SPEECH



The EU GSP Plus Status for Pakistan and Child Labour: Compliance and Compulsions

Karamat Ali*

Introduction

The Generalised Scheme of Preferences Plus (GSP+) arrangement is the European Union's strategy to promote sustainable development in vulnerable developing countries. It can be defined as a tool to promote trade, sustainable development and labour rights protection. The GSP+ status awards tariff free access to countries on various goods to the European Union countries. The GSP+ status is awarded to the developing countries which become party to twenty-seven conventions in the areas of human rights, labour rights, environmental rights and good governance. Another condition attached to the conventions remain that the countries must not have formulated reservations which are prohibited by these conventions; and the most recent conclusion of the monitoring bodies under those conventions must not identify any serious failure to implement them effectively.¹

The European Union (EU) granted GSP+ status to Pakistan in January 2014. Through GSP+ status, Pakistan is eligible to export around 78% of its products free of duty to the EU's (then) 28-member countries. This represents almost 20% of Pakistan's exports globally.² As the GSP+ allowed many Pakistani goods duty-free access to the European market, Pakistan's exports to the European Union increased from 4.53 billion euros in 2013 to 7.49 billion euros in 2019, registering an increase of 65%. As a result of GSP+, more than78% of Pakistan's exports enter the EU at preferential rates. Around 80% of the textiles and clothing articles exported to the EU from Pakistan enter the EU at preferential tariff.³

^{*} Mr. Karamat Ali is Executive Director at the Pakistan Institute of Labour Education and Research (PILER), Karachi. Email: karamatorama@gmail.com.

https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158619.pdf

http://democracy-reporting.org/wp-content/uploads/2016/05/gsp_in_pakistan_a_brief_i ntroduction.pdf.

³ https://ec.europa.eu/trade/policy/countries-and-regions/countries/pakistan/.

The EU conducts biennial reviews of the GSP+ beneficiary countries to determine whether to extend statuses for a further two years. Pakistan has successfully navigated through three biennial reviews, which were held in 2016, 2018 and 2020 by the EU. The first report pointed out some shortcomings in the compliance; however, the EU extended the status to Pakistan for the next two years. The second report was termed a "mixed one" meaning that the country has taken some positive steps towards compliance, however, it still needs improvement in some areas. The status was extended to Pakistan for two more years. However, the third EU GSP+ report of Pakistan submitted in the European Council in March 2020 has raised several concerns and puts forward recommendations for compliance in the future.

These concerns merit an analysis from the prism of issues and challenges facing compliance. Also, these concerns necessitate a range of policy and practice level measures to be taken by the government of Pakistan. The civil society and other stakeholders are also require to benefit from an analysis of compliance issues as it can be used as a policy advocacy tool should take to engage with the government.

Overview of Third EU Report on GSP+ and Pakistan

The European Union submitted the Joint Staff Working Document titled "The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Pakistan covering the period 2018-2019" on 10 February 2019 to the European Council and Parliament.⁴ The report was accompanied by the Joint Report to the European Parliament and the Council Report on the Generalised Scheme of Preferences covering the period 2018-2019. The report reads that Pakistan was granted the GSP+ in 2014 and has shown commitment to maintaining ratifications and meeting reporting obligations to the United Nations Treaty Bodies for the 27 UN Conventions.⁵ The report, however, has raised various concerns particularly on labour rights and child labour which required to address by the government of Pakistan in compliance with the GSP+.

https://ec.europa.eu/transparency/regdoc/rep/10102/2020/EN/SWD-2020-22-F1-EN-MA IN-PART-1.PDF.

⁵ Ibid.

Positive Aspects

The following are the key, positive highlights as described and discussed in the EU Report.

