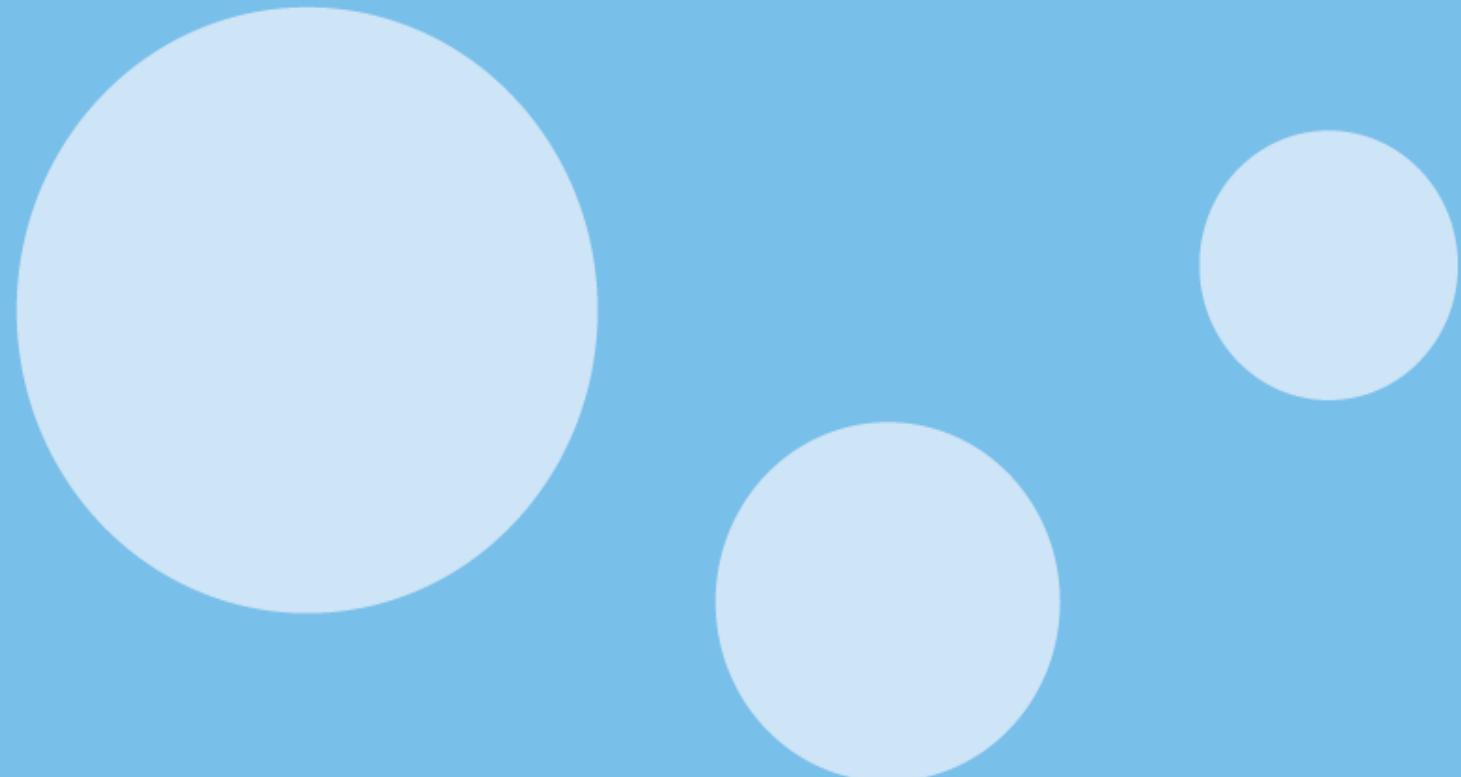


## DecentWorkCheck

# Analysing De-Jure Labour Market Institutions from Worker Rights Perspective

Iftikhar Ahmad



## *Abstract*

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WageIndicator presents a new way of comparing labour market regulations worldwide, i.e., through worker rights perspective. We document a new tool, i.e., DecentWorkCheck (DWC) and use it to analyse de-jure labour market institutions in 32 countries of the world. These include low, middle and high-income countries (World Bank classification). We consider nine important elements of decent work agenda and convert these into legal indicators/questions that workers can easily respond to and know whether they are employed in decent working conditions or not. De-facto institutions will only be informed by workers using these Checks in meetings, awareness raising campaigns organised by WageIndicator Foundation in our sample countries. Through DecentWorkCheck we introduce an online and offline tool that can be used by workers to benchmark their condition against national and international work standards. The tool creates awareness among workers and employers about their rights and obligations vis-à-vis international labour standards. This paper documents the methodology we would use in creating DecentWorkCheck and ranking of countries. It also presents a prototype of Revised DecentWorkCheck for India. Based on this methodology and revised Check, WageIndicator Foundation will create many more Checks. The Foundation currently operates in 70 plus countries.

## *About WageIndicator Foundation*

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A more transparent labour market in principle improves the functioning of economies as a whole.

WageIndicator believes every worker and employer should have free access to information about wages, labour laws and career. We collect and compare labour market information through on- and offline surveys and desk research. We share our findings and serve as an online up to date labour market library for millions worldwide.

WageIndicator believes this helps individual workers to fairly access the labour market and it helps employers to comply with national labour law. In some developing countries we even assist in mapping wage structures for the first time. We started in The Netherlands and now operate in over 70 countries worldwide with a staff of some 100 specialists.

The first WageIndicator website, loonwijzer.nl, was an easy to use salary indicator for workers looking for information about wages. It was launched in The Netherlands in 2001 as a joint initiative by Paulien Osse, Director of the WageIndicator Foundation and Kea Tijdens, scientific coordinator of the WageIndicator and research coordinator at AIAS/University of Amsterdam.

Loonwijzer.nl quickly became a popular website for workers and job seekers looking for information on wages, collective agreements and career advice. Growing off our success in the Netherlands we soon branched out to other countries in Europe, Asia, Latin America, and Africa.

Our WageIndicator Foundation is assisted by world-renowned universities, such as University of Amsterdam and Harvard Law School, trade unions and employers' organisations.

Those who work for WageIndicator consider each other family members. Face to face meetings are rare, but our online staff and network is strong, dedicated and loyal. Many WageIndicator specialists are working parents, therefore WageIndicator babies get an miniature Atlas of the World to welcome them as new members of our global family.

In more developed economies our most consulted service is the Salary Check by occupation. In less developed economies there is a huge demand for detailed minimum wage and labour law information, which we provide online and offline.

In less developed economies like Guinea or Burundi much work is done to map the wage structure in a country for the first time. Moreover there is a general lack of information about the labour law. We systematically collect and present major items of the national labour law in all countries. The system we have developed allows for international comparison of wages and law.

WageIndicator shows that labour law in many countries is often good enough, but compliance with the law is the real issue. Therefore WageIndicator offers compliance forms, mediation, a legal helpdesk and even a mobile judge.

We strive for a strong WageIndicator operation in all countries, making sure everybody gets a fair deal and can work under "OK" circumstances.

