



► 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. 5: Workplace Dialogue and Workers' Participation Committee²

Key points

- **E1: Ambiguity over the relationship between WPCs and trade unions in the BLA and BLR.**
- **E2: Employer influence and interference in the election of workers' representatives to participation committee.**
- **E3: Restrictions on voter eligibility regarding the WPC representatives.**
- **E4: Broad restrictions on actions of trade unions and WPCs.**

Introduction

Rights and roles of workers' representatives must be so conceived as not to replace or prejudice those of trade unions. Direct negotiation between the undertaking and its employees, by-passing representative organizations where

these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and prompted.

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.

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned. Collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level (CEACR, General Survey, 2012, para.239)³.

Relevant ILO instruments are: ILO Convention No.98; Workers Representatives Convention (C.135) and Recommendation (R.143), 1971; and Collective Bargaining Convention (C.154) and Recommendation (R.163), 1981.

Many countries have developed diverse mechanisms of worker representation and consultation in the workplace: i.e. known as **“Works Councils” in Europe, “Workplace Forums” in South Africa, “Labour-Management Councils” in South Korea and the Philippines, “Labour-Management Joint Consultation System” in Japan or “Workers’ congress” in China.** These mechanisms function either as a complementary to the union representation in unionized undertakings or as an alternative form of worker representation in non-unionized undertakings. While there is a great diversity in the structure and the function of these mechanisms, they have primarily been developed out of the common recognition that an effective mechanism for information sharing and consultation between management and labour at the workplace level is a key to the sound and peaceful labour relations, which would in turn contribute to enhancing productivity and efficiency of the workforce and the business.

At the same time, it is important to note that in the systems where both trade unions and workplace consultation bodies can co-exist, necessary measures have been introduced to prevent workplace consultation bodies from undermining the prerogative rights of trade unions, in particular collective bargaining.

Key Issues in Bangladesh

In Bangladesh, a Workplace Participation Committee (WPC) is to be established in every **non-unionised** establishment in which at least 50 workers are ordinarily employed [BLA sec.205 (1) - (12)];

- Consisting of representatives of the employer and the workers;
- Worker representatives shall be elected in the manner prescribed by rules from amongst the workers working in that establishment [sub-sec (6)];
- In the absence of trade unions, the worker reps may carry out the activities related to the interests of the workers until a TU is formed in that establishment [sub-sec (6a)]
- If a TU exists in the establishment, no participatory committee shall be required to be constituted [sub-sec 12)]

The functions of the WPC are [BLA Sec.206] are:

- To inculcate and develop sense of belonging to the establishment among the workers and employers;
- To make the workers aware of their commitments and responsibilities to the establishment, in particular to:
 - endeavour to promote mutual trust and faith, understanding and cooperation;
 - ensure the application of labour laws;
 - foster a sense of discipline;
 - improve and maintain OSH and working conditions;
 - encourage vocational training, workers' education and family welfare training;
 - adopt measures for improvement of welfare services;
 - fulfill production target, increase productivity, reduce production cost, prevent wastage and raise quality of products.

In many instances, trade unions are reported to be paralyzed by the formation of the participation committees. This is a relevant concern, especially in view of

³Committee of Experts on the Application of Conventions and Recommendations (CEACR), 2012, “General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008: Giving globalization a human face” (ILC.101/III/1B). [Referred to as “CEACR, General Survey, 2012”]

the fact that participation committees are composed of both workers' and employer's representatives: i.e. if the employer participates in the WPC, it does not necessarily represent the interests of the workers, and therefore their roles and functions should not be the same as those of trade unions. It is therefore essential to ensure that the WPCs do not undermine the rights and functions of trade unions, both in law and in practice.

Guided by the Committee of Experts' Observations on the application of C.87 adopted in 2020 (published in 2021) and in 2022 (published in 2023), amendments in the laws and regulations are required at least for the following 4 issues in order to bring them in line with the ILS.

Issue E1: Ambiguity over the relationship between WPCs and trade unions in the BLA and BLR.

[BLA sec. 205, 206, BLR 183]

Prior to the 2022 amendments, the Bangladesh Labour Rules (i.e. Rules 183-187) were not consistent with the BLA (i.e. sec.205(12)) and provided rules as if a WPC and trade unions can co-exist in an establishment.

CEACR Observation on C.87, 2022 (2023)⁴:

- "...the Committee welcomes the amendment that appears to have been made to Rule 183 clarifying that it is not necessary to form a participation committee in companies where a union is present.

In addition, there should also be clear rules in the BLA and BLR for the transition where a trade union is newly established in a previously non-organized establishment where a WPC has been established and operational: i.e. once a trade union is newly formed, the existing WPC should ultimately cease to exist and be replaced by the trade union.

