

UnFAIR LABOUR Practices, anti-union Discrimination, and workplace violence

Module 5: Monitoring and Enforcement Mechanisms



Structure of this module:

- Role of the Department of Labour.
- Standard Operating Procedures (SOPs) for unfair labour practice and anti-trade union discrimination & Procedures for reporting and addressing unfair labour practices.
- Penalties/sanctions for violations.
- Investigation of unfair labour practices, Identifying unfair labour practices & skills for investigators.
- The Committee on Freedom of Association and good practices concerning the investigation of unfair labour practices

Role of the Department of Labour

According to the Bangladesh Labour Act, 2006
[Act No. XLII of 2006]



CHAPTER XX

ADMINISTRATION, INSPECTION, ETC.

317. (4) The Director General shall have the following powers and functions... :-

- b) to submit complaints to the Labour Court against any offence **or unfair labour practice or anti-trade union discrimination** or violation of any provision of Chapter XIII;

190. Cancellation of registration –

1. Subject to other provisions of this section, the Director General may cancel the registration of a trade union, if-
 - e) it committed any unfair labour practice;

190. Cancellation of registration –

4. The registration of a trade union **shall not be cancelled** on the ground mentioned in sub-section (1) (e), unless an application is submitted to the Labour Court **within 3 (three) months of the occurrence of unfair labour** practice by such trade union mentioned in the allegation.

Standard Operating Procedures (SOPs) for unfair labour practice and anti-trade union discrimination & Procedures for reporting and addressing unfair labour practices

The Bangladesh Labour Act, 2006 [Act No. XLII of 2006] (as amended in 2018).

315. Report of offences –

Any contravention of, or refusal to comply with this Act or any rules, regulations or schemes by any person **may be reported** to the Director General, the Inspector General or Controller of provident funds, or to any officer subordinate to them **for information** or **for taking proper action**.

The Bangladesh Labour Act, 2006 [Act No. XLII of 2006] (as amended in 2018).

213. Application to the Labour Court –

Any **collective bargaining agent** or any **employer** or **worker** may **apply to the Labour Court** for the enforcement of any right guaranteed or given by or under this Act or any award or settlement or agreement or recognized by any existing custom or notice or order or notification or in any other way.

The Bangladesh Labour Act, 2006 [Act No. XLII of 2006] (as amended in 2018).

313. Cognizance of offences.-

1. No Court other than a Labour Court shall try an offence under this Act or any rules, regulations or schemes.
2. No Labour Court shall take cognizance of an offence under this Act or any rules, regulations or schemes **except upon complaint made by the following persons**, namely:-
 - a) aggrieved person, or aggrieved trade union;
 - b) in the case of an offence under section 298 or 301 or Chapter XIII, **the Director General**;
 - c) in the case of an offence under Chapter XVII, **the Chairman of the Board of Trustees or the Controller of provident funds**;
 - d) in the case of an offence under Chapter XVIII, **the competent authority**;
 - e) in the case of any other offence, **the Inspector General or any officer subordinate to him authorized in this behalf**.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

The designated Officials of the **Department of Labour** are required to comply with these procedures in considering applications for **Unfair Labour Practice** and **Anti-Trade Union Discrimination**.

This **Standard Operating Procedures (SOPs)** is intended to ensure the following in the process of considering Unfair Labour Practice and Anti-Trade Union Discrimination.

- i. To accelerate dispute resolution;
- ii. To develop harmonious relationship between employers & workers;
- iii. To ensure neutrality, transparency, and fairness

The **Standard Operating Procedures (SOPs)** for Unfair Labour Practice and Anti-Trade Union Discrimination is divided into **seven (7) steps**, with actions to be taken by the reporting party and/or the Department of Labour (DoL), and with a specified timeframes in most instances.

Step 1 – Written Complaint.

Step 2 – Verification.

Step 3 – Communication.

Step 4 – Investigation.

Step 5 – Resolution.

Step 6 – Record.

Step 7 – Referral to Labour Court.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 1 – Written Complaint

Action:

(i) Complaint submitted by [a] worker on an **unfair labour practice and anti-trade union discrimination** to DOL under section 315 & 317 of the BLA.

Timeframe:

Complaint should be submitted by [the] worker within **30 days** from occurrence of the date.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 2 – Verification

Action:

(i) Upon receipt of the written complaint, **the DOL will verify** whether the complaint relates to an issue of **unfair labour practice and anti-trade union discrimination or interference**.

