

**LEGAL REVIEW**

**ENERGY EFFICIENT BRICK PRODUCTION  
TECHNOLOGY TRANSFER PROJECT**

**CONSULTANT**

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**April 22, 2009**

**Terms of Reference**

**TOR 1** Overview of the laws and policies pertaining to the brick sector highlighting their status of their implementation/ enforcement.

**TOR 2** Identification of gaps and missing links between the existing laws, regulations and statutes and the reasons why these are not being implemented. Identify and evaluate environmental, public health, labour and social laws and the level of their enforcement.

**TOR 3** Identification of reasons as to why the laws are not being implemented.

**TOR 4** Analyze, assess and make recommendations, soliciting carbon trading through Clean Development Mechanism (CDM)/ EPA.

**TOR 5** Opportunities and way forward to link EEBP with Energy Conservation Fund.

**TOR 6** Opportunities available and the obstacles being faced by the sector, to achieve the status of cottage or regular industry.

**TOR 7** Opportunities for EEBP enterprises receiving the incentives in various shapes and forms.

**TOR 8** Assess and report on spatial planning of development authorities like CDA, PDA and LDA.

**TOR 9** Assess the key actors, resource persons, allies and lobbies.

**List of Books, Articles, Internet Downloads used directly or Indirectly for the Legal Review**

**Law Books and Related Publications**

Constitution of Pakistan  
Complete Labour Code of Pakistan - Imran Law House Lahore – Compilation of All Labour Laws  
All Pakistan Legal Decisions (Containing relevant Cases)  
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NWFP EPA EA Checklists and Guidelines [www.pakepa.org](http://www.pakepa.org)  
APBKOA in HR Case No 464/2005 Baba Inayat Masih PAPBMU  
APBKOA - 3<sup>rd</sup> National Meeting Abolition/ Rehabilitation of Bonded/Freed Labour May 18-19, 2007  
Mid Term Review of National Conservation Strategy - IUCN (HPB Ref:R0C01NCS) [www.iucn.com](http://www.iucn.com)  
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**Major Internet Downloads**

Labour Laws should be implemented strictly by Muhammad Kamran  
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Living and Working Conditions of the Brick Workers in India [www.carbon.com.pk](http://www.carbon.com.pk)  
VSBK Technology Transfer [www.carbon.com.pk](http://www.carbon.com.pk)  
The VSBK :a technology for the masses by Dr Soumen Maity ([smaity@devalt.org](mailto:smaity@devalt.org))  
Summary Human Development Report – 2006 A UNDP Publication [www.undp.org.pk](http://www.undp.org.pk)  
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Kyoto Protocol to the United Nations Framework Convention on Climate Change [www.unfccc.com](http://www.unfccc.com) )  
The World Conservation Union - Environmental Profile of Pakistan August 1998 [www.iucn.com](http://www.iucn.com)  
Environmental Legislation of Pakistan - 1993  
Proceedings of the Meetings of Pakistan Environmental protection Council 1993-99  
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The Pakistan National Conservation Strategy 1992 – IUCN [www.iucn.com](http://www.iucn.com)  
Implementation of the national Environmental Quality Standards in Pakistan by Norena, EJ  
Decisions of UNFCCC Mar30, 2006 – Related to Kyoto Protocol [www.unfccc.com](http://www.unfccc.com)

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**ABBREVIATIONS**

APBKOA All Pakistan Brick Kiln Owners Association  
APBMU All Pakistan Bhatta Mazdoor Union ( Bhatta Mazdoor – Brick Kiln Labour)  
BHU Basic Health Unit (s)  
BSOP Brick Sector of Pakistan  
BL Brick Labour (ers)  
BTK Bulls' Trench Kiln(s)  
BK Brick Kiln (s)  
BKL Brick Kiln Labour (ers)  
BKO Brick Kiln Owner (s)  
CDA Capital Development Authority  
CER Certified Emission Reduction (s)  
CC Carbon Credit (s)  
CLCP Complete Labour Code of Pakistan  
CDM Clean Development Mechanism  
DCO District Coordination Officer (s)  
DNA Designated National Authority - CDM  
DOE Designated Operational Entity - CDM  
DPO District Police Officer (s)  
EC Energy Conservation  
ECF Energy Conservation Fund  
EOAB Employees Old Age Benefit Institution  
EIA Environment Impact Assessment (s)  
EPA Environment Protection Agency (UN)  
EEBP Energy Efficient Brick Production  
ER Emission Reduction (s)  
EPA 97 Environment Protection Act 1997  
FPCCI Federation of Pakistan Chambers of Commerce and Industry  
GHG Green House Gases  
GB Green Brick (s)  
HR Human Rights  
HRCP Human Rights Commission of Pakistan  
IEE Initial Environment Examination (s)  
ILO International Labour Organization  
ICT Islamabad Capital Territory  
LDA Lahore Development Authority  
MW Mega Watt (1000 Kilo Watts or one million watts)  
NADRA National Database Registration Authority  
NEQS National Environment Quality Standards (of Pak EPA)  
NIC National Identity Card (s)  
NGO Non Government Organization (s)  
NWFP North West Frontier Province (of Pakistan)  
Pak EPA Pakistan Environment Protection Agency  
PDA Peshawar Development Authority  
PDD Project Development Document (s) - CDM  
PESSO Provincial Employees Social Security Ordinance  
PESSI Provincial Employees Social Security Institution (s)  
PIN Project Identification Note (s) - CDM  
QA Quality Assurance  
R&D Research and Development  
SC Supreme Court of Pakistan  
SDC Swiss Agency for Development and Cooperation  
SHO Station Housing Officer (s) – In charge of a Police Station  
SKAT Swiss Resource Centre and Consultancies for Development  
SRO Statuary Regulatory Order

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TTP Technology Transfer Project (s)

TOR Terms of Reference

UN United Nations

UNCRC United Nations Convention on the Rights of the Child

UNDHR United Nations Declaration on Human Rights

UNIDO United Nations International Development Organization

VSBK Vertical Shaft Brick Kiln (s)

## **Terminology**

This Section gives the Terminology for frequently used terms, their meanings and abbreviations as implied in the “Legal Review” are given in this paragraph.

Act means an act of the Parliament promulgated as such within the provisions of the Constitution of Pakistan and includes all the Acts adopted by Pakistan for application, promulgated before the creation of Pakistan by the than Government of India.

Brick Sector of Pakistan (BSOP) means the entire brick making kilns (BK) using BTK techniques for baking the bricks, any where in Pakistan.

Energy Efficient Brick Production (EEBP) means the proposal as being suggested and visualized for funding and adoption in Pakistan to modernize the BSOP for ER and EC.

Green House Gases (GHG) has the same meaning as given in Kyoto Protocol

Ordinance means a law promulgated in Pakistan and ratified as such under the provisions of the Constitution of Pakistan, when the parliament is not in session.

Policy means a written document that projects the desire or will of the Government of Pakistan on any subject and may be the basis of future legislation, orders or become an element of future planning.

Rules mean the set of stipulations framed under the orders of the competent authority as stipulated under the promulgated Laws to implement the promulgated Laws (an Act or Ordinance or Order), as provided for in Rules of Business or the Act or Ordinance itself, under provisions of the Constitution of Pakistan.

Regulations means the Regulations framed under the orders of the competent authority as stipulated under the promulgated Laws (an Act or Ordinance or Order), under provisions of the Constitution of Pakistan.

Pak-EPA means the Pakistan Environment Protection Agency as defined in the Environment Protection Act 1997 (EPA 97).

Vertical Shaft Brick Kiln (VSBK) means the technology originating from China for baking the “Green-Bricks”, and now introduced in India and Nepal by SDC as a TTP, and proposed for adoption by SDC in Pakistan, as a TTP.

Human Rights have the same meaning as defined by Human Resource Commission of Pakistan.

A child is defined as the one with an age of less than 14 years as in Employment of Children Act 1991 and Factory Act 1934 and the same definition will be used in this report.

An adolescent is defined as the one with an age of more than 14 years but less than 18 years in Employment of Children Act 1991 and Factory Act 1934 and the same definition will be used in this report.

An adult is defined as the one with an age of 18 years or more in Employment of Children Act 1991(ECA) and Factory Act 1934 and the same definition will be used in this report.

The child and adolescent are required to be registered with National data and registration Authority (NADRA) on Form B of NADRA and issued with a National Identity card on attaining the age of 18 years, on the basis of registration as a child.

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Nazim (s) means the Administrator of a union, Tehsil (Sub District), or District as referred to be SC in its HR case. It is an Urdu language word.

Peshgi (s) means an advance in cash, as used in BL case. It is an Urdu language word.

Jemadar (s) means an agent (male) or a person who performs a Jema (Addition or collection of men or material) as used in BL system. It is an Urdu language word.

Jemadarni(s) means an agent (female) or a person who performs a Jema (Addition or collection of women or material) as used in BL system. It is an Urdu language word.

Bhatta means a BK. It is an Urdu language word.

Mazdoor means a labour. It is an Urdu language word.

## **Executive Summary**

**0.1 General** The BSOP is based on BTK which uses coal and some undesirable fuels and is not energy efficient and has undesirable emissions. It relies on intensive BKL. The alleged bonded and child labour coupled with social security and labour laws needs to be seen in their true perspective.

EEBP has come up with Pilot Projects for VSBK TTP that conserves energy and reduces undesirable emissions. The Project is now entering its next phase involving additional BK and mitigating social concerns raised by the International Organizations, NGOs and HR activists.

The Legal Review has been carried to ascertain the prevailing BSOP environment and identify laws and their implementation status for launching the next phase of EEBP TTP based on an extensive set of TOR.

### **0.2 Objectives**

**0.2.1 Objective 1** To discuss the brick sector environment covering the BK practices, the evolution and role of labour, the laws in force and status of their implementation/ enforcement for EEBP TTP.

**0.2.2 Objective 2** To identify labour, social, environmental, and public health laws, evaluate them and identify gaps if any, for effective enforcement in favour of the sector.

**0.2.3 Objective 3** Identification of reasons as to why the laws are not being implemented.

**0.2.4 Objective 4** Analyze, assess and make recommendations, soliciting carbon trading through Clean Development Mechanism (CDM)/ EPA.

**0.2.5 Objective 5** Opportunities and way forward to link EEBP with Energy Conservation Fund.

**0.2.6 Objective 6** Opportunities available and the obstacles being faced by the sector, to achieve the status of cottage or regular industry.

**0.2.7 Objective 7** Opportunities for EEBP receiving incentives.

**0.2.8 Objective 8** Assess and report on spatial planning of development authorities.

**0.2.9 Objective 9** Assess the key actors, resource persons, allies and lobbies.

### **0.3 Main Findings**

**Objective 1** BSOP is relying on BTK and manual techniques for production alleged to have EC and ER issues. It is an informal and undocumented sector but hosts around two million workers.

GB making involves intensive manual labour on piece rates and advance against future work. The BKL, the BKO and the State are three direct stakeholders in BSOP.

EEBP TTP offers a viable alternative that is set to mitigate EC and ER issues pursuing social uplift in Pakistan.

The BKL is captive agricultural labour of feudal system working for advance grains and shelter.

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BK being the nearest alternative to agriculture diverted the captive labour and the landlord to the new pursuit due to shrinking lands and swelling numbers. There was no psycho socio mental change in mutual relationship that governs the rules of mutual business even today.

BSOP is sustaining itself on BKL, alleged to be bonded on one extreme. The socio economic and financial realities keep the BKL and BKO together to produce bricks, while law is on the watch.

The laws though not BSOP specific are fairly relevant and can ensure extension of rights to BKL.

The BKL lives on the premises, with inadequate space, community health, medical and general living conditions. Children tend to assist their families in GB making at the cost of their rights and education. Families with more adults tend to break the poverty cycle. The BKO do not have the resources to provide improved living conditions with existing resources and state of BSOP.

Mechanization may free the bonded labour, requiring their vocational training and rehabilitation.

The laws are not implemented for host of reasons attributable to three direct stakeholders.

**Objective 2** Labour Laws are generic rather than specific to BSOP. IRO is applicable to industry and not BSOP.

Law does not permit employment of bonded labour and giving advance or writing a contract for pay back in future work and is liable to exploitation by third parties at the cost of vulnerable BKO.

Child labour is prohibited but is practiced at the will of the parents, due to poverty, to generate extra resources, sacrificing their rights and education, against the provisions of law.

The Social Security and EOAB contributions are mandatory, avoided by BKO for want of will, alleged higher per capita contribution rates and non availability of NIC, depriving BKL of their rights.

If all laws were strictly implemented there would be no brick production and entire workforce would be without work causing suffering to poor and needy and hence the status quo.

The law protects the BKL, not the BKO and specific performance issues encourage coercion. The guidelines of the SC have not been incorporated in the Act and hence the anomaly.

The NESQ have not been promulgated for ER of BK thus making it difficult to ensure implementation of EPA 97 on BK.

The option for BSOP specific laws can be delayed but not prevented in the long term and all stakeholders need to get involved with it.

The implementation is lacking for reasons common to all laws.

**Objective 3** There is no BSOP specific implementation mechanism. The generic implementation mechanism does not consider BSOP as their priority.

The numbers of Public Service Providers are far too many, with too much in their hands and inefficiency and alleged corruption, compounds the implementation mechanism adversely.

There are inadequacies and ambiguities in law, which does not address all the concerns of all the stake holders. Non performance encourages coercion by BKO. Greed forces the BKO to resort to bonded mode. Projection by indirect stakeholders is on inputs not shared by all direct stakeholders. BSOP continues to produce bricks in spite of issues and the issues tend to be put on backburner.

Closure stake of BTK forces the BKO to risk advance to ensure uninterrupted making of GB and poverty of BKL encourages acceptance of realities to compromise and break the law.

**Objective 4** EEBP needs to establish the existing energy consumption and monitor emissions of existing BTK to establish the base line for establishing the EC and ER available for claiming CC through CDM.

VSBK qualifies for the CDM for which the case has to be processed through a consultant active in this field, who would prepare a PIN and PDD for ODE to certify and submit the case. On validation the eligibility will be established.

**Objective 5** The total conservation of energy has to be established and at this point in time no facilities have been extended to any project for EC by ENERCON, the custodians of ECF in Pakistan.

**Objective 6** The site, process and nature of job of making bricks is substantially different to industrial processes and utilization of industrial labour due to peculiar location of undefined site, higher manual inputs, pattern of output of workers, threat of relocation and informal nature of production.

The BSOP has its peculiarities and needs to be treated on its intrinsic parameters. The BKO would strongly contest if not opt out of a possible industry status, as BTK can seldom be co-located in an industrial estate or purely cottage industry set up, in its current configuration.

The BKL is temperamental and regulates its own work schedules and outputs that negates the basic 8 hour labour concept in Industry. The BKL may never generate the desired number of hours in a year in spite of having taken advance.

IRO lacks relevance, compatibility, acceptance and the mechanism for implementation on BSOP.

**Objective 7** The possibility of incentives exists if all the stake holders can get together and there is some one to represent the BSOP at federal and provincial levels. Some areas are, subsidies to BKL for improving their living conditions including health care and community health, financial assistance to replace advances, subsidized subscriptions for PESSI, EOAB and workers welfare & education as a package to implement EEBP TTP, not restricted to VSBK. Tax holiday for BKO can be sought.

**Objective 8** PDA does not permit BK in its jurisdiction. NWFP EPA has set out regulations to extend the chimney height to 35.5 meters and makes IEE and EIA mandatory for all new BK in the province.