- The report maintains that the Government of Pakistan has shown a keen interest in maintaining GSP+ for its economic and trade benefits, notably at the time of requesting and implementing an International Monetary Fund (IMF) loan programme. It is also interested in the GSP+ arrangement as an incentive to sustainable development and good governance.
- The report acknowledges that Pakistan has made noticeable achievements since 2014 as a GSP+ beneficiary. Legal and institutional progress has taken place in a number of areas, and the country's reporting capacity to the UN monitoring bodies has significantly improved.
- 3. The report appreciates that Pakistan is making some progress on adopting laws on the protection of women and children's rights, elimination of honour killings, protection of transgender persons, protection of the environment and good governance.
- 4. The report underscores the need for and shows appreciation for the launch of a National Child Labour Survey and the implementation of the National Action Plan on Human Rights. Furthermore, the jurisdiction of military courts over civilians ended as the Parliament did not approve its extension in March 2019.
- 5. The report recognises the institutional and capacity development of the Ministry of Human Rights, the Treaty Implementation Cells (TICs), and Human Rights provincial departments, as well as cooperation with stakeholders.
- 6. It also identifies that the Ministry of Human Rights has begun to establish the Human Rights Information Management System (HRIMS) in cooperation with the United Nations Development Programme (UNDP) and in consultation with the Office of the High Commissioner of Human Rights (OHCHR).
- 7. The report terms the enactment of the Transgender Persons (Protection of Rights) Act 2018 as an important milestone in defending the rights of transgender people as equal citizens.
- 8. The report acknowledges that the invitation to Pakistan of the Special Rapporteur on the Right to Food was a positive step.

- 9. The report highlights that Pakistan's efforts to implement the environmental conventions have improved.
- 10. The report maintains condition in society/issues that the Government continued to give high priority to the situation for women and girls. This has resulted in new legislation and policies to tackle persistent problems and in some instances seems to have resulted in improvements on the ground.
- 11. The report acknowledges that the Ministry of Human Rights showed renewed resolve to improve the situation of children's rights in the country through legislation, judicial reforms, awareness raising, and other practical measure.

Concerns

Labour Rights and Protection

Pakistan's commitment to labour rights is long standing. Pakistan has ratified all eight ILO core labour conventions which are considered fundamental and binding on every member state and conditional to the GSP+ status. These eight ILO conventions relate to: a) freedom of association and the effective recognition of the right to collective bargaining (Conventions 87 & 98); b) elimination of all forms of forced and compulsory labour (Conventions 29 &105); c) effective abolition of child labour (Conventions 138 & 182); and d) elimination of discrimination in employment and occupation (Conventions 100 & 111). Though Pakistan has in place the constitutional, legal, policy and institutional frameworks and mechanisms on labour rights and protection, these merit improvements in line with the aforementioned ILO conventions.

The overall situation of the workforce in Pakistan is unsatisfactory. The low labour force participation rate (44.3%) indicates low economic activity and the absence of full employment opportunities. Over 73 per cent of workers in the informal economy are deprived of social protection due to lack of comprehensive legislative framework. Poor safety and health conditions in the informal, as well as many formal sector establishments, result in a high rate of occupational diseases, injuries and deaths. Minimum wages are insufficient to provide workers and their families with decent living standards and the level of compliance with the minimum wages is low. Bonded labour, child labour and discrimination against employment of

Pakistan Labour Force Survey 2017-2018, http://www.pbs.gov.pk/sites/default/files/Labour%20Force/publications/lfs2017 18/Annual%20Report%20of%20LFS%202017-18.pdf.

women continue to exist despite legislation. Furthermore, the unionisation rate is extremely low and legislation on trade unions is restrictive.

Major concerns raised by the EU third GSP+ report of Pakistan is outlined below. These concern labour inspection, forced labour, child labour, unionisation, occupational health and safety, harassment and intimidation, and discrimination.

