

Ratified ILO Conventions & Legal Regime in Pakistan

Gap Analysis





Whereas universal and lasting peace can be established only if it is based upon social justice; And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures; Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries. - *Preamble to the ILO Constitution*



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Acronyms

BE&OE	Bureau of Emigration & Overseas Employment
BIRA	Balochistan Industrial Relations Act
CBA	Collective Bargaining Agent
CEACR	Committee of Experts on Application of Conventions & Recommendations
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
DoL	Directorate of Labour
EC	Employment Exchange
EFP	Employers' Federation of Pakistan
EOBI	Employees Old-Age Benefits Institution
FTCC	Federal Tripartite Consultative Committee
GB	Gilgit Baltistan
GoP	Government of Pakistan
GSO	Government Shipping Office
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
ILC	International Labour Conference
ILO	International Labour Organization
ILS	International Labour Standards
IRA	Industrial Relations Act
IRO	Industrial Relations Ordinance
KP	Khyber Pakhtunkhwa
KPIRA	Khyber Pakhtunkhwa Industrial Relations Act
LFS	Labour Force Survey
M/o OP & HRD	Ministry of Overseas Pakistanis and Human Resource Development
MDGs	Millennium Development Goals
MoPS	Ministry of Ports & Shipping
MSO-2001	Merchant Shipping Ordinance 2001
MWBs	Minimum Wages Boards
NCRDP	National Council for Rehabilitation of Disabled Persons
NGOs	Non-Government Organizations
NIRC	National Industrial Relations Commission
OEC	Overseas Employment Corporation
OSH	Occupational Safety & Health
PBS	Pakistan Bureau of Statistics
PCRDP	Provincial Council for Rehabilitation of Disabled Persons

ESSIs	Employees Social Security Institutions
PESSO	Provincial Employees Social Security Ordinance
PFRW	Punjab Fair Representation of Women Act
PIRA	Punjab Industrial Relations Act
PTCC	Provincial Tripartite Consultation Committee
PWF	Pakistan Workers' Federation
SIRA	Sindh Industrial Relations Act
UNO	United Nation Organization

Executive Summary

Pakistan has ratified thirty-six ILO Conventions including the eight core labour conventions. The Core Labour Standards relate to the right to unionization and collective bargaining; minimum age for work; elimination of the worst forms of child labour; elimination of forced/bonded labour; gender equity in wages and elimination of discrimination in employment. Pakistan has also ratified two Priority Conventions on the theme of Labour Inspection and Tripartite Consultations. Pakistan ratified (some inherited from British India) 26 technical conventions of the ILO of which three were ipso-juro denounced subsequent to the ratification of revised conventions (C15 & 59 on ratification of C138 and C41 on ratification of C89). Two of the above referred 26 technical conventions relate to the Final Articles and deal with the partial revision of Conventions. No legislative action is required by the States on ratification of the last two Conventions.

The current study is an attempt on analyzing the gaps in the legal regime with regard to the international labour standards ratified by Pakistan. It takes into account every convention ratified by Pakistan (as well as those inherited through British India) and examine whether national laws are compliant with the obligations provided under these Conventions.

Compliance with international conventions is not a one-way street. While ratification of conventions and subsequent enactment of legislation to incorporate the provisions of conventions into domestic legislation is one aspect, the other is to have institutional arrangements for effective implementation.

Conventions (C 98 & C 89) speak about the right to form unions and associations. Article 17 of the Constitution guarantees each citizen the right to form associations or unions subject to reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or

morality. Five Industrial Relations Acts (IRAs), one federal and four provincial, generally incorporate the core provisions of the Convention 98 and 87. Nonetheless, our current legislative framework limits certain groups from the right to form unions or associations. Civil servants, Police, Armed Forces, workers in Ordnance Factories, Security Printing Press and Security Papers, charitable organizations and hospitals and persons working mainly in managerial and administrative capacity are restricted to organize and to form trade unions. Other implicit exclusion is of the agriculture workers and other informal economy workers (home based workers and domestic workers) to have an associations recognized under a specific law. The precondition of existence of at least two trade unions in establishment for their registration as required under Industrial Relations Act 2012 is also not in norm with the provisions of C87.

No law of the land defines forced labour however; Article 3 & 11 of the Constitution of Pakistan guarantees the abolition of bonded labour and requires the state to gradually eliminate all forms of exploitation. For abolition of bonded labour, State has enacted Bonded Labour System (Abolition) Act, 1992. This Act abolishes bonded labour and prohibits customary arrangements that lead to bonded labour. It also ends any debts that existed which led to individuals being forced into labour to pay off the debt. There is also a dire need for increased penalties aimed at elimination of bonded labour and effective implementation of legislation. The Labour Force Survey also requires to be redesigned with inclusion of relevant questions. A new Survey on Forced Labour must be conducted to know its incidence. No law in the country permits compulsory labour on account of dissenting political or religious opinion.

Constitutional Provisions Articles 11, 35 and 37 strictly prohibit Child labour and all the current labour laws - Shops &

Establishment Ordinance, 1969; Factories Act, 1934; Employment of Children Act, 1991; Mines Act, 1923; the Road Transport Workers Ordinance, 1961 and the Bonded Labour System (Abolition) Act, 1992 - sets minimum age of child employment for light work are also compliant to the provisions of C138. However, there exists a difference between the age of compulsory education (16 years) sets in the Constitutional provision and the minimum working age (14 years) as specified in various labour laws. Employment of Children Act needs amendment where the minimum age for admission to work, for limited hours, may be retained as 14 years while the minimum age for admission to full time work may be raised to 16 years, in line with the Constitutional provision. The Employment of Children Act, 1991 is partially compliant to the provisions of C182 and needs amendment while raising the current minimum age for admission to hazardous work from 14 years to 18 years (16 years under exceptional circumstances).

The Constitutional framework also lays down the principle of equality of opportunity and non-discrimination (Article 18, 25, 27, 37 & 38) the Minimum Wages Ordinance (1961) and its Rules (1962) partially comply to the provisions of Equal Remuneration Convention (C 100) The Ordinance does not directly provides for equal remuneration; albeit it provides a platform for determining minimum rates of wages for workers, while stipulating principle of equality in minimum wage rates. No legislation is in field to define the term 'discrimination' to reflect compliance with the provisions enunciated in C111. MOP&HRD has worked on the draft model provincial anti-discrimination legislation for enactment at the provincial level in order to comply with the obligation of these two core conventions.

ILO Labour Inspection Convention 81 is one of the governance Conventions ratified by Pakistan. It requires a strong central labour inspection mechanism for implementation of

labour laws. Or for effective implementation of labour laws, a strong and unified labour inspection system is required under this Convention. Although inspection system is adequately regulated under the various labour laws however, there is no standalone law on inspection services in the country covering all the labour sectors. Regional/Provincial labour inspection authorities are required be established which should report to the central inspection authority for publishing a consolidated report and for reporting to the ILO on labour inspection. To gain full benefits from the GSP-Plus, Pakistan's perspective on labour inspection and labour compliance must undergo a paradigm shift.

In order to provide a consultative process for enforcement of international labour standards and reporting on ILO instruments, the Government is required to consult the representative organizations of workers and employers before reaching a final decision on labour related matters. The Committees notified at the Federal and Provincial level (FTCC and PTCCs) hold consultations on the labour relating matters and consult on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions. Although the provision of legal cover is not obligatory under this Convention, some legal coverage relating to the workers and mandate of these Committees is desirable to formulate the representative character of participants/organisations.

Pakistan has ratified three conventions on theme of working time and weekly rest day (C001, C014 & C106). The legislative mechanism includes the national and provincial legislation, i.e., the Mines Act 1923, Factories Act 1934, Road Transport Workers Ordinance, 1961, Shops and Establishments Ordinance 1969 and Khyber Pakhtunkhwa Factories Act, 2013, which determine hours of daily and weekly work, for the country (Province) as a whole and/

or for specific sectors or jobs. Legislations have also stipulated a maximum number of overtime hours that can be worked, along with entitlement for weekly rest days and annual holiday. No gaps could be identified in the application of these Conventions. Regulation of part-time work does not exist.

In order to regulate the prohibition of night work for protection of children and young persons, Pakistan has ratified two technical conventions (C006 & 090) which prohibit the employment of children during night hours and consider night work as the “worst form of child labour” in line with the provisions of Convention 182. The legislative mechanism emanates from Article 37(e) of the Constitution which requires the State to “ensure that children and women are not employed in vocations unsuited to their age or sex”. The Constitutional guideline to protect children from hazardous working conditions or work is implemented by the Mines Act 1923, Factories Act 1934, West Pakistan Shops and Establishments Ordinance, 1969, Employment of Children Act 1991. However, there is a gap in age limit which is set as eighteen years in Convention for eligibility for night work while the same is set as fourteen years (seventeen years under Mines Act) in labour laws.

To regulate the night work for women, Pakistan has ratified three technical conventions which restrict the employment of women during night hours with few exceptions (C004, 41 & 89). The legislative mechanism emanates from Article 37(e) of the Constitution which requires the State to “ensure that children and women are not employed in vocations unsuited to their age or sex”. The Constitutional guideline to protect women from work “unsuited to their sex” is implemented by the Mines Act 1923, Factories Act 1934, West Pakistan Shops and Establishments Ordinance, 1969, and KPK Factories Act, 2013.

To guarantee safe and healthy workplaces for

women, Pakistan has ratified one technical convention which restricts employment of women in underground mines with certain exceptions (C045). Again in this case, the legislative mechanism emanates from Article 37(e) of the Constitution which requires the State to “ensure that children and women are not employed in vocations unsuited to their age or sex”. The Constitutional guideline to protect women from work “unsuited to their sex” is implemented by the Mines Act 1923 which prohibits employment of women in underground mine except for those persons holding responsible positions of managerial or technical character or employed in health and welfare services or employed in any confidential capacity. The law is compliant with the provisions of C45.

On the theme of employment policy, Pakistan has ratified two convention, i.e., Fee-Charging Employment Agencies Convention (No. 96) and Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159). Convention 96 requires progressive abolition of fee-charging employment agencies conducted with a view to profit within a limited period of time prescribed by the competent authority. The legislative mechanism for implementation of this Convention is available in the form of Fee-charging Employment Agencies (Regulation) Act, 1976 and Emigration Ordinance, 1979. Both the Acts are fully compliant with the provisions of this Convention, especially its Part II. However, public sector institutions to support in-land employment are missing.

The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 is fully compliant with the provisions of C159 however the areas which need attention include vocational rehabilitation in rural regions, cooperation with organizations of persons with disabilities and non-availability of qualified rehabilitation staff implies that a considerable number of disabled persons do not receive appropriate training.

Pakistan has ratified three conventions on the theme of social security, two in the pre-partition era (C18 & 19) and one in the post-partition era (C 118). The legislative mechanism to implement the provisions of these Conventions comes from Article 38(c) and 38(d) of the Constitution which requires the state to “provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means” and “provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment. These Constitutional guidelines are implemented through the Workmen’s Compensation Act 1923, Maternity Benefit Ordinance, 1958, Provincial Employees’ Social Security Ordinance, 1965 and Employees’ Old-age Benefits Act, 1976. Two conventions require equality of treatment between local and foreign workers in giving maternity benefits and work injury compensation. National labour laws do not discriminate between the local and foreign workers in giving social security treatment. As regards Workmen’s Compensation (Occupational Diseases) Convention (No.18), the current list of occupational diseases, contained in the Workmen’s Compensation Act 1923 and Provincial Employees’ Social Security Ordinance 1965 is outdated.

Pakistan has ratified one convention on the theme of migrant workers (C21). The legislative basis for this comes from Article 3 (elimination of all forms of exploitation) and Article 11 (elimination bonded labour and slavery) of the Constitution. The Constitutional guarantees are implemented through Emigration Ordinance 1979 which is fully compliant with the obligations under this Convention.

Pakistan has ratified Convention 107 on the theme of indigenous and tribal peoples.

There is no separate legislation for enforcing this Convention however the rights of tribal people are protected through Rules of Business 1973 and through creation of a separate Ministry since independence (Ministry of States & Frontier Regions). The law is compliant to the obligations under this Convention.

Pakistan has ratified two conventions on the theme of dock workers (27& 32). The provisions of Conventions 27 & 32 are implemented through Karachi Port Trust Manual 1931 and Pakistan Dock Labourers Regulations, 1948 respectively.

Pakistan has ratified three conventions on the theme of shipping and seafarers, two before independence (Conventions 16 & 22) and one post-independence (C185). The provisions of all these Conventions, especially C 16 & 22, are fully complied to under the Merchant Shipping Ordinance 2001. The obligations under C185 (issuance of biometric seafarers identity documents) are only partially complied. It does not cover the requisite fields as specified by ILO for issuance of Seafarers’ Identity Documents (SIDs).

A broader national legislative labour framework — based on constitutional rights, national legislation and international labour standards — and a statutory enforcement mechanism is already in place to ensure compliance with ILO Conventions ratified by Pakistan with minor gaps.

Introduction

History

Pakistan inherited a set of labour legislations from British India to regulate the conditions of work and workers' welfare in factories, industrial establishments, shipping and mines along with fifteen International Labour

Conventions. The ILO Conventions are similar to International Treaties and subject to ratification. When a member state ratifies the Convention, it pledges itself to apply its terms and provisions.

Labour Legislation

While ensuring social justice, attaining social progress is the focus of ILO's standard setting process of which Pakistan as its affiliated member is an integral part, it is important to mention that both the earlier Constitutions of 1956, 1962 as well as current Constitution 1973 of the Islamic Republic of Pakistan ordains that "the State shall ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle; from each according to his ability to each according to his work". This umbrella protection has its roots way back in the Government of India Act 1935.

The 1973 Constitution, in the preamble proclaims the establishment of an order in which the principles of equality, tolerance and

social justice shall be fully observed, where fundamental rights including equality of status, of opportunity and before law, social, economic and political justice and freedom of thought, expression and association should be guaranteed.

It is therefore incumbent upon the State that all legislation in the area of labour and in particular in the area of Fundamental Principles and Rights at Work not only conforms to the provisions of the fundamental rights guaranteed under the Constitution, but also that the promotion of social and economic well being of its people enshrined in the Principles of Policy becomes the direct responsibility of the State and the same is duly reflected in its legislation.

Reforms in Labour Legislation

To make the labour laws more intelligible, keeping in view various studies the Government of Pakistan appointed a Commission on 16th March 1999 under the Chairmanship of Justice(R) Shafiur Rahman to suggest and recommend the simplification, rationalization and consolidation of the then labour laws in the country. The Commission recommended classifying existing labour laws into 6 major categories namely:

1. Laws relating to industrial relations;

2. Laws relating to fixation and payment of wages;

3. Laws relating to employment and working conditions;

4. Laws relating to occupational safety and health;

5. Laws relating to Human Resource Development; and

6. Laws relating to labour welfare and social

safety net;

The defunct Ministry of Labour, Manpower & Overseas Pakistanis consolidated the existing laws and proposed three draft laws on:

1. Industrial Relations,
2. Employment and Service Conditions
3. Occupational Safety and Health

Later on, due to devolution of subject to the provinces, these drafts could not be finalized in the shape of Acts.

The history of labour legislation in Pakistan may be divided into four parts:

- **The labour legislation inherited at the time of independence:** These laws are mainly relating to safety at workplace,

child labour, payment of wages and maternity benefits.

- **The labour legislation introduced during 1947 to 1971:** During this period laws were promulgated relating to employment, workers welfare, social security, working conditions and industrial relations.
- **The labour legislation introduced during 1971 to 2010:** The laws mainly relating to pension, workers welfare, forced labour, disabled person and employment agencies etc. were promulgated.

Current Scenario

Through 18th amendment in the Constitution in 2010, the concurrent list which contained the subject of labour has been omitted, consequently the Federation's power (the Parliament) to enact laws on the subjects enumerated in the said list ceased to exist.

Now, after the 18th amendment, a number of enactments have become provincial subject,

including the subject of labour. However those laws would continue to remain in force until altered, amended or repealed by the provinces and provinces are at the different stages of amending, adopting, enacting legislation.

