

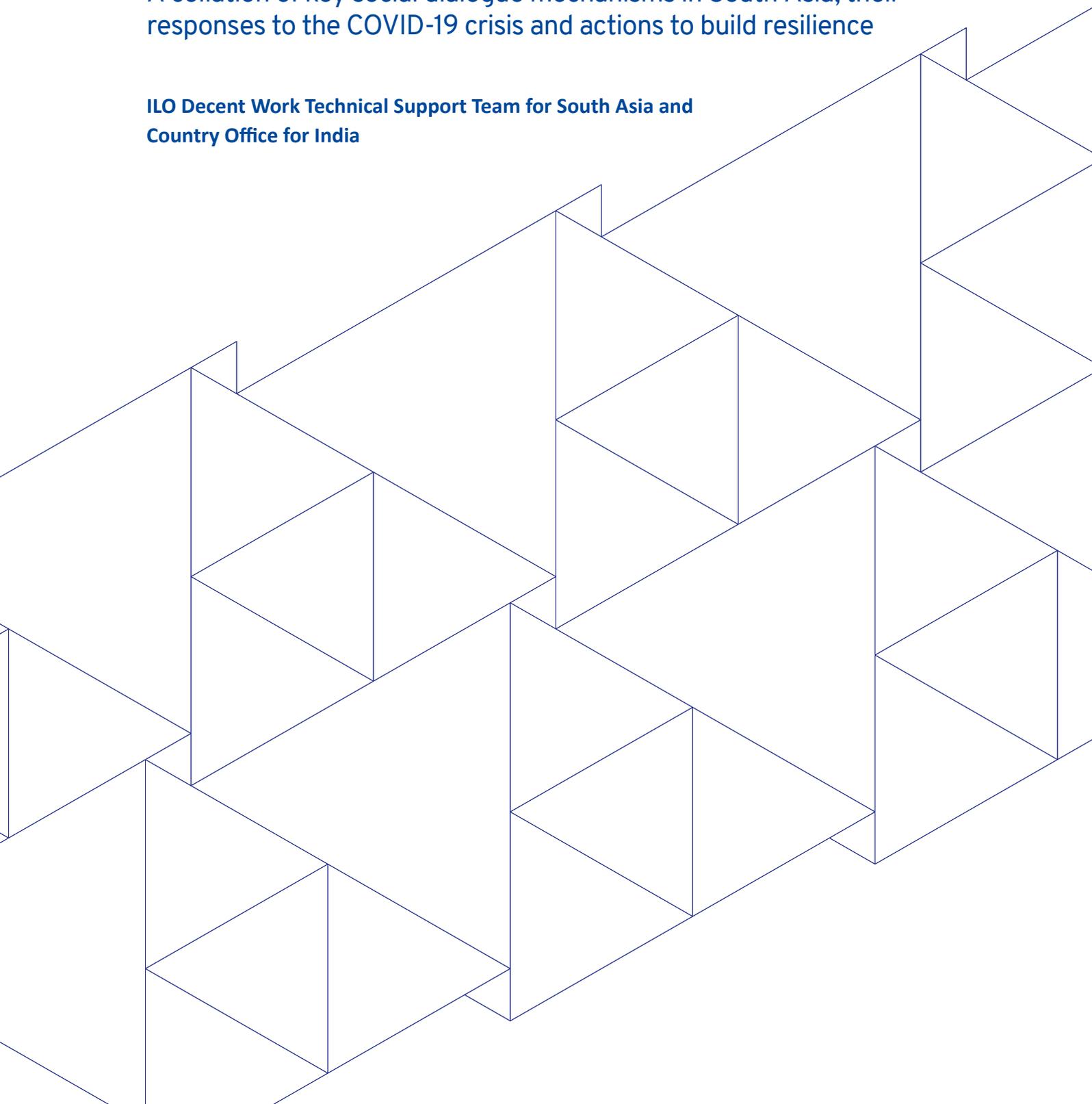


International
Labour
Organization

► Towards resilient social dialogue in South Asia

A collation of key social dialogue mechanisms in South Asia, their responses to the COVID-19 crisis and actions to build resilience

**ILO Decent Work Technical Support Team for South Asia and
Country Office for India**



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**ILO Decent Work Technical Support Team for South Asia and
Country Office for India**

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Contents

Foreword	5
Acknowledgements	6
Executive summary	7
Abbreviations	15
1. Introduction.....	17
2. A description of tripartite and bipartite social dialogue mechanisms in South Asia.....	19
2.1 Afghanistan	20
2.1.1 Tripartite social dialogue mechanisms	21
2.1.1.1 Decent Work Country Programme National Steering Committee and Technical Working Group.....	21
2.1.1.2 Labor High Council.....	21
2.1.2 Bipartite social dialogue mechanisms	22
2.2 Bangladesh	22
2.2.1 Tripartite social dialogue mechanisms	23
2.2.1.1 National Tripartite Consultative Council	24
2.2.1.2 Readymade Garment Tripartite Consultative Council	25
2.2.1.3 National Council for Industrial Health and Safety.....	25
2.2.1.4 Minimum Wage Board.....	26
2.2.1.5 National Wages and Productivity Commission.....	26
2.2.2 Bipartite social dialogue mechanisms	26
2.2.2.1 Collective bargaining	26
2.2.2.2 Participation committees	28
2.2.2.3 Safety committees	28
2.3 India	29
2.3.1 Tripartite social dialogue mechanisms	30
2.3.1.1 Indian Labour Conference and Standing Labour Committee	30
2.3.1.2 Wage boards	31
2.3.1.3 Industrial Tripartite Committees.....	32
2.3.1.4 Central Board of Trustees of the Employees' Provident Fund.....	32
2.3.1.5 Standing Committee of the Employees' State Insurance Scheme.....	33
2.3.1.6 Welfare boards	33
2.3.1.7 Tamil Nadu's State Labour Advisory Council	34
2.3.1.8 Kerala's Industrial Relations Committees	35
2.3.1.9 Maharashtra's Industrial Relations Committees	36
2.3.2 Bipartite social dialogue mechanisms	37
2.3.2.1 Collective bargaining	37
2.3.2.2 Works committees	39
2.3.2.3 Grievance redressal committees.....	40
2.4 Maldives	41
2.4.1 Tripartite social dialogue mechanisms	42
2.4.2 Bipartite social dialogue mechanisms	43

2.5 Nepal	43
2.5.1 Tripartite social dialogue mechanisms	43
2.5.1.1 Central Labour Advisory Council	44
2.5.1.2 Minimum Wage Fixation Committee	45
2.5.1.3 Labour Coordination Committee	45
2.5.1.4 Social Security Fund Steering Committee.....	46
2.5.1.5 Provincial Labour Advisory Councils.....	46
2.5.2 Bipartite social dialogue mechanisms	47
2.5.2.1 Collective bargaining.....	47
2.5.2.2 Labour Relations Committee	48
2.6 Pakistan	49
2.6.1 Tripartite social dialogue mechanisms	50
2.6.1.1 Pakistan Tripartite Labour Conference	50
2.6.1.2 Federal Tripartite Consultative Committee	50
2.6.1.3 Employees' Old Age Benefits Institution	50
2.6.1.4 Workers' Welfare Fund Board	51
2.6.1.5 Provincial Tripartite Consultative Committees	51
2.6.1.6 Provincial Employees' Social Security Institutions Tripartite Governing Bodies.....	52
2.6.1.7 Provincial Workers' Welfare Boards	52
2.6.1.8 Provincial Minimum Wage Boards	53
2.6.2 Bipartite social dialogue mechanisms	53
2.6.2.1 Collective bargaining.....	53
2.6.2.2 Works councils.....	55
2.6.2.3 Joint Management Board.....	55
2.6.2.4 Workers and Employers Bilateral Council.....	56
2.7 Sri Lanka	57
2.7.1 Tripartite social dialogue mechanisms	59
2.7.1.1 National Labour Advisory Council.....	59
2.7.1.2 Wages boards	60
2.7.1.1 Social Dialogue and Workplace Cooperation Unit.....	61
2.7.2 Bipartite social dialogue mechanisms	61
2.7.2.1 Collective bargaining.....	61
2.7.2.2 Employees Councils in State enterprises	62
2.7.2.3 Employees Councils in export processing zones.....	63
2.7.2.4 Workplace Cooperation Committees in private sector enterprises.....	64
2.7.2.5 Association for Conflict and Dispute Resolution	64
3. Roles of tripartite and bipartite social dialogue mechanisms in responding to the COVID-19 crisis	65
4. Key challenges and actions to strengthen social dialogue	70
4.1 Key challenges	71
4.2 Proposed actions.....	73
5. Conclusion	75
References	77



Foreword

We are living through troubling and uncertain times. In South Asia, COVID-19 has devastated the lives of the poor, and particularly of vulnerable workers in the informal sector. With all countries reporting declining GDPs, the pandemic has deeply affected national and global economic growth prospects, and this will inevitably have a detrimental impact on combatting prevailing inequality and gender disparities.

Governments in South Asia, like elsewhere, are urgently grappling with responses to this unprecedented crisis. These efforts are focused on reviving the economy while controlling the spread of the virus. Some governments have laudably made deliberate and sustained efforts to include employers' organizations and unions in crafting their responses, and this joint action is likely to be a key determinant in successfully dealing with this crisis.

The ILO experience shows that inclusivity through social dialogue amongst and between governments, employers' organizations and unions is essential for social and economic growth. These three constituents form the core partners who jointly share responsibility for national social and economic development. Such joint action is especially vital during times of crisis, as is being experienced now with this pandemic.

This report provides valuable information on the main tripartite and bipartite social dialogue mechanisms and processes in South Asia. It captures the extent to which these mechanisms have been involved in responding to the COVID-19 crisis. Crucially, it also provides a strategic set of actions aimed at facilitating the growth of resilient social dialogue mechanisms in South Asia. This is essential, not only to respond to this crisis, but also to respond nimbly and effectively to any crisis situation affecting economies and labour markets adversely.

Any effective social and economic recovery from the COVID-19 crisis will inescapably require the joint efforts of workers, employers and governments. This recovery will also critically entail commitments reached through engaging in good faith and a willingness to make compromises. This is not easy to do. Social dialogue is a complex process; however, it is the best option that we have, particularly in times of crisis, to bring together the combined energy, talents and resources of government, employers and unions in pursuit of a common purpose.

The ILO stands ready to support the tripartite constituencies to achieve a 'better normal', through inclusivity, partnership, joint action and shared responsibility.

Ms Dagmar Walter

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It was reviewed by Caroline O'Reilly, Senior Technical Expert, DIALOGUE, ILO Headquarters, Geneva, and John Ritchotte, Social Dialogue and Labour Administration Specialist, ILO Decent Work Team, Bangkok.

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We hope that this report will serve to promote, inform and guide efforts to strengthen social dialogue mechanisms and practices in South Asia.



Executive summary

The COVID-19 pandemic has had devastating impacts on lives, livelihoods and economies in South Asia, exacerbating existing inequalities. Women, those with lower levels of education, those in manual occupations, informal workers and the poor in general are the worst affected by the crisis. Layoffs and job losses have further worsened prevailing inequality.¹

Social and economic recovery from the crisis precipitated by COVID-19 and a return to a better normal will be a long and difficult journey. It will undoubtedly require strong partnerships and joint effort between governments, employers and unions.²

This report provides the following with regard to social dialogue in South Asia:

- ▶ A description of the key social dialogue mechanisms in each country
- ▶ The involvement of these mechanisms in developing and/or implementing responses to the COVID-19 crisis
- ▶ The gaps and actions aimed at strengthening social dialogue in South Asia and enhancing the resilience of social dialogue mechanisms to address future crises.

Historically, South Asian countries have had strong traditions of social dialogue. India, for example, was a founder member of the International Labour Organization (ILO). All of the ILO's Member States in South Asia, with the exception of Maldives, have ratified Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Each of the countries in South Asia, including Maldives, have, therefore, established key tripartite social dialogue mechanisms at the national level.

These key tripartite social dialogue mechanisms include:

- ▶ **Afghanistan:** The Decent Work Country Programme (DWCP) in Afghanistan uses the DWCP National Steering Committee and Decent Work Technical Working Group as mechanisms to facilitate the implementation of the DWCP. Afghanistan has also established a statutory Labor High Council as its apex tripartite social dialogue mechanism for labour issues.
- ▶ **Bangladesh:** A range of tripartite social dialogue mechanisms have been established in Bangladesh, including the statutory national Tripartite Consultative Council (TCC), National Council for Industrial Health and Safety, Minimum Wage Board, National Wages and Productivity Commission and labour courts. Bangladesh has also established a sectoral tripartite social dialogue mechanism, the Ready-made Garment Tripartite Consultative Council, specifically for the garment sector. The Bangladesh Labour Act was amended in 2019 to promote the establishment of tripartite social dialogue mechanisms in other sectors of the economy.

1 ILO, *ILO Monitor: COVID-19 and the World of Work. Third Edition – Updated Estimates and Analysis*, April 2020.

2 ILO (DIALOGUE), *Policy Brief: The Need for Social Dialogue in Addressing the COVID-19 Crisis*, May 2020.

- ▶ **India:** There is a rich legacy of social dialogue in India, and the country's tripartite social dialogue mechanisms include the Indian Labour Conference (ILC) and Labour Standing Committee, wage boards, industrial tripartite committees (ITCs), Central Board of Trustees of the Employees' Provident Fund, Standing Committee of the Employees' State Insurance Scheme and the welfare boards. Some states in India have also established tripartite social dialogue mechanisms, and these include the State Labour Advisory Board (SLAB) in Tamil Nadu, industrial relations committees in Kerala and the Mathadi boards in Maharashtra.

- ▶ **Maldives:** Maldives has made provision for the establishment of a national tripartite social dialogue mechanism and in this regard, the National Tripartite Labour Advisory Council (NTLAC) was established in April 2013. The NTLAC is convened under the chairmanship of the permanent secretary of the Ministry of Economic Development.

- ▶ **Nepal:** The following key tripartite social dialogue mechanisms have been established in Nepal at the national level: the Central Labour Advisory Council, Minimum Wage Fixation Committee, Labour Coordination Committee and the Social Security Fund Steering Committee. Nepal has also made provision for the establishment of provincial labour advisory councils. One of the provinces, Province Five, established a Province Five Labour Advisory Council in 2019 with the technical support of the ILO. Following this, the Province One Labour Advisory Council has also been established and is in the process of being operationalized by tripartite partners.

- ▶ **Pakistan:** Various tripartite social dialogue mechanisms at the federal and provincial levels have been established in Pakistan. Key amongst these are the Pakistan Tripartite Labour Conference, Federal Tripartite Labour Committee, Employees' Old Age Benefits Institution, Workers' Welfare Fund Board, provincial tripartite consultative committees, provincial employees' social security institutions tripartite governing bodies, provincial workers' welfare boards and provincial wage boards.

- ▶ **Sri Lanka:** At the national level, Sri Lanka's main tripartite social dialogue mechanisms are the National Labour Advisory Council (NLAC) and the wage boards under the Wages Boards Ordinance of 1941. The Department of Labour also includes a Social Dialogue and Workplace Cooperation Unit. The function of this unit is primarily to promote social dialogue at the enterprise level. Its function also includes the promotion of social dialogue generally within the country.

While the majority of ILO Member States in South Asia have ratified Convention No. 144, the picture is more mixed with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

In this regard, Afghanistan and India have not ratified either of these conventions. Nepal has ratified Convention No. 98, but not Convention No. 87. Both conventions have, however, been ratified by Bangladesh on 22 June 1972; and Maldives on 4 January 2014. Pakistan ratified Convention No. 87 on 14 February 1952 and Convention No. 98 on 26 May 1952; and Sri Lanka ratified Convention No. 87 on 15 September 1995 and Convention No. 98 on 13 December 1972.

With regard to bipartite social dialogue, most (but not all) countries in South Asia have made legislative provision for collective bargaining and workplace cooperation. In this regard:

- ▶ **Afghanistan:** The country's Labor Code currently does not provide for collective bargaining or workplace cooperation.

- ▶ **Bangladesh:** The Bangladesh Labour Act, 2006, stipulates that the formation of a union in an enterprise would require the support, through a vote, of at least 30 per cent of workers in the enterprise. The Bangladesh Labour Act, 2006, does not extend to workers in export

processing zones (EPZs). These fall under the Bangladesh Export Processing Zones Labour Act, 2019 (ELA). In 2019, the ELA was adopted to improve freedom of association for workers in these zones. The previous requirement of a minimum of 30 per cent of workers' consent to form a workers' welfare association (WWA) was lowered to 20 per cent in 2019.

WWAs in Bangladesh are mandated to undertake collective bargaining and include a strong workplace cooperation focus. The Bangladesh Labour Act also makes provision for the establishment of workplace cooperation mechanisms, such as participation committees in non-unionized enterprises and the establishment of safety committees. In 2019, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) made various recommendations for the further enhancement of freedom of association and collective bargaining in Bangladesh. This includes additional reductions to thresholds for union and WWA registrations respectively, legislative amendments to promote collective bargaining and stronger penalties to combat anti-union discrimination.

- ▶ **India:** Collective bargaining typically takes place at three levels. These are: first, national-level industry bargaining, which is common in core industries such as banking, coal, steel, ports and docks, and oil, where the central government plays a major role as the employer; second, industry-cum-regional level bargaining, which is peculiar to industries where the private sector dominates, such as cotton, jute, textiles, engineering, tea plantations, ports and docks; and third, at the enterprise or plant-level where a bargaining council (or negotiating committee) is typically constituted by proportional representation of many unions in an establishment.

The Industrial Relations Code, 2020, has replaced the Trade Union Act, 1926, the Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. This Code was passed by the Indian parliament on 23 September 2020. The Code provides for the recognition of trade unions as the bargaining agent. In terms of this draft Code, when only one union is functioning in an industrial establishment, it shall be recognized by the employer as the sole negotiating unit for workers. If more than one trade union is functioning in an establishment, the trade union with a minimum of 51 per cent of the workers of the establishment as members shall be granted recognition.

Regarding workplace cooperation, the Industrial Relations Code, under Chapter 3 (section 3) provides for the establishment of a works committee in enterprises employing 100 or more workers by general or special order by the appropriate government. Chapter 2 (section 4) of the draft Code also makes provision for the establishment of a bipartite grievance redressal committee in enterprises employing 20 or more workers.

- ▶ **Maldives:** The Employment Act, 2008, is silent on workers' right to strike or the right to form trade unions, and it lacks any provisions for collective bargaining. Whilst these are constitutional rights, there is no specific legislation that ensures and protects the right to organize and bargain collectively. In the absence of legislative provisions, workplace cooperation practices also appear to be generally absent in the country. In 2013, the ILO provided technical assistance to the Government of Maldives with drafting the Industrial Relations Act. The draft was endorsed by the National Tripartite Labour Advisory Council. The draft Act has however not yet been approved by the Maldives parliament.
- ▶ **Nepal:** Section 116 of the Labour Act, 2017, stipulates that enterprises employing ten or more workers are required to establish a collective bargaining committee. Section 123 of the Labour Act makes provisions for sectoral/multi-employer bargaining in respect of "tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers producing similar nature of products or service providers providing similar nature of services..." In terms of section 102 of the Labour Act, 2017, the Central Labour Advisory Council is mandated to frame and issue directives on collective bargaining as may be required.

Provision is also made for workplace cooperation. In this regard, section 111 of the Labour Act, 2017, provides for the establishment of labour relations committees in enterprises employing ten or more workers.

- ▶ **Pakistan:** Section 19 of Pakistan's Industrial Relations Act, 2012, sets out collective bargaining procedures. This primarily requires that the majority trade union in the enterprise (or group of enterprises) is certified as the collective bargaining agent. The Act requires the collective bargaining agent to have obtained the support of at least one third of the total workforce in the enterprise or group of enterprises. Where there is more than one union present, the collective bargaining agent is then determined through a secret ballot.

With regard to workplace cooperation, section 25 of Pakistan's Industrial Relations Act, 2012, makes provision for the establishment of works councils in every establishment which employs 50 workers or more. In addition, section 28 of the Act requires all establishments employing 50 or more workers to establish a joint management board. Workers' representatives form 30 per cent of a joint management board.

In its 2019 report, the CEACR identifies a range of key areas where Pakistan's labour law is not in compliance with one or both of the two fundamental conventions on the freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos 87 and 98). Chief amongst these areas are the exclusion of major parts of the workforce from trade union and collective bargaining rights, and difficulties to exercise rights that have already been granted. These concerns have been previously raised by the CEACR and have remained largely unaddressed.

- ▶ **Sri Lanka:** The Industrial Disputes Act No. 56 of 1999 provides the legislative basis for collective bargaining in Sri Lanka. By the terms of this Act, it is unlawful for an employer to refuse to bargain with a trade union. However, at least 40 per cent of the workforce in an enterprise must have membership in the union for it to be eligible to be recognized as a collective bargaining agent. The CEACR, in 2019, recommended that, in instances where there is no union that meets the required membership percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to bargain collectively on behalf of their members. This recommendation has not as yet been given statutory effect.

Collective bargaining in EPZs is governed by the Board of Investment (BOI) of Sri Lanka, and their Labour Standard and Employment Relation Manual of 31 March 2004 defines the procedures for collective bargaining within Sri Lanka's EPZs. This manual derives its basis from the Industrial Disputes Act No. 56 of 1999 and provides guidance on the implementation of the Act specifically in EPZs, including in respect of collective bargaining. In terms of section 9 of the manual, workers in Board of Investment enterprises have the right to form and join trade unions of their own choosing and to bargain collectively, subject to the provisions of the Trade Unions Ordinance and the Industrial Disputes Act.

Section 15(2) of the Labour Standard and Industrial Relations Manual makes provision for collective bargaining to be undertaken between the employer and an employees' council in non-unionized enterprises.

