



The Asia Foundation

FINAL REPORT

U.S. Department of Labor
Bureau of International Labor Affairs/TAATC

PROJECT #: IL-17821-08-60-K	COUNTRY/PROJECT NAME: Raising public awareness and strengthening the Ministry of Labor, Social Affairs, Martyrs, and Disabled to better protect the rights of workers in Afghanistan.	
FUNDING: U.S. \$500,000	PROJECT DURATION: 18 Months	EVALUATION DATES: Mid-term: July 2009 Final: No final evaluation was conducted, per guidance from USDOL.
DATE SUBMITTED: December 8, 2010	REPORTING PERIOD: Final (January 1, 2009 – July 7, 2010)	CONTACT: Nancy Yuan Vice President and Director Washington, D.C. Tel: 202-588-9420 Fax: 202-588-9409 nyuan@asiafound-dc.org
Project Objectives: Strengthened ability of the Ministry of Labor, Social Affairs, Martyrs, and Disabled (MoLSAMD) to enforce the new Afghan labor law and increase understanding and awareness of the new law and of internationally-recognized core labor standards among members of the judiciary, workers, employers, and civil society in Afghanistan.		
Immediate Objectives: <ol style="list-style-type: none">I. Increased sustainability of project impact.II. Increased understanding and awareness of the new Afghan labor law and internationally-recognized core labor standards within the Ministry of Labor, Social Affairs, Martyrs, and Disabled for its effective implementation and enforcement.III. Increased understanding and awareness of the new Afghan labor law and internationally-recognized core labor principles among workers, employers, their respective representatives, and civil society.IV. Increased understanding and awareness of new Afghan labor law and internationally-recognized core labor standards among judges and members of judiciary to improve enforcement.		

SUMMARY

The Asia Foundation (the Foundation) began the implementation of this project on January 1, 2009 after development of the workplan and completed it on July 7, 2010. The project period included a three-month no-cost extension. Funding support from the US Department of Labor enabled the Foundation to work with the Afghan Ministry of Labor, Social Affairs, Martyrs, and Disabled (MoLSAMD) in a range of capacity-building activities to strengthen implementation of the new Afghan labor law and Afghanistan's compliance with internationally recognized core labor standards. This final report provides a summary of the progress made in achieving these objectives.

Key to the success of project implementation were regular meetings and communications between the Foundation's senior leadership and the project team with the Deputy Minister of MoLSAMD, with the ministry's departments, and key ministry staff to assess concerns and priorities of the ministry with respect to the implementation of the 2007 labor law and their obligations under the international labor standards and core labor conventions. This resulted in a very effective working relationship with the ministry and strong coordination of project activities.

This final report highlights the achievements and outcomes of the project.

KEY ACHIEVEMENTS

- Establishment of a Labor Program Consultative Group in the MoLSAMD and at the provincial level in Balkh and Herat provinces.
- Comprehensive training curriculum developed on the labor law and international labor standards for ongoing use by MoLSAMD.
- Evaluation of the new Afghan labor law and recommendations for labor law reforms.
- Evaluation of the inspection system and recommendations for improvement.
- Evaluation of the dispute resolution system and recommendations for improvement.
- Training of 25 master trainers who provided instruction on the labor law and internationally recognized core labor standards.
- Establishment of a training program for central ministry MoLSAMD officials and provincially-based MoLSAMD officials on the new Afghan labor law and internationally recognized core labor standards in the target provinces of Balkh, Herat, and Kabul.
- Training: A total of 1,743 representatives from government, workers, employers, and civil society received training (752 of the 1,743 trainees, or 43 percent, were women). The initial trainings included 910 government staff, workers, employers, and civil society members from the three provinces of Balkh, Herat, and Kabul (407 of 910 participants, or 45 percent, were women). The follow-up trainings included 833 government staff, workers, employers, and civil society members from the three provinces (345 out of 833 participants, or 41 percent, were women).
- Development and dissemination of Information, Education, Communication (IEC) materials (brochures and posters) on the new Afghan labor law and internationally recognized core labor standards.
- Dissemination of 50,000 IEC materials to target provinces (10,000 to Balkh province; 10,000 to Herat province; 10,000 to Kabul province; 10,000 to MoLSAMD; 6,000 to trade unions; and 4,000 to stakeholder partners).

SUMMARY OF OUTCOMES

The primary objective of this project was met, as demonstrated by the strengthened ability of MoLSAMD to enforce the new Afghan labor law and increased understanding and awareness of the new law and of internationally-recognized core labor standards among members of the judiciary, workers, employers, and civil society in Afghanistan through the achievements of each of the Immediate Objectives. The specific outcomes accomplished, which contributed to the MoLSAMD's ability to enforce the new Afghan labor law and raise understanding among various stakeholder groups, are detailed below.

Outcomes of Immediate Objective I: Increased Sustainability of Project Impact.

Activity 1.1: Comprehensive Training Manual

As a result of this activity, MoLSAMD gained a comprehensive training manual and curriculum, which the ministry can continue to use as training material in a variety of settings. This training manual and curriculum were developed in cooperation with the National Labor Institute of India and covers a wide-ranging and important set of issues related to labor law enforcement including Child Labor, Contract Labor, Mediation, Dispute Resolution and Settlement, Collective Bargaining, Social Dialogue, Social Security, Women and Labor Law, and International Labor Standards. After training in India this comprehensive curriculum was used by the project team in the training programs and follow-up workshops in Balkh, Herat, and Kabul provinces and with MoLSAMD. The project printed 600 copies of the curriculum in both Dari (300) and Pashto (300) languages and distributed these to the MoLSAMD national and provincial officials, parliamentarians and LPCG members in target provinces through the ministry. In addition, 940 copies of the curriculum for three provincial training programs in the three target provinces were published and distributed.

Activity 1.2: Labor Program Consultative Groups

Labor Program Consultative Groups (LPCGs) have been established in the three target provinces of Balkh, Herat, and Kabul. During the project period, the Foundation worked with the ministry to organize a total of eight LPCG meetings. The members of LPCGs are from stakeholder organizations such as MoLSAMD, Ministry of Justice, Ministry of Women's Affairs, Civil Service Commission, Human Rights Commission, Afghan Civil Society Forum, Civil Society and Human Rights Network, National Union of Afghanistan Employees, and the Afghan Chamber of Commerce and Industries. The LPCGs provide consultation and advice on labor law implementation issues. The LPCG member organizations provide support and cooperation to MoLSAMD in the implementation of the labor law. As a result of coordination efforts, these were equipped to continue after the formal end of the project. In the immediate period afterward, support from the Canadian government enabled the LPCGs to continue in the three provinces and, more importantly, to serve as the model for the establishment of this successful consultative group in Kandahar province.

The LPCG is a potential mechanism for the MoLSAMD for ongoing coordination of all donor contributions to the strengthening of the ministry, though this will need further attention to transform the perceptions about the meetings, currently viewed as "project" meetings that

primarily cover donor-funded project activities, into a process driven by the ministry and focused on MoLSAMD's needs, ensuring that project-funded activities are fully integrated into the ministry's planning and therefore contribute to the achievement of the ministry's goals and objectives.

In the light of these meetings, the Foundation's labor law project team developed a brochure for use of the ministry and all the organizational members of the LPCG to reflect the existing situation of labor rights in the country, major objectives of the project, and the implementation strategy. The Foundation printed 300 copies of the brochure and shared them with various organizations to disseminate information about the project and raise awareness of the labor law issues. The Foundation also worked with the ministry to develop a brochure on future initiatives in the labor sector in Afghanistan, which was prepared for the International Labor Organization (ILO) Conference in Geneva. The brochure highlighted areas such as child labor, labor research, and migration, and others in which the ministry needs support for labor reforms. At the ILO Conference, 300 copies were distributed. (The brochure is attached as Annex F.)

Outcomes of Immediate Objective II: Increased understanding and awareness of the new Afghan labor law and internationally recognized core labor standards within the Ministry of Labor, Social Affairs, Martyrs, and Disabled for its effective implementation and enforcement.