Objective

Methodology

Scope

Objective

It is in this background that an analytical study has been designed to be undertaken by Ministry of Overseas Pakistanis & Human Resource Development in collaboration with the International Labour Organization to analyze the existing legal and institutional framework available for compliance of the State's obligations relating to ratified

Conventions by Pakistan. This is necessary for identification of gaps and areas for improvement for suggesting a framework for bridging the gap between legislation and State's obligations. The current study highlights the legal gaps in implementation of ratified ILO Conventions including the core labour standards.

Scope

The study will help Federal and Provincial Governments to review the legal regime in the light of International Labour Standards and also provide baseline for future reporting on Conventions. Further, this study will provide a detailed assessment of country's existing legal framework to support policy dialogue and its alignment with the provisions of the Conventions ratified by Pakistan.

It is pointed out that this study does not include the formulation of the required legislation for addressing the legal void. Furthermore, the study of the subsidiary rules, regulations and governing rules/office orders is also not covered under this study.

Methodology

The methodology for the study and preparation of the report includes:

1. Mapping of obligations under the relevant conventions ratified by Pakistan and legal /institutional framework of the country responsible to address such obligations;
2. Initial mapping shared with the relevant stakeholders, provincial departments, relevant federal government ministries, employers' and workers' organizations to seek their input on the comprehensiveness of the inventory relating to laws and institutions under each obligation;
3. Presentation of the findings under the study before the members of Federal Tripartite Consultative Committee during the consultation process of Decent Work Country Program (DWCP-III);
4. Secondary data comprising of labour laws, ILO Conventions and outcome of the consultations with the relevant stakeholders has been incorporated in the report.

Freedom of Association, Collective Bargaining & Industrial Relations

C087 - FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87)

Core Obligations

Convention 87 requires that workers have the right to establish and join organizations of their own choosing without previous authorisation. They are free to draw up their constitutions and rules, elect their representatives in full freedom, organise their administration and activities and formulate their programmes. The Convention further contains provisions through which the State should take all necessary and appropriate measures to ensure that workers and employers freely exercise the right to organize. Moreover, the State should refrain from any interference which would restrict these rights.

Legislative Compliance

The Convention 87 was adopted by ILO in 1948, which was ratified by Pakistan on 14th February 1951. The Trade Union Act 1926, inherited by Pakistan, was promulgated by the Government of British India much before the adoption of this Convention. All the Constitutions of Pakistan (1956, 1962 and 1973) since independence ensure the right to form associations. The obligations under the Convention were maintained in Industrial Relations Ordinance 1969 and in the later enactments (2002, 2008, 2010, 2011) and the current national and provincial IRAs. The relevant legal provisions have been reflected in **Exhibit 1**.

Exhibit 1

Constitution of the Islamic Republic of Pakistan, 1973

Article 17. **Freedom of Association:** (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

Article 38. **Promotion of social and economic well-being of the people:** The State shall : (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;

1. Industrial Relations Act, 2012

Section 1 (3). It shall apply to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province, but shall not apply to person employed,-

(a) in the Police or any of the Defence Service of Pakistan or any services or installations exclusively connected with or incidental to the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government;

(b) in the administration of the State other than those employed as workmen by the Railway and Pakistan Post;

(c) as a member of the security staff of the Pakistan International Airlines Corporation, or drawing wages in pay group, not lower than group V, in the establishment of that Corporation as the Government may, in the public interest or in the interest of security of the Airlines, by notification in the official Gazette, specify in this behalf;

(d) by the Pakistan Security Printing Corporation or the Security Papers Limited;

(e) by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis

2. Punjab Industrial Relations Act, 2010

Section 1 (3). It shall apply to all persons employed in any establishment or industry to the extent of Punjab, but shall not apply to any person employed-

Similar provisions (a-e) as IRA 2012 with the following extra provisions:

(f) as a member of the watch and ward, security or fire service staff of an oil refinery or an airport;

(g) as a member of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; and

(h) in an establishment or institution providing education or emergency services excluding those run on commercial basis.

3. Balochistan Industrial Relations Act, 2010

Section 1 (4). It shall apply to all persons employed in any establishment or industry to the extent of Balochistan, but shall not apply to any person employed-

Similar provisions (a-e) as IRA 2012 with the following extra provisions: (f) as a member of the Watch and Ward, Security or Fire Service Staff of an oil refinery, an airport or seaport; and

(g) as a member of the Security or Fire Service Staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas

4. Sindh Industrial Relations Act, 2013

Section 1 (3). It shall apply to all persons employed in any establishment or industry, including fishing and agriculture but shall not apply to any person employed –

Similar provisions (i-v) as IRA 2012 with the following extra provisions:

C098 - RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949

Core Obligations

Convention 98 states that workers should be protected against acts of anti-union discrimination with respect to their employment. The employment of a worker must not be subjected to the condition that he shall not join a union or shall resign from trade union membership. Similarly, causing the dismissal of a worker or prejudice a worker by reason of union membership or because of participation in union activities outside the working hour or within the working hours (with the consent of employer) is an act of discrimination. Workers' and employers' organizations must enjoy adequate protection against any acts of interference by each other and especially acts which are designed to promote the domination, financing and control of workers' organizations by employers or employers' organizations. Necessary measures, appropriate to national conditions, must also be taken to encourage and promote the full development and utilization of machinery for promoting voluntary negotiations between workers' organizations and employers to regulate the terms and employment conditions through collective agreements.

Legislative Compliance

The Convention 98 was adopted by ILO in 1949, and ratified by Pakistan on 26th May 1952. After independence, Pakistan adopted Trade Union Act 1926 and Industrial Disputes Act 1947, and both were consolidated as Industrial Relations Ordinance 1969. Not only the provisions of both Acts were maintained in the 1969 law, the concept of unfair labour practices, an important provision of the C-98, was also made part of this legislation. The obligations

vi. as a member of the watch and ward, security or fire service staff of an oil refinery or an airport;

vii. as a member of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; and

viii. in an establishment or institution providing education or emergency services excluding those run on commercial basis.

5. Khyber Pukhtunkhwa Industrial Relations Act, 2010

Section 1 (3).

It shall apply to all persons employed in any establishment or industry, but shall not apply to person employed,-

Similar provisions (a-e) as IRA 2012 with the following extra provisions:

(f) as a member of the watch and ward, security or fire service staff of an oil refinery or an airport;

(g) as a member of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; and

(h) in an establishment or institution providing education or emergency services excluding those run on commercial basis.

*The detailed provisions of law on application of this convention are provided in **Annex - I**.

Exhibit 2

1. Industrial Relations Act, 2012

Section 3.

Trade unions and freedom of association. Subject to the provisions of this Act and notwithstanding any other law for the time being in force,

(a) workers, without distinction whatsoever, shall have the right to establish and, subject to the rules of the organization concerned, to join international associations of their own choice without previous authorization:

(b) employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join international associations of their own choice without previous authorization:

(c) every trade union and employers association shall frame its own constitution and rules to elect its representatives in full freedom to organize its administration and activities and to formulate its programmes; and

(d) workers and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations and confederations of workers' and employers' organisations.

Section 31.

Unfair labour practices on the part of employers.—

(1) No employer or trade union of employers and no person acting on behalf of either shall—

(a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union;

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not a member or officer of a trade union;

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union;

(d) dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workman or injure or threaten to injure him in respect of

under the Convention were maintained in Industrial Relations Ordinance 1969 and in the later enactments (2002, 2008, 2010, 2011) and the current national and provincial IRAs, as reflected in the **Exhibit 2**.

C011 - RIGHT OF ASSOCIATION (AGRICULTURE) CONVENTION, 1921

Core Obligations

This Convention binds a ratifying State to provide same rights of association to agriculture workers as provided to industrial workers, and to repeal any law restricting such rights.

Legislative Compliance

The State has undertaken to provide the enabling provisions in the law and enforcement mechanism for the workers and employers to establish and join organizations of their own choice in agriculture sector similar to the other sectors of economy. The Convention was ratified by the Government of British India on 11th May 1923. None of the Industrial Relations Legislation explicitly or implicitly restricts the freedom of association for agricultural workers. The agriculture workers have the right to form associations as guaranteed under Article 17 of the 1973 Constitution. This right is regulated by the Societies Registration Act, 1860 and the Cooperative Societies Act, 1925. The Sindh Industrial Relations Act, 2013 has extended the right to form and join unions to the agriculture and fisheries workers. The relevant legal provisions have been reflected in **Exhibit 3**.

his employment by reason that the workman:

- (i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or
- (ii) participates in the promotion, formation or activities of a trade union;
- (e) induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person;
- (f) compel or attempt to compel any officer of the collective bargaining agent to arrive at a settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods;
- (g) interfere with or in any way influence the balloting for the determination of the Collective Bargaining Agent;
- (h) recruit any new workman during the period of a notice of strike under Section 41 or during the currency of a strike which is not illegal except where the Conciliator having been satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, has permitted temporary employment of a limited number of workmen in the section where the damage is likely to occur;
- (i) close down the whole of the establishment in contravention of Standing Order 11-A of the industrial and Commercial Employment (Standing Orders) Act, 1968 (W.P. Ord. VI of 1968); or
- (j) Commence, continue, instigate or incite others to take part in or expend or supply money or otherwise act in furtherance or support of, an illegal lockout.
- (2) Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen.

2. Punjab Industrial Relations Act, 2010

Sections 3 & 17

3. Balochistan Industrial Relations Act, 2010

Sections 3 & 17

4. Sindh Industrial Relations Act, 2013

Sections 3 & 17

5. Khyber Pukhtunkhwa Industrial Relations Act, 2010

Sections 3 & 17

*The detailed provisions of law are provided in **Annex - II**.

Exhibit 3

Constitution of Islamic Republic of Pakistan, 1973

Article 17.

Freedom of Association:- Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.

1. Societies Registration Act, 1860

Section 1.

Societies formed by memorandum of association and registration. Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in section 20 of this Act, may by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint-stock Companies form themselves into a society under this Act.

GAP ANALYSIS

The right to form association is considered as the social, economic and political right of a person. The principle of freedom of association is not only enshrined in the United Nations' Declaration on Human Rights, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) but also in ILO Constitution (1919), the Philadelphia Declaration (1944), the ILO Declaration on Fundamental Principles and Rights at Work (1998), and the ILO Declaration on Social Justice for a Fair Globalization (2008). The right to organize and form organizations of employers and workers is the prerequisite for sound social dialogue and collective bargaining. The right to freedom of association ensures that workers and employers can freely associate to efficiently negotiate working conditions and work relations. Collective bargaining not only allows for negotiating better working conditions but also prevents labour disputes and thus increases workers' productivity.

Government of Pakistan has ratified both the core conventions on the theme of freedom of association and collective bargaining (C87 and C98) as well the convention granting freedom of association rights to agriculture workers (C11). Convention 11 was ratified in the pre-partition era by the Government of British India (1923) while the fundamental conventions on freedom of association and right to bargain collectively were ratified in the early years of Pakistan's independence (1951 & 1952) indicating the State commitment towards promoting and protecting these fundamental rights.

The laws relating to industrial relations restrict Civil servants, the police, the military, the security staff of PIA, Ordnance Factories, Security Printing Press and Security Papers employees, charitable organizations and hospitals, establishments providing emergency services and education

2. The Co-Operative Societies Act, 1925

Section 5. Subject to the provisions hereinafter contained a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability:

3. Sindh Industrial Relations Act, 2013

Section 1. (3) It shall apply to all persons employed in any establishment or industry, including fishing and agriculture but shall not apply to any person employed...(there follows a list of exclusions).

*The detailed provisions of law are provided in **Annex-III**.

and persons working mainly in managerial and administrative capacity from the right to organize and to form trade unions. Nonetheless, the Sindh Industrial Relations Act grants exclusive right to agriculture workers to engage in trade union activities. However, the ILO Conventions require the right to form association be enjoyed by everyone working in the formal and informal economy. Such provisions need to be incorporated in other industrial relations acts and other informal economy workers (home based workers, domestic workers) must be allowed these rights. The other provinces may follow suit and incorporate similar expansive provisions in their Industrial Relations legislation.

It has been observed that the Industrial Relations Act 2012 requires the establishment of two trade unions simultaneously in any establishment/industry which is against the basic principle of freedom of association ordained in the above Conventions. Moreover, the requirement of having at least 20% of the workers employed as its members before registration of third and following union is also against the spirit of the Convention 87.

The national and provincial laws also put embargo on the workers to become member of more than one union. Only the Collective Bargaining Agent, once determined, has been given the exclusive right to represent all

workers at the workplace (both members and nonmembers), while a union can represent its own members only. The term CBA is not recognized in the above Convention. The powers of the Registrar of Trade Unions to inspect the accounts and records of the registered trade unions, and to cancel registration of a trade union amounts to indulgence of the authority in the affairs of the union.

The concept of go-slow is one of the preliminary forms of strike action and is justified under provisions of C87 & C98. It is considered as an unfair labour practice under the current industrial relations legislation. The restrictions as to the form of strike action (including go-slow) can only be justified if the action ceases to be peaceful. Moreover, go-slow needs to be regulated properly instead of declaring it as the unfair labour practice.

In view of the above, it can be said that above legislation is only partially compliant with the provisions of C87, C98 & C11. The main reforms needed are in the area of explicit and implicit exclusions of groups of workers which will bring our laws in much conformity with the international labour standards.

Forced Labour

C029 - FORCED LABOUR CONVENTION, 1930

Core Obligations

C29 defines forced labour and aims to eliminate its use in all its forms irrespective of the nature of work or the sector of activity. The Convention provides for adequate and strictly enforced penal sanctions against illegal exaction of forced or compulsory labour. The only five exceptions are as follows:

- Work or service of military nature;
- Work or service that is a part of normal civic obligation;
- Work or service exacted from a person as a consequence of conviction by the court of law;
- Work or service exacted during a time of emergency or natural calamity;
- Minor communal services performed in the interest of community.

Legislative Compliance

The Children (Pledging of Labour) Act 1933 was enacted by Government of British India, three year after the adoption of this Convention by ILO and much before its ratification by Pakistan on 23rd December 1957. This Act meets the obligations under C29 only to the extent of children. No such provisions prohibiting pledging of labour for adult workers are found in labour laws or Penal Code of that era. The bar to slavery and forced labour was strengthened in through Article 11 of the Constitution of 1973. A partial effect to the provisions of Convention was given by the promulgation of Bonded Labour System (Abolition) Act 1992. The legal framework is exhibited in the **Exhibit 4**.

Exhibit 4

Constitution of Islamic Republic of Pakistan, 1973

- Article 11. Slavery, forced labour, etc. prohibited**— (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.
- (2) All forms of forced labour and traffic in human beings are prohibited.
- (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.
- (4) Nothing in this Article shall be deemed to affect compulsory service:-
- (a) by any person undergoing punishment for an offence against any law; or
- (b) required by any law for public purpose provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.

1. Children (Pledging of Labour) Act, 1933

- Section 3. Agreements contrary to the Act to be void.**—An agreement to pledge the labour of a child shall be void.
- Section 4. Penalty for parent or guardian making agreement to pledge the labour of a child.**—Whoever, being the parent or guardian of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extend to fifty rupees.
- Section 5. Penalty for making with a parent or guardian an agreement to pledge the labour of a child.**—Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledges the labour of the child shall be punished with fine which may extend to two hundred rupees.

2. Bonded Labour System (Abolition) Act, 1992

- Section 4. Abolition of bonded labour system.**— (1) On the commencement of this Act, the bonded labour system shall stand abolished and every bonded labourer shall stand freed and discharged from any obligation to render any bonded labour.
- (2) No person shall make any advance under, or in pursuance of, the bonded labour system or compel any person to render any bonded labour or other form of forced, labour.
- Section 5. Agreement, custom, etc., to be void.**— Any custom or tradition or practice or any contract, agreement or other instrument, whether entered into or executed before or after the commencement of this Act, by virtue of which any person, or any member of his family, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.

*The detailed provisions of law are provided in **Annex-IV**.