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*DecentWorkCheck Team*

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## **1 Introduction**

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### **1.1 Background**

Decent Work is the type of work for which all of us aspire. It is done under conditions where:

- i. people are gainfully employed (and there exist adequate income and employment opportunities);
- ii. social protection system (labour protection and social security) is fully developed and accessible to all;
- iii. social dialogue and tripartism are promoted and encouraged; and
- iv. rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

The above four pre-conditions, usually referred to as "four strategic objectives", which once achieved promise decent work (International Labour Organization, 1999).

Decent Work, a term first used by ILO in 1999, has also been adopted by UN as one of the measurements of Millennium Development Goals (MDGs). Since 2005, Decent Work has been included as a target on the first MDG and ILO does all the reporting with regard to the achievement of this target (International Labour Organization, 2009).

While the first strategic objective seeks on creating income and employment opportunities, it is also concerned about quality of work. As indicated in above ILO Report (1999), there are different notions of "acceptable quality jobs" in different economies. Job quality is a multidimensional subject, which incorporates different dimensions of work and employment. These dimensions include labour compensation, i.e., wages, working hours, employment stability and fundamental rights at work as provisioned in core labour conventions, social protection, etc. All these facets of job quality (or inversely job insecurity) impact a worker's well being. However, as we contend in the coming paragraphs, there must be a mode through which workers, worldwide, can compare their working condition with ideal decent working conditions and know whether they are employed in quality jobs or not. Absence of such comparative tool proved to be the starting point for development of "DecentWorkCheck". We use different dimensions of job quality in creating "DecentWorkCheck". ILO refers to these aspects of job quality as the substantive elements linked with four strategic objectives mentioned above (International Labour Organization, 2012). Table 01 shows these

elements of job quality and the indicators that we are using to inform workers about their rights in their national settings.

## **1.2 DecentWorkCheck- An Innovative Concept**

WageIndicator Foundation has been working on this idea since late 2007 and the first series of DecentWorkChecks for South Africa, India and Netherlands was prepared in 2008. In this paper, we present revised DecentWorkCheck. The earlier version covered all substantive elements relating to Decent Work except "employment security" which is added in the new version. Similarly, questions posed under an earlier Check did not take into account different dimensions of decent work. Around 12 new questions have been added and same number of questions has been amended. The revised version addresses issues like pay premium for working at night and on weekly rest days, provision of written statement of employment particulars at the start of employment, hiring of fixed term contract workers, reasonable probation period, notice requirement before contract termination, severance allowance on contract termination, paternity and paternal leave; employment protection during maternity leave, right to return to same/similar position after maternity leave, nursing breaks for working mothers, labour inspection as a tool to maintain safe and healthy workplace, more grounds for discrimination, right to leave work, and the right to strike. DecentWorkCheck considers different work aspects, which are deemed important in attaining "decent work". The DecentWorkCheck makes the abstract Conventions and legal texts tangible and measurable in practice.

The DecentWorkCheck employs double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with their national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The DecentWorkCheck is based on de jure labour provisions, as found in the labour legislation. The employees themselves inform the real practice. DecentWorkCheck also takes a stance on desirability of national labour regulations and judges these against

relevant ILO Conventions. Through DecentWorkCheck, we introduce a tool for both online and offline use, allowing web visitors/income earners to test if their jobs and working conditions live up to national and international standards of 'decent work'.

Experiences gathered through WageIndicator show that workers benchmark their position in the labour market with that of colleagues, others in their professional group or branch of industry and use these new insights to actively improve their current position. WageIndicator has also observed that decent work deficits exist only because workers are not informed about their rights. Similarly, these violations exist because employers are not apprised of their obligations. WageIndicator websites reach a wide audience. By placing the DecentWorkCheck as a web application prominently on their homepages and by active promotion and marketing in each country, chances are that international decent work standards are perceived more and more as rightful national standards. The DecentWorkCheck will also be offered for display at the websites of trade unions, associations of employers and other worker rights organizations.

### **1.3 Main characteristics of DecentWorkCheck**

The main characteristics of DecentWorkCheck are as follows:

- Topics of DecentWorkCheck relate to ILO's current work on Decent Work Indicators. While ILO's work focuses more on statistics, WageIndicator's priority is to inform workers about their rights..DecentWorkCheck analyses de jure labour market institutions and provisions and compares these with international best practices as provided in international labour standards.
- The target population is the labour force and includes all types of workers, employees, employers or self-employed, whether they are formal or less formal.
- DecentWorkCheck aims to "create awareness among workers and employers about their rights and obligations respectively (and vice versa) vis-à-vis national and international labour standards. DecentWorkCheck is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Employers can also use this as an employment law audit tool to examine whether their organizations are complying with local and international labour standards.
- DecentWorkCheck different from other indices like World Bank's Doing

Business Indicators (Employing Workers Index-EWI<sup>1</sup>), World Economic Forum's Global Competitiveness Report (Labour Market Efficiency Pillar<sup>2</sup>), Harvard/NBER Global Labour Survey<sup>3</sup> or even ISSA's Social Security Programs throughout the World (SSPTW<sup>4</sup>) as it is not only descriptive in nature (like ISSA's SSPTW) and bereft of any subjective opinions (quite unlike EWI, GLS and GCR) but also covers a lot of different work related aspects. It is comprehensive when compared with all these labour market related indices. The table below shows how these indices are comparatively structured.

**Table 1: Comparative Structures of Different Work Related Indices**

<b>Sub-Indicators</b>	<b>Issues Covered</b>
<b><i>Employing Workers Index</i></b>	
<b>Difficulty of hiring</b>	<i>Fixed term contracts, minimum wage regulations</i>
<b>Rigidity of Hours Index</b>	<i>Paid vacations, non-standard work schedules (night work, holiday work and pay premiums)</i>
<b>Difficulty if Redundancy Index</b>	<i>Mandatory legal requirements on economic dismissal</i>
<b>Redundancy Cost</b>	<i>Weeks of salary (notice requirement and severance pay)</i>
<b><i>Global Competitiveness Index (Labour Market Efficiency)</i></b>	
<b>Flexibility</b>	<i>Cooperation in labour-employer relations, Flexibility of wage determination, Rigidity of employment, Hiring and firing practices, Redundancy costs, Extent and effect of taxation</i>
<b>Efficient Use of Talent</b>	<i>Pay and productivity, Reliance on professional management, Brain drain, Female participation in labour force *</i>
<b><i>The 2004 Global Labour Survey</i></b>	
<b>General Economic Situation</b>	<i>Economic growth; Unemployment and poverty; Influence of IMF and World Bank on country policies</i>
<b>The Labour Market</b>	<i>Wage-setting; Enforcement of minimum wage policies; Wage arrears; Prevalence of child labour; Gender discrimination</i>
<b>Freedom of Association &amp; Collective Bargaining</b>	<i>Legal and economic position of unions</i>
<b>Labour Disputes</b>	<i>Nature and frequency of industrial</i>