Activity 2.1. Evaluation of Labor Law

The Foundation supported the MoLSAMD to conduct assessment of their staff from the selected departments of Rights & Labor Law and of Labor Inspection to identify the personnel who would be given training on evaluating the current labor law against the international core labor standards and the three ILO conventions (100, 105, and 111) that have been ratified by the Afghan government. A comprehensive examination questionnaire for evaluation and assessment of rights and labor law for identifying the qualified officials was developed. The Foundation also provided technical assistance to the ministry to develop new criteria for monitoring and inspection that comply with the new labor law. The Foundation labor law project team worked with the Labor Law Department and formed a working group to develop their capacity regarding evaluation of the labor law and training on labor law implementation.

As a result of this project, the Government of the Islamic Republic of Afghanistan now has a written evaluation of the Afghan labor law prepared through a participatory process with MoLSAMD officials, assessing compliance with the internationally-recognized core labor standards as well as recommendations for labor law reforms. (The evaluation report is attached as Annex A.)

Activity 2.2: Qualified Master Trainers

The Foundation arranged a two-week Training of Trainers (ToT) program on the Afghan Labor Law and international labor standards for 25 Afghan officials from July 20-31, 2009 at the National Labor Institute (NLI), India. This training program was comprised of two components: (1) a broad overview of the Afghan Labor Law, internationally-recognized core labor standards,

and conventions which have been ratified by the Afghan government for MoLSAMD officials and staff, members of the judiciary, workers and employers associations, and other civil society organizations; and (2) design of a curriculum for MoLSAMD master trainers to enable them to carry out their responsibilities more effectively. In the training, the MoLSAMD officials were joined by senior judges and key representatives of worker and employer associations and civil society organizations in order to promote greater understanding of their respective responsibilities in implementing, enforcing, and raising awareness of the new labor law and the internationally-recognized core labor standards. (The agenda of the NLI training program is attached as Annex D.)

As a result of this training, the Government of the Islamic Republic of Afghanistan gained 25 master trainers – drawn from a broad range of institutions - as resources on the Afghan Labor Law and the international labor standards. The master trainers represented various stakeholder organizations such as the MoLSAMD, Ministry of Justice, Ministry of Women’s Affairs, Civil Service Commission, Human Rights Commission, Afghan Civil Society Forum, Civil Society and Human Rights Network, National Union of Afghanistan Employees, and the Afghan Chamber of Commerce and Industries. The project team observed a great increase in the skills and knowledge levels of the master trainers from the beginning of the project to its end. Through the practical experience of conducting training programs and follow-up workshops, their enhanced level of knowledge and understanding about the labor law enable them to serve as a cadre of experts on labor law issues, who can speak confidently about the issues in Afghanistan to a wide variety of stakeholders including the government, judiciary, and civil society. These master trainers remain as valuable assets to MoLSAMD and to the government, even if they leave the ministry itself and move to other government ministries. This high frequency of personnel turnover is a challenge faced by all government institutions and requires careful consideration of investments in training and other capacity-building efforts.

Activity 2.3: Technical Capacity Built Inside MoLSAMD and Other Afghan Ministries

During the project, five employees of the MoLSAMD Labor Law Department were given 13 training and capacity-building sessions on ILO core conventions, standards, child labor, and forced labor, among other topics, as well as the ILO Conventions 182 and 138 on child labor. During provincial training programs on the Afghan Labor Law and international labor standards, 95 MoLSAMD and other government employees participated in training. In addition, the project organized a workshop with 30 participants in the Ministry of Women’s Affairs (MoWA). A workshop involving gender units of nine ministries was organized in MoLSAMD in order to familiarize the gender units about the provisions relating to women in the Afghan Labor Law. These units are responsible for training further officials in their respective ministries regarding these issues. There was very strong participation by the gender units during the workshop.

The Foundation’s Labor Team also organized a two-day training program for MoLSAMD’s 34 directors, who head the provincial departments. This activity was not part of the stated deliverables of the project, but added a positive and valuable dimension to the project, as this extended labor law education to leadership beyond that of the project’s three target provinces. The 34 directors were trained on the Afghan Labor Law and international labor standards.

In order to ensure consistent, efficient, and effective handling of labor disputes and labor rights violations, as well as effective enforcement of the new Afghan labor law, the ministry and other relevant governmental and non-governmental institutions require the extensive knowledge and skills necessary to ensure accountability and transparency in the labor dispute process. Therefore, the Foundation's project team and its technical advisor, in consultation with MoLSAMD officials, reviewed the ministry's Labor Dispute Resolution System to identify areas for potential reform in order to increase harmonization of rulings and ability of the MoLSAMD officials to enforce the labor law. (The report is attached as Annex B.)

Activity 2.4: Study Tour on Labor Law Implementation for Government, Members of Judiciary, and Civil Society

In addition to the training, the Foundation organized a study tour in India for a mixed delegation of government, civil society, workers and employers associations, and members of the judiciary to provide an opportunity to learn from the process by which labor law is effectively implemented in India and to interact with relevant stakeholders in India such as trade unions, employers, ministry officials, and other professionals.

One of the highlights of this program was the New Delhi meeting between Mr. Mohammad Ghous Bashiri, Deputy Minister, MoLSAMD, Government of Afghanistan, with Mr. Mallikaarjun Kharge, Cabinet Minister of Labor, Ministry of Labor, Government of India. During the meeting, the Indian Labor Minister offered to provide support to the Government of Afghanistan on various important labor issues such as the development and certification of vocational training programs, strategies to counter large-scale unemployment in the country, and policies and programs for child labor and safe migration of Afghan workers to other countries. This represented a key partnership as those issues are among the major socio-economic problems facing Afghanistan. Through the facilitation of the Foundation's labor law project technical advisor, the two countries signed a Memorandum of Understanding (MoU) addressing these areas. (A copy of the MoU between Afghanistan and India is attached as Annex E.)

Activity 2.5: Standardized Questionnaire for Labor Inspections and Long-Term Inspection Plan

For effective enforcement of the new Afghan labor law, the Foundation's technical advisor, in consultation with MoLSAMD officials, reviewed the ministry's Labor Inspection Mechanism and provided technical support to assist the Department of Inspection in developing a long-term inspection plan and a standardized questionnaire for labor inspections that complies with the ILO Core Labor Standards as well as provisions in the new law. These have been complemented by regular training sessions and orientation programs for inspection officers in order to improve their monitoring and inspection practices. (A copy of the report on the Review of Labor Inspection Mechanism in MoLSAMD is attached as Annex C.)

Outcomes of Immediate Objective III: Increased understanding and awareness of the new Afghan labor law and internationally-recognized core labor principles among workers, employers, their respective representatives, and civil society.

With the technical and financial support of the Foundation, MoLSAMD developed and implemented an Information, Education, and Communication (IEC) campaign to educate workers, employers, their respective representatives, and civil society about internationally-recognized core labor standards and their rights and responsibilities under the Afghan Labor Law. During the project period, 50,000 IEC materials (posters and brochures) were distributed to target provinces and stakeholders. With the support of the US Department of Labor, this project trained a total of 1,743 representatives from government, workers, employers, and civil society (752 of the 1,743 trainees, or 43 percent, were women) in initial and follow-up trainings in each of the three target provinces.

Activity 3.1: Dissemination of Information, Education, Communication (IEC) Materials on the New Afghan Labor Law and Internationally Recognized Core Labor Standards

Posters and brochures were printed and distributed illustrating labor rights and responsibilities of workers and employers under the Afghan Labor Law regarding child labor, forced labor, discrimination against women, occupational safety and health of workers, and the right to participate in trade unions. These were printed in Dari, Pashto, and English (50,000 in total) and were distributed through the ministry in Kabul as well as in the provinces.

The IEC materials were distributed to the three target provinces: 10,000 to Balkh province, 10,000 to Herat province, and 10,000 to Kabul province. They were also distributed to others including 10,000 given to MoLSAMD for distribution to all non-target provinces; 4,000 to stakeholder partners; and 6,000 to trade unions.

For the provincial-level distributions, the IEC materials were disseminated among members of civil society, trade unions, judges, governmental officials, employers, and community members. The Foundation received positive feedback from officials in Herat province, who expressed their thanks and appreciation to the Foundation and US Department of Labor for this initiative.