C105 - ABOLITION OF FORCED LABOUR CONVENTION, 1957

Core Obligations

This Convention requires the member State to suppress and not to make use of any form of forced or compulsory labour as a:

- Means of political coercion, punishment for holding or expressing ideological or political views opposing the established socio economic system;
- Method of mobilising and using labour for purposes of economic development;
- Means of labour discipline;
- Punishment for having participated in strikes;
- Means of racial, social, national or religious discrimination.

Legislative Compliance

The State has taken necessary steps to ensure that compulsory labour is not exacted from a person on the grounds maintained in the Convention. However, in Pakistani law, a person convicted of heinous offenses has to undergo work as a consequence of conviction, if awarded by the court of law only. It has been observed that usually people are not made to perform compulsory labour as a means of political coercion, or as a means of labour discipline, or as a punishment for having participated in the strikes or as a means of racial, social, national or religious discrimination or on dissenting political opinions. Moreover, there is no law which could force mobilization and use of labour for the purpose of economic development.

GAP ANALYSIS

Convention 29 defines forced labour as “All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” with certain exceptions with respect to work of a “purely” military character, “normal” civic obligations, work as a consequence of a conviction in a court of law and carried out under the control of a public authority, work in emergency situations such as wars or natural calamities, and minor communal services. It is further specified in ILO Convention 105 that the forced labour can never be used as a means of political coercion or education or as punishment for expressing political views or for participating in strike action, as labour discipline, as racial, social, national or religious discrimination, or for mobilizing labour for economic development purposes. Forced Labour includes slavery (in its modern form) and practices similar to slavery, debt bondage and serfdom as defined in other international instruments, such as the League of Nations Slavery Convention (1926) and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) and International Covenant on Civil and Political Rights (ICCPR).

The exploitation through forced labour is usually happening in the private economy at individual or enterprise level. In the modern times, States do not usually indulge in forced labour. Bonded labor in Pakistan arises primarily due to illegal advances provided by employers to workers. A laborer becomes bonded when his or her labor is demanded in repayment for a loan which was granted in lieu of a promise for future work. This is known as peshgi in Pakistan.

Government of Pakistan has ratified both the core conventions (in 1957 & 1960 respectively) on the theme of forced labour and its abolition as well suppression of its use

in any form (like compulsory labour). The pre-partition law to control forced labour Children (Pledging of Labour) Act, 1933 aims to prohibit the making of agreements to pledge the labour of children, and the employment of children whose labour was pledge by parents or guardians. While in the post-partition era, Article 3 & 11 of the 1973 Constitution guarantee the abolition of bonded labour and require the state to gradually eliminate all forms of exploitation. Bonded Labour System (Abolition) Act, 1992 abolishes bonded labour and targets customary arrangements that led to bonded labour. It also ends any debts that existed which led to individuals being forced into labour to pay off the debt. The other specific laws which deal with forced labour include Prevention and Control of Human Trafficking Ordinance, 2002 (to check economic and sexual exploitation) and Pakistan Penal Code, 1860 (to suppress economic and sexual exploitation).

Taking stock of the above legislation indicates that ample laws concerning forced labour and effective penalties are already in place however some legal gaps are found in the application of Convention 105.

There is no law in Pakistan which permits the use of compulsory labour by State as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilising and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes or as a means of racial, social, national or religious discrimination.

The provisions of Pakistan Essential Services (Maintenance) Act, 1952, and corresponding provincial Acts are sometimes overstretched where employees are prohibited from leaving their employment or even the area of their establishment (station) without the consent

of the employer, as well as from enjoying the right to strike, subject to penalties of imprisonment that may involve compulsory labour.

Certain provisions (Section 204-208) of Pakistan Merchant Shipping Ordinance, 2001 are also not in compliance with the provisions of C105. Special reference is made to the provisions prescribing for imprisonment (which may involve compulsory labour by virtue of it) on various breaches of labour discipline by seafarers (such as absence without leave, willful disobedience, or combining with the crew in neglect of duty), and where seafarers may be forcibly returned on board ship to perform their duties.

In view of the above discussion, the current legislation on forced labour is partially compliant with the obligations under core conventions. However, reforms are required to avert the abuse of compulsory labour as a method of labour discipline or as a punishment for having participated in a strike (Pakistan Essential Services (Maintenance) Act, 1952, and Merchant Shipping Ordinance, 2001.

Child Labour

C138 - MINIMUM AGE CONVENTION, 1973

Core Obligations

This Convention ensures the effective abolition of child labour and demands to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons. Each ratifying member is required to notify a minimum age in this respect, which cannot be less than the age of completion of compulsory schooling and, in any case, cannot be less than 15 years. The Convention further stipulates that countries with insufficiently developed economy and educational facilities can initially specify a minimum age for admission to employment as 14 years. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons cannot be less than 18 years.

Legislative Compliance

The State has undertaken to provide the enabling provisions in the law and enforcement mechanism to ensure the minimum age for admission into employment. As indicated in the Exhibit below, the provisions of the Convention were transposed in both the pre-partition (Mines Act 1923 & Factories Act 1934) and Post-Partition era legislation (Shops and Establishments Ordinance, 1969 & Employment of Children Act, 1991). Pakistan, while ratifying this Convention on 6th July 2006, declared the minimum age for admission to employment as 14 years, there is no separate minimum age for admission to hazardous work as required under the Convention. The minimum age for admission to employment under the 1973 Constitution is also set as 14 years. With the addition of Article of 25-A, in the Constitution since

Exhibit 5

Constitution of Islamic Republic of Pakistan, 1973

Article 11. Slavery, forced labour, etc. prohibited – (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

The State shall:

Article 37. Promotion of social justice and eradication of social evils. – (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

1. Mines Act, 1923

Section 2(c). “child” means a person who has not completed his fifteenth year;

Section 26. Children.— No child shall be employed in a mine, or be allowed to be present in any part of a mine which is below ground.

2. Factories Act, 1934

Section 50. Prohibition of employment of young children.— No child who has not completed his fourteenth year shall be allowed to work in any factory.

3. Shops and Establishments Ordinance, 1969

Section 2(c). “child” means a person who has not completed his fourteenth year of age;

Section 20. Prohibition of employment of children.— No child shall be required or allowed to work in any establishment.

4. Employment of Children Act, 1991

Section 2(iii). “child” means a person who has not completed his fourteenth year of age;

Section 3. Prohibition on Employment.— No child shall be employed or permitted to work in any of the occupations set forth in Part I of the Schedule or in any workshop wherein any of the processes set forth in Part II of that Schedule is carried on

2. Khyber Pakhtunkhwa Factories Act, 2013

Section 1(d). “child” means a person who has not completed his fourteenth year of his age;

Section 80. Prohibition of employment of children.— No child shall be allowed to work in any factory.

*The detailed provisions of law on application of this convention are provided in **Annex - V**.

2010, requiring compulsory schooling of 5-16 years, the minimum age for admission to full time employment is implicitly raised to 16 years.

C182 - WORST FORMS OF CHILD LABOUR CONVENTION, 1999

Core Obligations

This Convention demands effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency, while term child applies to all persons under the age of 18. Furthermore, the term “worst forms of child labour” is defined as:

- All forms of slavery or practices similar to slavery including recruitment of children in armed conflict;
- The use, procuring or offering of a child for prostitution;
- The use, procuring or offering of a child for illicit activities like drug trafficking;
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Member States must take measures to provide the necessary and appropriate direct assistance for the removal of the worst forms of child labour and ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour. Further, a ratifying member must identify and reach out to children at special risk; and take account of the special situation of girls.

Exhibit 6

1. Pakistan Penal Code, 1860

Section 364-A. **Kidnapping or abducting a person under the age of fourteen:** Whoever kidnaps or abducts any person under the age of fourteen in order that such person may be murdered or subjected to grievous hurt, or slavery, or to the lust of any person or may be so disposed of as to be put in danger of being murdered or subjected to grievous hurt, or slavery, or to the lust of any person shall be punished with death or with imprisonment for life or with rigorous imprisonment for a term which may extend to fourteen years and shall not be less than seven years.

Section 366-A. **Procuration of minor girl:** Whoever by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Section 367. **Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.:** Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected to grievous hurt, or slavery or knowing it to be likely that such person will be so subjected or disposed of shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 371-A. **Selling person for purposes of prostitution, etc.:** Whoever sells, lets to hire, or otherwise disposes of any person with intent that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person shall at any time be employed or used for any such, purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanations:- (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

(b) For the purposes of this section and section 371B, “illicit intercourse” means sexual intercourse between persons not united by marriage.

Section 371-B. **Buying person for purposes of prostitution, etc.:** Whoever buys, hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment which may extend to twenty-five years, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.”

Section 374. **Unlawful compulsory labour:** (1) Whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to five years or with fine, or with both.

(2) Whoever compels a prisoner of war or a protected person to serve in the armed forces of Pakistan shall be punished with imprisonment of either description for a term which may extend to one year.

2. Employment of Children Act, 1991

Section 2(iii). **“child”** means a person who has not completed his fourteenth year of age;

Section 3. **Prohibition of employment of children.-** No child shall be employed or permitted to work in any of the occupations set forth in Part I of the Schedule or in any workshop wherein any of the

Legislative Compliance

Pakistan ratified Convention 182 on 11th October 2001. The provisions of this Convention were transposed in the Penal Code, Employment of Children Act and Prevention & Control of human Trafficking Ordinance 2002.

GAP ANALYSIS

Child labour is a violation of fundamental human rights and hinders children's development. There is a strong link between household poverty and child labour. The continued existence of child labour is a significant indicator of decent work deficits. Ensuring that every child is free of the compulsion to work and has access to quality education is the first step towards achieving decent work for the most vulnerable in society. Prior to the adoption of Convention 138, the ILO instruments on the minimum age for admission to employment or work only addressed specific sectors. The Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15), ratified in 1922 by the Government of British India and Minimum Age (Industry) Convention (Revised), 1937 (No. 59), ratified by the Pakistan Government in 1955 are two such conventions which were later denounced on the ratification of C138 in 2006. Convention 138 sets the general minimum age for admission to employment or work at 15 years (13 years for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It also provides for the possibility of initially setting the general minimum age at a lower level, i.e., 14 years (12 years for light work) where the economy and educational facilities are insufficiently developed. Convention 182 defines as a "child" a person under 18 years of age. It requires ratifying states to eliminate the worst forms of child labour, including all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour,

processes set forth in Part II of that Schedule is carried on. (4 Occupations & 34 Processes)

3. Prevention and Control of Human Trafficking Ordinance, 2002

Section 3

The human trafficking shall be punishable as under.

(iii) Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine:

Provided that if the commission of the offence under this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine:

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

*The detailed provisions of law are provided in **Annex - VI**.

including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; using children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. A ratifying member has to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. Moreover, it requires states to ensure access to free basic education and vocational training for children removed from the worst forms of child labour.

Government of Pakistan has ratified both the Conventions on child labour. Child labour is prohibited under Articles 11, 35 and 37 of the Constitution. The present legislative mechanism comprises Shops & Establishment Ordinance, 1969; Factories Act, 1934; Employment of Children Act, 1991; Mines Act, 1923; the Road Transport Workers Ordinance and the Bonded Labour System (Abolition) Act, 1992 and prohibits child labour. An analysis of labour laws reflects that these are compliant with the provisions of C138 on the minimum age for admission into employment (14 years).

However, there is a disconnect between the compulsory education age (16 years) set in the Constitution and the minimum working age (14 years) as specified in various labour laws. In order to bring laws in line with Article 25-A of the Constitution, which calls for free education for children under 16 years of age, labour laws need to be amended to increase minimum age for full time employment from 14 years to 16 years. Children aged 14 and over (but still under 16 years) must be allowed to work for limited hours only. Necessary change is required in various labour laws allowing for employment of children (14-16 years) for limited hours per day in order to resolve the conflicting Constitutional provisions (Article 11 vs. Article 25-A of the Constitution). Employment of Children Act 1991 is only partially compliant with the provisions of C182 and needs amendment by raising the current minimum age for admission to hazardous work from 14 years to at least 16 years (and preferably 18 years). The other relevant legislation condemning worst forms of child labour includes Pakistan Penal Code 1860 and Prevention and Control of Human Trafficking Ordinance, 2002. The issue of children's involvement in drug trafficking and their use in armed conflict by non-state actors has not been addressed under any legislation.

It can be safely concluded that Pakistan has enacted relevant laws for admission of children in employment however the current minimum age for admission to hazardous work (14 years instead of 18 years) is unacceptably low which needs to be rectified by enactment of another law.

Equality of Opportunity and Treatment

C100 - EQUAL REMUNERATION CONVENTION, 1951

Core Obligations

The convention requires that equal remuneration must be paid to men and women for the work of equal value and there must not be any discrimination on the basis of sex. The determination of work of equal value is based on the objective appraisal of jobs, a method which can be decided for fair assessment by the authorities responsible for determining wage rates. Differential rates of remuneration, which correspond to differences in the work to be performed, as determined by an objective appraisal are not considered as being contrary to the principles enshrined in this Convention.

Legislative Compliance

The Minimum Wages Ordinance authorises the Minimum Wage Board to recommend minimum rates of wages for all classes of workers in any grade and also specify the minimum rate of wages for time work, piece work, overtime work, and work on the weekly day of rest and for paid holidays. The Rule 15 of the Minimum Wages Rules 1962 lays down the principle of equal remuneration for work of equal value irrespective of worker's sex. The Provincial legislation, reflected in **Exhibit 7**, also ensures principle of non-discrimination regarding work of equal value.

C111 - DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION, 1958

Core Obligations

The Convention requires that there shall be no discrimination (any distinction, exclusion or preference) in equality of opportunity

Exhibit 7

1. West Pakistan Minimum Wage Rules, 1962

Rule 15. Rates of Wages—In fixing minimum rates of wages, the principle of equal remuneration for men and women worker of equal value shall be applied.

2. Khyber Pakhtunkhwa Payment of Wages Act, 2013

Section 26. Protection against discrimination.— There shall be no discrimination on the basis of gender, religion, sect, colour, caste, creed, ethnic background in wages and other benefits for work of equal value.

3. The Sindh Employees' Old-Age Benefits Act, 2014

Section 54. There shall no discrimination on the basis of sex, religion, race, creed, color, caste, ethnic background or domicile in employment, professional development and the wages for work of equal value.

*The detailed provisions of law are provided in **Annex - VII**.

Exhibit 8

Constitution of Islamic Republic of Pakistan, 1973

Article 18. Freedom of trade, business or profession. — Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent:-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein;

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

Article 25. Equality of citizens. — (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex 32|| 32.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Article 27. Safeguard against discrimination in services. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

1. Khyber Pakhtunkhwa Factories Act, 2013

Section 99 There shall be no discrimination on the basis of gender, religion, sect, color, caste, creed, ethnic background in employment, professional development and the wages for work of equal value.

2. Khyber Pakhtunkhwa Payment of Wages Act, 2013

Section 26. There shall be no discrimination on the basis of gender, religion, sect, color, caste, creed, ethnic background in the wages and other benefits for work of equal value.

3. Khyber Pakhtunkhwa Industrial and Commercial Establishment Act, 2013

Section 10. There shall be no discrimination on the basis of sex, religion, sect, color, caste, creed, ethnic background in considering and disposing of issues relating to compensation, in the event of injury or, death, to the workers or, their legal heir, as the case may be.

4. Khyber Pakhtunkhwa Minimum Wages Act, 2013

Section 18. No discrimination shall be made on the basis of religion, political affiliation, sect, color, caste, creed ethnic background in considering and disposing of issues relating to the enforcement of this Act.

*The detailed provisions of law are provided in **Annex - VIII**.

and treatment in respect of employment and occupation on the basis of race, colour, sex, religion, disability, political opinion, national extraction or social origin. The terms **employment** and **occupation** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Legislative Compliance

The State has undertaken to provide the enabling provisions in the law and enforcement mechanism to ensure the elimination of discrimination in equality of opportunity and treatment in respect of all employment related matters, especially training and other skills development opportunities. The Convention was ratified on 24th January 1961. Article 27 of the Constitution of Pakistan entails the principle of non-discrimination in services. It states:

“No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth.”

