EUROPEAN UNION’S GSP Plus Regime

Examining Pakistan’s compliance with International Legal Obligations

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# European Union’s GSP Plus Regime

## Examining Pakistan’s Compliance with International Legal Obligations

### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Introduction</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>Overview of Pakistan’s Compliance with</strong></td>
<td></td>
</tr>
<tr>
<td>Conventions Relating to the Environment</td>
<td>4</td>
</tr>
<tr>
<td>- UNFCCC 1992</td>
<td>5</td>
</tr>
<tr>
<td>- Kyoto Protocol to UNFCCC 1998</td>
<td>6</td>
</tr>
<tr>
<td>- CITES 1973</td>
<td>6</td>
</tr>
<tr>
<td>- Convention on Biological Diversity 1992</td>
<td>7</td>
</tr>
<tr>
<td>- Cartagena Protocol on Biosafety 2000</td>
<td>8</td>
</tr>
<tr>
<td>- Montreal Protocol on the Ozone Layer 1987</td>
<td>10</td>
</tr>
<tr>
<td>- Stockholm Convention on POPS 2001</td>
<td>10</td>
</tr>
<tr>
<td><strong>Overview of Pakistan’s Compliance with</strong></td>
<td></td>
</tr>
<tr>
<td>Conventions Relating to Narcotics Control</td>
<td>11</td>
</tr>
<tr>
<td>- Single Convention on Narcotic Drugs 1961</td>
<td>12</td>
</tr>
<tr>
<td>- UN Convention on Psychotropic Substances 1971</td>
<td>13</td>
</tr>
<tr>
<td>- UN Convention Against Illicit Traffic in Narcotic Drugs 1988</td>
<td>14</td>
</tr>
<tr>
<td><strong>Overview of Pakistan’s Compliance with</strong></td>
<td></td>
</tr>
<tr>
<td>Conventions Relating to Human Rights</td>
<td>17</td>
</tr>
<tr>
<td>- UN Convention Against Torture 1984</td>
<td>17</td>
</tr>
<tr>
<td>- UN Convention on the Rights of the Child 1989</td>
<td>18</td>
</tr>
<tr>
<td>- UN Genocide Convention 1948</td>
<td>19</td>
</tr>
</tbody>
</table>
OVERVIEW OF PAKISTAN’S COMPLIANCE WITH
LABOUR CONVENTION ........................................................................................................ 26
- Forced or Compulsory Labour No. 29, 1930 ................................................................. 26
- Freedom of Association and Right to Organize No. 87, 1948 ................................. 26
- Right to Organize and Bargain Collectively No. 98, 1949 ................................. 27
- Equal Remuneration No. 100, 1951 .......................................................................... 27
- Abolition of Forced Labour No. 105, 1957 ................................................................. 28
- Discrimination in Employment and Occupation No. III, 1958 ......................... 28
- Minimum Age for Admission to Employment No. 138, 1973 ............................. 28
- Child Labour Convention No. 182, 1999 ................................................................. 29

OVERVIEW OF PAKISTAN’S COMPLIANCE WITH
THE UN CONVENTION ON CORRUPTION, 2003 .......................................................... 31
The European Union’s Generalised Scheme of Preferences (GSP Plus) is a special incentive arrangement for sustainable development and good governance. The aim of this special incentive arrangement is to assist developing countries in exporting their products to the European Union.

GSP plus can serve as the impetus for bolstering Pakistan’s economy which faces a myriad of challenges, ranging from national security threats to the energy crisis. The special incentive arrangement aims to facilitate the economic growth of Pakistan by reducing tariffs on products which enter EU’s markets. Therefore, GSP plus provides a matrix for income generation and job creation.

Pakistan has been granted GSP plus status till 2017. Gaining access to the European markets was marked as one the highest priorities of the newly elected Government as a part of their economic development agenda. The GSP Plus Status will allow approximately 20 per cent of Pakistani exports to enter the EU market at zero tariff and 70 per cent at preferential rates. It is estimated that this arrangement will help Pakistani exports rise up to 2 billion dollars.

Furthermore, it is foreseeable that the new beneficial trade status is going to attract local and foreign investors towards the industrial sector of Pakistan, thereby reducing further flight of capital.

GSP plus will no doubt usher in a new era of economic growth for Pakistan, however, Pakistan has to fulfill certain commitments under international agreements in order to retain the benefit of holding the GSP plus status for the next 10 years. A focal requirement of the EU regulations requires Pakistan to ratify and effectively implement 27 international Conventions. The various Conventions deal with human rights issues, labour rights and environmental standards broadly. These Conventions have been ratified by Pakistan, however, some of these Conventions have not been implemented effectively. Furthermore, reporting and compliance mechanisms need to be invigorated.

Article 9 of the EU Regulations sets forth the criteria for a country for attaining the benefit of holding the GSP plus status. It elucidates that a country may benefit from the status if the monitoring bodies under those Conventions do not identify a serious failure to effectively implement any of these Conventions.

Furthermore, the country must not have made any reservations which are contrary to the aim and purpose of the international agreements. Additionally, it has to abide by the binding undertaking to maintain ratification of the relevant Conventions and to ensure the effective implementation thereof. The country should accept without reservation the reporting requirements imposed by

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each Convention and should give a binding undertaking to accept regular monitoring and review of its implementation record in accordance with the provisions of the relevant Conventions.7

The first inspection is expected in January, 2016. The European Commission will present a report to the European Parliament and European Council on the status of ratification of the relevant Conventions.8

It is imperative to note that Sri Lanka in 2010 lost its GSP Plus status due to significant shortcomings in respect of its implementation of human rights Conventions. Therefore, the fulfillment criterion for compliance is stringent. Pakistan has to strive to ensure that it does not meet the same fate and that the Conventions are being implemented effectively.

As existing UN monitoring bodies were already overseeing the progress of the implementation of the respective Conventions, the monitoring by EU bodies and their implementing agencies will create a dual burden on Pakistan when it comes to reporting mechanisms. However, this is a challenge that Pakistan has to face and circumvent so that it may continue to reap the benefits which accrue from this special incentive arrangement.

After the 18th constitutional amendment, many Ministries have been devolved to the provinces, such as the Ministry of Environment, Ministry of Labour, Ministry of Human Rights, Ministry of Women Development, and Ministry of Minority Affairs. Federal laws will only apply to the said province till the time that provincial laws are enacted. This creates an environment of ambiguity, especially when compliance with 27 Conventions is a necessary condition for retaining the GSP plus status.

When provinces legislate on matters, duplication of laws may arise. Furthermore, since the secretariats of Conventions accept compliance data from national entities, a centralized mechanism will be required at the federal level to collect and compile data gathered by the provinces, and to submit it to Convention secretariats.

However, it is noteworthy that there is an inter-provincial coordination division of the Federal Government which caters to the general coordination between the Federal Government and the Provinces. It promotes uniformity of approach in the formulation of policy and the implementation of such policies in the Provinces and the Federal Government in all fields of common concern. The division also deals with discussions of policy issues emanating from the Provinces which have administrative or economic implications for the country as a whole. Therefore, this division can play an instrumental role in coordination between the provinces and the Federal Government in order to ensure fulfillment of the Government’s obligations under the GSP plus agreement.

Moreover, the Federal Government has decided to set up ‘special cells’ and a focal point to ensure implementation of international Conventions. The provincial governments have been requested to establish legal cells in the respective provinces mandated to prepare required reports for the federation.

Furthermore, legislative initiatives are also underway in order to effectively implement the Conventions, such as the Climate Change, Bio-safety Act, and the Social Security Bill, 2010. As such, Pakistan is certainly showing commitment towards fulfilling its obligations under the GSP plus agreement.

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Therefore, in light of the above, the policy brief examines what the aims and objectives of the Conventions/protocols are and whether Pakistan has made any reservations with regard to any of them. The policy brief has been divided into different themes, i.e., Conventions pertaining to environmental standards, narcotics control, human rights, labour laws and good governance.

In order to gauge the extent of implementation of these Conventions, an exercise was carried out to determine what legislative instruments/policies have been enacted federally and/or provincially. This exercise involved assessing which ministry at the Federal level is responsible for overseeing the compliance with the international agreements. Lastly, the measures that need to be taken in order to ensure compliance were also highlighted.

The aim of the policy brief is to provide the Federal Government of Pakistan, its relevant ministries, the provincial departments and authorities, trade associations, chambers of commerce and all other relevant stakeholders with information on what has been achieved thus far pertaining to the compliance with the relevant international agreements and what still remains to be done. The policy brief can inform legislative decision-making, regulatory initiatives and business decisions geared to allow Pakistan to take full advantage of its position vis-à-vis the preferential regime accorded by the EU’s GSP plus scheme.
Pakistan has undertaken significant steps towards environmental protection. After the UN Conference on Human Environment in 1972, with the establishment of a sub-Ministerial Environment and Urban Affairs Division in 1974, Environment became a part of Pakistan’s mandate. As a consequence, Pakistan enacted its first environment specific legislation in 1983 in the form of the Pakistan Environment Protection Ordinance, 1983.

This impetus to enact environment-specific legislation proved to be an asset at the international level as Pakistan was prominent in the drafting of the Rio Declaration. It is also noteworthy that Pakistan’s Supreme Court created legal history with the seminal judgment of *Shehla Zia v WAPDA*, in which the Court recognized the right to a clean and healthy environment as part of the Fundamental Right to Life guaranteed by the Constitution. It has also continued to spearhead novel environmental jurisprudence.

Prior to the 18th amendment, the subject of “environment pollution and ecology” was included in the Concurrent Legislative List of the Constitution, enabling both the Parliament and Provincial Assemblies to pass legislation pertaining to these areas. The primary environment legislation was the Federal Government’s Pakistan Environmental Protection Act (PEPA), 1997 with the Ministry of Environment in charge of all matters pertaining to the environment.