<sup>1</sup> <http://www.doingbusiness.org/data/exploretopics/employing-workers>

<sup>2</sup> <http://www.weforum.org/issues/global-competitiveness>

<sup>3</sup> <http://www.nber.org/papers/w11598>

<sup>4</sup> <http://www.ssa.gov/policy/docs/progdesc/ssptw/index.html>

	<i>disputes; Institutions for resolving labour conflicts</i>
<b>Employment Regulations &amp; Working Conditions</b>	<i>Effect of regulations and collective bargaining on labour contracts, work hours, hiring and firing decisions</i>
<b>Employee Benefits</b>	<i>Pension schemes; Sickness benefits; Unemployment insurance.</i>
<b>Concluding Questions</b>	<i>Respondents' views on several economic and political issues</i>
<b><i>ISSA's Social Security Programs throughout the World</i></b>	
<b>Social Security</b>	<i>Old-Age, Disability/Invalidity and Survivors 'Benefits, Sickness and maternity benefits (cash benefits + medical care), Work Injury Benefits, Unemployment Benefits, Family Allowance</i>
<b><i>WageIndicator's DecentWorkCheck</i></b>	
<b>Productive Work &amp; Adequate earnings</b>	<i>Minimum Wage, Regular and timely payment of wages, Overtime compensation, Compensation for night work, weekend work and holiday work</i>
<b>Decent Working Hours</b>	<i>Paid annual leave, Maximum hours of work (limits on overtime hours), Compensatory holidays for working on weekly/public holidays</i>
<b>Employment Security</b>	<i>Provision of a written statement of particulars at the start of employment, hiring fixed term contract workers for permanent tasks, Length of probation period, Notice requirements, Severance Pay</i>
<b>Combining Work and Life</b>	<i>Family Responsibilities (Paternity leave, Parental leave, Flex-time options), Maternity Protection (Maternity leave, Free medical care, Salary during leave, Exemption from hazardous/arduous work, Protection from dismissal, Right to return to same/similar job, Nursing breaks)</i>
<b>Safe Working Environment</b>	<i>Health and Safety at Work (Safe workplace, Provision of free protective equipment, Safety training, Labour inspection esp. Occupational safety and health related)Sickness and Employment Injury (Paid sick leave, Access to free medical care, Employment security during illness, Work injury/disability benefit/survivors' benefits)</i>
<b>Social Security</b>	<i>Unemployment Benefit, Old-Age Pensions, Invalidity Benefit, Survivors' Benefit</i>

<b>Equal Treatment at work</b>	<i>Equal pay for work of equal value, sexual harassment laws, Occupational segregation, Equal treatment in employment</i>
<b>Children at Work</b>	<i>Minimum age for employment, Minimum age for hazardous work</i>
<b>Forced Labour</b>	<i>Forced labour, Worker's ability to terminate employment, Limit to maximum overtime hours</i>
<b>Social Dialogue/Trade Unions</b>	<i>Right to form and join unions, Right to bargain collectively, Right to strike</i>

- Employing Workers Index (EWI), Global Labour Survey (GLS) and Global Competitiveness Index (GCI) cover a limited number of variables and can't be used to measure decent work in a country. Moreover, these enumerate only the subjective opinions of local law firms, union leader & activists on local de-facto practices and business executives respectively. On the other hand, *DecentWorkCheck* is based on de-jure labour provisions and real practice in this case is informed only by the workers. Although above mentioned various indicators rank countries on the basis of labour market regulations, however they don't provide any knowledge of labour laws to workers or even employers. These indices can be used only by businesses and highly educated. *DecentWorkCheck* not only ranks countries on the basis of de-jure labour market institutions but also creates awareness among workers about their rights (as well as among employers).
- *DecentWorkCheck* is also comparable with corporate social responsibility tools like SA8000<sup>5</sup> and UN Global Compact principles<sup>6</sup>. It is more elaborate and covers a lot more issues than these standards. Organizations, committed to corporate social responsibility and sustainability, may like to use *DecentWorkCheck* as a checklist whether they are following international best practices in the field or not.
- *DecentWorkCheck* is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work.
- *DecentWorkCheck* can also be used as a comparative labour law tool and we can compare countries around the world and see which country has enacted more labour protective regime.

<sup>5</sup> SA8000, the most famous social standard for decent workplace, covers most of issues already covered under *DecentWorkCheck* however it does not refer to combining work and family (family responsibilities, maternity protection etc.) and social security measures (like old-age pension, work injury benefits, sickness benefits, invalidity and disability benefits).

<sup>6</sup> The UN Global Compact is a combination of ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. Its four labour principles (freedom of association and collective bargaining, elimination of forced labour, abolition of child labour and elimination of discrimination in all aspects of employment).

- The DecentWorkCheck would be a multilingual tool and similar across these countries. Paper-based DWC would supplement web DWCS in countries with low Internet access rates.
- DecentWorkCheck currently ranks countries on the basis of de-jure labour regulation however at some later stage, with enough data, we may also rank countries based on de-facto practices. What would still differentiate DecentWorkCheck from Global Labour Survey would be the factor that these practices would be informed by workers themselves and not by the ever-discontented trade union activists.

#### **1.4 Why focus de-jure labour market institutions**

While there are issues with focusing only on de-jure labour market institutions and provisions (namely existence of large informal sector, in developing countries, non-compliance coupled with tepid and lackluster implementation of labour laws), well drafted and inclusive (with least "exclusions") are still a pre-condition for attaining decent work. Well-drafted laws provide clear and explicit answers to difficult and perplexing questions. This point is quite lucidly summed up in the recent World Social Security Report 2010-11, which is of the view that even the widest and most expansive legal foundations can't achieve the desired outcomes if these are not enforced and backed by sufficient resources. Nonetheless, strong legal foundations are a pre-condition for securing higher provisions and resources. There is not a single situation where a country provides generous benefits (this report focuses on social security provisions but its insights can still be generalized) without a comprehensive legal basis (International Labour Organization, 2010). Similar points have been raised by Botero et al. (2004) that formal rules, although different from "on the ground" situation, still matter a lot.

## **2 DecentWorkCheck: Ranking Methodology**

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### **2.0 Overview**

Under the following indicators/questions, we try to capture 12 different dimensions of labour market institutions. If we consider these from the point of view of 10 substantive elements of decent work agenda, we cover only 9 of these and leave only questions regarding creation of productive employment opportunities. This is because a worker can't respond clearly about *government's commitment to full employment* (during the current economic turmoil, most of the countries will get negative score, if we include this in our list!). Similarly, we treat *unemployment insurance/benefits* under Social Security. As is evident from the list of indicators below, we consider individual employment law, collective relations (or labour) law and social security laws. At the same time, we consider constitution of country as well in the cases of equality of opportunity, child labour, forced labour and the right to unionization.

For each of the above aspects of job quality, we describe below the construction of questions/indicators, their legal basis in UN Covenants and ILO Conventions or comments by different ILO committees like ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) or Committee on Freedom of Association (CFA). Comments from ILO Committees are only referred to in case no relevant provisions are located in ILO conventions. We use emoticons/smileys (happy or sad face) for indicating whether a country meets international labour standards or not. Emoticons have been in use for a long time to represent body language. These emoticons convey our analysis to workers in the simplest possible language whether their country's labour laws are consistent with international labour standards or not.

Although *DecentWorkCheck* can be used by multiple groups as an awareness raising tool, however, it also makes an all encompassing assumption. It assumes that our ideal "employee works in a non-managerial post in a firm/establishment of at least 50 employees". This is because minimum wage, overtime and unionization rights are not applicable to the managerial or supervisory employees. Managerial and supervisory level employees may still use this tool to enhance their knowledge about their subordinates' rights and their own rights in other areas.

