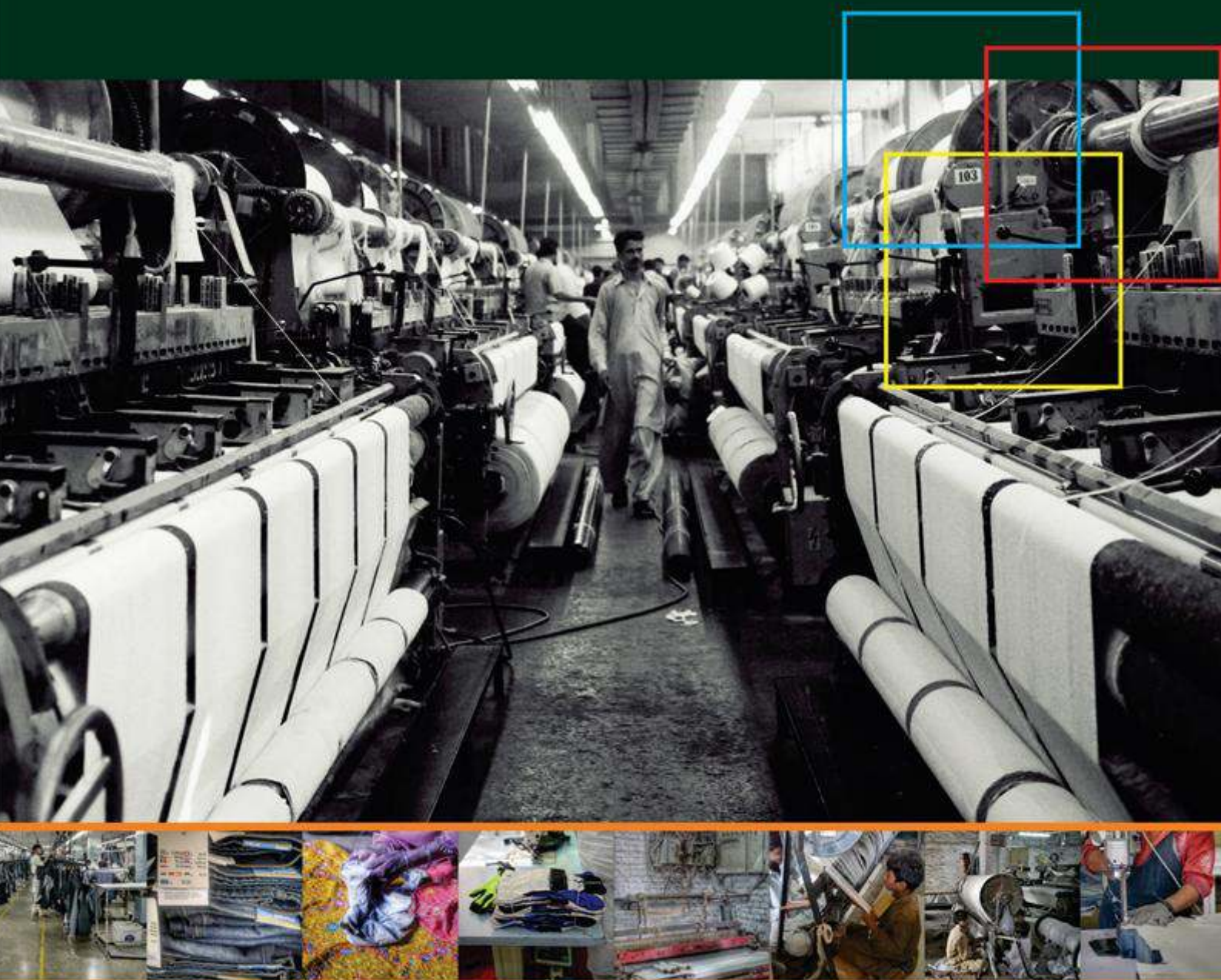




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Minimum wage setting, implementation and working conditions in the formal and informal sectors of the garment industry in Pakistan



Introduction

This research report was commissioned by the ILO as part of its Labour Standards in Global Supply Chains: A Programme for Action in Asia and the Garment Sector (LSGSC) project. The first year of this project is being carried out under a grant agreement between the ILO and the *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)* on behalf of Germany.¹ The project's objectives include strengthening the mechanisms for participatory and evidence-based wage fixing; increasing stakeholders' access to information to improve the quality of social dialogue; and improving systems for assuring labour compliance. The target countries are Cambodia, Indonesia, and Pakistan.

