

ACCUMULATION AND ALIENATION

State of Labour in Bangladesh 2013

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Chapter Six

LABOUR AND RIGHTS

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6.1 INTRODUCTION

Labour is the source of all wealth, the political economists assert. And it really is the source—next to nature, which supplies it with the material that it converts into wealth. But, it is even infinitely more than this. It is the prime basic condition for all human existence, and this to such an extent that, in a sense, we have to say that labour created man himself (Frederic Engels , cited in Mishra, 2012:1).

This chapter examines the United Nations (UN) conventions regarding labour rights and Bangladesh Labour Laws. In addition, this chapter assesses the status of ratification of UN conventions by Bangladesh. It also investigates the practices of labour laws in Bangladesh. With a view to examining the institutional capacities, this study adopted qualitative data with the help of content analysis along with secondary data. Bangladesh ratified seven out of the eight core conventions of UN regarding labour rights. It also adopted time-appropriate and modern labour laws highlighting the UN conventions in 2006. Nonetheless, legal rights of workers are being violated every day to a greater extent in Bangladesh. Owners of the factory are

avoiding the legal rights of labours by managing the authority with illegal transaction, getting abuse of political power or state power. Whereas, the essence of the constitution of Bangladesh is that everyone is entitled to all the rights and freedoms without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The workers of Bangladesh from every sector have to face discrimination and violation in the respect of legal and human rights. In Bangladesh, workers generally complain about low wages, delay in payment of wages, unsafe and unhealthy working conditions, no medical facilities, unjust termination (termination - allows owner or worker to end the working relationship by providing reasonable notice or payment instead) and dismissal (dismissal allows the employer to fire a worker found guilty of misconduct). Considering the relationship of governments, employers and workers, International Labour Organisation (ILO) set out basic principles and rights at work. They are either 'convention' (which are legally binding international treaties that may be ratified by member states), or 'recommendations' (which serve as non-binding guidelines). In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation enhances the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, i.e. not linked to any convention. Conventions and recommendations are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labour Conference of ILO. Once a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. If it is ratified, a convention generally comes into force for that particular country one year after the date of ratification. Ratifying countries commit themselves in applying the convention in national law and practice as well as reporting on its application at regular intervals.

This chapter starts its journey with the aim and objectives along with rationale showing the UN conventions regarding labour laws. After that, this chapter shows the status of ratification of UN conventions by Bangladesh. In the context Bangladesh, this chapter provides a chronological historical overview of Bangladesh labour laws from British period to the date. In addition, it makes an analysis on the Bangladesh labour laws examining its real practices in Bangladesh linking with ratified UN core convention. With a view to examining the extent of violation of ratified core conventions in Bangladesh, this study collects qualitative data vis-à-vis content analysis along with secondary data collected from different national and international research reports, books, newspapers etc. The Daily Prothom Alo is purposively selected for the sake of content analysis since it is the highest circulated and renowned Bengali daily newspaper in Bangladesh. The findings of the content analysis (January – December, 2012) are shown here as well (Annex 1).

6.2 LABOUR RIGHTS: CONVENTIONS OF UNITED NATIONS (UN)

6.2.1 Fundamental Conventions

The governing body of ILO (International Labour Organisation) has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work; freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered in the Declaration on Fundamental Principles and Rights at Work of ILO (1998). In 1995, the ILO launched a campaign to achieve universal ratification of the eight conventions (Table 6.1).

Table 6.1: The eight conventions by ILO to achieve universal ratification in 1995

Number	Core Conventions
87	Freedom of Association and Protection of the Right to Organise Convention, 1948
98	Right to Organise and Collective Bargaining Convention, 1949
29	Forced Labour Convention, 1930
105	Abolition of Forced Labour Convention, 1957
138	Minimum Age Convention, 1973
182	Worst Forms of Child Labour Convention, 1999
100	Equal Remuneration Convention, 1951

6.2.2 Governance Conventions

The governing body of ILO (International Labour Organisation) has designated another four conventions as "priority" instruments, thereby encouraging member states to ratify them because of their importance for the functioning of the international labour standards system (Table 6.2).

