International Labour Organization

Funded by the European Union

Concept Note

Employers' Consultation on Freedom of Associations and Collective Bargaining Reform, 10 August 2023, Star Avenue, Ramada Plaza, Karachi

I. Introduction

Pakistan has been an important and active member of the International Labour Organization (ILO) since 1947 and has ratified 36 ILO Conventions, including eight out of ten fundamental Conventions and two governance Conventions. This includes Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98). However, Pakistan's record of compliance with international labour standards remains a challenge. The ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) identifies at significant points in relation to which Pakistan's provincial labour laws are not in compliance with one or both of the two fundamental conventions on freedom of association and the effective recognition of the right to collective bargaining. The Committee also remarks on the persistence of this non-compliance across several years and through multiple labour law reform processes.

As per article 22 of the ILO Constitution[1], ILO Member States are required to regularly submit reports concerning their implementation of the Conventions they have ratified. These reports must also respond to specific recommendations, inquiries and comments made by the Committee of Experts on Application of Conventions and Recommendations (CEACR). It is important for the Government, employers' organizations and workers' organizations in Pakistan to comprehend the reporting obligations on international labour standards as well as how to use the CEACR's comments to analyses existing legislative and policy frameworks. Such understanding can reveal gaps and create opportunities for reform and improved compliance with international labour standards in line with the recommendations of ILO supervisory bodies. If translated into meaningful action, this should also ensure progress on meeting obligations under the European Union (EU) Generalised Scheme of Preferences Plus (GSP+), which has granted Pakistan preferential trade access to the EU since 2013.

With the support of the ILO through its project on *International Labour and Environmental Standards Application in Pakistan's SMEs* (ILES), a research has been conducted to develop a Technical Note capturing information about relevant articles and provisions of the ILO Conventions No. 87 and No. 98; recommendations from the Committee of Experts on Application of Conventions and Recommendations (CEACR); information about the current situation in relation to laws, policies and practices; proposed reforms and recommendations for implementation.to increase understanding of tripartite partners in Pakistan.

II. Objectives

The objective of this programme is to organize a one-day employers consultation on 10 August 2023 in Karachi with the Employers' Federation of Pakistan, employers' representatives, business associations and private sectors to discuss reform process and actions from the employers. The

[1] "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request" (Article 22).

consultation will cover ILO Conventions No 87 and No.98, comments of the CEACR, the Technical Note of the FOA/CB.

III. **Targeted Participants**

- Leadership of Employers' Federation of Pakistan
- Representatives from employers, business associations, private sectors

IV. **Budget.** The workshop will be covered by the ILES project.

V. **Link with the ILES output, DWCP CPO', P&B outcome.**

ILES project Output 1.1.1 Legislative and policy frameworks drafted and reviewed with involvement of Government, workers and employers to better comply with ILS

CPO: PAK 826 and PAK 201

P&B output: 2.3

Employers' consultation on Freedom of Association and Collective Bargaining

10 August 2023 in Karachi

Time	Programme	Speakers/ Resource Person
Thursday, 10th August 2023		
10.00-10.30	Registration	ILES Project
10.30-10.40	Opening remarks by EFP	EFP
10.40-10.50	Remarks by ILO Country Office for Pakistan	Mr. Geir T. Tonstol
10:50–11:00	**Session 1:** GSP+ and compliance with fundamental labour standards	Ms Khemphone ILES Project Manager
11.00-11.20	Tea break	
11.20 – 12.30	**Session 2: :** Freedom of Association and the effective recognition of the right to collective bargaining as a fundamental principle (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) & Right to Organise and Collective Bargaining Convention, 1948 (No.98) • Role of the comments of the ILO supervisory bodies for Member States • Recommendations of the ILO supervisory bodies to Pakistan	Ms. Elena Gerasimova, Labour Law and Labour Standards Specialist, ILO DWT for South Asia
12.30 – 13.30	**Session 3:** Technical Note on Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) & Right to Organise and Collective Bargaining Convention, 1948 (No.98) • Research findings and recommendations for reforms	By Mr Conor Cradden FOA/CB Consultant
13:30-15.00	**Lunch and pray break**	
15.00-16.45	**Session 4:** Employers' needs and identifying required support	All participants
17.00	Wrap up session	

Additional references for CEACR pronouncements on Pakistan's compliance with Conventions 87 and 98

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Articles 2-9: Scope of application of the Convention

1	**EXCLUDED CATEGORIES OF WORKERS** ***CFA Compilation*[1].** **Public servants** 332. All workers, without distinction whatsoever, including without discrimination in regard to occupation, should have the right to establish and join organizations of their own choosing. 336. Public servants, like all other workers, without distinction whatsoever, have the right to establish and join organizations of their own choosing, without previous authorization, for the promotion and defence of their occupational interests. 337. Public employees (with the sole possible exception of the armed forces and the police, by virtue of Article 9 of Convention No. 87) should, like workers in the private sector, be able to establish organizations of their own choosing to further and defend the interests of their members. 339. The denial of the right of workers in the public sector to set up trade unions, where this right is enjoyed by workers in the private sector, with the result that their "associations" do not enjoy the same advantages and privileges as "trade unions", involves discrimination as regards government-employed workers and their organizations as compared with private sector workers and their organizations. Such a situation gives rise to the question of compatibility of these distinctions with Article 2 of Convention No. 87, according to which workers "without distinction whatsoever" shall have the right to establish and join organizations of their own choosing without previous authorization, as well as with Articles 3 and 8, paragraph 2, of the Convention. ***2012 General Survey*[2]** 64. In contrast with Convention No. 98, Convention No. 87 does not contain a provision excluding from its scope certain categories of public servants. Accordingly, the Committee has always considered that the right to establish and join occupational organizations should be guaranteed for all public servants and officials, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state owned economic undertakings. Moreover, no distinction may be made based whether such employees are engaged on a permanent or temporary basis. However, the terms used in the legislation of the different countries to refer to public servants vary and the same expressions do not necessarily cover the same persons. The freedom of association of workers in the public sector may also be established, not by legislation, but by common law. **Members of the armed forces and the police** ***CFA Compilation*** 347. Article 2 of Convention No. 87 provides that workers and employers, without distinction whatsoever, shall have the right to establish and to join organizations of their own choosing. While Article 9 of the Convention does authorize exceptions to the scope of its provisions for the police and the armed forces, the Committee would recall that the members of the armed forces who can be excluded should be defi ned in a restrictive manner. Furthermore, the Committee of Experts on the Application of Conventions and Recommendations has observed that, since this Article of the Convention provides only for exceptions to the general principle, workers should be considered as civilians in case of doubt. 350. Civilians working in the services of the army should have the right to form trade unions. ***2012 General Survey*** 67. Under Article 9, paragraph 1, of the Convention, the only authorized exceptions from the scope of application of the Convention concern members of the police and the armed forces. These exceptions are justified on the basis of the responsibility of these two categories of workers for the external and internal security of the State. In the view of the Committee, these exceptions must however be construed in a restrictive manner. For example, they do not include civilian personnel in the armed forces, fire service personnel, prison staff, customs and excise

[1] Freedom of Association – Compilation of decisions of the Committee on Freedom of Association. Sixth edition. 2018. wcms_632659.pdf (ilo.org)

[2] General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008. 2012. wcms_174846.pdf (ilo.org)

officials, civilian employees in the industrial establishments of the armed forces, civilian employees in the intelligence services, or employees of the legislative authority. Nor do they automatically apply, in the view of the Committee, to all employees who may carry a weapon in the course of their duties, who cannot a priori be excluded from the scope of the Convention.

68. In practice, as it is not always easy to determine whether workers belong to the military or to the police, in the view of the Committee workers should be considered as civilians in case of doubt. For example, it considers that workers in private security firms and members of the security services of civil aviation companies should be granted the right to establish organizations, in the same way as workers engaged in security printing services and members of the security or fire services of oil refineries, airports and seaports.

2 FREEDOM OF ASSOCIATION RIGHTS OF MANAGERIAL EMPLOYEES

CFA Compilation

81. It is not necessarily incompatible with the requirements of Article 2 of Convention No. 87 to deny managerial or supervisory employees the right to belong to the same trade unions as other workers, on condition that two requirements are met: first, that such workers have the right to establish their own associations to defend their interests and, second, that the categories of such staff are not defined so broadly as to weaken the organizations of other workers in the enterprise or branch of activity by depriving them of a substantial proportion of their present or potential membership.

382. As regards provisions which prohibit supervisory employees from joining workers' organizations, the Committee has taken the view that the expression "supervisors" should be limited to cover only those persons who genuinely represent the interests of employers.

383. Limiting the definition of managerial staff to persons who have the authority to appoint or dismiss is sufficiently restrictive to meet the condition that these categories of staff are not defined too broadly.

384. A reference in the definition of managerial staff to the exercise of disciplinary control over workers could give rise to an expansive interpretation which would exclude large numbers of workers from workers' rights.

385. An excessively broad interpretation of the concept of "worker of confidence", which denies such workers their right of association, may seriously limit trade union rights and even, in small enterprises, prevent the establishment of trade unions, which is contrary to the principle of freedom of association.

3 FREEDOM OF ASSOCIATION RIGHTS OF WORKERS IN EPZS

CFA Compilation

403. Workers in export processing zones – despite the economic arguments often put forward – like other workers, without distinction whatsoever, should enjoy the trade union rights provided for by the freedom of association Conventions.

404. The Committee recalled that the standards contained in Convention. No 87 apply to all workers "without distinction whatsoever" and that the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively and thus considered that legislation concerning export processing zones should ensure these rights.

405. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy provides that special incentives to attract foreign investment should not include any limitation of the workers' freedom of association or the right to organize and bargain collectively. The Committee considers that legal provisions on export processing zones should ensure the right to organize and bargain collectively for workers.

General Survey 2012

74. In its report in 2009, the Committee observed with concern that there are significant lacunae in the application of Convention No. 87 with respect to workers in export processing zones (EPZs). Noting "the disparity between de jure and de facto application of labour standards in EPZs and between EPZ workers and those not working in EPZs", the Committee recalled that there are "around 3,500 EPZs throughout the world, operating in 120 countries and territories and employing around 66 million people" and found it "of particular concern when considering the importance of fundamental human rights, in particular equality of treatment, that there is often an extremely high proportion of women among EPZ workers deprived of their rights". The Committee therefore requests the governments concerned to provide information on the exercise in practice of trade union rights in EPZs and maquilas, particularly with regard to the access of the labour inspectorate and representatives of workers' organizations to these zones.

4	**FREEDOM OF ASSOCIATION RIGHTS OF WORKERS IN THE INFORMAL ECONOMY** ***General Survey 2012*** 75. With regard to the informal economy, the Committee added that in many countries around the world "the informal economy represents between half and three-quarters of the overall workforce" and that, under the terms of the Convention, these workers have the right to organize and to collective bargaining, without distinction whatsoever, to establish and join organizations freely and to represent their members in relation to the public authorities in structures established for the purpose of social dialogue. Examination of the Committees comments "lends weight to the importance of the obstacles faced by" many of these workers and "in some cases, illustrates the dramatic impact that this has had on society overall". 76. The Committee has welcomed the innovative approaches adopted in certain countries to enable workers in the informal economy to organize... It therefore endorses the concern expressed in the resolution adopted by the Conference in 2002 concerning decent work and the informal economy, 2002, in which the ILO emphasizes the practical importance of freedom of association for the effective improvement of working conditions in the informal economy, particularly for women and youth.
5	**FREEDOM OF ASSOCIATION RIGHTS OF AGRICULTURE AND FISHERIES WORKERS** ***CFA Compilation*** 374. Agricultural workers should enjoy the right to organize. ***General Survey 2012*** 53. [The guarantees set out in Article 2 of Convention 87] apply to all employers and workers in the private and public sectors, including seafarers, agricultural workers, migrant workers, domestic workers, apprentices, subcontracted workers, dependent workers, 60 workers employed in export processing zones and in the informal economy, and self-employed workers. *See also row 7 below.*
6	**FREEDOM OF ASSOCIATION RIGHTS OF SELF-EMPLOYED WORKERS** ***CFA compilation*** 387. By virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and the police – should have the right to establish and join organizations of their own choosing. The criterion for determining the persons covered by that right, therefore, is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practise liberal professions, who should nevertheless enjoy the right to organize. 388. The Committee requested a government to take the necessary measures to ensure that self-employed workers fully enjoyed freedom of association rights, in particular the right to join the organizations of their own choosing. ***General Survey 2012*** 71. The Committee considers that other categories of workers who are regularly denied the right to establish trade unions must be covered by the principles set out in the Convention. These include, in particular... self-employed workers
7	**FREEDOM OF ASSOCIATION RIGHTS OF DOMESTIC WORKERS DIRECTLY RECRUITED BY HOUSEHOLDS** ***CFA compilation*** 406. Domestic workers are not excluded from the application of Convention No. 87 and should therefore be governed by the guarantees it affords and have the right to establish and join occupational organizations. ***General Survey 2012*** 73. Finally, although trade unions have increased their efforts to reach out to domestic workers, the labour legislation in a number of countries still does not cover this category of workers, as a result of which there are no legal provisions applicable to them, including in relation to trade union rights, and they are not covered by labour inspection or enforcement institutions. 116 The Committee therefore regularly emphasizes the need to ensure not only that domestic workers are covered by the relevant legislation, but also that, in practice, they benefit from the guarantees set forth in the Convention.

Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

8	**RIGHT OF WORKERS TO JOIN MORE THAN ONE UNION** ***CFA Compilation*** 546. Workers should be able, if they so wish, to join trade unions at the branch level as well as the enterprise level at the same time. 547. Workers should be able to simultaneously join a company union and a union of groups of undertakings. 548. The impossibility, for workers, even if they have more than one employment contract, to become members of more than one trade union, in either their enterprise, industry, occupation or trade, or institution, does not comply with the principles of freedom of association, as it unduly impedes the right of workers to join organizations of their own choosing.
9	**SECTION 6 OF THE IR ACT 2012** *No additional references.*
10	**MINIMUM MEMBERSHIP REQUIREMENTS** ***CFA Compilation*** 488. The government should neither support nor obstruct a legal attempt by a trade union to displace an existing organization. Workers should be free to choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities. It may be to the advantage of workers to avoid a multiplicity of trade unions, but this choice should be made freely and voluntarily. By including the words "organizations of their own choosing" in Convention No. 87, the International Labour Conference recognized that individuals may choose between several workers' or employers' organizations for occupational, denominational or political reasons. It did not pronounce as to whether, in the interests of workers and employers, a unified trade union movement is preferable to trade union pluralism.
11	**RIGHT TO FORM MORE THAN ONE WORKERS' ORGANIZATION PER BARGAINING UNIT** ***CFA Compilation*** 488. The government should neither support nor obstruct a legal attempt by a trade union to displace an existing organization. Workers should be free to choose the union which, in their opinion, will best promote their occupational interests without interference by the authorities. It may be to the advantage of workers to avoid a multiplicity of trade unions, but this choice should be made freely and voluntarily. By including the words "organizations of their own choosing" in Convention No. 87, the International Labour Conference recognized that individuals may choose between several workers' or employers' organizations for occupational, denominational or political reasons. It did not pronounce as to whether, in the interests of workers and employers, a unified trade union movement is preferable to trade union pluralism.

Article 3(1): Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

Article 3(2): The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

12	**RIGHTS OF MINORITY UNIONS** ***CFA Compilation*** 1387. The Committee has recalled the position of the Committee of Experts on the Application of Conventions and Recommendations that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances. 1388. The granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations

should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them.

13 RIGHT OF BANKING SECTOR UNIONS TO ELECT THEIR REPRESENTATIVES IN FULL FREEDOM

CFA Compilation

589. The right of workers' organizations to elect their own representatives freely is an indispensable condition for them to be able to act in full freedom and to promote effectively the interests of their members. For this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining the conditions of eligibility of leaders or in the conduct of the elections themselves.

14 REGISTRAR'S POWERS OF INVESTIGATION, INSPECTION, AND INQUIRY INTO THE AFFAIRS OF A TRADE UNION

CFA compilation

680. The right of workers to establish organizations of their own choosing and the right of such organizations to draw up their own constitutions and internal rules and to organize their administration and activities presuppose financial independence. Such independence implies that workers' organizations should not be financed in such a way as to allow the public authorities to enjoy discretionary powers over them.

681. With regard to systems of financing the trade union movement which made trade unions financially dependent on a public body, the Committee considered that any form of state control is incompatible with the principles of freedom of association and should be abolished since it permitted interference by the authorities in the financial management of trade unions.

682. Provisions governing the financial operations of workers' organizations should not be such as to give the public authorities discretionary powers over them.

General Survey 2012

109. As the autonomy and financial independence and the protection of the assets and property of organizations are essential elements of the right of organizations to organize their administration in full freedom, any legislative intervention in this respect merits the attention of the Committee. While it accepts legislative requirements that the constitutions of organizations should contain provisions relating to their internal financial administration or which provide for external supervision of financial reports, with a view to ensuring the conditions for honest and effective administration, it considers that other interventions are incompatible with the Convention. For example, the Committee considers that such supervision is compatible with the Convention when it is carried out in the following manner (in all cases, both the substance and the procedure of such verification should be subject to review by the judicial authority, affording every guarantee of impartiality and objectivity):

– the supervision is limited to the obligation of submitting annual financial reports;

– verification is carried out because there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe the principles of freedom of association);

– verification is limited to cases in which a significant number of workers (for example, 10 per cent) call for an investigation of allegations of embezzlement or lodge a complaint.

110. However, it would be incompatible with the Convention if the law gave the authorities powers of control which go beyond these principles, or which tend to over-regulate matters that should be left to the trade unions themselves and their by-laws. This may take the form of extended control over the financial management of organizations, or legislative provisions which regulate in detail certain aspects of the internal administration of organizations. Examples include provisions which:

– establish the minimum contribution of members;

– provide for financial supervision of the accounts by the public authorities;

– entrust the authorities with extensive powers to regulate the maximum rates of salaries and allowances paid to employees of the trade union;

– specify the proportion of union funds that have to be paid to federations;

– require that certain financial operations, such as the receipt of funds from abroad, be approved by the public authorities;

– restrict the freedom of trade unions to invest, manage and use their assets as they wish for normal and legitimate trade union purposes;

	– empower the administrative authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time; or – intervene in the determination of the use of the assets of the trade union to pay fines or penalties imposed on the organization or on a trade union leader in the performance of her or his duties.
15	**RIGHT OF ORGANIZATIONS TO FREELY ELECT THEIR REPRESENTATIVES: DISQUALIFICATION CRITERIA** ***CFA compilation*** 606. The determination of conditions of eligibility for membership or office is a matter that should be left to the discretion of union/employer organization by-laws and the public authorities should refrain from any intervention which might impair the exercise of this right. 625. A law which generally prohibits access to trade union office because of any conviction is incompatible with the principles of freedom of association, when the activity condemned is not prejudicial to the aptitude and integrity required to exercise trade union office. 626. Conviction on account of offences the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the exercise of trade union functions should not constitute grounds for disqualification from holding trade union office, and any legislation providing for disqualification on the basis of any offence is incompatible with the principles of freedom of association. 627. The loss of fundamental rights, such as the ban on standing for election to any trade union office and any political or public office, could be justified only with reference to criminal charges unconnected with trade union activities, and are serious enough to impugn the personal integrity of the individual concerned. ***General Survey 2012*** 106. The Committee considers that conviction for an act the nature of which is not such as to call into question the integrity of the person concerned and is not such as to be prejudicial to the performance of trade union duties should not constitute grounds for disqualification from trade union office.
16	**DETAILED REGULATION OF INTERNAL FUNCTIONING OF TRADE UNIONS** ***CFA compilation*** 563. Legislative provisions which regulate in detail the internal functioning of workers' and employers' organizations pose a serious risk of interference by the public authorities. Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organizations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organizations. Furthermore, there should be a procedure for appeal to an impartial and independent judicial body so as to avoid any risk of excessive or arbitrary interference in the free functioning of organizations.
17	**QUALIFICATION OF A 'GO-SLOW' AS AN UNFAIR LABOUR PRACTICE** ***General Survey 2012*** 126. [A]ny work stoppage, however brief and limited, may generally be considered as a strike, and restrictions in this respect can only be justified if the action ceases to be peaceful. "Go-slow strikes" and "work-to-rule" actions are also covered by the principles developed.
18	**GROUNDS FOR THE PROHIBITION OR RESTRICTION OF STRIKES** **International Labour Standards on the right to strike (ILO Conventions; and Comments of the ILO supervisory Bodies; General Survey on Freedom of Association and Collective Bargaining, 1994, para. 151; and General Survey, 2012, paras.127-143 and "ILO Principles concerning the Right to Strike"[3])** The right to strike is recognized by the ILO's supervisory bodies as *an intrinsic corollary of the right to organize protected by Convention No. 87*, deriving from the right of workers' organizations to formulate their programmes of activities to further and defend the economic and social interests of their members. However, the right to strike is not absolute. It may be subject to certain legal conditions or restrictions, and may even be prohibited in exceptional circumstances: The ILO's supervisory bodies have taken the position that it is admissible to limit or prohibit the right to strike in the following three circumstances: i.e.

[3] Bernard GERNIGON, Alberto ODERO and Horacio GUIDO, "ILO Principles on the Right to Strike". (ILO, 2998). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_087987.pdf

Substantive restrictions
(a) ***Sectoral prohibition***: for public servants exercising authority in the name of the State;
(b) ***Essential services***: i.e. services which, if interrupted, endanger the life, personal safety / health of whole or part of the population;
(c) ***Situations of acute national or local crisis***, although only for a limited period and solely to the extent necessary to meet the requirements of the situation. This means genuine crisis situations, such as those arising as a result of a serious conflict, insurrection or natural, sanitary or humanitarian disaster, in which the normal conditions for the functioning of society are absent.

And in all these three cases, **compensatory guarantees (see below for the details)** should be provided for the workers who are thus deprived of the right to strike.

Additionally, for those services where prohibition of strike is not justified, it should be possible for the Government to negotiate "minimum services" in consultation with the social partners.

Minimum services are "services which are not essential in the strict sense of the term but where the extent and duration of a strike might be such as to result in an acute national crisis endangering the normal living conditions of the population (minimum service is considered as a possible alternative to a total prohibition of strike)". For instance, garbage collection services.

Compensatory guarantees
ILS also requires compensatory guarantees in the event of imposing restrictions on the right to strike:
- conciliation and mediation procedures which, in the event of deadlock, should lead to arbitration machinery which is seen to be impartial and reliable by the parties concerned.
- arbitration awards should be binding on both parties, and once issued, should be implemented rapidly and completely.
- compulsory arbitration is OK for essential services and if requested by both parties to the dispute.

CFA 2018 Compilation, paras.914-916: The responsibility for suspending a strike should not lie with the Government, but with an independent and impartial body which has the confidence of all parties concerned.

Procedural Restrictions
Legal procedural restrictions are acceptable, if they do not place a substantial limitation on the right to strike
-obligation of prior notice to employer = OK
- prior exhaustion of voluntary mediation and arbitration = OK, if not too long
- obligation of secret ballot to validate strike decision = OK
-obligation of quorum = OK, if the quorum is not too high ...taking into account the size of the undertakings

General Survey 2012

314. In previous General Surveys, the Committee has referred, in relation to the application of the Convention, to the general prohibition of strikes (enforceable with sanctions involving forced or compulsory labour), as well as to the restrictions on the right to strike relating to the public service and essential services. The Committee has considered that a suspension of the right to strike enforced by sanctions involving compulsory labour is compatible with the Convention only in so far as it is necessary to cope with cases of force majeure in the strict sense of the term – namely, when the existence or well-being of the whole or part of the population is endangered – provided that the duration of the prohibition is limited to the period of immediate necessity. Regarding public servants, the Committee has considered that the prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State. The Committee has also pointed out that, as an exception to the general principle of the right to strike, the essential services in which this principle may be entirely or partly waived should be defined restrictively, and therefore should include only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population.

CFA Compilation

824. A general prohibition of strikes can only be justified in the event of an acute national emergency and for a limited period of time.

825. Responsibility for suspending a strike on the grounds of national security or public health should not lie with the Government, but with an independent body which has the confidence of all parties concerned.

826. Recognition of the principle of freedom of association in the case of public servants does not necessarily imply the right to strike.

827. The Committee has acknowledged that the right to strike can be restricted or even prohibited in the public service or in essential services in so far as a strike there could cause serious hardship to the national community and provided that the limitations are accompanied by certain compensatory guarantees.

828. The right to strike may be restricted or prohibited only for public servants exercising authority in the name of the State.

829. Too broad a definition of the concept of public servant is likely to result in a very wide restriction or even a prohibition of the right to strike for these workers. The prohibition of the right to strike in the public service should be limited to public servants exercising authority in the name of the State.

830. The right to strike may be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population).

831. Public servants in state-owned commercial or industrial enterprises should have the right to negotiate collective agreements, enjoy suitable protection against acts of anti-union discrimination and enjoy the right to strike, provided that the interruption of services does not endanger the life, personal safety or health of the whole or part of the population.

832. Officials working in the administration of justice and the judiciary are officials who exercise authority in the name of the State and whose right to strike could thus be subject to restrictions, such as its suspension or even prohibition.

833. The prohibition of the right to strike of customs officers, who are public servants exercising authority in the name of the State, is not contrary to the principles of freedom of association.

834. Employees performing tasks related to the administration, audit and collection of internal revenues also exercise authority in the name of the State.

836. To determine situations in which a strike could be prohibited, the criterion which has to be established is the existence of a clear and imminent threat to the life, personal safety or health of the whole or part of the population.

