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PAKISTAN'S AGENDA FOR ACTION

INTERM REPORT

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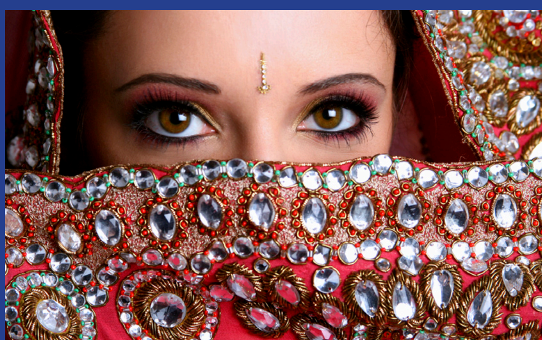

BIZCLIR

Business Climate Legal & Institutional Reform

INTRODUCTION

Pakistan: Economic promise, remaining constraints

For decades, Pakistan has suffered from low levels of foreign investment, costly confrontation with India over the disputed Kashmir territory, and domestic political instability. Following President Musharraf's rise to power in 1999, however, the country has endeavored to turn around its faltering economy. Beginning in 2002—and coinciding with the appointment of a new Finance Minister, institution of IMF-approved government policies, generous foreign assistance, and new access to global markets—Pakistan has enjoyed solid macroeconomic recovery and overall economic growth.[1] The government has privatized the banking sector and made other substantial macroeconomic reforms, including a 52% real increase in budget allocation for development spending in FY2007.[2] Poverty levels have decreased by 10% since 2001, and GDP has been growing at a rate of 6% to 8% since 2004.[3]

Indeed, the recent strengthening of Pakistan's economy is regarded as a regional success story. As one scholar notes, a "stable, prosperous, progressive Pakistan could trigger a new spurt of South Asian development."[4] Compared to its neighbors, Pakistan fares relatively well as a destination for "doing business," which means that companies are more able to join the formal sector, access credit, pay taxes, employ workers, invest, and engage in other functions that contribute to sustained economic growth. Specifically, in the World Bank's most recent "Doing Business" survey, the country ranks 74th out of 175 countries, better than all other South Asian economies except Nepal.[5]

Yet Pakistan is hardly free from legal and institutional encumbrances that constrain its ability to emerge from its status as a low income, high-poverty country. And the World Bank's high-level review of major categories of concern to business indicates that the momentum of certain reforms may be slowing down. As exhibited in Table I, only in the areas of paying taxes and trade across borders has Pakistan exhibited very recent progress in comparison to other countries.

Table 1. World Bank Doing Business Indicators

World Bank "Doing Business" categories	2006	2005	Change
Doing Business overall	*74*	*66*	*-8*
Starting a Business	54	44	-10
Dealing with Licenses	**89**	**93**	**-4**
Employing Workers	**126**	**120**	**-6**
Registering Property	**68**	**57**	**-11**
Getting Credit	**65**	**59**	**-6**
Protecting Investors	19	18	-1
Paying Taxes	140	143	+3
Trading Across Borders	**98**	**117**	**+19**
Enforcing Contracts	163	163	0
Closing a Business	46	34	-12

This assessment provides a "snapshot" of Pakistan's current situation with respect to seven key subject areas assessed. First, this assessment focuses on five Doing Business categories identified by USAID as especially significant (in bold in the table above): Dealing with Licenses, Employing Workers, Registering Property, Getting Credit, and Trading Across Borders. USAID's Mission in Pakistan requested that two additional areas be studied: (1) gender, as a crosscutting theme throughout the entire assessment and as the focus of a separate analysis of the impact of Pakistan's socio-cultural and legal environment on women in the business environment; and (2) commercial law and trade issues involving the Federally Administered Tribal Areas (FATA), an area of approximately 27,220 square kilometers midway along Pakistan's western border with Afghanistan and composed of seven "political agencies" and six smaller zones known as the "frontier regions." FATA is among the most poorly developed parts of Pakistan, and its administration poses tremendous challenges to the Pakistani government.

This assessment does not directly address Pakistan's political or economic future or broad economic policies, nor is it intended to do so. If one accepts, however, that an enabling environment for business and trade requires a detailed understanding of a country's legal, institutional, and social conditions for economic growth, as well as a strong legal and institutional

[1] See, e.g., CIA World Factbook at https://www.cia.gov/library/publications/the-world-factbook/geos/pk.htm and Stephen P. Cohen, The Idea of Pakistan (Brookings: 2004), p 313.

[2] CIA World Factbook.

[3] Id.

[4] Cohen, p 1.

[5] World Bank, Doing Business in 2007, at http://www.doingbusiness.org/economyrankings.

framework, then this assessment is a valuable tool for assessing where Pakistan is today and what is needed for expanded and continued growth in the future.

The original assessment work was conducted in mid-2007. The report findings in 4 sections were later revised and many sections were updated. This report contains in the main body, the original Employing Workers, Registering Property and Getting Credit sections done in 2007, as well as a new Trade Across Borders and Dealing with Licenses sections which were done in 2008. The report contains various annexes with the chapter on the Federally Administered Tribal Areas (Annex I), the original Dealing with Licenses chapter (Annex II), as well as the original 2007 Gender chapter (Annex III). As of the date of this interim report, the gender chapter is being revised. A new final report will be issued in 2008, which will include a revised Gender chapter.

The Pakistan BizCLIR Assessment Report and Indicators

This report is grounded in a comprehensive methodology, established through USAID's Economic Growth Office, which has been used in over 25 countries since 1998.[6] Incorporating lessons learned from that commercial legal and institutional reform assessment tool, USAID recently sponsored the development of an updated and redesigned set of indicators through its Business Climate Legal and Institutional Reform (BizCLIR) project. For the first time, these indicators have been aligned with the structure of the World Bank's enormously influential annual Doing Business country reports. The revised indicators serve as the vehicle for conducting an in-depth analysis of the state of Pakistan's enabling environment for business and trade through targeted questions that generate a "360-degree" understanding of the country's legal, institutional, and social conditions for economic growth.

The approach was chosen in light of demand for better understanding of Doing Business issues. Currently, Doing Business presents a set of quantitative indicators pertaining to business regulations and the protection of property rights that speak directly to the concerns of actors who actually do business. For each of the topics it examines, the World Bank has selected a few key indicia of whether and how the environment for doing business is "working," measured by such means as the number of procedures involved achieving a goal, the number of days it takes, and its cost in relation to per capita income.

The purpose of this USAID-sponsored BizCLIR assessment is to study selected Doing Business topics in greater depth so that Pakistan can bolster its performance in particular areas by knowing where opportunities and critical roadblocks exist. Beginning with the central focus of the Doing Business inquiry, the newly aligned indicators delve into the specific details of the legal framework, implementing institutions, supporting institutions, and social dynamics. They examine topics from a variety of perspectives, illuminating, for example, how a certain business process applies to rural communities, small and medium-sized businesses, and—of particular relevance in Pakistan—women-owned enterprises. The goal of this comprehensive assessment is to identify and prioritize opportunities for reform drawn from a deeper understanding of the Doing Business topic at hand.

The Islamic Republic of Pakistan was formed in 1947 out of five provinces of British India into a Muslim state, with two of those five Indian provinces (Punjab and Bengal) being partitioned between India and the newly formed Pakistan. Slightly less than twice the size of California in land area, Pakistan borders the Arabian Sea to the south, India on the east, Iran and Afghanistan on the west, and China on the north. It has a relatively young population (the median age is 20.9 years) of roughly 165 million inhabitants, and a population growth rate of nearly 2% per year.

The in-country portion of this assessment took place from June 2 to 15, 2007, when a team of expert consultants, including three Pakistani nationals and a representative from USAID-Washington, D.C., traveled across Pakistan to conduct a comprehensive study of the country's laws, public and private sector institutions, and social dynamics relating to commercial law and trade. The team members and topic area assignments were:

- Thomas Pellerin (Team Leader)
- Lola Rhode (Assessment Coordinator)
- Joe Lowther and Rafia Qureshi (Revised Dealing with Licenses chapter)
- Feisal Naqvi (original Dealing With Licenses)
- Michael Cardoza (Employing Workers)
- Andrew White (Registering Property)
- Wade Channell (USAID) (Getting Credit)
- Mumtaz Ali (Trading Across Borders)
- Nasim Zehra (Original Gender Chapter)
- Muhammad Ali Khan Saif (FATA)

[6] Detailed information about the Seldon Project can be found at www.bizlawreform.com.

- Maria Alejandra Rodriguez (Lead-Revised Report)

Although the gender and FATA areas of the assessment did not involve scoring indicators, they did entail significant advance research and preparation, followed by an extensive series of in-country interviews and a critical period of consultation among colleagues. For all topics, in-country interviews were conducted across all sectors and included high-level government officials, owners of small and medium enterprises, and representatives of civil society and private industry organizations. These interviews took place in Islamabad, Karachi, Peshawar, Sialkot, Lahore, and the FATA region. Each location was chosen to obtain an accurate "snapshot" of Pakistan's legal, institutional, and social conditions for economic growth, and of the enabling environment for business and trade. Specific questions were created to elicit a variety of perspectives and viewpoints, and to seek explanations for how a certain topic works in all pertinent communities—from the business centers in the Karachi, Lahore, and Islamabad to the industrial center of Sialkot, to more remote locations in Peshawar and FATA.

Structure and Scoring

Each of the five Doing Business-aligned subject matter areas set forth in this report is structured in the same way. Specifically, each area is broken down into four sub-sections:

Legal Framework. The indicators and chapters first examine the laws and regulations of Pakistan that serve as the structural basis for the country's ability to achieve and sustain market-based development. They pose the following questions: *How accessible is the law, not only to elite, well-informed groups, but also to less sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework?* Often discovered through this review are opportunities to make relatively small changes that may result in significant openings for business development and expansion.

> This assessment took place in a number of cities. Islamabad was included due to its importance as the capital city and the presence there of key government ministries and institutions. Karachi and Lahore were selected due to their significance as large urban areas with expansive business development and cross-border trade, and because each presents a culturally different part of Pakistan. Although much smaller than Karachi or Lahore, the city of Sialkot is no less important as a major industrial hub of Pakistan, and is renowned especially for light manufacture and export of sporting goods, surgical instruments, textiles, and paper products. Peshawar was selected because of its proximity to both the Afghan border and FATA region; it provided an excellent study of more rural and traditional Pakistani society and culture—especially important as a balance to the other faster-paced and more globalized cities visited by the team.

Implementing Institutions. Next, the indicators and chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework and subsidiary laws, regulations, and policies. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing certain areas of the commercial law. With respect to international trade, customs, immigration, and other border authorities are the chief implementing institutions. Again, the indicators seek to uncover how these implementing institutions function not only within Karachi and other major commercial centers, but also in rural communities and FATA, and among less empowered constituencies, such as women.

Supporting Institutions. The indicators and chapters then look closely at those organizations, individuals, or activities without which the legal framework or policy agenda in Pakistan cannot be fully developed, implemented, or enforced. Examples include lawyers, banks, business support organizations and private services, professional associations, universities, and the media. Questions and analyses examine relative awareness of law and practice on the part of each institution, and the specific ways in which institutions increase public and professional awareness, work to improve the business environment, and otherwise serve their constituencies. In certain instances, weaknesses in one or more supporting institutions have been identified as critical areas for reform.

Social Dynamics. Finally, the indicators look to relevant, critical social issues. These questions attempt to uncover roadblocks to reform, including entities that may have an interest in subverting change. These indicators also seek to identify significant opportunities for bolstering the business environment—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

With respect to the five Doing Business areas of inquiry, a process of scoring **key indicators** was used to assist the assessor in developing the most thorough analysis possible during the visit to Pakistan. Once as much relevant information as possible was gathered—from written sources, meetings and interviews, and consultation among colleagues—each of the key indicators was scored based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 5 and 20 **supporting questions** accompanied each key indicator. These questions themselves were not scored, but were intended to guide the assessor towards a consistent, factually-based judgment from which the key indicator score was then be derived.

The score awarded key indicators aligns with the following conclusions:
1 = strong negative
2 = moderate negative
3 = neutral (or having some negative and some positive qualities)
4 = moderate positive
5 = strong positive

These scores are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in Pakistan. Rather, they should be read in conjunction with this report as a means of (1) understanding the relative status of certain key indicators of a healthy legal and institutional environment for business and trade, and (2) identifying priorities for reform.

Crosscutting themes

Certain issues and dynamics are so prevalent across an analytical framework that they bear special mention. They can be thought of as crosscutting themes or topical "layers" that fall over all areas of review. The assessment is organized so that the typical components of a healthy society and a prosperous economy are discussed discretely and then related to each other where appropriate. This format represents much of the Western mental construct about civil society and an individual's relationship to the state and other organizations. Thus, in order to appreciate the true impact of the unique themes that permeate the findings and recommendations in this report, it is important to keep in mind that they not only overlap and affect all of the separate analytical areas, but each other as well.

Against this backdrop, a number of primary crosscutting themes emerged during the course of this assessment: (a) the place of women in the economy, specifically the impact of Pakistan's socio-cultural and legal environment on women in the business environment; (b) over-burdened and ineffective court systems; (c) opacity and confusion relating to land ownership and registration; (d) poor education, including especially the education and training of lawyers and judges; (e) inefficient and ineffective institutions; and (g) fragmentation of strategy and reform efforts. The issue of corruption surfaced in many of these themes.

Women. The place of women in Pakistan's economy emerges as a critical issue across all areas of assessment. Throughout a multitude of interviews, team members were reminded of constraints and compulsions regarding the place of women in Pakistani society, especially in Pakistan's business and commercial sectors. Perennial issues include women's participation in organizations and industry; the ability of women to professionally run their own organizations; the special needs of the female entrepreneur; equal access to resources and opportunity; and integration of women workers.

While the quality of life for women and girls in Pakistan has improved in recent years, through better access to paid employment, education, and health, women still lag significantly behind men in all aspects of commerce and society in Pakistan—and Pakistan still lags significantly behind other economies in the Asia-Pacific region.[7] According to the World Economic Forum's Index on the Economic Empowerment of Women, Pakistan is the "second worse performer of all 58 countries surveyed," ranking 53rd in terms of economic participation of women and 54th in terms of economic opportunity for women.[8] This has significant implications for Pakistan's economic growth: it has been observed that "linkages between female participation rates and economic growth rates are quite clear in all instances."[9] From 1970 to 1990, Asian-Pacific economies experienced a GDP growth rate of 1.96% for every 1% increase in women's participation in non-agricultural employment, and women's economic participation may have contributed 35% to 40% of the annual economic growth of newly industrialized countries over three decades.[10]

The many reasons for the gap are mostly rooted in cultural and societal norms. A number of employers interviewed in this assessment, for example, indicated that they would hire more women, but that women generally leave the workforce once they become

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7 Competitiveness Support Fund, Policy Study into the Economic Empowerment of Women in Pakistan and its Linkages with Competitiveness and Economic Growth, Executive Summary, http://www.competitiveness.org.pk/downloads/PolicyStudyintotheEconomicEmpowermentofWomenFinal.doc.

8 Id.

9 Id., S. 2.1.

10 Id.

married. In a highly patriarchal society like Pakistan's, women take on limited stereotypical gender roles that confine them to the home as a matter of "honor." Family loyalties (which can extend to distant relatives and tribal members) are accorded priority over other connections, including social and business relationships. Another topic of debate associated with more women in the workplace is the impact on the employability of men: will women be competing with men (including their husbands, brothers, and fathers) for a limited number of jobs, or will their presence contribute to an expanded Pakistani economy and, therefore, more job opportunities for everyone? As noted in the World Bank's 2005 Pakistan Country Gender Assessment, "the interaction between custom and law within the domain of the family [and within the larger cultural and sociopolitical context] essentially defines the *de facto* set of opportunities available to women, as well as the barriers they confront in fulfilling other basic needs such as education and health."[11]

The team did observe, however, that issues of culturally defined inequality, access to education and paid work, and the overall integration of women into the business and commercial arenas in Pakistan are heading slowly in a positive direction. Pakistan is in a period of prolonged economic growth—it has grown 6% to 7% annually for several years—and that growth creates greater openness to social change. The government is generally reformist vis-à-vis the economy. Many men are beginning to discover that having their wives or daughters economically active benefits the household. Colleges and universities are graduating an increasing number of women, and women now constitute more than half of the student population in some disciplines.

Gender constraints and opportunities tend to vary significantly across socio-economic strata. For poor, rural women, a deeper level of customary restrictions on activity and mobility undermines economic opportunity outside the home. At one extreme, within FATA, reportedly less than 2% of girls have access to formal education, and that figure is barely higher in the North West Frontier Province.[12] Throughout Pakistan, micro-lending to women is limited compared to other countries, but seems to be slowly opening minds.

At the upper end of society, there are a number of high-profile women entrepreneurs and businesspeople who tend to perceive less discrimination based on gender. In the vast center, among the urban and peri-urban populations, the roles and restrictions described above still predominate. Programs to assist women should account for these differing conditions among socio-economic groups.

The Gender findings of this interim-report are being revised, and a new chapter to be completed in 2008 will shed additional light on gender related issues in Pakistan. These findings will be incorporated to the final report.

Courts. In a series of landmark decisions from 1997 onward, the Pakistan Supreme Court held that the right of access to justice is a fundamental right. Yet access to justice in Pakistan remains a significant problem, with stakeholders reporting that the courts do little to resolve disputes and serve mostly as a tactical distraction or lever between the parties to a disagreement. Many cases are filed not for the purpose of seeking ultimate relief, but instead for "strategic reasons," such as to obtain interim relief in order to get the opposing party to negotiate on preferential terms.

A study conducted for the Asian Development Bank found that the average time taken for a civil dispute to be adjudicated in the Sindh High Court (excluding appeals, the allowance of which is almost inexhaustible) was 118 months. One High Court Justice in Pakistan commented that there are at least 25,000 cases currently pending before his court alone. In the lower civil courts, the problem is considerably worse. Real property disputes, which can account for as much as 75% to 90% of the civil docket in the district courts, generally languish in those courts for up to 10 years. The fact that the system is clogged with property disputes means that even non-property disputes (such as breach of contract cases) take incredibly long to adjudicate: a simple lawsuit to enforce a contract involves more than 50 procedures and takes almost 900 days to conclude. According to practitioners, this estimate is understated, with simple suits sometimes taking as many as four years to collect upon. And the use of specialized courts does not improve the problem. In matters brought before the labor courts, for example, a period of 8 to 12 years (including appeal to the provincial High Court) is not uncommon.

Assertive case management by the judges is non-existent. Judges often spend the day calling attorneys to appear before them in person in order to simply issue another continuance in their case. Legal reforms aimed at a more efficient judiciary have not gone far enough. There is little public confidence that the courts—as currently structured and given the subsistence wages

[11] World Bank, Bridging the Gender Gap: Opportunities and Challenges, PAKISTAN Country Gender Assessment, Report No. 32244-PAK (October 2005).

[12] Ashfaq Yusufzai, "Education-Pakistan: Taliban Orders Girls into Veils in Border Areas," Inter-Press Service (July 27, 2007).

paid to most judges—will soon fulfill their mandate of timely, efficient administration of justice. Reform will require both long-term institutional work with the courts and shorter-term solutions focusing on self-help and alternative dispute resolution (ADR). Automation and case management improvements will not overcome inherent defects; they will only allow courts to do the wrong things more quickly. The levels of dysfunction identified by respondents suggest that there are design flaws in the judiciary that cannot be corrected through efficiency gains. Better education and training of judges are needed (the current six-month judicial academy is inadequate because most of the time is spent teaching the basic principles of law that were never learned as part of the fundamental LLB education). Judges need to be better paid. Clearer procedural rules need to be implemented and judges need to be instructed in effective methods of case management, including the use of summary disposition, cost (wasting) orders, and striking of pleadings, where appropriate.

Courts should be the last resort for resolution of disputes, but this requires other viable options. Recent legal reforms have introduced court-annexed arbitration and mediation, but these new tools are underutilized. Judges complain that these tools impinge on their jurisdiction, describing ADR as "outsourcing of justice." Unfortunately, there is reason to believe that some of this protest arises from the loss of rents (i.e., informal and illegal fees) collected by judges at some point during a case. Practitioners note that judges are seriously underpaid, and most interviewees perceive that rent-seeking behavior is common. This is echoed by the findings of Transparency International, which ranks Pakistan 142nd out of 163 in its most recent Corruptions Perception Index.[13] Moreover, the arbitration law is fundamentally flawed: arbitration decisions are not binding, and thus can be ignored by a recalcitrant party and even overturned in court. This may explain why various business and professional associations have been slow to develop the ADR services that are common in many other countries. As a result of the weakness of ADR in Pakistan, the overall enforcement system is weaker and less reliable.

Unsurprisingly, women experience greater problems with the courts than men. The judicial system is generally unsupportive of women claimants because of their lower levels of education and business sophistication, and because of general norms against women in public places. (Norms against women in public places persist particularly in rural areas, where women are sometimes not allowed to travel without a male escort, much less appear in court on their own behalf.) Exceptional women are able to use the court system as effectively as men, but they are, indeed, *exceptions*. Women are less likely to use the court system to enforce their rights, to the extent that enforcement is currently possible, and are less likely to be able to defend their interests in court against a claim.

Land ownership. The ability to freely own land and to easily transfer and register that ownership is a fundamental requirement of business and economic growth in a free-market economy. Land and improvements to land are the foundation for wealth creation. A strong legal and institutional framework for land ownership is imperative in order for businesses to own, use, and sell all types of property; manufacture and sell products and services; raise capital; and obtain credit. Indeed, secure ownership of property and an objective, transparent, and uniform system of property registration are necessary in all economies. Throughout this assessment, a recurring theme is that problems with land registration and clouds on land title (including leasehold interests) are severely impeding a variety of desirable outcomes: the ability of entrepreneurs—especially women—to start businesses and obtain capital; the security of investments in real property; the efficiency and effectiveness of the courts in all civil matters; access to credit; and the overall economic growth of Pakistan.

An overwhelming majority of interviewees identified problems with land registration and transfer of title as the single biggest problem confronting Pakistan's ability to create a more effective enabling environment for business and trade and to promote stronger economic growth. The legal and institutional systems relating to land registration and transfer of title are quite slow (measured in terms of months and years). They are also complex, opaque, and inconsistent within and between the several provinces (and especially between rural and urban areas). In addition, there are important social concerns arising from poor understanding and awareness of the laws, access to the implementing institutions, and enforcement of property rights, especially among women.

Real property—land and buildings—can be a major source of security for credit, especially mortgage and construction lending. As very little land or other real property (such as apartments) has clear, registered title, use of real estate to secure credit is problematic in Pakistan. Banks may lend up to 70% of the value of titled property, but remarkably little property with clear title is available. The land registries, such as they

[13] See Transparency International, "Corruption Perception Index," at http://www.transparency.org/policy_research/surveys_indices/cpi/2006.

are, do not register ownership of land, but rather tax obligations based on use. Registration may be evidence of ownership, but it is not universally accepted as proof of ownership. In fact, it is possible under existing law for a person to make a gift of land to another without registering the exchange, and what appears to be good registered title may have been superseded by an unregistered transfer of title. A lender cannot know whether the land being offered as collateral has been given to another person who may have a legitimate claim on the property should the borrower default. Consequently, banks are reluctant to rely on mere registration.

Even when a bank is willing to lend money in such cases, it may decide only lend up to 50% of the value of the secured property in an effort to minimize the bank's risk. In other countries with more robust systems of title, it is not unusual for financial institutions to lend 90% (or more) of the value of a property. That 40% differential is *dead value*, an opportunity for economic growth lost as a direct consequence of a dysfunctional system of property regulation. This loss is further magnified by relatively high interest rates imposed due to the inherent risks involved. Without extensive improvements in the land titling system, Pakistan's real estate lending will remain stunted and relatively unavailable as a source of capital for commercial expansion and overall economic growth.

Problems with land registration and lack of clear title also severely impact access to justice for all Pakistanis. The huge numbers of land disputes that clog the courts prevent other litigants from pursuing legal redress and prevent the system from enforcing other areas of legal rights. These disputes arise primarily from inaccurate records (including multiple registrations by different parties of the same land interest and poor boundary descriptions that cause overlapping claims), a multiplicity of institutions with jurisdiction over the registration processes, and many opaque processes.

The opacity of the processes of land registration and lack of clear title also lead to a further social issue: significant opportunities for rent-seeking by the people involved in the processes. In most areas of the country, for example, a low-level government revenue official—the *Patwari*—has enormous and exclusive power. The *Patwari* holds the only land registration records in the jurisdiction, and has exclusive authority to note any changes in the land ownership. The *Patwari* is also the only official surveyor of the lands within a given jurisdiction, and, as such, determines the boundaries and is the sole arbiter of any boundary disputes. The *Patwari's* records are all manual, usually carried with the *Patwari*, and most *Patwaris* maintain no official office for conducting their duties. The system is opaque, subjective, and subject to abuse. The system is also is widespread: while generally thought of as a system that is only used in rural areas, *Patwaris* also have authority over lands in urban areas (such as nearly a third of urban Karachi) that, while legally defined as rural or "agricultural" lands, have actually been subsumed by urban growth and, in many cases, are actually owned by urban development authorities.

Table 2. Education Statistics

Education in Pakistan	
Schools without drinking water (2005)	19%
Schools without toilets (2005)	23%
Schools without electricity (2005)	33%
Females in school (2006)	43%
Drop-out rate (ages 5-10) (2005)	40%
Literacy rate	
2001-2002	45%
2004-2005	53%

Education. From 2002 to 2004, Pakistan spent less than half as much of its money on education as did nearby Iran and Kyrgyzstan, and considerably less than India and Bangladesh. As a result, literacy levels are low, though improving. There are some excellent schools producing well-educated professionals, but the supply is far below the demand.

Historically, Pakistan's business community has seemed unaware of the need for an educated workforce. In fact, many in the business community may have preferred a less educated workforce which, in turn, is less aware of its rights and less likely to challenge management.[14]

The quality of education, however, has a major impact on Pakistan's ability to create an enabling environment for business and trade. The ability to employ workers, for example, is negatively affected, because the supply of even semi-skilled labor is extremely limited. The various vocational and technical institutions operating around the country graduate just 250,000 students annually. A common complaint of industry about government vocational and technical training schemes—especially those that are centrally planned and managed—is that they are unresponsive to the needs of tomorrow's industry. The national annual requirement is thought to be one million graduates.

[14] See, e.g., Cohen, p 242.

The quality of the courts and overall access to justice and enforcement of legal rights are also directly affected by poor education. Several judges interviewed for this assessment decried the low quality of the bench and bar. In the first instance, higher education in Pakistan is only now beginning to emerge from decades of neglect. Pakistan's highly educated lawyers with international experience do handle sophisticated legal matters, advise and comment meaningfully on existing laws, and even propose legal reforms. But these lawyers are virtually all foreign-educated: traditionally, lawyers educated in Pakistan are graduates of law colleges, only some of which are even loosely associated with universities. Despite graduating with LLB qualifications, their actual knowledge of most areas of law is limited and quite uneven across parts of Pakistan. Because property disputes have been the staple of most Pakistan-educated lawyers, higher quality legal education has not been viewed as a priority in the past. As the Pakistan economy grows and globalization continues to take effect in Pakistan, however, a shortage of lawyers with expertise in subjects of business and commercial law, corporate law (including mergers and acquisitions), tax law, intellectual property law, and other more sophisticated areas of both domestic and international practice will directly affect economic growth and business expansion.

The quality of the judiciary is directly related to the quality of the bar from which judges are selected. One interviewee commented that it is "easy to get a law degree, but hard to practice," and unemployment pushes unsuccessful lawyers to become judges. As a result, time is spent in judicial academies teaching basic law that ideally would have been learned in law schools, and even then relatively little can be accomplished in the training period of only six months. Judges lack expertise in many areas of law that are brought before them, a problem that is especially crucial in adjudicating complex rights such as those that arise in the context of intellectual property and company law. Moreover, there is no judicial continuing legal education program at present, although there reportedly are plans to implement a program in Karachi.

The bar associations in Pakistan are not effective in promoting better education and training of lawyers. In other countries, the organized bar is often a source of basic and continuing legal education, information and expertise on cutting-edge legal developments, and the promotion of legal and regulatory reforms. The bar associations in Pakistan vary in their organized efforts in this regard, although there were reports of regular meetings among chambers of commerce and lawyers to examine reform needs.

Apart from legal education, overall university education has also suffered years of neglect. Until very recently, there was little research of value being conducted in any of the universities, especially in areas other than the hard sciences. To the extent there was any work being done with respect to the social sciences, such work was often conducted by an intelligentsia still mourning the demise of the Soviet Union. While there are now some signs of improvement (such as the new school for Law and Public Policy at the Lahore University of Management Sciences),[15] this lack of institutional capacity (especially in the social sciences) has led to an increasing absence of leadership in government and business, and to a general lack of understanding and awareness across all sectors of the Pakistani economy about how to develop a strong free-market economy.

Fragmentation. Pakistan's existing systems of economic governance and regulation reflect the piecemeal interventions of history, not a planned, strategic approach to market oriented reform. As a result, many of the regulatory systems are fragmented and disparate, with no overall direction toward a strategic goal. Labor suffers from more than 150 separate regulations and laws that have been introduced in a piecemeal fashion. Land is burdened by disaggregated systems, a holdover from an unreformed colonial legacy. Credit is hindered by gaps between sections of the separate parts of the overall credit framework. And socio-economic disparities are a challenge for all reforms, as changes affecting one group—rural, urban, or peri-urban—may not achieve desired results for another.

This situation is understandable. Pakistan inherited a system designed under colonial rule, partially adapted at independence, and rearranged repeatedly in accordance with fluctuating political and ideological changes in government. As a result, there is no focused, comprehensive vision for what is needed in the disparate parts of the economy, much less for the economy as a whole. A number of very effective reforms have recently been championed by solid leadership in the banking sector under the State Bank of Pakistan (SBP), but the impact on overall access to

[15] In addition to LUMS, mention should also be made of the world-class Aga Khan University Hospital in Karachi, the Ghulam Ishaq Institute of Engineering Sciences and Technology in the North West Frontier Province, and the University of Engineering and Technology at Lahore. However, the output of these universities can scarcely meet the needs of the country, especially since the secondary education system is not producing enough qualified applicants to these universities in the first place.

credit was limited because the reforms did not reach the problems affecting banking in other sectors.

The situation is reversible. Meaningful change will require deliberate, strategic analysis of each of the areas covered in this report, together with extensive use of participatory processes. The current government is generally business-friendly, and has begun some forays into better communication with stakeholders. But more work is needed. Continuing piecemeal reform may achieve some benefits, but will not result in the transformations required to give Pakistan the economic capacity it needs to provide for its future.

Summary of subject-specific findings

The findings of the five Doing Business-aligned subject-matter areas examined in this assessment, as well as the added areas of Gender and FATA requested by the USAID Mission in Pakistan, are summarized below. These findings represent the original work done concerning the gender report, which is being revised, with a new gender section to be added to the final report.

Employing Workers. Pakistan is currently in a state of "re-tooling" its economic framework and the labor market is no exception. The laws on the books bear little relation to the situation on the ground because inspection, application, and enforcement have all essentially ground to a halt. Certain sectors continue to participate in the formal employment regime, but, by and large, the workforce exists outside of it.

- Over 100 laws in Pakistan currently govern labor. The laws and amendments exist in a largely top-down, edict-style rubric that dictate everything from how many times per year a factory wall must be whitewashed to the minimum wage for a "canteen boy" in the province of Punjab. (They are also, in many instances, hopelessly out of date.) The laws do little to acknowledge the natural incentives of workers and employers in a free-market economy.
- All major International Labor Organization (ILO) treaties have been incorporated into the laws; wage and hours regulations provide strict protection for workers; employee benefit schemes are extensive (covering education of workers' children to community development to hospital care). On paper, foreign workers are provided for in a liberal and generous work visa regime.
- The current reach of labor laws, including occupational heath and safety and employee benefits schemes such as old-age pension and medical care, is fairly limited when compared to the overall size of the labor force in Pakistan. Because a significant portion of the 72% of the population not thought to be part of the official labor force is, in fact, working in a domestic or other unremunerated capacity, the reach of the labor law regime grows even shorter. Moreover, the labor laws in Pakistan are literally not enforced.

Registering Property. The ability to freely own all types of property, and to easily transfer and register that ownership—especially with respect to real (non-movable) and intellectual property—is a fundamental requirement of business and economic growth in a free market economy. Moreover, registration and protection of rights in intellectual property are extremely important in the encouragement of FDI and marketing of needed consumer goods, and to supporting innovative research and development of new domestic products. Thus, a strong legal and institutional framework is imperative in order for businesses to own, use, and sell all types of property; manufacture and sell products and services; raise capital; and obtain credit. Indeed, secure ownership of property and an objective, transparent, and uniform system of property registration are necessary in all economies.

- The **real property** registration processes in Pakistan is slow (measured in terms of months and years), complex, and opaque. There are also significant problems with access to implementing institutions and even more significant difficulties in the enforcement of property rights through the courts; these issues particularly affect women in the area of real property registration. A unified, coherent, reliable, and modern system of real property registration desperately needs to be developed and implemented in Pakistan.
- Registration of **intellectual property** (IP) and adequate protection of IP rights—including especially pharmaceutical patent protection, piracy and counterfeiting, and overall trademark enforcement—are significant areas of discussion and debate between Pakistan and several other countries, particularly the United States. Although Pakistan has made great progress in the area of registering and enforcing IP rights as compared to even a few years ago, specific areas (especially pharmaceutical patents) need attention in order to attract more foreign investment and to encourage domestic research and development.

Getting Credit. Reasonable access to affordable finance arises from a complex mixture of laws, institutions, and practices. The heart of the matter, however, is simple: lenders extend credit at affordable rates in a competitive market only when the costs and risks of extending credit permit them to. A high risk of default and a low likelihood of recovery on default will increase the cost of credit. If there are too many complexities involved in giving credit, then management becomes more expensive, and that, too, is reflected in the price.

- Pakistan has a solid foundation for increasing **access to credit**, but risks and costs are unnecessarily high. These risks and costs arise primarily from a lack of dependable enforcement and a lack of sufficient credit information about borrowers. The risks can be lowered, but success will require work in a number of areas. Large businesses generally have little trouble obtaining the finance they need. Their complaints tend to be limited to high interest rates or slow processes. Micro-enterprises are increasingly being served by various micro-finance institutions, but perhaps no more than 10% of the micro-finance needs are currently being met. For SMEs, there is a very large gap between supply and demand, with an estimated 90% of the market as yet unreached. When disaggregated by gender, the numbers for women are even worse.
- Lenders tend to over-collateralize, demand additional guarantees, or refuse to lend to numerous potential customers, largely because of problems with real property and insufficient legal support for use of movable property as security. Even when a borrower can provide acceptable collateral, enforcement against it is quite difficult. Pakistan's enforcement system, which relies primarily on the courts, is unsatisfactory. Every credit provider interviewed noted that enforcement of contracts, other than for leasing, is highly problematic in Pakistan. For women, who are discouraged from using the courts, it is even more difficult.
- Pakistan's **bankruptcy** regime is incomplete: it does not include reorganization, and voluntary liquidation is greatly circumscribed. When actions are commenced, they are inefficient and ineffective. As a result, lending and borrowing are more risky. The long-term project of bankruptcy reform should be started now.

Trading Across Borders.

- Pakistan Customs operates in an interactive and trade-friendly environment as reflected in its operations and in the positive reflection of business, transport, chambers of commerce, trade associations, and port/dry port operators.
- There is a general perception that customs operations are now fairly modernized and reformed, based on risk management, and not generally on discretionary control.
- The use of automation has resulted in speedy clearance of goods, with reduced use of discretion.
- Customs has two automated systems currently operating: Pakistan Computerized Clearance System (PACCS) and One Customs. Under PACCS, an importer or exporter can file a Goods Declaration online from anywhere in Pakistan, assess the amount of duties and taxes due, pay the amount electronically, and receive an electronic release authorization from Customs. The clearance of goods is however allowed only from Karachi.
- All the goods that are not cleared by PACCS are processed and cleared through the old computerized and semi-automated system. This system has connectivity all over Pakistan including all dry ports, land customs stations and air ports. This system is also web based but not yet fully automated, as its Risk Management System is undergoing initial trial runs for some imported goods at the Appraisement Collectorate, Customs House, Karachi.
- Before PACCS, up to 20-25% of the imported goods were examined by Customs, and the average dwell time for cargo containers presented for clearance used to be 13 days. With PACCS, automated risk managed examination have been reduced to 5 to 7%, with another 1 to 2% examinations generated outside of the automated system, directly by inspectors, for a total of inspections between 6% and 9%. By early 2006 clearance times had been reduced to 6-4 hours, and the dwell time to 4 days, but due to monitoring inadequacies in PACCS and some response slackness at desk level process officers, the average customs clearance time went back to about 48 hours and dwell time up to a week. With robust interventions by the Customs leadership, the situation is improving. The target for clearance time has been reduced to less than 12 hours.
- Pakistan has undertaken important steps to improve cargo security for goods arriving in and leaving its ports especially goods bound for US ports. It has adopted the US Secure Freight Initiative and, after due testing of the technology, it has been put into use at Port Qasim, in a dedicated terminal. 100% of containers at Port Qasim leaving

for US ports pass through this system of radiation detection portal monitors and a container scanner.

- Pakistan Customs officers, like their counterparts in many countries, receive salaries that are well below the market level. The basic level officers receive only Rs 13,000 per month (about US$ 2600/year). These low salaries are a key factor in the traditional and notorious Customs integrity problems.
- Pakistan Customs officers, like their counterparts in many countries, receive salaries that are well below the market level. The basic level officers receive only Rs 13,000 per month (about US$ 2600/year). These low salaries are a key factor in the traditional and notorious Customs integrity problems.
- Customs brokers (clearing agents) are licensed with customs and undergo a series of qualifying checks. They take an exam, pay a fee, and submit to background and police checks. Licenses are issued at the national and local (collector) levels.
- Road and rail transport in Pakistan is in need of significant infrastructure improvements. 85% of the port cargo moves inland by truck and the rest by rail.
- The greatest need is for a multimodal infrastructure that can serve internal traffic and transit traffic from Pakistan's landlocked northern neighbors. Pakistan also lacks transportation system for its abundant perishable farm produce.
- Women entrepreneurs are gradually taking up export business in Pakistan. There has been a significant increase in induction of women in the country's workforce which is the result of changing social and economic conditions and the consistent pro-women initiatives of the government.

Dealing with Licenses.

- Current economic growth and projected future growth have created a huge demand for construction services from both the public and private sectors. In Pakistan the construction industry accounts for over 7% of total employment, and the figure is 9.5% in the North-West Frontier Province (NWFP).
- The total public-sector market for construction is estimated to be Rs 2,500 billion.
- Investment and productivity in the construction sector are limited by a complex framework of laws and institutions at various levels of government.
- 40% of land in Pakistan is Government-controlled, and zoning, land use, and building permits are politicized and act as a disincentive for rational development.
- There are no legal restrictions against women owning property, but social traditions often lead to male members of the family either owning the real property or dealing with the property. This deprives many Pakistani women of what should be their main personal asset.
- Land use in Pakistan is a provincial and municipal level matter as there is no national level legal and regulatory framework for planning and zoning.
- Land acquisition is time consuming and replete with corruption.
- Changing the use of property can be expensive, as some local governments charge high commercialization fees.
- The cumbersome procedures for developers in the city keep many small developers out of the business while the larger and more influential developers flourish.
- In Lahore, just as the process of obtaining building permits and utilities connections is heavily influenced by corruption, so too is the process of inspections on construction projects.
- In Peshawar, inspections are more frequent since the earthquake, but the inspectors can be paid off, so it is uncertain whether the diligence is causing improved quality.
- Most professions are open to Pakistani women, at least in many parts of the country, but according to our interviews, real estate development remains a male-dominated profession that women are reluctant to enter.
- There are at least 80 **industrial parks** or zones in Pakistan, but most suffer from poor road and utilities infrastructure.
- There is no multiple listing service in Pakistan so finding land to build on can require communications with numerous **realtors**. The industry is unregulated and generally unprofessional. Realtors are not required to obtain licenses.

EMPLOYING WORKERS

Introduction

Employees constitute an overwhelming proportion of the inputs to national production, and the predictability of the regulatory regimes by which they are employed indicates the degree of predictability in the national labor market as a whole. If workers are poorly compensated and living in bad conditions, then the nation cannot be healthy. This chapter focuses on the legal framework of employment in Pakistan, the institutions that implement and support the labor market, and some of the unique social dynamics that impact the labor market. It also makes recommendations for improvement. It is important to remember that, all else remaining unchanged, "solutions" applied solely to the labor market cannot repair deficiencies in the labor market. The title "Employing Workers" necessarily implies both equally essential endpoints of the employment equation—labor supply (a ready and qualified source) and labor demand (growing in size and sophistication). Without both, the market for labor collapses. It is important that discussions and recommendations in this section be read and considered in light of the report's other discussions and recommendations that impact the continued demand for labor in Pakistan.

Employing Workers

Ranking Doing Business 2007: 126/175
BizCLIR Scores (scale 1 to 5):

- Legal Framework: 2.42
- Implementing Institutions: 1.83
- Supporting Institutions: 2.80
- Social Dynamics: 2.80

Pakistan is currently in a state of extensive "re-tooling," and the labor market is no exception. The laws on the books bear little relation to the situation on the ground, and inspection, application, and enforcement have all essentially ground to a halt. Certain sectors continue to participate in the formal employment regime, but most of the workforce exists outside of it. This has resulted in the freest of labor markets, with all of the attendant shortcomings and pitfalls. Pakistan is, however, well equipped to emerge from the current period of reform with a modern and efficient labor regime that capitalizes on the best that the population has to offer and that drives the country to lead global markets.

Legal Framework

Most of the 106 laws governing labor in Pakistan predate the Constitution of 1973, and some of them, especially those dealing with occupational health and safety, date from the late 1920s and early 1930s. Acts and "ordinances" (the latter so-called because they were promulgated during military rule) controlling the general employment relationship (i.e., the rights and duties of employers and employees) and those installing the various employee benefits schemes were enacted in the late 1960s and early 1970s, a period of tumult in Pakistan. General Yaha Khan's military government ended ignominiously with the separation of East Pakistan (now Bangladesh) in 1971 and he replaced himself by installing a civilian. Zulfiquar Ali Bhutto. Bhutto oversaw the nationalization of a broad swath of industry and the promulgation of the 1973 Constitution, and was subsequently elected to the post of Prime Minister by Pakistan's lower house of Parliament.

This brief history is relevant to the current state of labor law in Pakistan because, while many of the laws governing the basic relationship between employers and employees were promulgated prior to Bhutto's government, implementation occurred under his rule. That implementation occurred during a period of massive industrial nationalization and at a time when socialist norms and morals were thought serve the long-term best interests of the individual worker and thus, by extension, the country's economy. Pakistan's industrial and manufacturing capabilities were then nascent, and economic growth was to be gained through central planning and the combination of industrial factors in order to achieve efficiencies and economies of scale.

These historical contexts are reflected in Pakistan's current labor law regime. The laws and amendments are largely a top-down, edict-style rubric that dictate everything from how many times per year a factory wall must be whitewashed to the minimum wage for a "canteen boy" in the province of Punjab. (They are also, in many instances, hopelessly obsolete.) The laws do little to acknowledge the natural incentives of workers or employers in a free market economy.

For instance, the wage laws are comparatively rigid regarding hours worked per week, and overtime payments are hefty and mandatory, thus discouraging extra employment when desired by both workers and employers.

Employee benefits schemes are expensive and numerous (there are eight): the Employees Old Age Benefit Insurance (EOBI), the provincially-administered Employees Social Security Institutions (ESSI), the Worker's Welfare Fund (WWF), the Workers Profit Participation Fund (WPPF), the Educational Cess (EC), the Gratuity, the 10c Bonus, and the requirement for employers to provide life insurance (Group Insurance). These benefits schemes are mandatory and concurrent. The laws governing dispute prevention (collective bargaining) and dispute resolution (labor tribunals and courts) are similarly divorced from current realities. The laws regarding collective bargaining, like most of the others, are superficially fine, but they fundamentally ignore the natural incentives of the actors and the capabilities of the formal mechanisms for dispute resolution. The laws governing dispute resolution overtax the available institutions with overly-formalistic and often vague and contradictory rules.

The labor laws of Pakistan are, on their face, friendly to workers. All major International Labor Organization (ILO) treaties have been incorporated into the laws, wage and hours regulations provide strict protection for workers, employee benefits schemes are far reaching (from education of worker's children to community development to hospital care), and foreign workers are provided for by a liberal and generous work visa regime. Conversely, the labor laws appear to be less friendly to employers. The law does not contemplate or support the principle of at-will employment and takes pains to protect workers from an at-will work relationship. At face value, the laws appear to hamper an employer's flexibility in the employment of labor and impose undue administrative and distributive burdens that discourage more than the minimum necessary level of reliance on labor as a factor of production. In practice, a very different result occurs. But first a note about exactly who and what these labor laws are designed to govern.

The labor force in Pakistan is estimated to be about 28% of the total population (45 million workers out of approximately 160 million inhabitants in 2004). Agriculture accounted for 43.1% of the Pakistani labor force in 2003 and 2004 in a shallowly declining trend (see chart below).[16] The labor laws do not apply to the agricultural sector. Of the 56.9% of workers remaining, approximately 70% are employed in the informal sector—to which the labor laws also do not apply.[17] The informal sector includes unregistered businesses with fewer than ten employees, and, in reality, includes all unregistered business regardless of size.

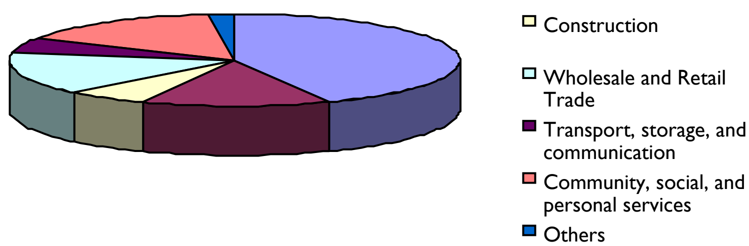
The 30% of formal sector employees that are non-agricultural thus represent about 17% of the total labor force in Pakistan. Of that 17%, the labor laws also do not apply to government employees, members of the military, and members of certain exempted professional classes (e.g., journalists, bankers, and teachers). They also do not apply to workers on short-term contract (currently up to nine months) and "vendors" who often perform piece-work in their own homes. The current reach of labor laws, including occupational heath and safety and employee benefits schemes such as old-age pension and medical care, is thus fairly limited when compared to the overall size of the labor force in Pakistan. Because a significant portion of the 72% of the population not thought to be part of the official labor force is, in fact, working in a domestic or other un-remunerated capacity, the reach of the labor law regime is even more limited.

[16] Id. n 18.
[17] Id.

Enforcement of the labor laws in Pakistan is literally non-existent. The provinces of Punjab and Sindh, together comprising the bulk of Pakistan's population, have suspended labor inspections altogether. Complaints to either the Labor Courts or any of the Labor Tribunals take on average a handful of years to resolve, and sometimes many more. Employers can easily pursue firings and unilateral renegotiations while employees have little practical redress. Strikes are uncommon and largely unpopular, and traditional unions are banned in professions, like teaching, that are traditionally unionized elsewhere. Administration of the various employee benefits schemes is so disjointed and inefficient that employers are rarely punished for non-contribution. Either employees would have received very little from the scheme in any event, or employers have devised a work-around (such as the submission of nameless eligibility rosters totaling a small fraction of the total employee roll) that can secure employee benefits from the government for those in need when they need it while allowing the employer to avoid paying the full employee benefits scheme tax.

Depending upon whether one asks a government functionary or a chamber of commerce member, estimates vary as to what percentage of eligible employers are complying with the laws regarding the employee benefits schemes in particular and the labor laws generally. The estimates range from two to 10%. Lack of compliance is blamed on a number of factors: the high administrative cost of the labor relationship laws, the high taxes and low values incident to the employee benefits schemes, the business decision to employ contract and piece-work workers (who are exempt from most labor laws), and the pure ease of being noncompliant. As a result, Pakistan employs a significant number of its formal non-agricultural workers in a temporary capacity. This is essentially at-will employment. These arrangements, often unwritten, are subject to at-will termination and renegotiation without recourse. Should scrutiny arise, employers can claim that the worker was on a short-term contract, a true subcontractor performing a specific task, or a "vendor" (typically an at-home piece-worker). Thus, the practical reality in Pakistan of the employment of the (relatively tiny) sector of workers that are ostensibly covered by stringent and highly protective labor laws is in almost complete contradiction of the text of those laws. The same holds true even for the textually liberal and generous foreign employee work visa provision. Foreign workers must typically pay "unofficial fees" and wait months to acquire these visas.[18]

Distribution of Employed - 2003-04



This excerpt from the Labor Policy of 2002 reveals the philosophical underpinning of the labor reform currently underway in Pakistan:

The progressive globalization of economy is bringing forth even more formidable challenges and pressures. Successive governments, torn between conflicting desires for promoting welfare of the low-income classes and requirements of global competition, have had the unenviable task of balancing demands for better wages and decent working conditions on the one hand and maintaining business competitiveness on the other while at the same time ensuring increased revenues.

Today, however, a different scenario is emerging. Sobered by the negative experiences of adversarial industrial relations over the past decades, trade unions are increasingly discarding militancy while employers are recognizing the need and benefits of co-opting labor as partners-in-productivity. Both employers and trade unions are progressively getting involved in bilateral dialogue as there is a growing realization that common interest of both employers and employees is best served by securing business profitability and growth.[19]

For Pakistan to jettison the traditional tripartite system in favor of a bilateral approach to labor law and policy was a significant step. It was long thought that labor and management could never fruitfully collaborate. While that may have been the case in times past, the productivity of bilateral associations such as WEBCOP in shaping reform through consensus has caused the government to leave the

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18 Foreign Investment Advisory Service of the World Bank Group, Pakistan—Review of Administrative Barriers, Preliminary Draft, May 2006.

19 Id. n 18.

negotiating table. Increasingly, labor unions are consolidating their voices, and think-tanks, who bring new ideas and perspective to labor issues formerly considered unsolvable, are emerging.

The Labor Policy enumerates the following specific goals for Pakistan:

1. Support bilateral and tripartite mechanisms for policy formulation, self-regulation, and peaceful resolution of disputes.
2. Exercise regulatory authority of government only when bilateral mechanisms fail to resolve disputes.
3. Consolidate/simplify labor laws.
4. Support structural legislative changes that will provide easy access to speedy justice in the labor sector.
5. Promote employees' social security and social insurance programs and improvement of labor welfare institutions, namely: Workers Welfare Fund, Employees Old Age Benefit institutions, and Provincial Employees Social Security institutions.
6. Progressively extend labor laws and welfare measures to informal and unorganized sectors.
7. Promote special emphasis on education for workers' children.
8. Combat child and bonded labor.
9. Eliminate gender discrimination to reinforce gender equality.[20]

Laws relevant to labor regulation have been grouped into five categories: industrial relations, employment and service conditions, occupational health and safety, human resource development, and labor welfare and social security. The Government of Pakistan, with the aid of donor agencies (most significantly the ADB), has drafted a consolidation of existing laws in the first two categories, and those drafts—the Employment and Services Conditions Act of 2006 and the Industrial Relations Ordinance of 2002—are pending parliamentary review. The government has also promulgated amendments to the current labor laws by way of the Finance Act of 2006. Those amendments include: increasing amounts payable to injured workers under the Worker's Compensation scheme, lengthening the maximum hours of a work day (to 12 hours), allowing women to work past 7pm (until 10pm) on the condition that employers provide transportation, and, perhaps most significantly, extending the full panoply of "permanent" employee benefits to "contract" employees.[21]

Despite the extension of benefits to contract employees and other tactical adjustments, the labor regime touches and concerns very little of Pakistan's real labor market.[22] By no means should these measures and others like them be discounted or discouraged, since they will ultimately encourage real

change, but broader recognition of the actual state of affairs is essential to productive planning and implementation of real reform. The large, mostly rural agricultural sector represents perhaps one of Pakistan's greatest opportunities for return-on-investment in human capital, yet its employers and workers are entirely unserved by even rudimentary labor laws. The civil service, while an institution apart in many societies, retains significant political and bureaucratic clout and its labor regime remains unharmonized with the supposedly mainstream labor regime. The military is an institution that few are willing to analyze in the course of labor reform discussion, but without this analysis, few problems can be identified. It is well known that there is limited labor mobility between the military and other sectors, further insulating the military and the civilian populace from each other.

Pakistan finds itself in a paradox with respect to the legal framework of its labor laws. By perpetuating and investing in a labor regime that was unpopular, unproductive, unenforceable, and unworkable, it unwittingly created the freest of at-will labor

[20] Id.

[21] Finance Act of 2006, at http://www.mofa.gov.pk/Publications/Budget/finance_bill06-07.pdf.

[22] Photo Credit: Personal Collection of Michael F. Cardoza .

markets. The unfortunate byproducts included high worker turnover, low employer investment in human capital, a common perception of workers as a commodity, and the lack of market-directed development of skilled workers for future generations.

Pakistan's will need to pursue more than legal consolidation and rationalization. If it is indeed to build a labor regime that is popular, productive, enforceable, and workable, material change in the labor law is required to remove disincentives to participation. Participation must offer clear benefits to both workers and employers, and the prices of those benefits must not be more than their worth to management and employees. Price must take into account the money value of time and administrative effort. Lastly, enforcement must be realistic, and its costs should be borne to the greatest extent by those who would cheat the system. At this time is it not clear whether these objectives are achievable. Drafters and legislators are in the unusual position of having to roll back an impressive regime of labor law architecture to a point at which it is small and simple enough to allow all parties to participate. They may find that they need to roll back quite a distance.

Implementing Institutions

Fortunately, the government of Pakistan realizes that, while the texts of the country's laws give it broad control over the landscape of labor, the reality is quite different. This realization has been the first step in devising a new labor regime. Many of the government-run implementing institutions are ineffectual in the labor arena, at best.

Labor inspections in the provinces of Punjab and Sindh (together comprising more than 75% of Pakistan's population) have been altogether halted. Excessive corruption and harassment at the hands of inspectors and local authorities led to the enactment of a "self-reporting" scheme for labor compliance that has barred inspections except under rare, and often bureaucratically unachievable, circumstances. A new labor inspection policy was drafted in 2006, but until that policy is promulgated through legislation, the "self-reporting" labor compliance schemes are being described, often wryly, as "business-friendly."[23]

Dispute resolution institutions (i.e., the administrative labor tribunals, the labor courts, and the provincial High Courts that are currently charged with hearing labor appeals) do little to resolve disputes and serve mostly as tactical distractions or levers between the parties to a disagreement. Also, the allowance for appeal is almost inexhaustible. For example, the National Industrial Relations Commission (NIRC), the administrative body charged with addressing unfair labor practices, which may be used by employees and employers alike, remedies problems by issuing orders for specific performance where applicable. Each party has a right of appeal to the full panel of the NIRC, and appeals may be filed on constitutional grounds with the provincial High Court. Similarly, the labor courts, which are open only to employees (and until recently could only remediate by ordering an employee's reinstatement), give a right of appeal to either party to the provincial High Court, where all of the facts and law are reopened for a whole new trial on the matter. Appeals from the High Court may proceed in the normal process to the Supreme Court. The whole process takes years—eight to 12-year waits for a decision are common.

Very few High Court judges are trained in labor law, and the judiciary on the whole, while complaining of being under-resourced, appears to lack both the mindset and the ethic required for effective judicial administration. Courtrooms are cluttered, crowded, and chaotic, and little substantive work occurs there. Instead, judges often spend the business hours calling attorneys to appear before them in person in order to simply issue continuances. The whole of Pakistani jurisprudence has suffered as a result, and the commercial legal system is currently seen by all, lawyers included, as merely an office of injunctive relief—a place to get the status quo legally frozen in time.

The Devolution of Power Plan of 2000 sent non-party elected *nazims* (mayors) to head 101 districts (including four cities) in Pakistan. They serve with the aid of an elected council and their own administration.[24] Devolution has been relatively popular at the district level, where government is, sometimes for the first time in years, responding to the demands of the local populace. A common criticism, however, is that district *nazims* are under-equipped to administer major government functions that require either national coordination or an economy of scale. With the recent state of labor regulation amounting essentially to a "time-out," it is too early to tell whether devolution will be a force for progress in the labor regulation arena. As agents

[23] Id. n 18.

[24] For an overview of devolution, see "Devolution in Pakistan," an overview of the ADB/DFID/World Bank Study (2004), *http://www.dfid.gov.uk/pubs/files/devolution-pak-es.pdf*.

for their constituents, however, district *nazims* are bringing the spoils of the employee benefits schemes, namely community development under the Worker's Welfare Fund, home to their districts. They are also exhibiting a measure of influence over the provincially administered ESSI scheme that supplies medical facilities and care to workers. Stakeholder faith in the national legislature and the various ministerial administrations is less robust.

Recent and historical periods of military government in Pakistan have resulted in a **national legislature** that is not as developed as it might be. The national legislature is not viewed as a worthwhile partner for the implementation of reforms or even amendments. The common view is that time spent trying to sell the legislature or any of its members on any matter of agenda is time wasted.
Labor and management forces have experienced less frustration in dealing with ministerial administrations, including the Minister of Labor, and have not yet given up. However, both labor and management know that the Ministry of Labor is ill-equipped to participate as a full member of a solution-developing tripartite team, and have carved off their own syndicate for discussion and production—WEBCOP. Management, represented by the EFP, and labor, represented by the half-dozen largest labor unions in Pakistan, meet through WEBCOP to craft mutually-agreeable policies, which they then present with one voice to the Ministry of Labor. (They have not, as of this writing, taken the next step of drafting legislation themselves.) Stakeholders and government executives agree, almost unanimously, that WEBCOP is a model for success. It even earned mention in the Labor Policy of 2002. This suggests that the market for compromise and some government regulation of labor is alive and well, and that perhaps it will continue to grow and flourish in the absence of functional state-sponsored forums for labor reform.

Supporting Institutions

Labor union membership in Pakistan is estimated at 1.0 to 1.5 million workers, which is 3% at most of the 45 million-strong labor force. Many workers, including civil servants, the military, and members of select sectors are prohibited from unionizing. But market penetration of organized labor is generally small—perhaps 12% of eligible workers at most.

Labor unions in Pakistan today are searching for identity, for purpose, and for the means to make their voices heard on issues of law, policy, and implementation. The Pakistan Workers Federation, a recent consolidation of three unions, today boasts 800,000 members. WEBCOP is becoming an increasingly orderly and productive venue for consensus and policy floatation because unions are coalescing around common interests and ideals. Unions that either have a political party as their primary patron or those that are strictly Islamist in their mission remain on the periphery. Unions are finding that complaints about violation of the oft-ignored labor codes are not nearly as productive as bilateral discussions with employers focused on creative problem-solving. They are discovering that there are multiple roads to power and more than one way to effect change for the welfare of their members.

The Saga of Saga

Soccer balls are big business in Sialkot, a city of light industry (and a major military cantonment) of about three million inhabitants just a few kilometers from the Indian border. Quality soccer balls are still stitched by hand in Sialkot, which produces roughly 80% of the world's soccer balls in partnership with major manufacturers like Umbro and Nike. One of the city's leading manufactures, Saga Sports, held a soccer ball manufacturing contract with Nike that represented about US$33 million of the total industry value of US$210 million. In late 2006, however, discovery of two child workers in a home doing "vendor" assembly of Nike soccer balls for Saga caused the company to lose its contract. News quickly spread to Lahore and beyond.

Now a Sialkot firm named Silver Star, headquartered just down the road from the once-palatial but now dormant "Saga City," is poised to be Nike's new supplier once negotiations are complete. Soccer ball makers at Silver Star, all of whom will be adults, will receive a well-defined package of benefits that will exceed state employee benefits schemes.

While the Saga saga is certainly one of the most sensational and notorious in Pakistan, the dynamic is repeated elsewhere on varying scales. The port city of Karachi, long the financial and commercial hub of Pakistan, hosts many reputable enterprises that have done business with large multinational firms for years. Compliance with labor regulations and employee benefits schemes among these Pakistani companies is close to 100%. There is too much money to be made legally and too much risk in skirting "social compliance" requirements to do otherwise. The story is the same elsewhere in Sialkot, Lahore, and Islamabad. Contact with multinational firms, either directly or as an upstream supplier, typically tends to correlate with labor regulation and employee benefits scheme compliance. Multinational firms appear to be emerging as an institution that "implements" international norms vis-à-vis labor regulation compliance, including compliance with home country labor regulations. As Silver Star and Saga have seen in Sialkot, this institution provides incentives for participants and swift punishment for shirkers.

Unions enjoy a good reputation for honest service to their members—most of whom pay dues—and, with some exceptions, of non-allegiance with political parties. (This may be a reflection more of the current irrelevance of the electorate than of union desire to remain politically flexible—time will tell.) They are relative neophytes with respect to internal coordination, public relations, message control, and persuasive politics, and are likely to benefit greatly from any increase in capacity. As Pakistan continues to talk seriously about drafting new labor codes and implementing them, the time for capacity building is now.

Across the WEBCOP table from the half-dozen or so labor unions is the EFP. Established in 1950, the EFP's mission is to:

Strive for Industrial Peace, Harmony, Poverty Reduction and Business Promotion and pursue Policies and Legislation conducive to Investment, Economic Growth, Employment Generation, and Decent Wages keeping pace with Socioeconomic Development of the Country.[25]

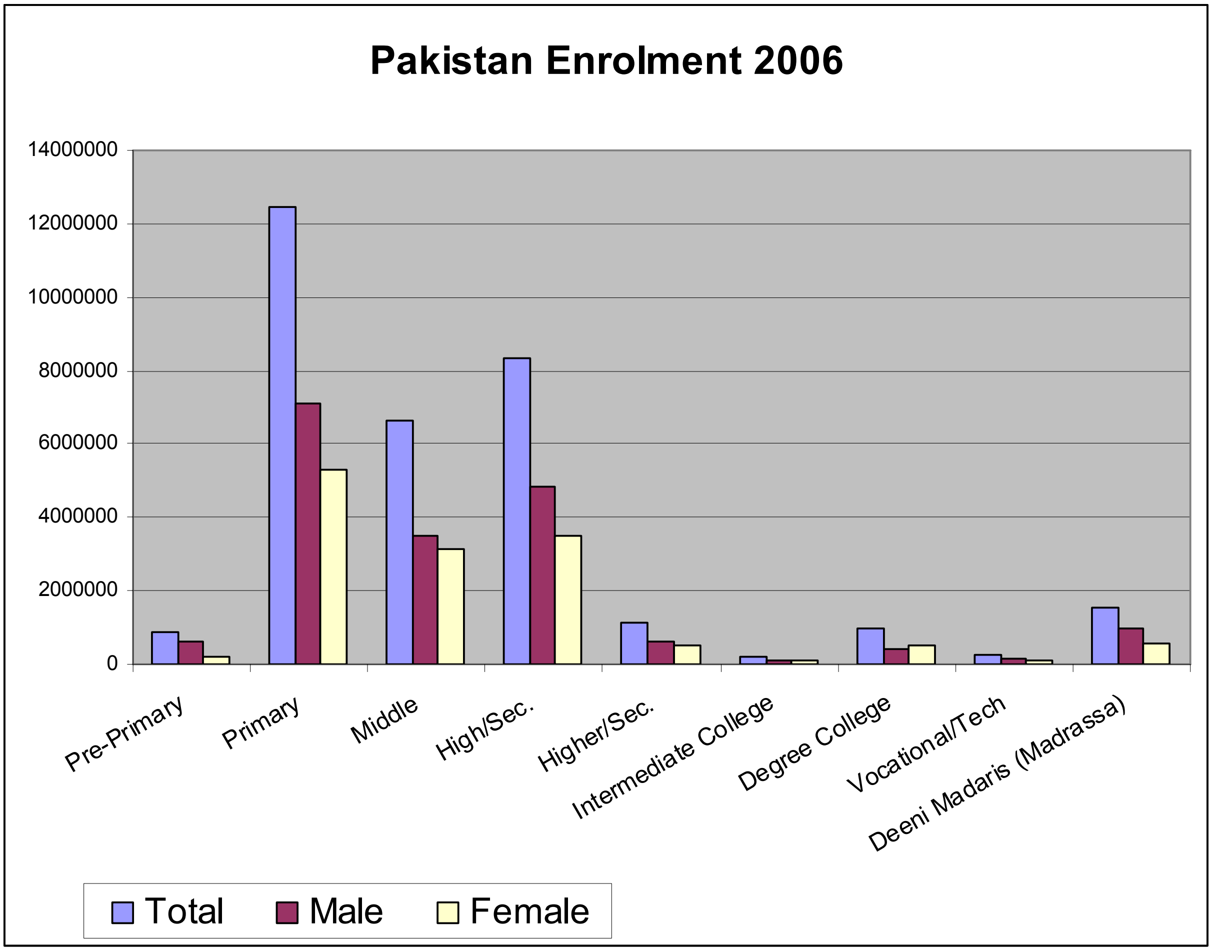
The EFP is an elected employer's representation organization that claims membership by 548 companies. The EFP further represents another nearly 15,000 companies through its representation of 14 trade associations. The EFP is highly regarded, and by most accounts highly effective at lobbying the government for changes to labor laws and their implementation, dialoging with labor unions, and presenting consensus-based policy suggestions to the government. The EFP recognizes that the long-term cooperative and bilateral development of labor capacity in Pakistan (including development of the female workforce) will be the key to the country's continued growth and global competitiveness. This outlook is not shared by many industrialists in Pakistan, and should be publicized.

The private sector, in general, views labor as a commodity, not capital. There is broad understanding that children and young people need to be educated in order to become qualified workers. However, that education is largely seen as the responsibility of the state, even though the state knows little about tomorrow's specific demands for specialized labor. There is also a general recognition that the basic needs of workers must be satisfied in order to maintain their productive utility. Again, this function is largely seen as a responsibility of the state despite the grossly inefficient government architecture of employee benefits schemes. Workplace health and safety are not priorities for the average employer or employee. One shipping container yard operator remarked, "We had to get outside people to come in to do heath and safety—they're foreign to the indigenous population. It took a lot of work to train and maintain and keep everyone's hard hat on."

The overall sense of the private sector is that the labor market is fluid and that individual worker's skills are static. Widespread non-observance of labor regulations encourages this outlook by eroding an employer's incentive to remain loyal to individual workers to develop them as capital instead of trading them in as chattel. Complaints by employers that someone else—typically the government—is

[25] Employers' Federation of Pakistan Mission Statement, June 2007.

failing to supply industry with qualified labor are falling on deaf ears. Pakistani businesses are beginning to realize that employers and employees are going to have to cooperate to pick up the training and education function where the government left off quite a long time ago.



From 2002 to 2004, Pakistan spent less than half as much of its money on education as Kyrgyzstan did.[26] In 2005, 19% of its educational institutions had no drinking water, 23% had no toilet facilities, and 33% operated without electricity.[27] In 2006, out of 33 million total students in Pakistan, just 43% were female (see chart below f).[28] The overall dropout rate in 2005 from grades I to IV (i.e., primary school, ages five to 10) was 31.3%—of which 40.2% were boys and 19.2% were girls.[29]

Industry's biggest cry is for skilled (often analogous to the classification "semi-skilled" in the West) labor. This is especially true in areas such as Peshawar in the North West Frontier Province where urban industry has little labor resource base outside those in the surrounding rural communities who can free themselves of agricultural responsibilities in order to work—often only seasonally. The various vocational and technical institutions operating around the country graduate at most about 250,000 students every year. The national requirement is thought to be one million graduates annually, and that is the National Vocational and Technical Education Commission's (NAVTEC) goal for 2010. NAVTEC, an ambitious project operated from the Prime Minister's office, has been instructed to "maintain gender balance, ensure quality of training programmes, hire experts both from local and

26 UNDP 2006 Human Development Report, at http://hdr.undp.org/hdr2006/statistics/indicators/100.htm.

27 Federal Bureau of Statistics, Islamabad, National Education Census Highlights 2006.

28 Ministry of Education, Pakistan Education Statistics, April 2007.

29 Id. n 27.

foreign markets as trainers, use the facilities of existing public and private sector institutions and strengthen capacity of existing public sector institutions."[30] NAVTEC intends to act as a regulatory and coordination body, but it is unclear how it will be able to marshal resources in order to reach its goal. A common complaint of industry about government vocational and technical training schemes—especially those that are centrally planned and managed—is that they are not responsive to the needs of tomorrow's industry.

Higher and elementary education programs are undergoing major overhauls in Islamabad. Reviewers are emphasizing requirements determination; institutions will be supplied as necessary later on. The college system is being revamped in an effort to control quality and broaden access across Pakistani society. Women are enjoying increased enrolment levels in higher education institutions in comparison to prior years, and Pakistan is finding that many of its brightest graduates are highly sought in the world labor market.

Media coverage of labor generally is excellent, from a labor point of view. Systemic discussions of the dynamics of labor or of the labor market in Pakistan rarely appear, however. Workplace injuries, union grievances, and wage disputes almost always make the first section and sometimes the front page. Some observers speculate that the diligence of this coverage may have much to do with the long-standing grievance that journalists have with their employers over employers' failure to ratify a wage increase that journalists claim is due to them pursuant to the Newspaper Employees (Conditions of Service) Act of 1973.