Table 6.2: Four Conventions as "priority" instruments by ILO

Year	Conventions
1947	Labour Inspection Convention,
1964	Employment Policy Convention,
1969	Labour Inspection (Agriculture) Convention,
1976	Tripartite Consultation (International Labour Standards) Convention

Since 2008, these conventions are now referred to as governance conventions as they have been identified by the declaration on social justice for a fair globalisation of ILO as the standards that are the most significant from the viewpoint of governance.

6.3 CONVENTIONS OF ILO AND BANGLADESH: STATUS OF RATIFICATION

Bangladesh has ratified seven out of the eight core conventions of International Labour Organisation (ILO). The ratified conventions of ILO is shown here (Table 6.3).

Table 6.3: Core Conventions of ILO and ratifications in Bangladesh

Standard	Convention	Ratification
Freedom of association and bargaining	Convention 87 (Freedom of association)	Yes
	Convention 98 (Right to organize & collective bargaining)	Yes
Elimination of forced and compulsory labour	Convention 29 (Forced labour)	Yes
	Convention 105 (Abolition of forced labour)	Yes
Elimination of discrimination	Convention 100 (equal remuneration)	Yes
	Convention 111 (employment and occupation)	Yes
Abolition of child labour	Convention 138 (Minimum age)	No
	Convention 182 (worst forms of child labour)	Yes

Source: International Labour organisation (ILO), 2013

The only core convention not ratified by Bangladesh is ILC 138 (Minimum Age Convention). The Bangladesh Labour Act (BLA), however, provides that the minimum age to work is 14 (although a special clause states that children between the ages of 12 and 14 may be employed to do "light work" that does not endanger their health, development and education). Social norms and economic

realities mean that child labour is widely accepted and very common in Bangladesh. According to the current socio economic condition of Bangladesh, a lion share of total population is still poor. The family size is large by average about 5 (BBS, 2010). Children are compelled to work to ensure their daily meals. Even, many families rely on the income generation by their children for survival, so child labour is often highly valued. Additionally, employers often prefer to employ children because they are cheaper and considered to be more compliant and obedient than adults. Although Bangladesh labour law approves of so called light work for children; incidences and experiences shows that children in Bangladesh are working in the fields of risky jobs such as brick fields, iron factory, silver factory, and tannery industry. The extent of child labour is omnipresent in Bangladesh, although the worst form of child labour was ratified. Surprisingly, Bangladesh thought nothing regarding child labour by age limit but did not accept so called child labour in the worst form which is contradictory and controversial as well. This is because when it is approved; naturally, it will get extreme for once. In finale, it is clear that Bangladesh government cannot ratify the convention regarding child labour having deemed the socio economic reality.

6.4 BANGLADESH LABOUR LAWS: HISTORICAL OVERVIEW

The labour law system is more than a century old in Bangladesh. The first labour law has been enacted in the Indian sub continent during the British period in 1881(Hossain, Ahmed and Akter, 2010). Subsequently, the British Government introduced several laws concerning different labour issues, e.g., working hour, employment of children, maternity benefit, trade union activities, wage, etc. The Factories Act (1881), Workmen's Compensation Act (1923), Trade Unions Act (1926), Trade Disputes Act(1929), Payment of Wages Act (1936), Maternity Benefit Act (1939), and the Employment of Children Act (1938) are remarkable labour laws enacted during the British period (Jabbar, 2003). After the separation of the Indian sub-continent in 1947, almost all the laws

during the pre partition period have been kept in force with some modifications and amendments, in the form of administrative rules, by the government of Pakistan (Hossain, Ahmed and Akter, 2010). After the independence in 1971, the government of Bangladesh retained the previous laws through the Bangladesh Laws Order (President's Order No. 48). It also enacted additional laws in response to the changing circumstances and needs of the working class and the country. In 2006, the country adopted the revised Bangladesh Labour Law (BLL) of 2006.

