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Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance



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Abbreviations

ATU	Anti-Trafficking Unit (FIA), Pakistan
FIA	Federal Investigation Agency, Pakistan
IOM	International Organization for Migration
NGO	Non-Government Organization
PISCES	Personal Identification Secure Comparison and Evaluation System
UAE	United Arab Emirates
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Fund
UNODC	United Nations Office on Drugs and Crime
US	United States of America
USD	United States Dollar

Islamic Republic of Pakistan

Figure 1 Islamic Republic of Pakistan, map (2004)



1. Introduction

1.1 Background

Trafficking in persons is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them. Trafficking in persons, and associated criminal activities such as money laundering, document fraud, and corruption, is of imminent concern to Pakistan.

Virtually every country in the world is affected by these crimes. Recent reports confirm that Pakistan is simultaneously a sending, transit, and destination point for trafficked persons. Domestic trafficking, especially of women and children, is also of ongoing concern.

The challenge for all countries, rich and poor, is to target the criminals who exploit desperate people and to protect and assist victims of trafficking, many of whom endure unimaginable hardships in their bid for a better life.

In response to the emergence of trafficking in persons, the Government of Pakistan has taken decisive action to develop national strategies to prevent and suppress these crime types and protect the rights of victims. In 2002, a *Prevention and Control of Human Trafficking Ordinance* was enacted. This was followed by the development of a *National Action Plan for Combating Human Trafficking* and the creation of an Anti-Trafficking Unit within the Federal Investigation Agency (FIA), Pakistan's premier national law enforcement agency.

In international law, since its inception in the year 2000, the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*¹ has become the principal and most universal framework to address the phenomenon of trafficking in persons. The purposes of the Protocol, as stated in Article 2 are:

- a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- b) To protect and assist the victims of such trafficking, with full respects to their human rights; and
- c) To promote cooperation among States Parties in order to meet those objectives.

UNODC, the United Nations Office on Drugs and Crime, is the guardian of the United Nations *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* and the *Convention against Transnational Organized Crime*.² UNODC leads international efforts to comprehensively prevent and suppress trafficking in persons and protect the victims of this heinous crime. UNODC's Country Office in Islamabad stands ready to assist Pakistan's authorities in their efforts. In April 2010, UNODC requested the services of an independent expert to assess the compliance of national laws and regulations in Pakistan against the requirements of international law and international best practice relating to trafficking in persons, especially women and children.

¹ 40 ILM 377 (2001).

² UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, UN Doc A/55/383 (2 Nov 2000) Annex I. The text has also been reprinted in (2001) 40 ILM 335.

1.2 Objectives

The purpose of this report is to identify domestic laws, regulations, and policies in Pakistan relating to trafficking in persons and assess them against the requirements articulated in international law and the standards set by international best practice guidelines.

Based on this assessment, recommendations for law reform, policy change and for further analysis are made.

1.3 Organization and Contents

This report is divided into five parts. Following this introductory part, Part 2 briefly highlights the contemporary patterns, levels, and characteristics of trafficking in persons and associated crime in Pakistan. Part 3 of this report examines current Pakistani laws, regulations, and policies against the standards set by international law, specifically the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. Part 4 analyses issues relating to domestic trafficking of Pakistani nationals and the return of trafficked persons to Pakistan. The recommendations based on the assessments made in Parts 3 and 4 are summarized in Part 5 of this report.

1.4 Methodology

1.4.1 Domestic Instruments

The assessment of Pakistan's laws relating to trafficking in persons is based, for the most part on the *Prevention and Control of Human Trafficking Ordinance 2002*, Pakistan's principal and most authoritative instrument to prevent trafficking in persons. The text of the Ordinance, which is reproduced in Appendix A of this report, is based on the version published by the Federal Investigation Agency (FIA) of Pakistan.³ Other versions of this Ordinance were not available at the time of writing.

The Ordinance is supplemented by the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan), which articulate a range of regulatory measures, mostly relating to victim protection and law enforcement. The assessment of these Rules is based on the version published by the Federal Investigation Agency (FIA) of Pakistan.⁴ Other versions of these Rules were not available at the time of writing.

In addition, Pakistan has set out a comprehensive policy document relating to trafficking in persons, known as the *National Action Plan for Combating Human Trafficking*. The Action Plan has been reproduced in several versions, which are referenced accordingly throughout this report. Additional laws, regulations, and other documents are referenced in full throughout the report.

³ The full text of the Ordinance is available at Pakistan, FIA, *Prevention and Control of Human Trafficking Ordinance 2002*, available at www.fia.gov.pk/pchto2002.htm (accessed 4 May 2010).

⁴ The full text of the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) is available at Pakistan, FIA, *Prevention and Control of Human Trafficking Ordinance 2002*, available at www.fia.gov.pk/pchto2002.htm (accessed 4 May 2010).

1.4.2 International Law and Practice

Pakistan's laws, regulations, and other measures relating to trafficking in persons are assessed against the mandatory and optional requirements contained in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.⁵ Complementary provisions under the *Convention against Transnational Organized Crime*⁶ are also identified. The *Interpretative notes for the official record (travaux préparatoires) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto* [hereinafter *Travaux Préparatoires*] complement these documents.⁷

To identify compliance with these instruments, and identify areas for law reform and policy change, the following documents have been consulted as they most accurately articulate international best practice and treaty compliance in relation to trafficking in persons:

- UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, New York, NY: UN, 2004;
- UNODC, *Toolkit to Combat Trafficking in Persons*, UNODC: Vienna, 2009; and
- UNODC & UN.GIFT, *Model Law against Trafficking in Persons*, Vienna: United Nations, 2009.

A complete list of sources referenced is set out at the end of this report.

1.4.3 Limitations and Obstacles

It has to be noted that upon commencement of this assessment, the authors were not furnished with any basic documents, records, or other information relating to current laws and regulations relating to trafficking in persons in Pakistan. Specifically, no official copies of the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan), the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) were made available to the authors. As this report was completed exclusively outside Pakistan, the authors were unable to access supplementary material such as parliamentary bills, explanatory memoranda, and were unable to consult with experts on Pakistani law, with international organizations, and non-government organizations.

The combination of these factors places obvious constraints on the ability to comprehensively analyze Pakistan's laws and regulations relating to trafficking in persons. Accordingly, the information presented in this report should be considered as an indicative snapshot rather than a detailed account of laws and regulations relating to trafficking in persons in Pakistan.

⁵ 40 ILM 377 (2001).

⁶ 40 ILM 335 (2001)

⁷ UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions; Addendum: Interpretative notes for the official record (travaux préparatoires) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto*, UN Doc A/55/383/Add.1 (3 Nov 2000) [hereinafter *Travaux Préparatoires*].

2. Settings

2.1 Trafficking in Persons in Pakistan

The US State Department's *Trafficking in Persons Report* 2009 describes Pakistan as 'a source, transit, and destination country for men, women and children trafficked for the purposes of forced labor and sexual exploitation'.⁸

The country's most pervasive human trafficking problem is said to be that of bonded labor, particularly in Sindh and Punjab provinces, and is centered around brick kilns, carpet-making, agriculture, fishing, mining, leather tanning, and production of glass bangles.⁹ While estimates vary considerably, according to some sources Pakistani victims of bonded labor — including men, women, and children — may be in excess of one million. Elsewhere, it has been estimated that in 2005, 23,000 families in Pakistan were impacted by human trafficking.¹⁰

Trafficking of Pakistani men and women who voluntarily migrate to the Gulf States, Iran, and Greece to engage in low-skilled employment remains an ongoing issue. Fraudulent job offers and exploitative recruitment fees result in situations of forced servitude and debt bondage once abroad. This includes restriction of movement, withholding of wages, threats, and physical and sexual violence.

Women and girls also constitute a significant target for trafficking in and out of the country. Women are traded between different tribal groups as forms of payment and to settle disputes, while girls are sold by their parents into forced marriages, domestic servitude, and prostitution.¹¹ Non-governmental organizations (NGOs) report that Pakistani girls are also trafficked to Middle Eastern countries for sexual exploitation.

Pakistan serves as a destination for women and children from Afghanistan, Azerbaijan, Bangladesh, India, Iran, and Nepal, trafficked principally for forced labor. The country further operates as a transit point for women from Bangladesh and Nepal trafficked into the Gulf States.

Pakistan's Federal Investigation Agency (FIA) also reports that hundreds, perhaps thousands, of children, primarily from the Rahimyar Khan and Bahawalpur Districts, have been trafficked to the United Arab Emirates (UAE) to be used as jockeys for professional camel races. The children are said to have ranged from four to twelve years of age, with fatalities and severe injuries a common occurrence. According to the FIA, the majority of reported jockey trafficking was orchestrated by agents through the use of imposter parents and fake birth certificates. Agents were also found to have assisted biological parents in the trafficking of their own children while, in other cases, parents arranged the process themselves.¹²

⁸ US, Department of State, *Trafficking in Persons Report* (2009) 231.

⁹ US, Department of State, *Trafficking in Persons Report* (2009) 231.

¹⁰ Tariq M Khosa, *Human Trafficking: Victim Support*, presentation by the Additional Director General, FIA, November 2006.

¹¹ US, Department of State, *Trafficking in Persons Report* (2009) 231.

¹² Pakistan, FIA, *Anti-Trafficking Unit*, available at http://www.fia.gov.pk/dep_trafficking.htm (accessed 4 May 2010); Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 45.

In 2005, the Government of the UAE introduced a ban on the use of children as camel jockeys below 45kg in weight and 14 years of age. According to information provided by the FIA, the same year saw 185 children deported back to Pakistan, with 101 children returned to their parents while 84 still remained in the custody of the Child Protection and Welfare Bureau Government of Punjab in Lahore. Another report claimed that 500 child camel jockeys were repatriated to Pakistan in 2005 and that 72 agents and facilitators were arrested in the same year.¹³ The FIA reports that, to date, 69 camel jockey cases have been registered with the FIA Anti-Trafficking Circle in Lahore, resulting in the arrests of 49 individual parents as 'facilitators', as well as three agents and sub-agents. Cases remain under investigation and no convictions or acquittals have yet to be recorded.¹⁴

The prevention of camel jockey trafficking and the securing of related convictions appear to be a priority for the FIA's Anti Trafficking Unit. The FIA also notes that intelligence networks have been concentrated in areas prone to the trafficking of children as camel jockeys in an effort to unearth the location of agents. Immigration check-posts have also reportedly been briefed on the profiling of women accompanying children to the UAE, and close collaborations between the FIA and other law enforcement agencies have been established to focus on trafficking through the Pakistan-Iran border.

Despite its intensified efforts, the FIA notes several problems in securing the arrests of agents involved in the camel jockey trade. These include a shortage of staff and vehicles as well as the refusal of facilitator parents to provide reliable details and information about agents. A recent FIA operation charged with the locating and arresting of known agents reportedly failed due to incomplete or false addresses provided by facilitator parents.¹⁵

2.2 Associated Crime

While the link between trafficking in persons and other forms of organized crime appears to be weak, the phenomenon of trafficking in persons is frequently reliant on a range of auxiliary criminal services often crucial to the success of journeys which involve several agents and facilitators and are typically multi-modal.¹⁶ Three such associated crimes that complement trafficking in persons in Pakistan are that of document/identity fraud, money laundering, and corruption.

2.2.1 Document fraud

Irregular migrants, including victims of trafficking in persons, are usually required to establish their identity either prior to or at some point during their journey. To meet this need, a plethora of specialized service providers exist to assist migrants in the production of particular documents and provision of identity documents and other credentials. For example, criminal elements in Pakistan possess the expertise to tamper with genuine foreign passports and visas.¹⁷ A sophisticated photo substitution in Pakistan costs up to

¹³ Tariq M Khosa, *Human Trafficking: Victim Support*, presentation by the Additional Director General, FIA, November 2006.

¹⁴ Pakistan, FIA, *Anti-Trafficking Unit*, available at http://www.fia.gov.pk/dep_trafficking.htm (accessed 4 May 2010).

¹⁵ Pakistan, FIA, *Anti-Trafficking Unit*, available at http://www.fia.gov.pk/dep_trafficking.htm (accessed 4 May 2010).

¹⁶ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating Migration from Pakistan and Afghanistan* (2009) 16.

¹⁷ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating*

USD 1200.00 on top of the cost of a passport, and forged or doctored passports will also be replete with fake entry stamps and visas to establish a reliable travel history.¹⁸

Technological advances and the intensive use of in-built security features has made forging or tampering with passports increasingly challenging. Thus visas, being more vulnerable than passports, are likely to remain the preferred target of document fraud for some time. Officials in Pakistan remain confident that efforts to prevent the use of tampered documents and visas are successful in most instances, and that the practice only accounts for a small proportion of the criminal industry complementing irregular migration.

The increased challenge presented by forging travel documents has seen a shift towards imposters obtaining and travelling on genuine documents, primarily sourced through diaspora networks. Theft of documents does occur, but trade is the most common scenario, with often substantial delays before a seller reports their passport as lost or stolen.

Fraudulent applications for local identity documents are also a feature of irregular migration by air. According to UNODC, it appears that smugglers are targeting vulnerabilities in the application process to obtain authentic passports for fraudulent identities or to be used by imposters. However demand for such services has waned, due to a move towards irregular migrants using stopovers on air routes to meet up with facilitators and receive documents and false identities, particularly in the Middle East. The need to leave Pakistan with a false identity is minimal in such instances and, instead, migrants can depart using their own genuine passport.¹⁹

Fraudulently assisting migrants in meeting visa requirements also accounts for a significant proportion of the criminal activity facilitating irregular migration. Core services include advice on how migrants can make false representations in applications and the production of documents such as bank documents, education qualifications, and employer references to corroborate application claims.

2.2.2 Money laundering

The high revenues generated by the criminal industry facilitating illegal migration, including trafficking in persons, and the tendency for transactions to be executed in cash, necessitates the laundering of significant amounts of money, particularly by those operating within larger criminal networks. Principal methods include depositing funds with financial agents who arrange for money to be transferred offshore, purchasing property with proceeds of crime offshore, particularly in the UAE, and the manipulation of existing company accounts and invoices in order to transfer money into corporate accounts.²⁰

The transfer of money to others within the criminal network is also a necessary component of operations, comprising both the use of informal value transfer systems and established companies such as Western Union. The movement of money from Pakistan into Iran often involves the purchasing and smuggling of goods into Iran, later to be sold to effect an intra-network transfer.

Migration from Pakistan and Afghanistan (2009) 19.

¹⁸ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating Migration from Pakistan and Afghanistan* (2009) 19.

¹⁹ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating Migration from Pakistan and Afghanistan* (2009) 22.

²⁰ UNODC, Country Office Pakistan & Country Office Afghanistan, (2009) 59.

2.2.3 Corruption

Corruption of government officials, especially at border control points, can serve to facilitate irregular migration if relevant officers are paid to ‘turn a blind eye’ to illegal border crossings. UNODC’s 2009 report entitled *Crime Facilitating Migration from Pakistan and Afghanistan* found that ‘[l]ow-level corruption at border crossings — especially land borders — appears to be institutionalized, to the extent that escorts can cite standard rates per migrant.’²¹

²¹ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating Migration from Pakistan and Afghanistan* (2009) 60.

3. Legislation

Pakistan's laws relating to trafficking in persons have been updated following the country's accession to relevant international treaties. On December 14, 2000, Pakistan signed the United Nations (UN) *Convention against Transnational Organized Crime*.²² The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,²³ which supplements the *Convention against Transnational Organized Crime*²⁴ has, to date, not been signed by Pakistan²⁵ although elements of the Protocol have been introduced into domestic law.

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan)²⁶ is the principal instrument to prevent and suppress trafficking in persons and is based in large parts on provisions under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. The *Prevention and Control of Human Trafficking Ordinance 2002* is supplemented by the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan),²⁷ which set out investigation and prosecution procedures, mechanisms in relation to security, welfare, and accommodation of victims, the involvement of non-governmental organizations (NGOs), and provisions relating to the repatriation of victims to their countries of origin.²⁸

It should be noted that under the *Constitution of Pakistan* slavery is not a legally recognized concept, and, together with all forms of forced labor and trafficking in persons is prohibited.²⁹ This signifies the high-level recognition of the problem of trafficking in persons in all its forms and the Government's commitment to act against it.

Furthermore, there are a number of other sources of legislation that may be relevant to the criminalization of activities associated with trafficking in persons, sometimes referred to as 'the end products of trafficking'. The *Penal Code* (Pakistan)³⁰ defines a number of offences related to kidnapping, abducting, slavery, forced labor, and forced prostitution.³¹ The *Bonded Labor System Abolition Act 1992* (Pakistan) also contains a number of offences relevant to forced labor. Finally, the *Suppression of Prostitution Ordinance 1961* (Pakistan) contains an offence of bringing or attempting to move any woman or girl between provinces for the purpose of prostitution.³² These offences are, however, not further examined in this report.

In early 2010, a Bill to enact a new *Prevention and Control of Women Trafficking Act* was introduced into the National Assembly of Pakistan. This Bill was specifically designed to

²² 40 ILM 335 (2001).