## **2.1 Productive Work & Adequate earnings**

### **1. Minimum Wages**

We report national minimum wages in national currency on monthly basis. The wages that we report in DecentWorkChecks are usually for unskilled workers. Countries usually set different types of wages for different regions (Pakistan, Indonesia), sectors (India, Sri Lanka), skill level (Pakistan, Nepal) or type of enterprises (as in Vietnam) and it is difficult to mention all these wages in DWC, so we mention only the lowest wage. If a worker is not even getting that low wage, he/she must be concerned about his working conditions. Some countries (especially in Europe and those following French industrial relations system) don't set minimum wage through laws, however collective bargaining agreements often set these wages. In that case, we look for the collective wage agreements and report those wages. In order to consider collective bargaining agreements in the place of labour regulations, the following two conditions must be fulfilled.

- i. These agreements should cover more than 50% of the workforce in a given sector (here manufacturing)
- ii. These should be extendable agreements, i.e., these apply to those workers and employers who were not actually party to these agreements.

The legal base for this indicator is found in Minimum Wage Fixing Convention, 1970 (No. 131). This Convention recommends taking into consideration both social factors (needs of workers and their families, cost of living/inflation, social security benefits) and economic factors (creation of employment, productivity, competitiveness etc.) while setting the minimum wage (article 3). As for scoring (happy or sad face), a country must have set the minimum wage at a level that is above World Bank's poverty line of \$1.25 a day, i.e., its monthly minimum wage when converted into US Dollar should be higher than \$37.5 per month. If a country's monthly minimum wage is less than \$37.5, its score decreases and it receives a sad face.

*Legal Base: Article 3 of Minimum Wage Fixing Convention, 1970 (No. 131), Article 23 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Economic, Social & Cultural Rights (Fair Wage clauses)*

*Sources: US DOS Human Rights Reports, country labour codes, ILO Database of Conditions of Work and Employment Laws*

## **2 Regular and timely payment of wages**

ILO Convention 95, regarding protection of wages, requires that wages must be paid regularly. It also indicates that intervals for payment of wages can be prescribed by

national laws or regulations, agreed under a collective agreement or fixed by an arbitration award (article 11 and article 12 of convention 117). We report the national situation, as provided in employment laws, whether there are clear provisions in labour codes on regular payment of wages. If these provisions exist in national code, that country gets a happy face (and its score increases).

*Legal Base: Article 12 of Protection of Wages Convention, 1949 (No. 95), Article 11 and 12 of Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws*

### **3      Overtime Compensation**

Business demands, sometimes, require workers to work extra hours. To a certain limit (56 hours in a week), workers are obliged to perform overtime work, if required by the employer. However, if an employer requires an employee to perform overtime work beyond that limit, he/she has the right to refuse.

In accordance with article 6 of the ILO Hours of Work (Industry) Convention, 1919 (No. 1), rate of overtime should not be less than one and one-quarter times (125%) the regular rate. Only those countries with overtime rates equal or higher than the one provided in above convention are given happy face.

*Legal Base: Article 6 of Hours of Work (Industry) Convention, 1919 (No. 1)*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws*

### **4      Compensation for night work, weekend work and holiday work**

In accordance with article 8 of Night Work Convention, 1990 (No. 171), compensation for night work should recognize the nature of night work (it brings more fatigue and a worker is cut-off from social circle). Similar point is made in article 8 of the accompanying recommendation on night work, which emphasizes that such compensation should be in addition to the remuneration paid for the same work performed during the daytime. Night work is defined as the work performed for at least 7 consecutive hours especially during the interval from midnight (12:00 a.m.) to 5 a.m.

Similarly, those workers who have to perform work on weekly rest days or public holidays must be compensated fairly, which is additional to the normal wage rates, for working on these days. A country receives positive score only if it has enacted provisions regarding premium pay for working on night, weekly rest day and public holidays.

*Legal Base: Article 8 of Night Work Convention, 1990 (No. 171)*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws*

## 2.2 Decent Working Hours

### 1 Paid annual leave

Paid annual leave is the period of time, during a year, when workers can take time off from their work while still receiving income and other benefits. The paid annual leave is in addition to public holidays, sick leave, casual leave and maternity/paternity leave. In accordance with article 3 of Holidays with Pay Convention (Revised), 1970 (No. 132), every worker, with one year of service, should be entitled to at least 3 working weeks of paid annual leave. Only those countries receive positive score, which have instituted a paid annual leave of at least 3 working weeks.

*Legal Base: Article 3 of Holidays with Pay Convention (Revised), 1970 (No. 132), Article 24 of Universal Declaration of Human Rights*

*Sources: Country Labour Codes, World Bank Doing Business Indicators, ILO Database of Conditions of Work and Employment Laws*

### 2 Maximum hours of work (limits on overtime hours)

The first ILO Convention, adopted in 1919, required that working hours in any establishment should not be greater than 8 hours a day and 48-hours a week. Article 3 of the ILO Convention (001) also provided for certain exception in which this limit could be exceeded and workers could be asked to perform *overtime work*. Article 4 of this convention specifies that maximum working hours in a week should not exceed *56 hours on average*. Although ILO Convention (001) does not prescribe in what period this 56-hour average may be attained, we use this as a ceiling and if a country's maximum working hours (normal + overtime hours) exceed 56 hours in a week, it received a negative score. We also use this indicator in measuring existence of forced labour; if a worker is working over 56 hours in a work-week, he/she must be spending over 12 hours at the workplace which deprives him/her of the necessary 11 hour rest period in a day (taking into account long commutes).

*Legal Base: Article 6 of Hours of Work (Industry) Convention, 1919 (No. 1), Article 24 of Universal Declaration of Human Rights*

*Sources: Country Labour Codes, World Bank Doing Business Indicators, ILO Database of Conditions of Work and Employment Laws*

### **3 Compensatory holidays for working on weekly/public holidays**

ILO Conventions 001 (Hours of Work in Industry), 014 (weekly rest in industry) and 106 (weekly rest in commerce/offices) stipulate the general standard that workers enjoy a rest period of at least 24 uninterrupted hours in every seven days. The ILO Conventions further provide that if a worker has to work over the weekend, a compensatory holiday of equivalent duration i.e., at least 24 hours, must be provided. Workers must also be provided with paid public holidays and they have to be compensated in time or remuneration for working on public and customary holidays (C172). A country receives positive score only if its law provides for compensatory holidays to those employees working on weekly rest days or public holidays.

*Legal Base: Article 2 of Weekly Rest (Industry) Convention, 1921, Article 6 of Weekly Rest (Commerce and Offices) Convention, 1957, Article 5 of Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws*

### **2.3 Employment Security**

#### **1 Provision of a written statement of particulars at the start of employment**

An employment contract is an agreement between an employer and employee and is the basis of employment relationship. It regulates the terms and conditions of employment between employer and employees. A contract of employment may be written or oral however a worker must be provided with written statement of employment particulars at the start of his/her employment. This statement may be in the form of job offer letter or any other document signed by the employer and agreed to and signed by the employee as an acceptance to the terms and conditions.

No ILO instrument (i.e., a convention or recommendation) (i.e., a convention or recommendation) particularly mentions that workers may be provided written statement of employment particulars except the ILO Recommendation on Private Employment Agencies (No. 188), which requires that workers hired for third parties, through these employment agencies, must be provided with written employment contracts and particulars. Nonetheless, this is still an employment aspect of employment security and we consider it in our DecentWorkCheck. If a country's law does not require an employer to provide "written statement of particulars to a new employee", it receives a negative score.