The BLL (Bangladesh Labour Laws) is fairly comprehensive and progressive. The law is a consolidation and updating of the 25 separate acts. The comprehensive nature of the law can immediately be gleaned from its coverage-conditions of service and employment, youth employment, maternity benefit, health and hygiene, safety, welfare, working hours and leave, wages and payment, compensation for workers in injury, trade unions and industrial relations, disputes, labour court, participation of workers in companies profits, regulation of employment and safety of dock workers, provident funds, apprenticeship, penalty and procedure, administration, inspection, etc. (Jabbar, 2003). The BLL is also considered an advance because it removes certain ambiguities in the old and diverse labour acts and aligns the labour law system with the core conventions of ILO. On the removal of ambiguities, the definition of a "worker" is now very specific. Another example may be the exclusion under the term "wages" of the following items - expense for housing facilities like lighting and water supply, contribution of employers to the provident fund, traveling allowances and other sums paid to worker that are needed to cover work-related expenses (Jabbar, 2003). The BLL is also an advance because of its wider coverage, for example, workers and staff of hospitals, nursing homes and even non-governmental organisations are now covered by the law. Moreover, certain welfare and social benefits have been improved or instituted, e.g., death benefit (financial support to family of deceased worker), application of provident fund benefit to all workers in the private sector, expansion of maternity benefit from 12 to 16 weeks, adoption of group insurance for

establishments with 200 or more workers, and increased compensation for employee in work-related injury, disability and death (Hossain, Ahmed and Akter, 2010).

6.5 CONVENTIONS OF UNITED NATIONS (UN) AND BANGLADESH LABOUR LAWS: EXPECTATIONS AND REALITY

Bangladesh labour laws have been come into existence with a long path. The aim of the laws is to ensure the rights of workers in Bangladesh undoubtedly and it can do so certainly, if it is properly worked. Nonetheless, these laws could not realize the emerging condition such as feminization of labour, Informalisation of labour and migration. This laws could not trace labour of informal sectors and flexi labours who have no particular office and owners e.g., freelancers. On the contrary, these laws have also lost its appropriateness because of the weakness of implementations, albeit it depends on the other enforcement institutions. However, it is the weakness of laws as they could have much emphasized on enforcements.

The key provisions of the Bangladesh labour laws (2006) are as follows:

6.5.1 Employment Standards

An employee or "labour" is defined as any person, including a trainee / probationer, whether the terms and conditions of his/her employment are expressly written or not, who is employed directly or through a contractor/agency, for any skilled, unskilled, physical, technical, business development or clerical job in any establishment or industry.

Workers are classified into six categories:

- **Apprentice:** A worker who is employed in an establishment as a trainee and during the period of training s/he is paid an allowance is called an apprentice.

- **Badli:** A worker who is employed in an establishment for the period of temporary absence of a permanent or probationer worker.
- **Casual:** A worker employed on a casual basis.
- **Temporary:** A temporary worker in an establishment for work that is basically temporary in nature and is likely to be finished within a limited period.
- **Probationer:** A worker provisionally employed in any establishment to fill up a post of permanent vacancy and his/her probationer period has not to be completed.
- **Permanent:** A worker employed with a view to filling up a permanent post or if s/he completes his/her probation period satisfactorily in the establishment.

In the case of providing appointment letters, ID cards and service books, whereas these are mandatory, and the law specifies what information should be included in the appointment letter and in the service book, and requires the latter to be signed by both the employer and the worker, most of the private sectors do not provide any appointment letter. For example, the garments workers are not mostly provided appointment letters, although they are provided an identity card. As a result, they cannot bargain with the owners for the lack of proper documents. Thereby, the UN core convention 98 (right to organize and collective bargaining) are being frequently violated. The findings of the content analysis show that 123 reports of violation of UN core convention 98 were published in 2012.

In the respect of payment of wage, the law defines who is responsible for payment of wages: employer/owner; chief executive officer (CEO); manager/person assigned responsible by the company; and the contractor, in case of worker appointed by the contractor. In case of the failure of the contractor to pay the wages to the worker, the principal owner shall pay the same and subsequently, it can be adjusted with the accounts of the contractor.

Unfortunately, this provision of Bangladesh labour laws is frequently violated because it is almost common seen in the case of garments sectors or other non government sectors in Bangladesh that factory has been stopped suddenly without paying the wage of labour, subsequently the labour stopped the highway to demand their wage to government.