The ILO aims to support Pakistan in its implementation of core labour standards and other conventions and to retain its Generalized Scheme of Preferences Plus trade status.² Through the Decent Work Country Programme in Pakistan, the ILO is currently engaged with the Government of Pakistan (GOP), provincial governments, employers' organizations, and workers' representatives.

This research report contributes to the above objectives by providing evidence on Pakistan's minimum wage setting and implementation system across its four provinces and in the ICT. It also provides data on the working conditions of workers in the textiles and garment sectors and the role of collective bargaining in shaping them. The research examines both the formal and informal sectors, with an analysis of the gender dynamics in the sectors. The primary focus is on Punjab and Sindh, although the research also covers Khyber Pakhtunkhwa (KP) and Balochistan provinces.

1 This publication has been published within the framework of the programme financed by the GIZ on behalf of the Government of the Federal Republic of Germany. The programme was initiated as part of a renewed partnership between the German Ministry for Development Cooperation (BMZ) and the International Labour Organization (ILO). The responsibility for opinions expressed in this publication rests solely with its author(s), and its publication does not constitute an endorsement by the ILO or the Government of the Federal Republic of Germany of the opinions expressed in it.

2 The EU's Generalised Scheme of Preferences (GSP) allows developing country exporters to pay low or no duties on their exports to the EU. This gives them access to the EU markets and contributes to their economic growth. Countries granted GSP Plus enjoy full removal of tariffs in two-thirds of all product categories. GSP Plus status is granted to countries that ratify and implement core international conventions relating to human and labor rights, environment and good governance.

Minimum wage institutions: Processes and implementation

Since the 18th Amendment to the Constitution of Pakistan, minimum wage setting has come within the sphere of provinces, while the federal government retains its role in the Islamabad Capital Territory (ICT). The provinces and ICT governments exercise their powers in respect of wage setting under the 1961 Minimum Wage Ordinance for West Pakistan or newly enacted provincial legislation. The continuing applicability of the West Pakistan Minimum Wage for Unskilled Workers Ordinance 1969 is currently debated. The legislation has not been expressly repealed, altered or amended. However, the federal government has no residual power in relation to this area, as it would be unconstitutional for it to legislate in a devolved area.

Minimum wage legislation covers all workers in industry and commercial establishments but expressly excludes the following groups:

- public sector employees;
- agricultural workers;
- coal miners;
- workers in charitable enterprises; and
- small enterprises that employ up to nine people in Khyber Pakhtunkhwa.

Although workers in informal sector enterprises or holding informal jobs are not expressly excluded from minimum wage or industrial relations legislation, stakeholders have historically, and almost universally, interpreted legal protections as applicable to only employees in formal sector enterprises. As a matter of statutory construction, however, it is possible to interpret the existing legislation as including workers in informal employment or holding informal jobs.

Minimum Wage Boards are established in each province and in the ICT under the 1961 Minimum Wage Ordinance or equivalent provincial legislation. Minimum Wage Boards have the role of recommending minimum wages rates for unskilled workers and skilled workers in scheduled industries, as well as for unskilled and juvenile workers. They also recommend adjustments after a minimum of one year but at least once every three years.

Minimum Wage Boards are specially constituted tripartite structures. Permanent members include a chairperson and representatives from employer and worker organizations. The chairperson must be an independent member with adequate knowledge of industrial labour and economic conditions of the Province and must not be connected to any industry nor associated with any employers' or workers' organizations; Worker and employer representatives should be nominated by their organizations. Additional members representing workers and employers of specific industries are appointed when considering minimum wage rates for skilled workers in those industries.

Legally, although Minimum Wage Boards can recommend rates, the power to declare minimum wages by notification in the official gazette remains with the provincial government or, in the case of the ICT, the federal government. There is nothing in the law that either requires the government to follow the recommendations of the Minimum Wage Board nor anything that requires it to give reasons for departing from the Minimum Wage Board's recommendations.

In giving their recommendations, Minimum Wage Boards are required to take into account the following:

- changes in economic conditions;
- costs of living; and
- other relevant factors.

There is nothing in the law that defines these terms or stipulates statistical indicators to be used. The legislation does not set out any formulas for wage fixing.