It must be specified here that Constitution guarantees freedom of trade, business or profession and says that “Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business”. The legal provisions on this Convention are reflected in **Exhibit 8**.

GAP ANALYSIS

Convention 111 defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, and

allows for additional grounds to be included after consultation with national workers and employers’ organizations. The Equal Remuneration Convention, 1951 (No. 100), provides for equal remuneration for men and women workers for work of equal value.

The elimination of discrimination at work is part of the 1944 Declaration of Philadelphia, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the 2008 ILO Declaration on Social Justice for a Fair Globalization, and the 2009 ILO Global Jobs Pact. Equality of treatment and non-discrimination are also themes of the International Convention on the Elimination of All Forms of Racial Discrimination-1965, ICCPR-2010, International Covenant on Economic, Social and Cultural Rights -2010, Convention on the Elimination of All Forms of Discrimination against Women-1979, and Convention on the Rights of Persons with Disabilities-2006 all of which have been ratified by Pakistan.

The applicable constitutional framework for equality of opportunity and non-discrimination emanates from Articles 18, 25, 27, 37 & 38 of the Constitution. The provisions of Equal Remuneration Convention are partially complied to under the Minimum Wages Ordinance (1961) and its Rules (1962) in the sense that the Ordinance does not directly guarantee equal remuneration, it only provides a platform for minimum rates of wages for workers, however it requires equality in those minimum wage rates. No supportive legislation has been enacted to ensure compliance with the provisions enunciated in C100 (equal remuneration) and C111 (equality in all employment related matters). There is a disconnect between the Constitutional provisions and the existing legal framework for enforcement of the above conventions.

An examination of the above reflects that the Constitution does provide the principle of non-discrimination. However, there is a dire

need for standalone legislation applicable to sectors across the board defining what will amount to discrimination in employment related matters in line with the obligations of these Conventions.

Khyber Pakhtunkhwa Government has taken the initiative and incorporated non-discrimination provisions in its five laws. Sindh Government has also incorporated non-discrimination and equal pay provisions in its Employees' Old-Age Benefits Act, 2014. Rest of the Provinces has yet to follow suit.

Labour Administration & Inspection

C081 - LABOUR INSPECTION CONVENTION, 1947

Core Obligations

The provisions of this Convention cover the functions, duties and responsibilities of labour inspection system, recruitment of inspection staff, and resources for inspectors along with their powers and obligations. The Convention stipulates that labour inspection should be placed under the supervision of a central authority. It further stresses that the inspection should cover a basic set of parameters such as hours of work, wages, safety and health of workers employed. Moreover, the inspectors must be empowered and should have the authority to conduct an inspection visit during any time of the day. Furthermore, the Convention provides for the imposition of adequate penalties as a result of violations detected. Moreover, it is obligatory to produce an annual inspection report detailing the issues raised at the time of inspection visits. The principle functions of labour inspection system are securing the enforcement of legal provisions, particularly through inspection visits, supplying technical information and advice to employers, workers and their respective organizations, and bringing to the notice of the competent authority defects or abuses not covered by existing legal provisions.

Legislative Compliance

Labour inspection is provided under various labour laws in Pakistan. These include:

- Factories Act, 1934
- Payment of Wages Act, 1936
- Shops and Establishment Ordinance, 1969
- Industrial and Commercial (Standing Orders) Ordinance, 1968

Exhibit 9

1. Mines Act, 1923

Section 4

Chief Inspector and Inspectors.— (1) The appropriate Government may, by notification in the official Gazette, appoint a duly qualified person to be Chief Inspector of Mines for the whole of Pakistan or for the Province, as the case may be, and duly qualified persons to be Inspectors of Mines subordinate to the Chief Inspector. 2. Khyber Pakhtunkhwa Payment of Wages Act, 2013

2. Factories Act, 1934

Section 10.

Inspectors.— (1) The Government may, by notification in the official Gazette, appoint such persons as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

Section 11.

Powers of Inspector.— Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed,—

(a) enter, with such assistants (if any), being persons in the service of the state or of any municipal or other public authority, as he thinks fit, any place which is, or which he has reason to believe to be, used as a factory or capable of being declared to be a factory under the provisions of section 5;

(b) make such examination of the premises and plant and of any prescribed registers, and take on the spot or otherwise such evidence of any persons as he may deem necessary for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

3. Shops and Establishments Ordinance, 1969

Section 25.

Appointment of Chief Inspector, Deputy Chief Inspectors and Inspectors.— (1) Government may, by notification in the official Gazette, appoint—

(a) a Chief Inspector of Shops for the whole of the Province;

(b) Deputy Chief Inspectors of Shops for such areas as may be notified; and

(c) such person or class of persons as it thinks fit to be Inspectors for the purposes of this Ordinance within such local limits as may be specified by the Chief Inspector of Shops.

(2) The Chief Inspector of Shops and the Deputy Chief Inspectors of Shops—

(a) shall supervise the work of Inspectors appointed under clause (c) of sub-section (1) in such manner as may be prescribed; and

(b) may exercise all or any of the powers of an Inspector.

Section 26.

Powers of Inspectors.— An Inspector appointed under section 25 may, for the purposes of this Ordinance and within the local limits for which he is appointed, at all reasonable times enter into any place which is, or which he has reason to believe is, an establishment, with such assistants, if any being persons in the service of Government, and make such examination of that place or of any prescribed record, register, or other documents maintained therein, and may require such explanation of any prescribed record, register or other documents and do all such things as he considers necessary for the purpose of this Ordinance. 6. The Sindh Employees' Old-Age Benefits Act, 2014

4. Road Transport Employees Ordinance, 1961

Section 9.

Inspection of registers and calling for information.— It shall be the duty of every employer to produce for inspection of such inspectors as may be appointed by the Government all accounts or other records required to be kept for the purposes of this Ordinance and to give such officer any other information in connection therewith as may be required.

*The detailed provisions of law are provided in **Annex - IX**.

- Minimum Wages Ordinance, 1961
- Road Transport Workers' Ordinance, 1961
- Maternity Ordinance, 1958
- Mines Act, 1923
- Employment of Children Act, 1991
- Dock Workers Act, 1934

GAP ANALYSIS

According to the Convention 81, the system of labour inspection in industrial workplaces shall apply to all workplaces in respect of which legal provisions relating to conditions of work and the protection of workers while engaged in their work are enforceable by labour inspectors. An effective labour administration system provides for a stable business climate and encourages national and foreign direct investment. Legal compliance helps to ensure a level playing field so that all are required to respect the same rules and standards. Proper labour inspection can help companies benchmark their compliance and, rather than being purely a fine-imposing service, the labour inspectors can help educate and assist business in meeting these obligations.

Inspection is provided in the Mines Act, 1923, Factories Act, 1934, West Pakistan Shops and Establishment Ordinance, 1969, Road Transport Employees Ordinance, 1961 and Khyber Pakhtunkhwa Factories Act, 2013. Informal economy, agriculture, and construction sectors are out of the ambit of law. Although, penalties have been provided for violation under the said laws, however these are very meager and have no deterrence effect. Some time the employers prefer to pay penalties rather to be compliant. However, after devolution, now the provinces are in process to amend the laws.

One of the fundamental challenge faced by a labour inspector is the obstruction by

employer by not allowing him to perform his duties (not allowing to enter premises, non-provisions of relevant record, not allowing private interviews with workers). Section 63 of Factories Act 1934 clearly prescribes the punishment for obstruction of labour inspectors in performance of their duties, where the penalty was prescribed as Rs.500 only. Now the penalty has been raised under the Punjab Factories Act (last amended in 2012) from a meager sum of Rs. 500 to Rs. 20,000 for each case of obstruction. The Government of Khyber Pakhtunkhwa has introduced a specific section (section 88) regarding obstruction of inspectors in the KPK Factories Act 2013. In case of violation, obstruction to inspection is punishable with a fine up to Rs. 20,000. If an employer is guilty of the same offence (repeat violation), he is punishable with imprisonment of either description for a term, which may extend to one month (however cannot be less than seven days) or fine which may extend to Rs. 50,000.

The inspection system in Pakistan faces a serious shortage of inspectors in relation to the number of workplaces liable to inspection. There is a need for standalone law on labour inspection in order to provide for a reformed labour inspection system with participation from the private sector. Inspection services have domain as these cover only the so-called formal sector. Consolidated annual report on inspections conducted during the year must also be published which is missing in Pakistan's case.

Provincial labour inspectorates, with dedicated career officials, need to be established with the mandate of enforcing legal provisions relating to conditions of work such as working time, wages, occupational safety & health, social security, child labour, bonded labour and other issues (benefits guaranteed under laws as well as types of contracts).

Tripartite Consultation

C144 - TRIPARTITE CONSULTATION (INTERNATIONAL LABOUR STANDARDS) CONVENTION, 1976

Core Obligations

The Convention obligates the State to ensure conduct of effective consultations between representatives of the government, employers and workers. It binds the Government to respond to the questionnaires concerning items on the agenda of the International Labour Conference and comments on proposed texts, submit timely reports on ratified and unratified Conventions & Recommendations, re-examine unratified Conventions & Recommendations for possible ratification and submit proposals on denunciation of any ratified Convention(s). These consultative meetings are required to be carried out at appropriate intervals at least once a year and the selection of the workers and employers for the membership of such bodies has to be based upon the principle of true representation.

Legislative Compliance

Tripartism is ingrained in labour laws in Pakistan. Various tripartite institutions are established under labour legislation. These include:

1. Governing Body of the Workers Welfare Fund (GB-WWF)
2. Board of Trustees of Employees' Old-age Benefits Institution (BOT-EOBI)
3. Four Provincial Minimum Wage Boards; (PMWB)
4. National Steering Committee on the Bonded Labour; (NSCBL)

5. Four Governing Bodies of the Provincial Social Security Institutions; (GB-ESSI)
6. Workers Welfare Boards; (WWB)
7. Four Provincial Tripartite Advisory Committees under Apprenticeship Ordinance 1962; (AC-App)
8. Miner's Welfare Board; (MWB)
9. Provincial Occupational Safety & Health (OSH) Councils; (OSH Council)
10. Provincial Committees on the Elimination of Bonded Labour; (PCEBL)
11. Vigilance Committees under Bonded Labour System (Abolition) Act 1992; (VC-BLS)

Before devolution, there also existed institutions like Federal Labour Conference, Pakistan Tripartite Labour Conference and Standing Labour Committee, however these institutions only partially fulfilled the obligations set under C144 for discussion on possible ratification or denunciation of ILS and reporting to ILO. It must also be indicated that these institutions were engaged irregularly on ad-hoc basis without specific agenda.. In 2014, the Federal Government notified the Federal Tripartite Consultative Committee (FTCC) in line with the provisions of C144. Similarly Provincial Tripartite Consultative Committees (PTCC) have been notified by all the provincial governments.

GAP ANALYSIS

Tripartism is at the heart of ILO and International labour standards are created and supervised through a tripartite structure which makes ILO unique in the United Nations system. Tripartism is also important at the national level. Through regular tripartite consultations, governments

ensure that the national labour standards are formulated, applied and supervised with the participation of employers and workers in full compliance with the provisions of ratified ILS. Convention 144 sets forth the framework for effective national tripartite consultations.

In view of the importance of tripartism, this is considered one of the four priority conventions. The 2008 Declaration on Social Justice For a Fair Globalization also stresses the key role of this instrument (together with the other three Governance Conventions – 81, 122 and 129) from the viewpoint of governance.

Government of Pakistan ratified this Convention in 1994 however no supportive enforcement mechanism was evolved. Although, Rules of Business, 1973, provided for the Federal Labour Conference and Pakistan Tripartite Labour Conference (PTLC), PTLC was held only a couple of times (2002 and 2009) after ratification of this Convention. A Federal Tripartite Consultation Committee and four Provincial Tripartite Consultation Committees have already been notified in 2014, with the mandate of performing functions as stipulated in this Convention.

Despite the notification of these Committees, a legal cover is required in the shape of an Act or Rules to be framed under Industrial Relations Act and Provincial IRAs. In accordance with the IRA 2012 (section 80), the Federal Government may co-ordinate with the provinces before enacting any law or rules for the effective enforcement of obligations of the State to international labour and employer related Conventions so ratified by the State and in case of difference of opinion, may refer such matter, to the Council of Common interests for decision. Since Convention 144 is ratified by the State.

Working Time

C001 - HOURS OF WORK (INDUSTRY) CONVENTION, 1919

Core Obligations

The working hours of persons employed in any public or private industrial undertaking must not exceed eight hours a day and forty-eight hours a week. This requirement is not applicable to the workers employed in an enterprise where only members of the same family are employed. For workers employed in supervisory, management or confidential capacity; and those employed in shifts with the condition that the average working hours for staff workers in three-week period must not exceed 8 hours per day and 48 hours per week. The daily working hours may be exceeded by one hour if the hours of work on one or more days of the week are less than eight.

The above limit of hours of work (8 hours a day & 48 hours a week) may be exceeded in case of accident (actual or threatened) or in case of urgent work to be done on machinery or plant, or in case of “force majeure”, but only to avoid serious interference with the ordinary working of the undertaking. The limit of hours of work may also be exceeded in those processes which are required to be carried on continuously by a succession of shifts however, the working hours must not exceed fifty-six in the week on average.

Legislative Compliance

As indicated in the **Exhibit 10**, the provisions of this Convention have been transposed in the national labour legislation through enactment of laws in both the pre-partition and post-partition eras after its ratification on 14th July 1921. The daily and weekly working hours have been clearly specified in Mines Act, 1923, Factories Act, 1934, Shops and Establishments Ordinance, 1969, Road Transport Workers Ordinance, 1961 and Khyber Pakhtunkhwa Factories Act, 2013.

Exhibit 10

1. Mines Act, 1923

Section 22B. **House of work above ground—** (1) A person employed above ground in a mine shall not be allowed to work for more than forty eight hours in any week or for more than eight hours in any day.

Section 22C. **Hours of work below ground.—** (1) A person employed below ground in a mine shall not be allowed to work for more than eight hours in any day.

2. Factories Act, 1934

Section 36. **Daily hours.—** No adult worker shall be allowed or required to work in a factory for more than nine hours in any day: Provided that a male adult worker in a seasonal factory may work ten hours in any day.

3. Shops and Establishments Ordinance, 1969

Section 8. **Daily, weekly hours and over-time.—** Save as otherwise expressly provided in this Ordinance, no adult employee shall be required or permitted to work in any establishment in excess of nine hours a day and forty-eight hours a week, and no young person in excess of seven hours a day and forty-two hours a week.

4. Road Transport Workers Ordinance, 1961

Section 4. **Hours of work and rest.—** (1) No worker shall be employed on a vehicle—

(a) for more than five hours at a time before he has had an interval for rest of at least half an hour nor for more than seven hours before he has had at least two such intervals;

(b) for more than eight hours in a day; and

(c) for more than forty-eight hours in a week.

5. Khyber Pakhtunkhwa Factories Act, 2013

Section 56. **Daily hours.—** No adult worker shall be allowed or required to work in a factory for more than nine hours in any day: Provided that a male adult worker in a seasonal factory may work ten hours in any day.

*The detailed provisions of law are provided in **Annex - X**.

C014 - WEEKLY REST (INDUSTRY) CONVENTION, 1921

Core Obligations

All staff employed in any public or private industrial undertaking must enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours. This period of rest must, wherever possible, be granted simultaneously to the whole of the staff of each undertaking and be fixed so as to coincide with the days already established by the local traditions or customs.

Legislative Compliance

As indicated in the exhibit 11, the provisions of this Convention have been given legal coverage in the country's labour legislation through enactment of laws. This Convention was ratified by British India on 11th May 1923. Provisions on weekly rest of at least 24

C106 - WEEKLY REST (COMMERCE AND OFFICES) CONVENTION, 1957

Core Obligations

Workers must be entitled to a weekly rest period of at least 24 hours in each period of seven days. The weekly rest must, whenever possible, be granted simultaneously to all the persons employed in each establishment; coincide with the day of the week established as a day of rest by local traditions or customs; and respect the traditions and customs of religious minorities. Special weekly rest schemes can also be established in consultation with the employers' and workers' representative organizations.