PUBLIC EXPENDITURE ON EDUCATION:
2002-04 (% of GDP)

Iran	4.8
Kyrgyzstan	4.4
India	3.3
Tajikistan	2.8
Kazakhstan	2.4
Bangladesh	2.2
Pakistan	**2.0**

Social Dynamics

Few Pakistani men will claim that Pakistani **women** are, as a class, shrinking violets. Nonetheless, traditional gender roles, unconscious gender attitudes and norms, and religious and tribal stereotypes keep girls out of school and women out of the workplace. In the rural context, male children are often assumed to be the family's best chance for escaping poverty. Primary school enrolment statistics indicate that boys are favored for schooling over girls at an early age. Girls often perform unremunerated domestic and agricultural work, and because those jobs are labor-intensive, many girls cannot be sent to school to receive a sustained education. Arranged marriages and the child-bride phenomenon also play a role in the perpetuation of traditional gender roles and attitudes because they transfer interest in a girl's activities to the husband or husband-to-be's family at an early age.

The fact that women want to work can be deduced from the rising participation of women in the skilled workforce. Skilled and professional work most often requires sacrifices and a focus on the goal of working in order to obtain the necessary qualifications and to overcome significant pockets of bias in industries where working women are still a novelty. Women have been a feature in the employment landscape for years in health care, education, garments and textiles, and office work, and are now expanding their horizons into traditionally male territories such as manufacturing, science, shop-keeping, and trade. Constraints on women's entry to the workforce include traditional prohibitions on solo travel, lack of separate toilet facilities at the workplace, discrimination in hiring, and an inability to meet hiring qualifications because of educational or experiential disadvantage.

The **literacy** rate in Pakistan was estimated to be 53% for the years 2004 and 2005, an improvement over the 45% estimated in 2001 and 2002.[31] Urban literacy has outpaced rural literacy by two to one, and female literacy has averaged about two-thirds that of male literacy over the past 15 years.[32]

In 2004, the overall probability of a Pakistani not surviving to his or her 40th birthday was 16.1%. That earned it a ranking of 117th of 172 countries surveyed in the United Nations Development Programme (UNDP) Human Development Report. **Life expectancy** at birth was 63.4 years, placing Pakistan 123rd out of 172. It was estimated that 9% of Pakistanis lacked access to a **clean water** source,

30 "Produce 1M skilled workers a year: PM," Dawn, June 14, 2006.

31 Pakistan Higher Education Strategy, June 28, 2006.

32 Ministry of Education, Facts and Figures, at http://www.moe.gov.pk/Facts%20&%20Figures/chap%201.pdf.

putting the country at 38th out of 125.[33] Full **immunization rates** of one-year-old children in 2004–2005 were 77%, up from 53% in 2001-2002.[34] The United Nations estimates that approximately 0.1% of Pakistan's population is infected with **HIV** (at a male to female ratio of five to one) and that social, cultural, and religious dynamics probably lead to underreporting.[35] **Poverty** has many measures. There is the dollar-a-day rule of thumb, the UNDP's HPI-1 index, and the weighted measures used by the Government of Pakistan in its 2003 Poverty Reduction Strategy. A rough average of these poverty assessments for Pakistan is 30%.

Child labor has not been systematically surveyed in Pakistan since 1996, when it was found that approximately 3.3 million of the 40 million children aged five to 14 were working full time, most in rural agricultural sector and many in the urban manufacturing industries.[36] The Labor Force Survey of 2003–2004 reports that 12.8% of children ages 10 to 14 are participating in the workforce (18.5% male

and 6.7% female)—up from 12% in 2001–2002.[37]

Industrialists and government servants know that child labor stunts the development of children, the development of adult worker capacity, and the development of a sophisticated workforce in general. There is, however, an undercurrent of resistance that is closely related to poverty and tradition. Child labor brings a significant stream of revenue to impoverished families, making the difference between eating today or going hungry, and therefore seeming to determine whether or not that child will grow into a wage-earning adult. Children often learn crafts and trades at the feet of adults, earning money and building basic skills. In a labor market where workers have essentially been commoditized and the unskilled are classified as skilled according to rudimentary talents, knowing how to quickly sew a soccer ball is a marketable attribute for a 15 year-old. These dynamics unfortunately serve to perpetuate child labor in Pakistan and with it the hobbling of the development of a sophisticated citizenry and workforce.

Despite the Bonded Labor (Abolition) Act of 1992, **bonded labor**—labor in repayment for an advance on wages or the factors of production—is alive in Pakistan. For example, it is estimated that virtually all of Pakistan's approximately 7,000 brick kilns, most of which are in rural areas, employ bonded labor.[38] The manpower-intensive operation takes place outdoors virtually year-round. Whole families are often employed at a particular brick kiln and the owner will typically pay a very low wage—in advance—along with loans and credits that must then be worked off. Brick workers are poor and come from portions of the lower castes in Pakistani society.[39] Public awareness, donor support, and NGO engagement have failed to end the practice.

Prior to partition in 1947, Pakistan and India (and Bangladesh) were one country. Pakistan does not identify with the same rigidly institutionalized system of caste that has been historically the hallmark of India, but there is a broad awareness and application of **social class** as a proxy for economic potential and mobility. That classification is typically grounded in place of birth, dialect, occupation of one's father, whether or not the birth family owns land (a vague concept given the state of Pakistan's land records, but critical to the class determination nonetheless), military service, and to a lesser extent, schooling. Factors that are not very significant include

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33 Id. n 26.

34 Id. n 31.

35 UNDP, HIV and AIDS in Pakistan, at http://www.youandaids.org/Asia%20Pacific%20at%20a%20Glance/Pakistan/index.asp.

36 Summary Results of Child Labor Survey in Pakistan, 1996, at http://209.85.165.104/search?q=cache:6i8qG54Nzf8J:www.ilo.org/public/english/standards/ipec/simpoc/pakistan/report/pakistan96.pdf+pakistan+child+labour+survey&hl=en&ct=clnk&cd=2&gl=us.

37 Government of Pakistan National Labor Force Survey 2003-2004, at http://www.statpak.gov.pk/depts/fbs/publications/lfs2003_04/results.pdf.

38 Muhammad Javaid Iqbal, "Bonded Labor in the Brick Kiln Industry in Pakistan," The Lahore Journal of Economics, Jan-Jun, 2006, pages 99-119.

39 Id.

monetary wealth, industrial achievement, political affiliation, and native intelligence. Status based on social class is overarching and pervasive, and it breeds insularity at the expense of new actors and ideas in the spheres of government, industry, education, and political thought. Landed elite are understood to be qualified for political leadership, middling trading families are thought to produce tomorrow's traders and industrialists, and lower-class minorities are almost universally thought to be inherently fated for making bricks.

One positive consequence of the ubiquity of Pakistani social class distinction and awareness may be in the professionalism and ability of middle and lower-level government bureaucrats, especially those in the newly devolved district governments. Since the days of British control, **government servants**, particularly those who in their course of their service have direct contact with the citizenry, have enjoyed a special prestige. Their work, despite low wages, is seen to involve vast responsibility, power, and an obligation to serve their fellow countrymen. Perhaps for these reasons, a significant portion of middle and lower-level bureaucrats appear to be technically and organizationally competent. The idea of meritocracy (although perhaps not the practice) in Pakistani government bureaucracy is not dead, and there are a number of bright and dedicated staff working hard, despite below-market wages, for the Pakistani cause. As power devolves to the district level, local constituencies are beginning to believe in the benefits of increased economic activity. This is leading to the unprecedented **rise of industrialists in local government**—the potential "Industrialists' Revolution" in Pakistan. Business-minded leaders and civic-minded bureaucrats have the potential to form powerful and effective teams for constituent services at all levels of government.

Public consensus, or even awareness, of the labor market in Pakistan is difficult to discern. Outside of government institutions devoted to policy and planning (many of those are recent creations) and the nascent handful of think-tank-type organizations, there appears to be a relative dearth in Pakistan of **systemic analysis**. While English-language newspapers are fastidious about reporting the facts and figures of salient events, those facts are very rarely—and then only shallowly—tied together to form an analysis of a dynamic or a business sector or a government function. Businesses are consumed by matters of survival and individual profit. Captains of Pakistani industry and small-scale shopkeepers share much in common—they both typically function as the Chief Operating Officer of their enterprise. (This dynamic owes to a number of business climate features such as personal liability of directors, lack of a bankruptcy system for discharge of debt, lack of a debt recovery industry, and various disincentives to corporate combination and growth.) As such, they are most often immersed in the latest crisis impacting their bottom line at the expense of systemic contemplation of their industry and commercial surroundings.

For all of its vibrancy in public debate and grassroots economic enterprise, Pakistan still sticks closely to the **top-down model of authority and decision-making.** Repeatedly, major market actors and significant government functionaries in major Pakistani cities remarked that they were waiting on a decision from overseas or guidance from Islamabad before acting—or thinking. The rationale was most often not fear of offending superiors, but rather a tendency to do things the way they had always been done in Pakistan. The recent (and in many cases dramatic) economic and governmental improvements at the hands of technocrats hand-picked to lead major ministries does little to quell the reinforcement of this dynamic. Also, since decisions are often made by the personalities in positions of authority, less value and emphasis are placed on quantitative analyses of issues. As a result, many Pakistanis have not developed a capacity to generate and understand critical econometric information. Pakistan prides itself on consensus and concerted action but it is also apparent that many precious moments are being wasted waiting for "the word" from the top that may never come. Devolution is bringing a new desire to accomplish goals at a lower level, but in many cases this has translated in to simply substituting one headman for another.

Most of the businesspeople interviewed over the course of this assessment have resigned themselves to or come to accept the structural status quo in Pakistan. This means that little attention is devoted to the idea of systemic improvement by the people who know how the system actually works. Correspondingly little pressure is brought to bear on a system that may be hopelessly inadequate, outdated, and often circumvented. The dominant paradigm in Pakistani business is that things are the way they are, that one makes the best of them the best way that one knows how, and that the victor earns the spoils. In essence: "Me first (and then maybe us)." This mindset is not particularly conducive to the growth of cooperative institutions.

A closely related and predominant theme encountered during the creation of this assessment is the **"zero-sum" paradigm**. It is the mindset characterized by the foundational belief that all wealth during the current period of existence has essentially existed in fixed sum and will always exist that way. A necessary corollary is that, like atomic physics, all wealth has (or will be) been allocated to all people in some proportion and that, like matter, all wealth is ultimately conserved on either side of the exchange equation. Therefore, there is (for all practical purposes) a finite sum of wealth in the universe and it has already been pretty much doled out. In order for one person to make money, another must be deprived. In other words— "If you win, I must have lost somehow." The concept of "growing the pie" or "rising tides raising all boats" is confined mostly to those in the higher tiers of government service and to those businesspeople who interact with multinational corporations. It also extends somewhat into education and urban planning, but its reach is still far too short to spur regular collaboration for the common good in industry, agriculture, land use, government regulation, political action, and community development.

An often overlooked barrier to entry for women into the mainstream workforce is Pakistan's dominant **culture of relational business**. As one Punjabi lawyer put it: "We don't have an ethic of individual self-reliance here." Part and parcel of the Pakistani civic attitude and spirit of cooperation is that life tasks are accomplished by the help and society of others. A person seeking a driver's license will retain a driver's license procurement agent who will then deal with the necessary bureaucracy. A small business owner seeking a supplier will contact his personal network of friends and associates in order to locate a suitable partner. Banks require a personal reference in order to open a savings account—one bank manager professed to acting as a reference for women who come in without their own references but otherwise "look trustworthy." As a group, women lack personal networks for business, employment, and education in financial matters. Women's Chambers of Commerce and other women-only groups are proving to be inadequate remedies when compared with efforts to link women with men in the informal personal/business networks that are so critical in Pakistan for success.

By far the largest obstacle to greater integration of women into the non-domestic employment sector is **unconscious gender attitudes and norms.** Much in the way that the "zero-sum" concept of wealth pervades society without ever being spoken, it is simply assumed in most quarters of Pakistan that women inherently do some things and men do others. The root of gender bias and gender disparity is something more unconscious than it is invidious and its practitioners are women as well as men. Tradition plays a significant role in Pakistani society. What *is* is closely linked temporally with what has been. Changing things that apparently "are working," such as traditional gender roles, uncomfortably calls into question other traditions and near-universally held beliefs. Fortunately, there is a growing recognition among the lower middle-classes that women like to work, that women are good at work, and that when women work, everyone benefits.

Those collaborations are being spurred by what many regard as failure or abandonment by the government. Not an abandonment or failure in the context of the most recent years, but a general sense of the perpetual ineffectiveness of Pakistani national leadership since the nation's founding in 1947. Devolution, discussed earlier, is a significant enabling circumstance in this new-found localized self-reliance. People are mostly excited by the prospect of supplementing an unresponsive national regime with organs of government that are closer to home. There is a growing sense, accompanied by some bitterness, of the need to **"go it alone"** on a local and regional scale in the absence of effective national schemes of government. Nowhere is this emerging dynamic more prominent than in the industrial city of Sialkot. The city's Chamber of Commerce, in cooperation with its district n*azim* and local administration, has managed—largely by itself—to break ground on a world-class cargo airport, partner with a foreign country (Sweden) for the creation of a technical university, and repair and upgrade its own roads. With its robust industries of leather goods, sporting goods, surgical instruments, and agriculture, among others, Sialkot stands a good chance of becoming a larger player on the world market. It does not intend to let unfulfilled promises by either Islamabad or the provincial government in Lahore stand in its way.

The normative attitude in Pakistan is one of **civic participation**. Respect to authority is freely given, people expect private property rights to be observed, public debate is a ubiquitous feature in urban Pakistan, and traffic flows effectively through uncontrolled intersections. Pakistanis respect each other and each other's opinions. Political violence is cause for grave national concern and there is a strong national ethic of partnership that engenders pride in the nation and its accomplishments from all corners. There is a tacit understanding that might does not make right and that criminals, worse than behaving in a manner that is "un-Islamic," are being disgustingly anti-social. Newspapers, as recent events have illustrated, are virtually uncensorable (Urdu papers are more susceptible than English-language ones), and cable television has rapidly expanded under the demand for hundreds of channels. Lawyers and the judiciary are significant movers in the realm of national policy and the public listens to their pronouncements. Even when perpetrating a scam—such as the presentation of an application for patent as license for the production of counterfeit goods—con men will use the cloak of legal imprimatur. In short, what is "right" matters to Pakistanis. Despite a state of virtual labor law meltdown, the codes, policies, and implementing regulations are still quoted today, though with less fervor than before. This suggests that codes, policies, and regulations represent a just and legitimate point of reference from which to launch debate.

The country is accustomed to doing what it wants in the absence of government regulation or consensual agreement otherwise limiting that behavior. This dynamic, ubiquitous in the West, is unknown in certain permission-based societies where no act may be undertaken by an individual unless and until it is specifically or implicitly authorized. This **"freedom of action" civic paradigm** is essential to growth; it enables social and technological change and rewards innovators for their ideas and the risks they take in the marketplace in order to implement them.

Recommendations

With regard to future programming, USAID in Pakistan might consider the following:

- Immediately begin leveraging in-house capabilities, such as the Department of Justice-sponsored Rule of Law Attorney, to assist in implementing the forthcoming labor law regime. An interagency memorandum of understanding should be drafted or amended in order to begin this effort. Major facets of labor law implementation should be examined with the objective of facilitating common-sense procedures. Some examples include: ensuring that redundant, inapplicable, or contradictory laws are publicly repealed; ensuring that the implementing codes are consolidated, easy to read and understand, and published ubiquitously; ensuring that implementation drafters do not operate in a "stovepipe" and that they secure the assistance of relevant external ministries, including finance; and educating the implementation drafters about the economic rationale underlying the 2002 Labor Policy and helping them to communicate the benefits of free-market labor practices through the implementation documents. Other large donors are supporting the technical aspects of consolidating and revising the labor laws, but implementation remains a problem in Pakistan. The event horizon for this activity is within the next five years and substantial assistance will be required. Rational implementation will be a long-term effort.
- Begin an effort to assist in the reformation of judicial administration in Pakistan. Starting first with a practical study of judicial inefficiency, gain metrics with which to enlist Government of Pakistan partnership. This effort should be undertaken by organizational process improvement specialists, not lawyers. This could be accomplished by outsourcing a study that focuses on questions such as: "Ranked in order, what Pakistani judicial processes are most inefficient?" and "How much time and effort could be saved by implementing what changes? At what cost?" For the long term, assist with a multi-year reformation of judicial administration in order to free judges to focus on the business of law and thereby remove the backlog of cases that has effectively halted the courts. This approach promises greater yield than simply adding more judges to the currently dysfunctional system.
- Immediately study the money flows of all employee benefits schemes (including those administered at the provincial level). Key personnel in the government must assist in order to combat entrenched beneficiaries of the current schemes. It is likely that waste, fraud, and large-scale structural inefficiency will be discovered during this endeavor. The current problem is that there is not one set of authoritative numbers that show where the money actually comes from and where it goes. The completion horizon for this study is unknown, but will almost certainly take more than two years. The likelihood of follow-on opportunities to assist in the significant reform of employee benefits schemes is high. The high cost and low perceived value of the current employee benefits scheme is a major drag on the effectiveness and efficiency of the labor regime. Lip service is being paid to possible reform of these schemes, but actual change is

unlikely until the scope and nature of the problem is objectively revealed.

- Immediately engage in simple, effective, and visible rural development projects (such as clean water) under the aegis of economic development. These efforts will yield several results: (1) access to clean water improves the health of the work force, (2) ready access to water reduces the time spent (sometimes all day) gathering water, which in turn frees time for employment in a remunerative sector and further schooling, and (3) most of the current water-gatherers are women—freeing them from gathering water will free them to work more productively and to be educated. Finally, Pakistanis interviewed during this assessment said that they would like to see more tangible results of the special relationship that exists between the United States and Pakistan, and expressed slight resentment over U.S. aid to the Pakistani military, an organization that has ruled Pakistan's civilians for much of the country's history.
- Immediately study ways to influence unconscious gender norms regarding women in the workplace. Workplace data indicates that the increase in working women is being viewed as a success for Pakistan by men, women, and the market alike. It is likely that the major barrier to greater participation in the work force by women is simply that "no one has really thought of it." In other words, unconscious stereotyping of gender roles by men and women are preventing new behaviors. Focus on reducing these unconscious stereotypes and on bringing about increased opportunities without seeming to favor one gender over the other and without seeming to push an agenda.
- Immediately begin to assist labor unions in developing capacity. It is essential that labor unions be assisted during this critical period, when the substance and implementation of the future body of labor law is being determined. Labor unions require assistance in order to develop effective methods of agenda formulation, representative techniques and ethics, policy planning, negotiating skills, and general economic education. This assistance will foster an outlook of productive participation with industry in the coming labor regime. An excellent (and under-utilized) example of this type of development is the work being done by the Solidarity Center in Islamabad.
- Immediately study the efficacy of bringing business development expertise (such as sector/industry development planning) directly to the district level. The recent popularity of devolution and the rise of industrialists in local government may set the conditions necessary for significant economic growth centered in the local districts. If so, it will be critical that they develop an architecture that is ultimately compatible with larger enterprises in Karachi and beyond the borders. Improvements in this area are likely to stimulate both the demand for and supply of quality labor. Such a study might begin by asking this question: "Would district *nazims* want external business development expertise? Of what type and under what conditions?"
- Incubate think-tanks. There is a dearth of independent policy discourse in Pakistan. Think-tanks are emerging, but only in large cities and only with industrial backing. More institutions of educated, independent, critical thinking are required in order to bring new ideas and methods to the public debate and to the government's attention. Industrial dynamics in Pakistan have shown that a good idea catches on. Good policy ideas may be an important step towards revitalizing representative democracy and

further empowering the legislature. This is a critical component of economic growth—without business-enabling legislation, business cannot grow. Immediately plan to support private institutions of public thought that will hold real promise for elevating public discourse on wealth-generating systemic reform. Begin by canvassing Pakistan for progressive thinkers with a penchant for information dissemination. Then move into vetting, training on self-financing and developing influence, and direct financial support of nascent think-tanks.

REGISTERING PROPERTY

Introduction

The ability to freely own all types of property, and to easily transfer and register that ownership—especially with respect to real (non-movable) and intellectual property—is a fundamental requirement of business and economic growth in a free-market economy. Moreover, registration and protection of rights in intellectual property are critical to the encouragement of FDI and marketing of needed consumer goods, and to supporting innovative research and development of new domestic products. Thus, a strong legal and institutional framework is required for businesses to own, use and sell all types of property; manufacture and sell products and services; raise capital; and obtain credit. Secure ownership of property and an objective, transparent, and uniform system of property registration are necessary in all economies.[40]

Registering Property

Ranking Doing Business 2007: 68/175
BizCLIR Scores (scale 1 to 5):

- Legal Framework:
  - Real Property: 1.89
  - Intellectual Property: 3.77
- Implementing Institutions:
  - Real Property: 1
  - Intellectual Property: 4
- Supporting Institutions:
  - Real Property: 1.57
  - Intellectual Property: 3
- Social Dynamics:
  - Real Property: 2
  - Intellectual Property: 3.5

This chapter reviews the two most important and problematic areas of property registration in Pakistan: the registration of real and intellectual property. The overall assessment of laws and institutions involved in property registration in Pakistan was complicated by the extreme confusion and lack of consistency in information obtained from interviewees. Each person presented a different and subjective description of the overall processes of registering real and intellectual property. While the legal framework for registering real and intellectual property appears relatively clear on paper, the actual implementation of laws and regulations causes confusion, and stakeholders have very different experiences. With respect to real property and intellectual property registration, many factors appear to influence individual experiences: location (which province, and whether urban or rural); the persons and registering offices with whom one deals; the personal circumstances of the individual seeking to register an interest in property; and many other subjective factors (such as the objectives of the person being interviewed). All interviewees agreed that the processes are quite slow (measured in terms of months and years), complex, opaque, and—in the case of real property—highly inconsistent both within and between the several provinces (and especially between rural and urban areas). Social concerns arise from poor understanding and awareness of the laws, different levels of access to the implementing institutions, and enforcement of property rights, especially when it comes to women and real property registration.

This chapter first examines the legal framework, the implementing and supporting institutions, and the overall social dynamics at play in real property registration. It then covers the same territory for intellectual property (IP) registration. While not as convoluted and problematic as land registration, and despite significant reforms in the past two years, registration of IP and adequate protection of intellectual property rights (IPR) have been significant areas of discussion and debate between Pakistan and several other countries, particularly the United States. Indeed, intellectual property concerns—especially those related to pharmaceutical patents, piracy and counterfeiting, and overall trademark enforcement—have recently been cited as "serious barriers to trade and investment" and as a potential reason for the failure of the Pakistan-U.S. Bilateral Investment Treaty and Pakistan-U.S. Free Trade Agreement negotiations.[41]

The chapter concludes with long- and short-term recommendations for a more comprehensive and uniform land registration system, and recommendations for better registration (and, thus, better protection) of IPR. While Pakistan has made great progress in the area of registering and enforcing IPR as compared to even a few years ago, specific areas (especially in the area of pharmaceutical patents) need attention in order to attract more foreign investment and encourage domestic research and development.

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[40] For a discussion of the movable property registration system, see this report's chapter on Access to Credit.

[41] Israr Khan, "Pak-US investment treaty in doldrums," The News, May 17, 2007, at http://thenews.jang.com.pk/ arc_news.asp?id=3.

Real Property

Legal Framework

Three primary laws, all published in English and publicly available, govern the registration of title to real property (referred to as "immovable property," i.e., primarily land and improvements to land) in Pakistan: the **Transfer of Property Act, 1882;**[42] the **Registration Act, 1908**; and the **Stamp Act, 1899**. Stakeholders believe that these laws are "outmoded" and badly need updating in order to meet international best practices. If even the minimal requirements and systems expressly mandated by those laws were implemented in Pakistan, however, the overall system of real property registration would dramatically improve. As discussed in detail below, the written laws themselves are only a part (though a significant part) of the overall problem; it is the poor and inconsistent implementation that is responsible for the chaotic regime of real property registration.

According to both the Transfer of Property Act[43] and the Registration Act,[44] all documents that transfer an interest in real property in Pakistan, including conveyances and leases, must be registered with the Provincial Registrar or his designated Sub-Registrar in the district in which the property is located. Moreover, *compulsory* registration extends to all instruments of gift of immovable property (excluding certain gifts effective under Islamic law), certain leases of immovable property (exceeding a certain duration), and other non-testamentary instruments that purport or operate to create title in immovable property. Such compulsory registration is important because, pursuant to the Registration Act, it provides admissible evidence of transfer of title, gives notice of title from the date of registration, and gives the registered document effect against unregistered documents.

The registration procedure outlined by the Registration Act is relatively straightforward. The document, which has usually been executed by the parties to the transaction beforehand,[45] is presented by the parties or their legal representatives at the local office of the registrar. The registering officer verifies that the document was executed by the persons who purport to have done so. He also verifies the identities, competence, and authority of the people appearing before him. He then makes certain endorsements on the face of the document.

The Registration Act is not the only law affecting registration of real property. The Stamp Act, although solely a fiscal regulation and not a registration law, *per se*, also affects the registration of documents that transfer title to real estate. The Stamp Act provides that all leases and defined documents of conveyance shall be duly stamped and charged with a duty (i.e., a tax). If a document is presented to the registrar (or his registering officer) without being duly stamped, then the registering officer is required to impound the document for non-compliance. Although both the Registration Act and the Stamp Act are silent on this point, there is a legal basis for the registering office to refuse to take further action after this point, and to forward the document to the Revenue Collector, who is then responsible for compelling payment, stamping the document, and returning it to the registering officer for further registration action. This process can add significant delays to the registration timeline.

The legal framework of registration of real property is further complicated by (1) a framework of land registration that affects so-called "revenue lands" or "agricultural lands"; and (2) local authorities' regulations that appear to completely circumvent the Registration Act and the Stamp Act. With respect to the former, in rural areas and even in some urban areas, low-level revenue officers called *Patwaris* act as both the surveyors and registrars of land. It is almost impossible to ascertain the parameters and legal framework of this *Patwari* registration system. Indeed, as discussed in greater detail in the section on implementing institutions below, it appears that the *Patwari* system has morphed out of a centuries-old Mughal[46] system of land records into its own extremely opaque and inaccurate (perhaps intentionally so) framework. In similar fashion, in urban areas, where real property lies within the geographical jurisdiction of

[42] The Transfer of Property Act, 1882, does not apply to all parts of Pakistan but only to those to which it has been formally extended. It has not been extended to the Punjab, for example. However, its principles are nonetheless applied as matter of justice and equity. It is also important to note that transfers of land in the Punjab can still be made through oral transfers as long as the transfer is made in front of the Patwari and witnesses. The transfer is then further confirmed by the Tehsildar, who is required to have the transaction confirmed in an open public hearing. This is often done in rural areas but not in urban areas.

[43] Section 54.

[44] Section 17.

[45] The actual practice in this regard is a bit unclear and appears uneven among different jurisdictions: there is anecdotal evidence that in some offices the usual practice is that documents are executed in front of the registering officer, though that is not required by the Registration Act, 1908, which only requires that a document be presented for registration within four months of its execution.

[46] Imposed by the Mughal Empire in South and Central Asia.

certain federal, provincial, and municipal government authorities (such as local development housing authorities or the Army), those authorities maintain their own registration systems and offices, at least some of which (especially the Army-run housing societies and cantonments) bear little or no relationship to provincial land registrars or revenue collectors.

Implementing Institutions

The formal legal framework created by the Transfer of Property Act, the Registration Act, and the Stamp Act is not unlike that used today in most developed countries, and—though greatly in need of updating—would be quite familiar to legal practitioners in most jurisdictions in the United States. Even a comprehensive reform of the legal framework, however, would be ineffective by itself: problems arise not only from the outmoded legal framework but also from the institutions charged with implementing that framework. Institutional implementation problems not only cause significant delays in registration (it can take more than six months to register a conveyance), but also lead to huge numbers of land disputes arising from inaccurate records (including multiple registrations of the same land interest by different parties, and poor boundary descriptions that cause overlapping claims), a multiplicity of institutions with jurisdiction over the registration processes, and opaque processes with significant opportunities for rent-seeking by people involved in the processes.

The primary implementing institution for registration of real property ownership is the office of the **Land Registrar** in each province (in some provinces this entity may be a **Deputy District Officer**).[47] The offices of the land registrars are chaotic places. In offices in Karachi and Peshawar, property records were stacked floor-to-ceiling throughout a maze of poorly-lit, poorly-ventilated, and filthy rooms. Although the Registration Act expressly requires provincial governments to supply the land registrar offices with fireproof and other suitable storage arrangements for the safe custody of registered documents, damaged documents are the norm. In one office, an extensive list of lost documents and cans of insect killer were ominous indicators of overall conditions. If a fire were to occur, most registered documents would be lost and the land records of the entire jurisdiction would be compromised.[48] There were no computers, no microfiche, and no obvious systems for organizing the records. Evidence suggests that finding a given record takes a group of staff members many hours and cannot be accomplished by the public.

As indicated above, the registration process itself is somewhat at odds with the more streamlined legal framework provided by the Registration Act and the Stamp Act. The usual process of preparing a conveyance deed for registration is cumbersome and quite slow: usually a deed is prepared on a "stamp paper,"[49] which requires that an application form (*challan*) must be filed with and approved by the provincial treasury. Additionally, a capital value tax must be paid to the treasury (usually through deposit in the SBP). In turn, the conveyance deed is prepared by a deed writer or, in the case of larger transactions that justify the considerably greater expense, a lawyer. The registration is accomplished in front of the staff designee of the land registrar, who—in addition to collecting the appropriate fee—will require proof of identity[50] from the parties executing the deed or their legal representative(s), and a signature and/or thumb print in the registration index from each party or representative.

In some jurisdictions, the primary institutional implementing authority for registration of interests in real property completely bypasses the land registrar contemplated by the Registration Act and resides with either (1) certain **federal, provincial, and municipal government authorities** and **private housing societies** or (2) the **provincial board of revenue or provincial revenue collector**. In the case of private housing societies and government authorities, parallel systems of registering interests in land have been created by these entities and they appear to have no relationship or interaction with the provincial land registrar or revenue collector. Private housing societies normally have three requirements for a valid transfer of

47 There is some confusion among those interviewed for this assessment as to the precise role and even the correct title of the Land Registrar throughout various parts of Pakistan. One view is that there is no "land registrar" per se, only a registrar simpliciter. Furthermore, it is unclear whether the registration authorities are characterized correctly as the "primary institutions" for land. Instead, the registration mechanism could be characterized as a supplemental mechanism to the primary mechanism of the land revenue system described below. Even today, the vast majority of lands (to the extent they are not in the tribal areas) are regulated under the land revenue system.

48 This has happened repeatedly in Lahore where fires have wiped out the records of a large part of the city. Many believe that that the fires were set deliberately by the parties then in power.

49 In the required denomination, purchased for a percentage-based fee from the provincial treasury or in some jurisdictions from authorized vendors.

50 Such as a Computerized National Identity Card, a birth certificate, a matriculation certificate, or a domicile certificate issued by a district magistrate.

land interest: (1) registration of a sale deed, (2) an internal transfer with the society, and (3) a mutation in the records of the relevant *Patwari*. Private housing societies quite often have computerized records. Similarly, the **Defense Housing Authority (DHA)** in Karachi has its own centralized and computerized land records registration system, which is generally regarded as up-to-date and accurate. No record of the transaction, however, is made with the provincial land registrar or the revenue collector.[51] And if an interest in real estate[52] is obtained from the **Karachi Development Authority** (KDA) or its counterparts in other cities (such as the **Peshawar Development Authority** or the **Lahore Development Authority),**[53] the registration of that interest is lodged in the local office of the authority, not with the provincial land registrar or revenue collector. As with the DHA registration system, these various development authorities also have their own up-to-date, accurate, and easily searchable computerized databases. To add to the confusion of parallel or alternative systems, multiple entities often have jurisdiction over a single particular parcel of land, and multiple approvals and registrations may be required. According to one interviewee,[54] some industrial estates in Karachi fall simultaneously within the land jurisdictions of the municipal government, provincial government, and Army, such that all three entities must give approvals and will register the interest (in this case, a leasehold) in the land.

The other primary implementing institution—and one that also bypasses the land registrar—is the provincial board of revenue or provincial revenue collector in certain jurisdictions. Especially in the case of rural areas and certain government lands (even in urban areas), moreover, the junior official within the revenue office responsible for maintaining land records is the ***Patwari***.

Patwaris retain custody of the original land records of a particular area, and also are the sole custodians of the records of government lands. There are nearly 14,000 *Patwaris* in Pakistan, each of whom is responsible for the original records of a particular area or between two to eight revenue estates. A revenue estate may be a single large village or two or three small villages. A *Patwari* is required to keep the original land records with him at all times, and has the authority to make changes relating to ownership, use, and taxation in the original record.

Land records are not simply static details of who owns what. The *Patwari* has 17 massive registers in his possession. One register contains details of present landowning; in another, the *Patwari* records sale and transfer of land. Another register details crops grown on lands and registers tenancies. In the Lal Kitaab, or "Red Book," the *Patwari* records unusual happenings on a particular property or area, such as an outbreak of bird flu, disease, or cluster of cow fatalities There is also a register containing the family tree of the landowner, which determines how the property will be divided if the landowner dies. All these registers are cross-linked and are quite scientific, in theory. In practice, however, the system is a mess.[55]

In those jurisdictions that rely on the *Patwari* for registering land ownership, the *Patwari* has enormous

Women and Real Property

With respect to real property, women interviewees had the same complaints as men: extreme delays, overall chaos, and confusion in the registration systems. When asked if they feel comfortable accessing the government offices in which registrations and other related administration activities take place, women noted that most physical facilities are in disrepair and disarray, but that they are no more intimidating or unfriendly to women than to anyone else. Indeed, several women commented that they were given preferential treatment when they entered registrars' offices, and one land registrar noted that his office makes special accommodation—in the form of a home visit by the registrar—for any women who are uncomfortable entering the office. No women were seen working in any of the land registration offices in Peshawar or Karachi visited during this assessment. When asked about the employment of more women in land offices, interviewees consistently responded that they would gladly hire more women but that female employees leave the workforce once they are married.

Although property registration laws themselves may be gender-neutral, social constraints cannot be overlooked. This is particularly apparent when women inherit their interests in property. As land ownership is significantly unclear and it is extremely difficult to ascertain prior title, women who inherit land interests may not understand what they have legally inherited—and they may be misled by male family members about distribution or coerced into giving up whatever interests they may have inherited. More reliable and transparent registration of land could alleviate this gender issue.

51 In DHA Lahore, no registered deed is required and the transfer is entirely internal. DHA Lahore also records are fully computerized.

52 Again, almost always a leasehold interest only.

53 In LDA, there are two types of lands: one type requires a registered sale and an internal transfer, and the other requires only an internal transfer. LDA has no computerized record of any sort, although LDA does own many computers.

54 Interview in Karachi with representatives of Overseas Investors Chamber of Commerce & Industry, 8 June 2007.

55 Blue Chip Magazine, Vol. 1, Iss. 3, August 2004, quoted in Muhammed Usman Qazi, Computerization of Land Records in Pakistan (April 2006) at http://www.apdip.net/ projects/e-government/capblg/casestudies/Pakistan-Qazi.pdf.

> In those jurisdictions that rely on the Patwari for registering land ownership, the Patwari has enormous and exclusive power . . . A more opaque, subjective, and abuse-prone system is hard to imagine.

and exclusive power.[56] He has the only land registration records in the jurisdiction, and the records are not available for public inspection.[57] He has exclusive authority to note any changes in the land ownership, and legal transfer of title does not occur unless and until he makes such notations.[58] The *Patwari* is the only official surveyor of the lands within his jurisdiction, and he alone determines the boundaries and is the sole arbiter of any boundary disputes.[59] His records are all manual and are carried with him wherever he goes, and most *Patwaris* maintain no official office for conducting their duties.[60] A more opaque, subjective, and abuse-prone system is hard to imagine. And it is widespread: while it is generally thought of as a system that is only used in rural areas, *Patwaris* in fact have authority over lands in urban areas (such as Karachi, which is nearly one-third urban) that, while legally defined as rural or "agricultural," have actually been subsumed by urban growth and, in many cases, are owned by urban development authorities.[61]

Finally, even in those jurisdictions where the office of the land registrar is the primary implementing institution, it is not the only one. A process of "mutation" supplements the statutory registration process provided by the Registration Act. Following registration of the conveyance deed, the new owner (the buyer) takes the registered deed to the office of the Board of Revenue or, in some cases, to a *Patwari* outside the revenue offices, who then enters a mutation record of the conveyance and ownership. In some jurisdictions, this mutation record is part of the Record of Rights, and is considered further evidence of ownership, although generally the mutual record is kept separately from the Record of Rights.[62] While mutation itself is not part of the land title registration system, and is instead only part of the fiscal system, it is generally regarded as an essential part of proving ownership of land. As described above, in the case of rural lands, it may be the *only* actual registration system. And even where formal registration has been accomplished in the office of the land registrar (or Deputy District Officer), mutation is almost universally considered the last step in land title registration and is required as evidence of such ownership in title disputes (generally evidenced by issuance of a *fard*[63] by the *Patwari* or other revenue officer).

Supporting Institutions

The institutions that typically support real property registration are private lawyers, courts, provincial governments, real estate agents and brokers, and banks and mortgage lenders. In Pakistan, these institutions are typically not involved in improving the overall system.

Private lawyers are generally bypassed by stakeholders in favor of much less-expensive deed writers, who tend to be more competent when it comes to drafting documents pertaining to real estate conveyancing. Most Pakistan-educated lawyers receive substandard legal education[64] and training when compared with their Western counterparts, and receive virtually no specialized training in conveyancing and registration of real property. According to one interviewee, lawyers involved in most real estate transactions, including leases, do very little actual work in exchange for their substantial fees: the client assembles all the relevant documentation (e.g., the *fard*, the certificate of non-encumbrance, or other evidence of clear title), and the deed writers draft the necessary conveyancing documents. When properties are located within a housing or development authority or similar

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56 No interviewees can recall any interactions with female Patwaris. In the Northwest Frontier Province, regulations reportedly forbid women from serving as Patwaris.

57 In some jurisdictions, a duplicate copy is maintained: The Patwari record (parth patwar) is kept with him while a duplicate record (parth sarkar) is kept at Tehsil headquarters with the Tehsildar. The Tehsildar then reconciles his record with the Patwari on a monthly basis.

58 In theory—although the practice is not consistent throughout Pakistan—the mutation made by the Patwari must be checked by the Qanungo (also called Girdawar in some areas) and, once the Qanungo approves, the mutation must still be approved by the Tehsildar following a public hearing.

59 As in the case of mutations, the survey conducted by the Patwari (which is called a girdawari) is supposed to be checked by the Qanungo and then finally approved by the Tehsildar.

60 In some areas, the Patwari keeps his records in an office called a patwarkhana.

61 Who, to make matters even more complicated, maintain their own registration systems and records, though subject to the priority of the Patwari's records.

62 The Record of Rights (or jamabandi) is the main record kept by the revenue department, which notes who owns what. Mutations are entered into the mutations register but a notation referring to the mutation is entered into the jamabandi so as to keep the jamabandi up to date. The jamabandi is then issued afresh generally every four years (though the time periods differ in practice from place to place), at which point all of the mutations over the past four years are incorporated into the Record of Rights.

63 A fard is an extract from the Record of Rights issued by the Patwari. It is issued only to the owner of record. When a sale deed is presented to a land registrar, the seller is also required to present evidence of title, a requirement normally interpreted as meaning a fard in favor of the seller.

64 Generally in part-time law colleges, staffed by part-time faculty.

jurisdictional entity, the authority staff often prepares any necessary documentation for transferring leasehold interests and registering those interests in the authority's centralized registry.

Everyone interviewed expressed vigorous discontent with Pakistan's land ownership and registration systems.

Courts are notoriously slow and incapable of resolving real estate disputes. According to judges, a significant part of the problem lies with the quality of judicial education and training—the only requirement is an LLB and six months of training in a provincial judicial academy. These low standards, coupled with low pay, make it nearly impossible to build a cadre of competent judges, especially in the lower (district) civil courts. In most cases, however, primary fault lies with the lawyers: because most real estate disputes involve challenges to ownership, possession, and boundaries, at least one party to every dispute (almost always the party enjoying beneficial use) will instruct his lawyer to delay the case for as long as possible, maximizing the period of beneficial use and exerting maximum pressure on the opposing party to reach a compromise. In Peshawar and Karachi, four to 10 year delays are normal. Considering that 50 to 75% of the case load in the lower lever district civil courts and the provincial high courts is related to land disputes, the significant caseload and delay affects interests in real property and the resolution of many other types of civil disputes as well. Active case management by judges is virtually non-existent. And when judges do attempt to impose deadlines and move cases along in a timely fashion, lack of credible evidence from the various registries (and especially from the *Patwaris*, who are often directly responsible for delaying the court proceedings by failing or refusing to provide information) frustrates these efforts.

Provincial governments appear to be completely absent from the registration process, except to the extent that they participate in alternative registration schemes through development authorities and similar entities. The provincial governments have not even met their basic legal obligation to provide secure and fire-proof facilities for the storage of registered documents. Other than a few limited pilot projects in the provinces of Punjab (particularly in Lahore) and Balochistan, the provincial governments have not attempted to address the land record registration problems identified above. Steps they have not taken include: consolidating the various land registries; upgrading the provincial land registrars' facilities; providing non-manual, automated registration systems for the land registrars; creating uniform registration systems throughout a province; and undertaking to create province-wide cadastral surveys and indices.

The involvement of **real estate agents and brokers** in registration of land records is also very limited. There is no national organization of realtors, and local realtor associations are not involved in lobbying or pressing for land registration reforms. Because there is no organized real estate profession in Pakistan, there are no professional codes of conduct, continuing professional education programs, or formal systems or associations in place to encourage greater professionalism and competence among realtors. To the extent that realtors are involved in conveyancing transactions, the opportunities for rent-seeking at all levels of the transaction are abundant and exploited.

Banks and lenders, at least in the case of mortgage interests on agricultural lands, appear to have given up on the various systems of real property registration and created ways to avoid them. For example, the use of a so-called "Passbook" is becoming standard practice among banks, whereby an encumbrance on the land is created by contract but not recorded in any official government registry.[65] Instead, the encumbrance is recorded in a Passbook issued by the bank to the landowner, who then shows it to subsequent mortgagors as proof of non-encumbrance (or satisfaction of prior encumbrances) when seeking a new mortgage. Of course, the problem with this system is that there is no centralized registry of Passbook information (other than the *Patwari*, in limited cases), and subsequent lenders may have no knowledge of prior encumbrances. In questions of priority of security interests, the Passbook system generally results in more rather than less litigation.

Social Dynamics

There is a strong demand for reform of land registration and land titling processes in Pakistan within the business community, and even among some government administrator, such as officials in the land registrar offices. All interviewees expressed dissatisfaction with Pakistan's land ownership and registration systems. Their primary concerns are the relatively limited amount of land available to most businesses (both to own as well as to lease), the

[65] In some areas of Pakistan, the practice may be that Passbooks are sent to the Patwari, who makes an entry with respect to the debt in his records. Those Passbook debts, therefore, are recorded in official records. Also, the security interest of the Bank might not be enforceable if there is no record with the Patwari. There is no uniform practice in this regard and no interviewees could explain why or under what circumstances such notation is made in the Patwari's records.

complexity and opacity of multiple land registration processes, the obstacles to owning land in the first place, and the impediments to proving ownership and obtaining mortgages.

Yet the state—who, as the largest landholder in Pakistan is naturally the largest stakeholder in land registration reform—has paid scant attention to these concerns.[66] Most state officials who administer land rights have considerable "discretion" in conveyance decisions, and they appear to wield that power in a highly political and opaque manner. Artificial shortages of land are created by occasional government policies or mere inaction. According to reports, moratoria are occasionally imposed on sale or transfer of state lands. Moreover, while there are development start-up rules that apply to most state-owned land,[67] interviewees in both Karachi and Peshawar complained of extremely poor follow-up by government authorities. Considerably more than half of all land subject to being withdrawn (land which otherwise could be used for active economic development) sits unused well beyond the allotted start-up time.

Further complicating the social dynamic of land ownership and registration is a phenomenon known in Pakistan as the Land Mafia. The Land Mafia are individuals or organized groups who illegally take possession of land and/or who unlawfully claim ownership of land (often through forged documents or fraudulent claims of inheritance) and seek to dispossess the true owners through legal or extra-legal means.[68] Squatting and land-grabbing are considered a major social problem and are regarded as a significant impediment to economic development. The courts have not resolved this problem.[69]

Even the judges interviewed for this report agreed that the courts are unable to quickly and effectively hear and decide cases involving conflicting claims to land ownership and possession, in part due to the proportionately huge load of land disputes before the courts, and in part because it is so difficult for true owners to obtain credible evidence of their ownership.

[66] Other than the land registrars who would like to see more modern facilities and efficient systems for registration and maintenance of land records.

[67] Requiring the state to take back the land and re-convey it if development is not started by a new owner or lessee within a specified period of time, usually three years.

[68] In addition to use of legal process in the courts, some Land Mafia occupy the property using actual or threatened violence. In some cases, the Land Mafia undertake improvements to the land, as if they were its true owners.

[69] The Illegal Dispossession Act of 2004, passed to help people whose land has been illegally taken, but it has not helped much.

Instead, as discussed above, lawyers for these squatters and land-grabbers delay the progress of cases as long as possible, allowing their clients to continue beneficial possession or to enabling them to extort payments in return for relinquishing their claims. As one interviewee in Karachi commented, "land litigation is never about resolving disputes—it's about putting pressure on the other party, often for negotiation purposes." And, of course, the spill-over effect from the log-jam of land litigation is that the overwhelmed judiciary is unable to effectively and efficiently resolve non-land disputes, such as basic contract and tort claims.

Few government programs have aimed to reform land registration systems. The few programs that have been attempted in recent years have been instituted in response to a particular project or isolated situation, such as a pilot project undertaken by the Punjab Government to computerize *Patwari* land records in certain areas of that province, and a surveying/mapping/microfilming project reportedly undertaken in Karachi. Interviews blame the political influence of the Land Mafia—whose interest in preventing reforms aimed at transparency and accuracy in land rights registration is obvious—for part of the state's inaction. However, business leaders also accept some blame, admitting that they do not have time[70] to meet with and lobby government leaders for needed reforms.

Intellectual Property

Legal Framework

Pakistan is a member of the **World Intellectual Property Organisation (WIPO)** and is a signatory to the **Paris Convention**, the **Berne Convention,** and the **Universal Copyright Convention**, among other multilateral agreements. Pakistan has six primary laws that regulate the registration and enforcement of IP rights: the **Industrial Designs Ordinance (2000)**, the **Patents Ordinance (2000)**, the **Lay-out Design of Integrated Circuits Ordinance (2000)**, the **Copyrights Ordinance (1962, as amended in 2000)**, the **Trademarks Ordinance (2001)**, and the **Trademarks Rules (2004)**. In 2005, the **Intellectual Property Organization—Pakistan** was established,

[70] As one interviewee explained, meetings with government representatives are invariably delayed by several hours due to logistic problems and other vague reasons, and it is difficult for most businesspeople to be out of touch with their offices for prolonged periods of time, especially because they are not able to keep their mobile phones turned on while they wait or while they are in the meetings.

merging together three IP offices (the Patent Office, the Trademarks Office, and the Copyright Office, which were previously divided between the Ministries of Industry, Commerce, and Education) into a single ministry-level agency that reports directly to the Prime Minister.

The initial Patents Ordinance (2000) is generally considered a good law, although some have said it was "made in haste and without public consultation … failing to exploit all the public health provisions in the agreement on TRIPS."[71] Interviewees agree that the 2000 law was (at least) compliant with the WTO Agreement on Trade Related Intellectual Property Rights (TRIPS) rules. In 2002, certain amendments made to the Patents Ordinance (2000) resulted in considerable and lingering debate about the ordinance's current TRIPS compliance. The IPO-P insists that the patents law remains TRIPS-compliant and that complaints (primarily from U.S., Canadian, and Swiss industry and trade interests) of non-compliance are without merit and fail to take into account certain "flexibilities" in the agreement on TRIPS that were negotiated by various developing countries, beginning primarily in 2001. Indeed, IPO-P and some other commentators argue that "a strict implementation of various TRIPS provisions and constraining the use of existing flexibilities will lead to substantial increases in drug prices, particularly in developing countries."[72] This debate has been characterized as mirroring a continuing conflict between "the interests of a vocal group of developing countries…set against the interests of transnational pharmaceutical companies and several industrialized countries."[73]

An analysis of this "flexibilities" debate falls outside the scope of this assessment.[74] However, the primary complaints regarding Pakistan's patent laws are: the lack of data protection (data exclusivity); deletion of previously enacted provisions for "use" patents; the allowing of "early working" or "Bolar" exceptions, which may benefit generic drug producers; patent registration limited to single chemical entities; and limited protection for derivatives. The issue of data exclusivity is reportedly being addressed by a new draft Data Protection Act that has been prepared with input from the U.S. pharmaceutical industry and other stakeholders in Pakistan and abroad. The draft law, however, has not yet been enacted, and its progress and likelihood of enactment, especially as initially drafted, are unclear. Reforms with respect to the other issues highlighted above do not appear to be on the horizon. According to industry stakeholders interviewed for this report, these issues have a negative impact on direct foreign investment in Pakistan, and on domestic research, development, and production of products (especially pharmaceutical products). Given that the pharmaceutical industry is one of Pakistan's largest industries, with an estimated market in 2003 of US$1 billion annually (and a 5% annual rate of growth),[75] the laws governing patent registration, in particular, need to be carefully assessed.

Women in the IP world. During this assessment, a very small number of women were observed working in the IP registration offices in Karachi, and none worked in the IPO-P offices in Islamabad, although the Islamabad, Karachi, and Lahore "Help Lines" each list a woman as the point of contact. When asked about the employment of more women in IP registration offices, interviewees reiterated the response from land registration officials: they would gladly hire more women. On the industry side of IPR, however, women are actively involved at all levels, including in trade groups involved in advocacy for better protections. Mrs. Ameena Saiyid, OBE, is an active member and the 2006 Chairperson of the Anti Counterfeit and Infringement Forum, for example. Most meetings and public forums include significant participation by women.

Implementing Institutions

The formal legal framework for registering intellectual property is not overly complicated or unclear, despite some policy-centered debates about the content of the patent laws. As with all laws in Pakistan, however, implementation is the primary concern and registration of all forms of intellectual property is dismally slow.

Intellectual Property Organization–Pakistan (IPO-P) is the sole registration authority for intellectual property rights. With its headquarters in Islamabad, IPO-P is structured in a manner that, at least on paper, seems to invite private sector as well as government input into matters of IP policy and implementation. The IPO-P is headed by a Policy Board of 18 members; the Chairman is selected from the private sector and the Vice-Chairman is from government. Other members of the Policy Board are six Federal Secretaries and ten Corporate Executives. The operational head of the IPO-P is the Director General, who reports directly to the Prime Minister. According to the IPO-P, this structure allows it to be less "political," more responsive to the needs of the IP

71 Hafiz Aziz ur Rehman, "TRIPS and Public Health: Implications for Pakistan," Islamabad Law Review, Vol. 1:3&4, Autumn/Winter 2003, pps 457 and 485.

72 Id at 476.

73 Id at 460.

74 For additional information and a review of the Pakistani perspective on the issue, see Rehman.

75 Id at 481.

industry, and more professional in its operations. The Patent and Design Office, Trade Marks Registry, and Copyright Registry of the IPO-P are located in Karachi, with an IPO-P Regional Office in Lahore and others planned in Peshawar and Quetta. Currently, online registrations cannot be accomplished in Islamabad nor can any searches of databases in Karachi be conducted remotely. If an application for registration is made anywhere other than Karachi, therefore, the actual registration documents must be sent to Karachi and manually processed there. There is an e-mail "Help Line" in Karachi, however, to which search requests can be sent.

Although they are not remotely accessible, records in the Patents and Design Office are now fully computerized and the relevant database can be searched through public terminals in that office.[76] There are also 14 patent examiners currently in the Karachi Patent and Design Office. According to the IPO-P, computerization of that office was begun in April 2006 and a database of 20-year-old records is nearly complete. The Trademarks Registry in Karachi also is now fully computerized, with an up-to-date searchable database that covers the preceding 50 years. Both the Patents and Design Office and the Trademarks Registry report that they have installed and are just beginning to use the WIPO Industrial Property Automation System, a comprehensive automation solution developed by WIPO. The Copyright Registry is not yet computerized, although IPO-P reports that plans are underway for automation in that office.

The Trademarks Registry publishes a paper version of the Trademarks Journal, listing all applications for registration of trademarks and registration of copyrights. The actual frequency of publication is unclear from interviews, but it is intended to be quarterly. There are also plans underway to combine all IP registration applications into a single *IP Journal* to be published quarterly. There are no immediate plans to make this information Internet-accessible.

According to all interviewees, the timeframe for accomplishing IP registration is quite slow. In the case of trademark applications, one interviewee observed that a minimum of three to five years is required, although he did praise the Karachi Trademarks Office in particular for having a good registrar in charge. In the case of patent applications, he observed that the Patents and Design Office "will not even look at the application for at least two years," and at least one year is required for a copyright application. He also estimated that as many as 5,000 to 6,000 patent applications are currently pending before the Patents and Design Office. One law firm interviewed noted that it usually keeps four employees in the Trademarks Office in an effort to "push things along," and said that "capacity building" is the single greatest need of the IPO-P.

The IPO-P is not the only institution responsible for implementing IP registration in Pakistan. In the case of generic pharmaceutical products, the **Ministry of Health** is also issuing patents, even when these patents may conflict with prior pending applications by non-generic manufacturers before the Patents and Design Office. The actual reason for this apparent overlap in authority is unclear, but stem from political issues. Reportedly, discussions are currently underway between the Director General of the IPO-P, the Minister of Health, and the Prime Minister to resolve this conflict. Significantly, multinational pharmaceutical firms are pushing these discussions forward, in light of their complaints that generic drug manufacturers are able to obtain information on file with the Patents and Design Office and circumvent that process by registering the same data with the Ministry of Health.

Supporting Institutions

Trade and industry groups are important supporting institutions in the registration and enforcement of IPR. The most prominent of such groups in Pakistan is the Anti Counterfeit and Infringement Forum (ACIF), based in Karachi. Active members include representatives from large multinational corporations (MNCs) operating in Pakistan, including Johnson & Johnson, Pepsi Cola, Unilever, Oxford University Press, and Nestlé. ACIF publishes a quarterly newsletter, hosts frequent forums on IPR issues, and provides input to government policymakers on IPR issues.

While they are not directly involved in registration of intellectual property, l**aw enforcement entities** and the **courts** (theoretically) provide important supporting functions related to IPR enforcement. According to interviewees, however, these institutions have historically been weak and vulnerable to negative political influence. While law enforcement is rapidly improving with respect to investigations and arrests, interviewees complain that the courts are still not effectively dealing with IP infringements.

In Pakistan, overall enforcement of IP rights is provided by the **Provincial Police**; production control (i.e., preventing counterfeiting and piracy) is provided by the **Federal Investigation Agency (FIA)**; border control (i.e., preventing smuggling in and out of

[76] At the time of this assessment, however, the public terminals and office-use systems appeared to be out-of-order.

counterfeit goods) is provided by **Customs**; and **private investigation agencies** supplement the investigation and enforcement authorities on behalf of the larger companies (mostly MNCs) and trade groups. Virtually every interviewee for the IP section of this report, especially in the IPO-P, was quick to point out the successes of law enforcement entities: several interviewees noted a major Customs seizure at the Karachi airport of over 180,000 pirated optical disks in the early 2000's as well as similar seizures in Lahore and Islamabad. The Rawalpindi Customs reportedly has established an "Anti-Piracy Cell" at Islamabad Airport. The FIA has also carried out significant seizures of optical disks and stamping equipment at several manufacturing plants, and according to IPO-P, six major manufacturers of optical disks were shut down in 2005. The IPO-P also touts a 95% drop in the import of polycarbonate after 2005.[77]

Several interviewees commented that, while the FIA and Customs are doing a good job in effectively combating IP infringement, there is a lack of coordination between all agencies, and especially a lack of front-line enforcement by the Provincial Police. IPO-P responds by noting that monthly coordination meetings are held by representatives of all enforcement agencies involved in IP law enforcement, a statement corroborated by interviewees who are not affiliated with the IPO-P. In response to charges that the Provincial Police are not actively enforcing IP laws (or are only "selectively" enforcing them while protecting some infringers), the IPO-P admits that enforcement activities have been prioritized according to availability of resources and concerns about public opinion. The first priority has been large-scale manufacturers, with smaller manufacturers and distributors targeted next. Small-scale vendors—the ones that Provincial Police would ordinarily be targeting at local bazaars and markets—are low on the priority list. IPO-P believes that a major push against small violators would expend limited and generate too much ill-will at this point. According to IPO-P, most people in Pakistan do not really understand the harm caused by counterfeiting and piracy, especially in light of the lower prices of those goods. As such, IPO-P's long-term strategy is not only direct law enforcement but also public education and awareness.

Finally, all interviewees unanimously agreed that the **courts** are not adequately enforcing IP laws, despite the best efforts of the law enforcement agencies.

[77] In fact, IPO-P claims to have completely dried up the manufacture of pirated disks in Pakistan, and asserts that all pirated disks found in that country are coming in from Southeast Asia.

Although copyright infringement and piracy are non-bailable criminal offences that carry significant fines, judges are either unaware of those laws or unconcerned with strict enforcement. In the case of patent and trademark infringement, the laws themselves are quite lenient. Violations are non-criminal and only minimal civil penalties (the equivalent of US$25) are imposed per violation. Moreover, judges receive no special training or education in IP law, and there is no special tribunal established to hear IP cases.

Social Dynamics

As the IPO-P underscores in its published materials and during interviews, public education and awareness are an important component of any IPR enforcement effort. The Government of Pakistan appears to be well aware of the need for an effective and efficient IP registration and enforcement regime, and appears to have taken massive strides towards that goal. Even small and many medium-sized businesses in Pakistan, however, are still unaware of the IP registration services available to them or the consequences of infringement. Similarly, the public is generally unaware of the enormous economic costs (billions of rupees annually lost in government revenues) to the nation resulting from IPR infringement, and of the social costs arising from consumer harm and from lost opportunities for FDI and domestic investment in research and development of innovative products, manufacturing, and distribution of legitimate products. Trade and industry groups have decided to educate the public and raise public awareness of IPR issues. While IPO-P has undertaken active campaigns to raise public education and awareness (such as a current ad campaign in airports undertaken in conjunction with Customs), the public remains largely ignorant and thus generally not supportive of IP registration and enforcement.

Recommendations

Real Property

Short Term

- Microfilm or scan into a computerized database all land records in the offices of Provincial Land Registrars, as well as those maintained by *Patwaris* and the Revenue Collectors offices, for preservation and ease of indexing and searching.
- Revamp provincial land registration offices: conduct physical upgrades of the facilities, and sort, clean, and restore documents and place them in secure, fireproof storage.

- Digitize and index deeds, mortgages, and other land instruments and link them to the surveyed land plots they relate to, so that such information can be found in minutes and read by any member of the public on a computer screen.
- Conduct public education and awareness of land tenure rights, especially for women in rural areas.
- Conduct land tenure/titling education and training programs for civil district court judges. Couple this education with the establishment of specialized land disputes courts or tribunals (subject to Constitutional limitations) and strict case management.
- Establish land tenure/titling education and training programs for governmental officials involved in land registration processes.
- Establish a uniform system of land mapping using aerial photography and satellite surveying on a large scale, initially in Punjab and Sindh Provinces on a most urgent basis. Establish an automated (computer database) cadastral system similar to the one being considered in Lahore.

Long Term

- Create a single land registry in each Province, and eliminate duplication in other parallel systems. This would entail, at a minimum, merging the registries employed by various housing authorities and cooperatives, as well the *Patwari* system, into a single system of land registration.
- Reform the non-transparent practices surrounding state land and land held by various governmental and cooperative authorities and societies. As practical, there should be a single governmental body that owns or coordinates ownership of all state land throughout Pakistan. Also, a long-term program should be adopted to privatize state land, particularly those large areas that are not actually used for public purposes
- Reform the existing Land Registration Act to bring it more in line with international best practices, especially in abolishing oral gifts and transfers of land interests.

Intellectual Property

Short Term

- Continue to integrate all management of IPO into a centralized registry, including bringing trademarks, patents, and copyrights registry offices into a single facility under a single management structure.
- Microfilm or scan into a computerized database all IP records in the regional trademarks, patents, and copyrights registries for preservation and ease of indexing and searching.
- Revamp regional trademarks, patents, and copyrights offices: conduct physical upgrades of the facilities, and sort, clean, and restore documents and place them in secure, fireproof storage.
- Fully automate indexing of trademarks, patents, and copyrights registries so that such information can be found in minutes and read by any member of the public on a computer screen, including eventually remote Internet access.
- Conduct public education and awareness of IP rights, especially about national economic harm and the personal and economic injury caused by counterfeit products and piracy.
- Establish IPR education and training programs for civil district court judges and establish specialized IPR courts or tribunals
- Establish IPR education and training programs for government officials involved IPR processes.
- Better coordinate IPR enforcement activities.

Long Term

- Foster close coordination and increased input from industry and trade representatives during the reform of IP laws and regulations.
- Resolve the TRIPS-compliance debates, especially those involving the pharmaceutical industries, and encourage greater FDI in IP-related areas.

GETTING CREDIT

Introduction

Reasonable access to affordable finance arises from a complex mixture of laws, institutions, and practices. The heart of the matter, however, is simple: lenders extend credit at affordable rates in a competitive market only when the costs and risks of extending credit permit them to do so. A high risk of default and a low likelihood of recovery on default will increase the cost of credit. If there are too many complexities involved in giving credit, then management becomes more expensive, and that, too, is reflected in the price.

Getting Credit

Ranking Doing Business 2007: 65/175
BizCLIR Scores (scale 1 to 5):

- Legal Framework: 2.78
- Implementing Institutions: 1.89
- Supporting Institutions: 2.25
- Social Dynamics: 2.09

Pakistan has a solid foundation for increasing access to credit, but risks and costs are unnecessarily high. They can be lowered, but success will require work in a number of areas. Large businesses generally have little trouble obtaining the finance they need. Their complaints tend to be limited to high interest rates or slow processes. Micro-enterprises are increasingly being served by various micro-finance institutions, but perhaps no more than 10% of the micro-finance needs are currently being met. For SMEs, there is a very large gap between supply and demand, with an estimated 90% of the market as yet unreached. When disaggregated by gender, the numbers for women are even worse.

Women receive the lowest percentage of microfinance loans in the region and constitute only 10% of the formal workforce; few women are able to get formal loans. Many are forced to depend on informal lending for their needs, and these arrangements come with exorbitant interest rates. A large percentage of Pakistani women, especially in rural areas, do not even have personal identity cards and are therefore essentially invisible to the formal market. Add in lower education, less business experience, and some cultural biases against women in the formal markets, and there are very high barriers to access to credit for women. Better access is needed for the entire economy, but particularly for women if they are to play a larger role in Pakistan's economic growth.

While Pakistan has tremendously improved its lending environment over the past ten years, risks in the lending market keep rates high. These risks arise primarily from lack of dependable enforcement and lack of sufficient credit information about borrowers. These problems also result in some unnecessarily high costs of lending. Unsophisticated SME businesses cannot provide reliable financial information, thus making it difficult for them to convince banks of their debt service capacity—information that is essential to any evaluation of a borrower's creditworthiness.

This report addresses the problems of costs and risks across the full spectrum of issues affecting access to credit, with a particular focus on lending to SMEs and women:

- **Banking**. The framework for banking and non-bank financial institutions is generally sound, and has greatly improved in the past decade. A few minor changes could enable credit providers to respond more effectively to market demands, but the bigger problems are more practical. Many banks and bankers bring forward a legacy of poor customer service and marketing practices that make the application process difficult for borrowers and keep the costs of lending unnecessarily high. Missing market information exacerbates the situation. Better service and a wider range of products (aggressively promoted) are needed to reach those who cannot benefit from current banking services, especially women.
- **Credit Information**. All lenders—from banks that provide multimillion dollar loans to wholesalers who supply trade credit to microfinance lenders—seek to reduce the risks of default by determining the creditworthiness of the borrower. This process is complex and expensive unless it is supported by efficient and reliable credit bureaus. Pakistan's incomplete system of credit information does not adequately support the credit evaluation process, and this fact results in higher costs of credit. Although the banking sector has its own system, the data content is limited, and the system is essentially worthless to the non-bank institutions that cannot access it. Recently-opened private bureaus still lack access to

important creditworthiness information. Women are relatively invisible in the credit history market, both to the private and public information bureaus.

- **Secured Transactions**. Lending against assets normally provides substantial security for creditors, but not in Pakistan. Problems with real property and insufficient legal support for use of movable property limit available forms of collateral. Even when a borrower can provide acceptable property, enforcement against it is quite difficult. As a result, lenders over-collateralize, demand additional guarantees, or simply do not lend to any but the soundest customers. Problems with movable could be solved through relatively straightforward legal reform, but only if those reforms provide for expedited enforcement. For real property collateral, reforms will require extensive, long-term effort; very little can be achieved through minor reforms when the system needs a complete overhaul.
- **Leasing**. For businesses, financial leases offer an avenue for financing the purchase of equipment and other movable property. In Pakistan, the framework is well-structured and has provided for a highly effective leasing business that is backed by efficient enforcement techniques. Because it does not require pre-existing property ownership by the borrower, it by-passes many of the problems with movable property pledges—problems that keep many borrowers, especially women, outside of the formal financial system. Leasing in Pakistan is a success story in general, but one that needs to be scaled up and out to reach a greater percentage of the market. The leasing system is limited to financial leases only, with no significant use of operational leases. High interest rates are limiting expansion.
- **Enforcement.** The primary risk in lending is default by the borrower. To guard against default, a healthy credit system provides for various forms of effective enforcement of credit agreements. Pakistan's enforcement system, which relies primarily on the courts, is unsatisfactory. Every credit provider interviewed unequivocally noted that enforcement of contracts, other than for leasing, is highly problematic.[78] Despite some improvements in enforcement of commercial loans, this system continues to falter. For women, who are discouraged from using the courts, it is even worse. Reform will require both long-term institutional work with the courts and shorter-term solutions focusing on self-help and alternative dispute resolution, where viable.
- **Bankruptcy.** Bankruptcy systems limit costs and risks to lenders by defining what will happen if a borrower is unable to repay commercial debts and must be either liquidated or reorganized. Bankruptcy can also provide protection to debtors by allowing them to seek help while they try to save failing companies. Pakistan's bankruptcy regime, however, is incomplete: it does not include reorganization, and voluntary liquidation is greatly circumscribed. When actions are commenced, they are inefficient and ineffective. As a result, lending and borrowing are more risky. Bankruptcy reform is a long-term project that should be started now.

Legal Framework

Credit flows depend on a complex mix of laws that protect lenders (and borrowers). At the highest level are the banking and financial market regulations, which govern the fundamental credit infrastructure. These are accompanied by an array of more specific laws and regulations, such as civil procedure mechanisms that define how to enforce a contract, and restrictions on leasing and secured lending.

In general, Pakistan's legal framework for credit is robust and capable of supporting significant increases in credit supply. The greatest weakness—representing the greatest source of risk for lenders—is in the area of enforcement. This problem arises from a variety of sources, including weaknesses in identifying collateral, hidden claims that undermine security, and malfunctioning courts. For borrowers, there is an additional risk in that the bankruptcy system, as indirectly regulated through the banking laws, does not provide sufficient protection in the event of default. As a result, benefits from formal registration are diminished, encouraging many businesses to remain in the informal sector.

[78] Leasing currently provides greater effectiveness in enforcement because it is based on ownership by the lender: a leasing company owns the equipment used by the debtor, so that if the debtor does not pay, the company can repossess the equipment immediately and without first obtaining court authority. The same approach can be extended by contract for secured lending (where the debtor owns the property being pledged).

There are no explicit prohibitions against women having access to credit. Nor are there any explicit legal burdens on women that do not apply to men. However, the *practices* of credit extension still favor men over women in most markets, from micro-finance to loans to large companies. Consequently, improving the access of women to affordable credit will require reform and other efforts at the institutional level, rather than a narrow focus on legal reform.

Banking. Starting in the late 1980s, Pakistan undertook a series of reforms to open up the financial markets and increase competition in banking and other financial services. This included privatization of a number of state-owned banks, along with an update of the laws that regulate the financial sector. By privatizing the banks and introducing modern commercial regulation, Pakistan has dramatically reduced non-performing loans.

Today, the SBP, through its Prudential Regulations, oversees the banking sector. The SECP, a recently established organization responsible for company registration, regulates non-bank financial institutions (NBFIs), such as microfinance institutions (MFIs) and leasing companies, separately.

> Now that banks are allowed to make lending decisions based on prudential analysis and international best practices, they will generally continue to seek collateral, but should reduce percentages on a case-by-case basis depending on cash flow, credit history, and other factors.

