



# ► Factsheet on Technical Note

May 2023

## Factsheet on Technical Note and Global Good Practices to Align Bangladesh Labour Laws with Selected International Labour Standards (Bangladesh Labour Act and Rules)<sup>1</sup>

### No. 3: Protection Against Acts of Anti-union Discrimination and Acts of Interference<sup>2</sup>

#### Key points

- **C1: Excessive sanctions including imprisonment for activities that do not justify the severity of the sanction**
- **C2: Inadequate procedures for claims related to acts of anti-union discrimination and acts of interference**
- **C3: Inadequate remedies for acts of anti-union discrimination.**
- **C4: Unclear coordination functions between different departments of the Ministry of Labour in dealing with anti-union discrimination complaints.**
- **C5: Need to strengthen adjudication of unfair labour practice disputes [Added]**
- **C6: Pending judicial proceedings concerning dismissed workers in the mining sector**
- **C7: Allegations of anti-union discrimination**
- **C8: Lack of protection for workers for filing a complaint or for participating in proceedings against an employer including through helplines.**
- **C9: Inadequate sanctions for acts of anti-union discrimination and interference**
- **C10: Lack of legislative protection against act of interference by the employers in the BLA**
- **C11: Lack of prohibition of and penalties for blacklisting. [Added]**

<sup>1</sup> Labour law reform under the Road map of actions and the National Action Plan (NAP) on the Labour Sector of Bangladesh (2021-2026) needs to address recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) since both instruments were mainly drafted to address issues on ILO Conventions Nos. 87,98 and 81, including issues raised by CEACR. The ILO Office in Bangladesh and the Bangladesh's Ministry of Labour and Employment agreed that the ILO prepare a Technical Note as a useful tool that provides information for the Government and social partners on how the labour laws in Bangladesh can be amended in response to CEACR's recommendations and in alignment with selected international labour standards.

<sup>2</sup> The ILO Office in Bangladesh has developed 12 chapter-wise factsheets on two sets of the Technical Note, one for the Bangladesh Labour Act of 2016 (revised in 2013 and 2018) (BLA) and Bangladesh Labour Rules of 2015 (revised in 2022) (BLR) and another for the Export Processing Zones (EPZ) Labour Act, 2019 and the EPZ Labour Rules, 2022. Each issue and recommendation under the Technical Note has a specific code by letter and number for easy references. For example, for B1, B represents the topic on freedom of association which is linked to Matrix B of the Technical Note, and it is the first issue identified under this topic. There is also recommendation B1 which is corresponded to issue B. The recommendation can be found in the full Technical note.

## Introduction

Anti-union discrimination is one of the most serious violations of freedom of association, as it may jeopardize the very existence of trade unions. It may also, consequently, result in a denial of collective bargaining.

Therefore, legislation must make effective provisions for the prohibition of anti-union discrimination and for the protection of workers against such acts. Additionally, the existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. This general principle, which the Committee of Experts continually emphasizes, is based on Art.3 of C.98, which provides that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in Articles 1 and 2.....the Committee emphasizes the importance of ensuring without delay independent, expeditious and in-depth investigations in cases of allegations of anti-union discrimination."

## Unfair Labour Practice System

Several countries in the world, including the United States, South Africa, Japan, Republic of Korea and Philippines have established a special Unfair Labour Practice (ULP) system to safeguard the right to organize and to ensure rapid and effective resolution. Disputes over unfair labour practices are investigated and settled by an independent, often tripartite, body: i.e. the National Labor Relations Board in the U.S.; the Commission for Conciliation, Mediation and Arbitration (CCMA) in South Africa; Labour Relations Commissions in Japan and in Republic of Korea (provincial and central). These bodies are authorized to issue cease-and-desist order and are also given considerable discretion over remedy orders including reinstatement of employees with or without back pay. Decisions of these bodies may be appealed to judicial courts, and sanctions shall be applied in the case of non-compliance with the decisions of these bodies.

## Key Issues in Bangladesh

In Bangladesh, the Bangladesh Labour Act (BLA) defines and prohibits certain acts as anti-trade union discrimination and unfair labour practices (BLA sections 195, 196 and 196A). Such acts can be committed either by employers (secs. 195 and 196A) or by trade unions or workers (sec.196).