Timeframe:

3 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 2 – Verification (cont'd.)

Action:

(ii) If [the] issues [are] not related to unfair labour practice and anti-trade union discrimination or interference, the complaint will be referred to the appropriate authority.

Timeframe:

3 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 3 – Communication

Action:

(i) After **verification**, if necessary the DOL will **forward the complaint** to the employer requiring him/her to provide a **written response**.

Timeframe:

5 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 3 – Communication (cont'd.)

Action:

(ii) The letter to the employer she be sent by **registered post** with confirmation of receipt. (including mailing time)

Timeframe:

5 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 3 – Communication (cont'd.)

Action:

(iii) **Written response** from [the] employer. (including mailing time)

Timeframe:

5 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 3 – Communication (cont'd.)

Action:

(iv) Decision for next step by DOL.

Timeframe:

2 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation

Action:

(i) Upon **receipt of the written response** (or in the **absence of a response** within the required time period) the DOL will **appoint an investigation team** [which] consists of minimum **two members**.

Timeframe:

2 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation (cont'd.)

Action:

(ii) Both [the] employer and [the] complainant will be **notified in writing** of the **start** and the **process of the investigation**. (including mailing time)

Timeframe:

6 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation (cont'd.)

Action:

(iii) As part of the **investigation**, the investigation team will **meet with the employer and [the] complainant separately** at the establishment and the trade union office respectively. Both parties will be asked to have any **relevant documents and other information**, including **witnesses**, ready to be presented at the meetings.

Timeframe:

7 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation (cont'd.)

Action:

(iv) The investigation team will **collect relevant documents** and may take **witness statements**, which he/she will ask witnesses to sign. He/she may also [make a] **request for more information**.

Timeframe:

7 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation (cont'd.)

Action:

(v) The investigation team may also arrange for a **joint meeting**, with both [the] employer/representative of [the] employer and [the] complainant, for the purpose of **clarifying facts, reviewing available evidence or exploring possible solutions to address the complaint**. The convening of a joint meeting will be at the discretion of the investigating team, unless requested by both parties. In determining the need for a joint meeting, the investigating team will **take into consideration the degree of harassment and intimidation**.

Timeframe:

7 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 4 – Investigation (cont'd.)

Action:

(vi) The investigation team will finally write an **investigation report** which includes a conclusion as to the alleged unfair labour practice and anti-trade union discrimination, and as relevant, a **recommendation for resolution**. In all cases, the investigation team will **indicate whether he/she considers that there has been a violation of the workers' fundamental right to freedom of association**.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 5 – Resolution

Action:

(i) If the DOL finds that **there has not been an unfair labour practice and anti-trade union discrimination**, it will **notify** both parties with **attachment of the investigation report and the case is terminated at that point.**

However, the complainant is free to further pursue his/her complaint, for example through a **direct application to the Labour Court under section 213 of the BLA.** (including mailing time).

Timeframe:

2 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 5 – Resolution (cont'd.)

Action:

(ii) If the DOL finds that **there has been an unfair labour practice and anti-trade union discrimination**, it will **notify** both parties **with attachment of the investigation report** and **will set a deadline for the employer to comply with the recommended resolution**.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 5 – Resolution (cont'd.)

Action:

(iii) If the employer complies, as confirmed by the complainant in writing, the case is resolved at this stage and parties will be informed accordingly. However, if the complainant (or the employer) is **not satisfied with the resolution** recommended by the DOL, he/she is free to further **pursue his/her complaint, for example through a direct application to the Labour Court** under section 213 of the BLA.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 5 – Resolution (cont'd.)

Action:

(iv) It should be noted that the case can also be considered **resolved** at any earlier stage of the procedure. This is the case if and as soon as **the employer has addressed the complaint to the satisfaction of, and as confirmed in writing by the complainant.**

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 6 – Record

Action:

- (i) The DOL will ensure that it has made a **full record** of the process.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 6 – Record (cont'd.)

Action:

(ii) The record will include the **complaint**, the **response**, other **letters** sent and received, **meeting minutes**, **witness statements**, submitted **documents** and any other **information** received or obtained, the **investigation report** and a **record of any resolution** reached.

Timeframe:

Step by step, it will be preserved in the file & should be maintained [in] a prescribed register. (Annexure-1)

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 6 – Record (cont'd.)