One of the more significant changes in banking is the establishment of **cash-flow lending**, which, unfortunately, is clouded by a great deal of confusion. Under the previous system of state-owned banks, some lending was not based on prudential, commercial standards but was instead "personality based"—many loans were given primarily on the basis of political or family connections—or directed to support industrial policy in selected sectors, without regard to commercial risks. In a commercial market, market-oriented bankers will determine the credit-worthiness of a borrower based on a number of factors. Foremost among these is the ability of the borrower to repay the loan through cash flow. Once the banker determines that the borrower appears reasonably able to repay the loan, the bank will seek to obtain collateral to secure the payment obligations and ensure that borrowers who are able to pay are actually motivated to do so.

Under the prior state banking system, and even now, much lending heavily collateralized. Often, banks will require 200% or more in collateral through mortgages, guarantees, pledge of accounts, and other mechanisms (further discussed below). There are several reasons for this. First, under a non-commercial system, many lending decisions are political, not commercial, and therefore the usual market-oriented analysis is not applied; in these cases, banks rely on collateral for protection. Second, when the borrowers have unreliable (or non-existent) internal accounts, it is difficult to judge cash flow accurately; banks therefore require extra collateral to cover the risk of accounting inaccuracies. Third, if the market value of collateral is difficult to ascertain, additional collateral is required.

Today, banks are required to use cash-flow analysis. They are also *permitted* to lend without collateral, based solely on cash flow, up to Rs 1 million. Many in the business community believe that banks therefore should not require collateral on smaller loans. Expectations of collateral-free lending are out of place, however. Now that banks are allowed to make lending decisions based on prudential analysis and international best practices, they will generally continue to seek collateral, but should reduce the percentage on a case-by-case basis depending on cash flow, credit history, and other factors.

The overall legal framework for the lending environment has been substantially improved, but changes in regulations and practices are needed to improve the ability of lenders to manage risks. Some requirements have a chilling effect on company growth and should be eliminated. The bifurcated system of SBP and SECP regulation, while appropriate, has led to unnecessary limitations on credit as well as a few gaps that need to be filled.[79] The issues arise from separate treatment of different players in the system that should be handled in similar ways, but are not. These gaps appear to be inadvertent, but they also seem to support concerns among many that there is no comprehensive agenda for reform. Early reforms of the banking system were strategic, but applied primarily to banking, not to the overall financial system and its numerous components. The reform agenda needs to be redesigned on a comprehensive basis.

A strategic agenda is needed to identify unnecessary costs, risks, and limitations in the financial sector, both in regulation and practices. Not all of these are

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[79] One of the gaps is the regulation of commodity and currency futures. It is still not clear who has authority to regulate these, leaving them poorly regulated. As a result, development of futures markets continues to be inhibited.

covered under the banking law, so that the agenda should be expanded to cover the other laws and regulations mentioned below. Changes in lending-related laws and practices should include:

- **Liberalization of personal guarantees**. For lending to SMEs, Regulation R-2 of the Prudential Regulations on SMEs mandates that the owners of the SME must guarantee all loans personally.[80] For large companies, such guarantees are no longer required, but are permitted. While banks often require such guarantees for new and higher risk companies, this mandatory requirement has a chilling effect on credit because it undermines the benefits of incorporation. For SMEs, the guarantee requirement eliminates limitation of liability for the owners, even with a proven track record. Hence, there is little incentive to formalize an informal business or seek formal credit. From the lender's perspective, of course, there is appropriate concern that SMEs may commingle funds with the owners' family funds, thus justifying personal guarantees. However, this decision should be left up to the banks.
- **Better coordination of banking and non-banking regulation.** Unlike banks, NBFIs are not permitted to pledge their loan portfolios, thus restricting their access to capital markets. As a result, their growth—and the expansion of credit in the market—is inappropriately limited. This inconsistency, along with others described below in the discussions on secured lending and credit information, should be eliminated to enhance credit markets.
- **Prudential regulation of new accounts**. Pakistan has a vast "unbanked" population, especially in rural areas. To open a first-time account, the new applicant must have an "introducer"—an existing account-holder who can vouch for the applicant. While this is a common practice in many societies, it is not the only way that banks can fulfill their fiduciary obligations. Rather, they can rely on credit history, if available, or even their own research. Bankers dealing with first-time applicants reported they found this restriction sometimes limiting, especially for documented women trying to enter the banking sector for the first time. While relatively insignificant for the overall banking system, this barrier is highly significant for those seeking access to the formal sector for the first time. The mandatory requirement should be amended.
- **Improved trade finance**. Although the government of Pakistan is encouraging trade finance through preferential interest rates, one of the most important tools of trade finance, the letter of credit (LOC) – is being undermined through practice. Some Pakistani traders are abusing LOCs by encouraging hyper-technical readings to find non-substantial discrepancies in the documents to avoid payment. As a result, very few foreigners will accept LOCs drawn on Pakistani banks, and few Pakistanis are able to obtain LOCs drawn on foreign banks. LOCs are effectively regulated internationally through the publications of the International Chamber of Commerce, but Pakistani courts are being manipulated to undermine these global best practices. Judges need to be educated and required to apply "substantial compliance" standards if Pakistan wishes to improve trade finance. Existing regulations should be reviewed, updated, and supplemented to change this trend.
- **Longer-term maturities**. The banking sector offers short-term investments, which cannot be used effectively to back up long-term obligations. There is a need for expanded products to better enable banks to match income and obligations based on complementary maturities and thus expand long-term lending capacity.
- **Greater flexibility in foreign exchange**. Pakistani companies may hold foreign exchange, but only in small amounts. The government limits retention of foreign exchange earnings to 5% in an attempt to ensure sufficient government holdings. While understandable, these limitations have a negative impact on businesses whose operations require a ready supply of foreign currency. Moreover, practitioners have described foreign exchange regulations as a bureaucratic nightmare. Delays and increased costs associated with obtaining additional currency reduce the competitiveness,

> Without a national identity card, there is no admission to the formal credit world. The card is relatively easy to obtain, but not for unsophisticated, poorly educated women from traditional homes who are intimidated by formal procedures.

[80] "All facilities, except those secured against liquid assets, extended to SMEs shall be backed by the personal guarantees of the owners of the SMEs. In case of limited companies, guarantees of all directors other than nominee directors shall be obtained." Regulation R-2, Prudential Regulations on Small and Medium Enterprises Financing.

profitability, and growth potential of Pakistani businesses and create incentives for offshore banking arrangements to bypass restrictions. These problems could be reduced through liberalization of the foreign exchange regime.

- **Harmonizing Islamic theory and actual practice**. To meet the mandates of Islamic law, banks in Pakistan use Islamic principles to set fees (instead of interest) to cover costs and risks of lending. In addition, they use a sale/buyback contract for lending that does not actually involve sale or buyback of goods but meets strict interpretations *shariah* finance. When such loans must be litigated, there are substantial problems because the underlying documents do not comport with the reality of the loan. Moreover, the Sindh High Court has held that loans cannot be rescheduled under Islamic law, a controversial decision which, if left standing, will have serious negative consequences for the economy. These legal uncertainties increase risks for the lenders, which results in a higher risk premium and thus higher cost of credit. Pakistan needs to harmonize the documentation of loans with the actual practice, perhaps through adoption of tested practices from other Islamic jurisdictions. In addition, several banks reported strong demand for Islamic banking products, which they are attempting to meet through imported and adapted practices. There is great potential for Islamic finance in the traditional, rural regions of the country, as well as in the major urban centers.
- **Electronic banking and telephone banking**. Pakistan has recently adopted an electronic transactions law, but it has not yet been thoroughly tested. Proper application and regulation will be indispensable for developing e-commerce and e-banking. Telephone banking permits payments to and withdrawals from a bank account through use of mobile phones. This new technology holds particular promise for low-end banking, because it allows for branchless banking and very low cost transactions.
- **Consumer protection**. Consumers complain that banks are not transparent enough in their information, hiding various fees and costs for loans and credit cards that are difficult for the average consumer to understand. Such banking behavior can increase the risk of default, especially in a market such as Pakistan's, where so many borrowers are new to banking. SBP could bring about much needed improvement by working with consumer and banking groups to establish and monitor clear standards. This includes clear prohibition and prosecution of lending kickback schemes, in which loan officers push an application through in exchange for an illegal payment of some percentage of the loan (usually 2.5% in recent years). This practice is a legacy from the earlier system in which few loans were made on a cash-flow commercial basis; it may not be widespread, but it damages the reputation of banks and banking and the ability of borrowers to repay.

An extensive review of banking law and financial market regulation was beyond the scope of this report. However, SBP is now pursuing a financial markets reform strategy that will look into these matters more thoroughly.

Credit Information. Information about a potential borrower's financial behavior allows banks to manage lending risks and price credit according to the proven track record of the borrower. Borrowers with positive histories can obtain better terms in a competitive financial market; those with a poor record will pay more, if they qualify at all. Thus, credit information links behavior to positive and negative consequences, and reinforces positive behavior.

Pakistan's bifurcated system of financial markets regulation has inadvertently created gaps in the provision of credit information. Banks are required by law to report all negative account information to the Credit Information Bureau (CIB) of the SBP. (Positive information is now being included as well, but this is a new development.) CIB provides creditworthiness reports to financial institutions governed by the SPB. This information is not available to others. As a result, information on bank defaults and payment history is only available to banks, not to other suppliers of credit, such as leasing companies or MFIs.

Several private credit information bureaus are operating in Pakistan, but due to regulations that restrict the sharing of bank information, they are not able to access credit information regarding formal bank loans. Moreover, there are no mandatory reporting requirements for MFIs or other NBFIs, or for utilities and other suppliers of services. Voluntary reporting has enabled these private agencies to provide useful but incomplete information.

Substantial work is needed to close the gaps in credit information. Currently, the CIB covers less than 1% of the adult population, compared to 8% for OECD countries. Private agencies have information on just over 1%, compared to 80% for OECD countries.[81] An integrated approach that increases reporting obligations for those who formally extend credit is required. Service providers should be able to provide all forms of information.

For women in the micro-credit market, credit information becomes increasingly important as they seek to move from micro-credit into mainstream banking. Unfortunately, information on micro-loan repayment (which tends to exceed 95%), is not captured. Thus, a woman who wishes to "graduate" to higher level loans may not be able to leverage years of positive credit behavior into acceptable risk management information for other lenders.

The difficulties of bringing women into the credit information system are complicated, particularly in rural, traditional zones, by registration issues. For bank loans and many other forms of credit, borrowers must present a national identity card, which includes a unique number that identifies the carrier. This is standard practice for eliminating risk of confusion and complying with various statutes. The card is normally assigned at the registration of a child's birth. Unfortunately, up to 50% of female births are not registered in rural areas, and a significant number in urban and peri-urban settings likewise go unregistered. Indeed, a bank in Sialkot commissioned a study and found that of 200 women sampled, only 116 (58%) had national identity cards (and only six had received formal loans).

Without a card, there is no admission to the formal credit world. The card is relatively easy to obtain, but not for unsophisticated, poorly educated women from traditional homes who are intimidated by formal procedures. Redressing this situation will require a combination of improved birth registrations and assistance to women seeking credit. This assistance can most readily be given at the micro-credit level, but also as part of a service to new customers in formal banking. The identity card will allow the holder to enter the credit information system as well.

Secured Transactions (including Real Property). Secured transactions (collateral) lending is a system for lowering risks of default and loss. The lender, having made a reasonable assessment that the borrower can repay the loan, takes an interest in property, which can be seized and sold if the borrower fails to pay. Property can be movable, immovable, or even intangible (such as a franchise right or unmatured accounts receivable). This "security interest" or "pledge" has been shown to improve payment behavior, reduce default, and, when default does happen, to reduce the costs of collection. In a competitive market, secured lending lowers the costs of credit and increases the credit supply.

As with credit information, Pakistan's secured lending system is incomplete. Several bankers noted that taking a security interest, even when imperfect, reduces non-performing loans, but complained that the ability to take security interests is compromised by gaps in the system. Although some of the basic framework is in place and can be expanded, much work will be needed to meet the current and future demand for credit.

Real property. More extensive analysis of the real property regime is provided separately in this report. This section focuses on the impact of weaknesses in the real property regime on availability of credit.

Real estate is a major source of loan security for mortgage and construction lending. In Pakistan, however, use of real estate to secure loans is problematic, despite a mortgage law that allows for mortgages and other property interests. There are a number of significant hurdles. First, very little land or other real property (such as apartments) has clear, **registered title**. Banks will lend up to 70% of the value of titled property, but relatively little titled property is actually available. The land registries, such as they are, do not register ownership of land, but rather tax obligations based on use. Registration may be evidence of ownership, but it is not proof. Consequently, banks are reluctant to rely on mere registration. Without extensive improvements in the land titling system, Pakistan's real estate lending will remain stunted.

Second, mortgage lending is undermined by **hidden liens and claims**. In particular, it is possible under existing law for a person to make a gift of land to another without registering the exchange. Thus, a lender cannot know whether the land being offered

> Theoretically, a wide range of property can be pledged. The following types are the most common:
> 1. Bank account deposits
> 2. Shares of a company
> 3. Automobiles

[81] Worldwide, private agencies tend to have more extensive credit information, in part because they gather it from numerous sources, whereas public agencies tend to collect information supplied on a mandatory basis. See *http://www.doingbusiness.org/Explore Economies/Default.aspx?economyid=147*.

as collateral has been given to another who will have a legitimate claim on the property should the borrower default. Islamic law permits oral transfers of this sort, and can be respected within the formal system; however, legal protection should be given only to *registered* claims, otherwise the gifts can work injustice on innocent third parties. The problem is further complicated by the use of unregistered mortgages and property claims. One practitioner reported a case in which a debtor successfully forestalled foreclosure by having a female relative enter a claim of superseding ownership, without any documentary proof.

Third, **enforcement** is quite difficult. Recent improvements in the enforcement law (further discussed below) are undermined by an enforcement system that is reluctant to evict occupants from land due to unpaid loans. It can still take several years to foreclose on property, which results in higher costs to lenders, and thus higher fees to borrowers and more restrictive lending.

Registration of mortgages has been overpriced, with reports of up to 5% of the value of the mortgage in some jurisdictions. (Others reported lower charges, as low as 0.045% in Punjab and 2% in Sindh.) The registration cost must be passed on to the borrower, and this can make a loan unaffordable to potential customers. In order to avoid these charges, banks have developed a practice of registering only part of the mortgage (as little as 5% to 10% of the actual loan) while holding onto title documents as an "equitable mortgage." This practice makes loans more affordable and provides reasonable protection to lenders, but it limits the ability of a borrower to obtain additional credit with excess equity in the pledged real property. The registration costs need to be re-examined and lowered. Other countries have restructured similar registration fees from a source of tax revenue to a simple cost-recovery charge, and have thereby substantially lowered the cost to the property owner and improved incentives for formal registration at fair market value.

> According to *Doing Business,* Pakistan has one of the worst enforcement systems in the region: a simple suit involves more than 50 procedures and takes almost 900 days to conclude.

For women, there are no legal impediments to ownership or use of real property; the barriers are cultural and practical. While a woman can own land as an individual, in her own name, without permission from a husband or other male authority figure, few women actually do this. Many women have claims to land through inheritance, but custom encourages them to forego any claims in favor of their brothers. As a result, most women tend not to accumulate assets in their own right, having theoretical claims to land that they will seldom claim. In some cases, even those rights are eliminated through deliberate forgery of a woman's signature so that a husband or male familial joint tenant can sell property without her knowledge or permission. Public education will be needed to inform women of their rights; legal reform will be required to ensure actual participation in transactions by joint owners, coupled with criminal fraud sanctions.

Movable and intangible property. In well-developed financial systems, movable and intangible properties are a greater source of secured lending than real estate. Pakistan, however, has a constrained and segmented movable and intangible property regime. Few items can be used as collateral, and they are available primarily to companies, not individuals.

Non-possessory pledges of **movable property** are recognized and governed under the Companies Ordinance of 1984. According to the law, a company can provide movable property as security for a loan. The pledge is then registered with the SECP, for a cost of approximately US$80, by submitting the underlying documents manually for registration in the electronic database. Registration of pledges is *only available for registered companies*, not individuals or other organizations falling outside of the Companies Ordinance.

Receivables (but only with account-debtor permission). There is a vast range of untapped property that is theoretically available but still unused in Pakistan. Contractual rights such as highly valuable franchises (a McDonald's franchise, for example) are essentially unused. Inventory is used only on the basis of shared possession, in which both debtor and lender hold keys to the storage units. Accounts receivable may be pledged only with the permission of the account debtor, putting tremendous limitations on their utility, and hindering the development of factoring and asset-backed securities. Moreover, for movable property, the debtor must possess any collateral being pledged, thus limiting the use of third-party collateral. Finally, SMEs and other companies are regularly required to provide personal guarantees of directors in addition to collateral; this reduces the willingness of borrowers to seek formal financing.

For **agriculture**, secured lending is underdeveloped. Practices common in more mature markets, such as pledges of livestock, crops, and even unharvested crops, are generally missing, although micro-leases of livestock have recently appeared. Limited lending is done against crops on a possessory basis, but there is little if any lending based on warehouse receipts, a mechanism well suited to lending on storable grains such as rice and wheat. Some banks will take risks and lend against future crops, but this is done primarily on a moral suasion basis, as the legal framework for enforcement against not-yet-existent collateral is weak. There is a great need for the development of secured lending products in the agricultural sector.

> The existing arbitration law is fundamentally flawed: arbitration decisions are not binding, and thus can be ignored by a recalcitrant party and even overturned in court.

For **women**, secured lending can offer an outstanding opportunity to obtain credit without prior ownership of land or other valuable assets. Movable property lending does not suffer from title and ownership issues, like land. Moreover, the property used to secure the loan (normally equipment or other productive assets) is used to produce the revenues and cash flows needed to pay the loan, and thus creates a self-liquidating system of credit. Unfortunately, the existing system covers only companies, not individual entrepreneurs, and is overpriced for smaller loans: modern pledge systems tend to cost only US$10-20 per transaction, far less than the US$80 minimum currently charged by the Company Registry.

Pakistan needs a comprehensive system of collateral lending that is open to all potential lenders and borrowers at a low cost. The system must include rapid, out-of-court enforcement capacity to ensure success. Without such a system, access to credit will remain unnecessarily limited.

Leasing. There are two principle forms of leasing: financial and operational. Financial leases are essentially loans in which the lender maintains ownership until the terms of the lease are fulfilled. At that point, the borrower pays a nominal amount and takes ownership. In operational leases, there is no intention of the lessee taking ownership: the purpose is simply to provide assets for a fixed period of time, after which the leasing company retakes possession. Both systems are compatible with principles of Islamic finance.

Financial leasing is growing in Pakistan. Because the lender owns the collateral and retains title, the legal framework has been designed with effective enforcement provisions that are backed by local authorities. As a consequence, financial leasing provides substantial opportunity for growth at competitive rates. A number of leasing companies are already competing in the market.

However, expansion of leasing beyond automobiles and large equipment may be slowed without a national registry for leased and pledged property. One of the major risks to leasing companies is fraud, which occurs when the goods are sold or transferred. For vehicles, this is not a problem because ownership is registered with a motor vehicle authority so that a third party cannot obtain ownership of the leasing company's property. For areas where expansion is needed (e.g., office furniture, livestock, unregistered equipment) leasing companies need the protection of a central notice registry in which they can publicly assert their ownership of the leased assets.

Operational leasing, although legal, is virtually non-existent in Pakistan. Further analysis is needed to determine why this practice has not developed. It is likely that tax laws and underlying interest rates make this otherwise useful mechanism financially unfeasible.

For women, leasing is yet another non-discriminatory form of financing. It does not require prior ownership or title for the "borrower" (the lessee), so that those with a reasonable business plan, predictable cash flow, and a sufficient deposit can generally obtain commercial equipment through a lease. Targeting leasing products for women, including livestock leasing in rural areas, could have substantial impact on the commercial capacity of women.

Insurance. A vibrant, cost-effective insurance market allows both lenders and borrowers to lower their risk of loss. Lenders tend to require borrowers to take out some form of casualty or loss insurance to cover the possibility that property securing a loan might be destroyed or stolen. This protects both parties. Lenders also insure themselves directly by obtaining insurance against default. Insurance leads to greater affordability of credit by allowing lenders to lower their risk premiums.

Pakistan's insurance industry offers a wide variety of products. There appear to be no barriers to creating and providing targeted insurance products needed to sustain the credit market. Lenders reported that casualty insurance for mortgage loans and collision insurance for automobile loans are readily available on a competitive basis and can be tied to lending and leasing. To reach the lower end of SME lending, however, lenders and insurers will need to better target the market with affordable products, especially as movable property lending is introduced. Pakistan also appears to be in a position to develop and introduce micro-insurance, a product being introduced elsewhere, which has particular importance for low-end borrowers.

Although there is significant development in the insurance market for casualty and collision, lenders complain that there is no such development for them to ensure against default. Further study is needed on this topic to determine why such products are underdeveloped or altogether missing, but it is likely that default insurance is constrained by the same risk management factors that keep interest rates high.

There are no legal barriers to women obtaining insurance, but, as with credit history, there is a very practical barrier: individuals must have an identity card to qualify. In addition, they must know of its existence and benefits and be able to afford it. Lenders (including both banks and NBFIs) can play an important role in introducing insurance to their borrowers and working with insurers to develop appropriate products. First-time undocumented female borrowers may require help obtaining identity cards.

Enforcement. Worldwide, he single greatest risk in the credit market is default. The severity of this risk is tied to the quality of the enforcement system. Unfortunately for the Pakistani credit market, the enforcement system is very weak. In fact, according to *Doing Business,* Pakistan has one of the worst enforcement systems in the region: a simple suit involves more than 50 procedures and takes almost 900 days to conclude.[82] According to practitioners, this estimate is understated, with simple suits often taking four years to be resolved.

Sadly, this four-year average represents a considerable improvement over previous years. Prior to reforms under the Financial Institutions (Recovery of Finances) Ordinance, 2001,[83] an enforcement action on commercial debt could take up to 10 years. The ordinance eliminated excessive appeals and introduced faster mechanisms for seizure of property, and has sped up the process of enforcement, but even these reforms are not enough. The goal of the ordinance is to reduce enforcement actions to six months; this goal has not been reached.

Studies elsewhere have shown that the delays, costs, and uncertainties of enforcement lead directly to higher fees and costs in banking.[84] In Pakistan, bankers indicated that the risk premium charged for loans is 1.5-2.5% for the best customers, with much higher rates possible as uncertainties increase. As one practitioner pointed out, litigation in Pakistan is a tool for injunctive relief: it is used to stop and delay enforcement, not to enforce claims.

It was beyond the scope of this chapter to examine the court system in depth, yet two weaknesses in the prior reforms are clear. First, the legal reforms have not been fully adopted in practice: many judges continue to allow impermissible delays and appeals. Clearly, there is a need for better monitoring of judicial performance.

Second, the reforms did not go far enough. Default on commercial loans and leases generally involve no substantive claims, only a failure to pay. Consequently, there is no need for a drawn out procedure to establish rights or fault. Lenders should be able seize collateral upon default. Although the law allows such self-help, seizure without court order has been challenged as unconstitutional, and a decision on that issue is pending before the Supreme Court. Judges are generally uncomfortable with self-help and are prone to grant injunctions. Part of the discomfort comes from the lack of proper effective regulations regarding notices needed before repossession. The goal of the law—i.e., an expedited procedure that allows for immediate seizure and liquidation of subject property, preferably without any court involvement—is not being achieved.

Leasing, however, currently enjoys such efficiency. In the case of car and equipment leases, the leasing company can repossess the property upon default. If the lessee refuses to surrender possession, the police will support the leasing company and assist in re-taking the property. Such immediate consequences are permitted by law and captured by the leasing contract. In legal theory, this system is

[82] See *http://www.doingbusiness.org/ExploreEconomies/Default.aspx?economyid=147*.

[83] See: *http://www.sbp.org.pk/about/ordinance/ r_ordinance.htm*.

[84] See Marco Pagana, ed. Defusing Default: Incentives and Institutions (Inter-American Development Bank, Washington, DC, 2001), where researchers have compared enforcement capacity across different regions of Italy and found that slower, less certain enforcement led directly to higher interest rates.

based on ownership: the leasing company is in fact the legal owner of the property being repossessed.

The same kinds of rights can be granted to a secured lender, but some legal theoreticians will occasionally resist such reforms, arguing that a different regime should apply where the lender does not actually own the property being repossessed. Fortunately for reformers, this theoretical barrier need not stand in the way, as freedom of contract should permit borrowers to grant lenders the same rights that leasing companies have, and the law should support such contracts. Today, however, there is a disconnect, and Pakistan's borrowers are the primary victims. There will be little credit expansion on an affordable basis until the enforcement regime is improved.

Improvements are possible. First, Pakistan's laws could be further amended to permit rapid enforcement of loans; this would be similar to the system used for enforcement of leases. This does not require an overhaul of the Code of Civil Procedure, but could be introduced as part of a much needed comprehensive law for collateral lending, with appropriate revisions to the code for unsecured lending.

Second, Pakistan needs a viable system of **alternative dispute resolution**, which could be quite useful for settling substantive disputes between parties to avoid delay or deeper breach in contract implementation. (ADR is not useful when the only issue is non-payment, a situation that simply requires enforcement.) Recent changes to the Code of Civil Procedure have introduced court-annexed arbitration, but this new tool is underutilized, partly because of Pakistan's culture of injunction: people turn to courts to delay or impede action, not to seek enforcement, because court enforcement is unreliable. In such a setting, ADR becomes merely another step in a chain of delays, because the system does not compel performance based on the outcome of ADR.

In addition, judges complain that ADR is an infringement on their jurisdiction, describing such mechanisms as "outsourcing of justice." Unfortunately, there is reason to believe that some of this protest arises from the loss of rents. Practitioners note that judges are seriously underpaid, and they perceive that rent-seeking behavior is common. This is echoed by the findings of Transparency International, which ranks Pakistan as 142nd out of 163 in its most recent Corruptions Perception Index.[85]

Court should always be a last resort for resolution of commercial disputes, but this requires other viable options. ADR is still underdeveloped in Pakistan. The existing arbitration law is fundamentally flawed: arbitration decisions are not binding, and thus can be ignored by a recalcitrant party and even overturned in court. This may explain why various business and professional associations have been slow to develop the ADR services that are common in many other countries. As a result of the weakness of ADR, the overall enforcement system is weaker and less reliable.

A relatively simple step can be taken immediately to improve the ADR regime. Pakistan has been a signatory to the New York Convention on Enforcement of Foreign Arbitral Awards since 1958. The New York Convention provides for rapid recognition and enforcement of awards granted in another country, with very limited rights of appeal. These safeguards are critical to attracting high value foreign investors who normally require arbitration clauses in their investment contracts. Enabling legislation was only recently enacted in Pakistan, but on a temporary basis and with some problems.[86] Addressing implementation of the convention through permanent legislation would create a more attractive climate for foreign investment, and would encourage better approaches to domestic enforcement.

Lenders are not completely without recourse. There is widespread use of post-dated checks as an enforcement mechanism. Under Pakistani law, drawing a check on an insufficient account is a criminal offense, so that someone who bounces a check can be arrested. The use of post-dated checks allows lenders to hold out the threat of debtor's imprisonment to ensure compliance. This is useful, but not desirable, and exists in great part because the normal enforcement system does not work.

Improving enforcement will require serious, long-term effort. Yet not all of the problems are due to the system of enforcement per se. Much of the delay is due to a deluge of litigation over claims to ownership of land, which arises from the

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[85] See *http://www.transparency.org/policy_research/surveys_indices/cpi/2006*.

[86] For further analysis of the implementing legislation and its weaknesses, see http://www.jamilandjamil.com/publications/pub_reports/papericc.pdf.

dysfunctional property regime. These slow, complex, and burdensome cases overwhelm court capacity and keep the relatively few commercial cases from being resolved in a timely manner. Either the land issues need to be resolved or commercial cases need their own, separate forum.

Bankruptcy. Laws pertaining to insolvent companies establish an orderly, predictable system for handling commercial debt in the event that a borrower cannot repay. They generally provide for two possibilities: liquidation or reorganization of the debtor's business. Liquidation laws enable lenders to better predict and manage risk. The threat of liquidation also improves payment behavior among debtors. Reorganization permits lenders to work with a potentially viable debtor to survive and repay a higher percentage of debt, while preserving jobs and the positive economic impact of the underlying business. In both cases, both lenders and debtors benefit because bankruptcy laws provide greater certainty in the lending environment.

Unfortunately, Pakistan's bankruptcy regime has not provided this certainty. Bankruptcy practice has been undermined by systemic problems in the courts. Moreover, the law is incomplete, providing only for liquidation, not reorganization. Trigger measures favor creditors, and although debtors can seek bankruptcy protection (for liquidation only) in theory, bankruptcy is not effective in practice. Corporations may not terminate voluntarily without a declaration of solvency by the board, which is not appropriate in a bankruptcy situation, especially because the board will face criminal charges if the company is thereafter unable to pay its debts.

Demand for bankruptcy reform is improving because of problems in the textile sector. Although no action has yet been taken as a result of the "Rehabilitation Act" that was drafted several years ago to introduce reorganization, there is now some hope that the neglected draft will be reactivated and adopted. The law will require regulation to govern turn-arounds, so there is considerable work to be done.

Demand for use of bankruptcy procedures has been limited for several reasons. First, bankruptcy is still seen as a moral failure, rather than as the result of unforeseeable market changes or simple human error. Second, there is a very low level of commercial credit: most investment in Pakistan is financed through retained earnings or through networks of friends and family who do not look to bankruptcy laws if the borrower defaults. Defaults on informal loans are enforced through illegal force, so these loans do not lead to declarations of bankruptcy. Third, the theoretical benefits of bankruptcy protection for companies—limited liability—do not accrue to directors. Due to banking law requirements (for SMEs) and banking practices (for larger companies), directors must remain personally liable for all debts of the company. As a result, bankruptcy filings simply shift the liability from the corporation to individuals. There is therefore no incentive for a director to take a company into bankruptcy and increase personal exposure. These practices discourage participation on boards and decrease the attractiveness of formal business incorporation.

Finally, the supply of bankruptcy cases that might give rise to better practice and demand for reforms has been severely interrupted by political interference in non-performing loans and poor collection during the period of bank nationalization. With a return to private banking, there has been a substantial improvement in proper debt recovery and management. Non-performing loans have fallen from levels as high as 40% in 1996 to approximately 5% today. With the government now generally steering clear of politically-based debt forgiveness, it is likely that there will be an increase in bankruptcy filings, or, if not in filings, in demand for reforms so that filing is a viable option.

As the economic activity of women increases, women are likely to become more vocal about inheritance rights.

Inheritance. As noted above, women are in theory able to inherit land and other valuable assets from their parents' estates. In practice, women are encouraged to waive their claims in favor of their brothers. There are numerous historical and cultural reasons for this, including assumptions that the daughters will marry into the inheritance of their husband's family. As a result, women are disadvantaged economically, accumulating fewer assets that could be used as collateral for a loan or otherwise invested in productive enterprises.

It is beyond the scope of this chapter to analyze the socio-cultural reasons for current inheritance practices. Change is underway, however. Urban populations are developing cultural patterns that differ from those in traditional, agricultural settings. As the economic activity of women increases, women are likely to become more vocal about inheritance rights. The courts of Pakistan are not currently prepared to respond to increased demand, however.

The probate system of Pakistan, according to reports from practitioners, is not sufficient to handle the equitable distribution of property in accordance with law. Options that might put some assets in the hands of women are simple not plausible within current probate practice. For example, an estate may consist of many more assets than just land. By valuing the total estate and dividing it among the heirs by *value*, it would be possible to allow land to go to one person, and money, livestock, or other holdings to another, rather than pressuring women simply to give up all claims. Unfortunately, there is no system in place for such evaluation and distribution. Probate, as a practical matter, barely exists.

The problem is complicated by poor understanding of options, especially within an Islamic context. Pakistan needs to carefully study probate models from other Muslim countries and adopt a system that would permit better management of these matters.

Implementing Institutions

The range of implementing institutions for credit issues spans the range of laws covering this area. In general, recent amendments to the mandate and functions of most of these institutions have established a viable foundation for increased access to finance. The courts, which serve as implementing institutions for enforcement, bankruptcy, and (indirectly) all other areas, continue to be the weakest link in the system. As noted above, there are non-court, non-litigation options for enforcement, and these mechanisms would better allocate responsibility for enforcement and elevate courts to their appropriate position as the last recourse.

The Ministry of Finance (MOF) has primary responsibility for overseeing the laws and institutions that govern access to credit. It is a relatively powerful ministry, with political capacity to introduce laws and see them enacted. Theoretically, it could be a focal point for reforms and improvements in the credit arena. However, much of the important work of oversight has been delegated to the SBP and SECP, which are highly respected. These organizations have a more direct interest in driving reforms that affect access to finance.

> Pakistan needs a comprehensive registry for pledges, not one that covers only a subset of collateral lending and commercial liens. Should the government decide to develop a modern collateral registry, the Company Registry is well suited to take on that task based on its successful handling of existing registration requirements.

Recently, the MOF established an Economic Reform Unit (ERU), an internal think-tank-like organization with responsibility for identifying needed reforms, analyzing the costs and benefits of reforms that they identify or receive from others, and proposing appropriate reform initiatives. It is staffed with a small but capable cadre of economists. At this time, however, and until other public and private entities produce similar units that can promote and advocate reforms, the tasks before the ERU appear greater than its response capacity. Assistance will be needed over the medium term, and must be coordinated with the Economic Affairs Division (EAD), which is in charge of long-term planning.

The ERU and MOF could benefit from assistance in developing strategic capacity. The MOF has a well-deserved positive reputation for promoting a number of market-friendly reforms, but these reforms have sometimes been ad hoc rather than strategic. As the analysis of the framework laws indicates, problems in access to credit cover a wide range of laws and institutions, and a comprehensive approach to reform has yet to be formulated. As a result, reforms such as the proposed reorganization amendments for bankruptcy may languish for years, while various business advocacy groups express frustration that they are not being heard. The MOF, through the EAD and ERU, should eventually lead strategy formulation and pursue reform in concert with other public and private stakeholders.

Regulatory bodies. The SBP is well respected in general and is recognized as a competent authority that seeks positive and appropriate reforms. As with the MOF, however, it is not apparent whether there is a long-term strategic framework for reform, despite a well-deserved reputation for excellent research capacity. Likewise, it is not clear that the government has a coordinated approach that includes the SBP in a comprehensive framework for wider reforms. That said, the SBP is a generally a strong and reliable advocate for market-oriented change. With branches throughout the country, it is also well positioned to gather and disseminate information on changed practices and needed reforms. Support may be needed to ensure that (1) changes are properly regulated and (2) feedback loops are fully established with public and private sector constituencies.

Private sector representatives complain that the SBP is too restrictive, and that it does not allow sophisticated enterprises to take reasonable business risks with their own money. This may unnecessarily restrict modernization and expansion of the private sector.

The SECP is an autonomous body that enjoys a positive reputation among stakeholders, with one exception: The SECP is young, and thus not fully mature as a regulatory body. The capital markets appear to be growing faster then the SECP's regulatory capabilities. Direct assistance may be needed to increase capital market competition and transparency. The organization is staffed with capable, forward-looking professionals who actively seek to provide better services, but it needs more staff. The SECP is improving its online services, thus improving the efficiency and decreasing the cost of its various registration and monitoring activities. It has not, however, been able to provide all necessary regulations online for the various laws it implements and oversees.

The judiciary. Pakistan's court system is the weakest link in the chain of access to finance. It causes many lenders to view Pakistan as a relatively high-risk lending environment. (This is not true at the micro-finance level, where public pressure and moral suasion ensure that 95% or more of all loans are repaid in a timely manner.) Reforms thus far have been insufficient to reduce these risks substantially and there is little public confidence that the courts as currently structured (and with judges receiving subsistence wages) will fulfill their mandate of timely, efficient administration of justice.

In-depth analysis of problems in the judiciary was beyond the scope of this chapter. However, two points are clear. First, many of the changes needed to improve access to credit do not require comprehensive reforms to the courts as a whole. The most critical reforms actually reduce court involvement in defaults, because the laws need to be changed to permit contractual enforcement in which the lender and borrower agree to allow direct seizure and liquidation of movable property (subject to appropriate consumer protections) for secured loans. For loans secured by real estate, self-help exists but is undermined by the lack of clear property demarcation and weak title. Addressing these problems will reduce the overall backlog of the courts, thus allowing them to focus on other commercial disputes where court involvement is more useful.

Second, court reformers should not assume that the basic design of the courts is appropriate to the needs of the country, but merely beset by mechanical inefficiencies. The problems of the system result from design defects that cannot be overcome by automation and case management improvements, which will only allow courts to do the wrong things more quickly. The levels of dysfunctionality mentioned by respondents suggest that these design flaws (including the numerous appeals permitted due to the poor quality of the first instance courts) will not be corrected through efficiency gains.

Unsurprisingly, women experience greater problems with the courts than men. The judicial system is generally unsupportive of women claimants because of their lower levels of education and business sophistication, and because of general norms against women in public places. (Norms against women in public places persist particularly in rural areas, where women are sometimes not allowed to travel without a male escort, much less appear in court on their own behalf.) Exceptional women are able to use the court system as effectively as men, but they are, indeed, *exceptions*. Women are less likely to use the court system to enforce their rights, to the extent that enforcement is currently possible, and are less likely to be able to defend their interests in court against a claim.

Property registries. Registration of land is covered by a separate chapter of this report. For purposes of access to credit, it must simply be noted that there are serious deficiencies in the substance and practice of these registries. On the substantive side, the registries do not establish ownership, which is necessary for mortgage lending, but only establish tax liability. On the practical side, too little of the country's real property is registered to support the increase in mortgage and construction lending that is needed. Fortunately, some aspects of registration (such as property liens and mortgage) can be handled through modern pledge registries even while the underlying property registries are in disarray. This should be a focus of secured lending reform.

The Company Registry of the SECP provides services for the filing of pledges against company assets. As already noted, however, the system is inadequate: Pakistan needs a comprehensive registry for pledges, not one that covers only a subset of collateral lending and commercial liens. Should the government decide to develop a modern collateral registry, the Company Registry is well suited to take on that task based on its successful handling of existing registration requirements. It will, however, need to lower the price of filing to a cost-recovery basis (the target should be US$20 or less per filing) and to simplify the information required: the registry need only capture notice of a claim and an adequate description of the pledged property, not all of the underlying documents giving rise to the claim.

Supporting Institutions

A wide range of supporting institutions is required to support (1) a healthy credit environment and (2) a meaningful system for actively reforming credit laws and regulations. In Pakistan, the basic institutions are in place, but many of them lack the strategic and service capacity to meet the needs of their members and the national economy. In other words, there is a significant quantity of these institutions, but their quality varies.

> One of the great weaknesses today in the credit information system is that hundreds of thousands of women and men who obtain micro-credit are not establishing credit histories that will help them move into SME lending as they grow.

Banks and Banking Associations.

Banks. Banking reform in the 1990s led to dramatic improvements in Pakistan's banking sector. Today, there are 41 banks operating in the country, many with majority or minority foreign ownership. The remaining state-owned banks continue to function relatively effectively, and should no longer be recipients of state bail-outs or subsidies for non-performing loans due to poor lending practices. Indeed, should they fail to adjust to the new competitive banking climate, they should be allowed to fail, although this option is not necessarily one that Pakistan will choose.

> Banks can routinely ignore customers with too many questions or too few documents in favor of those who are fully prepared or more sophisticated, and still have more business than they can handle.

Of the 41 banks operating, 10 of them dominate the market with an aggregate of 75% of all assets. It is anticipated that several of the smaller regional banks will be acquired by larger banks to create more nationally-oriented banking services. Even with such efficiency gains, Pakistan will continue to lack adequate banking services for the foreseeable future.

At present, approximately 16% of businesses are able to obtain the credit they need. The vast majority of individuals obtain no formal credit or the simplest checking and savings accounts. In Sialkot, a survey of 200 women found that only 3% to 6% hold bank accounts. The market is underserved.

Fortunately, many of the new banks are not only aggressively competing to take on a greater share of the market, but are also developing targeted packages designed to serve different market niches. The Women's Bank directly serves the needs of women, but this one bank is not sufficient for women's banking needs. The Women's Bank in Sialkot (a city of over one million inhabitants), hosts 7,000 accounts, of which 6,000 belong only or primarily to women. Hundreds of thousands of potential clients remain unreached. If this is to change, other banks will also need to reach out.

Interviewees communicated different levels of satisfaction with banks. Wealthier respondents, such as leaders of the chambers of commerce, say that the banks generally accessible with sufficient products, but complained about interest rates or the insufficient length of maturities. Middle and lower level businesspeople feel that banks lack a customer service orientation and skills and are burdened by overly complex and bureaucratic procedures. A returning Pakistani diaspora businessman with a background in mortgage banking found that he needed several days to obtain and fill out all the necessary forms for opening an account, an activity that should only take a few minutes. A university professor complained of being sent from branch to branch of one bank to get a form he needed, only to discover at last that all of the banks were out of the form. While competition will likely lead to better service, it alone is not enough.

One reason for poor customer service is the high level of demand for loans compared to the low supply. Banks can routinely ignore customers with too many questions or too few documents in favor of those who are fully prepared or more sophisticated, and still have more business than they can handle. This leads to good service for existing or high-end new customers, but poor service for the great mass of those seeking new accounts or products. Better information on customer needs, coupled with publicity and competition based on customer satisfaction, could do much to correct this problem.

SMEs also complain that few banks have loan officers who understand SMEs and their needs. (The same complaint is lodged by women regarding sensitivity to women's needs.) This is particularly irksome in light of government efforts to improve lending to SMEs. Again, because banks do not have to improve their outreach or their product lines to meet capacity for loans with current resources, they simply do not feel the pressure to create such capacity. Some banks, such as Alfalah Bank, actively develop these specialties, but greater competition will be needed to move some of the moribund older banks into a more proactive posture.

Think-tanks should be an integral part of any project for policy development and reform.

Banking growth has also led to a dilution of management strength. Both banks and customers complain about a shortage of skilled managers able to meet increased demand and competition. This situation is not helped by ongoing brain drain, in which many young managers and professionals have left the country in search of better wages in Europe or North America. There is no short-term solution to this problem, but various individuals have recommended that the government develop incentive packages to bring them home or entice them to stay.

Banking associations. Pakistan's banking associations and organizations can serve the banking industry well as advocates for reform. The **Pakistan Microfinance Network**, as the name suggests, brings together numerous microfinance institutions to research regulatory issues and advocate for reforms. The **Development Finance Group** provides similar services for its members with regard to economic development issues as they affect credit and finance. Other national and sector associations are also active.

Many of Pakistan's cities have **bankers' clubs** that provide a forum for local bankers to examine issues germane to them on a local or national scale. Many of these clubs also hold regular meetings with the business community to examine common problems, disseminate information regarding banking reforms and challenges, and collect information for their own analysis. Not all of their experience with advocating reforms at the national level has been positive. As one banker noted, "We tell them what we need, and they do what they want." There is no formal system for feedback and input between these important stakeholders and regulators or legislators.

The problem of feedback and input also arises in part from disorganization in many of the associations. Many of the groups lack clear direction and are not yet adept at offering useful services, like training and advocacy. Given their relatively recent development, this is not surprising, and points the way to possible targets for technical assistance. Some association representatives have also expressed interest in improving self-regulation among banks and other financial institutions to reduce government involvement and corruption in the system. If the demand is strong enough, this might be another opportunity for programmatic help.

Some women are present in the management and oversight of some of these organizations, but not many. It is not unusual for a Bankers' Club to have one woman on the board; it is also common for them to have none. This is in part a function of the sparse presence of women in upper level banking positions generally.

Credit Information Bureaus. As noted in the discussion of the legal framework, Pakistan has both public and private credit information agencies. The national **Credit Information Bureau**, overseen by the SPB, is responsible for capturing and disseminating information that is mandated by banking regulations. The information is limited in scope and output: it covers only that which is submitted by banks, and is available only to banks. It is also primarily negative information (e.g., defaults and delinquencies), although the inclusion of positive information is being considered. Within those limitations, the CIB operates effectively and at rates that bankers find acceptable.

There are at least three private credit bureaus, of which the best known is **Datacheck** of Karachi. Datacheck enjoys a good reputation for trustworthiness and affordability. Unfortunately, Datacheck and its competitors are limited by the type of information they are able to obtain. They cannot get banking information from CIB, but are able to obtain other credit information on a voluntary reporting basis from leasing companies, NBFIs, credit card companies, and others. There is no mandatory reporting for utilities, phone companies, or other high volume providers of goods and services, nor are micro-finance institutions (regulated under the SECB) required to report on positive or negative lending information. This represents a substantial opportunity for improvement.

The bifurcated system of information needs to be integrated. If private agencies were able to obtain CIB information (for a fee), they could provide a more complete credit history. Computerization of court records and the introduction of a national collateral registry system could also produce important information; these advances should be designed with information access in mind.

Banks and credit bureaus may need assistance in improving their ability to rate and rank borrowers according to their credit risks. Several bankers noted that credit agencies do not yet provide adequate ratings for companies. The private sector should be able to develop such services on their own; assistance may be needed for public agencies.

One of the great weaknesses today in the credit information system is that hundreds of thousands of women and men who obtain micro-credit are not establishing credit histories that will help them move into SME lending as they grow. Micro-loans are not reported. As a result, years of positive credit information is being lost, making it harder for the borrowers to prove themselves and obtain the benefits of their positive payment history. Of course, part of the problem is that borrowers do not always want such information registered or reported for fear of greater exposure to tax authorities. Public education will be needed to help potential users understand the benefits of credit reporting.

> The first order of business should be to build upon existing goodwill and establish a public-private reform agenda in which the private sector helps to identify, analyze, and prioritize problems and solutions that are inhibiting access to credit.

Accountants. Accounting is an integral part of cost and risk reduction for banks. Unless a borrower has good accounts, a bank cannot reasonably assess the health of the business for cash-flow based lending, and must either reject the loan application or require more collateral. Poor accounting also leads to increased analysis and management costs.

Fortunately for Pakistan, there is a good basis for an increased supply of good accountants. The Institute of Chartered Accountants reports that Pakistan currently has approximately 4,000 chartered accountants, one-fifth of whom hold certifications from other countries. (In fact, Pakistani accountants are currently being sought and recruited for positions in British firms to fill a shortage of accountants in the United Kingdom.) Although the supply of chartered accountants may not be sufficient to meet the overall needs of the country, the supply of unchartered accountants tends to be of good quality as well. More accountants are needed, but demand has been suppressed because of problems in the formal lending markets.

Pakistan is going through a transition, slowly, from relational banking (based on who you know) to commercial lending (based on a business's viability as proven through accounting records). Experience in other countries shows that businesses take on the expense of improving their accounting only when there is a significant benefit, such as availability of equity or credit, or when there is a sufficient threat of audits by the tax authorities, and the accounts can be used to defend against the audits. Tax audits are still perceived as unlikely, but the possibility of finance—especially under the new cash-flow lending regulations—offers an incentive for businesses to improve their books.

Many formal and informal businesses do not have banking accounts that will support an application for commercial lending. Few banks have time or resources to help potential clients fix that problem. However, at least one bank, Alfalah, is addressing the appallingly low accounting standards by providing low-cost accounting services to new SME applicants. Similar programs, coupled with greater public education about the benefits of improved accounting, will be needed to change the dominant paradigm for the SME sector.

Bar associations. The bar associations of Pakistan were not a focal point of this chapter of the assessment. The bar is important, however, as a source of information and expertise on legal and regulatory reform for access to credit. Pakistan's highly educated lawyers can advise and comment meaningfully on existing laws, and even propose legal reforms, but this tends to occur on an ad hoc basis. The bar associations vary in their organized efforts to support such changes, but there were reports of some meetings among chambers of commerce and lawyers to examine reform needs. Most bar associations have not shown much interest in identifying reform needs or advocating for changes to the legal framework. Intellectually, there appears to be a solid foundation to build on, but the organizational orientation and structures are weak.

Leasing companies. Leasing has grown significantly in Pakistan, and is now a very healthy industry. Leasing companies compete with one another to provide vehicles, equipment, and sometimes even office furniture, fixtures, and computer technology. These advances are happening as a market response to legal framework protections and the high demand for leased goods.

There are only two significant limitations on the ability of leasing to grow. First, leasing companies cannot readily package their accounts to obtain additional funds from the capital markets limits because securitization is not yet well developed in Pakistan. Second, the lack of a registry system for public notification of a leasing company's interest in leased property creates a higher level of risk, which in turn (1) leads to unnecessary additional costs and (2) limits the types of assets that can be leased. Although leasing will continue to grow in Pakistan for the foreseeable future, its growth may be insufficient or insufficiently affordable to meet the depth of demand in the market.

Think-tanks. Proper policy formulation requires institutional capacity to identify and analyze problems and solutions. This capacity can be developed in numerous institutions, but can also be developed in independent think-tanks and research facilities that support the various institutions and stakeholders that seek reform. Pakistan is showing positive signs of growth in this area, with a number of relatively new think-tanks appearing at universities, sometimes with significant assistance from donors. The Lahore University of Management Sciences (LUMS) and Aga Khan University in Karachi have shown particular promise. Some of the newer institutions are still fragile and would benefit from technical support from the donor community. This assistance needs to include self-promotion to ensure funding and impact. Many government institutions are not aware of the services provided by think-tanks or that such services are needed. Think-tanks should be an integral part of any project for policy development and reform.

Collection agencies. According to bankers, collection agencies are still new and relatively untested in Pakistan. Many banks and leasing companies have their own collection departments, but there is now at least the possibility of outsourcing to private collection companies.

Collection agency expansion is limited by the enforcement problems already noted. For credit services other than leasing, the lender must obtain a court order to seize movable property. Moreover, court enforcement is hardly a threat to most borrowers, due to lengthy delays and inefficiencies. Until Pakistan has a more solid enforcement system, collection agencies will be limited in their ability to provide meaningful services.

ADR services. As with collection agencies, ADR services languish because of the ineffective enforcement system. Arbitration is not legally binding on its merits in Pakistan, so any post-arbitration recalcitrance will require an excessively complex homologation (recognition) proceeding in court. This nullifies the utility of arbitration. There may be an opening for consensus-based arbitration within industry niches (such as a within business associations that can blacklist those who fail to abide by decisions), but there is unlikely to be significant development in adjudicatory ADR without a better system of enforcement. Fortunately, Pakistan's Attorney General is an internationally-respected expert on arbitration who could serve as a valuable champion for reanimating stalled reforms and initiating new efforts.

Business associations. Like banking associations, business associations seem to have proliferated throughout the country, ranging from local and national chambers of commerce to smaller industry groups. Some have proven very proactive in pursuing reforms that affect access to credit or, more generally, greater profitability for their members; others are well intentioned but poorly organized. This characterization points again to the lack of a formal system of public-private dialogue for policy reform, where business associations in other countries often play a crucial role. Without a formal, credible mechanism for engaging the government on policy needs, the advocacy role of business associations will remain stunted, although they may develop many other useful services for their members.

One service that could be of considerable help with policy reform and credit access is market information on businesses. Banks note that it is difficult (and expensive) to develop banking products without reliable information such as business profiles and numbers of businesses in different market segments. SMEDA is potentially well positioned to provide just such information, but has not yet developed the capacity. Any comprehensive programs to improve access to credit should include efforts to address this gap.

Social Dynamics

The social dynamics affecting access to credit are both simple and complex. On the simple side, there is a high demand for credit. SMEDA estimates that SMEs alone need approximately Rs 1.5 billion of commercial lending. In Pakistan's active banking market, numerous national and regional banks and NBFIs are competing to meet this demand. However, the unmet demand for SME financing and the high level of micro-entrepreneurs who do not use formal banking services (and often turn instead to exorbitant loan sharks) indicate that there are serious barriers to market development.

> Because of educational and social disparities, it is difficult for the majority of women to overcome perceived bias and their own perceived inadequacies to open a bank account, establish themselves, and take out a formal loan.

The principle obstacle to wider access appears to be the lack of a strategic, cohesive, comprehensive approach to the problem. The government has actively promoted reforms over the past several years, with good results. However, these reforms seem disconnected from a larger picture. For greater success, well-intentioned measures need to be integrated into a long-term agenda for systemic change.

One of the missing links is a connection with the stakeholders. Many respondents noted that there was not a formal system for gathering input from those most affected by and best attuned to changes and needs in the finance system. While government policymakers do occasionally seek input on the basis of goodwill, there is no mandatory or institutionalized system for seeking and obtaining public comment. This is not surprising, given the sometimes tumultuous political history of Pakistan and its sometimes authoritarian political structures. In fact, the amount of outreach to private sector groups, while insufficient, is a positive sign of increased understanding of democratic policymaking.

Another problem arises in government borrowing. Banks, given the option, will often prefer the security of government bonds to riskier, higher-cost commercial lending. The government of Pakistan has been absorbing much of the liquidity of the banking sector that could be going to the private sector for commercial finance. This reliance on government debt is in part due to poor revenue collection mechanisms, a topic beyond the scope of this chapter, but in need of further elaboration. Compounding the problem is a surfeit of potential savings that are not being collected by banks. This is further addressed below.

The current government is strongly perceived as business-friendly; it is recognized for positive attempts to improve the business environment. This suggests that there is a reservoir of political will for ongoing reforms. The reforms will need direction, so the first order of business should be to build upon existing goodwill and establish a public-private reform agenda in which the private sector helps to identify, analyze, and prioritize problems and solutions that are inhibiting access to credit.

Most of the reform needs identified in this and other studies are not opposed by vested interests. The most likely roadblocks to reform are based on legal theory and unfamiliarity with potential solutions. For example, the need for expanded access to credit information (particularly banking information) is impeded by concepts of information privacy that can inappropriately protect defaulting borrowers from the consequences of default by shielding them from public scrutiny. Many European countries, even with their strict information secrecy laws, have been able to fashion more effective approaches that protect information generally, but protect potential creditors as well. Another example is found in enforcement, where leasing companies are better protected than lenders in enforcement actions because of legal doctrines related to the supremacy of ownership. There is no reason why similar protections could not be extended to secured loans as well, but forging such protections will require pragmatic, reasoned approaches based on better understanding of both law and practice.

The lack of savings noted above deserves further analysis. Several factors negatively affect the use of banks for savings. One is the difficulty that new customers face in opening a bank account or otherwise interacting with banks. For the lower end of the SME spectrum, this can be a formidable practical and psychological challenge.

Another inhibiting factor for increased use of savings and current accounts is a fear of formality among micro and small enterprises. Many in the informal sector are concerned that any kind of formal activity, such as creation of a bank account, will bring them to the attention of tax and licensing authorities, resulting in greater tax burdens without corresponding benefits. These fears are generally unfounded but are unlikely to disappear without active outreach and education efforts by the finance community.

At the lowest end of the lending spectrum, many people still rely on money lenders (i.e., loan sharks) who frequently charge more than 100–200% interest on an annualized basis. These loans sometimes lead to indentured servitude. Explanations for this behavior in places where micro-lending and bank loans may be a reasonable alternative emphasized three factors: ignorance of other options, indicating poor dissemination of the other options by banks and MFIs; fear of registration because of tax exposure, indicating a gap in public education; and difficulty in dealing with complex formal procedures and documentation, indicating excessive complexity and lack of customer service.

At other socio-economic levels, many businesses understandably turn to family and friends rather than banks for financing, even though they could qualify for and afford formal loans. This practice is particularly prominent in Pakistan for several reasons. First, interest rates are relatively high due to the unnecessarily high risks and costs in the Pakistani financial system. Although the interest may be affordable, it is not desirable. Second, capital and financial markets are underdeveloped, so that there are limited investment opportunities for those with extra capital. As a result, many people maintain excess liquidity rather than investing, so that they have available cash for family and relationship lending, even with less productive returns. It is not necessary or even appropriate to discourage such informal lending (although informal loans do result in lost tax revenues) in Pakistan's economic environment; what is needed is a change in the market that will make formal lending and investing more attractive.

Gender. There is a significant disparity in access to credit along gender lines. The discrimination is not based in law, but in practice, and results partly from history and culture. This raises challenges, but also opportunities.

Women need more than credit in Pakistan—they need "credit plus." Because of educational and social disparities, it is difficult for the majority of women to overcome perceived bias and their own perceived inadequacies to open a bank account, establish themselves, and take out a formal loan. This is true in urban and rural settings, although the phenomenon is more pronounced in more traditional regions. Consequently, it is not enough to open credit opportunities. Many women will require customer-oriented service that includes assistance in getting a national identity card, simplified forms and procedures, and help understanding those forms and procedures. Some banks, such as the Women's Bank and Alfalah, offer these services, but they need to be more widespread.

It is also not enough simply to have a bank for women. When men from other banks were asked if they targeted women customers, there were normally two responses. One was that they did not discriminate—all credible, qualified customers were welcome regardless of gender. The second was that their bank was a shareholder in the Women's Bank, so that they took care of any perceived obligation through their participation in a woman-oriented institution. There was little recognition or understanding that women represent a distinct, profitable, lower-risk market that could be aggressively pursued. This is not surprising: although SBP has a target of 30% employment of women at every level of the organization, few banks are even approaching 10% female staff. They simply do not have access to a female perspective within their institutions.

The challenge today is one of practical versus strategic approaches. The practical approach seeks to help women deal with the status quo by enabling them to handle the existing system more effectively. This will slowly increase participation of women in the credit market. The strategic approach would deliberately transform the current system into one that is more equitable in practice as well as in law. Pakistan needs a strategic approach.

The good news is that Pakistan is in a period of prolonged economic growth that creates greater openness to social changes. According to Benjamin Friedman, societies are more tolerant and progressive in improving societal equality during times of growth.[87] Pakistan has been growing at six to 7% annually for several years. Pakistan's government is generally reformist vis-à-vis the economy. Many men are beginning to discover that having their wives or daughters economically active benefits the household.[88] Colleges and universities are graduating an increasing number of women, and women represent more than half of the student population in some disciplines.

This appears to be an opportune season to increase efforts to bring more women into the formal banking sector. It will require extensive outreach and public education to decrease traditional biases and increase women's capacity to take advantage of new opportunities. It will also require new banking products, such as branchless banking that can reach customers who cannot travel to branches. But there is no reason that Pakistan must continue to have the worst rank in South Asia for women's access to credit.

Recommendations

It is possible to have a positive impact on access to credit through piecemeal reforms, but it is not desirable. Pakistan needs a comprehensive strategic approach to financial sector enhancement to serve as a long-term roadmap that makes sense of the many influences on credit availability. The recommendations below begin with development of a national strategy, but recognize that it is possible to pursue only a few reforms and still achieve a positive impact.

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87 Benjamin Freidman, The Moral Consequences of Economic Growth, 2005.

88 Anecdotal evidence in rural communities indicates that women who obtain loans from MFIs for their micro-businesses are at lower risk of physical maltreatment by their husbands.

- Working with the MOF and the apex institutions for credit providers (SBP and SECP), establish a formal standing committee to develop and pursue financial sector and credit reform. The finance system is multifaceted and complex: decisions on capital market instruments can affect retail lending to SMEs, even when those effects are unintentional. Recognizing this, the strategy should be comprehensive, taking into account the overall reach of reforms. It should also be segmented to address problems for: large, SME, and micro loans; agricultural versus commercial credit; industry segments; gender issues; and long-term versus short- and medium-term impact.
- Establish a formal mechanism for the standing committee to seek input and analysis from stakeholders, especially as related to the various market sectors and their unique needs. Identification, analysis, and prioritization of reforms should result from substantial public private dialogue.
- Accompany all reforms with extensive, targeted public information and education campaigns that use stakeholder organizations (such as business associations) and the media. Many reforms lack impact because they remain "undiscovered" by the intended beneficiaries.
- Establish a banking reform strategy. The SBP has announced its need for technical assistance in preparing a financial sector strategy for Pakistan. Specifically, it needs support in preparing an implementation plan for reforms needed under Basle II and for the overall financial strategy, including how to address issues of cost of financial intermediation (with spreads in Pakistan being very high) and competitiveness, a strategy for financial inclusion, and a strategy for technology and governance reforms, among others. Assistance should be provided.
- Amend banking and finance laws. In addition to overall banking financial sector strategy, help to address the specific reform needs set forth in the Framework Law discussion within a comprehensive strategy context.
- Enhance collection and dissemination of credit information by integrating the currently segmented system and expanding requirements for information reporting. Mandate reporting of micro-lending to establish credit histories for women.
- Improve identification of women. Credit information starts with registration of individuals, and many women are unregistered. Combine registration with banking services, but also increase registration by offering or mandating registration at birth by shifting the burden of registration onto the healthcare providers (including midwives) who deliver babies. The National Database and Registration Authority would be an able partner: it has the mandate to register births and has proven to be very user friendly in registration and other services.
- Create a national collateral registry and secured lending system that permits registration of pledges on movable property by any creditor against any borrower, whether an entity or individual, for a broader range of property types. Expanded use of real property should also be encouraged, but this will require extensive system reform in the real property system.
- Eliminate hidden liens. Regulate oral transfers of property by providing protection against competing claims only if the transfer is registered. This will need careful justification and examination in light of Islamic traditions, but the traditions can coexist by honoring the gift but permitting state protections only after the oral gift has been registered.
- Expand the protections enjoyed by leasing companies to the enforcement rights of secured lenders. Comprehensive court reform will take years, but partial reforms affecting credit can be achieved much more rapidly.
- Improve the handling of inheritance, possibly by drawing from models from other Muslim countries. This will necessitate careful study followed by extensive public education to defuse potential emotional reactions. Existing inheritance atomizes land holdings and reduces asset accumulation for women.
- Establish a registry (within the secured lending registration system) for leased assets to further protect lessors and to expand the range of assets that can be utilized for leasing. Particular efforts should be made to enhance agricultural leasing programs for equipment and livestock.
- Expand use of warehouse receipts. Agricultural lending on grain can and should be enhanced by a national system of warehouse receipts.
- Eliminate mandatory personal liability. Banks may wish to require personal guarantees from directors or owners of young or risky SMEs, but the decision should be left to the banks. Removing mandatory personal liability

requirements would make formalization through limited liability companies more attractive.

- Establish binding arbitration. Pakistan should establish appropriate regulations in support of the New York Convention, and also amend domestic laws to recognize binding domestic arbitration that is not subject to court challenge.
- Develop credit insurance and credit-enhancing insurance. Upon further study, introduce affordable insurance products to better protect lenders and borrowers from unexpected loss (especially of pledged property), and thus lower risks of lending.
- Improve accounting standards. A combination of public education on the benefits of solid accounting (including access to finance) and the introduction of affordable accounting services (including accounting software that conforms to the new International Accounting Standards for non-Quoted Companies) is needed to change the dynamics of unreliable accounting that characterizes the much of SME sector.
- Reform the bankruptcy regime. Bankruptcy reform will take years, but is needed now. Long-term, comprehensive reforms should begin immediately, starting with the introduction of reorganization mechanisms and borrower-initiated bankruptcy protection. A draft reorganization law has been prepared, but needs to be pursued by policymakers. Substantial assistance will then be needed to ensure effective implementation.
- Develop products to address gender imbalance. Many women need a "credit plus" approach—access to credit coupled with assistance in applying for loans, preparing business plans and accounts, and sometimes even personal registration to receive a national identity card. The "plus" services may need to be offered through separate entities if the costs of such services cannot be absorbed effectively by banks that provide them, a point to be further analyzed.
- Develop understanding. Public information on the benefits of women's participation in the economy, the rights of women to inherit, work, and obtain loans, and the opportunities available to women is crucial but currently insufficient. Extensive public and civic education is needed.
- Develop competition. Experience shows that Pakistani bankers respond to competition within their own banks and between banks. Establish awards and competitions for reaching women who are not using formal banking services. The competition should not simply reward increased lending, but improved approaches to reaching women, so that the approaches will be shared as a part of the competition, improving general knowledge for all participants.

TRADING ACROSS BORDERS

Introduction

A critical component of a country's ability to compete internationally is its capacity to move goods, people, and conveyances across its borders in an efficient, facilitative yet protected manner. In the modern globalised market, economies can only flourish if their commercial enterprises can import and export without excessive regulations, procedures, costs, and delays. Goods and people in international trade must be able to move rapidly, *securely* and safely, from the point of departure to the destination, with the least impediments as possible arising from regulations or threats.

There is a clear understanding in the government and trade environment of Pakistan, that international trade *helps promote* social and economic development. The Government of Pakistan (GOP) recognizes that the government organizations controlling and administering the movement of goods and the people, must adopt and apply modern, simplified, transparent, and secure clearance procedures. In recent years, the GOP has taken several initiatives by way of institutional reforms and new/amended legislation, to bolster business and trade. These initiatives demonstrate that the Government of Pakistan is committed to becoming a responsible partner and safe supplier in the global supply chain.

The Government of Pakistan and the people involved in trade and business also understand the need and the great potential of increased participation by women in the economy of the country. As noted throughout this report, it will be challenging to create opportunities for women to assume a greater role in the economic life of Pakistan. These opportunities must be developed in the business environment, as well as at all decision-making levels in the government.

This chapter addresses the legal, institutional, and operational elements that can facilitate or hinder international trade expansion in Pakistan. It recommends steps to capitalize on the positive achievements made to date and to overcome the constraints imposed by culture, politics, tradition, and regulations.

Legal Framework

Introduction. The two most significant international organizations that develop and monitor international regulations, standards, and best practices for trading across borders are the World Trade Organization (WTO), and the World Customs Organization (WCO). The WCO is required to ensure harmonization and uniformity of its conventions, settlement of disputes regarding classification of goods and valuation, among others. Other international organizations and agreements also regulate the movement of goods and passengers across borders, including the International Maritime Organization, the International Civil Aviation Organization, and the International Standards Organization. WTO likewise regulates international trade based on agreements, understandings, and rules framed by its members.

Pakistan has been a member of the WCO since 1955. Chief among its international conventions, standards, and recommended practices are the International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention), the Harmonized Commodity Description and Coding System, International Convention on Temporary Admission (Istanbul Convention), and the International Convention on Mutual Administrative Assistance in Customs Matters. These rules govern essential aspects of international trade: standard best practices for efficient and simplified processing of goods and conveyances, Harmonized System for the classification of goods for revenue collection, standardized trade statistics, and common treatment of goods that transit a country for ultimate supply to a land locked country.

Being a member of GATT 1947 (1994), Pakistan was one of the 124 countries who signed the Marrakesh Declaration of 15th April, 1994, establishing the World Trade Organization as of January 1, 1995. By signing the Marrakesh Declaration, Pakistan, like other member states, agreed to implement and adhere to WTO Agreements, understandings and rules for free and fair trade, including the GATT Valuation Agreement. The hallmark of WTO is that it is a rule based system where every member has a say in decision making. The Dispute Resolution Understanding provides one such example.

The UN Economic Commission for Europe (UNECE) administers the Convention on the International Transport of Goods Under Cover of TIR Carnets ("*Transport Internationaux Routiers*" - TIR Convention, 1975). This important instrument facilitates the movement of goods across borders as necessary for their transport, and reduces interventions by customs at intermediate borders. Transport operators use a commonly accepted customs transit document, the TIR Carnet. This also serves as a guarantee for the customs duties and taxes of the goods in transit. These international conventions and standards harmonize the treatment of goods, conveyances, and passengers. They thereby provide both large and small traders and transporters predictability, cost-effectiveness, and transparency in their international transactions.

Pakistan's Customs law. As the 14th signatory to the WCO's Revised Kyoto Convention on the simplification, modernization, and harmonization of customs procedures, Pakistan is ahead of most of its neighbors and even some developed countries. It has strengthened its commitment for improving customs procedures by revising the Customs Act of 1969 (IV of 1969) and incorporated therein standard best practices prescribed by the Revised Kyoto Convention. Although an extensive analysis of the Customs Act compared with the Revised Kyoto Convention has not been undertaken, it is generally accepted that the requisite ingredients of the Convention stand almost fully incorporated/enacted in Pakistan's procedures and legal system.

Pakistani customs legislation is made up of a basic law: the Customs Act. This law in turn is supported by an elaborate set of rules of procedure called "Customs Rules" and a number of regulations (i.e., Statutory Regulatory Orders or "SROs"). The Customs Administration continuously reviews and has greatly reduced the number of SROs in recent years. These have been systematically consolidated for the convenience of stakeholders. However, this review could not conduct a thorough analysis of the nature of the consolidation and reduction of SROs. The main principles and procedures of the Revised Kyoto Convention are discernable in the customs law and SROs even if not in an easy-to-follow manner.

Pakistan Customs applies the Harmonized Commodity Description and Coding System and the GATT valuation rules (Article VII of GATT (1994), in compliance with WCO and WTO requirements. They are currently finalizing rules to govern the temporary admission of goods as required under the WCO's Istanbul Convention.

Other international agreements. Pakistan has signed but not yet ratified the TIR Convention on international road transport. This UN agreement governs the carriage of goods by road in 68 countries. Nearly all of Pakistan's neighbours are signatories to the TIR Convention. The TIR system is supported by the International Road Transport Union (IRU) in Geneva, which administers an international guarantee chain in all countries where a TIR transit operation can be established. TIR requires a system of guarantees for the goods transiting a country by trucks. Pakistan has been facing difficulties in meeting the IRU's guarantee requirements. Pakistan sent the country's ratification papers to the UN through diplomatic channels, but the papers were rejected because Pakistan had registered a reservation under the Convention related to traffic with India.[89] However, Pakistan remains interested in joining the TIR system as a result of the pivotal role of this Convention in the facilitation of trade across borders. Accordingly, Pakistan has again taken up the case for the Convention's ratification with all the stakeholders. Pakistan's entry into the TIR compliant group of countries will help to remove one of the residual obstacles in its way to becoming a regional trading hub.