However, with the enactment of the 18th amendment, the Concurrent List in the Constitution has been abolished. As a result, provinces now have exclusive jurisdiction to frame laws on the subject. As a consequence, PEPA 1997 will only apply to the Islamabad Capital Territory and those areas not included in any province. It will also remain applicable to provinces till it is repealed or amended by them.

However, under the amended Fourth Schedule of the Constitution, the Federal Government retains a number of subjects that are directly or indirectly related to environmental governance such as international treaties, Conventions and agreements and matters of inter-provincial coordination.

The 18th amendment also paved way for a devolution process by virtue of which an administrative reordering of the Federal Government was carried out. The Ministry of Environment ceased to exist from 1st July, 2011 and a Federal Ministry of Climate Change replaced it. However, in 2013, budget cuts forced the hand of the newly elected government to downgrade the Ministry of Climate Change to a Climate Change Division.

Provincial governments are preparing to enact environment-specific legislation but a myriad of questions arise when it comes to the implementation of such legislation, such as the scope and effectiveness of such legislation, especially when it comes to meeting Pakistan’s international obligations under the Conventions & Protocols that Pakistan has ratified.

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9 [PLD 1994 Supreme Court 693]
THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (1992)

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted by 154 countries, including Pakistan, on 9 May 1992. It was ratified by Pakistan in June, 1994 with no reservations and entered into force on 30 August, 1994. Under the UNFCCC, the parties agreed to stabilize the emission of greenhouse gases (GHG) so as to allow ecosystems to adapt naturally to climate change. However, the UNFCCC was only intended to be a framework agreement that was dependent on subsequent protocols for its implementation.

Under the terms of the UNFCCC, Pakistan submitted its Initial National Communication on Climate Change in November, 2003. The Communication sought to “provide a detailed analysis of issues confronting Pakistani climate change planners” and described the impacts climate change will have on water resources, agriculture, forestry and land-use change, coastal zones, livestock, biodiversity, important ecosystems, socioeconomics and extreme events.

The primary policy document on climate change in Pakistan today is the National Climate Change Policy (“NCCP”), adopted by the Federal Government in 2012. The NCCP highlights Pakistan’s acute vulnerability to climate change threats and provides policy measures for climate change adaptation and mitigation in various areas. A broad policy implementation mechanism is also provided. The NCCP is a laudable document, as it is inter-sectoral in nature and describes the link between environment, development and poverty.

Prior to the 18th Amendment, the Federal Ministry of Environment was the designated National Authority under the UNFCCC. Following devolution, the Ministry of Environment ceased to exist from 1 July, 2011 with its functions devolved to the provincial governments or relocated to federal Ministries and Divisions.

The Planning and Development Division of the Planning Commission of Pakistan now has responsibility for making national policies, plans, strategies and programmes regarding climate change. Interestingly, laws, policies, plans, strategies and programmes for climate change at the provincial level are now the domain of the provinces.

The Ministry of Environment was replaced initially with a Federal Ministry of Climate Change. Following the 2013 elections however, budget cuts necessitated this Ministry being downgraded to a Climate Change Division functioning under the Federal Cabinet Secretariat with a drastically reduced annual budget. The Climate Change Division now serves as the focal body for the UNFCCC.

While it would be premature to make a definitive assessment at this juncture, generally speaking, it appears that the ambitious reshuffling of responsibilities between the centre and provinces following the 18th Amendment has hindered Pakistan’s response to climate change and the implementation of environmental law in general. The recent degradation of the Ministry of Climate Change to a Division under the Cabinet Secretariat with a limited budget appears to have curtailed its capacity to combat the effects of climate change. The provincial governments on the other hand, have appeared to demonstrate a lack of interest in this area and there are no indications as yet of province-specific climate change policies.

The problem is compounded if one takes into account the fact that any provincial climate change policy would have to be inter-disciplinary and would require inter-Department coordination at the provincial and local levels.

Keeping in view the above, it may be suitable to designate a lead department at the provincial level that would be responsible for designing provincial climate change policies. Although this would require amendment in the provincial Rules of Business, it would go a long way in
bridging the gap between policy formulation and implementation on this subject. Such provincial lead departments may also be tasked with reviewing.

The climate suitability of existing legislation is another area which must be incorporating within provincial initiatives on climate change. A review would seek to examine the suitability of existing legislation and the regulatory framework they operate within to the modern challenge of climate change.\(^\text{10}\)

**KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (1998)**

As noted above, the UNFCCC was only intended to be a framework agreement that was dependent on subsequent protocols for its implementation. In 1997, the Kyoto Protocol to the UNFCCC was adopted, under which countries listed under Annex I of the UNFCCC (developed economies) submitted themselves to individual, legally binding commitments to reduce their combined GHG emissions to 5.2% below the 1990 level during the period 2008-2012. The Protocol was ratified by Pakistan in January, 2005 and entered into force in April, 2005.

The Protocol is considered a groundbreaking document since its main feature is the introduction of three flexible mechanisms; Emissions Trading (ET), Joint Implementation (JI) and the Clean Development Mechanism (CDM). These are market-based cooperative mechanisms which are designed to lower the costs for Annex-I parties in meeting their emissions targets.

For the purposes of Pakistan, the only relevant mechanism is the CDM as it is the only mechanism involving the participation of developing countries. The Director General (Environment)/Director (Urban Affairs) at the Climate Change Division is the Designated National Authority for CDM in Pakistan under the Kyoto Protocol. The Division has set up a specialised CDM Cell responsible for approving and facilitating CDM projects in line with national sustainable development goals. The CDM Cell works with public and private sector partners in the CDM process for attracting investments in the potentially suitable projects, together with technology transfer and capacity building.

Further, a National Operational Strategy for CDM was approved by the Prime Minister of Pakistan in February 2006. Under this strategy the priority areas for CDM projects are: renewable/alternate energy, energy efficiency/conservation, fossil fuel co-generation, forestry (afforestation and reforestation), agricultural and livestock practices, waste management (landfills and composting), CNG and hybrid transport vehicles, mass transit systems, and industrial/chemical processes.

**CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (1973)**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 (CITES) is an international agreement between governments whose primary objective is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. In this regard, CITES requires international cooperation to safeguard certain species from over-exploitation and ensure the sustainability of international wildlife trade. As of today, CITES provides different levels of protection to more than 35,000 species of animals and plants, whether they are traded as live specimens, fur coats or dried herbs.

\(^{10}\) These suggestions are based on an article written by prominent environmental lawyer, Ahmad Rafay Alam for the South Asia Jurist in 2013.

CITES was signed by Pakistan on 20 April, 1976 and entered into force on 19 July, 1976. No reservations were entered by Pakistan vis-à-vis CITES. In 2012, Parliament enacted the Pakistan Trade Control of Wild Fauna and Flora Act which serves as the primary implementing legislation for CITES. The 2012 Act places restrictions on the export, re-export or import of specimens listed in the Appendix to CITES through a system of permits/NOC’s and creates offences relating to the same. The 2012 Act further establishes a Management Authority and Scientific Authorities which may render advice on animals and plants to the Management Authority from time to time or on a case to case basis.

The Inspector General Forests, Climate Change Division, Government of Pakistan, has been designated as the Management Authority for the purposes of CITES and the 2012 Act. Enforcement is carried by the Additional Secretary, Climate Change Division. The Conservator Wildlife serves as the Scientific Authority whereas the Pakistan Agriculture Research Council and the Commonwealth Institute of Biological Control are also listed in the register of scientific institutions.

**BASEL CONVENTION ON THE CONTROL OF TRANS-BOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL (1989)**

The overarching objective of the Basel Convention is to protect human health and the environment against the adverse effects of hazardous wastes. The provisions of the Basel Convention aim to reduce the generation of hazardous waste and promote environmentally sound management of hazardous wastes, wherever the place of disposal. Further, the Convention seeks to restrict trans-boundary movements of hazardous wastes except where such movements are in accordance with the principles of environmentally sound management. However, the Convention requires such ‘permissible’ trans-boundary movements to be controlled by regulatory systems.

Pakistan acceded to the Basel Convention on 26 July, 1994, with no reservations. The Joint Secretary (International Cooperation), Climate Change Division, is listed as the Competent Authority and Focal Point for the implementation of the Basel Convention.

The principal legislative instrument catering to the implementing of this Convention is the Pakistan Environmental Protection Act, 1997 which placed export/transit and import restrictions. Section 13 placed a ban on the import of hazardous waste into Pakistan and its territorial waters, Exclusive Economic Zone and historic waters. The 18th Amendment however, has undermined the operation of this provision since the subject of imports is a federal matter and so cannot be legislated by the provinces. As such, it is not clear how this provision could be retained in a provincial law.

Even though regulation of imports is at present a federal subject matter, one solution could be for the federal government to delegate authority to the provinces to specifically regulate the import of hazardous waste.

The Hazardous Substances Rules, 2003 are also relevant in this regard, as they lay down in detail a number of safety precautions that must be adopted for the transportation and storage of such substances and gases. However, these Rules were yet to be notified as of 2011 and their current status is unclear.

**CONVENTION ON BIOLOGICAL DIVERSITY (1992)**

Article 1 of the Convention on Biological Diversity (CBD) provides that the objectives of the Convention relate to the “conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising out of the utilization of genetic
resources”. The CBD was signed by Pakistan on 5 June, 1992 and ratified on 26 July, 1994 with no reservations. The Climate Change Division is the primary department responsible for promoting the objectives of the CBD. The Director, Biodiversity Program, Biodiversity Directorate serves as the primary National Focal Point while the Inspector General Forests and the Conservator Wildlife also serve as key officials.

The primary policy instrument in Pakistan relating to biodiversity is the Biodiversity Action Plan (BAP) which was prepared in 2000. The BAP provides a brief assessment of the status and trend of the nation’s biodiversity, outlines strategic goals and objectives, and identifies a plan of action that includes coordination arrangements and implementation measures. It is noteworthy that Pakistan is one of the few countries in the world that have developed substantive BAP documents.