The CEACR has however emphasized the need to promote collective bargaining more strongly in Sri Lanka. In this regard, in 2019, the CEACR also highlighted the need for government to promote collective bargaining in Sri Lanka's EPZs. Another issue highlighted by the CEACR was the need to amend section 49 of the Industrial Disputes Act which currently excludes Sri Lanka's state and government employees from the Act's scope of application.

Workplace cooperation in Sri Lanka takes place primarily at three levels. First, the Employees' Councils Act, 1979 (No. 32 of 1979) makes provision for the establishment of employees' councils in state enterprises (though these employees' councils appear to be defunct). Second, the Labour Standard and Employment Relation Manual of 2004 provides guidelines for the establishment of employees' councils in enterprises that operate in Sri Lanka's EPZs. Third, workplace cooperation takes place, although to a more limited extent, in some privately owned enterprises. Sri Lanka currently does not have legislation that facilitates workplace cooperation in enterprises that are privately owned. With ILO support, in 2019, the tripartite constituents developed guidelines for the establishment of workplace cooperation committees and the transparent election of workers' representatives to serve on these committees.

South Asia' tripartite and bipartite social dialogue mechanisms have, however, played very limited roles in responding to the COVID-19 crisis. This is not unexpected, given that many of these mechanisms had been non-functional for many years. While some mechanisms were consulted in the earlier stages of the crisis, including the Central Labour Advisory Council in Nepal and the national Tripartite Consultative Council in Bangladesh, their roles have been limited to dealing with wage payment matters.

In Sri Lanka, the engagement through a tripartite task force established by the Minister of Skills Development, Employment and Labour Relations has been more substantial, and has resulted in a tripartite agreement on wages and working arrangements applicable to all formal sector workers. These arrangements aim at addressing situations where companies are unable to bring in the entire complement of the workforce due to government restrictions (imposed due to health concerns). In Pakistan, early tripartite engagements in the Sindh Province appeared promising but have not yet resulted in any meaningful outcomes.

Unfortunately, none of South Asia's tripartite social dialogue mechanisms have played a role in developing broader social and economic responses to the crisis or in facilitating the implementation of government response initiatives. As a result, the role of social partners in responding to the crisis has largely been minimal. This will inevitably weaken the effectiveness and impact of response initiatives and is also very likely to prolong recovery. It is equally important to note that bipartite social dialogue mechanisms have also not played any meaningful role in the context of the crisis. Across South Asia, both collective bargaining and workplace cooperation have been largely absent during the crisis and neglected prior to the crisis.

Specific social dialogue challenges have been starkly highlighted through the COVID-19 crisis and through responses to the questionnaire. These challenges, if left unaddressed, will continue to erode social dialogue processes and mechanisms in South Asia, and they include:

► **Trend towards dormancy of key tripartite social mechanisms**

Many tripartite social dialogue mechanisms in South Asia have either become dormant or have been functioning sporadically before the crisis. In this regard, for example, the ILC has not met since 2015, and India's ITCs have also become dormant. Pakistan's Tripartite Labour Conference last convened in 2009, and Maldives' National Tripartite Labour Advisory Council last met in 2016. Of the tripartite social dialogue mechanisms that are not yet dormant, many do not meet regularly. This could also very likely result in dormancy.

Institutional support for tripartite social dialogue mechanisms is also extremely weak. Support for key tripartite social dialogue mechanisms in the form of a secretariat, research capacity and budgets are absent. As a result, each of these weaknesses combine to further constrain these important mechanisms in partnership and trust building.

This situation stems from a range of factors including diminished appreciation for the role of social dialogue; a duplication of mandates between mechanisms; the presence of too many structures; a lack of constituency capacity to support and participate in a large number of structures; and the possibility that some structures may simply be outdated and, therefore, lack relevance in terms of their functions and composition.

Reversing this decline will require focused interventions including rebuilding a recognition and understanding of the importance and value of both bipartite and tripartite social dialogue as a basis for mobilising support for social dialogue processes in the sub-region. Re-establishing the functionality of these social dialogue mechanisms will also fundamentally require a systematic analysis of each of them to identify internal challenges and broader external conditions/constraints impacting on each of these mechanisms.

► **Declining collective bargaining and workplace cooperation**

With the exception of Afghanistan, Maldives and India, the remaining countries in South Asia make explicit provisions for collective bargaining. However, the practice of collective bargaining is declining. The CEACR has identified and made various recommendations to address impediments to freedom of association and collective bargaining, particularly in Bangladesh, Pakistan and Sri Lanka.

Social partner capacity in the area of collective bargaining also requires enhancement. This includes the practice of collective bargaining itself as well as enhancing skills in negotiation techniques. An additional factor in this regard is that the majority of the enterprises in South Asia tend to be small enterprises and microenterprises. In addition to capacity constraints, they are, therefore, faced with the additional challenge of inadequate labour legislation coverage.

In addition, Bangladesh, India, Nepal, Pakistan and Sri Lanka have each made provision for the establishment of workplace cooperation mechanisms at the enterprise level. The establishment of such mechanisms, however, remains limited across South Asia. In order for workplace cooperation mechanisms to be trusted and have legitimacy, it is necessary that workers' representatives are transparently elected by workers themselves, and this remains a challenge.

Structures for workplace cooperation are especially relevant in the COVID-19 return-to-work phase. They provide a platform for management-worker partnerships in order to safely return enterprise to operations, and to jointly develop and implement recovery efforts. It is, therefore, necessary to create awareness about the importance of workplace cooperation and of measures to promote transparent and legitimate management-worker cooperation.

► **Limited representation of vulnerable workers**

Tripartite social dialogue mechanisms in South Asia, in the main, do not make specific provision for women's representation. Nepal's Central Labour Advisory Council and the Province Five Labour Advisory Council do, however, have representation for women on each of these structures, even if to a limited extent. The situation regarding representation of the informal sector is more dire. Informal sector representation is primarily limited to India's welfare boards, such as the Building and Other Construction Workers Welfare Board. It is, however, largely absent in other South Asian countries.

Women and informal workers have been deeply affected by the COVID-19 crisis, and the pandemic has exacerbated their already precarious social and economic situations. In this regard, the ILO has rated particular sectors as being at a high risk of severe COVID-19

impact in terms of job losses and a decline in working hours. One of these sectors is manufacturing.³ This has strong implications for women in countries with large garment manufacturing sectors such as Bangladesh, Pakistan, India and Sri Lanka, as these sectors predominantly employ women. In addition, South Asia comprises a large proportion of women in the informal economy, who cannot easily get access to credit and are, therefore, more likely to have closed their businesses given extended lockdowns with substantially reduced or no revenues.

The voices of women and informal sector workers in the demands for measures to respond to the COVID-19 crisis are weak; their representation in unions and employers organisation is rare. It is vital that both unions and employers' organizations identify measures to increase the representation of women and informal sector workers in their membership. This will require research by the social partners to understand the challenges and needs more clearly. Research is also critical to promote informed discussions on informality within tripartite social dialogue mechanisms. Such discussions are largely absent from the agendas of national tripartite social dialogue mechanisms in South Asia.

► **Increased labour disputes leading to further polarization**

Labour dispute resolution mechanisms in South Asia were weak even prior to the COVID-19 pandemic. Labour ministries/departments have limited conciliation capacity, but at the same time, labour judiciaries are inundated with cases, most of which predate the crisis. As a result, the pressure on labour departments and the labour judiciary has been vastly magnified.

Unless these significant labour dispute resolution capacity weaknesses are urgently addressed, the potential for labour action, such as strikes and other protest action, could well increase. This will have negative implications for the COVID-19 recovery phase and could further polarize social dialogue processes and mechanisms.

To prevent the further weakening of social dialogue mechanisms and practices in South Asia, it is, therefore, imperative that a focused sub-regional resilience building programme, concentrating specifically on social dialogue, is initiated. It is proposed that this programme include initiatives to:

- Reverse the trend towards dormancy amongst tripartite social dialogue mechanisms through rebuilding an appreciation of the role of social dialogue and systematically capacitating social dialogue mechanisms to effectively undertake their work. The latter will require research to identify the internal and external conditions or constraints impacting each of the key mechanisms in South Asia and will also involve the selective use of the ILO's SAM-SDI (**full form??**) tool. A programme to methodically address identified social dialogue and industrial relations capacity gaps is, therefore, critical.
- Strengthen bipartite social dialogue processes through capacity building in the areas of collective bargaining and workplace cooperation. In order to promote a safe return to work, social partners will be familiarized with the guidelines for the establishment of an enterprise-level COVID-19 task force developed by the ILO Decent Work Team for South Asia in consultation with the ILO's Bureau for Employers' Activities (ACTEMP), Bureau for Workers' Activities (ACTRAV) and Inclusive Labour Markets, Labour Relations and Working Conditions Branch (INWORK).

3 The COVID-19 Response: Getting Gender Equality Right for a Better Future for Women at Work, May 2020.

- ▶ Increase awareness of the issues faced by vulnerable workers, including women and informal sector workers, and promote informed dialogue and action on these issues.

- ▶ Strengthen dispute prevention and resolution capacity through the building of grievance handling procedures at an enterprise level, enhancing conciliation and arbitration capacity; and piloting a rapid response dispute resolution mechanism to address disputes arising from the COVID-19 pandemic.

At the recent ILO Global Summit on COVID-19 and the World of Work – Building a better future of work, held in July 2020, representatives of governments, employers and workers, including those from South Asia, echoed in unison the critical need for social dialogue in the social and economic recovery process. Achieving this will require the full and sustained commitment and participation of the tripartite constituencies and their leadership.



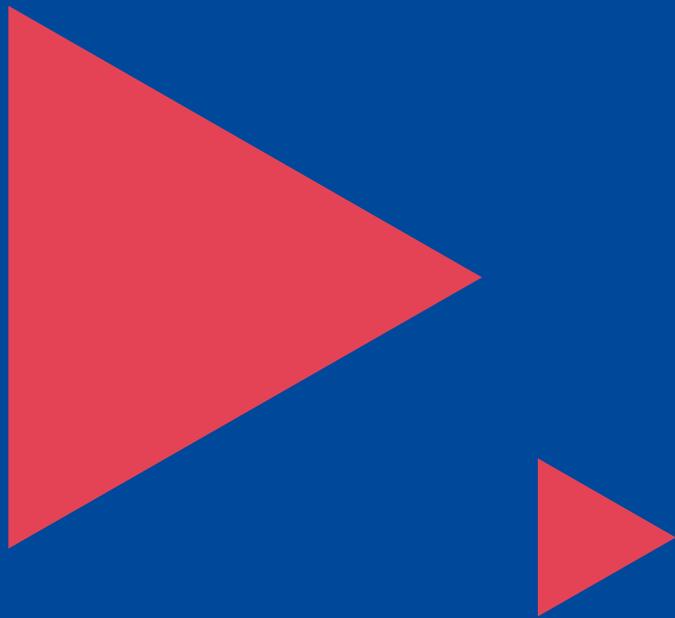
Abbreviations

ACCI	Afghanistan Chamber of Commerce and Investment
ACTEMP	Bureau for Employers' Activities
ACTRAV	Bureau for Workers' Activities
ADCOR	Association for Dispute and Conflict Resolution
BIRA	Balochistan Industrial Relations Act
BOI	Board of Investment
BWA	Bureau for Workers' Activities
CEACR	Committee of Experts on the Application of Conventions and Recommendations
DWCP	The Decent Work Country Programme
EFP	Employers' Federation of Pakistan
ELA	Bangladesh Export Processing Zones Labour Act, 2019
EMKA	Afghan National Trade Unions
EMSC	Employment Mediation Services Centre
EPZs	Export processing zones
ESIC	The Employees' State Insurance Scheme
EU	European Union
ILC	Indian Labour Conference
INWORK	ACTRAV Inclusive Labour Markets, Labour Relations and Working Conditions Branch
IRA	Industrial Relations Act
ITCs	Industrial tripartite committees
KPIRA	Khyber-Pakhtunkhwa Industrial Relations Act
MIC	Middle-income country
MoLSA	Government of Afghanistan's Ministry of Labor and Social Affairs
MWB	Minimum Wage Board
NATURE	National Association for Trade Union Research and Education
NLAC	National Labour Advisory Council
NTLAC	National Tripartite Labour Advisory Council
NTLAC	National Tripartite Labour Advisory Council
NUAWE	National Union of Afghanistan Workers and Employees
PIRA	Punjab Industrial Relations Act

PWF	Pakistan Workers Federation
RMG	Ready-made garment
RMG TCC	Ready-made Garment Tripartite Consultative Council
SAM-SDI	Self-assessment method for social dialogue institutions
SAWAB	Salaries and Wage Advisory Board
SIDS	Small island developing State
SIRA	Sindh Industrial Relations Act
SLAB	State Labour Advisory Board
TCC	Tripartite Consultative Council
UNDP	United Nations Development Programme
WEBCOP	Workers and Employers and Bilateral Council
WWA	Workers' welfare association

▶ 01

▶ Introduction



The devastating social and economic impacts of the COVID-19 pandemic have highlighted the crucial need for social dialogue as an essential component of national recovery efforts globally. These recovery efforts, if they are to be successful, will require the full participation, commitment and support of employers' organizations and trade unions. This will, in turn, require strong, vibrant and resilient tripartite and bipartite social dialogue institutions, mechanisms and processes.

In most instances in South Asia, this important, active and resilient social dialogue infrastructure is absent. While many institutions and mechanisms exist on paper, they are rarely called upon to provide meaningful policy advice or inputs, and many of them fail to meet on anything but an occasional basis. The COVID-19 response and recovery process, however, offers a unique opportunity to refocus efforts on re-energizing and rebuilding dynamic social dialogue institutions and mechanisms.

To this end, this report comprises the following:

- ▶ A description of the main bipartite and tripartite social dialogue institutions/mechanisms in South Asia

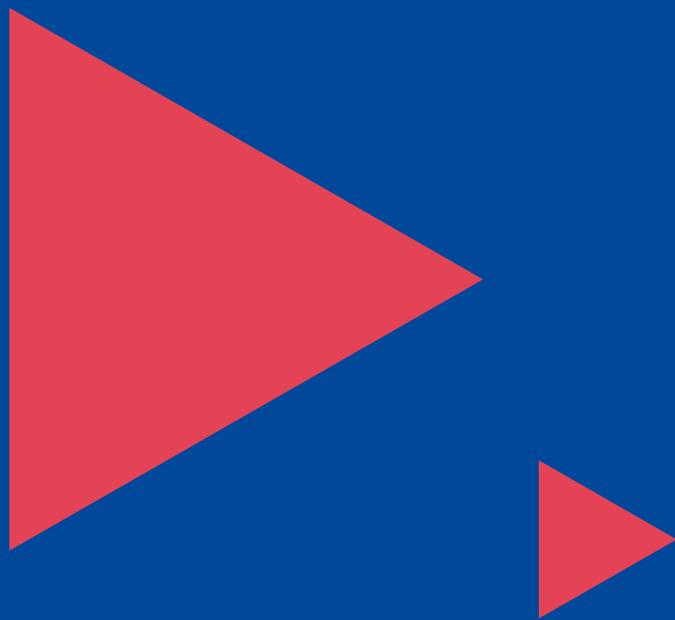
- ▶ A description of the involvement of these mechanisms in developing and/or supporting responses to address the impacts of the COVID-19 pandemic

- ▶ An identification of the key challenges and actions aimed at supporting these mechanisms to build resilience and to function more effectively, particularly in times of crisis

The key sources of information for this report comprise questionnaires that were completed by countries' offices, employers' organizations and unions in South Asia; and a literature review, which included COVID-19 reports/assessments conducted by the UN and its agencies in South Asia.

▶ 02

- ▶ **A description of tripartite and bipartite social dialogue mechanisms in South Asia**
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The ILO defines social dialogue as “all types of negotiation, consultation or information sharing among representatives of governments, employers and workers or between those of employers and workers on issues of common interest relating to economic and social policy”.⁴ The idea of social dialogue rests on the principle that those most affected by policy decisions should participate meaningfully in shaping them.

Social dialogue comes in a number of forms, each serving a different purpose, and tripartite social dialogue is at the very heart of the ILO's work. The *National Tripartite Social Dialogue: an ILO guide for improved governance* defines tripartism as “the interaction of government, employers and workers (through their representatives) as equal and independent partners to seek solutions to issues of common concern.”

Bipartite social dialogue is when two parties – one or more employers and/or one or more employers' organizations, and one or more workers' organizations – exchange information, consult each other or negotiate together. This could, for instance, pertain to wages, working conditions or health and safety at work. The government is usually not a partner in the bipartite process unless it is the employer. It may, however, aid social partners in their bipartite negotiations. The government may also offer conciliation and mediation services should a dispute arise between the social partners.

Collective bargaining and workplace cooperation are two types of bipartite social dialogue. In terms of the Collective Bargaining Convention, 1981 (No. 154), collective bargaining is primarily concerned with negotiations on the terms and conditions of employment, regulating relations between employers or their organizations and a workers' organization or workers' organizations. Terms and conditions typically define issues such as working hours, wages, leave and overtime. Collective bargaining is about joint decision-making. Workplace cooperation, which does not undermine the positions of trade unions and does not deal with matters within the scope of collective bargaining, is mainly a tool for consultation between employers and workers and their representatives to improve conditions in the workplace. The two processes can be mutually supportive: collective bargaining can strengthen workplace cooperation, and effective workplace cooperation can facilitate collective bargaining. The more regularly and consistently the partners engage in social dialogue, the better able they are to deal with difficult issues.

The ILO Member States in South Asia have a long tradition of social dialogue. They have all ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); and most, with the exception of Maldives, have, therefore, established tripartite social dialogue mechanisms at the national level. Some countries, such as India, Pakistan and Nepal, have also established tripartite social dialogue mechanisms at the state or province level. In addition, Bangladesh has established a tripartite social dialogue mechanism for the ready-made garments sector specifically. Each of these countries, at varying levels, also include bipartite social dialogue mechanisms, primarily at an enterprise-level.

This section attempts to provide an “inventory” of the main tripartite and bipartite social dialogue mechanisms that exist, or are provided for through relevant labour legislation and/or regulations, in South Asia. It does not, at this stage, attempt to analyse the effectiveness of these mechanisms. This is explored further in sections 2 and 3.

4 ILO, *National Tripartite Social Dialogue: An ILO Guide for Improved Governance*, December 2013.

2.1 Afghanistan

Since 1978, Afghanistan has been severely affected by war and persisting insecurity, and this has pervaded all aspects of life and work in the country. The UNDP's (United Nations Development Programme) Human Development Index 2019 ranks it at 170 of 189 countries and territories worldwide. The COVID-19 pandemic has worsened Afghanistan's economic prospects. The first COVID-19 case in Afghanistan was identified on 22 February 2020 in Herat city. Within a month, the virus had spread to Balkh, Samangan, Kandahar and Kabul provinces.

The decline in Afghanistan's GDP from global and regional economic effects may reach 17 per cent by 2023 compared to its level at the end of 2019. Even assuming that the security situation improves, the political impasse is solved, and the capacity to quickly implement required health and social protection responses exists, Afghanistan is not in a position to fund policies of reasonable size from domestic revenues.⁵ The Ministry of Labor and Social Affairs also estimates that approximately 2 million people will be unemployed due to the pandemic.⁶

Afghanistan ratified Convention No. 144 on 7 April 2010. The country is yet to ratify Convention No. 87 and Convention No. 98.

2.1.1 Tripartite social dialogue mechanisms

All Labour matters fall under the jurisdiction of Afghanistan's Ministry of Labor and Social Affairs (MoLSA). The social partners are represented as follows:

- ▶ Employers: Afghanistan Chamber of Commerce and Investment (ACCI)
- ▶ Workers: National Union of Afghanistan Workers and Employees (NUAWE) and the Afghan National Trade Unions (EMKA)

Afghanistan has established tripartite social dialogue to facilitate the implementation of the country's DWCP. The government has also established a Labor High Council as a national social dialogue mechanism. These mechanisms are described below.

2.1.1.1 DWCP National Steering Committee and DWCP Technical Working Group

The DWCP National Steering Committee and the DWCP Technical Working Group have both been established to support and oversee the implementation of the DWCP in Afghanistan. They are governed by a terms of reference, and while both mechanisms are accountable to the Minister of Labor and Social Affairs, neither has dedicated secretariat support. Meetings are convened by the Ministry of Labor and Social Affairs, and meetings of both mechanisms have been infrequent.

A recent accomplishment of the DWCP National Steering Committee has been the approval of Afghanistan's DWCP 2018–22. This resulted in the conclusion of an aligned memorandum of understanding by the MoLSA, ACCI, NUAWE/EMKA and the ILO Office for Afghanistan on 18 November 2018.

In 2020, the DWCP Technical Working Group endorsed a proposal to the United States Department of State for the expansion of the Road to Jobs Project to the Balkh province in 2020–22.

2.1.1.2 Labor High Council

Afghanistan has a number of "high councils" covering various issues. Provision was made for the establishment of a Labor High Council under Article 144 of the Afghanistan Labour Law, 2007.

5 UNDP (United Nations Development Programme), *Afghanistan COVID-19 Impact: Short term Disruptions and Policy Considerations*, April 2020.

6 Afghanistan, Ministry of Labor and Social Affairs, *Emergency Proceeding to Tackle the COVID-19 in Labor Market*, April 2020.

The Council was subsequently formally established through Government Gazette No. 1306 of 11 August 2018. Its purpose is to consider legislation, policy and issues affecting industrial relations. The Labor High Council is chaired by the Minister of Labor and Social Affairs and is accountable to the President of Afghanistan.

It comprises three government members, three employers' representatives and three workers' representatives. Employers' and workers' representatives are nominated by the ACCI and the NUAWE respectively. Other employers' and workers' organizations may attend as observers but without voting rights.