► Relevant ILS and ILO Jurisprudence⁵

► CFA:

- "The Workers Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned." (CFA, 2018 Compilation, para.1582)⁶.
- "The Committee has recalled that legislative or other measures have to be taken in order to ensure that organizations that are separate from trade unions do not assume responsibility for trade union activities and to ensure effective protection against all forms of anti-union discrimination." (CFA, 2018 Compilation, para.1230).

Issue E2: Employer influence and interference in the election of workers' representatives to participation committee.

[BLR 187, 188]

CEACR Observation on C.87, 2020 (2021)⁷:

- "...the Committee emphasizes the need to review the BLR to align it with the 2018 amendments of the BLA, as well as regarding the following matters previously raised:...(iii) **Rule 188 provides for employer participation in the formation of election committees which conduct the election of worker representatives to participation committees in the absence of a union – this, according to the ITUC, could lead to management domination of participation**

⁴ Committee of Experts on the Application of Conventions and Recommendations (CEACR), Observation on C.87 for Bangladesh, adopted in 2022 and published for the 110th ILC Session in 2023 [Referred to as "CEACR Observation on C.87, 2022 (2023)"].

⁵ 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.

⁶ Committee on Freedom of Association, 2018, "Compilation of decisions of the Committee on Freedom of Association, sixth edition. [Referred to as "CFA, 2018 Compilation"]

⁷ Observation on C.87 for Bangladesh, adopted in 2020 and published at the 109th ILC session in 2021. [Referred to as "CEACR Observation on C.87, 2020 (2021)"].

and safety committees; the Government informs in this respect that election of worker representatives to participation committees without representation of employers is being piloted in two factories;"

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

- "The Committee further notes that Rule 188...has been amended to limit the employer representation to one, giving greater weight to the workers' representation. *The Committee requests the Government to provide detailed information on the application of Rule 188...*"

► **Relevant ILS and ILO Jurisprudence**

- **The Article 3(1) of C. 87:** Workers' and employers' organisations shall have the right ... to elect their representatives in full freedom.
- **Article 5 of the Workers' Representatives Recommendations, 1971 (No.143)** requires that "[W]orkers' representatives⁸ in the undertaking should enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative..., in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements." Articles 6-8 provide for the measures needed to be taken to ensure protection of elected worker representatives.

Issue E3: Restrictions on voter eligibility regarding the WPC representatives.

[BLR 190]

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

- "...the Committee emphasizes the need to review the BLR to align it with the 2018 amendments of the BLA...regarding the following matters previously raised:...(iv) **Rule 190 prohibits certain categories of workers from voting for worker representatives to participation committees;**"

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

- *"The Committee deeply regrets that the Government appears not to have taken advantage of the recent*

revision process....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).

► **Relevant ILS and ILO Jurisprudence**

- **Article 3(1) of C. 87:** Workers' and employers' organisations shall have the right ... to elect their representatives in full freedom.
- **CEACR:** "...the law which allows arbitrary interference by the authorities in elections is incompatible with Article 3, paragraph 1, of the Convention No.87. (General Survey, 2012, para.101).

Issue E4: Broad restrictions on actions of trade unions and WPCs

[BLR 202]

BLR Rule 202 requires trade unions and WPCs to avoid some specific actions, including: (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;... (4) Interfere in the production and normal activities of organization; And (5) Convening any strike by not following the rule 204. However, such broad restrictions could undermine some legitimate activities of participation committees and trade unions without being perceived as interference in the work, administrative functions, production or activities of the establishment.

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

- "...the Committee emphasizes the need to review the BLR to align it with the 2018 amendments of the BLA...regarding the following matters previously raised:...; (v) **Rule 202 contains broad restrictions on actions taken by trade unions and participation committees;**"

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

⁸ Under the Convention, the term workers' representatives means persons who are recognised as such under national law or practice, whether they are-- (a) trade union representatives, (b) elected representatives, namely representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned (Art.2).

► ILO Brief

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- ***"The Committee deeply regrets that the Government appears not to have taken advantage of the recent revision process....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).

► Relevant ILS and ILO Jurisprudence

- **Article 3(2) of C. 87:** Workers' and employers' organisations shall have the right ... to organise their administration and activities and to formulate their programmes.
- **Cooperation at the Level of Undertaking Recommendation, 1952 (No. 94) and the Communication with the Undertaking Recommendation, 1967 (No.129)** recommend that measures be taken to promote effective consultation, co-operation and communications policy between employers and workers at the level of the undertaking on matters NOT within the scope of collective bargaining (such as e.g. the development of an OSH management system (maintaining a safe and healthy working environment primordially being a management responsibility) or the closure of a plant (the discretion over an undertaking's assets primordially being a right of the undertaking's ownership).