- Labour inspection system is too weak to ensure its crucial function of proper enforcement and overseeing of the application of labour laws and safety standards. The strength of labour inspectors is too low and they lack technical skills and the capacity to perform their tasks as well.
- 2. Forced labour manifests itself, in particular, in the form of bonded labour and remains a major issue in Pakistan, despite its prohibition by law. The issue is that of non-implementation and is rooted in a lack of political will to implement the law.
- 3. Pakistan made limited progress over the reporting period to ensure freedom of association and the right to collective bargaining. There are concerns over low unionisation rates and weak functioning of tripartite social dialogue at national and provincial levels. The unionisation rate remains very low at less than 5%.
- 4. Enforcement of provincial laws and proper investigations and prosecutions of child and forced labour remains a concern. In 2018-2019, inspections in Punjab and Khyber Pakhtunkhwa led to several hundred arrests and prosecutions. On the other hand, in the Khyber Pakhtunkhwa the enforcement of the law prohibiting debt bondage in the formal sector is based entirely on a complaint system. In 2018, only one complaint was received.
- 5. Though the number of provincial inspectors is increasing, it remains low relative to the number of enterprises.
- 6. Another priority area is the adoption and implementation of the Occupational Safety and Health (OSH) legislation. The federal and provincial governments are working on Bills on OSH to improve legislation without concrete outcomes. New model OSH legislation, developed by the federal government, is still not adopted in all provinces.
- Serious incidents, such as factory firesand building collapses, still occur.
 The construction sector remains the most hazardous sector in terms of occupational injuries. The majority of injuries take place in the

- agriculture sector (42%) followed by construction and manufacturing (34% combined).
- 8. Harassment and intimidation of trade union members continues to be an issue. This can take the form of threats of dismissal.
- 9. There is a considerable gender gap with regards to labour force participation. According to the latest Labour Force Survey the participation rate of women in labour market is less than 15% compared to 46% for men.

Freedom of Association and Rights to Collective Bargaining (Conventions 87 & 98)

The right to organise and form associations (C No.87) is the prerequisite for sound collective bargaining and social dialogue. This fundamental convention sets forth the right of workers and employers to 'establish and join organisations of their own choice without previous authorisation'. Workers' and employers' organisations are entitled to organise freely and are not liable to be dissolved or suspended by administrative authority. They have the right to establish and join federations and confederations, which may in turn affiliate with international organisations of workers and employers.⁷ The second fundamental ILO Convention No.98 states that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment and that the workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other.

Historically in Pakistan, legislation on the rights to organise and form unions and collective bargaining has been restrictive and exclusionary. The trend continued even after the passage of the 18th Constitutional Amendment in 2010 that gave provinces the autonomy to legislate on labour. The provinces failed to reform the key labour legislation, and have retained the repressive framework of earlier laws which excluded several categories of workers from the rights to form associations and collective bargaining. The Industrial Relations Act 2012 applicable in Islamabad Capital Territory, and provincial laws - the Balochistan Industrial Relations Act 2010, Khyber Pakhtunkhwa Industrial Relations Act 2010, Punjab Industrial Relations Act 2010, and Sindh Industrial Relations Act 2013 - contain lacunae that, beside excluding several categories of workers from this fundamental right, inhibit registration of

Pakistan and GSP+ Scheme Compliance with the ILO Core Labour Standards: Need for Reforms; Pakistan Institute of Labour Education and Research.

trade unions to the categories of workers allowed to form unions. Also, employers harass, intimidate, and often dismiss workers if they are found to be involved in union activities. Thus, unionisation rates remain very low at less than 5%, according to an estimate.

Therefore, it is not surprising that the right to unionisation has remained a concern for the EU, the ILO and the trade unions as the country has made limited progress over the reporting period to ensure freedom of association and the right to collective bargaining. There are concerns over low unionisation rates and weak functioning of tripartite social dialogue at national and provincial levels.

The actual unionisation rate is lower than 5%; it would be approximately 2%. Rather than improving, the unionisation rate is decreasing day by day in Pakistan. A report prepared by PILER, there were in total 7,500 unions in 1,300 workplaces in Pakistan. There is exceptionally weak labour inspection in the country as one of the reasons of the decreasing unionisation. The number of labour inspectors in Pakistan, estimated to be 450 against a workforce of 65.5 million, gives some indication of the 'inadequacy' of labour inspectorate staff strength that capacity building programmes for labour inspectors had declined. It was noted that the training centres for labour inspectors in Karachi and Lahore had been closed years ago. Also, the majority of workers have been working as contract workers and are, thus, not eligible to be a part of unionisation process.