²³ 40 ILM 377 (2001).

²⁴ Article 1(1) *Trafficking in Persons Protocol*.

²⁵ UNODC, *Signatories to the United Nations Convention against Transnational Crime and its Protocols*, available at www.unodc.org/unodc/en/treaties/CTOC/signatures.html (accessed 4 May 2010).

²⁶ The full text of the Ordinance is available at Pakistan, FIA, *Prevention and Control of Human Trafficking Ordinance 2002*, available at www.fia.gov.pk/pchto2002.htm (accessed 4 May 2010).

²⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 91–92.

²⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

²⁹ Article 11(1), (2) *Constitution of Pakistan*.

³⁰ Act XLV of 1860.

³¹ Sections 359-374 *Penal Code* (Pakistan).

³² Section 9 *Suppression of Prostitution Ordinance 1961* (Pakistan).

criminalize trafficking in women into and within Pakistan, but it lacked sufficient support to be enacted.

3.1 Use of Terms

Section 2 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) sets out relevant definitions. The following Sections identify and examine the most significant terms.

The definition of ‘child’ as ‘a person who has not attained the age of eighteen years’³³ conforms to Article 3(d) of the *Trafficking in Persons Protocol* and as such is unproblematic. The definitions of ‘Code’³⁴, ‘Government’³⁵ and ‘document’³⁶ are either unproblematic or of no relevance to this assessment and need no further examination.

3.1.1 ‘Benefit’

Current Pakistani Law

Section 2(a) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘benefit’ to include ‘monetary profit, proceeds or payment in cash or in kind’. The definition of ‘benefit’ is relevant to the definitions of ‘human trafficking’³⁷ and ‘organized criminal group’³⁸ as well as for the trafficking offences in subs 3(i) and (iii). It is used in a number of contexts. The relevant definitions and offences recognize that a person may traffic another person for the purpose of attaining a ‘benefit’, but a ‘benefit’ may also be given or received as a means by which to traffic the person.

International Law

There is no specific guidance on the definition of ‘benefit’ from either the *Trafficking in Persons Protocol* or the *Model Law against Trafficking in Persons*. However, the definition of ‘trafficking in persons’ in Article 3(a) *Trafficking in Persons Protocol* does not restrict the meaning of ‘benefit’ to financial benefits.

Assessment and Recommendation

Although there is little guidance from international law about what a ‘benefit’ should include, there is a noticeable deficiency in Pakistan’s definition of the term. Significantly, it only includes benefits of a financial kind. This excludes other forms of benefits, such as property, services (such as transportation, sexual services, labor etc), and other material and non-material benefits. It would be desirable to expand the definition in that way or leave the term undefined and open to judicial interpretation.

³³ Section 2(b) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

³⁴ Section 2(c) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

³⁵ Section 2(g) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

³⁶ Section 2(e) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

³⁷ Section 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

³⁸ Section 2(j) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Recommendation 1:

Redefine the term ‘benefit’ in s 2(a) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include non-financial benefits. Alternatively, the term may be left undefined such that there is no limit to the potential scope of benefits a trafficker may receive from trafficking in persons or use to facilitate it.

3.1.2 ‘Coercion’

Current Pakistani Law

Section 2(d) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘coercion’ as the

use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or of infliction of serious harm.

This term is mostly relevant to the definition of ‘human trafficking’³⁹ and the two specific trafficking offences in subs 3(i) and 3(iii). In this context ‘coercion’ is one potential ‘means’ by which to facilitate the trafficking of a person.

International Law

The *Trafficking in Persons Protocol* refers to ‘coercion’ as one of the means by which the act of trafficking may be facilitated. It is used in the following context: ‘by means of threat or use of force or other forms of coercion’.⁴⁰ This suggests that ‘threats or the use of force’ are a form of ‘coercion’. No further guidance on a specific definition of ‘coercion’ is provided by the Protocol.

The *Model Law against Trafficking in Persons* suggests that there are a variety of possible definitions of ‘coercion’ that focus on the ‘objective situation or the situation as perceived by the coerced person’.⁴¹ The suggested definition is that:

“Coercion” shall mean use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to:

- (i) Threats of harm or physical restraint of any person;
- (ii) Any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- (iii) Abuse or any threat linked to the legal status of a person;
- (iv) Psychological pressure.⁴²

Another example suggested by the *Model Law against Trafficking in Persons* includes ‘abuse of authority’ as a form of coercion.⁴³

³⁹ Section 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁴⁰ Article 3(a) *Trafficking in Persons Protocol*.

⁴¹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 11.

⁴² UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 11.

⁴³ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 12.

Assessment and Recommendation

Whilst the definition of ‘coercion’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) meets the standards required by international law, the definition could be improved by extending it to forms of psychological, mental or legal coercion. As it stands, ‘coercion’ can extend to acts or circumstances ‘calculated to have the same effect’ as ‘physical force’. This particular phrase seems open to judicial interpretation and may well allow for other forms of psychological, mental or legal coercion. However, it also creates uncertainty as to what may be considered ‘coercion’. Specific and precise recognition of other forms of coercion would be more effective.

Recommendation 2:

Remove uncertainty in the definition of ‘coercion’ by amending s 2(d) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to specifically include a wider range of psychological, mental or legal forms of coercion.

3.1.3 ‘Exploitative entertainment’

Current Pakistani Law

Section 2(f) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘exploitative entertainment’ as ‘all activities in connection with human sports or sexual practices or sex and related abusive practices’. The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) does not define ‘exploitation’ in any general sense.

‘Exploitative entertainment’ is referred to as one form of exploitation possible in the general offence of trafficking⁴⁴ and is the only form of exploitation in the specific offence of trafficking in women and children for exploitative entertainment.⁴⁵ The definition appears to be aimed at targeting some of the major forms of trafficking in Pakistan, especially sex trafficking and the trafficking of children to Gulf countries for camel racing.

International Law

The definition of ‘exploitative entertainment’ has no equivalent in international law. The *Trafficking in Persons Protocol* does, however, define the broader term of ‘exploitation’ to

include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁴⁶

Assessment and Recommendation

The exact parameters of ‘exploitative entertainment’ are quite unclear and ambiguous. The definition allows for ‘all activities’ connected to ‘human sports or sexual practices or sex and related abused practices’ to be considered as ‘exploitative entertainment’. There is no requirement the ‘activities’ themselves are exploitative and the phrase ‘related abusive practices’ could be interpreted broadly. As such the definition lacks certainty and could apply to unintended circumstances.

⁴⁴ Section 3(1) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁴⁵ Section 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁴⁶ Article 3(a) *Trafficking in Persons Protocol*.

It may be advisable to define ‘exploitation’ generally ensuring that, at a minimum, the forms of exploitation listed in the *Trafficking in Persons Protocol* are included. This definition could include the activities specified in the definition of ‘exploitative entertainment’ as specific forms of exploitation in order to target forms of exploitation that are considered unique local problems.

Recommendation 3:

Substitute the definition of ‘exploitative entertainment’ in s 2(f) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) with a more general definition of ‘exploitation’ that lists the forms of exploitation required by the *Trafficking in Persons Protocol*. If necessary, any unique forms of exploitation specific to Pakistan may be included in the definition on exploitation.

3.1.4 ‘Human trafficking’

Current Pakistani Law

Section 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘human trafficking’ as:

obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person’s subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3.

In a strict sense the definition is only relevant to the general offence of human trafficking in subs 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). The ‘purposes mentioned in section 3’ are thus only those specified in subs 3(i). As such this definition is of no relevance to the more specific offences relating to the trafficking of women and children⁴⁷ or to labor trafficking⁴⁸.

The following table breaks down the definition of ‘human trafficking’ to assist in comparisons to the definition of ‘trafficking in persons’ provided in the *Trafficking in Persons Protocol*.

⁴⁷ Section 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁴⁸ Section 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Section 2(h) Prevention and Control of Human Trafficking Ordinance 2002 Definition of 'human trafficking'	
Act	<ul style="list-style-type: none"> • 'obtaining, securing, selling, purchasing, recruiting, detaining, harboring or receiving a person' • 'notwithstanding his implicit or explicit consent'
Means	<ul style="list-style-type: none"> • the use of coercion,⁴⁹ kidnapping, abduction; or • by giving or receiving any payment or benefit; or • sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever
Purpose (as listed in s 3(i))	<ul style="list-style-type: none"> • attaining any benefit; or • exploitative entertainment;⁵⁰ or • slavery; or • forced labor; or • adoption.

International Law

Article 3(a) *Trafficking in Persons Protocol* defines 'trafficking in persons' as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Under the Protocol, trafficking in persons consists of a combination of three basic elements — act, means, and purpose — each of which must be taken from a list set out in the definition in Article 3(a).⁵¹

⁴⁹ 'Coercion' means the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force by calculated to have the same effect, such as the credible threat of force or of infliction of serious harm: s 2(c) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁵⁰ 'Exploitative entertainment' means all activities in connection with human sports or sexual practices or sex and related abusive practices: s 2(f) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁵¹ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 268.

Article 3(a) <i>Trafficking in Persons Protocol</i> Definition of ‘trafficking in persons’	
Act	‘[T]he recruitment, transportation, transfer, harboring or receipt of persons’
Means	‘The threat of use of’: <ul style="list-style-type: none"> • force or other forms of coercion; • abduction; • fraud or deception; • the abuse of a position of vulnerability • the giving or receiving of payments/benefits to achieve the consent of a person having control over another person.
Purpose	Exploitation This includes at a minimum: <ul style="list-style-type: none"> • the exploitation of the prostitution of others or other forms of sexual exploitation; • forced labor or services; • slavery or practices similar to slavery; • servitude; or • the removal of organs.

Article 3(b) of the *Trafficking in Persons Protocol* requires that the consent of the victim of trafficking in persons to the intended exploitation is to be considered irrelevant where any of the means (such as force, coercion, fraud, et cetera) have been used.

The *Trafficking in Persons Protocol* requires State Parties to criminalize ‘trafficking in persons’ as defined but they may also criminalize related conduct.⁵²

Assessment and Recommendation

The definition of ‘human trafficking’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) appears, to some extent, to be modeled on the *Trafficking in Persons Protocol* definition. Whilst there is a comprehensive list of possible acts of trafficking, it is worth noting that the ‘transportation’ or ‘transfer’ of persons is not criminalized. Whilst some of the acts criminalized under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) may be construed to cover this activity, it would be prudent to specifically criminalize the ‘transport’ and ‘transfer’ of persons to remove any ambiguities. The criminalization of other acts of trafficking not in the *Trafficking in Persons Protocol* is legitimate provided the acts stated in the Protocol are also criminalized.

Recommendation 4:

Amend the acts of trafficking listed in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to also include the transport and transfer of persons.

It is commendable that the definition in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) finds ‘implicit or explicit consent’ to be irrelevant. This appears to

⁵² Article 5(1) *Trafficking in Persons Protocol*; UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 267.

satisfy Article 3(b) *Trafficking in Persons Protocol* regarding the irrelevance of consent to the intended exploitation when the specified means of trafficking have been used.

The means of trafficking specified in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) definition somewhat mirror the definition in the *Trafficking in Persons Protocol*. The fact that the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘coercion’ to include a number of possible means assists this.⁵³ However, there are a number of departures from international law in relation to the means of trafficking specified. Whilst the *Trafficking in Persons Protocol* refers to the ‘giving or receiving of payments or benefits to achieve the consent of a person having control over another person’, the definition in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) does not specify that the benefits or payments are given to or received from a person having control over another person. Furthermore, the provision stating that the ‘sharing or receiving a share for such person’s subsequent transportation out of or into Pakistan by any means whatsoever’ may go beyond the requirements of the *Trafficking in Persons Protocol*. Indeed it appears to be more focused on instances of migrant smuggling. Finally, there is no recognition that the ‘abuse of a position of vulnerability’ may be used as a means by which to facilitate the trafficking of a person.

Recommendation 5:

Amend the specified means of trafficking set out in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include the ‘abuse of a position of vulnerability’. Amend the definition of ‘human trafficking’ such that the giving or receiving of payments or benefits is recognized as a means of trafficking only where it is used to achieve the consent of a person having control over another person.

A significant flaw in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) definition of ‘human trafficking’ is that it does not explicitly include any forms of exploitation. Rather, it refers to any purposes in s 3 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). As such it can be inferred that exploitation can only include ‘exploitative entertainment, slavery or forced labor or adoption’.⁵⁴ Significantly, ‘practices similar to slavery, servitude or the removal of organs’ are not criminalized under the Ordinance. This creates quite a gap and inconsistency with the *Trafficking in Persons Protocol*. It is commendable, however, that ‘adoption’ is specifically listed as a form of exploitation in the definition. This is considered one possible implementation of the phrase ‘practices similar to slavery’ from the *Trafficking in Persons Protocol*.⁵⁵

Further, with no definition of ‘slavery’, ‘forced labor’ or ‘adoption’ available in the Ordinance, it is difficult to determine the boundaries of what can be considered ‘exploitation’. The criticisms made of the definition of ‘exploitative entertainment’ in Section 3.1.3 above further emphasize the uncertain nature of what constitutes ‘exploitation’ under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Consistent with the recommendations made in Section 3.1.3, it would be advisable to consider the implementation of a definition of ‘exploitation’ that includes the

⁵³ “Coercion” means the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force by calculated to have the same effect, such as the credible threat of force or of infliction of serious harm: s 2(c) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁵⁴ Section 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁵⁵ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 269.

minimum forms as suggested by the *Trafficking in Persons Protocol*. Additional forms of exploitation such as forced or servile marriages should also be considered.⁵⁶

Recommendation 6:

At a minimum, criminalize forms of exploitation listed in the *Trafficking in Persons Protocol*. Consider the inclusion of additional forms of exploitation into s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

One area of common criticism pertaining to the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) relates to the somewhat convoluted approach to the organization and drafting of the offences.⁵⁷ It appears that Pakistan has opted to have a general definition of ‘human trafficking’ and then specific offences aimed at targeting certain activities. The issue is that the definition of ‘human trafficking’ is only relevant to the general offence in s 3(i). This creates a number of inconsistencies and a great deal of confusion to those who apply the law. It is recommended that one of two options be implemented. Firstly, the general definition of ‘human trafficking’ can be maintained, but all three offences must refer to it in order to maintain some consistency. The second, and preferable option, is to remove the definition of ‘human trafficking’ and merge it into the description of each of the three offences set out in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). This would require a consistent definition be applied to all offences. Further, it may be worth considering the use of a general offence of trafficking, which may then be aggravated in certain circumstances (e.g. the trafficking of women and children, and for certain forms of exploitation).

Recommendation 7:

Retain separate offences but merge the definition of ‘human trafficking’ currently in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) into the offence description. Alternatively, the definition of ‘human trafficking’ could be consolidated with individual offences that refer to it.

3.1.5 ‘Inhuman sports’

Current Pakistani Law

Section 2(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines ‘inhuman sports’ as including ‘all sports involving, as a matter of normal course, infliction of physical or mental injury on a person against his will, intention or reasonable expectation’. This particular term is referred to in the definition of ‘exploitative entertainment’ and is thus relevant to the offences in subs 3(i) and 3(iii). It appears that the inclusion of ‘inhuman sports’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is an attempt to address the issue of trafficking in children for the purpose of camel racing in Gulf countries, a unique local problem.

International Law

There is no international guidance on this particular definition as the *Trafficking in Persons Protocol* does not isolate or identify local types of trafficking in persons. Under Article 5

⁵⁶ For suggestions on other forms of exploitation see further, UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 35.

⁵⁷ Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 30.

Trafficking in Persons Protocol, State Parties are obliged to criminalize, at a minimum, the full range of conduct covered by the definition of ‘trafficking in persons’ in Article 3(a). Furthermore, Article 34(3) *Convention against Transnational Organized Crime*, with which the *Trafficking in Persons Protocol* must be read, provides that ‘each State Party may adopt more strict or severe measures’. As such the criminalization of conduct going further than that required by the *Trafficking in Persons Protocol* is optional.

Assessment and Recommendation

This inclusion of ‘inhuman sports’ appears to be necessary to target particular forms of trafficking specific to Pakistan. It should be noted that the definition of ‘exploitative entertainment’ actually refers to ‘human sports’ but it assumed for the purposes of this assessment that this is intended to mean ‘inhuman sports’. It is recommended that this error be amended so as to avoid any further confusion.

Recommendation 8:

Amend any references in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ‘human sports’ to read ‘inhuman sports’.

Consistent with recommendations made regarding the definition of ‘exploitative entertainment’, it may be more effective to define ‘exploitation’ generally and include ‘inhuman sports’ as one form of exploitation. Alternatively, a specific offence of trafficking for the purpose of inhuman sports may more effectively criminalise this specific form of trafficking.

Recommendation 9:

Consider the introduction of a broad definition of ‘exploitation’ that includes ‘inhuman sports’ as a form of exploitation. Alternatively, consider a specific offence criminalizing trafficking for the purpose of ‘inhuman sports’.