In the Gender Assessment portion of the World Bank's Country Report on Pakistan it is noted that, "Pakistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Specific policies to promote gender equity have been articulated in the National Plan for Development and Empowerment of Women (2002), National Plan of Action (1998) and

89 To date, India is not a signatory of the Convention.

the government's Poverty Reduction Strategy Paper (PRSP, 2003). Prominent civil society organizations have stepped-up efforts to educate the public about the benefits of reducing gender inequalities. Moreover, they are increasingly engaged in dialogue with government ministries about how to incorporate gender issues across all major areas of development policy." [90]

These policies and action plans, which promote and support equal opportunities for women in all aspects of public, private, and commercial life in Pakistan, provide the umbrella that covers and applies to all other government policies. The international trade and transport conventions and the customs law are gender-neutral; they neither impede nor require actions by or for women or any other specific group. Their implementation, however, is subject to the government treaties, policies, and action plans that may or may not promote gender equalities.

Implementing Institutions

Customs. Pakistan Customs operates in an interactive and trade-friendly environment as reflected in its operations and in the positive reflection of business, transport, chambers of commerce, trade associations, and port/dry port operators.

Top executives at the Federal Board of Revenue (FBR) (formerly the Central Board of Revenue or CBR) and the Customs Department have undertaken a massive re-engineering of customs operations in the past few years. A draft of the 2005 World Bank report on Pakistan Customs however, indicated that a number of problems remained. Since then, many of the identified obstacles have been removed and reforms have been pushed forward. Plans are also in place to close the remaining gaps so as to keep the reforms momentum on track.

The FBR and Pakistan Customs have developed and instituted the following internationally recognized foundations upon which a modern customs system is built:

- Adoption of international standards for customs clearance and codification of these standards in customs regulations;
- Simplified document and information requirements;
- Reduced tariff rates for imports;
- Elimination of export duties;
- Elimination of import and export licenses;
- Automation of the customs clearance process;
- Web-based pre-filing of the goods declaration (GD);
- Importer self-assessment of duties and taxes;
- One-stop processing that allows e-filing of the declaration with Customs and online payment of duty and taxes to the bank (being further streamlined/improved).
- Rapid customs clearance—in hours, not days;
- Continuous 24/7 service at the airports;
- Greatly reduced number of cargo examinations – down from 20% in previous years to 5 to 10%;
- Cargo exams in many cases determined by selectivity in the automated system, reducing the discretion of individual officers;
- Adherence to the WTO/GATT valuation rules;
- Instituting a post-clearance audit system in "One Customs" computer-based clearance system and plans for introducing such audit in the Pakistan Computerized Clearance System (PACCS) for implementation in the near future;
- Improved cargo security;
- Clearly publicized customs requirements that are easily available to all traders;
- A multi-layered system of appeals with accelerated disposal process;
- A separate Alternate Dispute Resolution System, through public – private partnership;
- Cooperation and regular consultation with the trade and transport communities;
- State-of-the-art training for career-level Customs officers;
- Salary increases for qualified and proficient Customs officers;
- Improved recruitment standards;
- Goal to achieve zero tolerance for corruption, with an internal affairs division to investigate and pursue allegations of impropriety by Customs officers;
- Ratification of the WCO's International Convention on the Simplification and Harmonization of Customs procedures (Revised Kyoto Convention); and
- Signatory to important international conventions on customs and transport facilitation.

Nearly all these reforms have either been implemented or are in the process of implementation and are generally endorsed by Customs managers all over the country.

The result is a general perception that customs operations are now fairly modernized and reformed, based on risk management, and not generally on

[90] World Bank, Bridging the Gender Gap: Opportunities and Challenges (No. 32244-PAK, October 2005).

discretionary control. The use of automation has resulted in speedy clearance of goods, with reduced use of discretion. There has been an increase in frequency of consultations with trades, and an association of stakeholders in efforts to further simplify procedures. There is also a clear manifestation of increased professionalism in the daily operations of Customs.

However, despite these reforms, reservations exist —within and outside the Customs administration— that high level of revenue security and transparency has not yet emerged as a general pattern in Customs clearance operations. This is because of insufficient safeguards even in PACCS. There is a need for greater management reviews and for a post clearance audit system. Both are imperative. The automated clearance system must be reviewed by senior management continuously by updating and upgrading it with fresh valuation data and new trends in imports. Similarly, the early implementation of a post clearance audit system of all trade transactions is needed to ensure objectivity in customs processes. Time is of the essence, as reform initiatives are bound to lose momentum if audit function fails to assert itself as a force, to instill a strong sense of accountability and to forestall delinquency amongst both the government functionaries and traders.

Pakistan Computerized Clearance System (PACCS). The system has been developed over the past 3 to 4 years, by Pakistan Customs with support and funding from the World Bank. PACCS is not a UN ASYCUDA system. Pakistan Customs also applies another Computerized System called, "One Customs".

PACCS has only been implemented in two container terminals at Karachi Port (KICT at West Wharf and PICT at East Wharf) for imports and exports. It has also been applied at QICT in Port Qasim.

PACCS uses selectivity and modern risk management techniques to assess each transaction based on the information supplied electronically on the Goods Declaration and cargo manifest. The automated system analyzes the clearance histories of importers and exporters for the previous 90 days. However as mentioned above, greater management reviews are required to safeguard revenue.

Under PACCS, an importer or exporter can file a Goods Declaration online from anywhere in Pakistan, assess the amount of duties and taxes due, pay the amount electronically, and receive an electronic release authorization from Customs. The clearance of goods is however allowed only from Karachi. This facility is available to any trader, but is used mostly by large companies with exporting or importing experience. The traders also have the option to file the hard copy of a Goods Declaration and complete the other requirements through a clearing agent, broker or even get self clearance. Large businesses are directly connected to Customs via the internet and small businesses can access terminals provided at chambers of commerce if they do not have their own computers and Internet access.

The Federal Board of Revenue (FBR) posts the national import and export requirements, tariff rates, and other information required to complete a customs transaction on its website. At present, over 50% of all imports and exports in Karachi are cleared through PACCS. Goods not cleared electronically include loose cargo, scrap of all kinds, cargo at a few terminals outside KPT area, air cargo, transit cargo and goods transshipped to ports outside Karachi.

Customs offers a "One-Window" service to release goods, and PACCS system indicates if any other agency certificates are required. The trader then obtains the necessary authorizations or certificates (primarily phyto-sanitary certificates) before coming to the port to clear the goods. She presents these certificates to the Customs officer and terminal gate operator stationed at the port for the release of the goods.

Although some results of PACCE have been successful, the system is still facing problems:

(i) Lack of post clearance Audit System.

(ii) Absence of a proper valuation check.
(iii) Outdated Risk Management System.
(iv) Third party audit of the system has not been conducted. In its absence roll out of the existing PACCS could lead to serious problems.
(v) Other agencies who have border requirements for goods or conveyances, for example the Ministry of Ports and Shipping, Ministries of Health, Agriculture, Phyto-sanitary and Veterinary Services, are not yet automated. Importers therefore still face manual processes to complete these other requirements. They thus have to deal with a dual system: to obtain paper authorizations from the relevant agency while they complete the customs process electronically. The Ministry of Commerce and the Federal Board of Revenue have been working with these other ministries to encourage their automation under the umbrella of Trade and Transport Facilitation Project (TTFP) of the Ministry of Commerce financed by The World Bank and now a part of the National Trade Corridor Improvement Programme (NTCIP) of GOP.

In view of the above any further roll out has to wait for a major upgrade, third party audit of the system and testing of the upgraded system. The Federal Board of Revenue is currently involved in a major review of PACCS pilot project.

One Customs. All the goods that are not cleared by PACCS are processed and cleared through the old computerized and semi-automated system. This system has connectivity all over Pakistan including all dry ports, land customs stations and air ports. This system is also web based but not yet fully automated, as its Risk Management System is undergoing initial trial runs for some imported goods at the Appraisement Collectorate, Customs House, Karachi. Goods subject to this abovementioned system include all those indicated in the Customs Tariff Chapters 1-27, as well as all automobiles. These cover all Agricultural produce, products made from agricultural produce, fish, animals and their products, minerals and mineral oil etc. There is a well developed post clearance audit and regular valuation check in this system.

The trial and testing of One Customs application to goods under other chapters is planned over the next 2-3 months, after which One Customs could become substantially automated and paperless like PACCS. This system is being run by Customs with the help of Pakistan Revenue Automation Ltd. (PRAL). At present, however, the One Customs system has a few problems:

(i) Lack of transparency.
(ii) Paper-based.
(iii) Requires ongoing contact between customs and importers.
(iv) As the risk management system is still undergoing test and trials, it cannot be automated.
(v) Although the system has been substantially upgraded (as compared to the previous manual system) the average clearance time is still 1-2 days, compared to 1day (on average) for PACCS.

Comparing the two systems – First, PACCS facilitates a quicker release of cargo, and is an automated system, however the percentage of goods examined at the port is still quite high. According to one estimate, after a low of 5% achieved over a year ago the percentage has climbed back to about 15%. This has been due to the detection of some fraud in the PACCS clearance. Second, it is generally perceived that the average revenue collected in One Customs is more than PACCS.

In any case, both systems have some major problems. However our present survey shows that "One Customs" has an edge over PACCS especially because of a strong post clearance audit system and regular valuation checks and updates of value in its data bank, which PACCS lacks.

Cargo examinations. In the past, up to 20-25% of the imported goods were examined by Customs, and the average dwell time for cargo containers presented for clearance was13 days. With PACCS, automated risk managed examinations have been reduced to 5 to 7%, with another 1 to 2% of examinations generated outside of the automated system, directly by inspectors, for a total of inspections between 6% and 9%. By early 2006, clearance times had been reduced to 6-4 hours, and the dwell time to 4 days, but due to monitoring inadequacies in PACCS and some response slackness by desk level process officers, the average customs clearance time went back to about 48 hours and dwell time up to a week. With robust interventions by the Customs leadership, the situation is improving. The target for clearance time has been reduced to less than 12 hours. The ports allow five days of free demurrage for cargo (as against 10 days previously). The reduction in average dwell time for a container to 4-5 days means that clearance from port is done within the free time (the length of time from Customs release of the goods until their movement out of the port depends on the transport logistics arranged for each shipment.) With predictability now available for the Customs processes, most importers are able to move their cargo out of the port rapidly and hassle free. The customs clearance time and dwell time in One Customs is, on average, almost the same.

Valuation. Customs collects duties, sales tax and advance income tax (WHT). Valuation for the purpose is transaction-based as required by GATT. If there is a problem or discrepancy, the system generates an examination requirement which is conducted by an appraiser assigned by the system. Appraisers require goods examination for all purposes (valuation, quantity, description, etc.). In PACCS no one knows in advance which officer will check a shipment, thus eliminating the opportunities for unofficial payments. Where the transaction value is not accepted, the appraiser will use the alternative valuation rules established by GATT and conduct investigative research and, as stated, may also require examination of the goods. The PACCS system however does not have a valuation checking or updating system.

If the appraiser recalculates the value, he electronically issues a demand for payment to be made within 90 days (the recalculations are almost invariably increased). This first review is completed within one day. If the duty increase is challenged by the importer, Customs may accept the declared valuation and close the transaction, or the importer can approach the Assistant Collector or Deputy Collector. The importer will come to the office for a hearing and this will be his first human interaction with Customs for the transaction. This will take place within two to three days of the arrival of the goods. If the importer still disagrees with the outcome, he can approach the Collector or an outside authority (court). Most cases are settled at the second review and within two to three days, since the port charges demurrage after four days. This procedure reflects the most modern principles and procedures for an internal appeals process.

Transit cargo represents an important slice of the trade potential between Pakistan's ports and Afghanistan, other landlocked countries to the north, and western China. The dream to develop Pakistan into a regional transport hub can be accelerated once PACCS is fully operational for all types of cargo movements to all corners of the country and the much awaited post-clearance audit system becomes a reality.

Any automated system, of course, must be operated by competent and knowledgeable individuals. To this end, Pakistan Customs has made a commitment to develop and enhance the professionalism of its workforce. Officers who have been trained to operate the PACCS system will receive higher salaries, and this benefit will eventually extend to all qualified Customs officers.

Customs duties. Duties have been significantly reduced and a few items even zero-rated. Whereas about 10 years ago the rates were as high as 45% and 25% on machinery, the duty on machinery now is mostly 5% to 0% except for machinery which is made locally. While duty on imported raw materials and intermediate goods for machineries ranges between 5% -10%, its average incidence is over 5%. Duty drawback (refund of the duties paid on import) is allowed on exported manufactured products. The procedures have been greatly simplified and included in the automated system.

Alternate Dispute Resolution (ADR). The FBR has a good ADR system. The FBR appoints a committee of three members, two of whom are from the private sector. One of these two private sector members serves as the committee chair. Decisions are generally honored by the FBR and most cases are settled out of court. A current list of the businesspeople and other persons who are approved to participate in the ADR committees is published by the FBR on its website.

Security. Pakistan faces particular difficulties in the war on terrorism both domestically and internationally. Its trade and transport systems lie on a key transit route from the center of extremist ideology in Afghanistan to the international global supply chain, and are thus vulnerable to being compromised for the movement of illegal and dangerous cargoes. If Pakistan is to maintain and improve its position in the global economy, it must implement modern and secure trade techniques. Recognizing this, Pakistan has undertaken important steps to improve cargo security for goods arriving in and leaving its ports especially goods bound for US ports. It has adopted the US Secure Freight Initiative and, after due testing of the technology, it has been put into use at Port Qasim, in a dedicated terminal. 100% of containers at Port Qasim leaving for US ports pass through this system of radiation detection portal monitors and a container scanner.

US and Pakistani Customs have installed a fiber-optic direct link from the container scanners at Port Qasim to the US center in Virginia. The link operates in real time, and the decision to clear a container is jointly made by US and Pakistani Customs. Any anomalies indicated by the scans are examined and investigated by Pakistan Customs before the container can be loaded for outbound shipment. This program facilitates the release of these containers in the United States because they do not need to undergo screening again at American ports unless a container has been tampered with. This important security effort also provides a significant trade benefit for Pakistan's exports to the United States. The scheme was expected to be extended to the containerized terminals of Karachi Port (Karachi International Terminal by the end January 2008 and Pakistan International Container Terminal by the end of April 2008).

Loose cargo entering Karachi Port and Port Qasim will also be required to be scanned leaving the port and moving inland or to border ports as soon as scanning equipment is installed and made operational. Inland (dry) ports and the border ports will have scanners too. Readings from the port of entry and the port of destination will be automatically compared. Scanners will help secure and facilitate the transit of cargo inland, as well as to neighboring countries that receive the cargo by road and rail. However, there is a perception that transit goods sometimes get pilfered in route to Peshawar/Chaman. Customs holds that such perception is rooted in history, and is no longer a reality. According to officials, sometimes posting errors in electronic data give rise to such an impression.

Customs reports that there is a good container sealing system in place for cargo security. The seal numbers, the time of sealing, and the time of departure from and arrival at the port gates are automated. All seals are physically checked by Customs officers at the gates of departure and arrival. The seals themselves, however, are not electronic. There is no longer the traditional concern about cargo pilferage within any of the ports.

The FBR and other Ministries have agreed to install appropriate security equipment at all airports to meet US Transportation Safety Administration standards. These installations will also contribute to trade facilitation of Pakistan exports to the US and, eventually to other destinations.

Customs integrity and professionalism. Pakistan Customs officers, like their counterparts in many countries, receive salaries that are well below the market level. The basic level officers receive only Rs 13,000 per month (about US$ 2600/year). These low salaries are a key factor in the traditional and notorious Customs integrity problems. A meager pay certainly provides an incentive for corruption. But more important, is the existence of opportunity for officials to act arbitrarily without fear of penal action which provides the safe haven for corruption. The new structural reforms promise to significantly reduce the opportunities for corruption. A second element of any integrity management system has to be accountability. This needs to be enforced with a well designed system of audit and transparent investigative practices. Otherwise, accountability initiatives will run into a disarray of vindictive and impulsive probes which will shatter the confidence of officers and adversely affect their performance. Some officers working in integrity management will benefit from visits to countries having achieved higher level of integrity management benchmarks. Skill development training in this area is also recommended.

The FBR has timely initiated a bold and progressive re-engineering program aimed at improving the professionalism and integrity of its personnel. Since 2005, career-level officers in the customs and tax administrations have been sent to study for a special MBA degree at the Institute of Business Administration, Karachi. An increasing number of officers are also being sent for studies to universities abroad, more frequently to the US, the UK and Australia. Officers are also sent to attend seminars and workshops in reputed foreign institutes. This quantum jump in career development is bound to attract more highly qualified candidates in the recruitment process, and will upgrade the level of service that Pakistan can offer to its citizens and international traders.

Even more remarkably, the FBR is currently reorganizing and upgrading the entire customs administration. All new positions have been posted for competition, and the first to be filled are those of the career-level officers. Candidates are required to undergo interviews that include technical, psychological, and integrity reviews. The salaries for those who qualify for the new positions are increased by 100%. This process is also being repeated for all the lower-level officer positions. This reform program aims to recruit and retain only qualified and competent officers, and to compensate them in accordance with higher standards of performance/competence as well as expectations.

Now that customs, sales tax, and internal revenue processes are automated, and officers and staff are being better prepared professionally, many integrity problems are likely to be addressed. In the past, Customs' image was tarnished owing to general perception of "under the table" system of payments for moving papers and appraising and releasing goods. PACCS substantially reduced opportunities for importers to offer unofficial payments to Customs officers, and for Customs officers to solicit them, by eliminating interactions between Customs officers and importers. Since only the system can generate a requirement to examine the goods, no one can know in advance which officer will be assigned to conduct the examination.

Pockets of traditional "collusive corruption" generally only occur when goods have to be appraised for valuation. The importer may under-value the goods in order to generate interaction with an appraiser, hoping to receive favorable duty and tax treatment. However, any required examination is performed by Customs with only the terminal operator present. The importer is no longer allowed at the port premises due to increased security requirements. This has the added benefit of removing the importer from direct interaction with any particular Customs officer. Although there have been some reports of officers compromising security, and of some port officers not following the mandated system generated interventions, the automated system is well designed to isolate the importers and exporters from customs officers, and to minimize the role of customs clearing agents in any "collusive" dealings.

The clearing agents, who were traditionally involved in the unofficial payment racket, are also being affected by reforms. Customs officers and importers noted that clearing agents in Pakistan used to be notorious for customs soliciting "fees" to expedite shipments. However, now that importers are able to assess duties and taxes and pay them directly to the bank in advance of the arrival of the goods, importers need to rely less often on clearing agents.

Customs Officers also report that businesspeople no longer tolerate wrongdoing or delays by Customs officers, unless they are complicit with the corruption. Each Customs office has established a system of checks and balances that eliminates the "one-man shows" that allowed improprieties to be hidden in the past. An active internal affairs division investigates allegations of impropriety by Customs officers. There is also a system of internal audits by both FBR and the Auditor General of Pakistan.

The general opinion of the trade and port operators is that corruption has been reduced substantially.

Customs-Trade cooperation. Interviews were held in Islamabad, Sialkot, and Karachi with the various chambers of commerce, freight forwarders, port operators, air cargo associations, free zone operators, Trade Development Authority, and importers and exporters. There was virtual consensus that Pakistan Customs has become more customer-friendly and no longer poses problems for the international trading system. Customs is regarded as very accessible, open to discussion, and good to deal with. It provides swift remedies to problems and cooperates very closely with the business community.

Customs is active with all the chambers and trade associations and participates in many trade workshops and seminars. Customs has been providing regular PACCS training to clearing agents, importers, etc., which is very important as PACCS may expand to all ports in the near future.

Trade across land borders. Pakistan has four neighbors and it is currently trading with all the four through land borders. The main trade routes are:

Neighbor	Routes
India	Wahga (Grand Trunk Road) just east of Lahore. Customs Station: Wahga
China	Karakoram Highway (KKH) through Khunjarab Pass (16000ft); Customs Station: Sust (9500 ft).
Afghanistan	
	(i) Khyber-Pass (on Peshawar-Kabul Road) Customs Station: Torkham.
	(ii) Kojak-Pass (on Quetta-Qandahar Road). Customs Station: Chaman
	(iii) Via Miram Shah in North Waziristan Customs Station: Ghulam Khan
	(iv) There are another 10-12 smaller trading links with proper Customs controls but trade through these routes is not significant.
Iran	Taftan (on Quetta-Taftan Road).

Besides land routes, rail links Pakistan with India (near Wahga and Khokrapar in Thar Desert), and is used for regular passenger service as well as some cargo. Railway line also runs from Quetta to Chaman up to Afghan border via Kojak Pass and up to Iran border via Taftan which carries both passengers and cargo, both ways. A railway line runs through Khyber Pass which stops at Landi Kotal, 5km short of Afghan border. It had been in use for carrying tourists each Sunday. Currently it is out of use as the track got damaged in floods a few years ago.

(1) Pakistan-India Trade. The Pakistan-India border trade is currently taking place through Wahga, just east of Lahore situated on the historic 600 years old Grand Trunk Road (now dual carriage way). Another customary carrier of passengers and cargo between Lahore and Delhi is the rail service, also passing south of Wahga (at Attari). At both places new platforms and air-conditioned arrival and departure lounges offer state-of-the-art baggage and passenger processing arrangements, each having been built in 2007 at a cost of Rs. 50 million. The FBR is also planning to create similar facilities at Sust, Torkham, Chaman and Khokrapar for passengers. Air passenger service operates on Karachi-Bombay and Lahore-Delhi sectors. The newly opened rail passenger service between Khokrapar (Pakistan) and Monabao (India) is in its infancy. Trade through this route is under consideration and may become a reality in the near future.

The Wahga land custom station also handles Afghan Transit trade (exports of fresh/dry fruit from Afghanistan to India). Passenger facilitation is in very good shape but there is insufficient infrastructure in place to facilitate large-scale trade. A project is underway to establish a new customs station over 65 acres of land at Wahga border with requisite trucking bays for loading/unloading, warehousing and processing of cargo. Earlier, trucks had to be unloaded on each side close to the border and cargo was shifted manually. Border crossing of loaded trucks has now been allowed so that export cargo of each country can be offloaded in the customs area of the importing country.

Because of the ongoing Pakistan-India dialogue about Confidence Building Measures, especially under the South Asia Free Trade Agreement (SAFTA), border trade is expected to expand manifold in the next few years. This will require expansion in infrastructure on both sides. Some of the expected increase in trade could be diverted to the other now dormant land routes such as Kasur–Ferozepur link just south-east of Lahore (Gandasinghwala), and the rail link of Khokhrapar-Monabao (Rajasthan). But both require massive upgrades and the latter will also need uninterrupted power supply. The cargo handled through railways between Lahore (Mughalpura) and Amritsar is processed by Customs at Lahore Dry Port which is well integrated into One Customs.

(2) Pakistan – China Trade. Border trade with China and with the Central Asian Republics (CAR) through China, takes place via the Karakoram Highway (KKH) and the Khunjarab Pass (at 16,000ft altitude). Though periodically interrupted in winter months due to land slides and snowfall, this trade is expanding consistently, now aggregating to over US$ 100 million annually. Since 2005, a well designed customs/immigration complex is in place at Sust (at 9500 ft), an isolated post about 200km from Gilgit and 74km inside the border crossing at Khunjarab Top to the north-east. Processing of cargo and carriers has been considerably streamlined. Classification and valuation related disputes, which earlier kept customs operations in ad hoc state, have been narrowed down. The time taken by Customs in release of cargo (both imports and exports) has been reduced to less than 12 hours from an original 3 to 5 days. Communications via satellite linkage and local power generation have supported its functioning as a customs station. It is now well integrated into One Customs, the system of customs assessment operated by customs through PRAL, with its CPU at Karachi.

The significance of this customs station lies in:

(i) Increased trade through an upgraded KKH.
(ii) Steady flow of transit trade via this route that is taking place under a Transit Trade Agreement earlier signed by Pakistan, China, Kazakhstan, and Kirghizstan.
(iii) Enforcement and application of the Pakistan – China FTA.

With the expected growth in the Pakistan-China border trade in the near future, the existing infrastructure is bound to come under pressure. KKH will become an important economic artery, connecting CAR countries, China and Afghanistan through Pakistan. By using Pakistan's National Trade Corridor, these countries will find new export outlets through Karachi and Gawadar, to the Gulf, Africa, Europe, US and the rest of Asia. Trade of China and CAR countries might also become a reality with Afghanistan, Iran and India with greater ease and speed.

(3) Pakistan – Afghan Trade. Unlike the reform and modernization that has improved customs operations at sea, air, and inland ports, the land border, particularly with Afghanistan, remains rooted in old-fashioned, manual, and often arbitrary procedures. The local culture predominates and impacts the trade with Afghanistan. The population at the borders is mainly tribal, with extended family members living on both sides, crossing the border at will, without controls. This situation, though not unique to Pakistan, is not easy to be addressed, particularly because the free movement across border makes smuggling easy, and is a means of living for at least 500,000 persons and their dependents in the Tribal Areas. Up until the 1990s, Pakistan's tariffs were very high and most household items of common consumption were not importable into the country. This situation gave rise to smuggling of such items under the umbrella of Afghan transit trade, most of which were brought back by individuals, donkeys, camels and jeeps through informal routes. Pakistan's new liberal policies and lowered tariffs have helped reduce this trade but only to some extent. **Even though 25% is the highest tariff in Pakistan, this form of informal trade and smuggling persists, resulting in a very lucrative endeavor.**

Most of the Pakistan-Afghan border trade is currently taking place via two major routes: Khyber Pass (NWFP) with Torkham being the border Customs Station and Kojak Pass (Baluchistan) with Chaman being the border Customs Station. The NWFP part of the tribal belt is partially administered by the Federal Government through the Governor of that Province. The head of a district (Political Agency) is the Political Agent (PA), appointed by the provincial governor. The PA wields vast powers. Customs operate only on the main roads and Customs Stations. In Baluchistan the civil administration of a district is the responsibility of a District Coordination Officer who does not exercise control over customs but customs needs his support in the event of public pressure/commotion. Customs has jurisdiction in surrounding areas and can exercise enforcement duties against illegal goods movement outside the customs stations. A third land route, with a Customs Station at Ghulam Khan (in North Waziristan), has also become active. Sizable quantities of commodities pass in trade both ways. A new customs station at Qamar Din Karez (in Zhob area) is being developed, which is closest to Ghazni in Afghanistan. This route is expected to help ease the congested Chaman Customs Station. Other smaller Customs Stations are located on traditional routes between local villages on both sides of the Pakistan – Afghan border in different areas such as Nawa Pass in Bajawar, Khapakh in Mohmand Agency, Tri Mangal and Shahi Dund in Parachinar, and Angoor Adda in South Wasiristan and Badini in Zhob. These routes carry relatively small traffic. Compliance with Customs procedures in these cases is more for convenience than by conviction. Nonetheless, Customs presence and assertion of its statutory power keeps institutional sovereignty on goods and transport.

Main exports in this area include household goods, flour, food, textiles cooking oil and vanaspati ghee, toiletries, cement, structural steel, light engineering goods, etc. Most of the imports to Pakistan are dry fruits, carpets, fresh fruits, scrap metal, and timber. Most of the loaded conveyances are randomly searched and packages are selectively examined. Nonetheless, the overall environment remains tribal and traditional. These border customs stations are gaining significance with the growing volume of trade not only in the Afghan Transit Trade hub, but also with the trade between the two neighbors.

The agencies represented at the main border stations are Customs, Immigration, Plant Quarantine, the Frontier Corps (a paramilitary force that oversees border security). In the Tribal area, the PA oversees and coordinates all the agencies and border operations. The official hours of operation at the border are 8 am-5 pm. While the border is sometimes kept open even at night (the agencies' presence however is round the clock).

The expected establishment of Reconstruction Opportunity Zones (ROZ) in and around the tribal belt adds to the importance of these trade routes, small and big alike. These will cater to the economic and social needs of these zones and thus will have a positive impact on the local population. Improvements and developments at the border customs stations will also lend support and credibility to the ROZ projects.

Torkham: On the Afghan side, the Customs station opposite to Torkham has recently been built farther away (500 meters) from the border. On the Pakistan side, the infrastructure at Torkham is old and insufficient to handle the current volume of trade. The Customs Appraising Hall and offices are old and not appropriately equipped. There is not enough space for trucks, trailers, or tankers of liquid cargo to park and for goods to be examined and assessed. There are no proper passenger processing facilities. Owing to lack of a reliable telephone line and irregular power supply, the customs clearance system is not linked with One Customs in real time. Historical data is, however, fed on a daily basis. Despite the tribal environment, compliance with Customs laws and procedures is maintained in relation to trade and collection of duties and taxes. The authenticity of financial transactions, however, is unreliable as Afghanistan's banking system is still under-developed. This poses valuation problems for Customs.

As this station is becoming a choking point, it needs elaborate trucking bays, goods examination platforms, and a proper appraisement hall to allow customs officials to perform their functions properly and with speed. There is a dire need for uninterrupted power supply and effective round the clock communication with the One Customs platform.

Chaman: It is the southernmost and second busiest Customs Station after Torkham along the Pakistan-Afghan border, on the road connecting Quetta with Qandahar. A railway line also connects Quetta to Chaman and is regularly used both for passenger and cargo traffic. As already noted, the working environment is again tribal and conventional.

The old Customs House at Chaman has been expanded and refurbished. Goods Declarations for clearance of cargo are being processed through One Customs in real time, an impressive leap in trade facilitation at this far flung trading outpost. Reportedly, Customs' processing time in exports and imports normally is within one day. Officers in these crossings need training in areas of skill development, both at operational and management levels.

Pakistan-Iran. Trade between Pakistan and Iran is mainly taking place via Taftan, the least inhabited village along the Pakistan-Iran border. The main means of transport are rail and trucks. Imports and exports largely comprise bitumen, vegetables, chickpeas, onions, blankets, hosiery, dry fruit from Iran and rice, food items, household goods from Pakistan. Interestingly, a large chunk of imports from Iran leave that country in informal trade are treated as regular imports by Pakistan. In 2007, Iran doubled import duties on Pakistani rice, which has sharply reduced Pakistani rice exports to Iran. Since rice sales proceeds were being used to pay for exports from Iran, the cargo arriving from Iran has fallen to a trickle.

A project for physical infrastructure at Wahga for cargo processing is underway. Facilities at Sust and Chaman exist but need expansion and upgrading. All other border customs stations share a lack of adequate physical infrastructure and conventional customs processing. Except for Wahga, Sust, and Chaman, physical infrastructure needs to be significantly enhanced in all regards, also including communications, uninterrupted power supply, and cargo handling equipment. It is recommended that a study be conducted to:

(i) Assess the projected trade at the major border customs stations (Rail and Road) of Wahga, Sust, Torkham, Ghulam Khan, Qamar Din Karez, Chaman and Taftan.
(ii) Assess and recommend appropriate physical infrastructure and other allied facilities for each station to cater to growing needs for next 10 – 20 years.
(iii) Assess the training needs of customs officers and staff.
(iv) Recommend training programs for officers and staff to improve their professional competence with emphasis on facilitation, service orientation in the context of economic development, and integrating the economy with the global supply chain.

Ministry of Commerce. In the past, Trade across borders to and from Pakistan was subject to policy regulations instituted from time to time by the Ministry of Commerce under the Import and Export Control Act, 1950, such as quotas for textile exports and licensing for imports. These have since been eliminated and the residual regulations now focus on Pakistan's international commitments such as WTO Agreements, Transit Trade Agreements, and protocols regarding Green House Gases (e.g. CFC's) etc. or national considerations of health, environment, defense and the like. The Ministry of Commerce reviews these regulations on an annual basis and notifies the new structure under the umbrella of the Import and Export Policy Order.

New WTO compliant trade defense laws have also been enacted to protect local industry against imports which are dumped or subsidized. The government has also planned to further strengthen the National Tariff Commission (NTC) which administers these laws. This new legal framework has obviated any ad-hoc interventions in tariff structure under the garb of protection. The institutional framework thus being in place, the capacity of local industry in seeking effective protection can be enhanced by creating an environment of private-public participation through collaboration between trade associations, industry, and the Government agencies dealing with the respective issues.

In April 2007, the Prime Minister approved a new policy regarding the handling of customs tariff matters. The Federal Board of Revenue was authorized to deal with immediate tariff matters while NTC focuses on medium and long term tariff matters and trade defense laws. NTC is also required to act as a center of expertise on all international trade and tariff matters. Therefore, from now on, NTC will work as the "Focal Point" for all tariffs related matters. The consultations with stakeholders on tariff matters with reference to international trade matters, including FTA's and WTO negotiations, also need to be deliberated in NTC to frame a policy regarding such matters, so that these are not in conflict with the GOP's long-term policies which are now to be the domain of NTC. It is recommended that NTC senior staff receive training and participate in study tours to 2-3 developed countries to study their systems. Also, it is recommended that a detailed study on the trade/tariff institutions in 3-4 developed or developing countries be completed. International best practices should also be analyzed to identify how Pakistan can benefit from them.

The Ministry of Commerce has been consistently assisting SMEs to enhance their capacity to export products. A large number of SMEs have been assisted in obtaining accreditation under different relevant ISO 9000 and 14000 series standards.

The Pakistan Standards and Quality Control Authority (PSQCA), instituted in 1996, establishes national standards and enforces quality control. However, it needs capacity building in the context of international trade by entering into Mutual Recognition Agreements with similar foreign institutions, recognized globally. This is imperative to enable PSQCA to assist local producers of export-goods to certify their standards/quality. The laboratories operating in the country also need appropriate refurbishing so as to develop and acquire the capacity to conduct all required testing in relation to export goods. The Pakistan National Accreditation Council accredits various industrial units and laboratories for various standards. Apart from accrediting hundreds of industrial units, it has also accredited 26 laboratories in collaboration with the Norwegian Accreditation Authority. A mutual recognition agreement with the Norwegian Authority is expected in April 2008.

The Ministry of Commerce runs a Foreign Training Institute in Islamabad to strengthen trade education of its own personnel as well as officials from various government offices dealing with trade. Although the Institute's focus is on basic level training of trade officers, it has been conducting specialized short-term courses as well as seminars on various trade-related issues, which have helped with capacity building and creating awareness amongst participants from the trade and industrial sectors. Further strengthening and reinvigoration of the Institute is recommended to increase its expertise in capacity building of the Ministry itself, as well as its allied offices/organizations, and the private sector. It would also be worthwhile for the Institute to coordinate its programmes with those of other similar organizations within the country, in particular with FBR. Likewise, Foreign Training Institute leaders need to learn from the experience of the training institutes of a few other countries.

Support for Compliance Certifications. The government has been providing a subsidy of 50% for various compliance certifications (quality, environment and social). To accelerate this process the GOP decided a while back to increase the subsidy for ISO 9000, ISO 14000, OHSAS 18001, SA 8000, WRAP, EKOTEX, BSCI and BRC as follows:

- One Certification 50%
- Two Certification 66%
- Three Certification 82%
- Four or more certifications 100%

These certifications will enable Pakistan Trade and Industry to not only become compliant with International Standards, but also to help them become part of the global supply chain.

Trade Development Authority of Pakistan. TDAP, an agency established within the Ministry of Commerce and Trade in 2007, is the successor agency to the former Export Promotion Bureau (EPB). TDAP is in the process of building up a modern organization. Its strategy is to cut the cost of doing business, support export development, improve products to international markets standards and promote trade business practices such as just-in-time, and generally help the industry to become part of the global supply chain.

The reviews from the various trade sectors, however, portray that TDAP, as a successor of EPB, is still run by an ineffective and sluggish bureaucracy that has not served the needs of Pakistan Business through accelerated export growth**.** Business people do not believe that TDAP is actively working to remove impediments due to poor local infrastructure, even though it has been in the best position to intercede in Islamabad. They claim that it does not disseminate trade information to business houses within the country, it does not meet often or regularly with the trading community, and it is not a facilitator. These perceptions could be rooted more in the past experience of traders / exporters encountering EPB personnel. One has yet to see how TDAP is to play its strategic role in the export economy of the country. However, its leadership appears determined and committed to achieve its goals of a modern competent and efficient organization.

An ineffective government export bureau is a critical gap in Pakistan's efforts to overcome its structural impediments to growth in exports. Pakistan faces a modern trading environment: there are no more quotas to protect market shares of its textile products; there are tightened requirements for just-in-time delivery and environmental and social compliance; it faces good quality, competitive products, at lower prices internationally. India and China have expanded capacity and cut costs. Pakistan faces a serious challenge and TDAP's task is therefore monumental.

The new management at TDAP has aggressive plans to modernize this authority to better serve the country. Recognizing that the country needs a quantum increase in exports and not simply incremental growth, it plans to focus on export development rather than export promotion only. For example, one of Pakistan's natural resources is marble mining. TDAP envisions a holistic approach in this sector (and indeed for other sectors) mining, research, technology, logistics and infrastructure and developing an export platform. TDAP wants to provide the leadership and coordination that individual industry sub-sectors cannot offer. The agency's restructuring and re-engineering will go hand in hand with human resource development and the application of new technologies.

The major objectives of this ambitious re-engineering include sectoral marketing plans; the use of international consultants for each sector; supply-chain mapping of core sectors; use of information technology for virtual exhibitions and e-commerce for business transactions; up-to-date information gathering about Pakistan in the world's media, along with dissemination of this information through daily briefing papers to be made available to importers, exporters, and policy-makers; a new Export Development Program for SMEs; incorporation and adoption of international best practices; a research panel to develop, for example, business image branding for Pakistan products and services; foreign / local experts for Overseas Business Support Units; and a fund for travel to international exhibitions.

TDAP also recognizes the need to highlight women in their new business strategy. At present it offers free attendance for women at their export seminars and pays airfare and registration fees for women attending international trade fairs. TDAP's aim is to attract women into business as entrepreneurs, (not simply as wives assisting in their husbands' companies); to give women additional financial support and structured training; to establish Women Entrepreneur Cities in major industrial areas that include child care, health care, and family planning; and to develop a women's virtual employment scheme (e.g., find 1,000 IT-skilled women, give them a computer and broadband, and allow them to work for a company from their homes).

Export Processing Zones Authority. Established under the Ministry of Industries, the Export Processing Zone Authority appeared to be a forward-looking project in the early 1980s. Initially it developed land and infrastructure for potential investors to operate outside of government regulations and high tariffs and manufacture products for exports. Such zones are called free trade zones or free zones in other countries. The government allows import of machinery, raw materials, and component parts for manufacturing or assembly operations in EPZ without the payment of duties and taxes and where imports into the zone are made from Pak territory, duty drawback is allowed on the exported products.

In recent years, however, the fiscal advantages of export processing zones have disappeared in view of reduced tariffs and free trade agreements, elimination of licensing requirements, and privatization. The main residual financial relief is in the form of exemption from local taxes. The current advantage of EPZs is in their infrastructure. They offer the option to have a manufacturing unit without the hassle of land acquisition, utilities, and other requirements. Despite all the economic reform and deregulation in Pakistan in recent years, acquiring the basics of doing business (utilities, land transfer, etc.) is still expensive and cumbersome. With property prices skyrocketing, the EPZs offer an incentive through real estate rental; they offer a heavily subsidized infrastructure compared to that available to private entrepreneurs in other parts of the country.

However, the advantages of the zones' infrastructure have not been optimally utilized. Just 10 companies use 70% of Pakistan's EPZs. Most of the companies in the zones are small, with no expertise or financial muscle. Many current tenants remain within the zone without undertaking business investment or exporting. EPZA is working to change this by requiring business commitments from the tenants.

EPZA recognizes that it needs to re-engineer its strategy, as has TDAP, if the zones are to survive or prosper again. By opening zones to public-private partnerships and to privately owned and managed options, EPZA has plans for their growth as industrial villages. There are three zone property and management versions: owned and managed by the federal government (as in Karachi), public-private ownership (as in Sialkot), and fully private ownership and management.

There is no clustering of zones at present. Exporters want to be able to move goods from one location to another, but cannot. More and more, entrepreneurs want zones to extend over an entire city, as is the case in other countries. EPZA's plans for textile villages for garment manufacture would address this desire. Sialkot has set aside 100,000 acres for such schemes; Karachi has developed 200,000 acres and has plans for 300,000 acres more in the future. Thus, the EPZA recognizes that it needs to move from a formerly successful bureaucracy into one that can respond to the modern market environment and adapt to meet the needs of its export community.

Ministry of Health. The Ministry of Health has a dual role, one to exercise health controls at entry points, and the other to regulate imports and exports of pharmaceutical products as well as import of raw materials for indigenous pharmaceutical industry. The former does not pose any difficulty in customs clearance as in most cases the powers under the health control circulars are exercised by customs. However, in the case of regulated imports and exports, traders are required to obtain written permission from the Assistant Drugs Controller (Ministry of Health), which can take some time. During the intervening period, consignments have to wait either at the port, in a customs bonded warehouse, or in the factory. In either case the delays add to the costs and involve management time and hassle.

The pharmaceutical industry in particular believes that it is being over-regulated due to concerns about price controls, intellectual property rights related to counterfeit drug products, and other issues. The industry observes that inspectors from the Ministry of Health frequently apply arbitrary and cumbersome enforcement standards on imported pharmaceutical goods, delaying their release by up to 20 days. These controls are meant to ensure quality standards, but control officers appear to be leveraging these for their personal gains. Such delays nullify the benefits of rapid customs clearance. In addition, the enforcement mechanism of health related products are lax, as in such matters the police and courts are also involved. FBR and the chambers of commerce have been reportedly trying to coordinate with the Ministry of Health in an effort to enable health officials at ports to provide the same modern and predictable level of services, based on principles of risk management. Release of consignments without full compliance with rules/regulations, however, could pose serious health risks and may not be feasible. The only feasible option in such a case would be to take such goods to a customs bonded area where the requirements of health regulations could be fulfilled before their release to the market and consumers.

The Ministry of Health is issuing patents for generic products, based solely on the request to be registered with Health, even when the Intellectual Property Office has not yet approved the applications. The pharmaceutical trade associations want the Ministry of Health not to register generics if an application is pending at the Intellectual Property Office. They are taking this up with the Prime Minister, the Minister of Health, and the Intellectual Property Office Director General. Being a poor country though, Pakistan requires price controls on at least essential drugs, so that a common citizen has access to such drugs.

Supporting Institutions

The general opinion among many industry and government agency leaders is that Pakistan's business climate is better: tariffs are down and in some cases eliminated; regulations have been simplified; licenses are no longer required for import or export; and the majority of international transactions are accomplished electronically. Along with the growth in GDP and foreign investments, there are a growing number of public-private partnerships. These partnerships will enable the much-needed upgrading of Pakistan's transport infrastructure.

Across the trade and transport sectors there are plans to capitalize on the healthy business environment, and to transform Pakistan into an attractive destination in the global supply chain, one with a clean and safe environment. The freight forwarders association, the air cargo association, ports operators, chambers of commerce, government planners and business leaders alike want to benefit from Pakistan's geographic opportunities and develop the country into a regional hub for sea, land, and air transport, as well as a transit route for its landlocked northern neighbors and China.

Since unemployment remains high, industrial zones planned across the country are expected to provide modern infrastructure and up-to-date social amenities to attract and improve the workforce. Under these initiatives, old warehouses and docks will be replaced; land will be reclaimed to create additional port capacity; social needs such as child care, health care, family planning courses, skills training, will be incorporated into the industrial zones; and small manufacturing or processing operations will be centralized into environmentally safe and modern enclaves.

In the major trading centers of Pakistan, there are also efforts underway to attract the pool of talent offered by women. While much progress has been made in recent years, the business and government communities know that many Pakistani women remain unaware of the business opportunities open to them. To that end, economic and business planners are making special efforts to increase awareness and business opportunities for women, to provide training and specialized work environment, and to help women entrepreneurs to export internationally.

There are two remaining challenges that concern many: the growing competition from China and India in the global market, and the strict US and even EU countries visa requirements for business travel. There is a feeling that unlike Pakistani products, Chinese and Indian export products are heavily subsidized by their governments. They agree though, that the critical need is to upgrade production management and adoption of cost cutting techniques so as to become globally competitive.

Certain manufacturers want a reduction in US duty rates in order to better compete in the export market. Others complain that Pakistan's low tariffs have weakened their ability to compete with China, and they believe that the Government of Pakistan should subsidize their industries. Others contend that Chinese exports to Pakistan are under-invoiced. Although members of industry, as well as traders, do not want an overly protective environment, there is a general consensus that due to their subsidized nature, Chinese products out-price Pakistan products in export and domestic markets.

US and Western European perceptions that Pakistani citizens or goods transported from Pakistan pose a security threat are perhaps overly cautious, but they persist. These perceptions are hurting Pakistan's marketing effort and competitiveness. Business people face significant hurdles when they try to obtain visas to travel to the US and Europe, and many simply cannot go. They also cannot afford to hire local marketing agents in foreign countries, and thus are not able to keep up with promotions and sales. Likewise, many countries have travel advisories that restrict travel to Pakistan by potential foreign business partners.

Neither the tariff and subsidy issues, nor the visa restrictions are likely to be remedied easily, in the short run. In the meantime, the business and government leaders must pursue their efforts to facilitate infrastructure management capacity and improvement in productivity and build a modern and safe trading environment. This will provide the foundations for eventually overcoming the remaining obstacles to global trading and consequent prosperity for Pakistan.

Seaports. Pakistan has two main seaports, Karachi and nearby Port Qasim. A third large seaport at Gawadar in Baluchistan was inaugurated in March 2007. It is to be further expanded in a second phase. It has, however, yet to handle any substantial quantities of cargo.

Karachi Port handles about 75% of the sea cargo in Pakistan, and has three terminal operators: Karachi Port Trust (KPT), a government trust founded in 1886, the Karachi International Container Terminal (KICT) and the Pakistan International Container Terminal (PICT), both privately-owned terminals. KPT provides the piloting to bring vessels into the port from the open seas and the terminals manage their own cargo handling.

The Port of Karachi has a long history since it was built by the British in the late 1700s as a gateway to Delhi. It has a direct rail link to Lahore and is approximately 1,000km closer to China's western Xinjiang Province than Shanghai. Karachi moves a considerable amount of military cargo and food for the UK, US, and NATO in and out of Afghanistan. The port is congested and, barring the two container terminals, its cargo handling facilities are dilapidated.

The KPT wants the city to regain its status as a hub port that attracts mother ships and loading cargo destined for other major ports, as it did in the 1960s. It also wants to see growing traffic in overland transport to China through the northern frontier. However, by not making investments in the port infrastructure over the years, Karachi has developed into a feeder port, moving cargo to other large ports in the region, such as Dubai and Salalah, where cargo received from Karachi gets transshipped to major international lines. KPT believes that infrastructure upgrades will allow the port to attract direct shipments to the East Coast of Africa, Europe, North America, and Southeast Asia.

To attain this goal, the port needs significant improvements and a stable government. The plan is for KPT to divest itself as a terminal operator and open the port to public-private partnership. The government will provide the infrastructure improvements (deep water dredging, quays, roads, industrial parks, etc.) and the private terminal operators will provide their own equipment and management. KPT has planned industrial and commercial parks (e.g., a cargo village, a textile village, a Special Economic Zone), rail links, roads, and land reclamation. A large new terminal is planned, east of the oil terminal. Work on this terminal is likely to start in the near future.

Today, goods destined for western China go by sea to Shanghai and then overland to Xinjiang Province. If the Karakoram Highway is upgraded, the Port of Karachi hopes to gain a significant share of this trade.

The other port is Port Qasim which lies to the east of Karachi. Of its two terminals, Passim International Container Terminal is handling most of the containerized cargo and it has been the first such terminal in the country to have been put under a security clearance system by Customs in collaboration with US Customs in line with the latter's well acknowledged system called, The US Container Security Initiative Program. The other terminal of Port Qasim handles containerized as well as other cargo.

Customs Security Initiative (CSI). About 27% of Pakistan's exports are meant for the US. After 9/11 this cargo was faced with Security problems. Pakistan therefore decided to fast track the adoption of the Customs Security Initiative (CSI) at Port Qasim International Container Terminal (Fig. I and II). This work was initiated with the collaboration of the Department of Homeland Security of the US. This initiative is consistent with US SAFE Ports Act 2006 and Secure Freight Initiative (SFI). The Terminal was setup within 6 months, and thereafter 100% of exports to the US are scanned. There is close coordination between the two customs administrations i.e. total connectivity between PACCS and ATC in Virginia (USA). Now exports are transported to the US without any interruption, much faster and with lower costs. Earlier, cargo security had to be cleared at Salalah Port, Yemen, which put a burden on the exporters in terms of money, logistics and time. Now the security clearance of one container costs only a few hundred rupees and scanning is done in minutes. About 250 containers pass through this system daily. It has the capacity to handle many more.

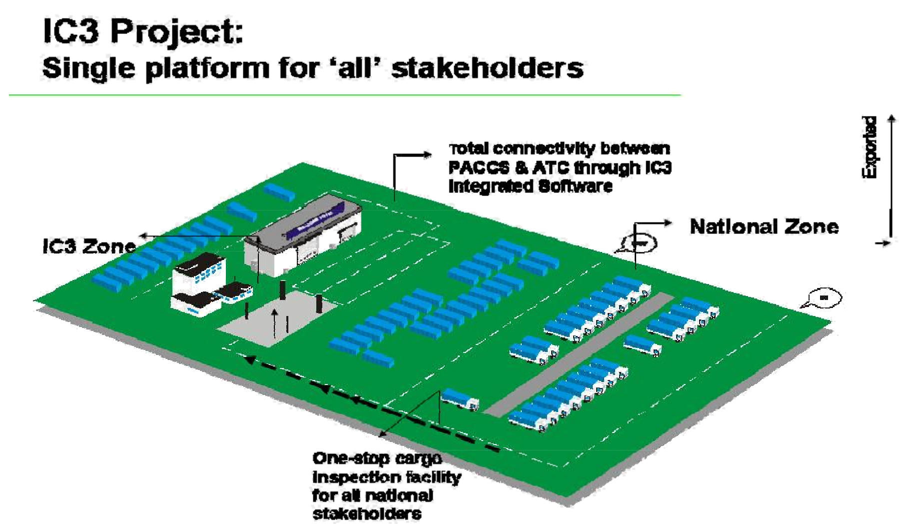

Figure . IC3 Project

The Port of Karachi was expected to have container scanners at one container terminal by the beginning of 2008 and at the other before end June, 2008. Port Qasim's second terminal is also planning to install this system. These are being provided by the private terminal operators who hope to attract SFI/CSI expansion to Karachi Port. Participation in SFI/CSI gives Pakistan significant security and facilitation enhancement and identifies Pakistan as a reliable participant in the global supply chain.

All the port terminal operators report excellent cooperation with Customs and all are electronically linked to Customs.

The ports employ up to 25% women, including managers, in all roles except stevedores, who perform heavy physical labor.

The development of the country's third deep-sea port at Gwadar will provide shipment facilities to China, Central Asian Republics, and land-locked Afghanistan. This project will not only boost development activities in Gwadar area, but with the completion of Makran Coastal Highway, the Gwadar project will stimulate economic activities and investments in the entire Makran coastal belt of Balochistan.

Lahore Dry Port. The Lahore Dry Port is the pioneer dry port and also the largest amongst land customs ports. It was established about 30 years ago at Mughalpura Railway station of Lahore, the same station which up until the early 1960s had handled import-export trade with India. It has institutionalized systems of standard procedures and its computerized clearance processes are linked in real time with One Customs. To cater to increased traffic in cargo, a satellite customs station also operates at a distance of about 20km which is called NLC Terminal as it is operated by National Logistic Cell (NLC). It is also well integrated into One Customs.

Sialkot Dry Port. The Sialkot Dry Port was the first initiative of the private sector and was developed with some support from the government (railway track, land and some infrastructure). It is a one-stop Customs-bonded area for imported goods and those cleared for export. The traders report good working relations with Customs and guaranteed one-day processing of all goods – imports as well as exports.

The city of Sialkot is Pakistan's largest producer of sports goods, textile surgical instruments, soccer balls, athletic equipment, and leather goods. The manufacturing infrastructure of Sialkot has been developed partly by the Punjab Small Industries Development Corporation and partly by local entrepreneurs, but with little help from the federal government. The long-awaited Sialkot International Airport, which has been built entirely with local private funds, has just been inaugurated and will offer direct cargo service for the area's products to foreign destinations. This important trade center is, however, at the mercy of Pakistan's poor transport infrastructure. Now a new highway is being built to connect Sambrial Dry Port with Lahore, but the city of Sialkot will still be at a distance of some 25 km. Currently, there is no reliable direct rail connection to Karachi for exports.

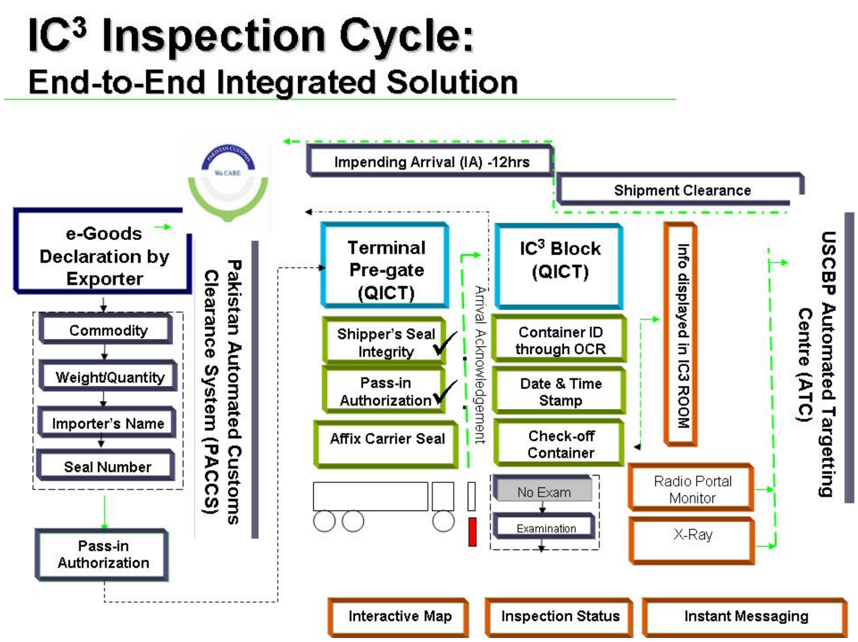

Figure 2. IC3 Inspection Cycle

Sialkot's trade organizations and local leaders perceive that the government in Islamabad has not invested enough in their industrious and productive community. They have had to pay for many of their infrastructure projects themselves. They have built and operate the dry port, the new airport, made road improvements, established an engineering university jointly with the Swedish government, and are setting up display centers for Sialkot industries that will create jobs and new businesses. The local leaders believe that the more they perform traditional government functions to meet their own needs, the less the government pays attention to them. They would like the federal government to do more for their local industries and infrastructure.

Faisalabad Dry Port. Faisalabad Dry Port has been established alongside the railway line as a private sector initiative. It handles a substantial quantity of export cargo (mostly textiles) and also serves as one stop for imports. Its systems are fairly new and operate smoothly with customs clearance processes integrated into One Customs, thus facilitating speedy clearance. Traders speak positively about customs officials in relation to facilitation, openness, problem-solving, guidance and advice. Some traders, however, complain about the time it takes to clear import cargo despite One Customs connectivity, and prefer to clear their goods from Karachi. Like Sialkot, in Faisalabad, too, private sector has done a lot in improving city infrastructure and in extending support to government-run projects.

Peshawar Dry Port. This dry port has been established by the government at Peshawar Cantonment Railway Station, on railway land adjacent to some railway sheds, traditionally used for processing of Afghan Transit Trade. The Customs processes are on the pattern of One Customs with full real-time linkage. However, it has become very congested with the rapidly increasing volume of Afghan transit trade and regular imports. This dry port has one branch at the city railway station and a separate bonded area as well. The local trading community feels the need for a larger modern dry port with rail linkage so as to be served both by road and rail. A small dry port is also operating about 10 miles away from Peshawar at "Azakhel". This is fed by NLC and private trucks. This is also connected to One Customs. However the area and logistics support leave a lot to be desired.

There are some smaller dry ports located in Quetta, Hyderabad, Rawalpindi, and Multan. They operate on the same pattern, each one closely linked to a rail line and also having facility to receive cargo by road transport. Processes of customs clearance are same with linkage to One Customs clearance system and appropriate supervision. As trade grows, these Customs Stations / Ports would need to be upgraded.

Airports. Pakistan's major international airport is in Karachi, where Customs operates round-the-clock and release goods electronically within hours of their arrival at the airport. Significant levels of both domestic and international cargo are also handled at the Islamabad and Lahore airports. Air carriers are not bonded for domestic transit and are thus required to clear goods at the first port of arrival. In an ironic twist to the Customs reform and modernization that provides quick release of goods, air cargo operators are facing increased storage costs since the goods no longer remain in Customs. The Pakistan Air Cargo Association is in dialogue with relevant government agencies (Customs, Health, Anti-Narcotics) for instituting a one-window operation that would further speed up the overall release of goods, and thus reduce costs.

Sialkot International Airport, entirely funded by the local business community, has been inaugurated recently. It will soon be operating on regular basis, offering international air cargo service to the area and saving their valuable time from pursuing export/import cargo clearance at distant airports of Lahore, Karachi and Islamabad.

The air cargo association addresses all issues in air freight with government departments and shippers. All association members attend customs training and are, by and large, well versed in customs clearance requirements. The air cargo association has noted that while the Karachi seaports are working well, the airports need improvement. The association is pushing to make Karachi Airport an international commercial hub. It has a central geographic location in South Asia with good ocean links for landlocked countries to the north and air routes from Singapore, Dubai, and Qatar. Karachi Airport is also the natural refueling stop for the Singapore-London route. Additionally, a multimodal system will require more warehouses, and the trucking system must be modernized. The association would like to see a single administrative document for air freight recognized and used by neighboring countries. This reform would save regional traders time and money.

One of the biggest problems the air freight industry and Pakistan exporters face is the intense security requirements on their goods (predominantly textiles) destined for the United States and Europe.

Exporters have experienced weeks of delays. The FBR and other ministries have agreed to install security equipment at all airports that meet US Transportation Security Administration standards by mid-2008.

Express carriers. Express carrier services in Pakistan are not used extensively for international air freight because the Middle Eastern commercial carriers offer lower prices and the same services. The cargo tariffs in this region are lower than in the United States, and, in an effort to reduce costs, European commercial airlines have had to drop their express services. All of the airlines that operate out of Karachi can provide service to Europe within 36 to 48 hours and service to the United States within four to five days. Emirates and Delta now have daily flights to New York. DHL, on the other hand, must stop at its hubs in Dubai, Bahrain, and Brussels and then use road transport to bring cargo to Frankfurt.

Known shippers get better rates within the FedEx network than unknown shippers. The air cargo association would like the American agencies to relax their security requirements or to recognize factors such as known shippers i.e. reliance on profiling.

Freight forwarders. Freight forwarding in Pakistan was not considered industry until 2004. Previously, it was unregulated and unstructured. It was in fact controlled by the Pakistan shippers' council in FPCCI. Pakistan's freight forwarders came together as an industry in 2005 by forming the Pakistan International Freight Forwarders Association (PIFFA), which currently has 360 members. Their objectives are to provide effective representation and support for Pakistan's freight service industry and to observe the highest standards of professional competence. They have established a code of business ethics and professional conduct for freight forwarders; they promote a high level of professional education and experience in order to provide services; and they encourage financially sound, stable, and ethical freight forwarders. All these objectives were achieved through the Trade and Transport Facilitation Project of the Ministry of Commerce, financed by the World Bank.

PIFFA joined the International Freight Forwarders Association (FIATA), and has begun work in many areas to raise their industry to international standards and best practices.

The freight forwarding industry requires capacity building and infrastructure improvements. PIFFA is focusing on freight forwarding, trucking, and warehousing, and recognizes that it is up to the freight forwarding industry to bring itself up to international standards, and thereby improve Pakistan's competitiveness.

PIFFA members recently received four weeks of train-the-trainer training from FIATA in logistics, freight forwarding, and customs procedures. This was followed by broad industry training since September 2007, through workshops on freight forwarding and capacity building in collaboration with Customs, the Ministry of Commerce and Industry, the State Bank of Pakistan (SBP), FIATA, the International Chamber of Commerce, and local chambers. PIFFA will arrange training for SMEs who need training in the industry and in international standards and thereby improve their competitiveness globally.

Approximately 15% of PIFFA's workforce is women. They work at all levels of the freight forwarding industry, including management. One freight forwarder interviewed during this assessment has implemented a good maternity leave package, medical coverage, and leave benefits for female staff.

When PIFFA was formed, Customs reacted negatively by requiring freight forwarders to be licensed. PIFFA opposed this and, working with the FBR, managed the licensing requirement to be withdrawn. Freight forwarders will instead be required to register with the Ministry of Commerce and meet certain prescribed minimum standards, minimum qualifications, and training requirements.

Founder Chairman PIFFA has helped develop the national trade policy in this regard that covers all trade from the sea to the docks, by road and by air, and across the territory to the neighboring borders. PIFFA developed the trade policy for freight forwarding and provided substantial input to the National Trade Corridor Improvement Programme (NTCIP).

PIFFA is also actively trying to develop a proper structure for the road transport industry, which is an informal sector. It is separately working on cross-border and local transport. There are currently no axle controls, and weight limits are not enforced except on the M-1 and M-2 motorways (Peshawar to Lahore). Trucks routinely carry overloads in an effort to earn sufficient money. Besides the obvious safety risks, trucks are ruining the roads at great cost to the government as the roads require regular repairs, in excess of what is generally required.

There is no central registration of privately-owned trucks. Trucks are bought by private individuals through private loans and the assets belong to the tribe or family. There is no corporate or bank financing at reasonable rates. PIFFA is working to close such loopholes. PIFFA in short has suggested the following:-

(i) Service industry should be allowed dedicated Bank funding based on their cash flow / turnover. Such cash flow and turnover to be treated as collateral.
(ii) Dedicated funding for fleet formation.
(iii) Funding for the warehousing sector.

Customs clearing agents. Customs brokers (clearing agents) are licensed with customs and undergo a series of qualifying checks. They take an exam, pay a fee, and submit to background and police checks. Licenses are issued at the national and local (collector) levels.

Since under PACCS an importer himself can assess the duties and taxes and pay them directly to the bank, in advance of the arrival of the goods, the clearing agents are experiencing reduced demand for their services. As has already happened in many other countries, clearing agents will have to diversify into freight forwarding and other services in order to remain employable.

Warehouses. With the reduced duty rates, the rapid clearance of goods by Customs, and the quick turnaround by the vessels, there is not much demand for bonded storage facilities. As discussed above in the section about the EPZs, warehouses are in effect being subsidized by the government because the ships turn around within 18 hours and the goods move quickly out of the port to their destination. Free demurrage time is now proposed to be reduced from five days to three. Nonetheless warehousing close to port terminals remains a necessary concomitant service as there are always some exigencies which compel traders to keep the imported/export-bound cargo in the warehouses. Currently, available facilities are mostly non-standardized and poorly managed. There is a dire need to develop this service sector on modern lines. In particular, intervention is needed to ensure financing for new projects undertaken by companies incorporated with SECP.

Transport. Road and rail transport in Pakistan is in need of significant infrastructure improvements. 85% of the port cargo moves inland by truck and the rest by rail. Trucking is costly because most goods are produced or arrive in the south, and the trucks returning from trips north are generally empty. The NLC is a government agency that operates a very large trucking fleet and also coordinates the rail service in Pakistan (however, the NLC will take a fee of US$400 from a private trucker to authorize him to take an international load to Afghanistan.) Logistics problems prevail, with many tolls, police bribes, and overloaded trucks. The private trucking sector is fragmented despite PIFTA, and it needs to be structured and regulated.

Traders do not trust the railroad system, because there are no regular schedules or marshalling yards for containers. There is a lack of rolling stock, and freight trains are unpredictable and lack a proper tracking system. The productivity of Pakistan Railway's freight services is rated at about one-eighth that of Chinese Railways, one-third that of Indian Railways, and half that of Thai Railways, a network of comparable size.

The greatest need is for a multimodal infrastructure that can serve internal traffic and transit traffic from Pakistan's landlocked northern neighbors. Pakistan also lacks a transportation system for its abundant perishable farm produce. As an illustration, Pakistan is the World's seventh largest producer of milk, but it cannot adequately move the milk for export to other markets. This results in lost opportunities for the entire supply chain – from dairy farmers to international transporters. Fruits, vegetables and the emerging meat produce are other products in the "lost opportunity" category.

Improving Pakistan's international transport capacity would require rail transport to be provided a huge investment for railway lines upgrades, as well as improvement of the Rolling Stock, and opportunity for private management. In addition, trucking regulations such as weight limits need to be enforced all over the country, especially the highways and motorways. Some in the transport sector believe that the infrastructure costs may outweigh the opportunity costs. On the contrary, improvements would greatly alleviate the road wear and transit time loss which will more than offset the initial costs in the long run. Additionally it will offer delivery time predictability. Any road upgrades that have already been made have an improved delivery time, which in turn reduces costs and increases the competitiveness of Pakistan products.

There is growing recognition within the Government of Pakistan that the sustainability of economic growth is closely linked to the efficiency of the national transport system. Most trade associations believe that the government should allow the private sector to invest in the transport industry as it did for aviation and telecommunications. This would force national entities to improve service. For example, the government is beginning to allow private railway management in an effort to improve the rail transport within the country.

A rail hub is being developed in Lahore. It will consist of 100 acres, of which two seaport terminal operators, QICT and PICT, will each have 32 acres. The rail links are being opened to commercial management under a new public-private system. New rail cars from China have doubled the number of trains, increased the rail cars per train to 32, and reduced the transit time from 48 to 30 hours on average from Karachi to Lahore. From Lahore the goods will move by truck to all points in Pakistan. This partial privatization of the rail system will succeed if it guarantees delivery times—something that government-controlled operations have not been able to do. Similar other hubs are also at the planning stage. The efficiency of the existing railway can be improved greatly and quickly with better management and utilization of the rolling stock. A very important element of this is the working of railway workshops and how well and quickly the engines and wagons are serviced or repaired. The expertise of the railway engineers and modernization of workshops is the crucial element and can be achieved quickly.

To address its transport infrastructure needs, Pakistan, with support from the World Bank, has launched a major initiative, the National Trade Corridor Improvement Programme (NTCIP), to improve the trade and transport logistics chain. The NTCIP would link Pakistan's major ports in the south and southwest with its main industrial centers and neighboring countries in the north, northwest, and east. The ports, roads, and railways along the NTC handle 95% of external trade. The NTCIP plans to revamp the whole transport sector, including ports, roads, railways, and aviation.

The NTCIP project is composed of a dedicated national committee that includes 12 ministries (including FBR) and three Port Authorities. The PIFFA Chairman is the only private sector member. The main objective of the NTCIP is to reduce the cost of trade and transport logistics and to bring them up to international standards. This will reduce the cost of doing business in Pakistan, which will ultimately enhance export competitiveness and the country's industrialization.

The government is in an advanced stage of preparing a consolidated business plan for NTCIP. The investment program is expected to cost US$ 6 billion over the next five years.[1]

A major component of this programme is the National Trade and Transport Facilitation Project, (NTTFP). This project was launched in 1998 by the Ministry of Commerce in collaboration with the Shippers' Council, FPCCI and was financed by the World Bank. However action on this was started in 2002. The second phase of this project was launched in 2006 as a component of NTCIP. This project is supervised by a committee known as "National Trade and Transport Facilitation Committee" (NTTFC). It is headed by the Secretary of Commerce but its Secretariat is located in FPCCI, Karachi. It includes all the stakeholders such as members from the private sector including FPCCI, PIA, PNSC, NLC, Pakistan Railways, CAA, SMEDA, PICT, Banks, Insurance Companies etc.

Trade Associations (Chambers of Commerce, Industry and Transport Associations). Pakistan has a large number of trade associations, including multiple chambers of commerce, a freight forwarders association, an air cargo association, and many industry trade associations. The major industries and trade sectors are well represented in these associations and are able to voice their concerns at many levels.

These associations work to facilitate the dialogue between the GOP and the business community, and to encourage foreign businesses to invest in Pakistan. Some of the priority areas for these associations include:

- combating corruption in order to create a level playing field
- price controls
- IPR
- Improvement of the tax system
- deregulation of several sectors, and
- conducting business-oriented research

Various associations claim success in achieving zero duty rates for certain goods and lifting the sales tax on exports.

While the general consensus is that the government is open to input from the trade associations and that significant progress has been achieved, there are some who believe that there is still no vision in the government ministries. These critics believe that there is generally top-down change, and that the

[1] World Bank, Transport in South Asia, Pakistan Transport Sector.

chambers of commerce do not adequately reflect the problems and aspirations of the SMEs, who are disorganized. Broad economic, social, and justice issues that some of the associations have identified and that still plague the country are labor, human resources, illiteracy, lack of skill, insufficient or no facilities for training on some sectors, business litigation, costs of transport just to get to work, inefficient economy, police harassment of the poorest people, illiteracy, and lack of skills. There is a perceived gap between the new emerging business environment and the existing business environment.