Forced and Bonded labour

Pakistan has a high prevalence of forced/bonded labour. According to the Global Slavery Index 2018, there are approximately 3,186,000 victims of modern forms of slavery in the country.⁸ The sectors worst affected with bonded labour are agriculture (in lower districts of Sindh and southern Punjab) and brick kilns (Punjab). Forced labour, to a lesser extent, is found in the carpet weaving and domestic services.⁹

Pakistan ratified the ILO Convention concerning Forced or Compulsory Labour, No. 29, in 1957 and the Convention on the Abolition of Forced

⁸ Global Slavery Index 2018, https://downloads.globalslaveryindex.org/ephemeral/GSI-2018 FNL 190828 CO DIGITAL P-1607054882.pdf.

⁹ Pakistan and GSP+ Scheme Compliance with the ILO Core Labour Standards: Need for Reforms; Pakistan Institute of Labour Education and Research.

Labour, No. 105 in 1960. Both Conventions prohibit all forms of forced or compulsory labour including coercive employment practices, debt-induced forced labour and trafficking into forced labour which are the contemporary forms of forced labour that have emerged in the private economy and global supply chains. At the national and provincial levels the laws related to forced and bonded labour include Bonded Labour System (Abolition) Act 1992 Islamabad Capital Territory (ICT) and Balochistan province; Punjab Bonded Labour System (Abolition) (Amendment) Act 2018; Khyber Pakhtunkhwa Bonded Labour System Abolition Act 2015, and Sindh Bonded Labour System (Abolition) Act 2015. A National Policy and Plan of Action on Bonded Labour was formulated in 2001. Provinces of Sindh and Punjab adopted the Provincial Plan of Action to Combat Bonded Labour.

The law on bonded labour system abolition requires provincial governments to set up vigilance committees at district level supervised and headed by Deputy Commissioners. The District Vigilance Committees (DVCs) comprise the elected representatives of the area, representatives of district administration, bar associations, press, social partners (workers, employers, NGOs), social services and labour departments. In Sindh province, only 7 districts, out of 29, have notified the DVCs but none is functional. In Punjab 36 districts, out of 39, have functional DVCs which meet irregularly and discuss labour issues such as child labour, wages, etc. None of the committee members put bonded labour on the agenda.¹¹

The key legislation, the federal and provincial Bonded Labour System (Abolition) Acts, is in compliance with the ILO conventions No.29 and No. IO5. However, implementation has remained ineffective. Reasons include lack of freedom of association and denial of the right to organise to agricultural workers, concentration of land ownership in the hands of few, and the state administrative machinery subservient to the landed elite. Hence, the law has not been used ever. Bonded labour cases in the agriculture and brick kiln sectors are dealt under habeas corpus petitions filed in the courts by the victims' friends, relatives or human rights groups. There has never been a prosecution and conviction of any landlord under this law.

¹⁰ Ibid.

¹¹ Ibid.

Other laws which have a bearing on bonded/force include Punjab Prohibition of Child Labour at Brick Kilns Act, 2016, Prevention and Control of Human Trafficking Ordinance 2002, Prevention of Trafficking in Persons Act 2018, Punjab Protection and Restoration of Tenancy Rights Act, 1950, Sindh Tenancy Act, 1950 amended in 2013, NWFP Tenancy Act, 1950 and the Baluchistan Tenancy Ordinance, 1979.

Of particular importance to bonded labour is the Sindh Tenancy Act 1950, and its amendment carried out in 2013. The Act is outdated. In addition, lack of implementation, incumbent upon the provincial administrative mechanism and legislation, i.e., Sindh Revenue Board, Sindh Revenue Act, has rendered the Act ineffective. Though according to the law, a share-cropper is to receive 50% share in the output but the contract requires that the hart bear the cost of tillage and land preparation and half the cost of seed, fertilizer and pesticides. This binds the poor, asset-less peasants to debt bondage. Lack of transparent documentation system for financial transaction between the tenant and the landlord, and lack of provision of special Hari Courts for settlement of disputes, add to strengthen the debt trap. The lacunae in the Act have led to a persistence in bonded labour in agriculture in the Sindh province.