3.1.6 ‘Organized criminal group’

Current Pakistani Law

Section 2(j) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides a definition of ‘organized criminal group’:

a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Ordinance, in order to obtain, directly or indirectly, any financial or other material benefit and includes a person knowingly receiving or disbursing benefits accruing from the commission of any offence in relation to human trafficking by an organized criminal group.

The term ‘structured group’ is not further defined under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). This definition is relevant to the aggravation in s 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

International Law

The *Convention against Transnational Organized Crime*, which the *Trafficking in Persons Protocol* supplements, defines ‘organized criminal group’ as:

a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more offences established under chapters V and VI of this Law, in order to obtain, directly or indirectly, a financial or other material benefit.⁵⁸

Article 2(c) *Convention against Transnational Organized Crime* further defines ‘structured group’ to mean

a group that is not randomly formed for the immediate commission of an offence and that does not need to have formally defined roles for its member, continuity of its membership or a developed structure.

The term ‘structured group’ is not further defined under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). This definition is relevant to the aggravation in s 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Assessment and Recommendation

The definition of ‘organized criminal group’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is based largely on the definition provided under the *Convention against Transnational Organized Crime*. It lacks, however, a definition of the term ‘structured group’.

To bring the definition and its interpretation in line with international law and remove any ambiguities it is desirable that the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) include a definition of ‘structured group’ similar to that provided by the *Convention against Transnational Organized Crime*. Alternatively, it may be worth removing the requirement that the group be ‘structured’, such that those who work together for the immediate commission of an offence may have the higher penalties applied to them under the offence in s 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Recommendation 10:

Implement a definition of ‘structured group’ to remove any ambiguities. Alternatively, remove the requirement of a ‘structured group’ from s 2(j) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to facilitate prosecution of those who act together in the immediate commission of an offence.

A notable difference is that the definition under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) only requires two or more persons (as opposed to three) and as such the aggravated trafficking offence⁵⁹ has a lower threshold than that required under international law. This lowering of the threshold is legitimate given that State Parties may adopt more strict or severe measures.

The definition of ‘organized criminal group’, unlike international law, also extends to persons who receive or disburse any benefits related to trafficking. This addition is significant in targeting those who are not directly involved in the trafficking but implicitly support it. The current definition in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is thus an important element in deterring traffickers through the threat of higher penalties and it also facilitates a wider scope of potential prosecutions. Once again, this

⁵⁸ Article 2(a) *Convention against Transnational Organised Crime*.

⁵⁹ Section 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

particular part of the provision is legitimate given that it is an implementation of a stricter or more severe measure than that required under international law.

3.1.7 'Victim'

Current Pakistani Law

Section 2(k) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) defines 'victim' as 'the person who is the subject of or against whom any offence under this Ordinance has been committed'. The definition is important in the context of provisions in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) that address assistance and compensation to victims.

International Law

Whilst the *Trafficking in Persons Protocol* provides no guidance on a definition of the term, the *Model Law against Trafficking in Persons* does offer a more detailed definition of a 'victim of trafficking' in persons:

any natural person who has been subject to trafficking in persons, or whom [the competent authorities, including the designated non-governmental organizations where applicable] reasonably believe is a victim of trafficking in persons, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.⁶⁰

Assessment and Recommendation

The current definition of 'victim' in Pakistani law may be construed to mean that a person can only be considered a 'victim' if there has been a successful prosecution of an offence under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). This has restricting effects in terms of recognizing victims of trafficking and assisting them.

The adoption of a wider and more specific definition, such as that proposed by the *Model Law against Trafficking in Persons* would enable victims to gain access to services regardless of whether there has been a successful prosecution. Of course there may need to be a balance between a lower threshold definition that 'entitles one to basic service and assistance' and a higher threshold definition that satisfies 'a Government's need to regulate the dispensation of services and benefits'.⁶¹

Recommendation 11:

Amend the definition of 'victim' in s 2(k) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure that persons reasonably believed to be a victim of trafficking are given the status of 'victim'.

There is also some ambiguity as to whether a victim of trafficking can only be a non-citizen or non-permanent resident of Pakistan given that domestic trafficking is not addressed in the legislation. The legislation would require amendments to ensure provisions relating to victims of trafficking also cover Pakistani nationals.

⁶⁰ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 22.

⁶¹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 23.

Recommendation 12:

Appropriately amend the definition of ‘victim’ in s 2(k) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure Pakistani nationals who are victims of trafficking are recognized as such.

3.2 Criminalization

Section 3 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) creates four principal criminal offences relating to human trafficking. These offences, for ease of reference, will be referred to as:

- a general trafficking offence;⁶²
- an offence of labor trafficking;⁶³
- an offence of trafficking in women and children for exploitative entertainment;⁶⁴ and
- an offence for the misuse of travel documents.⁶⁵

These offences are aggravated if they are committed by an ‘organized criminal group’,⁶⁶ or are committed repeatedly.⁶⁷ The following Sections assess each provision under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) that is considered relevant to the criminalization of trafficking in persons.

3.2.1 General human trafficking offence, s 3(i)

Current Pakistani Law

Section 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) creates, what appears to be, a general offence of ‘human trafficking’:

Whoever knowingly plans or executes any such plan for human trafficking into or out of Pakistan for the purpose of attaining any benefit, or for the purpose of exploitative entertainment, slavery or forced labor or adoption in or out of Pakistan shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.

Higher penalties apply to any person found guilty of kidnapping or abducting in connection with this offence. Further, any attempt to commit the offence is punishable by five years imprisonment and may also be liable to fine.

International Law

As has been previously discussed, Article 3(a) *Trafficking in Persons Protocol* defines ‘trafficking in persons’ as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to

⁶² Section 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁶³ Section 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁶⁴ Section 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁶⁵ Section 3(iv) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁶⁶ Section 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

‘Organized criminal group’ is defined in s 2(j) of the Ordinance.

⁶⁷ Section 5 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 5(1) of the Protocol requires that criminal offences be established to criminalize the conduct 'set forth in Article 3, when committed intentionally'. The obligation is to 'criminalize trafficking, either as a single criminal offence or a combination of offences that cover, at a minimum, the full range of conduct covered by the definition'.⁶⁸ Article 34(3) *Convention against Transnational Organized Crime*, with which the *Trafficking in Persons Protocol* must be read, provides that 'each State Party may adopt more strict or severe measures'.

Additionally, Article 5(2) *Trafficking in Persons Protocol* requires that each State Party criminalize 'attempting to commit an offence',⁶⁹ 'participating as an accomplice in an offence'⁷⁰, and 'organizing or directing other persons to commit an offence'⁷¹.

Assessment and Recommendation

The offence in s 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is intrinsically linked to the term 'human trafficking', defined in s 2(h) of the Ordinance. The definition of 'human trafficking' does not, however, specify any 'purposes' or 'exploitation' for which trafficking may occur. This general trafficking offence thus fills that gap. As such it appears this offence was intended to criminalize the full range of conduct specified in the definition of 'trafficking in person' as found in the *Trafficking in Persons Protocol*. Comments and criticisms related to this approach to drafting the offences and the forms of 'exploitation' criminalized by this offence are covered in Section 3.1.4 above.

It is interesting to note that this offence adds the phrase 'attaining any benefit' as another possible 'purpose' of trafficking. Whilst the *Trafficking in Persons Protocol* only recognizes exploitation as a purpose, State Parties are free to adopt more strict or severe measures.⁷² It appears that this added purpose would target those who facilitate trafficking and receive a benefit, but are not involved in the actual exploitation of the victim.

The general offence of trafficking notably only requires 'knowledge' as opposed to 'intention' in relation to planning or executing the offence. This may indicate that the threshold under Pakistan's offence is lower than that under international law. This provision is legitimate given that State Parties may adopt stricter or more severe measures.⁷³

Finally, it appears that an attempt to commit the offence is criminalized in two ways. A person may be prosecuted for the offence if he or she 'knowingly *plans* for human trafficking'. An attempt to commit the offence is also specifically criminalized. There is no specific criminalization of participating as an accomplice or organizing or directing others to commit the offence. It may be, however, that Part V ('Of Abetment') of the *Penal Code*

⁶⁸ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 267.

⁶⁹ Article 5(2)(a) *Trafficking in Persons Protocol*.

⁷⁰ Article 5(2)(b) *Trafficking in Persons Protocol*.

⁷¹ Article 5(2)(c) *Trafficking in Persons Protocol*.

⁷² Article 34(3) *United Nations Convention against Transnational Organized Crime*.

⁷³ Article 34(3) *United Nations Convention against Transnational Organized Crime*.

(Pakistan)⁷⁴ adequately criminalizes these requirements under the Protocol. It has been suggested elsewhere that there is a gap in the law in terms of ‘aiding and abetting the offences’.⁷⁵ As such it may be more effective to specifically implement Article 5(2) *Trafficking in Persons Protocol* in relation to each offence.

Recommendation 13:

Consider specifically criminalizing the conduct of those who organize or direct others to commit the offence and those who participate as an accomplice in the offence under s 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

3.2.2 Labor trafficking, s 3(ii)

Current Pakistani Law

Section 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides an offence that is aimed at criminalizing instances of labor trafficking:

Whoever knowingly provides, obtains or employs the labor or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labor or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.

Higher penalties apply if the commission of the offence involves kidnapping or abduction, or any attempt to do so. If the offender provides ‘payment of any remuneration in lieu of services or labor of the victim’ then this is not to be considered a mitigating factor when sentencing.

International Law

As has been discussed earlier, State Parties to the *Trafficking in Persons Protocol* ‘are obliged by Article 5 to criminalize trafficking, either as a single criminal offence or a combination of offences that cover, at a minimum, the full range of conduct by the definition’.⁷⁶ Provided this obligation is met, State Parties may identify and criminalize related conduct.⁷⁷ Further, the obligation is ‘to criminalize trafficking as a combination of constituent elements and not the elements themselves’. Thus an offence of trafficking can be created so long as it contains act, means, and purpose elements. Finally, Article 5(1) of the Protocol requires that criminal offences be established to criminalize the conduct ‘set forth in Article 3, when committed intentionally’.

Assessment and Recommendation

Pakistan has identified and criminalizes a range of conduct related to trafficking in persons beyond the general offence of trafficking in persons.

⁷⁴ Act XLV of 1860.

⁷⁵ Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 30.

⁷⁶ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 267.

⁷⁷ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 267.

Bonded labor has been described by some sources as Pakistan’s “largest human trafficking problem.”⁷⁸ The offence in s 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) thus appears to be aimed at specifically addressing the issue of labor trafficking and/or debt bondage. Whilst ‘forced labor’ is a form of exploitation specified in the general trafficking offence, there is no definition given to the term. As such it is possible there is overlap between this offence and the general trafficking offence. It is worth noting, however, that this offence does not require any transnational activity and may also apply to cases of domestic trafficking for labor.

Like the offence in s 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan), only ‘knowledge’, as opposed to ‘intention’, in relation to planning or executing the offence is required. This may indicate that the threshold under Pakistan’s offence is lower than that under international law. This provision is legitimate given that State Parties may adopt stricter or more severe measures.⁷⁹

An anomaly of this particular offence is that there is no criminalization of an attempt to commit the offence itself, as is provided in s 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Only attempts to kidnap or abduct another in the commission of the offence appear to be criminalized. Consistent with the recommendations in Section 3.2.1, it may be prudent to also specifically criminalize the conduct of those who organize or direct others to commit the offence and those who participate as an accomplice in the offence.

Recommendation 14:

Amend the offence in s 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to appropriately criminalize attempts to commit the offence, organizing or directing others to commit the offence and participating as an accomplice in the offence.

3.2.3 Offence of trafficking in women and children, s 3(iii)

Current Pakistani Law

Section 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) contains an offence aimed at targeting specifically those who traffic women or children for the ‘purpose of exploitative entertainment’:

Whoever knowingly purchases, sells, harbors, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.

Compared to the general trafficking offence in s 3(i), the higher term of imprisonment in s 3(iii) signifies that trafficking in women and children is seen as a more heinous crime. If the commission of this offence involves kidnapping or abduction, or attempt to, the penalty may be higher again.

Section 3(iii) further states:

⁷⁸ US, Department of State, *Trafficking in Persons Report* (2009) 231. See Section 2 above.

⁷⁹ Article 34(3) *United Nations Convention against Transnational Organized Crime*.

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

The exact meaning of this phrase is somewhat mysterious. It appears this clause is aimed at prosecuting child traffickers even where the biological parents of a child contend that there was no instance of trafficking.

In early 2010, a Bill to enact a new *Prevention and Control of Women Trafficking Act* was introduced into the National Assembly of Pakistan. This Bill was specifically designed to criminalize trafficking in women for the purpose of exploitative entertainment or forced labor into and within Pakistan, but it lacked sufficient support to pass.

International Law

Article 2(a) *Trafficking in Persons Protocol* states that a purpose of the Protocol is to 'prevent and combat trafficking in persons, paying particular attention to women and children'. However, there is nothing in the *Trafficking in Persons Protocol* that requires a separate offence of trafficking in women and children. Rather the obligation is to 'criminalize trafficking, either as single criminal offence or a combination of offences that cover, at a minimum, the full range of conduct covered by the definition'.⁸⁰ As has been previously discussed,⁸¹ Article 3(a) *Trafficking in Persons Protocol* defines 'trafficking in persons' as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Article 34(3) *Convention against Transnational Organized Crime* further provides that 'each State Party may adopt more strict or severe measures'.

Article 3(c) *Trafficking in Persons Protocol* provides that where the victim of trafficking is less than 18 years of age, the offence of trafficking in persons is proved even if it does not involve any means. Therefore in these circumstances it is only necessary to prove an act of trafficking for the purpose of exploitation.

Article 5(1) *Trafficking in Persons Protocol* further requires that criminal offences be established to criminalize the conduct 'set forth in Article 3, when committed intentionally'. Additionally, Article 5 requires that each State Party criminalize 'attempting to commit an offence',⁸² 'participating as an accomplice in an offence',⁸³ and 'organizing or directing other persons to commit an offence'.⁸⁴

⁸⁰ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 267.

⁸¹ See Section 3.1.4 above.

⁸² Article 5(2)(a) *Trafficking in Persons Protocol*.

⁸³ Article 5(2)(b) *Trafficking in Persons Protocol*.

⁸⁴ Article 5(2)(c) *Trafficking in Persons Protocol*.

Assessment and Recommendation

It is important to note at the outset that the term ‘human trafficking’, as defined in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan), is not used in the description of this offence. As such, this offence has to be assessed independently against the definition of ‘trafficking in persons’, as stated in Article 3(a) *Trafficking in Persons Protocol*. Criticisms of this approach to drafting the offences are outlined in Section 3.1.4 above.

It appears that the offence in s 3(iii) is an attempt to target the trafficking of women and children and address Article 2(a) *Trafficking in Persons Protocol*. The Protocol makes it possible to create a number of offences that, in combination, criminalize the full range of conduct specified by the definition of ‘trafficking in persons’ as stated in the *Trafficking in Persons Protocol*. However, under the Protocol State Parties are obliged to ‘criminalize trafficking as a combination of constituent elements and not the element themselves’.⁸⁵ Section 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) appears to satisfy this requirement in that there are elements of acts, means and purpose present.

However, the acts of trafficking specified in this offence are inconsistent with both the *Trafficking in Persons Protocol* and the definition of ‘human trafficking’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Interestingly the ‘transportation’ and ‘transfer’ of persons are acts of trafficking under this offence but not in the definition of ‘human trafficking’, despite being required under the *Trafficking in Persons Protocol*. Recommendations made in Section 3.1.4 regarding the acts required to be criminalized are relevant here.

Recommendation 15:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to reflect the acts of trafficking as specified in the *Trafficking in Persons Protocol*.

It is significant that this offence does not state that ‘implicit or explicit consent’ of the person is irrelevant. This is another inconsistency with the definition of ‘human trafficking’ in s 2(h) of the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Further, Article 3(b) *Trafficking in Persons Protocol* requires that the consent of the victim to the intended exploitation is irrelevant where any of the means specified are used.

Recommendation 16:

Include in s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) that the consent of the victim to the intended exploitation is irrelevant where any of the means specified are used.

Another point of difference between this offence and the definition of ‘human trafficking’ in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is that in s 3(iii) the purpose of the trafficking (exploitative entertainment) must be intended. This is, however, unproblematic, as Article 5 *Trafficking in Persons Protocol* requires the criminalization of offences committed intentionally. This is, unfortunately, further evidence of an inconsistent approach to the drafting of the offences in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁸⁵ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 268.

Section 3(iii) further differs significantly from the *Trafficking in Persons Protocol* in that only 'exploitative entertainment' is considered to be a purpose of the trafficking. It appears the offence is aimed at addressing the prevalent issue of trafficking in women and children for sex and camel racing. In light of earlier criticisms based on the ambiguities of the definition of 'exploitative entertainment', it flows that an offence based only on this form of exploitation may also be uncertain in nature.

Recommendation 17:

Include in s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) specific forms of exploitation as opposed to 'exploitative entertainment'.