Action:

(iii) This information will be used to update a comprehensive database which will include data on: the **time taken to resolve cases**, the **remedies** imposed, including the **number of cases of reinstatement** with or without **back pay**, the **number of remedies accepted** by employers versus **appealed to judicial proceedings**, **time taken for judicial proceedings** and the **percentage of cases where employers' appeals succeed**, and **sanctions** ultimately imposed following full proceedings.

Timeframe:

Step by step, it will be preserved in the file & should be maintained [in] a prescribed register. (Annexure-1)

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 6 – Record (cont'd.)

Action:

(iii) The online database will be **updated** with the relevant information.

Timeframe:

Step by step, it will be preserved in the file & should be maintained [in] a prescribed register. (Annexure-1)

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 7 – Referral to Labour Court

Action:

(i) If the DOL finds that there has been an **unfair labour practice and anti-trade union discrimination** but the employer **does not comply** in a timely manner with the resolution recommended by the DOL, then it shall **lodge a complaint with the Labour Court** under sections 313 (2-b) and 317 (4-b) of the BLA.

Timeframe:

4 working days.

The Standard Operating Procedures (SOPs) for Unfair Labour Practice and Anti-Trade Union Discrimination:

Step 7 – Referral to Labour Court (cont'd.)

Action:

(ii) To this end, the DOL will submit the **full record** of the proceedings, including its **findings** and **recommendations**, to the court.

Timeframe:

4 working days.

Penalties/sanctions for violations



BLA, Section 291. Penalty for unfair labour practice or anti-trade union discrimination -

1. If any person contravenes any provision of section 195 or 196A, he [or she] shall be punished with imprisonment for a term which may extend to 1 (one) year, or with fine which may extend to 10,000 (ten thousand) taka, or with both.

BLA, Section 291. Penalty for unfair labour practice or anti-trade union discrimination -

2. If any worker contravenes any provision of section 196, he [or she] shall be punished with imprisonment for a term which may extend to 6 (six) months, or with fine which may extend to 5,000 (five thousand) taka, or with both.

BLA, Section 291. Penalty for unfair labour practice or anti-trade union discrimination -

3. If any trade union or any person, other than a worker, contravenes any provision of section 196, it or he [or she] shall be punished with imprisonment for a term which may extend to 1 (one) year, or with fine which may extend to 10,000 (ten thousand) taka, or with both.

Compilation of decisions of the Committee on Freedom of Association:

“No one should be subjected to discrimination or prejudice with regard to employment because of legitimate trade union activities or membership, and the persons responsible for such acts should be punished.”

Investigation of unfair labour practices

Identifying unfair labour practices
& skills for investigators

Why investigate?

Committee on Freedom of Association (CFA):

The ultimate responsibility for **ensuring respect for the principles of freedom of association** lies with the Government.

[And in particular, the **Department of Labour.**]

Some preconditions for operating effectively

- A clear and concrete **legal framework** that regulates the content of **freedom of association** in a non-controversial manner.
- A **sanctions** system providing an **effective deterrent** against violations of the right to freedom of association.
- The safeguarding of the **powers of investigators** in discharging their duties.
- The inspection system must be **impartial, independent** and **professional**, and it must engender confidence and social recognition.

Note: Also applicable for Labour Inspectors

Overview of considerations for investigators:

- **Identification of unfair labour practices –**
 - Reference Sections 195 and 196 of the BLA (module 1).
 - 195. Unfair Labour practices on the part of the employers.
 - 196. Unfair Labour practices on the part of workers.

- **The Standard Operating Procedures (SOP's) for Unfair Labour Practices –**
 - Conducting the investigation to determine the unfair labour practice.
 - Identifying the different types of evidence required.
 - Gathering the evidence.
 - Dealing with documents and other forms of evidence.
 - Reporting the unfair labour practice.

Overview of considerations for investigators:

- **Interpersonal/Soft skills for investigators -**
 - Assessing evidence for reliability and admissibility.
 - Questioning skills: including examination, cross examination and re-examination.
 - Listening skills.
 - Paraphrasing skills.
 - Reframing skills.
 - Reporting writing skills.

The Committee on Freedom of Association and good practices concerning the investigation of unfair labour practices



Compilation of decisions of the Committee on Freedom of Association:

“Cases concerning anti-union discrimination should be **examined rapidly**, so that the necessary remedies can be really effective; an excessive delay in processing such cases constitutes a serious attack on the trade union rights of those concerned.”