BK exists within the limits of LDA. Punjab EPA is close to sanction a project to ensure EC and ER control for BSOP in Punjab. There is no specific spatial planning for BK in LDA and as the urban limits extend, the land cost discourages BKO to lease the land and their continuity is under threat.

CDA allows existing BK in Zones III to V to operate but is getting to implement some EC and ER control. The BK is likely to be targets of elimination as awareness for EC and ER picks up in CDA.

**Objective 9** The BKO represented by APBKO, the BKL with no elected unions and the DVC and labour department are the Direct stake holders. The EEBP TTP is the new entrant and likely to play significant role as their projects unfold.

The UN backed international organizations, NGOs, the HR activists, the APBMU and the media are the indirect stake holders that influence projection of HR violations, bonded and child labour issues.

**Recommendations to EEBP-TTP**

Select EC and ER as the basic theme to select an umbrella to develop EEBP-TTP, incorporating CC under CDM as the primary source of future development of EEBP in Pakistan.

Live with existing laws and introduce EEBP-TTP and increase involvement as resources are available.

Aim for a Federal Brick Sector Authority in stages and evolve Provincial Brick Sector Authority on graduated scale and interact with the state machinery to develop legislation specific to BSOP for labour and social security laws using system based approach and involving all stake holders, ensuring mutual respect, to address the problems of BSOP and create a specific implementation mechanism aimed at reducing the number of public service agencies to the minimum.

Add R&D, QA and NEQS and dispute resolution to the implementation mechanism agenda.

**Recommendations for the Government**

The Government needs to incorporate the informal BSOP in their development goals and extend poverty alleviation programmes to mitigate the suffering of labour in this neglected sector that has extensive economic potential for growth. The data base needs to be established to develop the sector with R&D and TTP under a central coordinating and implementing authority.

Develop legislation specific to BSOP for labour and social security, and community health laws using system based approach, involving all stake holders ensuring mutual respect, to address the problems of BSOP and create a specific implementation mechanism aimed at reducing the number of public service agencies to the minimum. Let community participation take roots.

Let representative BKL unions, NGOs, HR activists and development agencies be part of the solution.

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**PART - I**

**1.1 Objective 1**

To discuss the brick sector environment covering the BK practices, the evolution and role of labour, the laws in force and status of their implementation/ enforcement for EEBP-TTP.

**1.2 Introduction**

A legal review, as per Terms of Reference (TOR) has been undertaken on behalf of SKAT for SDC (Funding Agency) for TTP of the EEBP. The conventional Brick Production in Pakistan is mainly based on BTK. The review of the relevant laws applicable to the BSOP encompassing labour, social, community health, child education and environmental issues to establish their implementation status in prevailing environment, suggesting improvements, actions, introduction of laws and corresponding implementation procedures, where necessary, to ensure their adequacy for launching the TTP for EEBP.

The current practices depend on use of locally available and imported coal and some undesirable fuels thus compounding the environmental hazards. There is a need for energy conservation (EC) and emission reduction (ER) by adopting EEBP Technology, possibly use of Vertical Shaft Brick Kilns (VSBK), as a Technology Transfer Project (TTP).

**1.2.1 Methodology and Approach**

The Legal Review is based on study of law, data collection, study of related written material, field visits, views of related officials, case law studies and over 40 years of personal experience with the workers. The layout being followed covers the total requirement of TOR, not necessarily in the order followed in the Inception Report and discussions.

**1.3 Overview of BSOP**

The BSOP is an informal and undocumented sector of production that produces the basic construction material employed for housing in most of the country. The sector has caught an eye of the International community on account of environment concerns on one hand and use of bonded labour and child labour on the other. The BSOP has lot of commonality with BS of other South Asian countries namely India and Nepal.

The three direct stake holders of existing BSOP are the State, BKL and BKO. The indirect stake holders include the International Organizations, NGOs, HR activists and the APBMU.

A detailed document has been issued by NWFP EPA covering the detailed working and related efficient practices titled, "Environment Assessment Checklists and Guidelines", based on the provisions of EPA 1997 and rules framed thereafter. It gives insight of existing practices and indicates that if BTK is operated efficiently the particulate is within the NEQS. It also recommends a chimney height of 35.5 Meters to ensure settlement of particulate in the chamber and thus not pose an environmental hazard to that extent. It also makes the IEE and EIA mandatory for all new BK.

The first step is to create a large enough quantity of suitable soil stacked at site with the help of loaders and tractors and mix it with adequate quantity of fine sand or other admixture soils, so that raw material is available for further processing. In areas where local transportation of suitable soil becomes uneconomical the site may have to be changed say in 5-7 years or so.

The second step involves mixing of clay with water, preparation of the "dough" that is moulded into Green Bricks (GB) in a standard mould. This is major manual activity involving 120-200 persons (60 to 70 families), working in groups and being paid on actual out puts per 1000 bricks. This is the

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main (if not only area) where children could be involved for helping their parents, at the discretion of parents themselves.

The third step involves placing the dry GB into BTK by hand carts or animal drawn carts and manually placed in a standard stack, covered from top leaving the space for ignition of fire from the top. This is handled by 12-15 persons with 2-3 carts.

A portion of 25-40 meters is kept open for placing of green bricks. This opening moves as the operation develops and acts as the suction point of fresh air to allow the burning, with inner wall of BTK carrying pipes to permit the exhaust of hot gases through a chimney. When the kiln is full the other end of this opening has burnt bricks ready for extraction or recovery.

The fourth step is igniting the fire and keeping it alive, the job being handled by an independent party of 4-6 firemen (who have nothing in common with the GB makers), with air being drawn from the space between the GB. The firemen are specialists in their own right. They are directly handling the coal dust, the fire hazard and flue gases while re-charging the chimneys. If they are not well trained and motivated they are likely to be a source of additional use of coal, and resulting wastage of energy and source of additional emissions. Keeping the fire alive and green bricks pouring in is the main concern of every BKO to ensure economical and efficient brick production.

The fifth step is the progressive removal of burnt bricks for stacking for subsequent sorting and sale, through yet another independent group and specialists in their own right. This group is also exposed to burnt brick dust hazard.

The overall control, water supply, fuel supply, security, services, housing, record keeping, fuel procurement, sales and management, is done through the BKO and is indirect expenditure or overheads.

There are six independent activities and major man power is consumed in the second activity (the main area of concern). The remaining five activities consume only 15-20 % of the man power consumed in the entire operation.

It is only the GB moulding that is handled by the group of people as a family and is the real BK labour and has the potential to be or in some cases is, possibly the "Bonded Labour" in its classical sense in some areas.

### **1.4 Overview of EEBP - TTP**

In 1993, the SDC launched a programme to improve global environmental problems and achieve greater energy efficiency in small and medium-sized industries (foundries, glass industry). In the brick industry, efforts were made to transfer Chinese Vertical Shaft Brick Kiln (VSKB) technology to India and Nepal. The VSBK can potentially save a tremendous amount of coal / fuel and reduce the emissions if run in an optimal manner addressing both EC and ER issues. SDC has TTP has also addressed community and social issues as part of the development effort in Nepal. EEBP TTP offers a viable alternative that is set to mitigate EC and ER issues pursuing social uplift in Pakistan.

The EEBP TTP has already installed few VSBK as a Pilot Project and its demonstrated success will give useful inputs to launch the TTP in a comprehensive manner.

### **1.5 Overview of Salient Labour Issues BSOP**

#### **General**

The provisions of Universal Declaration of Human Rights (UDHR) and UN Convention on the Rights of the Child (UNCRC) are recorded for reference. The Constitution of Pakistan and ratification of labour and child related issues by Pakistan at all International forums makes it

mandatory to enact laws and ensure their implementation to safeguard the rights of labour and the children.

BSOP owes its existence to toiling millions who mould Green Bricks to feed the Brick Kilns. It is only logical to discuss the evolution of the alleged 'Bonded Labour', involvement of entire families in this sector, and the implications of these practices on their contribution and related issues.

BSOP is a labour intensive sector with complaints of bonded and child labour, non adherence to minimum wages, lack of social, community health, education and rather inadequate living environment. The impact on environment is yet another area of concern.

Some very diverse aspects are being discussed that may give insight to the dimensions of the problem. The final outcome notwithstanding, all aspects need to be seen on a neutral platform.

Views and problems of all the stake holders registered to find a way through the labyrinth.

Views of some overshadow others and unheard voices tend to be suppressed in favour of views expressed by few whose voices are heard and can be projected. Truth needs to be established rather than assumed and end results may justify the means and negate the popular convictions if facts are pragmatically analyzed. The establishment of a data base may be the first serious effort to establish the magnitude of a problem and where it exists.

### **1.5.1 Universal Declaration of Human Rights**

Article 4

Everyone, as a member of society, has a right to social security.

Article 22

Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.

Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 23(1-4)

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holiday with pay.

Article 24

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 25(1)

State parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

### **1.5.2 UN Convention on the Rights of the Child**

Article 32(1)

Labour should not be viewed purely as a commodity as human beings are involved who need to be treated with dignity and fairness. In Pakistan, people have to work for a living since there are no

Social Protection and Safety Net systems to speak of. They need to be motivated by providing them at least a minimum quality of life so that they may improve their productivity and thereby national economic growth.

### **1.5.3 Evolution of Bonded Labour**

Bonded Labour is peculiar to South Asia as agrarian society of yester years depended on captive landless labour force to deliver the entire agrarian cycle against a surety for bread, clothing and shelter, on large land holdings. The agricultural workers settled for basic necessities, and socio cultural realities never let them think beyond the minimum, due to the clout of the land holder. The Cast System prevalent in the Hindu dominated subcontinent lent strength to the system. The availability of grain for next working season for the entire family was advanced (on harvest) to them and hence the concept of Advance or Peshgis in kind.

The waste and abandoned land was a natural site for a Brick Kiln as water, labour and animal transportation was already in place (more so in lean periods in agricultural activity). The partial mechanization of agriculture created additional free hands and increased the job opportunity for the semi skilled hands. The Brick Production was thus a natural choice for business as an alternative to agriculture as the lands shrunk and the availability of labour swelled. "Land Lord Kiln Owner" was the new boss and 'Agricultural Brick Kiln Labourers' the new workforce. The Peshgis in kind was replaced with cash or cash cum kind and there was no fundamental (mental, psychological or social) change in mutual relationship. The principles continue to control the mutual relationship even today.

Brick Kilns are the least resource based production line that is manpower intensive and the landless workers unable to have foothold in the agriculture sector fell prey to the demand and as their bread, clothing and living was not the responsibility of the Land Lord, the system of Cash Advance 'Peshgis' was put in practice, and is still in vogue. The labour migrated as groups to areas where agricultural lands depended on rain alone, to satisfy the needs of the Brick Kilns by choice. It may be noted that all BK labour is not 'Bonded Labour' in its classical sense.

### **1.5.4 Brick Kilns Labour**

The work on brick kilns being peculiar and demanding is not acceptable to the daily wager or a permanent employee or a worker as defined in IRO 2002 and contract system encourages the output oriented compensation and hence the prevalence of a situation that could turn out to be 'bonded labour' type, either acceptable both to the kiln owner and the labour, or forced down by the

BKO (Classical Bonded Labour).

If at some stage we are able to implement abolition of 'Bonded Labour' from BSOP, there are other sectors like agriculture, domestic services and many other areas where people require Peshgis to meet the immediate requirements to be paid for by services in future. Almost all bonded and child labour occurs in developing countries, largely in agriculture. In South Asia child labour is extensively employed in, domestic service, factory production, backstreet workshops and brick moulding.

### **1.5.5 BK Labour and BKO**

Both the parties in the system are at risk, as it is difficult for the owner to ensure that the labour actually performs and it is difficult for the bonded labour to be monetarily strong enough to withstand the waiting period for the wages to be due. The mutual relationship is generally established through an agent (Jemadar) who gets his commission before the labour starts the unwritten Contract (after enactment) and get the mobilization advance. The Agent remains liable for ensuring the availability of the labour for the promised period and their performance.

This situation is available for exploitation by third parties who exploit the labour to get advance, arrange for bailiff to raid the already planted labour, who leave the BK and are freed, with cash advance not returned to the BKO, making headlines, and a projection of Bonded Labour prevalence at the cost of BKO and BSOP. The act is repeated at yet another BK, with Law insisting on abolition of bonded labour. How and from where should the BKO arrange labour to make the GB, under conditions acceptable to all the genuine stakeholders within the legal framework, discharging all his obligations gracefully?

#### **1.5.6 Country Pattern of BK - BSOP**

The bonded labour is least prevalent in NWFP as most working families move to rest of the country. The BSOP labour is migratory to meet the demand, in Northern Punjab and less susceptible to be bonded labour in its classical sense. In Central Punjab the labour is local, has some awareness, has options to work in Industrial zones and hence less liable and obliged to the owners. As we travel south the clout of the owners increases and general awareness decreases so more close to a bonded labour situation. In extreme cases especially in Sindh, the owner is also a spiritual leader cum landlord and has strong clout over the law enforcing agencies as well, thus exploiting the situation to the total advantage of the owner. Here the situation is closest to that reported in international press. The use of unfair or illegal means, to get the output worth the money advanced as "Peshgi", is a possibility that cannot be ruled out. The law protects the bonded labour as the money is not to be advanced for future work and the advance is not recoverable if the BKL does not oblige the BKO.

#### **1.5.7 An inadequate Advantage to the BK Labour**

It is only in BSOP that the homeless labour can live in conditions similar to his rural living and back ground, open space, no social taboos and living with family at the cost of BKO. If men travel away for work their living expenses at the workplace reduce the net cash available for the remaining members, add the insecurity in the absence of the male heads and BSOP is a better option than one sees *prima-facie*. BSOP as their livelihood for migratory and non migratory labour is a blend of choice and financial compulsion and they weigh it before formal acceptance. However, the options reduce as we travel further south to Sindh. No wonder a large percentage of labour in the north belongs to Southern Punjab, but none from Sindh migrates to Southern Punjab or further north. It is also interesting to note that all non- moulders mostly live without their families and thus more liable to change their work places.

#### **1.5.8 Sustainability of BSOP**

The BSOP is sustainable due to the interlinked reality of entire families moulding the bricks. Creating an environment that we have a 'wage based' and 'child labour free' GB making not involving "Peshgi" is indeed an uphill task. It warrants a total solution in the backdrop of a proper 'Legal Review' of existing legal framework, its state of implementation and come up with practical options, if we change over to an EEBP TTP, with gradual induction of pug mills and mechanical 'Extruders' and trolley lifts. The bonded labour gets sidelined and manpower involved in remaining operations in BSOP is definitely not 'child labour' and / or 'bonded labour'. This would add to the ever increasing idle human resource in Pakistan, raising the hemline of poverty. An attempt to mechanise the process will add to the unemployment and require vocational alternatives to mitigate the sufferings.

### **1.6 Economic Social and Cultural Realities**

Poverty is the seed-bed of both the child labour and bonded labour. Poor parents get into debt to make both the ends meet and are bonded and fail to send their children to school for reasons of economic necessity. In practice the loan never gets paid off and the repetitive cycle of debt and work to be done is in place, the consequent denial of education setting in motion a mutually reinforcing cycle liable to pass down the generations. Perhaps the basic fiber of social security of the poor needs our attention as an element of development Planning.