According to the CBD Secretariat, Pakistan’s progress in implementing its BAP has been less than satisfactory thus far. The first implementation mechanism was introduced in 2006, with a Biodiversity Secretariat established at the erstwhile Ministry of Environment. Although the Secretariat played an important role in raising awareness and influencing policy, it lacked the capacity and resources to develop an effective coordination mechanism for BAP implementation at national and provincial levels. A Biodiversity Working Group was constituted but remained similarly paralyzed by capacity and financial constraints. Biodiversity steering committees were constituted in all provinces, but have remained dormant.

Capacity, financial and administrative constraints notwithstanding, a large number of actions recommended by the BAP have been partially implemented. Of significance, is the establishment of a Protected Area System (national parks, wild life sanctuaries, game reserves) which covers more than 10% of the country’s area. A number of botanical gardens and herbaria have been established in various universities and government departments for ex situ conservation. Progress has been made to control soil erosion in catchment areas of large dams as well as the sustainable use of water for irrigation.

Awareness campaigns have improved the understanding of the importance of biodiversity and have resulted in biodiversity concerns being gradually addressed in various sectoral policies and programs. The Center for Biodiversity Conservation was also set up in 2009 for undertaking advanced research and studies in this area. Importantly, there has been ‘significant progress’ in the mobilization of national and international financial resources for implementing the Convention.

Pakistan has also made efforts to align with international legislation concerned with biodiversity. A National Biosafety Centre has notably been established to facilitate implementation of the Cartagena Protocol, along with national biosafety guidelines to regulate genetically modified organisms.

The CBD Secretariat has recognized Pakistan as making ‘reasonable progress’ towards the achievement of the 2020 Aichi Biodiversity Targets but noted that the country had ‘still not reached the threshold level necessary for making significant progress on CBD implementation’. This is mainly due to the weakness of the institutional mechanism for implementation of the BAP, which is crippled by a lack of resources and capacity. Consequently, a monitoring and reporting system has not been developed.


Pakistan ratified the Cartagena Protocol on Biosafety on 31st March, 2009 without any reservations. The Protocol deals with the safe transfer, handling, and use of genetically engineered plants, animals, and microbes that can cross international borders. The Protocol is
also intended to avoid adverse effects on the conservation and sustainable use of biodiversity without unnecessarily disrupting world food trade.

The mandatory setup to develop and implement the Biosafety Framework in the country is in place. The primary legislation that governs the implementation of the Protocol is the Environmental Protection Act, 1997, under which Biosafety Rules, 2005 and Biosafety Guidelines, 2005 have been notified.

The National Biosafety Guidelines, 2005 established the proper procedures and forms to carry out the safeguard mechanisms. Pakistan Biosafety Rules, 2005 provide legal cover to the National Biosafety Guidelines and its implementation in the country.

The mechanism of monitoring and implementation of the National Biosafety Guidelines is built on the following three tiers as specified in the Biosafety Rules, 2005:

(i) National Biosafety Committee (NBC) in the Environmental Protection Agency
(ii) Technical Advisory Committee (TAC)
(iii) Institutional Biosafety Committee (IBC)

The National Biosafety Centre serves as the secretariat of the National Biosafety Committee. The NBC provides the requisite set-up for the implementation of the Biosafety Rules, 2005 and Biosafety Guidelines, 2005. The overall objective of the centre is to provide safeguard against undesirable effects of the GMOs.

NBC is headed by Secretary Climate Division and is responsible for overseeing all laboratory work, field trial, commercial release, import, export, sale and purchase of Genetically Modified Organisms (GMOs) and their products. All applications/requests of any such activity related to GMOs, as prescribed in the National Biosafety Guidelines 2005, will be submitted to the relevant IBC which is monitoring, implementing and the regulatory authority at baseline level. Then these must be transferred to TAC for assessment and on its recommendations, NBC will take further necessary actions.

Pakistan has been active in the implementation of the CPB in the country, and organized the following activities for the implementation of Article 23 of the CPB, which focuses on public awareness and participation. These activities have included arranging capacity building seminars/workshops, insertions of public notices in the newspapers along with articles in magazines and the Center’s officer has participated in more than 29 different programs on electronic media, for the mass awareness about the biosafety and bio-security of GMOs and their products. Furthermore, Pakistan has also established liaison with international and multilateral organizations for capacity building, training and awareness activities including United Nations Environment Programme (UNEP) and the Global Environment Facility (GEF).

As noted above, awareness campaigns have improved the understanding of the importance of biodiversity and have led to broader engagement across society in implementation. However there is no strategic plan for meeting the future needs. Such a plan may include developing biosafety educational material with the involvement of the Provinces, Universities and other stakeholders. Further consultation and training workshops need to be carried out, stressing on the importance of Green labeling. It is crucial to note however, that Pakistan is taking its obligations under the Protocol seriously as legislative initiatives are underway in the form of a Biosafety Bill.
MONTREAL PROTOCOL ON SUBSTANCES THAT DEPLETE THE OZONE LAYER (1987)

The Montreal Protocol is one of the most successful environmental agreements to date. Its widespread adoption and implementation are an example of exceptional international co-operation. The Montreal Protocol was designed to reduce the production and consumption of ozone depleting substances in order to reduce their abundance in the atmosphere, and thereby protect the earth’s fragile ozone layer.

Pakistan acceded to the Montreal Protocol in 1992 without any reservations. The protocol obliges all signatories to phase out a list of substances which are depleting the ozone layer. Pakistan created an ozone cell under the Ministry of Environment (prior to the 18th amendment) to monitor the implementation of the various projects in collaboration with the national and international stakeholders to fulfill the country’s commitments under the Protocol.

The ozone cell is responsible for enactment of policies/regularity measures to regulate the import of ozone depleting substances (ODSs) and to assist the shift from an ODS based industry into ozone friendly technology through the implementing agencies (UNDP, UNEP, UNIDO, and World Bank) with the financial assistance of the Multilateral Fund Secretariat (MLFS).

Currently, post 18th amendment, the Ozone cell is under the Climate Division. Implementation of the Convention involved a Refrigerant Management plan to create awareness on the initial phase out schedule for ozone depleting substances like chlorofluorocarbons (CFCs) and allied materials. However, these earlier trainings did not touch upon the phase out plan for Hydro Chlorofluorocarbons (HCFCs). Now that the phase out plan for CFCs has been successfully achieved in 2010, UNEP has shifted focus on creating awareness on the new phase out plan for HCFCs.

The Ozone Cell imposed a ban on import of CFC-based compressors in July, 2008 under the new Trade Policy 2008-09 although it was not obligatory under the provisions of the Montreal Protocol on the Substances that Deplete the Ozone Layer. Pakistan took this initiative voluntarily in order to contribute effectively towards achieving the protocol’s objectives. Therefore, Pakistan’s commitment to meeting the objectives of the Montreal Protocol is noteworthy.

STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS (POPs) (2001)

Pakistan ratified the Convention on persistent organic pollutants on 17th April, 2008 without reservations. The Stockholm Convention is a global treaty to protect human health and the environment from persistent organic pollutants (POPs). The Stockholm Convention has five essential aims:

(i) Eliminate dangerous POPs
(ii) Support the transition to safer alternatives
(iii) Target additional POPs for action
(iv) Cleanup old stockpiles and equipment containing POPs
(v) Work together for a POPs free future

In following up on its commitment, the government launched a project on POPs management and their phase-out. This project was intended to strengthen capacity and build ownership in Pakistan to meet its obligations under the Stockholm Convention. Pakistan has prepared and submitted a National Implementation Plan (NIP) to the Stockholm Convention Secretariat by the Ministry of Environment for funding. Therefore, Pakistan has taken positive steps to fulfill its obligations under the Stockholm Convention.
NARCOTICS CONTROL

OVERVIEW OF PAKISTAN’S COMPLIANCE WITH CONVENTIONS RELATING TO NARCOTICS CONTROL

Background

At present Pakistan is a signatory to all the significant international agreements pertaining to the illicit use of drugs and narcotic substances including – most significantly – the United Nations Single Convention on Narcotic Drugs (1961), the United Nations Convention on Psychotropic Substances (1971) and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988). In the period since its ratification of these agreements the Government of Pakistan has endeavored to realize its international obligations under these international legal instruments. At present, Pakistan is engaged in efforts to implement its national drug control master plan for the period 2010 – 2014 and has made significant advances in certain areas of narcotics control including, most significantly, in the fields of supply reduction and law enforcement.

The Government instituted the Anti-Narcotics Task Force (ANTF) in 1991, subsequently consolidated with the Pakistan Narcotics Control Board in 1995 to form the Anti-Narcotics Force (ANF), which – at present – operates as a federal investigatory and enforcement agency focusing on offences pertaining to the manufacture, trade and trafficking of illicit substances. The ANF operates at the federal level as an inter-agency task force on narcotics control, improving coordination between the various law enforcement agencies extant in the country in anti-narcotics efforts. In addition to the establishment of the ANF, the Pakistani Government has also made increased efforts to counter drug abuse at various levels. Institutional changes, as well as legislative and administrative measures and policies, have also been adopted at the federal and provincial levels to address the emerging challenges in drug control in the country. Following the promulgation of the 18th Amendment to the Constitution in 2010 however, the devolution of responsibilities from the federal to the provincial level has yet to fully materialize. Furthermore, it is difficult – at present – to foresee what broader effects this devolution of responsibilities will have on the country’s anti-narcotics efforts.

Despite these positive developments however, concerns still remain over the continued weaknesses in the Government’s anti-narcotics approaches, including its capacity to monitor licit activities related to narcotic drugs, psychotropic substances and drug precursor substances, while at the same time ensuring their adequate availability for medical and scientific purposes. Most significantly, inadequacies in the control of pharmaceutical preparations containing psychotropic substances at the retail level have led to an increased abuse of such substances. The lack of an adequate monitoring mechanism for precursor chemicals has also increased the risk of their diversion into illicit channels.

