International Labour Organization

ILO brief

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)[1]

No. 4: Collective Bargaining and Collective Bargaining Agreements[2]

Key points

- **D1: Lack of clear definition and meaning of collective bargaining and lack of institutional framework to support and promote it in practice, such as through the principle of negotiation in good faith [Added].**
- **D2: Determination of collective bargaining agents.**
- **D3: Excessive preferential rights for CB agents.**
- **D4: Lack of legal basis for Higher-level collective bargaining.**
- **D5: Extension of collective agreements [Added]**
- **D6: Infringements on the right to collective bargaining.**
- **D7: Lack of enforcement of collective agreement [Added]**

[1] 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.

[2] 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

The right to organize and to bargain collectively is the complement to freedom of association and is interwoven with the other fundamental rights. The ILO Constitution recognizes the solemn obligation of the ILO "to further among the nations of the world programmes which will achieve [...] the effective recognition of the right of collective bargaining". The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has since achieved almost universal endorsement in terms of ratification, bearing witness to the force of its principles in the majority of countries. In June 1998, the ILO took a further step with the adoption of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Declaration indicates that "all Members, even if they have not ratified the [fundamental] Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights" [including the right to bargain collectively]. The Government of Bangladesh ratified ILO Convention No. 98 in 1972.

Time after time, collective bargaining has proven to be an essential tool for both employers and workers in navigating difficult times such as economic down-turn, global financial crisis or most recently the Covid-19 pandemic. The ILO found positive and important role that collective bargaining played across the world during the Covid-19 pandemic (2020-2021), such as in affording protection to front-line workers; in implementing government-sponsored employment retention measures (such as short-time work, partial unemployment, wage subsidies and furlough schemes); or to negotiate short-order flexibility (in wage-setting, working time and work allocation) in exchange for employment guarantees.

Key Issues in Bangladesh

In Bangladesh, collective bargaining is not an established practice, and collective bargaining is rather understood and practiced as a dispute settlement negotiation, rather than a pure negotiation on the terms and conditions of employment or on the relationships between employers and workers that does not necessarily entail disputes. In fact, this is not uncommon in Asia. What, then, would it take to promote collective bargaining in Bangladesh?

In its Observation on the application of C.98 by the Government of Bangladesh adopted in 2020 (published in 2021) the Committee of Experts requested the Government to provide information on a number of issues pertaining to the promotion of collective bargaining, or lack thereof, 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 8 issues, in order to promote collective bargaining in Bangladesh in line with the ILS.

Issue D1: Lack of clear definition and meaning of collective bargaining and lack of institutional framework to support and promote it in practice, such as through the principle of negotiation in good faith [Added].

[BLA sec. 3, 195, 202, 210]

Currently, there is a lack of clarity on the definition and meaning of collective bargaining in the BLA: i.e. On the one hand, sec. 202(24)(a) seems to signify a voluntary process of bargaining, but it appears to be inconsistent with sec.3 which establishes that it is up to the employer to create its own service rules regulating employment of workers. Sec.210(2), on the other hand, describes bargaining as a mandatory procedure, and limits CB to "discussion on the issue raised" in the communication of an industrial dispute, signifying a post-dispute, limited application for bargaining, restricted in scope and application to the specific matter raised.

Resolving the apparent difference between these two uses gets to the heart of a policy discussion that Bangladesh law and policymakers should fully explore: whether collective bargaining in Bangladesh is to be a means of negotiating and executing collective bargaining agreements that establish the terms and conditions of employment, forming the basis of industrial relations; whether collective bargaining is to remain a means of settling disputes as they arise, resulting in various dispute settlements; or, whether the intention is that collective bargaining should be a

means of performing both functions, as Section 202(24) and Section 210(2) read together would seem to imply.[3]

Relevant ILS and ILO Jurisprudence[4]

- **Article 2 of C.87:** ILO Convention on Collective Bargaining, 1981 (No.154) provides as follows: "For the purpose of this Convention the term collective bargaining extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations." [Emphasis added]
- **CEACR:** "The principle of negotiation in good faith, which is derived from Article 4 of the Convention [i.e. C.98], takes the form, in practice, of various obligations on the parties involved, namely: (i) recognizing representative organizations; (ii) endeavouring to reach agreement; (iii) engaging in real and constructive negotiations; (iv) avoiding unjustified delays in negotiation; and (v) mutually respecting the commitments made and the results achieved through bargaining. (General Survey, 2012, para.208. "Negotiation in good faith"). (emphasis added)

Issue D2: Determination of collective bargaining agents.