837. What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country. Moreover, this concept is not absolute, in the sense that a non-essential service may become essential if a strike lasts beyond a certain time or extends beyond a certain scope, thus endangering the life, personal safety or health of the whole or part of the population.

838. The principle regarding the prohibition of strikes in essential services might lose its meaning if a strike were declared illegal in one or more undertakings which were not performing an "essential service" in the strict sense of the term, i.e. services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

839. It would not appear to be appropriate for all state-owned undertakings to be treated on the same basis in respect of limitations of the right to strike, without distinguishing in the relevant legislation between those which are genuinely essential and those which are not

840. The following may be considered to be essential services:

- the hospital sector
- electricity services
- water supply services
- the telephone service
- the police and the armed forces
- the fire-fighting services
- public or private prison services
- the provision of food to pupils of school age and the cleaning of schools
- air traffic control

842. The following do not constitute essential services in the strict sense of the term:

- radio and television
- the petroleum sector and oil facilities
- distribution of fuel to ensure that flights continue to operate
- the gas sector
- filling and selling gas canisters
- ports
- banking
- the Central Bank

- computer services for the collection of excise duties and taxes
- department stores and pleasure parks
- the metal and mining sectors
- airline pilots
- production, transport and distribution of fuel
- rail services
- metropolitan transport
- postal services
- refuse collection services
- refrigeration enterprises
- hotel services
- construction
- car manufacturing
- agricultural activities, the supply and distribution of foodstuffs
- tea, coffee and coconut plantations
- the Mint
- the government printing service and the state alcohol, salt and tobacco monopolies
- the education sector
- mineral water bottling companies
- aircraft repairs
- elevator services
- export services
- private security services (with the exception of public or private prison services)
- airports (with the exception of air traffic control)
- pharmacies
- bakeries
- beer production
- the glass industry

848. By linking restrictions on strike action to interference with trade and commerce, a broad range of legitimate strike action could be impeded. While the economic impact of industrial action and its effect on trade and commerce may be regrettable, such consequences in and of themselves do not render a service "essential", and thus the right to strike should be maintained.

849. Within essential services, certain categories of employees, such as hospital labourers and gardeners, should not be deprived of the right to strike.

19 COMPULSORY ARBITRATION

CFA Compilation

816. Compulsory arbitration to end a collective labour dispute and a strike is acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, i.e. in the case of disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely those services whose interruption would endanger the life, personal safety or health of the whole or part of the population.

817. Compulsory arbitration is acceptable in cases of acute national crisis.

818. In as far as compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organize freely their activities and could only be justified in the public service or in essential services in the strict sense of the term.

819. It is difficult to reconcile arbitration imposed by the authorities at their own initiative with the right to strike and the principle of the voluntary nature of negotiation.

820. A provision which permits either party unilaterally to request the intervention of the labour authority to resolve a dispute may effectively undermine the right of workers to call a strike and does not promote voluntary collective bargaining.

822. The Committee considers that a system of compulsory arbitration through the labour authorities, if a dispute is not settled by other means, can result in a considerable restriction of the right of workers' organizations to organize their activities and may even involve an absolute prohibition of strikes, contrary to the principles of freedom of association.

823. In order to gain and retain the parties' confidence, any arbitration system should be truly independent and the outcomes of arbitration should not be predetermined by legislative criteria.

General Survey 2012

246. The imposition of arbitration with compulsory effects, either directly under the law, or by administrative decision or at the initiative of one of the parties, in cases where the parties have not reached agreement, or following a certain number of days of a strike, is one of the most radical forms of intervention by the authorities in collective bargaining. Before addressing the issue, certain preliminary clarifications are required. First, a distinction has to be made between rights disputes, which concern the application or the interpretation of a collective agreement (the settlement of such disputes may be referred to an independent authority), and interest disputes, which relate to the establishment of a collective agreement or to the modification, through collective bargaining, of wages and other conditions of work contained in an existing collective agreement. The latter type of dispute is addressed here. Furthermore, the term "compulsory arbitration" itself gives rise to a certain confusion. If the term refers to the compulsory effects of an arbitration procedure resorted to voluntarily by the parties, this does not raise difficulties in the Committee"s opinion, since the parties should normally be deemed to accept being bound by the decision of the arbitrator or arbitration board they have freely chosen. The real problem arises in the case of compulsory arbitration which the authorities may impose in an interest dispute at the request of one party, or at their own initiative, the effects of which are compulsory for the parties.

247. Compulsory arbitration in the case that the parties have not reached agreement is generally contrary to the principles of collective bargaining. In the Committee's opinion, compulsory arbitration is only acceptable in certain specific circumstances, namely: (i) in essential services in the strict sense of the term, that is those the interruption of which would endanger the life, personal safety or health of the whole or part of the population; (ii) in the case of disputes in the public service involving public servants engaged in the administration of the State; (iii) when, after protracted and fruitless negotiations, it becomes obvious that the deadlock will not be broken without some initiative by the authorities; or (iv) in the event of an acute crisis. However, arbitration accepted by both parties (voluntary) is always legitimate. In all cases, the Committee considers that, before imposing arbitration, it is highly advisable that the parties be given every opportunity to bargain collectively, during a sufficient period, with the help of independent mediation.

20 PENAL SANCTIONS

CFA Compilation

156. No one should be deprived of their freedom or be subject to penal sanctions for the mere fact of organizing or participating in a peaceful strike, public meetings or processions, particularly on the occasion of May Day.

955. Penal sanctions should only be imposed if, in the framework of a strike, violence against persons and property or other serious violations of the ordinary criminal law are committed, and this, on the basis of the laws and regulations punishing such acts.

966. Penal sanctions should only be imposed as regards strikes where there are violations of strike prohibitions which are themselves in conformity with the principles of freedom of association. All penalties in respect of illegitimate actions linked to strikes should be proportionate to the offence or fault committed and the authorities should not have recourse to measures of imprisonment for the mere fact of organizing or participating in a peaceful strike.

General Survey 2012

158. Most legislation restricting or prohibiting the right to strike provides for various sanctions against workers and trade unions that infringe this prohibition, including penal sanctions. However, the Committee has continually emphasized that no penal sanctions should be imposed against a worker for having carried out a peaceful strike and thus for merely exercising an essential right, and therefore that measures of imprisonment or fines should not be imposed on any account. Such sanctions could be envisaged only where, during a strike, violence against persons or property, or other serious infringements of penal law have been committed, and can be imposed exclusively pursuant to legislation punishing such acts, such as the Penal Code (for example, in the case of failure to assist a person in danger, deliberate injury or damage deliberately caused to property). The concern expressed by the Committee to ensure that sentences of imprisonment are on no account imposed on strikers is also supported by the supervisory bodies of the United Nations, and particularly the Committee on Economic, Social and Cultural Rights, which has considered that the imposition of such sanctions constitutes non-compliance with the obligations of the State party to the Covenant.

Article 4: Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

21	**DISSOLUTION OF ORGANIZATIONS** ***CFA Compilation*** 979. In the light of Convention No. 87, organizations of workers can only be dissolved voluntarily or through judicial channels. 986. Measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association. 987. The administrative dissolution of trade union organizations constitutes a clear violation of Article 4 of Convention No. 87. 988. The Committee has emphasized that the cancellation of registration of an organization by the registrar of trade unions or their removal from the register is tantamount to the dissolution of that organization by administrative authority. 989. The cancellation of a trade union organization's registration by administrative authority because of an internal dispute – which in fact implies the suspension of its activities – is a serious infringement of the principles of Freedom of association, and in particular of Article 4 of Convention No. 87 which provides that workers' and employers' organizations are not liable to be dissolved by administrative authority. 990. Cancellation of a trade union's registration should only be possible through judicial channels. 991. Deregistration measures, even when justified, should not exclude the possibility of a union application for registration to be entertained once a normal situation has been re-established. 992. Legislation which accords the minister or administrative authorities the complete discretionary power to order the cancellation of the registration of a trade union, without any right of appeal to the courts, is contrary to the principles of freedom of association.

Article 5: Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

22	**RIGHT TO ESTABLISH FEDERATIONS AND CONFEDERATIONS** *No further references*

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Articles 1-6: Scope of application of the convention

23	**CATEGORIES OF EXCLUDED WORKERS** *No further references*
24	**EXPORT PROCESSING ZONES (EPZS)** *No further references*

Article 1. *Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.*

25	**PROTECTION AGAINST ACTS OF ANTI-UNION DISCRIMINATION IN THE BANKING SECTOR** *No further references*

Article 2(1). Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

26	**PROTECTION AGAINST ACTS OF INTERFERENCE**

CFA Compilation

1187. Article 2 of Convention No. 98 provides that workers' and employers' organizations shall enjoy adequate protection against acts of interference in their establishment, functioning or administration.

1188. Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities.

1189. Workers shall have the right to join organizations of their own choosing without any interference from the employer.

1190. The Committee recalled the fundamental principle of workers being able to join organizations of their own choosing and of the enterprise not interfering in favour of a trade union.

1191. The employer's consent to the establishment of the union should not be required as a condition for registration. Indeed, the Committee considers that such a requirement would constitute a clear violation of the principles of freedom of association.

1192. Respect for the principles of freedom of association requires that employers exercise great restraint in relation to intervention in the internal affairs of trade unions.

1193. Respect for the principles of freedom of association requires that the public authorities exercise great restraint in relation to intervention in the internal affairs of trade unions. It is even more important that employers exercise restraint in this regard. They should not, for example, do anything which might seem to favour one group within a union at the expense of another.

Article 4: Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

27	**RIGHTS OF MINORITY UNIONS TO BARGAIN ON BEHALF OF THEIR MEMBERS**

CFA Compilation

1387. The Committee has recalled the position of the Committee of Experts on the Application of Conventions and Recommendations that, where the law of a country draws a distinction between the most representative trade union and other trade unions, such a system should not have the effect of preventing minority unions from functioning and at least having the right to make representations on behalf of their members and to represent them in cases of individual grievances.

1388. The granting of exclusive rights to the most representative organization should not mean that the existence of other unions to which certain involved workers might wish to belong is prohibited. Minority organizations should be permitted to carry out their activities and at least to have the right to speak on behalf of their members and to represent them.

1389. Where, under a system for nominating an exclusive bargaining agent, there is no union representing the required percentage to be so designated, collective bargaining rights should be granted to all the unions in this unit, at least on behalf of their own members.

General Survey 2012

225. In the view of the Committee, both systems of collective bargaining which grant exclusive rights to the most representative union, and systems under which several unions in an enterprise or a bargaining unit may conclude different collective agreements, are compatible with the principles of freedom of association. In its view, systems under which the collective agreements concluded by the representative organization only apply to the signatories and their members (and not to all workers), and the opposite practice under which all the workers in a bargaining unit are covered, are also compatible with these principles.

226. As the ILO Constitution itself enshrines the notion of "most representative" organizations (article 3, paragraph 5), the mere fact that legislation draws a distinction between the most representative trade union organizations and other organizations is not, in itself, reason for criticism. However, such a distinction should not

result in the most representative organizations being granted privileges which go beyond priority in representation for the purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies. 551 In other words, this distinction should not have the effect of depriving trade unions which are not recognized as being among the most representative ("minority" organizations) of the essential means of defending the interests of their members, organizing their administration and activities and formulating their programmes. Accordingly, whatever the representativity threshold chosen, while it is acceptable that the union which represents the majority or a high percentage of workers in a bargaining unit should enjoy preferential or exclusive bargaining rights, the Committee considers that in cases where no union meets these conditions, or does not enjoy such exclusive rights, minority trade unions should at least be able to conclude a collective or direct agreement on behalf of their own members.

28 DETERMINATION OF THE COLLECTIVE BARGAINING UNIT

CFA Compilation

1359. Workers and employers should in practice be able to freely choose which organization will represent them for purposes of collective bargaining.

1366. The competent authorities should, in all cases, have the power to proceed to an objective verification of any claim by a union that it represents the majority of the workers in an undertaking, provided that such a claim appears to be plausible. If the union concerned is found to be the majority union, the authorities should take appropriate conciliatory measures to obtain the employers recognition of that union for collective bargaining purposes.

1379. It is not necessarily incompatible with Convention No. 87 to provide for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit. This is the case, however, only if a number of safeguards are provided. The Committee has pointed out that in several countries in which the procedure of certifying unions as exclusive bargaining agents has been established, it has been regarded as essential that such safeguards should include the following: (a) certification to be made by an independent body; (b) the representative organizations to be chosen by a majority vote of the employees in the unit concerned; (c) the right of an organization which fails to secure a sufficiently large number of votes to ask for a new election after a stipulated period; (d) the right of an organization other than the certificated organizations to demand a new election after a fixed period, often 12 months, has elapsed since the previous election.