In 2012, Pakistan instituted the Drug Regulatory Authority of Pakistan (DRA) via the DRAP Act, 2012 (Act No. XXI of 2012); the DRA’s stated goal is to provide effective coordination and enforcement of the Drugs Act of 1976 (XXXI of 1976) and to harmonize the inter-provincial trade and commerce of therapeutic goods. The DRA is an autonomous body operating under the administrative control of the Federal Government is – at present – attached to the Ministry of National Health Services, Regulations and Coordination. The DRA, therefore, is the primary governmental institution concerned with regulating drugs and their precursor substances, and
operates to coordinate provincial regulatory measures as well. However, considering the aftereffects of the 18th Amendment have yet to be explored it is uncertain how, going forward, Pakistan will be able to realize its international obligations given that much of the implementation will be conducted at the provincial level.

**THE SINGLE CONVENTION ON NARCOTIC DRUGS (1961)**

The Single Convention on Narcotic Drugs is an international treaty which was signed in 1961 and which entered into force in 1964, whose purpose is to prohibit production and supply of specific (nominally narcotic) drugs and of drugs with similar effects except under license for specific purposes, such as medical treatment and research. Pakistan signed the treaty in 1961 and ratified the instrument in 1965, holding the following reservation:

*The Government of the Islamic Republic of Pakistan will permit temporarily in any of its territories:*

(i) The quasi-medical use of opium;
(ii) The use of cannabis, cannabis resin, extracts and tinctures of cannabis for non-medical purposes, and
(iii) The production and manufacture of and trade in the drugs referred to under (i) and (ii) above.

The reservation was held in recognition of the fact that, in the Pakistani socio-cultural context, opium, cannabis and their derivatives have traditionally been used for medicinal, quasi-medicinal and non-medicinal purposes. While the Convention allows a State to 'phase out' traditional drug uses, it also asserts that the non-medical uses of substances such as cannabis must be proscribed as soon as possible.

Prior to the passing of the Single Convention, anti-narcotics treaties had focused only on controlling opium, coca, and their derivatives including morphine, heroin and cocaine. The Single Convention, consolidated those treaties, broadening their scope to include cannabis and drugs whose effects are similar to those of the drugs specified. The Commission on Narcotic Drugs and the World Health Organization were empowered to add, remove, and transfer drugs among the treaty's four Schedules of controlled substances and the International Narcotics Control Board was put in charge of administering controls on drug production, international trade, and dispensation. The United Nations Office on Drugs and Crime (UNODC) was delegated the Board's day-to-day work of monitoring the situation in each country and working with national authorities to ensure compliance with the Single Convention. This treaty has since been supplemented by the Convention on Psychotropic Substances, which controls other, newer, narcotic substances including LSD, MDMA, and other psychoactive pharmaceuticals.

The Single Convention repeatedly affirms the importance of medical use of controlled substances, noting in its preamble that "the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes". Articles 1, 2, 4, 9, 12, 19, and 49 contain provisions relating to "medical and scientific" use of controlled substances. In almost all cases, parties are permitted to allow dispensation and use of controlled substances under a prescription, subject to record-keeping requirements and other restrictions.

The Single Convention unambiguously condemns drug addiction, stating that "addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind". It takes a prohibitionist approach to the problem of drug addiction, attempting to stop all non-medical, non-scientific use of narcotic drugs. Article 4 requires nations to limit use and possession of drugs to medicinal and scientific purposes. Article
49 allows countries to phase out coca leaf chewing, opium smoking, and other traditional drug uses gradually, but provides that "the use of cannabis for other than medical and scientific purposes must be discontinued as soon as possible." The discontinuation of these prohibited uses is intended to be achieved by cutting off supply. Rather than calling on nations to prosecute drug users, the treaty focuses on traffickers and producers and as of March 2005, 116 drugs were controlled under the Single Convention.


\textbf{UN CONVENTION ON PSYCHOTROPIC SUBSTANCES (1971)}

The Convention on Psychotropic Substances is a United Nations treaty designed to control psychoactive drugs such as amphetamines, barbiturates, and psychedelics. It established an international control system for psychotropic substances and responded to the diversification and expansion of the spectrum of drugs of abuse and introduced controls over a number of synthetic drugs according to their abuse potential on the one hand and their therapeutic value on the other. The Convention was signed in 1971 and entered into force in 1976, and Pakistan acceded to the Convention in 1977.

During the 1960s, drug use increased greatly around the world, especially in Western nations. Inspired by prominent advocates of the use of such substances such as Aldous Huxley and Timothy Leary, millions of people experimented with powerful hallucinogens, and drugs of all kinds became freely available. The widespread use of such substances, however, had deleterious effects on the social fabric and economic progress, therefore governments around the world felt that stricter controls on the use and trafficking of such substances were necessary. At the time the Single Convention on Narcotic Drugs represented the primary international legal instrument on the restriction of illicit drugs; the Single Convention’s scope, however, was limited to drugs with cannabis-, coca-, and opium-like effects, and thus it could not be employed to restrict the many newly-discovered psychotropics.

On February 21, 1971, a conference of plenipotentiaries in Vienna signed a new Convention worded to include almost any conceivable mind-altering substance. The Convention, which contains import and export restrictions and other rules aimed at limiting drug use to scientific and medical purposes, came into force on August 16, 1976. 175 nations are, at present, Parties to the treaty and many domestic laws have been passed to implement the Convention including the US Psychotropic Substances Act, the UK Misuse of Drugs Act 1971, and the Canadian Controlled Drugs and Substances Act. Like the treaty itself, these statutes usually divide drugs into several classes or Schedules.

The Convention has four Schedules of controlled substances, ranging from Schedule I – the most restrictive – to Schedule IV – the least restrictive. A list of psychotropic substances, and their corresponding Schedules, was annexed to the 1971 treaty. A 2002 European Parliament report describes the Schedules as follows:

- Schedule I includes supposedly dangerous drugs claimed to create a serious risk to public health, and whose therapeutic value is doubtful or nil. It includes synthetic hallucinogens
such as LSD and natural ones like DMT. The most controversial drug in this category is Cannabis, which is of great therapeutic value according to many doctors.

- Schedule II includes stimulants of the amphetamine type, of limited therapeutic value, as well as some analgesics such as phencyclidine.
- Schedule III includes barbiturate products with fast or average effects, which have been the object of serious abuse even though useful therapeutically, and some analgesics like buprenorphine.
- Schedule IV includes hypnotics, tranquilizers (including benzodiazepine) and analgesics, which engender an appreciable dependence, but are mainly used in therapy.

A 1999 UNODC report notes that Schedule I is a completely different regime from the other three. According to that report, Schedule I mostly contains hallucinogenic drugs such as LSD that are produced by illicit laboratories, while the other three Schedules are mainly for licitly produced pharmaceuticals. The UNODC report also claims that the Convention's Schedule I controls are stricter than those provided for under the Single Convention, a contention that seems to be contradicted by the 2002 Canadian Senate and 2003 European Parliament reports.

Although estimates and other controls specified by the Single Convention are not present in the Convention on Psychotropic Substances, the International Narcotics Control Board corrected the omission by asking Parties to submit information and statistics not required by the Convention, and using the initial positive responses from various organic drug producing states to convince others to follow. In addition, the Convention does impose tighter restrictions on imports and exports of Schedule I substances. A 1970 Bulletin on Narcotics report notes:

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LSD, \text{ mescaline, etc., are controlled in a way which is more stringent than morphine under the narcotics treaties. Article 7, which sets down this regime, provides that such substances can only be moved in international trade when both exporter and importer are government authorities, or government agencies or institutions specially authorized for the purpose; in addition to this very rigid identification of supplier and recipient, in each case export and import authorization is also mandatory.}
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The Pakistani Government promulgated the Drugs Act (XXXI of 1976) in 1976, whose purpose was to regulate the production and trade of drugs in Pakistan. Framed as a regulatory instrument, the Act regulated the manufacture, import, export and sale of drugs, providing a framework within which producers and vendors of drugs could operate. The Act did not penalize illicit substances but instead provided offences for incorrect or unlicensed manufacture or trafficking of licit substances. Concerns, however, have been expressed vis-à-vis Pakistan's ability to regulate licit activities related to drugs and their precursor substances. The Act operates to regulate the licit manufacture and trade of drugs but fails to address precursor chemicals or the illicit use of otherwise legal substances and as such presents a lacuna in Pakistan’s antinarcotics legal regime.12

**UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)**

The Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is a UN treaty which provides comprehensive measures against drug trafficking, including provisions

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against money laundering and the diversion of precursor chemicals. It provides for international cooperation through, for example, extradition of drug traffickers, controlled deliveries and transfer of proceedings. The Convention was signed in 1988 and entered into force in 1990; Pakistan signed the treaty in 1989 and ratified it in 1990. Building upon the framework established by the previous two Conventions the Convention aims to end the international trafficking of drugs, regulating precursor chemicals to drugs controlled by the Single Convention and the Convention on Psychotropic Substances. It also strengthens provisions against money laundering and other drug-related crimes.

The Convention represents an escalation in the War on Drugs, a ‘broad spectrum’ initiative conducted by a number of States to prohibit and proscribe the illegal drug trade. The Preamble of the Convention notes that previous enforcement efforts have not stopped drug use, warning of "steadily increasing inroads into various social groups made by illicit traffic in narcotic drugs and psychotropic substances." It cautions that the drug trade and related activities "undermine the legitimate economies and threaten the stability, security and sovereignty of States." The sense of urgency is underscored by the image of innocent boys and girls being exploited:

Children are used in many parts of the world as an illicit drug consumers market and for purposes of illicit production, distribution and trade in narcotic drugs and psychotropic substances, which entails a danger of incalculable gravity.

Much of the treaty is devoted to fighting organized crime by mandating cooperation in tracing and seizing drug-related assets. For instance, article 5 of the Convention requires its parties to confiscate proceeds from drug offenses and to empower its courts or other competent authorities to order that bank, financial, or commercial records be made available or seized. The Convention further states that a party may not decline to act on this provision on the ground of bank secrecy. Article 6 of the Convention provides a legal basis for extradition in drug-related cases among countries having no other extradition treaties. In addition, the Convention requires the parties to provide mutual legal assistance to one another upon request, for purposes of searches, seizures, service of judicial documents, and so on.