A further concern is that this s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) applies to women and children equally. Article 3(c) *Trafficking in Persons Protocol* requires that trafficking in children should be criminalized even where it does not involve any of the means of trafficking. Given this it is recommended that a dedicated offence of trafficking in children be created to reflect this requirement. Further, an offence of trafficking in children should not be limited to specific forms of exploitation such as 'exploitative entertainment'. An extension of this approach would be to keep the general offence of trafficking, but have an aggravation where the trafficked person is a woman. This would avoid inconsistencies relating to the definition of 'human trafficking'.

Recommendation 18:

Create a dedicated child trafficking offence that does not require any means of trafficking be proved. This offence should not be limited to specific forms of exploitation.

The phrase in s 3(iii) relating to the plea of a biological parent resembles to some degree a provision in the *Model Law against Trafficking in Persons* which suggests that 'the consent of a parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation shall be irrelevant'.⁸⁶ It should be considered whether the clause in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) be expanded to include persons having legal or de facto control of a child.

Recommendation 19:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure that the consent of a parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation shall be irrelevant.

Article 5 *Trafficking in Persons Protocol* requires that each State Party criminalize 'attempting to commit an offence'. In s 3(iii), however, only attempts to kidnap or abduct a person in the commission of the offence are criminalized.

Consistent with the recommendations in Section 3.2.1, it may be prudent to also specifically criminalize the conduct of those who organize or direct others to commit the offence and those who participate as an accomplice in the offence.

⁸⁶ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 38.

Recommendation 20:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to appropriately criminalize attempts to commit the offence, organizing or directing others to commit the offence and participating as an accomplice in the offence.

It should be noted that the recent *Prevention and Control of Women Trafficking Bill 2010* (Pakistan) appears to make amendments to this offence. Notably the Bill removes mention of children in the offence, specifies ‘forced labor’ as another form of potential exploitation, criminalizes the selling and buying of women for marriage and criminalizes attempt of the offence. Whilst these are minor improvements, the Bill also does not adequately implement the recommendations made here regarding the offence in s 3(iii) or other more general recommendations made by this report.

3.2.4 Misuse of travel documents, s 3(iv)

Current Pakistani Law

Section 3(iv) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) makes it an offence relating to misuse of travel or identity documents where there is an intention to prevent a person from movement or travel:

Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person’s liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.

International Law

The *Trafficking in Persons Protocol* contains no provisions similar to the offence in s 3(iv).

Article 12 *Trafficking in Persons Protocol* obliges States Parties to take measures to ‘ensure that travel and identity documents are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued’ and ‘to prevent their unlawful creation, issuance and use’. The *Model Law against Trafficking in Persons* states that ‘one way to meet this obligation is to include a provision in [the] criminal law’.⁸⁷ In particular it suggests the following provision:

Any person who obtains, procures, destroys, conceals, removes, confiscates, withholds, alters, replicates, possesses or facilitates the fraudulent use of another person’s travel or identity document, with the intent to commit or to facilitate the commission of an offence under this Law, shall be guilty of an offence.⁸⁸

Assessment and Recommendation

The offence in s 3(iv) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) addresses a prevalent method used by traffickers whereby travel documents are withheld in order to prevent the victim from escaping or otherwise leaving. Whilst the offence somewhat mirrors the suggested provision in the *Model Law against Trafficking in Persons* there are certain amendments that could be implemented to better address this issue.

⁸⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 48.

⁸⁸ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 48.

Firstly, it may be desirable to expand the offences in s 3(iv) to also criminalize the ‘alteration’ or ‘replication’ of travel or identity documents, in addition to the acts already specified. Secondly, the offence could be amended such that it applies to the misuse of travel or identity documents to facilitate any act of trafficking, rather than just using it to restrict a person’s movement. This will appropriately criminalize the misuse of travel or identity documents at any stage of the trafficking process.

Recommendation 21:

Expand the offence in s 3(iv) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include the ‘alteration’ and replication’ of documents related to human trafficking. Amend s 3(iv) to criminalize the misuse of documents related to human trafficking in order to facilitate any offence under the Ordinance.

3.2.5 Aggravations

Involvement of organized criminal group

Current Pakistani Law

Section 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) creates an aggravated offence whereby any offence under s 3 of Ordinance is committed by an ‘organized criminal group’:

Where an organized criminal group is guilty of any offence under clauses (i), (ii), (iii) or (iv) of section 3, the term of imprisonment or each member of such group involved in the commission of such offence shall not be less than ten years imprisonment and may extend to fourteen years where the purpose of trafficking of a victim is exploitative entertainment and shall also be liable to fine.

The definition of an ‘organized criminal group’ is set out in s 2(j) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). This definition is assessed in Section 3.1.6 above.

International Law

Article 4 *Trafficking in Persons Protocol* states that:

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protocol of the victims of such offences.

This provision has to be read in conjunction with Article 34(2) *Convention against Transnational Organized Crime* which provides that the offences established in accordance with the Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group. The *Travaux Préparatoires* state that the purpose of this provision is to

indicate unequivocally that the transnational element and the involvement of an organized criminal group are not to be considered elements of those offences for criminalization purposes.⁸⁹

As such, it is conceivable that the involvement of an ‘organized criminal group’ is only considered an aggravation to the basic offences. Article 34(3) *Convention against Transnational Organized Crime* further provides that ‘each State Party may adopt more strict or severe measures’.

The *Model Law against Trafficking in Persons* suggests that State Parties may wish to create an aggravated offence where the crime was committed by an organized criminal group.

Assessment and Recommendation

Section 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) is designed to prevent and suppress the involvement of organized criminal networks in trafficking in persons. The assessment and recommendations made in Section 3.1.7 in relation to the definition of ‘organized criminal group’ are relevant to this offence.

There is some confusion as to the penalty attached to this offence. Where a member of an organized criminal group commits an offence for a purpose other than ‘exploitative entertainment’, the sentence specified is a minimum of ten years imprisonment. There is, however, no maximum sentence specified. It is only extended to 14 years imprisonment where the purpose is ‘exploitative entertainment’. In practice it seems that the only possible sentence in this situation would be a term of imprisonment of ten years.

Recommendation 22:

Consider setting a maximum term of imprisonment where a member of an organized criminal group commits an offence with a purpose other than ‘exploitative entertainment’.

Given the earlier criticisms made of the definition of ‘exploitative entertainment’ in Section 3.1.3 above, it would be advisable that the reference to ‘exploitative entertainment’ be removed. If an increased penalty is to be attached where the purpose is certain forms of exploitation, then these forms should be specified clearly.

Recommendation 23:

Remove the reference to ‘exploitative entertainment’ as an aggravating element is from s 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Clearly specify certain forms of exploitation where an aggravated penalty is to be applied.

Repeat offending

Current Pakistani Law

Section 5 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides that where an offence under the Ordinance is committed repeatedly the term of imprisonment may extend to fourteen years with the possibility of additional fines.

⁸⁹ *Travaux Préparatoires*, para 59. See also UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 258.

International Law

As discussed earlier, Article 34(3) *Convention against Transnational Organized Crime* provides that 'each State Party may adopt more strict or severe measures'. As such, while the *Trafficking in Persons Protocol* does not specifically require that there be aggravated offences of trafficking, their use is optional.

The *Model Law against Trafficking in Persons* also suggests an aggravating offence where 'the offender has been previously been convicted for the same or similar offences'.⁹⁰

Assessment and Recommendation

Section 5 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) complies with international best practice by providing higher penalties for repeat offenders.

3.3 Identification and Protection of Victims of Trafficking in Persons

The most effective anti-trafficking laws and policies are those that focus not only on the prosecution of offenders, but also on the identification and protection of victims of trafficking in persons, especially women and children. Trafficking in persons constitutes a serious violation of fundamental human rights and freedoms, and for that reason policies and laws should be in place to address the harm done to victims, and to prevent further traumatization or victimization through the criminal justice system.⁹¹

The following Sections examine the processes adopted to identify victims and the assistance and protection available to victims of trafficking in persons in Pakistan, their immigration status, and measures pertaining to the return and repatriation of victims.

3.3.1 Identification of victims of trafficking in persons

The timely and proper identification of victims of trafficking in persons is of paramount importance to ensure that victims receive the necessary assistance and protection, as well as for the effective prosecution of their traffickers.⁹²

Current Pakistani Law

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) contain no provisions that directly address matters relating to victim identification. Section 3(1) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) requires that statements of victims of trafficking in persons should be recorded by the Court, except where this is unfeasible or where the victim is unable to do this. This point, however, does not immediately relate to victim identification measures.

⁹⁰ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 39.

⁹¹ UNICEF et al, *Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime* (2004) 27.

⁹² UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53.

International Law

Article 6(3) *Trafficking in Persons Protocol* contains general references to victim and witness protection, assistance, and compensation, but makes no specific reference to victim identification, leaving this matter to the discretion of State Parties.

International best practice models, including the *Model Law against Trafficking in Persons*, suggest that law enforcement agencies develop guidelines to assist in the identification of victims and their referral to appropriate assistance agencies. Such guidelines should include a list of indicators that could be reviewed and updated periodically as needed.

Assessment & Recommendation

From the available information it is not immediately clear what processes are used by law enforcement and other government agencies in Pakistan to identify victims of trafficking in persons. Such measures may not require legislative implementation and could also be instituted through internal guidelines. It would be desirable to identify and independently assess the methods used by the FIA and other agencies in Pakistan to identify victims of trafficking in persons and refer victims to relevant assistance programs. This assessment will require direct consultation with Pakistani authorities and NGOs.⁹³

Recommendation 24:

Identify and assess methods used to identify victims of trafficking in persons in Pakistan and referral of victims to assistance programs.

3.3.2 Assistance and protection

Accommodation and material assistance

One of the main obstacles to prosecution of human traffickers is the fact that victims are almost always witnesses and thus face or fear intimidation by their traffickers. Many victims also fear maltreatment by government authorities, deportation or other potential risks to their physical safety. In addition, most trafficking victims are heavily traumatized due to the physical, psychological and/or sexual violence to which they were subjected and often require medical treatment and psychological counseling. Many have no place to stay or means of support upon their return to their home country and may be stigmatized and rejected by their families. They are generally in need of accommodation, financial assistance, education and vocational training programs, as well as assistance with finding employment. Without this support, victims are vulnerable to being re-trafficked.

Accordingly, in order to successfully prosecute traffickers, countries must implement victim-sensitive policies and laws to allay the fears of trafficked victims and to ensure their safety. Moreover, it has been noted that although the setting up of appropriate assistance and protection measures may be expensive, 'addressing the social, educational, psychological and other needs of victims as soon as they are discovered may ultimately prove less costly than dealing with them at a later stage.'⁹⁴

⁹³ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53.

⁹⁴ Gina Taylor, *Evaluation of the Victims of Trafficking Pilot Project – POPPY* (2004); UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 55; UNICEF et al, *Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the*

Current Pakistani Policy & Law

The Government of Pakistan has set up comprehensive policy and legal frameworks designed to offer victims of trafficking in persons safe temporary accommodation, access to food and medical assistance, and to counseling and rehabilitation programs.

The *National Action Plan for Combating Human Trafficking* specifically states:

- i. Establishing shelters for the protection and other needs of the trafficking victims in order to provide safety, access to independent advice and counseling, medical health and rehabilitation from trauma, while giving special attention to security of the victims, confidentiality and privacy. These shelters will also be provided the linkage to facilitating the victims' future reintegration.
- ii. A model shelter has been established at Islamabad with the cooperation of IOM and US Embassy. It is planned to establish more shelters in other places for which a PC-I is under prosecution offer whose approval funds will be allocated and more shelters will be established.
- iii. The purpose of providing secure accommodation shall be to protect victims, suspected victims and witnesses, help them, meet their relevant needs, and create a safe environment for those persons. A shelter shall in no case be considered a place of confinement and the persons placed therein shall be treated as victims or suspected victims. Secure accommodation shall also ensure suitable conditions for rehabilitation and reintegration. At the same time, secure accommodation shall provide a safe environment to the victims awaiting their repatriation and that of witnesses that have presented evidence.
- iv. Secure accommodation shall have the following facilities: properly secured building with appropriate living conditions; access to telephone; access to medical care; and psychological counseling; possibility of legal assistance; opportunity to have a translator; and a separate place for conversation; ensuring confidentiality of information about the person placed in the accommodation.⁹⁵

These policy statements have been partly legislated in s 6(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and are otherwise regulated in s 3(2), (3) and s 4 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) enables female and child victims⁹⁶ of trafficking in persons to gain access to accommodation, food, and medical treatment. A court order is required to gain access to such assistance. Under s 6(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) a court trying an offence under the Ordinance may order that government agencies 'make arrangements for the shelter, food and medical treatment of victim being an unaccompanied child or a destitute woman.' The same principle is reiterated in subs 3(2) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) which states that victims who are unaccompanied minors and 'destitute women' who appear in court proceedings may, by court order, be kept 'in a shelter home established by the Government or by [...] Non-Government Organizations for accommodation, food, and medical treatment'.

United Nations Convention against Transnational Organized Crime (2004) 27.

⁹⁵ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

⁹⁶ 'Child' means any person under the age of 18, s 2(b) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Under subs 3(3) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) it is also possible for the court to release the victim into the custody of 'any of his blood relation after requiring a bond from the custodian for safe custody of the victim and his production before the court at the time and place mentioned in the bond and shall continue to produce until otherwise directed.'

The establishment of safe and secure accommodation for victims of human trafficking is further regulated in s 4 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan):

The Government shall establish shelter homes for safe custody of the victims and shall also make necessary security arrangement for the protection of the victims in the shelter homes whether established by the Government or the Non-Governmental Organizations.

In circumstances in which the victim 'is not satisfied with the Non-Governmental Organization to which his custody was given by the court, he may apply to the court for' alternative accommodation, subsection 3(2).

In addition to these arrangements, Pakistan has also set up a help-line on human trafficking which is run by the FIA.⁹⁷

International Law

International law mandates the provision of assistance and protection to victims of trafficking in persons in Article 6(3) *Trafficking in Persons Protocol*. This requirement only applies to victims who are in the territory of the respective country, i.e. the receiving State until the victim has returned to his or her country of origin and to the country of origin thereafter.⁹⁸

Article 6(3) is discretionary, not mandatory,⁹⁹ and only binds State Parties

to consider implementing measures to provide for the physical, psychological, and social recovery of victims of trafficking, including, in appropriate cases, in cooperation with NGOs and other relevant agencies and members of civil society.

In particular, these measures should include:

- a) appropriate housing;
- b) counseling and information, in particular as regards to their legal rights, in a language that the victim can understand;
- c) medical, psychological and material assistance; and
- d) employment, educational and training opportunities.¹⁰⁰

In applying these provisions, State Parties should, where possible, differentiate the available support depending on the special needs of different categories of victims of trafficking in persons. Specifically, they shall take into account 'the age, gender, and special needs of victims, in particular the special needs of children, including appropriate housing, education, and care.'¹⁰¹ 'So far as children are concerned', notes David McClean, 'it will usually be

⁹⁷ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 15.

⁹⁸ *Travaux Préparatoires*, para 71.

⁹⁹ See further, David McClean, *Transnational Organized Crime* (2007) 337.

¹⁰⁰ Article 6(3) *Trafficking in Persons Protocol*.

¹⁰¹ Article 6(4) *Trafficking in Persons Protocol*.

desirable to appoint some person to act as guardian of the child, both in terms of its social welfare and also in the context of any legal proceedings that may take place.¹⁰²

Article 6(5) *Trafficking in Persons Protocol* reiterates the points raised by paragraph (3) by calling on State Parties to endeavor to provide for the physical safety of victims of trafficking while they are within its territory.¹⁰³ This requirement extends to all victims of trafficking, whether or not they are witnesses in criminal proceedings.

Assessment and Recommendation

Current policy, legal, and regulatory frameworks in Pakistan pertaining to accommodation and material assistance provided to victims of trafficking in persons are consistent with international legal principles. Pakistan has set up a system that provides victims with the essential support, accommodation, medical care, counseling, et cetera. The provisions also recognize the vulnerability of unaccompanied minors and women who may find it difficult to find safe accommodation without Government or NGO assistance. Not further assessed here are the quality of these support services, including their administration and delivery.

The available information suggests that accommodation and other material support is not available to male victims and to children who are accompanied by a parent(s) or guardian(s). While the current support mechanisms, especially shelter homes, may be unsuitable to accommodate adult men and families, and while the number of such victims may be small compared to women and unaccompanied minors, the legislative and regulatory system should not preclude adult men and families from accessing essential assistance. To that end, the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) should also use gender-neutral language. The *Model Law against Trafficking in Persons* emphasizes that basic benefits and services should be available to all victims of trafficking in persons, including, wherever possible, the accompanying dependents of the victim.¹⁰⁴

Recommendation 25:

Insofar as possible, explore extending accommodation and material assistance schemes to adult male victims of trafficking in persons and to family units. These categories of victims may require assistance different to those schemes currently in place.