1384. While stressing that the appropriate procedure for the verification of facts and alleged irregularities in a ballot process for bargaining rights under the collective agreement between workers or members of rival organizations is primarily the responsibility of the national bodies, the Committee emphasized the importance it attaches, if there is a new ballot, to the authorities providing the safeguards necessary to avoid all alleged irregularities, thus guaranteeing that the affected workers have a full and fair opportunity to participate, in an atmosphere of calm and security. While providing all relevant ballot information, including how to vote against a union, would be acceptable as part of the process of a certification election, the active participation by an employer in a way that interferes in any way with an employee exercising his or her free choice would be a violation of freedom of association and disrespect for workers fundamental right to organize.

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Means of recognition

224. By virtue of Article 4 of the Convention, the right to collective bargaining rests with workers" organizations and employers and their organizations. Accordingly, recognition by an employer of the main unions represented in the enterprise or bargaining unit, or the most representative of these unions, constitutes the very basis for any procedure of collective bargaining at the enterprise level. Consequently, unjustified refusal to recognize the most representative organizations, or the imposition of a high percentage requirement for the recognition of a collective bargaining agent, may impair the promotion and development of free and voluntary collective bargaining within the meaning of the Convention. The determination of the criteria for the designation of bargaining agents is therefore a central issue. Although the Committee allows a certain flexibility, it considers that, at the very least, in the event of controversy, the determination of bargaining agents should be carried out by a body offering every guarantee of independence and objectivity on the basis of two criteria: representativity and independence.

Recognition procedure and criteria of representativity

228. With regard to the criteria to be applied to determine the representative status of organizations for the purposes of bargaining, the Committee emphasizes the importance of ensuring, in case controversy should arise, that these criteria are objective, preestablished and precise so as to avoid any opportunity for partiality or abuse. Furthermore, such determination should be carried out in accordance with a procedure that offers every guarantee of impartiality, by an independent body that enjoys the confidence of the parties, and without political interference. Governments should then be guided exclusively by the criterion of representativity in their relations with employers" and workers" organizations. Both systems of "compulsory" recognition of trade unions, whereby the employer, under certain conditions, must recognize the existing trade union(s), and those which envisage a system of "voluntary" recognition, are acceptable. Nevertheless, in the latter case, the public authorities are

invited to encourage employers to recognize trade unions which can prove their representativity. Finally, recognition may also be "voluntary" when provided for in a bipartite or tripartite agreement, or where it constitutes a well-established practice.

229. When national legislation provides for a compulsory procedure for recognizing unions as exclusive bargaining agents, the Committee considers that certain safeguards should be attached, namely: (i) the certification to be made by an independent body; (ii) the representative organization to be chosen by a majority vote of the employees in the units concerned; (iii) the right of an organization, which in a previous trade union election failed to secure a sufficiently large number of votes, to request a new election after a stipulated period; and (iv) the right of any new organization other than the certified organization to demand a new election after a reasonable period has elapsed. Finally, where the legislation provides that only registered trade unions may be recognized as bargaining agents, it should be ensured that the conditions required for registration are not excessive, as otherwise there would be a risk of the development of collective bargaining being seriously impaired.

29 **WORKERS' REPRESENTATIVES (Election of workers' representatives to works councils)**

ILO Convention No.98; Workers Representatives Convention (C.135) and Recommendation (R.143), 1971; and
Collective Bargaining Convention (C.154) and Recommendation (R.163)1981.

Rights and roles of workers' representatives must be so conceived as not to replace or prejudice those of trade unions. Direct negotiation between the undertaking and its employees, by-passing representative organizations where these exist, might in certain cases be detrimental to the principle that negotiation between employers and organizations of workers should be encouraged and prompted.

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned.

CFA Compilation

1582. The Workers Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), contain explicit provisions guaranteeing that, where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures are to be taken to ensure that the existence of elected representatives in an enterprise is not used to undermine the position of the trade unions concerned

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239. Since, under the terms of the Convention, the right of collective bargaining lies with workers" organizations of whatever level, and with employers and their organizations, collective bargaining with representatives of non-unionized workers should only be possible when there are no trade unions at the respective level. Indeed, the Committee considers that direct bargaining between the enterprise and its employees with a view to avoiding sufficiently representative organizations, where they exist, may undermine the principle of the promotion of collective bargaining set out in the Convention. It is in this spirit that Article 5 of the Workers" Representatives Convention, 1971 (No. 135), provides that, where there exist in the same undertaking "both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives". Article 3(2) of Convention No. 154 is drawn up in similar terms and the Collective Agreements Recommendation, 1951 (No. 91), establishes that the term "collective agreements" means "all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers" organisations, on the one hand, and one or more representative workers" organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other."

Many countries have developed diverse mechanisms of worker representation and consultation in the workplace: i.e., known as **"Works Councils" in Europe, "Workplace Forums" in South Africa, "Labour-Management Councils" in South Korea and the Philippines, "Labour-Management Joint Consultation System" in Japan or "Workers' congress" in China.** These mechanisms function either as a complementary to the union representation in unionized undertakings or as an alternative form of worker representation in non-unionized undertakings. While there is a great diversity in the structure and the function of these mechanisms, they have primarily been developed out of the common recognition that an effective mechanism for information sharing and consultation between management and labour at the workplace level is a key to the sound and peaceful labour relations, which would in turn contribute to enhancing productivity and efficiency of the workforce and the business.

Technical note to align Pakistan laws with International Labour Standards on Freedom of Association[1]

Part 1. Industrial Relations Act, 2012

July 2023

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Articles 2-9 of the Convention. Scope of application of the Convention.

Article 2. *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

Article 9. *1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.*

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
1 ARTICLES 2-9 OF THE CONVENTION. SCOPE OF APPLICATION OF THE CONVENTION. EXCLUDED CATEGORIES OF WORKERS			
1.1 Ensure that the federal government takes the necessary measures to revise the IRA so that all categories of workers can enjoy their rights under the Convention, the only admissible exception – which must be construed in a restrictive manner – being the police and the armed forces.	• ***Many categories of workers remain excluded from scope of the IR Act*** Section 1(3): the act "shall not apply to any person employed: (a) in the Police or any of the Defence Services of Pakistan or any services or installations exclusively connected with the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government; (b) in the administration of the State other than those employed as workmen; (c) as a member of	*CEACR Observation on C87 (2022/23)* "In its previous comment, the Committee had noted that sections 1(3) of the Industrial Relations Act (IRA) 2012... excluded many categories of workers from [its] scope" "Regarding trade union rights of the associations of public officials and employees of publicly owned	**Recommendation 1.1:** Repeal the express exclusions for many categories of workers contained in subsections 1(3)(a-e) of the IRA with the only possible exception of the exclusion of the police and armed forces. *For other recommendations on the scope of the IR acts see also below on agricultural and fisheries workers, informal sector workers,*

[1] This Technical Note is based on the recommendations of the ILO supervisory bodies on Pakistan, first of all, recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), expressed in Observation on Convention No. 87, adopted 2022, published 2023 (Comments (ilo.org)), Direct Request on Convention No.87, adopted in 2022, Published in 2023 (Comments (ilo.org) and Observation on Convention No.98, adopted 2022, published 2023 (Comments (ilo.org)) and some earlier CEACR comments. Proposed reform strategies are also based on the positions of the ILO supervisory bodies summarized in the Compilation of decision of the Committee on Freedom of Association, General Surveys, and secondary literature review.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
1.3. *Pending legislative reform, it also urges the Government to take all the necessary measures to ensure that the associations of currently excluded categories of workers can represent the interests of their members in relation to the employer and the authorities. The Committee requests the Government to provide information on the measures taken in this respect. The Committee requests the Government to provide information on the measures taken in this respect.*	the Security Staff of the Pakistan International Airlines Corporation or drawing wages in pay group not lower than Group V in the establishment of that Corporation as the Federal Government may, in the public interest or in the interest of security of the Airlines, by notification in the official Gazette, specify in this behalf; (d) by the Pakistan Security Printing Corporation or the Security Papers Limited; and (e) by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis.	undertakings, the Committee notes the observations of the ITF denouncing the derecognition of Pakistan Airline Pilots' Association (PALPA), the sole representative organization for pilots in Pakistan, and unions representing other workers in PIA, as well as the termination of all working agreements through a notice of the employer communicated on 30 April 2020. This notice indicated that except for the Collective Bargaining Agent (CBA), no other union, society or association will be recognized as representative of all or any category of employees… The Committee recalls in this regard that as it had noted in its 2016 observation concerning the application of the Convention in Pakistan, the Government had indicated that public officials and employees of publicly owned undertakings which are excluded from the purview of the industrial relations legislation, get coverage under article 17 of the Constitution as enforced by the SRA and had referred to PALPA as an example of such associations. In view of the Government reply to the ITF observations, the Committee is bound to note that the categories of workers excluded from the industrial relations legislation cannot exercise the rights enshrined in the Convention by forming associations under the SRA."	*directly employed domestic workers and self-employed workers.* **Recommendation 1.2.** While working on these legislative amendments, take measures to ensure that the associations of currently excluded categories of workers can represent the interest of their members based on Convention No.87 in relation to employers and authorities. This should be ensured, particularly, in relation to PALPA. Inform the CEACR about the measures taken in this respect.
2 FREEDOM OF ASSOCIATION RIGHTS OF MANAGERIAL EMPLOYEES			
2.1 *Ensure that the law is revised with a view to (i) enabling senior managerial workers to establish and join organizations that can adequately defend their occupational interests; and (ii) guaranteeing that workers' organizations are not deprived of a substantial proportion of their actual or potential membership as a result of the current legal*	• ***The IR Act permits employers to ban managerial employees from joining organizations of their own choosing*** Section 31(2): an employer may require "that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen" • ***The IR Act contains an excessively broad definition of the term "employer" and a***	***CEACR Observation on C87 (2022/23)*** The longstanding CEACR view is that "senior managerial staff may be denied the right to join the same organizations as other workers, provided that they have the right to form their own organizations to defend their interests". The Government has argued that since managerial employees fall into the legal category of 'employer' they have the right to associate as employers. However, the CEACR has pointed out that	**Recommendation 2.1:** Delete section 31(2) of the IRA. **Recommendation 2.2.** Amend definitions of "workmen" and "employer" to ensure that the "employer" and "management" are not interpreted too broadly, and the workers organisations are not deprived of the substantial portion of their potential members. Consider using definitions of

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
definitions of "workmen" and "employers".	***correspondingly restrictive definition of the term "worker"*** Section 2(ix)(b): the category of 'employer' includes "any person responsible for the management and control of the establishment". Section 2(xxxiii): the category of worker or workman includes any "person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward"	"employers' associations by definition represent employers who are workers' counterparts and cannot become collective bargaining agents, undertake collective bargaining, raise an industrial dispute, give a strike notice". The law as it stands therefore deprives "large categories of administrative, agency and managerial staff from their trade union rights as employees". Even where managerial employees do have proper freedom of association rights, it remains important to ensure that the line of demarcation between managerial and non-managerial employees is reasonable. The CEACR view is that "where managerial staff are denied the right to join the *same* organizations as other workers, the category of executive and managerial staff should not be so broadly defined as to weaken the organizations of other workers by depriving them of a substantial proportion of their actual or potential membership"	"supervisors" or "managerial staff" to differentiate the staff and employers (companies and enterprises). When defining the managerial staff or supervisors, consider the positions expressed by the ILO supervisory bodies. Only those who genuinely represent the interests of employers can be included in these categories (have the authority to appoint or dismiss the staff). **Recommendation 2.3.** Ensure through legislative amendments that the managerial staff defined in accordance with these principles have the right to establish their own associations to defend their interests. *See also recommendation 12.2 on bargaining and representation rights.*
3 FREEDOM OF ASSOCIATION RIGHTS OF WORKERS IN EPZS			
3.1 Submit a copy of the final version of EPZ (Employment and Service Condition) Rules 2009. ***3.2 Provide information on the exercise of trade union rights in the EPZs, including the trade unions registered and the number of unionized workers, as well as any instances in which trade unions have been refused registration and the reasons therefor.***	• ***The freedom of association rights of workers in EPZs remain insufficiently clear***	***CEACR Observation on C87 (2022/23)*** "For many years, the Committee has been requesting the Government to take the necessary steps to ensure that the workers in EPZs can benefit from the rights enshrined in the Convention". The Committee notes that the exceptions to the coverage of certain labour laws in EPZs introduced in 1982 have mostly been rescinded, but that the 1969 Industrial Relations Ordinance still does not apply. The Committee has been unable to assess whether the 2009 EPZ (Employment and Service Conditions) Rules effectively extend to workers the rights guaranteed in the Convention as it has not seen a copy of the rules.	**Recommendation 3.1:** Take any remaining action required to amend the law to bring EPZ workers fully into the scope of the IR legislation. This could be achieved via an amendment to the IR Act expressly including these workers within its scope. For example, Section 1(3) could be amended to read "It [the IR Act] shall apply to all persons… in the Islamabad Capital Territory or carrying on business in more than one province including within any export processing zone".