The Department of Labour (DoL) has issued the Standard Operating Procedures (SOPs) for the Unfair Labour Practice and Anti-Trade Union Discrimination to manage and

prosecute anti-union discrimination and unfair labour practices complaints.

In its Observation on the application of C.98 by the Government of Bangladesh adopted in 2020 (published in 2021) , as well as in its Observation on the application of C.87 adopted in 2022 (published in 2023), the Committee of Experts has requested the Government to provide information on a number of issues pertaining to anti-union discrimination and interference, including on the practical applications of several provisions of the Bangladesh Labour Act, 2006 (BLA) (revised in 2013 and 2018) and the Bangladesh Labour Rules, 2015 (Amended in 2022) (BLR). On the basis of this, the Technical Note for Bangladesh has identified that specific amendments to the laws and regulations are required at least for the following 7 issues.

## Issue C1: Excessive sanctions including imprisonment for activities that do not justify the severity of the sanction

### CEACR Observation on C.98, 2020 (2021):

- "The Committee also notes that the 2018 amendments introduced section 196(4) providing for the adoption of SOPs for investigating unfair labour practices on the part of the workers and reduced by half the maximum prison sentence imposable on workers for a series of violations – unfair labour practices, instigation and participation in an illegal strike or a go-slow, participation in activities of unregistered trade unions and dual trade union membership
- However, the Committee observes that the sanctions still include imprisonment for activities that do not justify the severity of the sanction and recalls that it has been requesting the Government to eliminate such penalties from the BLA and to let the penal system address any possible criminal acts."

## Issue C2: Inadequate procedures for claims related to acts anti-union discrimination and acts of interference.

### CEACR Observation on C.98, 2020 (2021):

- “...Taking due note of the information provided (by the Government), the Committee recalls that **the existence of legal provisions prohibiting acts of anti – union discrimination is not enough if they are not accompanied by effective and rapid procedures** to ensure their application in practices...”

## B2.1: Need to improve the Special Operating Procedures (SOP) for unfair labour practices

### CEACR Observation on C.98, 2020 (2021):

- “The Committee notes with interest the addition of section 196(A) in the BLA explicitly prohibiting anti-union activities by the employer and providing for the establishment of standard operating procedures (SOPs) for investigating such acts...”
- The Committee requests the Government to continue to **provide detailed statistics on the number of complaints of anti-union discrimination received by the relevant authorities** and their follow-up, including time taken to resolve the disputes, remedies imposed, the number of complaints settled amicably compared to those referred to labour courts, the results of judicial proceedings and the sanctions ultimately imposed following full proceedings.

### CEACR Observation on C.87, 2022 (2023):

- The Committee however notes with **regret** that the following rules which the Committee had previously requested the Government to address appear not to have been amended in the manner requested:...(vii) the BLR lacks provisions providing adequate procedures and remedies for unfair labour practice complaints.
- **The Committee deeply regrets that the Government appears to not to have taken advantage of the recent revision process to address the above-mentioned concerns and urges it to ensure an expedited review** of these remaining issues so that the **Bangladesh Labour Rules** may be brought fully into conformity with the provisions of the convention.” [emphasis original]

## B2.2: Expertise of officers who deal with unfair labour practices cases

### CEACR Observation on C.98, 2020 (2021):

- “The Committee encourages the Government to continue to provide the **necessary training to labour officials** on dealing with anti-union and unfair labour practices complaints with a view to ensuring their

efficient and credible handling and to inform about the functioning in practice of the workers’ resource centre.” [emphasis original]

## C2.3: Lack of protection against retaliation action against workers due to their involvement with claims related to unfair labour practices and anti-union discrimination. [Added]

## C2.4 Functioning of the online database on anti-union complaints and protection of personal data

### CEACR Observation on C.98, 2020 (2021):

- “While noting the technical challenges encountered, the Committee expects the online database on anti-union complaints to be fully operational in the near future so as to ensure transparency of the process and at the same time ensuring protection of personal data of the workers concerned.”

**Relevant ILS and ILO Jurisprudence<sup>3</sup>**► **Article 1 of C.98:**

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to-- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

- **CEACR:** The existence of legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. (General Survey, 2012, paras. 190-193).