In addition, Article 12 of the Convention establishes two categories of controlled illicit drug precursor substances, Table I and Table II. The Commission on Narcotic Drugs has power to decide whether to control a precursor substance, and which Table to place it in. The assessment of the International Narcotics Control Board is binding on the Commission, however, as to scientific matters. A two-thirds vote is required to add a substance to a Table. Article 12 protects the interests of pharmaceutical and chemical companies by requiring the Board to take into account the "extent, importance and diversity of the licit use of the substance, and the possibility and ease of using alternate substances both for licit purposes and for the illicit manufacture of narcotic drugs or psychotropic substances."

Control of amphetamine-type stimulant precursors has become a major UN priority.

Article 12 of the Convention may require nations to ban possession of drugs for personal use:

Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.

Previous drug control treaties had targeted drug manufacturers and traffickers, rather than users. The Mechanics and Dynamics of the UN System for International Drug Control by David R. Bewley-Taylor, PhD and Professor Cindy Fazey, PhD, explains that "[t]he 1988 Convention was
an attempt to reach a political balance between consumer and producer countries. Consequently, it was not only the duty of producing countries (e.g. the developing countries of Asia and South America) to suppress illicit supply, but also the duty of consumer countries (e.g. the industrialized countries of Europe and North America) to suppress the demand for drugs."

However, it is unclear whether this provision actually does mandate prohibition of drug possession for personal use, due to the caveat that such possession need only be prohibited if it is "contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention." The ‘American National Commission on Marihuana and Drug Abuse’ found that the provisions of the 1961 Single Convention on Narcotic Drugs against possession apply only to possession related to illicit trafficking, while the Canadian Le Dain Commission of Inquiry into the Non-Medical Use of Drugs found otherwise.

In the Pakistani context the Control of Narcotic Substances Act provided mechanisms for investigating, prosecuting and trying drug-related offences, allowing authorities to treat such offences in a manner similar to other organized crimes. The Act established Special Courts purpose-built for trying such offences and allowed for the tracing, freezing and forfeiture of assets within Pakistan and across foreign jurisdictions. The Act also included provisions obliging financial institutions to report suspicious transactions, where it is felt that the finances under review were the proceeds of the drug trade. Given the international nature of the contemporary trade in illicit drugs, the Act also incorporated special provisions to effect and streamline international cooperation in the investigation and prosecution of drug-related offences. The Act, therefore, represented a comprehensive attempt at realizing Pakistan's international legal obligations under the Single Convention and the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.13

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OVERVIEW OF PAKISTAN’S COMPLIANCE WITH CONVENTIONS RELATING TO HUMAN RIGHTS

Background

Pakistan has ratified all the human rights Conventions required to attain the GSP plus status. In order to fulfill its obligations under these international Conventions, the Government of Pakistan has undertaken new legislative initiatives and has formulated a number of policies aimed at safeguarding the basic rights of citizens of Pakistan. Landmark legislation has been enacted to comply with the international Conventions and in furtherance of this aim, amendments to the Constitution of Pakistan have also been made.

The Government of Pakistan has also taken administrative measures in order to regulate monitoring and evaluation of human rights violations in Pakistan. These include the establishment of the National Commission of Human Rights, National Commission on the status of Women Rights, and human rights departments at the provincial level.

However, Pakistan faces a myriad of challenges when it comes to a uniform implementation of these Conventions due to the enactment of the 18th Constitutional Amendment Act, 2010, which led to the devolution of federal ministries dealing with human rights to the provinces. The Ministry of Human Rights was merged with the Ministry of Law and Justice. After the 18th amendment, the implementation of these international Conventions is the responsibility of the provincial governments. This development has lead to a lack of coordination between the provinces and the Federal Government. Furthermore, the pace at which these legislative initiatives are being enacted by the provincial governments varies, resulting in inconsistency and may lead to hurdles in monitoring/reporting mechanisms.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, 1984

The United Nations Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment 1984 was ratified by Pakistan on 23 June, 2010. The Convention requires State parties to end torture within their jurisdiction and criminalize all acts of torture. The Convention goes beyond many other international Conventions in that it offers a general definition of torture as the infliction of severe physical and/or mental suffering committed under the color of law. Importantly, the Convention does not allow any room for the use of torture in emergencies or exigent circumstances.

Article 14 of the Constitution of Pakistan specifically deals with prohibiting torture and underlines the principle of the sanctity of human life and physicality by stating that “(1) The dignity of man … shall be inviolable and (2) No person shall be subject to torture for the purpose of extracting evidence.”

Non-constitutional sources are important in ascertaining the precise legal definitions for terms like “injury” which the aforementioned constitutional provisions aim to prohibit. On point is Section 44 of the Pakistan Penal Code 1860 (hereinafter “PPC”), which states that “the term 'injury' denotes any harm. Whatever illegally caused to any person, in body, mind, reputation or property.” Article 35 of the Police Order 2002 pertains to the “responsibility on complaints of neglect and excesses by the police”. Article 114(1)(c) of the Police Order 2002 states that the
“Provincial Police Officer and Capital City Police Officer shall issue Code of Conduct to regulate police practices in respect of... the detention, treatment and questioning of persons by police officers....” Sub-section 2 of the same Article proclaims that “subject to rules, a police officer contravening the Code of Conduct may be awarded one or more punishments provided under Article 113”. Article 156(d) of the Police Order 2002 is relevant here which states that a police officer who “inflicts torture or violence to any person in his custody shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.”

The Pakistan Penal Code creates offences for public officials causing injury to others and also defines injury and hurt as “Whoever causes pain, harm, disease, infirmity or injury to any person or impairs, disables or dismembers any organ of the body or part thereof of any person without causing his death, is said to cause hurt.” The Prisons Act of 1894 and the Pakistan Prison Rules 1978 also have protections against torture or injury caused in Prison. Similarly, various provisions of the Criminal Procedure Code, the Pakistan Army Act 1952, the Qanun-e-Shahadat Order 1984, and the Punjab Employees Efficiency, Discipline and Accountability Act 2006 apply to the enforcement of the provisions of the Convention in various areas.

It is apparent that the promulgated laws of Pakistan are broadly compliant with the Convention. Nevertheless, in some instances promulgation of new laws, or amendments to and reformation of existing laws is warranted in order to fully meet the objectives of the Convention. Importantly, the biggest cause of concern is not the dearth of laws for the prevention of torture and similar acts and the provision of due process but the implementation of existing laws safeguarding against CAT based violations. Most frequent and systematic violations of CAT are committed by members of the law enforcement agencies. Therefore, it is imperative that penalties against violators are strictly enforced under appropriate domestic legislation. Furthermore, the State of Pakistan needs to institute pragmatic steps for the promotion of greater transparency and accountability of state organs and agents in order to meet the obligations and duties listed in CAT. Extensive training programs of all members of enforcement agencies need to be set up and awareness drives need to be initiated and effectively monitored in order to systematically prevent violations of CAT. The criminal prosecution of a selected few for committing torture brought into the limelight as a result of media coverage is not the solution to the problem. A major overhaul of the whole security and enforcement system of the state is required.

**CONVENTION ON THE RIGHTS OF THE CHILD, 1989**

Pakistan ratified the Convention on the Rights of the Child 1989 on the 12 November, 1990. The aim of the Convention is to set standards for the protection of children against abuse, neglect and exploitation. The Convention deals with the right to possess, receive, or have access to certain things or services. The Convention also mandates the protection of children from harmful acts and practices. Further, it ensures the child’s right to be heard on decisions affecting his or her life and ensures progressive participation in matters impacting on the child.

At the time of ratification Pakistan included a general reservation that the provisions of the CRC would be interpreted according to the principles of Islamic Law and values. This was withdrawn on July 23, 1997.

The Convention has three optional protocols:

Pakistan has signed the first optional protocol but not ratified it. On 5 July 2011, Pakistan ratified the second optional protocol. Pakistan is not a signatory to the third.

**Legislation**

While Pakistan ratified the CRC quite early, it has not made any specific legislation neither at the Federal level nor at the Provincial Level that transposes the provisions of the CRC into domestic Law. There is still a dearth of legislation on issues impacting child trafficking, sexual abuse, and domestic labour. However, the legal system does cater to various other areas identified in the CRC through scattered legislation both at the Federal level as well as the Provincial level. Some examples are:

- Child Marriage Restrain Act 1929
- Employment of Children Act 1991 (as amended in 2011)
- Protection of Breastfeeding and Child Nutrition Ordinance 2002
- Juvenile Justice System Ordinance 2000
- Birth, Marriage, and Death Registration Act 1886
- KP Child Protection and Welfare Act 2010
- Sindh Children Protection Authority Act 2011
- Sindh Children Act 1955
- Punjab Children Act
- Guardians and Wards Act 1890

It is to be noted that Article 35 of the Constitution of Pakistan states that, “The State shall protect marriage, the family, the mother and the child.” Additionally, Article 11(3) of the Constitution prohibits the employment of children below fourteen years of age in factories, mines or other hazardous employment. Furthermore, the Guardian and Wards Act 1890 gives significant powers to the Courts relating to guardianship of a child and ancillary issues. Many of the protections for children may be covered by ordinary criminal legislation. However, there is a significant need to have focused legislation protecting children and addressing their unique vulnerabilities.

There are bodies formed at the Federal as well as Provincial level pursuant to the Convention. At the Federal level the National Commission for Child Welfare and Development (NCCWD) has been established whereas the Provinces have Provincial Commissions for Child Welfare and Development (PCCWD). The PCCWDs operate under the Social Welfare Department of the respective provinces.

**UNITED NATIONS CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, 1948**

This Convention was signed by Pakistan on 11th December 1948 and was subsequently ratified on 12th October 1957. Pakistan did not raise any reservation in regards to this Convention, therefore, committing to adhere to all the provisions of this Convention. The Convention addresses humanitarian issues and provides a definition of genocide besides the required intent of prohibited acts. Genocide was defined in the Convention as any of a number of acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group”.