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
4 FREEDOM OF ASSOCIATION RIGHTS OF WORKERS IN THE INFORMAL ECONOMY			
4.1 Take all necessary measures, including legislative measures, with a view to guaranteeing the rights of informal economy workers under the Convention, for example by including them within the scope of the IR Act.	***4.2 The IR Act does not apply to workers in the informal sector*** "according to the Government, Industrial Relations Act (IRA) 2012… appl[ies] to formal sector workers, and workers of informal sector can only establish or join associations established under Societies Registration Act, 1860." (CEACR Direct Request 2022/23). The Government has also indicated that "associations formed under Societies Registration Act do not have the capacity of representing the occupational interests of their members in relation to the employer and the authorities to the same extent, nor do they benefit from the same legal guarantees as a trade union formed under IRA" (CEACR Direct Request 2022/23).	***CEACR Direct Request on C87 (2022/23)*** "The Committee recalls that workers in the informal economy have the right, without distinction whatsoever, to establish and join organizations freely and their organizations should benefit from all the guarantees enshrined in the Convention."	**Recommendation 4.** Under the term of the Convention No.87 the right to freedom of association (to organize and to bargain collectively) should be given to all workers without distinction whatsoever, to establish and join organizations freely and to represent their members in relation to the public authorities in structures established for the purpose of social dialogue. It's important to find the way to ensure this through the legislation. **Recommendation 4.1:** Introduce a simple definition of 'worker' that encompasses all forms of employment and other types of dependent work, thereby expressly according collective labour rights to all workers without exception. *In order to fully guarantee the rights of all types of the informal workers under the Convention, it is also recommended that further provision also be made to ensure that these workers and their organizations are able to exercise their freedom of association rights in practice.* **Recommendation 4.2**: Consider new legal provision to enable workers in the informal economy to form and join organizations of their own choosing in all circumstances, for example, if their employer does not legally exist, or if they are unable to prove that they are employed, or if they are dependent workers but are not employed under a contract of employment. This is likely to involve significantly revising union registration practice and procedures as these are currently focused exclusively on unions that form at the enterprise level in the formal sector.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
			This recommendation also applies to agriculture and fisheries workers, self-employed workers and directly-employed domestic workers. See also recommendation 12.2 on bargaining and representation rights
5 FREEDOM OF ASSOCIATION RIGHTS OF AGRICULTURAL AND FISHERIES WORKERS			
5.1 Ensure that the federal and provincial legislation is amended so that all agricultural and fisheries workers, whether engaged in the formal or informal sector, enjoy the rights conferred by the Convention in law and in practice.	• ***Lack of coherence between law and practice on the rights of agricultural and fisheries worker*** "The Committee had previously noted that agricultural and fisheries workers are excluded from the scope of the IRA... The Committee notes that according to the Government... the IRA does not prevent workers from joining any trade union in any commercial establishment including in agriculture and fisheries". • ***Many agricultural and fisheries workers are informal workers*** "the Committee notes that a large proportion of agricultural and fisheries workers are not employed in any establishment but engage in their activities in an informal manner."	***CEACR Direct Request on C87 (2022/23)*** Having noted the Government's argument that agricultural and fisheries workers are 'implicitly' covered by the IR Act if they work in commercial establishments, the CEACR nevertheless "notes that a large proportion of agricultural and fisheries workers are not employed in any establishment but engage in their activities in an informal manner".	**Recommendation 5.** Develop/adopt legislative amendments ensuring clear expression of the right of agricultural and fisheries workers, both in formal and informal sector, to organize and to bargain collectively. See also recommendations 4, 4.1 & 4.2
6 FREEDOM OF ASSOCIATION RIGHTS OF SELF-EMPLOYED WORKERS			
6.1 Provide details about the modalities envisaged under the IR Act and similar laws in other provinces to provide the right to establish and join unions to self-employed persons. ***6.2 Ensure that the current discussions soon result in the effective recognition and exercise of self-employed persons' rights under the Convention.***	***6.3 Self-employed workers currently seem to be excluded from the scope of IR Act*** Section 1(3) [the Act "shall apply to all persons employed in any establishment or industry"] read in conjunction with Section 2(ix) [""employer" in relation to an establishment, means any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment"] appears to limit the coverage of the act to workers with a contract of employment and thereby exclude self-employed workers.	***CEACR Direct Request on C87 (2022/23)*** "The Committee had previously noted that the industrial relations legislation seems to exclude self-employed workers and had requested the Government to ensure that they can benefit from their rights under the Convention." The CEACR reports that "the Government is striving to bring self-employed persons under the umbrella of the legislation and modalities are being discussed to provide the right of union formation to self-employed persons."	**Recommendation 6.** Develop/adopt legislative amendments ensuring clear expression of the right of self-employed workers to establish and join unions of self-employed persons as soon as possible. See also recommendations 4, 4.1 & 4.2

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
7 FREEDOM OF ASSOCIATION RIGHTS OF DOMESTIC WORKERS DIRECTLY RECRUITED BY HOUSEHOLDS			
7.1 Adopt the necessary measures to provide [directly employed domestic workers] with a legal framework within which they can fully exercise their freedom of association rights, for example by extending the scope of industrial relations legislation to this group of workers, or by adopting specific laws covering them at the federal and provincial levels.	• ***Directly employed domestic workers appear to be excluded from coverage of IR Act*** "The Committee notes that the wording of section 1(3) of the IRA... seems to exclude domestic workers directly recruited by households – as opposed to those employed by firms – from the scope of these acts and therefore from the right to establish and join organizations of their own choosing."	***CEACR Direct Request on C87 (2022/23)*** The Committee notes that the wording of section 1(3) of the IRA, the KPIRA, the PIRA and the SIRA, seems to exclude domestic workers directly recruited by households – as opposed to those employed by firms – from the scope of these acts and therefore from the right to establish and join organizations of their own choosing. It notes, however, that section 1(4) of the BIRA 2022 seems to include them, as it provides coverage for "workers at all workplaces".	**Recommendation 7.** Develop/adopt legislative amendments ensuring clear expression of the right of domestic workers to establish and join unions, using the avenues proposed by the CEACR (by extending the scope of the IR legislation to domestic workers or by adopting specific laws covering this group of workers). See also recommendations 4, 4.1 & 4.2

Article 2: *Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.*

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
8 RIGHT OF WORKERS AND EMPLOYERS TO ESTABLISH AND JOIN ORGANIZATIONS OF THEIR OWN CHOOSING. RIGHT OF WORKERS TO JOIN MORE THAN ONE UNION			
8.1 ***Ensure that the IR Act is amended to ensure that workers engaged in more than one job in different establishments can join more than one union.*** ***8.2*** ***Ensure that the IR Act is amended to ensure that workers are able to join trade unions at the national and branch level as well as the enterprise level at the same time.***	• ***The law forbids multiple union memberships, even where these correspond to different jobs*** Section 3(a): "no worker shall be entitled to be a member of more than one trade union at any one time and on joining another union the earlier membership shall automatically stand cancelled"	***CEACR Observation on C87 (2022/23)*** "The Committee had previously noted that pursuant to the IRA and its provincial variants, no worker shall be entitled to be a member of more than one trade union at any one time and had requested the Government to revise the relevant legal provisions…The Committee recalls in this regard that it is not a requirement of the Convention that workers should have the right to join more than one union relating to the same establishment. However, as mentioned in its previous comments, it considers that workers who are engaged in more than one job – in different establishments – should be allowed, to join the corresponding union of their choice, that is more than one union; and in any event workers should be able, if they so wish, to join trade unions at the national and branch level as well as the enterprise level at the same time."	Recommendation 8.1: Amend section 3(a) of the IRA, third paragraph, to add the words "at the same workplace" after "at any one time". **Recommendation 8.2:** Amend the IR Act to make it clear that workers can join trade unions at the national, branch and enterprise level at the same time.
9 RIGHT OF WORKERS TO ESTABLISH AND JOIN THE ORGANIZATION OF THEIR CHOOSING. SECTION 6 OF THE IR ACT 2012: APPARENT IMPOSSIBILITY OF TRADE UNION REGISTRATION			
9.1 ***The Committee notes that according to the Government, while in practice, the National Industrial Relations Commission (NIRC) registers trade unions irrespective of whether any one or two unions are already registered with it, the Government is taking steps to amend the IRA. The Committee requests the Government to inform it of developments in this regard.***	• ***Law appears to prevent union registration where no or only one trade union is already present*** Section 6 states that any trade union may apply for registration "provided that there shall be at least two trade unions in an establishment". This appears to preclude the possibility of establishing a trade union where there are no unions (or only one) already in existence. This provision makes such little sense that it seems likely to be a drafting error. The Government has	***CEACR Direct Request on C87 (2022/23)*** "In its previous comments, the Committee had requested the Government to amend section 6 of the IRA, which provides that any trade union may apply for registration "provided that there shall be at least two trade unions in an establishment"."	**Recommendation 9.1:** Delete the second paragraph of section 6 of the IR Act 2012.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
	stated that the NIRC takes no account of this clause in practice.		
10 RESTRICTION OF TRADE UNION PLURALISM. MINIMUM MEMBERSHIP REQUIREMENTS			
10.1 ***Ensure that workers may establish organizations of their own choosing and that no distinction as to the minimum membership requirement is made between the first two or more registered trade unions and newly created ones.***	• ***The law on trade union registration restricts trade union pluralism*** Section 8(2)(b) "where there are two or more registered trade unions in the establishment, group of establishments or industry with which the trade union is connected, unless it has as its members not less than one-fifth of the total number of workmen employed in such establishment, group of establishments or industry, as the case may be"	***CEACR Direct Request on C87 (2022/23)*** "The Committee had previously requested the Government to amend section 8(2)(b) of the IRA … which provides[s] that when there are already two unions or more registered in the establishment, group of establishments or industry, no other trade union is entitled to registration unless it has as members not less than 20 per cent of the workers employed in the corresponding unit… although it is generally to the advantage of workers and employers to avoid a proliferation of competing organizations, the right of workers to be able to establish organizations of their own choosing implies that trade union pluralism must remain possible in all cases. It is important for workers to be able to change trade unions or to establish a new union for reasons of independence, effectiveness, or ideological choice."	**Recommendation 10.1:** Delete section 8(2)(b) of the IRA.
Proposed by the consultant: **Clarification of the law on the formation of occupational, professional and other multi-employer trade unions.**			
10.2 ***Clarify the law on formation of occupational. Professional and other multi-employer trade unions.***	Section 8(2)(b) "where there are two or more registered trade unions in the establishment, group of establishments or industry with which the trade union is connected, unless it has as its members not less than one-fifth of the total number of workmen employed in such establishment, group of establishments or industry, as the case may be"		**Recommendation 10.2:** Given that section 8(2)(b) of the IRA (and its provincial equivalents) is widely thought to be necessary to prevent competitive multi-unionism, it may be useful also to consider the development of alternative approaches to the problem of competitive multi-unionism at the enterprise level. These may include the clarification of the law on the formation of occupational, professional and other multi-employer trade unions. *A discussion of trade unions' rights to represent their members may also be useful in this context.*

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
			See recommendation 12.2 on bargaining and representation rights.
11 RIGHT TO FORM MORE THAN ONE WORKERS' ORGANIZATION PER BARGAINING UNIT			
11.1 Amend section 62(3) of the IRA so as to allow the creation of more than one workers' organization per bargaining unit.	• ***The law prevents the registration of more than one union per bargaining unit*** Section 62(3) of the IRA: "After the certification of a collective bargaining unit, no trade union shall be registered in respect of that unit except for the whole of such unit and no certification or proceedings for determination of collective bargaining agent under Section 19 shall take place for a part of a collective bargaining unit or a group of collective bargaining units"	***CEACR Observation on C87 (2016/17)*** "The Committee reiterates that, while a provision requiring certification of a collective bargaining agent for a corresponding bargaining unit is not contrary to the Convention, the workers' right to establish and join trade union organizations of their own choosing implies the possibility to create – if the workers so choose – more than one organization per bargaining unit"	**Recommendation 11.1**: Appropriately amend or delete section 62(3) of the IRA to ensure that workers have an opportunity to create more than one organization per bargaining unit.