**Issue C3: Inadequate remedies for acts of anti-union discrimination.**

**Currently, there is no provision on remedies in the BLA nor in the BLR for acts of anti-union discrimination.**

**CEACR Observation on C.87, 2020 (2021):**

- "...Further recalling that in case of dismissals by reason of trade union membership or legitimate trade union activities, reinstatement should be included among the range of measures that can be taken to remedy such a situation and that, if compensation or fines are imposed, these should be sufficiently dissuasive..." [emphasis original]

**Relevant ILS and ILO Jurisprudence**► **Article 1 of C.98**

- **CEACR:** Determining the scope of the concept of "adequate protection" within the meaning of Article 1(1) of the Convention [No.98] is central to issues relating to anti-union dismissal and measures of prevention and compensation. The Committee considers that systems are compatible with the Convention which envisage: (i) preventive measures...; (ii) compensation and sufficiently dissuasive sanctions (civil, administrative or penal) and/or; (iii) the reinstatement of a worker dismissed by reason of trade union membership or legitimate trade union activities with retroactive compensation which, in the absence of preventive judicial or administrative procedures of prior authorization, constitutes the most effective remedy for acts of anti-union discrimination.

In the view of the Committee, reinstatement should at least be included among the range of measures that can be ordered by the judicial authorities in the event of anti-union discrimination.

When a country opts for a system of compensation and fines, the Committee considers that the compensation envisaged for anti-union dismissal should fulfil certain conditions: (i) be higher than that prescribed for other kinds of dismissal, with a view to the effective dissuasion of this type of dismissal; (ii) be adapted in accordance with the size of the enterprises concerned (it has considered, for example, that while compensation of up to six months' wages may be a deterrent for small and medium-sized enterprises, that is not necessarily the case for highly productive and large enterprises); and (iii) the amount be reviewed periodically (particularly in countries with galloping inflation where the compensation soon becomes merely symbolic), based for example on a minimum number of wage units or units of taxable income.

<sup>3</sup> Note: The factsheets only provide selected examples of ILS and ILO jurisprudence due to space limitation. Richer body of ILS and ILO Jurisprudence is provided in the Technical Note.

### Issue C4: Unclear coordination functions between different departments of the Ministry of Labour in dealing with anti-union discrimination complaints

[BLA sec. 124A, 317 and 319]

**CEACR Observation on C.98, 2020 (2021):**

- The Committee requests the Government to clarify the outcome of the 5,407 complaints that have been resolved, to indicate the number or the percentage of complaints specifically related to anti-union practices, and to provide information on whether any steps are taken to ensure anonymity of the complainants so as to prevent reprisals against helpline users...
- The Committee encourages the Government to continue to formally expand these procedures to other geographical areas and industrial sectors..."

### Issue C5: Need to strengthen adjudication of unfair labour practice disputes [Added]

[BLA sec. 317 (4)]

### Issue C6: Pending judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (District Sessions Court, Dinajpur, Case No.345/2011)

**CEACR Observation on C.98, 2020 (2021):**

- "...the Committee requested the Government to provide information on the outcome of the judicial proceedings concerning dismissed workers in the mining sector who were charged with illegal activities (Case No.345/2011) once the judgement of the District Sessions Court, Dinajpur, has been rendered..no hearing has yet been held but observing that the case the case has been pending for several years.
- The Committee emphasizes the importance of ensuring expeditious examination of allegations of anti-union discrimination so as to ensure adequate protection against such acts in practice.
- The Committee expects the case to be completed rapidly and requests the Government to provide

information on its outcome once the judgment of the District Sessions Court, Dinajpur has been rendered. "

### Issue C7: Allegations of anti-union discrimination following the 2016 Ashulia incident and the 2018-2019 minimum wage protests.

**CEACR Observation on C.98, 2020 (2021):**

- The Committee requests the Gov to clarify its involvement in the ongoing investigations into the massive dismissals ...and to provide information on whether an investigation, by an independent entity, has taken place in this regard. The Committee firmly expects that any future investigations into concrete allegations of anti-union discrimination will be done in full independence and impartiality and that the Government will continue to take all necessary measures to prevent repeated and institutionalized acts of anti-union discrimination. Further recalling that in case of dismissals by reason of trade union membership or legitimate trade union activities, reinstatement should be included among the range of measures that can be taken to remedy such a situation and that, if compensation or fines are imposed, these should be sufficiently dissuasive, the Committee requests the Gov to provide information on the concrete remedies applied in all cases of termination of workers in the above incidents for which it has been found that they had occurred for anti-union reasons."