*Legal Base: Article 5 of the Private Employment Agencies Recommendation, 1997 (No. 188)*

*Sources: Country Labour Codes, ILO NATLEX Database*

## **2 Hiring fixed term contract workers for permanent tasks**

Employment protection measures require that workers on fixed term contracts may not be hired for tasks of permanent nature. Fixed term contracts are those contracts, which are entered into for a specific duration and mention an "expiry" date. If fixed term contracts workers are being hired for permanent tasks, workers are being forced into precarious employment. This aspect is also not clearly mentioned in any ILO instrument (i.e., a convention or recommendation) however it is still relevant to measure decent work. A country that allows hiring fixed term contract workers for tasks of permanent nature receives a negative score, i.e., a sad face. While mentioning national regulations under this indicator, we also mention maximum duration of fixed term contracts including renewals.

*Sources: Country Labour Codes, World Bank Doing Business Indicators, Baker & McKenzie "Worldwide Guide to Termination, Employment Discrimination, and Workplace Harassment Laws", ILO Termination of Employment Digest, ILO Employment protection legislation database -EPLex*

## **3 Length of Trial/Probationary Period**

Probationary or qualifying period is a period of employment in which an employee's suitability for a particular job is assessed. ILO Convention 158 (on employment termination by employer) requires that "the employment of a worker shall not be terminated unless there is a valid reason for such termination' (Article 4) and 'before he is provided an opportunity to defend himself' (Article 7). However, probationary workers usually don't get these protections and ILO also allows these workers to be excluded. This Convention does not fix a probationary/trial period for employees rather it stipulates that probationary period must be of *reasonable duration* and determined in advance. The reasonableness of probationary period is determined by the nature of the job, time needed to gain required proficiency as well as time to determine an employee's suitability for employment.

Probation period is usually fixed as 90 days however most of the global employment laws require a probationary period of three to six months. A country scores positively only if it has fixed probation period equal to or less than 6 months.

*Legal Base: article 2 of the Termination of Employment Convention, 1982 (No. 158)*

*Sources: Country Labour Codes, ILO NATLEX Database*

#### **4      Notice requirements**

An employer is required to serve a termination notice before terminating services of an employee. The employer may also opt to pay compensation in lieu of notice. Moreover, an employer is not required to serve termination notice (or pay in lieu of) if the employee is guilty of serious misconduct (Art. 11, Convention 158 of Employment Termination). In order to protect employment, countries' laws should provide for reasonable notice periods in the case of employment termination (and only then they receive a positive score).

*Legal Base: article 11 of the Termination of Employment Convention, 1982 (No. 158)*

*Sources: Country Labour Codes, World Bank Doing Business Indicators, ILO Employment protection legislation database – EPLex, ILO Termination of Employment Digest, Baker & McKenzie “Worldwide Guide to Termination, Employment Discrimination, and Workplace Harassment Laws”*

#### **5      Severance Pay**

Severance Pay is the amount paid by the employer for terminating employment relationship, regardless of the reason for termination whether it is resignation by the employee or a worker is laid off due to redundancy (except in case of serious misconduct). In the case of employment termination, a worker is entitled to severance allowance or other separation benefits. The amount of these benefits may depend on the length of service and wage level of an employee. This allowance can be paid directly by employer or through a fund constituted by employers' contributions. Article 12 of Convention 158 is relevant here. Countries decide themselves a reasonable amount of severance pay. If a country does not provide severance allowance, it receives negative score. Severance pay is not payable if a worker is dismissed on account of serious misconduct.

*Legal Base: article 12 of the Termination of Employment Convention, 1982 (No. 158)*

*Sources: Country Labour Codes, World Bank Doing Business Indicators, ILO Employment protection legislation database – EPLex, ILO Termination of Employment Digest, Baker & McKenzie “Worldwide Guide to Termination, Employment Discrimination, and Workplace Harassment Laws”*

## **2.4 Combining Work and Life**

### **A. Family Responsibilities**

According to ILO Convention 156 on the subject, family responsibilities are responsibilities in relation to dependent children and other immediate family members who need care (sick, elder, infirm). Noting that notion of "family" and "family responsibilities" can take different forms in different cultures and societies, countries are allowed to define who are included under provisions of this convention.

#### **1 Paternity leave**

Paternity leave is for the father around the time of birth of a child. Paternity leave is not found in any of the ILO conventions however it is becoming more of a norm in developed countries. Paternity leave is usually of short duration (1 day to two weeks) and is fully paid. A country receives positive score only if it requires employers to provide (paid or unpaid) paternity leave.

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws, World Bank's "Women, Business and the Law" Database*

#### **2 Parental leave**

ILO Recommendation 165 (concerning workers with family responsibilities) supports provision of Parental leave. It recommends that after exhausting paternity and maternity leave, either parent should be able to obtain leave of absence, i.e., parental leave for taking care of infant(s). As indicated above, parental leave is different from maternity or paternity leaves and either parent (father or mother) can take this leave. Parental leave is usually of longer duration however paid at lower rates (or sometimes unpaid). Although either parent can take this leave, take-up rate for fathers is much lower than that for mothers.

*Legal Base: ILO Recommendation 165*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws, World Bank's "Women, Business and the Law" Database*

#### **3 Flexible working options**

ILO Recommendation regarding "Workers with Family Responsibilities" encourages governments to take measures for improving the quality of working life and special measures may be taken aiming at making flexible work arrangements with regard to working schedules, rest periods and holidays. Research has also shown the provision of

flexible work practices (that help workers achieve work-life balance) positively impact job satisfaction, recruitment and retention, working environment and reduced stress, etc.

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws, World Bank's "Women, Business and the Law" Database*

## **B Maternity Protection**

Maternity protection allows women to successfully combine their productive and reproductive roles without compromising one at the cost of another. Similarly, it protects women from marginalization/discrimination in the labour market due to their reproductive roles.

Maternity protection, by contributing to the maternal and child health, contributes to the attainment of Millennium Development Goals (MDGs) 4 and 5<sup>7</sup>. Similarly, maternity protection measures safeguard and increase women employment and labour market presence, and ensure income security by providing cash and medical benefits during the period thereby helping in achievement of MDG 1 and 3<sup>8</sup>.

There are different aspects of maternity protection of which maternity leave is only one such aspect. These aspects include health protection measures for pregnant and breast-feeding mothers, maternity leave, leave in case of pregnancy related illness, provision of cash and medical benefits, employment protection and non-discrimination, allowing nursing breaks to breast-feeding mothers.

Convention 183, adopted in year 2000, is the most recent and updated convention on the subject. It expands the scope of maternity protection to virtually all workers and provides for **at least** 14 weeks of paid maternity leave. Moreover, it provides guidance on different aspects of maternity protection. We use above-mentioned aspects of maternity protection as indicators in DecentWorkCheck. Only when a country's law provides benefits that are equal to or higher than those provided under Convention 183, it receives a positive score, i.e., a happy face.