[BLA sec. 202]

Pursuant to section 202 of the BLA, if there is only one trade union in an establishment, that trade union is deemed to be the collective bargaining agent for that establishment.[5] In the case where there are more than one trade union, a trade union which has more than one third of the total number of workers employed in the establishment as its members can be given the exclusive bargaining agent status.[6]

CEACR Observation on C.98, 2022 (2023):

- "The Committee…is not requesting the Government to remove the one third majority requirement for the acquisition of the exclusive bargaining agent status but… ***The Committee…requests the Government to clarify whether, in case where no union reaches the required threshold to be recognized as the exclusive collective bargaining agent under section 202 of the BLA, the existing unions are given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members."*** (Emphasis original).

Relevant ILS and ILO Jurisprudence

- **Article 4 of C.98.**
- **CEACR:** "…while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members. (General Survey on fundamental Conventions, 2012, para.226).

Issue D3: Excessive preferential rights for collective bargaining agents

[BLA sec. 204]

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

- "**…**while noting the minor amendments to sections 202 and 204[7] [of the BLA], the Committee notes that they do not address its concerns in that they limit the scope

[3] [3] ILO Bangladesh's Promoting Social Dialogue and Harmonious Industrial Relations in the Bangladesh Ready-Made Garment Industry Project (SDIR Project), April 2017, "Labour Law Review Final Report", p.9.

[4] 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.

[5] Sec.202, sub-paragraph (1).

[6] Either through an election among themselves or through a secret ballot held by the Director General upon an application made by a trade union or by the employer. (Sec.202, sub-paragraph (2)).

[7] **BLA Sec.204. Check-off.** - (1) If the collective bargaining agent so requests, an employer shall deduct from the wages of the workers working in his establishment, who are members of that CBA union,… [: Provided that the members outside the CBA union may pay subscriptions by receipts]…

of action of trade unions other than the collective bargaining agents."

Relevant ILS and ILO Jurisprudence

- **Article 4 of Convention No.98.**
- **CFA: "**The Committee has recalled the position of the Committee of Experts on the Application of Conventions and Recommendations that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances." (CFA, 2018 Compilation,[8]para.1387 "rights of minority unions").

Issue D4: Lack of legal basis for Higher-level collective bargaining.

[BLA sec. 202, 203]

Currently, sections 202 and 203 of the BLA anticipate CB only in an establishment or a group of establishments. While the law does not prohibit CB at higher levels per se, it is silent about it and the lack of a legal basis to govern or facilitate CB at higher levels makes it difficult for the employers and workers to conduct it in reality.

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

- "The Committee requests the Gov to consider to further revise sections 202 and 203 of the BLA so as to **clearly provide a legal basis for CB at the industry, sector and national levels.**" (Emphasis original).

Relevant ILS and ILO Jurisprudence

- **CFA:** Under C.98, the determination of the bargaining level is essentially a matter to be left to the discretion of the parties. Consequently, the level of negotiation should not be imposed by law, by decision of the administrative authority or by the case-law of the administrative labour authority. (CFA, Compilation, 2018, para.1404).

Issue D5: Extension of collective agreements [Added]

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

Once collective bargaining at higher levels is made possible through amendments of the BLA, consideration should also be given to the effect of the collective agreements that are concluded at higher levels - i.e. to whom they shall apply, wholly or partially.

Relevant ILS and ILO Jurisprudence

- The ILO Collective Agreements Recommendation, 1951 (No.91) indicates that, where appropriate, "measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement" (para.5(1)). National laws or regulations may make the extension of the collective agreement subject to the following, among other, conditions:

  (i) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative;

  (ii) that, as a general rule, the request for extension of the agreement shall be made by one or more organizations of workers or employers who are parties to the agreement; and

  (iii) that the employers and workers to whom the agreement would be made applicable should be given an opportunity to submit their observations (para.5(2))

[8] Committee on Freedom of Association, 2018, "Compilation of decisions of the Committee on Freedom of Association, sixth edition. [Referred to as "CFA, 2018 Compilation"].

Issue D6: Lack of proper definition of collective agreement and of its legality [Added]

[BLA sec. 2(25)]

Issues:

"Settlement" means a "settlement arrived at in the course of a conciliation proceeding, and includes an agreement between an employer and worker arrived at otherwise than conciliation proceedings, is in writing and signed by both parties and a copy thereof is sent to the Director of Labour and the Conciliator"

Issue D7: Infringements on the right to collective bargaining.

[BLA sec. 3, BLR 4, 202]

Issue D7.1: Service rules

Currently, the laws and regulations do not determine the hierarchy between the service rules and collective agreements.