One industry in particular that is well represented by several chambers of commerce is the pharmaceutical industry. Pakistan is the fourth largest pharmaceutical producer in the world, and it produces goods worth US$ 1.2 billion.[1] Pharmaceutical companies face a series of problems with exports of goods and non-tariff barriers in international markets, as well as copyright, patent and trademark infringements of their products. One of the chief perceived causes for the slow growth in export of pharmaceuticals is Pakistan's price controls on pharmaceutical products, which some other countries do not impose. Some perceive this policy as an incentive for exporters who get better prices on export. However exporters from Pakistan are also supported by the Government of Pakistan, which provides assistance for the registration of their products in other countries and contributes 50% of the cost of certain tests e.g. Bioequivalence, Bioavailability, etc.

All of the numerous trade associations interviewed for this review indicated that there are many women working in their industries and at all levels. The pharmaceutical industry noted that approximately 50% of its employees are women. They agree, however, that a major obstacle facing women who would like to enter the business in Pakistan is an awareness of the opportunities that exist in international trade. Many associations have established programs to create better awareness of business and financing opportunities, and to offer training in business practices. They are also enabling women to network through women's committees or within the framework of the whole association. One Chamber of Commerce and Industry Chairman believes that the women's committee is one of the most active groups.

There is some debate about whether it is more beneficial for women to have their own separate committee within a Chamber of Commerce and Industry, where there is a risk that they could be marginalized, or whether they should be integrated within the ranks of all chamber's committees and management positions. In the larger perspective, the fact that this debate even exists is a positive achievement. Experience and broader participation by women in business and the chambers will determine the best alternative.

The new Trade Law of 2007 has replaced the old Trade Organization Ordinance of 1961. This law provides for a new women's chamber to be established on all Pakistan bases. Similarly, every chamber is now required to have at least 3 women members on their managing committees. This will further help the women in developing their business skills and awareness of the international environment.

Intellectual Property Rights. IPR is a major concern for overseas investors' businesses operating in Pakistan. Until three years ago, IPR issues were governed by three ministries: trademarks by the Ministry of Commerce; patent by the Ministry of Industry; and copyright by the Ministry of Education. These have now been consolidated into one office, the IPO-P, which now also administers all IPR laws. It is headed by officers of highest rank in bureaucracy, a Secretary to the Government. The Board of Governors of this autonomous organization is comprised of 18 governors, the majority of whom come from the private sector including its Chairman. The Organization has been provided sufficient financial resources to perform its duties adequately. In its short life, it has considerably contributed to awareness about IPR, reorganized the work of the erstwhile splintered IPR officers of patents, trademarks and copyright mobilized enforcement agencies of Pakistan Customs, and the prime national investigation agency i.e. FIA (Federal Investigation Agency).

The entity has been able to curb import of the building block of readable discs by destroying six manufacturing facilities of such discs at Karachi. These companies used to export the discs all over the world. 3,500 raids have already been conducted on the suppliers / wholesalers of counterfeit goods and the printers of counterfeit packaging and labels. The small vendors of a large number of products susceptible to counterfeit practices have been mobilized to resist counterfeit trade and to assist the enforcement agencies in identification of the delinquent elements. As a result, Pakistan has already earned a good name amongst IPR–compliant nations

[1] 2006 – index of Medical Survey – IMS.

and international organizations dealing with the subject.

IPO-P has also commenced training for business management and field enforcement agencies, for the trading community at large, for manufacturers, and for officers of the judiciary to build capacity for managing IPR matters in better and more effective manners, and to enhance awareness of IPR–related issues.

Currently, IPO-P is running training programs for the investigators of FIA and the officers of the judiciary (Judges) who are to adjudicate cases of IPR infringements. These programs though reportedly running smoothly, would require more time, energy and resources, being a new subject for a majority of local trainers. Support of IPO-P's training programs is strongly recommended, including study tours to other countries by some of the trainees, to see first hand how other countries handle investigation and adjudication of IPR infringement cases.

Patents. The pharmaceutical industry's IPR problems are related to patents and counterfeits. Pakistan's patent ordinance was made compliant with the WTO TRIPS rules in 2000. Since then, however, the industry proposed many amendments. By 2002 Pakistan's laws were no longer fully TRIPS-compliant, resulting in lost patent protection for a few products. The government, with help from the US industrial sector, is now working to develop a new Data Protection Act.

Large pharmaceutical companies have invested in research and development globally, and would like to include Pakistan, but they need data protection, TRIPS compliant patent laws, and deregulation.

The pharmaceutical industry appears to have been hard hit by mushrooming of counterfeit products in the past. It has been feeling concerned that while patent applications of multi-national brands of medicines/pharmaceutical products are pending with the government, the Ministry of Health has been allowing import of such products under generic names. This disrupts the business strategy of the companies who have developed the patented (abroad) products. IPO-P leadership is of the view that with the raids and customs' interventions, counterfeit products business is now getting seriously hurt. There has been acknowledgement and appreciation of IOP-P's performance by a number of IPR offices and organizations of other countries.

Counterfeits. Most counterfeiters have some political protection. Producers make a little of the legitimate product and the remainder counterfeit. This process is difficult to control because of the regulatory price controls. The only way for legitimate producers to stay within the price controls is to cut costs on the packaging, thus opening the product to abuse by counterfeiters. Some pharmaceutical firms are of the view that there is no government plan to officially control counterfeits, as there are no investigations or enforcement. Penalties for counterfeiting are very small (US$25). The industry and trade associations are asking for stricter laws and training for police and customs officials. This issue is critical because counterfeit pharmaceutical products are a matter of public health. However, the Ministry of Health does not agree that price controls have led to counterfeiting. The issue is much alive in Pakistan. Recently there have been several cases against counterfeit drugs and their manufacturers are facing legal action.

Copyrights. In Pakistan a person needs only to publish a claim to trademark or copyright in any newspaper, regardless of circulation, to have legal rights. Trade associations want the publications to be made in larger recognized media/newspapers. An official Trademark Journal publishes pending applications quarterly, but this is an antiquated method of information dissemination. Currently, all such applications are being automated. The system is fair, but not well implemented. IPO-P is now making efforts to disseminate the information through its website.

The efforts of IPO-P are slowly but surely bearing fruit, which is now recognized even by the US Government, the International Federation of Phonographic Industry (IFPI), the Recording Industry Association of America (RIAA), the World Intellectual Property Organization (WIPO), among others. Of course more needs to be done by IPO-P and the enforcement agencies of Pakistan. However the Patent, Trademark, etc. owners also need to help Pakistan overcome the menace of piracy. There is now the need to make available genuine patented products in Pakistan at reasonably low and affordable prices. This will minimize the incentive for manufacturers / traders of counterfeit products. The DG – IPO-P is of the view that this is the responsibility of patent and trademark holders and will greatly help elimination of counterfeit products and trade in such products.

Social Dynamics

Traditionally, trading across borders has involved the powerful and wide-reaching authority of the border control officer. In Pakistan, this border control officer has been, principally, the Customs Officer. Historically, customs officers are perceived to have created congestion, delays, expense, and aggravation, and to have served as a non-tariff barriers to trade, resulting in Pakistan's delayed participation in the global marketplace.

As mentioned in the Legal Framework review above, a key remedy to such arbitrary and unethical behavior is to institutionalize modern, transparent, and predictable processes and practices. Through the on-going reforms which FBR is implementing, there has been a considerable shift in the outlook and functioning of customs. Today its role is positively perceived among traders. The FBR is now fine tuning customs processes and automating many control functions, implementing risk management in the decision making process, establishing electronic transfer of funds for any revenue collection, setting performance standards for officers, and creating a system of internal audits and investigations. Once these are developed adequately and enforced appropriately, speed, efficiency and objectivity will fully replace any abusive discretion by the officers.

Pakistan Customs, to its credit, has been proactively trying to remedy the traditional expectation of unofficial payments for the clearance of goods in its major ports. In implementing the PACCS system, it has reduced the need for face-to-face interaction by dealing officers with the traders. Virtually all the sectors interviewed for this review reported satisfaction with the processing of their cargo by Customs and particularly when they have been able to take advantage of the automated system. They claim that clearance times are predictable and transparency in conduct of desk officers has improved.

Gender. Women appear to be active participants in the international trading sectors of Pakistan at all levels in major population areas. They receive equal treatment in the workplace in terms of training, salaries, and promotion potential. Most sectors have a good number of women managers, some at the highest levels. As a general rule, women are perceived to perform better than men. Yet men still appear in vast majority, and with better salaries. The increased involvement of women is seen as an important factor which has potential to boost trade across borders. What is important is to evaluate their existing role and to identify plans of actions and interventions which promise to increase women's involvement in the years ahead.

In particular, women are involved in the production of export products; more women are becoming senior managers; many are independent businesswomen; some are Ministry Members, Dry Port Trustees, Chamber of Commerce committee members and Chairwomen. Women are also opening more law chambers where in the past it was rare. The pharmaceutical industry reports that 50% of its employees are women; the freight forwarders claim that up to 15% are women; the shipping industry has approximately 25% women in all jobs except the heavy physical labor; Customs has 15 to 25% women (mostly all in the career level cadre and as secretaries, not many as junior officers); and women are active in the air freight industry.

Development of Women entrepreneurship in exports. Women entrepreneurs are gradually taking up export business in Pakistan. TDAP is engaged in various promotional activities for women like holding annual Wexnet Exhibitions in Pakistan, provision of training facilities and subsidized participation in international trade fairs and delegations. TDAP has also prepared a database of women entrepreneurs to offer its services. To provide women entrepreneurs with a more organized environment, the GOP decided to establish Women Entrepreneur Cities in Karachi and Lahore where infrastructure like industrial plots, common facility centers, business centers, technical workshops, child care centers, training centers, etc. will be provided.

There has been a significant increase in induction of women in the country's workforce which is the result of changing social and economic conditions and the consistent pro-women initiatives of the government. As per a study of SDIP, there has been a significant increase from 30 to 39% between 1991-2002 in the share of females in paid labor force. This may be seen in the following two figures, the first showing labour force activity in four South Asian countries and the second figure showing the women's share in employment by sector in four South Asian countries.

In the process of integration of South Asia into the world economy, South Asian women's involvement in the paid labour force has not increased significantly.

Significant increases however were observed in Pakistan, from a very low level of under 30% to 39% (1991-2002).

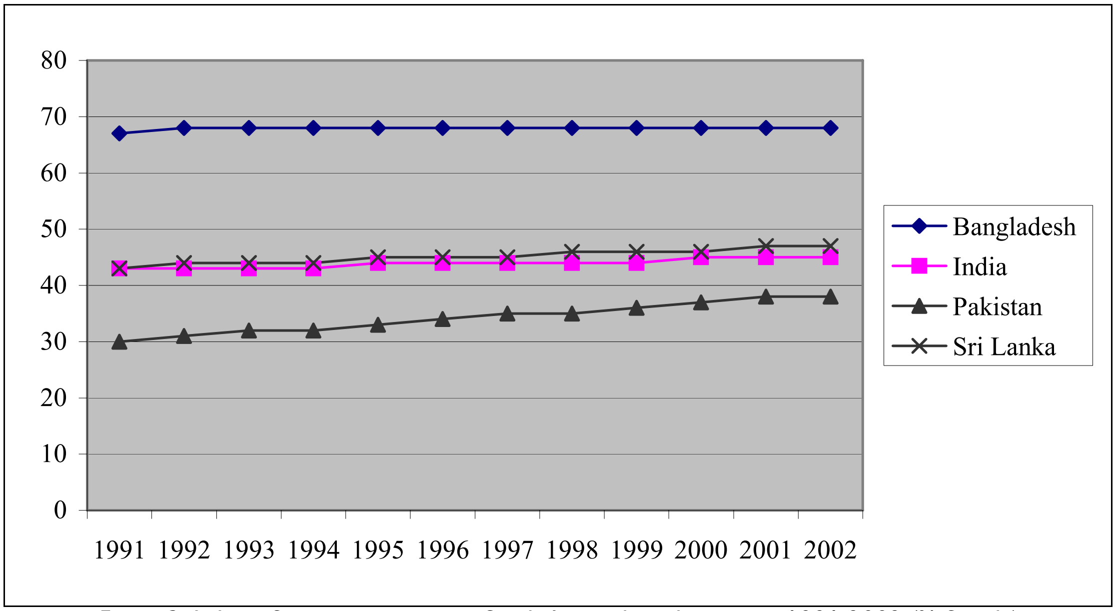

Figure 3: Labour force activity rates in South Asia, selected countries 1991-2002 (% female)
Source: World Bank (2003)

Sector-wise a significant share of women workforce is still in agriculture. However, a large proportion of this work is not remunerated. For example, more than half of all employed females as compared to about one third of males are employed as unpaid family helpers in agriculture

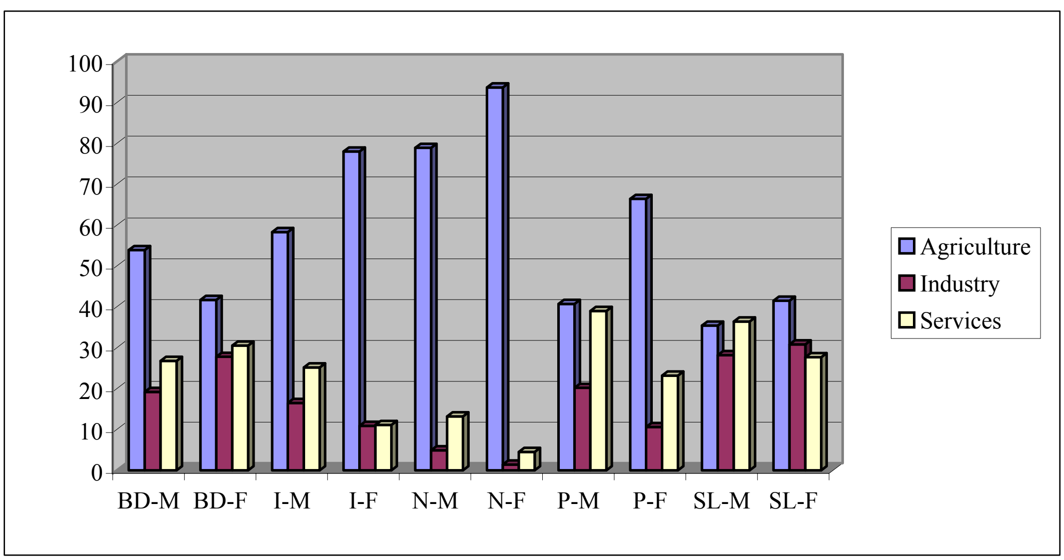

Figure 4: Gendered employment in South Asia by major sector (%) Source: MHHDC (2000)[1]

1 Note: BD=Bangladesh (1996 data), I=India (1994), N=Nepal (1996), P=Pakistan (1997), SL=Sri Lanka (1995), F=female, M=male

Seasonal cotton-picking in Pakistan is almost exclusively done by females. The increase in cotton production at an annual growth rate of 14% in the latter half of the 1980s has caused a tremendous rise in the demand for female wage labour (Kazi, 1999). However, recent research shows that they did not benefit from liberalization in Textile and Clothing (T and C) trade in terms of better wages and working conditions (Siegmann, 2006).

Significant opportunities have become available for women in the South Asia low-technology manufacturing industries such as the T and C industry and one hopes that, with the GOP's interventions in areas of women education, skill development and providing improved working environment to women, the share of women in T and C will increase substantially in the coming years (MHHDC, 2002). Pakistan as well as India display a relatively low share of female employment in the textile and clothing industry due to a more significant textile rather than garment production, whereas Bangladesh and Sri Lanka specialize in garment manufacturing.

Women contribute significantly to Pakistan's main export engine, the textile and clothing sector. Apart from cotton-picking, women form about one half of the workforce in the garment sub-sector. Their wages and working conditions however leave much to be desired and need to be seriously addressed.

There are distinct obstacles for women that must be addressed. There are not enough economic welfare programs for women (as compared to social welfare programs). Most women entrepreneurs are SMEs who need more awareness about financing and business opportunities, as well as skills training.

There remains cultural resistance in a male dominated society, lack of access to information, lack of sufficient training in good business practices and business administration (financing, accounting principles, market availability, export and import opportunities, rules and regulations, etc.), and lack of sufficient funds for international marketing. There is a lot of publicity about empowerment of women and government funding, but awareness is needed as most women do not know about or see the funding. Women entrepreneurs are simply not well organized and lack the training and means to get organized.

In rural areas, women miss out on job opportunities because large manufacturing operations have been established in the major cities and larger towns. These women must remain near their homes in order not to be exposed to harassment or safety problems. Additionally, the role of women at the border, particularly with Afghanistan, remains very traditional and they are not part of the larger international trading workforce. Their induction in the workforce can be made possible by education, vocational training and setting up of women's hostels in the urban areas.

In this regard, an initiative of the Small and Medium Enterprise Authority (SMEDA) is worth noting – the creation of Women Business Incubation Centers (WBIC). In its first pilot project, it provides 'hands-on support' to women entrepreneurs, including business infrastructure, and addressing the issue of their spatial mobility, etc. Such projects are particularly relevant to foreign donors' economic improvement programs. They offer an area of assistance for investment in human capital that could prove fruitful and is very needed.

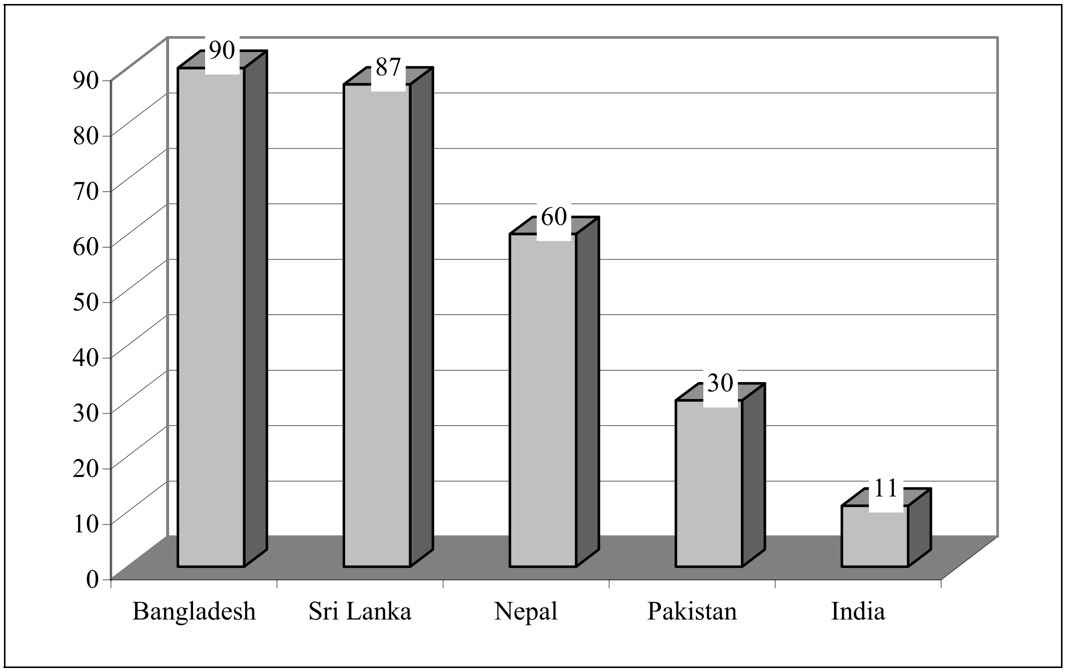

Figure 5: Female workers in paid employment in the South Asian TandC industry (% of total TandC workforce) Sources: Siegmann (2005a)

***Tawana* Pakistan.** *Tawana* in Urdu means strong. This programme was launched in 10 rural districts of Pakistan by the President in March 2007. The districts are Badin, Thatha in Sindh; Pishin, Turbat, Gwader in Balochistan; Pak Pattan, Muzaffar Garh, D.G Khan in Punjab; and Lakki Marwat and Mardan in NWFP.

This programme was meant for 5 to 12-year old girls studying in Government Primary schools. They were provided juices, milk and vitamin rich biscuits on a daily basis. The idea was to encourage female enrollment in schools and to curtail drop-outs in far flung areas. This scheme has benefited about 200,000 girls. It has run into serious problems and is in danger of being stopped altogether.

This is an excellent scheme, and the GOP should be persuaded to continue it. In fact the age of girls should be increased to 15-16 years, so that the girls complete 10 years of education.

The scheme should be reviewed and foreign donors should offer funding for 20 more districts, of which at least 5-6 should be in NWFP and a similar number in Balochistan e.g. Karak, Bannu, Tank, Charsadda, Swabi and Mansehera in NWFP and Zhob, Lesbela, Quetta and Naushki in Balochistan. Likewise 5 districts each in Punjab and Sindh should be additionally supported. This should cater to about 500,000 girls.

Such a program could be monumental in improving the lot of Pakistani women and bringing them up to par with males, improving their status in life, and changing the traditional bias against women.

Small and Medium Enterprises (SMEs). In Pakistan's social environment, business has traditionally remained a family affair. The decision making and financial commitments are privileges enjoyed by the eldest member (or older members) of the family. The exposure to global competition and the facilities of electronic communication are changing this and gradually professional management is creeping into the structure. Several telecommunication companies and financial institutions emerged as well as other businesses (largely multi-nationals) which operate on modern lines, applying latest technology and management techniques in their operations and are run with special focus on induction and development of human resources on scientific lines. These developments are reinforcing the process of business outlook, changing processes in large as well as medium scale businesses. Yet these need to be further sensitized, to accelerate the process of transformation.

The GOP is cognizant that this acceleration is a key element in the overall growth of the economy and for this reason it has taken several initiatives. However, much remains to be done:

- The SME Policy should be implemented / supported, as provided in the SME Act (2006).
- The SME Policy should have different approaches, for supporting Small Enterprises as opposed to Medium Enterprises.
- Women and other marginalized groups should receive special focus within the SME Policy.
- Private sector should be encouraged to play a key role in implementation of the policy. SME development offers the most viable option for private sector led growth to reduce poverty by creating a large number of jobs all across Pakistan.

SMEs are receiving increasing focus in Pakistan as these contribute 30% to GDP, with a 25% share in manufactured exports. SMEs employ 78% of the industrial labor force and 35% of value addition in manufacturing sector. An estimated 3.2 million SMEs operate in the country. Over 50% are in trade, wholesale, retail and restaurants. Punjab has 65% of SMEs followed by Sindh, NWFP, and Baluchistan with 18%, 14% and 2% share respectively.

Non-availability of finance has been recognized as one of the major impediments to SME development. To meet the financing needs of the SME sector, an SME Bank was formed in 2002. However, its operations are hampered by very high mark-up rates, which increase SMEs cost of doing business instead of helping them improve their financial position.

The Small and Medium Enterprise Development Authority (SMEDA) is another institution dedicated to the promotion of SMEs in the country. During FY 2007, SMEDA started establishing demonstration projects and Common Facility Centres for SMEs. These include projects in sports, agro-based industry, leather and light engineering sectors.

One hopes these inputs will have significant impact on the businesses to change their management outlook and become dynamic players in trade across borders as well as in the country's growth process. Foreign donor support to sensitize SME's and even large scale businesses will have a very useful catalytic impact at this stage.

Aik Hunar Aik Nagar (AHAN) Project. This project aims at reducing poverty at grass root level by preserving and developing traditional rural arts and crafts, and providing them market access. The GOP plans to launch as many as 100 projects under this program by the end of December 2008. It has the potential to become a source of export cargo in 3-4 years.

As stated above, in order to benefit SMEs and bring them in alignment with mainstream industries and trade, the GOP needs to invest in training and capacity building for senior management/partners.

Recommendations

As seen throughout this review of Trading Across Borders, Pakistan has made great strides to eliminate some of the traditional bureaucratic obstacles. In particular, the reform and modernization of Pakistan Customs at the major ports and dry ports, and the positive perception the trade communities have of Customs, is a welcome sign. This change needs to be consolidated, and therefore it is advised that assistance be provided to Customs which handles the US$ 50+ billion trade of Pakistan.

Reform and modernization of procedures at the land borders, particularly along western borders, where long-standing cultural and tribal practices hold sway, is a major area of concern. Such reforms require long-term and firm commitment from the FBR and the Government. Moreover, the political realities of Pakistan's trade with each of its four contiguous neighbors require discrete solutions. From the dialogue in which Pakistan has engaged each of these neighbors, one can easily conclude that in the days to come trade links will become stronger and require much better infrastructure.

Currently, the volume of land border trade is a small fraction of Pakistan's total international trade volume. But as noted, it has great potential to grow. It is significant that donors keep this area of trade in their focus for determining priorities in assistance programs. The growth of trade through these stations is slowly but surely involving local people in trade as they are its direct beneficiaries. This involvement of locals in trade is likely to break the traditional cultural barriers overtime and integrate them within the mainstream.

The major issue now affecting the overall trade system is the need for extensive infrastructure improvement of Pakistan's road and rail systems, airports, and seaports. As discussed above, the roads and railways are in the greatest immediate need of assistance, but much of the requirements are capital investments. The World Bank and the GOP have both undertaken long-term commitments to improve this infrastructure.

Thus, the remaining areas of trade across borders that merit recommendation for this project lie in capacity building and human capital improvements.

Short Term

Land Border Customs Stations. The land border stations, where trade has a clear potential to grow rapidly in the near future, require immediate action for capacity building. It is recommended that: A study be conducted to project the trade growth across the land borders and, based on the findings, recommend improvements to the physical infrastructure, cargo handling equipment and manpower.

A training program in skill development be developed and executed for stakeholders such as customs, goods clearing/forwarding agents, exporters and business women, exporters, importers and transporters.

Trade Development Authority of Pakistan (TDAP). Trade Development Authority is in its formative phase. Its restructuring is yet to be completed. It will need:

(i) Technical advice to support the reengineering of its export development functions.

(ii) Support of consultants in upgrading and increasing productivity of export items with large growth potential e.g. fruits, flowers, gems and jewelry.

Intellectual Property Organization of Pakistan (IPO-P).

(i) IPO-P is in the process of providing training to the Police, Customs, FIA (the elite investigative agency) and the Judiciary, with reference to IPR offences. Technical assistance may be extended to augment this programme for skill development in understanding the laws and identification of counterfeit goods.

Gender

(i) Conduct an in-depth study of the working conditions of women in urban, rural and tribal areas to understand women's problems at work and to assess needs for concrete assistance to address their more common problems/issues.

(ii) The GOP's programme "National Gender Reform Action Plan (GRAP)" needs extensive support. The plan is being implemented by the Women Development Division of Government of Pakistan.

(iii) "*Tawana* Pakistan" programme of the Government of Pakistan should be pursued and supported as mentioned in the body of the report. Secondly it should be supplemented and twice as many districts should be covered with support from foreign donors, for girls of ages 5—16, so that they complete 10 years of their education.

Business Visas. Consult with US Embassy on issuance of visa to Pakistani business people.

Long Term

Customs

(i) Training for Customs officers in cargo processing at all Customs Houses and Customs Stations, with following components:
   a. Study tours to border Customs posts of other countries having higher level of customs skills and experience in trade facilitation.
   b. Training of officers in trade facilitation/processing of cargo,
   c. Integrity management teams of FBR–exposure visits and training courses/workshops.
   d. Develop customs stations at Ghulam Khan and Qamar Din Karez to reduce pressure on Torkham and Chaman.

(ii) Upgrade of Customs Training System / Institutes, especially at Karachi and Islamabad and creation of satellite training facilities at Peshawar, Multan, Quetta and Lahore.

Freight Forwarding Agents, Transporters and Warehousing. In view of the pivotal importance of these services in trade logistics the following measures are proposed:

(ii) Non–asset based services, such as freight forwarding agents, should be provided bank funding on the basis of their cash flow or turn-over as collateral, at preferential rates.

(iii) Trucking companies, if instituted as legal entities under the law, should be provided dedicated funding for building up fleets of medium and long haul trucks / trailers as per recognized standards, at preferred rates for 3-5 years.

(iv) The warehousing sector requires development as a support service in helping trade and industry become part of the global supply chain. Incorporated companies in this sector may be declared "industry" to qualify for obtaining financing from commercial banks at concessionary rates. This is essential as the free storage time has been reduced from 10 days to 5 days and is now proposed to be reduced to 3 days.

Manpower Training Institutes in Textile Parks. Technical support through the Ministry of Textiles is recommended for establishing training institutes in the three Textile Parks which Government of Pakistan is developing at:

(i) Karachi : (Textile City and Garment City)
(ii) Lahore: Garment City
(iii) Faisalabad: Garment City

Institutes at Lahore and Faisalabad should have dedicated wings for training of women and in Karachi one training institute each may be established for men and women. All these institutes should have satellite garment training institutes in Multan, Peshawar, Quetta, Hub and Rawalpindi / Islamabad. The latter can later grow into full fledged institutes.

National Tariff Commission (NTC). Local manufacturers (especially SMEs) encounter difficulties in data collection for filing and pursuing tariff protection cases on account of dumping, export subsidies or surging imports, and safeguards (Trade Defense Laws). Technical support for capacity building of the National Tariff Commission, manufacturers, Trade Associations, Chambers of Commerce and Industry, and Small and Medium Enterprises is recommended. For this purpose, special training courses in skill development need to be conducted in various cities of Pakistan under the auspices of Foreign Trade Institute of Pakistan. The focal point for the skill development programmes should be National Tariff Commission.

Gender. Working women, particularly in trade and industry, need to be supported. This can be done as follows:

They may be exposed to the working environment of other countries (trading/ business houses and public sector) through documentaries, training seminars, and visits. This should be done through NGO's, specializing in women's development, newly established Women's Associations, and women members of the Chambers and Associations.

(i) Training workshops/seminars may be arranged for the women to build capacity to prepare them for taking up supervisory/leadership/entrepreneurial roles.

(ii) SMEDA is running a programme for the skill development of women from Tribal areas in Peshawar. That programme should be supported to become a larger and sustained activity.

SMEs and Large Scale Business

(i) SMEs require capacity and skill development in "Doing Business" to enable them to become part of the global supply chain and to prepare them to fight unfair trading practices of other countries, e.g. dumping.

(ii) Large Scale Business Houses having export business or export potential need to learn techniques of strategic decision making with particular reference to exports and investment. Workshops / seminars in this area involving senior executives of such business houses will provide useful exposure.

Foreign Trade Institute. The existing Institute is inadequate for the role now proposed. This Institute therefore needs to be upgraded immediately as well as additional capacity building.

Overall need assessment. Many proposals have been made in the body of the report and in our recommendations, both short term and long term. In each, such a need assessment activity is involved.

It may be worthwhile to conduct one or more additional studies in the sectors picked up for assistance.

DEALING WITH LICENSES

Introduction

This chapter covers the framework of laws, regulations, and requirements for licenses and permits that businesses in Pakistan must deal with to develop commercial real property. This includes requirements relating to zoning; construction project licenses, permits, and inspections; land registration and titling (more comprehensively covered in the Registering Property Chapter); and engaging in the real estate development business.

This chapter examines in more breadth and detail the issues that the World Bank *Doing Business* Dealing with Licenses indicators seek to measure. In *Doing Business*, the indicators measure the procedures, time and expense involved in building a warehouse in Karachi valued at PKR 9,800,000. World Bank *Doing Business 2007* also included for the third time a regional report for South Asia that collected data on additional cities in Pakistan: Faisalabad, Karachi, Lahore, Peshawar, Quetta, and Sialkot.[94] Note, however, that the World Bank Doing Business indicators show that Pakistan has less number of licensing procedures than the average of the OECD countries, which is the average against which all countries are measured. This is not consistent with the findings of this report, which, as can be seen in the following pages, shows a picture of many long, complicated and cumbersome procedures.

Dealing with Licenses in Pakistan

Obtaining necessary licenses and permits, completing required notifications and inspections, and obtaining utility connections to build a warehouse in Karachi:

Indicator	Pakistan	Region	OECD
Procedures (number)	12	16.3	14.0
Duration (days)	223	247.3	153.3
Cost (% of income per capita)	869.5	3,230.0	62.2

World Bank Doing Business 2007

This chapter of the CLIR Assessment provides insights on the legal, regulatory, and institutional environment for real property development in Islamabad, Karachi, Lahore, and Peshawar.

The importance of this issue to Pakistan cannot be underestimated. Land and improvements to land are fundamental to economic development and land is the primary form of wealth in most economies, including Pakistan. To foster development of real property, the state must provide effective governance in a way that promotes competition and growth and improves the lives of its citizens. Thus the GOP and provincial and local governments need to provide and enforce rules that are transparent, predictable and fair for developers while protecting citizens from inappropriate or unsafe development.

Current economic growth and projected future growth have created a huge demand for construction services from both the public and private sectors. In Pakistan the construction industry accounts for over 7% of total employment, and the figure is 9.5% in the North-West Frontier Province (NWFP). Private sector construction is increasing and the federal government has approved a budgetary allocation of Rs 2,080 billion for infrastructure development over the next five years (2005-2010) and is planning additional projects including District Development programs and projects in the Karachi Port, Pakistan Steel, Port Qasim, and the Gwadar port. The total public-sector market for construction is estimated to be Rs 2,500 billion.

But construction activities could be even higher, particularly in the private sector.

Investment and productivity in the construction sector are limited by a complex framework of laws and institutions at various levels of government. In addition, 40% of land in Pakistan is Government-controlled, and zoning, land use, and building permits are politicized and act as a disincentive for rational development. Rent-seeking is ubiquitous in obtaining permits, dealing with inspections and obtaining utility connections. As a result, businesses in Pakistan reported that the land acquisition and site development regulatory interface is the worst administrative barrier they face.[95]

Regulation of land and real estate development are primarily provincial issues, and, in fact, are the chief

[94] See *www.doingbusiness.org/southasia*.

[95] Pakistan Administrative and Regulatory Cost Survey (ARCS) found that 79% of businesses identified land acquisition and site development regulatory interface as a barrier, with 49% rating it as a severe barrier. By comparison, 57% of respondents identified financial regulation, 53% tax administration, 38% business registration and 30% labor regulation as barriers.

source of revenue for districts. It is difficult to generalize with regard to some of the obstacles faced by builders since each province and municipality is different in terms of laws, regulations, institutional capacity, and culture – sometimes dramatically so. This chapter attempts to provide insights by covering cities with very different characteristics. It begins by examining the legal framework, implementing and supporting institutions, and social dynamics that impact real property development in Karachi, Lahore, Peshawar, and Islamabad, with an emphasis on commercial development. The chapter concludes with long- and short-term recommendations for an improved business environment for real property development.

Legal Framework

The laws and procedures relating to real property are particularly cumbersome. The system of land laws and records has changed little since its creation in the early 17th century.[96] Licenses, permits and inspections of land and improvements are found in at least 10 separate laws and bylaws in Karachi alone –and Karachi is probably the most advanced municipality in terms of land development. These laws do not reflect the needs of citizens and businesses and foster opportunities for corruption, inefficiencies in construction projects, and a lack of urban planning and building safety.

Although statistics are not available, according to industry experts the top 5 growth cities in Pakistan for the construction industry are Lahore, Karachi, Islamabad (housing, Baharia Town), Sialkot, and Muzaffarabad/Azad Kashmir (earthquake reconstruction).

Title and registration of property issues cause significant delays for developers. As discussed in the Registering Property chapter, these issues are nationwide and quite complex since a mix of national, provincial and municipal laws apply and multiple implementing institutions are involved. The main national laws are the Transfer of Property Act, the Registration Act, and the Stamp Act, all of which were enacted 100 or more years ago.[97]

These laws are outmoded and vague in some sections and, along with provincial and municipal level laws, regulations and procedures, cause practices to vary widely in different jurisdictions. This can be seen in the procedures set forth in the *Doing Business South Asia* report for six cities. For example, in Peshawar, the developer must follow several procedures regarding registration that are not required in Karachi: obtain a No Demand Certificate from the Excise & Taxation Office; obtain a *Fard Jamabandi*, an official excerpt of the register from the Land Revenue Department; present to the Sub Registrar a notarized affidavit by the seller confirming clean title of the property and indemnifying buyers; and verification by the Registrar that the property or parties have not been restrained from sale-purchase by any court.

Even after complying with the procedures, buyers and owners cannot be sure who actually owns the land. As detailed in the Registering Property chapter, the conflicting national and local government laws and overlapping registration systems of *Patwaris*, and federal, provincial and municipal government agencies lead to a conflicting and uncertain framework for land registration and transfer. In addition, unrecorded Sharia successions and *benaami* ("no name") transactions (which allow individuals to conceal the identity of the true owner of the property) are recognized.

The GOP Planning Commission and other government agencies and NGOs have recommended that Pakistan adopt a central and unified land registry system. In March 2005 the Prime Minister announced a plan to develop a unified computerized land registry, initially at the provincial level and then linked to the national central registry. In addition, legislative reforms are needed to eradicate parallel regimes for land transfer, ban oral transfers, and repeal Transfer of Property Act section 53-A, which allows a person with possession and a claim to have made partial payment to sue for specific performance of a sale agreement.

The World Bank Punjab Land Records Management and Information Systems Project improving business processes and institutional capacity for to modernize the Punjab land records system, establishing Service Centers, and automating land records systems in certain districts. We are informed that the project

96 While the issues relating to registration and title of real property are covered in depth by the Registering Property chapter of this report, we briefly explore those issues as part of the procedures that developers must deal with.

97 It was not clear to the assessing team if these laws have been amended, and if so, to what extent These laws are, however, covered in more detail in the Registering Property chapter.

will be digitalizing about one-third of the land records in the province.[98]

There are unique difficulties relating to ownership of apartment buildings that tend to chill development of apartments. The laws do not provide for multi-ownership of buildings or common areas. In addition, rents are controlled and it is quite difficult to evict a tenant for non-payment of rent. Each of the provinces has a law based on the West Pakistan Rent Restriction Ordinance of 1959. These laws provide for a Controller with authority to determine the fair rent of residences as well as when eviction of tenants is allowed. These problems contribute to the shortage of housing stock in Pakistan -there are 650,000 new units needed per year but only 350,000 built, and the number of persons per room is higher than India and China.[99]

Title and registration issues also make it difficult to use real property as collateral for loans, including loans to provide funds for development on the property. There is a mortgage law, but banks will only take as collateral land that is titled. It is also difficult for banks to determine whether title is clear, as oral transfers, hidden liens[100], and other problems can arise (see Registering Property chapter). As is discussed in the Getting Credit chapter, even when a borrower can provide acceptable property, enforcement against it is complex and slow. As a result of these problems, lenders often over-collateralize, demand additional guarantees, or only lend to companies with long track records of success. And banks require a host of documents from a borrower prior to the creation of a mortgage: documents of title and chain of title; Non-Encumbrance Certificate from the Registrar and/or the controlling authority of the land; permission to mortgage from the controlling authority; search report from the registrar or Patwari; PT-1 Form for urban land; and a No-Objection Certificate from any prior mortgagees.

There are no legal restrictions against women owning property, but social traditions often lead to male members of the family either owning the real property or dealing with the property. This deprives many Pakistani women of what should be their main personal asset. Without the ability to pledge real property as collateral, women have less access to finance.

The current **Zoning and Planning** regime hurts the construction industry and the public as cities are being developed in a haphazard, inefficient and environmentally unfriendly way. Pakistan underwent massive urbanization at a rapid pace from the 1960s to now without carrying out effective urban planning. At this point planning is needed, but the cities must also integrate and assimilate what was semi-informally developed.

Land use in Pakistan is a provincial and municipal level matter as there is no national level legal and regulatory framework for planning and zoning. At the municipal level, there are government development authorities in most major cities of the country that own land in the urban areas, and are charged with urban planning and projects like housing and parks. In Lahore, Karachi and Peshawar, the institutions a developer must deal with for building purposes depends on which jurisdiction the land is located in.

Land acquisition is time consuming and replete with corruption. Many developers prefer to acquire land from private owners or the Defense Housing Authority (DHA) rather than the government as private transactions take less time (140 days for acquisition from government verses 64 days from a private party[101]).

In Lahore, Karachi, and Peshawar, there is insufficient urban planning, outdated building laws and a lack of by-laws for zoning. The by-laws that exist are out of date, do not reflect the realities of the needs of the cities' citizens and businesses, and leave room for discretion. The developer must deal with the institution and/or person that has discretionary authority, which then causes the need for a bribe to get the approval. Further, the by-laws do not provide for higher density in some areas of the city. There needs to be a new framework developed that takes into account the fact that the cities have grown and the economy is modernizing. Lahore has grown to a city of 10 million (from 6.8

98 Brief information about the project is available at http://web.worldbank.org/external/projects/main?Projectid=P090501&Type=Overview&theSitePK=40941&pagePK=64283627&menuPK=64282134&piPK=64290415.

99 Pakistan Board of Investment, "Housing and Real Estate Development," http://www.pakboi.gov.pk/sectors.htm

100 One of the problems is created by the fact that the law provides for and recognizes undocumented "Equitable Mortgages." An equitable mortgage is not created by a recorded document; rather it is created by an act or written or oral agreement by which one party manifests its intent to pledge the property as security for a debt. In Pakistan, equitable mortgages were traditionally favored due to high taxes on registered (i.e. documented mortgages). Those taxes have, in some instances, been reduced but the legality of equitable mortgages has not been changed.

101 Pakistan Administrative and Regulatory Cost Survey , 2005 (ARCS)

million in 1998). The Lahore Master Plan only covers about 2/3 of the city. In any case, a master plan should be developed at a metropolitan area level and thus, in Pakistan and most places must include multiple towns, districts and agencies, though in some cases it can be led by a metropolitan authority (e.g. CDGK in Karachi).

There are two laws governing urban development and planning: Lahore Development Authority (LDA) laws, which are under the Government of Punjab, and local council laws. The zoning bylaws for the LDA are created by the LDA. As in all Pakistani cities and rural areas, a significant amount of land is controlled by the DHA. Other urban land is governed by union councils or town councils with undefined responsibilities for providing approvals. And there are cases in which international companies purchase tracts and create their own zoning by-laws.

Lahore has residential, commercial, and industrial zones. Residential only covers single family homes – not apartments (which are commercial). To build apartments the developer must get permission from LDA, which is difficult to get and even if it is obtained the developer must pay a commercialization fee (which sometimes costs more than the land). Then the building is limited to 3 or 4 stories height. And there is simply not enough commercial zoned property, which is why there is a lack of hotels, shopping malls, etc. in Lahore. In fact, leading developers contend that zoning is the biggest constraint to commercial development in Lahore. The GOP is aware of this, but because of vested interests, it is difficult to do anything about it.

Karachi has a Master Plan 2020, also known as Karachi Strategic Development Plan 2020 (KSDP2020). It creates a strong planning body that will be impartial and can deal with the interests of government, the private sectors, and citizens. It will need planners, architects, engineers, economists, demographers, geographers, sociologists, statisticians, cartographers, IT specialists and field surveyors.

This is Karachi's sixth Master Plan, and the previous ones can only be considered failures. Planning is a problem, as the infrastructure is not keeping pace with development and there are some areas being developed illegally.[102] But it appears that zoning is not a big problem in Karachi, with sufficient commercial zoned property.

Peshawar does not have a Master Plan, and a zoning report compiled in the 1980s has not been implemented. Thus the city is growing haphazardly and new unauthorized townships are being developed on its periphery and lack sanitation, drainage, drinking water, paved streets, etc.

In Islamabad zoning is quite clear and straightforward. Islamabad is rather strict in terms of zoning, with only a small area zoned industrial and specific industry lists that can be registered for. Approval to change the industry is complicated unless it is a "positive" change, e.g. a non-polluting business taking over for a high polluter.

Changing the use of property can be expensive, as some local governments charge high commercialization fees. For example, LDA in Lahore charges a commercialization fee of 20% of the value of the property –this even applies where the property already is zoned commercial.

The main national laws relating to **Licenses and Permits** are the Environmental Protection Act and Building Code. Under the Environmental Protection Act, environmental approval must be obtained before commencement of any project. Pursuant to Environmental Protection Act, Section 12, all construction projects must file with the EPA an Initial Environmental Examination or, where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment.

The October 2005 earthquake caused changes to building codes and permits. The GOP set up a committee of various GOP agencies, local governments, universities, and consultants to revise the Pakistan Building Code and a new Building Code was adopted in August 2007. The changes focus on making buildings earthquake resistant. Pursuant to the new Code and a directive by the Prime Minister, provincial and district governments are revising their building regulations to ensure compliance with improved construction standards, earthquake mitigation, accessibility, foundations, and walls, construction materials, and policies to deal with weak existing buildings. Where a change of approved use is requested, the developer must obtain a zoning variance.

[102] For example, there are over 2,000 illegal slums in Karachi, known as Kachi Abadis. The Government claims that there isn't much it can do since the settlers are mostly ethnic groups from interior areas of Sindh and there can be ethnic uprisings if the government attempts enforcement actions.

There are also local level regulations and procedures that builders must follow, as well as various procedures to obtain utilities connections. These regulations and procedures are often used to further corrupt practices. In Lahore, the regulations are ambiguous, which actually favors the builders to the detriment of the public. Buyers have few protections and citizens are not protected from overbuilding, inappropriate building, overstretched infrastructure, etc. In Karachi, the non-uniformity of building by-laws and regulations is a problem. The various institutions and agencies in Karachi that have their own set of building bylaws and regulations for commercial development are: Cantonment Boards (6 of them); Karachi Building Control Authority (KBCA)[103]; Defense Housing Authority (DHA); and Private/Cooperative Housing Societies.

The cumbersome procedures for developers in the city keep many small developers out of the business while the larger and more influential developers flourish. The vague bylaws foster corrupt practices. The regulatory framework of Peshawar, including zoning, floor-area ratios (FARs), and building control regulations, is completely outdated, severely restrictive, and far from international standards. Since it does not respond to the market forces, the regulatory framework discourages investments in the city. In addition, the three main agencies regulating construction (CDGP, CDMD, and Cantonment Boards) each administers its own building bylaws with little coordination with the others.

Thus a developer will need to obtain the following permits or approvals, depending on the nature of the project:

- town planning approval;
- zoning variance;
- mechanical (plumbing) plan;
- architectural plan;
- situation plan;
- environmental plan;
- electrical permit;
- building permit;
- completion certificate; and
- no objection certificate.

There are a host of additional approvals that may be required, depending on the site and project, for example location approval from the Federal, Provincial, or Local government; Export Processing Zone Approval; or Stability Certificate for factories.

Inspections are also based on the Building Code, Environmental Protection Act, and local government regulations. In addition, the Boiler Act of 1923 requires inspections of boilers and certification by inspectors appointed by the provincial governments. There are also inspections required under local laws and regulations, including development authority by-laws. There are several inspections that must be undertaken on a construction project, including environmental protection, building, health and hazards, factories, utilities, and labor.

The **Real Estate Development Business** is governed by the Pakistan Engineering Council Act and bylaws.

[103] In 1979, the Karachi Building Control Authority (KBCA) was created under Sindh Building Control Ordinance 1979. 60% of Karachi property is under the KBCA; Cantonment Boards and DHA own the other 40%.

Implementing Institutions

Zoning and Planning falls under various jurisdictions in each city.

In Lahore, each government authority has its own administrative body and its own regulatory mechanisms for any development taking place on the land under its jurisdiction. Much of the land in the urban centre of Lahore is under the jurisdiction of the LDA and originally was land transferred from the provincial government to the development agency, as in all cities in Pakistan where a city development authority exists. If outside the main urban centre, public land will usually fall under the TMA or if the land is far out of the urban centre, it would be under the Union Administration. Private societies own a large percentage of land in Lahore (bought from the LDA) and the most well known of these private societies is the DHA. Land under the DHA was originally for developing housing and commercial plots that were/are allotted to military officials. The DHA has devised its own procedures for the title and transfer of land and also has its own regulatory framework around building bylaws.

The various jurisdictions land in Lahore can fall under are as follows:

- Lahore Development Authority (LDA) – City District Lahore.
- Town (Tehsil) Municipal Administration (TMA) or if farther away, Union Administration
- Private Societies such as Defence Housing Authority (DHA) and various other private housing societies
- Cantonment Land – run by the Cantonment Boards.

Most of the large scale commercial development in Lahore takes place on LDA land[104] or under the jurisdictions of the TMA. The LDA has been described as quite inefficient by most of the individuals interviewed in the construction industry – it has insufficient capacity to effectively control and carry out planning on the vast amount of land that falls under its jurisdiction and the LDA is "becoming a spectator." Additionally, it has been described as being heavily influenced by political insiders, resulting in an "ad hoc" zoning environment and an extremely weak and out of date regulatory framework for title, transfer, and development of property. On the other hand, the management of military land by Cantonment Boards (CB) and Military Estate Offices (MEO) and the procedures adopted by the DHA in ensuring title to land and maintaining records for rights in property can serve as examples of good practices to be emulated throughout the country.

The Karachi Development Authority, which has been absorbed into the City District Government Karachi (CDGK) was given a large amount of land in the city. This land is regulated by the KBCA and building plans for construction on all development authority schemes have to follow KBCA rules and regulations. This is much different than the practice in Lahore where the LDA not only develops the bylaws for the city but also carries out the approval of the building plans on land under its jurisdiction. The separation of these entities in Karachi has provided KBCA with the independence needed to effectively carry out its regulatory and supervisory roles. Each military cantonment in Karachi is administered by the MEO and its own Cantonment Board. Much of this land, which also exists in other cities of Pakistan, has been converted for "civilian" use and development, e.g. housing and commercial development. There are also private/cooperative housing societies in Karachi and throughout the nation which also have their own mechanisms for development on their lands.

Today there are more than fifty active cooperative societies who were allotted land by the Federal Government many years ago and there are various housing societies who have land allotted to them by the Government of Sindh. These housing societies are established as separate legal entities.

The Hayatabad Township was under the control of the PDA until recently but now is entirely under the control of the township with no links to the municipal authority. This township is regarded as having best practices in Peshawar as it has a good framework for its regulatory work and is even in the process of introducing a one stop shop for permits.

In Peshawar the City Development & Municipal Department (CDMD) replaced the Peshawar Development Authority (PDA) as the department in charge of construction. The CDMD has fairly good technical capacity, but because it is charged with many tasks, including implementation of major public projects, it is overstretched. Responsibilities of integrated services like water and sewage, building regulation, and development control have been devolved to the four Town Municipal Administrations (TMAs), which do not have the capacity to manage them. These services should be at the district level to maintain consistency of policy

[104] Although the Mall Road in Lahore is owned by the provincial government and there is a large amount of development underway on that stretch of land much to the dismay of environmental watchdogs.

frameworks and implementation processes. There are also Cantonment Land controlled by the Ministry of Defense and industrial estates including one controlled by the Sarhad Development Authority and one controlled by the Small Industrial Development Board. There is also a large area on the outskirts of Peshawar controlled by the NWFP Government.

The City District Government Peshawar (CDGP), CDMD, and Cantonment Boards each administer its own non-uniform building bylaws with little coordination with the others. Within the CDGP, the enforcement of these regulations has been devolved to the 4 TMAs, which have little capacity to enforce. These factors have given rise to land and building mafias, which are behind the proliferation of *katchi abadis* and building violations. Interviewees indicated that the PDA can be paid off to make any parcel commercial.

Islamabad falls under the category of "capital territory" and much of the land in the city is controlled by the Capital Development Authority (CDA), centralizing the framework surrounding zoning and building regulations. One of the main functions of the CDA is to acquire land and undertake works in specified areas and to plan and execute development schemes. The CDA has strict regulations about development schemes and specific zoning regulations which, according to many interviewees, are quite well enforced although there is always room for bending rules and discretion as it is working closely with the Federal Government.

Land within Islamabad that has not been acquired by the CDA is more difficult to purchase and transfer and the builder enters the gray areas of proving land ownership (most of such land is agricultural on the outskirts of the city). Once this land has been purchased by the builder, it would then need to be approved by CDA.

The **Licenses and Permits** necessary to commence and complete a construction project are obtained from the Environment Protection Agency, Building Control Authority, and local agencies and institutions. Each city has a Building Control Authority that regulates construction and issues permits. They are not automated and require visits and payments in person, which leads to corrupt practices. In addition, obtaining utility connections is often problematic, with lengthy delays to projects and bribery commonly used to expedite connections.[105] Installation costs and utility fees are high and there are various additional taxes and surcharges.

The Environmental Protection Agency, with offices in each province, is a department of the Ministry of Environment and is responsible to implement the Pakistan Environmental Protection Act, 1997. Builders need to submit an Environmental Impact Statement to the EPA for "no objection" and the EPA inspects the building. With 52 persons on the staff and a wide range of responsibilities including air and water pollution issues, the EPA cannot properly review and inspect environmental issues relating to construction projects. After the developer files an Initial Environmental Examination or, where the project is likely to cause an adverse environmental effect, an Environmental Impact Assessment, the EPA has four months to provide a decision, though this period can be extended by the EPA. The decision will be approval, rejection, require submission of an environmental impact assessment, approval subject to conditions, or require that the environmental impact assessment be re-submitted after required modifications. Fees for the review of Environmental Impact Statements are on a sliding scale from 2,000 Rupees for small projects to 20,000 Rupees for projects with over 10 million Rupees value. No construction can commence until approval has been issued. Failure to comply with Section 12 is punishable by a fine. Every review of an environmental impact assessment is supposed to be carried out with public participation but this doesn't really happen in practice.

In Lahore, the authorities issuing licenses and permits include:

- The government authority with jurisdiction over the land (**LDA or other)** - to issue a certificate confirming land title[106] and for obtaining approval of the site plan and completion certificate. Completion certificates at the *tehsil* government level, however, are also delivered by LDA.
- Environment Protection Agency – a no objection certificate for projects of certain characteristics

105 According to ARCS, 49 percent of developers paid a bribe to expedite electricity connections; 48 percent paid a bribe to expedite phone connections; and 40 percent paid a bribe to expedite gas connections.

106 This brings in various issues of land title that have been discussed earlier in the chapter and the report as a whole such as the certificate of title being useless if title is challenged before the courts.

- Lahore Electric Supply Company Limited (LESCO)
- Pakistan Telecommunication Company[107]
- Water and Sanitation Agency
- Sui Northern Gas Company (if a gas connection is required)

The institutions described as taking the longest to issue permits and also being the most expensive to issue the related permits, are the building authorities, specifically the LDA. In addition, the laws and regulations relating to obtaining construction permits are not easily available and most developers find themselves resorting to property dealers to obtain the desired information. In all the processes pertaining to obtaining permits, corruption has been described as a norm, starting from obtaining a building permit (some building authorities more so than others) to obtaining utilities connections. For utilities, the more one pays, the faster one receives the desired connection. Since the privatization of much of the telecommunication industry however, this connection has become the easiest to obtain, followed by gas, water and sewage, with electricity noted as being the most difficult and time consuming. Building permits come with their own set of complications pertaining to violations and discretion by the authorities which has created a vicious cycle of ad hoc building in the city. The LDA has gotten more vigilant in certification of building structure – including seismic certification– since the 2005 earthquake. But still, a substantial amount of building in Lahore is done without any approvals. Corruption is a big issue at every level of government.

In Karachi, the authorities issuing licenses and permits include:

- Whichever is the concerned authority to provide a certificate confirming land title - this could range from the CDGK or DHA or another authority as discussed earlier in the report.
- Karachi Building Control Authority – to obtain a building permit and the construction company is also to notify KBCA in writing when the foundations have been completed on the project. KBCA is also to be informed when the building has been fully completed so it can issue an occupancy permit and a completion permit. Necessary inspections carried out by KBCA in order to issue these permits are discussed in the inspections section.
- Karachi Electric Supply Corporation.
- Pakistan Telecommunication Company (once again, one can opt for a private option as discussed in the case of Lahore).
- Excise and Taxation Department of the Government of Sindh – to provide the property tax valuation and a copy of the certificate from the tax authorities confirming that the building company does not owe them any money.
- Karachi Water and Sewerage Board.

KBCA is a regulatory and supervisory body whose prime function is to ensure that the approval of building plans and issuance of permits are in conformation with the existing Building & Town planning regulations. Obtaining building permits and completion permits from the KBCA take the longest amount of time, with the building permit also being the most expensive according to builders. Confirming land title can be a cumbersome procedure and can also take a very long time, depending on the authority being dealt with. Amongst the utility connections, as in Lahore, the electricity connection is the most cumbersome, costly, and time consuming while the telephone connection is the most cost effective. Interviewees have noted that customer service in many of these companies has improved significantly over the years but only for existing customers of the company. For new entrants, service has not improved much and it can still be a challenge to obtain satisfactory assistance, especially from the electricity, gas, and water & sewage companies.

In Peshawar, the authorities issuing licenses and permits include:

- Relevant authority to obtain certification confirming land title and also to obtain approval of the site plan
- Environment Protection Agency (obtain No Objection Certificate)
- Peshawar Electric Supply Company (PESCO)
- Pakistan Telecommunication Company (or private provider)
- Works and Services (W&S) Department of the Government of NWFP – for water and sewage connection
- Building Control Agency of the W&S - for the issuance of the Completion Certificate.

In Peshawar, it typically takes 45 to 90 days to obtain building permits. Since the 2005 earthquake the

[107] Although one is able to simply buy a CDMA wireless phone from the market now in Pakistan which functions as any landline phone without requiring a PTC connection.

Building Control Agency Officials (part of the City Development and Municipal Department) have shown more professionalism, including streamlined on-site inspections, and they are now more thorough in pointing out flaws in buildings while they are under construction and in enforcing codes. Nonetheless, the Building Control Department remains corrupt and the laws and bylaws can be bent to assist favored builders. As a result, there are still mid and high rise apartment and commercial buildings that are being constructed in violation of the codes. This includes adding more floors to the approved plan, economizing on cement and steel, violating zoning laws (including retail stores on the ground floor of apartment buildings), and using substandard materials. Out of all permits required for building in Peshawar, the approval of the building plan has been noted to take the longest and to be the most expensive. Amongst the utilities connections, as in Lahore and Karachi, the electricity connection requires the most amount of time and money to be obtained.

Islamabad has a much simpler institutional framework, with the CDA owning and overseeing most of the land in Islamabad. It is leased to the people to whom the land is allotted by CDA. As stated above, there are some private holdings of land, and sales of this land must be approved by the CDA. The CDA reviews and approves building plans and inspects buildings during construction. The processes for utilities hook ups are clear in Islamabad although water shortages are a problem.

Some of the same authorities that issue licenses also conduct **inspections**, i.e. the Environmental Protection Agency, Building Control Authority, and agency that has jurisdiction over the land (LDA, etc.). There are also provincial-level Electrical Inspectorates that approve electrical installations prior to connection. Pakistan also has requirements for registration and inspection of boilers that involves document filing, an initial inspection and annual inspections, registration fees, registration certificates, and frequent unofficial fees (since the inspectors have considerable discretion in certifying boilers). The Ministry of Labor conducts inspections to ensure that labor conditions are complied with on the project. In Sindh, the Excise and Taxation Department carries out inspections to assess the value of the building. Private licensed contractors carry out some of the above-mentioned inspections. The numerous inspections are typically not coordinated and may not even be scheduled.

This appears to be both a management and a corruption issue. Inspections processes should be transparent and inspections should be risk-based. This would include coordinating inspections on construction sites to minimize the burden on developers.

In Lahore, just as the process of obtaining building permits and utilities connections is heavily influenced by corruption, so too is the process of inspections on construction projects. While the laws pertaining to inspections are clear and easily available at the relevant authority's office, rent seeking by the inspectors is a common practice and the inspectors can easily be influenced for a favorable outcome on the inspection. It has also been pointed out that while most inspectors are sufficiently trained, they often do not have the tools to carry out inspections in an effective manner.

Inspections by the KBCA, which are the bulk of inspections taking place in Karachi, are improving, as inspectors have received training and have greater capacity to carry out the inspection effectively. However, their professionalism and ethics are still questionable. The outcome of the inspection can be easily influenced. This includes issuance of completion permits, which carries a major risk regarding building standards and quality of the ultimate product. This can be seen in the number of inappropriate and substandard buildings throughout Karachi. Some developers have recommended the creation of independent/private management agents throughout the process of building who would ensure that health and safety and other regulatory standards are being met and would also ensure that regulations are being met *after* the building has been completed and has been occupied. The latter is a practice that has been largely missing from the construction industry in Pakistan.

In Peshawar, inspections are more frequent since the earthquake, but the inspectors can be paid off, so it is uncertain whether the diligence is causing improved quality. The Provincial and District Governments have pushed hard for the Building Control Officials to streamline the onsite inspection

> On September 1, 2007, a newly built bridge in Karachi called the Shershah Bridge collapsed only two months after its inauguration by President Musharraf. It cost Rs 3.5B to build, and it appears that design flaws were behind the collapse, although no official statement has yet been released by the committee that was set up by the Prime Minister to inquire into this matter. All this delay and confusion surrounding this incident are reinforcing public perception that once again, something is being hidden and vested interests are coming into play again. This is worrying as there are numerous similar infrastructure projects planned not only in Karachi but throughout the country. (For more details, please see: http://www.dawn.com/2008/03/14/top3.htm).

mechanisms. The mindset and approach of many of the inspectors has become more stringent for compliance with different standards; however, outcomes of the inspections can still be influenced in the builder's favor.

In Islamabad, processes for the construction industry for permits and inspections are largely centralized at the CDA. Approval of building plans and inspections of the building progress are both conducted under the auspices of the CDA. As in Peshawar, inspectors are paying more attention to the compliance with the building plans, especially the seismic controls, due to Islamabad's tragedy in the earthquake.

Labor inspections are carried out under the provincial Ministries of Labor. They have been frozen in Punjab for about two years and they are not applied consistently or rigorously in the other provinces. However, in 2007 the Federal Government approved a new labor inspection policy under the Federal Ministry of Labor which should improve provinces' labor inspections.

The primary regulator of the **real estate development business** is the Pakistan Engineering Council, which regulates construction professionals and issues licenses. It is computerized and relatively transparent.

Women experience difficulties in obtaining permits and dealing with inspections. Government employees are mostly male (women comprise only between 5% and 25% of government employees depending on the province[108]) and are reluctant to deal with women. There may be various reasons for this, including the fact that some male government employees are conservative and they have difficulty negotiating bribes from women, others could be that some male officials do not see women as individuals, or actors in the public space that have the authority to exercise a transaction. In addition, in some cases it could be an issue of honor and respect to the customs that men and women should not interact in the public area. The chapter on Gender of this report sheds more light on this issue.

According to statements by multiple Pakistani professional women, women also face sexual harassment from employees and other customers at many government agencies. The situation appears to be worst at the "offices" of Patwaris, where women would not be welcome, comfortable, or safe.

Supporting Institutions

The institutions that support real property development include lawyers, courts, government agencies, professional associations, venues for public private dialogue, and financial institutions.

Private lawyers tend to be generalists and rarely specialize in real property issues. There are some very talented lawyers in the major cities, but most Pakistan-educated lawyers have not received the necessary training to effectively represent developers.

Courts are generally inefficient, with unqualified judges. The courts are overburdened with property disputes, which is not surprising given the state of the laws relating to registration and titling. During the last five years, the courts and other supporting institutions have increased involvement in zoning issues. The Supreme Court made rulings that some buildings that were not compliant had to be torn down. However, the lack of by-laws for zoning make compliance actions difficult.

There is **public private dialogue** on zoning in Lahore, but results of the dialogue are uncertain. There is a lack of dialogue on environmental impact. Government officials and business interests build what they want to without any discussion about environmental impact. This also seems to be the case in other cities.

There is a relatively new public sector body formed under the Ministry of Finance called the **Infrastructure Development Facility** (www.ipdf.gov.pk), which is already up and running, and has a healthy project pipeline. Its purpose is to facilitate the structure, promotion and closing of Public Private Partnerships (PPPs) for infrastructure development on behalf of the national, provincial and local governments as well as State Owned Enterprises.

Standards for the construction industry are not enforced and often the builders do not meet minimum standards because they do not have to –it is often easy to get a completion certificate. There is at least one professional project management group: National Engineering Services Pakistan (Pvt.) Limited (NESPAK). In addition, the GOP is conducting seminars on the new Building Code for engineers and other construction professionals.

The **Pakistan Council of Architects and Town Planners** is a government body that allows members to practice nationally. But in many cities architects must also be registered with the

108 Depending on the jurisdiction. See, Federal Bureau of Statistics, Economic Census 2005; UNESCAP, Report on the State of Women in Urban Local Government in Pakistan.

Cantonment, DHA, or development authority. The **Institute of Architects, Pakistan** is another government body that acts as a trade organization.

The **Chambers of Commerce** in Lahore, Karachi, and Peshawar are very professional organizations with knowledgeable staff. The construction related chapter of each organization has been noted to be an effective avenue for collecting and dispersing information on important issues (with some chapters being stronger than others such as Karachi being the strongest). Some of the industry's leaders in each city are represented in the organization and have proven to be extremely forthcoming regarding the real issues affecting the industry and their businesses. The leaders of the sub-committees also have the ability to get to the policy makers in their governments but as with many things in Pakistan, vested interests do come into play at times.

There is a lack of **bank** financing for large construction projects so developers raise money privately for developments. The National Bank of Pakistan is now encouraging banks to finance construction projects, but it is doubtful that developers will want to obtain bank finance since they can raise the funds elsewhere and banks would require oversight of the project.

With the infrastructure plans of the GOP and provincial **governments,** the public sector will increasingly be a customer for the construction industry. In general, it is easier for builders to work for the public sector than for the private sector. The government is more relaxed about the rules and regulations and there is less corruption in the building process (we have not evaluated the situation in the procurement process).

There are at least 80 **industrial parks** or zones in Pakistan, but most suffer from poor road and utilities infrastructure.

There is no multiple listing service in Pakistan so finding land to build on can require communications with numerous **realtors**. The industry is unregulated and generally unprofessional. Realtors are not required to obtain licenses.

Most professions are open to Pakistani women, at least in many parts of the country, but according to our interviews, real estate development remains a male-dominated profession that women are reluctant to enter. Women's reluctance is probably due to societal norms as well as the harassment that often ensues from interaction with people from all walks of life, including rural and uneducated people and corrupt government bureaucrats. The architecture and legal professions are more hospitable for women and an increasing number of Pakistani lawyers are female. However, in these professions, and in the business world in general, there is still something of a "boys' club" that makes it more difficult for female professionals to get clients. Jobs on construction sites may be a mixed blessing: women make up at least 15% of India's construction workforce, but they often have the most menial jobs that are dangerous and unhealthy.

Social Dynamics

There is strong demand among construction industry professionals and the business community for reform of the land registration, titling, and zoning processes. There appears to be a growing recognition among citizens and governments that these processes are holding back Pakistan's economic development. However, the GOP and provincial governments have not paid appropriate attention to these issues and there is still insufficient momentum for the much-needed and overdue overhaul of the registration and titling systems, nor has there been much movement in serious urban planning, except perhaps in Karachi.

Because the lack of clarity in the laws and the rent seeking in the institutions actually in some way cater to developers, particularly big developers, there is little government oversight of issues

In Afghanistan, poor land titling and tenure insecurity hinder the use of the country's land assets and deter foreign investment. Issues include: 1) unclear property rights and tenure security, 2) disorganized land registration systems, 3) deficient legal framework, and 4) overlap and friction between customary and statutory law. The USAID Afghanistan LTERA Project is developing a transparent, efficient, and accessible land registration system incorporating best international practices. The overall objective of the program in to establish a consolidated land administration system that unites all land mapping, registration, record keeping, and titling functions into one database for use by investors, courts, and land office administrators. Key achievements of the project include:

- Restored and classified over 6 million legal documents including over 650,000 property title deeds.
- Computerizing archives in the land registries in 10 provinces.
- Reduced the steps for registration of real property from over 30 to 4 for land and 3 for buildings.
- In four provinces and in Kabul the project has established community based planning and property dispute resolution and a women's legal defense pilot programs.
- Conducted mapping and surveys to establish property boundaries in the pilot areas.
- Working with informal settlements and municipalities to recognize customary deeds in the formal property registry system.
- Drafted a national land policy and working with various ministries to develop a national land law combining several individual pieces of land related legislation.

surrounding a development, e.g. parking, electricity, fire department capacity. NGOs and citizen activists are often the only ones left to keep an eye on these issues. They undertake public interest litigation, though they run into the difficulties in the court system that are discussed above. Their success is limited although on the rise in the past few years. Very recently some buildings have been brought down in Pakistan by the intervention of the Supreme Court through the persistence of these groups and these incidents have come to serve as examples and these social groups hope they will set some precedents.

Another example of persistence by these social groups is the Canal Road Widening Project in Lahore which has gathered much attention in the press and the flaws in this program have been widely discussed. It is termed a disaster for the environment of Lahore and the persistence of the social groups have actually led to an injunction on the project by the Supreme Court.

Many of the problems in implementation of laws relating to land and construction stem from government employees that are often unprofessional and under-skilled. The problems stem from recruitment that is not based on skills, poor management, weak training programs, a lack of incentive and disciplinary systems, and low pay compared to the private sector. With support from the World Bank, the GOP has made a commitment to develop a more qualified and professional civil service. This includes attempts to de-politicize recruitment by giving the Federal Public Service Commission more autonomy and revising performance evaluation and promotion. The Government has moved to improve training through the Civil Services Academy, the four National Institutes of Public Administration, and the Pakistan Administration Staff College, which will be merged into a new National School of Public Policy.