### Issue C8: Lack of protection for workers for filing a complaint or for participating in proceedings against an employer including through helplines.

[BLA sections 195]

**CEACR Observation on C.98, 2020 (2021):**

- "the \_Committee requests the Government ...to provide information on whether any steps are taken to ensure anonymity of the complainants so as to prevent reprisals against helpline users."

## ► Relevant ILS and ILO Jurisprudence

## ► Prohibited grounds under ILO Convention on Termination of Employment, 1982 (C.158)

- Trade union membership
- Legitimate trade union activities, in particular:
  - participation in union activities outside working hours or, with the consent of the employer, within working hours;
  - seeking office as, or acting or having acted in the capacity of, a workers' representative;
  - the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

## Issue C9: Inadequate sanctions for acts of anti-union discrimination and interference.

[BLA sec.291]

## CEACR Observation on C.98, 2020 (2021):

- “The Committee **“regrets** that despite its previous request to increase the **penalties envisaged for unfair labour practices and acts of anti-union discrimination by employers**, the applicable fines remained unchanged and, as a result, **are not sufficiently dissuasive** (a fine of maximum 10,000 Bangladeshi taka which equals US\$120 - section 291(1) of the BLA). The Committee further notes that the penalty of imprisonment has been reduced through the 2018 BLA amendment from two years to one year (sec.291(1) of the BLA)...
- “...the Committee requests the Government once again to take the necessary measures, after consultation with the social partners, to increase the amount of the fine imposable for acts of anti-union discrimination.”

## Issue C10: Lack of legislative protection against act of interference\_by the employers in the BLA

[BLA Sec. 195(1)(g) and 202(13) and BLR rule 187(2)]

## CEACR Observation on C.98, 2020 (2021):

- “While noting the Government’s emphasis on the 2018 BLA amendments and noting that sections 195(1)(g) and 202(13) prohibit employer’s interference in the conduct of elections for a collective bargaining agent and Rule 187 (2) of the BLR prohibits interference in elections of worker’s representatives to participation committees, the Committee observes that these provisions do not cover all acts of interference prohibited under Art.2 of C.98, such as acts designed to promote the establishment of workers’ organizations under the domination of the employer, to support workers’ organizations by financial or other means with the objective of placing them under the control of an employer or an employers’ organization, to exercise pressure in favour or against any workers’ organization, etc...
- “...the Committee therefore requests the Government to take all necessary measures to broaden the current scope of protection against acts of interference in the BLA and the ELA, so as to ensure that workers’ and employers’ organizations are effectively protected against all acts of interference both in law and in practice. The Committee trusts that, in the meantime, efforts will be made to ensure that, in practice, workers’ and employers’ organizations will be protected from any acts of interference against each other.”



## Relevant ILS and ILO Jurisprudence

## ► Article 2 of C.98

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

- **CEACR:** "Acts of interference are deemed to include acts which are designed to promote the establishment of workers' organizations under the domination of an employer or an employers' organization, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations." (General Survey, 2012, para.194) [Emphasis original]

## Issue C11: Lack of prohibition of and penalties for blacklisting. [Added]

- The Government indicated to the CEACR that "the BLA leaves no scope for blacklisting trade union leaders or workers..." While the Government did not specify the provision(s) of the BLA to which it was referring to, in reality the current provisions of the BLA (i.e. sections 195 and 196A) are not sufficient in effectively prohibiting the blacklisting.

## ► Relevant ILS and ILO Jurisprudence

- **CEACR:** "... The practice of so-called "blacklists" of trade union officers, activists or members used in the context of hiring procedures is particularly incompatible with the principles of the Convention....Recalling that the secret nature of such lists often makes a dead letter of the remedies laid down by ordinary legislation on the protection of privacy, the Committee encourages governments to take stringent measures and to order the necessary investigations in this respect...." (General Survey, 2012, para.178).