The Labor High Council is required to meet quarterly. However, meetings have been very infrequent, having met only three times since its establishment.

The Labor High Council's key accomplishment to date has been the endorsement of the revised Labor Law (2019) and National Labor Policy (2019) in December 2019.

2.1.2 Bipartite social dialogue mechanisms

Bipartite social dialogue is largely absent in Afghanistan. The relations between the government and the majority union, NUAWE, are also currently tense. The government has frozen the assets of the NUAWE, which includes 17 properties, and it would seem that the issue revolves around the ownership of these properties. The government, however, still includes NUAWE in its consultations.

2.2 Bangladesh

Bangladesh has experienced steady economic growth during the last two decades. Before the COVID-19 pandemic struck, economic growth was projected to be strong at about 7.5 per cent in 2020 after reaching 8.2 per cent in 2019. This growth has been mainly driven by the ready-made garment (RMG) sector. The projected economic growth rate has since been revised sharply downwards to about 2 per cent due to the pandemic.⁷

Under the Everything But Arms preferential tariff scheme, Bangladesh enjoys duty-free market access to the EU countries. The RMG sector accounted for over 83 per cent of the country's exports in 2018 and employed over 4 million (mostly women) workers. The COVID-19 pandemic has severely affected this sector, with \$3.18 billion worth of orders being cancelled at 1,150 factories from mid-March till 29 April 2020, affecting approximately 2.28 million workers.⁸ The industry is also a key contributor to other economic sectors, such as banking, insurance, real estate, packaging, hotels, recycling, consumer goods, utility services and logistics.⁹

Labour rights and industrial relations in Bangladesh are governed by the Bangladesh Labour Act, which was enacted on 11 October 2006. The Act consolidates 25 separate acts into one labour code. It regulates working hours, wages, trade unions and industrial relations across the country (comprising eight divisions and 64 districts, which have a limited role in policy-making).

The Bangladesh Labour Act, 2006, also governs maternity benefits, compensations for injury and accidents, occupational safety and health standards and the labour inspectorate, and prohibits child labour. It also establishes various tripartite social dialogue mechanisms, described in the next section, and procedures for industrial disputes including strikes and lockouts.

The Act was amended twice after the Rana Plaza tragedy. The first amendment was on 15 July 2013, with the associated Bangladesh Labour Rules being amended in 2015. The second

⁷ IMF Country Report No. 20/187, June 2020.

⁸ BRAC Institute of Governance and Development, *COVID-19 Crisis Implications for the RMG Sector: Trade Union Responses – A Rapid Study*, June 2020.

⁹ ADB (Asian Development Bank), *COVID-19 and the Ready-made Garments Industry in Bangladesh*, 2020.

amendment was gazetted on 14 November 2018. The Bangladesh Labour Rules have, however, not yet been amended following the 2018 amendments. The Bangladesh Labour Act is not fully applicable to factories operating inside EPZs. Industrial relations and labour rights in these areas fall under the jurisdiction of the Bangladesh EPZ Labour Act, 2019. The revised rules for these two acts are yet to be published.¹⁰

The country ratified Convention No. 144 on 17 April 1979; it ratified Convention No. 87 and Convention No. 98 on 22 June 1972.

2.2.1 Tripartite social dialogue mechanisms

Social dialogue in Bangladesh received added impetus after the issuing of a special paragraph by the CEACR in 2016. The paragraph emphasized the urgent need for improved industrial relations in Bangladesh's RMG sector. In addition, the Sustainability Compact, which the Government of Bangladesh signed with the European Union (EU) and the ILO in 2013, includes specific commitments from the government for improved industrial relations through social dialogue in the RMG sector.

Responsibility for industrial relations vests with the Ministry of Labour and Employment. This ministry comprises two departments: the Department of Labour and the Department of Inspection for Factories and Establishments. The latter department is primarily responsible for occupational health and safety and the reconciliation of individual disputes.

The Department of Labour has is responsible for maintaining harmonious labour relations. Its functions include addressing industrial disputes, union registrations, facilitating the establishment of participation committees and oversight of collective bargaining processes.

The social partners are organized as follows:

- ▶ **Employers:** Bangladesh Employers' Federation
- ▶ **Workers:** National Coordinating Committee for Workers' Education and the IndustriALL Bangladesh Council

Bangladesh has established a number of tripartite social dialogue mechanisms. After the Rana Plaza collapse on 24 April 2013, Bangladesh has also established tripartite mechanisms primarily focused on promoting and monitoring occupational health and safety.

Table 1. Tripartite social dialogue mechanisms in Bangladesh

Tripartite social dialogue mechanism	Total membership	Membership breakdown	Lead institution	Headed by
National Tripartite Consultative Council	60	20 members each from the government, workers' and employers' organization respectively	Ministry of Labour and Employment	Minister of Labour and Employment The Deputy Secretary (Labour) of the Ministry of Labour and Employment is the Member-Secretary.
Minimum Wage Board (MWB)	6	Chairperson (usually a retired judge), one independent member, two employers' representatives, and two workers' representatives	Ministry of Labour and Employment	District judge
Crisis Management Committee	10	Chairperson and three members each from the government, workers' organizations, and employers' organizations.	Ministry of Labour and Employment	Joint secretary

¹⁰ Centre for Policy and Dialogue, for the ILO Country Office in Bangladesh, *Review of the National Tripartite Plan of Action (NTPA)* (unpublished), July 2020.

Tripartite social dialogue mechanism	Total membership	Membership breakdown	Lead institution	Headed by
Social Compliance Forum for RMG sector (SCF)	31	15 members from government, four representatives each from workers' organizations, employers' organizations and international organizations	Ministry of Commerce	Minister of Commerce
Task Force on Labour Welfare in RMG sector	11	Chairperson, five members from the government, three from employers' organization, and two from workers' organizations	Ministry of Commerce	Secretary: Ministry of Labour and Employment
Task Force on Occupational Safety in RMG sector	14	Chairperson, seven members from the government, four members from employers' organizations, and two from workers' organizations	Housing and Public Works	Joint Secretary: Ministry of Works
National Tripartite Committee for Fire and Building Safety in the RMG sector	16	Chairperson, five members each from the government, workers' organizations, and employers' organizations	Ministry of Labour and Employment	Ministry of Labour and Employment
Rana Plaza Coordination Cell (RPCC)	12	Neutral chairperson (ILO), representatives from Ministry of Labour and Employment, Bangladesh Garment Manufacturers and Exporters Association, Bangladesh Employers' Federation, National Committee for Workers' Education, IndustriALL Bangladesh Council, Bangladesh Institute of Labour Studies, IndustriALL Global Union, and nominated brands	ILO	ILO
National Industrial Safety and Health Council	22	Chairperson and seven members each from the government, workers' organizations and employers' organizations	Ministry of Labour and Employment	Joint Secretary: Ministry of Labour and Employment
RMG Tripartite Consultative Council (RMG TCC)	20	Chairperson, six members each from the government, workers' organizations, and employers' organization	Labour and Employment	Minister of Labour and Employment The Deputy Secretary (Labour) of the Ministry of Labour and Employment is the Member-Secretary.

Sources: Bangladesh Institute of Labour Studies and Friedrich-Ebert-Stiftung (FES), *State of Bangladesh Garment Sector Tripartism and the Scope of Harmonious Industrial and Labour Relations*, December 2016; ILO Country Office for Bangladesh, May 2020.

Bangladesh's tripartite social dialogue mechanisms are outlined below.

More details with respect to selected tripartite social dialogue mechanisms are provided below.

2.2.1.1 National TCC

The national TCC was established in 1980. Its key functions are set out in the Bangladesh Gazette notice of 2 December 2015. This notice describes the functions of the national TCC as including:

- ▶ To assist and advise the government on the development of labour laws, regulations, policies and plans, considering recommendations submitted by employers, and workers, organizations

- ▶ Taking into consideration available resources and overall socio-economic conditions in the country, to advise the government on measures for the promotion and development of sound employer-labour relations

- ▶ To assist and advise the government, in consultation with employers, and workers, organizations, on matters presented to the Council for advice

- ▶ To brief the government on the labour situation in the country

- ▶ To review all activities with respect to child labour and to advise the government accordingly

- ▶ To advise the government on measures to enhance production through the optimal use of available resources

- ▶ To review compliance with international labour standards

The frequency of meetings for the council is not defined in the notice, and secretariat support is provided by the Ministry of Labour and Employment. The most recent policy-level activity of this mechanism was its involvement in the Bangladesh Labour Act amendment process in 2018.

2.2.1.2 Ready-made Garment Tripartite Consultative Council

The RMG TCC was established through a government notice dated 6 March 2017. This notice outlines the key functions of the mechanism as including the following:

- ▶ Taking into consideration the available resources and overall socio-economic conditions of the country, to advise the government on initiating measures to improve relations between employers and workers towards enhancing productivity in the garment sector

- ▶ To advise the government upon reviewing the overall situation of the garment industry

- ▶ To assist and advise government on matters pertaining to the garment industry, including related laws, regulations, policies and plans

- ▶ To advise and assist the government, in consultation with employers and workers in the RMG sector, on matters presented to the Council for advice

- ▶ To advise the government on measures to enhance productivity in the RMG sector through the optimal use of available resources

The RMG TCC is required to have at least three meetings each year, and secretariat support is provided by the Ministry of Labour and Employment. The amendments to the Bangladesh Labour Act in 2019 now provides for the establishment of similar tripartite consultative councils for other sectors of the economy.

2.2.1.3 National Council for Industrial Health and Safety

The Government, by notification in the official Gazette, constituted the National Council for Industrial Health and Safety in 2013 to undertake the following functions:

- ▶ Prepare national policy to ensure safety in industrial establishments, and to maintain healthy, neat and clean conditions in these establishments

- ▶ Develop guidelines for the implementation of its policies

- ▶ Promote the implementation of the policies prepared by the Council, following the guidelines framed by it

The Inspector General of the Department of Inspection for Factories and Establishments provides secretarial support.

2.2.1.4 Minimum Wage Board

The MWB was established according to the terms of section 138 of the Bangladesh Labour Act 2006. It is mandated to make recommendations to the government on minimum wages for the various sectors of the economy on a five-yearly basis.

The MWB is required to consider a range of issues in the process of recommending minimum wages, including the cost of living, cost of production, production capacity, inflation, and prevailing national socio-economic conditions amongst others.

The MWB follows three prescribed steps before submitting recommendations to the government. These are:

- ▶ Step 1: In consultation with its members, the Board prepares draft recommendations to fix or revise sectoral minimum wages.
- ▶ Step 2: The Board circulates its recommendations, through a gazette notification, as a basis for receiving public comments.
- ▶ Step 3: The Board reviews the comments received and submits revised recommendations to the government for a final decision within a period of six months from the commencement of its work.

A permanent MWB office provides support to the Board.

2.2.1.5 National Wages and Productivity Commission

The Bangladesh Government constituted the tripartite National Wages and Productivity Commission under the State-Owned Manufacturing Industries Workers (Terms and Conditions of Service) Ordinance, 1985. The Commission is tasked with making recommendations on the wage structure, remuneration and other benefits for public-sector workers, including those working in state-owned enterprises.¹¹ These commissions are normally set up by the government on an ad hoc basis. Secretariat support is provided by the Ministry of Labour and Employment.

2.2.1.6 Labour courts

Labour courts have been established in accordance with the terms of section 214 of the Bangladesh Labour Act, 2006. Currently, three out of the seven labour courts are based in Dhaka, two in Chittagong and one each in Rajshahi and Khulna. Each labour court consists of a chairperson, a workers' representative and an employers' representative. These representatives are selected from a panel of six workers' representatives and six employers' representatives.

The primary purpose of the labour courts is to adjudicate collective (rights and interests) and individual disputes.

2.2.2 Bipartite social dialogue mechanisms

The key bipartite social dialogue mechanisms in Bangladesh function primarily at the enterprise level. They comprise the following:

¹¹ ILO, *Current Status and Evolution of Industrial Relations System in Bangladesh*, 2009.

2.2.2.1 Collective bargaining

Collective bargaining in Bangladesh takes place solely at the enterprise level. Section 202 of the Bangladesh Labour Act, 2016, provides for the election of collective bargaining agents. This agent is responsible for representing workers in an enterprise, or in a group of enterprises, in the collective bargaining process.

In enterprises that have only one registered union whose membership is equal to one third of the total workforce, that union is legally authorized to function as the collective bargaining agent. In such instances, an election would not be required. However, in enterprises with more than one registered union, a collective bargaining agent is elected from among the unions on the basis of a secret ballot.

Collective bargaining is, however, practised to a limited extent in Bangladesh. A 2019 report of the C&A Foundation estimates that only 51 collective bargaining agreements have been concluded in the RMG sector since 2013.¹²

In addition, the Bangladesh Labour Act, 2016, prescribes that the formation of a union in an enterprise requires the support, through a vote, of at least 30 per cent of workers in the enterprise. The Bangladesh Labour Act does not extend to workers in EPZs. This falls under the ambit of the ELA.

The ELA was adopted in 2019 and includes revisions to the draft EPZ Labour Act, 2016 and 2017, to improve freedom of association for workers in these zones. A previous requirement that a minimum of 30 per cent of the workers consent to form a WWA has now been lowered to 20 per cent. The WWAs are intended to function as unions and bargain on behalf of their members. Government data indicates that, during the last five years, various WWAs had submitted 521 charters of demands, all of which have been successfully negotiated, and collective bargaining agreements or memorandums of understanding have been signed.¹³ The required level of consent from workers to call strikes and lockouts has also been lowered, with workers now being able to call such protest events with the consent of two thirds of the workers instead of three fourths.¹⁴

The WWAs are also mandated to undertake functions that are aligned with workplace cooperation, including promoting mutual trust, understanding and cooperation between employers and workers, and reducing wastage of materials/inputs.

The CEACR, in 2019, made recommendations to further enhance freedom of association and collective bargaining in Bangladesh. These recommendation included that:¹⁵

- ▶ The government should continue to train and sensitize the police and other state agents about human and trade union rights with the aim of avoiding the use of excessive force and ensuring full respect for civil liberties during public assemblies and demonstrations. They should also investigate instances of violence and repression properly.
- ▶ The trade union registration process should be made more user-friendly and accessible to all workers. Training should also be provided, where necessary, to workers on submitting complete and duly documented applications. Comprehensive training should also be provided to divisional and regional officers who, following the decentralization of the registration process, are responsible for the registration of trade unions in order to ensure that they have sufficient knowledge and capacities to handle registration applications rapidly and efficiently.

12 C&A Foundation, *Key Lessons on Collective Bargaining in Bangladesh's Apparel Sector*, April 2019.

13 ILO, "Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Bangladesh (Ratification: 1972)".

14 Danish Trade Union Development Agency (Analytical Unit), *Labour Market Profile Bangladesh – 2020, 2020*.

15 ILO, "Observation (CEACR) - adopted 2019, published 109th ILC session (2021): Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Bangladesh (Ratification: 1972)".

In addition, both the online union registration system and the publicly available database should be made fully operational to ensure total transparency of the registration process.

- ▶ The Bangladesh Labour Rules, 2015, should be amended to facilitate trade union registration; the minimum trade union membership requirements should be further reduced, at least for large enterprises and trade unions in a group of establishments; section 179(5) of the Bangladesh Labour Act, 2015, should be amended; and section 190(f) should be repealed as the latter currently allows for the cancellation of a trade union if membership falls below the minimum membership requirement.
- ▶ The minimum membership requirements to form a WWA, especially in large establishments as well as federations, should be further reduced. The WWAs and federations should be allowed to associate with other entities in the same zone and outside the zone in which they were established, including with non-EPZ workers' organizations at different levels. In addition, the ELA's compliance with Convention No. 87 should be further improved through the repeal or substantial amendment of various provisions.
- ▶ The amount of the fine that can be imposed for acts of anti-union discrimination should be increased.
- ▶ Sections 202 and 203 of the Bangladesh Labour Act should be revised to clearly provide a legal basis for collective bargaining at the industry, sector and national levels.¹⁶

2.2.2.2 Participation committees

Section 205 of the Bangladesh Labour Act, 2006 (amended in 2019) makes provision for the establishment of participation committees in non-unionized enterprises employing 50 and more workers. These participation committees are primarily workplace cooperation mechanisms. Their prescribed functions are to:

- ▶ Endeavour to promote mutual trust and faith, understanding and cooperation between employers and workers
- ▶ Ensure the application of labour laws
- ▶ Foster a sense of discipline, and to improve and maintain safety, occupational health and working conditions
- ▶ Encourage vocational training, workers' education and family-welfare training.
- ▶ Adopt measures for the improvement of welfare services for the workers and their families
- ▶ Fulfil production targets, increase productivity, reduce production costs, prevent wastage and improve the quality of products

As a result of a 2019 amendment to the Bangladesh Labour Act, unionized enterprises are no longer required to establish a participation committee.

2.2.2.3 Safety committees

Section 90A of the Bangladesh Labour Act, 2006 (amended in 2019) provides for the establishment of safety committees at the enterprise level. These safety committees are required to:

¹⁶ ILO, "Right to Organise and Collective Bargaining Convention, 1949 (No. 98) – Bangladesh (Ratification: 1972)".

- ▶ Assist in the implementation of occupational health and safety laws and regulations
- ▶ Identify occupational safety and health risks according to the recommended checklist and recommend remediation measures to the employer and the labour inspector
- ▶ Meet/communicate with the participation committee in order to enable the committee to fulfil its role of improving and maintaining occupational health and safety standards in the factory
- ▶ Organize occupational health and safety training for workers
- ▶ Form firefighting and emergency rescue teams and organize evacuation drills
- ▶ Make recommendations on compensation for workplace accidents
- ▶ Organize initiatives for Safe Workplace Day
- ▶ Implement National Industry Health and Safety Council policies

2.3 India

India has witnessed rapid economic growth in the last two decades and has emerged as one of the fastest-growing middle-income countries in recent years. The country is striving to further enhance its economic growth rate in order to achieve its goal of being a prosperous and inclusive economy. A number of efforts are being undertaken in a multifaceted environment, which is, amongst other things, characterized by:¹⁷

- ▶ The size, complexity and diversity of the country, with 29 states and seven union territories
- ▶ Very high levels of informality, with the majority of workers lacking access to formal employment or social security benefits
- ▶ A rapidly changing world of work globally, resulting in workers leaving agriculture and taking up jobs, often as migrant workers, in growing sectors such as construction in urban areas around the country
- ▶ A low and declining women's labour force participation rate

The COVID-19 pandemic has had a severe impact on the Indian economy and society. The growth rate projections for the Indian economy for 2020/21 have been lowered to negative territory for the first time in 40 years, and the country's industrial output declined by 16.7 per cent in March 2020. Unemployment has been progressively growing since January 2020 when the first cases of coronavirus was detected. Close to 122 million Indians, mainly informal workers, lost their jobs in April 2020 alone. Of these, 91.3 million were small traders and labourers. A significant number of salaried workers (17.8 million) and self-employed people (18.2 million) also lost work. In 2018, India received the highest amount remittances globally (\$79 billion). India is expected to see a 23 per cent dip in inflows in 2020.¹⁸

The Government of India instituted nationwide lockdowns as a key element of its response to limit the spread of COVID-19 infections. This led to a temporary closure of factories and, despite government appeals, lay-offs began, particularly among low-wage workers. Over 90 per cent of the total workforce (around 419 million workers) working in the informal sector, without any

17 Gerry Rodgers, "India, the ILO and the Quest for Social Justice since 1919", *Economic & Political Weekly*, March 2011; VV Giri National Labour Institute, *Report of the National Tripartite Social Dialogue Workshop*, December 2019.

18 UN in India, *COVID-19: Immediate Socio-Economic Response*, 27 May 2020.

social protection, are deeply affected. Formal, permanent jobs were not spared either. Large companies across various sectors (such as media, aviation, retail, hospitality, automobiles) have announced massive lay-offs. Equally affected are the 75 million micro, small and medium enterprises (MSMEs) that contribute more than 30 per cent to the Indian GDP and employ close to one third of the total labour force.¹⁹

India ratified Convention No. 144 on 27 February 1978. Neither Convention Nos 87 or 98 have yet been ratified.

2.3.1 Tripartite social dialogue mechanisms

As a founding member of the ILO, India has a long history of social dialogue dating back to its colonial era. It became a permanent member of the ILO's Governing Body in 1922. The first ILO branch office in Asia was opened in New Delhi in 1928. Labour is on the Concurrent List, in terms of the country's constitution, and states have, therefore, developed their own labour legislation and institutions to oversee implementation.

Tripartite social dialogue structures established at state levels include those focused on minimum wage setting, regulating the employment of contract labour, and the formulation of social security schemes for unorganized workers amongst others. These tripartite social dialogue structures have been established through various acts, including the Minimum Wages Act of 1948, Contract Labour (Regulation and Abolition) Act of 1970, Unorganized Workers' Social Security Act of 2008, and the Building and Other Construction Workers' Act of 1996.

Important tripartite social dialogue mechanisms at the central level, as well as in selected states in which the ILO has undertaken activities to capacitate tripartite social dialogue mechanisms, are described below.

At a central level, important tripartite social dialogue mechanisms include the following.

2.3.1.1 Indian Labour Conference and Standing Labour Committee

The ILC is India's apex-level tripartite consultative mechanism. The first meeting of the ILC (then called the Tripartite National Labour Conference) was held in 1942. The ILC is convened by the Ministry of Labour & Employment and is chaired by India's prime minister. The key purpose of the ILC is to advise the government on labour matters, and the agenda of the ILC is finalized by a tripartite Standing Labour Committee. All 12 central trade unions, central employers' organizations, state governments, union territories and relevant central ministries/departments participate in the ILC.

Employers' and workers' organizations are allocated an equal number of seats. As recommended by the National Labour Conference held in September 1982, only trade unions with more than 500,000 members, spread over four states and four industries, are given representation in the ILC.