On job terminations, the employer is required in the case of-

- **Retrenchment:** to give one month's notice and the equivalent 30-day wages or gratuity for every year of service if the worker is employed on continuous service for not less than one year; and
- **Discharge:** to give financial benefit equivalent to 30-day wages for every completed year of service by an employee found to have physical or mental incapacity.

In addition, the employer is allowed to terminate services of worker without explaining any reason by giving a written notice of 120 days for permanent workers employed in a monthly basis and 60 days to other workers. In this regard, when the workers regardless of blue or white collar labour want to change their job in the case of getting better opportunity or personal problems, they have to face various harassments in Bangladesh. It is the violation of UN core convention 29 exhibited by 26 incidences in the findings of content analysis. Furthermore, to dismiss workers without providing prior notice due to the conviction of workers for any criminal offence, or if the worker is proved guilty of misconduct, which may be any of the following: willful insubordination (alone or in combination with others) to any lawful or reasonable order, theft or fraud or dishonesty, taking or giving bribes, habitual absence without leave for more than 10 days, habitual late attendance, habitual breach of any rule or law applicable to the establishment, riotous or disorderly behavior, habitual negligence or neglect of work, frequent repetition of work on which fine can be imposed, resorting to illegal strike or to go slow or instigating others to do so, and falsifying,

tampering the official document of the employer. Among the aforementioned cases, if a worker is convicted with any case, he or she must be immediately dismissed including different types of fine and punishment regardless of social and economic, there is no insight of rules in Bangladesh.

In the case of working hours and overtime, although eight hours per day working hours is maintained in Bangladesh. A significant number of working sectors of labour, however, does not favour the labours in terms of the specific working hours. Women and children are the worst victim in this regards in Bangladesh. In the respect of overtime, workers are compelled to work overtime. Unfortunately; they are even not paid for overtime duty. Some are paid at late mostly at the end of month, sometimes they have to lose their jobs if he or she express demand for payment of overtime. These sorts of violations of labour laws are common in the most of the major industry including garments and ship breaking industry in Bangladesh. By the interval of working hours, owners use it as their wish.

Workers are entitled to holidays, casual leave, festival leave, annual leave and sick leave by the revised labour laws of Bangladesh. But, in the most cases, workers are forced to have duty in the holidays by the name of overtime; even they are eve and anon rejected to get leave when they get sick. For profit sharing issues, every worker has the right to participate in company's profits/benefits by the Bangladesh labour laws, albeit it is matter of fun in the case of Bangladesh in practices.

According to BLLs, no young worker is permitted to work in any establishment between the hours of 7 p.m. and 7 a.m. It is frequently violated in Bangladesh berceuse so called night duty is about mandatory regardless of age and gender. A 'Minimum Wage Board' is established to determine the minimum rates of wages in different private sectors, taking varied criteria into consideration: cost of living, standard of living, and cost of production, productivity, and price of products, business capability, and economic and social conditions of the country. Majority of the owners of industry are still breaching the laws in this regard.

In the case of equal treatment, according to the BLLs, employers are mandated to observe equal wages for male and female workers for equal nature or value of working. According to UN convention (No. 100), equal remuneration can be cited in this regard. A considerable number (20) of reports regarding violation of equity in terms of remuneration have been published. It is not anomaly when a woman is less paid than a man in Bangladesh, although both male and female work the same by time and hardship. In the respect of forced labour (UN Convention, No. 29), there were 26 published reports in 2012. This is evident in almost every sector of labour force of Bangladesh.

6.5.2 Occupational Safety and Health

In terms of occupational safety and health issues, the status of Bangladesh is very poor and workers are extremely vulnerable in this regard. Owners of the industries or factories are exploiting the poor workers by virtue of the opportunity of abject poverty of the poor workers. They are treated as irrational being by their health and safety facilities.