*Legal Base: Maternity Protection Convention, 2000 (No. 183), Article 11 of UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*

*Sources: Country Labour Codes, ILO Database of Conditions of Work and Employment Laws, World Bank's "Women, Business and the Law" Database*

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<sup>7</sup> Goals 4 and 5 relate to reducing child mortality and improving maternal health respectively

<sup>8</sup> Goal 1 and 3 related to eradicating extreme poverty and hunger and Promote gender equality and empower women respectively

## **2.5 Safe Working Environment**

### **A. Health and Safety at Work**

An important aspect of decent work is that it is safe work. Working conditions should be safe and healthy. According to ILO statistics, in every 15 seconds, one worker dies of occupational accident or disease. In these 15 seconds, 160 workers have a work-related accident, often leading to extended absence from work. Apart from the human cost of occupational safety and health failures, economic burden is estimated at 4% of Global GDP.

In a safe and healthy workplace, employers ensure that different chemical, physical and biological substances at workplaces don't pose risk to the health of workers; employers provide adequate protective clothing and equipment to prevent accidents or adverse effects to workers' health; employers have taken measures to deal with emergencies and there are adequate first aid arrangements available; workers co-operate with the employer to create and maintain a safe and healthy workplace; and workers are provided safety training by employers. (Article 16-19, Occupational Safety and Health Convention, 1981, No. 155). A country scores positively if its labour law requires employers to ***provide safe and healthy workplace; employer provides workers with free protective equipment and trains them to deal with workplace hazards and emergencies.***

An important mean to maintain safe workplace is the existence ***of central and independent labour inspection system.*** Labour inspectors inspect a workplace in order to assess risks to healthy and safety of workers from different processes at workplace. While labour inspection is essential for checking enforcement of all labour and employment laws, it is especially relevant in the context of occupational safety and health. The blaze in a garment factory in Karachi (Pakistan) in September 2012 and later incidents of building collapses in Bangladesh where around hundreds of workers were burnt to death sheds light to the importance of labour inspection. Had labour department carried out inspection and discussed different hazards at work with management, this catastrophe would not have even taken place. A country scores positively if it has established a central and independent labour inspection system.

*Legal Base: Occupational Safety and Health Convention, 1981 (No. 155), Labour Inspection Convention, 1947 (No. 81), Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)*

*Sources: Country Labour Codes, ILO NATLEX Database*

## **B. Sickness and Employment Injury Benefits**

Paid sick leave is an important aspect of social security (as indicated in various ILO Conventions and UN ICESCR) and comprises of two important components:

- Workers are provided leave from work during illness; and
- There is an income replacement program that replaces workers' earnings that they have lost due to illness/sickness

Paid sick leave protects worker's status and income during the period of sickness or injury by financial and health protection. Paid sick leave has its benefits as it prevents development of serious illness and reduces spreading of disease in workplace. Paid sick leave is usually provided through contributions, pay roll taxes or employers' funds.

Social Security (Minimum Standards) Convention, 1952 (No. 102) requires that workers be provided with a **sickness benefit**, which is equal to 45% of the normal wage rate. This sickness benefit usually starts after a waiting period of three days and must be paid for the first 6 months (26 weeks) of illness. A country scores positively on this indicator if its laws provide for paid sick leave during the first 6 months of illness and a sickness benefit equivalent to 45% of the normal wage rate.

Once a person gets sick, he/she is also in need of **medical care**. ILO Conventions 102 and 130 (Medical Care and Sickness Benefits Convention, 1969) require an employer to provide medical care to the insured/protected persons. Without reference to the cause, whether occupational or non-occupational accidents/disease, all types of contingencies including any morbid condition, pregnancy (and its consequences) and medical care of preventive nature is covered. Medical care is provided to maintain, restore or improve the health of a protected person (worker and his dependents) and his ability to work while attending to his personal needs as well. Under medical care, a protected person enjoys following benefits in the case of illness: preventive care; general practitioner care including home visits, specialist care, hospitalization, pharmaceutical supplies and pregnancy related care. Countries may impose a reasonable qualification period for affording medical care. Workers may also have to share the cost and countries may limit the duration of care benefits to 6 months (26 weeks). A country scores positively when its labour laws provide for medical care, at least for the first 6 months of illness.

While a sick worker is provided paid sick leave and medical care during the first 6 months of his/her illness, it is incidental to these provisions that he may not be fired during these months and his **employment must be secure for the first 6 months of his illness**. Article 6 of Convention 158 considers termination of a worker on the ground of temporary

absence from work due to illness or injury as unfair termination. If a country's law does not provide for employment security during the first 6 months of illness, that country's score decreases.

**Employment or Work Injury** is any morbid condition, incapacity for work, invalidity or loss of a faculty due to a work-connected accident or an occupational disease. Countries define themselves as to what constitutes "industrial accident" and "occupational disease" in their relevant country contexts. Employment Injury benefit is the oldest type of income replacement program. It also includes survivors' benefits in the case of a fatal accident leading to the death of a secured/insured worker. Employment Injury benefit programs include short term (temporary disability) and long term benefits (partial and total permanent disability) and survivors' benefits (dependent on the age of survivors). Employment injury benefit includes medical care services and cash benefits. Convention 102 requires that in the event of employment injury, workers be provided with periodic payments, corresponding to at least 50% of the reference wage in cases of incapacity for work (temporary or permanent disability). In the case of fatal accident, survivors are to be paid periodically at least 40% of the reference wage. These benefits can also be paid in lump-sum. There is usually no qualifying period for employment injury and survivors' benefits. These benefits, if paid periodically, are granted throughout the contingency (e.g., until a temporary disability persists or a disabled worker dies or a survivor beneficiary dies). A country scores positively only when the employment injury benefit is at least 50% of the reference wage.

*Legal Base: Social Security (Minimum Standards) Convention, 1952 (No. 102)*

*Sources: Country Labour Codes, ILO NATLEX Database, ISSA Social Security Programmes throughout the World*

## 2.6 Social Security

Social security is defined by ILO as "the protection which society provides for its members against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children". Social security measures that provide cash benefits in order to replace lost income in the event of old-age, invalidity, death of a worker or unemployment are called income maintenance programs and are our focus of attention here. These income maintenance programs can come in three forms; namely, employment related, means tested or universal programs.

However, we consider only employment related programs in DecentWorkCheck. Old Age, Invalidity (disability due to a non-occupational disease/accident) and Survivors' benefits cover long-term risks and provide benefits for a longer duration, usually for life, quite opposite to the employment injury and sickness benefits which are comparatively of shorter duration.

**Old-age pension/benefits** are payable only once a worker has reached a statutory retirement age. Countries also specify various qualifying conditions (minimum years of employment, minimum years of contribution, etc.). Here again, we use provisions in the ILO Convention 102 as our criterion. Old- age benefit/pension, granted as periodic payment, must at least be 40% of the reference wage. Minimum age for pension may not be set higher than 65 years. However, keeping in view the higher life expectancy and working ability of individuals, countries may set higher pensionable age. In the wake of current economic crisis gripping the Eurozone, most of the countries have raised retirement age, which is now above 60 or even 65. **Invalidity benefit** is a long-term benefit payable in the case of partial or total permanent disability resulting from non-occupational injury/accident or disease prior to reaching the standard pensionable age. Provisions for invalidity benefit are quite similar (i.e. 40% of the reference wage) to those granted under old-age pensions and survivors' benefits.