The Convention requires a ratifying State to take appropriate measures to ensure the proper administration of provisions concerning weekly rest, by means of adequate inspection, supplemented by adequate penalties. The provisions on weekly rest are not applicable to establishments in which only members of the employer's family are employed and persons holding high managerial positions.

Legislative Compliance

As indicated in the exhibit below, the provisions of this Convention have been transposed in the local labour legislation through enactment of laws in both the pre-partition and post-partition eras, after its ratification on 15th February 1960.

Exhibit 11

1. Mines Act, 1923

Section 22A. **Weekly days of rest—** (1) No person shall be allowed to work in mine on more than six days in any one week.

2. Factories Act, 1934

Section 35. **Weekly Holiday.**— (1) No adult worker shall be allowed or required to work in a factory on a Sunday unless—

(a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday.

3. Shops and Establishments Ordinance, 1969

Section 6. **Weekly Holiday in establishments.**— (1) Except as otherwise provided in this Ordinance, every person employed in any establishment shall, in addition to the leave and holidays as may be admissible to him under sections 14, 15 and 16, be allowed as holiday, one day in each week.

4. The Road Transport Workers Ordinance, 1961

Section 4. **Hours of work and rest.**— (2) Every worker shall be entitled to have at least twenty-four hours of consecutive rest in a week.

5. Khyber Pakhtunkhwa Factories Act, 2013

Section 54. **Weekly holiday.**— (1) No adult worker shall be allowed or required to work in a factory on a Sunday unless—

(a) he had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday

*The detailed provisions of law are provided in **Annex - XI**.

Exhibit 12

1. Shops and Establishments Ordinance, 1969

Section 6. **Weekly Holiday.**— (1) No adult worker shall be allowed or required to work in a factory on a Sunday unless—

(a) he has had or will have a holiday for a whole day on one of the three days immediately before or after that Sunday.

Section 27. **Penalties.**— (2) Whoever contravenes any of the provisions of section 6, 7, 19 or 20 shall, on conviction, be punishable with fine which for the first offence may extend to rupees [two fifty], and for a second or subsequent offence with fine which may extend to rupees [five hundred] or with simple imprisonment which may extend to three months, or with both.

2. Khyber Pakhtunkhwa Shops and Establishments Act, 2015

Section 6. **Weekly Holiday in establishments.**— (1) Every person employed in any establishment shall, in addition to the leave and holidays, as may be admissible to him under sections 14, 15 and 16 of this Act, be allowed as holiday, one day in each week.

Section 28. **Penalties.**— (2) Whoever contravenes any of the provisions of this Act shall, on conviction, be punishable with fine which for the first offence shall not be less than two thousand rupees and may extend to ten thousand rupees and for a second or any subsequent offence may extend to twenty thousand rupees or with simple imprisonment which may extend to one month, or with both.

*The detailed provisions of law are provided in **Annex - XII**.

Provisions on weekly rest for commerce and offices are found in the Shops & Establishment Ordinance, 1969, Punjab Shops & Establishment Ordinance, 1969 (amended in 2014) and Khyber Pakhtunkhwa Shops & Establishments Act, 2015. Punjab while amending this act has raised penalties for the violation of first instance (from Rs. 250 to 5000) and subsequent violation (from Rs. 500 to Rs. 10,000).

GAP ANALYSIS

Compliance to reasonable working hours is a fundamental component of safe and humane working conditions. The first ever ILO Convention in 1919 was on working hours – stipulating a maximum of 48 hours per working week. In addition to concerns about exploitation and impact on family life, there are workplace health and safety risks in built in a work excessive of permissible working hours. Working hours are also strongly linked to wages, such that employees may seek longer hours in order to increase their income. Where workers are paid by the piece rate, it can result in long working hours. Currently, there is no mechanism under Pakistani law on how to recalculate piece rate wages in time-based work. All hours worked beyond the permissible limit or agreed working week are considered overtime. Overtime has to be voluntary and not enforced. If workers are forced to work overtime in order to earn the minimum wage, or if they are coerced into working overtime beyond legal limits, this may constitute forced labour. The reason for limiting working hours is to promote better work-life balance and reduce workers' stress related occupational conditions and accident rates.

ILO Convention 14 on Weekly Rest (Industry) 1921 and Convention 106 on Weekly Rest (Commerce and Offices) 1957 provides that all workers should be entitled to at least 24 hours consecutive rest every week. Employers may agree to exceptions or

alternative arrangements in consultation with trade unions or other worker representatives.

The national and provincial legislations, i.e., Mines Act 1923, Factories Act 1934, Road Transport Workers Ordinance, 1961, Shops and Establishments Ordinance 1969 and Khyber Pakhtunkhwa Factories Act, 2013 have fixed hours of daily and weekly work, for the country as a whole and/or for specific sectors or jobs. Legislation has also stipulated a maximum number of overtime hours that can be worked, along with requirements for weekly rest days and annual holiday entitlements. A failure to comply with laws on working hours, rest and leave can lead to penalties ranging from fines to imprisonment of responsible individuals. National laws are fully compliant with the provisions of Conventions ratified under this theme.

Protection of Children and Young Persons

C006 - NIGHT WORK OF YOUNG PERSONS (INDUSTRY) CONVENTION, 1919

Core Obligations

This Convention requires that young persons under eighteen (18) years of age must not be employed during night (a period of at least eleven consecutive hours, including the interval between 22:00hrs and 05:00hrs) in any public or private industrial undertaking other than an undertaking in which only members of the same family are employed. Young persons over the age of sixteen (16) may be employed during the night in the industrial undertakings on work which, by reason of the nature of the process, is required to be carried on continuously day and night, such as manufacturing of iron and steel; glass works; manufacturing of paper; manufacturing of raw sugar and gold mining reduction work. Although Pakistan has not formally denounced this Convention yet due to the ratification of Convention 90, this Convention has become outdated.

Legislative Compliance

As indicated in the **Exhibit 13**, the provisions of the Convention are given effect in both the pre-partition legislation (Mines Act 1923 & Factories Act 1934) and Post-Partition era legislation (Shops and Establishments Ordinance, 1969 & Employment of Children Act, 1991) after its ratification on 14th July 1921 by British India. Although different timings for prohibiting night work of young persons are found in Mines Act, 1923 (Section 26-B), Factories Act, 1934 (Section 54) and Shops & Establishments Ordinance (Section 7), the provisions of Employment of Children Act, 1991 have overriding effect on any other law on the subject. Employment of Children Act, 1991 stipulates that no child be allowed or required to work between 07:00 pm to 08:00 am in any condition.

Exhibit 13

1. Mines Act, 1923

Section 26B.

Limitation of working hours for young persons.— No person who has not completed his seventeenth year shall be permitted to work in any part of a mine, either below ground or above ground, unless the hours of work of such person for any day are so fixed as to allow an interval of rest of at least twelve consecutive hours which shall include at least such seven consecutive hours between the hours of 7 P.M. and 7 A.M. as may be prescribed.

2. Factories Act, 1934

Section 54.

Restrictions on the working hours of a child.— (3) No child or adolescent shall be allowed to work in a factory except between 6 A.M. and 7 P. M.

3. Shops and Establishments Ordinance, 1969

Section 7.

Opening and closing hours of establishments.— (1) No establishment shall on any day remain open after 8:00 p.m.: Provided that any customer who was being or was waiting in the establishment to be served at such hour, may be served during the period of thirty minutes immediately.

4. Employment of Children Act, 1991

Section 7.

Hours and Period of Work.— (4) No child shall be permitted or required to work between 7.00 p.m. to 8.00 a.m.

5. Khyber Pakhtunkhwa Factories Act, 2013

Section 83.

Restrictions on the working hours of an adolescent.— Hours of work of an adolescent, who has been certified fit to work in a factory, shall be governed by the Employment of Children Act, 1991.

*The detailed provisions of law are provided in **Annex - XIII**.

C090 - NIGHT WORK OF YOUNG PERSONS (INDUSTRY) CONVENTION (REVISED), 1948

Core Obligations

Young persons under eighteen years of age must not be employed or made to work during the night (a period of at least twelve consecutive hours, including the interval between 22:00hrs and 06:00hrs) in any public or private industrial undertaking. Family undertakings in which parents and their children or wards are employed and the work which is not deemed to be harmful, prejudicial, or dangerous to young persons may be exempted from application of above provisions. For purposes of apprenticeship or vocational training in specified industries or occupations which are required to be carried on continuously, the competent authority

may, after consultation with the employers' and workers' organisations, authorise the employment in night work of young persons who have attained the age of sixteen years but are under the age of eighteen years.

Legislative Compliance

The provisions of the Convention 090 have been incorporated in both the pre-partition (Mines Act 1923 & Factories Act 1934) and Post-Partition era legislation (Shops and Establishments Ordinance, 1969 & Employment of Children Act, 1991) before its ratification on 14th February 1951. Night work of young persons is prohibited with varying limits defined under the law. However, the prevailing provision comes from Employment of Children Act 1991 which requires that "no child be permitted or required to work between 7.00 p.m.to 8.00 a.m."

GAP ANALYSIS

Pakistan has ratified two technical conventions focusing on the night work of young persons. Article 37(e) of the Constitution of Pakistan, 1973 requires the State to "ensure that children and women are not employed in vocations unsuited to their age or sex". In view of this policy guideline, State has not only ratified these conventions aiming to protect children and young persons from night work but has also enacted necessary legislation in this regard.

Convention 90 is revised form of Convention 06 and has same provisions in law as for C-06. The Night Work of Young Persons (Industry) Convention, 1919 (No. 6), authorizes night work by young persons over the age of 16 in a limited number of processes which are required to be carried on continuously day and night. On the other hand, the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90), envisages certain exceptions and

Exhibit 14

1. Mines Act, 1923

Section 26B.

Limitation of working hours for young persons.-- No person who has not completed his seventeenth year shall be permitted to work in any part of a mine, either below ground or above ground, unless the hours of work of such person for any day are so fixed as to allow an interval of rest of at least twelve consecutive hours which shall include at least such seven consecutive hours between the hours of 7 P.M. and 7 A.M. as may be prescribed.

2. Factories Act, 1934

Section 54.

Restrictions on the working hours of a child.-- (1) No child shall be allowed to work in a factory for more than five hours in any day.

(2) The hours of work of a child shall be so arranged that they shall not spread over more than seven-and-a-half hours in any day.

(3) No child or adolescent shall be allowed to work in a factory except between 6 A.M. and 7 P. M.

3. Road Transport Workers Ordinance, 1961

Section 3.

Age Limit.- (1) No person, other than a driver, shall be employed in any road transport service unless he has attained the age of eighteen years.

(2) No person shall be employed in any road transport service for the purpose driving a vehicle unless he has attained the age of twenty-one years

4. Shops and Establishments Ordinance, 1969

Section 7.

Opening and closing hours of establishments.-- (1) No establishment shall on any day remain open after 8:00 p.m.: Provided that any customer who was being or was waiting in the establishment to be served at such hour, may be served during the period of thirty minutes immediately.

4. Khyber Pakhtunkhwa Factories Act, 2013

Section 83.

Restrictions on the working hours of an adolescent-Hours of work of an adolescent, who has been certified fit to work in a factory, shall be governed by the Employment of Children Act, 1991.

5. Employment of Children Act, 1991

Section 7.

Hours and Period of Work.- (1) No child or adolescent shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has an interval of at least one hour for rest.

(3) The period of work of a child shall be so arranged that inclusive of the interval for rest, under subsection (2), it shall not exceed seven hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7.00 p.m.to 8.00 a.m.

(5) No child shall be required or permitted to work over-time.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

*The detailed provisions of law are provided in **Annex - XIV**.

authorizes night work by young persons aged between 16 and 18 for the purposes of apprenticeship or vocational training in specified industries or occupations which are required to be carried on continuously. Moreover, under the Convention 90, exemptions and exceptions can only be provided in consultation with workers' and employers' organizations. Convention 90 increased the period of prohibition from 11 to 12 consecutive hours while otherwise allowing for greater flexibility.

Convention 06 requires that young persons under eighteen years of age cannot be employed during the night in any public or private industrial undertaking, or in any branch thereof. The obligations of the Convention are partly met by the Mines Act 1923, Factories Act 1934, West Pakistan Shops and Establishments Ordinance, 1969, Employment of Children Act 1991 with regard to the prohibition of children's employment during night hours. However, there is a gap in age limit as it is set as eighteen years in Convention and fourteen years (seventeen years under Mines Act) in law.

The Convention 90 provides that young persons under eighteen years of age cannot be employed during the night in any public or private industrial undertaking, or in any branch thereof. The Factories Act, 1934 conforms to it by providing that no child or adolescent shall be allowed to work in a factory except between 6 A. M. and 7 P. M.

As above, the obligations of this Convention are also fully met by the Mines Act 1923, Factories Act 1934, West Pakistan Shops and Establishments Ordinance, 1969, Employment of Children Act 1991 with regard to the prohibition of children's employment during night hours. However, there is a gap in age limit as it is set as eighteen years in Convention and fourteen years (seventeen years under Mines Act) in law.

National laws are in line with the provisions of Recommendation on the Worst Forms of Child Labour, (No. 190) which says that the work during night by young persons under 18 years of age be considered hazardous and therefore be treated as one of the worst forms of child labour which must be eradicated in terms of Convention 182. It is proposed that in view of ratification of C90, tripartite consultations may be started to denounce C06.

Night Work

C004 - NIGHT WORK (WOMEN) CONVENTION, 1919

Core Obligations

Women without distinction of age cannot be employed during the night (a period of at least eleven consecutive hours, including the interval between 22:00hrs and 05:00hrs) in any public or private industrial undertaking. This prohibition is not applicable to the undertakings in which only members of the same family are employed, in cases of “force majeure”, and where night work is necessary to preserve easily perishable materials from loss.

Legislative Compliance

Employment of women during night hours is prohibited under Mines Act, 1923, Factories Act, 1934, Shops & Establishments Ordinance, 1969 and Khyber Pakhtunkhwa Factories Act, 2013. This Convention was ratified by British India on 14th July 1921.

C089 - NIGHT WORK (WOMEN) CONVENTION (REVISED), 1948

Core Obligations

Women, irrespective of their age, cannot be employed during the night (a period of 11 consecutive hours including an interval of at least seven consecutive hours, including the interval between 22:00hrs and 07:00hrs) in any public or private industrial undertaking. This prohibition is not applicable to the undertakings in which only members of the same family are employed, in cases of “force majeure”, and where night work is necessary to preserve easily perishable materials from loss. Similarly, the prohibition is also not applicable to women in managerial or technical positions and women employed in health and welfare services not generally engaged in manual work.

Exhibit 15

1. Mines Act, 1923

Section 23C.

Employment of women.— (1) No woman shall be employed in any part of a mine which is below ground.

(2) No woman shall be allowed to work in a mine above ground between the hours of 7 P.M and 6 A.M.

2. Factories Act, 1934

Section 45.

Further restrictions on the employment of women.— (b) no woman shall be allowed to work in a factory except between 6 A. M. and 7 P.M.:

Provided that if the employer arranges for the transport facilities, a woman with her consent may work upto 10.00 p.m. in two shifts

3. Shops and Establishments Ordinance, 1969

Section 7.

Opening and closing hours of establishments.— (4) Except with the permission of Government, no woman or young person shall be employed in any establishment otherwise than between the hour of 9-00 a.m. to 7:00 p.m.

*The detailed provisions of law are provided in **Annex - XV**.

Exhibit 16

1. Mines Act, 1923

Section 23C.

Employment of women.— (1) No woman shall be employed in any part of a mine which is below ground.

(2) No woman shall be allowed to work in a mine above ground between the hours of 7 P.M and 6 A.M.

(3) The provisions of this section shall not apply to women who do not perform manual work and are:

(a) holding positions of managerial or technical character, or

(b) employed in health and welfare services.

2. Factories Act, 1934

Section 45.

Further restrictions on the employment of women.— (b) no woman shall be allowed to work in a factory except between 6 A.M. and 7 P.M.:

Provided that if the employer arranges for the transport facilities, a woman with her consent may work upto 10.00 p.m. in two shifts

3. Shops and Establishments Ordinance, 1969

Section 7.