Workers in Bangladesh, for example, garment industry, are not often provided medical facilities such as first aid box, well equipped dispensary with patient room, nursing and staffs, albeit these health and security facilities are strongly ensured by the Bangladesh Labour Laws. According to the laws, employers are required to take appropriate measures to protect workers from danger and damage due to fire. Unfortunately, more than thousands of garments workers have to die only by fire burnt. The recent accident by fire of 'Tazrin Fashion' of Dhaka is the vivid example in this regard. Workplaces are required to be kept clean and free from effluvia arising out of any drain, privy or other nuisance. In this regard, Bangladesh shows poor scenery with unhygienic toilet, tiffin room. No separate toilet for male and female labour is found as well. The owners are frequently violates the laws in terms of overcrowded rooms, insufficient lighting, air and not providing pure drinking water.

6.5.3 Welfare and Social Protection

In the case of gratuity, provident fund and group insurance, there are frequent violations of the laws as workers are not often allowed in this regard in Bangladesh. According to the laws, every employer should provide compensation to its workers for work-related injury, disability and death. Very few institutions have experience regarding this in Bangladesh. Most of the owners in Bangladesh try to avoid the case of compensation intentionally. This case is frequently happened as law enforcement agency including police, court and concerned department or ministry of government are failed to trace the cases because of corruption and bureaucratic complexity. It is priory mentioned that laws related to indiscrimination against women regardless of payment and conduct, forced risky jobs to women are being violated to a greater extent.

6.5.4 Labour Relations and Social Dialogue

By core conventions of UN (No. 87 and 98); freedom of association and right to organize, and collective bargaining, Bangladesh is on alarming crossroads, where 82 published reports were there in 2012 regarding in the violation of ratified UN conventions number 87 (freedom of association and right to organize) and 123 reports were published regarding violation of collective bargaining. Owners often impose restrictions on formation of trade union. Sometimes, workers are allowed to form union but in limited or formation of union by the workers who are in favour of the owners. Under these processes of so called union formation, owners can manipulate the bargaining process and exploit the workers managing a few workers. It is common in Bangladesh that workers who want to form union have to lose their jobs or threaten by the *mastan* from owners' side.

6.5.5 Enforcement

Bangladesh labour laws are modern and appropriate to promote the rights of workers beyond doubt. Nonetheless, the incidence of

violation of labour rights is taking place everyday in the country to a greater extent. The contradiction between the fitness or appropriateness and extent of violation raise a common question. Interestingly, the question is not related to policy but execution. It is a matter of fun to monitor 60, 000 factories by only 2200 inspectors. Thus, the major drawback to ensure labour rights lies in the poor logistic and infrastructural facilities of the concerned authority of government of Bangladesh. Corruption is another dominating but a glass ceiling to ensure labour rights in Bangladesh. Corruption is something cross cutting issue in this regard that undermines every provision of laws. For example, there is an unholy alliance between owners of factories and authority of trade union registration. When the leaders of the workers with required number of signature go for trade union registration, they are trapped by bureaucratic procedures. Not only that the some officers of the registration authority informs about trade union to the respective owners of the factory. As a result, the leaders including identified workers have to receive threat and dismissal from jobs. Trade union issue is not a single issue; due to disturbance in bargaining and collective organizing led by trade union makes risky to all of the remained ratified core convention of United Nations as well as Bangladesh Labour Laws. In finale, weakness in governance, promotion of elite class and bourgeoisie class by the state (e.g., majority of the owners of industry are from the major political parties, or they have any other inclination to political parties. As a result, there is an unholy alliance among the owner class by virtue of political power regardless of ruling or opposition party) are the dominating threat to ensure labour rights in Bangladesh . Mounting evidences have been trying to identify the institutional drawbacks in practicing the conventions as well as labour laws. A report by War on Want (2009: 5) reveals that, in the case of garment industry of Bangladesh, failure of the enforcement is one of the institutional shortcomings in this regard. According to it:

The failure of the law to bring about lasting change in the lives of workers is due to lack of enforcement of its key provisions. The Bangladesh Ministry of Labour and Employment

has primary responsibility for monitoring enforcement of the Labour Law. However, resources allocated to the Ministry are woefully inadequate: in 2006 there were only 20 inspectors responsible for monitoring the conditions of more than 20,000 factories, docks and other businesses across Bangladesh. There are other voluntary associations that have been set up by the factories themselves that purport to play an important role in enforcing labour standards in the garment sector.