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The issues prevalent in Pakistan relevant to this Convention consist majorly of target killings witnessed of communities like Shias, Christians or Ahmedi’s. The nature of the crime of genocide is such that any specific implementing legislation is generally not effective in its prevention. Rather, the spirit of the Convention requires broad protections against such crimes to be embedded within the criminal justice system of a country.

In the Pakistani domestic context, there exist a plethora of laws in the criminal justice system such as the Pakistan Penal Code, which prohibits such practices. Further, there are specific offences catering to acts that target people on the basis of their religion, race, sect or caste that fall under the Anti-Terrorism legal framework. The preamble of the Anti-terrorism Act 1997 specifically states that this Act was enacted for “the prevention of terrorism, sectarian violence and for speedy trial of heinous offences.” Thus, it can be determined that this legislation does address the scope of this Convention through its definition of terrorism, sectarian violence and heinous offences as this would cover any act of genocide that occurs in Pakistan. Moreover, to attain expeditious justice for such victims, special Anti-terrorism courts have been established which would prosecute cases under this Act. Pakistan therefore appears to be compliant with its international law obligations under this Convention as far as implementing legislation is concerned.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION, 1965

This Convention was signed and ratified by Pakistan on September 1966. Pakistan has raised no reservations on this Convention. The Convention asserts to promote and encourage the fundamental freedoms of all the citizens of the state irrespective of their race, color, sex, national origin, language or religion. To implement this Convention, Pakistan under its Constitution guarantees the fundamental rights to citizens, which provide them rights irrespective of their race, religion, caste, sex, residence or place of birth. The general political structure in Pakistan consists of 10 reserved seats for the minorities in the National Assembly to represent these marginalized communities.

The relevant ministries’ and bodies which deal with the implementation of this Convention are: the Ministry of Law, Justice & Human Rights, Ministry of Minority Affairs, the National Commission for Minorities, the Federal Advisory Council for Minorities Affairs, the Districts Minority Committees, the National Committee on the Kalash People and the monthly holding of meetings with minority members of the National Assembly. However, the issues that have arisen regarding the implementation of this Convention are related to the limited scope of application of this Convention in Pakistan. The definition of minorities in Pakistan is based on the religious affiliation of people rather than on the grounds of ethnicity, racialism or linguistically. The current law does not specifically address the issue of racial discrimination in detail, which is one of the core obligations that a State has under this Convention. In the past, there have been policies to accommodate the minorities (Scheduled castes) into the mainstream society by imposing quotas to include them into the governmental or political sphere, however, recently there has been a failure to implement such policies resulting in a failure to implement the Convention as well.

Moreover, according to the Convention, accurate statistics of the marginalized communities need to be provided which Pakistan has failed to identify. Therefore, it is imperative to identify these ethnic groups that exist in Pakistan to evaluate the practical steps, which can be taken through legislation or institutions (other measures) by the authorities to implement the Convention to its full extent. However, the principal legislative and administrative measures that are already in place in Pakistan in accordance to the provisions of this Convention are as follows:

- The Muslim Family Laws Ordinance, 1961 (aimed at protecting the rights of women
regarding marriage and divorce).

- The Child Marriage Restraint Act, 1929 prohibits marriage of minors and prescribes punishments for anyone, including a parent or guardian, for conducting a child marriage.

- The Family Courts Act, 1964 provides for constitution of Special Family Courts to adjudicate family cases e.g. divorce, maintenance and custody of children, etc. No court fee is payable in such cases and the courts are required to decide the cases expeditiously. The Act was thoroughly revamped in 2002 and longstanding demands of women’s rights activists to make it more contemporary were incorporated in it.


- There is prohibition for women to be employed in night shifts (Section 45 of the Factories Act, 1934 and Section 23(C) of the Mines Act, 1923) or in hazardous occupations (Hazardous Occupations Rules, 1963).


- The Civil Servants Rules.

- Under the Pakistan Penal Code, 1860, (PPC) severe penalties are prescribed for the offences of kidnapping or abduction of girls/women under Sections 361, 363, 364A & 369, procurement of a girl (Section 366A-PPC) or her importation from abroad (Section 366B-PPC).

- The Criminal Procedure Code, 1898 provides for special treatment of women, when confronted with the law. The police may not enter a residential house, for arrest or search, which is occupied by a woman, till notice is given and such woman is facilitated to withdraw (Section 48. CrPC).

- The Court may also release a convicted woman, not punishable with death or imprisonment for life, on probation of good conduct, by executing a bond, with or without sureties (Section 562-CrPC).

- The law also provides for compensation. Under Section 545 of the Pakistan Criminal Procedure Code the court compensates the victim by ordering that payments from the fines taken from criminals be given to them.

- The Criminal Law (Amendment) Act, 2004 outlaws honour killings in accordance with the Constitution.

- Protection of Women (Criminal Laws Amendment) Act 2006 provides relief and protection to women against misuse and abuse of law and prevent their exploitation.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966

The Convention was signed by Pakistan on 3rd November, 2004 and ratified on 17th April, 2008. The only reservation that Pakistan has in regard to the implementation of this Convention is the appropriate applicability of this Convention due to the scarce resources available. The Convention enunciates for states to grant economic, social and cultural rights to all its citizens and provide labour rights, rights to health, education and an adequate standard of living etc. The chapter III of the Constitution enshrines these rights awarded under the Covenant as Principles of
Policy (Art. 29-40). These are meant to be guidelines for the Government in enacting legislation and are not enforceable themselves, however, their interpretative and persuasive value cannot be underestimated. Article 29(3) calls upon the President and Governors of the four provinces to have a report prepared on the observance and implementation of the Principles of Policy and present it before each House of the Parliament and the Provincial Assemblies.

Even though the Assembly has remained functional for 28 years, only 12 annual reports have been submitted since 1973. Therefore, it can be stated that submission of these reports by the Members of the Parliament and provincial Assemblies should take precedence, as it is their constitutional obligation. Furthermore, steps by the government need to be initiated to make these policies as part of the fundamental freedoms guaranteed to the citizens under the Constitution or update the current legal infrastructure entailing these rights in accordance to ICESCR.

The Social Security Bill 2010, which seeks to give effect to the provisions of ICESCR, is currently under consideration by the Parliament. Once this Bill is passed, social security benefits will become a part of the fundamental rights guaranteed under the constitution of Pakistan. The Bill, therefore, would ensure that every citizen would have access to the basic necessities of life such as food, clothing and medical coverage and would thus fulfill one of the core tenets of this Covenant. This is significant considering the fact that the ICESCR does not incorporate positive legal obligations upon States party to it, but instead represents aspirational goals to be realized over time. It is imperative, however, to note that given the domestic context of Pakistan as a developing State, where resources and capacity are scarce, the enactment of this piece of legislation represents a positive step but would be difficult to implement. As the Bill has been framed, the Ministry of Law, Justice and Human Rights is responsible for the implementation of these rights.

In the recent years, there has been sufficient legislation and policies on the federal and provincial level to promote the education, health and labour prospects in the country, some of which are as follows:

- National Education Policy 2009 (education budget)
- National Employment Policy 2009
- The Sindh Right of Children to Free and Compulsory Education Act, 2013
- Punjab Compulsory Primary Education Act 1994
- NWFP Compulsory Primary Education Act 1996
- The Balochistan Compulsory and Free Education Ordinance 2013
- National Health Policy (Ministry of Health, Islamabad), 2001
- Reproductive Healthcare and Rights Act 2013
- National Labour Policy 2010
- National Plan of Action for the Abolition of Child Labour

Therefore, Pakistan is still in the process of enacting legislation in order to promote these basic rights under the Covenant but it needs to be more efficient in the enactment of legislation at a Provincial level. For instance, it has been observed that the area concerning health specifically is
not being addressed by the Provincial Governments thus being unsuccessful in establishing a uniform framework for the citizens of Pakistan.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

The ICCPR was signed by Pakistan on 17 April, 2008 and ratified on 23 June, 2008. This Covenant generates a framework for States to award civil and political rights to individuals, including the right to life, religion, speech, assembly, electoral rights and rights to fair trial etc. At the time of ratification, Pakistan entered into several reservations pertaining to Articles 3 (equal rights of men and women), 6 (right to life), 7 (torture, cruel punishment), 12 (liberty of movement), 13 (expulsion of aliens), 18 (freedom of thought), 19 (freedom of opinion), 25 (participation in public affairs, right to vote) and 40 (reporting requirements) of the Covenant. However, to avail the GSP plus status, Pakistan agreed to withdraw its reservations on Article 6, 7, 12, 13, 18, 19 and 40 of the Covenant. Furthermore, its reservation on Article 3 was limited to the applicability of Personal law and Law of Evidence and the reservation on Article 25 was restricted to the elections of the President of Pakistan.

Pakistan has recognized these rights provided under the Covenant in its Constitution (Article 8-28 of fundamental rights). Furthermore, the criminal legislation i.e. the Pakistan Penal Code 1860, Criminal Procedure Code, Qisas and Diyat Ordinance (safeguards to torture), Prison rules etc., and the labour laws in Pakistan provide the requisite framework to award such broad range of rights to the citizens of Pakistan.

Pakistan has further taken conducive institutional steps to regulate the monitoring, evaluation, transparency and channeling of complaints and allegations of human rights violations. This includes the establishment of the National Commission on Human Rights and the National Commission on the status of Women Rights. After the 18th amendment, the provincial governments have established Human Rights Departments at the provincial level that supplement the work of the Federal Ministry of Human Rights. The Supreme Court of Pakistan also consists of a Human Rights Cell that provides efficient and inexpensive remedies to issues pertaining to the infringements of Fundamental Rights under the Constitution. Furthermore, the institution of Ombudsman in Pakistan was established to establish good governance affecting the rule of law to ensure rights and benefits of citizens. The public is authorized to file complaints against any maladministration on the part of the officials. The National Accountability Bureau focuses on corruption scandals in the state.