Opening and closing hours of establishments.— (4) Except with the permission of Government, no woman or young person shall be employed in any establishment otherwise than between the hour of 9-00 a.m. to 7:00 p.m.

*The detailed provisions of law are provided in **Annex - XVI**.

Legislative Compliance

Convention 89 is the improved form of Convention 04, and has better protection for working women. It has raised the protection time from 22:00 – 05:00 to 22:00 – 07:00 and also allows for night work of women in managerial positions. The Factories Act, after amendment in 2006, allows extension of working hours for women to 10:00 pm as allowed under the Convention. The relevant legal provisions have been reflected in Exhibit 16.

GAP ANALYSIS

The idea of protecting women from arduous working conditions also found expression in the Preamble of the ILO Constitution which provides that an improvement of labour conditions is urgently required by the regulation of the hours of work, including the protection of children, young persons and women. The question of night employment of women has been a recurrent theme in the standard-setting work of the ILO. Since its early days, the ILO has demonstrated a particular interest in the regulation of the harmful effects of night work as well as the protection of women workers.

Convention 04 in fact stands, at the convergence point of this two-fold preoccupation – humanizing working conditions by limiting night work in general, while setting up women-specific protective rules principally on account of their unique reproductive role, physical features traditions and burdensome family responsibilities.

The 1973 Constitution requires the State to ensure that children and women are not employed in vocations unsuited to their age or sex. The Mines Act, 1923, Factories Act, 1936, KPK Factories Act, 2013 and West Pakistan Shops and Establishments Ordinance, 1969 ensure the implementation of the constitutional and conventional obligations of both the Conventions. All

the laws are in full conformity with the obligations under the Conventions.

A contrary argument, made by these working on gender issues, is that the obligations of the conventions are in conflict with our constitutional and legal provisions of newly promulgated provincial labour laws recognizing equal rights to all citizens and prohibiting discrimination based on origin, race, sex, language, religion, opinion, and economic situation. Maintaining the prohibition on the night work of women in industry constitutes an inadmissible discrimination against working women particularly when the concern for protection, which originally inspired the Conventions, is no longer relevant. Moreover, the exclusion of women from night work seems to be discriminatory especially in so far as wage levels and promotion at work are concerned and the limitation of the hours of work of women has actually become a genuine obstacle to the actual integration of women into the labour market.

It is quite strange to note that with ratification of C-089, the Convention 041 was denounced however C-004 was retained which itself is the basic form of C-041 & C-089. It is proposed that C-004 may be denounced after consultation at Federal Tripartite Consultative Committee & Provincial Tripartite Consultative Committees (FTCC & PTCC) level and may be communicated to the ILO. Moreover, the Government may also consider ratification of Protocol on C89, which allows for night work for women except for pregnant & breastfeeding workers.

In view of the above the government should consider opening of dialogue with the social partners to denounce both the conventions and instead ratify Night Work Convention, 1990 (No. 171.)

Occupational Safety & Health

C045 - UNDERGROUND WORK (WOMEN) CONVENTION, 1935

Core Obligations

No female, irrespective of her age, should be employed on underground work in any mine. National laws can however exempt females holding positions of management who do not perform manual work; females employed in health and welfare services; females who, in the course of their studies, spend a period of training in the underground parts of a mine; and other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual work.

Legislative Compliance

Employment of women in an underground mine is prohibited except for persons holding positions of managerial and technical character, or employed in health and welfare services. The relevant legal provisions have been reflected in **Exhibit 17**.

GAP ANALYSIS

Mines are surface or underground sites where the exploration and preparation for and the extraction of minerals takes place. According to the Underground Work (Women) Convention (No. 45) of 1935, in principle no female of any age should be employed in underground work in mines. The Convention provides that no female, whatever her age, shall be employed on underground work in any mine, with certain exceptions. The Mines Act, 1923 is in full conformity with the obligations under Convention 45.

However, in the present circumstances, the obligations of C-45 implicitly violate the principles of equal treatment of men and women at work, including access to jobs. The exclusion of women from underground work in mines is a violation of the principle of

Exhibit 17

1. Mines Act, 1923

Section 23C.

Employment of women.— (1) No woman shall be employed in any part of a mine which is below ground.

(3) The provisions of this section shall not apply to women who do not perform manual work and are:

(a) holding positions of managerial or technical character, or

(b) employed in health and welfare services.

Section 24.

Supervising staff.— Nothing in section 22B, section 22C, section 23, sub-section (4) of section 23B or in section 23C shall apply to persons who may be rules be defined to be persons holding responsible positions of a managerial or technical character or employed in health and welfare services or employed in any confidential capacity.³ Shops and Establishments Ordinance, 1969

*The detailed provisions of law are provided in **Annex - XVII**.

equality enshrined in the Constitution as well as new laws promulgated by the province of Khyber Pakthunkhwa.

The Government is required to take appropriate measures to eliminate the incongruity between the ratified convention on the subject, i.e., C-045 and the national laws, including inter-alia denunciation of the ILO Convention 45 and ratification, if approved by the social partners, of new instrument on the subject, i.e., Safety and Health in Mines Convention, 1995 (No. 176).

Reflecting the shift of emphasis in standard setting from specific protection for women workers to equal protection for all workers, and as a part of the fight for achieving mine safety, this Convention (C176) focuses on the protection of all employees, male or female, in mines and covers a wide range of measures to be implemented by the competent authorities and the social partners.

Employment Policy & Promotion

C096 - FEE-CHARGING EMPLOYMENT AGENCIES CONVENTION (REVISED), 1949

Core Obligations

The Convention provides for the progressive abolition of fee-charging employment agencies established with a view to profit within a limited period of time prescribed by the competent authority. These agencies should not be abolished until a public employment service is established. Further, all the employment agencies must be supervised by the government regulatory agency. The essence of this convention is that employment agencies must not charge in excess of the scale of charges approved by the competent authority. They can place or recruit workers abroad if permitted by the competent authority and under conditions determined by the laws or regulations for the Country.

Legislative Compliance

The provisions of C96 have been transposed in Fee-Charging Employment Agencies (Regulation) Act, 1976 and Emigration Ordinance, 1979. The Fee-Charging Employment Agencies (Regulation) Act, 1976 allows the Federal Government to make rules about fees & expenses to be charged by the fee-charging employment agencies as has been reflected in **Exhibit 18**. No rules have been formed to implement the provisions of 1976 law. The Emigration Ordinance, 1979 also has provisions to regulate fee charging for providing or seeking employment for persons proceeding abroad for employment.

Exhibit 18

1. Fee-charging Employment Agencies (Regulation) Act, 1976

Section 3.

Prohibition to act as fee-charging employment agency.— After the enforcement of this Act, no employment agency shall, save as hereinafter provided, act as fee-charging employment agency in any area;

Provided that an employment agency acting immediately before the enforcement of this Act as a fee-charging employment agency may continue so to act for , and may apply for a licence within a period of six months from such enforcement.

Section 6.

Prohibition of operation of fee-charging employment agency in certain cases— Where a public employment service has been set up for any area, the competent authority may, by notification in the Official Gazette prohibit from such date as may be specified therein the operation of, or the rendering of any service by, all or any of the charging employment agencies operating in such area, and such prohibition the licences issued for such area shall stand cancelled from the date specified in the notification and no compensation shall be paid therefor:

2. Emigration Ordinance, 1979

Section 22.

Receiving money, etc., for providing foreign employment. – Whoever, for providing or securing, or on the pretext of providing or securing, to or for any person employment in any country beyond the limits of Pakistan. (a) being an Overseas Employment Promoter, charges any fee in addition to the prescribed amount, or (b) not being such a Promoter, demands or receives, or attempts to receive, for himself or for any other person, any money or other valuable thing, shall be punishable with imprisonment for term, which may extend to fourteen years, or with fine, or with both.

*The detailed provisions of law are provided in **Annex - XVIII**.

C159 - VOCATIONAL REHABILITATION AND EMPLOYMENT (DISABLED PERSONS) CONVENTION, 1983

Core Obligations

This Convention requires the member states, in accordance with national conditions, practice and possibilities, to formulate, implement and periodically review a national policy on vocational rehabilitation and employment of disabled persons. It ensures that appropriate vocational rehabilitation measures are made available to all categories of disabled persons, and aims at promoting employment opportunities for disabled persons in the open labour market. It further requires that equality of opportunity and treatment for disabled men and women workers must be respected. The competent authorities must take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and to advance in employment. Measures should be taken to promote the establishment and development of vocational rehabilitation and employment services for disabled persons in rural areas and remote communities as well.

Legislative Compliance

The provisions of C159 have been the basis of in Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, reflected in Exhibit 19, which requires the establishment of appropriate vocational rehabilitation centres for all categories of disabled persons, and for promoting employment opportunities for disabled persons in the open labour market. The law not only constitutes councils for employment, rehabilitation and welfare of disabled persons, it also sets employment quota for disabled persons. Pakistan

Exhibit 19

1. Disabled Persons (Employment and Rehabilitation) Ordinance, 1981

Section 6.

Functions of the Provincial Council.— Subject to any direction given by the Government, the Provincial Council shall—

- (a) execute the policy made by the Government for the employment, rehabilitation and welfare of disabled persons;
- (b) undertake appropriate projects for purposes of welfare of disabled persons;
- (c) issue directions to an employment exchange or any other body for the implementation of the projects of the Provincial Council;
- (d) take stock of the extent of functional disabilities of disabled persons;
- (e) evaluate, assess and coordinate the execution of its policies;
- (f) have overall responsibility for the achievement of the purposes of this Ordinance;
- (g) conduct survey of the disabled persons who are desirous of being rehabilitated;
- (h) conduct medical examination and provide treatment to the disabled persons;
- (i) provide **training** to the disabled persons; and
- (j) take such other measures as are necessary for carrying out the purposes of this Ordinance.

Section 10.

Establishments to employ disabled persons.— (1) Not less than three percent of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the Employment Exchange of the area in which such establishment is located and against whose names in the register maintained under section 12 an endorsement exists to the effect that they are fit to work.

(2) The disabled persons employed against any post in pursuance of sub-section (1) shall be entitled to the terms and conditions which are not less favourable than those of the other persons employed by the establishment against similar posts.

2. The Sindh Differently Able Persons (employment, rehabilitation and welfare) Act, 2014

Section 8.

Establishments to employ differently abled persons. — (1) Not less than two percent of the total number of the persons employed by an establishment at any time shall be differently able persons whose names have been registered with the Employment Exchange or the District Officer Social Welfare of the area in which such establishment is located and against whose names in the register to be maintained under section 10 an endorsement exists to the effect that they are fit to work.

(2) The differently able persons employed against any post in pursuance of sub-section (1) shall be entitled to the terms and conditions which are not less favorable than those of the other persons employed by the establishment against similar posts.

*The detailed provisions of law are provided in **Annex - XIX**.

enacted the Ordinance in 1981 whereas the Convention was adopted by ILO in 1983. The 1981 Ordinance originally provided for 1% quota which was later raised to 2% through notification in 1998. The current employment quota for disabled persons in Punjab is 3% (through amendment in 1981 Act, in 2015) and 2% in Sindh (through its new Act of 2014).

GAP ANALYSIS

Under ILO classification of international labour standards, C96 & C 159 have been clubbed together under the theme of Employment Policy & Promotion. Work is the prime activity in most people's daily lives. For many people, the only way to escape poverty is through having a job (irrespective of the conditions of work). Productive work and securing decent employment and income is an aspect of decent work concept. Every country has to devise its own policies to bring about full and productive employment for its people. ILO standards on employment policy (and those ratified by Pakistan) provide a framework for designing and implementing such policies, thereby ensuring maximum access to jobs needed to enjoy decent work for persons looking for employment inside the country and abroad as well as the employment and rehabilitation opportunities for disabled people.

The Convention provides for progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies. The convention stipulated that private recruiting agencies need to be licensed. However deregulation of placement services seems to be a natural consequence of the general trend in most countries towards deregulation and privatisation. There is a general belief that the government cannot effectively control the economy and the labour market.

In its current form, the Fee-charging Employment Agencies (Regulation) Act,

1976 is compliant to the obligations of the Convention including Part II thereof, which is accepted by Pakistan. It clearly provides that where a public employment service has been set up for any area, all or any of the fee charging employment agencies operating in such area shall stand cancelled from the date specified in the notification.

However there is a room in the Convention to liberalize the activities of fee-charging employment agencies through promoting healthy competition between public and private placement agencies. In this context, it may be noted that ratification of Part III of Convention, instead of Part II allows for such competition while ensuring the necessary supervision by authorities to prevent abuses.

The ILO has also framed a new Convention 181, which leaves this subject to the authority of the individual countries. The convention 181 replaces the old convention 96. The old convention restricted or even prohibited private employment agencies. The new convention is set to regulate private agencies as long as (well defined) worker rights are respected. The new convention will have a major influence on the future regulatory framework of private fee-charging agencies.

In view of the above the government may consider ratification of C181 or denunciation of Part II of C96 and ratification of Part III thereof so that a healthy competition may prevail in the country and labour should be more benefitted.

Convention 159 provides for vocational rehabilitation measures for all categories of disabled persons and for promotion of employment opportunities and equal treatment of disabled men and women. The Convention also requires that member countries, when formulating and implementing policies, should consult organizations of disabled persons. The Disabled Persons (Employment and Rehabilitation) Ordinance, 1981 conforms

the obligations of Convention 159.

It has been noticed that the obligation relating to the periodic review of the policy is not reflected in the law. The measures that are least implemented concern vocational rehabilitation in rural areas, cooperation with organizations of persons with disabilities and availability of qualified staff for vocational rehabilitation. That implies that a considerable number of disabled persons do not receive appropriate training. The role played by organizations of persons with disabilities in representing their groups in an advisory capacity has not yet been recognized. The lack of training of staff in vocational rehabilitation is a serious shortcoming, which leads to lower quality in training programmes.

The current quota (2%) for disabled persons must be given a legal cover by making an amendment in the Ordinance as has been done by the Province of Punjab. The employment quota in Punjab for disabled persons in both public and private sector is raised to 3%.

Social Security

C018 - WORKMEN'S COMPENSATION (OCCUPATIONAL DISEASES) CONVENTION, 1925

Core Obligations

A ratifying member undertakes to provide compensation to the workmen incapacitated by occupational diseases, or to their dependents in case of death from such diseases, in accordance with the general principles of the national legislation relating to compensation for industrial accidents. The rates of such compensation must not be less than those prescribed by the national legislation for injury resulting from industrial accidents.

Legislative Compliance

The provisions of this Convention were transposed in both the pre-partition (Workmen's Compensation Act 1923), enacted before the adoption and ratification of this Convention on 30th September 1927 and Post-Partition era legislation (Provincial Employees' Social Security Ordinance, 1965). Both the laws provide for compensation to a worker if personal injury is caused to a workman by accident arising out of and in the course of employment as mentioned in Exhibit 20. The employment injury provisions are applicable on occupational diseases arising out of and in the course of a worker's employment.

C019 - EQUALITY OF TREATMENT (ACCIDENT COMPENSATION) CONVENTION, 1925

Core Obligations

A ratifying member is under the obligation to grant treatment to the nationals of any other ratifying member, without any condition as to residence, who suffer personal injury due to

Exhibit 20

1. Workmen's Compensation Act, 1923

Section 3.

Employer's liability for compensation.— (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in [Part B of] Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the employer proves the contrary, the accident shall be deemed to have arisen out of and in the course of the employment.

2. Provincial Employees' Social Security Ordinance, 1965

Section 2.

(10) "employment injury" means a personal injury to a secured person caused by an accident or by such occupational disease as may be specified in the regulations, arising out of and in the course of his employment;

Section 39.

Injury benefits.— A secured person shall, subject to regulations, be entitled to receive injury benefit at such rate as may be fixed by Government by notification, in consultation with the Institution, in respect of any day including the day on which, as a result of an employment injury, he is certified by a medical practitioner authorised by the Institution in the manner provided in the regulations to give such a certificate to be incapable of work, but for not more than one hundred and eighty days.

Section 40.