The central trade unions represented in the ILC are:²⁰

- ▶ Bharatiya Mazdoor Sangh
- ▶ Indian National Trade Union Congress
- ▶ All India Trade Union Congress
- ▶ Hind Mazdoor Sabha

¹⁹ UN in India, *COVID-19: Immediate Socio-Economic Response*, 27 May 2020.

²⁰ India, Ministry of Labour & Employment, "47th Session of Indian Labour Conference (25–27 February 2018): Composition".

- ▶ Centre of Indian Trade Unions

- ▶ All India United Trade Union Centre

- ▶ Trade Union Coordination Centre

- ▶ Self Employed Women's Association

- ▶ All India Central Council of Trade Union

- ▶ Labour Progressive Federation

- ▶ United Trades Union Congress

- ▶ National Front of Indian Trade Unions

The employers' organizations represented in the ILC include:

- ▶ Council of Indian Employers (a combination of the Standing Conference of Public Enterprises, Employers' Federation of India, and All India Organisation of Employers)

- ▶ All India Manufacturers' Organization

- ▶ Laghu Udyog Bharati

- ▶ Confederation of Indian Industry

- ▶ Federation of Indian Chambers of Commerce & Industry

- ▶ The Associated Chambers of Commerce of India

The government seats are determined keeping adequate representation from various central ministries, state governments and union territories in mind.

The ILC is intended to be convened annually, and the last ILC was held in 2015.

The Standing Labour Committee is a tripartite mechanism that meets before an ILC, and its purpose includes developing the broad principles to guide an ILC and agreeing on its agenda. The 48th session of the Standing Labour Committee was held in New Delhi on 11 May 2017. This session was not, however, followed by an ILC.

2.3.1.2 Wage boards

In 1931, the Royal Commission on Labour recommended the establishment of wage boards for the determination of wages. The Bombay Industrial Relations (Amendment) Act of 1948 is one of the earliest pieces of legislation in India which includes a provision for the establishment of wage boards in industries covered by the Act.

The principal purpose of establishing wage boards was to relieve industrial courts and labour courts of a part of their adjudication work. In March 1957, the first wage board was constituted for the cotton textile industry. Subsequently, wage boards were also constituted for a range of other sectors including sugar, cement, tea, coffee, rubber plantations, and iron and steel.

A wage board comprises a chairperson (normally a retired or serving judge), an equal number of representatives of employers and employees (usually two members each), and two other independent members (an economist and a consumer's representative) nominated by the board. The members representing the workers and employers are appointed by the government on the recommendations of their respective most representative organizations. The role of independent members on the board is largely to address and prevent deadlocks by providing representatives of employers and unions advice.

The unanimous recommendations of the board are submitted to the government, and the average time taken by wage boards to finalize their deliberations varies from three years to five years. The government normally accepts unanimous agreements, but it may choose to modify any provision of the recommendation. Once finalized, the outcome is to be complied with by all parties.

Apart from the wage boards for journalists and news-agency workers, all other wage boards are non-statutory in nature. Therefore, recommendations made by these wage boards are not enforceable by law.

2.3.1.3 Industrial tripartite committees

The central government in India has constituted non-statutory ITCs for various sectors. The decision to constitute these committees was an outcome of the ILC of 1944, and they have been established to discuss industrial relations issues specific to their respective areas of focus, and to advise the government on measures to improve industrial relations in each of these sectors. ITCs are standing committees under the Ministry of Labour & Employment.

The following ITCs have been constituted:

- ▶ Industrial Tripartite Committee on Plantation Industry

- ▶ Industrial Tripartite Committee on Road Transport Industry

- ▶ Industrial Tripartite Committee on Cotton Textile Industry

- ▶ Industrial Tripartite Committee on Jute Industry

- ▶ Industrial Tripartite Committee on Electricity Generation & Distribution Industry

- ▶ Industrial Tripartite Committee on Engineering Industry

- ▶ Industrial Tripartite Committee for Sales Promotion Employees

However, meetings of these structures have not been convened for a number of years.

2.3.1.4 Central Board of Trustees of the Employees' Provident Fund

The Central Board of Trustees of the Employees' Provident Fund is a statutory body constituted by the Indian central government under the provisions of section 5A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act 19 of 1952). The tenure of the Board is five years. The composition of the Board, as per section 5A of the Act is as follows:²¹ chairperson, vice-chairperson, Central Provident Fund Commissioner (ex officio), five central government representatives, 15 state government representatives, 10 employers' representatives, and 10 workers' representatives.

The functions of the Board of Trustees include:

- ▶ Administration of the fund

- ▶ Delegation of administrative and financial powers as deemed necessary for efficient administration of the schemes

- ▶ Appointment of officers and staff

- ▶ Maintenance of accounts

²¹ India, Ministry of Labour & Employment, Employees' Provident Fund Organisation, "Functions – Central Board of Trustees".

- ▶ Submission of audited accounts and annual reports on performance of the EPF to the government

The Board is active and meets as required.

2.3.1.5 *Standing Committee of the Employees' State Insurance Scheme*

The Employees' State Insurance Scheme (ESIC) is a social security system tailored to provide socio-economic protection to workers, and their dependants, covered under the scheme. The scheme provides full medical care and various cash benefits, including sickness and temporary or permanent disablement resulting in loss of earning capacity, maternity leave, and monthly payments to dependents of insured workers who die in industrial accidents.²² It is a statutory body of the central government's Ministry of Labour & Employment.

The Standing Committee is a statutory executive organ of ESIC. The members are drawn from the staff of ESIC, three members each from the central and state governments, three members representing employers, three members representing workers, one member representing parliament, and one member from the medical profession. The Secretary of the Ministry of Labour & Employment is the Chairperson of the Standing Committee. The Director General of ESIC is also an ex-officio member of the Standing Committee. The Standing Committee is vested with powers to administer the affairs of ESIC,²³ and it is an active structure that meets regularly.

2.3.1.6 *Welfare boards*

India has established welfare funds for unorganized workers in various sectors. This has been through legislation including the Beedi Workers' Welfare Fund Act, 1976, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the Cine-Workers' Welfare Fund Act, 1981,²⁴ amongst others. These welfare funds are financed by a welfare cess as per the respective cess/fund acts. The major welfare schemes of all these funds provide for health, housing, maternity benefits and education benefits.

Various tripartite welfare boards have also been established to support the administration of these welfare funds. For example, the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, makes specific provisions for the establishment of a Building and Other Construction Workers, Welfare Board at the state level. According to the terms of section 18(3) of this Act, the composition of these boards is as follows:

- ▶ A chairperson
- ▶ A member nominated by the central government
- ▶ A maximum of 15 members appointed by the state government
- ▶ A maximum of 15 members representing employers and building workers respectively

The Act stipulates that at least one board member must be a woman.

22 India, Ministry of Labour & Employment, "Employees State Insurance Scheme (ESIC)".

23 India, Ministry of Labour & Employment, Employees State Insurance Corporation, "Standing Committee".

24 In terms of section 2 of the Cine-Workers' Welfare Fund Act No. 33 of 1981, a "cine worker" refers to individuals employed directly or through any contractor in connection with the production of not less than five feature films, to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise.

Section 22 of the Act provides for the board to undertake the following functions:

- ▶ Provide immediate assistance to a beneficiary in case of accidents
- ▶ Make pension payments to beneficiaries who have reached the age of 60 years
- ▶ Sanction loans and advances to a beneficiary for the construction of a house not exceeding a specified amount
- ▶ Pay premiums towards a group insurance scheme for beneficiaries
- ▶ Provide financial assistance for the education of children of beneficiaries.
- ▶ Provide for the medical expenses for treatment of major ailments suffered by beneficiary and/or dependants as may be prescribed
- ▶ Make payments of maternity benefits to women beneficiaries
- ▶ Implement improvements to welfare measures and facilities as may be prescribed

These functions also generally reflect the functions of other welfare boards. Given that labour is included in the Concurrent List of the Constitution of India, states in India have also established tripartite social dialogue mechanisms. Based on recent initiatives of the ILO, key tripartite social dialogue mechanisms in three states, Tamil Nadu, Kerala and Maharashtra, are described below.

2.3.1.7 Tamil Nadu's State Labour Advisory Council

The SLAB is a non-statutory state-level tripartite body. It was established for consultation on all labour policy matters, and more broadly, strategic challenges affecting labour in Tamil Nadu. As a result, amendments to existing labour laws as well as any new labour legislation is expected to be referred to the SLAB for consultation.

The SLAB comprises five representatives from the government, six employers' representatives, six workers' representatives, and four members of the State Legislative Assembly. It is chaired by the Minister of Labour. The membership of the SLAB is expected to be reconstituted every three years. It was most recently reconstituted in 2019 following intervention from the ILO.

The SLAB is required to meet at least once a year. This has, however, not been the practice, with the structure having met infrequently, and in some years (1999, 2001–06, 2016, 2017, 2018), they have not met at all. When it has met, it has addressed a range of important industrial relations issues. Table 2 lists these issues.

Table 2. SLAB accomplishments

Year	Accomplishments
2007	<ul style="list-style-type: none"> • Amendment of section 5(3) of the Maternity Benefit Act, 1961, to increase maternity leave from 12 weeks to 26 weeks • Amendment of section 8 of the Maternity Benefit Act, 1961, to increase the medical bonus of women employees from 250 Indian rupees to 1,000 rupees • Process to constitute a labour court at Hosur was agreed for further action by the Chennai High Court • Amendment of the Industrial Disputes Act, 1947, to grant powers of civil courts to labour courts • Facilitated the establishment of labour offices (social security services) in all district headquarters
2009	<ul style="list-style-type: none"> • Amendment of section 2A of the Industrial Disputes Act, 1947, allowing workers to make direct applications to the labour court after 45 days of having made an application to a conciliation officer • Extension of the application of the Tamil Nadu Non-Resident Tamils' Welfare Act, 2011, to unorganized workers in the construction sector
2010	<ul style="list-style-type: none"> • Amendment to section 2(2) of the Tamil Nadu Catering Establishment Act, 1958, to prohibit the employment of children under the age of 14 and the employment of children aged 14–17 years in hazardous occupations

Year	Accomplishments
2013	<ul style="list-style-type: none"> • Amendment to section 2(a)(i) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, to increase the wages of supervisors from 3,500 rupees to 15,000 rupees • Registration of inter-state migrants by welfare boards and the extension of all applicable benefits by the boards • Development of procedures for the registration of workers by the welfare boards and increase of cess tax (collected for welfare payments to workers) from 0.3 per cent to 1 per cent

Source: Tamil Nadu Department of Labour and Employment, 2018.

The SLAB, which has also played a positive role in promoting better labour relations in Tamil Nadu, is also intended to facilitate the addressing of key labour disputes which, if left unaddressed, could disrupt the economy of Tamil Nadu. It, therefore, has a fundamental role to play in promoting industrial peace.

2.3.1.8 Kerala's industrial relations committees

Kerala's formation of tripartite IRCs dates back to 1940, with the establishment of the IRC for the coir sector. Since then, various other IRCs have been established for different sectors of the state economy in Kerala. These sectors are:

- ▶ Cashew nuts
- ▶ Textiles
- ▶ Plantations (called the Plantation Labour Committee, which deals with the cultivation and processing of tea, coffee, rubber and cardamom)
- ▶ Kuttanad agricultural sector (focusing on paddy employers and workers)
- ▶ Coir
- ▶ Newspapers (including print and electronic media)
- ▶ Toddy
- ▶ Private hospitals
- ▶ Supply corps (for workers in public corporations responsible for food distribution)
- ▶ Automobile transport

The IRCs are intended to promote industrial peace in sectors which are large employers, and which may also be prone to industrial unrest. The IRCs comprise an equal number of members representing workers and employers, currently ten from each side. Nominations are obtained through the regional offices of the Department of Labour. The Minister of Labour appoints members to the IRCs, and the government has seven representatives. The Minister of Agriculture, Minister of Industry, and the respective secretaries of these departments, along with the labour department, law department and finance department, are also members of the IRCs.

Some IRCs include representation from the Department of Tax. Meetings are chaired by the Labour Commissioner or the Additional Labour Commissioner (Industrial Relations). The IRC for cashews is chaired by the Minister for Cashews and Fisheries. Most IRCs meet on a bi-monthly basis.

Members appointed to these committees are selected based on their knowledge of their respective sectors, including of labour matters. The IRCs are constituted every three years, giving representation to the most representative national trade unions and employers' organizations.

The purpose of the IRCs is to determine the terms and conditions of employment (in particular of wages and working conditions) in the sectors and industries in their respective purviews. For example, the IRC for the Kuttanad region accounts for the seasonal nature of work and the yield of field crops while determining minimum wages for this region.

The committees meet to discuss and arrive at agreements on wage revisions, bonuses and working conditions for their constituents, which are dispersed across various geographical areas of Kerala. The decisions reached by the IRCs are not statutorily enforceable as the IRCs are not statutory structures. However, once decisions are reached through a process of discussions in the IRCs, they are generally considered to be binding on the participating parties, and are, therefore, consequently implemented by the state government. Implementation of the decisions of the Plantation Labour Committee is regarded as mandatory. This is due to the large numbers of workers who are employed in the plantations sector, which leads to the need to maintain industrial peace in this sector.

The IRCs have played a critical role in facilitating dialogue between the social partners to avoid labour unrest. They also appear to have contributed to increased coordination between trade unions on wage and other demands. This happened even though the unions were affiliated to different political parties. The IRCs became forums for synchronized bargaining, voluntary negotiations and pre-emptive settlement of disputes in Kerala.

2.3.1.9 Maharashtra's industrial relations committees

Mathadi is a Marathi term meaning carrying a load of material either on the head (*matha*) or on the back (*mathadi/hamal*) to stack at an appropriate place. These operations include loading, unloading, stacking, carrying, weighing, measuring, or other work, including work that is preparatory or incidental to such operations.

The “other manual workers” referred to in the Maharashtra Mathadi, Hamal, and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, are those workers doing incidental or preparatory work for loading and unloading activities. There are many thousands of mathadi, hamal and other manual workers engaged in various markets, shops and factories in loading and unloading operations. Mathadi workers are men, but women are employed in the “other manual workers” category, undertaking tasks such as cleaning, packing and preparation and processing of dried foods.

The activities of the Mathadi boards primarily include regulating the terms of employment and providing social security for the workers covered by the Maharashtra Mathadi, Hamal, and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Their activities include:

- ▶ Registration of employers and workers (existing and new) falling under the Act
- ▶ Ensuring the allocation of workers to employers through allotment letters
- ▶ Collection of levies from employers
- ▶ Payment of wages through the levies collected
- ▶ Fixing of wages and other working conditions
- ▶ Establishment and management of welfare, provident and gratuity funds
- ▶ Payment of gratuities to workers
- ▶ Determination and payment of other benefits such as bonuses, paid holidays and paid leave

There are 34 boards, and they are constituted by product, for example, grocery, fruit, vegetables, dried foods, timber, cotton, iron. Each board comprises a chairperson (who is a Deputy or Assistant Commissioner of labour), and equal representation of employers' organizations and trade unions. The Act makes provision for a "one-man board", where a Deputy or Assistant Commissioner of Labour is the sole representative of the board, with the responsibility of making all decisions in consultation with the social partners. This type of "one-man board" is, however, intended to be an interim measure, until a full tripartite board has been constituted. In most cases in Maharashtra, the majority of boards still function as one-man boards rather than as the tripartite mechanisms envisaged in the Act.

Each board usually comprises a staff complement comprising:

- ▶ The Enforcement Department (including a labour inspector directly appointed by the board)
- ▶ The Administrative Department
- ▶ The Accounts Department

Each board charges a levy to the employer to provide various social security benefits to mathadi workers. The minimum levy is fixed at 30 per cent of payroll. A board may also fix a levy of up to 50 per cent of payroll. The levy is generally used to pay the following:

- ▶ **Bonus/ex gratia, paid holidays, leave with pay, house rent allowances:** Bonuses are payable once a year at the time of the festivals of Diwali or Dusshera (important Hindu festivals).
- ▶ **Provident fund:** An advance is payable to registered workers (from that worker's superannuation to the relevant provident fund account) for the purposes of housing, children's education, medical treatment, or daughter's marriage as per the rules of the provident fund and as approved by the state government.
- ▶ **Gratuity:** This is paid at the end of the employment of a worker due to resignation, termination or death.
- ▶ **Compensation amount:** This is paid in the event of injury, disablement or death. In the event of death, this amount is paid to the legal heirs of the deceased worker.
- ▶ **Administration costs of each Mathadi board:** The board runs its administration out of the portion of the levy earmarked for administration. This is used to cover administrative costs such as staff salaries, rent, rates, taxes, printing and stationery. This, however, does not include the salary payments of the government officials who chair the boards. These officials are paid by the relevant state governments.

2.3.2 Bipartite social dialogue mechanisms

India has made provisions for bipartite social dialogue at an enterprise level. This includes through the establishment of mechanisms collective bargaining and workplace cooperation respectively.

2.3.2.1 Collective bargaining

In India, the first collective bargaining agreement was concluded in 1920 in Ahmedabad's textile industry. Collective bargaining typically takes place at three levels:²⁵

25 Nishith Desai, *India: Trade Unions and Collective Bargaining*, November 2019.

- ▶ National-level industry bargaining is common in core industries such as banks, coal, steel, ports and docks, and oil, where the central government plays a major role as the employer. In these industries, central trade unions do not typically provide any guidelines on a charter of demands. Instead, the government and trade unions set up a “coordination committee” to engage in collective bargaining proceedings.
- ▶ Industry-cum regional bargaining is peculiar to industries where the private sector dominates, such as cotton, jute, textiles, engineering, tea plantation, and ports and docks. Bargaining generally occurs in two steps. First, company-wide agreements are formed, which are, second, then supplemented with regional (i.e. plant-level) agreements. Basic wage rates and other benefits are usually decided at the company level, while certain allowances, incentives and so on, are decided at the regional or plant level, taking into account the particular circumstances and needs of affected workers.
- ▶ In enterprise or plant-level bargaining practices, a bargaining council (or negotiating committee) is typically constituted by proportional representation of many unions in an establishment. Management negotiates with one bargaining agent if multiple unions at the company are able to form such a single entity. If not, the management will then be required to negotiate individually with each registered union.

A collective bargaining process generally starts with a charter of demand submitted by a union, and the different unions in an enterprise may each submit their own charters. Negotiations are then undertaken on the basis of the charter(s) towards concluding an agreement. In India, collective bargaining outcomes are divided into three classes:

- ▶ Bipartite (or voluntary) agreements are concluded through voluntary negotiations between the employers and trade unions.
- ▶ Settlements are tripartite in nature as they involve the employer, trade union and conciliation officer. They arise from a specific dispute, which is then referred to an officer for reconciliation. If during the reconciliation process, the officer feels that the parties’ positions have been reconciled and that an agreement is possible, she/he may withdraw from the process. If the parties finalize an agreement after the officer’s withdrawal, then the agreement is reported back to the officer within a specified time and the matter is settled. However, it should be noted that this form of settlement is narrower than bipartite agreements as they must relate to the specific issues referred for conciliation to the conciliation officer.
- ▶ Consent awards are agreements that are reached while a dispute is pending before a compulsory adjudicatory authority, and they are incorporated into the authority’s award. Even though the agreement is reached voluntarily, it becomes part of the binding award pronounced by the authority constituted for the purpose.

An Industrial Relations Code, 2019, has been developed by the Indian government to replace the existing Trade Union Act, 1926, Industrial Employment (Standing Orders) Act, 1946, and the Industrial Disputes Act, 1947. It was introduced in the Indian parliament on 28 November 2019 and was passed on 22 September 2020.

The Industrial Relations Code, 2020, provides for the recognition of trade unions as bargaining agents (Chapter three, section 14).²⁶ According to this Code, when only one union is functioning in an industrial establishment, it shall be recognized by the employer as the sole negotiating unit for workers. If more than one trade union is functioning in an establishment, the trade union with at least 51 per cent of the workers as its members shall be granted recognition.

²⁶ There is currently no central law in India providing for the recognition of trade unions.

If no trade union in the establishment has a membership of 51 per cent of the workers,²⁷ the employer shall constitute a negotiating council of the representatives of the trade unions that have a membership of at least 20 per cent of the workers in the establishment. The mode of verification of the membership is yet to be prescribed. The validity of such recognition is for a period of three years.

2.3.2.2 Works committees

The beginnings of bipartite works committees can be traced back to 1920 when the Government of India constituted joint committees in government printing presses.

The Industrial Relations Code, 2020, under Chapter 2 (section 3), provides for the establishment of a works committee in enterprises employing 100 or more workers by general or special order by the appropriate government. The Code requires that the number of representatives of workers should not be less than those of the employer. If a registered trade union is present, then the workers' representatives are nominated by that trade union. The functions that the Industrial Relations Code, 2020, prescribes for the works committees are to promote and maintain harmonious labour relations at a workplace level.

In order to provide clarity regarding the functions of a works committee, the 17th ILC held in July 1959 compiled a list of issues that a works committee may or may not address.²⁸ The list of issues that a works committee may not deal with are:

- ▶ Wages and allowances

- ▶ Bonus and profit-sharing schemes

- ▶ Rationalization and matters connected with the fixation of workloads

- ▶ Matters connected with the fixation of the standard labour force

- ▶ Programmes of planning and development

- ▶ Matters connected with retrenchment and lay-offs

- ▶ Victimization for trade union activities

- ▶ Provident fund, gratuity schemes and other retiring benefits

- ▶ Quantum of leave, and national and festival holidays

- ▶ Incentive schemes used to enhance worker productivity

- ▶ Housing and transport services

A works committee may address the following:

- ▶ Conditions of work, such as ventilation, lighting, temperature and sanitation, including latrines and urinals

- ▶ Amenities such as drinking water, canteens, dining rooms, crèches, rest rooms, medical and health services

- ▶ Safety, and accident prevention, occupational diseases and protective equipment

²⁷ Unions have raised concerns that the requirement of the support of 75 per cent of the workers for recognition as a sole negotiating agent is too high.