In Pakistan, access to accommodation and material assistance appears to require a formal court order. Access to assistance also seems to be tied to criminal proceedings against the traffickers. Subsections 3(2) and (3) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) also require court orders to accommodate victims of trafficking in persons outside designated shelter homes. This, in turn, suggests that accommodation and material assistance are not available to victims of trafficking in persons that are not participating in court proceedings and/or do not testify against their traffickers. Without further information it is, however, not certain that these are the intended meaning and consequences of s 6(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and s 3(2) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

The requirement of a court order to access essential services that will frequently be required at very short notice and outside normal business hours. As such, a formal court order

¹⁰² David McClean, *Transnational Organized Crime* (2007) 340.

¹⁰³ See also Article 25(1) *Convention against Transnational Organized Crime*.

¹⁰⁴ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 55, 57.

constitutes a cumbersome and unnecessarily bureaucratic process. While some official assessment of eligibility for accommodation and material support is necessary, these assessments should be conducted swiftly by authorities that are accessible at any time.

To this end, the *Model Law against Trafficking in Persons* also suggests that the 'referral to assistance agencies should take place at the earliest moment possible and preferably before the victim makes an official statement.'¹⁰⁵ It also recommends 'that the police and other bodies involved in the identification process establish procedures for adequate assistance to and referral of victims.'¹⁰⁶ Consequently, it may, for instance, be preferable to enable FIA officers to refer victims of trafficking in persons directly to shelter homes, relevant government agencies and/or non-governmental organizations.

Recommendation 26:

The requirement of a court order to access accommodation and material assistance should be removed and substituted with a system that allows immediate referral to accommodation and emergency assistance.

It is not uncommon for countries, including Signatories of the *Trafficking in Persons Protocol*, to tie the provision of accommodation and material assistance to the victim's cooperation with authorities generally and in criminal proceedings specifically. Pakistan's laws and regulations are also set out in a way that suggests that the provision of accommodation and assistance primarily seeks to ensure that the victim does not abscond and can readily appear before a court whenever needed.

Many victims of trafficking in persons are, however, unwilling to cooperate in criminal proceedings against their traffickers for fear of threats, intimidation, and other negative ramifications. Moreover, some victims, even if they are willing to cooperate with the authorities, may not have any information or may not be able to provide other evidence that would be considered useful for criminal investigations, prosecutions, and judicial proceedings. These victims, it seems, are currently unable to gain access to accommodation and material assistance through official channels in Pakistan. The *Model Law against Trafficking in Persons* therefore suggests that basic benefits and services should be provided without regard to the ability or willingness of the victim to participate in the investigation or prosecution of his or her alleged trafficker.¹⁰⁷

Recommendation 27:

Examine access to and availability of accommodation and material assistance to victims of trafficking in persons that are unwilling or unable to cooperate with government authorities in proceedings against traffickers. It should be ensured that, at a minimum, these victims can access emergency support and safe temporary shelter.

Legal assistance and access to courts

Upon detection, victims of trafficking in persons will often be involved in legal proceedings that may be directed against their trafficker or, occasionally, against the victims themselves (due to their legal status and, perhaps, illegal activities in the host country).

¹⁰⁵ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 56.

¹⁰⁶ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 56.

¹⁰⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 57.

Accordingly, it is important that victims have access to legal assistance in order to understand relevant proceedings, participate in them, and to facilitate the expression of their views and concerns. Legal advice should be made available as part of the integrated support offered by the victim assistance program. Because many victims are fearful of governments and bureaucratic authorities, the provision of legal assistance and representation is especially important. The task of legal counsels is to inform victims about their role and rights in criminal proceedings and to accompany them throughout the process. They assist victims in expressing their views and enforcing their procedural rights. Legal counseling also prepares victims for the criminal proceedings and can reduce the risk of imposing further trauma on the victims. Moreover, it increases the chance of sound and coherent witness statements and contributes to the successful prosecution of the traffickers. There is, indeed, a clear relationship between victims' access to legal representation and successful prosecution outcomes.¹⁰⁸

Victims of trafficking usually have limited, if any, financial means to pay for legal counseling. Therefore, it is necessary to make free legal assistance available. Furthermore, the professional legal counsels should be familiar with the needs and situations of victims of trafficking in persons and should have acquired the necessary expertise to represent them effectively during the various legal proceedings.¹⁰⁹

UNODC's *Toolkit to Combat Trafficking in Persons* further notes that:

Victims [of trafficking in persons] should be supported in their efforts to participate in the judicial process through direct and indirect means, timely notification of critical events and decisions, provision in full of information on the procedures and processes involved, support of the presence of victims at critical events and assistance when there are opportunities to be heard. The structure of the justice system should take into account the obstacles which many victims encounter in seeking to obtain such access, owing to factors such as culture, race, language, resources, education, age or citizenship.¹¹⁰

Current Pakistani Law

In Pakistan, s 6(1) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) ensures that free legal assistance is available to victims of trafficking in persons during trials and other legal proceedings under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Subsection 6(2) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) mandates the allocation of appropriate government funds to that end.

International Law

The provision of legal assistance to victims of trafficking in persons is recognized in Article 6(2) *Trafficking in Persons Protocol* which states that

State Parties shall ensure that its domestic legal or administrative system contains measures that provide victims of trafficking, in appropriate cases:

- (a) information on relevant court and administrative proceedings;

¹⁰⁸ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 433.

¹⁰⁹ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 434.

¹¹⁰ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 430.

- (b) assistance to enable their views and concerns to be presented and considered at appropriate states of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense.

The same principle is also expressed in Article 25(3) *Convention against Transnational Organized Crime*.

The *Trafficking in Persons Protocol* also requires States to provide victims of trafficking with information on relevant court and administrative proceedings and with counseling and information, in particular about their legal rights, in a language they can understand.¹¹¹ International law does not specifically mandate the provision of free legal assistance.

Assessment and Recommendation

In general, existing regulations in Pakistan comply with international law and international best practice relating to legal assistance and access to courts. In fact, Pakistan offers free legal assistance and the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) create a specific fund for that purpose although there is no international obligation to do so.

Pakistan's regulatory framework, however, does not set out any specific measures that ensure that victims can effectively present their views and concerns in relation to legal proceedings. It may thus be necessary to explore further the practical measures that prosecutors and courts take to enable victims to participate in legal proceedings, which may also include proceedings before labor courts, victim impact statements, and victim statements on plea bargains.¹¹²

Recommendation 28:

Identify and examine procedures and practical measures adopted by prosecution services and judicial authorities to enable views and concerns of victims of trafficking persons to be expressed and presented in relevant legal proceedings. Explore the allocation and spending of government funds as stipulated by s 6(2) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

Victim compensation

Victims of trafficking in persons have a right to receive compensation from the trafficker for the physical or mental harm suffered at the hands of the trafficker or because they did not receive any payment for their labor or services. UNODC's *Toolkit to Combat Trafficking in Persons* also notes that receiving compensation is important for victims of trafficking not only because of the financial component but also because it has a symbolic meaning.

- At a societal level, awarding compensation acknowledges that trafficking is a crime;
- At an individual level, the victim's pain and suffering are acknowledged and compensation can constitute a first step towards overcoming trauma inflicted and abuses suffered;
- At a practical level, compensation can assist victims in rebuilding their lives;

¹¹¹ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 430.

¹¹² Cf UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 64.

- At a retributive level, compensation paid by traffickers can constitute a form of punishment and deter other traffickers.¹¹³

Current Pakistani Law

Section 6(ii) of the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides that victims of human trafficking can seek compensation and reimbursement of expenses in accordance with s 545 *Code of Criminal Procedure 1898* (Pakistan). This section, inter alia, enables the court to order, in addition to other fines or penalties, the payment of compensation for any loss (injury or mental anguish or psychological damage) caused by the offence, when substantial compensation is, in the opinion of the court, recoverable by such a person in a civil court.

International Law

Article 6(6) *Trafficking in Persons Protocol* obliges State Parties to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.¹¹⁴ The Protocol further requires States to provide trafficked persons with ‘information on relevant court and administrative proceedings’. This provision may be interpreted to include information and assistance with respect to obtaining compensation through criminal or civil proceedings.¹¹⁵

The *Trafficking in Persons Protocol* does not specify the source from which victims may obtain compensation. It has been noted that this source could be the traffickers themselves, either as a result of compensation orders made in criminal proceedings, or some national compensation scheme funded from the public revenue.¹¹⁶ To that end, the *Model Law against Trafficking in Persons* also recommends the establishment of a victim fund to which victims can apply for compensation for the damages suffered by them. It may, however, be preferable to maintain a single fund for all victims of serious crime rather than establishing different funds for different types of crime.¹¹⁷

Assessment and Recommendation

In accordance with international law, Pakistan’s *Prevention and Control of Human Trafficking Ordinance* (2002) creates an avenue for victims of trafficking in persons to seek compensation. Rather than creating a public compensation scheme, Pakistan connects civil actions for compensation with criminal proceedings against the perpetrator. This means that a single trial both punishes the perpetrator and compensates the victim, thus reducing any stress on victims. This is also achieved by making payment of compensation part of the sentence imposed on the perpetrator. This practice complies with model court-ordered compensation provisions set out in the *Model Law against Trafficking in Persons*.¹¹⁸

¹¹³ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 435.

¹¹⁴ See also Article 25(2) *Convention against Transnational Organised Crime*.

¹¹⁵ UNICEF et al, *Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime* (2004) 40.

¹¹⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 436–437; David McClean, *Transnational Organised Crime* (2007) 341.

¹¹⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 69, 70.

¹¹⁸ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 67–68.

The disadvantage of this compensation system, which has also been adopted in other jurisdictions, is that the award of compensation is contingent upon the victim having been identified by the authorities and for a perpetrator to have been prosecuted and found guilty in criminal proceedings. Prosecuting trafficking offences is difficult, however, because often the offender is unknown or has fled the jurisdiction or there is insufficient evidence, or the victim is unwilling or unable to cooperate with law enforcement.¹¹⁹ Without a successful prosecution, victims of trafficking in persons cannot claim any compensation under the existing scheme in Pakistan. Moreover, victims of trafficking in persons in Pakistan are unable to obtain compensation until any appeals have been decided.¹²⁰

Recommendation 29:

Explore avenues and mechanisms to provide victims of trafficking in persons with compensation in the absence of a criminal conviction of the trafficker.

The existing regulations provide little or no detail about the application procedure for payment of compensation, the basis on which the amount and level of compensation is calculated,¹²¹ and the exact circumstances under which compensation may be paid.¹²² These procedures may not require legislative implementation, but should be clearly articulated and publicly available.

Recommendation 30:

Identify (and regulate) the circumstances under which compensation may be paid to victims of trafficking in persons, the basis on which compensation is to be calculated, the amount of compensation payable, the application procedure for payment of compensation, and a procedure for review and appeal of decisions with respect to claims for compensation.

3.3.3 Non-governmental organizations

Non-governmental organizations (NGOs) play two separate but equally important roles with respect to victim support. First, many victims may be reluctant to contact or cooperate with government agencies for fear of repercussions, especially deportation. Second, NGOs, if properly resourced, may be better equipped and better suited than government agencies to offer certain support services to victims of trafficking in persons.

A very critical factor with respect to assistance and support programs for victims of trafficking in persons is to ensure that the services NGOs and government agencies provide are comprehensive and integrated. Strong partnerships between government agencies and NGOs and among NGOs provide the most effective means of offering coordinated services.¹²³

¹¹⁹ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 437.

¹²⁰ Section 545(2) *Code of Criminal Procedure 1898* (Pakistan).

¹²¹ See, however, s 546 *Code of Criminal Procedure 1898* (Pakistan).

¹²² See further, UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 71–72.

¹²³ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 410.

Current Pakistani Law

NGOs play an important role in providing accommodation and other assistance to victims of human trafficking in Pakistan. It has even been suggested that NGOs are 'legally entitled' to participate in all activities beneficial to victims of human trafficking.¹²⁴

Under the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan), NGOs share several responsibilities relating to victims of trafficking in persons with government agencies, especially in relation to the custody of female and child victims during legal proceedings. Section 5 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) provides:

- (1) The non-governmental organizations to which the victims are handed over, shall be responsible for proper shelter, food and medical treatment at a notified place which shall be open to inspection by an inspecting officer notified by the Government.
- (2) In case any non-governmental organization is found involved in maltreatment with the victim or fails to fulfill its responsibilities of providing proper shelter, food and medical treatment, its notification may be cancelled, after giving an opportunity of being heard.

The *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) set up a very close partnership between government agencies and NGOs in Pakistan, while ensuring the government authorities retain some oversight over the operation of NGOs and have the ability to suspend those organizations that operate inappropriately.

International Law

Article 6(3) *Trafficking in Persons Protocol* encourages cooperation of government agencies with NGOs, other relevant organizations, and other elements of civil society in providing accommodation and other assistance to victims of trafficking in persons. There are, however, no mandatory and no additional measures relating to NGOs anywhere in the Protocol or other international legal instruments.

Assessments and Recommendation

Pakistan's current arrangements relating to the involvement of NGOs meet international best practice. It may be desirable to conduct a separate assessment of the quality and accessibility of services offered by NGOs to victims of trafficking in persons in urban and rural parts of Pakistan and examine more closely the practical, day-to-day cooperation between government and non-governmental entities.

Recommendation 31:

Undertake an independent assessment of the quality and accessibility of services offered by NGOs to victims of trafficking in persons in urban and rural parts of Pakistan and the cooperation between government and non-governmental entities to that end.

3.3.4 Immigration status of victims

'There is', as one author notes, 'a difficult relationship between trafficking [in persons] and general immigration law.'¹²⁵ Many victims of trafficking in persons have entered or reside

¹²⁴ Tariq M Khosa, *Human Trafficking: Victim Support*, presentation by the Additional Director General, FIA, November 2006.

¹²⁵ David McClean, *Transnational Organized Crime* (2007) 343.

illegally in the country in which they are apprehended and are often in fear and/or at risk of deportation if they are found by government authorities. Indeed, exposure to immigration authorities is one weapon in the hands of traffickers to threaten and exploit their victims.

For these reasons, it is fundamentally important that genuine victims of trafficking in persons are provided with simple and accessible avenues to legalize their status temporarily or permanently. At a minimum, victims should be permitted to remain in the country lawfully while proceedings against their traffickers continue and until arrangements for their safe return are made. At best, victims of trafficking in persons should have opportunities to apply for long-term or permanent visas that allow them to remain in country to which they have travelled, should they so desire. Experience has shown that victims of trafficking in persons are unlikely to cooperate with government authorities if they are in fear of immediate deportation. In turn, the easier and the more advantageous immigration regimes for victims of trafficking in persons are, the more likely victims will cooperate with government officials.

Current Pakistani Law

In Pakistan, victims of trafficking in persons may only remain in the country if they are required to participate in criminal proceedings, otherwise they will be removed.

Current law may enable or require victims to remain in Pakistan only in order to participate in legal proceedings, usually as witnesses in the prosecution of their traffickers. Section 6(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides that:

The competent authorities of the Government, at any stage of the trial, [may] allow or extend the stay of the victim in Pakistan till such time, as the court deems necessary.

The courts may take and record victim statements in order to determine whether the victim is of benefit to criminal proceedings,¹²⁶ unless the victim is unable to get her or his statement recorded or it is otherwise not feasible to record the victim's statement in writing, s 3(1) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

If the presence of the victim in Pakistan is 'considered necessary' for the trial of the traffickers, the person may apply to the National Alien Registration Authority for a visa ('temporary registration as alien') and for a work permit. Victims may also be eligible for a visa and work permit if their immediate return to their home country (or another place outside Pakistan) is not possible, s 7(1) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

If the victim is no longer required for the trial, a court may 'direct the Government to facilitate' her or his repatriation, s 7(1) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).¹²⁷

International Law

Article 7(1) *Trafficking in Persons Protocol* calls on State Parties to consider adopting legislative or other appropriate measures that permit foreign trafficked persons to remain in the territory of the host country, temporarily or permanently, in appropriate cases.

¹²⁶ See s 164 *Code of Criminal Procedure 1998* (Pakistan), No V of 1998.

¹²⁷ See further Section 3.3.3 below.

In implementing such measures, Article 7(2) calls on State Parties to give appropriate consideration to humanitarian and compassionate factors. It is understood that 'humanitarian factors' refer to rights that are established in international human rights instruments, such as the *International Covenant for Civil and Political Rights (ICCPR)* and the *Convention relating to the Status of Refugees*. 'Compassionate factors' is meant to refer to personal circumstances such as family situation, age, gender, de-facto relationships, and other factors that should be considered on an individual and case-by-case basis.¹²⁸

Assessments and Recommendation

Pakistan's laws and regulations permitting identified victims of trafficking in persons to remain in the country presently only meet the minimum international requirements. The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) allows victims to remain in Pakistan only to participate in legal proceedings or if they cannot immediately be returned to their home country or to another place outside Pakistan.

As mentioned previously, some victims of trafficking in persons may not want or not dare to testify against their traffickers or may not hold any information relevant to the traffickers' prosecution. Currently, these victims are not eligible for any temporary residence permit in Pakistan. This situation may create fear of deportation among many victims and may in turn be used by traffickers to further exploit and threaten their victims. However, all victims of trafficking in persons require equally adequate protection measures regardless of whether or not they are willing and able to participate in legal proceedings. It is for that reason that the *Model Law against Trafficking in Persons* recommends that all victims of trafficking in persons be issued with a temporary residence permit for at least a period of six months, with the possibility of renewal, irrespective of whether he or she cooperates with the competent authorities.¹²⁹

Recommendation 32:

Consider extending the eligibility for temporary residence and work permits for at least six months to all victims of trafficking in persons irrespective of their participation in legal proceedings.