Disablement pension.— A secured person who sustains total or partial disablement shall, subject to regulations, be entitled, upon the expiration of his entitlement to injury benefit, to receive disablement pension, according to the degree of disablement determined from time to time, at such rates for different degrees of disablement as may be fixed by Government by notification, in consultation with the Institution.

*The detailed provisions of law are provided in **Annex - XX**.

industrial accidents happening in its territory, or to their dependents, the same treatment in respect of workmen's compensation as it grants to its own nationals.

Pakistan inherited its ratification from British India which ratified the Convention on 30th September 1927. The obligations under this Convention are fulfilled through relevant provisions in the Workmen's Compensation Act 1923 and the Provincial Employees' Social Security Ordinance, 1965 as has been mentioned in **Exhibit 21**. While providing accident compensation, no discrimination on the ground of nationality is allowed.

C118 - EQUALITY OF TREATMENT (SOCIAL SECURITY) CONVENTION, 1962

Core Obligations

This Convention aims at settling the specific social security problems encountered by migrant workers. However, the State may limit its application to some branches enumerated in the Convention which include, medical care and benefits related to sickness, maternity, invalidity, old-age, survivors, employment injury, unemployment and family. The State has to ensure the provision of all or selected benefits to its nationals as well as migrants equally.

Legislative Compliance

The provisions of the Convention are contained in both the pre-partition legislation (Workmen's' Compensation Act) as well as in the post-partition legislation (Maternity Benefit Ordinance, 1958). This Convention was ratified by Pakistan on 27th March 1969. It must be emphasized here that although Pakistan accepted on two branches of benefits provided under this convention, i.e., maternity benefits and employment injury, no discrimination is exercised between the nationals and foreigners in provision of benefits in all other areas as well. The international social security agreements

Exhibit 21

1. Workmen's Compensation Act, 1923

Section 3. Employer's liability for compensation.— (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

2. Provincial Employees' Social Security Ordinance, 1965

Section 39. Injury benefits.— A secured person shall, subject to regulations, be entitled to receive injury benefit at such rate as may be fixed by Government by notification, in consultation with the Institution, in respect of any day including the day on which, as a result of an employment injury, he is certified by a medical practitioner authorised by the Institution in the manner provided in the regulations to give such a certificate to be incapable of work, but for not more than one hundred and eighty days.

Section 40. Disablement pension.— (1) A secured person who sustains total or partial disablement shall, subject to regulations, be entitled, upon the expiration of his entitlement to injury benefit, to receive disablement pension, according to the degree of disablement determined from time to time, at such rates for different degrees of disablement as may be fixed by Government by notification, in consultation with the Institution.

(2) Disablement pension shall terminate with the death of the recipient or when disablement ceases, or ceases to be total or partial disablement:

Provided that if a disablement pension has been paid for five years it shall be payable for life.

Section 41. Disablement gratuity.— (1) A secured person who sustains minor disablement shall, subject to regulations, be entitled to a disablement gratuity at such rates for different degrees of disablement as may be fixed by Government by notification, in consultation with the Institution.

(2) Where a person receiving disablement pension ceases to suffer from total or partial disablement but continues to suffer from minor disablement he shall, on the termination of his disablement pension, be entitled to disablement gratuity under this section.

*The detailed provisions of law are provided in **Annex - XXI**.

Exhibit 22

1. Maternity Benefit Ordinance, 1958

Section 4. Right to and liability for payment of maternity benefit.— (1) Subject to the provisions of this Ordinance, every woman employed in an establishment shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of her wages last paid during the period of six weeks immediately preceding and including the days on which she delivers the child and for each day of six weeks succeeding that day.

2. Workmen's Compensation Act, 1923

Section 3. Employer's liability for compensation.— (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.

Provided that the employer shall not be so liable—

(a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding four days;

(b) in respect of any injury, not resulting in death, caused by an accident which is directly attributable to—

(i) the workman having been at the time thereof under the influence of drink or drugs, or

(ii) the willful disobedience of the workman to an

signed between Pakistan and other countries include the ones between Islamic Republic of Pakistan and the Socialist People's Libyan Arab Jamhuriya (1989), Pakistan and Denmark (1983), and the one signed between Pakistan and Netherlands (2005).

GAP ANALYSIS

A society has to protect its citizens not only from war and disease, but also from the insecurities related to earning their livelihoods. A social security system provides for basic income in cases of illness and injury, invalidity, unemployment, old age and retirement, family responsibilities such as pregnancy (maternity) and survivors' benefits in the case of loss of the family breadwinner. To provide access to social safety net is the primary responsibility of the State.

Pakistan has ratified three conventions on the theme of social security, two in the pre-partition era (Conventions 18 & 19) and one in 1969 (Convention 118). It is strange to note that Pakistan ratified two conventions on the theme of equality of treatment between the local and foreign workers. Convention 18, on the other hand, deals with workmen compensation in the event of occupational diseases which itself is an out-dated Convention. However, it has not ratified ILO Convention 102 focusing on theme of social security.

The Constitution of Pakistan 1973 requires the State to take necessary measures to provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment" and "provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means" (Article 38(c) & (d)). The national and provincial laws (Workmen's Compensation Act, 1923

order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or

(iii) the willful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workmen.

3. Provincial Employees' Social Security Ordinance, 1965

Section 38. Medical care during sickness and maternity.— (1) A secured person and his dependents shall be entitled to medical care in the manner and to the extent provided in the regulations.

(2) A secured woman shall subject to regulations, be entitled to prenatal confinement and post-natal medical care, if she is entitled to maternity benefit under section 36 or if, during six calendar months immediately preceding her claim, contributions in respect of her were paid or payable for not less than ninety days.

Section 39. Injury benefits.— A secured person shall, subject to regulations, be entitled to receive injury benefit at such rate as may be fixed by Government by notification, in consultation with the Institution, in respect of any day including the day on which, as a result of an employment injury, he is certified by a medical practitioner authorised by the Institution in the manner provided in the regulations to give such a certificate to be incapable of work, but for not more than one hundred and eighty days.

Section 40. Disablement pension.— (1) A secured person who sustains total or partial disablement shall, subject to regulations, be entitled, upon the expiration of his entitlement to injury benefit, to receive disablement pension, according to the degree of disablement determined from time to time, at such rates for different degrees of disablement as may be fixed by Government by notification, in consultation with the Institution.

Section 41. Disablement gratuity.— (1) A secured person who sustains minor disablement shall, subject to regulations, be entitled to a disablement gratuity at such rates for different degrees of disablement as may be fixed by Government by notification, in consultation with the Institution.

*The detailed provisions of law are provided in **Annex - XXII**.

and Provincial Employees' Social Security Ordinance, 1965) are generally in conformity with the provisions of the Convention. However there is a need to revise the list of occupational diseases in consultation with the employers and workers organizations. The Federal & Provincial government must consider revising the list of occupational diseases by incorporating the list contained in the amended schedule I of the Employment Injury Benefits Convention, 1964 (No. 121) as well as the List of Occupational Diseases Recommendation, 2002 (No 194).

The provisions of Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) are complied to under Workmen's Compensation Act, 1923 and Provincial Employees' Social Security Ordinance,

1965. There is no difference of treatment in labour laws for national and non-national workers so far as entitlement and payment of compensation is concerned, if they are residing in Pakistan.

The provisions of Equality of Treatment (Social Security) Convention, 1962 (No. 118) are also complied to in national laws for declared branches of social security (maternity benefit and employment injury benefit). National labour laws do not differentiate between the local and foreign workers in providing social security treatment. As mentioned above, Pakistan has signed social security agreements with some countries.

In conclusion, it can be safely indicated that Pakistan meets the requirements of these three conventions however there is a need to revise the list of occupational diseases and sign more mutual social security agreements with other countries, especially countries where more and more Pakistani workers are employed and consider ratification of Convention 102.

Migrant Wokers

C021 - INSPECTION OF EMIGRANTS CONVENTION, 1926

Core Obligations

The official inspection carried out on board of an emigrant vessel for the protection of emigrants must be undertaken by one Government only during the total voyage. To avoid conflict of interest, and ensure objectivity in inspections, an official inspector may not be in any way either directly or indirectly connected with or dependent upon the ship owner or shipping company. The official inspector must ensure the observance of the rights which emigrants possess under the law of the country whose flag the vessel flies, or such other law as is applicable, or under international agreements, or the terms of their contracts of transportation.

Legislative Compliance

As indicated in the Exhibit 23, the provisions of this Convention were given effect to in both the pre-partition legislation (Emigration Act, 1922) and the post-partition legislation (Emigration Ordinance 1979). The Convention was ratified on 14th January 1928. The Emigration Ordinance authorises the Director General Bureau of Emigration & Overseas Employment, a Protector of Emigrants or any other officer authorised by the Federal Government to exercise all the powers with regard to searching and detention of vessels or otherwise for the prevention of smuggling on board thereof and has the authority to enter any port or point of entry or departure or inspect any conveyance carrying or bringing or believed to be carrying or bringing any emigrant.

GAP ANALYSIS

Migration is an old age phenomenon and for thousands of years, human beings have migrated in search of a better life.

Exhibit 23

1. Emigration Ordinance, 1979

Section 11.

Powers to search and detain vessels, etc. – The Director General, a Protector of Emigrants or any officer authorized by the Federal Government may for the purpose of preventing the commission of any offence under this Ordinance, exercise all the powers conferred on the officers of customs by the Customs Act, 1969 (IV of 1969), with regard to the searching and detention of vessels or otherwise for the prevention of smuggling on board thereof and, for this purpose, he shall have the authority to enter any port or point of entry or departure or inspect any conveyance carrying or bringing or believed to be carrying or bringing any emigrant.

*The detailed provisions of law are provided in **Annex - XXIII**

According to BE&OE statistics, there are 7.8 million Pakistani migrant workers working in more than 50 countries of the world. Pakistani workers are mostly concentrated in Middle East (50%), North American (18%), United Kingdom (18%), and Europe (7%). A mere 7% is scattered in other countries of the world including East Asia, Australia, and Africa. The Gulf countries, notably Kingdom of Saudi Arabia and the United Arab Emirates (UAE) despite wide fluctuations in the last three decades, remain the destination for the majority of emigrating workers. Other important destinations include Oman, Kuwait, Bahrain, Libya, Qatar, Malaysia, and South Korea.

The obligations under Convention 21 are complied to through the Emigration Ordinance 1979. Since migration through ships is not the dominant form of movement and travelling anymore, the Convention is applicable on emigration through Planes, vehicles and other medium of transport as well.

The Governing Body has shelved Convention 21 quite some time ago and has invited the State parties to contemplate ratifying the Migration for Employment Convention (Revised), 1949 (No. 97), if appropriate, and denouncing Convention 21 at the same time. It is proposed to start consultation with the social partners on ratification of Convention 97 and subsequent denunciation of Convention 21.

Indigenous & Tribal Peoples

C107 - INDIGENOUS AND TRIBAL POPULATIONS CONVENTION, 1957

Core Obligations

Government has the primary responsibility for developing coordinated and systematic action for the protection of the indigenous, tribal or semi-tribal population and their progressive integration into the general life. If the social, economic and cultural conditions of these populations prevent them from enjoying the benefits of the general laws of the country, special measures must be adopted for the protection of the institutions, persons, property of such target groups. Each Member must, within the framework of national laws and regulations, adopt special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to the populations concerned so long as they are not in a position to enjoy the protection granted by law to the workers in general.

A ratifying state has to do everything to prevent all discrimination between workers belonging to the populations concerned and other workers, in all work related rights. These include admission to employment; equal remuneration for work of equal value; medical and social assistance, the prevention of employment injuries, workmen's compensation, industrial hygiene and housing; the right of association and freedom for all lawful trade union activities, and the right to conclude collective agreements with employers or employers' organisations. Persons belonging to these populations have, like the general population, the same rights as general population in the area of social security, health & welfare and education.

Legislative Compliance

Labour legislation is not yet applicable to the tribal areas of the country. It is also

important to note there are only a few industries in the tribal areas, hence need for extension of Labour Laws to FATA was not contemplated or demanded by the local people. The Constitution of Islamic Republic of Pakistan, 1973 defines tribal as the areas in Pakistan which immediately before the commencing day were tribal areas and includes Provincially Administered Tribal Areas (PATA) and Federally Administered Tribal Areas (FATA). The executive authority of the Federation extends to the FATA while the executive authority of the Province extends to PATA. An Act of Parliament does not apply automatically to FATA unless the President so directs. Similarly, an Act of Parliament or that of Provincial Assembly is not applicable on PATA unless the Governor of the Province in which such tribal area is located, so directs with the approval of the President. The Constitution further states that the President may, with respect to any matter within the legislative competence of the Parliament, and the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly make regulations for the peace and good government of FATA or PATA respectively or any part thereof, situated in the Province. The Constitution guarantees that all important decisions regarding tribal peoples are taken while taking into account the views of the people of such tribal area, as represented in tribal jirga.

GAP ANALYSIS

Estimates suggest that the population of indigenous/tribal people in Pakistan is about 2% of the total population. As in other parts of the world, indigenous and tribal peoples in Pakistan are among the marginalized and excluded groups in society, although considerable diversity exists between the different groups. The Government of Pakistan ratified the ILO Convention on Indigenous and Tribal Populations in 1960.

The tribal people in Pakistan are ruled by specific tribal frameworks such as Federally Administered Tribal Areas and Provincially Administered Tribal Areas as regulated under the Constitution.

Pakistan has no specific law relating to the convention, but as per Rules of Business 1973, the States and Frontier Regions Division has the mandate to deal with the affairs of tribal people which inter-alia includes (a) administrative and political control in the Federally Administered Tribal Areas; (b) development plans and programmes of Federally Administered Tribal Areas; (i) administrative reforms. The primary activities required in Pakistan is training and capacity building of government officials on indigenous and tribal people's issues, and awareness-raising among government and civil society organizations on Convention 107.

Convention 107 was ratified by 27 countries however 10 countries have denounced the same whilst 9 of them have ratified Convention 169, which is a new version on the theme. A Committee of Experts convened in 1986 by the Governing Body of the ILO concluded that "the integrationist approach of the Convention was obsolete and that its application was detrimental in the modern world." C107 was revised during 1988 - 1989, through the adoption of Convention 169.

It is suggested that government should consider to denounce the convention 107 and ratify the new version C 169 to recognize and respect ethnic and cultural diversity of tribal people. It is based on respect for the cultures and ways of life of indigenous peoples and recognizes their right to land and natural resources and to define their own priorities for development. The Convention aims at overcoming discriminatory practices affecting these peoples and enabling them to participate in decision-making that affects their lives. Therefore, the fundamental

principles of consultation and participation constitute the cornerstone of the Convention and in line with our Constitution. Only five labour laws have been extended to PATA areas and only one (Employment of Children Act) has been extended to FATA. Either more labour laws need to be extended to tribal areas of FATA & PATA to bring them in the mainstream or a separate labour code may be drafted and enacted to provide fundamental rights at work to workers employed in these areas.

Dock Workers

C027 - MARKING OF WEIGHT (PACKAGES TRANSPORTED BY VESSELS) CONVENTION, 1929

Core Obligations

The Convention states that any package or object that weighs 1000kg (one metric ton) or more must have its gross weight plainly and durably marked upon it on the outside before it is loaded on a ship or vessel. In exceptional cases where the weight of the package cannot be determined, provisions in the national law or regulations may allow an approximate weight to be marked. It is the obligation of the country to mark the package from which it is being consigned. The national law or regulation will determine whether the responsibility of marking falls on the consignor, some other person or a body.

Legislative Compliance

The Convention was ratified by the Government of British India on 7th September 1931. The provisions of this Convention are given full effect under section 33-A of the Part III of the Karachi Port Trust Manual 1931, framed under Karachi Port Trust Act 1886. The modern equipment, which displays the weight of containers, is used in all ports in Pakistan and the standards of this Convention are fully applied in practice.

C032 - PROTECTION AGAINST ACCIDENTS (DOCKERS) CONVENTION (REVISED), 1932

Core Obligations

The objective of Convention 32 is to ensure protection against accidents and, to some extent also, protection against injury to the

health of all workers employed on shore or on board ship in the loading or unloading of any ship, whether engaged in maritime or inland navigation.