Moreover, to address the predominant national security threat in Pakistan, landmark legislation known as the Action in Aid of Civil Power Regulations, 2011 (AACPR) has been enacted for times of conflict or emergency. According to Article 245 of the Constitution, in times of external aggression or times of war, the Federal Government has the authority to call Armed Forces to act in aid of civil power.

During this period, the fundamental freedoms guaranteed under Chapter I of the Constitution are suspended. Thus the AACPR legislation was explicitly designed to comply with the conventions of ICCPR and CAT, therefore, providing the necessary safeguards under these Conventions to the citizens of Pakistan during times of conflict, even though their fundamental rights under the Constitution are temporarily suspended.

Specific legislation in relation to this Covenant:

- National Commission on Human Rights 2013
Therefore, Pakistan has taken sufficient legislative and institutional initiatives to implement ICCPR in the domestic framework. The recent 2013 elections that took place after the ratification of ICCPR were held according to the international obligations under this treaty. An Election Commission of Pakistan was established to oversee the electoral process in Pakistan and the existing legal infrastructure was improved through various amendments to the Constitution of Pakistan which also included a parliamentary process to appoint the head of the Election Commission of Pakistan, Caretaker Prime Minister and Chief Ministers.

Therefore, these mechanisms were adopted to correspond to the obligations Pakistan had under ICCPR and this brought significant electoral improvement. However, omissions were observed in the primary legislation in regard to the process of transparency and access to remedy.


The Convention on Elimination and Discrimination Against Women (1979) (CEDAW) was ratified by Pakistan in 1996. The main purpose of this Convention is to eradicate any such concurrent traditional practices or laws in a State that discriminate against women on the basis of their sex and to therefore provide them a manifesto of equal opportunities and rights through national action. At the time of the ratification, however, Pakistan had made a reservation on Article 29 paragraph 1 of the Convention. This reservation revolves around the position on the jurisdiction of International Court of Justice. Pakistan, nonetheless, has made over a period of time, amendments to its pre-existing legal infrastructure and has taken new legislative initiatives to meet the objectives and purposes of the Convention. The Ministry of Women and Development and the National Commission on the status of Women established in the year of 2000 focuses to oversee the implementation and enforcement of the laws pertaining to the rights of women.
The principal instruments of legislation which were enacted after the Convention was ratified by Pakistan are as follows:

- The Criminal Law (Amendment) Act, 2004 (on 'honour' crimes)
- Protection of Women (Criminal Laws Amendment) Act, 2006
- Criminal Law (Amendment) Act, 2010 (on sexual harassment)
- The Protection against Harassment of Women at the Workplace Act, 2010
- The Acid Control and Acid Crime Prevention Act, 2010
- The Women in Distress and Detention Fund (Amendment) Act, 2011
- Domestic Violence (Prevention & Protection) Act 2012
- Reproductive Healthcare and Rights Act 2013
- The Protection Against Harassment of Women at the Workplace Act, 2010 (Punjab)
- Sindh Domestic Violence (Prevention and Protection) Act 2013
- National Plan of Action
- National Policy for Development and Empowerment of Women 2002

All these laws and policies have been made compliant to CEDAW. However, after the 18th amendment to the Constitution, the laws have to be enacted provincially as well. This change has been witnessed to become an impediment in the implementation of the Convention, as now it is obligatory for the Provincial governments to make the respective provincial laws that are compliant to the Federal legislation and the Convention itself. Even though the federal government has been very apt at taking new legislative initiatives to promote and protect the rights of women, the provincial governments are lacking in enacting the necessary laws. Moreover, the reporting procedure will become more complicated now, as the Federal level will have to coordinate and simulate the reports from provincial governments before it reports to the Committee on CEDAW. Pakistan has already been unsuccessful in submitting the initial and periodic reports on time to CEDAW and this new development can be foreseen as another hindrance for Pakistan to submit its report on time due to the complicated and lengthy procedure of gathering reports from all the provinces and finally submitting one to the Committee of CEDAW.
OVERVIEW OF PAKISTAN’S COMPLIANCE WITH LABOUR CONVENTIONS

Background

The International Labour Organization’s 8 core Conventions form the bedrock of the international legal regime applicable to labour, freedom of association, unions, collective bargaining, worker rights, child labour, slavery and bonded labour. It is encouraging that Pakistan has taken active measures to adopt domestic legislation that deals with the themes highlighted by the Conventions. There certainly remain fundamental areas for improvement both in terms of legislation and implementation. The scourge of bonded and child labour has been difficult to eliminate. With traditional practices such as the *peshgi* system rooted in certain regions of the country, a comprehensive approach needs to be adopted. Provincially, measures are being taken to address these concerns but the process is painstakingly slow. It is hoped that with the added pressure created by Pakistan gaining the EU’s GSP Plus status, efforts on the legislative transposition and implementation of the core ILO Conventions will receive an impetus.

**CONVENTION CONCERNING FORCED OR COMPULSORY LABOUR, NO. 29 (1930)**

The Convention on Forced or Compulsory Labour 1930 was ratified by Pakistan on 23rd December 1957. The Convention aims to suppress the use of force or compulsory labour in all its forms. Forced or compulsory labour is deemed to be any work or service which is exacted from a person under the menace of any penalty and for which the person has not offered himself voluntarily.

The legislative framework applicable here stems from Article 11 of the Constitution of Pakistan, which prohibits slavery and forced labour. More specifically, the Bonded Labour System (Abolition) Act of 1992 deals with the core issues of the Convention. This Act abolishes bonded labour and targets customary arrangements that led to bonded labour. It also ends any debts that existed which led to individuals being forced into labour to pay off the debt.

The law provides for the establishment of Vigilance Committees (VC) at the district level. In addition, the VCs shall report to the Coordinating Cells at the Provincial level and MoL at the Federal level. The issues pertaining to the Convention were dealt with by the MoL at the Federal level.

Provincially, the Labour & Human Resource Department acts as the enforcing body in Punjab. When it comes to the provinces Sindh, Balochistan and KPK, the status of implementation of the Convention is unclear, even though these provinces have the necessary bodies to deal with matters related to Labour. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.

**CONVENTION CONCERNING FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANIZE, NO. 87 (1948)**

The Convention concerning Freedom of Association and Protection of the Right to Organize 1948 was ratified by Pakistan on 14th February 1951. It aims to guarantee to workers and employers rights to create and join organizations of their own choosing. Additionally, no
restrictions are to be placed on the creation and joining of such organizations nor can they be dissolved or suspended by administrative authority.

The applicable legislative framework emanates from Article 17 of the Constitution of Pakistan on Freedom of Association. This Article guarantees that each citizen “shall have the right to form associations or unions subject to reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan, public order or morality.” After the 18th Amendment to the Constitution, the provinces embarked on enacting provincial statutes dealing with the subject of the Convention. Each province enacted their own Industrial Relations Act in the past five years, with Sindh enacting it the last in 2013. These Acts with minor deviations generally incorporate the core provisions of the Convention and allow for establishment and joining of unions and associations by workers and employers.

Under the Provincial Acts there are Registrars established for the registration of Unions and Associations. After registration these unions become a body corporate.

**CONVENTION CONCERNING THE APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANIZE AND TO BARGAIN COLLECTIVELY, NO. 98 (1949)**

This Convention was ratified by Pakistan on 26th May 1952. It further strengthens the rights of workers to join unions or associations and prevents any form of punitive action against workers who join such organizations.

Article 17 and 18 of the Constitution of Pakistan establish the strongest domestic protections supporting the Convention’s core obligations. They apply to Freedom of Association and Freedom of trade, business or profession, respectively. Furthermore, Provincial Industrial Relations Act deals with the actual application of the provisions of the Convention. These Acts generally grant rights of joining and establishing unions as well as associations. In addition, the Acts create Collective Bargaining Agents to represent workers and bargain collectively. Furthermore, dispute settlement mechanisms for worker’s issue have also been established. The Industrial Relations Acts also create special Labour Courts to which workers, Collective Bargaining Agents, and employers may bring their grievances.

**CONVENTION CONCERNING EQUAL REMUNERATION OF MEN AND WOMEN WORKERS FOR WORK OF EQUAL VALUE, NO. 100 (1951)**

The Convention was ratified by Pakistan on 11th October, 2001. The legislative framework is provided under Articles 25 & 27 of the Constitution of Pakistan, 1973 and Minimum Wages Ordinance 1961 – although not directly concerned with equal remuneration, it provides a platform for minimum rates of wages for workers. Additionally, The Protection against Harassment of Women at the Workplace Act, 2010 was also promulgated at federal level acting as a safeguard for women at work.

The Labour Policy, 2010 also categorically mentions the Convention emphasizing on equal remuneration for women and men. In 2002, a National Policy for Development and Empowerment of Women was introduced outlining the importance given to women in the workplace, including equal remuneration.

Currently, there is no dedicated legislation which addresses the key provisions of the Convention (as stipulated under Article 2 of the latter). The Ministry of Women’s Development and the
Ministry of Labour (MoL) and Manpower\textsuperscript{14} dealt with issues pertaining to equal remuneration for workers for work of equal value. However, after the 18\textsuperscript{th} Amendment, the responsibility regarding labour issues has devolved to the Provinces.\textsuperscript{15} In Punjab, the relevant labour law is being enforced by the Labour & Human Resource Department.\textsuperscript{16} The Protection against Harassment of Women at the Workplace Act, 2010 has also been transposed into the provincial legislative framework of Punjab with the aim of affording protection against harassment to women at the workplace. With regards to Sindh, Balochistan and Khyber-Pakhtunkhwa (KPK), there seems to be vagueness as to their implementation mechanisms. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.