Although Pakistan has ratified ILO's Equal Remuneration Convention, 1951 (No. 100), it has not yet taken any significant steps in implementing the Convention. There is no law currently in force that prohibits discrimination based on sex or gender in relation to wages.

The legislation is silent as to the purpose of a statutory minimum wage and there is no conceptual agreement among stakeholders as to the purpose of minimum wages in Pakistan. There is pervasive underpayment of wages, which suggests that the minimum wage is not functioning as a binding wage floor. In addition, stakeholders differ as to the level at which the wage floor should be set.

Provincial governments look to the annual federal budget for an indication of the minimum wage rate set by the federal government for ICT, and then follow suit. Minimum Wage Boards generally do not lead the wage setting process, but simply adopt the rates set by the provincial governments, which follow the lead of the federal government itself. As such, despite efforts to implement technical criteria in minimum wage settings, it is a political process in which Minimum Wage Boards are sidelined. Even in provinces where detailed work is undertaken by Minimum Wage Boards, figures are replaced by those announced in the federal budget.

In practice, minimum wages for workers in different occupational groups in scheduled industries are not genuinely independently determined. Instead, rates are linked to the rate for unskilled workers, with the same percentage increase applicable to unskilled workers applied each year.

The role of collective bargaining in wage setting can be expanded in formal sector enterprise by increasing the scope of collective bargaining agreements. As anticipated by Punjab's minimum wage notifications, which does not specify a rate for the top category of workers in the managerial or supervisory group, highly skilled workers can also use collective bargaining to set their wages. Some workers in informal sector enterprises or holding informal jobs already engage in annual collective bargaining negotiations. These negotiations are parallel to the formal wage setting process, although they take place with the knowledge and occasional participation of provincial and district government.

In practice, appointments to the Minimum Wage Boards are political in nature and do not ensure full consultation or active participation of tripartite partners. Workers' and employers' organizations do not feel adequately represented in the structure. Board members often lack the requisite knowledge or expertise.

Official notifications of minimum wage rates are often significantly delayed following the announcement of minimum wage increases. Workers thus anticipate the pay increase before

the minimum wages are legally raised by notification, and feel that the delay in notification deliberately denies them their pay increase. Arrears in wage are not always paid.

In the private sector, some firms have internal wage setting documentation and calculations that are shared with recognized collective bargaining agents. This increases the level of cooperation between management and workers, as well as the legitimacy of the wage rate.

In the garment sector, workers – depending on occupational groups – are often paid by piece rate. Workers in informal employment or holding informal jobs are not registered for any social welfare benefits, nor do they claim the statutory minimum wage if they are underpaid. Moreover, workers in informal sector enterprises, as well as those holding informal jobs, are often paid below the minimum wage.

Penalties for non-payment, underpayment, or delayed payment of wages are too slight to be a deterrent. Special penalties for persistent or repeated contraventions of minimum wage laws only exist in Punjab. Under the current regime, the costs of regulatory risks are relatively low. Moreover, enforcement of minimum wages faces additional challenges in the informal sector.

Labour conditions in the textile and garment industries

Compliance with labour standards can give firms access to the international market. In Pakistan, the number of firms currently considered to be sufficiently compliant to directly supply major international retailers or brands is very low. Only around 14 companies (“the top tier firms”) many of which manufacture garments for multiple international brands, are considered compliant. According to international buyers, more firms in the top tier are needed to allow buyers more choice. According to top tier firms, there is room for more compliant firms to supply international buyers without fear of competition.

Compliance among the top tier firms has been buyer-driven, particularly in cases where buyers place direct orders with the manufacturers. Buyers conduct audits and assessments of labour standard compliance and the threat of cancellation of orders is a strong incentive for compliance. However, not all buyers have an in-country presence (due to the security situation) to conduct their own audits and inspections.

International market-driven and buyer-driven compliance is powerful but affects only a small number of enterprises. Audit and monitoring systems are weaker when orders are placed by buying houses, importers, and supply-chain coordinators. The extent of activities of large supply-chain coordinators and buying houses in Pakistan is not clear. Manufacturers receive orders from a combination of sources, including directly from the international retailers and brands; buying houses and importers; and supply-chain coordinators.

The more distant on the value chain the manufacturer is from the international buyer or market, the less incentive they have for compliance as there is less oversight from international buyers. Similarly, the more intermediaries there are between the manufacturer and the end-buyer, the less incentive manufacturers have for compliance. Manufacturers that do not interact directly with international end-buyers provide less risk to the end-buyers’ reputation. They are also more likely to be part of outsourced and ephemeral supply chains created to fulfil specific orders by supply chain coordinators.