### **1.6.1 Child Labour in BSOP**

The loan is taken for meeting the basic needs of the family so the entire family gets together to give the desired output and pay off the loan. Involvement of children with their families in the BK is natural and inherited. The projection that children are made to work may not be entirely true in all cases, disease or death of family elders being an exception.

### **1.6.2 Protection of the Child**

There are no two ways to look at a child. The child must be provided an environment in which he is protected, has a place to live, an opportunity for education, access to health care, a reasonable prospective for healthy physical, mental and social growth, not exposed to hazardous employment and not forced to earn a lively hood – These are his rights the moment he opens his eyes in this world, enactment or No enactment, purely on the principles of natural justice. These basic rights are expressed by UN Convention on the Rights of the Child (UNCRC) enforceable in Pakistan by ratification as such by the State, accepted as a constitutional right, and supported by relevant legal documentation and enactment, judicial precedence, Islamic injunctions, social awareness and accepted by community at large.

### **1.6.3 Housing, Living Conditions and Community Health**

#### **1.6.3.1 General**

Housing and living conditions of workers in an rural areas or areas close to the vicinity of the BK is definitely below the average living conditions in large worker's colonies or industrial estates in urban or semi urban settings. It is only desirable that their conditions be improved substantially. An average of 50 S Ft per head and a total of 200 workers on a kiln means around 10,000 S Ft of area, amounting to an investment of Rs 5 million, which may be a little too high for BKO.

#### **1.6.3.2 Alternatives**

The priority areas are clean water and water borne sewerage as a first step. As a community it may be convenient to provide clean water, but sewerage and its maintenance is a tall order in the short term. In rural environment water borne sewerage is a luxury especially where electricity is not available. However if EEBP is combined with extruders and lifts, the saving in numbers may help the proposal to develop housing in the long run. The numbers of labour becoming jobless would need to be trained in alternative skills for rehabilitation. This is one area where resources from the state or donors and social organizations could help.

#### **1.6.3.3 Medical Care**

The extension of general medical care is the responsibility of the state and Basic Health Units (BHU) – not a reliable medical care facility as of now, are adequately located to support the rural population only in theory. The concepts of prevention from diseases in prevailing environment, amongst the affected people leaves a lot to be done, in terms of awareness in extension of healthcare.

The EEBP may demand first aid for every site as required under Factory Act 1934, which could be resisted as BK is not a factory in its classical sense. Medical care is also covered by PESSI, as BKO contributions are mandatory. EEBP units would be covered on that score as being covered in Chapter II.

## **1.7 Overview of Laws on Labour and Environment**

### **1.7.1 General**

Laws in a society reflect the collective will of the people to ensure maintaining the mutual and multi faceted relationship that extends fair reward for individuals work. In a shrinking world international concerns on Humanitarian Issues are voiced on related forums and thus laws tend to address these concerns as well. Concerns are seen, as a universal phenomenon of violation of human rights, by the developed countries.

The ground realities however, vary and some concerns are seen on mismatched concepts. The media has extensive communication infrastructure at their disposal that facilitates dissemination of available information (or disinformation) to the world, without giving other stakeholders a chance to project their compulsions. Partial truths thus get projected with complete disregard to the total truth.

The reaction at times attracts measures that are more damaging to the community, for whom they are being voiced, aggravating rather than reducing the misery (Stopping import of footballs, as child labour is being employed in their manufacture). History is a witness that a concern being voiced through UN now, was being practiced in most countries a couple of decades back and it may have taken them close to a century to get to their present status of human rights. It may take less time in developing countries, but it would improve with time, awareness, realization and attitude. Centuries of foreign rule, a rather weak and selfish leadership coupled with pathetic government machinery and law enforcement agencies, unabated increase in population, even the best of laws and a well meaning implementation provision, tends to make the enforcement doubtful if not counterproductive.

Pakistan is a democratic country, with a constitution that respects human rights and provides for making laws (Ordinance when the National Assembly is not in session), indicates the authority responsible to implement, empowers the government to make rules (and regulations where necessary), indicates the judicial cover and law enforcement agency and specifies the penalty or punishment for violating the law.

A list of the laws will be enumerated and become the basis for further discussion in Part II.

### **1.7.2 Power to Legislate**

Parliament is the source of making laws in Pakistan, and the Constitution clearly lays down the procedures. The enactment is not a long drawn process if properly sponsored and is based on realities. The process of drafting a law and processing it needs to incorporate all the stakeholders, not a matter of routine. It is here that laws are promulgated and fail to achieve the intended purpose in implementation.

### **1.7.3 Evolution of Labour Code**

The labour laws of Pakistan were promulgated to ensure provide a clean and safe environment to the factory worker, laying down his hours of work and related wages as early as 1934 – 36. The process of law making was evolutionary, concurrent and responsive to the role of the labour as the industrial growth took a shape. The laws were not enacted exclusively for BSOP in particular, but protection to the labour force in law, never excluded the BSOP. The law addressed the BSOP related Bonded and Child labour issues exclusively.

The implementation remains a big question mark and details would be covered, later in the review. Prima facie the non implementation is attributable to all the stakeholders.

### **1.7.4 Evolution of EPA 97**

The EPA was enacted in 1992 replacing its original version. The law is unique in that it has been developed progressively and in consultation with various stakeholders. The law is fairly

comprehensive and mainly touches the brown issues. The need for contemporary green laws, thus continues to be felt. A lot of work is being done by UNDP and IUCN in conjunction with Ministry of Environment and corresponding Rules, Regulations have not been fully developed. The BSOP does not figure out as a major player and thus no direct EC and ER standards are available, although NWFP EPA has done some serious spade work that can become the basis of development of future laws for BSOP.

### **1.7.5 List of Acts Ordinances Acts and Rules**

	<b>Ref</b>
Constitution of Pakistan	Non CLCP
Bonded Labour (Abolition) Act 1992	67-72
Bonded Labour (Abolition) Rules 1995	73-77
Employment of Children Act 1991	84-90
Employment of Children Rules 1995	91-98
Children (Pledging of Labour) Act 1933	99
Compulsory Education Act (Non CLCP)	Non CLCP
Constitutional Case No 1 OF 1988 – SC APLD 513 OF 1990	Non CLCP
Human RIGHT CASE No 5091 OF 2006 – SC APLD 232 OF 2007	Non CLCP
Minimum Wages Ordinance 1961	1136-48
Employees Social Security Ordinance 1965	1445-542
Employees Old Age Benefit Act 1976	1191-238
Industrial Relations Ordinance 2002	685-872
Factory Act 1934	242-309
Environment Protection ACT 1997 <a href="http://www.pakepa.org">www.pakepa.org</a>	Non CLCP

### **1.8 Main Findings - Objective 1.**

BSOP is relying on BTK and manual techniques for production alleged to have EC and ER issues. It is an informal and undocumented sector but hosts around two million workers. GB making involves intensive manual labour on piece rates and advance against future work. The BKL, the BKO and the State are three direct stakeholders in BSOP.

EEBP TTP offers a viable alternative that is set to mitigate EC and ER issues pursuing social uplift in Pakistan.

The BKL is captive agricultural labour of feudal system working for advance grains and shelter.

BK being the nearest alternative to agriculture diverted the captive labour and the landlord to the new pursuit due to shrinking lands and swelling numbers. There was no psycho socio mental change in mutual relationship that governs the rules of mutual business in most cases even today.

BSOP is sustaining itself on BKL, alleged to be bonded on one extreme. The socio economic and financial realities keep the BKL and BKO together to produce bricks, while law is on the watch.

The laws though not BSOP specific are fairly relevant and can ensure extension of rights to BKL.

The BKL lives on the premises with inadequate space, community health, medical and rather poor general living conditions. Children tend to assist their families in GB making at the cost of their rights and education. Families with more adults tend to break the poverty cycle. The BKO do not have the resources to provide improved living conditions with existing resources and state of BSOP.

Mechanization may free the bonded labour, requiring their vocational training and rehabilitation.

The laws are not implemented for host of reasons attributable to three direct stakeholders.

**PART - II**

**2.1 Objective 2** To identify labour, social, environmental, and public health laws, evaluate them and identify gaps if any, for effective enforcement in favour of the sector.

**2.2 General** This Part of the legal review will identify and evaluate the Labour, Social, Public Health and Environmental laws as they affect BSOP and identify gaps and missing links if any. Reasons for non implementation and “what needs to be done”, including a mention of system solution will be recorded.

**2.3 Identification and Evaluation of Laws and Identification of Gaps and Missing Links**

**2.3.1 Constitution of Pakistan**

**2.3.1.1 Identification** The following provisions of the constitution are relevant to the legal review in hand and form the basis for enactment of various laws being discussed in this Part.

Article 3 Elimination of Exploitation - The state shall ensure the elimination of all forms of exploitation and the gradual **fulfilment** of the fundamental principle, from each according to his ability to each according to his work.

Article 11(1-3) Slavery, forced labour, etc. Prohibited, Slavery is nonexistent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form; All forms of forced labour and traffic in human beings are prohibited; No child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment.

Article 17(1) Freedom of association:- Every citizen shall have the right to form association or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Pakistan; public order or morality.

Article 18 Freedom of trade, business or profession:- subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business.

Article 25(1-3) Equality of Citizens:- All citizens are equal before law and are entitled to equal protection of law; there shall be no discrimination on the basis of sex alone; Nothing in this article shall prevent the State from making any special provisions for the protection of women in children.

Article 37(e) Promotion of social justice and eradication of social evils:- The state shall make provisions for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment

Article 38(a-e) Promotion of social and economic well-being of the people:- The state shall secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlord and tenants; provide for all citizens within the available resources of the country, facilities of work and adequate livelihood with reasonable rest and leisure; provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means; provide basic necessities of life, such as food, clothing, housing, education and medical relief for all citizens irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment; reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan.

**2.3.1.2 Evaluation** The basic provisions provide the template, for the parliament to enact laws and establish the mechanism for its implementation. The national commitment to International Conventions acts as a catalyst and thus laws get promulgated and *prima-facie* meet the commitment. The enactment does not always involve the participation of the stakeholders and may result in serious gaps between the intended provisions, the promulgated provisions, the expectations of the stakeholders and the regulatory mechanism that involves human and financial resources that are not always available. The ground realities tend to be ignored at various levels and role of NGOs both helps and damages the basic cause. The problems are seldom seen in the prevailing socio economic realities and community perceptions. The solutions are available, but the problem does not merit the imposition of the intended solution and voices are seldom understood though heard and the causes stay in place jeopardising the entire process.

**2.3.1.3 Gaps and Missing Links** The Constitution has adequate provisions for enactment of new laws where required, amend existing laws where necessary and incorporate adequate mechanism for making Rules, regulations and ensuring the implementation.

### **2.3.2 Pledging of Children for Labour**

**2.3.2.1 Identification** Children (Pledging of Labour) Act 1933, applicable to whole of Pakistan gives basic definitions in Sec 2, declares all existing agreements void (Sec 3), prohibits parents or guardians to get into agreement with the Employers and prohibits Employers to get into agreement with parents and guardians for pledging the Children for future work and defines penalty for violating the Act.

**2.3.2.2 Evaluation** This law prohibits pledging of children for labour and exhibits the desire to prohibit the bonded labour as early as 1933. The law was not developed, as the socio economic realities never gave an alternative to those who were compelled to practice the pledged (bonded) child labour. The social attitudes need to be changed with mass campaigns, protection of children rights and strengthening the basic family unit to survive in a hostile socio economic environment. The national social security equation, distribution of wealth and extension of job opportunities needs to be incorporated in the national development policies to get a positive response from the masses.

**2.3.2.3 Gaps and Missing Links** This needs to be supplemented with Regulatory Mechanism. The provisions herein overlap with the domain of Bonded Labour System (Abolition) Act 1992 and relevant comments therein would be pertinent.

### **2.3.3 The Factories Act 1934**

**2.3.3.1 Identification** This Act has seven parts. Part I covers general, factory premises and work related definitions. Part II deals with the Inspecting staff, Part III deals with Health and safety of workers and machines interface, Part IV deals with working hours of Adults, Part IV A deals with Holidays with Pay, Part V deals with Special provisions for Adolescents and Children (reconciled with Employment of Children Act 1991), Part VI deals with penalties and procedures and Part VII with supplementary issues. The Provincial factory Rules are so designed to ensure implementation of the Act especially in confined areas and "Factory Environment".

**2.3.3.2 Evaluation** The Act is indeed a very practical and futuristic enactment, more so if we place ourselves in 1934, when industrialization had hardly gained a reasonable foothold in the Sub Continent. The clauses relevant to the employment of labour in general and children in particular are being applied to cases of labour in BSOP as well. The environments of a BK are not comparable to a "Factory" and thus the total application of the Act to BSOP is ruled out.

**2.3.3.3 Gaps and Missing Links** Part I deal with the Factory environment oriented definitions that are alien to BSOP and thus not applicable. Part II deals with the Inspecting Staff, which is well covered in Bonded Labour System (Abolition) Regulations 1993.

Part III deals with Health and safety of workers and machines interface, and may be extended to the extent of Fire Place in the BTK or electrical appliances. Part IV deals with working hours of Adults, not applicable to a BK environment being an output oriented process where time is contingent on other activities. Part IV A deals with Holidays with Pay, and cannot be applied *mutatis mutandis* to BSOP. Part V deals with Special provisions for Adolescents and Children (reconciled with Employment of Children Act 1991) and can be applied on BSOP. Part VI deals with penalties and procedures and Part VII with supplementary issues. There is sufficient judicial precedence on record to ensure that children are not employed except where fit and within their abilities with no compromise for allowing employment for hazardous work.

The Provincial Factory Rules are so designed to ensure implementation of the Act especially in confined areas and "Factory Environment" and make it impossible to apply these rules on BSOP. It may be more realistic to draft a new law covering the scope of this Act for Brick Kilns, with details as in Part V.

The President of All Pakistan Brick Kiln Owners Association is of the view,

"The nature of work in green brick making is such that their compensation is based on their output. They have their own timings to suit their work. In winters they start at 10AM, in summers they work at night and thus overcome the weather hazards, the factory environment cannot be created for them at site. They regulate their own outputs and do not like to be supervised. One day they turn out 2000 bricks and on another day none. They would work only if the entire family joins them or else there is no output."

#### **2.3.4 Employees' Old Age Benefits (EOAB) Act 1976**

**2.3.4.1 Identification** There was no provision for old age benefits for industrial, commercial and other organizations and this Act provides for contribution by any employer employing five or more persons and compulsory insurance of all its employees. Its application to BS is evident, as it talks of an Employee and not a workman, labour or Contract Labour.

Employees' Old Age Benefits (EOAB) Act 1976 extends to whole of Pakistan and applies to every industry or establishment employing more than five persons. The Act provides for building up a Fund for extending the benefits to the employees registered in the process of paying contributions. The benefits means old-age pension, survivor pension, widows' pension, old age grant and such other payments as may be determined by the Federal Government. It is mandatory for an Employer to get his Employee insured and pay 5% of minimum wages as contribution to the EOAB institution. The whole procedure of collection, control, audit, accounting and delivery system is in place and is well regulated. There is an additional requirement of every employee contributing Rs 20 and the Federal Government contributing to the Fund. Its application to BS is mandatory.