Overcoming vested interests and reforming the laws, regulations and bureaucracy that are stifling real estate development requires leadership from the Government, as well as advocacy and monitoring from businesses. Unfortunately, there has been insufficient leadership from federal or provincial level governments and the business community has been fairly passive in advocating for reforms.

Recommendations

Short Term

- Facilitate dialogue within local governments and between governments and the private sector regarding commercial development of their land holdings, which include about 40% of Pakistan's land.
- Conduct seminars and public education on major land issues facing Pakistan, including titling and registration, urban planning, and PPPs for infrastructure.
- In each city create an autonomous body that will develop the zoning by-laws. Such body will need to incorporate the multiple players: army, local government, provincial government, federal government, and should have civil society members as well.
- Commence dialogues in each major city to agree on a vision and urban plan. Thereafter, determine the level of demand for the plan, and finally complete the zoning based on the plan.
- Determine whether support is needed for implementation of Karachi 2020.
- Develop process maps for issuing construction permits for each city and make them available as "roadmaps" to guide developers through the permit process.
- Clarify the roles of various government agencies –at the national, provincial, and municipal level– regarding zoning and construction licenses and permits.
- Conduct a pilot project to streamline the construction permits process in one municipality: mapping the processes; eliminating unnecessary regulations and procedures; training municipal employees.
- Conduct a pilot project in one municipality to reduce the burden of inspections: eliminate unnecessary inspections; streamline and increase transparency of the inspections process; review competency of inspectors; train inspectors; establish complaint mechanisms.
- Eliminate or revise the Boiler Act of 1923.

Priority Recommendations

The following activities are most likely to have significant effect on eliminating major constraints to real estate development:

- Amend laws on land titling and registration.
- Develop centralized provincial land registries and eliminate or reform the patwari system.
- Revise provincial and municipal laws and regulations to provide for a streamlined process for issuing construction permits.
- Develop one stop shops for construction permits in large cities.
- Conduct replicable pilot activities to automate licensing and permit processes.

Long Term

- Develop urban plans and new planning regulations and zoning bylaws in at least one pilot city. The plans should include provisions on the infrastructure needed to support existing and future developments. This planning must be based on public private dialogue and input from Pakistani and international experts, with a transparent process and publicity of the master plan and zoning.
- Reform planning and building legislation and regulations, so that they clarify the roles and responsibilities of national, state and municipal authorities, harmonize site development requirements throughout the country, establish a process for zoning variances, require that permit rejections be in writing, and provide for efficient and transparent appeals.
- Separate those who do the zoning from those who implement it, and create an autonomous body that develops zoning bylaws. For example the functions of the LDA should be separated.
- Amend laws on land titling and registration, including elimination of parallel regimes for land transfer, ban of oral transfers, and repeal of Transfer of Property Act section 53-A, which allows a person with possession and a claim to have made partial payment to sue for specific performance of a sale agreement. Make the registration of *all* property transaction related documents compulsory (including declaration that *Benaami* transactions are unlawful), and amend the Registration Act and the Stamp Duty Act accordingly.

USAID helped several Ukrainian cities to establish one-stop shops for licenses and permits. In the city of Illichvsk, a one-stop shop decreased the number of documents needed from a developer for a permit to start a construction project from 10 to 6; the official costs for the permit dropped from $168 to $30; and the number of visits to government authorities dropped from 27 to 3. As a result, the percentage of entrepreneurs who used unofficial payments to obtain the permits dropped from 82% to 25%.

- In each province, develop a centralized provincial registry. Then develop a national title registry system with other forms of transfer and registration abolished and registration in the provincial/national registry mandated by law. As an initial step, the provinces and cities should update the existing records, ensure that all future transactions are registered and computerize the Registrar's Department to enable an automated land registration system to produce a property index register relating to all transactions in a property quickly and in a transparent manner. To eliminate overlapping jurisdictions, revenue authorities and *patwaris* should be forbidden from maintaining parallel ownership records. However, reform of the *patwari* system should be undertaken with caution since the system has been an important part of rural life in Pakistan for centuries. Pakistan should analyze how reforms of similar systems – especially in Bangladesh and India – have fared.

> Disposition of public lands can be done in various ways and should be done transparently and in a way that encourages appropriate use and is environmentally sound. For example the land of the Royal Palm club in Lahore was previously leased to a golf club at a nominal rate. Subsequently, the government took the land back and leased it for $ 30 million for 30 years to a private developer who has retained the golf club, but built better facilities.

- Restructure the CDMD and provide it with a mandate to develop integrated strategic and action plans for Peshawar.
- Develop a laws or regulations requiring licensing of real estate agencies and brokers. The latter should be individual estate brokers working for estate agencies or as freelance estate brokers. In both cases, there should be testing and continuing education requirements and perhaps a bond or fund requirement to cover damages from fraud or negligence.
- Encourage women to exercise their rights to real property and to enter professions related to real estate development, including developer, architect, lawyer, and broker, through public education campaigns and establishment of women's professional associations that can advocate for women's inclusion and rights.
- Dispose of land in prime commercial locations owned by the provincial and local governments and used for less productive purposes, or presently leased out to the private sector for a nominal rent. In this regard the NWFP Local Government Ordinance (LGO) 2001, that curbs the local governments from placing their properties to more efficient and productive use, also needs amendment. The disposition process must be transparent.
- Develop the desired process for issuing construction permits then revise municipal bylaws to streamline the process for issuing permits. All relevant government agencies and private sector and other stakeholders must participate to ensure buy-in and their uniform application and enforcement across the city. The revised bylaws should eliminate unnecessary permits, procedures and fees, eliminate discretion as much as possible, and consolidate reviews and inspections.
- Develop legislative or regulatory requirements for inspections, including publication of information on legislation, regulations, procedures and fees for inspections; notices of inspections being delivered in advance by phone or e-mail; time limits for inspections; and complaint mechanisms.
- Develop a risk-based approach to inspections, with databases that track risks by sector and business as well as repeat offenders, and targets inspections to those activities and firms where risks are highest.
- Train building inspectors and environmental inspectors and improve human resource management in inspectorates.
- Amend the Environmental Protection Act or develop regulations to provide more objective and concrete guidance on the degree of environmental impact control needed for various types of projects. For example, some types of activities, sizes of projects, and locations might require a full EIA and others might merit fast-track permits. In addition, the environmental tribunals provided for under the EP Act to enforce the laws need to have judges appointed.
- Consider eliminating or privatizing building inspections and electricity inspections. Inspections could be outsourced to private firms or even eliminated if proper insurance coverage is made mandatory. Insurance companies would likely be vigilant in overseeing proper construction and maintenance to minimize claims.
- Revise provincial rent restriction laws to improve the relationship between landlords and tenants, encourage development of apartment

buildings, and cut down on litigation over landlord-tenant issues.

- Develop one stop shops or single windows for construction permits and site inspections, including permits from various government agencies and utility connections. This should begin with pilot one stop shops in a large city and a small city in an earthquake affected area. An alternative would be to attempt to improve the existing institutions, but in some jurisdictions, e.g. Peshawar, the situation may be irreparable in terms of mismanagement and corruption and it is probably better to build new institutions.
- Automate one stop shops and government agencies dealing with land registration and construction permits. This will minimize human interaction and opportunities for corruption, create efficiencies in information sharing, and allow women to avoid the unpleasant experiences related to in person visits to government agencies.
- Review need for various utilities fees, taxes, and surcharges, and methods for setting fees; consider basing fees on market rates or cost recovery and consider eliminating subsidies. Require published schedules of utilities fees and time limits for utilities connections.
- Educate businesses on permits and inspections processes and on their rights.
- A donor could provide training for the City District Government Karachi (CDGK) staff involved in implementation of the Plan, training for the Mega City Steering Committee and Karachi Panning and Development Control Committee, training of the professions we mentioned, and technical assistance to the in implementation of the Master Plan.
- Donors should also consult with the CDGK to determine its needs, but assistance could include: development of an implementation plan and regulations including revision of the Karchi Builing and Town Planning Regulations; reform of the revenue (taxation and fees) system; development of a transport plan (including mass transportation, traffic, and parking strategies); and development of utility, water and waste management strategies.

ATTACHMENT 1: COMPILATION OF RECOMMENDATIONS

EMPLOYING WORKERS		
No.	**Type**	**Recommendation**
1.	**General**	• Immediately begin leveraging in-house capabilities, such as the Department of Justice-sponsored Rule of Law Attorney, to assist in implementing the forthcoming labor law regime. An interagency memorandum of understanding should be drafted or amended in order to begin this effort. Major facets of labor law implementation should be examined with the objective of facilitating common-sense procedures. Some examples include: ensuring that redundant, inapplicable, or contradictory laws are publicly repealed; ensuring that the implementing codes are consolidated, easy to read and understand, and published ubiquitously; ensuring that implementation drafters do not operate in a "stovepipe" and that they secure the assistance of relevant external ministries, including finance; and educating the implementation drafters about the economic rationale underlying the 2002 Labor Policy and helping them to communicate the benefits of free-market labor practices through the implementation documents. Other large donors are supporting the technical aspects of consolidating and revising the labor laws, but implementation remains a problem in Pakistan. The event horizon for this activity is within the next five years and substantial assistance will be required. Rational implementation will be a long-term effort. • Begin an effort to assist in the reformation of judicial administration in Pakistan. Starting first with a practical study of judicial inefficiency, gain metrics with which to enlist Government of Pakistan partnership. This effort should be undertaken by organizational process improvement specialists, not lawyers. This could be accomplished by outsourcing a study that focuses on questions such as: "Ranked in order, what Pakistani judicial processes are most inefficient?" and "How much time and effort could be saved by implementing what changes? At what cost?" For the long term, assist with a multi-year reformation of judicial administration in order to free judges to focus on the business of law and thereby remove the backlog of cases that has effectively halted the courts. This approach promises greater yield than simply adding more judges to the currently dysfunctional system.
		• Immediately study the money flows of all employee benefits schemes (including those administered at the provincial level). Key personnel in the government must assist in order to combat entrenched beneficiaries of the current schemes. It is likely that waste, fraud, and large-scale structural inefficiency will be discovered during this endeavor. The current problem is that there is not one set of authoritative numbers that show where the money actually comes from and where it goes. The completion horizon for this study is unknown, but will almost certainly take more than two years. The likelihood of follow-on opportunities to

EMPLOYING WORKERS		
No.	**Type**	**Recommendation**
		assist in the significant reform of employee benefits schemes is high. The high cost and low perceived value of the current employee benefits scheme is a major drag on the effectiveness and efficiency of the labor regime. Lip service is being paid to possible reform of these schemes, but actual change is unlikely until the scope and nature of the problem is objectively revealed. • Immediately engage in simple, effective, and visible rural development projects (such as clean water) under the aegis of economic development. These efforts will yield several results: (1) access to clean water improves the health of the work force, (2) ready access to water reduces the time spent (sometimes all day) gathering water, which in turn frees time for employment in a remunerative sector and further schooling, and (3) most of the current water-gatherers are women—freeing them from gathering water will free them to work more productively and to be educated. Finally, Pakistanis interviewed during this assessment said that they would like to see more tangible results of the special relationship that exists between the United States and Pakistan, and expressed slight resentment over U.S. aid to the Pakistani military, an organization that has ruled Pakistan's civilians for much of the country's history. • Immediately study ways to influence unconscious gender norms regarding women in the workplace. Workplace data indicates that the increase in working women is being viewed as a success for Pakistan by men, women, and the market alike. It is likely that the major barrier to greater participation in the work force by women is simply that "no one has really thought of it." In other words, unconscious stereotyping of gender roles by men and women are preventing new behaviors. Focus on reducing these unconscious stereotypes and on bringing about increased opportunities without seeming to favor one gender over the other and without seeming to push an agenda. • Immediately begin to assist labor unions in developing capacity. It is essential that labor unions be assisted during this critical period, when the substance and implementation of the future body of labor law is being determined. Labor unions require assistance in order to develop effective methods of agenda formulation, representative techniques and ethics, policy planning, negotiating skills, and general economic education. This assistance will foster an outlook of productive participation with industry in the coming labor regime. An excellent (and under-utilized) example of this type of development is the work being done by the Solidarity Center in Islamabad. • Immediately study the efficacy of bringing business development expertise (such as sector/industry development planning) directly to the district level. The recent popularity of devolution and the rise of industrialists in local government may set the conditions necessary for significant economic growth centered in the local districts. If so, it will be critical that they develop an architecture that is ultimately compatible with larger enterprises in Karachi and beyond the borders. Improvements in this area are likely to stimulate both the demand for and supply of quality labor. Such a study might begin by asking this question: "Would district *nazims* want external business development expertise? Of what type and under what conditions?" • Incubate think-tanks. There is a dearth of independent policy discourse in Pakistan. Think-tanks are emerging, but only in large cities and only with industrial backing. More institutions of educated, independent, critical thinking are required in order to bring new ideas and methods to the public debate and

EMPLOYING WORKERS		
No.	**Type**	**Recommendation**
		to the government's attention. Industrial dynamics in Pakistan have shown that a good idea catches on. Good policy ideas may be an important step towards revitalizing representative democracy and further empowering the legislature. This is a critical component of economic growth—without business-enabling legislation, business cannot grow. Immediately plan to support private institutions of public thought that will hold real promise for elevating public discourse on wealth-generating systemic reform. Begin by canvassing Pakistan for progressive thinkers with a penchant for information dissemination. Then move into vetting, training on self-financing and developing influence, and direct financial support of nascent think-tanks.

REGISTERING PROPERTY		
No.	**Type**	**Recommendation**
1.	**Real Property / Short Term**	• Microfilm or scan into a computerized database all land records in the offices of Provincial Land Registrars, as well as those maintained by *Patwaris* and the Revenue Collectors offices, for preservation and ease of indexing and searching. • Revamp provincial land registration offices: conduct physical upgrades of the facilities, and sort, clean, and restore documents and place them in secure, fireproof storage. • Digitize and index deeds, mortgages, and other land instruments and link them to the surveyed land plots they relate to, so that such information can be found in minutes and read by any member of the public on a computer screen. • Conduct public education and awareness of land tenure rights, especially for women in rural areas. • Conduct land tenure/titling education and training programs for civil district court judges. Couple this education with the establishment of specialized land disputes courts or tribunals (subject to Constitutional limitations) and strict case management. • Establish land tenure/titling education and training programs for governmental officials involved in land registration processes. • Establish a uniform system of land mapping using aerial photography and satellite surveying on a large scale, initially in Punjab and Sindh Provinces on a most urgent basis. Establish an automated (computer database) cadastral system similar to the one being considered in Lahore.
2.	**Real Property / Long Term**	• Create a single land registry in each Province, and eliminate duplication in other parallel systems. This would entail, at a minimum, merging the registries employed by various housing authorities and cooperatives, as well the *Patwari* system, into a single system of land registration. • Reform the non-transparent practices surrounding state land and land held by various governmental and cooperative authorities and societies. As practical, there should be a single governmental body that owns or coordinates ownership of all state land throughout Pakistan. Also, a long-term program should be adopted to privatize state land, particularly those large areas that are not actually used for public purposes • Reform the existing Land Registration Act to bring it more in line with international best practices, especially in abolishing oral gifts and transfers of land interests.

REGISTERING PROPERTY		
No.	**Type**	**Recommendation**
3.	**Intellectual Property / Short Term**	• Continue to integrate all management of IPO into a centralized registry, including bringing trademarks, patents, and copyrights registry offices into a single facility under a single management structure. • Microfilm or scan into a computerized database all IP records in the regional trademarks, patents, and copyrights registries for preservation and ease of indexing and searching. • Revamp regional trademarks, patents, and copyrights offices: conduct physical upgrades of the facilities, and sort, clean, and restore documents and place them in secure, fireproof storage. • Fully automate indexing of trademarks, patents, and copyrights registries so that such information can be found in minutes and read by any member of the public on a computer screen, including eventually remote Internet access. • Conduct public education and awareness of IP rights, especially about national economic harm and the personal and economic injury caused by counterfeit products and piracy. • Establish IPR education and training programs for civil district court judges and establish specialized IPR courts or tribunals • Establish IPR education and training programs for government officials involved IPR processes. • Better coordinate IPR enforcement activities.
4.	**Intellectual Property / Long Term**	• Foster close coordination and increased input from industry and trade representatives during the reform of IP laws and regulations. • Resolve the TRIPS-compliance debates, especially those involving the pharmaceutical industries, and encourage greater FDI in IP-related areas.

GETTING CREDIT				
No.	**Type**	**Recommendation**	**Priority**	**Duration**
1.	**General**	• Working with the MOF and the apex institutions for credit providers (SBP and SECP), establish a formal standing committee to develop and pursue financial sector and credit reform. The finance system is multifaceted and complex: decisions on capital market instruments can affect retail lending to SMEs, even when those effects are unintentional. Recognizing this, the strategy should be comprehensive, taking into account the overall reach of reforms. It should also be segmented to address problems for: large, SME, and micro loans; agricultural versus commercial credit; industry segments; gender issues; and long-term versus short- and medium-term impact. • Establish a formal mechanism for the standing committee to seek input and analysis from stakeholders, especially as related to the various market sectors and their unique needs. Identification, analysis, and prioritization of reforms should result from substantial public private dialogue. • Accompany all reforms with extensive, targeted public information and education campaigns that use stakeholder organizations (such as business associations) and the media. Many reforms lack impact because they remain "undiscovered" by the intended beneficiaries. • Establish a banking reform strategy. The SBP has announced its need for technical assistance in preparing a financial sector strategy for Pakistan. Specifically, it needs support in preparing an implementation plan for reforms needed under Basle II and for the overall financial strategy, including how to address issues of cost of financial intermediation (with spreads in Pakistan being very high) and competitiveness, a strategy for financial inclusion, and a strategy for technology and governance reforms, among others. Assistance should be provided. • Amend banking and finance laws. In addition to overall banking financial sector strategy, help to address the specific reform needs set forth in the Framework Law discussion within a comprehensive strategy context.		
		• Enhance collection and dissemination of credit information by integrating the currently segmented system and expanding requirements for information reporting. Mandate reporting of micro-lending to establish credit histories for women. • Improve identification of women. Credit information starts with registration of individuals, and many women are unregistered. Combine registration with banking services, but also increase registration by offering or mandating registration at birth by shifting the burden of registration onto the healthcare providers (including midwives) who deliver babies. The National Database and Registration Authority would be an able partner: it has the mandate to register births and has proven to be		

GETTING CREDIT				
No.	**Type**	**Recommendation**	**Priority**	**Duration**
		very user friendly in registration and other services. • Create a national collateral registry and secured lending system that permits registration of pledges on movable property by any creditor against any borrower, whether an entity or individual, for a broader range of property types. Expanded use of real property should also be encouraged, but this will require extensive system reform in the real property system. • Eliminate hidden liens. Regulate oral transfers of property by providing protection against competing claims only if the transfer is registered. This will need careful justification and examination in light of Islamic traditions, but the traditions can coexist by honoring the gift but permitting state protections only after the oral gift has been registered. • Expand the protections enjoyed by leasing companies to the enforcement rights of secured lenders. Comprehensive court reform will take years, but partial reforms affecting credit can be achieved much more rapidly. • Improve the handling of inheritance, possibly by drawing from models from other Muslim countries. This will necessitate careful study followed by extensive public education to defuse potential emotional reactions. Existing inheritance atomizes land holdings and reduces asset accumulation for women.		

GETTING CREDIT				
No.	**Type**	**Recommendation**	**Priority**	**Duration**
		• Establish a registry (within the secured lending registration system) for leased assets to further protect lessors and to expand the range of assets that can be utilized for leasing. Particular efforts should be made to enhance agricultural leasing programs for equipment and livestock. • Expand use of warehouse receipts. Agricultural lending on grain can and should be enhanced by a national system of warehouse receipts. • Eliminate mandatory personal liability. Banks may wish to require personal guarantees from directors or owners of young or risky SMEs, but the decision should be left to the banks. Removing mandatory personal liability requirements would make formalization through limited liability companies more attractive. • Establish binding arbitration. Pakistan should establish appropriate regulations in support of the New York Convention, and also amend domestic laws to recognize binding domestic arbitration that is not subject to court challenge. • Develop credit insurance and credit-enhancing insurance. Upon further study, introduce affordable insurance products to better protect lenders and borrowers from unexpected loss (especially of pledged property), and thus lower risks of lending. • Improve accounting standards. A combination of public education on the benefits of solid accounting (including access to finance) and the introduction of affordable accounting services (including accounting software that conforms to the new International Accounting Standards for non-Quoted Companies) is needed to change the dynamics of unreliable accounting that characterizes the much of SME sector. • Reform the bankruptcy regime. Bankruptcy reform will take years, but is needed now. Long-term, comprehensive reforms should begin immediately, starting with the introduction of reorganization mechanisms and borrower-initiated bankruptcy protection. A draft reorganization law has been prepared, but needs to be pursued by policymakers. Substantial assistance will then be needed to ensure effective implementation.		
		• Develop products to address gender imbalance. Many women need a “credit plus” approach—access to credit coupled with assistance in applying for loans, preparing business plans and accounts, and sometimes even personal registration to receive a national identity card. The “plus” services may need to be offered through separate entities if the costs of such services cannot be absorbed effectively by banks that provide them, a point to be further analyzed. • Develop understanding. Public information on the benefits of women’s participation in the economy, the rights of women to inherit, work, and obtain loans, and the opportunities available to women is crucial but currently insufficient. Extensive public		

GETTING CREDIT				
No.	**Type**	**Recommendation**	**Priority**	**Duration**
		and civic education is needed. • Develop competition. Experience shows that Pakistani bankers respond to competition within their own banks and between banks. Establish awards and competitions for reaching women who are not using formal banking services. The competition should not simply reward increased lending, but improved approaches to reaching women, so that the approaches will be shared as a part of the competition, improving general knowledge for all participants.		

<table>
<tr><th colspan="3">TRADING ACROSS BORDERS</th></tr>
<tr><th>No.</th><th>Type</th><th>Recommendation</th></tr>
<tr><td>1.</td><td>Short Term</td><td>Land Border Customs Stations.
• A study be conducted to project the trade growth across the land borders and, based on the findings, recommend improvements to the physical infrastructure, cargo handling equipment and manpower.
• A training program in skill development be developed and executed for stakeholders such as customs, goods clearing/forwarding agents, exporters and business women, exporters, importers and transporters.
Trade Development Authority of Pakistan (TDAP).
• Technical advice to support the reengineering of its export development functions.
• Support of consultants in upgrading and increasing productivity of export items with large growth potential e.g. fruits, flowers, gems and jewelry.
Intellectual Property Organization of Pakistan (IPO-P).
• IPO-P is in the process of providing training to the Police, Customs, FIA (the elite investigative agency) and the Judiciary, with reference to IPR offences. Technical assistance may be extended to augment this programme for skill development in understanding the laws and identification of counterfeit goods.
Gender
• Conduct an in-depth study of the working conditions of women in urban, rural and tribal areas to understand women's problems at work and to assess needs for concrete assistance to address their more common problems/issues.
• The GOP's programme "National Gender Reform Action Plan (GRAP)" needs extensive support. The plan is being implemented by the Women Development Division of Government of Pakistan.
• "Tawana Pakistan" programme of the Government of Pakistan should be pursued and supported as mentioned in the body of the report. Secondly it should be supplemented and twice as many districts should be covered with support from foreign donors, for girls of ages 5—16, so that they complete 10 years of their education.
Business Visas. Consult with US Embassy on issuance of visa to Pakistan business people.</td></tr>
<tr><td>2.</td><td>Long Term</td><td>Customs.
• Training for Customs officers in cargo processing at all Customs Houses and Customs Stations, with following components:
• Study tours to border Customs posts of other countries having higher level of customs skills and experience in trade facilitation.
• Training of officers in trade facilitation/processing of cargo,
• Integrity management teams of FBR–exposure visits and training courses/workshops.
• Develop customs stations at Ghulam Khan and Qamar Din Karez to reduce pressure on Torkham and Chaman.
• Upgrade of Customs Training System / Institutes, especially at Karachi and Islamabad and creation of satellite training facilities at Peshawar, Multan, Quetta and Lahore.
Freight Forwarding Agents, Transporters and Warehousing.
• Non–asset based services such as freight forwarding agents should be provided bank funding on the basis of their cash flow or turn-over as collateral, at preferential rates.</td></tr>
</table>

TRADING ACROSS BORDERS		
No.	**Type**	**Recommendation**
		• Trucking companies, if instituted as legal entities under the law, should be provided dedicated funding for building up fleets of medium and long haul trucks / trailers as per recognized standards, at preferred rates for 3-5 year. • The warehousing sector requires development as a support service in helping the trade and industry become part of the global supply chain. Incorporated companies in this sector may be declared "industry" to qualify for obtaining financing from commercial banks at concessionary rates. This is essential as the free storage time has been reduced from 10 days to 5 days and is now proposed to be reduced to 3 days. **Manpower Training Institutes in Textile Parks.** Technical support through the Ministry of Textiles is recommended for establishing training institutes in the three Textile Parks which Government of Pakistan is developing at: • Karachi : (Textile City and Garment City) • Lahore: Garment City • Faisalabad: Garment City • Institutes at Lahore and Faisalabad should have dedicated wings for training of women and in Karachi one training institute each may be established for men and women. All these institutes should have satellite garment training institutes in Multan, Peshawar, Quetta, Hub and Rawalpindi / Islamabad. The latter can later grow into full fledged institutes. **National Tariff Commission (NTC).** • Technical support for capacity building **Gender.** • Study tours. • Training workshops/seminars to build capacity of women to prepare them for taking up supervisory roles. • Support SMEDA programme for the skill development of women from Tribal areas in Peshawar. **SMEs and Large Scale Business** (iii) SMEs require capacity and skill development in "Doing Business" to enable them to become part of the global supply chain and to prepare them fight unfair trading practices of other countries e.g. dumping. (iv) Large Scale Business Houses having export business or export potential, need to learn techniques of strategic decision making with particular reference to exports and investment. Workshops / seminars in this area involving senior executives of such business houses will provide useful exposure. **Foreign Trade Institute.** The existing Institute is inadequate for the role now proposed. This Institute therefore needs immediate up gradation and capacity building. **Overall need assessment.** Many proposals have been made in the body of the report and in our recommendations, both short term and long term. In each such a need assessment activity is involved. It may be worthwhile to conduct one or more studies for that purpose in the sectors picked up for assistance.

DEALING WITH LICENSES		
No.	**Type**	**Recommendation**
1.	**Priority Recommendations**	The following activities are most likely to have significant effect on eliminating major constraints to real estate development: • Amend laws on land titling and registration. • Develop centralized provincial land registries and eliminate or reform the patwari system. • Revise provincial and municipal laws and regulations to provide for a streamlined process for issuing construction permits. • Develop one stop shops for construction permits in large cities. • Conduct replicable pilot activities to automate licensing and permit processes.
2.	**Short Term**	• Facilitate dialogue within local governments and between governments and the private sector regarding commercial development of their land holdings, which include about 40% of Pakistan's land. • Conduct seminars and public education on major land issues facing Pakistan, including titling and registration, urban planning, and PPPs for infrastructure. • In each city create an autonomous body that will develop the zoning by-laws. Such body will need to incorporate the multiple players: army, local government, provincial government, federal government, and should have civil society members as well. • Commence dialogues in each major city to agree on a vision and urban plan. Thereafter, determine the level of demand for the plan, and finally complete the zoning based on the plan. • Determine whether support is needed for implementation of Karachi 2020. • Develop process maps for issuing construction permits for each city and make them available as "roadmaps" to guide developers through the permit process. o Clarify the roles of various government agencies –at the national, provincial, and municipal level– regarding zoning and construction licenses and permits. o Conduct a pilot project to streamline the construction permits process in one municipality: mapping the processes; eliminating unnecessary regulations and procedures; training municipal employees. o Conduct a pilot project in one municipality to reduce the burden of inspections: eliminate unnecessary inspections; streamline and increase transparency of the inspections process; review competency of inspectors; train inspectors; establish complaint mechanisms. o Eliminate or revise the Boiler Act of 1923.
3.	**Long Term**	• Develop urban plans and new planning regulations and zoning bylaws in at least one pilot city. The plans should include provisions on the infrastructure needed to support existing and future developments. This planning must be based on public private dialogue and input from Pakistani and international experts, with a transparent process and publicity of the master plan and zoning. • Reform planning and building legislation and regulations, so that they clarify the roles and responsibilities of national, state and municipal authorities, harmonize site development requirements

DEALING WITH LICENSES		
No.	**Type**	**Recommendation**
		throughout the country, establish a process for zoning variances, require that permit rejections be in writing, and provide for efficient and transparent appeals. • Separate those who do the zoning from those who implement it, and create an autonomous body that develops zoning bylaws. For example the functions of the LDA should be separated. • Amend laws on land titling and registration, including elimination of parallel regimes for land transfer, ban of oral transfers, and repeal of Transfer of Property Act section 53-A, which allows a person with possession and a claim to have made partial payment to sue for specific performance of a sale agreement. Make the registration of *all* property transaction related documents compulsory (including declaration that *Benaami* transactions are unlawful), and amend the Registration Act and the Stamp Duty Act accordingly. • In each province, develop a centralized provincial registry. Then develop a national title registry system with other forms of transfer and registration abolished and registration in the provincial/national registry mandated by law. As an initial step, the provinces and cities should update the existing records, ensure that all future transactions are registered and computerize the Registrar's Department to enable an automated land registration system to produce a property index register relating to all transactions in a property quickly and in a transparent manner. To eliminate overlapping jurisdictions, revenue authorities and *patwaris* should be forbidden from maintaining parallel ownership records. However, reform of the *patwari* system should be undertaken with caution since the system has been an important part of rural life in Pakistan for centuries. Pakistan should analyze how reforms of similar systems – especially in Bangladesh and India – have fared. • Restructure the CDMD and provide it with a mandate to develop integrated strategic and action plans for Peshawar. • Develop a laws or regulations requiring licensing of real estate agencies and brokers. The latter should be individual estate brokers working for estate agencies or as freelance estate brokers. In both cases, there should be testing and continuing education requirements and perhaps a bond or fund requirement to cover damages from fraud or negligence. • Encourage women to exercise their rights to real property and to enter professions related to real estate development, including developer, architect, lawyer, and broker, through public education campaigns and establishment of women's professional associations that can advocate for women's inclusion and rights. • Dispose of land in prime commercial locations owned by the provincial and local governments and used for less productive purposes, or presently leased out to the private sector for a nominal rent. In this regard the NWFP Local Government Ordinance (LGO) 2001, that curbs the local governments from placing their properties to more efficient and productive use, also needs amendment. The disposition process must be transparent. • Develop the desired process for issuing construction permits then revise municipal bylaws to streamline the process for issuing permits. All relevant government agencies and private sector and

DEALING WITH LICENSES		
No.	**Type**	**Recommendation**
		other stakeholders must participate to ensure buy-in and their uniform application and enforcement across the city. The revised bylaws should eliminate unnecessary permits, procedures and fees, eliminate discretion as much as possible, and consolidate reviews and inspections. • Develop legislative or regulatory requirements for inspections, including publication of information on legislation, regulations, procedures and fees for inspections; notices of inspections being delivered in advance by phone or e-mail; time limits for inspections; and complaint mechanisms. • Develop a risk-based approach to inspections, with databases that track risks by sector and business as well as repeat offenders, and targets inspections to those activities and firms where risks are highest. • Train building inspectors and environmental inspectors and improve human resource management in inspectorates. • Amend the Environmental Protection Act or develop regulations to provide more objective and concrete guidance on the degree of environmental impact control needed for various types of projects. For example, some types of activities, sizes of projects, and locations might require a full EIA and others might merit fast-track permits. In addition, the environmental tribunals provided for under the EP Act to enforce the laws need to have judges appointed. • Consider eliminating or privatizing building inspections and electricity inspections. Inspections could be outsourced to private firms or even eliminated if proper insurance coverage is made mandatory. Insurance companies would likely be vigilant in overseeing proper construction and maintenance to minimize claims. • Revise provincial rent restriction laws to improve the relationship between landlords and tenants, encourage development of apartment buildings, and cut down on litigation over landlord-tenant issues. • Develop one stop shops or single windows for construction permits and site inspections, including permits from various government agencies and utility connections. This should begin with pilot one stop shops in a large city and a small city in an earthquake affected area. An alternative would be to attempt to improve the existing institutions, but in some jurisdictions, e.g. Peshawar, the situation may be irreparable in terms of mismanagement and corruption and it is probably better to build new institutions. • Automate one stop shops and government agencies dealing with land registration and construction permits. This will minimize human interaction and opportunities for corruption, create efficiencies in information sharing, and allow women to avoid the unpleasant experiences related to in person visits to government agencies. • Review need for various utilities fees, taxes, and surcharges, and methods for setting fees; consider basing fees on market rates or cost recovery and consider eliminating subsidies. Require published schedules of utilities fees and time limits for utilities connections. • Educate businesses on permits and inspections processes and on their rights.

		DEALING WITH LICENSES
No.	**Type**	**Recommendation**
		• A donor could provide training for the City District Government Karachi (CDGK) staff involved in implementation of the Plan, training for the Mega City Steering Committee and Karachi Panning and Development Control Committee, training of the professions we mentioned, and technical assistance to the in implementation of the Master Plan. • Donors should also consult with the CDGK to determine its needs, but assistance could include: development of an implementation plan and regulations including revision of the Karchi Builing and Town Planning Regulations; reform of the revenue (taxation and fees) system; development of a transport plan (including mass transportation, traffic, and parking strategies); and development of utility, water and waste management strategies.

ANNEX I DOING BUSINESS IN THE FEDERALLY ADMINISTERED TRIBAL AREAS

Historical Perspective and Governance

Historical Background

The region of the Federally Administered Tribal Area (FATA) lies in a narrow tract running along the Indus with parallel lines almost north and south. Midway along the Pakistan' western border with Afghanistan, it is a wedge of rugged land lying between the north-western Himalayan zone and the north-western chain of the Sulaiman Mountains. This mountainous land known as the Federally Administered Tribal Areas is composed of seven 'political agencies' and six smaller zones called the frontier regions. On the remaining three sides, the FATA region is bordered by the "settled" provinces of Pakistan. The much controversial Durand Line is its western border. The FATA region stretches to a maximum length of approximately 450 kilometers and spans across more then 250 kilometers at its widest point. Its total reported area remains 27,220 square kilometers.

In the 19th century, this area enjoyed immense strategic importance as it served as a buffer zone between the British colonial power and the Tsarist Russia. Almost a century later, this region has come under the spotlight for reasons of national security of Pakistan and related global issues. Despite its rich history and crucial geo-political importance, FATA is in fact amongst the most poorly developed part of Pakistan as a whole. The history of this tribal region is short and simple on one hand but highly arduous and enigmatic on the other posing tremendous challenges to the government regarding its administration.

The problem associated with tribal administration today, remain more or less similar to what the British experienced as rulers in this region. These tribes remain and have always been fiercely independent, autonomous and isolated both by choice and chance. Almost all rulers starting from Ahmed Shah Abdali in 1747, the Amir of Afghanistan to the British in 1849, no one has ever been successful in exercising authority over these tribes due to their harsh resistance and subsequent reprisals. Whatever influence each ruler had was confined to the plains and the immediate vicinity of their respective areas of influence. All efforts to establish peace and order in this area kept on failing miserably. The prevalent lawlessness among the tribes, their bitter feuds leading to incessant violence, and their unwillingness to pay revenue resulted in frequent armed encounters with the rulers creating a state of continuous anarchy.

This tribal structure presented serious problems for the British rulers. Their governing strategies in the Indian Subcontinent failed drastically in this region. The tribes resisted their "Forward Policy" and attempts to extend their hegemony over Afghanistan for many years. The continuous failing efforts is evident from the fact that the British after their occupation of this region in 1849 had to carry out thirty seven expeditions across the Frontier Region in the period of thirty years for border pacification.

This incessant resistance offered to the British rulers however, did not deter the British to give up completely on the tribal areas and its inhabitants. Considering them to be somewhat completely incorrigible, they kept on making systematic efforts to implement some policies in this region offering them to be more of a conciliatory method rather than development strategies to which the tribes were resistant. As a part of such methods, all Frontier duties were abolished, a system of free trade was introduced and commercial activities were encouraged in every way. Fairs were held to promote commodities and roads were constructed from the passes to the nearest bazaars. Medical facilities were also provided in the hospitals and dispensaries established at various points along the frontier. The tribal *maliks* and *jirgas* were encouraged to enter the British territory for the settlement of their disputes. One last major attempt for harmonization was made when the doors of British Service were opened to the local tribes by offering them various ranks within the army and other services.

Realizing the unsuitability of any good governance of the tribal areas as one complete unit after the creation of the North West Frontier Province in 1901, Lord Curzon divided the region into settled districts and tribal agencies. The institution of political agent was strengthened and one was appointed for each agency to manage its administration. The British forces were restricted to the British territory and interference in the affairs of the tribe was strictly avoided. This resulted in relative peace in the area and suppression of anti-British sentiments amongst the tribal people. Lord Curzon paid a personal visit to the Frontier, where, at a *darbar* attended by the local *Khans, Sardars* and tribal *Maliks* he assured them of the British non-interference policy in their lives and independence.

The efforts on the part of the British rulers to administer the tribal areas continued till the independence of this region. After the independence from India and creation of Pakistan in 1947, the tribal areas acceded to Pakistan. This accession did not subsume political autonomy of the tribes. The instruments of accession, signed in 1948, awarded a special administrative status to the tribes. They were allowed to retain their semi autonomous status, exercising administrative authority based on tribal codes of customs and traditional institutions. This rather unique system was crystallized in Pakistan's Constitution of 1973 while the two previous constitutions did provide for varying degrees of legal cover. Under the Constitution of 1973, FATA is included among the "territories" of Pakistan (Article 1). It enjoys representation in the two houses of the Parliament, the National Assembly and Senate. But, unlike parliamentary form of government whereby the prime minister and his or her cabinet have executive authority to rule, FATA remains under the direct executive authority of the President of Pakistan (Articles 51, 59 and 247).

Presently FATA has seven tribal agencies which include Khyber Agency, Kurram Agency, North Waziristan and South Waziristan Agency, Mohmand Agency, Bajaur Agency and the Orakzai Agency which was the last to be formed. Unfortunately, right from the beginning of the journey of independence, the constitutional ambivalence and the superfluous treatment accorded to the tribal areas which became part of Pakistan, resulted in absolute lack of emergence of any norms of governance. They continued to remain in an era of darkness while the rest of the country's political and social sectors institutionalized.

The 1979 Soviet-Afghan War marked a turning point in the history of this region. For the last three decades this region has seen nothing but turmoil and instability which spilled over the border from Afghanistan. FATA was plunged deeper into isolation cutting it off from the mainstream society of Pakistan, which demonstrated its negative effect of the economy and society of the country. Today, the tribal areas face the most critical phase in their history and it is at this juncture that long-term planning initiatives are framed to steer this region towards security, political stability, commercial sustainable development and most importantly hope for a bright future.

It is pertinent to highlight some of the distinguishing characteristic features of tribal region for instance the governance and administrative system, the political representation system and dispute settlement system, in order to understand the peculiar situation in FATA.

Governance and Administration

As already mentioned above, FATA remains under the direct executive authority of the president of Pakistan. Laws which are framed by the national parliament are not directly applicable unless accompanied by an order of the President. The President is also empowered to issue regulations for the good governance and peace of the tribal areas. Primarily, FATA continues to be governed by the Frontier Crimes Regulation (FCR) 1901 which is administered by the Governor of the NWFP acting as the representative of the President of Pakistan. The FCR 1901 chiefly remains to be a body of rules enacted for the suppression of serious crimes in the tribal region. Regrettably, there is no parallel body of laws to regulate civil and commercial matters within the region and this needs specific attention if any workable strategy for sustainable development is to be implemented in this region successfully.

Until the year 2002, the NWFP Planning and Development Department was authorized to take all decisions related to development planning in the FATA. Later in 2002, the FATA Secretariat[1] was set up which was followed by the Civil Secretariat FATA was established to take over the role of the decision maker. Project implementation is now carried out by a line of departments of this body. The NWFP Governor's Secretariat plays a coordinating role for interaction between the federal and provincial governments and the Civil Secretariat FATA.

Political Administration in FATA

In theory under the 1973 Constitution of Pakistan the president of the country enjoys executive powers to rule over the area. The president further delegates this authority to the governor of the North Western Frontier Province. Paradoxically, FATA comes under the jurisdiction of the central government but for all practical purposes the governor of NWFP administers the area.

The seven tribal agencies mentioned above are administered by political agents individually. The political agent oversees the working of the line departments and service providers and is also responsible for handling inter-tribal disputes over boundaries or the distribution of natural resources with other agencies or the settled areas of the country. The political agent is also entrusted with the responsibility of playing a supervisory role for development projects. He can make recommendations, submit proposals to the government and approve various development projects. He is also the project coordinator for different rural development schemes.

On a piece of paper, the Ministry of State and Frontier Regions (SAFRON), at the federal capital, Islamabad, is entrusted with the task of handling administrative affairs and development projects in FATA. However, in practical terms, it acts no more than as a forwarding agency. It plays no role in policy administration and its subsequent implementation in the tribal area. For the purpose of practical administration of each agency in FATA, the political agent is at the top of the organizational hierarchy. He is the officially appointed executive of the respective agency and he reports directly to the commissioner of the adjacent division. In terms of rank and position, a political agent is equivalent to a deputy commissioner and he enjoys immense authority, powers and influence. He is entrusted with multifaceted responsibilities. As an executive he is responsible to maintain peace and promote the law and order situation in the area. He is also responsible for the collection of land revenue and other taxes. The political agent is also required to coordinate the development activities of various nation building sectors and lead, plan, direct and control the day-to-day activities effectively.

The political agent also plays a judicial role by appointing members of the *jirga* and ensuring its peaceful working. He makes arrangements for the security and daily expenditures of the *jirga* members including hosting feasts to promote good will. The political agent is entrusted with the task of promoting and practicing alternate means of dispute resolution through the medium of *jirga*.

Each agency is usually divided into two or three subdivisions, each under the direct control of an assistant political agent. Below the assistant political agent, there is a series of subordinate administrative units. There is no system of a regular police force in the tribal areas. On the other hand the political agent maintains a force of local tribal men known as *khasadars*. This force is the primary organ to control the peace and order situation in FATA. It is an independent body and does not resemble the formal system of law enforcement agencies.

Political Representation in FATA

No political parties are allowed access to FATA. They are not allowed to campaign and run elections. The only campaign which is continuously in existence is the one run by the local religious clerics who propagate rather sensitive and volatile religious issues rather than economic and social development. Tribal minds are easily influenced and local men tend to believe what the clerics teach and support. Recently the chairperson of Pakistan Peoples Party has moved a petition in the Supreme Court of Pakistan for the extension of the Political Parties Act 1962, amended by Political Parties Ordinance 2002 to FATA. This shall allow the presence of political parties within the region and they would be allowed to establish offices to launch their election campaigns. The tribal people will be able to look up to the election candidates to fulfill promises of economic development in exchange of their votes. Also this shall allow the local people to move away

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[1] FATA Secretariat has the overall administrative responsibility in the FATA. It functions under the direct control of the Governor of NWFP. FATA Development Authority is responsible for development work in the region.

from the extremist element in the society and develop their own thought process.

Although officially part of the territory of Pakistan, until 1996, the people of FATA did not enjoy any direct representation at the national level legislature. The reserved seat in the National Assembly was filled by influential and wealthy individuals who were in a position to exercise control over the local *maliks* and buying their loyalties. Until 1996, *maliks* were the only electoral college for elections to the national parliament. The *maliks,* themselves are direct appointees of the political agent and personal relations with the political agent are crucial for their appointment as *maliks*. Their personal links with authorities and trust is their key strength. In 1996, came a turning point in FATA administration when the then president Farooq Leghari by means of a presidential ordinance extended the right of adult franchise to the people of FATA. This allowed the residents both male and female to vote for the nominated candidate for the National Assembly elections and have directly elected representation at state level. Since this ordinance, two elections have taken place, first in February 1997 and second in October 2002, under which members of the assembly have been elected through adult franchise.

In spite of the administrative mechanism outlined above, very important fact which has to be kept in mind before any progressive mechanisms are devised for this area is that like the British era, the government interference in tribal matters is kept to a minimum. The tribes have always and continue to regulate their own affairs with almost no outside intrusion. The tribes conduct their social, political and commercial matters with customary rules and unwritten codes of ethics. The government struggles to perform its functions through local-level tribal intermediaries, the *maliks* and *lungi* holders (representatives of sub-tribes or clans). These people are influential members of their individual tribes and each government realizes the importance of good and healthy relations with them in order to make any progress in this region.

Dispute Settlement in FATA

All civil and criminal disputes are settled under FCR 1901 by a *Jirga*. The residents of the tribal areas cannot approach the apex courts (Supreme Court of Pakistan and Peshawar High Court) with a constitutional writ challenging a decision issued under the FCR 1901.They have no right of appeal and remain deprived of the constitutional guarantees for protection of human rights. Therefore, the FCR 1901 poses a serious challenge for any judicial and administrative process envisaged for a long term social and commercial modernization of this tribal area.

Jirga in the most simple of terms is an informal mechanism of dispute resolution, the origin of which is seemingly lost in the corridors of history. Interestingly, *jirga* is not essentially a dispute resolution system but has served as an effective platform to promote the local "*pakhtun"* culture. The much adhered to code of honor is supported and references are made to the social practices frequently. However, in the context of dispute resolution, the importance of *jirga* can not be undermined. It is an informal institution but it leaves very formal effects on the lives of the tribal people.

A *jirga* is composed of tribal elders and influential village men. A *jirga* can be summoned in the event of an important socio-political event or when criminal and civil matters need to be decided. At a glance it is a very casual arrangement with men seated in a circle with no president, secretary or a convener. There is no authorized hierarchical arrangement of seating positions and everyone has the right to speak and voice opinion, keeping in view the cultural respect for age and eldership. The main purpose of this arrangement is to dispense justice speedily, ensure public participation in the judicial process and make sure that judgments are carried out. *Jirga* plays a role in civil cases like land, property and contractual disputes and also in criminal situations like murder and robbery. *Jirga* for generations has been seen as the bulwarks of liberty and independence. Most community business, both public and private, is settled by means of *jirga* in tribal societies.

It shall not be incorrect to call *jirga* a customary judicial institution where cases are tried, sentences are awarded, disputes are settled, rewards given and punishments are inflicted. The types of cases brought before a *jirga* are not only limited to major crimes and issues but it also helps resolve inter tribal disputes and issues between individuals. Politically also *jirga* plays a key role in bringing the parties to peace deal and make truce, an otherwise impossible target for the political administration which is often the political agent and his staff. Relations of the tribal community with the outside world are also regulated through the *jirga.* In colonial days the British rulers realizing the importance of this institutions for effective governance, fostered good relations with the *jirga* members and developed workable relationship with the cross-border tribes of

Afghanistan. Written treaty contracts offering non-interference in the tribal affairs are still honored by the Sate of Pakistan.

Jirga members are selected according to the type and nature of jirga. In the case of a *sarkari jirga* (a government *jirga* constituted under the FCR 1901). Political Agent appoints a group of elders to sit as *jirga* members. Issues pertaining to blood feuds, women, wealth and land are within the jurisdiction of this type of *jirga.* In *shaksi jirga,* the political agent and the assistant political agent appoint two *jirga* members exercising their discretion whereas one member each is appointed with the consent of the parties involved. The FCR 1901, has provisions for the constitution of an independent and unbiased *jirga* giving each party to the dispute the right to chose and nominate an equal number of people as *jirga* members to ensure impartiality and justice. In the event of the parties belonging to different sects, members of the *jirga* shall be taken from each sect. The right to nominate an individual as *jirga* member is always vested in the political administration in the tribal region, which remains the appointed political agent. The third type of jirga is the *quami jirga* the members of which comprise all sections including each household of the tribe. Elderly members are given preference. This type of *jirga* deals with issues concerning the whole tribe like distribution of water for irrigation, rights and use of collective property etc.

The social standing of the *jirga* members makes it difficult for the parties to the dispute not to accept their judgment. The size of the *jirga* depends on the situation under consideration, the nature of the issue, its significance within the tribal society and the sensitivity of the matter. A *jirga* may have only one member although two or more member *jirga* is more popular. Members can be added at subsequent stages of the *jirga* proceedings. However, no member can be added after the third time. One significant criterion for selection is the knowledge of the laws of the "*pakhtunwali*" (code of *pakhtun* people).

As already stated above the *jirga* proceedings are seemingly informal. The members sit in a circle and there is no official arrangement of the members. There is also no official president or other judicial officers. Mostly, a *jirga* has two distinct age groups. The white bearded elders are nominated as judges and the comparatively younger members play the role of the jurists or lawyers. The *jirga* passes the judgment after all the necessary investigation into the concerned matter or dispute. One thing which remains the prime concern is the focus on reconciliation between both parties. The *jirga* members leave no stone unturned to achieve this. *Jirga* decisions are of two kinds. One is founded on the principle of *haq* (the right) and the other is based on *wak* (authority). Both the parties have to be present at the *jirga* proceedings and after hearing both sides, the judgment is given. If the given judgment is based on *haq*, both the parties have a right to contest the judgment on its merit.

If it is established that justice was not done or, the *jirga* by passed essential procedural rules and precedence, the delivered judgment is not accepted. In this event, the aggrieved party has the right to constitute another *jirga* to confront the one which has delivered the faulty judgment. In the likelihood of this happening, the *jirga* proceedings start afresh. However, the tribal norm is that the decision given on third occasion shall be final and conclusive. The parties must vest their trust in this jirga and abide by the ruling as this *jirga* is given the *wak (*authority). The ruling of this *jirga* cannot be challenged. One important condition is that this *jirga* must take a unanimous decision. Minority views are given some consideration but the powerful members of the *jirga* exercise their influence to reach the final verdict.

Jirga proceedings are usually in the open and are not conducted behind closed doors. The main purpose of *jirga* proceedings is to find a solution according to the customs of the concerned tribe rather than imposing other cultural values and norms on them. A tribe participating in the *jirga* as a party, may even be asked to go to a near by place and take time to deliberate over the issues.

Once it has arrived at a consensus, it will return and join the full *jirga* proceedings. This ensures that the tribe as a whole has a say in the matter which is of immense importance. *Jirgas* are usually convened in a cordial and congenial atmosphere. Parties have the chance to openly express their individual views and it is not unknown to see *jirgas* reaching the most unexpected verdicts.

Like all other judicial institutions, implementing the delivered verdict is the final stage. A *jirga* reaches its decisions in the light of the tribal rules and precedence. *Jirga* decisions are final and binding on the parties. They can rarely be challenged. Any one not abiding by the decision of the *jirga* can be subject to punitive sanctions. This practice of punishing the people for non compliance with the *jirga* decisions is different in different tribes. The limited practice of the right to waive off a *jirga* decision differs from agency to agency and tribe to tribe. The usual practice is that anyone rejecting or challenging collective wisdom of the elders undertakes a great risk.

A *jirga* is authorized both by FCR 1901 and also tribal practice to impose powerful sanctions against those bypassing its authority. These include, social boycott of the accused to the extent that no one from the village is allowed to associate with him, not even in times of dire need like emergencies and death. As a penalty to be payable by the accused party, heavy fines can be imposed which are payable to the innocent party. The weapons of the accused party can be confiscated and it may also be asked to deposit cash with the *jirga*. If the party does not comply, the *jirga* can resort to ruthless means to implement their decisions like sending men to burn the house and property of that party. He is also labeled as *kabarjun* (an arrogant). It is not unknown for this party to be even killed by his opponents in the course of time. The stigma of being a *kabarjun* stays even after death and villagers would not like to mourn his death.

In certain agencies there is a force or an executive council of tribesmen to implement the decision of the *jirga*. In Waziristan Agency this force is called *Salwaikhtae*.. This force comprises of more or less forty members depending upon the seriousness of the matter. However, on the other hand, the implementation of the decision of the jirga also depends on the strength of this force. The political agent may also use his force called *khasadars* to implement the decision of a *jirga*.

Jirga has been and still is of great significance within the tribal society. Like all other legal mechanisms it has its advantages and drawbacks which advocate its continuation and replacement with new legal reforms respectively. *Jirgas* members are well acquainted with the local tribal traditions and may have expert knowledge about the concerned matter. Considering its informal nature, it is easier to be hold a *jirga* according to the need of time. It is most certainly cheaper and more accessible than the local courts. *Jirga* also has the credit for being largely responsible for bringing peace amongst the tribes. *Jirga* is largely associated with peace making, reconciliation and compensation within the tribal network.

However, the importance of an efficient and workable court system cannot be ignored to achieve sustainable economic development. It is not practical to leave technical commercial matters to be settled by illiterate tribal elders. *Jirga* members are not familiar with the legal procedures and laws and they can only apply the cultural rules to settle the matters and since they are not members of a public institution they are not publicly responsible. *Jirga* members usually do not have the credibility and competence required to settle complex modern day issues. Also, absolute impartiality of the *jirga* members is also a matter of concern. There are certain changes which are needed to be brought about in the ancient *jirga* system to make a more effective dispute resolution mechanism. The Law Reform Commission (1967-1970) noted the following:

"The *Jirga* system was introduced in a particular area of the country under special circumstances. It can work only under those peculiar conditions. The basic requirement for the successful working of this system is the tribal affinity, which is gradually disappearing even in those parts of the country for which this system was originally designed. The second essential requirement is that there should be an acclaimed leadership in the sense that persons constituting the *Jirga* or the tribunal should be the real leaders of the people and should command respect among them."

In view of the above, it can be seen that in spite of the drawbacks of the *jirga* system it can be said that it is an effective instrument with a social and judicial purpose. It is a system which has been in existence for generations and its complete abolition shall lead to a vacuum. Each year the *jirgas* deal with a sizeable number of cases which otherwise would have been left unresolved as the bulk of the tribal society has no access to the mainstream legal system. Pakistan is a developing country. Major bulk of the funds is required for development purposes and it shall not be advisable to totally abolish the *jirga* system as this would require setting up of the regular court system. *Jirgas* are also effective as they approach the matter by keeping mediation, arbitration and compromise in view in contrast to sole legal principles applied by the courts.

Jirgas can play the role of independent institutions of justice. It needs to be reformed on modern lines to meet the requirements of modern day judicial system. The socio-economic realities have to be incorporated and the concept of basic commercial norms and human rights has to be promoted. One very important thing remains the right of appeal against a *jirga* decision in the courts of settled areas on points of law, merit and precedence. This shall ensure better administration of justice and more effective dispute resolution platform.

Recommendations For Improving Alternative Dispute Resolution

Jirga plays the role of the judiciary keeping in mind the established principles of alternate dispute resolution. However, there remain complex commercial matters which cannot be resolved by such an informal mechanism conducted by illiterate tribal people unaware of the complexities of the modern day commercial transaction. Two main recommendations are put forward here if sustainable economic development polices are to result in positive changes. Firstly, the informal alternate dispute resolution mechanism existent in the form of *jirgas* can be streamlined vis-à-vis the alternate dispute resolution mechanism in the settled areas of the country which is outlined as follows:

Two kinds of ADR have been practiced in Pakistan; traditional ADR and public bodies based ADR. The former refers to the traditional, centuries old system prevalent in tribal areas and villages called *Panchayat (in Punjab)* and *Jirga (in NWFP and Balochistan).* Superior courts in Pakistan have repeatedly declared such modes of dispute resolution as illegal on the grounds that they result in violation of the rights of poor and non-influential parties. However, such traditional *jirgas* are still practiced in some rural and far flung areas of the country. The latter include more formal and streamlined alternate dispute resolution mechanism performed by public bodies including *Arbitration Councils, Union Councils and Conciliation Courts.* These public bodies enjoy individual jurisdiction and deal with their concerned areas of expertise. Arbitration councils are generally focusing on issues of divorce, permission for second marriage, and maintenance for existing wives. Union Councils provides an arbitration forum (through elected councilors) under Muslim Family law Ordinance 1961 and looks after a few selected family related issues. Conciliation courts are established under Conciliation Courts Ordinance 1961 and are vested with limited civil/criminal/pecuniary jurisdiction. In addition to this, Small Claims and Minor Offences Ordinance 2002 has been promulgated for providing exclusive forum (at the district level) for facilitating the resolution of smaller disputes. This law also provides ADR mechanism for facilitating the resolution and settlement of disputes within the framework of the formal court system. The institutions of *musalihat ajnuman* (conciliation forums) have been introduced at district levels to provide a forum for ADR.

Under the Access to Justice Program, the review of Arbitration Act represents a significant policy action. This review needs to be undertaken and capacity building initiatives put in place to promote effective arbitration regime in Pakistan.

Recommendations

- Alternate Dispute Resolution should be streamlined in FATA as there is no court structure present.
- Dispute resolution experts must be appointed with the consent of both parties to assist the *jirga* members.
- The government Access to Justice program should be extended to FATA to introduce new dispute resolution system and provide aid for the preparation of indigenous experts from FATA.
- The political agent should be empowered for the implementation of decisions pronounced by the ADR panel.
- The Muslim Family Law Ordinance 1961, Conciliation Courts Ordinance 1961 and Small Claims and Minor Offences Ordinances 2002 must be extended to FATA by a presidential ordinance to this effect under the 1973 Constitution. These pieces of legislation contain provisions and methods of alternate dispute resolution which shall complement the jirga procedures.

Secondly, it needs to be mentioned that the importance of a court system cannot be ignored if large scale economic development is desired. There is a demand for the introduction of a court system for dispute resolution in FATA. A reliable and effective court system is one of the main pillars of any economic structure. Courts determine and provide a sustainable portion of stability by providing the details of rights and duties of all stake holders. They act as the reliable "referee" expected to fairly apply the rules of the economic/commercial game. The courts lay out the structure, rules of procedure, and competencies of the judicial system.

It is quite apparent that a fully functional court system cannot be established in FATA without complex procedures and unwanted delays. Till such time this is achieved, it is recommended that serious commercial disputes be referred to the courts of the adjacent settled area. This suggestion has worked well in 2000-2001 when in compliance of a notification issued by the president, cases from the northern areas of Pakistan which face the same legal scenario, were sent to the National Accountability Courts in Rawalpindi. Within FATA the agencies can be grouped together for this purpose. Cases from Khyber, Mohmand, Bajaur, Kurrum and Orakzai agencies can be referred to the High Court in Peshawar for adjudication and settlement. The cases from the remaining two agencies, North and South Waziristan can be sent to the D.I. Khan Bench of the

Peshawar High Court. Any appeals against the decision of the court can be heard by the division bench of the High Court headed by two judges or an appeal can be filed at the Supreme Court of Pakistan.

This mechanism shall introduce the role of the judiciary into the commercial practices within FATA and allow the stake holders to pursue justice at the highest level. It is also recommended that a legal officer should be appointed by the government in each agency to work under the respective political agent. He must be a lawyer with reasonable exposure to the court system at local level. He should be given the task of filtering the commercial cases and directing them either to the local *jirgas* or the courts in the adjacent settled areas depending upon the complexity of the issue.

Commercial Law and Trade Diagnostic

FATA has a great economic potential in terms of its location. Rich in mineral resources, located on the border with Afghanistan and being the gateway to the plains of Central Asia are features which are of prime importance for economic growth. However, its poverty and backwardness are serious impediments in its development. A major reason for this situation is its governance system and growing militancy in the region. Economic development cannot take place in a vacuum. It requires a framework encompassing all segments of the society. There are certain prerequisites for development and essentially they must be met in order to result in a workable sustainable development program. Some key factors are identified below:

- Effective and accountable system of governance
- Law and Order situation
- Conflict Resolution mechanism
- Access to Justice

FATA Governance

Good governance is a requirement for implementation of reforms and policy. Governance in FATA needs to undergo a fundamental change and must emerge as a sound mechanism capable of supporting all development strategies. All different segments of the society must be vocal and express their concerns and commitments to follow future implementation initiatives. Time wasting and inefficient working mechanisms and rampant corruption have to be removed. A central governance mechanism has to be the controlling factor. Transparent working of institutions and decision making procedures have to be ensured.

Human security is the key to any socio-economic development. Security to the workers, service providers and government officials traveling to FATA for work purposes has to be guaranteed. Free movement within FATA without local escorts has to be made available as this creates major difficulties on a number of levels especially during inspections and monitoring. Violent conflicts within FATA are not unknown. From family disagreements to large scale armed conflicts all have damaged the security situation repeatedly. Such clashes result in irreparable loses to human life and resources which pushes FATA back in the development sector. Along with the indigenous mechanism available for conflict resolution in the form of tribal *jirgas* a set of rules and regulations which have been designed by mutual participation of all segments, needs to be incorporated to serve as a basic charter of code of conduct and also peaceful coexistence. Access to civil courts to all the parties is a dire need to streamline the conflict resolution process within FATA and allow potential economic activities to take place smoothly.

Till today, FATA remains aloof from the legislative process and prevalent legal network in Pakistan. This has been one of the most detrimental factors towards economic development within the region. The absence of legal framework providing mechanisms of acquiring land, investing in different industrial sectors, employing workers and dispute resolution, have deterred private investors from exploring FATA as an economic zone. Any future sustainable development program designed for FATA needs to take into consideration the existing mechanisms and reforms which are much needed.

Existing laws and acts of Parliament are not applicable to FATA. The laws pertaining to contract, employment, taxation and land registration need to be extended to FATA if they are to have effect within this region. By virtue of Article 247 of the Constitution of 1973 Islamic Republic of Pakistan the executive authority of the President shall extend to the Federally Administered Tribal Areas. This article vests with the president of Pakistan the privilege to pass ordinances extending to FATA. The Governor of NWFP, in the exercise of his function under this article shall comply with the direction issued by the president and facilitate the implementation of the ordinance within FATA. Successful economic development in any society is chiefly dependent on structured legal rules pertaining to land registration, employment contracts, taxation, contract enforcement mechanism and most importantly dispute settlement. FATA is no different. Each of these areas have to be viewed independently and a structured program for the existing loopholes has to be drafted. The success of these legal initiatives shall depend upon implementing institutions which are discussed first.

Prevailing: Agency administration under the supervision of Political Agent

Proposed: FATA Secretariat/FATA Development Authority (FDA) to be strengthened and PA's powers regulated through legislative enactments

Implementation Institutions:

FATA Development Authority, FDA with field level support from political administration at the agency level.

Supporting Institutions: FATA Secretariat

Recommendations with Respect to Overall Governance

Governance system must be strengthened by extension of laws to FATA through promulgation of Presidential Ordinances. Presently, the Political Agent exercises all authority of the state. In existing scenario for an interim period, this may be the only available option, however, the exercise of his powers must be regulated in future. This may be ensured through extension of laws with amendments suitable to the situation in FATA.

Focus must be given to building up the capacity of FATA Secretariat and FDA to accept the role and responsibility within a reasonable period of 3-5 years. Pre-requisite formalities in the 1973 Constitution of Pakistan regarding the president's order for law application and enforcement in FATA should be met during this period and services should be acquired and coordinated from federal/provincial governments.

It must be noted that FDA has been established to undertake economic development in the region. It is a mega bureaucratic establishment and experience shows that generally such institutions fail to deliver on account of being unfit for such endeavors. Bureaucrats are by nature unqualified for managing developmental activities aimed at economic reforms. FDA is staffed by bureaucrats who have a traditional approach in relation to FATA. Most of them have served in FATA as Political Agents and in other tiers of administration and in some indirect manner are responsible for the mess that FATA today is.

So far, FDA has not come up with a concrete plan for the execution of its mandate either. It is prudent to expect that it will suggest a grand scheme of reforms which will be entirely dependent on government support and will have serious flaws with its sustainability dimensions. It is suggested that FDA must recruit development specialist with private and business sector experience. It must operate with market oriented approach in order to make a difference.

Recent socio-political problems in FATA in the wake of militant uprisings have eroded the writ of government in several regions thereby weakening the credibility of political administration. Most of such areas are in complete control of local militants and government cannot interfere in such regions. For example, North Waziristan, South Waziristan and areas of Bara Tehsil in Khyber agency are almost completely taken over by the pro-Taliban militias.

The government can restore its image by strengthening its linkages with the local community. This may be ensured through strengthening the local government institutions. An amended Local Government Ordinance has already been approved for FATA. This will help in re-establishing of the channel and linkages of government with the tribes. *Maliks* and local tribal elders including influential religious leaders and social activists must be brought on board through consultations and interactive participatory approach in order to provide ownership to the political and economic growth initiatives by the government.

The recent Local Government Ordinance 2000 has brought important changes at the administrative level in Pakistan by providing for elections for local offices and institutions. The post of local councilors has been introduced who have been entrusted with the prime responsibility of undertaking social and economic development in their own district. This is a highly workable mechanism as the elected councilor is a local resident well aware of the issues dominant in the area. He can use the allotted funds for development projects in the area and act as the local representative of the people. Two years ago a rudimentary type of local government system was introduced in FATA through which local councilors were appointed. This did not result in any significant results as the people appointed were not elected by the people and also they did not receive any funding from the government. It is highly recommended that the Local Government Ordinance 2000 is extended to FATA by a presidential ordinance. This shall open doors for direct election of councilors who shall be chosen by the people of FATA. Considering that each councilor shall be a representative of a certain area, well aware of the social and economic issues, he shall be able to devise development policies and carry out their implementation.

The local and international NGOs must also start to work in FATA with a new cultural sensitive approach. Till now all policy actions have failed due to the cultural and religious insensitivity shown by the NGO representatives who already enjoy a bad reputation in the tribal setting, being seen as propagators of western values and ideologies. They must develop good social relations with the local religious/community leaders and *maliks* and try to understand the working of the tribal societies rather than imposing strategies on them. Working with the local influential tribal men, will also help eliminate the negative propaganda voiced against them by the local religious clerics. They will no longer be seen as enemies from the west, but shall be seen as the local supporters who wish to help reform the social and economic environment of the tribal societies.

Some initiatives need to be taken to improve the security situation in FATA which is so far the greatest impediment in any socio-economic reform process. Appointment of a special home secretary is an encouraging indication of the government's commitment to improve law and order situation in FATA. Law and order must be maintained and government's writ established at all costs. However, resort to the use of force is counterproductive in the long run as witnessed in the wake of military operations in South and North Waziristan. Home Secretary for FATA must focus on conciliation and mediation with the local population and attempt to thwart the designs of militants and violators of law by avoiding the use of force to a maximum degree

A proposal for appointment of Additional Political Agent in each agency responsible for development projects is a welcome sign. This office must be established and empowered to supervise development programs in FATA. The officer should attempt to involve local population in the activities in order to ensure a sense of security and ownership among them. He must perform his functions by adopting a participatory approach in his work rather than a purely bureaucratic style.

Registering Property

Situation Analysis

Pakistan has inherited land registration system from the British India, according to which a system of registration of land exist only in settled areas of Pakistan. A *Patwari* is an agent or representative of the government for keeping record of the government and private lands. He regularly submits changes and update of record to the government periodically. The government keeps its record at Land Registration Record office known as *Saddar Qanoon Go*, which means the office which keeps record of lawful ownership of lands in the government books. This system has been inherited from the Mughal period and was later developed and implemented by the British colonial rulers for revenue generation. The system is applicable to rural and agricultural land.

Legal Procedure for Land Registration in Settled Areas

The applicable pieces of legislation for the registration of immovable property in the settled areas of Pakistan include The Transfer of Immoveable Property Act 1882, Land Revenue Act, 1967, Stamp Act 1899 and Registration Act 1908. Sale of real estate in Pakistan takes place through a title document known as sale deed, except in very few cases. Some people before execution of the sale deed, may opt to execute an agreement to sell however, such an agreement to sell does not transfer title of the property to the buyer. It, nevertheless, does create a right in the property, in case the seller refuses to honor the terms and conditions of the agreement and also to seek the specific performance of the agreement to sell. A sale deed must be affixed with requisite stamp duty and it must be registered with relevant sub-registrar. After registration of the sale deed with the sub-registrar it must be ensured that this sale deed is entered in the register of mutations kept and maintained by a *patwari*.

In 1902, the British colonial rulers attempted to introduced a similar and identical set-up. It could only be implemented in two agencies of the tribal areas namely North Waziristan Agency and Kurram Agency. As a result land record in the regional of Miranshah in North Waziristan and some areas of Kurram Agency was prepared. Presently, in all the seven tribal agencies of NWFP there is no land registry system in place and common practice for land purchase and record keeping is either verbal sale and purchase between the buyer and seller or buyer and seller write an informal sale deed and keep them for their legal heirs and their record. In the beginning of the seventies, people also started writing sale deeds on judicial or simple papers and getting it certified by the Tehsildar's office, which keeps a copy for his record to be used for reference in future. The evidence of ownership of the property still is possession and power to claim and occupy land.

On the other hand, there is a complete mechanism of laws governing the registration of immoveable property in both rural and urban areas of Pakistan. In rural areas, the transfer is in shape of *Intakaal* and is vested in *tehsildars*. When a transaction occurs both the parties have to present themselves before the above mentioned authorities the consideration as well is witnessed by these governmental authorities. Provincial governments hold land records and the revenue head is DCO in present local government system.