The purpose of the Foundation's distribution of 6,000 IEC materials to the trade unions (3,000 posters and 3,000 brochures) was to enable the trade unions to post them in various locations and in governmental and non-governmental organizations to raise awareness about labor rights in Afghanistan. Based on the assessment of the National Union of Afghanistan Employees, which distributed IEC materials, they have had a huge impact on workers, particularly those who previously were unaware of their rights. The National Union of Afghanistan Employees provided one indicator of the impact of the IEC campaign, citing the large increase in the number of workers who came to the union with labor questions and issues.

Activity 3.2 & 3.3: Training of Target Groups

During the project, the following sectors were trained on the new Afghan Labor Law and international labor standards in the three target provinces: trade union members, employers, and civil society members. In the initial trainings, participants from the three provinces of Balkh, Herat, and Kabul included 910 government staff, workers, employers, and civil society members (407 out of 910 participants, or 45%, were women). In the follow-up trainings, participants included 833 government staff, workers, employers, and civil society members (345 out of 833

trainees, or 41%, were women). More than 1,000 copies of the training curriculum, as well as 1,000 copies of the Afghan Labor Law, were distributed among the training participants. The training focused specifically on the needs of workers, employers, and civil society, including using the IEC materials to creatively and effectively disseminate key labor messages to their target groups.

The trained master trainers conducted a total of three initial trainings for hundreds of local-level officials (one training in each of the three target provinces to increase their awareness on labor laws and rights, job responsibilities, proper reporting of violations, and redress mechanisms). The initial trainings started in October 2009 and finished in early January 2010 (Kabul training, October 25-29, 2009; Mazar-e-Sharif, Balkh province training, December 6-10, 2009; and Herat training, January 3-7, 2010). A total of 910 participants took part in the three initial trainings, 407 of whom were women (45 percent). In the second year, the trained officials conducted follow-up workshops for other local-level officials to share their experiences, challenges, and best practices on implementing and enforcing the new labor law. The follow-up trainings began in late January 2010 and ended in March 2010 (Kabul training, January 26-27, 2010; Mazar-e-Sharif, Balkh province, February 9-14, 2010; and Herat province training, March 17-18, 2010). A total of 833 trainees participated in the follow-up trainings, including 345 women (41 percent).

Training	Participants	Location	Start	Finish
Initial training program	340	Kabul	Oct 25, 2009	Oct 29, 2009
Initial training program	285	Balkh	Dec 06, 2009	Dec 10, 2009
Initial training program	285	Herat	Jan 03, 2010	Jan 07, 2010
Follow up workshop	272	Kabul	Jan 26, 2010	Jan 27, 2010
Follow up workshop	291	Balkh	Feb 09, 2010	Feb 14, 2010
Follow up workshop	270	Herat	March 17, 2010	March 18, 2010

Please refer to Annex H for further details of all trainings held during the project period.

Outcomes of Immediate Objective IV: Increased understanding and awareness of new Afghan Labor Law and internationally recognized core labor standards among judges and members of judiciary to improve enforcement.

Due to this project, judges have developed a more sophisticated understanding of the Afghan Labor Law. Fifty judges participated in the provincial-level initial and fifty in the follow-up trainings described above. The Foundation had initially designed the program to include separate training for judges. However, as the number of available judges became clearer, the Foundation determined that it was more effective to include the judges in the trainings with other stakeholders. Along with these diverse trainees, the judges received training on various labor-

related topics such as Afghan Labor Law, international labor standards, women and labor law, contract labor, mediation, dispute resolution system, collective bargaining, child labor, and social security for workers. During the closing ceremony in Herat, one of the participating judges said, “As a judge, I was thinking that I understood every point about the Law of Islamic Republic of Afghanistan, but after attending this training program, I realized that my knowledge about the Labor Law was so limited and now I can take better steps in enforcement of the Labor Law.” These judges, with responsibility for enforcing the Afghan Labor Law and internationally-recognized core labor standards, now have a better understanding of the law and standards and are better equipped to enforce the new law. Since a relatively small number of labor cases are referred to the courts, the impact of closing this gap in knowledge is not yet clear.

CHALLENGES

Some of the challenges faced during project implementation included:

- Poor understanding and lack of clarity on the part of MoLSAMD staff regarding their day-to-day responsibilities and the ministry’s implementing procedures, and lack of knowledge about the number and approval procedure of these regulations.
- Lack of coordination among the MoLSAMD departments and its leadership in relation to their work processes and the approval of the labor law implementing regulations.
- Lack of documentation in the MoLSAMD on strategic plans and activities in general.
- Identifying local organizations with capacity in labor issues for the purpose of training and awareness-raising, due to the lack of attention given by the Government as well as the civil society toward labor issues in the country; identification of implementing partners required continuous and substantial dialogue to raise awareness about the relevance of labor issues among local organizations and also to assess their potential to carry out the project activities.
- Deterioration of security in Afghanistan and operating in elections environments in 2009 and 2010. The most visible impact was on the original ToT for the 25 master trainers, originally intended to be held in Kabul. The ILO informed the Foundation that they were unable to conduct the ToTs in Kabul, as they were not able to obtain security clearances from within the ILO. Therefore training was conducted instead in India and only the follow-on training in Afghanistan.
- The political situation, security, and elections slowed down ministry actions at times.

Attachments:

- Annex A: Evaluation of Labor Law
- Annex B: Evaluation of Dispute Resolution Mechanism
- Annex C: Evaluation of Inspection Mechanism
- Annex D: Training Curriculum (in English, Dari, and Pashto) and NLI Training Agenda
- Annex E: MoU on labor between Afghan-Indian governments
- Annex F: MoLSAMD brochure for the ILO Conference about needed labor reforms
- Annex G: IEC materials (posters and brochures)
- Annex H: Table of trainings

ANNEX A: Evaluation of Afghan Labor Law

Conducted under the U.S. Department of Labor program 2009-2010 (July 7, 2010)

The Asia Foundation

Considering the large percentage of labor force working in the unorganized sector in the country, acutely limited level of awareness about labor rights and almost non-existent labor management relations, the importance of the labor law as a medium to further labor welfare cannot be underestimated. The new Afghan Labor Law enacted in 2007 covers various important labor issues like prohibition of compulsory work, organizing work relations, observing international treaties, recruitment rules, contract terms, work standards, occupational safety and health issues, special provisions for women workers, participation of employees in trade unions etc. The purpose of this paper is to evaluate Afghan Labor law for its conformity to the broad objectives and principles of internationally recognized core labor standards (ILS).

Afghanistan became the 60th member of International Labor Organization (ILO) in September 1934. ILO Constitution specifically mentions that universal peace can be established only if it is based upon social justice. As a major step towards providing social justice, in June 1998, ILO adopted a historic 'Declaration on Fundamental Principles and Rights at Work'. This Declaration contains four core labor standards, i.e. the basic rights that workers are entitled to everywhere as fundamental human rights. These are:

- Freedom of association and collective bargaining;
- Elimination of forced labor;
- Elimination of child labor; and the
- Elimination of discrimination in respect of employment and occupation.

This declaration commits all ILO members to respect, promote and realize the principles of justice in these four areas even if the country has not ratified all the eight ILO Conventions which cover these four core labor standards. These Conventions include Freedom of Association and Protection of the Right to Organize Convention, 1948; Right to Organize and Collective Bargaining Convention, 1949; Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957; Equal Remuneration Convention, 1951; Discrimination (Employment and Occupation) Convention, 1958; Minimum Age Convention, 1973; and Worst Forms of Child Labour Convention, 1999.

Five of these eight Core Conventions have been ratified by Afghanistan and therefore it puts a major obligation on Government of Afghanistan to evaluate its labor law for its conformity to the core labor standards. This would also help in implementation of the ratified core conventions. On ratification of conventions, the country concerned has to make periodical reports on the progress made on their implementation to ILO and necessary changes in national legislation required have to be initiated. As regards Afghanistan, the Committee of Experts of ILO has been repeatedly noting that the reports due have not been received concerning the application of ratified Conventions and it has also made various adverse observations about the application of the core Conventions ratified by Afghanistan including Abolition of Forced Labour Convention, 1957,

Equal Remuneration Convention, 1951, Discrimination (Employment and Occupation) Convention, 1958. The Committee has also commented on the relook on the certain provisions of the new Afghan Labor Code for the purpose of fulfilling the obligations of core labor standards. It is notable to mention that the Government of Afghanistan is keen to implement these core labor standards. The strategy of Ministry of Labor, Social Affairs, Martyrs and Disabled for Afghanistan National Development Strategy (ANDS) among things includes, labor reform, effective implementation of labor laws, policies and instruments, implementation of international policies and instruments related to work and labor, protecting the rights of children at work including working children and trafficked children, special measures for the welfare of women workers and training of its employees at the central and provincial levels to develop their capacities and competencies to better implement laws and policies.