**2.3.4.1 Evaluation** This Act provides for the barest minimum pension needs of an employee and can go a long way in addressing the financial security of the employees in distress and old age. It also provides for the Insurance cover. It is legally binding on BSOP but it is not being contributed to by the BKO. The main hurdle is the non availability of the NIC for the BK labour as a whole. The Fund is well established and has a large base and beneficiaries. If voluntarily accepted by BSOP for implementation it can go a long way in mitigating the social structure of BSOP labour.

The BKO opine that BSOP is a manpower intensive cottage industry and their returns per person employed are much lower than those in industry. Hence their contribution at 5% is too heavy as they employ a comparatively disproportionately high numbers and the state needs to rationalize it for BSOP to enable their contributions to benefit the BK labour as well. Non availability of NIC is yet another problem that may deprive the non holders both for registration and corresponding benefits and / or payment of contributions.

**2.3.4.3 Gaps and Missing Links** The EOAB in its present shape has the ability to absorb the BSOP. However the rates as being applied are not practical. It may be more pertinent to discuss

the issue with the BKO and the Regulatory Authorities to arrive at a subsidized rate to make it practicable.

### **2.3.5 Provincial Employees Social Security (PESS) Ordinance 1965**

**2.3.5.1 Identification** Providing for benefits to certain employees or their dependents in the event of sickness, maternity, employment injury or death and for matters ancillary there to be covered in this Ordinance.

Provincial Employees Social Security (PESS) Ordinance 1965 in Chapter I it is applicable to whole of Pakistan (Sec 1) and establishes the PESS Institution (PESSI) as a body corporate and authorizes it to have its own Employees Social Security Fund (ESSF) vide Sec 2. Chapter II (Sec 3 -19) covers the organization. Chapter III deals with the contributions presently fixed at 6% of wages (Sec 20 -27). Chapter IV deals with Finance and Audit (Sec 28 – 34). Chapter V deals with benefits (Sec 35 – 55). Chapter VA deals with domestic servants (Sec 55A). Chapter VI deals with Determination of Questions and Claims (Sec 56 – 65), Chapter VII deals with Offences and Penalties of fine or imprisonment (Sec 66 – 67) and Chapter VIII deals with Miscellaneous matters (Sec 68 – 82).

**2.3.5.2 Evaluation** The BKO opine that BSOP is a manpower intensive cottage industry and its return per person employed are much lower than those in industry. Hence their contribution at 5% is too heavy as they employ a comparatively disproportionately high numbers and the state needs to rationalize it for BSOP to enable their contributions to benefit the BK labour as well. Non availability of NIC is yet another problem that may deprive the non holders both for registration and corresponding benefits and / or payment of contributions.

This provides for the social security in BSOP. The contributions and registration though mandatory is hampered by the non availability of NICs to the labour

**2.3.5.3 Gaps and Missing Links** The PESSI in its present shape does not have the ability to absorb the BSOP, due to the distant locations of BK and requirement of mobile dispensaries, to avoid travel to city centres for minor ailments.. The sector may go in for the complete coverage through legislation and mutual cooperation with NGOs coming forward to extend financial and institutional support; the bonded labour fund could be directed to rescue the sector on this account. It may be more pertinent to discuss the issue with the BKO, the BK labour and the social security / labour department and arrive at a practical solution.

### **2.3.6 Minimum Wages for unskilled Labour Ordinance 1969**

**2.3.6.1 Identification** The minimum wages for the labour are regulated by Minimum Wages for unskilled Labour Ordinance 1969 which extends to whole of Pakistan and applies to every commercial and Industrial Establishment and organization. Sec 2 gives all the definitions. Sec 3 refers to the Schedule which specifies the minimum wages for various areas. Sec 4 fixes the responsibility of payment on every employer, Sec 5 declares all agreements under duress and contrary to the minimum wages as void, Sec 6 makes the contract of wages more than the minimum as effective, Sec 7 lays down the Penalty of fine or six months imprisonment and Sec 8 makes the offence cognizable on the complaint of the employee and the union only. The Minimum wages are regularly updated on the commencement of a financial year.

**2.3.6.2 Evaluation** The BK labour has its own mechanics. This act provides for the minimum wages. The BKO and the labour need to sit together and establish the optimum output per eight hours (one day) per person of GB production. The rates per K brick may be arrived at after catering for labour laws, weekly and gazetted holidays. Equivalence needs to be established failing which there will be a room for violation. The Contract rate arrived at may form the basis of the Contract and implementation of Minimum wages. It may be logical to consider that the BK labour has some sort of living accommodation provided by the BKO. Notwithstanding the need to improve the living

conditions the cost at which the facility is being provided needs to be accounted for arriving at the minimum wages.

**2.3.6.3 Gaps and Missing Links** The minimum wages to be made applicable need an elaborate mechanism of Price Control and would best be arrived at after mutual discussion between the labour, the BKO and the state representatives.

### **2.3.7 Human Rights Case No 5091 of 1988 PLD 513 of 1990**

#### **2.3.7.1 Identification** Extracts from SC Order Dated August 21, 1988

“In this first case of its type, namely, public interest litigation, the Supreme Court have taken cognizance of a case of public importance for the enforcement of Fundamental Rights, regarding bonded labour practices, concluded the first part of the proceedings. All the 21 detenus, who belong to brick kiln labour force and are of Christian community, have been released from the alleged detention. With regard to second part, namely, prevention of the bonded labour practices in the brick kiln industry, the court gave directions for devising long term measures. The reports have been called from the AG Punjab, the Police Investigating agency, the concerned labour unions, the concerned Bhatta Owners Union, the Director of the Punjab Labour Welfare Department, Lahore High Court Bar Association through Mr Abdus Sattar Najam, Advocate, and a separate report which will be treated as confidential regarding woman and children concerned in this labour problem. It has also been directed that in addition to the efforts being made to eradicate the mall practices in the field of labour employment in the brick kiln industry, a system should be devised to avoid all grievances / complaints of the nature dealt by the Supreme Court in this case.

Note;- This was done over a period of seven months and detailed reports and the proceedings there of are on record. This led to the Final orders of the Supreme Court as given below.  
Extracts from SC Order Dated March 15, 1989.

#### **The Agreed Order for final disposal of the case passed on 15-3-1989 reads as follows (In the matter of Enforcement of Fundamental Rights Re: Bonded Labour in Brick kiln Industry)**

“Members of both the parties in person and through their learned counsels have been heard in the above noted case. The following agreement in principle has been reached and is made as the order / decision of the Court:-

##### Past Peshgis

It is to be made clear that past un returned Peshgis given to the labourers by the brick kiln industry owners and still outstanding against the labourers. The labourers are legally bound to return all such outstanding Peshgis to the respective kiln industry owners. However, in case of denial of peaceful return of these Peshgis, the owners are authorized to recover the same by legal means i.e. through Court decrees – cases to be decided expeditiously with effective notices to the labourers; but, they are not authorized to use unlawful means for the recoveries of such Peshgis, such as coercive methods or use of police.

##### Past Special Emergency Loans

A maximum of Rs 5000 per house hold granted to the labourers in the past, in the form of formal loans or grants; marriages, religious festivals, medicines/treatment and death ceremonies, by the owners(to the labourers) shall not be recoverable from them and shall be treated as donation. The concession shall only be available to those labourers who return and resume their work voluntarily.

##### Future Peshgis

Peshgis System in future is to be discontinued. Although in proper cases if a valid agreement on this point is reached between a labourer and a brick kiln owner, the later shall give to the former an advance loan, which shall not be in any case more than seven days wages, against a proper

receipt in duplicate, copy of which shall be retained by both the parties. The payments / adjustments of which shall be made to the owners in easy instalments as agreed by the parties. However, if a loan in this behalf is not settled/ adjusted, no additional loan is to be advanced by the owner and if given that would be against the spirit of the agreement and would be at the risk of the owner.

#### Return to work

A notice / direction is to be issued to all the labourers to come for work and report to their respective bhatta owners; who will give them assurance in writing that they will not use any coercive methods or use of police force to bring them back or to retain them. However, in case a labourer does not want to come back or having returned, wants to leave his work in the bhatta of an existing owner, or to get job elsewhere, or in the bhatta of another owner, he shall not be retained forcibly provided he on application to be made to the concerned district Judge / civil judge 1st class, gets a certificate for the purpose.

#### Payment of Wages

Payment of Wages shall have to be made to the labourers on daily / weekly / fortnightly / monthly basis as agreed upon between the labourers and bhatta owners, regularly. No deductions are to be made from their wages; from the damage / losses to bricks caused on account of rain and it shall be borne by the bhatta owners.

#### Jamadar Jamadarni System

The existing Jamadar Jamadarni System is to cease forthwith. All the labourers shall have direct dealings with their respective owners. No payments of the labourers shall be made to them nor recoverable / adjustable.

The owners shall not directly or indirectly ask or pressurise any labourer for employing the woman folk or children. However, if the later do so at their own risk or responsibility, no complaint shall then be made against the bhatta owners in this behalf. The head of the household who employees any of their woman folks against her wishes and / or children might in proper cases, be proceeded against."

**2.3.7.2 Evaluation** This is an historic decision that set the pace for enactment of the relevant laws. If we see the detailed case, the SC had desired promulgation of Abolition Act, which has been done, to meet the obligations.

**2.3.7.3 Gaps and Missing Links** This being a SC Decision, no comments are offered, but their affects are included in final Recommendations.

### **2.3.8 Employment of Children Act 1991**

**2.3.8.0 Child Labour Defined** Child labour is defined as all economic activity for children under 14 years, any work for those aged 14-18 of hours per week (in excess of) to undermine their health or education, and all "hazardous work" which could threaten the health of children under 18,.

The employment of children where, nature and duration of work is not considered harmful is legally permitted. Light work of a few hours per week could be regarded as beneficial, as it contributes to the family income. "Child labour" by contrast should be eliminated.

**2.3.8.1 Identification** Employment of Children Act 1991, applicable to whole of Pakistan (Sec 1) has defined, a child (less than 14 years), an adolescent(14 – 18 years) and an adult -18 years (Sec 2), and prohibits employment of children in certain occupations and specified places of work (Sec 3 read in conjunction with schedules I and II), set up a NCRC for functions as visualized in Art 43 of the US convention on the rights of the Child (Sec 5), Regulated his conditions of work in part III (Sec 6 – 13) covering hours and periods of work, weekly holidays, notifying employment of a child

to the inspector, and other related health and safety concerns. In Part IV the penalties, empowerment to make related Rules, and other repeal and savings have been given (Sec 14 – 21). In the schedule 4 occupations and 34 processes have been given that prohibit employment of children. This bars employment of children for putting green bricks in BTK, firing process and taking out of burnt bricks being hazardous, using coal dust and dust release.

Employment of Children Rules 1995 have been promulgated, defined, and binds the owner to notify the period of work of children and adolescents, medical fitness certification, maintaining register of child workers, ensuring cleanliness of place of work, ventilation, lighting, availability of drinking water, sanitary services and fire protection, fencing of machinery and notifying accidents, and assuring the child is not asked to lift more than 10Kg of weight. All report and record formats have also been given.

**2.3.8.2 Evaluation** The Constitution of Pakistan (Art 11-2) states that “No child below the age of 14 years shall be engaged in any factory or mine or any other hazardous employment”. The employment of children on hazardous work is considered to be against the accepted Rights of the Child and has been voiced by ILO. Whereas basic provisions of law are well covered in the Factory Act 1934, there was a need to promulgate a specific law and create appropriate forums to ensure the rights of the Child. The Children comprise 50% of our population and need to be kept in good health, offered fair opportunities for education and given vocational training to see a healthy youth and adult human resource that can contribute positively to improve the socio economic condition in next two decades.

A child, adolescent and an adult has been well defined and where all a child can work, and what must be done for an adolescent has been clearly defined. The provisions of Factory Act 1934 were already there to prevent child labour. The constitutional provisions for right of a child stand legalized and formalized substantially after the promulgation of Employment of Children Act 1991.

**2.3.8.3 Gaps and Missing Links** The employment of children by BK needs to be rationalized and seen as a social necessity, rather than categorised as a child labour as perceived internationally. The education and development of these children has to be ensured without separating the children from their families, incentive based education and vocational training needs to be integrated. Parents need to be educated rather than exploited against the BKO.

### **2.3.9 Bonded Labour System (Abolition) Act 1992**

**2.3.9.1 Identification** The law makers promulgated the Bonded Labour System (Abolition) Act 1992 to comply with the national aspirations on one hand and respond to ILO convention on the other, in the backdrop of a human rights violation case decided by the SC in which the CJ directed the law makers to promulgate the Abolition of Bonded Labour Act to ensure the fundamental rights to this class of labour (SC 513 of 1990). The relevant extracts of the orders have been covered in paragraphs above.

Bonded Labour System (Abolition) Act 1992, applicable to whole of Pakistan (Sec 1) has been defined (Sec 2), over rules existing laws (Sec 3), abolished Bonded Labour System (Sec 4), declared void all agreements and customs (Sec 5), extinguished all liability to repay bonded debt (Sec 6), freed all mortgaged property (Sec 7), restrained creditors from accepting payment against extinguished debt (Sec 8), specified Authorities to implement the provisions of the Act (Sec 9 – 10), specified punishment of fine or imprisonment for enforcement and extraction of bonded labour and failure to restore property (Sec11 – 13) and established Vigilance Committees in every district (DVC) to advise, keep an eye on working of the law, to provide necessary assistance and rehabilitation (Sec 15) and other related provision (Sec 16 -20) and authorized Federal Government to make related Rules (Sec 21).

**2.3.9.2 Evaluation** This is a BSOP specific Act and its efficacy is best seen by the SC 232 being discussed separately. The observation is that no enactment sees the light of the day if it covers only one side, in this case the labour. The ground realities are different and it is only after the law is brought in line with the realities that a solution would be possible. It is interesting to note that SC

decision 513 ante, has covered the rights of the BKO to recovery of Peshgis through legal mechanism rather than force or coercion, completely denied by the Act, and accordingly SC 232 does not speak about the outstanding liabilities, once the Act is enforced.

The Bonded Labour System (Abolition) Act 1992, has abolished the bonded labour system all bonded labour free of its obligations vide Sec 4 and there is no ambiguity in law. It is illegal to enforce bonded labour practices, which carries 2-5 years of imprisonment.

### **2.3.9.3 Gaps and Missing Links**

There is a serious need to differentiate between the actual bonded labour being practiced and the pure mobilization based commitment to pay back by working on BK. The need for advancing money to BK labour should be accepted as a first step. This payment should be made through the Bonded labour Fund or a bank as Interest Free Loan. The labour contract should be signed with families with working members excluding children clearly defined, along with other provisions as highlighted in Part V. The state should be a witness through a dedicated body for implementation by provincial governments to ensure even handedness. The effort to improve their lot should be shared rather than exploiting the BKO for having advanced the money. There should be no room for exploitation by the NGOs of a situation which is seen in total isolation of ground realities.

### **2.3.10 Bonded Labour System (Abolition) Rules 1995**

**2.3.10.1 Identification** Bonded Labour System (Abolition) Rules 1995 have been promulgated, defined, and indicates authorities to deal with restoration of possession of property of bonded labour (Sec 3), gives powers and duties of District Magistrate (DM) and officers designated by him (Sec 4 – 5)), constitutes DVC (Sec 7-8), and established a Rehabilitation and Welfare Fund (Sec 9).

**2.3.10.2 Evaluation** The implementation is delegated to a 17 member DVC consisting of members who have a lot more to do. The result is lack of implementation. It is only on Dec 18, 2008 that Lahore High court has directed the Provincial government to present the reports of the DVC. A generic solution is not likely to ensure implementation as already practiced and seen. A dedicated team is required to enable the law to be implemented.