There is, at present, no recognition of humanitarian and compassionate grounds that may require a victim of trafficking in persons to remain in Pakistan. Specifically, victims who are unable or unwilling to return to their home country for fear of persecution for reasons of race, religion, nationality, political opinion, or membership of a particular social group remain unprotected. This is, in part, due to the fact that Pakistan is not a State Party to the *Convention relating to the Status of Refugees*.

International best practice models recommend that victims of trafficking in persons and their accompanying dependants may apply for long-term or permanent residence on humanitarian grounds if they or their families face a risk of retaliation, discrimination, or persecution in their country of origin.¹³⁰

¹²⁸ UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime, *Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, UN Doc A/AC.254/4/Add.3/Rev.6 (4 Apr 2000) footnote 55.

¹²⁹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 75.

¹³⁰ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 76.

Recommendation 33:

Explore the feasibility of allowing victims of trafficking in persons and their accompanying dependant(s) to apply for long-term or permanent residence in Pakistan on humanitarian grounds.

3.3.5 Repatriation

Once rescued from an instance of trafficking, many victims will wish to return to their home country as swiftly as possible. The term repatriation refers to this process.

The repatriation of victims of trafficking in persons can be a complex undertaking. For example, in some cases it may be difficult to establish what the home country of a victim is and whether it is safe to return that person to that country. In many other cases, victims of trafficking in persons have no travel or identity documents and therefore face complications in transit points and may be unable to re-enter their countries of origin. If left to travel alone, they are especially vulnerable to being re-captured by traffickers.

Current Pakistani Law

Section 7 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) contains several provisions relating to the repatriation of victims of trafficking in persons:

- (1) Where a victim is not a citizen of Pakistan, the court shall record the evidence of the victim at the earliest. If the victim is no more required for the trial, the court may direct the Government to facilitate such victim for this repatriation. [...]
- (2) If the repatriation of the victim is decided, the Government shall in consultation with the concerned Embassy or, as the case may be, the High Commission of the country to which the victim belongs, make necessary arrangements for its safe return.
- (3) The Non-Governmental Organizations may provide assistance to the Government in the process of repatriation of the victim.
- (4) The Government shall establish special funds for repatriation of the victim
- (5) The Government shall establish special funds for preparation of the victim.

Current Pakistani regulations provide that unless the victim of trafficking in persons is required to remain in Pakistan for the trial, i.e. for witness testimony in proceedings against the traffickers,¹³¹ the person ought to be repatriated, s 7(1).

To assist victims in making the necessary arrangements and obtaining relevant permits and travel documents, Pakistani authorities may assist by consulting with the embassy or other consular mission of the victim's home country in Pakistan in order to ensure the swift and safe return of the person, s 7(2). Non-governmental organizations may also assist in this process, s 7(3).

Subsections 7(4) and (5) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) envisage the creation of a special fund to enable the repatriation of the victim and to prepare victims for return to their home countries.

¹³¹ See further Section 3.3.2 above.

International Law

Article 8 *Trafficking in Persons Protocol* creates several obligations for countries seeking to repatriate victims of trafficking in persons to their home country.

Article 8(2) *Trafficking in Persons Protocol* requires that the State Party returning the victim must have due regard for the safety of the victim and for the status of any legal proceedings relating to the trafficking. This provision relates to the timing of any return of the victim. It recognizes that decisions to return a victim of trafficking in persons require consideration of two factors. First, paramount in the decision to repatriate must be the safety of the victim. Accordingly, 'it may well be best for the return of the victim to his or her home State to be delayed in order to allow at least some aspects of [the physical, psychological, and social] recovery process to have been completed.'¹³² Second, victims of trafficking in persons may be needed in criminal proceedings in the receiving State before they are returned to their home country. In the case of child victims of trafficking in persons, countries should also consider not repatriating child victims to their home country unless doing so is in their best interest and, prior to their return, a suitable relative or guardian has agreed and is able to take responsibility and offer care and protection for the child.¹³³

Articles 8(2) of the Protocol further mandates that the repatriation of the victim 'shall preferably be voluntary'. While the Protocol does not prohibit compulsory repatriation against the known wishes of the victim, it calls on Signatories not to use force in order to compel victims to return to their home country. 'There is something offensive in the notion that a victim, compelled by illicit force to move another State, should then be compelled, albeit by legitimate force, to move once again', notes one commentator.¹³⁴ Article 8(2), however, does not place any specific obligation on the State Party returning the victim.¹³⁵

The *Trafficking in Persons Protocol* also obliges State Parties to cooperate in the course of the return procedure. Upon request of the receiving state, states of origin shall verify whether the trafficked person is a national or had the right to permanent residence at the time of entering the receiving state and, if the person has no proper documentation, issue the necessary travel or other documents to enable the person to travel and re-enter its territory, Article 8(3), (4) *Trafficking in Persons Protocol*.

Assessments and Recommendation

Existing provisions in Pakistan relating to the repatriation of victims of trafficking in persons to their home country comply with minimum requirements under international law. Pakistan's regulations also specifically recognize that the repatriation of a victim may be delayed because of legal proceedings in which the victim participates (as a party or witness). Moreover, the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) contain specific mechanisms to facilitate the return of victims by working with the embassies and foreign missions of the victim's home country.

Contrary to international best practice, current regulations in Pakistan, however, do not take into account that compassionate or humanitarian reasons may make it necessary to delay

¹³² David McClean, *Transnational Organized Crime* (2007) 347.

¹³³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 290.

¹³⁴ David McClean, *Transnational Organized Crime* (2007) 347–348.

¹³⁵ *Travaux Préparatoires*, para 73.

the repatriation of victims of trafficking in persons. A review completed in February 2009 also noted that current policies in Pakistan do not sufficiently recognize the safety of victims of trafficking in persons and do not envisage for alternative rehabilitation measures.¹³⁶ It would thus be desirable to include into s 7 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) a clause that ensures that the safety of the victim is considered before decisions about repatriation are made.¹³⁷ Special provisions should also be made for the repatriation of child victims of trafficking in persons.

Recommendation 34:

Amend s 7 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) to ensure that any repatriation of victims of trafficking in persons shall be with due regard for their safety. Provisions should also be included to ensure that child victims of trafficking in persons are not returned to their home country if there is an indication following a risk and security assessment that their return would not be in their best interest.

Pakistan's regulations also contain no safeguards to ensure that victims of trafficking in persons are not repatriated in violation of the non-refoulement principle or to a place where they may face inhuman or degrading treatment.¹³⁸

Recommendation 35:

Incorporate provisions into the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) to ensure that any decision to repatriate a victim of trafficking in persons is considered in the light of the principle of non-refoulement and of the prohibition of inhuman and degrading treatment.

There are also no provisions in Pakistan to ensure that any risks to the life, health or liberty of victims and their families are assessed before a victim is repatriated. Insofar as possible, a risk assessment should take into consideration factors such as the risk of reprisals by the trafficking network against the victim and his or her family, the capacity and willingness of the authorities in the victim's country of origin to protect the victim and his or her family from possible intimidation or violence, the social position of the victim on return, the risk of being arrested, detained, and prosecuted by the authorities in his or her home country for trafficking-related offences (such as the use of false documents and prostitution), the availability of assistance, and opportunities for employment.¹³⁹

Recommendation 36:

Risk and security assessments should be carried out prior to any repatriation from Pakistan if victims raise a substantial allegation that they or their families may face danger to life, health, or personal liberty if they are returned to their home country.

¹³⁶ Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 29.

¹³⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 78–79.

¹³⁸ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 79.

¹³⁹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 79.

3.4 Prevention, Education, and Awareness

3.4.1 Awareness campaigns and education

Raising awareness and educating the public about the causes, consequences, and signs of trafficking in persons are important tools to prevent and detect this heinous crime. Accordingly, awareness and education campaigns feature prominently in domestic anti-trafficking strategies and in international law and best practice guidelines.

Current Pakistani Law & Policy

Pakistan's *National Action Plan for Combating Human Trafficking* states:

Awareness raising efforts need to be incorporated as a continuous process in the national counter-trafficking strategy, as it is important to create an understanding of the trafficking spectrum across all sections of the society. These objectives are best served through launching targeted and well-planned nationwide campaigns. Awareness-raising has to be motivational, informative, realistic and target oriented.

Promoting awareness of the negative consequences of smuggling of and trafficking in human beings shall be given greater attention so as to inform potential migrants of the risks involved. The multi dimensional problem of trafficking calls for an integrated and a multi-sectoral approach. Legal and administrative measures are necessary but not sufficient for eliminating the problem. There is a general lack of awareness regarding trafficking at all levels, the victims, the family, the community, the law enforcement agencies, lawyers, prosecutors and the media. The urgent need is to bring about an entire attitudinal and behavior [...] change in the public perception regarding this problem. A part of the strategy is carrying out information campaigns to generate mass awareness about trafficking, risks to the victims and methods employed by traffickers. Also, increasing awareness and sensitization amongst immigration and diplomatic officials for application of the knowledge on their job.¹⁴⁰

For the most part, designing and conducting public awareness campaigns relating to trafficking in persons falls within the mandate of Pakistan's Ministry of Information. In addition, the FIA has set up a website to raise awareness and inform the public about 'most wanted' human traffickers and common modi operandi. The website also contains a list of authorized agents and fake/illegal agents who are involved in labor recruitment.¹⁴¹

In addition, the *National Action Plan for Combating Human Trafficking* delegates the following public relations and awareness-raising tasks to the Ministry of Foreign Affairs:

- i. Awareness raising on migrant rights, migration policies and procedures for promotion of migration through regular/legal channels.
- ii. Use of electronic and print media besides seminars, briefings, workshops, meetings etc. aimed at all the groups including general public, law enforcement officials, media, relevant professionals, NGOs and policy makers.
- iii. Publicizing legal migration polices and laws of other countries for intending emigrants.
- iv. Mass awareness campaigns at the grass roots and higher levels on the issues, problems and risks of human trafficking and smuggling.
- v. Indexation of national database on human trafficking
- vi. Sensitization and involvement of print media in reporting, investigating and publicizing the crime.

¹⁴⁰ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁴¹ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) paras 33, 34.

- vii. Issue-based radio and television programs based on social, psychological and legal aspects of human trafficking, in particular, on the negative impacts of trafficking of women and children.¹⁴²

International Law

Article 9(1) *Trafficking in Persons Protocol* requires Signatories to establish policies, programs, and other measures to prevent and combat trafficking in persons and protect victims from re-victimization. This should also include legislative, educational, social and other measures to discourage the demand that fosters all forms of exploitation of persons that leads to trafficking, Article 9(5).

Article 9(2) also encourages State Parties to instigate mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.¹⁴³ Paragraph (3) further calls on Signatories to collaborate broadly with non-governmental organizations and other elements of civil society in creating and conducting awareness and education campaigns.¹⁴⁴

To facilitate the implementation of these (and other) measures, the *Model law against Trafficking in Persons* recommends the creation of a national anti-trafficking coordinating body or inter-agency anti-trafficking task force with a mandate to develop a national plan of action consisting, inter alia, of a comprehensive set of measures for the prevention of trafficking in persons.¹⁴⁵

Assessments and Recommendation

The standards articulated by Article 9 *Trafficking in Persons Protocol* are not mandatory and most of the proposed measures relating to awareness-raising and education are aspirational policy measures, ill-suited for legislative implementation.¹⁴⁶ Accordingly, Pakistan's laws and regulations contain no specific provisions to this end.

Pakistan has, however, set out a comprehensive *National Action Plan* in which prevention, awareness, and education measures feature very prominently. The strategies articulated in the *National Action Plan for Combating Human Trafficking* comprehensively adopt international best practice guidelines. Furthermore, the Ministry of Interior of Pakistan has established a steering committee to monitor and review anti-trafficking and anti-migrant smuggling efforts in Pakistan. The Joint Secretary (Security) has been chosen as the focal point for coordination and information exchange on these issues.¹⁴⁷ An Inter-agency Task Force (IATF) consisting of all the law enforcement agencies has also been set up.¹⁴⁸

As a minor point, there is conflicting information about which Ministry coordinates domestic anti-trafficking awareness-raising and education efforts and there may be an overlap (and duplication) between activities of the Ministry of Information and the Ministry of Foreign Affairs. It would be desirable to update and correct relevant information.

¹⁴² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁴³ See also Article 31(5) *Convention against Transnational Organised Crime*.

¹⁴⁴ Article 9(2), (3) *Trafficking in Persons Protocol*.

¹⁴⁵ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 84.

¹⁴⁶ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 297.

¹⁴⁷ See further Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan* (2010) 18–21.

¹⁴⁸ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 11.

As it is beyond the scope of this assessment to review the quality and scope of existing and proposed awareness and education campaigns, it would be beneficial to commission an independent assessment of these aspects to ensure that anti-trafficking campaigns are effective, reach target audiences, and have maximum impact. Such an assessment should also cover campaigns run by international organizations and non-government entities.

Recommendation 37:

Commission an independent assessment of the scope, design, impact, and quality of anti-trafficking education and awareness campaigns in Pakistan.

3.4.2 Research; addressing the root causes of human trafficking

One of the main obstacles in preventing and suppressing trafficking in persons more effectively is the lack of systematic, in-depth, analytical research on the causes, concepts, circumstances, and characteristics of this phenomenon. Analytical research work is fundamental to understanding the dynamics, levels, and patterns of trafficking in persons, the operations and motivations of offenders, and the needs and vulnerabilities of victims, so as to identify better ways of countering it. Only with a proper knowledge base can governments be encouraged and held accountable to take evidence-based policy action and develop meaningful legislation that would lead to curtailing trafficking in persons and address its root causes.

Current Pakistani Policy & Practice

Pakistan's *National Action Plan for Combating Human Trafficking* states:

Part of the overall strategy is seeking to institute poverty mitigation measures and safety nets to promote economic development and social inclusion with a view to ameliorate the situation with regard to supply/push side factors. Efforts will also be made to seek international cooperation on both demand and supply sides by seeking formal job quotas in the destination markets and seeking development assistances for interventions in poverty pockets. Another objective is to provide basic education and skills, diversifying job opportunities and reducing barriers to entry into the job markets, and commercial activities. Additionally, a study would be conducted (with support from donors) highlighting links between underdevelopment and trafficking in persons. Based on the study, i) funding for specific programs may be sought from international donors, ii) strategy should be evolved in consultation with Ministries of Labor and Foreign Affairs, to lobby for a better labor/immigration regime for Pakistan nationals in the developed world. Responsibility: Ministry of Finance, Economic Affairs Division Ministry of Foreign Affairs.¹⁴⁹

The *National Action Plan* further advocates data collection and research:

i. Various governmental, international and non-governmental agencies are engaged in research and data collection efforts including the Ministries of Interior, Labor & Manpower, and Women Development, alongside the Federal Investigation Agency, Bureau of Emigration, and the International Organization for Migration. An Anti-Trafficking Unit Coordination and Monitoring Cell has been established at the FIA Headquarters which is carrying out research especially with regard to data related to offenders and their prosecution as well as crime prevention measures. The various processes and outputs include issuance of Human Trafficking Intelligence Gazette for information sharing with the operational units. A part of the effort is operationalization of FIA's website for information related to human trafficking efforts. IOM's publication "The Pakistan

¹⁴⁹ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

Thematic Group’s Position Paper on Human Trafficking”, its upcoming survey of human trafficking in Pakistan, and a border assessment study are expected to plug the existing gaps in this area.

ii. The ATU Monitoring and Coordination Cell at the FIA Headquarters shall be responsible for collection of data related to all groups (age, sex etc) who are victims of trafficking, also developing effective and well targeted prevention measures, improving data collection and research for analysis of subjects including the nature and scale of human trafficking and exploitation mechanism used by the criminal groups. Responsibility: ATUs Monitoring & Coordination Cell, FIA.¹⁵⁰

International Law

Article 9(4) *Trafficking in Persons* calls on Signatories to cooperate in addressing the root causes of trafficking in persons, including poverty, underdevelopment, and lack of opportunity. Article 9 also encourages State Parties to instigate research and collaborate broadly with non-governmental organizations and other elements of civil society.¹⁵¹

The *Model Law against Trafficking in Persons* further recommends that countries

[e]stablish procedures to collect data and to promote research on the scale and nature of both domestic and transnational trafficking in persons and its forced labor and slavery-like outcomes, the factors that further and maintain trafficking in persons and best practices for the prevention of trafficking, for assistance to and protection of victims and the prosecution of traffickers.¹⁵²

Assessments and Recommendation

The measures called for in international law and Pakistan’s *National Action Plan* involve non-legislative initiatives and do not require legislative authority.¹⁵³ Accordingly, domestic law and regulations in Pakistan contain no provisions relating to research and to addressing the root causes of trafficking in persons. It is noteworthy, that the *National Action Plan* recognizes the important role that these efforts play in combating trafficking in persons and articulates detailed measures for a national research agenda.¹⁵⁴

Existing data and analysis relating to trafficking in persons in Pakistan is, however, very limited and official and independent research into this topic is only in its infancy. As a general point, it would be desirable to encourage broad-based collaboration between government agencies, civil society groups, international organizations such as UNODC, UNICEF, IOM, UNHCR, and others, research centers and academic scholars within and beyond Pakistan in order to identify, examine, understand, and address the causes, consequences, and dynamics of trafficking in persons in Pakistan more effectively.