The matters dealt under the Convention include the following: the safety of workplaces and the approaches thereto (elimination of encumbering goods, fencing of dangerous passages), the provision of safe means of access to the ships (accommodation ladder, gangway or ladder), the transport of workers by water, the provision of safe means of access to holds, the protection of hatchways and other deck openings, the provision of adequate lighting, the safe removal and replacement of hatch coverings and beams, the safety of hoisting machinery and gear and their accessories (including their examination and testing and the annealing of certain parts, and the records pertaining to such tests, examinations and heat treatments), the selection of persons operating lifting or transporting machinery, the safety of loading and unloading operations (signals, proper stacking and stowing of goods, means of escape, use of cargo stages, etc.), the protection of workers dealing with dangerous goods, the provision of first-aid and rescue facilities, and the provision of an efficient system of inspection.

Legislative Compliance

The Convention was ratified by the Government of British India on 10th February 1947. The provisions of Convention 32 are given effect through on the Dock Labourers' Act of 1934, followed by the 1948 Pakistan Dock Labourers' Regulations, amended in 1951. To implement the provisions of the Act and regulations, Government has established Directorate of Dock Workers Safety with its headquarters at Karachi.

GAP ANALYSIS

Dock industry acts as an important link in the transport network that requires constant upgrading in order to respond to the demands of international trade. The dock sector has seen profound reforms due to the growing transport volume, new and updated infrastructure, and the widespread use of containers. Dock work sector used to rely on occasional and low-skilled labour, however now it requires more highly skilled workers who are increasingly registered workers. At the same time, due to high capital investment, the demand for dock workers has reduced.

The obligations under Convention 27 & 32 are complied with Dock Labourers' Act of 1934, followed by the 1948 Pakistan Dock Labourers' Regulations and Karachi Port Trust Manual 1931. Since Convention 32 is quite outdated and Convention 27 is also assigned the "to be revised status" by the ILO, it is proposed that Pakistan should denounce both of these Conventions and ratify a single all-encompassing Convention (152) ensuring safe and healthy workplace for dockers.

The ILO has revised the principles contained in the ILO Convention C32 by Occupational Safety and Health (Dock Work) Convention, 1979 (C152). This convention requires a ratifying state to take measures with a view to providing and maintaining workplaces, equipment and methods of work that are safe and without risk of injury to health; providing and maintaining safe means of access to any workplace; providing information, training and supervision necessary to ensure protection of workers against risks of accident or injury to health at work; and providing workers with personal protective equipment and clothing.

Similarly, Convention 27 may also be denounced and a new Convention 137 may be ratified. The Convention 137 deals with new methods of work in docks and their

impact on employment and the organization of the profession. The Convention aims to afford protection to dockworkers in their professional life through measures relating to the conditions of their access to and performance of work; and to foresee and manage fluctuations in the work and the workforce required for it. The legal framework of Pakistan is compliant to the provisions of C27 and C32.

Seafarers

C016 - MEDICAL EXAMINATION OF YOUNG PERSONS (SEA) CONVENTION, 1921

Core Obligations

Convention 16 requires that the employment of any child or young person under eighteen years of age on any vessel (some exceptions allowed) is conditional on the production of a medical certificate attesting fitness for such work, signed by a doctor who is approved by the competent authority. The continued employment at sea of a child or young person is subject to the repetition of such medical examination after intervals of not more than one year. Should a medical certificate expire in the course of a voyage, it remains in force until the end of the said voyage.

Legislative Compliance

The provisions of this Convention are given effect through Merchant Shipping Ordinance 2001 (**Exhibit 24**). The law requires repetition of medical certificate of physical fitness every two years for young persons (15-18 years). There is discrepancy in law since Convention prohibits employment of young persons under 18 years of age on any vessel except where a medical certificate attesting fitness for such work is submitted and revised every year. Our law not only allows employment from 15 years onward and requires repetition of medical certificate every two years.

C022 - SEAMEN'S ARTICLES OF AGREEMENT CONVENTION, 1926

Core Obligations

Convention 22 applies to all seagoing vessels registered in the country and to the owners, masters and seamen of such

Exhibit 24

1. Pakistan Merchant Shipping Ordinance, 2001

Section 112.

Medical examination of young persons – (1) Save as otherwise provided in sub-section (2), no young person shall be engaged or carried to sea to work in any capacity in any ship unless there has been delivered to the master a certificate granted by a prescribed authority that the young person is physically fit to be employed in that capacity.

(2) Sub-section (1) shall not apply

(a) to the employment of a young person in a ship in which all persons employed are members of one family; or

(b) where the Shipping Master, on the ground of urgency, has authorised a young person to be engaged and carried to sea, without certificate required by sub-section (1) being delivered to the master, and young person is not employed beyond the first port at which the ship in which he is so engaged calls except in accordance with the provisions of sub-section (1).

(3) A certificate of physical fitness required by sub-section (1) shall remain in force for two years only from the date on which its is granted.

(4) The Shipping Master may require the master of any ship to produce for inspection any medical certificate delivered to him under sub-section (1).

*The detailed provisions of law are provided in **Annex - XXIV**.

vessels. The Convention requires that every person employed or engaged in any capacity on board any vessel must have signed articles of agreement with the ship-owner or his representative. The agreement must not contain anything which is contrary to the provisions of national law or the Convention. The agreement may be made either for a definite period or for a voyage or, if permitted by national law, for an indefinite period. The agreement must state clearly the respective rights and obligations of each of the parties. The Convention also provides for the ways in which an indefinite term agreement can be terminated. It also requires that every seaman must be given a document containing a record of his employment on board the vessel.

Legislative Compliance

The provisions of the Convention were transposed in both the pre-partition legislation (Merchant Shipping Act 1923) and maintained in the post-partition legislation (Merchant Shipping Ordinance 2001), as reflected in Exhibit 25. Pakistan Merchant Shipping Ordinance, 2001 provides the form and content of the agreement with the crew including all important terms of agreement such as nature and duration of voyage, job title, wages, compensation for personal injury, etc.

C185 - SEAFARERS' IDENTITY DOCUMENTS CONVENTION (REVISED), 2003

Core Obligations

Convention 185 requires each ratifying member to issue a seafarer national a seafarers' identity document. This document is only an identity document and not a travel document. It must contain specified data including a biometric and must conform to the model provided by the Convention so that it is easily recognizable by the immigration authorities. The convention further contains two sets of provisions with regard to requirements designed to improve the security of seafarers' identity documents (security of the physical documents as well as security of the basic infrastructure for issuance of verification of SIDs) and facilitation for seafarers in the form of shore leave, transit and transfer in accordance with the Convention.

Legislative Compliance

The provisions of this Convention have been given effect to through the Merchant Shipping Ordinance 2001 (**Exhibit 26**) which was promulgated much before the ratification of this Convention on 21st December 2006. The MSO 2001 provides

Exhibit 25

1. Pakistan Merchant Shipping Ordinance, 2001

Section 125.

Agreement with crew – (1) The master of every Pakistani ship, except a coasting ship of a gross tonnage of less than two hundred so long as such coasting ship is employed on voyages confined to ports or places within the same Province, shall enter into an agreement in accordance with this Ordinance with every seaman whom he engages at, and carries to sea as one of his crew from, any port or place in Pakistan.

(2) The master of a ship who neglects or fails to enter into an agreement required by sub-section (1) shall, for each offence, be liable to a fine which may extend to ten thousand rupees.

Section 126.

Forms and contents of agreement. (1) An agreement with the crew made under Section 125 shall be in the form approved by the Federal Government, and shall be dated at the time of the first signature thereof, and shall be signed,

(a) where the ship is at the port or place of engagement, by the master before any seaman signs the same; and

(b) where the ship is not at the port or place of engagement, by the owner or the owner's agent before the master signs it and by the master before the seaman is on board.

(2) An agreement with the crew made under Section 125 shall contain as terms thereof the following particulars, namely

(a) the name of the ship or ships with the official number of numbers in which each seaman undertakes to serve;

(b) either the nature and, as far as practicable, the duration of the intended voyage or engagement, or maximum period of the voyage or engagement and the places or ports of the world, if any, to which the voyage or engagement is not to extend;

(c) the time at which each seaman is to be on board or to being work;

(d) the capacity in which each seaman is to serve;

(e) the amount of wages which each seaman is to receive;

(f) a scale of the provisions which are to be furnished to each seaman, such scale being not less than the prescribed scale;

(g) any regulations as to conduct on board and as to fines, short allowance or provision or other lawful punishments for misconduct, which have been sanctioned by the Federal Government as regulations proper to be adopted, and which the parties agree to adopt;

(h) payment of compensation for personal injury or death caused by accident arising out of or in course of employment;

(i) where it is agreed that the services of any Pakistani seaman shall end at any port or place outside Pakistan, a stipulation to provide him either fit employment on board some other ship bound to the port or place at which he was engaged or to such other port or place in Pakistan as may be mutually agreed upon, or a passage free of charge to any such port or place; and

(j) stipulations relating to such other matters as may be prescribed.

(3) the agreement with the crew made under section 125 shall provide that in the event of a dispute arising outside Pakistan in respect of any matter touching the agreement, such dispute shall be referred to the Pakistan consular officer whose decision thereon shall be binding on the parties until the return of the ship to the port or place in Pakistan at which the seaman is to be discharged.

(4) The agreement with the crew made under Section 125 shall be so framed as to admit of such stipulations, to be adopted at the will of the master and seamen in each case respecting the advance of wages or supply of warm clothing and similar other matters, as are not inconsistent with the provisions of any law for the time being in force relating to merchant shipping.

(5) If a master enters into an agreement with any seaman for a scale of provisions less than the prescribed scale he shall, for each offence, be liable to a fine which may extend to ten thousand rupees.

*The detailed provisions of law are provided in **Annex - XXV**.

for issuance, re-issuance (in case of loss) and cancellation of seamen's service book (SSB), the earlier form of Seafarers' Identity Documents provided under C185.

GAP ANALYSIS

World trade is mainly carried on ships and requires seafarers to operate ships. Shipping (and consequently the seafarers) is one of the earliest of the "globalized" industries. Seafarers are frequently exposed to difficult working conditions and particular occupational risks. They are vulnerable to exploitation and abuse, non-payment of wages, non-compliance with contracts, exposure to poor diet and living conditions, and even abandonment in foreign ports.

Pakistan has ratified three conventions on the theme of seafarers, two in the pre-partition era (Convention 16 & 22) and one in post-partition era (Convention 185).

Merchant Shipping Act, 1923 regulated the shipping (and seafarers) in the country. The Act was amended from time to time to cater to the changing requirements of the sector. Taking into account the deficiencies of this law and in order to address needs of modern shipping industry and provide basis for safe navigation in Pakistani waters, the Merchant Shipping Ordinance, 2001 was enacted. The Merchant Shipping Ordinance 2001 is generally in conformity with the provisions of Convention 16.

However, the validity of medical certificate is fixed as one year by the Convention and two years by the sub-section (3) of section 112 of the Pakistan Merchant Shipping Ordinance, 2001 which needs rectification in the national law. There is another view that amendments to MSO, 2001 are not required as Article 3 of Convention 16 concerns the young persons aged below 18 years, while in actual no person below 18 years is allowed shipboard employment. Moreover,

Exhibit 26

1. Pakistan Merchant Shipping Ordinance, 2001

- Section 120.** **Seamen to be in possession of seamen's service book –** (1) No person shall engage any Pakistani seaman at any port or place in Pakistan except in a coasting ship of a gross tonnage of less than two hundred so long as such coasting ship is employed on voyages confined to ports of places within the same Province unless the seaman is in possession of a seamen's service book issued in Pakistan by a Shipping Master in a form as may be prescribed, or a valid Pakistan International Passport.
- (2) If a person engages any seaman in contravention of sub-section (1), he shall, for each offence, be liable to a fine which may extend to ten thousand rupees.
- Section 121.** **Loss of seamen's service book –** Whenever a seaman proves to the satisfaction of a Shipping Master that the continuous discharge certificate issued to him has, without any fault on his part, been lost, torn or defaced, or that he has otherwise been deprived of it, the Shipping Master shall, on payment of the prescribed fee, if any issue to the seaman a copy of the certificate to which he may be entitled and such copy shall have all the effect of the original.
- Section 122.** **Cancellation of seamen's service book –** (1) Notwithstanding anything contained elsewhere in this Ordinance, the Shipping Master may suspend, cancel, or confiscate the seamen's service book of any seaman who is shown, to the satisfaction of the Shipping Master, to have deserted his ship or is found guilty of smuggling, theft, misbehavior or is in breach of agreement or such other offence as may, in the opinion of the Shipping Master, make him unsuitable for employment on board a ship.
- (2) Any person aggrieved by an order under sub-section (1) may, within ninety days from the date of receipt of such order, prefer an appeal to the Federal Government.
- (3) An appeal under sub-section (2) shall be preferred and disposed of in such form and manner as may be prescribed.

*The detailed provisions of law are provided in **Annex - XXVI**.

since Convention 138 of the ILO and IMO STCW Convention specify the minimum age for hazardous employment as 18 years, the Shipping Office has set the minimum age as 18 years for pre-sea induction course. Once a person completes this course and is issued an SSB, he is allowed to be on board a ship for employment purpose and is already over 18 years of age.

As for the obligations under Convention 22 (articles of agreement/employment agreement with the crew), Merchant Shipping Ordinance 2001 is fully compliant with it. The obligations under C185 (issuance of biometric seafarers identity documents) are partially complied with under the Merchant Shipping Ordinance. The Ordinance provides for the issuance of Seamen Service Books and Continuous Discharge Certificates, required under C108 (earlier form of C185).

The national law does not deal exclusively with the Seafarers' Identity Documents. However, the Government Shipping Office is in process of issuing machine-readable SIDs to the seafarers with the help of National Database Registration Authority (NADRA). Reforms are needed in the Merchant Shipping Ordinance 2001 as well as the issuance procedure and issuance software so that biometric SIDs can be issued to the workers, in compliance with the ILO guidelines. The NADRA-issued SIDs are not compliant with the ILO requirements.

CONCLUSION

This report has attempted to analyse the existing legal and institutional framework for ensuring compliance with international labour standards ratified by Pakistan. It provides a holistic view of the national labour law, its access as well as any gaps and lacuna with regard to the ratified ILO Conventions. This study has indicated that national laws are mainly compliant with ratified ILO Conventions with minor gaps

identified. New enactments are needed in the area of anti-discrimination and equality of opportunity. This study should serve as a guide for both the Federal and Provincial Governments to understand their obligations under ratified ILO Conventions, legal gaps, future reform agenda, and recommendations on further ratification or denunciations.

Recommendations for	
Major Reforms	<ul style="list-style-type: none"> • Industrial Relations Acts • Employment of Children Act, 1991 • Bonded Labour System (Abolition) Act, 1992 • Mines Act, 1923 • Factories Act, 1934 • Merchant Shipping Ordinance, 2001 • Extension of more laws to tribal areas/enactment of a separate labour code
New Laws/Rules	<ul style="list-style-type: none"> i. Anti-Discrimination ii. Labour Inspection iii. Tripartite Consultation Committees
Denunciations	<p>Necessary Denunciations</p> <ul style="list-style-type: none"> i. Night Work (Women) Convention, 1919 (No. 4) ii. Night Work of Young Persons (Industry) Convention, 1919 (No. 6) <p>Possible Denunciations</p> <ul style="list-style-type: none"> i. Inspection of Emigrants Convention, 1926 (No. 21) ii. Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27) iii. Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32) iv. Underground Work (Women) Convention, 1935 (No. 45) v. Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96) vi. Indigenous and Tribal Populations Convention, 1957 (No. 107)
Ratifications	<p>Necessary Ratification</p> <ul style="list-style-type: none"> i. Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 <p>Possible Ratifications</p> <ul style="list-style-type: none"> i. C152 - Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152) ii. Indigenous and Tribal Peoples Convention, 1989 (No. 169) iii. Night Work Convention, 1990 (No. 171) iv. Safety and Health in Mines Convention, 1995 (No. 176) v. Private Employment Agencies Convention, 1997 (No. 181)

Annexures