Discrimination and equal remuneration

Elimination of discrimination in respect of employment and occupation is one of the fundamental rights and is considered a key element of social justice. Wage difference is one of the most obvious and measurable forms of discrimination at workplace. Equality in wages for women and men is thus essential in progressing towards wider equality in society. The ILO Equal Remuneration Convention No. 100 specifically and exclusively addresses this inequality and sets the standard of equal remuneration for men and women for work of equal value. Under Article 2 C 100, the ratifying country commits to apply this principle by means of 'national laws or regulations; legally established or recognised machinery for wage determination; collective agreements between employers and workers; or a combination of these various means'.¹²

Constitutional and legal frameworks on anti-discriminatory practices exist in Pakistan. Article 25 (1) 44 of the constitution of Pakistan guarantees that all

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¹² Ibid.

citizens are equal before law and are entitled to equal protection of law. At a legal level, Pakistan Minimum Wage Rules 1962 (Rule 15), Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Section 26), Khyber Pakhtunkhwa Factories Act, 2013 (Section 99) and the Sindh Employees' Old-Age Benefits Act, 2014 (Section 54) guarantee equal wages for men and women. The Sindh Home-based Workers Act 2018 relates to social protection of home-based workers and makes all labour laws in the province applicable to home-based workers. The law, however, does not contain specific provision for gender pay equity. The Protection Against Harassment of Women at Workplace Act, 2010, applicable in all regions, provides safeguards against harassment, abuse, and intimidation in the workplace.

Discrimination against women in employment continues. Women's economic participation, an important measure of equality, comprises five aspects: labour force participation; wage equality for similar work; estimated earned income; number of legislators, senior officials, and managers; and number of professional and technical workers. Pakistan is doing poorly on all five: female labour force participation rate is 20.1 per cent versus men's 68 per cent; 71.8 per cent women work in the informal economy; average monthly wages for men are Rs. 19,943 but women get Rs. 11,884. The mean hourly gender pay gap is 34 per cent in Pakistan. And only 0.5 per cent of women are employed as managers, 7.7 per cent as professionals, and 1.8 per cent as technical workers.¹³

Occupational health and safety

One of the key areas of decent work deficit in Pakistan is poor occupational safety and health (OSH) at the workplace in both formal and informal sectors. Most of the enterprises in the organised sectors are not aware of OSH risks and hazards, and often they do not see the importance and urgency of addressing those risks and hazards. In 2012, a massive fire engulfed a factory in Baldia, Karachi, which killed more than 250 workers. Many key sectors of the economy namely construction, mining, agriculture and fishing face significant challenges in terms of OSH risks and hazards.¹⁴

Before decentralisation of powers in 2010 through 18th Amendment to the Constitution, occupational safety and health issues in the industrial sector

¹³ http://www.pakistani.orgJpakistan/constitution/part2.ch1.html

¹⁴ https://www.ilo.org/islamabad/areasofwork/safety-and-health-at-work/lang--en/index.h tm.

were mainly governed by the Factories Act, 1934. Provincial governments, e.g., Sindh and Punjab, have enacted occupational health and safety laws e.g., Sindh Occupational Safety and Health Act, 2017 and the Punjab Occupational Safety and Health Act 2019.

Sindh Occupational Safety and Health Act, 2017, is applicable to all places of work in the province of Sindh, but does not include mines. Whereas, Punjab Occupational Safety and Health Act 2019 does not specify the workplaces. Sindh Government under the Occupational Safety and Health Council Sindh has formed Occupational Safety and Health Council Sindh with a mandate to advise the Government on all matters relating to the objects of this Act which Government may refer to the Council and review legislation relating to OSH and recommend amendments, expansion, or clarification under the said legislation.

However, a range of measures remain to be taken in the light of both laws in the areas of capacity building of employers and workers on OHS, formation of OHS committees at workplace level, induction of OHS inspectors, display of OHS information in local languages at the workplaces, provisions of OHS kits to all industrial workers, hazard and risk assessment, development of OHS plan at unit levels, and compulsory vaccination and inoculation of workers.