**2.3.10.3 Gaps and Missing Links** The implementation needs to be specific rather than generic and previous comments be held, to ensure implementation through a dedicate authority.

### **2.3.11 SRO 730(1)/ 2000 Fund for the Rehabilitation, Education and Welfare of the Freed Bonded Labour under Sec 9 of the Bonded Labour System (Abolition) Rules 1995.**

**2.3.11.1 Identification** To ensure that the bonded labour actually joins the main stream labour force a Fund was established vide a notification SRO 730 (1) / 2000. It is located at Islamabad, indicated its regular source of income, nominates BOD and lays down all the related procedure that ensures its delivery to the affected.

**2.3.11.2 Evaluation** The intention of the Government to see that the bonded labour is actually abolished and the financial impact is absorbed, the Fund provides for this eventuality. If all the stake holders get together and work honestly without political exploitation, this can help relieve the system and even be part of a solution that we shall come to, once the entire review is completed. The emphasis is on dedicated mechanism and not a generic approach, a system solution rather than part solution.

To the best of information this fund remains unutilized for reasons that could not be established. SC 232 of 2001 also does not touch on this issue on an otherwise detailed order.

**2.3.11.3 Gaps and Missing Links** The Funds should be used as intended initially and their scope are extended to include other social, educational and financial needs of labour employed on the BK. A clear picture would merge once the Analysis and Recommendations are finalized in Part V.

### **2.3.12 Pakistan Environmental Protection Act 1997**

**2.3.12.1 Identification** Pakistan Environmental Protection Act 1997 is applicable to whole of Pakistan (Sec1). A comprehensive list of environment related definitions follows in Sec 2. Pakistan Environmental protection Council (PEPC) has been established and its Function and Powers defined (Sec 3 – 4). Pakistan Environmental Protection Agency (Pak-EPA) has been established at Federal level and its functions and powers defined Sec (5 – 7). Provincial Environmental Protection Agency ( Province-EPA) has been established at Provincial level and its functions and powers defined (Sec 8). Provincial Sustainable Development funds have been established and its management regulated by a Board (Sec 9 -10). Certain discharges or emissions have been prohibited beyond certain levels (Sec 11), to be defined by Pak-EPA under the powers vested in it in Sec 6. Initial Environmental Examination (IEE) and Environmental Impact Assessment have been made compulsory for all new projects (Sec 12). Import of Hazardous Waste has been prohibited (Sec 13) and Handling of Hazardous substances prohibited (Sec 14). Emissions and noise levels from motor vehicles have been regulated (Sec 15), to be defined by Pak-EPA under the powers vested in it in Sec 6. Federal and Provincial EPA have been empowered to pass orders and actions for violating any provision of act or rules and regulations there under for remedial actions (Sec16) and Penalties indicated (Sec 17). Responsibilities have been defined and designated for offences by bodies corporate, government agencies, local authorities or local councils (Sec 18 -19). Environmental tribunal have been established, their jurisdiction and powers specified and procedures for appeals streamlined (Sec 20 -22). Environmental Magistrates have the jurisdiction to hear the Grievances to the orders of the Tribunal, and Court of Sessions is the Final Appellant Authority (Sec 23 – 25). Powers to delegate and give directions rest with the Federal Government. Who has been indemnified (Sec 26 -28). Dues are recoverable as the arrears of land revenue (Sec 29). The Act overrides all other inconsistent laws (Sec 30). Powers to make rules, amend the Schedules and make regulations have been specified (Sec 31 – 33). EPA Ordinance has been repealed with associated savings and successions (Sec 34).

**2.3.12.2 Evaluation** The Act has little to give strength to BSOP for reduction of ER. The implementation depends on related regulations and development of NEQS.

NWFP EPA has come forward with the document that makes IEE and EIA of all BKs mandatory and has given guidelines for BTKs to reduce emissions and conserve energy. The Act is unique in that it was drafted after far more extensive public consultation than any other legislation in Pakistan.

To enhance the institutional role of Pak-EPA and ensure that the public is involved in all important environmental decisions, policies and regulations, the consultative process should be institutionalized.

**2.3.12.3 Gaps and Missing Links** The EPA needs to establish a national strategy for ensuring ER, EC, specifying fuels, and other related issues by enhancing the scope of document issued by the NWFP EPA for BK.

The Pakistan Environmental Protection Act, 1997 should be amended to define the rights of the citizens to a clean environment, access to environmental information and participation in decision-making. The example set in the draft NWFP Environment Act, 1995 should be followed.

The Government Rules of Business, 1973 should be amended, at least to the extent that they apply to the Ministry of Environment, Rural Development and Local Government and the Pak-EPA, to make public consultative process an integral part of the legislation development process.

The Pakistan Environmental Protection Act, 1997 should be amended to make public consultation mandatory for all important environmental decisions, policies and regulations.

An Internet-based website should be developed by Pak-EPA to disseminate information and solicit opinion to include, Environmental policies, rules, regulations and standards, Current drafts of policies and regulations under development, Summaries of EIAs and IEEs submitted to EPAs and Roster of stakeholders.

A permanent roster of eminent citizens, stakeholders, public figures, scientists and experts should be maintained by Pak-EPA. Every important decision and changes in rules and regulations should be circulated at least to persons on this list.

The public consultation process that was undertaken during the development of NCS and the Pakistan Environmental Protection Act, 1997 should be thoroughly documented for future reference.

Voluntary development and discussion on policies and regulations should be encouraged at the local NGO level. Public consultation should not be a donor-driven exercise.

### **2.3.13 Human Rights Case No 5091 of 2006 PLD 232 of 2007**

**2.3.13.1 Identification** After the promulgation of the Act, a case was brought before the SC, and relevant extracts are recorded below.

Be as it may, it seems that detainees were prima-facie kept in illegal custody denying their fundamental rights as held by this court in the case of Darshan Masih alias Rehmatey and others v. the State (PLD1990 SC513)

It may be noted that in the case of this very judgment, the Act of 1992 was promulgated for the purpose of taking care of such class of labourers who are detained some time along with their families for forcible labour particularly at Brick kilns. We have noticed while hearing the case that culprits make an attempt to save their skin from criminal liability on different pretexts including the one that labourers were working voluntarily at brick kiln. But in instant case it seems to be its own nature for the reasons that a breakthrough has been made to affect the recovery of such class of labourers, who were detained by the brick kiln owners on the pretext that they had entered into an agreement to work at brick kiln.

Previously we have held that although the Act of 1992 has been promulgated but in its terms it is not sufficient to cater the requirement because to ensure the application of fundamental rights of such class of labourers guaranteed by the Constitution, the law must be more stringent, otherwise it would become very difficult for the law enforcing agencies as well as the court to effect the recovery of the detained persons and to punish the delinquents adequately. ***Thus it is recommended that law giver may review the said provisions of law by incorporating the provisions to cater requirement, as the prevailing presently.***

It is to be noted that we had been receiving complaints from different quarters alleging illegal detention of labour by brick kiln owners but when ever probe is started breakthrough is not made for one or the other reason. Therefore, we consider it appropriate to send copies of this order to Chief Secretaries of all the Provincial Governments in pursuance where of the Brick kilns in their respective provinces are registered along with particulars of the proprietors with direction that they should keep the regular record of the labours engaged by them and shall furnish a list of the same to the concerned labour officer and whenever there is a change in the labour and the labour officer shall be visiting the Brick kilns as per their registered numbers from time to time and shall be submitting report to the department and if any matter of violation is reported by them of bonded labour it shall be brought into the notice of DPO, DCO and the Nazim of district for the purpose of necessary action against the violators and ensure a full implication of the Act 1992.

We are conscious of the fact that as for as police is observing their duties from this angle as well, therefore, respective DPO shall be issuing standing instructions to the respective SHOs to have an eye on Brick kilns in their areas and if any case is noticed of bonded labour they may proceed

against the Brick kiln owners for the purpose of ensuring fundamental rights which have been guaranteed to the citizens under the constitution of the Islamic Republic of Pakistan concerned it has to perform multifarious duties but they are also not. Similarly the provincial governments hence forth shall adhere strictly to the provisions of sec 5 of the Act 1992.

On receipt of copy of this order Provincial Chief Secretary shall lodge a campaign throughout the province through agencies mentioned in sec 9 of the act 1992, keeping in view of the observations noted herein above, and shall ensure the implementation of law on the subject in letter and spirit to control the bonded labour in their respective provinces

**2.3.13.2 Evaluation** The SC Decision speaks volumes about the implementation of the Act and its orders are mandatory. Main points are given in Gaps and Missing Links below.

The views of the brick Kiln owners on the subject are summarised below.

“Our offer to the Government is to recognize the fact that all the BK labour has to be advanced money, why not get into a written tripartite agreement involving the labour the BKO and the Labour Department. Why should the finance not come through the bank at nominal rates as for SME? Why should the law not recognize the mutual rights of both the parties involved in the transaction. I must say the role of so called unions is negative, as just a dictatorial demand that labour rate be increased from Rs 350 per K to Rs 400 per K of green bricks be made, does not enable the BKO to generate these resources. The government must regulate these activities and must play a positive role to regulate the process rather than leave it to professional thugs.

On the side line of the issue, is it not worth pondering that category of labours other than the Green brick makers also avail the advances, but it is only the later, who is termed as the Bonded Labour, willing to register the cases and run away with the advance? They all live under similar conditions, but only one category is being exploited and subject of international exploitation of the BSOP. All categories of contractors are given Mobilization Advance under a proper warranty, why can't this facility be extended to the brick making contract labour? “

**2.3.13.3 Gaps and Missing Links** The law must be more stringent. Thus it is recommended that law giver may review the said provisions of law by incorporating the provisions to cater requirement, as the prevailing presently.

Brick kilns in their respective provinces are registered along with particulars of the proprietors with direction that they should keep the regular record of the labours engaged by them.

The Service Providers are also not observing their duties from this angle as well; therefore, respective DPOs shall be issuing standing instructions to the respective SHOs to have an eye on Brick kilns in their areas (as ordered by the SC)

### **2.3.14 Compulsory Education Act 2002**

**2.3.14.1 Identification** The education of Children has been made Compulsory by promulgation of Compulsory Education Act 2002 by the Government of Punjab. The provision of free books and no tuition fees up to the primary level is being practiced. The girl students have been given additional encouragement by payment of stipends.

The Compulsory Education Act makes it mandatory for all parents to send their children to schools, where education and books are free and special stipends have been awarded to female students to encourage their parents to send them to school.

**2.3.14.2 Evaluation** The Act provides for an opportunity to all the segments of the society to send their children to school and avail free education. The impediments are the parents who fail to send their children to school.

**2.3.14.3 Gaps and Missing Links** The BSOP needs to utilize the provisions to its advantage by educating its labour force on benefits of child education possibly through an incentive based approach and linking it to the state sponsored labour contracts coupled with vocational training and population planning.

## **2.4 Main Findings Objective 2 - Identification of Gaps and Missing Links**

Gaps in Laws have been listed in the identification and evaluation stage and would be used in Analysis and Recommendations in Part V.

The basic labour laws covering the BSOP are not specific to the sector. This encourages violation by stakeholders in some case. They are generic and have to be interpreted as such. IRO is specific to industry and not squarely applicable to BSOP.

There exists an association but there is no concept of CBA in BSOP as even very large units and clusters are open areas and do not qualify as a factory or an industry, thus IRO 2002 is not squarely applicable to the BSOP.

The sector does not have the capacity to generate large revenues, but has a huge labour bank that contributes to the national development. Any laws that directly or indirectly increase the financial inputs of the sector will reflect adversely on the market price of the Brick. A shift to alternatives like cement blocks may make the entire sector dormant. Hence an apparent attempt to improve the lot of the labour beyond practical limits would be catastrophic.

Law does not permit employment of bonded labour and giving advance or writing a contract for pay back in future work and is liable to exploitation by third parties at the cost of vulnerable BKO.

Child labour is prohibited but is practiced at the will of the parents, due to poverty, to generate extra resources, sacrificing their rights and education, against the provisions of law.

The Social Security and EOAB contributions are mandatory, avoided by BKO for want of will, alleged higher per capita contribution rates and non availability of NIC, depriving BKL of their rights.

If all laws were strictly implemented there would be no brick production and entire workforce would be without work causing suffering to poor and needy and hence the status quo.

The law protects the BKL, not the BKO and specific performance issues give an unfair lever to the BKO to resort to coercion in some cases as their advances are not secured by law. The guidelines of the SC have not been incorporated in the Act and hence the anomaly.

The NESQ have not been promulgated for ER of BK thus making it difficult to ensure implementation of EPA 97 on BK.

The option for BSOP specific laws can be delayed but not prevented in the long term and all stakeholders need to get involved with it.

The implementation is lacking for reasons common to all laws.

## **2.5 Objective 3 Identification of reasons as to why the laws are not being implemented.**

**2.5.1 Reasons for Non Implementation** The BSOP is not a priority sector for ensuring the implementation and the cases reported for non adherence to law are more in the realm of seeing HR implementation rather than the desire for ensuring the implementation for BSOP.

Reasons for non implementation and “what needs to be done”, including a mention of system solution is given in detail below.

### **2.5.2 Analysis and Evaluation**

In spite of such clear perceptions and ensuing desires the bonded labour is assumed to flourish in many sectors, millions of children are deprived of their basic rights and their role as direct bread winners or an aid to bread winning cannot be blocked. Reasons are in abundance and include but not limited to poverty, lack of awareness, uneducated parents, unabated population growth, preference for a male child (adding female children in a poor family for want of a male child and increasing the cash needs), non existence of social security coverage at a level that is effective, social injustice, exploitation by the family itself and a general apathy towards the issue. The "Bonded Labour and the Child" are deprived and may continue to be so till we change the socio-economic scenario by internal and external dynamics. The issue is linked to the overall national resources depleting every moment due to increasing population and increasing poverty line. The seeds of success have to be sown in the minds of the deprived, which are otherwise willing to be deprived till education forces their eyes open, and they see light in working for their rights. Rights as seen by the middlemen are not supported by the will of the deprived to change the scenario.

The corruption of law enforcing agencies, the judicial line, the naive politicians, the not so weak brick kiln owners, the willing to compromise labour inspectors, collectors of social security and Employees old age benefit contributions, the ever increasing jobless millions, the lack of education and awareness, the threat of becoming jobless and non working union leaders, coupled with unwillingness to accept and resolve the problems all adds up to see a wide gap between the law and its implementation. Make a more stringent law and the system will benefit at the cost of the law.

The solution is thus complex but not impossible to implement in spirit if not in letter.

The problem of child labour is restricted to families employed in Green brick moulding and possibility of children being employed directly by brick Kiln owners is impracticable and non existent. The onus of this violation strictly rest with the parents and family members, who may have been induced to generate cash and encourage the bonded labour system. The obligation of the child varies from family to family but generally children are given chores according to their physical potential and provisions of law are compromised rather than violated.

### **2.5.3 What needs to be done?**

The integration of bonded and child labour concerns into national development strategies, backed by effective implementation, is therefore the preferred route to a lasting solution. Reduction of chronic poverty through broad-based economic and social development will create the platform for fundamental change in cultural attitudes towards these basic issues.

A generic solution is to reduce the number of agencies involved in implementation to reduce the number of people who can benefit individually by misusing their power at the cost of the law and the poor working class.