In the case of death of a breadwinner, dependents (widow/er and children) of a worker are afforded survivors' benefits in order to cover the loss of support. **Survivors' benefits** are paid as a percentage of the benefit granted to the deceased at death or the benefit to which worker would have been entitled to had he reached the pensionable age. Lifetime benefits are payable to widows who have children, have a disability or above a specific age. Survivors' benefits for children are payable only until a child reaches the age of 15 years or school leaving age (whichever is higher/ comes later).

**Unemployment benefit** is provided to compensate for the loss of earnings resulting from involuntary unemployment. An unemployed becomes eligible for unemployment benefit if he is capable of work and is actively seeking work. If a worker rejects suitable employment, this benefit may be suspended. Convention 102 requires that periodic payments under this benefit must at least be 45% of the reference wage. If a country does not provides unemployment or the gross replacement rate is lesser than 45%, it gets a negative score.

Pension, invalidity benefit and survivors' benefit are calculated on the basis of a worker's previous earnings or wages of a skilled manual male employee (referred to as the "reference wage").

*Legal Base: Social Security (Minimum Standards) Convention, 1952 (No. 102), Universal*

*Declaration of Human Rights(Article 22, 25), ICESCR (Article 9) and CEDAW (article 11)*

*Sources: Country Labour Codes, ILO NATLEX Database, ISSA Social Security Programmes Throughout the World*

## **2.7 Equal Treatment at work**

### **1 Equal pay for work of equal value**

Equal remuneration for all workers, referring to the rates of remuneration without discrimination on the basis of gender and any other discriminatory grounds as mentioned under *Equal treatment in employment*, is the fundamental requirement for promoting non-discrimination at the workplace. Equal pay is the first step in providing a level playing field for women workers. Violation of the principle of "equal pay for work of equal value" widens the currently existing gender, racial and geo-demographic pay gaps.

This gap exists when men and women receive different amount of money for work of equal or comparable value. The gender pay gap of roughly 18% percent means that women workers earn that much less per hour than their male counterparts. Gender pay gap is both cause and consequence of gender inequality. Equal remuneration is a fundamental right for all workers. A country receives positive score only when its constitution or labour code has relevant provision on respecting the right to equal remuneration for work of equal value.

*Legal Base: Equal Remuneration Convention, 1951 (No. 100), Universal Declaration of Human Rights (Article 23), ICESCR (Article 7), CEDAW (Article 11)*

*Sources: Country Constitutions, Country Labour Codes, ILO NATLEX Database, World Bank's "Women, Business and the Law" Database*

## **2 Sexual Harassment Legislation**

Sexual harassment involves unwanted or unwelcome behavior, which can offend, humiliate and intimidate a person while creating a hostile working environment.

Sexual harassment includes but is not limited to unwelcome sexual advances, verbal harassment or abuse, request for sexual favors, physical conduct or sexually demeaning attitude.

Any of the above mentioned acts is included in harassment, if it is unwelcomed and is causing interference in work performance or creating a hostile working environment or the harasser attempts to punish the complainant for refusal to comply with his/her requests and makes sexual favors a condition of employment. A country scores positively only when labour code or other employment related laws include a provision to

prevent and penalize sexual harassment at the workplace.

*Legal Base: Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

*Sources: Country Constitutions, Country Labour Codes, ILO NATLEX Database, World Bank's "Women, Business and the Law" Database*

### **3 Occupational segregation**

Occupational sex segregation is the phenomenon where men and women are concentrated in stereotypical types of work and different level of economic activity. Occupational segregation has two main types; vertical segregation where women are engaged in lower grades of work and horizontal segregation where women are limited to a narrower and smaller group of low paying occupations like education and health. Occupational segregation is also interlinked with the idea of equal pay for equal work and gender pay gap. Occupational sex segregation as a form of discrimination is also recognized in Convention on Discrimination (Employment and Occupation), 1958 (No. 111). We check occupational segregation by asking the question whether women can work in the same industries as men. If a labour code places restrictions on working of women in certain industries (restriction on working of pregnant women and working mothers in certain industries are not considered), that country receives a negative score.

*Legal Base: Discrimination (Employment and Occupation) Convention, 1958 (No. 111)*

*Sources: Country Constitutions, Country Labour Codes, ILO NATLEX Database, World Bank's "Women, Business and the Law" Database*

### **4 Equal treatment in employment**

The objectives of equal pay for equal value and occupational desegregation can be achieved only when men and women are treated equally in all aspects of employment. ILO Convention on Discrimination in employment and occupation defines discrimination as "any distinction, exclusion or preference made on the basis of *race, colour, sex, religion, political opinion, national extraction or social origin*, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". Other prohibited grounds for discrimination, as provided under ILO Conventions 87, 98, 156, 158, 159, 162 and 183, include "*Age, HIV/AIDS status, disability, family/marital status (family responsibilities), trade union membership and related activities*". A country's labour code is juxtaposed against different grounds of discrimination and receives positive or negative score respectively. If a country receives negative score in 5 of the 11 grounds, a composite negative score is given to the country.

*Legal Base: Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Universal Declaration Of Human Rights (article 2), CEDAW (article 11), Convention on the Rights of Persons with Disabilities (article 27)*

*Sources: Country Constitutions, Country Labour Codes, ILO NATLEX Database, World Bank's "Women, Business and the Law" Database*

## **2.8 Children at Work**

### **1 Minimum age for employment**

According to ILO, Child Labour is defined as work that has the potential to deprive children of their childhood, their dignity and is also harmful for their physical, moral and mental development and it interferes with their education (either by not allowing them to attend school, leaving school prematurely i.e., without compulsory education or forcing them to combine school attendance with heavy work.). So, the question arises as to how should we differentiate between child labour and child work? This, according to ILO, depends upon age of the child, type and hours of work performed, working conditions as well as the development stage of individual countries. ILO Convention on Minimum Age requires that general minimum wage should not be less than compulsory school leaving age or 15 years, whichever age is higher. However, developing countries may initially set the lower minimum age of 14 years (12 years in case of light work).<sup>9</sup>

A country receives a negative score if its constitution or labour code sets minimum age lower than 15 years (14 years for developing countries).

*Legal Base: Article 2 of Minimum Age Convention, 1973 (No. 138), Article 32 of the Convention on Rights of Child*

*Sources: Country Constitutions, Labour Codes, ILO NATLEX Database*

### **2 Minimum age for hazardous work**

According to ILO Convention 138, "any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons" is considered hazardous work. Another core ILO Convention on child labour (No. 182) considers hazardous work as one of worst forms of child labour. A child over the age of 15 years (or 14 years in a developing country case) but less than

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<sup>9</sup> For a classification of countries by income level, please follow this World Bank link.

[http://data.worldbank.org/about/country-classifications/country-and-lending-groups#Low\\_income](http://data.worldbank.org/about/country-classifications/country-and-lending-groups#Low_income)

18 years is called "young person/worker or adolescent". Minimum age for hazardous work is set at 18 years however under certain conditions, this may be lowered to 16 years (only for developing countries under strict conditions). A young person can't be allowed to engage in hazardous work activity (night work is prohibited for young workers). A country receives positive score if minimum age for hazardous work is set as 18 years or higher.

*Legal Base: Article 3 of Minimum Age Convention, 1973 (No. 138), Article 32 of the Convention on Rights of Child*

*Sources: Country Constitutions, Labour Codes, ILO NATLEX Database*

## 2.9 **Forced labour**

According to ILO, **Forced labour** is any type of work or kind of service in which someone engages involuntarily and under some implied coercion or a manifest threat of penalty or oppressive measure. Bonded Labour (which is a special type of Forced Labour) exists mainly in Asian and agricultural societies. Actually this type of labour mostly exists in cases where monetary/financial deals occur such as loans, which if the debtor is unable to pay, he has to serve the creditor for some specified or unspecified term.