Features of Internationally recognized core labor standards (ILS) and the need to evaluate labor law for conformity to ILS

ILS encompass certain basic human rights, namely freedom of association and collective bargaining, the abolition of forced labor, the elimination of child labor, equality of opportunity and treatment, and they cover a wide range of issues in the world of work. The International Labour Organization's oldest and most important function is the setting of International Labour Standards. They have certain specific characteristics and cover most of the fields of labor law.

Internationally recognized core labor standards are universal in character, as they are intended to be applied in countries with different social and economic structures, from the least to the most industrially developed. Thus, consideration of diverse national practices goes into their preparation and framing. They provide for widely accepted goals and rules for national action that all countries can follow. Therefore, conformity of labor law to ILS ensures the state action to flow in right direction towards universal accepted principles of fulfillment of labor rights.

Further, in order to attain the objective of universality, standards are sufficiently flexible. They are drafted in a spirit of realism and effectiveness, respecting the needs of all member States so as to take into account variations in national conditions, circumstances and development. There are, however, limits to flexibility if standards pertaining to human rights of workers are to be attained. This flexibility along with necessity to fulfill basic human rights makes it pertinent that labor law essentially is in line with ILS.

To suit the changing conditions, ILS are also regularly updated by adopting new instruments and revising old ones. Since 1919, standards have had to adapt to a changing world of growing globalization, conflicts, economic crises and rapid cultural changes. In such an environment, standards are adopted with a view to the possibility that they may need to be modified in the future. Therefore adoption of ILS in the labor law provides the necessary adaptability to the national legislation to changing environment within and outside the country.

The core labor standards are essentially expression of tripartite agreements, as they are the result of a tripartite international consensus resulting from a constructive dialogue between workers, employers and government at the international level. They reflect the interests of all the three

constituents and therefore the need to appropriately incorporate these elements in the national legislation.

Very importantly, the standards originate from concrete problems and situations, and therefore reflect what is feasible as per the existing situations and promote economic and social progress. Since ILS are adopted after they are well debated by the representatives of governments, jointly with those of employers' and workers' organizations of member States, they provide a procedure that leads to realistic solutions for contemporary problems. Therefore, these standards greatly influence the national legislation of the countries particularly with respect to the obligations towards the fulfillment of ratified Conventions and they also help to prevent the adoption of regressive or contradictory national legislation.

Further ILS, especially those adopted in recent years contains provisions requiring tripartite involvement in their application at national level. Governments therefore are encouraged to consult employers' and workers' organizations on the measures to be taken with a view to their application. For example for fixing the minimum wage, the ILS encourage that it should be done in after consultation and participation of the representative organizations of employers and workers concerned.

Afghan Labor Law and ILS

Provisions of labor law on freedom of association and collective bargaining;

The core labor standard relating to freedom of association and collective bargaining include right of workers and employers, without distinction, to establish and to join organizations of their own choice for furthering and defending their interests. These organizations, federations and confederations have the right to draw up their constitutions and rules; elect their representatives in full freedom; organize their administration and activities; and formulate their programs. Further, it provides for protection of workers against acts of anti-union discrimination; protection of workers' and employers' organizations against any acts of interference by each other; promotion of voluntary collective bargaining and is implemented through the core conventions, Freedom of Association and Protection of the Right to Organize Convention, 1948 and Right to Organize and Collective Bargaining Convention, 1949.

Afghanistan has ratified only the Convention on Freedom Association and Protection of the Right to Organize Convention, 1948. It has to however take all appropriate measures to ensure that workers and employers exercise freely their right to organize.

Unfortunately, the Afghan labor law is very limited in its focus on labor relations, freedom of association, participation in unions and collective bargaining. Only towards the end, the Art 147(3) of the Chapter 14 labor law provides for the right to the workers to join labor unions. However, this provision lacks the strong statement to indicate government's commitment to promote freedom of association. Also there is no deterrent provided for those employers who disallow the participation in trade unions. Further, under the labor law, these unions are to be governed by the provisions of social organizations law. Under this law, there is no specific definition and provisions for workers union and these unions are treated like any other social

organization which has to be registered with the Ministry of Justice. Therefore, the labor law is highly deficient here considering the importance of the existence of workers unions and the freedom of association and participation in these unions for the realization of workers' rights.

Therefore, the provisions relating to freedom of association and forming trade unions have to be more explicit and specific in the labor law which should clearly indicate government's firm commitment for freedom of association and guide government's more concrete actions towards encouraging and promoting full development and utilization of machinery for social dialogue and voluntary negotiation between employers and workers' organizations. Finally, the trade unions of workers need to be registered with the Ministry of Labor, Social Affairs as these are workers associations are distinct from other social organizations and hence clearly the Ministry of Labor should have the mandate over their formation.

Provisions of Afghan labor law on elimination of forced labor or compulsory work

ILO defines "forced or compulsory labor" as meaning all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered her or himself voluntarily." In principle, forced or compulsory labor is almost everywhere banned. The two ILO Conventions dealing with the abolition of forced or compulsory labor are the most widely ratified Conventions. These are the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).

Each country which ratifies the Convention 29 undertakes to suppress the use of forced or compulsory labor in all its forms within the shortest possible period and the illegal use of forced or compulsory labor is punishable as a penal offence with penalties that are really adequate and strictly enforced.

However, certain types of labor are excluded from the scope of the Convention, including work of a purely military character; work which forms part of the normal civic obligations of citizens; work extracted from any person as a consequence of a conviction in a court of law; work demanded in cases of emergency, that is war, calamity and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; minor communal services, that is services performed by the members of the community in the direct interest of the said community after due consultation with the community.

The convention on Abolition of Forced Labour Convention, 1957 (C 105) aims at abolition of certain forms of forced or compulsory labor like means of political coercion or education or as a punishment for holding or expressing certain political or views, as a method of mobilizing and using labor for purposes of economic development; as a means of labor discipline; as a punishment for having participated in strikes; or as a means of racial, social, national or religious discrimination. Government of Afghanistan has ratified this Convention.

Article 4 of the Afghan Labor Law relates to Prohibition of Compulsory Work. It defines compulsory work as that when the worker is threatened to do it or when a job against the rules and regulations of the organization and against the will of the worker is to be performed by the worker.

However, Afghanistan has only ratified C 105 and not C 29. While C 29 calls for the general abolition of forced or compulsory labor in all its forms subject to certain exceptions, Convention No. 105 requires the abolition of forced or compulsory labor only in the five cases listed above. Thus this C 105 is quite limited in scope in comparison to Convention no 29 and basically supplements the C 29.

Since Afghanistan has ratified C 105 and not C 29, application of this ILS is highly limited to that extent. However, to make its labor law more compliant to ILO standards for abolition of forced labor, there is a need for following amendments in the labor law:

- a) A comprehensive definition of forced or compulsory labor should be provided under the labor law which clearly lays down the scope of law to avoid confusion. As Afghanistan has already ratified Convention 105, it must clearly lay out under the Labor law, the five situations of forced labor like the political coercion, economic development, labor discipline, participation in strikes and discrimination which are prohibited under the Convention.
- b) The exceptions where the conditions of forced or compulsory labor will not apply should also be mentioned in the labor law.
- c) The obligations of the government with respect to abolition of forced or compulsory labor should be clearly spelt out.
- d) Penal action against the offenders where cases of forced labor are found should also be clearly brought out under the Law.

Provisions of Labor Law on elimination of child labor

ILO has adopted two core conventions for elimination of child labor. The Convention no. 182 is on Worst Forms of Child Labor and Convention no. 138 deals with Minimum age for employment. Government of Afghanistan has recently ratified both C 138 and C 182. C 138 reflects the conviction that childhood is a period of life, which should be devoted not to work but to education and development, and that child labor often destroys children's chances of a productive future. Each country ratifying Convention 138 undertakes to pursue a national policy for effective abolition of child labor; specifies a minimum age for admission to employment or work in their law, which will not be less than the age of completion of compulsory schooling; raise this progressively to a level consistent with the fullest physical and mental development of young people; and guarantees that the minimum age of admission to any type of employment or work, which is likely to compromise the health, the safety or the morals of young persons shall not be less than 18 years.