²⁸ National Labour Commission Report, 2001.

- ▶ Adjustment of festival and national holidays

- ▶ Administration of welfare and funds

- ▶ Educational and recreational activities, such as libraries, reading rooms, cinema shows, sports, games, picnic parties, community welfare, and celebrations

- ▶ Promotion of thrift and savings

- ▶ Implementation and review of decisions reached at meetings of works committees

As an example of workplace cooperation, in 1997, following consultation with unions, the Tata Iron and Steel Company in Jamshedpur established a three-tier machinery for consultation comprising:

- ▶ Joint departmental councils

- ▶ Joint works councils

- ▶ A joint consultative council of management

The joint departmental councils operate at the level of every department or as a combination of two or more departments. The joint works council is for the entire company, and it coordinates the activities of the departmental councils. The Joint Consultative Council of Management is at the apex, and it is entrusted with the task of advising the management on all matters concerning production and workers' welfare. The functioning of the joint councils is reviewed in consultation with trade unions from time to time.

2.3.2.3 Grievance redressal committees

Chapter 2 of the Industrial Relations Code, 2020, makes provision for the establishment of grievance redressal committees in enterprises employing 20 or more workers.

The purpose of these committees is to resolve the grievances of individual workers relating to the terms of employment or conditions of service. The worker has up to one year from the date on which the cause of action of the grievance arises, within which they must file her/his grievance.

The grievance redressal committee shall:

- ▶ Consist of an equal number of members from the employers and the workers. The chairperson is to be selected annually, from the representatives of employer and workers, on a rotational basis.

- ▶ Not exceed ten members

Representation of women workers shall not be less than the proportion of women workers to the total workers employed in the enterprise. The Committee is required to complete its proceedings within 30 days of the receipt of the application. The committee's decision is based on agreement by the majority of its members, provided that more than half of the members representing the workers have agreed to the decision. In the absence of such an agreement, it is deemed that no decision could be reached. The worker may then lodge an application for conciliation by a conciliation officer. Where an employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual worker, any dispute arising from this is deemed to be an industrial dispute, even if no other worker or any trade union is a party to the dispute.

2.4 Maldives

Maldives is a small island developing State (SIDS) with middle-income country (MIC) status. The country has a resident population projection for 2020 of 557,426 inhabitants, sparsely distributed across 188 islands.²⁹ A new government was elected in September 2018.

The People's Special Majlis convened in 2004 to amend the constitution of the Republic of Maldives completed its work in 2008. A new constitution, with an expanded chapter on fundamental rights, was enforced on 7 August 2008. The right to work, the right to form trade unions and to participate in their activities, and the right to strike are all protected rights under the new constitution. Article 37 grants the right to every Maldivian citizen to engage in any employment or occupation and entitles all workers to just and safe conditions of work, fair wages, equal remuneration for work of equal value, and equal opportunity for promotion.

Article 37 also grants the right to rest and leisure, including limits on hours of work and periodic holidays with pay. The right to a pension is granted under Article 38, which states that every person employed by the State shall have the right to a pension as provided by law, is a right that has been continued from previous constitutions. Article 25 prohibits all forms of discrimination and forced labour.

The Employment Act, 2008, is the first statute in the Maldives that provides for the legislative regulation of employment relations. It provides for minimum working conditions in key areas such as working time, wages, formation and termination of employment contracts, training, workplace safety and health, and various types of leave.

The Employment Act, 2008, also establishes the Employment Tribunal, which has jurisdiction in relation to individual (but not collective) disputes. This Act also establishes the Labour Relations Authority within the Ministry of Economic Development, whose function is to promote compliance with the Employment Act, 2008. In this regard, it is authorized³⁰ to:

- ▶ Enter into and check during daylight hours any places which there are reasonable grounds to believe is a workplace and question any employees present.
- ▶ Obtain records, books, registers and other documents required to be maintained in relation to employment and related matters pursuant to law to ensure that they are being maintained as required; and upon submission, make copies of the same and collect information.
- ▶ Obtain information about employees' working conditions, salaries and working hours.

The Labour Relations Authority is headed by a Director General.

The first positive case of COVID-19 in the Maldives was reported on 7 March 2020. The pandemic has exacerbated the economy's exposure to external shocks. The originally predicted GDP growth of 7.5 per cent before the pandemic has subsequently been revised downwards to between 0.5 and -5.6 per cent. In addition, Maldives is poised to lose between \$770 million (12 billion Maldivian rufiyaas) and \$904 million (14.1 billion rufiyaas) in state revenue this year due to the closure of borders and the subsequent impact on the tourism sector due to COVID-19.³¹

Maldives has not yet ratified Convention No. 144; Convention Nos 87 and 98 were both ratified on 4 January 2013.

29 UNDP, *Socio-Economic Impact Analysis of COVID-19 on the Maldives*, April 2020.

30 Clause 81 of the Employment Act, 2008.

31 UNDP, *Socio-Economic Impact Analysis of COVID-19 on the Maldives*, April 2020.

2.4.1 Tripartite social dialogue mechanisms

The ILO's tripartite constituents in Maldives are the Ministry of Economic Development, Maldives Trade Union Congress and the National Federation of Maldivian Employers.

The Government of Maldives established the National Tripartite Labour Advisory Council (NTLAC) in April 2013 to serve as Maldives' national tripartite consultative mechanism. The NTLAC's mandate is to provide consultation, cooperation and consensus-seeking between the government, employers' organizations and workers' organizations on matters relating to labour, employment and other labour-related policies, and the implementation of such policies.

The NTLAC's scope of work includes:³²

- ▶ Reviewing labour and employment-related policies and institutions and providing advice and recommendations to the government.
- ▶ Monitoring the labour and industrial relations situation in the country.
- ▶ Facilitating and promoting cooperation among the different stakeholders to foster harmonious industrial relations.
- ▶ Promoting the decent work agenda and providing support to ILO programmes.

Its composition includes the:

- ▶ Minister of the ministry responsible for labour affairs (chairperson)
- ▶ Permanent Secretary of the ministry responsible for labour affairs
- ▶ Director General of the Labour Relations Authority
- ▶ One representative from the attorney general's office
- ▶ Three representatives from workers' organizations
- ▶ Three representatives from employers' organizations

The Labour Relations Authority serves as the secretariat of the NTLAC, whose most recent meeting was held in 2016. It has met only four times since its establishment. This sporadic functioning severely limits the NTLAC's effectiveness as a platform for tripartite social dialogue. This has been recognized by the social partners, who have emphasized the need for the effective functioning of the NTLAC, and social partners, who have identified issues that they view as priorities for tripartite engagement.³³ These include the revision of the Employment Act, enhancing the capacity of the labour administration in the areas of labour inspection and labour dispute resolution, and clarifying the status of undocumented migrant workers.

A recent experience of tripartite social dialogue in Maldives has been the convening of a tripartite Salaries and Wage Advisory Board (SAWAB) by the Ministry of Economic Development in 2019. The SAWAB was formed to recommend minimum wage levels to government, and it comprised one government, two employers' and two workers' representatives. The SAWAB undertook a minimum wage study informed by extensive consultations, which included over 60 meetings involving a total of approximately 400 participants. The SAWAB's recommendations await adoption and are very likely to be affected by the impact of the COVID-19 pandemic.

³² NTLAC Terms of Reference (draft), 2013.

³³ Priorities identified through interviews conducted with the social partners on 17 February 2020.

2.4.2 Bipartite social dialogue mechanisms

The Employment Act, 2008, of Maldives is silent on the right to strike or the right to form trade unions. The Act also lacks provisions for collective bargaining. While these are constitutional rights, there is no legislative framework for them.³⁴ Workplace cooperation practices also appear to be absent.

In 2013, the ILO provided technical assistance to Government of Maldives to draft the Industrial Relations Act. The draft was subsequently endorsed by the National Tripartite Labour Advisory Council, but has not yet been approved by Parliament.

2.5 Nepal

Following national elections in 2017, Nepal has transitioned into a federal structure of government. The country has also announced its commitment to the 2030 Agenda for Sustainable Development, and it has declared its aspiration to graduate from being a Least Developed Country by 2022 and become a Middle-Income Country by 2030. The acute political crisis of several decades is over, and the new government appears determined to make economic growth and domestic job creation its top priorities.

However, these priorities must now be addressed within the context of the COVID-19 pandemic. Nepal recorded its first COVID-19 case on 24 January 2020. Nepal's economic growth since the earthquake of April 2015 had been robust, averaging 6.95 per cent per annum over the last three years ending in 2018/19. This was the first time that the economic growth rate had remained above 6 per cent for three consecutive years. Historically, in South Asia, Nepal has had the lowest rates of economic growth, averaging 4.2 per cent over the past two decades.

Due to the COVID-19 crisis, Nepal's GDP growth rate is projected to drop between 1.5 and 2.8 per cent.³⁵ Its economy is also expected to be severely impacted from reduced tourism and remittances.

Nepal ratified Convention No. 144 on 21 March 1995 and Convention No. 98 on 11 November 1996. It has yet to ratify Convention No. 87.

2.5.1 Tripartite social dialogue mechanisms

Nepal's tripartite constituencies are represented by the:

- ▶ **Government:** The Ministry of Labour, Employment and Social Security
- ▶ **Employers:** The Federation of Nepalese Chambers of Commerce and Industry
- ▶ **Workers:** The workers are represented by the three union federations: the General Federation of Nepalese Trade Unions, All Nepal Trade Union Federation and Nepal Trade Union Congress. These union federations cooperate and coordinate their activities through a platform called the Joint Trade Union Coordination Centre.

The country's key tripartite social dialogue mechanisms are described below.

2.5.1.1 Central Labour Advisory Council

The Central Labour Advisory Council is given statutory recognition through section 102 of the Labour Act, 2017. In terms of this Act, the Central Labour Advisory Council's powers, functions and duties are to:

34 World Bank, "Labor Management Procedure: Maldives COVID-19 Emergency Response and Health Systems Preparedness Project", May 2020.

35 UNDP in Nepal, *Rapid Assessment of Socio-Economic Impact of COVID-19 in Nepal* (draft), June 2020.

- ▶ Provide advice and suggestions in relation to labour policies to the Government of Nepal.
- ▶ Provide necessary advice and suggestions to the Government of Nepal for appropriate improvement in the laws relating to labour.
- ▶ Provide suggestions to the Government of Nepal in relation to the ratification or implementation of any international convention concerned with labour, and of which Nepal is a party.
- ▶ Provide suggestions to the Government of Nepal in relation to reports, concerning any international convention on labour, which the government is required to submit.
- ▶ Prepare standards on occupational safety and health and recommend these to the Government of Nepal.
- ▶ Prepare codes of conduct on fair labour practice and recommend these to the Government of Nepal.
- ▶ Provide suggestions in relation to the formulation of policies concerning vocational skills development and training.
- ▶ Establish coordination with the Government of Nepal, employers and trade unions to ensure industrial peace, sound industrial relations and minimization of disputes.
- ▶ Establish coordination with the Government of Nepal, employers and trade unions for employment and productivity growth.
- ▶ Frame and issue directives on collective bargaining as may be required.

The Central Labour Advisory Council is mandated to form other committees or task forces to carry out its functions. Meetings are required to be held on a quarterly basis, and secretariat support is provided by the Ministry of Labour, Employment and Social Security.

In terms of composition, the Central Labour Advisory Council comprises the following members:

- ▶ Minister of Labour and Employment (Chairperson)
- ▶ Secretary of the Ministry of Labour, Employment and Social Security as the Member Secretary
- ▶ Secretary of the Ministry of Finance
- ▶ Secretary of the Ministry of Labour and Employment
- ▶ Secretary of the Ministry of Physical Infrastructure and Transportation
- ▶ Secretary of the Ministry of Agriculture
- ▶ Secretary of the Ministry of Industry
- ▶ Secretary of the Ministry of Health
- ▶ Director General of the Department of Labour
- ▶ Executive Director of the Social Security Fund
- ▶ Executive Director of the Vocational Skill Development Training Centre

- ▶ Five employers' representatives (including at least two women) nominated by the Federation of Nepalese Chambers of Commerce and Industry
- ▶ Five workers' representatives (including at least two women) nominated by the Joint Trade Union Coordination Centre.

The tenure of members is usually three years, and they may be renominated after the expiry of their term. The most recent achievement of the Central Labour Advisory Council was its involvement in drafting the Social Security Act, 2017, and the Labour Act, 2017.

2.5.1.2 Minimum Wage Fixation Committee

Section 107 of the Labour Act, 2017, makes provisions for the constitution of a permanent Minimum Wage Fixation Committee. This committee comprises the following members:³⁶

- ▶ Joint Secretary, Department of Labour Relations, of the Ministry of Labour, Employment and Social Security as the Chairperson
- ▶ Division Head of the Ministry of Labour, Employment and Social Security (Labour Relations Division) as the Member Secretary
- ▶ Director General of the Department of Labour
- ▶ Deputy Secretary of the Ministry of Industry, Commerce and Supplies
- ▶ Director of the Nepal Rastra Bank
- ▶ Three employers' representatives (including at least one woman), nominated by the Federation of Nepalese Chambers of Commerce and Industry
- ▶ Three workers' representatives (including at least one woman), nominated by the Joint Trade Union Coordination Centre

The Committee is authorized, when recommending minimum wage for workers, "to do so for the whole country or specific region or specific nature of enterprises or industries or employment sector"³⁷ on a biennial basis. The last minimum wage recommendation was made by the Committee in 2018 and resulted in a 38 per cent increase in the minimum wage. The recommendation was adopted in 2018 and is being implemented.

2.5.1.3 Labour Coordination Committee

Section 117 of the Labour Act, 2017, makes provision for the establishment of a Labour Coordination Committee primarily as a tripartite dispute resolution mechanism. It is chaired by the Director General of the Department of Labour and comprises representation from the Federation of Nepalese Chambers of Commerce and Industry, and the Joint Trade Union Coordination Centre. The number of representatives is not prescribed and is addressed on a case-by-case basis.

Its duties, powers and functions³⁸ are to:

36 Nepal, Ministry of Labour, Employment and Social Security, *Nepal Gazette*, "Labour Rules, 2075 (2018), Chapter 9: Determination of Minimum Wages, Section 57, 2018.

37 Nepal Law Commission, *Procedure for Establishment of the Province Labour Advisory Council*, Section 5 (not in public domain), 2019.

38 Nepal, Ministry of Labour, Employment and Social Security, *Nepal Gazette*, "Labour Rules, 2075 (2018), Chapter 14: Miscellaneous, Section 80, 2018.

- ▶ Hold talks and provide suggestions to concerned parties to resolve industrial disputes in an enterprise.
- ▶ In the case of a dispute, or in the case of the possibility of any dispute between workers and employers, to encourage and coordinate processes with the concerned party for dispute resolution.

2.5.1.4 Social Security Fund Steering Committee

The Contribution Based Social Security Rules, 2074 (2017), make provision for the establishment of a tripartite Steering Committee. The purpose of this committee is to develop policies and plans regarding social security schemes, advise the Government of Nepal on social security matters, and advise the Fund's management on the operations of the Fund.

The Steering Committee comprises the following representation:

- ▶ Secretary, Minister for Labour (chairperson)
- ▶ Deputy Governor, Nepal Rastra Bank
- ▶ Joint Secretary, Ministry of Finance
- ▶ Joint Secretary, Ministry of Law, Justice and Parliamentary Affairs
- ▶ Joint Secretary, National Planning Commission
- ▶ Joint Secretary, Ministry of Cooperatives and Poverty Alleviation
- ▶ Three representatives (with at least one mandatory woman member) nominated by the Joint Trade Union Coordination Centre
- ▶ Three representatives (with at least one mandatory woman member), nominated by Federation of Nepalese Chambers of Commerce and Industry
- ▶ Executive Director of the Social Security Fund (Member Secretary)

The tenure of the members is four years, and the Steering Committee is functional.

2.5.1.5 Provincial Labour Advisory Councils

A 2019 amendment to the Labour Act, 2017 (Article 105A), makes it possible to establish a provincial labour advisory council. This is a tripartite social dialogue mechanism convened by the Department of Social Development in each province. Its intended purpose is to support the implementation of the Labour Act, 2017 and the Social Security Act, 2017, and to promote social and economic development at a provincial level.

So far, a provincial labour advisory council has been established for Province Five in 2019 by Province Five's Department of Social Development with technical support from the ILO.

The Province Five Labour Advisory Council is mandated to:³⁹

- ▶ Recommend the formulation of long-term labour policy.
- ▶ Provide suggestions and feedback on provincial labour policy.
- ▶ Provide timely suggestions and feedback to for the possible revision of labour-related laws.

39 Nepal, Department of Social Development for Province 5 in Nepal, *Procedure for Establishment of the Province Labour Advisory Council*, section 5 (not in public domain), 2019.

- ▶ Prepare and recommend occupational safety and health-related standards.

- ▶ Develop a code related to proper labour practices in the province and recommend these to provincial government.

- ▶ Provide suggestions and feedback on any changes to policy regarding vocational training and skills testing training.

- ▶ Support coordination between the provincial government, employers and trade unions to maintain industrial peace and good industrial relations and to minimize labour disputes.

- ▶ Support coordination between the provincial government, employers and trade unions to increase employment and productivity.

- ▶ Provide the Ministry of Social Development with collective bargaining procedures.

- ▶ Inquire about the status of workers employed in projects under programmes run by the various thematic ministries within the province.

The Province Five Labour Advisory Council comprises the following representation:

- ▶ Minister of Province Five's Ministry of Social Development as the Chairperson

- ▶ Secretary of the Ministry of Social Development

- ▶ Secretary of the Chief Minister and Council of Ministers for Province Five

- ▶ Secretary of the Ministry of Economic Affairs and Planning

- ▶ Secretary of the Ministry of Industry, Tourism, Forest and Environment

- ▶ Secretary of the Ministry of Physical Infrastructural Development

- ▶ Secretary of the Ministry of Land Management, Agriculture and Cooperatives

- ▶ A member of the Province Planning Commission (labour related)

- ▶ Four employers' representatives (including at least two women), nominated by the provincial government based on recommendations from Province Five's employers' organizations

- ▶ Five workers' representatives (including at least two women), nominated by the provincial government based on recommendations from unions

- ▶ The Member Secretary, who is the chief of the related department within the Ministry of Social Development.

The term of the members is two years, and they may be renominated. The Council's secretariat support is provided by the Ministry of Social Development.

2.5.2 Bipartite social dialogue mechanisms

Nepal has established a framework for workplace cooperation and collective bargaining at the enterprise level.

2.5.2.1 Collective bargaining

Section 116 of the Nepal Labour Act, 2017, stipulates that enterprises employing ten or more workers are required to establish a collective bargaining committee. This collective bargaining

committee would, based on the number of workers, comprise three to 11 representatives, who would be appointed through one of the following actions:⁴⁰

- ▶ They would be appointed by the elected authorized trade union of the enterprise.
- ▶ If an election for an authorized trade union cannot be held or the term of the authorized trade union has expired, the representatives would be nominated through mutual agreement of all the unions in the enterprise.
- ▶ If neither of the two previous options are possible, the representatives would be appointed based on the signatures of more than 60 per cent of the workers working in the enterprise.

The collective bargaining committee has the power to submit collective claims or demands, and to enter into agreements. Disputes are mediated by the Ministry of Labour, Employment and Social Security. Should mediation fail, then the Ministry may arbitrate based on the mutual agreement of both parties.

Section 123 of the Labour Act, 2017, makes provisions for sectoral/multi-employer bargaining with respect to the “tea estate, carpet sector, construction business, labour provider, transportation sector or any other group of manufacturers producing similar nature of products or service providers providing similar nature of services...”. In such instances, the collective bargaining committee would submit its claims or demands to the relevant employers’ association.

By the terms of section 102 of the Labour Act, 2017, the Central Labour Advisory Council is mandated to frame and issue directives on collective bargaining as may be required.

2.5.2.2 Labour relations committees

Section 111 of the Labour Act, 2017, provides for the establishment of labour relations committees in enterprises employing ten or more workers. The labour relations committee is required to:

- ▶ Hold consultation for productivity increments and operational improvements.
- ▶ Attempt to settle any grievance, or any probable grievance, of workers in consultation with the concerned party.
- ▶ Improve the working environment.
- ▶ Function as an occupational safety and health committee until one is formed.

The Act states that meetings of the committee will be held as and when required, and they should not affect the work of the enterprise. The composition of these labour relations committees, as prescribed in the Labour Rules, 2018, are as follows:

- ▶ The manager of the enterprise or a person nominated by him/her serves as the coordinator.
- ▶ Two managerial-level employees are nominated by the overall manager of the enterprise.
- ▶ Four members (including one woman) are nominated from the trade union of the enterprise.
- ▶ The head of the administrative division of the enterprise serves as the Member Secretary.

⁴⁰ Section 116 of the Labour Act, 2017.

In an enterprise employing more than 300 workers, two additional representatives of management and workers would also respectively be appointed. The tenure of members is two years, but it would, however, appear that the establishment of labour relations committees in Nepal remains rare.

2.6 Pakistan

The constitution of Pakistan includes provisions that aim to protect and promote the social and economic well-being of its citizens and social justice. Rights including the prohibition of bonded labour, eradication of slavery, and the right to form associations or unions, amongst others, are enshrined in the constitution. The 18th constitutional amendment in April 2010 led to the decentralization of power and giving autonomy to the provinces. The enactment of legislation regarding issues listed below consequently vests with each of the four provincial governments and the Islamabad Capital Territory respectively:⁴¹

- ▶ Labour conditions and welfare, provident fund, worker's compensation and employer's responsibilities

- ▶ Industrial relations, industrial disputes and trade unions

- ▶ Exchange of information regarding labour employment to the Bureau of Training

- ▶ Legislation on safety and security in factories, mines and oilfields

- ▶ Unemployment insurance.