**CONVENTION CONCERNING THE ABOLITION OF FORCED LABOUR, NO. 105 (1957)**

The Convention was ratified by Pakistan on 15\textsuperscript{th} February, 1960. The legislative instruments currently in force include Article 11 of the Constitution of Pakistan, 1973 and the Bonded Labour (Abolition) Act, 1992. The law provides for the establishment of Vigilance Committees (VC) at the district level. In addition, the VCs shall report to the Coordinating Cells at the Provincial level and MoL at the Federal level. The issues pertaining to the Convention were dealt with by the MoL at the Federal level.

Provincially, the Labour & Human Resource Department acts as the enforcing body in Punjab. When it comes to the provinces Sindh, Balochistan and KPK, the status of implementation of the Convention is unclear, even though these provinces have the necessary bodies to deal with matters related to Labour. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.

**CONVENTION CONCERNING DISCRIMINATION IN RESPECT OF EMPLOYMENT AND OCCUPATION, NO. 111 (1958)**

The Convention was ratified by Pakistan on 24\textsuperscript{th} January, 1961. Legislative safeguards vis-à-vis non-discrimination are provided under Articles 27, 37 and 38 of the Constitution of Pakistan. In addition, the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 regulates employment in the industrial and commercial establishments – facilitating employment benefits such as wages, payment of bonuses, group incentive schemes, etc. Furthermore, the National Labour Policy, 2010 specifically mentions No. 111 and discusses the creation of jobs where men and women would be subject to nondiscrimination and equal pay.

At the provincial level, Punjab has enforced the relevant law by the Labour & Human Resources Department. Sindh, Balochistan and KPK, however, do not have clear implementation statuses. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.

**CONVENTION CONCERNING MINIMUM AGE FOR ADMISSION TO EMPLOYMENT, NO. 138 (1973)**

The Convention was ratified by Pakistan on 6\textsuperscript{th} July, 2006. Constitutional safeguards include Articles 11, 35 and 37 of the Constitution of Pakistan, 1973. The legislative framework highlighting the mandate laid out in the Convention predates the date of ratification of the latter. The Shops & Establishment Ordinance, 1969 provides for the prohibition of employment of

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\textsuperscript{14} The Ministry of Labour and Manpower has, since the 18\textsuperscript{th} Amendment, also been devolved. The relevant ministry now comes under the auspices of the Overseas Pakistanis and Human Rights Development Departments.

\textsuperscript{15} Applicable to all Conventions pertaining to Labour laws in this document.

\textsuperscript{16} http://punjab.gov.pk/labour_gsp [Accessed 14-02-2014]
children. The Factories Act, 1934 further expands on the ambit of child labour by prohibiting the employment of young children and non-adults. There is also the Employment of Children Act, 1991 regulating the age of children in work places, including their working conditions; The Mines Act, 1923 (prohibits employment of persons less than 14 years near mines, and under 18 in underground mines); the Road Transport Workers Ordinance (prohibits employment of under 18 years person in any transport related work and under 21 as drivers) and the Bonded Labour System (Abolition) Act, 1992 (prohibits employment of children in lieu of loan or peshgi). In 2001, the MoL also introduced a National Plan Action for the Elimination of Child Labour. However, since the 18th Amendment, it is uncertain whether the said national policy still applies.

The province of Punjab has been working on enforcing the Convention via its Labour & Human Resources Department. The province of KPK, while maintaining a Child & Bonded Labour Cell under the Directorate of Industries, Commerce & Labour, cannot be seen to be implementing the provisions laid out in the Convention. In the same manner, evidence also reflects the provinces of Sindh and Balochistan as not having cogent mechanisms addressing child labour issues in the respective provinces. It should also be noted that the National Labour Policy, 2010 categorically mentions that children working underage must be withdrawn. It also emphasizes that young persons must work in a controlled and regulated environment. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.


The Convention was ratified by Pakistan on 11th October, 2001. The constitutional protections afforded are under Articles 11, 35, 37 of the Constitution of Pakistan, 1973. Domestic legislation pertaining to the protection of children in respect of worst forms of labour includes Shops & Establishments Ordinance, 1969; Factories Act, 1934; Employment of Children Act, 1991; Mines Act, 1923; Road Transport Workers Ordinance. Similar to the above Convention (No. 138), the province of Punjab has been working on enforcing the Convention via its Labour & Human Resources Department. The province of KPK, while maintaining a Child & Bonded Labour Cell under the Directorate of Industries, Commerce & Labour, cannot be seen to be implementing the provisions laid out in the Convention. The Convention also acknowledges that children working underage must be withdrawn. It also emphasizes that young persons must work in a controlled and regulated environment. Pakistan has expressed no reservation vis-à-vis the implementation process of the Convention.

Conclusion

After having studied the abovementioned Conventions, it may be concluded that labour issues in Pakistan were almost always addressed by means of appropriate legislation. Often, the date of the legislation predated the actual date Pakistan ratified a certain Convention (see above). In that context, labour laws couple with child labour laws seemed to be strongly rooted under Pakistani law. Safeguards for all labour laws have, till date, been reinforced in the Constitution of the Islamic Republic of Pakistan, 1973.

However, since the paradigm shift after the 18th Constitutional Amendment, 2010, provinces now play a more significant role vis-à-vis the law making process and its implementation. What

needs to be addressed more coherently is the issue of provincial demarcation with regards to certain laws. Each province must be clear as to which departments fall under its ambit. In addition, ILO Conventions on labour laws must be addressed via concrete legislation (provincially). Apart from Punjab, provinces are unclear as to implementation mechanisms. Perhaps, more clarity on this matter would pave way for a transparent future on labour issues. Also, other provinces could refer to Punjab’s framework and adapt similar models. As a result, Pakistan’s human rights violations should significantly reduce, thereby bringing it more in line with our obligation under the Generalized System Preferences system (GSP Plus).
GOOD GOVERNANCE

OVERVIEW OF PAKISTAN’S COMPLIANCE WITH THE UN CONVENTION ON CORRUPTION, 2003

The EU’s GSP Plus Regulations focus upon providing States with incentives to realize sustainable development and good governance goals. Corruption, as an endemic problem in the Pakistani context, represents one of the greatest threats to the domestic establishment and inculcation of good governance norms. As such, the UN Convention against Corruption represents the primary international legal instrument targeting corrupt practices and improving transparency in the domestic context, and its implementation represents a significant milestone in effecting the Pakistani State’s obligations to meet the needs of its citizenry.

Background

The UN Convention Against Corruption was promulgated in 2003 and entered into force in 2005, and aims to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; to promote integrity, accountability and proper management of public affairs and public property. The Convention was signed by Pakistan on 9th December, 2003 and was ratified on 31st August, 2007 with Pakistan holding the following reservation to the Convention:

“The Government of the Islamic Republic of Pakistan declares that, pursuant to Article 66, Paragraph 3 of the Convention, it does not consider itself bound by the provisions of paragraph 2 of this Article.”

The paragraph to which the reservation refers to is produced hereunder and relates to the dispute resolution mechanism proposed under the Convention:

Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

In addition to proscribing corruption, the Convention also aims at providing preventative mechanisms in order to preclude corruption and its related practices. Therefore, an entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. Article 5, which constitutes the core obligation arising out of the Convention, enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

In addition to preventative measures, the Convention also requires States party to the agreement to establish criminal and other offences to cover a wide range of acts of corruption, if such

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practices do not already constitute crimes under domestic law. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

The Convention also incorporates provisions enabling international cooperation in curbing corrupt practices. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries such as Pakistan, where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments.

The legal framework for addressing corruption in Pakistan comprises of three main laws: the Pakistan Penal Code of 1860 (PPC), the Prevention of Corruption Act of 1947 (PCA) and the National Accountability Ordinance of 1999 (NAO). The PCA criminalizes active and passive bribery, focusing predominantly on curbing corrupt practices within the public sector, while the PPC outlaws attempted corruption, in addition to extortion or abetment of extortion. It also addresses money laundering and the bribery of foreign officials. The National Accountability Ordinance, which outlines the authority of the NAB, refers to bribery, embezzlement, misuse of power, fraud and illegal enrichment. The NAO has been the subject of widespread criticism as well as the source of considerable confusion. First, it excludes important categories of officials from its remit, including members of the judiciary and active armed forces personnel.

The Chairman of the NAB may choose to release an accused in exchange for the “voluntary return” of assets obtained through corrupt activities, which many argue is akin to impunity. A plea bargain provision has also been attacked for granting NAB extensive powers of pardon, when in fact only the courts, not NAB, have authority to change the punishment terms. Nonetheless, the incorporation of plea bargains – an oddity in the Pakistani legal system – has been met with concern and skepticism. The NAO also provides for the detention of suspects without charge for 90 days. Even this timeframe was abused quite openly when NAB first started work, with reports of some individuals being held for up to two years despite a lack of evidence against them.

In 2002, NAB prepared a National Anticorruption Strategy (NACS), which attempted to review and assess causes, nature, extent and impact of corruption in Pakistan; develop an integrated framework for tackling corruption with a particular focus on prevention coupled with enforcement; and create an action plan for the circumscription of corruption. The NACS predates the Convention however, but nonetheless informs the broader anticorruption legal regime in the country. NACS was, to a large extent, a stillbirth: hatched in an environment radically different – and much less accommodating – than the one in which it was conceived. Although the NACS was approved “in principle” by the Cabinet before the 2002 elections, the new politicians were not part of the NACS development process, and they harbored a deep mistrust of the organization in which it was anchored. The then-president Pervez Musharraf, for his part, was

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beholden to his political allies and was in no position to push through an agenda that threatened their interests. Senior bureaucrats who had earlier indicated enthusiasm for pursuing a preventive approach to corruption lost interest when they realized that the strategy was no longer a government priority. Therefore, the will to implement quickly diminished at all levels.

At present Pakistan suffers from endemic corruption, in both the public and the private sectors. Ratification of the Convention has had, to date, little effect on the broader legal framework. That said, however, there have been several small-scale initiatives aimed at creating ‘islands of integrity’ within the broader legal system; one of the more notable successes of these initiatives was the institution of the Islamabad Traffic Police and the Motorway Police, both of which demonstrated positive outcomes in an otherwise lackadaisical anticorruption matrix.23

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