Article 13 of the Afghan Labour Law mentions that the minimum age of employment is 18 years, except for light work where it is 15 years. It also specifies that the employee must possess at least high school education. It further mentions that recruitment of youth/ children less than 18 years is prohibited if it affects their physical growth or cause damage or disability. Therefore, the Afghan Labour Law is broadly in conformity with the Minimum Age Convention.

In case of C 182, each country, which has ratified this Convention, shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency. It includes all forms of slavery or practices similar to slavery, such as the sale and trafficking of children (forced or compulsory labor), including forced or compulsory recruitment of children for use in armed conflict, the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, the use, procuring or offering of a child for illicit activities, in particular of the production and trafficking of drugs as defined in the relevant international treaties and work, which by its nature or the circumstances in which it is carried out is likely to harm the health, safety or morals of children.

The Afghan Labour Law is broadly in line with the spirit of this Convention too, as it prohibits employment of children below 18 years of age in work that may affect physical growth or cause damage or disability. Other provisions of Convention relating to slavery, trafficking of children for forced labor, use of child for prostitution or for pornography etc. get partially covered under the Presidential Decree (Number 52) on Combating Kidnapping and Human Trafficking which has been passed on 14th July 2008.

However, there are no provisions in the labor law specifically indicating strong commitment of Government of Afghanistan towards the elimination of child labor. Further, the law also does not provide definition of child labor. Nor does it provide the information about the persons responsible for enforcement of these provisions and the penal action against employers of child labor.

Importantly, the labor law is also silent about its applicability on the child labor in the agricultural sector. This severely affects the scope of implementation of the labor law as large numbers of children in the country are working in the agriculture.

Further, the law also does not provide any information relating to the list of the jobs prohibited for children less than 18 years. This list is to be drawn up in consultation with the Ministry of Public Health, and the respective organizations. As the Convention 182 has already been ratified, the list of worst forms of child labor needs to be drawn up immediately and added to the law for the effective implementation of these provisions.

Therefore, the labor law needs to be amended suitably to indicate Government's strong commitment to eliminate child labor from the country. The definition of child labor, list of prohibited jobs for children below 18 years of age, penal action against defaulting employers etc need to be added in the labor law in the articles relating to child labor.

Elimination of discrimination in respect of employment and occupation

Discrimination in one form or another occurs in the world of work every day, throughout the world. Discrimination at work can be direct or indirect. Discrimination is direct when regulations, laws, and policies explicitly exclude or disadvantage workers on the basis of characteristics such as political opinion, marital status or sex. Discrimination at work may also manifest itself in access to a job, while performing a job, or through dismissal from a job or lower salaries etc. Elimination of discrimination at work is central to social justice. The

elimination of discrimination is also an indispensable part of any viable strategy for poverty reduction and sustainable economic development.

This core labor standard is implemented through two core conventions of Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The aim of the C 100 is equal remuneration for women and men workers for the similar nature of work. The term “remuneration” includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker.

The section 8 of the Afghan Labour law provides that workers have the right to work and to receive remuneration, and that workers are entitled to receive wages and salaries on the basis of the quality and quantity of the work and in accordance with their grade, rank and post. And section 9(1) of the law prohibits discrimination in respect of salaries and allowances. Discrimination in the payment of wages is prohibited under section 59(4). While these provisions may provide some protection from discrimination, they do not fully apply the principles of the C 100. Considering the importance of giving full legislative expression to the principle of the Convention, a provision may be explicitly added in the labor law providing for the right of women and men to receive equal remuneration for work of equal value.

Further, the Article 1(a) of the Convention defines the term “remuneration” in the broadest possible terms. Accordingly, the principle of equal remuneration for women and men for work of equal value has to be applied to all aspects of remuneration. The sections 8, 9 and 59(4) of the labor law appear to prohibit discrimination in respect of salaries, wages, and allowances, the provision may be made for applying it with respect to other elements of remuneration, such as “salary supplements” mentioned in section 3, or any other emoluments, whether in cash or in kind.

C 111 aims at promotion of equality of opportunity and treatment in respect of employment and occupation. The term “discrimination” is defined as any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, social origin or such other ground as may be specified by the State concerned, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Each State which ratifies the Convention undertakes to declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminating any discrimination in respect of access to vocational training; access to employment and to particular occupations; and terms and conditions of employment.

Though there are provisions in the labor law prohibiting discrimination in recruitment, payment of wages provision of education etc, these need to be more specific to fulfill the core labor standards particularly those relating to equality of wages between women and men, equal opportunities for vocational training, promotion and other benefits and no discrimination on the basis of caste, color, sex, region etc.

The Section 9 of the Labour Code also does not contain a definition of “discrimination”. In order to facilitate the implementation of the labor law’s provisions on non- discrimination, there is a need to include in the legislation a definition of discrimination. Such a definition should cover direct and indirect discrimination and include the prohibited grounds listed in Article 1(1)(a) of the Convention, as well as any other ground the Government may determine in accordance with Article 1(1)(b) such as, for instance, age, disability or health status.

As regards, special measures of protection for women, the Government has not yet established and provided a list of physically arduous or harmful work prohibited for women under section 120 of the labor law. The Government may ensure that the list that is drawn up does not contain exclusions that go beyond what is strictly necessary to protect women’s reproductive capacity, as special protective measures for women. Further, this list should not be based on stereotyped perceptions regarding their capacity and role in society which may be contrary to the principle of equality of opportunity and treatment.

Implementation of internationally recognized core labor standards in Afghanistan

As regards the implementation of labor standards, it may be said that labor rights are not clearly understood in Afghanistan. There is virtually no tradition of labor-management relations in the country. Though there are instances of force labor, very little information is available on the incidence of compulsory labor. Children between the ages of 6-14 years very often work to supplement their family income and at times are the sole bread earners of the families. There is large scale discrimination of women in employment in terms of opportunities to work outside home, salaries and opportunities for vocational training etc. There is an emergent need to create more awareness about the internationally recognized core labor standards within the Ministry, among workers and employers organizations for effectively implementing these standards. There is very limited awareness of labor law among workers, employers and civil society and Judges too are also not fully aware of the provisions of the new labor law which has made the enforcement of labor law even more difficult. Therefore, sensitization and capacity development of the various stakeholders viz. Ministry, judges, trade unions, employers’ organizations and civil society on a nation-wide scale on the provisions of labor law is very important for its enforcement.

The treatment of workers is embedded in broad social, political, and economic circumstances. In the absence of a strong political will and effective governance institutions, it is difficult to properly fulfill the core labor rights. Also in the absence of strong economic growth, there is little chance of achieving broad-based improvements in workers’ standards of living. Thus, the economic and political context is crucial when assessing compliance with labor standards, particularly for identifying the sources of noncompliance and, therefore, the appropriate policies need to be initiated to improve compliance.

Afghan Labor Law and Rights of Casual Labor

Casual labor performs a variety of services, usually on a temporary or part time basis or these workers are employed on an ‘as and when needed’ basis. They are hired for few hours, few days or for few weeks depending on the nature of the work. Therefore, the workers very often do not

accumulate enough service to gain full employment rights, including a claim against unfair dismissal etc. However, certain rights apply to all workers, including the right to not to be discriminated against for reasons of age, gender, race, disability or sexual orientation, the right to a minimum wage, the right to paid holiday and the right to a healthy and safe working environment. However in many developing countries including Afghanistan, casual workers do not have even these basic human rights which are provided for all workers under the ILS.