¹⁵⁰ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁵¹ Article 9(2), (3) *Trafficking in Persons Protocol*.

¹⁵² UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 86.

¹⁵³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 297.

¹⁵⁴ See also Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 28, 46–47.

3.5 Criminal Proceedings

3.5.1 Mandate

Section 9 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) assigns the investigation of offences under the Ordinance to 'such persons or agencies as are specially empowered by the Government in that behalf.' This function is presently carried out by Pakistan's Federal Investigation Agency (FIA).

Under s 10 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan), offences under the Ordinance have to be tried by a Magistrate Court of the First Class or higher. That court is also authorized to pass any sentence for human trafficking offences.¹⁵⁵

3.5.2 Matters relating to the trial process

Section 8 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) provides that the offences under the Ordinance are 'cognizable, non-bailable, and non-compoundable as construed by the Code'. According to the *Code of Criminal Procedure 1898* (Pakistan) a 'cognizable offence' means an offence in which a police officer may execute an arrest without warrant'.¹⁵⁶ A bailable offence is an offence in which the accused person can be punished for imprisonment for a term of less than 7 years. An offence punishable for 7 years or more is thus a non-bailable offence.¹⁵⁷ Only so-called Sessions Judges may grant bail for a non-bailable offence. A non-compoundable offence is an offence in which the court cannot compound the case without trial.

Under s 10 of the Ordinance 'no court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Ordinance'.

3.5.3 Protection of victims and witnesses in court

As mentioned previously, many victims and witnesses of trafficking in persons are at risk of threats and intimidations by traffickers and their associates, especially if victims testify in criminal proceedings. It is for that reason that many victims refrain from cooperating with authorities and refuse to testify against their traffickers.

Accordingly, it is important that national laws contain provisions that protect the physical safety of victims and witnesses participating in court proceedings and, insofar as possible, protect their privacy and identity.

Current Pakistani Law

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) does not contain any specific provisions relating to the protection of victims and witnesses in criminal proceedings involving offences relating to trafficking in persons. The *Code of Criminal Procedure 1898* (Pakistan) also appears to have no specific provisions on this point.

The *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) contain a general clause in s 3(1) that requires victims of trafficking in persons to 'be produced before the

¹⁵⁵ Notwithstanding anything contained in s 32 *Code of Criminal Procedure 1898* (Pakistan).

¹⁵⁶ Section 4(f) *Code of Criminal Procedure 1898* (Pakistan).

¹⁵⁷ Section 4(b) *Code of Criminal Procedure 1898* (Pakistan).

court for recording his statement' unless the victim is unable or the recording is otherwise not feasible. Section 7(1) equally requires the court to record the evidence of non-Pakistani victims of trafficking in persons as soon as practicable. The Rules, however, contain no further details about how victim statements are used in criminal proceedings and the conditions and circumstances in which victims and witnesses participate in criminal proceedings.

International Law

Article 6(1) *Trafficking in Persons Protocol* obliges State Parties to protect the privacy and identity of victims of trafficking in persons, inter alia, by making legal proceedings relating to such trafficking confidential.

There are a variety of ways in which protection of the privacy and identity of victims and witnesses of trafficking in persons during court proceedings may be provided. This may include measures such as conducting court proceedings in camera, away from the presence of media and public, sealing records of the court proceedings, hearing victims and witness testimonies out of the view of the accused (by video link, behind a screen, etc), using pseudonyms for victims and witnesses, restricting questions asked to the victim or witness, et cetera. Where threats against victims and witnesses are particularly imminent, it may also be necessary to take measures to relocate the victim or witness and take additional steps to limit the disclosure of personal information.¹⁵⁸

The acceptability and use of these measures will, however, vary between jurisdictions and some measures may not be permissible in all legal systems. The *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* also note that:

Drafters should bear in mind that denying information to the defense must be reconciled with any applicable constitutional or other rights, including the right to confront witnesses or accusers and the right to disclose any information that might be exculpatory or assist the defense. Drafters should also consider that excluding the media or the public from legal proceedings limits the effectiveness of openness and transparency as a safeguard to ensure the propriety of the proceedings and may infringe the rights of the media to free expression.¹⁵⁹

Assessments and Recommendation

In the absence of additional statutory and regulatory documentation, and without direct consultation with investigators, prosecutors, and judicial officials in Pakistan, it is not possible to comprehensively and conclusively assess existing mechanisms relating to victim and witness protection in Pakistan.

As a general point, it would be beneficial to conduct further analysis of relevant laws, procedures, and practices pertaining to victim and witness protection in Pakistan. It may not be feasible to limit such analysis to trafficking in persons and it may instead be desirable to examine protection mechanisms in relation to victims and witnesses of all serious offences.

¹⁵⁸ See further, UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 62–63, 64–66; UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 283.

¹⁵⁹ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 284.

Recommendation 38:

Conduct an independent assessment of the availability, scope, and operation of victim and witness protection programs in Pakistan.

3.6 Law Enforcement & Border Measures

3.6.1 Current law enforcement arrangements in Pakistan

As the national policing agency, Pakistan's Federal Investigation Agency (FIA) — established in 1974 and governed by the *Federal Investigation Agency Act 1974* (Pakistan)¹⁶⁰ — has primary responsibility for investigating and preparing cases involving trafficking in persons and for the prosecution of offenders. It is also involved in the apprehension of fake recruitment and employment agencies.¹⁶¹

The FIA's Additional Director General (Immigration) acts as the National Rapporteur on human trafficking. This role involves liaison with other Ministries, agencies, international partners, the Director General FIA, the Anti-Trafficking Unit(s), border security, and other law-enforcement agencies, in order to efficiently implement operational investigation and criminal prosecution of human trafficking crimes. The specific duties of the Additional Director General (Immigration) include:

- 1) Identification of requirements arising from implementation of the National Action Plan, and taking appropriate actions to resolve them;
- 2) Provision of information to relevant authorities ensuring that ministries and other agencies are properly informed on the activities of the Plan;
- 3) Direction, co-ordination and liaison with all stakeholders, including other ministries, agencies and organizations;
- 4) Supervision over activities of the Anti-Trafficking Units;
- 5) Convening meetings of appropriate actors within the nucleus organizations in order to resolve functional problems;
- 6) Accordingly, ensuring that adequate support resources are available from appropriate Government bodies for the Plan; and
- 7) Maintaining close contacts for potential donor support through international partners.¹⁶²

On June 9, 1975,¹⁶³ the FIA established an Immigration Wing which is presently divided into two branches: the Immigration Branch and the Anti-Human Smuggling Branch.

The Immigration Branch has the mandate to control and monitor the arrival and departure of international travelers, as well as to prevent and detect instances of migrant smuggling and trafficking in persons at Pakistan's 25 airports, land border crossings, seaports, and (international) railway stations.¹⁶⁴ Officers assigned to the Immigration Branch examine travel documents of all arriving and departing passengers at border checkpoints, while also

¹⁶⁰ The complete text of the *Federal Investigation Agency Act 1974* (Pakistan) is available at Pakistan, FIA, *Introduction to FIA*, www.fia.gov.pk/abt_background.htm (accessed 4 May 2010).

¹⁶¹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁶² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 18 Jan 2010).

¹⁶³ Prior to 1975, immigration check-points were operated by provincial immigration authorities.

¹⁶⁴ Pakistan, FIA, *Immigration Wing*, available at www.fia.gov.pk/dep_immigration.htm (accessed 4 May 2010).

aiming to prevent, detect, arrest, and detain passengers travelling on forged and fake documents. Officers are further charged with arresting offenders on the request of police and other law enforcement agencies, as well as implementing orders and instructions conveyed by the Government in respect of passengers included in various watch lists, stop lists, and black lists.¹⁶⁵ According to the FIA, approximately 500-600 officers are currently assigned to duties within the Immigration Wing. It should be noted, however, that all FIA officers rotate between different parts of the FIA every two to three years (with the exception of some female officers who are exclusively posted at international airports).

Under the Immigration Wing, the FIA operates 16 'Anti-Human Trafficking Circles' in all major cities across Pakistan. These Circles (previously called Passport Circles) are tasked with enforcing relevant immigration laws, including the *Immigration Ordinance 1979*, *Passport Act 1974*, *Foreigners Act 1946*, *Exit from Pakistan (Control) Ordinance 1981*, and various provisions under Pakistan's *Penal Code*.¹⁶⁶ Members of the Anti-Trafficking Circles are also involved in the deportation and return of persons entering Pakistan on forged documents or who make false representations and declarations in relation to their immigration.¹⁶⁷

The FIA has also established an Anti-Trafficking Unit based at the FIA headquarters in Islamabad as a special division to deal with all trafficking in persons and migrant smuggling matters. The Anti-Trafficking Unit also maintains sub-units in the zonal directorates in Karachi, Lahore, Rawalpindi, Peshawar, and Quetta.¹⁶⁸ The principal tasks of the Anti-Trafficking Unit, as Stated by the FIA, include:

- The prevention and protection of victims of trafficking;
- The investigation and prosecution of cases;
- The building and maintenance of a database of persons involved in trafficking in persons or migrant smuggling;¹⁶⁹
- Liaison with NAS of the US Embassy in Islamabad, non-government organizations, provincial police et cetera; and
- The development of a referral system for the transfer of victims to shelter homes and to facilitate the repatriation of victims of trafficking and smuggling to their countries of origin.¹⁷⁰

Furthermore, Pakistan has set up an Inter-agency Task Force (IATF) consisting of all relevant law enforcement agencies including the FIA, FC Balochistan, Balochistan Levies, Coast Guards, Maritime Security Agency, and Police. The IATF is charged with intercepting people being trafficked and apprehending human traffickers at points of origin (such as internal trafficking originating in Punjab), transit (such as Karachi, Mand Billo, Quetta), and departure

¹⁶⁵ Pakistan, FIA, *Annual Administration Report 2008 (2009)* 7.

¹⁶⁶ Pakistan, FIA, *Immigration Wing*, available at www.fia.gov.pk/dep_immigration.htm (accessed 4 May 2010).

¹⁶⁷ Pakistan, FIA, *Annual Administration Report 2008 (2009)* 9.

¹⁶⁸ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 4 May 2010).

¹⁶⁹ A 'list of most wanted traffickers' is available at Pakistan, FIA, *Most Wanted Human Traffickers*, available at www.fia.gov.pk/Most_Wanted_Human_Traffickers.htm (accessed 4 May 2010).

¹⁷⁰ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 4 May 2010); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

(including coastal areas such as Gwader, Taftan etc). The IATF also conducts interception activities on Lee market in Karachi, in hotels, serais, coach stations, et cetera.¹⁷¹

The Ministry of Interior and the Ministry of Labor also have a separate mandate to ‘take action against recruitment agencies that act as agents for sending victims abroad for trafficking/other forms of exploitation, including camel jockeying et cetera.’¹⁷²

3.6.2 Current border measures

Current Pakistani Law & Policy

Pakistan’s *National Action Plan for Combating Human Trafficking* sets out a range of policy measures designed to improve border control and the apprehension of victims and perpetrators involved in trafficking in persons at Pakistan’s main airports, seaports, and land-border control points:

- i. Also planned is strengthening of measures related to permission of entry, or denial of entry, revocation of visas, or temporary detention of persons accused of being involved in immigration/trafficking related offences, through strengthening of Passport Cells which are being staffed and equipped with additional resources. Responsibility: Director General FIA, Director General Immigration & Passports.
- ii. Efforts will be made for strengthening of immigration controls to reduce human trafficking particularly to Middle East and Europe. The proposed measures include creation of additional positions and provision of transport to strengthen Passport circle Gujranwala, sanction of posts and provisions of transport for establishment of new Passport Circles at Taftan, Turbat and Gawader. Manning of all immigration counters by ASIs is also Planned. Responsibility: Ministry of Interior.¹⁷³

International Law

Article 11(1) *Trafficking in Persons Protocol* obliges State Parties to strengthen, to the extent possible and without prejudice to international commitments in relation to free movement of people, border controls and to consider strengthening cooperation among border control agencies by establishing and maintaining direct channels of communication. The qualification ‘to the extent possible’ must be read as referring to the means and resources available to each State Party as well as the practical questions posed by the nature of borders, land or sea, which may make effective border controls very difficult.¹⁷⁴

Assessments and Recommendation

The measures relating to border control called for in international law and Pakistan’s *National Action Plan* mostly involve initiatives that do not necessarily require legislative authority.¹⁷⁵ Accordingly, domestic law and regulations in Pakistan contain no specific provisions relating to border control procedures.

It would be beneficial to assess separately the processes and procedures in place at Pakistan’s land, air, and sea borders, aimed at identifying instances of trafficking in persons.

¹⁷¹ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 11.

¹⁷² Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

¹⁷³ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

¹⁷⁴ David McClean, *Transnational Organized Crime* (2007) 358.

¹⁷⁵ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 312.

This will require direct consultation with relevant border control and customs agencies, including site visits to selected airports, seaports, and land border crossings.

Recommendation 39:

Conduct an independent assessment of the border control and customs processes and procedures in Pakistan.

Measures relating specifically to identity documents and document fraud detection are explored separately in Section 3.7 below.

3.6.3 International law enforcement cooperation

Trafficking in persons is an offence that frequently crosses international borders and affects multiple jurisdictions. Moreover, some perpetrators take advantage of discrepancies in legal systems and enforcement measures by residing in or relocating to jurisdictions where the risks of interdiction and arrest are low.

Consequently, cross-border cooperation between law enforcement agencies is essential in curtailing transnational trafficking in persons. In a negative sense, lack of cooperation, information exchange, and mutual legal assistance between countries frequently frustrates criminal investigations, prosecutions, as well as prevention measures.

Current Pakistani Law & Policy

The *National Action Plan for Combating Human Trafficking* in Pakistan recognizes the significance of cooperation between domestic law enforcement agencies as well as cooperation between Pakistani authorities and agencies in other countries:

At the international level, cooperation in action against trafficking in human beings and illegal immigration will be developed and strengthened through information/intelligence exchange, law enforcement cooperation and mutual legal assistance. Responsibility: Ministry of Foreign Affairs, Ministry of Interior.

Strengthening cooperation, including with countries of origin, transit, and destination, to establish a framework to facilitate the return of smuggled and trafficked persons and after appropriate legal action, the return of smugglers and traffickers. Responsibility: Ministry of Foreign Affairs.¹⁷⁶

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) contain no specific measures relating to law enforcement cooperation and related issues such as mutual legal assistance in criminal matters, joint investigations, extradition, technical cooperation, and the like.

Pakistan is a Signatory to several international treaties, such as the *Convention against Transnational Organized Crime*, which include a range of law enforcement and judicial cooperation provisions. Domestically, these matters are, for the most part, set out in separate statutes including the *Extradition Act 1972* (Pakistan), the *Code of Criminal Procedure 1898* (Pakistan), the *Mutual Assistance in Criminal Matters Act* (Pakistan), and

¹⁷⁶ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

similar statutes. Pakistan also has entered into a range of bilateral treaties to facilitate mutual legal assistance, extradition, and other forms of cooperation with other countries. It is also likely that Pakistan entertains memoranda of understanding (MoUs) with foreign law enforcement agencies, though these documents are not accessible from outside Pakistan.

International Law

The *Trafficking in Persons Protocol* does not directly address the issue of law enforcement cooperation, except for information exchange and training, which is discussed separately in Section 3.8 below.

The provisions relating to law enforcement cooperation under the *Convention against Transnational Organized Crime*, however, apply mutatis mutandis, to the *Trafficking in Persons Protocol*.¹⁷⁷ This includes, inter alia, provisions on international cooperation for purpose of confiscation (Article 13), extradition (Article 16), mutual legal assistance (Article 18), joint investigations (Article 19), and law enforcement cooperation (Articles 26 and 27 *Convention against Transnational Organized Crime*).¹⁷⁸

Assessments and Recommendation

A complete assessment of Pakistan's laws relating to law enforcement cooperation (as well as prosecutorial and judicial cooperation) is beyond the scope of this report. These measures are, however, of great importance to Pakistan's efforts to effectively curtail cross-border trafficking in persons along with other forms of transnational crime. An assessment completed in February 2009 identified some of the existing law enforcement arrangements between Pakistan and neighboring countries, but did not further examine the quality and depth of this element of law enforcement cooperation.¹⁷⁹

Elsewhere, it has been noted that:

Pakistan does not have bilateral arrangements for cooperation in migration matters. We need to negotiate mutual agreements with other countries, which secure benefits like minimum wages and other welfare for the migrants, and protection from indiscriminate arrests, prosecution, deportations etc.¹⁸⁰

For that reason, it is desirable to carry out a separate independent assessment of current Pakistani laws, regulations, and procedure relating to mutual legal assistance, extradition, transfer of proceedings, transfer of sentenced persons, and other measures relating to law enforcement, prosecutorial, and judicial cooperation.