In the urban areas land ownership can be proved through a registered deed. It is certified by the Registrar's office. This system is comparatively advanced as opposed to the Patwari's record. In case of dispute over the ownership of immoveable property, the parties may invoke the jurisdiction of civil courts. Rights of appeal, review and revision up to the superior judiciary are available to aggrieved parties in respect of their claims.

In FATA there is no mechanism to govern the registration of immoveable property. The transfer in sale of immoveable property is recorded on white paper, and disputes are referred to a *jirga.* In FATA, there is no legal mechanism for governing matters such as transfer of immoveable property. The transfer of moveable property is through unregistered bargain which does not bind any party to comply with the binding terms and conditions and provide an opportunity to go back on their promises. There is no concept of written contracts and the registration of those contracts because the present local Registration Act 1908 is not extended to FATA. There is no registering authority which validates the ownership of property of any party. The absence of a legal framework for regulating transfer of property tends to lead towards insecurity amongst land owners.

The absence of any role of a competent governmental authority to monitor the sale and transfer of immoveable property and maintenance of property records has led to the discouragement of investors in FATA. The investors do not feel safe and the magnitude of risk associated with financial investments has been a major factor towards poor economic development in FATA. Major land law related reforms have to be introduced to harmonize land ownership, acquiring of land from local owners, subsequent land registration, transfer of title and registration of title.

Real property law is crucial in market economies; it lays the foundation of the legal environment for a business to own, use and sell land and buildings as well as to use them as collateral to obtain credit. Pakistan is a transition-economy country and a defined real property legal system shall encourage entrepreneurs to buy land freely, use it for economical activities in a secure environment. A strong title system is essential for the creation of an economic zone in the country with special reference to FATA.

Implementing Institutions

There are presently no institutions. As a short term measure, the political agent heading the political administration in FATA can be entrusted the responsibility of Registration of property. On a long term basis the laws need to be extended to FATA and an officer designated under the Ordinance will be responsible for implementation of reforms or the functions along with the already existent political administration. The Registrar's office in FATA may be designated to carry out this function.

Supporting Institutions

Political Administration is the most important supporting institution. However, Revenue department and local government councilors may also provide support. In this situation, FATA Secretariat shall be responsible for overall coordination with the relevant departments for carrying out surveys and maintenance of land records.

Members of Parliament, elected members of local government, tribal elders, religious leaders, community activists and NGOs may also participate. Their participation is essential for ensuring community ownership of the initiative.

Social Dynamics

The existing vacuum created due to the absence of real property laws in FATA is detrimental to any predicted economic activity in the region. Complex and unclear practices and cultural rules result in an unreliable system of land titling. These are a natural consequence of tribal mindset and physical destruction caused by lack of education and awareness coupled with the tribal system of ownership and passing of property. The neighboring Afghan conflict has also contributed to the already backward scenario and hampered economic development in this region.

The property disputes within the tribal societies contribute much to the lawlessness prevalent in the region. Often, clashes between rival tribes and clans occur over property matters as there is no method by which ownership can be established. Even today, the game of power plays an important role and occupation, even if illegal, is considered to the sole land mark of ownership. Small land holders feel unsafe and work in a threatened environment where there is no guarantee of their reaping fruits of their own labor. Development agencies are reluctant to enter into any agreement with big land owners due to the absence of any secure system of land purchase and registration. This problem needs to be understood and acknowledged to improve the social ties between the tribes and also push economic development activities in the region.

Recommendations

At the national level, property registration is regulated by an Act of Parliament, The Registration Act 1908. It governs the sale, transfer and registration of immovable property. The Registration Act 1908 with the amendment to section 17b making "agreements to sell compulsorily register able" needs to be extended to FATA. Extension of this 1908 Act to FATA by a special ordinance issued by the president of Pakistan shall streamline the buying, transfer and ownership of property within FATA, which in turn shall provide incentives for private investors to purchase land and start larger scale economic activities.

The ordinance issued shall have to be implemented by the Governor of NWFP who shall assign the task of implementation to the political agents. The local elders and *jirgas* will need to be involved at each step so that the implementation process is completed without much resistance.

Political administration must be required to conduct agency wide survey of land holdings and verify ownership claims. Later, the record may be properly compiled and registration documents issued to owners. This is a complicated, cumbersome and time consuming exercise and if not prudently conducted, has the potential of generating unrest among the local tribes. However, it is indispensable for any step towards economic reforms in FATA and therefore must be undertaken in consultation with tribal elders and through engagement of *Maliks, Lungi* holders, local political and religious leaders and members of Parliament. FDA must manage this process.

Establishment of a governmental authority for the security of the transactions and transfer of immoveable property within FATA would greatly help provide sureties to potential investors. This governmental authority should be the depositary of land records. The Political Agent of the agency may be authorized to adjudicate upon disputes relating to ownership of properties. These powers must be extended to him through a Presidential Ordinance along with amendments in the relevant statutes. Political Agent may be empowered to exercise judicial powers in this regard keeping in view the specific situation in FATA. A complete legal framework must be established to ensure that commercial transactions of land becomes safe and secure and the people of FATA can enter into contracts without any fear of loss, fraud or misrepresentation. This will enhance the interest of the people of FATA in healthy business activities and offer their lands for sale or lease for economic purposes.

Dealing with Licenses for Companies

Situation Analysis

There is no system of registration and licensing of companies/businesses in FATA. Verbal bargains are the basis of business contracts in FATA. The Companies Ordinance 1984 and Partnership Act are not applicable in FATA. The Securities and Exchange Commission of Pakistan has no jurisdiction in FATA. Consequently, no sustainable business environment could be established in FATA due to the absence of secure set of rules to ensure the liabilities and obligations of business partners. There is no authority with responsibility to issue licenses to entrepreneurs in any specific area of business. This has deterred many a potential investors and industrialists from considering successful business opportunities in FATA.

The situation in Settled Areas

The applicable legislation is the Companies Ordinance 1984. According to this Ordinance, any seven or more persons associated for any lawful purpose may, by subscribing their names to the Memorandum of Association and complying with the requirements of the Companies Ordinance 1984 in respect of the registration, form a public company, and any two or more persons, so associated may, in like manner, form a private company. For a foreign company seeking to establish a place of business in Pakistan, required documents must be delivered at the registrar's office within 30 days of establishing a place of business in Pakistan. A certified copy of the Company's charter, statute or memorandum and articles of the company duly authenticated by the Pakistan embassy in the country of origin must be submitted.

The Securities and Exchange Commission (SEC) took over the responsibility and powers of a corporate law authority in 1999. On the national level, it has been actively involved in keeping pace with the changes in the international business sector. The SEC has focused on adopting good corporate governance techniques and provide transparency and accountability in the corporate sector, providing safeguards to the various stakeholders.

Implementing Institutions

There are presently no implementing institutions. However, if the laws are extended to FATA then an officer designated under the Ordinance will be responsible for implementation of reforms or the functions may be entrusted to the Political Administration. Registrar of Companies may be appointed to perform the functions under the Companies Registration Office. Securities and Exchange Commission office can be established to be responsible for the working of companies and ensure compliance with international rules of corporate governance.

Supporting Institutions

Political Administration is the most important supporting institution. However, SECP shall provide technical expertise and staff for the registration of companies. In addition, FDA[2] and FATA Secretariat shall provide relevant support. Tribal Chamber of Commerce and Industry may also play an important and supportive role in implementation of reforms. Their advice to the institution and relationship with local business entities is essential for success of reforms.

Social Dynamics

Modern day company law is the need of the time in FATA. Much of the work done within a tribal setup is by the family members. As there is no piece of legislation available, generations have passed and members of a family have not been able to reap economic results from their activities. Even today, the activities remain at a house hold level and the input of the workers and resources are going to waste. In the event of the introduction of company laws, partnerships are going to be promoted and inter tribal resources can be streamlined in the form of small companies and partnerships. This shall have a revolutionary impact on the social scenario within the tribal network. It shall pave a path for meaningful usage of time, resources and efforts of the tribal people, giving them much needed financial benefits. The education and training of the tribal people to work for and own establishments will result in safeguarding the rights of the investors and land owners and also introduce cooperate governance in the region.

Recommendations

Laws relating to forming and subsequent registration of companies is governed by the Companies Ordinance 1984, which provides an elaborate mechanism for the regulation of business. Firms are registered with the sub-registrar under the Partnership Act 1932. It is the holder of records of firms and maintains a register of companies. It is much desired that the 1984 Ordinance must be extended to FATA by a Presidential Ordinance to this effect. Modifications suitable and pertinent to the peculiar situation in FATA must be carried out in the Ordinance. For instance, the Political Agent may be empowered to enforce and implement the provisions of these laws in FATA.

The Securities and Exchange Commission of Pakistan (SECP) should incorporate its branches within FATA to provide a protection and facilities to business communities of FATA and regulate current and future businesses within a legal framework. Companies Registration offices need to be set up in FATA and economic benefits of registered company must be shared with the tribal community.

Another suggestion is to introduce amendments in the Companies Ordinance 1984 by authorizing the Registrar of Companies in adjacent districts in settled areas to allow a company to conduct business in the FATA region. Special provisions may be incorporated in the licenses of such corporate entities and they may be regulated from the

[2] FDA is responsible for economic sector and infra sector development. FDA is under the direct control of the Governor of NWFP

registrar's office in Peshawar and other adjacent settled districts, including, Kohat, Bannu and D.I.Khan.

The Contract Act 1872 should also be extended to FATA with necessary amendments since it is the governing act for regulating commercial transactions. Businesses shall be able to enter into legally binding contracts which in turn shall provide security and options to both the employers and workers. Access to judicial institution must be facilitated and secured. In addition, Trade Organizations Ordinance 2006 must be extended to FATA. This shall pave way for economic and trade reforms. The entrepreneurs of FATA and future potential investors shall be able to avail more opportunities in trade and business.

Employing Workers

Situation Analysis

Regrettably, labor related laws are not applicable in FATA. The landowner/worker and all other service contracts are entered into verbally and their execution totally dependent on the influential tribesmen. In most cases, the ordinary inhabitants are not aware of their rights especially monetary compensation and are left without any effective remedy in case of termination of employment. Poverty and lack of access to settled areas renders them susceptible to exploitation as at times they have no other means of sustenance but to work on exploitative terms. There is no legal protection to both employers and employees, which renders FATA totally unsuitable for economic investments.

Industrial Relation Ordinance 2002 regulates the relationship between employers and employees in Pakistan. It applies to all persons employed in any establishment or industry. As a means of dispute resolution, it provides for a labor court and also arbitration. This ordinance aims to provide a balance of rights of both employers and employees and eventually eliminate unfair labor practices.

Implementing Institutions

There are presently no implementing institutions. However, if the laws are extended to FATA then an officer designated under the Ordinance will be responsible for implementation of reforms or the functions may be entrusted to the Political Administration. Department of Labor and Manpower shall be responsible for providing infrastructure for the labor related laws and will help in the implementation of Industrial Relations Ordinance 2002.

Supporting Institutions

Political administration, FDA and FATA Secretariat shall act as supporting institutions. Members of Parliament, elected members of local government, tribal elders, religious leaders, community activists and NGOs may also participate and support such initiatives. Their involvement will ensure that a code of conduct devised for harmonizing the relationship between employer and employee will enjoy community approval. Keeping in view the peculiar social situation in FATA, community support is essential for the success of reforms.

Social Dynamics

In tribal societies great importance is attached to property ownership. Property and land is passed in the families and clans for generations. Traditionally in this misbalanced social set up, the influential land owners employ the locals and in some cases non-tribal persons from regions outside FATA to work on their lands. Individuals and families are employed for generations. However, as there is no legal system pertaining to employment of workers, the employees are neither aware nor able to assert their rights and tend to be used as labors rather than farmers. Considering that employment opportunities are so limited, the workers cannot complain and continue to work without much monetary compensation and work benefits.

The tribal areas are faced with the phenomenon called "land mafia". The so-called land mafia is run by influential individuals and there is no system of determining the titles to the land and no enforcement of land rights. The issue of squatting and land grabbing is another menace impeding economic development in FATA.

A well defined employment structure is the need as it will outline the rules of employment and streamline the worker/land owner relationship. Workers shall be able to rely on their employment contracts where as presently everything is entered into verbally. The system shall also introduce dispute resolution mechanism and this shall result in a better social scenario within the tribal societies. Inter tribal exchange of labor will be encouraged and more man power can be utilized efficiently.

Recommendations

Industrial Relation Ordinance 2002 must be extended to FATA with suitable amendments and with full force. This shall act as an incentive for business activities and provide protection of the backward and vulnerable class of people in the region.

The Political Agents in FATA may be empowered to settle and adjudicate upon labor disputes. Right of appeal may be provided before the Commissioner.

Political Agents may be entrusted the task to promote and practice alternate means of dispute resolution (ADR). This includes international methods like negotiations, conciliation, mediation and most importantly arbitration.

The local elders, the political agent, a representative of the business community and investors may form a joint mechanism for facilitating ADR. This shall offer a sound mechanism for settlement of disputes and shall encourage the private sector investors to explore FATA.

Enforcing Contracts

Situation Analysis

There is no legal system in FATA for regulation the formation and enforcement of contracts. Almost all agreements are oral and even if written, are in the form of unregistered deeds. Such documents have no legal force and neither party has means to access justice on its basis. These unregistered documents stand void at law and cannot create, assign, limit or extinguish any right, title or interest. This lacuna has resulted in poorly coordinated business and industrial activities within FATA and discourages the private sector investors to explore FATA as a potential economic zone.

Situation in Settled Areas

Contractual obligations are protected under the Contract Act 1872 and Specific Relief Act 1877. These are the governing laws that contain provisions for the formation and enforcement of contracts. The Registration Act 1908 already discussed above, provides for the registration of such service contracts to outline the rights and obligations of the parties to the contract. It also determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. The rules regarding performance of a contract are enshrined in Specific Relief Act 1877 which provide situations when a contract can be specifically enforceable. It also contains equitable remedies for breach of contract by either party. According to the Contract Act 1872, a contract would be considered as a valid contract when it is written and registered with the free will of the parties

In tribal areas, all civil and criminal disputes are settled under FCR 1901 by a *Jirga*. The residents of the tribal areas cannot approach the apex courts (Supreme Court of Pakistan and Peshawar High Court) with a constitutional writ challenging a decision issued under the FCR 1901. They have no right of appeal and remain deprived of the constitutional guarantees for protection of human rights. Therefore, the FCR 1901 poses a serious challenge for any judicial and administrative process envisaged for a long term social and commercial modernization of this tribal area.

Implementing Institutions

There are presently no implementing institutions. However, if the laws are extended to FATA then an officer designated under the Ordinance will be responsible for implementation of reforms or the functions may be entrusted to the Political Administration.

Supporting Institutions

ADR mechanisms operating under the overall supervision of political administration. Members of Parliament, elected members of local government, tribal elders, religious leaders, community activists and NGOs may also participate and support such initiatives. Their involvement will ensure that contractual obligations are respected and honored. In the event of violation of contract, the social pressure exerted by the local elders will have a positive impact and will ensure that violation of contract is prevented or at least the party who is wronged by that violation is adequately compensated.

Social Dynamics

The introduction of contract laws within FATA is very much an "economic-driven" issue. The critical importance of a fully implemented and reformed system of contracts for sustainable economic development can never be ignored. Oral contracts have no legal value and leave usually the employees without any means of justice. The influential land owners make their own rules and local tribals have not much choice but to work for them. Most oral contracts between the land/property owners run for generations and each subsequent generation is made to work on the same terms and policies. This has contributed much to the frustration and stagnation within the tribal societies. Entering into binding contracts with an effective dispute resolution system will provide a desirable outlet for the local land owners and workers. It shall also attract outsiders to invest in FATA bringing long term social and financial reforms within FATA. Incentives for the locals and stake holders will change.

Recommendations

In view of the desire to promote economic activities in FATA, it is mandatory to extend the application of these laws to FATA region along with necessary amendments. This shall facilitate and secure the contract formation and enforcement procedure and provide guarantees for economic activities.

In the interim scenario, the Political Agent must be authorized to act as guarantor for certain types of contracts. This arrangement will facilitate enforcement of contract through the exercise of powers by the Political Agent under FCR which is the only available and effective legal instrument in the present scenario.

Political Agent may also be authorized to exercise judicial powers in respect of disputes relating to violation of contracts and to hear complaints arising out of contractual obligations. Right of appeal may be provided before the Commissioner.

Trading Across Borders

Situation Analysis

FATA region does not have laws and defined rules for regulation of import and export. Afghanistan has a long adjoining border with FATA and the import of all goods both legal or illegal are going unchecked because of the absence of mechanism to regulate cross border transactions. Smuggling across borders is a common practice which has been going on for centuries. This results in a free flow of goods without any legitimate procedure.

Transit trade facility extended to Afghanistan is being exploited by smugglers for the last several decades. It has been used a conduit for smuggling of foreign goods to Pakistan. This has resulted in proliferation of Bara markets (markets for smuggled and non-custom paid goods) not only in the tribal areas but also Peshawar and Rawalpindi, where goods are available at a lower cost. This has adversely affected local industry and legitimate businesses. Corruption on part of the Political Administration and Customs department has been the major factor in this state of affairs.

Presently, the Political Agent is empowered to grant permits for transport of goods from settled areas to FATA and onward to Afghanistan. Ministry of State and Frontier Regions (SAFRON) may also grant export permits to Afghanistan for certain items including petroleum etc. The system of granting of permits is devoid of a transparent mechanism. Corruption and nepotism is common and openly practiced. Political Administration grants permits arbitrarily and without any legal procedure. In most cases, bearers of permits do not pay any duty to the administration in respect of transported goods. This results in loss of revenue to the government.

It is quite obvious that government support is not available in promotion of trade in FATA. Locals are involved in businesses without the support of a regulatory authority.

Cross border trade sector is faced with numerous problems including the following:

- No warehousing facility is available in FATA to ensure raw material supply to the existing industrial units operating and new units that will be established.
- Dry Port facilities are non-existent in FATA in order to facilitate the local trade community.
- No trade facilities are available for businesses in FATA. Financial requirements are being met from informal market at high markup rates.
- Infrastructure and communication network is in a dilapidated state in FATA. Road network exists in the main areas, but various new areas having potential of raw material are not connected to the road links where the industry is in operation. Improper maintenance of existing roads, inadequate communication facilities and illegal power connections further worsen the situation.
- Transportation and movement of goods from and within FATA is too difficult because of the non-existence of the regulatory system in FATA. Customs check posts on FATA borders are a den of corruption and a source of discouragement for legitimate businesses.

In so far as the rest of the country is concerned, it is a member of the World Trade Organization (WTO). Although Pakistan is not a member of any free trade arrangement, it is party to arrangements designed to achieve progress towards regional liberalization of trade with the organizations like The Economic Cooperation Organization (ECO). The South Asian Association for Regional Cooperation (SAARC) is another forum for cross border trade activities from Pakistan. In order to regulate cross border trade activities, there are certain pieces of legislation like the Imports and Exports (Control) Act 1950 and Import and Export policy 2004. Along with laying down rules and measures for cross-border trade, these pieces of legislation also specify regulations for import of secondhand machinery for construction, mining and petroleum sectors

Implementing Institutions

There are presently no implementing institutions. However, if the laws are extended to FATA then an officer designated under the Ordinance will be responsible for implementation of reforms or the functions may be entrusted to the Political Administration. Customs department shall be responsible for implementation of Customs Act.

Supporting Institutions

Tribal Chamber of Commerce[3] and Industry shall provide technical support and expertise and act as a bridge between the government and businessmen. FDA and FATA Secretariat shall be responsible for overall coordination with the relevant departments for ensuring that trade is conducted in a transparent manner.

Recommendations

Trade related activities in the FATA must be regulated. Cross border movement of goods must be controlled in accordance with the provision of Customs Act and Imports and Exports (Control) Act 1950.

Powers of Political Administration in respect of granting of permits must be regulated. Procedure for the granting of permits should be made open, public and transparent. Permits must be auctioned in a public auction and after a notice has been duly advertise in the press.

The present state of affairs must be streamlined in order to reap economic benefits not only for FATA but for Pakistan as well.

Import and Export (Control) Act 1950, Customs Act and related enactments must be extended to FATA with necessary modifications and amendments through a Presidential Ordinance. Political Agent's powers must be extended to facilitate the implementation of these laws but at the same time, stringent accountability mechanism must be incorporated in these amended statutes for regulating the powers of Political Administration. Check and balance mechanism must be imposed on the borders to monitor cross-border trade and control illegal trade of weapons and narcotics. The concept of border police must be introduced. Central Board of Revenue and Pakistan Customs should aim to establish a presence and work with the office of the political agent in each agency.

Valuable foreign trade can be earned by the government of Pakistan's effort to extend the Import and Export (Control) Act 1950 to FATA. Goods manufactured and products from FATA should be exported legally across the border and also to other parts of Pakistan to generate capital.

Development of trade sector is crucial for socio-economic improvement in the region. In order to improve the performance of this sector, the following recommendations are worth consideration:

- Development of infrastructure facilities including the improvement of existing road network, construction of new roads to improve transportation and to reduce transportation cost;
- Establishment of ware houses at locations near the industry with large stocks of the various types of raw materials. This will help in boosting productivity and thus employment followed by income generation in the area. Exporters will be facilitated in trade with Afghanistan.
- Dry port facilities are almost non existent in FATA. These are crucial for growth of trade and import/exports. Presently there is only one dry port which serves the FATA region and it is situated in Peshawar. Dry port facility must be provided in border areas with Afghanistan especially at Torkham in Khyber Agency, in Parachinar and Miranshah in NWA.
- Afghan Transit Trade must be regulated. Transit trade facilities to Afghanistan are openly exploited by smugglers for their illegal benefits. Good imported for Afghanistan are transported back to Pakistani territory for sale in Bara markets resulting in huge revenue losses for the

[3] A body established a few years ago by the local business men in FATA. It mostly co-ordinates the commercial activity in FATA and, acts as a platform for joint decisions and policy making with the local business community.

government. It has also negatively impacted upon the local manufacturing sector. Factors responsible for this state of affairs is the open border with Afghanistan and the ease with which movement of goods take place across the border without any checks, collusion of Political administration with smugglers and corruption of other law enforcement agencies including customs department.

It is, therefore, suggested that the provisions of Customs Act must be strictly enforced in respect of transportation of goods across border. Stringent measures must be adopted on the border with Afghanistan. The entry points from settled areas into FATA region must be monitored for preventing cross border movement of goods. Exporters and importers must be made to pay taxes at such points. This will remove the incentives to bring smuggled goods.

Another important step which shall prove beneficial towards sustainable development in FATA would be strengthening the Tribal Chamber of Commerce and Trade. This shall work towards promotion of trade activities and also safeguard the interests of all local stake holders. It will also act as a bridge between business community and the government and will act as a medium for promotion of local products for trade purposes.

Getting Credit

Situation Analysis

At present, access to credit for entrepreneurs does not exist in FATA. Banks and financial institutions do not offer credit and loan facilities due to the absence of laws and regulations combined with the instability prevalent in the tribal society. In the absence of collateral guarantees from the entrepreneurs and the government, no commercial financial institution is in a position to operate in FATA. The existent commercial activity in the region is dependent upon informal market and money lenders for meeting their financial requirements. In most cases such arrangements are based on exploitative terms and high mark up rates which retard better economic growth.

In Pakistan, the financial sector at national level is regulated by the Agricultural Development Bank Ordinance 1961, Banking Companies Ordinance 1962, Banking Companies Rules 1963, Credit Rating Companies Rules 1995, Draft Banking Act 2006, Loan for Agricultural Purposes Act, 1973, Micro-Finance Banking Ordinance 2000, Micro-Finance Institutions Ordinance 2001 and State Bank of Pakistan Act, 1956.

Implementing Institutions

There are presently no implementing institutions. However, if proper mechanism is established and relevant laws are extended then the banks and financial institutions shall implement their program for provision of credit facilities to entrepreneurs.

Supporting Institutions

Political Administration is the most important supporting institution. However, FDA and FATA secretariat shall provide overall coordination and providing a conducive environment for encouraging access to credit for tribal businesses. Tribal Chamber of Commerce and Industry will offer advisory services to entrepreneurs and may not only act as a medium of referral for local entrepreneurs but also as a channel of interaction between banks and businesses.

Members of Parliament, elected members of local government, tribal elders, religious leaders, community activists and NGOs may also participate and support such initiatives. Their involvement will not only ensure the security of loan but in most cases may help in monitoring the project/business concern and timely repayment of loan.

Recommendations

The abovementioned legislative enactments govern principles and procedures for granting of loans, the required paper work, repayment of loans and procedure for recovery. In development of industrial units, the importance of these activities cannot be denied. These financial institutions play a key role in the development of industrial area. Therefore, for a commercial environment to thrive in FATA such a mechanism should be introduced.

Steps towards provision and recovery of loans should be taken in order to facilitate the working of banks and other financial institutions.

Entrepreneurs and business interested in obtaining loans and credit facilities should be guided by the government through seminars and public interaction about the availability of loans and the terms and conditions required for securing a loan.

In order to provide security to credit lending institutions for their loans, the possibility of using land and other assets situated in settled areas may be used as collateral for loans to conduct business in FATA.

Business environment can be improved by joint ventures launched under public-private partnership arrangements. FDA may act as the partner representing the public sector and firms or individuals may act as private partners. Funds may be channeled in the businesses through the public partner which will ensure that the interest of the bank or financial institution is safeguarded.

Organizations like SMEDA and PASDEC have great and valuable experience in such ventures and FDA must involve them in joint ventures in FATA

FDA may consider the possibility of creating its own credit lending institution in FATA or devise a mechanism of "money back" to banks and financial institutions.

Financial institutions and banks including Bank of Khyber, SME and Khushali bank must be proactive in FATA and must extend their operations in FATA in coordination with FDA. Such arrangements, including micro-finance facilities must be promoted by the FDA.

NGOs involvement in FATA is crucial. Their engagement in FATA must be ensured in order to promote business environment through public engagement and dialogue with the locals at the grass root level. NGOs have expertise in such endeavors and can facilities FDA in activities such as raising awareness / sensitization, skill development at local level and providing guidance in business management to local entrepreneurs.

Political Agent must be required, through a legislative enactment, to act as the guarantor for a person/firm interested in obtaining loans from bank or government. He may require the local Member of National Assembly, councillor or Malik to provide guarantee for the entrepreneur belonging to his area. In the prevalent situation in FATA, this arrangement will help secure the interest of the lending institution since in case of violation of financial obligations, action can be taken against the entrepreneur under the provisions of FCR which is the only available legal mechanism at present. Implementation of such arrangements through FCR, although not ideal, but is the only workable and effective option in the present scenario.

Laws relating to banking courts and tribunals should be extended to FATA through Presidential Ordinances with appropriate amendments in order to bring them in conformity with peculiar situation in FATA. Political Administration may be authorized to exercise judicial powers in respect of the implementation of these laws. This would facilitate the resolution of disputes arising out of these transactions at a quasi-judicial forum.

Role of Islamic Commercial System

Introduction

Islamic principles of commercial law pertaining to credit, leasing and acquiring of loan can prove to be very workable in FATA, where the mindset is cultural and people have close affinity with religion. A pure western model of business network may not receive as much support as an industrial development scheme having its roots in Islam. Shari ah compliant laws dealing with contracts, agency, loans can be more easily integrated into the tribal society and provide a platform for sustainable economic development in FATA. Drafts from the United Arab Emirates (civil code) and Kuwaiti Commercial Code as well as Egyptian Laws can serve as a good guide.

The following are the main principles of Islamic commercial law which, if integrated into the economic development plans drafted for FATA, can manifest in positive results and help introduce long term sustainable development strategies in FATA:

Murabaha is a sale on mutually agreed profit between two parties. It is essentially a contract of sale in which a seller declares his cost and the expected profit. This has been adopted by many Islamic banks as a mode of Islamic financing. As a commercial financing technique, a client asks a bank or a financial institution to purchase a certain product on his behalf. The bank or the financial institution does this for a profit over the cost which is agreed upon in advance. *Murabaha* is a sale of goods contract between a seller and a buyer by which a seller sells certain specific goods permissible under Islam and the law of the land to the buyer at a cost plus a mutually agreed upon a profit payable immediately or on some date in the future either in lump sum or in installments. The agreed profit can either be a fixed sum or can also be based on a percentage of the price of goods.

For economic development plans for FATA, the concept of *Bai-Murabaha* (order on promise) can prove to be very workable. In this category of *murabaha*, the contract is between a buyer, seller and the bank. Under this contractual arrangement, the bank or the financial institution acts as an intermediary trader between the buyer and the seller. In other words, upon receipt of an order and agreement to purchase a certain product from the buyer, the bank will purchase the product for the seller to fulfill the order. A very important distinction to highlight here is that the bank or financier acts as an Islamic financier in this transaction.

Important features of *Bai-Murabaha* as given below:

1. A client can make an offer to purchase particular goods from the bank for a specified agreed upon price, including the cost of the goods plus a profit.
2. A client can make the promise to purchase from the bank, that is, he is either to satisfy the promise or to indemnify any losses incurred from breaking the promise without excuse.
3. It is permissible to take cash/collateral security to guarantee the implementation of the promise or to indemnify any losses that may result.
4. Documentation of the debt resulting from *Murabaha* by a Guarantor, or a mortgage, or both like any other debt is permissible. Mortgage/Guarantee/Cash Security may be obtained prior to the signing of the Agreement or at the time of signing the Agreement.
5. Stock and availability of goods is a basic condition for signing a *Murabaha* Agreement. Therefore, the bank must purchase the goods in accordance with the specifications of the client, thereby taking ownership of the goods before signing the *Murabaha* agreement with the client.
6. Upon acquiring the goods, the bank assumes the risk of ownership. In other words, the bank is responsible for damages, defects, and /or spoilage to the merchandise until such time that it is actually delivered to the buyer.
7. The bank must deliver the goods to the client at the date, time, and place specified in the contract.
8. The bank sells the goods at a price above the cost to obtain a profit. The sale price that is charged by the bank is agreed upon in the *Murabaha*. The profit can be stated in terms of a flat dollar amount or on a percentage of the purchase price. If a percentage is used, the percentage shall never be expressed in terms of time, in order to avoid confusion that the price is a form of interest (Riba), which is not allowed.
9. The price agreed to in the agreement is binding on both parties.
10. It is permissible for the bank to contract with a third party to buy and receive the goods on its behalf. This agreement must be a separate contract.

How can *Murabaha* contracts be introduced in FATA?

The Islamic *Murabaha* contract can be enforced by extending the relevant Islamic provision in the form of an ordinance and then extended to FATA through a presidential decree under the 1973 Constitution. The implementing institution shall be the banks and financial institutions working with the administrative support of political agent and his administration. Considering there are no banks in FATA, commercial banks in the settled areas need to be given incentives to have a presence in FATA. The same banking legislation should be applicable as in the settled areas,

Mudaraba is a form of partnership by which one party provides the funds for a project while the other provides expertise and management. The latter is referred to as the *mudarib*. It is mutually decided that any profits accrued are to be shared between the two parties while loss is borne by the provider(s) of the capital. This form of partnership is a halal (lawful) means of earning profit in a business venture on agreed upon proportions. This is also a close model of "agency law" as the *mudarib* acts as the agent of the financing party who is the principal in this contract. This type of business venture serves the interest of the capital owner and the *mudarib* (agent).

A *mudarba* contract serves the interest of both parties in a business venture. It is a good mechanism to bring the capital owner and skilled persons together. The capital owner may not have the ability or the experience to run a profitable business. On the other hand, the agent (the *mudarib*) may not have adequate capital to invest in a business or project. Therefore, by entering into a contract of *Mudaraba* each party compliments one another, allowing a business venture to be financed.

How is a *mudarba* contract implemented?

The bank or a financial institution provides the capital as a capital owner. The *mudarib* provides the effort and expertise for the investment of capital in exchange for a share in profit that is agreed upon by both parties. The *mudarib* can be for example in an agricultural society a small land owners and farmers. The bank or the financial institutions recovers its investment before dividing the profits. The profit is considered collateral for the capital. This is a good guarantee mechanism of loan recovery for the banks or financial institutions.

Situation in FATA

In FATA the banks are reluctant to enter into *mudarba* contracts as they feel insecure vis-à-vis recovery of their capital. Also *mudarba* contract is a partnership between a capital provider and skilled labor. Therefore, *mudarba* contract may be used in loaning and similar transactions. In FATA there is a dire shortage of skilled persons who can offer expertise in the economic development sector. Lack of any regulatory authority for enforcement of agreements is another major factor. But if this procedure is streamlined within FATA, small land owners shall greatly benefit as according to the local culture, land passes through inheritance but they do not have the financial means to put this land to commercial use.

Islamic Leasing

One fundamental principle of Shari ah is asset based financing. As opposed to conventional monetary dealing, profit is generated when something having intrinsic utility is sold or offered for use. On the other hand cash has no intrinsic value. As such dealing in money (same currency) cannot generate profit but a Riba (interest) which is declared haram (forbidden) in Islam. Some element of risk has to be involved. The second basic element of Shari'ah is that one cannot claim a profit or fee for a property/transaction, the risk of which was never borne by him.

Based on the above fundamental principles, the most ideal mode of financing in Shari'ah is Musharaka and Ijarah. Idealistically ijarah is a from of investment and also a mean of finance. In the light of cornerstones of Shari'ah, leasing is a contract whereby rights to an asset are transferred by the owner, known as the less or, to another person, known as the lessee, at an agreed-upon price called the rent, and for an agreed-upon period of time called the term of lease. Leasing is lawfully allowed under Sharia'h provided two main principles are observed. Firstly, asset based finance and the assumption of risk connected with the ownership of the asset. In such a lease contract the leased asset remains the property of the less or along with the risk. Liabilities like government taxes and bills are with the less or. Any unilateral or unconditional termination of the lease either by the less or the lessee without prior notification is contrary to the principles of justice and equity, hence not allowed under Sharia'h, thus providing safety for both parties to the leasing contract.

Insurance - Islamic Takaful - (by the owner)

Islamic Shariah principles of Takaful are relevant for insuring businesses. There is a general view among religious minded Muslims that the western style of insurance system is un-Islamic on grounds that it conflicts with the fundamental Islamic norms of Shariah. Introduction of an insurance system based on Shariah principles shall be welcomed in the region.

Approach of the donor agencies and NGOs

It can be easily observed that the international donor agencies and NGOs have chosen to ignore the Islamic commercial laws altogether while drafting a workable draft for economic development within the tribal communities. Shari ah compliance is not only a politically sensitive effort but is also an immensely practical alternative to boost commercial activities in the tribal communities. It must be given substantive consideration while outlining all draft polices for this area as compliance with religion is one of the most visible element of the tribal societies. Any reform proposed on these lines shall receive instant support and encouragement and shall manifest itself in positive results. Without taking the shari'ah principles of commercial law, long term sustainable development is going to be jeopardized. Religious, moral and sociological factors have to be given their due importance in all policy decisions. It should also be noted that there is almost a universal agreement that the implementation of a new commercial law framework within FATA is an urgent priority. If the donor agencies and international NGOs will remember to introduce religious sensitive elements into their strategies, their efforts shall show fruitful results.

Implementing Institutions for Sharia ah

Principles of Shari'ah relating to Islamic commercial transactions may be extended to FATA in the form of an Ordinance drafted after careful and thorough consideration of the peculiar situation in FATA. This ordinance may be promulgated through presidential decree and responsibility of implementation may be entrusted to the political agent's office in coordination with banks or related financial institutions. A number of famous commercial banks are operating a wing offering Islamic modes of financing in the settled areas of the country and the same pattern can be implemented in FATA. The department of the political administration which is currently allotted the funds for tribal development can initially introduce these principles of trade within FATA.

Social Dynamics

Tribal mindsets reflect very close affinities with Islam. People exhibit adherence to Islamic principles in daily life and many cultural practices are also associated with Islam. Tribal population is poor and illiterate. Only 17 % of the entire population of FATA is literate. But, on the other hand, almost 100% of the population is aware of religious principles and receive some level of religious education. Coming to commercial matters, they are well aware of the fact that interest must be avoided at all costs. Therefore, if they have to be introduced to mainstream economic circle, the Islamic principles of interest free banking and loan procedure has to be offered. Afghanistan provides a good example where almost 80% of all bank accounts are non-interest bearing.

Recommendations

- It will be of great practical use if the international donor NGOs and donor agencies aspiring to bring about a commercial law reform in the tribal area must get involved in consultations with religious scholars, clerics and experts in Islamic Law to familiarize themselves with Islamic commercial code of ethics.
- Commercial legal network from a couple of Islamic states must be studied to see the efficiency of the system and its impact on the society and the business community.
- The customary law of the tribes must be studied and understood. These laws must also be included in the economic draft policy.
- Religion sensitivity must be exhibited to bridge the gap between the western agencies and the tribal communities, which perceive the west as an enemy of Islam.
- All other relevant laws must be extended to the FATA through presidential ordinance with necessary amendments authorizing the political agent and his administration in the respective tribal agency to supervise their implementation or in the alternate, the relevant government institutions and departments in the settled districts geographically adjacent to the FATA agency may be authorized to oversee implementation.

ANNEX 11 ORIGINAL DEALING WITH LICENSES CHAPTER

Introduction

This chapter deals with the complex and extensive web of licenses and government regulations that businesses face in the course of their operations. It considers the permits, licenses, and other requirements found in the areas of business formation and operation, labor and employment, banking, real property, intellectual property, investment, and trade.

After business formation, the environment for government regulation in, for example, zoning, construction, taxation, or safety, environment, and health standards, becomes part of the business environment that supports or discourages entrepreneurship, business entry, and enterprise formalization. In this regard, the regulatory environment of Pakistan is greatly influenced by its historical context, which has lead to a vast of array of complex regulations and procedures.

Dealing with Licenses

Ranking Doing Business 2007: 89/175
BizCLIR Scores (scale 1 to 5):

- Legal Framework: 2.77
- Implementing Institutions: 2.13
- Supporting Institutions: 1.66
- Social Dynamics: 2.25

Western travelers to the Moghul Empire often noted that the fundamental relationship between the state and the subject (especially the prosperous subject) was adversarial. According to one observer at the Emperor Jehangir's court, "There are very many private men in cities and towns . . . that are very rich: but it is not safe for them that are so, so to appear, lest that they should be used as fill'd sponges." Another writer noted that, it was "not safe for [rich merchants] so to appear . . . for should the Mohall's Officers see the Chests and Bags of Gold carried as publicly here, as they are in the Streets of London, they would be apt to change their Owner, and be deliver'd to him who calls himself the Original Proprietor."[1]

It is important to examine the origins of Pakistan's legal framework because laws are only a means to social ends. Furthermore, since law-making in Pakistan has historically tended to consist almost entirely of incremental and minor changes, many of the laws affecting private enterprise are still laws originally created by regimes that were either hostile or indifferent to private enterprise. If those laws are applied today without any consideration for the circumstances of their creation or the ethos embedded in them, they will continue to produce the results for which they were originally intended, rather than those currently desired.

The days of the Moghals may appear to be long gone, but the assumption that the government is the original proprietor of all wealth still lingers in the ranks of bureaucracy. More importantly, the laws of the Moghals also linger in the form of the current system of land records, which has hardly changed since its creation by the East India Company in the late 18th century during the formalization of the land revenue system established in the 16th century by the Emperor Akbar. In fact, the records of the land revenue system still serve in Pakistan as the primary land records, even though the land revenue tax itself was abolished in 1977. The primary system of land records in Pakistan was designed in the late 1500s to help the state recover funds, not to help the inhabitants avoid title disputes. The land record system was therefore indifferent to property disputes because such disputes did not affect the collection of revenue. Half a millennium later, the land record system still leads to a legal system overwhelmed by property disputes.

[1] Abraham Eraly, The Last Spring: The Lives and times of the Great Moghals (Penguin, 1997), p 722.

The current regulatory framework relating to labor and employment issues consists of 161 laws, rules, and regulations, many of which originated in the 1960s and 1970s when private enterprise took a backseat to nationalization, and Article 3 of the Constitution was drafted to provide that "The State shall ensure . . . the gradual fulfillment of the fundamental principle, from each according to his ability, to each according to his work."

Given the multiple burdens of the past, one is tempted to describe private enterprise in Pakistan as stalled. Yet Pakistan is in the middle of a regulatory revolution, a paradigm shift in which the legal structures of the past are being reexamined and revised. In some cases, the reform is superficial; in others, fundamental. In almost all cases, however, there is a transition—or at least the beginning of a transition—towards a mode of administration in which the state and private enterprise are no longer adversaries but partners in economic growth.

Legal Framework

According to the World Bank's latest report, "Pakistan ranks relatively well in **starting a business**—both globally and regionally."[2] According to the timeframes mandated by the SECP, as authorized by the Pakistan Companies Ordinance of 1984 (and since amended), it should be possible to register a new company in four days.[3] Registration entails a number of requirements, including filing a memorandum of association, preparing a seal, and registering with a number of other agencies, including those whose jurisdiction includes sales tax and employment and labor issues. Most retail outlets must also register with a local "Chief Inspector" under the Pakistan Shops and Establishment Ordinance. Independent estimates of the time actually needed to start up a company range from 13[4] to 24[5] days, which, though high, is less time than the four months required in the 1990s.

In any event, it is apparent that the formation of a company is no longer a significant hurdle for private entrepreneurs. One especially promising aspect of the law and regulations governing company registration is that there is no minimum capital requirement. Also, registration fees are not unduly burdensome, as they often are in other countries. Instead, the regulatory constraints against efficient operation of companies lie in government regulation that applies *after* a company has been formed and strike at the heart of an entrepreneur's incentive to join the formal economy.

Corporations are deemed to be good for business for the simple reason that they limit the liability of their shareholders. Even if a company goes bankrupt, the most that a shareholder will lose is the value of his shares; he will not be liable in his personal capacity. Companies are also good for business because they provide a structured way for people who may be complete strangers to cooperate and put their financial and intellectual capital to use. In other words, a shareholder can invest with confidence in the shares of a publicly traded company because he trusts that the relevant regulatory framework will force the management of the company to respect his rights.

The two most important goals of a corporate regulatory framework then are to (1) ensure that corporations enjoy limited liability and (2) ensure that corporate management respects the division between its own assets and the company's assets. On both accounts, Pakistan's corporate regulatory framework is lacking.

> The single most important regulatory requirement in Pakistan that undermines the limited liability of corporations is the demand by all banks—as supported by the law—for personal guarantees of the company directors.

Admittedly, the limited liability of companies is never absolute. In practically all countries, the corporate shell does not protect against criminal charges or when the corporate form is being used to defraud. However, Pakistan's laws go much further.

In Pakistan, the regulatory requirement that most severely undermines the limited liability of corporations is the demand by all banks for personal guarantees of the company directors. Until recently, this demand was non-negotiable because the regulations issued by the State Bank of Pakistan (SBP) mandated that banks obtain personal guarantees from all directors of private limited companies.[6] In 2003, the SBP changed these regulations to allow banks to formulate their own policies with respect to personal guarantees.[7] This relaxation has yet to have any beneficial effect, however: all banks, practically without exception, still

2 World Bank, Doing Business in 2007, p 45.

3 Companies Registrations Offices Regulations (2003), SRO No. 89(I)/2003.

4 Foreign Investment Advisory Service Report, p 168.

5 World Bank, Doing Business in 2007, p 45.

6 BSD Circular Letter No. 7, May 31, 1972, clause b: "No banking company shall make advances to a private limited company without obtaining a personal guarantee of the directors of such company in addition to the normal security which the banking company may require."

7 State Bank of Pakistan, Prudential Regulations for Corporate/Commercial Banking, Regulation R-10.

demand personal guarantees from all directors of private limited companies before issuing loans. Since Pakistan's banking sector is now quite competitive, the continued demand for personal guarantees cannot simply be ascribed to bureaucratic inertia. Instead, the demand for personal guarantees continues because banks have limited faith in their ability to recover loan amounts through the sale of pledged collateral.

The most blatant exception to the principle of limited corporate liability—which in itself constitutes a highly burdensome regulatory requirement—comes from the criminal law. Specifically, the National Accountability Bureau (NAB) Ordinance of 1999, Section 5(r), provides that "willful default" of a loan by a company to any entity or bank is a crime for which every director and controlling shareholder of a company can be held liable and punished with 14 years imprisonment. Furthermore, the term "willful default" was specifically clarified in 2000 to mean "any default" of more than 30 days.[8] In other words, this provision turns civil default into a strict liability crime.

The NAB law, introduced in the early days of the present government, assumed that defaulting businesspeople would immediately pay back the "stolen" amounts to the banks if treated with sufficient severity. This assumption proved false, however, and the government was forced to retreat and introduce a provision that prosecution on willful default grounds could only take place with the approval of a committee created by the SBP.[9] That committee halted all fresh prosecutions on willful default grounds since 2002, but the NAB law still has influence over business because the threat of criminal prosecution for non-payment of a loan is basically a criminalization of taking risks, which operates as a disincentive to starting a new business.

Even apart from the well-publicized flaws of the NAB law, the bureaucracy has yet to fully embrace the benefits of limited corporate liability. For example, the Income Tax Ordinance of 2001 still provides that all directors of a company are liable in their personal capacity for all defaults of the company.[10] Furthermore, even when the law itself contains no specific provisions, state entities often use indirect means to pressure directors and shareholders for the alleged defaults of the company. In one case, a former employee of a company was placed on the Exit Control List (and thereby barred from leaving Pakistan) on the grounds that his former employer had defaulted in payment of excise tax, even though the Central Excises Act of 1944 contained no provision placing individual liability on directors of companies (let alone employees). Even today, the website of the Employees Old Age Benefit Institution (EOBI) states that one of the mechanisms being considered by the government to improve compliance with EOBI laws is to make directors personally liable for defaults of the company.[11]

The issue of limited liability is one which strikes at the heart of corporate regulation. If companies do not enjoy limited liability, and if shareholders and directors do not enjoy some degree of protection from ordinary business risk, they will be reluctant to involve themselves in business. At present, the risk associated with corporations means that many people who are not normally engaged in business refuse to become directors in any company, while people who are engaged in business refuse to become directors in companies that they do not control. In each case, the end result for the corporate sector is a loss of intellectual and financial capital. Furthermore, since corporatizing a business does not result in either reduced risk or increased access to financial and intellectual capital, small businesses have fewer reasons to formalize and form a company. As a consequence, the informal sector continues to flourish and the government loses valuable tax revenue.

The current status of **labor regulations** presents in a concentrated fashion many of the challenges that exist within the regulatory environment in Pakistan.

The universe of labor regulations consist of a stratified mountain of 161 laws and regulations. The earliest layer dates back to the early years of the twentieth century (e.g., the Mines Act of 1923), the middle layer consists of laws added during Pakistan's romance with socialism during the 1960s and 1970s, and the final layer consists of legislation haphazardly tacked on during the last two decades. Thus, as a preliminary matter, the regulatory environment for businesses seeking to legally employ workers is a vast and confusing backdrop against which businesses are forced to make their way. Regulation begins with a requirement that new companies register with the Employee Social Security Institution and with the Employees Old-Age Benefits Institution—steps that take around 11 days each[12]—but the path beyond that stage is significantly encumbered.

8 National Accountability Bureau Amendment Ordinance, 2000.

9 Section 25A of the NAB Ordinance, added vide National Accountability Bureau (Second Amendment) Ordinance, 2000.

10 §200 of the Income Tax Ordinance, 2001.

11 See: http://www.eobi.gov.pk/InstitutionalStrategy/institutional%20strategy-main.html.

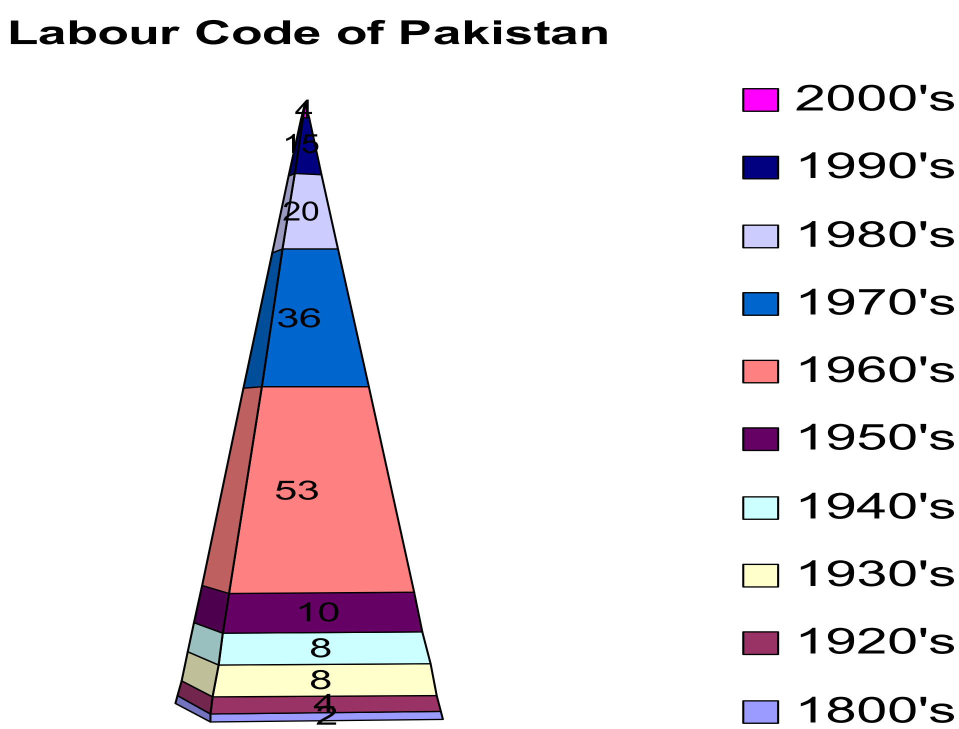
12 Starting a Business in Pakistan, at http://www.doing business.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=147.

Specifically, the ad hoc construction of the regulatory framework for labor and employment has led to many inconsistencies. While some issues (such as minimum wage) are highly regulated, others are ignored. For example, there is no general law dealing with occupational safety: instead there are only stray provisions contained in the Factories Act of 1934 and the Mines Act of 1923.

The problem created by this plethora of legislation is further compounded by the Constitution of Pakistan, which divides responsibility for labor legislation between the federal and provincial governments. There are therefore multiple authorities simultaneously applying, enforcing, and administering multiple legal regimes. The Federal Government, for example, is responsible for collecting benefits under the Employees Old Age Benefit Act of 1976 and the Companies Profit (Workers Participation) Act of 1968, while the provincial governments are responsible for implementing the Provincial Employees Social Security Ordinance of 1965, minimum wage laws, and the Workers Welfare Fund Ordinance of1971.

More importantly, the multiple burdens lead to high costs to business: employers in Pakistan pay 13% of the salary of qualifying employees as benefits along with 7% of their profits.[13] Furthermore, employers must file multiple returns with multiple regulators even though the information provided in each case is essentially identical. On the other side, workers seeking benefits have to approach multiple regulators to obtain them.

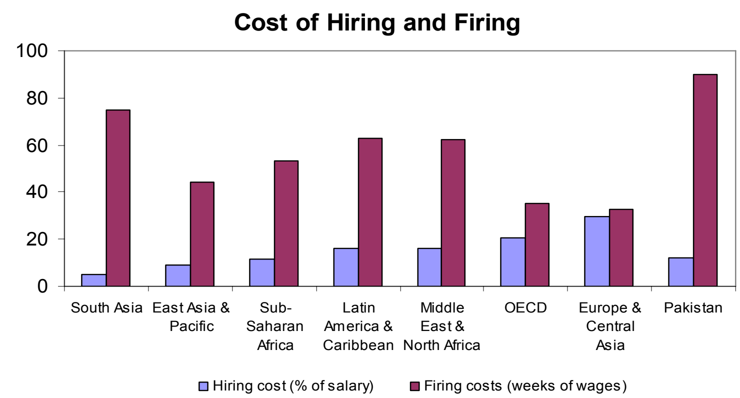
A significant portion of the regulatory framework is overly complex. For example, the minimum wage notification issued by the Punjab government, instead of simply specifying a minimum wage for unskilled labor, specifies minimum wages for 7,185 different classes of workers in 51 different industries, with many of the prescribed wages differing only by a few rupees.[14] Similarly, the cost of terminating a worker is prohibitively expensive because regulation requires that



[13] Employers are required to pay 6% of an employee's salary under the Employees Old Age Benefits Act, 1976 and 7% of an employee's salary under the Provincial Employees Social Security Ordinance of 1965. In addition, 2% of profits is payable under the Workers Welfare Fund Ordinance of 1971 and 5% is payable under the Companies Profits (Worker's Participation) Act of 1968.

[14] Punjab Minimum Wages Board, "Minimum Wage for Head Mali [Gardener]," Cycle and Cycle Parts Manufacturing Industry Notification, August 8, 2006. Head mali wages are fixed at Rs 166.65 per day; the wages of a normal mali are fixed at Rs 158.96 per day.

employers pay 90 weeks of severance in addition to other penalties.[15] Because those costs are not payable if an employee is discharged for misconduct, however, the labor system gives employers a positive incentive to fire their employees on trumped-up charges. This has led to numerous cases in which the grounds of termination are under challenge before the labor courts. Not surprisingly, Pakistan ranks extremely low on indexes that catalog flexibility in hiring and firing and costs of hiring and firing.[16]



Obviously, the current labor system requires reform. From the employer's perspective, the labor laws represent unnecessary expenses and lead to employers keeping workers off the books, farming out work to subcontractors or temporary workers, or bribing the labor inspectors (or all of the above).[17] Because most employers choose to evade the laws and not register their employees, many workers receive no benefits and no job security.

From the employee's perspective, the results are equally disheartening. To begin with, the high cost of compliance means that employers prefer not to create jobs but to try and make do with their existing labor force. Secondly, to the extent jobs are created, employers prefer not to create permanent jobs but to contract those jobs out. Because employers are reluctant to create permanent positions, employees rarely receive training. And finally, because the cost of compliance is perceived as excessive by the business community, employers tend to fight back against unionization, preferring either to create a docile "pocket union" composed of favored employees or else using strong-arm tactics to ensure that unions are not formed.

In consonance with the new Labor Policy, the government has embarked on an ambitious task of reformation and consolidation of labor regulation.

In response to these problems, the government adopted a new Labor Policy in 2002 (the first labor policy since 1972), which opens with this statement: "The traditional environment of mutual antagonism and mistrust between employers and labor has adversely affected investment, business profitability and growth, all of which are crucial elements for ensuring security of employment, decent wages and social security for the labor sector."[18] In consonance with the new Labor Policy of 2002, the government has embarked on an ambitious task of reformation and consolidation of labor regulation. The first of these laws, the Industrial Relations Ordinance, was introduced in 2002, and the consultative process has been completed with respect to a second law, the Employment and Service Conditions Bill.

The **regulation of real property** is the single largest and most significant regulatory challenge confronting Pakistan today. Simply defined, capitalism consists of the belief that the most efficient use of capital arises when individuals are given the maximum freedom to decide how to use their capital. It then follows that the state has a vested interest in ensuring that transfers of capital are made securely, quickly, and efficiently. Because the primary form of wealth in Pakistan consists of real property, the state of Pakistan has a vested interest in ensuring that property transactions are as secure, quick, and efficient as possible. However, real property transactions in Pakistan are highly insecure, inefficient, and encumbered by litigation (or the threat of litigation).

The fundamental problem is the lack of a system of recorded title in the country. The basic land records maintained by the provincial governments are not

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[15] World Bank Report No. 38075-PK, Pakistan Labor Market Study: Regulation, Job Creation and Skills Formation in the Manufacturing Sector, p 20.

[16] Chart and figures taken from World Bank, Report No. 38075-PK, "Pakistan Labor Market Study: Regulation, Job Creation and Skills Formation in the Manufacturing Sector," p 20.

[17] According to one source, there are only 32,000 registered workers in Sialkot out of a total workforce of 300,000. Similarly, the Sindh Social Security department proudly reports that it has a total of 412,000 registered workers; the workforce eligible for registration is estimated at four million, and the total population of Sindh is about 40 million.

[18] Government of Pakistan, Labor Policy 2002, p. 13, at http://www.pakistan.gov.pk/divisions/labour-division/media/LP2002.pdf.

records of title and do not record definitively who is the owner of a particular piece of property. Instead, they are land revenue records, i.e., records of who is liable to pay taxes on the property in question. A person who is recorded as the owner of a particular property in the land revenue records is entitled to present those records as *prima facie* evidence of his title, but a court may still decide that the property actually belongs to someone else.

The land revenue system's historical underpinnings date back to the 16th century, and persisted through colonial rule. Today, 60 years after independence, land revenue records in Pakistan are still maintained and kept in exactly the same manner as they were in 1947, even though the land revenue tax itself was abolished in 1977.

The fact that land records in Pakistan consist primarily of land revenue records is extremely important because there was no equivalent right of "ownership" of real property on the Indian subcontinent. Instead, all land belonged to the king and the only right recognized by the king was the right of the occupier of that land to continue to occupy it upon payment of a fee. As explained by the 1899 edition of the Punjab Settlement Manual, "the share of the State which we call the land revenue is not a land tax. It is more analogous to rent."[19]

More importantly, because the interest of the state historically consisted in identifying the person liable for payment of this "rent," the fact that the system did not record title, or was only an imperfect proxy for title, was of minimal consequence to the state. Instead, because the right of possession was a consequence of the right to pay tax, the system placed an incentive on the private claimants to land to make sure that their title was recognized. However, there was no corresponding incentive for the state to definitively settle title disputes because the state continued to receive revenue pending the dispute resolution.

The problems created by the absence of recorded title are compounded by a number of factors. For example, Pakistani law recognizes the concept of oral gifts. Thus, even though the land revenue records may show a person as the owner of a particular property, it may well be the case that another person holds title to that property because the property in question was orally gifted to him. Furthermore, since oral gifts are invariably disputed by the party being dispossessed, they also result in litigation.

A second complicating factor is that Pakistani common law recognizes the concept of *benami* ownership. *Benami*'s literal translation is "without name," but in practical terms it means a situation in which the ostensible owner of property is actually holding the property in trust for a beneficial owner. *Benami* ownership, however, is not recorded. In 2000, a draft *benami* law was by the Government of the Punjab but never enacted. While subsequent newspaper reports have suggested that a *benami* law is being prepared, there is no enacted law to date.[20] In the meantime, the right of a beneficial owner to file suit against the ostensible owner of property continues to form the basis for litigation.

A third set of complicating factors is created by the Islamic law of inheritance. Under this law, testamentary rights are limited to one-third of the estate. The balance of the property owned by the deceased devolves immediately upon his death in prescribed shares to his legal heirs. In practice, because there is no probate process, the right of a legal heir to his share of property overrides all records to the contrary. Even to the extent that all the heirs of a particular landowner are recorded, ownership splinters within a few generations into smaller and smaller portions. For example, if a person has three equal and distinct parcels of land, and three sons, his three sons will each inherit an equal share in each property (rather than getting one property each). The ultimate result is that many individuals end up owning very small shares in multiple properties.[21] If the co-owners cannot agree on management and use of the land, the only solution is formal partition proceedings filed in a court of law, resulting in yet more litigation.

One method increasingly used by parties to deal with the plethora of land-holders is powers of attorney. However, power of attorney does not need to be registered in the locality where the land is situated. Consequently, multiple powers of attorney can be registered for the same piece of land. In fact, as explained by one report, the entire system of registration is a misnomer:

Pakistani law does not view registration or any other record of rights in land as a guarantee from the government or its agencies that the person mentioned in the records of any agency is the rightful owner . . . .

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[19] Sir James Douie, The Settlement Manual, 6th Edition (Mansoor Book House, Lahore), paragraphs 1-2.

[20] "Efforts under way to evolve uniform law of Benami transactions in provinces," Dawn (May 10, 2005).

[21] In a Sialkot register, one person's share of 7/2506 amounted to about 20 yd² of agricultural land. According to the Executive District Officer, neither the size of the holding nor the proportion held were unusual.

In transactions involving property transfers, the documents of "title" provided by the seller to the buyer do not certify title. These are private documents that confirm one of the transactions in the entire chain of transactions. . . . According to Rule 135 of the Registration Rules, 1929, it is not the concern of the Registrar to establish the validity of a document. In fact, he cannot even refuse to register a document on the grounds that it is a fraudulent transaction . . . Not only is the Registration Office not supposed to go into questions of title, the legality of transactions and the validity of the document it is expressly forbidden by law to concern itself with these issues.[22]

Another complicating factor is that some provinces in Pakistan have enacted laws creating a right of pre-emption in certain instances. Under the Punjab Pre-Emption Act of 1991, the neighbor of a person selling agricultural land has a pre-emptive right to purchase the land, i.e., a right of first refusal. Since the right of pre-emption is regarded as a predatory right and is consequently disfavored, the exercise of the right is subject to a number of stringent conditions. However, whether or not these conditions have been met can only be settled through litigation. Furthermore, the right of pre-emption creates problems because land transfers are almost invariably under-reported in value so as to avoid taxes. If the declared sale price of the land is actually less than the actual sale price (which is often the case), the prospective seller clearly has much to lose from the exercise of the pre-emptive right of purchase (and conversely, the holder of the pre-emptive right has much to gain). Not surprisingly, litigation flourishes.

A final complicating factor that further provokes litigation is that while §54 of the Transfer of Property Act of 1882 provides that no document creating any interest in land shall have any effect unless registered, §53-A of the Transfer of Property Act carves out an express exception for an agreement to sell. An agreement to sell does not confer title, but it does give rise to a right of specific performance. In short, a buyer under an agreement to sell can file a suit to compel the seller to execute a sale deed with him even though the agreement between the parties is unregistered. Since unregistered documents are relatively easy to forge, agreements to sell are the basis of considerable litigation.

Most Pakistani cities have commercialization policies that severely restrict the ability of commercial developers to develop property.

Unfortunately, agreements to sell result in litigation even when not forged because land sales in Pakistan are conducted in stages. At the first stage, the prospective buyer will submit a token payment and in return obtain copies of the relevant documents for due diligence. If the documents are acceptable, the buyer then signs an agreement to sell and makes payment of a further amount, normally ranging between 20 to 40% of the total price. The remainder of the purchase price is then due upon signature of a sale deed and the handing over of possession, which typically occurs three months later. However, if the payment is delayed, then the sales agreement may or may not be valid (depending upon the length of delay and the language of the agreement to sell). Furthermore, if the price of the property has risen in the interim period, the seller may wish to refuse to accept payment and then lay the blame on the buyer. Either way, litigation often ensues.

The end result of all these issues is a system destined to produce litigation. According to some measures, disputes over property account for as much as 90% of pending civil litigation. A study conducted for the Asian Development Bank (ADB) found that the average time required to adjudicate a civil dispute in the Sindh High Court (excluding appeals) was 118 months. This has various consequences.[23] For example, many property cases are filed for "strategic reasons," e.g., to obtain interim relief in order to get the opposing party to negotiate on preferential terms. Furthermore, the fact that the system is clogged with property disputes means that even non-property disputes (such as breach of contract cases) take an unreasonable period to adjudicate.

The uncertainty of title directly affects private enterprise in a number of ways. Because title to property is almost invariably riddled with flaws, the value of **real property as collateral** is compromised.[24] Pakistani banks are therefore reluctant to advance more than 50% of the assessed value of property, even though in other countries with more robust systems of title, it is not unusual for financial institutions to lend as 90% (or more) of the value of a property.

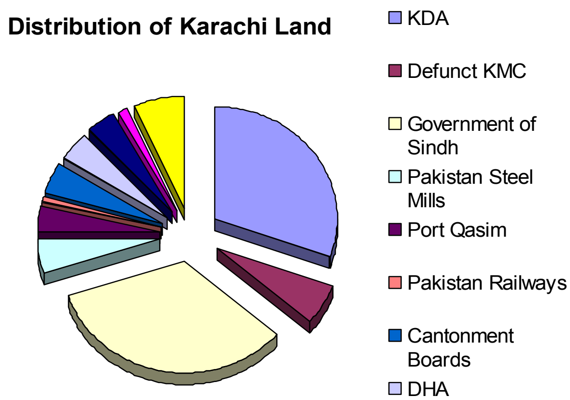
The problems caused by the deficiencies of the land titling system are then further exacerbated by the fact

22 Issues and Polices Consultants, "Land Markets in Peshawar and Karachi," p. 5. In some cases, notably with respect to the Lahore Defense Housing Authority, powers of attorney are simply not accepted because of concerns regarding fraud.

23 Study conducted by Mr. Shahid Kardar. Copy on file with author.

24 As noted by the Privy Council in as far back as 1872, "the difficulties of a litigant in India begin when he has obtained a decree" (cited in Jameela Pir Buksh v. Appellate Authority, 2003 SCMR 1524).

that Pakistani law allows parties to create unregistered security interests in land through the creation of an "equitable mortgage." More specifically, §58(f) of the Transfer of Property Act of 1882 provides that the mere retention of the title deed to a property gives the holder of the title deed a security interest in the property. Since equitable mortgages are not required to be registered (and consequently are not normally registered), the result is yet more uncertainty for buyer and lender alike. More importantly, not only does the system allow for the creation of unregistered



mortgages but, by imposing a substantial level of taxes on registered mortgages,[25] it used to practically force lenders not to opt for registered mortgages. Not surprisingly, most bankers report that even in the case of the largest loans, they will execute a registered mortgage for a token amount (normally 5%) and have an equitable mortgage for the remainder (though this may change given the recent decrease in rates).

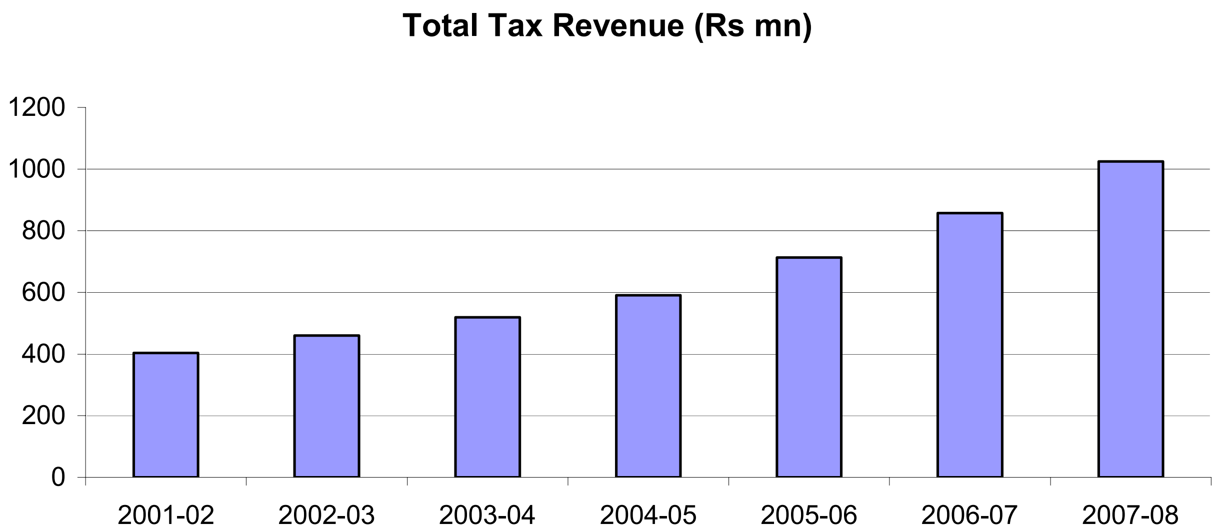
The land revenue system is not the only system of land regulation, nor is it universally applicable. In traditionally urban areas, no land revenue was payable and hence land revenue records are not available at all. As a consequence, the only centralized record of land available with respect to historically urban areas (such as the Walled City of Lahore) are those maintained with the relevant sub-registrar under the Registration Act of 1908 or, in some cases, by the excise department.

Land revenue records are also not maintained with respect to military cantonments, which instead operate an entirely separate system of records. Additionally, large urban areas have been developed by official housing and development authorities. In each case, these housing authorities (for example, the Lahore Development Authority) maintain their own records. Finally, a large number of private cooperative housing societies maintain their own internal land records. The end result is that land records are fragmented across different authorities. In the case of Karachi, urban land is held by eleven different types of authorities: 3.7% of land is, for example, held by more than 50 different cooperative housing societies.[26] Each housing society then operates its own system of records that runs in parallel to the land revenue records. The systems operated by the different societies vary widely in quality, with the land records of the military-operated housing societies usually being the most sophisticated and well organized. Perhaps for this reason, land in military-run housing societies commands a healthy premium over urban land in other areas.

Land use and commercialization policies are also extremely problematic in Pakistan. Under the rent restriction laws of Pakistan, every lease is a lease forever and in practice only terminates when the tenant defaults in payment of rent or the landlord is able to prove a personal need for the property in question. Since the law also restricts the landlord's ability to increase rent, existing tenants often have a very strong incentive not to vacate their leaseholds. The end result, once again, is litigation that clogs up the legal system. According to one study, approximately 6% of all reported cases decided by the Supreme Court of Pakistan from 2000 to 2005 related to rent matters. Conservatively speaking, the minimum amount of time required to evict a tenant is two years—and five to seven years is not unusual. The consequence of this unnecessary litigation is that rental space is at a premium. Some landlords refuse to rent their properties to other Pakistanis, instead reserving their properties for foreigners. In many cases, people refuse to rent out their properties at all, preferring to let their properties stay empty rather than take the risk of the property being caught up in litigation. To the extent that landlords are willing to rent, it is normal for them to seek large security deposits (equal to one or even two years of rent). Finally, to the extent that rent control legislation is effective in preventing landlords from ousting tenants, the protections of the law are exercised not by poor people (who do not have the funds to access courts) but by middle- and upper middle-class people. Thus, rent control laws can hardly be justified on grounds of pro-poor protection.