Compilation of decisions of the Committee on Freedom of Association:

“Complaints against acts of anti-union discrimination should normally be examined by national machinery which, in addition to being **speedy**, should not only be **impartial** but also **be seen to be such by the parties concerned**, who should participate in the procedure in an **appropriate and constructive manner**.”

Compilation of decisions of the Committee on Freedom of Association:

“It may often be difficult, if not impossible, for workers to furnish proof of an act of anti-union discrimination of which they have been the victim. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery **appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize.”**

Compilation of decisions of the Committee on Freedom of Association:

“Respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of **redress** which are **expeditious**, **inexpensive** and **fully impartial**.”

Compilation of decisions of the Committee on Freedom of Association:

“The Committee has considered that governments should take the necessary measures to enable **labour inspectors to enter freely and without previous notice any workplace liable to inspection, and to carry out any examination, test or inquiry** which they may consider necessary in order to satisfy themselves that the legal provisions – including those relating to **anti-union discrimination** – are being strictly observed.”

Compilation of decisions of the Committee on Freedom of Association:

“Cases concerning anti-union discrimination contrary to Convention No. 98 should be **examined rapidly**, so that the necessary **remedies can be really effective**. An excessive delay in processing cases of anti-union discrimination, and in particular a **lengthy delay** in concluding the proceedings concerning the **reinstatement of the trade union leaders** dismissed by the enterprise, constitute a **denial of justice** and therefore a **denial of the trade union rights** of the persons concerned.”

Compilation of decisions of the Committee on Freedom of Association:

“The longer it takes for a procedure – particularly concerning the reinstatement of trade unionists – to be completed, the more difficult it becomes for the competent body to issue a fair and proper relief, since the situation complained of has often been changed irreversibly, people may have been transferred, etc., to a point where it becomes impossible to order adequate redress or to come back to the status quo ante.”

“Delay in the conclusion of proceedings giving access to remedies diminishes in itself the effectiveness of those remedies...”.

Good practices while investigating unfair labour practices:

- 1. Effective sanctions.**
- 2. Thorough investigations.**
- 3. Investigate direct/indirect violations.**
- 4. Effective protection of witnesses & legal counsels of workers.**
- 5. Find intellectual instigators.**
- 6. Government is under a responsibility to take all necessary measures .**
- 7. Rapid examination (delay constitutes a denial of justice).**
- 8. Speedy conclusion.**

Good practices while investigating unfair labour practices:

- 9. Confidentiality.**
- 10. Difficult for workers to furnish proof.**
- 11. Prevent impunity.**
- 12. Cases of detention: guarantee adequate protection of human rights.**
- 13. Torture is prohibited.**
- 14. Guarantee due process of law in accordance with human rights.**
- 15. Investigate duly founded accusations.**
- 16. Inspectors: to enter freely and without previous notice.**

Special considerations in cases of murder:

- Requires the institution of **independent judicial inquiries**.
- Should be investigated and prosecuted **ex officio**.
- Investigations should yield **concrete results**.
- **Prevent impunity.**

Conclusion

In conclusion: The Department of Labour & Ensuring Justice Through Effective Investigation

- The Department of Labour plays a pivotal role in upholding the principles of fair labour practices and combating anti-trade union discrimination, as outlined in the Bangladesh Labour Act.
- The established Standard Operating Procedures (SOPs) provide a vital framework for reporting, addressing, and investigating these violations.
- The penalties and sanctions serve as deterrents against unfair practices.
- This module has highlighted the critical importance of thorough and timely investigations of unfair labour practices and anti-trade union discrimination.
- Adhering to the good practices emphasized by the Committee on Freedom of Association – including speed, impartiality, and effective sanctions – is paramount for achieving just outcomes.

Which are the good practices while investigating unfair labour practices according to the Committee on Freedom of Association?

In groups:

- Read and analyse the relevant extracts from the [Compilation of decisions of the Committee on Freedom of Association \(June 2018\)](https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_632659.pdf), from paragraphs **1134. to 1162.** on the “**Need for rapid and effective protection**”.
https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_632659.pdf
- Discuss the main characteristics of investigations of unfair labour practices.
- Identify at least 5 characteristics of adequate investigation practices and write each of them in a post it. The more you find the better!
 - Choose a spokesperson to present your findings.
 - Time: 20 minutes for participants.
 - Feedback: 15 minutes.

Materials: post-its, markers, flipcharts or blackboard.

End of Module 5

See Activities 5.1 to 5.4