As a result, provinces have enacted local labour laws (for example, the Balochistan Industrial Relations Act (BIRA) 2010, the Khyber-Pakhtunkhwa Industrial Relations Act (KPIRA) 2010, Punjab Industrial Relations Act (PIRA) 2010, Sindh Industrial Relations Act (SIRA) 2013), which often do not coordinate well with federal-level labour legislation (Industrial Relations Act (IRA) 2012).

With respect to its economy, Pakistan's manufacturing industry, of which garment and textiles forms a key sector, is the second-largest economic sector after agriculture. This sector is also the most vulnerable to factors such as government policies, trade agreements and labour relations issues. Since January 2014, Pakistan also benefits from the Generalised System of Preferences Plus (GSP+) trade preferences with the EU. As a result of GSP+, more than 78 per cent of Pakistan's exports enter the EU at preferential rates. In addition, about 80 per cent of the textiles and clothing exported to the EU from Pakistan enter the European Union at a preferential rate.⁴²

Poor labour standards have, however, constrained industry stability and growth. Pakistan has faced significant consequences from poor labour standards and weak labour law enforcement, including but not limited to the Walt Disney Company banning the procurement of merchandise produced in Pakistan as of April 2014. The access to GSP+, however, provide an increased incentive for improvements in working conditions and the application of labour laws.

In addition, the COVID-19 pandemic continues to impact the lives of the people in Pakistan. The country has witnessed a significant increase in confirmed cases from the initial two cases reported on 26 February 2020 to over 200,000 cases in July 2020. Real GDP growth decelerated from 5.5 per cent in 2018 to 3.3 percent in 2019. Measures to revive the economy include a \$6 billion International Monetary Fund Extended Fund Facility (EFF) arrangement.

41 Malik Zia Ud Din, *Analyzing the Labour Issues in Pakistan: A Historical Background of Labour Laws and Labour Unions*, December 2017.

42 European Commission (<https://ec.europa.eu/trade/policy/countries-and-regions/countries/pakistan/>), 2020.

Before the outbreak of COVID-19, the economy was expected to pick up moderately on the back of structural reforms. Over the medium to long term, in order to recover from the effects of COVID-19 and continue its trajectory towards an upper middle-income country, it is estimated that Pakistan needs to double its private investment rate and investment in human capital, raise more revenue, simplify its business regulatory regime, integrate with global value chains, and sustainably manage its natural endowments.⁴³

Pakistan ratified Convention No. 144 on 25 October 1994. It ratified Convention No. 87 on 14 February 1951 and Convention No. 98 on 26 May 1952.

2.6.1 Tripartite social dialogue mechanisms

Pakistan's Ministry of Overseas Pakistanis and Human Resource Development is responsible for industrial relations in Pakistan. The social partners are represented by the Employers Federation of Pakistan and the Pakistan Workers Federation, and the key national tripartite social dialogue mechanisms are described below.

2.6.1.1 Pakistan Tripartite Labour Conference

The first Pakistan Tripartite Labour Conference was held in 1949. The Conference is intended to be held annually, and its purpose is to discuss all labour issues, including labour legislation and policy. The Standing Labour Committee is a tripartite mechanism, which essentially addresses matters referred to it by the Pakistan Tripartite Labour Conference. The mechanism includes representation from both federal and provincial government, employers' organizations and unions. It appears that the last Pakistan Tripartite Labour Conference was held in February 2009.⁴⁴

2.6.1.2 Federal Tripartite Consultative Committee

The National Tripartite Consultative Committee was formed in July 2014 specifically for consultation on labour matters, including international labour standards. The Committee consists of representatives from the provincial departments of labour, the Employers' Federation of Pakistan and the Pakistan Workers Federation.⁴⁵ The most recent meeting of this Committee was held in 2016.

2.6.1.3 Employees' Old Age Benefits Institution

The Employees' Old-Age Benefits Institution is an entity of the Ministry of Overseas Pakistanis and Human Resource Development, and it was established under the Employees' Old-Age Benefits Act, 1976. It was established to achieve the objective of Article 38 (C) of the constitution by providing for compulsory social insurance. It extends the following benefits to insured persons or their survivors:⁴⁶

- ▶ Old age pension
- ▶ Survivor's pension
- ▶ Invalid pension
- ▶ Old age grant

43 UNDP, *COVID-19 – Pakistan Socio-economic Impact Assessment and Response Plan*, May 2020.

44 ILO, "Direct Request (CEACR) –adopted 2018, published 108th International Labour Council session (2019)".

45 Friedrich Ebert Stiftung, *Trade and Compliance of Labour Standards in Global Supply Chains*, November 2017.

46 Pakistan, Ministry of Overseas Pakistanis and Human Resources Development, Employees' Old-Age Benefits Institution, "Enactment".

It is governed by a tripartite Board of Trustees,⁴⁷ and the President of the Board of Trustees is the Secretary of the Ministry of Overseas Pakistanis and Human Resource Development. Its members include the respective secretaries of each of the provincial labour departments, four employers' representative and four workers' representatives.

2.6.1.4 Workers' Welfare Fund Board

The Workers Welfare Fund Board was established under the Workers Welfare Fund Ordinance, 1971, with the purpose of financing:⁴⁸

- ▶ Projects for the establishment of housing estates or construction of houses for industrial workers.
-
- ▶ Other measures for the welfare of workers including:
 - Free-of-cost education up to secondary school level
 - Scholarships for post-secondary-level studies
 - Marriage grants
 - Death grants.
-

The Workers' Welfare Board is managed at the federal level by a tripartite governing body, which comprises a maximum of 18 members including representatives of federal and provincial governments and representatives of workers and employers as per section 7(2) of the Workers' Welfare Fund Ordinance, 1971.

A range of tripartite social dialogue mechanisms have also been established at the provincial level, which fall under the jurisdiction of the respective provincial labour departments. These include the following.

2.6.1.5 Provincial tripartite consultative committees

Based on similar lines to the National Tripartite Consultative Committee, tripartite consultative committees have also been established in each of the four provinces – Sindh, Punjab, Khyber Pakhtunkhwa (KPK), and Baluchistan – between August and September 2014.

Sindh issued a notification dated 3 May 2017 for the establishment of a tripartite consultative committee⁴⁹ (now termed the Tripartite Standing Committee). This notification provides a useful example of the intended composition and functions of the provincial tripartite consultative committees. By the terms of this notification, the Committee comprises the following representations:

- ▶ Secretary of the Sindh Labour and Human Resources Department
-
- ▶ Director of the Sindh Employees' Social Security Institution (Karachi)
-
- ▶ Director of Labour for Sindh
-
- ▶ Secretary of the Workers' Welfare Board for Sindh (Karachi) as the Member Secretary
-
- ▶ Chairperson of the Minimum Wages Board for Sindh (Karachi)
-

47 Pakistan, Ministry of Overseas Pakistanis and Human Resources Development, Employees' Old-Age Benefits Institution, "Objectives".

48 Workers' Welfare Board.

49 Sindh has since chosen to establish a tripartite standing committee rather than a tripartite consultative committee. This committee includes the National Trade Union Federation, Homebased Women Workers' Federation, and the NGO, the Pakistan Institute of Labour Education Research (PILER). The Pakistan Workers' Federation is not included, purportedly because it does not have sufficient membership in the textiles and RMG sectors.

- ▶ Four employers' representatives
- ▶ Four workers' representatives

Through the notification, the Tripartite Standing Committee for Sindh is mandated to:

- ▶ Study and discuss the comments and reports of the ILO that are communicated to the Government of Pakistan/Sindh.
- ▶ Study and discuss the responses to queries concerning agenda items for the International Labour Conference office, pertaining to the Government of Pakistan/Sindh.
- ▶ Monitor and review, as required, the provincial labour laws, rules, and regulations in order to ensure coherence, conformity and alignment with international labour standards.
- ▶ Study and discuss proposals concerning adoption of any new Convention or Recommendation of the ILO.
- ▶ Consider unratified Conventions for possible ratification.
- ▶ Study and discuss proposals for the denunciation of any ratified Convention.
- ▶ Consider any other matter as and when assigned by the Government of Sindh.

In terms of the notification, the Committee is required to meet at least twice a year.

2.6.1.6 Provincial Employees' Social Security Institutions Tripartite Governing Bodies

Each of the four provinces have established their own Employees' Social Security Institution,⁵⁰ and these are individually overseen by a tripartite governing body. The Employees' Social Security Institution is funded through workers' contributions in each province. In general, the purpose of these Employees Social Security Institutions is:

- ▶ Providing medical care facilities to contributing workers and their dependants.
- ▶ Providing payment of benefits to workers or their families. These include cash sickness benefits, injury benefits, maternity benefits, disability gratuities, disability pensions, ex-gratia grants, Iddat benefits, survivors' pensions and death grants (paid to the workers' dependents). The types of benefits that are paid may vary slightly between provinces.

2.6.1.7 Provincial workers' welfare boards

In line with the federal Workers' Welfare Board, provinces have also established their own workers' welfare boards. These are administered through tripartite representatives with similar functions to the federal structure. For example, the Punjab Workers' Welfare Board comprises the following representation:⁵¹

- ▶ Secretary of the provinces Finance Department (Lahore)
- ▶ Commissioner of the Punjab Employees' Social Security Institution (Lahore)
- ▶ Director of Labour Welfare Punjab (Lahore)

50 Pakistan, Department of Labour and Manpower, Balochistan Province, 1971; The Provincial Employees Social Security Ordinance, 1965 (West Pakistan Ordinance No. X of 1965), 17 May 1965.

51 Sindh Province, The Workers' Welfare Fund Ordinance, 1971; The Sindh Workers' Welfare Fund (Amendment) Act, 2018; Sindh Act No. XXI of 2018.

- ▶ Three employers' representatives
- ▶ Three workers' representatives

Its functions include the:

- ▶ Construction of housing estates ("labour colonies") for workers
- ▶ Construction and operation of workers' welfare schools
- ▶ Provision of welfare grants, such as death grants, marriage grants and scholarships.

2.6.1.8 Provincial minimum wage boards

Established at the provincial level in Pakistan, MWBs are tripartite boards generally responsible for:⁵²

- ▶ Recommending minimum wages to the relevant provincial government
- ▶ Conducting periodic reviews of minimum wages and making recommendations to the provincial government.

2.6.2 Bipartite social dialogue mechanisms

At the federal level, through the Industrial Relations Act, 2012, Pakistan has made provisions for bipartite social dialogue through the mechanisms described below.

2.6.2.1 Collective bargaining

Section 19 of Pakistan's Industrial Relations Act, 2012, sets out the collective bargaining procedure. This principally requires the certification of the majority trade union in the enterprise (or group of enterprises) as the collective bargaining agent. The Act requires the collective bargaining agent to have obtained the support of at least one third of the total workforce in the enterprise or group of enterprises. Where there are more than one union present, then the collective bargaining agent is determined through a secret ballot.

The process of compiling voters' lists for the secret ballot is the responsibility of the registrar of trade unions of the relevant province. The voters list compilation process appears to be highly detailed. Substantial information must be provided by both management and the contesting unions with respect to each worker and union member.⁵³

Based on the outcome of the secret ballot, the certified trade union functions as the collective bargaining agent for a period of two years, and is empowered to:⁵⁴

- ▶ Undertake collective bargaining on behalf of all workers in the enterprise.
- ▶ Represent workers in dispute resolution procedures.
- ▶ Undertake strike action.

52 Pakistan, The Khyber Pakhtunkhwa Minimum Wages Act, 2013; Balochistan Minimum Wages Ordinance, 1961 (XXXIX of 1961).

53 Sections 19(4) and 19(5) of the Industrial Relations Act, 2012.

54 Section 20 of the Industrial Relations Act, 2012.

- ▶ Nominate workers' representatives to serve on the board of trustees of welfare institutions, provident funds, and also of the Workers Participation Fund established under the Companies Profits (Workers Participation) Act, 1968 (XII of 1968).

Collective bargaining is normally done at the plant level. It is, however, also undertaken at the federal level mainly by public sector unions, such as the All Pakistan WAPDA Hydro Electric Workers Union, Railway Workers' Union and the All Pakistan PWD Employees' Union.

In its 2019 report,⁵⁵ the CEACR identifies a range of key areas where Pakistan's labour law is not in compliance with one or both of the two fundamental conventions on freedom of association and the effective recognition of the right to collective bargaining (Conventions Nos 87 and 98). Amongst these, the main issues are:

- ▶ The exclusion of major parts of the workforce from trade unions and collective bargaining rights. Sectors and job roles excluded from coverage by the federal and provincial industrial relations acts include agriculture and fisheries workers (except in Sindh), EPZs, large sections of the public services, workers employed in many parts of the healthcare and education sectors, and workers in technical and managerial roles. This makes for a very narrow definition of a worker, excluding, for example, any person employed mainly in a managerial or administrative capacity, sales workers and software engineers amongst others.
- ▶ Numerous obstacles to trade union registration, which tend to frustrate the process.
- ▶ Difficulties in effectively exercising rights that have been granted.

The Committee has, therefore, reiterated its earlier recommendations to enhance both freedom of association and collective bargaining. To this end, CEACR recommendations include:

- ▶ Federal and provincial governments should take necessary measures to ensure that all workers, with the only possible exceptions of the armed forces, the police and public servants engaged in the administration of the state, are granted the right to establish and join organizations of their own choice.
- ▶ Relevant federal and provincial acts should be revised with a view to ensure that senior managerial workers can establish and join organizations that can appropriately defend their occupational interests.
- ▶ The current legal definitions of "workmen" and "employers" in the federal and provincial labour legislations should be reviewed to ensure that workers' organizations are not deprived of a substantial proportion of their actual or potential membership.
- ▶ Rules under development for EPZs should guarantee the right of workers in these zones to organize.
- ▶ Measures should be taken whereby if no union in a specific negotiating unit meets the required threshold of representativeness to negotiate on behalf of all workers, then minority trade unions should be enabled to negotiate, jointly or separately, at least on behalf of their own members.

⁵⁵ ILO, *International Labour Standards: 2019 Report of the Committee of Experts on the Application of Conventions and Recommendations*, 2019.

2.6.2.2 Works councils

Section 25 of Pakistan's Industrial Relations Act, 2012, makes provision for the establishment of works councils. Every establishment which employs 50 workers or more is required to establish a works council. As a prerequisite, these works councils must comprise an equal number of management and workers' representatives. The workers' representatives must work within the same enterprise as the works committee on which they serve. They would be nominated by the enterprise's collective bargaining agent, should one exist. If the enterprise does not have a collective bargaining agent, then the worker's representatives are elected by a simple majority through a secret ballot of all workers in the establishment. The workers' representatives serve for a period of two years.

Section 26 of the Industrial Relations Act, 2012, prescribes the following functions for the works councils:

- ▶ To endeavour to maintain good relations between employers and workers
- ▶ To promote the settlement of differences and disputes through bilateral negotiations
- ▶ To promote security of employment for workers and conditions of safety, health and job satisfaction
- ▶ To take measures to facilitate good and harmonious working conditions in the factory/ establishment; to provide vocational training and educational facilities for the children of workers engaged in secretarial and accounting work; and to promote their absorption into the enterprise's workforce
- ▶ To discuss any other matter of mutual interest with a view to promoting better labour-management relations

Commercial and financial matters pertaining to the enterprise fall outside the purview of the works committee. In terms of section 27(5) of the Industrial Relations Act, 2012, the management may not, without having first obtained the written advice of the workers' representatives, proceed with any action concerning the following:

- ▶ Framing of service rules and policies regarding promotions and discipline of workers
- ▶ Changes to physical working conditions in the establishment
- ▶ In-service training of workers
- ▶ Recreation and welfare of workers
- ▶ Regulation of daily working hours and breaks
- ▶ Preparation of leave schedules
- ▶ Matters relating to the order and conduct of workers within the enterprise

Section 27(6) of the Industrial Relations Act, 2012, also empowers the worker's representatives to, of their own accord, provide advice to the management on these matters. It is incumbent on the management to convene a meeting to discuss such advice within two weeks of it being provided. In the event that the advice is rejected by top management, then the collective bargaining agent may initiate a formal dispute resolution process. However, the Act is silent on the manner in which formal dispute processes would be initiated in non-unionized enterprises.

2.6.2.3 Joint management boards

Section 28 of Pakistan's Industrial Relations Act, 2012, requires all establishments employing 50 or more workers to establish a joint management board. Workers' representatives will form 30 per cent of the joint management board, and the collective bargaining agent is authorized to nominate workers' representatives to serve on the board. In enterprises without a collective bargaining agent, workers' representatives will be elected through simple majority in a secret ballot.

Section 28(3) of the Industrial Relations Act, 2012, mandates that the joint management board consider the following matters:

- ▶ Improvements in production, productivity and efficiency
- ▶ Planned regrouping or transfer of workers
- ▶ Laying down the principles of remuneration and introduction of new remuneration methods
- ▶ Providing minimum facilities for workers employed through contractors, and who are not covered by laws relating to the welfare of workers

Based on this mandate, the functions of the joint management board appear to include aspects of collective bargaining.

Given the autonomy of provinces with respect to labour matters, provinces have also developed their own labour legislation. Punjab's Industrial Relations Act, 2010, and Sindh's Industrial Relations Act, 2013, are examples of provincial-level labour legislation. These acts include provisions for the establishment of a workers management council⁵⁶ in enterprises employing 50 or more workers. The workers management council incorporates the functions and procedures of both the works council and the joint management board provided for in the federal Industrial Relations Act, 2012.

2.6.2.4 Workers and Employers Bilateral Council

The Workers and Employers and Bilateral Council (WEBCOP) was established in July 2000 as a forum to collectively voice workers' and employers' issues and to jointly promote policy dialogue.⁵⁷

- ▶ The overall objective of this Council is to promote harmonious industrial relations so that there is an improvement in productivity for the benefit of the nation. The specific objectives that WEBCOP is required to pursue include:⁵⁸
- ▶ Promoting employment opportunities and enhancing the employability of the available workforce.
- ▶ Removing impediments to speedy industrialisation.
- ▶ Fostering sound industrial relations at the enterprise/industry level as well as at the provincial and national levels.
- ▶ Achieving a balance between the rights and obligations of industrial partners and WEBCOP in Pakistan.

⁵⁶ Section 29 of the Sindh Industrial Relations Act, 2013, and Section 29 of the Punjab Industrial Relations Act, 2010.

⁵⁷ ILO, "Evolution of the Industrial Relations System in Pakistan", 2009.

⁵⁸ ILO, *Best Practices in Social Dialogue*, 2003.

- ▶ Developing a basis for the determination of wages without interfering in the process of collective bargaining.

- ▶ Promoting productivity and quality improvement efforts at the enterprise/industry level in order to meet the challenges of globalization and other environmental changes.

- ▶ Improving the quality of life for workers by establishing a link between the pace of economic development and quantum of social benefits.

- ▶ Developing an effective participative culture at the enterprise level through bipartite consultation and dialogue on matters relating to industrial relations, productivity, safety, health, environment, investment, employment, and socio-economic benefits.

- ▶ Promoting agro-based industries with the purpose of promoting prosperity for rural workers and improving their quality of life.

- ▶ Activating and extending full support to tripartite bodies to accomplish their tasks efficiently and in the best national interests.

- ▶ Providing a bipartite institutional framework for voluntary mediation, conciliation and arbitration of industrial disputes.

- ▶ Providing the necessary guidance and assistance in matters relating to industrial relations and labour laws.

- ▶ Augmenting training, educational and research facilities with a view to upgrading the skills and knowledge of workers, managers and employers.

- ▶ Devising a code of conduct, within the context of existing national and international norms and obligations, to enable employers and workers to jointly improve the efficiency and productivity of the enterprise for mutual benefit.

- ▶ Achieving mutually acceptable labour law reforms and supporting their improvement, simplification, rationalization, codification and implementation.

In previous years, WEBCOP seems to have been an influential mechanism and played important roles in various initiatives including labour policy formulation, working for the elimination of child labour and skills development. Unfortunately, its influence appears to have waned in recent times, much to the detriment of improved management-worker relations in Pakistan.

2.7 Sri Lanka

Sri Lanka's first piece of labour legislation was promulgated in 1846 in relation to immigrant labour from south India. Since then, a large body of legislation has been announced to protect labour and regulate industrial relations.

The 1978 constitution explicitly gave jurisdiction to the Supreme Court to deal with complaints regarding the violation of fundamental rights. Article 12 guarantees the right to equality and Article 14 (c) and (d) specifically refer to the right to associate freely and to join a trade union. The more important labour legislation pertaining to social dialogue is outlined below.⁵⁹

- ▶ Trade Unions Ordinance No. 14 of 1935: This provides for the registration, control and deregistration of unions and covers both the public and private sectors. A registrar appointed under the ordinance registers, regulates and may deregister unions.

⁵⁹ ILO, *The Current Status and Evolution of Industrial Relations in Sri Lanka*, 2009.

- ▶ Trade Unions Ordinance (Amendment) Act No. 15 of 1948: This Act provides public servants who were previously excluded under the Trade Unions Ordinance No. 14 with a limited right to organize. The amendment permits the registration of trade unions of public servants other than judicial officers, members of the police and armed forces, prison officers, and members of the agricultural corps. It, however, prohibits their affiliation, amalgamation and federation.⁶⁰

- ▶ Wages Boards Ordinance 27 of 1941: This ordinance prescribes legal obligations with regard to salaries and wages of all employees. It also provides legal authority for the establishment of specific wages boards (discussed in section 2.7.1) for different trades.