In 2012, the provincial labour standards and inspection systems were reactivated. However, the systems are very weak, underfunded, lacking in modern training, and lacking in capacity to conduct effective training.

There are low rates of unionization in garment and textile industries, although Works Councils are common. However, Works Councils cannot independently engage in collective bargaining on behalf of workers, nor can they raise industrial disputes. In addition, their role is one of mediator rather than as the workers' representative.

For workers holding informal jobs, including home-based workers, unionization has improved wages and conditions in some instances. The primary relationship of consequence to the conditions of home-based workers is the relationship between the worker and her contractor. Innovations in partnerships between private companies and non-government organizations (NGOs) have also improved wage rates and the quality of products produced by workers in informal employment, particularly female home-based workers.

Recommendations

To the federal government

1. Ratify relevant international Conventions

Ratify ILO's Minimum Wage Fixing Convention, 1970 (No. 131)

2. Repeal the 1969 Unskilled Minimum Wage Ordinance

To clarify the applicable law, the Unskilled Minimum Wage Ordinance 1969 should be repealed in order to avoid inconsistencies in wage setting mechanisms for unskilled workers.

To the provincial governments

1. Implement a minimum wage system that is consistent with Convention No. 131

Although provincial governments do not have the power to ratify international conventions, they can implement minimum wage systems that are nevertheless consistent with ILO Convention No. 131 and the Minimum Wage Fixing Recommendation, 1970 (No. 135).

Minimum wage fixing systems which broadly conform to Convention No. 131 and Recommendation No. 135 are those which:³

- i. are as broad as possible in the scope of application;
- ii. ensure full consultation and participation of social partners, on an equal footing, in the design and operation of the minimum wage system;
- iii. in determining minimum wages levels, include elements that into account both needs of the workers and their families, and economic factors;
- iv. incorporate periodic adjustment of minimum wage rates to reflect changes in costs of living and other economic conditions; and
- v. ensure implementation of appropriate measure to ensure the effective application of all provisions relating to minimum wages.

The provincial governments should ensure that their wage setting mechanisms and the Minimum Wage Boards comply with these requirements.

2. Abolish express exclusions from minimum wage system

Provincial governments should abolish the express exclusions contained in the minimum wage legislation, including those excluding agricultural workers, public sector workers, and workers in charitable enterprises.

³ ILO: *Minimum wage systems*, International Labour Conference, 103rd Session, Geneva, 2014, p. 30.

3. Interpret the minimum wage legislation in a manner consistent with Convention No. 131, and extend coverage to workers in informal sector enterprise and/or those holding informal jobs.

Minimum wage legislation does not expressly exclude workers in informal sector enterprises or those holding informal jobs. Provincial governments should interpret the legislation in a manner consistent with Convention No. 131. Interpretations that expand the minimum wage coverage are therefore preferable. It is possible to interpret minimum wage legislation to include:

- workers in informal sector enterprises;
- workers holding informal jobs;
- domestic workers; and
- home-based workers.

Alternatively, and for the avoidance of doubt, provincial governments should amend minimum wage legislation to expressly include these categories of workers.

4. End parallel wage setting system for workers in informal sector enterprises or holding informal jobs

The practice of collective bargaining for wage setting which results in below statutory minimum rates should end. As noted earlier, workers in informal sector enterprises or holding informal jobs can be covered by statutory minimum wages through an interpretation of legislation that is consistent with Convention No. 131. Alternatively, minimum wage legislation can be amended to expressly include workers in informal sector enterprises or holding informal jobs.

5. Enact provincial legislation, which implements Pakistan's obligations under Equal Remuneration Convention, 1951, No. 100

The principle of equal remuneration for men and women workers for work of equal value must be implemented. Provincial governments should legally enshrine the principle through provincial legislation.

6. Specify elements, statistical indicators, and data sources to be used in minimum wage fixing

Under the current legislation, provinces require the Minimum Wage Boards to review minimum wage levels periodically, if there are changes in “economic conditions and cost of living and other relevant factors”.⁴ However, legislation is silent on the elements to be taken into consideration, and there are no agreed data sets or data sources to be used to determine economic conditions, costs of living, and other economic conditions.

The provincial governments, in discussion with the federal government, should enumerate and publish the following:

- elements to be considered as economic conditions;
- elements to be considered in costs of living; and
- elements to be considered as other relevant factors.