Article 3(1). *Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*

Article 3(2). *The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.*

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
12 THE RIGHT OF WORKERS' AND EMPLOYERS' ORGANIZATIONS TO ORGANIZE THEIR ADMINISTRATION AND ACTIVITIES AND TO FORMULATE THEIR PROGRAMMES. **RIGHTS OF MINORITY UNIONS**			
12.1 Ensure that federal legislation is amended with a view to limiting the distinction between CBA and minority unions to the recognition of certain preferential rights without thereby depriving minority unions of the essential means of defending the occupational interests of their members.	*NB the term 'minority unions' does not refer to unions whose members come from ethnic or religious minorities, but unions* ***other*** *than the most representative union in any given workplace or bargaining unit.* • ***Some important trade union rights are granted only to collective bargaining agents*** "In its previous comments, the Committee had noted that certain rights, in particular to represent workers in any proceedings [Section 65(1)] and to check-off facilities [Section 22(1)], were granted only to CBAs, that is to say the most representative trade unions." (CEACR Observation 2022/23). Section 34(1) (and the rest of Chapter VI of the IR act) also limits the right to raise an industrial dispute to a collective bargaining agent.	***CEACR observation on C87 (2022/23)*** "In its previous comments, the Committee had noted that certain rights, in particular to represent workers in any proceedings and to check-off facilities, were granted only to CBAs, that is to say the most representative trade unions. ...the distinction between most representative and minority unions should be limited to the recognition of certain preferential rights (for example, for such purposes as collective bargaining, consultation by the authorities or the designation of delegates to international organizations); however, the distinction should not have the effect of depriving those trade unions that are not recognized as being among the most representative, of the essential means of defending the occupational interests of their members (for instance, making representations on their behalf, including representing them in case of individual grievances), of organizing their administration and activities, and formulating their programmes (including giving notice of and declaring a strike), as provided for in the Convention."	**Recommendation 12.1:** Review the law on collective bargaining agents and other rights of trade unions with a view to permitting minority unions: • to represent their members in grievance and disciplinary procedures (amend section 65(1) of the IRA to allow representation of a worker by a trade union rather than a collective bargaining agent) • to have access to check-off facilities (amend section 22(1) of the IRA to refer to a trade union rather than a collective bargaining agent) • to have the right to call a strike (of trade unions amend Chapter VI of the IRA on the Settlement of Disputes to refer to a 'trade union' rather than 'collective bargaining agent') Based on C98, grant to existing trade unions the right to bargain at least on behalf of their own members, jointly or separately, where no bargaining agent is in place (see Recommendation 27 for details). **Recommendation 12.2:** Consider making this review part of a wider discussion on representation rights that also covers organizations of non-standard workers and possibly also managerial workers. This discussion would include most notably the

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
			principles underpinning the right to bargain and to represent members.
13 RIGHT OF BANKING SECTOR UNIONS TO ELECT THEIR REPRESENTATIVES IN FULL FREEDOM			
13.1 Amend the legislation on eligibility by making it more flexible, either by admitting as candidates persons who have previously been employed in the occupation concerned, or by exempting from the occupational requirements a reasonable proportion of the officers of an organization, along the lines of section 8(d) of the IRA. This longstanding issue is also the object of **Case No. 2096 before the Committee on Freedom of Association**, which was first examined in October 2000.	• ***The Banking Companies Ordinance of 1962 restricts eligibility for office in banking unions to current employees of the relevant bank*** Section 27-B of the Banking Companies Ordinance: (1) No officer or member of a trade union in a banking company shall use any bank facilities including a car or telephone to promote trade union activities, or carry weapons into bank premises unless so authorized by the management, or carry on trade union activities during office hours, or subject bank officials to physical harassment or abuse and *nor shall he be a person who is not an employee of the banking company in question.* (2) Any person violating any of the provisions of sub-section (1) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both. Section 8(d) of the IRA: … (d) the number of persons forming the executive which shall not exceed the prescribed limit and shall not include less than seventy five percent from among the workmen actually engaged or employed in the establishment or the industry for which the trade union has been formed: Provided that the condition of being employed in any establishment or an industry as foresaid shall not apply to the remaining twenty five percent of the members of such executives.	***CEACR observation on C87 (2022/23)*** "In its previous comments, the Committee had noted that section 27-B of the Banking Companies Ordinance of 1962 restricted the possibility of becoming an officer of a bank union only to employees of the bank in question under penalty of up to three years' imprisonment, and had urged the Government to amend the legislation… provisions like section 27-B infringe the right of organizations to draw up their constitutions and to freely elect representatives by preventing qualified persons (such as full-time union officers or pensioners) from being elected and by creating a risk of interference by the employer through the dismissal of trade union officers, which deprives them of their trade union office."	**Recommendation 13.1:** Repeal section 27-B of the Banking Companies Ordinance or amend it by allowing former bank workers to stand for office or by allowing union executive bodies to maintain a certain proportion of honorary members, along the lines of section 8(d) of the IRA.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
14 RIGHT OF ORGANIZATIONS TO ORGANIZE THEIR ADMINISTRATION AND TP FORMULATE THEIR PROGRAMS. THE REGISTRAR'S POWERS OF INVESTIGATION, INSPECTION, AND INQUIRY INTO THE AFFAIRS OF A TRADE UNION			
14.1 Ensure that the IR Act is amended with a view to explicitly limiting the powers of financial supervision of the Registrar to the obligation of submitting annual financial reports and to verification in cases of serious grounds for believing that the actions of an organization are contrary to its rules or the law or in cases of a complaint or call for an investigation of allegations of embezzlement from a significant number of workers.	• ***Registrar's powers are defined using wording that is excessively broad*** In Section 5(d), The IRA confers on the Registrar extensive powers of inspection, inquiry, and investigation "as he deems fit" regarding the internal affairs of unions: (d) to inspect the accounts and records of the registered trade union, or investigate or hold such inquiry in the affairs of the trade unions as he deems fit either by himself of through any officer subordinate to him and to authorize him in writing in this behalf; and © such other powers as may be prescribed.	***CEACR observation on C87 (2022/23)*** "the Committee recalls that it considers that the wording of the relevant legislative provisions empowering the Registrar to proceed to inquiry "as he/she deems fit" is excessively broad and not compatible with the principle enshrined in Article 3 of the Convention."	**Recommendation 14.1:** Reform the existing legislation with a view to revising the approach to the regulation of trade union activity by the public authorities. Such a review would cover the inspection, inquiry and investigation powers of the registrar. ,. Ensure in Section 5 of the IRA that the Registrar has power of financial supervision limited to submitting annual financial report and verification on case of serious grounds for believing that the actions of the organization are contrary to its rules or the law or in cases of a complaint or call for an investigation of allegations of embezzlement from a significant number of workers. See also Recommendations 15, 16, 21.
15 RIGHT OF ORGANIZATIONS TO FREELY ELECT THEIR REPRESENTATIVES. DISQUALIFICATION CRITERIA			
15.1 Ensure that the federal and provincial legislation is amended so as to make the grounds for disqualification more restrictive.	• ***IR Act establishes excessively broad criteria for disqualification from eligibility for union office*** Section 18: "a person who has been convicted and sentenced to imprisonment for two years or more or in an offence involving moral turpitude under the Pakistan Penal Code (Act XLV of 1860) shall be disqualified from being elected as, or from being, an officer of a trade union, unless a period of five years has elapsed after the completion of the sentence." Section 44 (10) and 67(5) provide for disqualification for contravening certain parts of the IR legislation and for violating a judicial order to stop a strike.	***CEACR observation on C87 (2022/23)*** "the Committee once again emphasizes that legislation which establishes excessively broad ineligibility criteria such as by means of a long list, including acts which have no real connection with the qualities of integrity required for the exercise of trade union office, is incompatible with the Convention. The Committee considers that not every contravention of industrial relations legislation, nor every violation of a judicial order to stop a strike, nor every conviction for the range of offences alluded to necessarily constitute acts of such a nature as to be prejudicial to the performance of trade union duties"	**Recommendation 15.** Amend the IR Act to ensure restrictive definition of the grounds for disqualification from eligibility for trade union office, using criteria provided by the CEACR and the CFA (see para 15 of the Technical Note Supplement for criteria).

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
16 RIGHT OF WORKES' AND EMPLOYERS' ORGANIZATIONS TO DRAW UP THEIR CONSTITUNTIONS AND RULES, TO ORGANIZE THEIR ADMINISTRATON AND TO FORMULATE THEIR PROGRAMMES. **DETAILED REGULATION OF INTERNAL FUNCTIONING OF TRADE UNIONS**			
16.1 Ensure that the federal and provincial legislation is revised so as to lay down only formal requirements with respect to trade union constitutions.	• ***The law provides for an inappropriate degree of regulation of internal trade union functioning*** Section 8(1)(j): A union constitution must provide for "the manner of *election of officers by the general body of the trade union and the term, not exceeding two years*, for which an officer may hold office upon his election or re-election" Section 8(1)(i): A union constitution must provide for "the *meeting of the executive and of the general body of the trade union so that the executive shall meet at least once in every three months and the general body at least once a year*" Section 48(2): "the *Commission may, in lieu of ordering a person who has been expelled from membership of a trade union [for refusing to participate in an unlawful strike] to be restored to membership, order that he be paid out of the funds of the trade union such sum by way of compensation or damages as the Commission thinks just.*"	***CEACR Direct Request on C87 (2022/23)*** "In its previous comments the Committee had noted that certain provisions of the federal and provincial legislation regulate in detail the internal functioning of trade unions… The Committee once again recalls that it has always considered that national legislation should only lay down formal requirements respecting trade union constitutions, except regarding the need to follow a democratic process and to ensure a right of appeal for the members. The right of workers' organizations to draw up their constitutions and rules, to organize their administration and to formulate their programmes means that matters such as setting the period of terms of office, the frequency of the meetings of organs, or sanctions against members should be left to be determined by the unions themselves in their constitutions and by-laws."	**Recommendation 16.1:** amend section 8(1)(j) to delete the words "not exceeding two years" **Recommendation 16.2:** amend section 8(1)(i) so as to require that the executive and general body meet regularly; the periodicity should be determined by the unions themselves in their constitutions.. **Recommendation 16.3:** delete section 48(2).
17 QUALIFICATION OF A 'GO-SLOW' AS AN UNFAIR LABOUR PRACTICE			
17.1 The Government has indicated that the federal and other provincial acts on the subject will be amended after due consultation with the tri-partite constituents… The Committee expects that sections 32(1)© of the IRA will be soon amended so as to omit the qualification of peaceful go-slow as an unfair labour practice	***17.2 The law unjustifiably restricts the forms of lawful industrial action*** Section 32(1)(e): "No workmen, or other person or trade union of workmen shall… commence, continue, instigate or incite others to take part in, or expend or supply money or otherwise act in furtherance or support of, an illegal strike or a go-slow"	***CEACR Direct Request on C87 (2022/23)*** "In its previous comments, the Committee had noted that the IRA and its provincial variants outlaw go-slow as an unfair labour practice and had requested the government to ensure that the law is amended in this respect… The Committee recalls that the restrictions to the forms of strike action including go-slow can only be justified if the action ceases to be peaceful."	**Recommendation 17.1:** Amend section 32(1)(e) of the IR Act to remove any reference to 'go-slow'. Consider expressly stating somewhere in the law that a go-slow is a type of strike and is subject to the same regulation."
18 GROUNDS FOR PROHIBITION OR RESTRICTION OF STRIKES			

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
18.1 Ensure that federal and provincial acts are amended so that any prohibition or restriction of the right to strike is brought into conformity with the Convention.	• ***The IR Act contains excessively broad grounds for the restriction or prohibition of strikes*** Section 42(3): "Where a strike or lock-out lasts for **more than thirty days**, the Government, may by order in writing, prohibit the strike or lock-out: … … prohibit a strike or lock-out **at any time before the expiry of thirty days**, if it is satisfied that the continuance of such a **strike or lock-out is causing serious hardship to the community or is prejudicial to the national interest**." Section 45(1)(a): The Government may prohibit a strike or lock-out "relating to an industrial dispute of **national importance**" Section 45(1)(b): The Government may prohibit a strike or lock-out "relating to an industrial dispute in respect of any **of the public utility services** which the Commission is competent to adjudicate and determine" Schedule – I. Public Utility Services {See Section 2(xxv)] 1. The generation, production, manufacturing, or supplying of electricity, gaz, oil or water to the public. 2. Any system of public conservancy or sanitation 3. Hospital and ambulance service 4. Any system, telegraph or telephone service 5. Railways and Airways. 6. Ports. 7. Watch and Ward Staff and Security service maintenance in any establishment.	***CEACR Direct Request on C87 (2022/23)*** The Committee notes the following grounds for restriction or prohibition of strikes in the federal and provincial legislation: (i) sections 42(3) of the IRA, 43(3) of the BIRA, 44(3) of the KPIRA, 40(3) of the PIRA and 41(3) and (4) of the SIRA, provide that, *where a strike lasts for more than 30 days, the Government may, by an order, prohibit such a strike, provided that the Government can also prohibit a strike at any time before the expiry of 30 days if "it is satisfied that the continuance of such a strike is causing serious hardship to the community or is prejudicial to the national interests"*; (ii) the *Government can prohibit a strike related to an industrial dispute "of national importance" (section 45 of the IRA) or in respect of any public utility services, at any time before or after its commencement (sections 45 of the IRA* and KPIRA, 41 of the PIRA and 42 of the SIRA); (iii) *a strike carried out in contravention of the above sections, is deemed illegal by virtue of sections 43(1)(c) of the IRA*, 58(1)(c) of the BIRA, 59(1)(c) of the KPIRA, 55(1)(c) of the PIRA and 56(1)(c) of the SIRA; and (iv) according to the schedules of the IRA, KPIRA, PIRA and SIRA *the lists of public utility services include services such as oil production, postal services, railways and airways.* The Committee takes note of the wide range of grounds for restriction or prohibition of strikes that currently exist in the federal and provincial legislation. It "recalls that the prohibition of strikes can only be justified: (1) in the public services for public servants exercising authority in the name of the State; (2) in the event of an acute national or local crisis; or (3) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee considers that not every strike lasting longer than 30 days fulfils these conditions and that services such as oil production, postal services, railways, and airways do not normally constitute essential services in the strict sense of the term, although they are important public services in which a minimum service could be required in case of a strike."	**Recommendation 18.** Review existing legislation with a view to developing a comprehensive new approach to strike regulation that is in full conformity with the Convention No.87. This discussion would cover topics such as: • the definition of 'acute crisis', • the definition of 'essential services' • the definition of 'public servants exercising authority in the name of the state' • institutional structures for decision making, including arbitration • minimum services, compensatory guarantees for workers affected by strike prohibition, and so on. **Recommendations 18.1:** Amend Sec. 42(3) and 45 (1) (a) and (b) and Schedule I of the IRA in relation to the prohibition and limitations of industrial action to bring them in line with the ILS as laid out here, both in terms of substantive and procedural aspects. 1. The current rule that any strike can be prohibited by the Government *after 30 days* is not in line with the principles of freedom of association. 2. Similarly, the criteria that an industrial action can be prohibited at any time before 30 days if it "s "*causing serious hardship to the public life or is prejudicial to the national interest.*" 3. Sec.45(1)(b) allows Government to prohibit a strike if it is in public utility services. Schedule I includes services which cannot be considered as "essential services" as defined in the ILO jurisprudence. Instead, the concept of "essential services" and "minimum services" as defined by the