The state needs to recognise the need of the poor, a one time grant or part grant - part loan may be placed at their disposal through the banks or brick kiln owners. There after they should be paid their wages as per law, and minimum outputs guaranteed as mutually agreed, binding them to send their children to school.

The rights of the brick kiln owners should not be compromised, just as has been done by a unilateral Abolition Act that will never see implementation because it has not given a solution to the worker and has assumed that it is always the one advancing the money who is at fault. Introduce vocational training suited to the uneducated to create a semi skilled or skilled labour force to introduce mechanization and resulting saving in manpower.

A rights-based approach which relies on laws and their enforcement is insufficient in isolation because bonded and child labour is a dynamic feature of complex social and economic conditions. But such actions will be ineffective in the absence of institutional capacity to rehabilitate the

children. Implementation need to be complemented with development programmes which tackle the underlying causes of bonded and child labour and which recognise the practical difficulties in reintegration of bonded labour into national labour scheme and their children into formal education.

Bonded labour and their Children should be consulted as some families may be genuinely anxious to find ways of combining education with the economic expediency of helping their family unit. The introduction of adult literacy drives may be linked to some incentives to help bring in change in basic attitude towards education. Not all parents see education as a means to a brighter future when they are totally illiterate and lack awareness of the real issues. I have personal experience of family elders making fun of children when they achieve some academic credibility, while the elders are content with their age old attitudes to life and work.

Some caution is needed in the presumption of a perfect inverse relationship between child labour and education. The availability of education alone may not be sufficient to break down the demand for child labour. Schools which or which have inadequate facilities or insufficient teaching and classroom resources will fail to give the intended benefits. The need for incentives for such parents should be recognised.

Government institutions that can safeguard the rights of children are weak and suffer from mismanagement, bureaucratic apathy, lack of funds and an overall commitment to the social needs of the population. The centuries-old traditions discriminate against women and girls, puts a premium on the expectations from a male child thus compounding the issues. Poverty has created a criminal divide in the society where the plight of poor children goes un-mourned. The poor and down trodden are indebted to the rural leadership and land owners, and their sustained poverty is a surer recipe for the electoral success of the leaders.

In traditional Brick kiln labour families a child is perceived as the saviour of the future generation, who must grow up quickly to accept his responsibility as a breadwinner, ensure protection to all the female folks, concentrate on helping the family on its chores, be ready to take up as the "Male Descendent" of the family, and he must be trained accordingly. Providing education to a child or giving him his "Rights" may or may not suit those who are basically responsible for it, and hence the devastation. He may even be a fit case to provide financial support by providing debt relief as a bonded labour both within and outside the BS.

Households where adult members suffer prolonged periods of illness suffer dramatic cuts in income and forced sales of assets which are compensated by withdrawing children from school and sending them to work. Male children orphaned by disease or accident are heads of households, are compelled to provide for siblings. Economic setbacks tend to regenerate the supply side of the child labour equation.

#### **2.5.4 System Solution**

Let every sector put its head together and collect all the stake holders and compromise and cooperate to see that they mutually agree to a code of conduct that is not illegal and yet practical enough to respect each others rights and obligations. Let them as a collective body assure the state that they will pay their due share of taxes (abide by reasonable basic targets and output oriented growth) and contribute collectively to socioeconomic growth of the working poor. Let them develop mutual respect rather than fear, let them sacrifice rather than be greedy, let them give rather than take and let them achieve rather than fail. They have no way out.

The introduction of EEBP TTP can thus be conveniently linked to the desired improvements in facilities for the Labour to include social security, child education, vocational training, health care, community health, workers participation and profit sharing. There is a need for BSOP oriented poverty alleviation programmes and NGOs participating in family sizing, social awareness, community participation and attitudes towards gender preference.

Limited financial, human and technical resources available to the federal and provincial EPA, lack of political support and will, limited technical expertise in the country and lack of public pressure

due to limited environmental awareness, The generally short duration of appointments of officials, both technical and non-technical, in the federal and provincial ministries of environment, and the environmental protection agencies, which reduces the continuity and consistency required to develop and implement policies and regulations and 'Posting out' of suitably trained staff and experts from the federal and provincial ministries of environment and the environmental protection agencies to other government departments and agencies further compromises the achievements side of the equation .

**2.6 Main Findings Objective 3 – Identification of reasons as to why the laws are not being implemented.**

There is no BSOP specific implementation mechanism. The generic implementation mechanism does not consider BSOP as their priority.

There are too many Public Service Providers, with too much in their hands, inefficiency and alleged corruption, compounds the implementation mechanism adversely.

There are inadequacies and ambiguities in law, which do not address all the concerns of all the stake holders. Non performance encourages coercion by BKO. Greed forces the BKO to resort to bonded mode. Projection by indirect stakeholders is on inputs not shared by all direct stakeholders. BSOP continues to produce bricks in spite of issues and the issues tend to be put on the backburner.

Closure stake of BTK forces the BKO to risk advance to ensure uninterrupted making of GB (basic input) and poverty of BKL encourages acceptance of realities to compromise and break the law. There is a need for all stake holders to get together and find a way out of this complex situation if the status quo is to be changed.

The continuity in implementation mechanism needs to be maintained for well trained key personnel to ensure positive results in specific areas such as environment awareness and protection.

**PART - III**

**3.1 Objective 4 Analyze, assess and make recommendations, soliciting carbon trading through Clean Development Mechanism (CDM)/ EPA.**

**3.2 THE CDM Definition and Scope**

Article 12 of the Kyoto Protocol indicates the purpose of CDM thus:

"To assist Parties not included in Annex I in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist parties included in Annex I in achieving compliance with their emission limitation and reduction commitments under Article 3.

The CDM was introduced during the Kyoto Protocol conference in December 1997. It is a market-based mechanism that allows more flexibility for Annex I Parties to meet their greenhouse gases emission targets. Carbon being a tradable commodity, parties subject to emission targets can purchase the carbon credits -or certified emission reductions (CERs)- produced at lower costs in countries that do not have the same emission restrictions, or can directly invest in CDM projects in these countries in return for carbon credits. The principle behind is simple: ***The global benefit of reducing carbon emissions is the same no matter where the action is taken. Thus it makes economic sense to reduce emissions where it is the least expensive. The CDM is the only mechanism of the Kyoto Protocol that involves the developing countries.***

While investors profit from the CDM by meeting their GHG ER targets in a cost-effective manner, CDM projects also benefit developing countries with additional revenue, technology transfers, moving towards sustainable Development.

Typical CDM projects categories are: renewable energy, fuel switching, (in industries, transports, the residential sector etc), solid waste management, advance coal based power generation technologies, renovation and modernization, demand-side management and Industrial energy efficiency projects. All projects must result in net GHG emission reductions. Small-scale CDM projects (renewable energy <15MW, energy savings of <15 MW per year, projects with annual emissions (15000 tones CO<sub>2</sub>) are eligible for fast track clearance).

**3.3 The CDM Project Cycle**

Participants must prepare a project design document, including a description of the baseline and monitoring methodology to be used, an analysis of environmental impacts, comments received from local stakeholders and a description of new and additional environmental benefits that the project is intended to generate. An operational entity will then review this document and, after providing an opportunity for public comment, decide whether or not to validate it.

When a project is duly validated, the operational entity will forward it to the Executive Board for formal registration. Unless a participating Party or three Executive Board members request a review of the project, its registration becomes final after eight weeks.

Once a project is running, it will be monitored by the participants. They will prepare a monitoring report, including an estimate of CERs generated by the project, and will submit it for verification by an operational entity. To avoid conflict of interest, this will be a different operational entity to that which validated the project.

Following a detailed review of the project, which may include an onsite inspection, the operational entity will produce a verification report and, if all is well, will then certify the emission reductions as real. Unless a participating Party or three Executive Board members request a review within 15 days, the Board will issue the CER and distribute them to project participants as requested.

Finally, CER generated by CDM projects will be subject to a levy known as the 'share of the proceeds'.

Two per cent of the CER from each project will be paid into the Adaptation Fund to help particularly vulnerable developing countries adapt to the adverse effects of climate change. Projects in LDC are exempt from paying this share of the proceeds.

Another percentage, yet to be determined, will be levied on projects to cover the CDM administrative costs. In the meantime Parties have been urged to help finance these expenses by making voluntary contributions to a UNFCCC Trust Fund for Supplementary Activities.

### **3.4 Main Findings - Objective 4**

EEBP needs to establish the existing energy consumption and monitor emissions of existing BTK to establish the base line for establishing the EC and ER available for claiming CC through CDM.

VSBK qualifies for the CDM for which the case has to be processed through a consultant active in this field, who would prepare a PIN and PDD for ODE to certify and submit the case. On validation the eligibility will be established.

### **3.5 Objective 5 Opportunities and way forward to link EEBP with Energy Conservation Fund.**

Here the basic requirement is that **minimum of 15 MW of energy is actually saved** once the EEBP TTP is in place, **needs to be confirmed by the Client – SDC / SKAT.**

#### **3.5.1 Approach**

There are two key areas that need to be searched. The basic facts that would support the EEBP to conserve energy would have to be established. This has to be weighed against the ENERCON under the Ministry of Environment to accept the proposal in Principle. The legal aspects are easy to manage; it is the technicalities that may need to be clarified. In fact once CDM and Carbon Trading, also under the same organization are linked that a clear picture would emerge.

#### **3.5.2 Output**

The CDM, Carbon Trading, Energy Conservation (Fund) and EPA are well inter connected and the comprehensive interaction would list the possibility clearly. It is at national Level that the proposal must be identified and supported, before undertaking the initiative and utilize the services of CDM at the International level within the preview of Kyoto Protocol. The legalities are not cumbersome, the time and patience may be the answer.

### **3.6 Main Findings - Objective 5**

The total conservation of energy has to be established and at this point in time no facilities have been extended to any project for EC by ENERCON, the custodians of ECF in Pakistan.

**PART - IV**

**4.1 Objective 6 Opportunities Available and the Obstacles being faced by the Sector to achieve the Status of Regular Industry**

**4.1.1 General** The mere declaration of a sector as Industry to reap minor advantages in terms of bank loans and becoming part of a documented economy and having a say at national level does not resolve the problems being faced by BSOP in terms of labour and social issues and otherwise being on the back burner for total reliance on the category of available lever that for all legal interpretations is a BL.

It is strongly felt that once the BSOP Regulatory Mechanism is in the control of its stake holders and is handled by International Development Agencies, the basic concept would see a change. It is only after the change has actually been felt that opportunities would open up. The BKO are badly engaged in contesting their right to hire the specified labour to produce the GB and continue to be engaged by NGOs. The not so representative unions, Labour and Law enforcement agencies. The immediate relief needs to be provided to the BSOP in terms of Regulatory mechanism both for Law and its implementation by involving all the stake holders.

The BKO do not see any advantage of running into a new without putting the basic house in order.

**4.1.2 Obstacles Being Faced** The BKO have voiced their concerns on availability of labour if existing law is enforced in entirety. This has been exhibited on many occasions. The raiding by bailiffs backed by NGOs, HR activists and unions does indicate the possibility that it could be motivated by ill will and depriving the BKO of his money rather than addressing the BL issue. There are areas where a serious BL situation is prevalent but no one can interfere and there are others, where both the BK labours and BKO are efficiently managing till the involvement of the NGOs, HR activists and unions.

The implementation of PESSI and EOAB could be facilitated by launching a country wide campaign by the NGOs to ensure issue of NIC to all the non holders including those in BSOP.

The NGOs, the unions and HR activists have a lot to say about the BL and BCL, their living conditions and violation of HR. *Prima facie* the HR situation needs to improved as stipulated and not continue to be ignored. It is only after a physical raid that the violators of law are brought to books.

The Apex Court desires a more stringent law to ensure abolition of BL and orders before and after the promulgation of the Act raises basic questions of implementation that possibly cannot be handled by the DVC or labour department and Law enforcing agencies, unless all stake holders get together and offer a solution that protects all the stakeholders on one hand and is backed by effective legal provisions to proceed further for EC, ER, by establishing an EEBP through VSBK or any additional locally developed solutions.

**4.2 Main Findings - Objective 6** The site, process and nature of job of making bricks is substantially different to industrial processes and utilization of industrial labour due to peculiar location of undefined site, higher manual inputs, pattern of output of workers, threat of relocation and informal nature of production.

The BSOP has its peculiarities and needs to be treated on its intrinsic parameters. The BKO would strongly contest if not opt out of a possible industry status, as BTK can seldom be co-located in an industrial estate or purely cottage industry set up, in its current configuration.

The BKL is temperamental and regulates its own work schedules and outputs that negates the basic 8 hour labour concept in Industry. The BKL may never generate the desired number of hours in a year in spite of having taken advance.

IRO lacks relevance, compatibility, acceptance and the mechanism for implementation on BSOP.

#### **4.3 Objective 7 Opportunities for EEBP, Receiving Incentives**

**4.3.1 Opportunities** EEBP is currently planning on introduction of VSBK TTP. The minimum number of units to qualify for CDM has been estimated at 14 shafts. The production capacity equals two average sized BTK. It would be difficult to prove to the government and other stake holders that the VSBK TTP is here to prove its worth and exhibits clear advantages in terms of EC (saving of fuel) and ER, unless it enjoys a substantial market share.

An exhibited material strength of the brick and its acceptability by the construction industry would be a natural basis for making it mandatory for the state funded development projects to incorporate them. The number produced in each consumption area would be the first indicator to attempt an entry. The pace would pick up as the regulatory Mechanism ensures quality control and fair pricing coupled with smooth production and availability. A successful EEBP would speak for itself and quality conscious private sector may take a lead in consuming the product and we may not consider it's becoming a mandatory incorporated item.

Assuming the EEBP makes the mark, the basic opportunity remains in the domain of ECF and Carbon trading through CDM. There are hurdles but no serious disqualifications attached to the concept and should be a fair return for the international investors, once the base line is established. The efforts are more in the domain of Technical inputs for registration and selection of operational entity and related consultants.

**4.3.2 Regulation** The first step for EEBP is to sponsor the basic integrated legal framework and enabling it to handle the entire BSOP including the EEBP-TTP to overcome the pit falls in legislation and come up with an implementation mechanism to relieve the BSOP from conventional lethargy of existing service providers and take all the genuine stakeholders on board both for the legislation and implementation initiatives.

Once the Regulation mechanism is established it will have inbuilt initiatives that address the HR issues on one hand (thus opening transparent vistas for the entire BSOP) and raising self financed partially subsidized financial pool to address social issues encompassing community health. Living conditions, workers participation and being proud of a being a BK labour rather than a branded BL.

**4.3.3 Incentives** It is successful completion of the first phase that incentives could actually be available. The incentives would include the basic "Tax Free regime for all the BSOP" for say five years after physical establishment of regulation mechanism (which may take say 2-3 years). Thereafter the Tax Free Regime be extended to any EEBP including VSBK Technology. I see an effective R&D activity under the proposed regime that would use the locally developed Pug mills, Extruders, and effective EC mechanisms to see the sector bloom with pride and financial independence contributing to better quality of bricks and allied products and employing a large sized quality labour that boasts of exporting well trained dedicated labour to other industries both within the country and abroad.