25 Until 2003, a total of 2% was payable in the Punjab which has now been reduced to a total of 0.045%. However, total charges in Sind are still at 2% Unregistered equitable mortgages are free.

26 Issues and Polices Consultants, "Land Markets in Peshawar and Karachi," p 25.



Most Pakistani cities have commercialization policies that severely restrict the ability of commercial developers to develop property. Part of the problem is due to the simple fact that land use plans were originally developed in the major cities at a time when the population of the cities was considerably smaller. According to one source, the urbanized land area of Karachi was only 349 km² as per the 1974 Master Plan but 3,520 km² as per the 1988 Master Development Plan.[27] Furthermore, to the extent any town planning was being carried out, it was being done by a bureaucracy that saw no reason to accommodate any demand for commercial property. Since the massive increase in population meant that an increase in commercial activity was unstoppable, commercial builders often resorted to illegal tactics in order to protect their projects. This unchecked and unplanned commercialization has in turn been countered in cities like Karachi by a nascent environmental movement that responds to all commercial development with scorched earth tactics.[28]

In comparison to the apparently insoluble complexities of land regulation, the **regulation of taxation** in Pakistan is not only healthy but one of the clear success stories of the Musharraf government. The reform drive in the area of taxation was initiated in 2001 following the receipt of a hard-hitting report authored by an independent Task Force on Tax Administration, which made the fundamental point that "the relationship between the taxpayer and the tax collector is largely adversarial. Neither the taxpayer nor the tax collector has faith in the other's integrity."[29]

The most important consequence of the report and the subsequent reforms is that the Central Board of Revenue (CBR) has abandoned its old emphasis on punitive methods and has instead embraced a more open system that provides a more balanced set of incentives to taxpayers. For example, every single income tax return was (in theory) previously subject to scrutiny. This policy was abandoned in 2002 and replaced with a policy of universal self-assessment. Similarly, on the customs front, all inbound shipments are no longer inspected. Instead, shipments are assessed using risk-management software that identifies high-risk shipments. These are then inspected in a way that reduces contact between importers and the Customs officers (or appraisers). Finally, in the context of sales tax, the entire sales structure was streamlined by making most export-oriented industries zero-rated. Results of these reforms have included a more business-friendly tax regime and a dramatic increase in tax receipts (as visible in the gross annual recoveries shown above).

As part of the Finance Bill of 2007, the CBR has been reorganized and renamed the Federal Board of Revenue. This bill seeks to enhance the autonomy of the CBR and increase the salary of its employees. The formal autonomous status of the CBR is important because structural reform will serve Pakistan's interests well. Given that taxation policy and rates are controlled by the CBR, it is vitally important that the CBR is operationally autonomous and not susceptible to

27 See: http://www.urckarachi.org/land.htm.

28 A good example of the typical article opposing commercialization is provided by Fatima Bhutto, "Dubai-istan," The News, February 18, 2007.

29 The Report of the Task Force on Reform of Tax Administration, 2001, at www.cbr.gov.pk.

corrupt practices as was the case for much of the 1990s.[30]

In comparison to other sectors, the **financial sector** regulatory mechanisms are both modern and aligned with current trends. The responsibilities of the central bank are performed in Pakistan by the SBP, which was created first by the State Bank of Pakistan Order of1948 and then, on a more formal basis, by the State Bank of Pakistan Act of 1956. Under the latter act, the SBP is authorized to "regulate the issue of bank notes and keeping of reserves with a view to securing monetary stability in Pakistan and generally to operate the currency and credit system of the country to its advantage." In 1997, the autonomy earlier granted to the SBP was formalized through a series of amendment ordinances that give full and exclusive authority to the SBP to regulate the banking sector, conduct an independent monetary policy, and set limits on government borrowings.

While the commercial banking sector is controlled by the SBP, the remaining financial sector regulatory functions are carried out by the SECP. The SECP is thus formally responsible for regulating the insurance sector, pension funds, and non-banking financial companies such as investment financial services, leasing companies, housing finance services, venture capital investment, discounting services, investment advisory services, and asset management services. The SECP also regulates various external service providers that are linked to the corporate sector, like chartered accountants, rating agencies, and corporate secretaries.

The legal status of **administrative tribunals** in Pakistan is a problem that has emerged over the past decade and has yet to be clearly examined. The problem arises because, in a series of landmark decisions from 1997 onwards,[31] the Supreme Court has ruled that the right of access to justice is a fundamental right that requires that "judicial power" can only be exercised by "courts." The term "court" was then restrictively defined to mean tribunals subordinate to the High Court of each province manned by independently appointed judges.

The issue is that "judicial power" is an amorphous concept. The problems inherent in the adoption of this line of reasoning have yet to fully emerge because only tribunals that are emphatically unconstitutional (such as military tribunals) have been examined by the Supreme Court. However, many other less controversial administrative tribunals (such as tax tribunals or competition authorities) exercise what looks very much like judicial power. Indeed, it is standard practice for a particular area of the economy to be regulated through a comprehensive statute which in turn creates a specialized tribunal to handle disputes arising under the statutes (albeit normally with a right of appeal to the regular judicial hierarchy). Such statutes and tribunals, for example, exist with respect to the oil and gas sector, telecommunications, electricity, electronic media, competition law, corporate law, and securities regulation.

With notable exceptions, the statutes creating administrative tribunals are relatively new. For example, the Oil and Gas Regulatory Authority was created by statute in 2002, the Securities and Exchange Commission in 1997, the National Electric Power Regulatory Authority (NEPRA) in 1997, the Telecommunications Authority in 1996, and the Electronic Media Regulatory Authority in 2002. It should be noted that statutory bodies created from the 1990s onwards received input from multilateral or donor institutions. As a consequence, the administrative tribunals created for each sector are fairly well regarded by the relevant business communities. One complaint, however, is that these institutions lack independence when it comes to balancing the government's interests against those of the private sector. Since the members of administrative tribunals tend to have been transferred directly from other government posts and institutions, their pro-government tilt is somewhat understandable. The appointment of qualified and independent personnel to administrative tribunals is therefore of considerable importance.

A prime example of the consequences of a dysfunctional tribunal is provided by NEPRA, which regulates all electricity tariffs. According to several sources, one of the prime reasons for Pakistan's current dearth of electricity (as evidence by prolonged blackouts) is the fact that NEPRA has simply failed to approve any reasonable tariffs. Instead, project financiers report having been harangued by NEPRA members that they should charge lower rates "in the public interest." Since private banks lack incentive to

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30 In one notorious case, the duty structure applied to steel was changed by the government of Benazir Bhutto, allegedly to try to bankrupt her political opponent (who was the owner of steel mill). Whether that is true or not, the perception regarding the misuse of the CBR was such that when General Musharraf passed the NAB Ordinance in 1999, the abuse of the CBR for political purposes was specifically and separately declared to be a crime. See also §9(a)(vii) of the NAB Ordinance: corruption and corrupt practices are defined to include the issuance of "any directive, policy or any SRO or any other order which grants or enables any undue concession or benefit in any taxation matter."

31 Mehram Ali v. Federation of Pakistan, PLD 1998 SC 1445; Liaquat Hussain v. Federation, PLD 1999 SC 504.

subsidize infrastructure projects, the result has been a number of generation projects that have failed to reach financial closure.

In comparison to the newly created regulatory bodies, the creation of the Board of Investment (BoI) to provide a unified forum for dealing with issues relating to **FDI** has been less successful. Created by the Board of Investment Ordinance of 2001, the BoI is charged by law with the responsibility "to promote, encourage and facilitate local and foreign investment." However, the institutions most directly relevant to FDI are the SECP and the SBP, not the BoI. The SECP is relevant because all foreign companies that have "established a place of business" in Pakistan are required to provide certain documents to the SECP (such as copies of their memorandum and articles of association). Furthermore, the repatriation of profits is regulated by the SBP under the Foreign Exchange Regulation Act of 1947. Under clause (ii) (I) of Paragraph 13 of Chapter XIV of the Foreign Exchange Manual, any application for remittance of profits must be accompanied by a letter from the BoI giving the relevant company permission to operate in Pakistan. Registration of a foreign company with the BoI therefore confers no additional benefits but is merely a documentary formality. It is also worth noting that foreign companies cannot simply submit one set of documents to the BoI but must submit separate sets of largely identical documents to all three institutions. Finally, while the BoI is legally equipped to serve in a coordinating role, it has yet to perform that function. For example, the tourism policy on the website of the BoI states that tourism projects will be entitled to the concessions that are provided to industries. However, the Punjab Government is refusing to treat tourism projects (e.g., hotels) on an equal concessionary basis, resulting in litigation. This dispute is exactly the sort of problem the BoI is supposed to help resolve.

Implementing Institutions

Like many other bureaucratic institutions in Pakistan, the **land revenue regulation** authorities are divided into two cadres of officials. The lower-level cadre consists of village and *tehsil*-level officials such as *Patwaris*, *lanugos*, and *Tehsildar*, who serve in the field. The senior-level cadre of officials consists of bureaucrats, inducted directly into management positions, who oversee the management and administration of land records in positions associated with the various district governments. However, the overall management of the land record system lies not in the district governments but in the provincial Boards of Revenue, which are charged by law with "the general superintendence and control over all Revenue Officers and Revenue Courts."[32]

Notwithstanding its elaborate and detailed manuals and mechanisms, the land revenue system is known to be corrupt. Lower-level officials, such as *Patwaris*, have massive discretion when it comes to performing their office. Given their low wages, the *Patwaris* often ask for, and receive, facilitation payments that are seen as part of the course of business. At the higher levels, corruption is less entrenched but nonetheless endemic. The Government of the Punjab is currently spearheading a movement to initiate the computerization of land revenue records. This step will increase transparency and will perhaps reduce the *Patwaris*' ability to extract transaction costs.

The SECP, which deals with matters such as the **registration of companies**, was the first of Pakistan's major regulatory institutions to be thoroughly revamped. Prior to 1999, the corporate sector and the securities market were regulated by the Corporate Law Authority, which suffered from bloat and sloth. The SECP was therefore formed as an independent and autonomous regulatory body with broad authority to cover not just the corporate sector and the securities market but a whole host of other areas such as the insurance sector and private pensions. Starting in 2000, the SECP has consistently sought to fill its senior management positions with well-regarded professionals. As a consequence, the SECP has been perceived by the market as being far superior to (and more business-friendly than) its predecessor institution.

The SECP Act of 1997 was recently amended to provide that the policy committee of the SECP would be chaired not by the Chairman of the SECP but by the Finance Minister or his nominee. As a consequence, the SECP is less autonomous than previously.

Recently, the SECP pre-emptively took over an investment bank (owned by a politically influential family) whose management had invested funds into real estate schemes in apparent violation of applicable laws. The swift action by the SECP avoided wider fallout, established a welcome standard of oversight, and resulted in the protection of the general investor through a negotiated sale in favor of a fresh investor who has agreed to make full payment, inclusive of accumulated interest, to almost all of the concerned parties.

The SBP is the main institution charged with regulating the **financial sector,** and in particular, commercial

[32] Punjab Board of Revenue Act, 1957, Section 4.

banks. The SBP has consistently been regarded as one of the premier policy institutions and has consequently managed to maintain high levels of professionalism. In recent years, the SBP has taken an important step towards maintaining its distinct status by spinning off its daily operations into a subsidiary company and allowing the main State Bank to deal with higher-level policy issues. The SBP has therefore continued to produce high quality economic research and is staffed by a well qualified team of professionals.

Notwithstanding its strengths, the SBP continues to be hampered by its assumption that it alone stands between the nation and fiscal ruin. That attitude may have been justified when the banking sector was dominated by public sector banks, but is no longer tenable given that the banking sector has been largely privatized.

As noted above, the current system of **labor laws** benefits neither the business nor the worker communities. Furthermore, the labor system fails to provide benefits to those workers who are covered by the myriad laws enacted ostensibly for their welfare. Since benefit schemes are disaggregated among many different authorities, workers seeking benefits must contact a number of different offices to access their benefits. More importantly, funds collected ostensibly for the benefit of workers all wind up going into the Federal Consolidated Fund from which limited amounts are then doled out to provincial committees, which in turn have limited capacity to spend the funds and even less ability to ensure that those funds are not misused. From 2005 to 2006, a total of Rs 10.6 billion was collected in workers welfare fund contributions, the total budget allocations of the provincial worker welfare boards was Rs 4.91 billion, and the total amount actually spent by them was Rs 2.59 billion. In other words, almost three-fourths of the funds collected for worker welfare were never actually spent on worker welfare. The retention of funds earmarked for employee benefits by the federal government is a scandal that even the SBP has strongly condemned.[33]

The most significant new development in the field of labor regulation is the turn away in the new Labor Policy of 2002 from a trilateral approach (with workers, employers, and government all involved in negotiations) towards a bilateral approach. In a trilateral system, both workers and management see no reason to compromise because the casting vote lies with the government representative. In a bilateral negotiation system, both parties have an incentive to reach a reasonable compromise. The push towards a bilateral approach appears to have been initiated first by the Workers and Employers Bilateral Council of Pakistan (WEBCOP), an institution founded by 54 representatives from both the worker and the employer sides. Subsequently, when the new Labor Policy was promulgated in 2002, it explicitly stated that bilateralism would be the core element of the new Labor Policy. Specifically, the principles, objectives and action program of the policy concentrate on the creation of relationship of trust and cooperation between employer and employee "under the strategy of least intervention by the state."

Bilateralism appears to have gained the support of all stakeholders. According to one government representative, the recent raise in the minimum wage was independently decided by the government but was referred to WEBCOP for an equitable decision. In addition to WEBCOP, the labor sector appears to be one of the few areas in which there is an outside agency that genuinely contributes to the terms of the debate through research and analysis, namely the Employer's Federation of Pakistan (EFP). Formed in 1950, EFP is one of the oldest institutions of its kind in Pakistan, and is regularly involved at both the national and international levels in representing the interests of the Pakistani business community.

Notwithstanding the existence of active institutions such as WEBCOP and EFP, the current status of labor regulations enforcement is questionable. The governments of both Sind and the Punjab have suspended labor inspections for all practical purposes. Furthermore, the suspension of inspections is not being done *sub rosa* but with considerable pride. The representatives of the Sindh Government, for example, stressed the fact that they had stopped all inspections as part of their "business-friendly" polices. Similarly, the Punjab Government announced its move to suspend inspections as part of its Industrialization Policy of 2003.[34]

In order to understand this drastic step, it needs to be recalled that the combination of practically unlimited discretion and minimal pay had earned labor inspectors

[33] State Bank of Pakistan's Financial Sector Evaluation, 2003, at http://www.sbp.org.pk/publications/FSA-2003/Chapter_6.pdf.

[34] Punjab Industrialization Policy 2003. Copy on file with author. See also "CM announces social security reforms, industrial body," Daily Times, June 25, 2003 at http://www.dailytimes.com.pk/default.asp?page=story_25-6-2003_pg7_17. A new national Labor Inspection Policy has been promulgated but it does not appear as though any significant steps are being taken towards its implementation. The Labor Inspection Policy 2006 can be accessed at http://www.pakistan.gov.pk/divisions/labourdivision/media/LIPDraft5Mar06.pdf.

a well-deserved reputation for rent-seeking by 2003. Nonetheless, allowing the de facto suspension of the current labor regulatory system is a dangerous tactic that could easily lead to the demise of what looks to be a promising start towards bilateral cooperation.

Meanwhile, the only compensatory pressure being applied with respect to social compliance issues comes from international businesses. The most well-known case in this regard is that of Saga Sports in Sialkot, whose long-standing relationship with Nike was cancelled due to concerns over the treatment of workers. Nike has instead entered into a relationship with a different company, Silver Star Sports, which has in turn promised a generous array of benefits to its workers. Many export-oriented industries (including the textile sector) are trying to pre-empt international concerns by becoming SA 8000-certified. The Ministry of Commerce is trying to help by subsidizing compliance and certification procedures for international standards such as SA 8000. However, businesses that are not export-oriented obviously feel no reason to become certified. Thus, while the Ministry of Commerce's initiative is certainly a good step forward, it is by no means an adequate replacement for a functional monitoring system with respect to labor rights.

In the context of **tax regulations**, one of the most significant changes in recent years has been the complete overhaul of the internal dispute resolution process with respect to taxation disputes. Only a few years ago, the state of affairs was dire. This situation was then tackled through a number of measures, most notably through the introduction of alternate dispute resolution (ADR) procedures and the addition of extra officers to deal with disputes. As a consequence of these measures, more than 82,000 pending appeals have been disposed of at the commissioner level and the only cases now pending before the CBR's internal hierarchy are fresh cases. The disposal of cases has also been pursued within the formal judicial hierarchy with encouraging results. Thus, out of 25,000 appeals pending with the appellate tribunal, almost 21,500 have been disposed of; out of the 1,950 appeals pending with the Supreme Court, 1,650 have been disposed of, leaving just 300 cases.[35] This overhaul of the dispute resolution system is certainly one of the most welcome (and significant) changes to Pakistan's regulatory regime in the past few years.

At present, the institution charged with monitoring **competition law** is the Monopoly Control Authority (MCA), which functions under the Monopolies and Restricted Trade Practices Ordinance of 1970 (MRTP). The MRTP has been scheduled for some time to be replaced by a new competition law drafted with assistance from international agencies such as the World Bank. The current status of the new law is unclear. According to some reports, the draft law has been shelved for the time being due to opposition from "vested interests."[36] If true, this would be an unfortunate development because the enactment of a new competition law is considerably overdue.

The current competition law is predicated on the assumption that the accumulation of wealth in private hands beyond a particular amount is against the public interest. Consequently, the primary function envisaged for the MCA is the identification and removal of unsightly private wealth ("the undue concentration of economic power")[37] with the removal of anti-competitive anomalies ("unreasonably restrictive trade practices") coming in a very distant second. Unsurprisingly, the MCA's own website states that "the existing law . . . is not in line with the policy of the government for a free market economy with key elements of liberalization, de-regulation, privatization and attracting investment."[38]

Perhaps because of its unrealistic mandate, the MCA has kept a very low profile for most of its existence, and particularly since 1977. Recently, however, the MCA has emerged from the bureaucratic wilderness to try and reinvent itself as a competition authority, resulting in well-publicized orders against cartels operating in the cement and sugar sectors. Unfortunately, the MCA's efforts have failed and its constitutional status has been challenged before the courts (which have also suspended enforcements of the orders).

Supporting Institutions

Discussions regarding regulatory reform in Pakistan take place almost invariably with the involvement of a minimal number of people and in the face of apathy

35 Quarterly Report, May 12, 2007, at http://cbr.gov.pk/FRS/2007/May12-2007.pdf.

36 Ihtashamul Haque, "Government drops Competition Commission Plan," Dawn, June 21, 2007. See also Monem Farooqi, "Legislation against Industrialists delayed," Nation, July 4, 2007.

37 Section 3 of the MRTP declares all "undue concentration of economic power" to be illegal. Under Section 4 of the MRTP, all undertakings with an aggregate value of more than Rs 4 billion (US$66.7 million) that are not owned by a public company or owned by a public company in which one person controls more than 50% of the voting shares constitute an "undue concentration of economic power."

38 See: http://mca.gov.pk/message.htm.

from the bar associations, the media, academia, and, most importantly, Parliament. The fact that there has been considerable regulatory reform within the past few years has nothing to do with any systemic or institutional improvements; instead, such reform has been driven entirely by a few competent and motivated individuals appointed at the top of their respective institutions by the current government.

The **legal community** is not particularly interested in regulatory reform for the simple reason that most lawyers deal only rarely, if ever, with business issues. One reason for this is that the vast amount of property-related litigation results in such enormous delays that businesspeople see civil courts as a complete waste of time. Thus, rather than seek damages for a breach of contract case, a businessman is more likely to initiate criminal proceedings against the opposing party in order to negotiate a solution on preferred terms. Commercial cases pending in the courts therefore tend to be disputes between a businessman and the state rather than private-private disputes.

The regulatory framework does not receive much attention from **universities and think-tanks**. In the first instance, higher education in Pakistan is only now beginning to emerge from decades of neglect. Until very recently, there was practically no research of any worth being done in any of the universities, especially in areas other than the hard sciences. Secondly, to the extent there was any work being done with respect to the social sciences, this work was often conducted by an intelligentsia hostile to the concept of private enterprise. Once again, there are now some positive signs. For example, the Lahore University of Management Sciences has started a new school for Law and Public Policy, and the Pakistan Institute of Development Economics has shown leadership in this area.[39]

In comparison to the slow pace of change in the academic and legal sector, **the private sector** appears increasingly capable of conducting policy analysis. The most common form of private sector participation in regulatory reform is through policy suggestions forwarded by the regional chambers of commerce and industry (with the Overseas Investors Chamber and the Karachi Chamber being the most active). A number of sector-specific trade associations regularly interact with the government; the All Pakistan Textile Manufacturer's Association is by far the most active. In the context of labor laws and regulations, the EFP is an extremely well-organized entity that presents the industry perspective with considerable force. Finally, professional associations, such as the Institute of Chartered Accountants of Pakistan, are highly regarded and consulted in issues related to their field.

Unlike the private sector, Pakistan's **civil society** organizations are still nascent and unable to serve as the basis for sustained regulatory reform.

Social Dynamics

To understand the social dynamics with respect to regulation in Pakistan, it is necessary to return once more to Pakistan's roots as a colony of the British Empire. When Pakistan became independent in 1947, it inherited a weak system of parliamentary governance and a complex system of bureaucratic administration.[40] As a consequence of this inheritance, and helped in no small part by the abysmal performance of democratic institutions during the early years, the bureaucracy acquired a dominant role in not just administering but developing economic and social policy, a role which it retains to date. Furthermore, the bureaucracy certainly did not see facilitation of private enterprise as its primary role: in fact, Pakistan's capital was shifted in 1962 from Karachi to Islamabad precisely so that government officials could be protected from the supposedly corrupting influence of businesspeople. The dominant role of the bureaucracy was also not changed by the advent of socialism under Prime Minister Zulfiqar Ali Bhutto. Instead, the bureaucracy enthusiastically participated in the large-scale nationalization of industry because state control of the means of production was an idea that dovetailed perfectly with the existing notion of a centrally planned and controlled economy. The subsequent years of martial law only consolidated the hold of the bureaucracy on regulatory issues

So far as the years following General Zia's dictatorship are concerned, it is a unresolved point as to whether the bureaucracy's unchallenged dominance on policy issues was due to the abdication by Pakistan's elected representatives of their fundamental responsibilities or whether Pakistan parliamentarians degenerated into a familiar pattern of corruption and rent-seeking because they were left no option by "the system." The fact remains that Benazir Bhutto was twice elected to power in 1989 and in 1993, and that in both instances her governments failed to pass a single act of Parliament worth remembering (other than the annual

[39] Nadeem ul Haque, "Where do policy ideas come from in poor countries?" Business Recorder, May 29, 2006.

[40] In the famous words of Hamza Alavi, Pakistan was at birth an "over-developed state." Hamza Alavi, "The State in Post-Colonial Societies," New Left Review, July/August 1972.

budget). Nawaz Sharif's record is considerably better in this regard, but the regulatory reform laws passed by his governments (such as the SECP Act of 1997) were never debated to any meaningful extent by Parliament. In fact, the Nawaz Sharif government passed two constitutional amendments in 1998, both without any debate whatsoever. Furthermore, the second of those amendments changed the Constitution to provide that any member of Parliament who voted contrary to his party's instructions could be expelled from Parliament. Clearly, members of Parliament were not being expected to provide intellectual input on legal reform issues.

Under President Musharraf, the government has made a genuine effort to use and empower domestic resources and experts. Nonetheless, legal reform is still discussed meaningfully only by a very small number of people, the vast majority of whom are civil servants.

That the last few years have been a watershed moment in Pakistan's economic development, and Pakistan's laws are now far more accessible and open to private enterprise than ever before. Notwithstanding this welcome news, these changes have been driven almost entirely from above through the appointment of key individuals to key posts.

One reform option is to increase the capacity of Parliament to provide leadership on regulatory reform issues. Parliament, however, has not shown great interest in these issues. For example, one may note that even though 2007 is an election year, there is no ongoing policy debate between the various political parties, and none of the main opposition parties has made any effort to campaign on the basis of its vision for government. The current website of the Pakistan Peoples Party, for example, lists only one document under the heading "What's New." (The document is a rhyming ode to the achievements of the late Zulfiqar Ali Bhutto.)[41]

The remaining option for pursuing regulatory reforms is to work with the bureaucracies responsible for regulatory implementation. Since independence from colonial rule, however, various political regimes have sought to consolidate their power by weakening the powers and autonomy of the civil service. Therefore, even though Pakistan was fortunate to inherit a civil service in which the country's best and brightest were proud to serve, decades of deliberate neglect have severely hampered the bureaucracy's ability to attract human capital. Civil servants, though still powerful, are no longer paid sufficient wages and are now susceptible to political interference.

Nonetheless, the senior bureaucracy is still regarded with considerable awe by the general public. Thus, the simplest way to ensure that the best and brightest once again start applying for government posts is to start paying a wage that competes favorably with top private

"Dealing with Licenses" and the Female Entrepreneur

Systemic regulatory reform is necessary to protect the rights of women. The clearest example of this point concerns the regulations relating to land. Islamic law provides clearly for the inheritance rights of women, but, in actual practice, women rarely receive their Islamic share of inheritance, particularly when the inheritance consists of real property. Because land holdings are so non-transparent, women are often unaware of the nature of the assets available for distribution. More importantly, agricultural land in rural areas tends to be held in common by multiple co-owners. Since women are often not physically present at the site of the land, having moved out of their parental household as a consequence of marriage, one of the most common ways in which women are cheated out of inheritance assets is that their brothers or other claimants will argue that the asset in question has been orally gifted to them. Since brothers normally live in the parental house, a woman who wants to challenge the "gift" faces the prospect of decades of litigation during which time her brother occupies and enjoys the land at her expense.

Women are also disproportionately hurt by the laws of *benami*. Thus, even if a husband buys and places land in the name of his wife, or if a father places land in the name of his daughter, claimants are able to question the daughter or wife's title to that land. Since women are often removed from familial lands, their ability to maintain possession of their lands and protect their assets is restricted. When it comes to land-related litigation in Pakistan, possession represents more than nine-tenths of the law.

From 2001 onwards, Pakistan has seen a grand experiment in gender sensitization through the provision of reserved seats for women at all levels of government. To the extent that this provision of reserved seats was supposed to result in increased gender sensitivity in Parliament (or in the provincial assemblies), it has yet to bear significant fruit. Female parliamentarians, like their male counterparts, have shown no appetite for reform. The debate on the Women's Protection Act in 2006, for example, occurred along entirely partisan lines.

Compared to parliamentary reform, the chances of getting pro-women regulatory reform through the bureaucracy are far higher. In the first instance, the bureaucracy is regarded as a socially acceptable career for a woman (which helps qualified women apply for government posts). Furthermore, it is far easier to sensitize a limited number of civil servants to the need for gender-based reform than it is sensitize an entire population. To the extent that gender-based regulatory reform needs to be advanced in Pakistan, it would certainly be strengthened if the current crop of civil service entrants were placed within the confines of a modern liberal arts university.

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41 See: http://www.ppp.org.pk/mbb/Poems/poem7.htm.

sector offers. A necessary second step is an upgrade to the education of civil service entrants.

The solution here is not to change or reform the training being provided at the Civil Services Academy but to change the academy itself. Pakistan now boasts several excellent, internationally competitive liberal arts and business schools. Therefore, it makes no sense for civil service entrants to continue be taught in isolation. Instead, the civil service authorities should devise training programs to educate civil service entrants at these universities. Significantly, the CBR has already adopted this position and now sends all of its junior officers to study for a one-year executive MBA at the Institute of Business Administration in Karachi. That model should be expanded to include all civil service officers, with preference being given (if necessary) to officers of the District Management Group, since they are the ones most likely to be placed in policy-making positions.

Recommendations

Short Term:

- Commission a study to review how the laws of Pakistan allow personal liability for corporate acts and how such laws compare to best practices in more developed economies.
- Complete and present a report on economic growth and development that demonstrates that (1) the crime of willful default as currently defined in the NAB Ordinance is not helpful from a business perspective, and (2) it would be in Pakistan's interest to amend the NAB Ordinance accordingly.
- Commission studies to examine the following:
  - The impact of the land regulatory system on the legal system of Pakistan (in quantitative terms, with reference to the number of cases pending and instituted on an annual basis that involve property disputes and issues).
  - The costs imposed on business and economic growth (in quantitative terms) by the current land regulatory system, including, specifically, the pre-emption laws, oral gifts and transfers, and equitable mortgages.
  - The potential effects (both negative and positive) of the repeal or reform of the pre-emption laws, laws relating to oral gifts and *benami* ownership of property, equitable mortgages, and rent regulations.
  - The various options available with respect to land regulatory reform, and, more specifically, the best way to merge and revise current systems of land regulation so as to provide certainty and clarity in land titling, securitization of transactions, and land transfers.
- Provide the Ministry of Law with the technical assistance it needs to prepare draft regulations in support of the draft Corporate Rehabilitation Act. Education and training on this issue should be undertaken in the Ministries of Law and Finance in support of the promulgation of the draft Corporate Rehabilitation Act. As a long-term measure, since the draft Corporate Rehabilitation Act is based heavily on the U.S. Bankruptcy Code, exchange programs to the United States for judges and other concerned officials under the Corporate Rehabilitation Act should be developed.
- Develop training and education seminars, in both the public and private sectors, to support the promulgation of the draft competition law.
- Commission a study to examine the workings of the CBR (now the FBR) with reference to international best practices and, in particular, to examine whether additional provisions are needed to strengthen the autonomy of decision-making in the FBR (given Pakistan's history and political culture).
- Assist the Ministry of Labor in its effort to consolidate and review current labor laws. The current benefits distribution system should be examined and a plan for reform developed, including whether such a system could be modified to allow for the devolution of spending power down to the district level.
- Examine the current training and educational programs for civil servants in Pakistan. Specific courses, syllabi, and degrees at Pakistan's top liberal arts universities should be developed to allow training for incoming officers at these universities.
- Review the current salary structure of the civil service for opportunities to make appropriate and sustainable increases to core civil servant, key administrative, and executive officer salaries.

Long Term:

- Fund efforts to develop civil society, including the creation of independent and autonomous policy-oriented think-tanks that are affiliated with liberal arts universities. Such funding should be linked to the development of relationships between Pakistani and outside universities so as to allow for the regular interchange of ideas between Pakistani and international scholars.

- USAID should consider a separate study to examine efforts to revise and reform the law relating to inheritance in the Islamic world, the extent to which similar reforms might be feasible in Pakistan, and the potential benefits of such reform.

ANNEX III ORIGINAL GENDER CHAPTER

Background

Pakistani women have largely moved beyond the micro-level, home-based candle-making, pickling and chutney-making, tailoring, and embroidery businesses to which they have traditionally been limited. Women are now engaged in textile production, furniture manufacturing, the steel industry, the food industry, boutiques and parlors, jewelry-making, and education. Women entrepreneurs export textiles, clothing, furniture, jewelry, food, and education.[1] Although there are no reliable figures regarding women entrepreneurs, various studies and project documents on gender acknowledge that their numbers are increasing.[2] Thousands of women are pursuing education for the purpose of entering into and succeeding in the business world. In Peshawar alone, 400 women are enrolled in the MBA programs offered by institutions there.

Methodology

Primary and secondary data for this chapter were collected through interviews with service providers and service users who are knowledgeable about the status of women in Pakistan's business environment. These include people working in various sectors and organizations, including banks, other financial institutions, the Trade Development Authority of Pakistan, chambers, federations, think-tanks, NGOs, business graduate programs, government organizations, and foreign donor organizations. Interviews were conducted in Peshawar, Karachi, and Islamabad.

In order to uncover constraints and challenges, interviews focused on women's involvement in the business world, participation in associations and industries, access to equal opportunities, and ability to professionally run their organizations. In addition, the specific needs of the women in the business environment, such as access to resources and the integration of women workers into the workforce, were discussed.

This chapter on gender and the business environment in Pakistan was conducted as part of the overall assessment of the country's business environment. The discussion focuses on the role of women with respect to the five Doing Business categories covered in this report—Dealing with Licenses, Employing Workers, Registering Property, Getting Credit, and Trading across Borders. Although issues of gender cut across the entire assessment, this chapter specifically addresses the impact of Pakistan's socio-cultural, legal, and institutional environment on women entrepreneurs and other women who operate in Pakistan's business environment. It further addresses questions concerning whether and under what circumstances women in Pakistan decide to launch a business.

Two parameters were set for this analysis. First, this chapter focuses primarily on small- and medium-sized enterprises (SMEs) owned by women entrepreneurs.[3] (Because micro-enterprises exist almost exclusively in the informal sector and there is lack of information regarding their status, an analysis for this group would have been incomplete.) Second, this chapter focuses less on the technical aspects of the five Doing Business areas and more on the socio-cultural dimensions of women with respect to those categories.

This chapter is divided into four sections. The first section describes the legal, educational, and cultural environment in which Pakistani women function. The second section describes four general categories of women in the business environment: those who inherit going concerns; business owners who launch businesses based on personal wealth; small, high-energy but highly disadvantaged entrepreneurs; and recent MBAs. The third section identifies the constraints that women face with respect to each of the five Doing Business areas covered in this assessment. Finally, the chapter provides recommendations for addressing these constraints.

1 Women-run schools, the Beacon House system, and the Salamat Academy are setting up schools in Malaysia under a joint venture arrangement.

2 See World Bank, Pakistan: Country Gender Assessment (May 2005); UNDP, Project Document on Community Empowerment through Livestock Development and Credit; UNDP Project Document on Gender Promotion in the Garment/Clothing Sector Through Skills Development (2006-2011); ILO, Study on Women Entrepreneurs in Pakistan (2003).

3 The Government of Pakistan's definition of small business is one that has an asset worth (other than land and building) between Rs 2 to 20 million. The asset worth of a medium-sized business is Rs20 to 50 million.

The overall context

For women, the business environment in Pakistan is defined by two broad factors: (1) their socio-economic status; and (2) the extent to which the business environment is receptive to them. Some demographic and socio-economic indicators provided in the table below detail the disadvantaged socio-economic position of women within Pakistan.

Table 3 Labor Force Statistics

	Pakistan				South Asia		Low income	
	1980	1990	2000	2004	1980	2004	1980	2004
GNP per capita (US$)	330	420	480	600	265	594	321	507
Population								
Total (millions)	82.7	108.0	138.1	152.1	898.0	1,446.8	1,392.2	2,343.0
Female (% of total)	48.3	48.4	48.5	48.5	48.3	48.7	49.0	49.3
Life expectancy at birth (years)								
Male	55	58	62	64	54	63	52	58
Female	56	60	64	66	54	64	53	60
Adult literacy rate (% of people aged 15+)								
Male	..	49.3	..	63.0	..	71.9	..	72.8
Female	..	20.1	..	36.0	..	46.4	..	50.4
LABOR FORCE PARTICIPATION								
Total labor force (millions)	27	35	47	54	360	573	567	956
Labor force, female (% of total labor force)	22	23	25	26	33	29	37	35
Unemployment								
Total (% of total labor force)	3.6	3.1	7.2	*7.8*	..	..	..	..
Female (% of female labor force)	7.5	0.9	15.8	*16.4*	..	..	..	..
EDUCATION ACCESS AND ATTAINMENT								
Net primary school enrollment rate								
Male	..	..	..	76	..	*90*	..	*82*
Female	..	..	..	56	..	*85*	..	*75*
Primary completion rates (% of relevant age group)								
Male	..	..	..	..	..	85	..	78
Female	..	..	..	..	..	78	..	70
Youth literacy Rate (% of people aged 15-24)								
Male	..	62.5	..	75.8	..	82.5	..	81.3
Female	..	30.6	..	54.7	..	65.3	..	66.5
HEALTH								
Total fertility rate (births per woman)	7.0	5.8	4.7	4.3	5.2	3.1	5.6	3.7
Contraceptive prevalence (% of women aged 15-49)	..	14	28	..	..	46	..	40
Births attended by skilled health staff (% of total births)	..	*19*	*20*	..	..	36	..	40
Maternal mortality ratio (per 100,000 live births)	..	..	500	..	..	..	..	..
Child malnutrition prevalence, weight for age (% of children under 5)	..	*40*	*35*	*38*	..	49	..	43

Source: The World Bank Group: Gender Statistics[4]

Internationally, Pakistan's standing on gender-related indexes is very weak. For example, in 2006 the United Nations ranked Pakistan 134th out of 177 countries in its Gender Development Index (GDI).[5] This ranking signals a very low length and quality of life of women in Pakistan relative to men. Pakistan received the same ranking in the UN's Gender Empowerment Measure (GEM) index, which

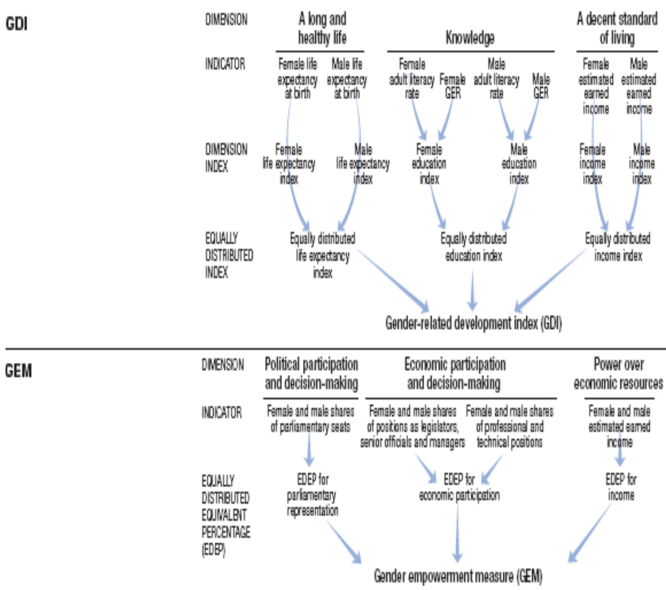
4 Available at: http://devdata.worldbank.org/genderstats/genderRpt.asp?rpt=profile&cty=PAK,Pakistan&hm =home.

5 United Nations, Human Development Report for 2006, http://hdr.undp.org/hdr2006/statistics/indicators/219.htm.

measures three basic dimensions of female empowerment—economic participation and decision-making, political participation, and decision-making and power over economic resources.[6]

The table below describes the indicators that constitute the GDI and GEM constructs.

Figure 1. Description of indicators that constitute the GDI and GEM constructs



This report reveals that the factors that influence the three key GEM indicators (political and economic participation and decision-making, and power over economic resources) are broad and affect women's positioning within the Pakistani business environment. They include: current socio-economic status of women, cultural traditions, women's presence in formal institutional structures, public visibility of women, the extent to which a woman's city of residence is a developed commercial center, and a woman's legal status. The level of family support, pressures to marry, and time spent child-rearing also influence a woman's ability to position herself in the business environment. Moreover, according to the Government of Pakistan's report to the1995 Fourth World Conference on Women in Beijing, "women face [additional] barriers owing to limited education and training opportunities."[7]

Limited access to social services and constrained mobility are additional restrictive factors.

Given these encumbrances, there is no uniform positioning of women in Pakistan's business world. The comment of one Peshawar businessman during this assessment that "there are no specific hurdles for women to interact, it is an advantage to be a woman, women are just normally more shy," is hardly accurate across the board. Another businessman's generalized comment that "our culture is still prohibitive, women cannot really go out" is also not universally true. While middle-class women who lack social and political networking opportunities and skills do face a more challenging environment, for example, this environment is not entirely prohibitive.

In different parts of Pakistan, the business environment for women depends on the extent to which a city or area has developed as a business center. In the city of Peshawar, for example, there are only a handful of women entrepreneurs who can be categorized as SME operators. Karachi, however, hosts hundreds of women whose businesses are SMEs.

In addition to these general socio-economic and geographical indicators, other specific elements influence the business context within which women function.

Women and the law. On paper, laws related to business are the same for men and for women. In practice, however, the business environment is more difficult for women to access and work within. The legal framework comprises more than just the constitutional rights of women, the general legislation pertaining to women, and associated regulations—it also includes society's acknowledgement, interpretation, and actuation of those documents.

While the Constitution of Pakistan clearly states that men and women are equal in the eyes of law, subsequent developments have undermined this concept. A wave of conservative Islamic legislation, sponsored by General Zia-ul-Haq in the late 1970s and 1980s, attempted to infuse provisions of traditional Islamic *fiqh* (human juristic effort presented as the divinely ordained *shariah*) into the body of law beyond the traditional confines of family law and inheritance. The scope of this legislation ranged from an Islamization overhaul of the Evidence Act of 1872 through the Qanun-e-Shahadat Order of 1984 to the full inclusion of traditional *hudood* laws. [18]

6 Id. See: http://hdr.undp.org/hdr2006/statistics/indicators/230.html.

7 Fourth World Conference on Women (1995), at http://www.un.org/womenwatch/daw/beijing/ index.html.

These *hudood* laws not only replaced the existing penal provisions with respect to murder, theft, adultery, and rape, turning large areas of offences against the state into private wrongs, but also added entirely new categories of offences such as *Qazf* (false accusation of sexual impropriety), fornication between consenting adults, and blasphemy.

The Qanun-e Shahadat Order of 1984 and its affect on the law of evidence is an instance of Islamization of the legal system that could negatively affect women in business. In that order, the testimony of a woman was declared to be worth only half that of a man:

> Article 17. Competence and number of witnesses.
>
> *(2) Unless otherwise provided in any law relating to the enforcement of Hudood or any other special law,*
> *(a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women so that one woman may remind the other, if necessary, and evidence shall be read accordingly.*[8]

It was only after countrywide protests by human rights and women activists, with the resultant attraction of international attention, that the proposed law was limited to financial and future transactions. This legal provision still puts a woman in a disadvantaged position since she cannot be a witness individually to a legal agreement that she draws up herself. Progress is being made, however, because a recently passed Women's Protection Bill undid some of the more discriminatory laws against women that were enacted under the Hudood Ordinance.

In other cases, law remains inoperative in the face of traditionally approved societal practice. For example, the law on inheritance clearly lays down a woman's right to inherit property. Yet it is widely agreed that this law is not implemented. Among other reasons, women are made to feel that asking for their rightful inheritance is immodest and incorrect.

A male-dominated public sector. A heavily male-dominated environment also works as a constraint against women. The near-absence of women in public spaces, including offices, is intimidating to women in a society where they are learning about business and are not accustomed to interacting as equals with men. For example, in the entire judicial administration of Karachi, from the lower courts to the Sind High Court, there is not a single female employee in the administration. There are women lawyers, judges, and litigators, but there are no women in the court administration. A man's perception of this situation contrasts starkly with a woman's. While a Karachi-based male lawyer maintained that "courts are gender-friendly and so women do not hesitate to take their disputes to court," a Karachi-based practicing female lawyer described the "almost all-male environment" as "intimidating."

Similarly, only male employees work at the government-run Industrial Facilitation Center in Peshawar. The center was established to facilitate the purchase of land by potential entrepreneurs in the government-managed Industrial Estates. According to a senior official at the center, however, women hardly ever seek support there, effectively negating the office's potential as a service provider to women entrepreneurs.

To familiarize policy makers, politicians, and bureaucrats with the real state of women in business, the International Labor Organization (ILO) through the UN Development Program (UNDP) is helping to develop training on women's employment for, *inter alia,* the civil services academy that trains high-level bureaucrats and the UNDP-funded Women's Political School.

The following table, which provides key GEM indicators as described in UNDP's 2006 Human Development Report, illustrates the extent of the male presence and female absence from Pakistan's public and professional spaces.

Table 4 Female Participation in Pakistan's Public and Private Sectors

Role	%
Seats in Parliament held by women (percent of total)	20%
Female legislators, senior officials, and managers (percent of total)	2%
Female professional and technical workers (percent of total)	26%
Ratio of estimated female to male earned income	29%

Source: Human Development Report 2006[9]

A male-dominated private sector. The virtual absence of women also extends to the private sector. In the business world, men hold most official positions in professional organizations. The absence of women from these organizations reinforces the stereotype that women are not involved in the business world. As

[8] See: http://www.equalitynow.org/english/wan/beijing5/beijing5_personal_en.html.

[9] See: http://hdr.undp.org/hdr2006/statistics/countries/data_sheets/cty_ds_PAK.html.

a result, women and issues related to female entrepreneurs are usually not included in policy dialogues. According to a knowledgeable official, a review of SMEs undertaken by the State Bank "has not set any parameters to focus on women's issues."

In most cases, the dominant perception within policy circles, among politicians, and even within the organizations themselves is that organizations that provide support to women in business are out of touch with reality. They are unaware of the extent to which women are part of Pakistan's business community, and equally are unaware of the sectors in which they are involved, openly stating that women are still involved exclusively in candle-making, jam-making, handicrafts, and embroidery. These perceptions lead various support organizations, such as the Small and Medium Enterprise Development Authority (SMEDA) of Pakistan, to support outdated policies for women, to misallocate limited resources, and to fail in their mission to help women succeed in business.

Technology. Another limitation in most small-scale businesses run by women is the limited use of technology. This leads to limited access to information and to an inability to compete both domestically and internationally. Most middle-class women entrepreneurs are not particularly technologically literate: a 2003 ILO study of female entrepreneurs in Pakistan stated that "the technological level of women's enterprises was very low."

Change. These constraints notwithstanding, forces are eroding impediments to women entering the business world. One of them is the economy. When job opportunities appear, for instance, women respond along with men. The boom in the garment industry across Pakistan has provided opportunities to hundreds of thousands of women, for example.

Categories of women entrepreneurs

In general, women entrepreneurs can be divided into four categories based on class, education, geographical location, social standing, power linkages, and family experience.

In one category are **women who inherit existing businesses**. There are numerous examples of this phenomenon, especially in the textile industry. As explained by one woman in Karachi, who now leads a successful textile operation, there are advantages to entering the business industry in this manner: the business's positive reputation moves with it, easing the new female owner's entry into the business community.

In a second category are the women who come from **wealthy families with business backgrounds**. Because of their financial standing and their connections to people of power, they have access to capital and related services, including market information, financial institutions, and export regulations. Women entrepreneurs who have started their own high-end jewelry, interior design, or textile businesses are often found in this category. Their success hints at the business potential that can be unlocked when women have access to capital and related services.

A third category of women in the business world are **middle-class, lower-resource entrepreneurs**. Women in this category may benefit the most from technical assistance and other support. Women who launch businesses with nominal resources are the "go-getters" who often begin a home-based, micro-enterprise, or small-scale business, and, through an enterprising spirit, economic need, and some basic education, develop into true entrepreneurs. These are normally strong-willed women whose determination to succeed helps them overcome initial hurdles such as lack of market access and information, minimal access to capital, and very limited knowledge of how to run a business. Restricted funds, restrictive social norms, limited access to banking services, and a lack of formal training cause most efforts to expand these businesses to fail, however.

The fourth general category is the aspiring **female business graduate**. Across the country, thousands of women are enrolled in MBA programs. Among graduates, however, only few start their own businesses—most join established companies instead. The number of female MBAs is likely to increase in the coming years due to the steady increase in the number of institutions that award MBAs. A rising trend of online MBA programs may also be particularly appealing to women. The new Peshawar U-21 program is a collection of 22 universities that will offer online MBA degrees, diplomas, and certificates.

Women and Doing Business

Dealing with Licenses. Procedural requirements for establishing and running businesses are legally the same for men and women. In practice, however, women find themselves at a disadvantage in the regulatory environment.

Energetic middle-class women who have successfully managed micro- and small enterprises often seek to expand their businesses. A crucial prerequisite for expanding business, however, is knowledge of regulations that identify, define, and regulate bank and non-bank business-relevant financial sector activities, monetary policy, secured transactions, real property, and corporate and personal income taxes. Most SME operators lack this education; they may even lack literacy.

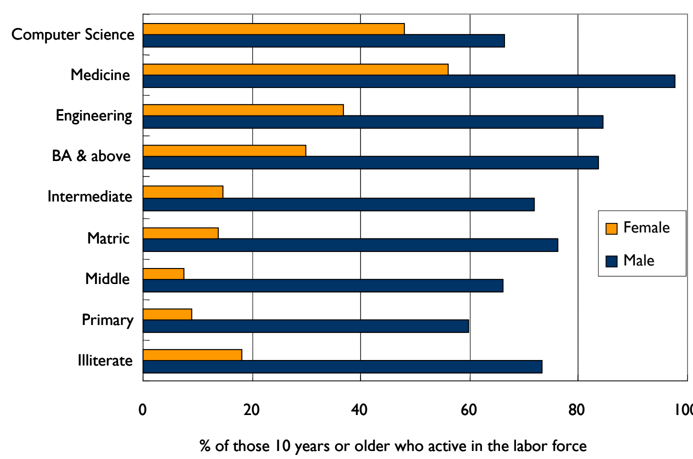
Steps are being taken, however, to address this need. For example, in 2007 the Federation of Pakistan Chambers of Commerce and Industry (FPCCI) in Karachi organized a 10-day course that covered how to set up businesses, including how to prepare a business ledger. Similarly, the Karachi-based Pakistan Society for Training and Development (PSTD) has organized training workshops on presentation skills, decision-making, customer service, secretarial announcements, and performance appraisal. These workshops are facilitated by member companies and outside facilitators.

Other than the First Women's Bank (FWB), most organizations that provide finances and services to small and medium entrepreneurs employ few women. This includes SMEDA, the Trade Development Authority of Pakistan (TDAP), and others. The virtual absence of women in these organizations deters aspiring middle-class women entrepreneurs. In a predominantly male-only environment these women—in Lahore, Peshawar, and Karachi—feel inhibited. While SMEDA has attempted to counter this by providing all-women "incubation centers," such efforts are only available on a limited scale to a very limited number of entrepreneurs. The majority of women will still have to turn to the average service provider.

Women entrepreneurs are usually not office holders in trade and industry associations, chambers, federations, think-tanks, or lobbying groups. Even their simple membership in such organizations is severely limited. In the Pakistan Business Council (PBC)[10] and the Overseas Chamber of Commerce, for example, not only are there no women officers, there are no representatives from women-led businesses or even any female entrepreneurs in the membership. Similarly, in the entire 4,000-person membership of the Sarhad Chamber of Commerce, there are only four women members. In the records of the Karachi Chamber of Commerce, there are 900 women members. However, there are no female members on the 30-member Managing Committee. Also, of the 25 sub-committees on customs, taxation, export, international property rights, etc., only the Women's Entrepreneurs Committee is headed by a woman.

In a more conservative area like Peshawar, women generally are not welcome in the top slots of the chamber. Even in a cosmopolitan and commercially developed city, while women may be more active in business in general, few are present in the top positions of business forums. The result is that women are not actively participating in chamber and industry association activities like in-house discussions and public debates on developments within the regulatory environment.

In an effort to counter this, the Commerce Ministry has issued instructions that every province will have a Chamber for Commerce for Women. This has met resistance from men in the Karachi and Peshawar chambers who oppose



separate women's chambers. Male members of the Karachi Chamber labeled the "women's chamber a *burqa* [veiled] section whose members would…have no clout and accessibility." Women entrepreneurs in both Peshawar and Karachi, however, believe that a separate body would be valuable. Supporting the women's position on the question of separate chambers, SMEDA officials argued that only elite women benefit in mixed

[10] The PBC was founded in 2006 as a policy think- tank, rather than a trade body. Its objectives are to promote economic growth in Pakistan, foster internal and external investment, and improve the country's international competitiveness. The PBC conducts research on the impact of Pakistan signing free trade agreements with countries such as Sri Lanka, China, Malaysia, Egypt, Nepal, and Bangladesh. There are 14 members of the PBC. Members are mainly local industrialists and a few multinationals. The PBC membership fee is Rs 2 million.

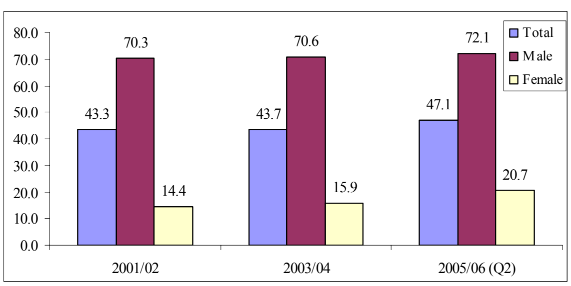
chambers. The average middle-class woman entrepreneur may join but will not have the confidence or ability to direct the energy and resources of the chamber to address her concerns.

The absence of women from chambers, associations, and federations results in the failure of these bodies to focus on issues of concern to women entrepreneurs. The absence of women in professional business groups also means that issues relevant to businesswomen will remain marginalized or unaddressed. This has far-ranging effects, as, for example, it remains unclear if the State Bank, which is currently reviewing the SME financing policy, is receiving input from women entrepreneurs.

Working Women's Incubation Centers have been established to give women the confidence to function in a professional environment. For example, one floor in a commercial building with approximately ten shops may be established at lower-than-market rates to only female lawyers, income tax consultants, and accountants.

Employing Workers. The participation rate for the female labor force in Pakistan is the lowest in South Asia, despite increasing to 18.9% in 2005–2006 from 15.9% in 2003–2004. The following tables illustrate various aspects of the workforce in Pakistan.

Table 5 Refined Labor Force Participation Rate, 2001/02 to 2005/06 (workers in% of population age 10+)

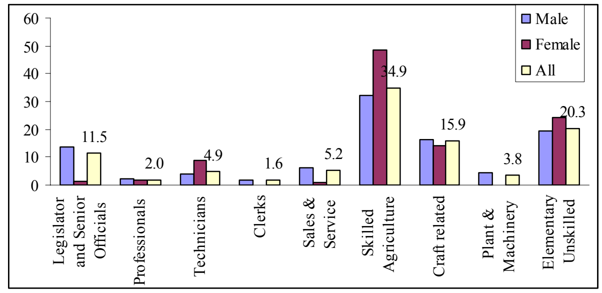


Source: Federal Bureau of Statistics, various years, Government of Pakistan.

Table 6 Labor Force Participation rates by education (refined activity rate) for men and women 2003/04

Source: Staff estimates based on FBS, 2003–2004, Government of Pakistan.

Table 7 Occupational Composition of the Employed Pakistani Labor Force by gender, 2003/04



Source: *Staff estimates based on LFS, 2003/04, Government of Pakistan.*

Female presence in the labor force varies from sector to sector. In the pharmaceutical industry's 400 national producing units, both skilled and unskilled workers are mostly women. This is referred to as an "equal opportunity" industry for women, especially where factory and office jobs are concerned. In the Northwest Frontier Province, there are about 50 pharmaceutical producers, which employ approximately 70% women laborers. In Peshawar, women receive college degrees in pharmacology, and receive on-the-job and technical training. Opportunities in the public sector are also growing. The Inspector General for drugs, a top government employee, is a woman. Numerous women have also been hired as drug inspectors, and they generally receive a fairer wage than in other industries.

Another sector with a large female representation is textiles. An estimated 30% of Pakistan's three million textile and clothing sector workers are female. (This is, however, a far lower percentage than other South and Southeast Asian countries.) Industry representatives report that women are more punctual and quality-conscious than their male counterparts. Women reportedly have a lower turnover rate and hence a longer-term and more sustainable relationship with their employers than their male counterparts in the clothing sector.

To bolster female participation in the textiles sector, the UNDP is implementing a project entitled the "Gender Promotion in the Garment/Clothing Sector through Skills Development" project (2006 to 2011).[11] This project aims to (1) generate employment for women in garment sector through training and re-training, (2) build the capacity of the private

[11] See: undp.org.pk/.../Project%20Document%0-GARMENT-GENPROM--PRGMEA-FITFD-Partners%20Contribution-23-Aug-2006.doc.

sector to conduct research and advocate gender mainstreaming in the garment sector, (3) promote policy incentivization, whereby the industry will be encouraged to promote gender participation in the garment sector, and (4) record best practices and disseminate the information for up-scaling skill development initiatives in the industry. The UNDP's implementing partners are the Pakistan Ready-Made Garments Manufacturers and Exporters Association and the Faisalabad Institute of Textile and Fashion Design.

Within male-dominant socio-economic power structures, women laborers often see themselves as powerless and inadequate. Hence they do not always focus on their rights, and even when they do, they do not generally believe their rights to be equal. In such an environment, women are vulnerable to diminished rights on two fronts: (1) from a potentially unfair employer who does not give women their rightful remuneration, benefits, and social security benefits; and (2) from the women themselves, who may interpret the benefits of a labor agreement as applying only to men. There are reports of gender-neutral laws and regulations being interpreted to apply to men only, leading to women laborers being kept from accessing rights to which they are legally entitled. The gap in rights and power only increases for women in the informal sector, where the majority of women are employed in situations where their rights are undefined and unprotected.

Women are generally not active in labor organizations, unions, and other labor-related forums in the textile, garment, and pharmaceutical industries. As a result, women's input into policies made by the industry and the government is limited. Women, however, have special needs with regard to occupational safety and security, health authority, and Social Security benefits that often go unaddressed.

Registering Property. In Pakistan's real estate context, where there are multiple jurisdictions and often multiple ownership interests in the same land, women and men experience similar problems when transferring or purchasing property. For women there is no legal restriction on the purchase, ownership, and control of property. Identical laws and procedures apply to all Pakistani nationals. In practice, however, the control of land predominantly rests with the male members of the family, while females are increasingly marginalized.

In most cities the office of property registration is male-dominated and can be intimidating for many women. Often, to avoid visiting the registry, women give male family members or colleagues power of attorney to oversee the transfer, increasing the possibility of fraudulent transfers.

A gender-based difference with respect to property flows from inheritance. Under law, women inherit only half the share of property that male members of the family inherit. That is law based on Quranic injunctions and therefore is not challenged. When bequeathing property to daughters, however, traditional practices override both law and religious injunctions. As a result, the overwhelming majority of women are not given their rightful inheritance. Families use the pretext of expenditures made on weddings or of future maintenance costs in case a divorced woman returns to her parents' or to her brothers' home to limit a woman's inheritance. Law laid down by the Supreme Court in 1991 in the PLD 199 Supreme Court 1 by the judges Muhammad Afzal Zullah and Usman Ali Shah highlighted the issue of women being denied their legal rights as legal heirs to property.[12] The decision found that the custom of denying property inheritance is opposed to public policy, unconstitutional, and unIslamic.

In addition, women are unable to access benefits like renting state-subsidized land dedicated for setting up industry. For example, in Peshawar's Hayatabad Industrial Estate, of the 460 plots, only four have been rented to businesswomen.

Control of property, even if registered in a woman's name, rests with male members. Karachi land registration officials stated that most women brought in by male relatives in order to sign paperwork are ignorant of the transaction that requires their signature, signing only because they have been told to. Often, women do not even know that they own property.

Getting Credit. The extent to which gender issues are relevant to getting credit in large part depends on a woman's socio-economic background. Women who belong to an affluent class normally enjoy access to credit.[13] Not only will they be aware of the credit facilities that exist, they will also be able to access these facilities through their contacts. These women usually

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[12] The All Pakistan Legal Decisions-Supreme Court of Pakistan PLD, Volume XLII (PLD Publishers, Lahore, 1990).

[13] Many women entrepreneurs report that interest rates on bank loans are very expensive. They chose to borrow money from friends when attempting to expand their businesses.

belong to families that also have their own businesses and therefore already have business ties to financial institutions.

Other women entrepreneurs, however, are often not able to fulfill the basic condition for getting credit: providing collateral. As previously discussed, they may not control the property that is in their name. In addition, their lack of formal business training may render their bookkeeping, accounts, pricing, and packaging substandard, making them unattractive clients. Finally, their inability to access information make may them unaware of credit offerings.

Aspects of the financial institutions themselves make them unlikely supporters of small businesses run by middle-class women. In most cases, the location of these institutions, the limited circulation of information about the services that they provide, the collateral that they demand, the credit history they require, and the net worth of the business needed to make it eligible for a loan make it challenging for small businesses to get credit.

One of the government's major institutional responses to women's inability to access credit was the establishment of the First Women's Bank (FWB). The mandate of the FWB is to provide dedicated support to women generally and specifically to those attempting to start their own businesses. Their products include loans up to Rs 25,000 (offered without collateral requirements and upon personal guarantees), commercial loans worth up to Rs 200,000, consortium funding, and letters of credit (LOCs). A recently-opened Financial Services Desk within the FWB now offers legal services, tax advice, and financial counseling to prospective entrepreneurs. Women entrepreneurs interviewed for this assessment, however, were generally unaware of these services, and bank officials were unable to provide records of any such services being delivered.[14]

Unfortunately, interviewees believe that the FWB has not yet been successful in fulfilling its mandate. They feel that the bank, with its high interest rates, excessive paperwork, and inability to offer a grace period for repaying loans, is no different from other lending institutions. Bank officials concede that clients must provide basic assurances of creditworthiness and complete the administrative requirements in order to secure loans. Interviewees assign part of the blame to the institution's mixed mandate: the FWB operates as both a development institution and a commercial bank. As a development institution, it exists to encourage women entrepreneurs. As a commercial bank, however, it is bound by regulations that set the parameters of its operation. [15] Nonetheless, it does offer advantages compared to other institutions, including lower interest rates.

In contrast to SME lenders, a developed system exists for providing micro-financing. Microfinance is offered at two levels: by banks and NGOs. Because many NGOs are unregulated, the cost of delivery is high. As a result, NGOs that lack equity and investment support issue few loans. Certain NGOs, such as PRSP and Kashf, receive outside support from organizations like the Aga Khan Foundation. Industry organizations, including the Karachi Chamber of Commerce, also take steps to encourage microfinance.

With respect to banks, Khushhali Bank is a micro-credit lending institution that covers 90% of the country's districts. Its mandate is to extend credit to the poor between the ages of 18 and 58. As a result of this mandate, approximately 40% of its national clientele is women. In Peshawar, this rate is even higher, at 52%.

The loans offered by the bank are Rs 3,000–10,000 at 11% interest, to be used for working capital or purchase of assets. The bank requires only a personal guarantee. Like other micro-lending institutions, Khushhali works with NGOs, including the Family Planning Association of Pakistan and the Human Development Foundation, to help loan applicants. During April 2007, the Peshawar branch of the bank extended loans to 35,000 clients; the average loan size was Rs 7,500.

Leasing is also a potential source of finance because of its characteristic as asset-based financing, which can help women overcome the problem of needing collateral for a loan. Various organizations, such as Orix Leasing Pakistan, in partnership with various NGOs, have been providing leasing-based financing to women. Another firm, Al Zamin Modaraba, provides loans

[14] According to the FWB, the Financial Services Desk provides the following services: address problems arising in any specific areas of business such as financing, marketing, management, legal issues, and tax matters; cater to business entities owned/managed by women; provide an environment where women entrepreneurs are at ease as they are dealing with women bankers; and offer consumer loan products, such as home improvement loans, car loans, home loans, and other such schemes.

[15] These include the prudential regulations, the banking Company Ordinance, and the State Bank regulations for all the banks.

through leasing and conducts seminars to disseminate information about leasing to women.[16]

The Leasing Association of Pakistan has made deliberate efforts to extend its services to women entrepreneurs through the Women's Chambers, the FPCCI, and the Karachi Chambers of Commerce and Industry. It is also working with SMEDA and TDAP and has participated in women's expos. Other initiatives include arranging lecture series to raise awareness about leasing for women entrepreneurs and SMEs. The chamber managing committees and women entrepreneurs have been disappointed, however, because the leasing companies have not been able to make what they feel to be adequate concessions to facilitate the freer flow of capital.

Inaccessibility of credit to middle-class female entrepreneurs makes liquidity low, which prevents the expansion of business. A further hurdle is that managers in financial institutions, where abundant credit is available, do not see inaccessibility of credit for this constituency as a problem, believing that credit is available equally to all. Nonetheless, women entrepreneurs typically find interest rates offered by the banks to be out of reach, and therefore turn to friends and family for capital to start up businesses.

This gap between the demand and the supply of services is an impediment to growth for women entrepreneurs. Women who succeed in micro-level businesses do not generally think beyond this level because they are not able to acquire the funds they need to expand their businesses.

Trade across Borders. Pakistan's female entrepreneurs engage in exports of textiles, garments, jewelry, food products, and furniture. The scale and manner of exports vary. For example, private, undocumented channels are used to export garments and high-end limited-quantity products like jewelry. Sales through exhibitions abroad are also a regular export channel for hundreds of Pakistani women who run small businesses. Export markets include Britain, the United States, Spain, Afghanistan, and elsewhere in the Middle East.

Women who are successfully involved in formal cross border trade run professionally managed business organizations. They are therefore both familiar with the export regulations and able to abide by them. Women who export products to Afghanistan, for example, are familiar with the regulations governing cross border exports and face no problems exporting.

Many of the smaller potential exporters, however, are unable to export because they lack information. They would benefit greatly from regular workshops geared towards women who intend to export to global markets.

TDAP is the key service provider for potential exporters. It has established more than 30 training courses and projects in various export sectors to train attendees on the export trade and industry. Export promotional activities are carried out in coordination with trade bodies at home and Pakistan's trade missions abroad. TDAP regularly posts information regarding foreign trade fairs on its website.

Women entrepreneurs complain, however, of TDAP's failure to provide them with timely information about exhibitions, export rules, export subsidies, tariff rates, and transport options. TDAP is the only authority that can send entrepreneurs abroad for product promotion. It has funds available for this purpose. Yet the consensus among the women entrepreneurs is that TDAP is not using these funds efficiently. Also, many women are unable to access the information on TDAP's website.

As for institutions related to the trade and transport sectors, there are equal opportunities for men and women in most trade and transport sectors, with the exception of physical dock labor (which is dominated by men). Planned modern export-oriented industrial parks will provide social support for workers, especially women.

Recommendations

General.

- Establish a high-profile research institute dedicated to collecting data on women entrepreneurs and the constraints they face. The institute should provide a reliable knowledge base for informed discourse and effective policy-making. This knowledge could be used in teaching institutions through case studies that examine how women entrepreneurs operate. Experts on business generally and on women in business could use the institute to proliferate knowledge through writings and discussions.
- Existing training institutions, including SMEDA and business chambers, should organize widely-publicized courses on topics such as staff management, production, managing purchases, selling/sales/pricing, construction

[16] Through a Lahore-based NGO called Asasa, which conducts awareness activities in Kasur.

of a balance sheet, language skills, preparing export documents, preparing presentations, brochure and marketing development, website development, and tax obligations.

- Provide separate women's chambers with research and capacity building support so that they can become effective participants in policy dialogue and advocacy, and so that they can improve the performance of women entrepreneurs.
- Disseminate the stories of successful women entrepreneurs through print and electronic media.

Dealing with Licenses.

- Enforce the 10% minimum quota of women employees in those service-providing organizations that are already bound by the regulation. The regulation should be extended to other organizations.
- SMEDA should aggressively broadcast, through popular media and through specialized business publications, the existence of its incubation centers so that women entrepreneurs can access these facilities and get the help they need to overcome regulatory hurdles.

Employing Workers.

- Build private sector capacity to conduct research on women in the garment, textile, and pharmaceutical sectors, study their strengths and weaknesses, and identify the steps required to promote increased women's participation in these sectors.
- Organizations such as the Pakistan Institute of Development Economics should identify and disseminate best practices in skill development and women-focused social security.
- Collect data on the size and characteristics of the female labor force that is engaged in the informal sector (especially as domestic help) in order to begin development of a strategy to assist this disenfranchised segment.
- Develop models for special recruiting campaigns for well-qualified female applicants for the purpose of encouraging equal employment opportunity.
- Provide on-the-job counseling and mentoring for women in government jobs to increase retention and career advancement.

Registering Property.

- Collect data on the denial of inherited property to women so that a strategy may be developed to ensure that women are able to claim and control their property.
- Property registration offices should employ more women.

Getting Credit.

- The state and the private sector should facilitate the establishment of venture capital opportunities directed toward women business graduates to encourage these women to become job providers, not just job seekers. In the third year of school, these women should be encouraged to make viable business plans for launch after graduation. Within a mentoring framework, female business graduates could prepare viable business plans and get strong support from business managers and area experts with practical business experience.
- Examine the possibility of setting up a Women's SMEDA.
- Make services offered by providers like SMEDA, TDAP, and FWB accessible to the middle-class entrepreneur. Widely disseminate information about these services through popular media.
- Institutions like SMEDA should offer business enhancement services under which women whose micro-enterprises are running successfully are encouraged to explore the possibility of expanding their businesses. Services should include facilitating acquisition of equity capital for expanding the business.

Trading Across Borders

- TDAP should establish structures, including help desks, for women entrepreneurs with women staff. TDAP should also initiate the formation of Women's Exporters Group to help women entrepreneurs export their products through participation in exhibitions. There must be transparency in the TDAP's selection process to nominate women for participation in foreign affairs.
- Create awareness in the service-user's mind about TDAP's presence and activities. TDAP needs to broadcast its services through popular media.
- TDAP should build products aimed at women intending to establish SMEs. For example, training on customs and exports laws should be organized.

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