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

- "The Committee also requested the Government to ensure that Rule 4 of the BLR giving the Inspector General total discretion to shape the outcome of service rules and determine their conformity with the law should not be used to limit collective bargaining…"[9]

Issue D7.2: Prohibition of certain trade union activities in a way that could impinge on the right to FOA and CB.

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

- "***The Committee encourages the Government to consider amending Rule 202,***[10] ***in consultation with the social partners, during the next revision of the BLR in order to ensure it does not unduly impinge on the right to collective bargaining.***" (Emphasis original)

▶ **Relevant ILS and ILO Jurisprudence**

▶ **CEACR:**

- "The ILO supervisory bodies have acknowledged certain restrictions on the subjects which may be covered by collective bargaining. They have considered, for example, that the employer's management prerogatives (such as the allocation of tasks and recruitment) could be excluded from negotiable issues. Moreover, certain subjects could be prohibited for reasons of public order, such as discriminatory clauses, trade union security clauses and clauses contrary to the minimum level of protection envisaged in the legislation. And the case in which the state is the employer, the Committee on Freedom of Association has also considered that "matters which clearly appertain primarily or essentially to the management and operation of government business" can reasonably be regarded as outside the scope of negotiation. (General Survey, 2012, para.216.)
- In practice, the Committee has considered that it should be possible for issues relating to transfer, dismissal and reinstatement, if the parties so agree, to be included in negotiations and not to be determined solely by law, and that the same applies to issues relating to the deduction of trade union dues, as well as to facilities in favour of trade union representatives. (Ibid., para.217)

[9] In relation to Rule 4, "the Government informs that the management of factories prepares service rules together with trade unions and in case of any objection, tripartite meetings are arranged to address the objection and only then does the DIFE verify the conformity of the service rules with the law, thus not hampering CB" (Cited in CEACR, Observation on C.98, 2020 (2021)).

[10] **BLR Rule 202 Avoiding some actions- any trade union, trade union federation or confederation, the collective bargaining agent, participating committee or any member thereof will avoid the following actions:** - (1) Interfere in the administrative functions of the organization; (2) Interfere in the employment, replacement and promotion of officers, employees or workers of the organization; (3) Adoption of any vehicles, furniture or any monetary benefits from the authority; (4) Interfere in the production and normal activities of organization; And (5) Convening any strike by not following the rule 204 [Arrangement of secret vote for a strike notice].

Issue D8: Lack of enforcement of collective agreement [Added]

[BLA sec. 2(25)]

It has been observed that labour inspectors are not necessarily aware of the need to enforce collective agreements, where they exist, especially when they provide higher standards than the laws and regulations. Currently, the BLA and BLR do not give clear recognition to the legal effect of collective agreements

Relevant ILS and ILO Jurisprudence

▶ **Art.27 of Convention 81 on Labour Inspection**: Under C.81, the term "legal provisions" includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred and which are enforceable by labour inspectors.

Issue D9: Resolution of industrial action through adjudication, not in conformity with the ILS

[BLA sec. 211]

In Bangladesh, the Labour Court has the ultimate jurisdiction on all types of labour disputes, including industrial action.

CEACR Observation on C.98, adopted in 2020 (2021)

- "...section 211 (2) of the BLA allows the possibility of adjudication of industrial action, which is not in line with the ILS."

Relevant ILS and ILO Jurisprudence

▶ **Article 4 of C.98**: Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for **voluntary negotiation** between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements. [Emphasis added]

▶ **CEACR:**

- "The imposition of arbitration with compulsory effects, either directly under the law, or by administrative decision or at the initiative of one of the parties, in cases where the parties have not reached agreement, or following a certain number of days of a strike, is one of the most radical forms of intervention by the authorities in collective bargaining." (General Survey, 2012, para.246).

It can be deducted that resolution of industrial action through adjudication is also contrary to the principle of voluntary negotiation under Art.4 of C.98.

There are a few other outstanding requests made by the CEACR in 2020 for more information from the Government in order for the Committee to assess the compliance with C.98: i.e.

  - Collective bargaining in the agriculture sector;
  - Collective bargaining in the public sector.
- The Technical Note for Bangladesh will be updated on these matters as soon as the comments of the CEACR are updated.

Issue D10: Inadequate measures to promote collective bargaining or to ensure expeditious progress in collective bargaining [Added]

[BLA sec. 2(42A), 202A]

Relevant ILS and ILO Jurisprudence

- **Art.4 of Convention No.98** requires countries which ratify it to take:

  "Measures appropriate to national conditions (...), where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreement"

  Art.5(1) of Convention No.154 provides that "measures adapted to national conditions shall be taken to promote collective bargaining".

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