About the state of children's rights in Pakistan, Mr. Ali expressed concerns about lack of planning and abject state of policy execution by the successive governments in the country to provide fundamental rights to children under the Constitution. "Under the 18th Constitutional Amendment, children aged 5 to 16 years have the right to have free compulsory education. But you can see how much progress has been made on this subject over the years," he said, adding that even in the current budgets no allocation had been made to ensure that all children had easy access to education. The matter was also taken to court in 2012 but the legal recourse had not made any difference on the ground yet. The data on out-of-school children and those who could not go to school, often-quoted figure between 25m and 35m. "It's an alarming number which will increase every year, if drastic measures are not taken to address the problem".

¹⁵ Art 25(A), Constitution of Pakistan, chapter Fundamental Rights, at www.na.gov.pk.

A report by the International Labour Organization (ILO) and UNICEF *Child Labour: Global estimates 2020, trends and the road forward* has plainly reveals a scary picture which indicates a rising issue of child and young age workers at global level and in the developed world as well. The COVID-19 pandemic has reversing the progress to eliminate the child labour as economic strains prevailed all over the world. The report indicates that the child labour has risen to 160 million worldwide – an increase of 8.4 million children in accordance with 2017 report.¹⁶

In the year of 2020, Pakistan has made very modest advancements in terms of child labour elimination from the society. For this purpose, the government has taken some serious steps. In February 2020, Pakistan's government formally designated and appointed members to the National Commission to the Rights of the Child, to inquire into complaints of violations of child rights and propose legal actions against the violators. It surprisingly included two children for representation in the Commission. Furthermore, in response to the fatal beating of an 8 year old domestic worker by her employer, a news highlighted by the media and for that reason Islamabad capital territory cabinet decided to ban domestic child labour under the age of 14. Also, the Pakistani government added domestic labour to the list of works defined as hazardous work prohibited for children under the employment of Children Act 1991.

The speaker highlighted an unfortunate situation on ground, how the children in Pakistan are subjected to the worst form of child labour due to poverty - a leading reason of child trafficking and sexual exploitation as well. Children in Pakistan very much engage in brick kilns and in the agriculture sector as well and they get a very small amount from their employers. The provincial governments are still far behind in applying work ethics for laborers in compliance to maintain international conventions. In addition to this the provincial labour inspectorates do not receive or have resources to adequately enforce laws prohibiting child labour. Even the federal and provincial governments are unable to publicly release information on their criminal and labour law enforcement efforts.

In enforcing labour laws the government needs to strengthen the police department to curtail malpractices, such as taking bribes from the suspected

¹⁶ https://www.unicef.org/press-releases/child-labour-rises-160-million-first-increase-two-decades.

perpetrators to ignore the crimes related to child rights and lack of willingness to conduct investigations regarding these crimes. It harms Pakistan's ability to address human rights' issues and damage national image.

Another lamenting issue is the rising rate of population coupling it with the fact that due to contraction of resources and mismanagement, the future labour force might not be physically fit and nourished as the 70% of our children are malnourished. It's not difficult to foresee that the coming generation of labour force would not match the productive capacity of its predecessors, if the children today keep depriving of their fair rights. Referring to developed countries, they made progress only after they universalised education and Pakistan needed to follow the same path. "Besides, a large number of illiterate and unemployed youth are a threat for society's development. We must start investing in our future."

In his concluding remarks he recommended following point.

For the EU

- 1. Make monitoring, oversight and reporting mechanism on GSP+ inclusive and open; including the public sharing of score cards.
- 2. Increase participation of civil society actors in monitoring, overseeing and reporting mechanisms on the GSP+ scheme.
- 3. Create a balance in priority settings amongst economic, social and cultural rights; environmental rights; labour rights; and good governance.

For the Government

- Provide financial and human resources to the Treaty Implementation Cells (TICs) properly so they can perform their role effectively in monitoring, coordinating, collecting and reporting progress on GSP+ commitments.
- 2. Digitise data collection and reporting processes by the TICs.
- 3. Organise capacity development programmes, through TICs, for relevant departments on GSP+ commitments and hold regular meetings with the departments to discuss progress on GSP+ commitments.