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
			ILO supervisory mechanisms should guide any provisions of national law which aim at limiting the right to strike. Essential services have to be clearly pre-determined in the law after consultation with social partners. So far, the IRA broadly defines "public utility service" in Schedule I and allows the Government to prohibit industrial action in public utility service. Also, the Commission has the right to "adjudicate and determine" public utility services (Section 45 (1)(b)). However, again, the public utility service defined here include service that should not justify such total prohibition of industrial action such as *oil production, postal services, railways and airways.* In services which do not justify a total prohibition of strike but where a prolonged strike could cause an acute crisis threatening the normal conditions of existence, "minimum service" could be established. Under the ILS including the jurisprudence of the supervisory bodies, ***essential services*** include: - *Telephone services* - *Air traffic control* - *Public utilities (water, gas, electricity)* - *Police and armed forces* - *Hospital sector* - *Fire-fighting services* - *Public or private prison services* - *Provision of food to pupils of school age and the cleaning of schools.* This list of essential services, however, is not a complete or fixed list, as the Committee of Experts is of the view that the special circumstances existing in the various member States must be taken into account. For instance, a strike in the port or maritime

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
			transport services might more rapidly cause serious disruptions for island countries that are heavily dependent on such services to provide basic supplies to its population than than it would for a country on a continent. Under the ILS, the following services have thus far been identified by the ILO as ***NOT essential services in the strict sense of the term***: i.e. -Petroleum refinery -Banking -Transport generally -Railway services -Metropolitan transport -Radio and television broadcasting -Postal services -Ports -Computer services for the collection of excise duties and taxes -Department stores and pleasure parks -Metal and mining sectors -Airline pilots -Production, transport and distribution of fuel -Refuse collection services -Refrigeration enterprises -Hotel services -Construction -Automobile manufacturing -Agricultural activities, the supply and distribution of foodstuffs -Government printing service and the state alcohol, salt and tobacco monopolies -Education sector -Mineral water bottling company **Recommendation 18.2**: The decision to suspend or prohibit an industrial action should not lie with the Government but with an independent and impartial body. Revise relevant parts of Sections 42 and 54 of the ORA to ensure that this decision is not

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
			designed to the Government, but only to impartial and independent body.
19 COMPULSORY ARBITRATION			
19.1 Noting the Government's renewed expression of intent to place this matter before the tripartite consultative committees, the Committee urges the Government to take all the necessary measures so that the federal and provincial legislation is amended with a view to restricting recourse to compulsory arbitration in line with the principles outlined above.	• ***The law allows the prohibition of virtually any strike, pending arbitration*** Section 42 (2): The party raising a dispute may at any time either before or after commencement of a strike or lock-out make an application to the Commission for adjudication of the dispute. In any case in which an industrial dispute is prohibited, the provisions of Section 42 provide for the compulsory arbitration of these disputes through the Commission (NIRC). Section 61 of the IRA allows the NIRC to prohibit the continuation of the strike.	***CEACR Direct Request on C87 (2022/23)*** The Committee notes that: (i) following the prohibition of a strike by the Government pursuant to the sections referred to above, the dispute is referred to the NIRC or the Labour Court for adjudication; (ii) a "party raising a dispute", either before or after the commencement of a strike, may apply to the NIRC or Labour Court, as applicable, for adjudication of the dispute (sections 42(2) of the IRA, 43(2) of the BIRA, 44(2) of the KPIRA, 40(2) of the PIRA and 41(2) of the SIRA); (iii) pending adjudication, the NIRC/Labour Court can prohibit the continuation of the existing strike action (sections 61 of the IRA, 57 of the BIRA, 58 of the KPIRA, 54 of the PIRA and 55 of the SIRA); and, (iv) section 42 of the BIRA provides that if the board of conciliators fails to settle a dispute in a public utility service or related to an industry of high economic and social importance, and the parties do not propose a panel of three arbitrators by consent, the government may appoint a retired judge of the Supreme Court for arbitration in the said dispute. The award of the arbitrator shall be final and valid for a period not exceeding two years as may be fixed by the arbitrator… The Committee notes that the provisions of federal and provincial acts allow the NIRC or the Labour Court to prohibit virtually any strike pending adjudication of the dispute; and in Balochistan, the new law provides for compulsory adjudication in disputes in public utility services, which include services such as oil production, postal services, railways, and airways, or in disputes related to "an industry of high economic and social importance". The Committee notes with ***concern*** that this system amounts to a denial of the right to strike as it makes it possible to prohibit virtually all strikes or to end them quickly. It recalls that recourse to compulsory arbitration is admissible only in cases where the strike can	**Recommendation 19.** Amend Section 42 and 61 of the IRA to ensure that the compulsory arbitration may be used only in cases where the strike may be prohibited (see Recommendation17,) or at the request of both parties of the dispute.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
		be restricted or even prohibited, or at the request of both parties to the dispute."	
20 PENAL SANCTIONS			
20.1 Ensure that federal and provincial legislation is amended to remove the possibility that workers be subject to penal sanctions for peaceful industrial relations activities	• ***A range of penal sanctions exist in the law for actions that are unlawful but peaceful*** Section 32 of the IRA. Unfair labour practices on the part of workmen. (1): No workmen or other person or trade union or workmen shall – (e) commence, continue, instigate others to take part in, or expend or supply money to, or otherwise act in furtherance or support of an illegal strike or a go-slow. Section 67. Penalty for unfair labour practices. Sections 33(6), 57(1)(a), 67(1), 67(2), 67(3), 67(4), 67(6), 68, 69, 70, 71, 72, and 74 all provide for imprisonment and fines for workers or employers who are responsible for certain unfair labour practices or who violate certain NIRC rulings. Section 44 (10) of the IRA: If the workmen contravene the order of the Commission under subsection (6), the Commission may pass orders of dismissal against all or any of the striking workers and, notwithstanding anything to the contained in this Act, if the Commission, after holding such enquiry as it deems fit, record its findings that any registered trade union has committed or abetted the commission of such contravention, the findings shall have the effect of cancelation of the registration of such trade union and debarring all officers of such trade union from holding of the registration of such trade union and debarring tall officers of such trade union from holding office in that or in any	***CEACR Direct Request on C87 (2022/23)*** The Committee notes thati) commencing, continuing, instigating others to take part in, or expending or supplying money to, or otherwise acting in furtherance or support of an illegal strike or a go-slow is an unfair labour practice (sections 32(1)(e) of the IRA, 18(1)(e) of the BIRA, KPIRA, PIRA, and SIRA) punishable by a fine of up to 20,000 Pakistani rupees (PKR) (sections 68(3) of the KPIRA, 64(3) of the PIRA and 65(3) of the SIRA), and up to 25,000 PKR in Balochistan (section 67(3) BIRA) and/or imprisonment which may extend to 30 days (section 67(3) of the IRA); and (ii) contravening an order to call off a strike is sanctioned as follows: dismissal of the striking workers; cancellation of the registration of a trade union; and debarring of trade union officers from holding a trade union office for the unexpired and immediately following terms (sections 44(10) of the IRA...). The Committee considers that: (i) no penal sanction should be imposed against a worker for having carried out a peaceful strike and on no account should measures of imprisonment be imposed except in cases of violence against persons or property or other serious infringements of rights, and only pursuant to legislation punishing such acts; (ii) the use of extremely serious measures, such as dismissal of workers and cancellation of trade union registration, implies a grave risk of abuse and constitutes a violation of freedom of association; and (iii) sanctions for illegal strike action should be imposed only if the prohibitions or restrictions on the right to strike are in conformity with the Convention." The Committee takes note of the different penal sanctions that exist in federal and provincial legislation, and points	**Recommendation 20:** No penal sanctions should be imposed for participation in a peaceful strike, even if unlawful as determined by the judicial authorities (penal sanctions should only be imposed for violence or other serious violations of the criminal law), and any sanction imposed should be proportionate to the offence committed. Ensure that sanctions for illegal strike action can be imposed only if the prohibitions or restrictions on the right to strike are in conformity with the Convention No.87. See details in Issue/Recommendation 18. **Recommendation 20.1.** Amend the IR Act (Sections 32, 33(6), 57(1)(a), 67(1), 67(2), 67(3), 67(4), 67(6), 68, 69, 70, 71, 72, and 74) to remove all possibility that peaceful industrial relations actions result in penal sanctions. **Recommendation 20.2.** Amend Section 44 of the IRA to ensure that extremely serious measures, such as dismissal of workers and cancellation of trade union registration, are not used in case of situation described in Section 44 (6).

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategy
	other trade union for the un-expired term of their offices and for the term immediately following.	out that since the law "allows the restriction or even prohibition of virtually any strike by executive or judiciary authority regardless of its peaceful character; therefore, under the current law, a peaceful strike can be considered illegal, and penalties applied to workers and unions involved in them."	

Article 4. *Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.*

Comments and recommendations of the CEACR	*Situation in Pakistan (law, policies, practices etc)*	Reasons and references	Proposed reform strategies
21 DISSOLUTION OF ORGANIZATIONS			
21.1 Provide statistical information on occurrences of cancelled registration in all provinces as well as the federal level since January 2016, and the procedures followed for such cases, including the results of all appeals that were taken.	• ***Questions remain about the use of discretionary powers to cancel registration*** Sections 11 and 16(5) provides that the registration of a trade union can be cancelled by the Registrar with the permission of the NIRC for numerous reasons. Section 59 provides that the decision of the NIRC in such matters is final and cannot be appealed to any court.	***CEACR Direct Request on C87 (2022/23)*** The Committee had previously noted that the registration of a trade union can be cancelled by the Registrar for numerous reasons set out in the federal and provincial legislation and had requested the Government to provide information on occurrences of cancelled registration all over the country since January 2016 and the procedures followed in these cases. The Government indicates that the actions of the Registrar are appealable and therefore the Registrar has no discretionary or arbitrary powers to dissolve unions. Regarding cases where the Registrar cancels the registration of a trade union when, after holding an inquiry, he or she finds that the union has dissolved itself or has ceased to exist (section 11(6) IRA, 12(2) BIRA, 12(3)a KPIRA & PIRA, and 12(3) SIRA), the Government indicates that in instances where the unions remained dormant over a long period with an incomplete record, when they apply for renewal but are unable to account for the delay in mandatory renewals of their officers, they are guided to dissolve their unions as per the dissolution clause of their constitutions and asked to apply afresh. The Committee notes with ***satisfaction*** that BIRA 2022 has removed all instances of cancellation of registration by the Registrar, except for the cases in which he finds that the union has dissolved itself or has ceased to exist (section 12(2)). ***CEACR Observation on C87 (2018/19)*** "The Committee had previously noted that the registration of a trade union can be cancelled by the registrar for numerous reasons set out in sections 11(1)(a), (d), (e) and (f), 11(5), and 16(5) of the IRA... and that, under the IRA, the Commission's decision directing the registrar to cancel the registration of a union cannot be appealed in court (section 59). The Committee had also... recalled that the dissolution and suspension of	**Recommendation 21.1.** Amend Sections 11, 16(5) and 59 of the IRA as necessary, to ensure that the registration of a trade union cannot be cancelled by the Registrar. Ensure a clear indication in the legislation that trade unions can only be dissolved voluntary or through judicial channels. **Recommendation 21.2.** Provide the information about the occurrence of cancelled registration since January 2016, procedures followed and the results of the appeals to the CEACR.