- ▶ Factories Ordinance 45 of 1942: This prescribes conditions and rules for workers employed in work connected with goods being made, altered, repaired, or animals slaughtered in pursuance of a trade or for gain. The law in Sri Lanka about safety and health is found in the Factories Ordinance, which lays down the conditions to be observed in workplaces specified as “factories”.

- ▶ Industrial Disputes Act 43 of 1950: This is the primary legislation that intends to promote stable industrial relations. It does this through providing a legislative framework for the resolution of rights and interests disputes and the enforcement of decisions. The most important amendment to this Act led to the setting up of the Labour Tribunals in 1957.

- ▶ Industrial Disputes (Amendment) Act, No. 56 of 1999: This amendment gave legal recognition to unfair labour practices by making the non-recognition of a legitimate trade union by an employer a criminal offence. The amendment was made through the addition of section 32A of the Industrial Disputes Act and was intended to promote freedom of association. Under this amendment, any trade union with membership of not less than 40 per cent of the workforce in any workplace must be recognized for bargaining purposes by the employer. In a situation where the employer disputes this strength of membership, the Commissioner-General for Labour (or an authorized officer) is empowered to ascertain the correct membership by a secret ballot of all the workers at the workplace.

With regard to the COVID-19 pandemic, Sri Lanka’s economy has been severely affected by factors such as a fall in demand for exports, the shutdown of the tourism industry, reduced remittances, and the depreciation of the Sri Lankan rupee, resulting in an increase in the costs of essential imports as well as of the servicing debt held in foreign currencies.⁶¹ With over half of the labour force in the informal sector, over three quarters of businesses in the small, medium and micro enterprise (SME) sector, and a heavy reliance on migrant earnings, both low and middle-income earners are expected to experience economic shocks with knock-on impacts on food security, indebtedness, and households’ investments in education and health.⁶²

The COVID-19 crisis has also disrupted the presidential and parliamentary elections, and has constrained political and public engagement. The UN in Sri Lanka has observed that the pandemic could be an opportunity for generating shared interest between different groups and improving social cohesion in the country.⁶³

Sri Lanka ratified Convention No. 144 on 17 March 1994, Convention No. 87 on 15 September 1995, and Convention No. 98 on 13 December 1972.

60 Shyamali Ranaraja, for ILO Colombo, *Review of the State of Labour Market Governance in Sri Lanka – Towards Building Consensus to Reinvent Tripartite Social Dialogue and Promote Cooperation*, August 2017.

61 UNICEF in Sri Lanka (UN Social Protection Working Group), “[Tackling the COVID-19 Economic Crisis in Sri Lanka: Providing Universal, Lifecycle Social Protection Transfers to Protect Lives and Bolster Economic Recovery](#)”, UN working paper, June 2020.

62 UNSDG, “UN Advisory Paper: Immediate Socio-Economic Response to COVID-19 in Sri Lanka”, June 2020.

63 UNSDG, “UN Advisory Paper: Immediate Socio-Economic Response to COVID-19 in Sri Lanka”, June 2020.

2.7.1 Tripartite social dialogue mechanisms

The tripartite constituencies in Sri Lanka are represented by the Ministry of Skills Development, Employment and Labour Relations, Employers' Federation of Ceylon and approximately 12 unions. The following are Sri Lanka's main tripartite social dialogue mechanisms.

2.7.1.1 National Labour Advisory Council

The NLAC was initially set up in 1989 with the objective of having a permanent consultative mechanism within the then Ministry of Labour. It is not a statutory structure, and based on its constitution, its aim is to "provide for consultation and cooperation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards."

The NLAC's constitution defines it as "the National Tripartite Consultative mechanism established to provide for consultation and cooperation between the government and the organizations of workers and employers at the national level on matters relating to social and labour policies and international labour standards."

Its objectives are to:

- ▶ Promote social dialogue between the government and the organizations of workers and employers on social and labour issues.
- ▶ Provide a forum for the government to seek the views, advice and assistance of organizations of workers and employers on matters relating to social and labour policies, labour legislation, and matters concerning the ratification, application and implementation of international labour standards.
- ▶ Promote mutual understanding and good relations, and foster closer cooperation between the government and organizations of workers and employers with a view to developing the economy, improving conditions of work and raising living standards.

Under its constitution, the NLAC has a wide scope of functions, including consultation and cooperation between the government and social partners on issues such as the establishment and functioning of national bodies (such as those responsible for the organization of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare, and prevention and settlement of industrial disputes); the preparation and implementation of labour laws; the consideration of matters concerning responses to requests for information from the ILO pertaining to compliance with international labour standards; ratification implementation and review of international labour standards; and other matters provided for under Convention No. 144.⁶⁴

The Minister for Labour is the Chairperson of the NLAC, but they may appoint a suitable officer in the ministry to act on their behalf at meetings that the Minister is unable to attend. Although the constitution states that the term of office for members will be one year, neither the constitution nor the rules specify the basis of the appointment of members. In practice, they are selected by the Minister from among "most representative" organizations of employers and workers in the different sectors of the economy.

Members of the NLAC comprise the following:

- ▶ Representatives of key government bodies such as the Commissioner General of Labour; heads of various units within the Department of Labour, the Employees' Provident Fund and Employees' Trust Fund; the Central Bank of Sri Lanka; and the Board of Investment of Sri

64 ILO, *Review of the State of Labour Market Governance in Sri Lanka – Towards Building Consensus to Reinvigorate Tripartite Social Dialogue and Promote Cooperation*, August 2017.

Lanka. The Department of Labour provides secretarial and administrative support to the NLAC.

- ▶ Nominated members of the Employers' Federation of Ceylon representing employers
- ▶ Several trade unions representing different sectors and different groups of workers. The selection of the most representative trade unions has been contentious, with many trade unions also questioning the basis of appointment of other trade unions.

A report of a tripartite workshop held in September 1993 made the following recommendations to the government aimed at enhancing the functioning of the NLAC.⁶⁵

- ▶ Give the NLAC statutory recognition and make it a permanent body
- ▶ Promote the practice of tripartism at the national and industry levels
- ▶ Provide for the exchange of views and ideas among the three parties relating to labour policy, legislation and other areas of mutual concern
- ▶ Provide inputs for the formulation of a national policy and its effective implementation
- ▶ Ensure the consultation of social partners before the adoption of legislation in areas of mutual concern

An ILO study was subsequently undertaken in 2017, which included a further review of the NLAC. This study re-emphasized the importance of establishing the NLAC as a statutory mechanism with clear membership criteria.⁶⁶

Informed by these efforts, in 2018/19, the ILO provided substantial support to tripartite constituencies in Sri Lanka through a ministerial tripartite task team in order to develop actions focused on building the institutional capacity of the NLAC. A detailed report has been submitted to the Minister of Skills Development, Employment and Labour Relations for further consideration. This report includes a draft NLAC Act, revised constitution and operating protocol for the NLAC.

2.7.1.2 Wages boards

The Wages Boards Ordinance 27 of 1941 makes provisions for the establishment of wage boards for the regulation of wages and working conditions in any trade or industry in Sri Lanka. The wage boards function on a tripartite basis, consisting of an equal number of representatives of employers and workers in a trade appointed by the minister in charge of the labour portfolio. These worker-members on a wage board for a particular trade are, therefore, not elected by workers, and these representatives may, consequently, not be representative of workers in that trade. The minister may also appoint not more than three "nominated members" who are neither employers' nor workers' representatives.

The wages boards are chaired by the Commissioner General of Labour or her/his nominee.

These boards determine:

- ▶ Minimum wage rates
- ▶ Leave

⁶⁵ ILO, *The Current Status and Evolution of Industrial Relations in Sri Lanka*, 2009.

⁶⁶ ILO, *Review of the State of Labour Market Governance in Sri Lanka – Towards Building Consensus to Reinvigorate Tripartite Social Dialogue and Promote Cooperation*, August 2017.

- ▶ Weekly and public holidays

- ▶ Maximum working hours

- ▶ Overtime rates

2.7.1.1 *Social Dialogue and Workplace Cooperation Unit*

The Department of Labour, under the Ministry of Skills Development, Employment and Labour Relations headed by the Commissioner General of Labour, includes a Social Dialogue and Workplace Cooperation Unit. This unit does not constitute a tripartite social dialogue mechanism, but it was established specifically to promote social dialogue, collective bargaining and workplace cooperation at the enterprise and national levels in an effort to prevent conflict.

The unit's work includes:

- ▶ Preparation of policy and position papers on social dialogue, collective bargaining and workplace cooperation.

- ▶ Conducting workshops, seminars and training programmes on social dialogue, collective bargaining and workplace cooperation for the benefit of workers, employers and their respective organizations.

- ▶ Creating public awareness on social dialogue, collective bargaining and workplace cooperation through the development of relevant material.

- ▶ Capacity building of stakeholders on social dialogue, collective bargaining and workplace cooperation.

- ▶ Coordinating with trade unions and employers to promote social dialogue, collective bargaining and workplace cooperation with a view to facilitating social dialogue and reaching collective agreements with a view to minimizing industrial disputes.

2.7.2 *Bipartite social dialogue mechanisms*

Sri Lanka's labour legislation provides for both workplace cooperation and collective bargaining. Bipartite social dialogue procedures have also been developed for its EPZs.

2.7.2.1 *Collective bargaining*

The first collective agreement signed in Sri Lanka in 1929 was between the Employers' Federation of Ceylon and the All Ceylon Trade Union Congress.

The Industrial Disputes Act No. 43 of 1950 (as amended by Act Nos 14 and 62 of 1957) provides the legislative basis for collective bargaining in Sri Lanka. Under the terms of this Act, it is unlawful for an employer to refuse to bargain with a trade union.⁶⁷ A trade union must, however, have at least 40 per cent of the workforce in an enterprise as members to be eligible to be recognized as a bargaining agent.

While considering representations made by trade unions on the implementation of this provision, in 2019, the CEACR recommended that "the NLAC and the Government will take the necessary measures to review section 32(A)(g) of the Industrial Disputes Act, in accordance with Article 4 of the Convention (Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in order to ensure that, if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions are given the possibility, jointly or separately, to

67 Industrial Disputes Act No. 56 of 1999, Section 32A(g).

bargain collectively, at least on behalf of their own members.”⁶⁸ This recommendation has not as yet been given statutory effect.

Collective bargaining has been an important method of wage determination especially in the banking sector, large trading companies and in the plantations sector. Collective agreements, while binding on the parties, can be legally enforced only if they have been formally communicated to the Commissioner General of Labour and published in the Government Gazette, provided that the Commissioner General of Labour is satisfied that the agreed conditions of employment are not less favourable than those applicable to workers in the same or a similar industry.

Section 10 of the Industrial Disputes Act also empowers the minister responsible for the labour portfolio to extend the application of any collective agreement to all workers in a particular sector. This provision has been used by the responsible minister on several occasions, particularly to extend the terms of collective agreements entered into between the Employers’ Federation of Ceylon and the plantation sector trade unions to the entire plantation industry of a particular crop (tea or rubber).

Collective bargaining in the EPZs is governed by the BOI, and their Labour Standard and Employment Relation Manual of 31 March 2004 defines the procedures for collective bargaining within Sri Lanka’s EPZs. In terms of section nine, workers in BOI enterprises have the right to form and join trade unions of their own choice and to bargain collectively, subject to the provisions of the Trade Unions Ordinance and the Industrial Disputes Act. Employers are required to respect the rights of workers to form and join trade unions of their own choosing and to bargain collectively.

Section 15(2) of the Labour Standard and Industrial Relation Manual makes provisions for collective bargaining to be undertaken between the employer and an employees’ council in non-unionized enterprises. The union, or employees’ council in the absence of a union, may also lodge industrial disputes with the Department of Labour and may embark on strike action following a prescribed procedure. Further details with respect to employees’ councils are provided in section 2.7.2.2.

Collective bargaining, however, appears constrained in the EPZs. In this regard, in 2019, the CEACR highlighted the need for the government to promote collective bargaining in Sri Lanka’s EPZs.

A further issue highlighted by the CEACR was the need to amend section 49 of the Industrial Disputes Act which currently excludes state and government employees from the Act’s scope of application.⁶⁹

2.7.2.2 Employees’ councils in State enterprises

The Employees’ Councils Act, 1979 (No. 32 of 1979), makes provisions for the establishment of employees’ councils in State enterprises. The number of members serving on an employees’ council is determined by the number of regular workers in the enterprise. The minimum number of employees’ council members is three for enterprises employing up to 50 workers, and the maximum number of members is 18 for enterprises employing more than 1,000 workers. Members are elected by secret ballot through a procedure prescribed by the Employees’ Councils Act. Members serve on the council for a period of two years.

68 ILO, “International Labour Standards: 2019 Report of the Committee of Experts on the Application of Conventions and Recommendations”.

69 ILO, “International Labour Standards: 2019 Report of the Committee of Experts on the Application of Conventions and Recommendations”.

The Act defines the objectives of the employees' council as:⁷⁰

- ▶ The promotion and maintenance of effective participation of workers in the affairs of the enterprise
- ▶ The securing of the mutual cooperation of the workers and employer in achieving industrial peace, and greater efficiency and productivity in the enterprise
- ▶ The execution of other matters as may be prescribed by the Minister by regulation

Under the terms of section 44 of the Act, the employees' councils have the right to:

- ▶ Advise and assist the employer to take adequate steps to prevent the occurrence of accidents by providing safety measures and eliminating any health hazards at the undertaking.
- ▶ Provide information and advice to government departments and other institutions on matters that may be referred to the council for advice.
- ▶ Promote the implementation of measures to prevent industrial accidents.

Section 45(1) of the Act also grants employees' councils the right to consult with the employer on the following issues in the event that they are not covered by legislation:

- ▶ Hours of work, the preparation of the roster of shift workers, and intervals for meals and rest
- ▶ Time and place for payment of wages and other remuneration
- ▶ Preparation of the annual leave schedule
- ▶ Carrying out of vocational training
- ▶ Administration of welfare, recreational and social activities
- ▶ Matters relating to the maintenance of order and discipline and the conduct of workers
- ▶ Matters regarding the transfers and dismissals of workers
- ▶ Matters concerning safety and occupational hazards
- ▶ Under the terms of the Act, the employees' councils⁷¹ are required to meet monthly.

2.7.2.3 Employees' councils in EPZs

The BOI's Labour Standard and Employment Relation Manual of 31 March 2004 provides guidelines for the establishment of employees' councils in enterprises that operate in Sri Lanka's EPZs. This Manual derives its basis from the Industrial Disputes Act No. 56 of 1999 and provides guidance on the implementation of the Act specifically in EPZs.

The Manual defines the employees' councils as a measure to promote employees' participation in decision-making that affects them, and as a mechanism for labour-management consultation and cooperation on matters of mutual concern at the enterprise level.

The composition of the employees' councils in EPZs includes elected representatives of workers representing the different departments of the enterprise and of the different categories of workers employed in the enterprise.

70 Sri Lanka, Employees' Councils Act, section 34, 1979 (No. 32 of 1979).

71 The employees' councils have become defunct.

The functions of these employees' councils are as follows:⁷²

- ▶ Regulation of relations between workers and management of the enterprise
- ▶ Promotion and maintenance of effective participation of workers in the affairs of the enterprise through consultation and cooperation between the workers and the management on matters of mutual concern to both parties
- ▶ Representation of employees in collective bargaining and industrial disputes in non-unionized enterprises
- ▶ Contribution to the promotion and maintenance of industrial peace and improvement of efficiency and productivity in the enterprise
- ▶ Promotion of the general interests, welfare and well-being of workers

2.7.2.4 Workplace cooperation committees in private sector enterprises

Sri Lanka currently does not have legislation that aims to facilitate workplace cooperation in enterprises that are privately owned. The ILO has been working with the tripartite constituents in Sri Lanka to promote workplace cooperation in such enterprises and has provided technical support to them to develop guidelines for the transparent establishment of workplace cooperation committees through the structured election of workers' representatives. These guidelines were finalized in 2019 and are planned to be piloted in 2020/21.

2.7.2.5 Association for Conflict and Dispute Resolution

In 2007, the EFC (Employers' Federation of Ceylon) and the National Association for Trade Union Research and Education (NATURE), which comprises the larger trade unions in Sri Lanka, launched the Association for Dispute and Conflict Resolution (ADCOR) with the support of the ILO. The objectives of the ADCOR are to resolve employment-related conflicts, make representations to relevant authorities, including government, on all matters affecting employment.

In addition, the Employment Mediation Services Centre (EMSC), which was originally established in 2001, was brought under the management of the ADCOR. The EMSC focused specifically on providing training on alternative dispute resolution techniques with a particular focus on mediation.

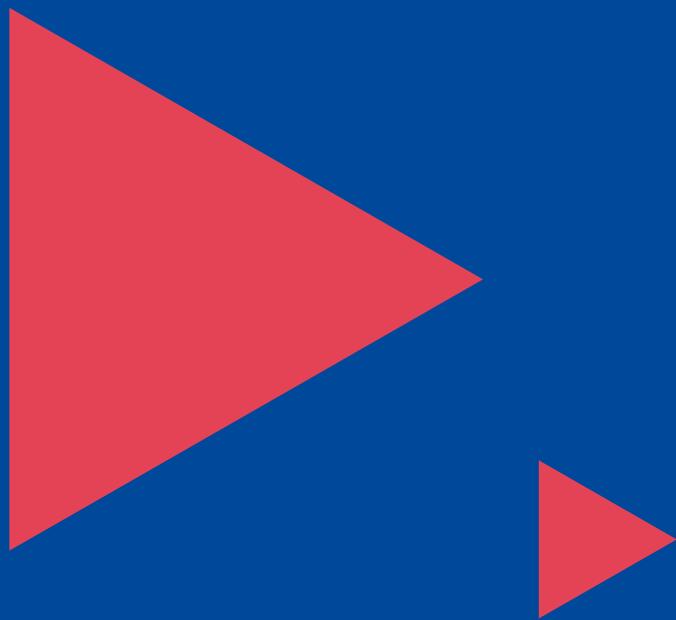
Unfortunately, the ADCOR is now defunct. Both the EFC and trade unions have expressed the need to revitalize the ADCOR and EMSC given the constructive roles of these mechanisms in promoting dispute resolution and improving industrial relations.

It is clear that there is no shortage of provisions and mechanisms for social dialogue in South Asia. The issue lies, however, in the extent to which these mechanisms are functional, their capacities to implement their respective mandates, and their ability to coordinate between themselves. The level of involvement of these mechanisms in the efforts to respond to the impacts of the COVID-19 pandemic provides a useful indicator of their effectiveness. This is explored in the next section.

⁷² Sri Lanka, Board of Investment, *Labour Standard and Employment Relation Manual*, section 10, 31 March 2004.

▶ 03

- ▶ Roles of tripartite and bipartite social dialogue mechanisms in responding to the COVID-19 crisis
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The COVID-19 pandemic has had devastating impacts on lives, livelihoods, economies; and on society in general. It has exacerbated existing inequalities. Women, those with lower levels of education, those in manual occupations, informal workers, and the poor in general are bearing the brunt of the crisis, and lay-offs and job losses have further worsened prevailing inequalities.

Recovery from this crisis and a return to a better normal will be a long and difficult journey. It will undeniably require strong partnerships and joint efforts between governments, employers and unions. In this regard, the ILO's *Policy Brief: The need for social dialogue in addressing the COVID-19 crisis*, issued in May 2020, emphasizes the importance of social dialogue and partnership generally, but especially in times of crisis.

A united responses is critical for South Asia, if a rapid, effective and inclusive response to the COVID-19 crisis is to be achieved. This section, therefore, describes the responses to the pandemic based on social dialogue in South Asia.

3.1 Afghanistan

The Labor High Council has not yet been convened to discuss the COVID-19 crisis, and this structure currently exists largely in name only. There has also not been bipartite social dialogue focused on the crisis to address its impact.

The DWCP Technical Working Group was, however, convened in May 2020, and the Minister of Labor and Social Affairs participated in the meeting. The key outcome of this meeting was the tripartite endorsement of a project proposal to the United States Department of State. This proposal focuses on expanding the Road to Jobs project to the Balkh Province in 2020–22. The Road to Jobs project aims to facilitate improved market access for enterprises. The tripartite constituents supported the proposal, including on the basis that it was an important intervention that would help address the impact of the COVID-19 crisis on enterprises.

3.2 Bangladesh

Bangladesh's national TCC played a role in reaching an agreement on the protection of wages and employment for the period of Eid al-Fitr 2020 and the public holidays that had been declared by the government to address the COVID-19 pandemic.

In this regard, the national TCC developed guidance on wage and bonus calculations at the enterprise level for the public holidays. The TCC also provided guidance that resulted in the prevention of lay-offs and retrenchments until Eid al-Fitr 2020. The unions have, however, indicated that dialogue has been insufficient and narrowly focused.

In an early response to the crisis, on 12 April 2020, the Ministry of Labour and Employment also formed 23 tripartite crisis management committees. These committees have been established in geographical economic nodes prioritized by the government. The aim of each crisis management committee is to:

- ▶ Monitor the payment of wages, arrears, bonuses and other applicable benefits to workers.
- ▶ Ensure the security of workers.
- ▶ Promote harmonious industrial relations during the COVID-19 crisis.

It is currently unclear if these crisis management committees have been active and effective in undertaking their work.

3.3 India

A meeting on the effects of COVID-19 with trade unions was convened by the Minister of Labour and Employment on 7 May 2020. Trade unions have, however, raised concerns that government has not yet responded to the recommendations that they had made at the meeting. Concerns have also been raised by unions, and officially by the ILO, regarding attempts by various states to amend labour laws and weaken labour rights as a basis for reviving state economies. These attempts appear to have subsequently been withdrawn.

In March 2020, the Labour Ministry issued a number of advisories to employers, state chief secretaries as well as secretaries of other ministries to avoid retrenchments and protect workers' health and safety. The Labour Ministry has also established 20 grievance centres intended to receive and address workers' grievances arising from the pandemic. These initiatives did not include the involvement of the social partners.