⁴ Section 7(1) of Minimum Wage Ordinance 1961, and of KP Minimum Wage Act 2013.

In addition, the provincial governments should determine the statistical indicators and data sources to be used in minimum wage fixing.

Elements to be considered, statistical indicators and data sources used should be published to ensure transparency in the wage fixing process.

7. Abolish separate minimum wage setting for skilled workers and per industry and encourage minimum wage setting by collective bargaining for skilled workers

Currently, where minimum wages for skilled workers in scheduled industries are notified, industry consultations are time-consuming and unproductive, as Minimum Wage Boards simply apply the same adjustment as is applied to the unskilled rate each year. Moreover, the proliferation of scheduled industries means an overly detailed minimum wage system that is unenforceable. In order to rationalize the time and efforts of the Minimum Wage Boards, the separate notifications for skilled workers in different schedules should be abolished.

As already anticipated in Punjab notifications, skilled workers should be encouraged to use collective bargaining to set wages.

8. Adopt transparent criteria and process of appointments to the Minimum Wage Boards

Appointments to the Minimum Wage Boards should be transparent and in accordance with the legislation. Provincial governments should ensure full consultation of and genuine participation by representatives of workers and employers. Nominations for board members should be sought from trade union federations, employers' organizations, and industry associations. Such nominations should be generally accepted by the Board unless there are genuine reasons. The independent member of the Minimum Wage Boards should fulfil the role of the technical expert, and have appropriate professional qualifications and experience.

Information in relation to appointments to the Minimum Wage Boards should be published to ensure transparency of the process, including:

- criteria for membership;
- nominations from trade unions, employers' representatives including employers' organizations and industry associations; and
- appointments to the boards and reasons for such an appointment.

9. Recommendations by Minimum Wage Boards must be reasoned, independent, and transparent

The Minimum Wage Board of each province should exercise its powers independently. When making recommendations, it should publish the reasons for their decision, including the social and economic factors considered, and information about the data used in the determination of minimum wages.⁵ The reasoning behind wage setting processes should be made publicly available to enhance the legitimacy of the rates recommended.

⁵ The Punjab government, for example, already produces a working paper on minimum wage setting.

10. Amend provincial legislation to strengthen the powers of the Minimum Wage Boards

Under the current legislation, provincial governments are not bound to follow the recommendations of the Minimum Wage Boards. Amendments should be made to legislation to limit the provincial governments' ability to deviate from the rate recommended by the Boards. The recommendations should be followed unless there are compelling reasons not to do so. Any deviation from the recommended rates should be supported by reasons, setting out factors considered and statistical indicators used.

11. The need for provincial differentiations in minimum wage rates should be discussed

Provincial governments should consider whether provincial differentiations in minimum wage rates are, or are likely to become, necessary. If so, provincial governments should agree on a mechanism for calculating and incorporating provincial differences. For example, provinces should decide on the elements for consideration, statistical indicators and data sources that reflect provincial differences.

12. Strengthen labour inspection systems

The labour inspection systems of all provinces must be significantly strengthened in order to improve compliance across each industry. The number of labour inspectors needs to be increased, and their capacity strengthened to conduct meaningful labour inspections. Areas of capacity building for labour inspectors may include:

- training on effective labour standards and inspections;
- access to transport for the purposes of conducting inspections and raids;
- access and training to use equipment for documenting violations and evidence gathering;
- creation of “squads” of mobile inspectors to target problem areas or industries;
- expansion of labour inspections to informal enterprises and factories;
- improving working relationships between labour inspectors, unions, and social activists in order to collect intelligence; and
- establishing summary enforcement mechanisms, such as on-the-spot fines and arrest warrants.

13. Prosecute up the supply chain, enact legislation that holds primary contractors responsible for violations of sub-contractors

Punitive measures should target enterprises up the supply chain. The worst violators of labour standards are often informal sector enterprises, subcontractors, and factories - including power loom units - that have no reputation to preserve, few fixed assets, and which are often not legally registered. They can often ignore fines and simply continue operations and production from a different location or under a different name. Moreover, for small enterprises, those that remain underground can under-price those that upgrade their practice. Therefore, detection and punishment of violations at the lower end of the supply chain are not likely to yield sustainable results unless in combination with penalties affecting those further up the supply chain. Legislation should be enacted to ensure that liability can be imposed on primary contractors.