Bangladesh Garment Manufacturers and Exporters Association (BGME) and the Bangladesh Knitwear Manufacturers and Exporters Association (BKMEA) were both established by the garment industry to monitor and report on the implementation of the labour laws in factories. The report, however, reveals that unfortunately, they have not proved themselves yet in this regard. In the case of garment industry, most of the provisions of labour laws are being frequently ignored whereas ILO conventions are far away. New research carried out by the Asian Monitor Resource Centre (AMRC) and the National Garment Workers' Federation (NGWF) (Cited in War on Want, 2009) including interviews with over 1,200 garment workers revealed a pattern of labour law violations in the garment factories of Bangladesh. Workers described a series of issues, including unsafe factories, lack of benefits, gender discrimination and paltry wages that do not cover basic expenses, unsecured job having no appointment letter, grueling labour and unpaid leave, forced and unpaid overtime and unpaid wages, lack of scope in raising voice regarding their rights as well as trade union.

These findings of the content analysis (Annex 1) are consistent with the findings of an extensive survey at national level in garment industry (formal sector) and construction industry, informal sector (Hossain, Ahmed and Akter, 2010). Likewise, Dr. Zia Rahman, a renowned sociologist and expert in labour issues in Bangladesh should be given special concentration in this regard. His analytical point of view is to some extent different

from the previous analysts. Since, he (2011) examined the labour rights in the garments sector of Bangladesh from the two points of view-non EPZ (Export Processing Zone) and EPZ readymade (RMG) garment factories. Not only that, he also assessed labour rights more broadly in terms of various facets of lives of the workers, role of owner and the state; since they must ensure labour rights as conceded in the labour laws of Bangladesh. International Trade Union Confederation (2012) is also concerned about the frequent trade union rights violation in Bangladesh. In the case of ship breaking industry, the violation of labour rights remains the same as garment industry. In the majority of the shipyards, workers are being deprived of their rights. They work under risky conditions but have no access to safety equipment, job security or a living wage (YPSA, 2010).

6.7 CONCLUSION

This chapter tries to examine the core conventions of ILO in the context of Bangladesh Labour Laws. The study attempts to test the practices of the ratified conventions in Bangladesh, collecting primary data through content analysis and secondary data from different sources. Some institutional shortcomings or weakness in the implementation of the ILO conventions or Bangladesh Labour Laws in Bangladesh has also been identified here. Weakness of law enforcement authority and crisis of skilled manpower are salient barriers which make constraint to be implemented. According to the findings of the study, all most all of the provisions of Bangladesh Labour Laws and core conventions of ILO have experienced violation to more or less. Thereby, it is clear that a gap between ILO ratification and practices is there in reality. Now, finding this gap to improve these circumstances as well as to ensure the labour rights and laws properly will be the core objective from the policy makers and the government. The existing policies and programmes need to revised and redesigned to cope up the situation of labour injustice. Unless government takes appropriate steps to establish labour rights, proper development along with sustainable work environment will remain elusive.

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Annex 1

Table 1: Findings of the content analysis regarding ratified core conventions of United Nations

Convention No.	Conventions	No. of Incidence of Violation
87	Freedom of association and Right to organise	82
98	Right to organise and collective bargaining	123
29	Forced labour	26
105	Abolition of forced labour	19
100	Equal remuneration	12
11	Indiscrimination regarding employment and occupation	21
182	Worst forms of child labour	25

Source: The Daily Prothom Alo, January –December, 2012

Table 2: Violation of rights and words of the labours

Violation of Rights	Words of the Labours
Minimum Wage	<i>I earn Tk 2,200 per month, with overtime, but rent, health expenses and food for my family costs me around Tk 5,000. My older brother sends money from abroad to help make up the difference, but what will happen if he can no longer afford to help us?</i>
Forced Labour	<i>Falling sick during work is not an excuse, they force us to work.</i>
Discrimination by Gender	<i>We women workers are forced to do more work for fewer wage compared to men.</i>
Unpaid and Unsecure job	<i>They say: if you are pregnant, leave the job. If you say no they kick you out without paying your wages.</i>
Trade Union	<i>“Hooligans in the pay of the owners threaten that they will kick us out of the factory if we talk about trade unions.”</i>

Source: War on Want, 2009: 5-11