Forced or Compulsory labour does not include "compulsory military service, work performed in execution of a sentence awarded by a court of law, community service, work in emergency situation, etc". Forced labour is a punishable penal offence. ILO Convention 105 requires states to take steps to suppress use of forced labour: as a means of political coercion; for purposes of economic development; as a means of all types of discrimination; or as a punishment for participation in strike. A country receives positive score for this indicator if its constitution and labour code prohibit forced/compulsory labour and declare it a penal offence.

Workers, like employers, must be able to **sever the employment relationship by serving a reasonable notice**, as determined in labour code or collective agreements. Labour Code must have provision regarding contract termination by a worker after serving due notice.

**Limit to maximum hours** has already been dealt with under decent hours topic. If a country's labour code (collective agreements) allows working more than 56 hours in a week, this is quite akin to forced labour and the country receives a negative score.

*Legal Base: Forced Labour Convention, 1930 (No. 29), Article 8 of the International Covenant On Civil And Political Rights*

*Sources: Country Constitutions, Labour Codes, ILO NATLEX Database*

## **2.10 Social Dialogue/Trade Unions**

**Freedom of association** and the right to bargain collectively are fundamental rights. These are the enabling rights and all other aspects of decent work namely abolition of forced labour and child labour, equality at work are attained only once workers have been granted these rights. Right to form and join associations is integral to democracy and is crucial to realize decent work. Workers, without distinction, have the right to form and join a union without previous authorization. Moreover, both workers and employers have the right to join federations and confederations, which have the right to affiliate with international organizations. Freedom of Association principle is applicable not only to the workers in the private sector but also to civil servants and other public sector workers. Public sector employees (with the exception of police and armed forces, as provided in article 9 of ILO Convention 87) have the right to form and join associations/unions of their own choice without any previous authorization. We use ILO CFA and CECACR reports to see whether country's collective relations law is consistent with ILO provisions on freedom of association and give a positive or negative score. A country receives positive score only if their constitution allows freedom of association and its labour law provides for the right to form and join association with very limited exclusions.

Workers have the **right to organize and bargain collectively** with their employers in order to improve their working conditions. Collective bargaining is the voluntary negotiation between workers' and employers' organizations to regulate the employment terms and condition through collective agreement. It engages both employers' and workers' organizations to collectively address socio-economic concerns and promotes a peaceful working environment. Collective bargaining and freedom of association are interlinked rights. Collective bargaining and social dialogue can't be achieved without independent workers' and employers' organizations. A country receives positive score if it allows collective bargaining between employer and worker organization without any interference from government.

**Right to strike**, though not specifically mentioned in ILO Conventions, is recognized by international labour standards however this is usually restricted in law and practice throughout the world. It is one of the essential means employed by workers to promote and defend their social and economic interests. Right to strike is incidental to the right to

organize and bargain collectively. Strikes can take many forms, namely the strike on socio-economic issues relating to the workplace, political strikes (protesting against government's policies), sympathy strikes, etc. A country scores negatively if there are outright prohibitions on strikes; legal requirements preventing the use of this right; restrictions on strikes in sectors which are not essential in nature; restrictions on strikes by public servants (civil servants who exercise authority in the name of the state are excluded); and provisions on introduction of compulsory arbitration exist before industrial action has even started.

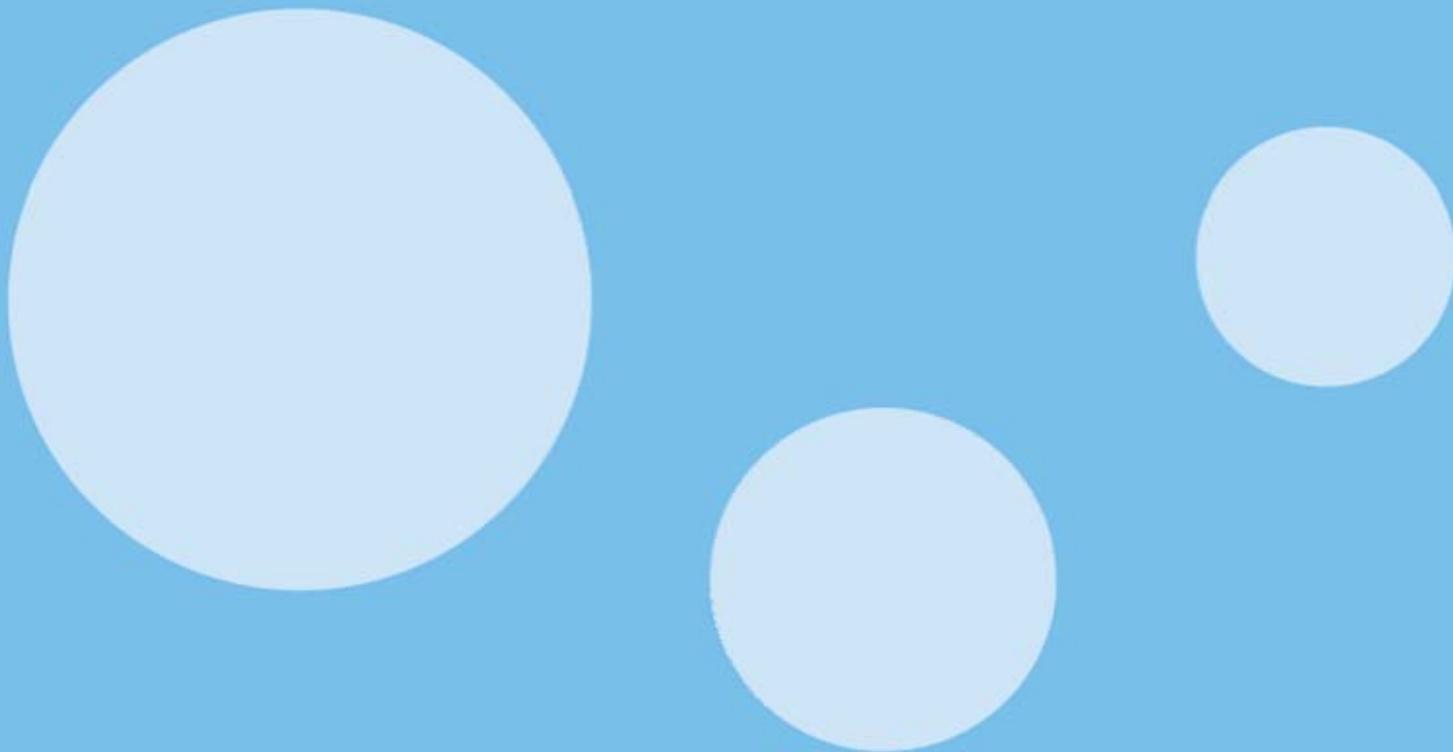
*Legal Base: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), UNIVERSAL DECLARATION OF HUMAN RIGHTS (article 20), ICESCR (article 8) Article 22 of the International Covenant On Civil And Political Rights,*

*Sources: Country Constitutions, Labour Codes, ILO NATLEX Database*

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