Situation of casual labor in Afghanistan

Like most developing countries in Afghanistan too informal economy provides employment to overwhelmingly large numbers of workers. Out of this, large percentage are casual or seasonal workers who have no permanency of work and are working as wage employed or self employed for only a few months in a year as per the need of the work. There is very little information available on the sector wise employment of labor even lesser for the casual and daily workers. In the National Risk and Vulnerability Assessment (NRVA) survey conducted by the World Bank, there is a reference to the non skilled daily wage worker and skilled daily wage worker. Further 'an Urban Area primary Source Study of Supply and Demand of the Labor Market' conducted by the National Skills Development program of the MoLSAMD, also provides some information on the number of daily wage workers working in various sectors in the informal economy like, services, construction, business and commerce, industries and agriculture. It also provides occupation-wise information on the workers in informal sector like carpenters, electricians, masons, painters, plumbers, etc, their working hours/days, skills, education levels and age group.

These workers are more in supply than demand, so their wages are generally depressed and they have virtually no bargaining power. Since they are working for only a few months of the year, their average earnings are even lower and there is large scale unemployment and underemployment. A large number of these workers, over 57% are illiterate and very few cross the primary level of education. Their skills levels are most primitive and almost all of them gain skills knowledge only on job. Under the circumstances, they are highly vulnerable to exploitation by the employers and work in very adverse working conditions with long working hours, no leave, unhealthy and unsafe working environment, and no social security like medical insurance, pensions etc and no protection from occupational hazards.

Legal framework

Under the Afghan Labor Law, there are no specific provisions for the protection of rights of casual labor. In fact there is no definition of casual or daily workers under the law and also no mention of the fact that they are also covered under the Labor law. The minimum wage has also not been fixed which makes Labor Law implementation even more difficult for the casual or daily workers. Further, under the Law, there is no mechanism to implement the provisions for safe working conditions for casual workers as well as no social security provisions have been made for them. In fact, the provisions for the compulsory or forced labor are also so sketchy that it does not cover the element of forced labor among the daily or seasonal workers particularly in the agriculture sector.

Suggestions for amending Labor Law

It is therefore important that the certain important provisions relating to casual workers be incorporated in to the new Labor Law to effectively implement it in the informal sector. Some of these are as follows:

- Foremost among these, is to fix a minimum wage, so that these workers are not exploited by the employers by being paid menial wages.
- Further, specific provisions may be added in the labor law for the social security measures like pension and specific schemes to provide benefits like life and disability cover; health and maternity benefits; old age protection; etc
- These workers should also have facility regular health checkups to detect any cases of diseases due to occupational hazards and health insurance benefits.
- Literacy drives for casual workers and their families could also be started to enable them to get at least basic education which will help them in gaining skills and better livelihood later in their lives.
- There should be provisions under the Labor Law making it mandatory on the employers to provide skills training to these workers for at least a few months.
- Further provisions to regulate the working conditions of these workers like hours of work, leave, breaks, safety and health conditions, and the responsibility of the employer in this regard should be specifically included in the Labor Law.
- For long term regular jobs, there should be proper contracts between the workers and the employers.
- Further, minimum age of work, i.e., 18 years should be specifically provided for under the Law for the casual workers and specific protective provisions for casual women workers should be also added in the Labor law.
- Penal action against the employers exploiting casual workers in terms of lower wages, conditions of work etc need to be clearly spelt out in the Act so that it could act as a deterrent for the offending employers.
- The grievance redressal mechanism has to be also laid down for the casual workers with clearly identified authorities these workers could approach in case their basic rights are encroached upon.

ANNEX B: Evaluation of the LABOR DISPUTE RESOLUTION SYSTEM at MoLSAMD

Introduction:

In order to have a prompt and equitable settlement of labor disputes, it is essential that appropriate dispute settlement machinery should exist to facilitate such settlement. The absence of effective dispute settlement procedures can result in lot of discontentment among workers and conflict in the relations between employers and workers and the process of collective bargaining. Many developing countries have undertaken measures to constantly seek to develop in their own special context, a suitable machinery and procedure for the development of such relations. The main idea is that the dispute resolution mechanism should be more practical and less legalistic which encourages worker employer relation and promotes environment for efficiency, economic growth and development.

Disputes manifest themselves in many ways. Disputes of right relate to the implementation or interpretation of an existing right, whether embodied in law, collective agreement or in an individual contract. Interest disputes usually arise when collective bargaining fails to lead to agreement. At another level of analysis, a dispute may involve an individual worker (*individual disputes*), or a group of workers (*collective disputes*).

The settlement procedures are most often established in national legislation incorporating voluntary procedures reached by the parties themselves. A key objective of the settlement procedure is to promote collective bargaining, hence, where possible, bipartite settlement is preferred. The procedures fall into three categories, namely conciliation and mediation, arbitration and adjudication through a tribunal or labor court. In all cases there is an element in various jurisdictions of a in-built voluntary approach, providing the parties some freedom in the use of the specific machinery. There is, in addition, a growing practice referred to as "alternative dispute resolution" which de-emphasizes the legalistic approach in favor of a type of workplace justice outside the conventional channels. Many governments are realizing that improving the labor relations environment and enhancing the prospects of industrial peace is essential for meeting the economic and social development challenges facing their countries.

ILO's Role:

Apart from helping member States to improve the mechanisms for the settlement of disputes, the ILO has in recent years assisted some countries to establish tripartite institutions for dispute prevention and resolution. These institutions give responsibility to the tripartite partners in managing relations in the workplace. However, irrespective of which of the institutional options is chosen, the overall aim of dispute prevention and resolution is to contribute to deepening democratic governance, and promoting social, economic and political stability.

ILO Conventions and Recommendations Relating to Dispute Resolution:

- Labor Relations (Public Service) Convention, (No. 151) 1978
- Collective Bargaining Convention, (No. 154) 1981
- Voluntary Conciliation and Arbitration Recommendation, (No. 92) 1951 11
- Examination of Grievances Recommendation, (No. 130), 1967
- Collective Bargaining Recommendation (No. 163) 1981

ILO is taking measures to promote effective management of conflict and the resolution of industrial disputes in different countries. Processes like conciliation and mediation are used increasingly, because they help to relieve pressure on the court system, which in many countries has become overloaded with cases, leading to delays and rising costs for both workers and employers.

While conciliation and mediation have gained widespread acceptance, in many countries these processes do not work effectively and often just add to the delays in dispute resolution, leading the parties back to the overburdened industrial courts. In this context that the standards and recommendations relating to social dialogue can play an effective role in dispute resolution at both industrial and national level, in particular, the core standards of freedom of association and the right to collective bargaining as they help in stable labor employers relations and facilitate effective management of conflict in through a mutually negotiated agreement between workers and employers. The relevant ILO Conventions and Recommendations discussed above leave ample room for individual countries to design their own system of dispute settlement, consisting of different procedures for dealing with different type of disputes.

Labor Dispute Resolution Mechanism in Afghanistan:

The disputes resolution mechanism in Afghanistan is not very effective and well developed. The mechanism as briefly underlined in the labor law is very ad hoc and centralized. In the event of a dispute, it is first tried to be resolved within the organization concerned. Within each organization, there is a Dispute Settlement Commission. This committee is like a grievance committee. If the worker considers that his rights have been violated, he can lodge a complaint to the Dispute Settlement Commission presenting reasons and evidence for it irrelevance. This process is more like a negotiation/conciliation process as the two parties concerned discuss the issues with the purpose of resolving them.

If the worker or the employer concerned is not satisfied with the outcome of the internal negotiation/conciliation, then the either party can take up the matter with the necessary documentations with the Central Commission of the Dispute Settlement, located in Labor Law Department in Ministry of Labor, Social Affairs, Martyrs and Disabled. The Commission consists of representatives of the Ministry, Trade Unions and Employers Organizations. This commission after referring to the labor law gives its opinion to the complainant. This process is like arbitration. Since the advice is based on the labor law which is enforceable under the court of law, the advice in most cases is binding. However, in the event of disagreement, or the Commission is not able to resolve the dispute between the involved parties, the issue is presented to the court of law. In Afghanistan, most of the cases are solved at the level of this Commission and very few cases are sent for settlement to the courts. There are no specific labor courts and labor litigation cases, if any, go to general courts.

Under the present system of resolving disputes, work related disputes from all over the country are received in the Ministry either by the complainants or their representatives. At least 40 complaints are received everyday in the Ministry. Out of these about 35 complaints are from Kabul and others from the rest of the provinces, which also indicates lack of awareness outside Kabul. Many of the complaints are verbal and this commission tries to resolve them by giving verbal advice. The disputes mainly relate to violation of labor rights like wages, leave, work conditions, etc. The replies to about 80% of these complaints are made by the Central Commission within three days. These replies are mainly in the form of advisory notes based on interpretation of labor law. These complaints as they are received are entered in the register and any one of the labor law department looks for the interpretation of labor law and international labor standards.