#### **4.4 Main Findings - Objective 7**

The possibility of incentives exists if all the stake holders can get together and there is some one to represent the BSOP at federal and provincial levels. Some areas are, subsidies to BKL for improving their living conditions including health care and community health, financial assistance to replace advances, subsidized subscriptions for PESSI, EOAB and workers welfare & education as a package to implement EEBP TTP, not restricted to VSBK. Tax holiday for BKO can be sought.

#### **4.5 Objective 8 - Assess and Report on Spatial Planning of Development Authorities**

#### **4.5.1 Report on Peshawar Development Authority (PDA)**

The PDA has no Brick Kilns located in its assigned geographical limits. The space for the Brick Kilns is kept outside the PDA limits by the Provincial Government under the strict control of NWFP EPA. A proper regulatory order that includes the IEA and EIA has been issued. The areas have been assigned after the issue of these instructions and hence a serious attempt to ensure implementation of EC as per prescribed ER.

#### **4.5.2 Provisional Report on Lahore Development Authority (LDA)**

The LDA has not specified an area for development of BK. The existing BK is forced out as a result of expanding dwellers. The Punjab EPA has a plan and a PC1 is on the anvil to regulate the sector but authorities are tight lipped and details are not readily available.

#### **4.5.3 Provisional Report on Capital Development Authority (CDA)**

The CDA has not specified an area for development of BK as such. The existing BK are forced out as a result of expanding dwellers except in Zone 2 and Zone 5 where existing BK are being brought under the EP Directorate of CDA. Establishment of EEBP in these zones is possible. The cost of the project may not make the IEA mandatory though it is desirable as expansion of the facility would make it mandatory.

#### **4.6 Main Findings - Objective 8**

PDA does not permit BK in its jurisdiction. NWFP EPA has set out regulations to extend the chimney height to 35.5 meters and makes IEE and EIA mandatory for all new BK in the province.

BK exists within the limits of LDA. Punjab EPA is close to sanction a project to ensure EC and ER control for BSOP in Punjab. There is no specific spatial planning for BK in LDA and as the urban limits extend, the land cost discourages BKO to lease the land and their continuity is under threat.

CDA allows existing BK in Zones III to V to operate but is getting to implement some EC and ER control. The BK is likely to be targets of elimination as awareness for EC and ER picks up in CDA.

#### **4.7 Objective 9 - Assess the key actors, resource persons, allies and lobbies.**

##### **4.7.1 Key Actors – BSOP**

Mr Muhammad Shoaib Khan Niazi President APBKOA  
Baba Inayat Masih President APBMU  
Nagra Law Associates  
All DVC through DCO of every District

##### **4.7.2 Key Actors – SDC – SKAT - EEBP TTP**

Individuals working in various capacities as per record available with EEBP office in Pakistan.

##### **4.7.3 Key Actors – NGO and HR Activists**

##### **4.7.4 Key Actors – CDM and ECF including EC and ER – Individuals and Organizations**

Mr. Gulzar Firoze, Chairman of the FPCCI's Standing Committee on Environment  
Ministry of Environment  
Mr. Ehsan Munir, former President of FPCCI  
Mr. Mir Hussain Ali, Secretary,  
Department of Environmental Protection and Alternate Energy, Government of Sindh  
Secretary for Environment, Government of Pakistan.

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Honourable Federal Minister for environment  
Mr. Saadullah Ayaz, Acting Head, CDM Cell  
Mr. Omar Malik, Director of the **Carbon Services**  
Ms. Tasneem Ilyas, Divisional Manger form **SGS- Group (DOE)**  
Mr. Daniel Keiser from Carbon Capital, Singapore  
Mr. Azharuddin from National Environmental Consulting  
Ministry Of Environment & UNIDO Sign a Project  
Ministry of Environment Government of Pakistan  
United Nations Industrial Development Organization (UNIDO)  
Director General Environment Mr. Jawed Ali Khan  
Engr. Shahia Yousif Bakhait UNIDO Representative in Pakistan  
Federal Minister for Environment Mr. Hameed Ullah Jan Afridi  
Secretary Environment Mr. Khushnud Akhtar Lashari.  
Ministry of Environment-Designated National Authority for CDM projects Pakistan

**4.8 Main Findings - Objective 9**

The BKO represented by APBKO, the BKL with no elected unions and the DVC and labour department are the Direct stake holders. The EEBP TTP is the new entrant and likely to play significant role as their projects unfold.

The UN backed international organizations, NGOs, the HR activists, the APBMU and the media are the indirect stake holders that influence projection of HR violations, bonded and child labour issues.

**PART - V**

**5.1 Analysis and Evaluation for Non Implementation of Laws**

**5.1.1 Post Enactment Situation**

The promulgation of the Act and Rules has improved the overall situation on the Brick Kilns in that Children only help their parents in making green bricks which is within the provisions of Employment of Children Act 1991 in general. The employment of children in other processes is negligible and not a source of concern. The non extension of education to children can take a turn around once the general socio economic conditions of the workers is improved and there is some awareness for long term dividends of education among the poor.

The ordinance is being followed by all formal sectors of industry and commercial establishments. Due to general poor state of jobs and returns in the country workers tend to settle for optimum wages in informal sectors of national work force. The implementation status in BSOP is not documented. However as the BSOP labour is paid per piece of green brick, the wages per 8 hours of work are either comparable and in some cases less / more than the minimum wages per capita. Families with all adult composition working with vigour can get more than the minimum wages and those overtaken by bad health tend to get less and thus aggravate their debt situation.

The ordinance is being followed by all formal sectors of industry and commercial establishments. Due to general poor state of jobs and returns in the country workers tend to settle for the job without insisting for coverage under PESSI in informal sectors of national work force. The implementation status in BS is not documented. If enforced it brings the BS worker at par with the industrial worker and ensures eliminating lot of pitfalls in their current terms of employment.

The promulgation of the Act and Rules has definitely reduced the free access of the owners to the labour purely on bonded system. They are being paid better compensation and there is a general awareness of the legal provisions to safe guard their basic rights as being reported by the social and BS related forums. There are forums where dissatisfaction is being shown for laxity on the part of DVC and non registration of many brick kilns. A detailed report has been ordered by the Lahore High court from the provincial Government on Dec 18, 2008. There is a room for improvement and more can be achieved. The reasons for total compliance includes the laxity of major public service providers (Police, Judiciary and, Labour Department). The proposed EEBP can be conveniently encouraged to ensure employment of free labour and adherence to law for enjoying the free TTP for the VSBK – EEBP and failure to do so may attract additional penalties.

**5.1.2 Areas of concern - State Human Report 2007**

These are the extracts from SHR 2007 pertaining to labour in general, that will help the finally recommended and accepted alternative for the BSOP as applicable. They are strategic and Policy issues that will act as guidelines on related issues and are recorded as such to give an independent dimension to the 'Legal Review'.

*Through the Finance Bill 2007, an amendment was proposed in the Companies Profits Act 1968 which would enable contract workers to participate in the Workers Profits Participation Fund;*

**5.1.2.1 Bonded labour**

Bonded labour continues to be one of the most pressing issues facing the country.  
*In order to curb bonded labour, it is recommended that National Identity Cards (NIC) be issued to the brick kiln workers.*

*Non-formal literacy and skill training centres should be established at brick kilns with pilot testing of brick making technologies to check their effectiveness.*

***It is important to devise financial mechanisms for facilitating workers and employers to enable them to launch publicity campaigns pursuing the Supreme Court's October 20, 2006 decision, which directed government agencies and departments to act against bonded labour.***

Pakistan is a signatory to the UN Declarations of 2005 and 2006 to the decent work agenda and the commitment to make full employment for all an objective of national policy. Promotion of equitable growth through provision of productive employment, adequate work conditions and decent living standards, consistent with international labour standards and fundamental rights of workers, should be the central plank of government policy. **Failure by exporters to check child labour or violation of fundamental rights of workers will cost the economy and exporters heavily, since it will result in multinationals shifting their imports to other markets.**

**The following recommendations address loopholes and weaknesses in the current Labour Protection Policy of Pakistan.**

#### **5.1.2.2 Implementation of the ILO Convention:**

It is necessary that Pakistan implements the ILO Conventions to which it is a signatory, as the current system has not only awarded undue protection to employers, it has also threatened the security of employees. Numerous examples testify to this claim:

#### **5.1.2.3 Working conditions**

Improvement in the conditions of work and the treatment of employees at work should be awarded the utmost importance, as currently these pose a threat to the safety of the employees.

#### **5.1.2.4 Rights-based approach**

There is a need to adopt a rights-based approach, along with better security of tenure, collective bargaining and enforcement of minimum wages, as 2007 saw numerous strikes and demonstrations by workers and worker unions claiming secure tenures and minimum wages. For example:

#### **5.1.2.5 Elimination of discrimination against women and children**

It is important to eliminate all forms of discrimination encountered by female workers and children. Reports by the UNICEF and ILO indicate that a very large proportion of the children are working in exploitative conditions. For example:

#### **5.1.2.6 Elimination of unemployment**

There is a need for greater job creation as unemployment has fuelled poverty leading to widespread dissatisfaction in the country. For example:

#### **5.1.2.7 Skill improvement**

There is a need to improve the skills of the labour force and enhance its employability. Some efforts are already being taken in this direction but much remains to be done.

A Child Domestic Labour Centre was inaugurated in Islamabad in November 2007 for providing education and skill training to children working as domestic servants.

Ten more centres were to be opened in the twin cities of Islamabad and Rawalpindi, targeting up to 1,500 children with an aim to providing them with alternative non-exploitative livelihoods.

### **5.1.2.8 Government, employers and labour unions**

Finally, there is a need to strengthen both employers and workers organizations and facilitate their active engagement in development and implementation of the government's economic and social policies. Currently, there appear to be few or no points of convergence between the labour unions and government, as numerous strikes have been organized by workers organizations. For example:

### **5.1.3 Recommendations**

1. "Day labourers" and "contract labour" should be made permanent immediately and should be granted the same facilities as permanent workers. (Not recommended for BSOP in initial stages of its establishment and be kept as a long term goal)
2. The third party system of production should be abolished. (Currently the best option for the BSOP for implementation in initial stages of its establishment and to be improved to give the same dividends as a permanent employee)
3. Legal cases against union leaders should be immediately withdrawn. (The current union Leaders are not from the floor of BSOP and their views be accommodated as 'observers' and agreed by other stakeholders till the BSOP labour has its own true representation as conceived)
4. Police patrols and checkpoints in labour areas should be withdrawn immediately.(This would be a natural outcome of BSA as subsequently discussed)
5. Strict measures should be implemented against managers and police officers involved in anti-labour activities.(The concept is to create a pro sector policy with all stakeholders taking steps in the same direction and there is no anti or pro concept)

### **5.1.4 Report Daily Times Oct 08, 2008**

ISLAMABAD: Bonded labour, highly prevalent in interior Sindh and Punjab in various forms, necessitates effective enforcement of Bonded Labour System (Abolition) Act, 1992, for its elimination. Equally incumbent on all stakeholders is to team up for freeing the society from the illegal practice of paying off loans with physical labour instead of money or goods.

In 1989, the Supreme Court (SC) declared bonded labour unconstitutional and ordered the government to take effective steps for its elimination. There followed passage of a law by parliament to formally prohibit bonded labour in the country and crackdown on those exploiting people through the practice. Accordingly, thousands of debt bondage victims, especially those working at brick kilns, secured freedom. In Pakistan, bonded labourers work under worst human conditions in brick kilns, houses, construction industry, agricultural sector etc. Exact numbers of this tormented lot are not available. However, in most of the cases, social and economic compulsions force families into bonded labour. Intervention by courts relieves such families of their misery. Such cases are brought to the notice of courts after authorities or policemen concerned refuse or fail to provide bonded labourers with justice.

In interior Sindh, Mirpurkhas, Sanghar and Umerkot are the districts notorious for bonded labour. Most of the bonded labourers work for feudal lords, especially in mango, date and banana farms. In the Punjab, majority of bonded labourers are brick kiln workers.

Over the past few years, local courts including Lahore High Court, Rawalpindi Bench, and Islamabad High Court, have taken up many bonded labour cases, especially those related to brick-kiln labourers, from the Potohar region. Such circumstances call for collective efforts by stakeholders for complete elimination of bonded labour, legal experts say.

**5.1.5 Brief on Meeting with Mr. Shoaib Niazi President all Pakistan Brick Kiln Owners Association at Multan Road Lahore on December 17, 2008**

(This Brief has been included to exhibit the views of the most affected stakeholder and author has analysed these views in the entire Report and the recommended solution aims at addressing these issues as well)

The meeting was held in the Public Office of Mr Shoaib Niazi, who is also the Nazim of his area. After a brief discussion, the introduction of VSBK TTP and raising the environment issues he gave his candid views as covered under each of the subjects.

**5.1.5.1 Bonded Labour**

I am a witness to the circumstances leading to the Supreme Court Decision 513 of 1990, which set the stage for promulgation of Abolition of Bonded Labour Act 1991. The Act has not been promulgated as per the directions of the Supreme Court and does not address the core issues. The Act was promulgated only to please the ILO and NGOs who keep blowing the trumpet of bonded labour.

The ground reality is that after the first SC decision the labour went off the Brick Kilns and then got into fresh unwritten contracts by taking advances and the system of Peshgis was fully in place along with the agency of Jamadar and Jamadarni prohibited by the SC Decision 513. The SC particularly directed not to follow the Indian legislation, as in India the Peshgis is with interest that makes the return virtually impracticable. We in Pakistan just desire the return of our original advanced money by producing the promised bricks. I do not understand how and where it becomes unrealistic. On the positive side, this decision acknowledges that most Brick Kiln Owners (BKO) are honest, patriotic and are willing to help the labour, and most labours are patriotic and do not exploit the BKO,

**5.1.5.2 Post Enactment Scenario**

I was also present when the Supreme Court gave the orders in their Case 232 of 2001, wherein a bonded labour case was registered for recovery of labour from a BK in Rajanpur. The case came to lime light after the enactment. Here in the court has given directions to be implemented by the Government. The Court Decisions exist but have not been implemented. The court has directed the law to be more stringent but there is no response from the legislators. The Act though otherwise deficient in meeting the challenges posed by ground realities, has not been implemented in letter or spirit as visualized (My observations notwithstanding). The total stoppage of the existing labour as per the Act would lead to total stoppage of Brick Kilns.

**5.1.5.3 NGOs and Bonded Labour**

It is sad to see that some NGOs and others working for international organizations, posing as the pioneers of abolition of bonded labour, plant the cases against the BKO to score a plus for themselves. In one case one individual got a total of Rs 6.5 Million from six different BKO in one year. The standard pattern was that after taking the advance a bailiff was sent to the BK, the labour had already been briefed and they would get away with the Peshgis with no return to the BKO. A case pending in the court, the labour available for yet another advance from another party, another raid by bailiff, another court case, another adverse projection in the world press, another assumed violation of human right another negative point in Pakistan' kitty, all at the cost of BKO and BSOP. However the good luck is that we know it is one person doing it six times and I am moving the legal proceedings accordingly.

**5.1.5.4 Financial Implications of Peshgis**

To give you the financial magnitude of the Peshgis, a BKO spending around a million plus on the entire kiln may have advanced in excess of 8 - 10 Million. We need a respite from this exploitation

of the labour and are seriously working on a "Pug Mill" that could one day rescue the BKO, some of the BK has already converted them and more would do so. This would spare the labour and I agree with you that we must redress the problem rationally or else we would increase the unemployed who may have to be trained for other vocations. The mechanization would increase the demand for Electricity, which is already too expensive and least available when most wanted.