3.4 Maldives

There has been an absence of social dialogue in Maldives' responses to the COVID-19 pandemic. The government did, however, proceed to implement various measures to contain the spread of the virus, and revive the economy. These included lockdowns, travel restrictions, and more recently, financing support instruments for tourism establishments, and small, medium and micro enterprises.

3.5 Nepal

The Government of Nepal published a gazette notification on the payment of wages during lockdown. This notification, published on 27 April 2020, stipulated that all workers' leave (including government workers) during lockdown would be converted to holiday leave and that full wage and allowance payments would be made to all workers during the lockdown period (March to June 2020).

The Ministry of Labour, Employment and Social Security subsequently convened a meeting of the Central Labour Advisor Committee to discuss the implementation of this notification. A tripartite task force of the Central Labour Advisory Committee has also been established to facilitate the addressing of industrial relations challenges, including with respect to wage payments arising from the COVID-19 pandemic.

The Joint Trade Union Coordination Centre has reported⁷³ that full wage payments have not yet been paid because employers found this to be unaffordable given the impact of the lockdown on their businesses. Trade unions have also expressed concerns that workplaces are operating without basic personal protective equipment, including sanitizer, masks, gloves and soap.

3.6 Pakistan

The use of social dialogue to respond to the COVID-19 crisis in Pakistan has primarily taken place in Sindh province. In this regard, Sindh's Tripartite Standing Committee met in March 2020, and this meeting led to Sindh's labour department issuing the two notifications:⁷⁴

- ▶ All workers were to be treated as being on paid leave and were not to be laid off during the shutdown.
- ▶ Outstanding wage payment should be made to workers by 31 March 2020.

73 Joint Trade Union Coordination Committee response to the survey questionnaire, June 2020.

74 Caroline Bates, Project Manager, International Labour and Environmental Standards, in Pakistan's SMEs project.

A number of leading industrialists from the textile sector subsequently approached the Ministry of Commerce, requesting financial support and an early return to operations. Some, particularly in the Sindh Industrial and Trading Estate (SITE Town), are reported to have continued operations in contravention of the lockdown. The Tripartite Standing Committee made the government aware of these breaches and as a result, further notifications and arrangements were made to:

- ▶ Ensure directors of labour were supervising areas and addressing reports of work being conducted in contravention of the lockdown.
- ▶ Establish crisis cells with contact numbers.
- ▶ Organize rotas of labour department staff to operate the cells.

On 28 March 2020, the Sindh Tripartite Standing Committee met virtually and this resulted in a joint workers' and employers' statement being issued which:

- ▶ Expressed support for the measures taken.
- ▶ Called for the establishment of a tripartite oversight mechanism.
- ▶ Called for measures for safe working modalities to be developed, which would then apply when the Section 144 notice was lifted (Section 144 of Pakistan's Code of Criminal Procedure empowers district administrations to issue orders that may place a ban on an activity for a specific period of time in the public interest).
- ▶ Called for expert committees to be established to review the impact of the crisis and to develop initiatives towards the provision of universal social security.

Despite these promising beginnings, it currently appears that the tripartite process and its previous undertakings have been overtaken by economic concerns and associated decisions taken at the federal level. Standard operating procedures for the reopening of enterprises were issued on 14 April 2020 by the government of Sindh.

It appears that little consultation was conducted with constituents, some of whom had not received any information regarding the various standard operating procedures and orders that had been issued. This is reported to have resulted in concern and confusion amongst the social partners.

From a bipartite social dialogue perspective, the Employers' Federation of Pakistan (EFP) and Pakistan Workers Federation (PWF) have issued a joint declaration, which aims to promote constructive industrial relations during the COVID-19 crisis.

The declaration confirms that:⁷⁵

- ▶ The EFP has requested all employers to respect and comply with the law, treat workers with compassion, and ensure the occupational health and safety of workers.
- ▶ The PWF has taken measures to step up awareness programmes for workers so that they fully cooperate with measures implemented by employers and governments to ensure their health and safety at the workplace and to respect the lockdown.

75 Joint Declaration by Employers Federation of Pakistan and Pakistan Workers Federation on the outbreak of COVID-19 challenges in Pakistan, April 2020.

3.6 Sri Lanka

The Government of Sri Lanka chose to rely strongly on social dialogue in order to address the industrial relations impacts of the pandemic. The government established a COVID-19 tripartite task force comprising members of the NLAC specifically for this purpose. In responding to the crisis, this task force focused on safeguarding the interests of workers and employers through social dialogue.⁷⁶

On 5 May 2020, the task force reached an agreement applicable to all sectors, ensuring payment of wages within the existing legal framework. This agreement was endorsed by the Sri Lankan ministerial cabinet on 14 May 2020. The agreement specifically covered the months of May and June 2020, and they determined that there was no distinction between the payment of wages with respect to workers who performed work and those who had to be “benched” (that is, those who were without any work). This arrangement was aimed at addressing situations where companies were unable to bring in the entire complement of the workforce due to health restrictions.

According to the agreement reached, employers would apportion and pay wages for days worked based on the basic salary. With respect to the days not worked (days on the bench without any work), wages would be apportioned and paid either at the rate of 50 per cent of the basic wage or 14,500 Sri Lankan rupees, whichever was higher.

Employers were also encouraged to rotate workers wherever possible in order to provide opportunities for as many workers as possible to resume work and thereby minimizing job losses.

The Employers’ Federation of Ceylon has also requested members to make use of bipartite social dialogue at the enterprise level to facilitate the implementation of the agreement. It has also encouraged employers to engage with recognized unions as bargaining agents, or with worker councils in enterprises where these were present.⁷⁷

While some countries in South Asia used social dialogue to design responses to the COVID-19 crisis, the overview in this sections shows that the majority did not apply it to good effect. With the exception of Sri Lanka, it is clear that the use of social dialogue has been limited and narrow. Where social dialogue has been used, it has been focused exclusively on labour matters, excluding broader social and economic priorities. This is a matter of concern as it essentially means that social partners have largely been excluded from participating in the development of national policy responses to the crisis.

Social partners have also been excluded from working with governments to implement these responses. This is fundamentally detrimental to the development and implementation of more impactful responses that are premised on partnerships and shared responsibility with employers and unions.

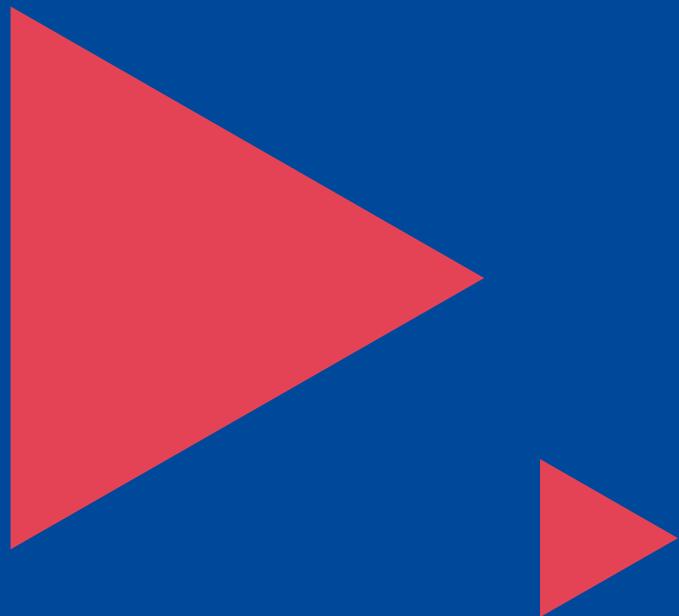
In addition, cross-border social dialogue has also been absent. The tripartite constituencies have not sought to build alliances with their counterparts in neighbouring countries to learn from their experiences and work together to jointly combat the shared impacts of the COVID-19 crisis. This is despite the existence of similar institutional mechanisms and challenges.

⁷⁶ IndustriALL Global Union, “Tripartite agreement to protect Sri Lankan workers”, 25 May 2020.

⁷⁷ The Employers’ Federation of Ceylon, *EFC News*, “Historic Tripartite Deal Reached on Wages Board Pay for Employees during COVID-19”, 13 May 2020.

▶ 04

- ▶ **Key challenges and actions to strengthen social dialogue**
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This section is based, in the main, on responses provided to the questionnaires from employers' organizations, unions and ILO Country Offices. Information has also been drawn from information obtained through earlier ILO consultations with tripartite constituents. It identifies key social dialogue challenges and aims to provide practical actions to address these challenges.

4.1 Key challenges

Effective social dialogue in South Asia is constrained by a range of issues including weakened labour administrations, increased polarization in the positions of social partners, and declines in the membership of both employers' organizations and unions. This section attempts to place a spotlight on the key challenges that have been more starkly highlighted through the COVID-19 crisis and in questionnaire responses.

4.1.1 Trend towards dormancy of key tripartite social mechanisms

There are a plethora of provisions and mechanisms for social dialogue across South Asia. As emphasized in this report, social dialogue has played only a minor role in national efforts to respond to the COVID-19 crisis. This is not particularly unexpected given that many tripartite social dialogue mechanisms have either become dormant or were functioning only sporadically prior to the crisis. For example, the ILC has not met since 2015, and India's industrial tripartite committees have also become dormant. Pakistan's TLC last convened in 2009, and Maldives' National Tripartite Labour Advisory Council last met in 2016.

Many of the tripartite social dialogue mechanisms that are not yet dormant do not meet regularly. This further weakens their role and potential contributions. Over time, this could also likely result in their own dormancy. For example, tripartite social dialogue mechanisms such as Nepal's Central Labour Advisory Committee, Afghanistan's High Labour Council and Bangladesh's RMG TCC rarely meet.

Institutional support for tripartite social dialogue mechanisms in most South Asian countries is extremely weak, and dedicated secretariat support is largely absent. In most cases, the staff of the labour ministry/department provide secretariat support in addition to their other responsibilities. Support to undertake research, as a basis for better informed social dialogue, is absent, as is communications capacity and dedicated support for meeting logistics. The key tripartite social dialogue mechanisms are also not provided with budgets to undertake their work. Each of these factors combine to further weaken these important mechanisms for partnership and trust building.

This situation stems from a range of factors including a diminished appreciation for the role of social dialogue; a duplication of mandates between structures; the presence of too many structures; a lack of constituency capacity to support and participate in a large number of structures; and the possibility that some structures may simply be outdated and, therefore, lack relevance in terms of their functions and composition.

Reversing this backward slide will require a range of interventions including rebuilding a recognition and understanding of the importance and value of both bipartite and tripartite social dialogue as a basis for mobilizing support for social dialogue processes in the sub-region. This will require a deepened awareness of social dialogue, its role and its various tools. This awareness building must extend beyond constituency leadership to encompass a wider range of stakeholders representing both employers and workers.

Re-establishing the functionality of these mechanisms will also fundamentally require a structured analysis of each mechanism to systematically identify challenges and the broader conditions/constraints that impact each of these mechanisms.

4.1.2 Declining collective bargaining and workplace cooperation

With the exception of Afghanistan, Maldives and India, the remaining countries in South Asia make explicit provision for collective bargaining. However, the practice of collective bargaining is declining. The CEARC has identified and made recommendations to address impediments to freedom of association and collective bargaining, particularly with respect to Bangladesh, Pakistan and Sri Lanka.

These recommendations include reducing thresholds for recognition as a collective bargaining agent, reducing union registration thresholds, and addressing cases of anti-union discrimination more strongly. Although some of these recommendations have been partially implemented, such as reductions in union registration thresholds in Bangladesh, many are yet to be addressed.

In addition, social partner capacity in the area of collective bargaining requires enhancement. This includes the practice of collective bargaining itself as well as enhancing skills in negotiation techniques. Another factor in this regard is that the majority of enterprises in South Asia tend to be small and micro enterprises. In addition to capacity constraints, they also face the challenge of inadequate labour legislation coverage.

Bangladesh, India, Nepal, Pakistan and Sri Lanka have each made provisions for the establishment of workplace cooperation mechanisms at the enterprise level. Afghanistan and Maldives have not yet made provisions for such mechanisms. In India, such mechanisms have been established mainly in very large corporates but are generally rarely found elsewhere. In Bangladesh, participation committees are more widespread but are predominantly found in RMG factories. The presence of workplace cooperation mechanisms in Nepal and Pakistan are much more limited.

In order for workplace cooperation mechanisms to be trusted and have legitimacy, it is necessary that workers' representatives are transparently elected by workers. This remains a challenge in the region.

Structures for workplace cooperation are especially relevant in the COVID-19 return-to-work phase. They are crucial as they provide a platform for consultation and joint management-worker action on an enterprise's safe return to operations. It is, therefore, necessary to create awareness of the importance of workplace cooperation and of the measures to promote transparent and legitimate management-worker cooperation.

4.1.3 Limited representation of vulnerable workers

Tripartite social dialogue mechanisms in South Asia, in the main, do not make specific provision for women's representation. However, Nepal's Central Labour Advisory Council and the Province Five Labour Advisory Council both make provisions for women's representation, although to a limited extent.

The situation with respect to the representation of the informal sector is more dire. Informal worker representation is primarily limited to India's welfare boards, such as the Building and Other Construction Workers' Welfare Board. Informal workers,⁷⁸ however, comprise the largest

⁷⁸ In 2003, the 17th International Conference of Labour Statisticians at the ILO (17th ICLS) defined the concept of informal employment as "all remunerative work (that is, both self-employment and wage employment) that is not registered, regulated or protected by existing legal or regulatory frameworks, as well as non-remunerative work undertaken in an income-producing enterprise. Informal workers do not have secure employment contracts, workers' benefits, social protection or workers' representation.

component of South Asia's workforce.⁷⁹ Amongst other things, informality has a harmful effect on workers' rights, including fundamental principles and rights at work, social protection, decent working conditions and the rule of law

Women and informal workers have been deeply affected by the COVID-19 crisis, which has exacerbated their already precarious social and economic situations. Their voices in formulating the measures to respond to the COVID-19 crisis are weak.

Research is critical to promote tripartite discussions on informality. Such discussions are largely absent from the agendas of national tripartite social dialogue mechanisms in South Asia. It is important that these discussions are informed by the ILO's Recommendation No. 204. This Recommendation advocates a practical approach to achieving decent work for all and inclusive development. It emphasizes integrated strategies in order to facilitate the transition to the formal economy, create new formal jobs, and prevent further informalisation.

4.1.4 Increased labour disputes leading to further polarization

Labour dispute resolution mechanisms in South Asia were weak even prior to the COVID-19 pandemic. Labour ministries/departments have limited conciliation capacity. In cases where such capacity has been developed (for example, in Bangladesh), it has not been dedicated strictly to the conciliation of labour disputes. Trained conciliators are required to undertake other duties with conciliation forming only a minor part their responsibilities.

At the same time, labour judiciaries are inundated with cases, most of which predate the COVID-19 pandemic. The pressure on labour departments and the labour judiciary have been vastly magnified as a result of this crisis, which has been characterized, amongst other things, by business closures, retrenchments and layoffs.

Unless these significant labour dispute resolution capacity weaknesses are urgently addressed, the potential for labour action, such as strikes and other protest action, could well increase. This will have negative implications for the COVID-19 recovery phase and could further polarize social dialogue processes and mechanisms.

4.2 Proposed actions

Many of the challenges that have been identified are common across the various countries in South Asia. The actions proposed are intended to be implemented through an intensive sub-regional programme of action aimed at building resilience with respect to social dialogue mechanisms and practices.

The identified actions are intended to facilitate a strengthened recognition of the importance of social dialogue, particularly in situations of crisis, such as the COVID-19 pandemic. These actions are also fundamentally intended to address institutional weaknesses and capacity constraints in order to build resilient social dialogue processes and systems in South Asia. It is important to implement these actions in combination with each other where necessary. For example, actions to increase awareness of social dialogue should be implemented in combination with measures to analyze and strengthen social dialogue mechanisms, in order to maximize impact.

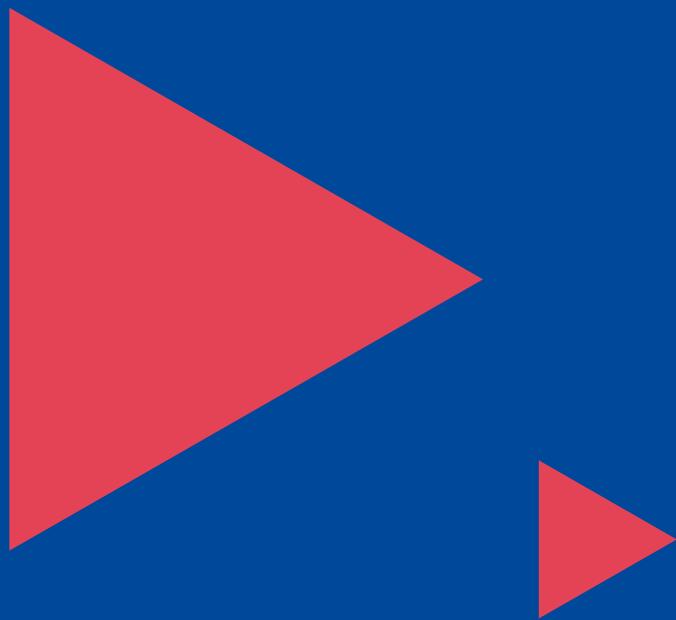
⁷⁹ ILO, *Men and Women in the Informal Economy: A Statistical Picture*, 2018.

Table 3. Actions to address key social dialogue challenges

Key challenges	Key actions	Priority
1. Trend towards dormancy of key tripartite social dialogue mechanisms	<ul style="list-style-type: none"> Country-by-country analysis of tripartite social dialogue mechanisms to identify specific gaps, and broader conditions/constraints impacting these mechanisms Actions will include targeted research, the selective application of the ILO's SAM-SDI tool, and capacity building 	Short term
	<ul style="list-style-type: none"> Strengthening constituency capacity through training on industrial relations and social dialogue 	Short term
	<ul style="list-style-type: none"> Training of government officials, providing secretariat support to tripartite social dialogue mechanisms, on the writing of meeting minutes, meeting organizing, agenda setting, research techniques, data gathering, data analysis and report drafting 	Short term
	<ul style="list-style-type: none"> Establishing a research observatory in the sub-region for research and information sharing on social dialogue practices and experiences at the global, regional, sub-regional and national levels, particularly in responding to crises 	Medium term
2. Declining bipartite social dialogue practices	<ul style="list-style-type: none"> Capacity-building programme on collective bargaining for social partners (and government officials where relevant), based on the Industrial Relations Toolkit 	Short term
	<ul style="list-style-type: none"> Capacity building for social partners on negotiation techniques 	Short term
	<ul style="list-style-type: none"> Capacity-building programme based on the Industrial Relations Toolkit on workplace cooperation 	Short term
	<ul style="list-style-type: none"> Promoting the ILO's Guidelines for the establishment of an enterprise-level COVID-19 task force, developed by the Decent Work Team for South Asia in partnership with ACTRAV, ACTEMP and INWORK. 	Short term
3. Limited representation of vulnerable workers	<ul style="list-style-type: none"> Setting of quotas for women's participation in all capacity-building activities and monitoring adherence. 	Short term
	<ul style="list-style-type: none"> Undertaking research through a sub-regional coalition of universities to highlight gender issues including the expanded gender gap arising from the COVID-19 crisis and promoting social dialogue on research findings 	Medium term
	<ul style="list-style-type: none"> Undertaking research through a sub-regional coalition of universities, to identify the impacts of the COVID-19 crisis on informal workers and promoting social dialogue on research findings These actions will aim to promote the implementation of Recommendation 204: Recommendation concerning the transition from the informal to the formal economy through joint tripartite efforts 	Medium term
4. Increasing labour disputes arising from the COVID-19 crisis, that, if not effectively addressed, will result in further polarization	<ul style="list-style-type: none"> Developing conciliation capacity through the training of tripartite constituents on conciliation 	Short term
	<ul style="list-style-type: none"> Providing technical support to establish dedicated conciliation within the labour administration 	Medium term
	<ul style="list-style-type: none"> Providing technical support to establish dedicated arbitration capacity 	Long term
	<ul style="list-style-type: none"> Designing and piloting a rapid response dispute resolution mechanism 	Short term
	<ul style="list-style-type: none"> Capacity building on enterprise-level grievance handling based on the Industrial Relations Toolkit; developing enterprise-level grievance handling guidelines, and piloting these guidelines 	Short term

▶ 05

▶ Conclusion



From this report, it is clear that with the exception of Maldives, each of the countries in South Asia have established tripartite social dialogue mechanisms at the national level. Countries such as India and Pakistan, and more recently Nepal, have also established such mechanisms at the state/province level. In Bangladesh, a sectoral tripartite social dialogue mechanism has also been established.

However, as is clearly demonstrated during the COVID-19 pandemic, these mechanisms have been used to a very limited extent, and in some countries not at all, to respond to the crisis and its impacts. Only Sri Lanka has progressively and constructively used social dialogue, through its national tripartite social dialogue mechanism, to address labour rights issues arising from the COVID-19 pandemic, specifically with regard to wages.

There is, unfortunately, no government in South Asia that has used its social dialogue mechanisms or processes to craft and implement broader economic and social responses to the crisis in partnership with its social partners.

This exclusion of the social partners will inevitably limit and weaken the effective implementation and impact of responses to the COVID-19 crisis. It is, therefore, vital to rebuild an understanding of social dialogue and its benefits, and consequently, to also rebuild institutional mechanisms and practices of social dialogue.

At the recent ILO Global Summit in July 2020, representatives of governments, employers and workers, including those from South Asia, echoed in unison the critical need for social dialogue in the social and economic recovery process. Achieving this will require the full and sustained commitment and participation of the tripartite constituencies, and their leadership.



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