The major problems in disputes resolution system in Afghanistan are:

- Severe lack of awareness of labor law and labor rights among workers and employers.
- Lack of enforcement of labor law, therefore, the employers do not have the fear of punishment and they do not comply with labor law. There are only 15 inspectors to check enforcement of labor law. This number is abysmally small to cover the entire country with 34 provinces.
- The mechanism is highly centralized with all disputes coming to the Central Commission in the Ministry. This process is highly time taking and cumbersome as the complaints have to in most cases travel to Kabul to bring their complaints as sending by post is not reliable and may take very long to reach.
- The staff dealing with these issues in the Ministry has a high turnover and efforts should be made so that they continue for long in this department which needs understanding of the issue and experience.
- The Article 89 and 98 of the Labor Law mainly deal with cases of labor disputes settlement. These articles give a sketchy description of provisions relating to disputes resolution. And the regulation for the purpose is yet to be developed. The disputes are still being handled as per the old regulation based on earlier labor law.

The Ministry is now considering setting up a new disputes resolution department within the Working Conditions department to streamline the whole process. The Technical Advisor for the labor project was the member of the committee formed by the ministry for this purpose. The Terms of reference for the department have been developed and also the disputes registration form enclosed this document. This will help to regulate the process of dispute regulation in the Ministry.

Recommendations:

- Provincial level Commissions to resolve disputes which will be faster and reduce too much burden on the central commission in the Ministry and it will also lead to decentralization of the system.
- Training and capacity building of labor departments in the provinces so that they can handle all such disputes.
- Cultivating a culture of negotiation between workers and employers in organizations to resolve issues through mutual understanding and dialogue.

Examine:

- Number of disputes received in 2008 and 2009 and how many resolved using the new labor law in 2009 as compared to 2008- to judge the awareness of new labor law and its provisions within the ministry.

Sources of Work Standard-Related Dispute Settlements:

Article 89:

If any dispute arises between the organization and the Council of Representatives as regards the setting of standards, then the issue will be settled by the following authorities:

1. In the ministries, state institutions, SOEs and private and joint ventures in which the government shares is more than 50%, the authorized authorities in cooperation with MoLSAMD.
2. In social and cooperative organizations and private and joint sector that government shares are less than 50%, by involved parties under supervision of MoLSAMD.

Complaints of the Staff to the Commission:

Article 98:

Should the worker consider the punitive measure to be unjustified, he could lodge a complaint to the Dispute Settlement Commission presenting reasons and evidence for its irrelevance.

If the Dispute Settlement Commission will not take measures to the worker's complaint, the worker can take up the complaint, with documentation, to the Central Commission of the Dispute Settlement. In case of dispute between the involved parties, the issue is presented to the court of law.

Regulation for dispute regulation

The working plan for 1388

The ToR for the Department of Dispute Resolution 14

ANNEX C: Evaluation of the MoLSAMD INSPECTION MECHANISM

Legislation for the protection of labor rights acquires real meaning only when it is enforced effectively. Therefore, it is essential that effective labor inspection system is put in to place to translate legislative provisions into practice. Labor inspections cover wide issues of labor welfare such as health and safety, social dialogue, legislation, market-control mechanisms, working conditions, the fight against illegal work, HIV/AIDS or child labor, etc.

Labor administration and labor inspection have become increasingly important in recent years, world over because labor administration in a globalized world has become a key factor in the implementation of government's economic and social policies. Labor administration means "public administration activities in the field of national labor policy." It is an essential tool with the government for fulfilling its responsibilities towards social issues. Labor inspection system is part of labor administration. It helps to ensure the implementation of labor policies at grass -roots level, getting its feedback and allowing for a readjustment of labor policies of necessary.

The functions of labor inspectors mainly include: (1) enforcing labor law and related regulations, (2) Advising employers and workers on the provisions of legislation of their responsibilities and promoting harmonious industrial relations and (3) reporting to superiors on problems and deficit areas in the organization including those not covered by the law.

The inspections mainly focus in enforcing labor law in respect of the following:

- The terms and conditions of work, including wages, hours of work, leave and overtime payment.
- Work place safety and health.
- Employment of children, young persons and women.

ILO's Conventions on Labor Inspections:

The International Labor Organization (ILO) has always had a deep interest in the promotion of effective systems of labor inspection to ensure that the labor standards provided for in the labor laws are given practical effect and thus become actual standards of protection for workers. International standards for labor inspection have existed for many years. These include the Labor Inspection Convention, 1947 (No.81), and the Labor Inspection (Agriculture) Convention 1969 (No. 129). Other Conventions include provisions on labor inspection such as the Convention concerning Occupational Safety and Health and the Working Environment, 1981 (No. 155); the Convention concerning the promotional framework for occupational safety and health, 2006 (No. 187) and the Convention concerning the Inspection of Seafarers' Working and Living Conditions, 1996 (No. 178) which recognizes the need of a labor inspection for the sea people.

Labor Inspections Department in the Ministry:

Existing scenario: The labor inspections in the Ministry of Labor, Social Affairs, Martyrs' & Disabled are carried out by the Inspections Department located in the ministry. This department is headed by a director and includes 15 inspectors. This number is abysmally low to carry out inspections in the entire country. The inspections are not carried out as per any annual plan. These

are carried out based on the availability of funds and security conditions in the country. These 15 inspectors are normally divided in to 5 groups with three inspectors in each group.

In a year, for three quarters, the inspections are carried out in Kabul and for one quarter, the inspectors visit provinces. In provinces, only government departments are inspected and in Kabul, government as well as private organizations is inspected.

The procedure of inspections include that the team of inspectors after selection of the organization to be inspected, meet the head of the organization and handover the list of questions and papers they need to see. There is no questionnaire which is followed for these inspections. These inspectors normally check the records relating to process of recruitment, employment conditions, service records, personal files, grade levels, working hours, overtime/ shifts etc. They also check the provision of safety equipment and the winter and summer clothing to workers. The inspections can take 2-3 months for large ministries and from 3- 10 days for private organizations depending on the size of the organization. There is no clear cut criterion for selection of organizations for inspection. During the inspection, the inspectors also guide the employers about various provisions of the labor law. In the end the team of inspectors prepares a report and protocol pointing out the deficiencies in the organization. The head of the organization concerned signs the protocol and it is given a clear time line to rectify these deficiencies.

Problems:

The number of inspectors is so low that it is practically impossible to cover the country with 15 inspectors.

- There is no laid out inspection plan.
- There is no criterion for selection of organizations for conducting inspections.
- The coverage of inspections is too limited and in provinces it is even more limited as it covers only government departments.
- There is no inspection machinery at the provincial level. Therefore the existing inspection mechanism is highly centralized.
- There is very limited coverage of women and children workers issues in the inspections.
- There are very limited funds available with the inspections department to carry out these inspections, which further limit the scope and coverage of inspections.
- There are no training programs for inspectors to make them aware of modern tools for conducting labor inspections in organizations.

Recommendations:

Considering the fact that the violation of human rights including their rights at work place is rampant in Afghanistan, there is a need for a very robust and strong labor inspection machinery to protect labor rights. To build up this system, there are a few recommendations as follows:

Planning of Inspections:

The work of the labor inspectors should be properly planned if policy objectives and obligations under the labor law are to be met. Labor enforcement should be systematically planned to make the best use of the scarce resources available with inspectors. Planning would involve taking stock of the existing situation and fixing targets for the number of inspections to be carried out. This would also involve laying down an annual action plan for the inspections department. This action plan will provide information on who will do what and when? It could address issues like:

- 1) How organizations are legally liable to inspection?
- 2) How frequently should the organizations liable to inspection be visited?
- 3) Where the organizations are liable to be inspected located?
- 4) Which organizations should be given priority in inspection?
- 5) How should priorities be determined?
- 6) How many inspectors are available to carry out inspections?
- 7) What is the reasonable number of monthly inspections for each inspector?