#### **5.1.5.5 Ground Realities**

Our offer to the Government is to recognize the fact that all the BK labour has to be advanced money, why not get into a written tripartite agreement involving the labour the BKO and the Labour Department. Why should the finance not come through the bank at nominal rates as for SME? Why should the law not recognize the mutual rights of both the parties involved in the transaction. I must say the role of so called unions is negative, as just a dictatorial demand that labour rate be increased from Rs 350 per K to Rs 400 per K of green bricks be made, does not enable the BKO to generate these resources. The government must regulate these activities and must play a positive role to regulate the process rather than leave it to professional thugs.

On the side line of the issue, is it not worth pondering that category of labours other than the Green brick makers also avail the advances, but it is only the later, who is termed as the Bonded Labour, willing to register the cases and run away with the advance? They all live under similar conditions, but only one category is being exploited and subject of international exploitation of the BSOP. All categories of contractors are given Mobilization Advance under a proper warranty, why can't this facility be extended to the brick making contract labour?

#### **5.1.5.6 Implementation of Labour Laws and Social Concerns**

In brief we as BKO are willing to pay reasonable share for both the SS and EOAB, provided the Government can ensure that the envisaged facilities are ensured to reach the BK labour. The labours do not have NIC which is the basic document for registering the labour, paying his dues and for the labour to get the social and EOAB. We request the state to proceed with speed for issue of NIC. I do not buy the idea of registering few labours with NIC and leave the remaining to the misery. We as BKO are willing to certify the credentials of the labour that works with us for a reasonable time, and we know them well enough for issue of NIC. I would like the medical facilities to BK labour and suggest mobile dispensaries for Brick Kilns. I am willing to contribute for better living conditions for BK labour, if there are practical steps taken by the state to ensure even handedness.

#### **5.1.5.7 Minimum Wages**

Talking about the minimum wages, the EOAB Contributions, the SS contributions, the Medical Cover, the Education of Labour's Children, improved living conditions, and all other related issues, I on behalf of the BKO confirm that let the government or any other agency take any step towards the rights of the labour and we shall not be lagging behind in this effort. We are willing to allocate space for schools, let the state provide the facilities. I suggest that to ensure that the children actually attend the school, a stipend of say Rs 10 per day may be fixed, to encourage the parents that their child is earning and they are gainers and not losers.

#### **5.1.5.8 Factory or Industry**

A reference to ground realities is necessary before categorizing the BK as a Factory, Industry, manufacturing concern or an establishment, as indicated in various labour laws. The nature of work in green brick making is such that their compensation is based on their output. They have their own timings to suit their work. In winters they start at 10AM, in summers they work at night and thus overcome the weather hazards, the factory environment cannot be created for them at site. They regulate their own outputs and do not like to be supervised. One day they turn out 2000 bricks and on another day none. They would work only if the entire family joins them or else there is no output.

SC 513 lays the responsibility of the child labour on BK squarely on the parents who may be taken to the court for violating the law and not the BKO. The legislation has to be exclusively for BSOP, as has been done for the Fishermen. That is where the salvation lies. We can neither afford non representative unions nor CBA, as we are too small and low profit making enterprise who manufacture a vital item of construction industry and any uncalled for burden will reflect adversely on the cost and business.

#### **5.1.5.9 Broad Data - Brick Kilns**

About the broad data on BSOP, there are around 11000 BK in Pakistan, with around 6000 in Punjab, 2000 each in Sindh and Baluchistan and 1000 in NWFP. The national average size may be taken as 0.5 Million Bricks per kiln per month with varying seasonal outputs. It is only in some areas of Sindh where BKO are influential politicians and large land holders that they have a good grip over their labour, elsewhere the labour exploits the BKO. In Sindh the labour from NWFP is willing to work on very low rates and local labour except under the influence of the few, does not like to work for the BK.

#### **5.1.5.10 Suggested Areas for Improvements in BSOP**

The land in Central and Southern Punjab is such that the borrow areas, get exhausted after some years and become too distant and the BK have to be shifted. This negates any large scale fixed investment on new technologies and we are thus content with our present design. We need improvement in three areas. No 1, we need pug mills to get better control over green brick making. We need to reduce the cost of fuels and shall welcome any technology that can be used to recycle the hot exhaust gases back to the kiln for fresh green bricks. We need to do something about the environment issues, because as the population explodes the BK tends to get into city limits and the flue gases tend to become the concern of the dwellers who force a closure and the kilns have to be shifted. The chimney discharge at a height of 65 feet and there is no effect on the environment. If there is something more damaging, we have not been educated in that. If there are problems, bring the solutions and we shall implement them.

#### **5.1.5.11 VSBK TTP**

The VSBK that you are suggesting now has failed in Pakistan and I and most of the BKO have no confidence in it. The mere fact that each shaft has a limited output and higher initial cost makes it unattractive. I shall definitely like to see the progress on site and see if it overcomes the previous problems. It has failed in the past and future will be no different.

I suggest making the technical solutions and improvement on existing BTK to economise on fuels and address the environment issues as well. Our doors are open and I am willing to discuss any EEBP TTP or any other TTP at a convenient notice, to make my services available to the desired improvements. Give me a solution and I shall get it implemented, not the VSBK, it is too heavy on initial investment, with very little chances of success. I wish VSBK TTP success, and request for Research on our existing BTK Technology to see Pakistan prosper in Brick making as a world Leader.

#### **5.1.5.12 A word of Thanks**

I thank you for giving me an opportunity to express my views and hard work being put in by you on your assignment. I have spent a lifetime in the BSOP and shall extend help in transfer of any technology that can reduce the fuel input and address the environment issues. Thank you.

#### **5.1.5.13 Acknowledgement**

It is with deepest sense of gratitude that I acknowledge the contribution of my friend and brother, Engr Muhammad Ayub Jafferi, for arranging the meeting with me and giving valuable advice on BSOP, his keen interest in environment needs to be harnessed. It would have not been possible to

locate the very busy man, involved in public dealings with offices spread all over his vast area of influence.

#### **5.1.5.14 Tele Conversation with Advocate Nagra**

It was a pleasure talking to Advocate Nagra, who promised to give his views as presented to SC in the bonded labour case, by mail. He also confirmed that there are no Child Labour cases, minimum wages cases, SS or EOAB cases lodged against the BSOP. It is the “bonded labour” as perceived by various stakeholders that is a matter of concern and litigation. This confirms our search for these cases on “Lawsite” that does not have any cases on record on the subject other than bonded labour and issues raised therein.

### **5.2 Alternatives and Recommendations**

#### **5.2.1 General**

The BSOP is employing around 2 million labour and each one of them is neither working under physical threat of life nor is free enough to take on alternate profession. There are genuine concerns of all the stakeholders directly involved with BSOP, the labour, the BKO and the Government. The international and local concerns are voiced by a potent force of NGOs, HR activists and the Unions, who are indirect stakeholders. A solution to be fair and effective needs to be well thought out and satisfy all the stake holders.

The fact that enacted laws, lack the IMPLEMENTATION thus defying the very purpose for which they were promulgated, is a reality that cannot be denied. The IMPLEMENTATION is not being hindered by lack of legislation (Gaps as indicated notwithstanding). If something is lacking it is the POLITICAL WILL to put the things in their RIGHT perspective. This dismal state cannot be accepted as “The Hurdle” to impede any positive initiative that is important, and can help SKAT – SDC to undertake a Technology Transfer Project in BS namely EEBP (In VSBK mode or any other alternative) within the micro and macro perspective as conceived).

EEBP TTP needs to involve itself and guide the entire BSOP to set conditions right, only to ensure safe transition of the entire to VSBK TTP or alternatives as established in future through indigenous R&D or sharing the post VSBK experience of our eastern neighbours and Nepal.

In case EEBP desires to introduce few units of VSBK TTP, hoping the wisdom will prevail and the BSOP is vibrant enough to maintain the impetus, it may not be so. However if BSOP is established with VSBK getting foothold in a created congenial environment, the success of TTP would pay dividends both in terms of EC/ER and lifting the entire sector to accept new ideas beyond VSBK TTP. A platform needs to be established and the initiative rests with the EEBP at this point in time.

The solution has to be the collective effort of all the stake holders arrived at after mutual agreement and respecting each other’s well defined domains ensuring that the benefits are shared as agreed, with inbuilt implementation, monitoring, QA, technical control, social justice and adherence to the existing laws on the related domains, dispute resolution mechanism avoiding interference of major public service providers (Police, Judiciary, Excise and Taxation, Labour Department), with state benefits restricted to supply of bricks at a rate composed by input elements linked to cost of fuel and labour as agreed between the “ Designated BS Authority and the Government. The Sales Tax is not payable by the Sector. The contribution to social security to be agreed at lump sum rates instead of percentage or function of emoluments. Provincial Government is providing Education facilities to all the citizens and non utilization by the BS should be penalized by the BS Authority.

#### **5.2.2 Problem Areas**

The basic problem stems from poverty and lack of resources to enable the state to ensure proper legislation, effective implementation and integration of all the stakeholders to see the BSOP deliver its bit, in the national Economy.

The legal provisions have flaws but the sector continues to produce bricks, hence as a base line the existing laws may be implemented and where necessary modified, till a platform is available for a revolutionary legislation that matches the aspirations of all stakeholders.

The most important area that concerns the issue is the ability of the assigned implementation machinery to monitor the implementation. The labour department, the law enforcement agencies and the courts are overworked and BSOP is not their priority, more by compulsion than by incidence or choice. So this is one area where a dedicated "Regulatory Mechanism" is required.

Generally the provisions of labour laws are not BSOP specific, there is definite need for a "Legal Mechanism" to integrate all the existing laws and confirm their application to BSOP and coordinate with the Regulatory mechanism to see the problems in implementation and seek and devise legal remedies.

There is also a need to expand the scope of existing "Bonded Labour Fund" to be utilized for the welfare of BSOP labour, and a central authority to regulate its genuine expenditure for the welfare of BL in BSOP.

The potent problem of EC and ER makes it worthwhile to integrate the TTP as a core technical issue for implementation of existing technologies and establish an R&D facility to establish other TTP that is indigenous and the stakeholders are involved in developing it, so they adopt it as their own solution.

### **5.2.3 Possible Alternatives**

#### **5.2.3.1 Alternative 1**

Attempt an improvement over current status and ensure implementation of existing laws with the help of the existing agencies by selecting specific districts and concentrating on ensuring implementation of laws by those accepting to enjoy the benefits of EEBP-TTP. The stake holders be got on board and hope things to improve, by using legal and moral influence, continuing to establish EEBP TTP in carefully selected areas. The minimum requirement is to see some department preferably Labour and or Police Department to come to the rescue.

Chances of this alternative to meet success are remote. However a little push can improve the situation in specific areas, say ICT. This is an acceptable alternative if EEBP plans to restrict its scope for a short period, to few shafts say up to 20 shafts or so.

#### **5.2.3.2 Alternative 2**

Create a dedicated EEBP set up as part of TTP to carry out necessary liaison with the stakeholders and the implementation agencies by selecting specific districts and concentrating on ensuring implementation of laws by those accepting to enjoy the benefits of EEBP-TTP. The major difference is the dedicated liaison element not available in the Alternative 1.

Chances of this alternative to meet success are reasonable. However a little pushes can improve the situation in specific districts. As a base line, if EEBP plans to restrict its activities to Islamabad and only desires to go up to 50 or 60 shafts in next three years, it would be prudent to ignore the shortfalls in law, its implementation and social security cum HR issues and proceed with setting the stage for completing technical formalities to register the VSBK TTP with CDM and get its certificates for international trading and be pioneer in this sector in Pakistan as well.

#### **5.2.3.3 Alternative 3**

Create a BS controller at Ministry Of Environment to be supported by fully Autonomous Regional Brick Sector Authorities (RBSA).

RBSA is controlled by a BOD composed of nominees of Brick Sector Stakeholders (BSSH). The BOD is responsible for ALL activities related to BS encompassing every EEBU, land, labour, technical inputs (environmental, QA) , financial, social, health, education, housing, pricing, demand and supply, law and order on the premises, immunity from service providers and ensuring dispute resolution.

This is a possible recipe that is best suited to the BSOP. It will get modified and improved, once we accept it after due diligence and adjust the proposal as we move forward. In fact here we have total control and if we do not achieve the desired results in assigned time, we can stop and withdraw. The EEBP would take its roots and possibly offer an option to the remaining BSOP to come up with initiative and expand the operations on self help basis.

#### **5.2.4 Basic Recommendation**

Follow up Alternative 3 for which further details are covered in subsequent paragraphs.

#### **5.3 What is to be done?**

The international funding agencies should be approached to pool their resources and help BSOP raise an infrastructure that accepts the challenge to carry out all the designated functions. This be preceded by creating a legal entity of Brick Sector Authority (BSA) that has the powers to make rules and regulations encompassing the entire sphere of activities of BSOP as a one window operation. The Pak EPA is the best forum to dovetail our requirements to the existing reviews pertaining to environment. It is the environment issues that dictate us to set the house in order as the gain is primarily in this sector and other issues though essential and demanding will find a solution in this vibrant and expanding arena.

This is a tall order, but the existing machinery has neither the capacity nor the mandate to handle a sensitive sector with its specific problems. The NGOs may join hands and geographically take on the awareness, social support, and education, vocational training and work for the BK labour rather than pointing out lacunas with existing law or its implementation.

In short let us get together and move in one direction and things will shape up as we move forward. An organization up to district level is indicated, with couple of districts being teamed up where number of BK so dictates. At the federal level we need to concentrate on coordination with the Federal Ministries, covering legislation, R&D, quality control and management, funding and projection. The Provincial set ups have to concentrate on implementation of social security, Community health, minimum wages, housing and facilities, labour laws and community participation.

This has to be Revolutionary in planning but not necessarily in execution. It could be Evolutionary by adding districts as we succeed and not increase our upfront expenses. The districts that show more promise could be the priority. Similarly not all the provinces become part of the scheme on day 1, we establish, we are strong and we grow. The concept and planning needs to be extensive, with very clear perceptions and long term vision rather than an overblown PR with no depth.

#### **5.4 Recommendations to EEBP TTP**

Select EC and ER as the basic theme to select an umbrella to develop EEBP TTP, incorporating CC under CDM as the primary source of future development of EEBP in Pakistan. Live with existing laws and introduce EEBP TTP and increase involvement as resources are available.

Aim for a Federal Brick Sector Authority in stages and evolve Provincial Brick Sector Authority on graduated scale and interact with the state machinery to develop legislation specific to BSOP for labour and social security laws using system based approach and involving all stake holders,

ensuring mutual respect, to address the problems of BSOP and create a specific implementation mechanism aimed at reducing the number of public service agencies to the minimum.

Add R&D, QA and NEQS and dispute resolution to the implementation mechanism agenda.

### **5.5 Recommendations for the Government**

The Government needs to incorporate the informal BSOP in their development goals and extend poverty alleviation programmes to mitigate the suffering of labour in this neglected sector that has extensive economic potential for growth. The data base needs to be established to develop the sector with R&D and TTP under a central coordinating and implementing authority.

Develop legislation specific to BSOP for labour and social security, and community health laws using system based approach, involving all stake holders ensuring mutual respect, to address the problems of BSOP and create a specific implementation mechanism aimed at reducing the number of public service agencies to the minimum. Let community participation take roots.

Let representative BKL unions, NGOs, HR activists and development agencies be part of the solution.