14. Penalties for labour violations should be increased

More severe penalties for labour violations increase the regulatory risk and costs of a breach. Current penalty rates are insufficient as deterrents. Penalties must be increased so that the costs of breach and regulatory risk are sufficiently high to deter violations.

15. Limit access to credit for violators of labour protection laws, incentivize compliant enterprises through preferential credit access

Provincial governments should coordinate with banks and financial institutions to limit access to credit to enterprises that have persistently or seriously violated labour standards. Access to credit can be restored once the enterprise has demonstrated compliance and a sustainable change in conduct, for example, when an enterprise passes two or more independent inspections. Conversely, enterprises that demonstrate continuing compliance with all labour standards can be rewarded through preferential credit access.

16. Take specific action to improve the conditions of home-based workers, particularly female home-based workers

In addition to interpreting labour legislation to include home-based workers, the following specific actions should be taken:

- support the development of alternative and safe workplaces, such as private-public partnerships in establishing neighbourhood sewing centres;
- support the unionization of home-based workers, and promote collective bargaining between home-based workers and contractors on wages and work conditions; and
- implement sexual harassment legislation in the workplace to make formal sector enterprises safer for women.

To employers and industry associations

1. Share best practice

Several enterprises in Pakistan have developed collaborative and productive relationships between employers and managers and workers. However, such examples are isolated and not widely known. It is important for employers to share best practices and experiences with each other in order to improve management as well as relationships with workers.

2. Support unionization of employees and workers

Employers should encourage unionization of employees, and consider unions as an ally rather than a barrier to productivity. Productive and cooperation relationships between trade unions and employers can be of mutual benefit to employers by increasing retention rates and per capita productivity.

3. Increase collective bargaining

Employers should support the use of collective bargaining as a wage setting mechanism, particularly for skilled workers for whom the statutory minimum

wage is not appropriate. Collective bargaining with particular occupational groups can be used as a tool for recruitment and retention of skilled staff.

To trade unions and federations

1. Improve services to own members

Trade unions should improve the services and support provided to their own members, for example, in providing legal services, advice, support networks, and by acting as advocates for workers' rights. By focusing on their roles as service providers to members, trade unions can increase influence, by attracting more members and becoming more effective advocates.

2. Increase the scope of collective bargaining

Trade unions should increase collective bargaining to include a range of issues. In addition to pay rates and allowances, collective bargaining can include leave entitlements, conditions of labour, healthcare, and a range of other benefits. Collective bargaining can be effective even in informal sector enterprises and among workers holding informal jobs. Therefore, where possible, collective bargaining should be used to address a range of worker concerns.

3. Share best practice

The capacity of trade unions and success in collective bargaining varies depending on industry and enterprise. However, there are several highly successful trade unions that have been able to negotiate a range of benefits and above minimum wage rates for members. These examples, however, are isolated and not well known. Trade unions can benefit from sharing their knowledge and experience, and learning from each other.

To the ILO

1. Promote conceptual agreement on the role of minimum wages in Pakistan

The ILO should facilitate and promote discussion on the role of minimum wages in Pakistan: for instance leading debate as to whether minimum wage rate should be fully implemented as a binding wage floor, a living wage or a fair wage. Among tripartite partners, as well as federal and provincial governments, conceptual agreement on the role of minimum wages is important to increase compliance with the wage rates set and can minimize conflict between tripartite partners in relation to wage setting.

2. Conduct or commission research

The ILO should conduct or commission research in the following areas:

- the role of the judiciary, labour tribunals, prosecutors in the enforcement of labour standards;
- remedies available to workers and employees when labour laws have been breached, particularly after industrial accidents;

- mapping of indirect sourcing and sub-contracting in the textile and garment sector, particularly in hotspots such as Faisalabad, Sialkot, Lahore, and Karachi;
- mapping of the subcontracting chain from home-based workers to end retailers; and
- understanding the scale and activities of intermediaries, such as supply chain coordinators.

3. Strategically support stakeholders

The ILO can strategically support other stakeholders in the following areas:

- creating forums for employers and trade unionists to discuss common areas of concern, share best practices, and exchange knowledge and experience;
- creating a broad-based consultation mechanism of stakeholders to develop new alliances and relationships;
- providing technical advice to provincial governments on legislative reform where necessary; and
- providing technical advice to provincial governments on minimum wage setting mechanisms, including the use of statistical indicators

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