Each inspector should be aware of his target number of inspections and which organizations he has to inspect, weekly and monthly. This program must take into account the workload with the inspector, public holidays and his annual leave. The inspection program of each inspector should be developed in consultation with the inspectors, superiors and colleagues.

The Means of Action of Labor Inspection:

The functioning and effectiveness of labor inspection services would be to a large extent dependent on the human and material resources available with inspection department. Proper remuneration is also necessary to attract and retain a high grade inspectorial staff, so that they remain devoted to their work and they carry out their duties with integrity, tact, intelligence and impartiality. Therefore, the inspection system must have sufficient, competent and properly paid staff, having a certain authority and necessary material means.

The labor inspectors in most countries are organized in a hierarchical system with Director General at the top. Below DG are the provincial or regional directors, then inspectors and assist inspectors. Therefore, there is a need to activate the inspection machinery at the provincial level in Afghanistan to ensure effective inspections in the provinces.

As regards, the number of inspectors, ILO Convention 81 and 129 specify the criteria to be taken into account like the nature, size and situation of workplace to be inspected, the number and complexity of legal provisions, the practical conditions under which the inspection is to be carried out etc. Therefore, there is a dire need to substantially increase the number of inspectors in the Ministry to have an effective labor inspection system.

Enforcement Measures:

The inspection system aims in the first go at securing voluntary compliance with the law by assisting employers and workers to understand the legal requirements and by giving them useful and practical advice on the best means of compliance. However, in addition, the inspection system must be capable of enforcing compliance by applying legal penalties when efforts to secure voluntary compliance fail. Also a system of warnings and orders must be interposed between these two

extremes of persuasion and legal sanctions. In cases of minor offences, labor inspectors may issue a warning and there after an order requiring remedy to a defect with a time period for compliance.

Training:

Apart from the labor law provisions, the inspectors must also have a certain level of knowledge in such fields like law, economics, sociology, etc. Regular trainings are therefore required for the inspectors to make them aware of the changes in the economic situation in the country and their efforts in work and employment. Inspectors in the Ministry of Labor Afghanistan also need to be trained in the modern techniques of labor inspection as well as made aware of certain good practices in other countries in the region so that they can replicate them in Afghanistan.

Material Means and Documentation:

The existence of effective inspection systems would also to a large extent depends on the existence of material means like premises, furniture, office equipment, transport facilities etc needed for their work. The inspection directorate also must have sufficient copies of updated documentations like laws and regulations to be enforced, circulars and directives of the ministry etc. The inspectors in the ministry feel that there are no proper arrangements for their transport which makes their task of conducting inspections even more difficult and time consuming.

Workers' Protection:

There are certain categories of workers who are not adequately protected or protected t all. These are temporary workers, sub contracted workers, home-based workers, rural workers, urban non formal sector workers part time workers, women, disabled child and young workers. Many times, labor inspections do not adequately serve these categories of workers. In Afghanistan, the labor inspections are not focusing on issues of rights of women workers like equal wages, non discrimination in employment, safety and health provisions etc. Similarly inspections are not covering issues of child workers as well as disabled workers. The labor inspectors in Afghanistan need to be sensitized to adequately cover these issues in their inspections.

Also experience in other countries reveal that hiring of women inspectors also help in effective protection for women and young workers. Therefore, for certain areas where proportion of women and young workers is high, women inspectors can be employed and assigned special duties with respect to these workers. In the inspection department in the ministry, there is no woman employee. Women should be posted to inspection department as office assistants as well as inspectors to appropriately address their issues.

Labor Inspection Reports:

In the existing system of labor inspections in the ministry, there are no specific reports being made by the inspectors to the ministry in addition to the report they make for the employer of the organization. Therefore, there is no clear reporting to the ministry on the issue and no specific records are available. Therefore, the labor inspectors should make two types of reports, the reports which are made periodically by the labor about their work, their observations and results obtained and the annual reports published by the service on the work of inspection as a whole. To enable the ministry to have constant supervision over enforcement, the inspectors should submit regular reports of their activities and observations. These reports may be submitted as per the

following plan. This will help in easy supervision of the work of inspectors. The information to be recorded may include:

- a) Identification of the organization visited, including address, nature of business, number of workers employed etc.
- b) A summary of inspectors investigations including references to hours of work, leave, wages, conditions of work for women and young workers, health hazards, sanitation etc, and any violations that may have been noticed and warnings and orders issued to rectify them.
- c) Other details like inspector's name, date and time of the visit, the names of persons interviewed.

In addition, the labor inspection department must also prepare an annual report of the activities of the department. This report can be published by the ministry as the work carried out by the department in a year.

ANNEX D: Training Curriculum and NLI Training Agenda

See attached.

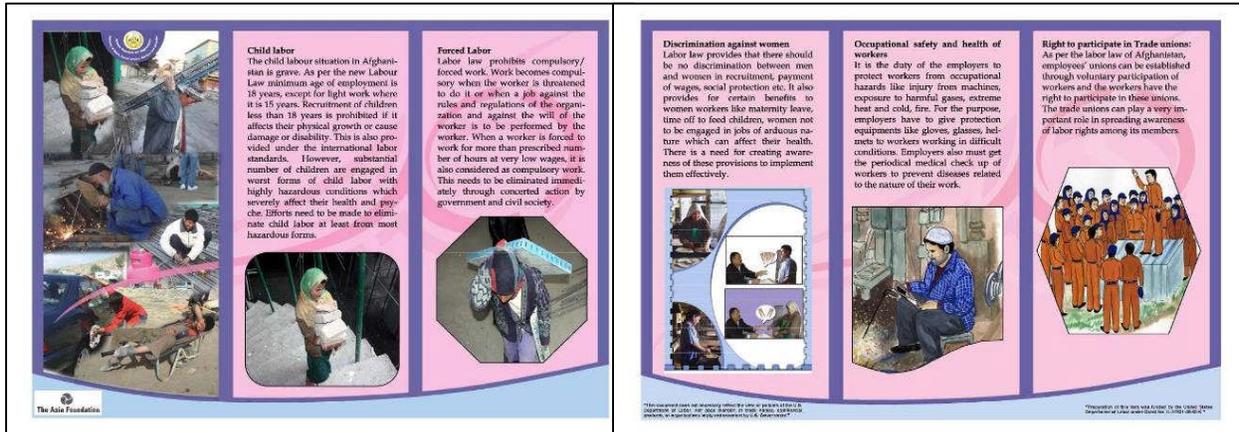
ANNEX E: MoU on labor between Afghan-Indian governments

See attached.

ANNEX F: MoLSAMD brochure about needed labor reforms for the ILO Conference

See attached.

ANNEX G: IEC MATERIALS



Labor Law brochure and posters distributed in target provinces.

ANNEX H: Training Table

The Asia Foundation Labor Law Program

Training Workshops October 2009 – June 2010

Program	Number of participants	Location	Date		Topics
			From	To	
Initial Training program	340	Kabul	Oct 25, 2009	Oct 29, 2009	See listing following below
Initial Training program	285	Balkh	Dec 06, 2009	Dec 10, 2009	See listing following below
Initial Training program	285	Herat	Jan 03, 2010	Jan 07, 2010	See listing following below
Follow up workshop	272	Kabul	Jan 26, 2010	Jan, 27, 2010	The participants of the follow-up workshop were the participants who had been trained in the initial training programs; topics were the same but more advanced.
Follow up workshop	291	Balkh	Feb 09, 2010	Feb 14, 2010	
Follow up workshop	270	Heart	March 17, 2010	March 18, 2010	
Training for Labor Directors of 34 provinces	34	Kabul	Nov 24, 2009	Nov 25, 2009	Afghan Labor Law and international labor standards
Gender Workshop	15	Kabul	May 30, 2009	May 30, 2009	Provisions of labor law about women's rights
Training for master trainers NLI, India	25	India	July 19, 2009	July 31, 2009	See listing following below
Gender Workshop	20	MoWA	June 17, 2010	June, 17, 2010	Social Security for women workers under the labor law

Topics of the initial training programs and follow up workshops:

Afghanistan Labour Law, International Labor Standards, Conciliation, Prevention and Settlement of Labor Disputes , Child Labour and Law, Contract Labour and Law, Collective Bargaining, Social Security For Labour, Women and Labour Law, Social Dialogue