Comments and recommendations of the CEACR	*Situation in Pakistan (law, policies, practices etc)*	Reasons and references	Proposed reform strategies
		trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should, therefore, be accompanied by all necessary guarantees, which can only be ensured through a normal judicial procedure, which should also have the effect of a stay of execution."	

Article 5. *Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.*

Comments and recommendations of the CEACR	*Situation in Pakistan (law, policies, practices etc)*	Reasons and references	Proposed reform strategies
22 RIGHT OF ORGANIZATIONS TO ESTABLISH FEDERATIONS AND CONFEDERATIONS			
22.1 Ensure that a (con)federation with a name similar but not identical to that of an existing (con)federation is not prevented from being formed and registered	• ***Trade union (con)federations not permitted to use a name similar to an existing (con)federation*** Section14(4): "No trade union federation or confederation shall be formed and registered having same, similar on identical name."	***CEACR Direct Request on C87 (2022/23)*** "a federation or confederation which has a similar name but not the same/identical name as an already existing federation or confederation should not be prevented from being formed and registered"	**Recommendation 22.1.** Amend section 14(4) of IRA to prevent only the formation of federations or confederations with a name *identical* to that of an existing body, but not similar.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
Articles 1-6: Scope of application of the Convention			
23 CATEGORIES OF EXCLUDED WORKERS			
23.1 ***Ensure that the legislation is amended so as to ensure that all workers, with the only possible exception of the police, the armed forces and the public servants engaged in the administration of the State benefit from the rights and guarantees enshrined in the Convention***	• ***Many categories of workers remain excluded from scope of the IR Act*** Section 1(3): the act "shall not apply to any person employed: (a) in the Police or any of the Defence Services of Pakistan or any services or installations exclusively connected with the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government; (b) in the administration of the State other than those employed as workmen; (c) as a member of the Security Staff of the Pakistan International Airlines Corporation or drawing wages in pay group not lower than Group V in the establishment of that Corporation as the Federal Government may, in the public interest or in the interest of security of the Airlines, by notification in the official Gazette, specify in this behalf; (d) by the Pakistan Security Printing Corporation or the Security Papers Limited; and (e) by an establishment or institution for the treatment or	***CEACR Observation on C98 (2022/23)*** "The Committee notes that the Industrial Relations Act (IRA) 2012... exclude[s] numerous categories of workers (enumerated by the Committee in its 2022 comments on the application of Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)) from their scopes of application. The Government indicates in this regard that it is its obligation to extend the right to freedom of association to all sectors of the economy, formal and informal and further refers to the adoption of BIRA 2022, which scope of application covers "all workers and employers at all workplaces"(section 1(4)), with the exception of "the Police, Levies or any of the Defence Services of Pakistan or any services or installations exclusively connected with or incidental to armed forces of Pakistan and essential services"(section 1(5)). The Committee notes with ***interest*** the legislative change in Balochistan, which has the effect of bringing many previously excluded categories of workers within the scope of the BIRA, allowing them to enjoy their rights	**Recommendation 23.** Amend the legislation to ensure that all categories of workers can exercise the rights enshrined in the Convention No.98, with the only possible exception of the police armed forces and the public servants engaged in the administration of the State. See also recommendations 1.1 and 1.2

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
	care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis.	under the Convention. It notes however, that the BIRA still excludes "any service or installation" connected to the armed forces, as well as "essential services"; and recalls in this regard that civilian personnel in the armed forces as well as workers in essential services should enjoy the rights and guarantees enshrined in the Convention."	
24 EXPORT PROCESSING ZONES (EPZS)			
24.1 The Committee requests the Government to provide a copy of the final version of the Export Processing Zones (Employment and Service Conditions) Rules, 2009. It firmly hopes that the rights of EPZ workers under the convention, especially their right to collective bargaining, is duly guaranteed in law and in practice and requests the Government to provide information concerning any collective bargaining taking place in the EPZs and any collective agreements concluded there, including the names of the parties and the number of workers covered.	The Committee recalls that since the adoption by the federal Government of S.R.O 1004(1)/1982 dated 10 October 1982 relating to exemption of EPZs from various labour laws, the EPZs were exempted from the application of industrial relations legislation (clause 7 of the S.R.O, referring to the applicable law at the time, namely the Industrial Relation Ordinance of 1969). For many years, the Government kept reiterating that it was working on Export Processing Zones (Employment and Service Conditions) Rules, 2009, which would guarantee the right of EPZ workers to organize. The Government indicates in this regard that it has "partially" withdrawn S.R.O 1004(1)/1982 "except clause 7" through a notification dated 5 August 2021 and that now the only exemption to the application of labour laws in the EPZs is the Industrial Relations Ordinance. It adds that the 2009 Rules have been finalized and the workers in EPZs can enjoy the rights guaranteed under the Convention accordingly.	he Committee notes however, that the Government does not provide a copy of the final version of 2009 Rules and therefore it is not in the position to evaluate whether and to what extent these Rules guarantee the rights enshrined in the Convention.	**Recommendation 24.1.** Provide the text of the Export Processing Zones (Employment and Service Conditions) Rules, 2009 to the CEACR. **Recommendation 24.2.** Review the text of the EPZ Rules, 2009 to ensure that the rights under Convention No.98 are fully granted to workers in EPZs, and work on necessary amendments if needed to improve compliance.

Article 1. *Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.*

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
25 PROTECTION AGAINST ACTS OF ANTI-UNION DISCRIMINATION IN THE BANKING SECTOR			
25.1 Repeal section 27-B of the Banking Companies Ordinance, 1962, to enable workers in the banking sector to exercise trade union activities in conformity with Article 1 of the Convention. The Committee also notes that the Committee on Freedom of Association referred to it the legislative aspects of Case No. 2096 that relate to the Convention (Report No. 392, October 2020, paragraph 109). [The United Bank Employees' Federation (UBEF).The complainant alleges restrictions on trade union and collective bargaining rights for employees of the banking sector].	• ***The Banking Companies Ordinance is contrary to the Convention*** Section 27-B: (1) No officer or member of a trade union in a banking company shall use any bank facilities including a car or telephone to promote trade union activities, or carry weapons into bank premises unless so authorized by the management, or carry on trade union activities during office hours, or subject bank officials to physical harassment or abuse and nor shall he be a person who is not an employee of the banking company in question. (2) Any person violating any of the provisions of sub-section (1) shall be guilty of an offence punishable with imprisonment of either description which may extend to three years, or with fine, or with both.	***CEACR Observation on C98 (2022/23)*** "For the past 20 years, the Committee has repeatedly urged the Government to repeal section 27-B of the Banking Companies Ordinance, 1962, which imposes penal sanctions (up to 3 years imprisonment and/or fines) for the exercise of trade union activities during office hours... [this] constitutes a serious infringement of Article 1 of the Convention" "More precisely regarding section 27-B itself, the Government once again indicates that the Ministry is vigorously pursuing the matter with the concerned quarters for its removal. The Committee notes with ***deep concern*** that no progress is reported concerning the repealing of section 27-B, which punishes trade unionists for legitimate union activities and so constitutes a serious infringement of *Article 1* of the Convention."	**Recommendation 25.1:** Amend section 27-B of the Banking Companies Ordinance to ensure that banking union officers are able to carry out appropriate trade union activities during office hours without thereby becoming liable to prosecution (penal sanctions).

Article 2(1): Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
26 PROTECTION AGAINST ACTS OF INTERFERENCE			
26.1 State the specific provisions of the legislation which prohibit and penalize acts of interference by organizations of workers and employers (or their agents) in each other's affairs.	• ***Lack of clarity about whether the law prohibits acts of interference***	***CEACR Observation on C98 2008/2009*** "The Committee had previously noted the Government's indication that workers and employers enjoy adequate protection against any act of interference by each other or each other's agents or members in their establishment." However, the Committee is still not clear about the provisions in the law by which this is achieved."	**Recommendation 26.1:** Amend legislation to provide express protection for worker and employers against acts of interference

Article 4: Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Comments and recommendations of the CEACR	Situation in Pakistan (law, policies, practices etc)	Reasons and references	Proposed reform strategies
27 COLLECTIVE BARGAINING. RIGHTS OF MINORITY TRADE UNIONS TO BARGAIN ON BEHALF OF THEIR MEMBERS			
27.1 Amend the legislation with a view to ensuring that when there is no union representing the required percentage to be designated as the collective bargaining agent, collective bargaining rights are granted to the existing unions, jointly or separately, at least on behalf of their own members.	• ***Unions with fewer than 33% of workers as members excluded from the possibility of bargaining*** Section 19(1) of the IRA: "Where there is only one registered trade union in an establishment or a group of establishments, that trade union shall if it has as its members not less than one-third of the total number of workmen employed in such establishment or group of establishments, upon an application made in this behalf be certified by the Registrar in the prescribed manner to be the collective bargaining agent for such establishment or group of establishments."	***CEACR Observation on C98 (2022/23)*** "The Committee notes that pursuant to Section 19 of IRA if a trade union is the only one in the establishment or group of establishments … but it does not have at least one third of the employees as its members, no collective bargaining is possible at the given establishment or industry. In its previous comments, it had considered that these rules constitute an obstacle to the promotion of free and voluntary collective bargaining in practice. The Government indicates in this regard that section 24(1) of BIRA 2022 has incorporated the recommendation of the Committee and reads "A trade union shall be permitted to act as a collective bargaining agent on behalf of its members". It adds that the other laws would be amended accordingly in consultation with the social partners. "	**Recommendation 27.1.** Amend Section 19(1) of the IRA to grant collective bargaining rights to existing trade unions that have less than one third of the total number of workers employed, jointly or separately, at least on behalf of their own members. See Recommendations 12.1 and 12.2
28 DETERMINATION OR MODIFICATION OF COLLECTIVE BARGAINING UNIT			
28.1 Amend the legislation so that the social partners can participate in the determination or modification of the collective bargaining unit.	• ***The IR Act gives exclusive competence to the public authorities in determining collective bargaining units*** Section 62: Where the NIRC, "after holding such inquiry as it deems fit… is satisfied that for safeguarding the interest of the workmen employed in an establishment or group of establishments belonging to the same employer and the same industry, in relation to collective bargaining, it is necessary, just and feasible to determine one or more collective bargaining units of such workmen in such establishment or group, it may…	***CEACR Observation on C98 (2022/23)*** "The Committee notes that the provisions on the determination of collective bargaining units give competence in this regard to the [public authorities] and that previously certified unions can lose their status of collective bargaining agents as a result of a decision in which the parties played no part. The Committee notes with ***concern*** that BIRA 2022 reproduces this provision, and **regrets** that the Government does not report any measures taken to revise the law in this respect." In previous comments, the CEACR has repeatedly argued that "the determination or modification of the collective bargaining unit [should be] made by the social partners, since they are in the best position to decide the most	**Recommendation 27.1:** Amend IRA section 62 to give workers and employers a role in determining the collective bargaining unit. See Supplementary materials, Section 28, for guidance.

	(a) determine and certify one or more collective bargaining units in such establishment or group; (b) Specify the modifications which, in consequence of the decision under this section, will take effect in regard to the registration of the trade unions and federations of trade unions affected by such decision and certification of collective bargaining agents among such unions and federations, nomination or election of shop stewards, and workers' representatives for participation in the management of the factories, if any, affected by such decision"	appropriate bargaining level." (CEACR Observation on C98 2021/22).	
29 WORKERS' REPRESENTATIVES (ELECTION OF WORKERS' REPRESENTATIVES TO WORKS COUNCILS)			
29.1 Submit a copy of the rules providing the notice and procedure for the election of workers' representatives to work councils	• ***Risk of mandated worker representation undermining the position of trade unions*** The law itself is potentially the source of some confusion as there appear to be four different types of worker representation: shop stewards (Section 23), Works Councils (Section 25), worker participation in management (Section 27) and the Joint Management Board (Section 28). The distinction between these different types of representation and their different areas of competence is not clear.	***CEACR Observation on C98 (2022/23)*** "In its previous comments, the Committee had requested the Government to ensure that both federal and provincial governments guarantee that the *existence of elected workers' representatives directly elected to work councils is not used to undermine the position of the trade unions concerned or their representatives* and to submit a copy of the Rules providing the notice and procedure for the election of workers' representatives to work councils."	**Recommendation 29.1:** Submit a copy of the Rules providing the notice and procedure for the election of workers' representatives to work councils. **Recommendation 29.1.** Review the existing legislation with a view to reforming representative participation in workplace decision-making, to ensure that the existence of the workers' representatives directly elected to work councils is not used to undermine the position of trade unions concerned or their representatives, and aiming to ensure simple structure with a clear mandate and a role sharply distinguished from that of trade unions. See Supplementary materials, Section 29, for guidance.