Recommendation 40:

Commission an independent assessment of international law enforcement, prosecutorial, and judicial cooperation laws, regulations, and procedures in Pakistan.

¹⁷⁷ Article 1(2), (3) *Trafficking in Persons Protocol*.

¹⁷⁸ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 254.

¹⁷⁹ Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 45–46.

¹⁸⁰ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) paras 41, 42.

3.7 Travel and Identity Documents

The inspection of travel and identity documents¹⁸¹ by government authorities, especially at border control points, is an important tool to detect some instances of trafficking in persons and deter others from doing the same. Accordingly, it is important that government authorities have the skills, procedures, and equipment in place to properly examine identity documents and detect cases of document fraud. Furthermore, to pre-empt the forgery of identity and travel documents it is essential that official documents are of a quality and contain security features so that they cannot be easily forged or altered. It can, however, often be difficult to intercept instances of trafficking in persons at border control points, since many victims of trafficking in persons may enter a country legally only to face subsequent exploitation.¹⁸²

Current Pakistani Law & Policy

The *National Action Plan for Combating Human Trafficking* identifies the following technical measures designed to detect document fraud in relation to trafficking in persons:¹⁸³

- a) Establishment of Personal Identification Secure Comparison Evaluation System (PISCES) at all major air, land and sea routes/checkpoints.
- b) To control document fraud, computerized National Identity Cards have been issued, replacing the old manual NIC.
- c) Similarly, a new Machine Readable Passport is also now being issued in place of the manual passport.
- d) An Automated Finger Impression System (AFIS) is also being created, instituting biometric features.
- e) Installation of forgery detection equipment at checkpoints.
- f) Replacement of manual border passes (rahdaris) by computerized border passes is also planned.¹⁸⁴

The Plan further states:

- i. Ensuring that travelling or other identity documents are of such quality that they cannot easily be tampered, forged, misused, altered, replicated or falsified. This includes expanding, improving and expanding the coverage of Machine Readable Passports, including the overseas missions. Responsibility: Director General, Immigration & Passport, M/o Interior.
- ii. Creating expertise in the scientific and technical fields in forensic science concerning secure documentation and ensuring that national travel and identity documents are of the highest possible quality and security. Responsibility: Ministry of Interior, National Database & Registration Authority.¹⁸⁵

¹⁸¹ According to *Travaux Préparatoires*, paras 80 and 83, “travel documents” includes any type of document required for entering or leaving a State under its domestic law’, and “identity documents” includes any document commonly used to establish the identity of a person under the laws and procedures of that State.’

¹⁸² *Travaux Préparatoires*, para 79.

¹⁸³ ‘Documents relating to human trafficking’ is defines in s 2(e) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

¹⁸⁴ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

¹⁸⁵ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006).

Personal Identification Secure Comparison and Evaluation System (PISCES)

To prevent the use of fraudulent and forged travel documents Pakistan introduced PISCES, the Personal Identification Secure Comparison and Evaluation System. PISCES is an electronic database operated by the FIA to collect information on persons entering and exiting Pakistan. It allows officers to collect and compare information, identify persons and, if necessary, question and detain persons of interest. PISCES was initially introduced at all international airports in Pakistan in 2004 and now operates at twelve airports, four seaports, five land border crossings, and two (international) railway stations across Pakistan. Further expansion of the PISCES project is anticipated in the near future.¹⁸⁶

The database records all incoming and outgoing passengers and links all points of entry and exit. The information on PISCES is shared among all law enforcement and immigration agencies and intelligence services in Pakistan. Since its inception, the database has been vital in identifying persons travelling on forged and stolen passports, and fraudulent visas. It is also of great use in identifying cases and patterns of migrant smuggling and human trafficking, and assists in the identification and arrest of persons wanted by Interpol and foreign law enforcement agencies.¹⁸⁷

Other measures relating to document fraud

In addition to the FIA, the Director-General of the Immigration and Passport Division of the Ministry of Interior has responsibility for some aspects relating to immigration control and for ensuring the legitimacy, security, and control of travel and other identity documents.¹⁸⁸ The National Database & Registration Authority under the Ministry of Interior is responsible for ensuring that Pakistani travel and identity documents are of adequate quality to prevent forgery.¹⁸⁹

Other measures to prevent and suppress document fraud include a computerized national identity card, machine readable passports, and automated finger print impression system.¹⁹⁰

International Law

Under Article 11(2)–(3) *Trafficking in Persons Protocol* countries are required to strengthen border controls to detect and prevent trafficking, including imposing requirements on commercial carriers to check whether or not passengers have the necessary passports and visas in their possession,¹⁹¹ setting standards for the technical quality of passports and other travel documents, and cooperating with other States in establishing the validity of their own documents when used abroad.

¹⁸⁶ Pakistan, FIA, *Personal Identification Secure Comparison and Evaluation System (PISCES)*, available at www.fia.gov.pk/prj_pisces.htm (accessed 4 May 2010).

¹⁸⁷ Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan* (2010) 21.

¹⁸⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁸⁹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁹⁰ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 9.

¹⁹¹ See further *Travaux Préparatoires*, para 80.

Article 12 requires Signatories to ensure that their travel and identity documents are of a quality that they cannot easily be falsified or misused and prevent their unlawful creating, issuance and use. This includes such measures as technical elements to make documents more difficult to falsify, forge or alter, and administrative and security elements to protect the production and issuance process against corruption, theft or other means of diverting documents.¹⁹²

Article 13 obliges State Parties to verify within a reasonable time frame the legitimacy and validity of travel and identity documents as requested by other Signatories.

Assessments and Recommendation

Pakistan comprehensively addresses all matters relating to identity documents in its *National Action Plan* and has implemented many policy objectives through practical measures. Implementation of some requirements under the *National Action Plan* and under international law, especially in relation to verifying the authenticity of travel and identity documents does not require legislation¹⁹³ and it appears that Pakistan has allocated the necessary resources and made the necessary administrative changes to comply with international requirements.

It is not immediately clear where relevant regulations for commercial airlines and shipping lines are set out which articulate procedures, including sanctions, to ensure that carriers check travel and/or identity documents of their passengers. It appears that relevant laws and regulations may not be accessible electronically (or otherwise) outside Pakistan.

Measures relating to the improvement of the technical standards of documentation issued by Pakistani authorities may be a legislative matter which is, however, not only related to trafficking in persons and thus not further explored in this report. To assess the standard of Pakistani documents and the processes of issuing these documents, it will be necessary to consult directly with Pakistani authorities and also cooperate with technical experts.

3.8 Information Exchange and Training

3.8.1 Information exchange

Along with formal law enforcement cooperation, it is important that all agencies involved in preventing and suppressing trafficking in persons share relevant information and engage in frequent communication both domestically and internationally. Information exchange is fundamental in gathering intelligence and evidence about ongoing and future investigations, building a knowledge base about the levels and characteristics of trafficking in persons, and in developing appropriate education and awareness campaigns.

Current Pakistani Policy & Practice

In recognition of the national and international significance of trafficking in persons, the Ministry of Interior of Pakistan established a steering committee to monitor and review anti-trafficking efforts (as well as anti-migrant smuggling efforts) in Pakistan. The Joint Secretary

¹⁹² UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 299.

¹⁹³ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 312–313.

(Security) has been chosen as the focal point for coordination and information exchange on these issues.

The FIA's Additional Director General (Immigration) acts as the National Rapporteur on trafficking in persons. This role involves liaison with other Ministries, agencies, international partners, the Director-General FIA, the Anti-Trafficking Unit(s), border security, and other law-enforcement agencies, in order to efficiently implement operational investigation and criminal prosecution of human trafficking crimes.

International Law

Article 10(1) *Trafficking in Persons Protocol*, along with Article 26 *Convention against Transnational Organized Crime*, states that law enforcement, immigration and other relevant authorities shall, as appropriate, cooperate with one another by exchanging information about the identification of offenders and victims of trafficking in persons, and the means and methods used by organized criminal groups to traffic human beings, including recruitment, transportation, and routes.

To facilitate and coordinate information exchange and cooperation between domestic agencies, the *Model Law against Trafficking in Persons* also recommends the creation of a national anti-trafficking coordinating body or an inter-agency task force.¹⁹⁴

Assessments and Recommendation

The Government of Pakistan has gone to some length to enable and encourage information exchange between the many agencies involved in the prevention and suppression of trafficking in persons. The creation of a specific inter-departmental steering committee to monitor and review anti-human trafficking efforts in Pakistan is commendable.

The *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* note that

the mere exchange of information is not likely to require legislative action. Given the nature of some of the information that may be exchanged, however, amendments may be needed to domestic confidentiality requirements to ensure that such information can be disclosed, and precautions may be needed to ensure that it does not become public as a result. The interpretative notes [*Travaux Préparatoires*] also raise the need for prior consultations in some cases, especially before sensitive information is shared spontaneously and not on request (A/55/383/Add.1, para. 37). Amendments may involve changes to media or public access-to-information laws, official secrecy laws and similar legislation to ensure an appropriate balance between secrecy and disclosure.¹⁹⁵

It is beyond the scope of this report to assess Pakistani privacy and freedom of information laws, examine the day-to-day information exchange between relevant agencies, and comment on the operation of the steering committee, the frequency of its meetings, and the depth of its efforts.¹⁹⁶

¹⁹⁴ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 84, 88–89.

¹⁹⁵ UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004) 309.

¹⁹⁶ See further, Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 45.

As a general point, it may be beneficial to invite representatives of foreign missions and international organisations, such as the UAE and United States embassies, British High Commission, and UNODC, UNHCR, and UNICEF to participate in (selected) meetings of the steering committee.

3.8.2 Training

Inadequately trained personnel hamper effective prevention and investigation of trafficking in persons as well as prosecution and conviction of offenders. Relevant authorities and complicit parties often do not perceive trafficking in persons as a criminal activity that poses serious risks to victims of trafficking and to the wider community.

It is thus crucial that law enforcement agencies, especially Pakistan's FIA, in conjunction with other relevant agencies, maintain a very high standard of training on all issues relating to trafficking in persons. Such training needs to be aimed at two separate, but equally important audiences:

- 1) Recruits, general police officers, and other first respondents who may be involved in the detection of relevant cases; and
- 2) Specialized officers who carry out the investigation and oversight of human trafficking cases.

Current Training Programs in Pakistan

Under the *Pakistan National Action Plan for Combating Human Trafficking*:

- i Training will be provided for all persons and bodies involved with different aspects of human trafficking and working with victims of trafficking. Such training will emphasize the protection of their human rights.
- ii Training will also be provided in the identification of victims for all the stakeholders working with victims of human trafficking and children, including authorities and relevant service-providers.¹⁹⁷

The FIA has also been tasked with:

Providing training to anti-trafficking and immigration officials as well as other relevant officials including Judges and Prosecutors etc to speed up the prosecution effort which is felt to be a weak link.

An associated intervention is building capacity to promote competence/professionalism and integrity amongst the anti trafficking staff. Training of ATU staff to augment skills and professionalism in combating human trafficking will be geared up.¹⁹⁸

According to the *National Action Plan for Combating Human Trafficking*, all staff of the Anti-Trafficking Unit(s) shall receiving training on the following issues:

- i Methods of identification of victims and suspected victims;
- ii Use of relevant surveillance methods and tools;

¹⁹⁷ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

¹⁹⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

- iii Obtaining, analyzing and presenting as evidence the information, documents, other things possessed by victims, and other sources;
- iv Rules for treatment of victims and suspected victims.¹⁹⁹

The FIA Academy offers specialized training courses on human trafficking, immigration, money laundering, and forged documents, among a variety of other courses.²⁰⁰

FIA agents are currently offered three distinct streams of training, both on a structured and ad hoc basis. The FIA delivers extended basic and advanced generalist training programs via their training Academy based at the FIA headquarters in Islamabad, as well as in zonal centers scattered around the country. FIA personnel also participate in more intensive, specialized training programs offered intermittently to branches of Pakistani law enforcement by international agencies and foreign donor countries.

International Law

Article 10(2) *Trafficking in Persons Protocol*, together with Article 29 *Convention against Transnational Organized Crime*, calls on State Parties to provide or strengthen training of law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.

Assessments and Recommendation

Existing FIA training programs relating to trafficking in persons (and also migrant smuggling) have recently been reviewed. This assessment revealed a number of shortcomings of current training arrangements, inadequate resources and facilities, a lack of coordination between donor countries, and a range of other areas which require reform and improvement.²⁰¹

The report that followed this assessment also developed a suite of recommendations for the introduction of new and improvement of existing training programs relating to trafficking in persons. It identified general objectives, learning outcomes, as well as obstacles in setting up these programs, and specifically recommended the creation of a specialized intensive training program, an introductory recruit and refresher program, and supported the wider use of computer-based training modules. For further information see Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan* (2010) 23–39.²⁰²

¹⁹⁹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 4 May 2010).

²⁰⁰ Other specialized training courses include terrorism, cybercrime, crime scene evidence and fingerprints, Pakistan, FIA, *FIA Academy*, available at www.fia.gov.ok/dep_academy.htm (accessed 4 May 2010).

²⁰¹ Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan* (2010) 25–26.

²⁰² See also Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 47.

4. Trafficking in Persons Involving Pakistani Nationals

4.1 Domestic trafficking (of Pakistani nationals)

It was mentioned earlier that Pakistan has a significant domestic trafficking in persons problem, especially involving the trafficking of women across tribal areas, and labor trafficking which frequently involves minors. The *National Action Plan for Combating Human Trafficking* is, however, limited to cross-border trafficking and does not address any element of domestic trafficking.²⁰³ By and large, relevant offences under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) also only apply to cross-border trafficking.

Insofar as the protection of and assistance to victims of domestic trafficking in persons involving Pakistani nationals or permanent residents is concerned, the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) have no, or only limited application as these instruments are predominantly designed to regulate the status, rights, and processes involving victims of foreign nationality.²⁰⁴ Victims that are citizens or permanent residents of Pakistan will have access to a great range of assistance schemes, protection measures, legal right et cetera that would be set out across a range of domestic statutes, which are beyond the scope of this report.

The following paragraphs briefly highlight some of the criminal offences and attendant international obligations relating to domestic trafficking in persons in Pakistan.

Current Pakistani Law

There is some uncertainty about which criminal offences apply and can be used for trafficking in persons within the national borders of Pakistan. The offences under s 3(i) and (iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) only criminalize trafficking 'into or out of Pakistan' and thus do not capture purely domestic cases. The offences under section 3(ii) and (iv), in contrast, do not require any international movement. The elements of these offences and their application are further examined in Section 3.2 of this report.

A report by the US Department of States has also suggested that ss 17 – 23 of the *Emigration Ordinance 1979* (Pakistan) criminalize instances of domestic trafficking.²⁰⁵ This suggestion may, however, be mistaken as the offences, including unlawful emigration,²⁰⁶ fraudulent inducement to emigrate,²⁰⁷ false representation of government authority,²⁰⁸ violation of terms of agreement with foreign employer by emigrant,²⁰⁹ and receiving money for foreign

²⁰³ Cf Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 29.

²⁰⁴ Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 31.

²⁰⁵ US, Department of State, *Trafficking in Persons Report* (2009) 232. The full text of the *Emigration Ordinance 1979* (Pakistan) is available at Pakistan, FIA, *The Emigration Ordinance, 1979*, available at www.fia.gov.pk/The_Emigration_Ordinance_1979.htm#of (accessed 18 May 2010).

²⁰⁶ Section 17 *Emigration Ordinance 1979* (Pakistan).

²⁰⁷ Section 18 *Emigration Ordinance 1979* (Pakistan).

²⁰⁸ Section 19 *Emigration Ordinance 1979* (Pakistan).

²⁰⁹ Section 20 *Emigration Ordinance 1979* (Pakistan).

employment,²¹⁰ all cover conduct that reaches across the national borders of Pakistan. A further analysis of these offences is beyond the scope of this report.

In early 2010, a Bill to enact a new *Prevention and Control of Women Trafficking Act* was introduced into the National Assembly of Pakistan. This Bill was specifically designed to criminalize trafficking in women into and within Pakistan, but it lacked sufficient support to be enacted.

International Law

The offence of trafficking in persons set out in Article 5 *Trafficking in Persons Protocol* is in itself not limited to trans-border cases of trafficking, although Article 4 of limits the application of offences established under the Protocol to offences that 'are transnational in nature'.

The requirement of transnationality in Article 4 is, however, not part of the definition of 'trafficking in persons' in Article 3(a).²¹¹ For this reason, Article 34(2) *Convention against Transnational Organized Crime* provides that the offence is to be established in the domestic law of each State Party independently of the transnational nature. Domestic offences should apply even where transnationality does not exist.²¹²

Assessment and Recommendation

Whilst a complete assessment of criminal offences relating to domestic trafficking in persons in Pakistan is beyond the scope of this report, the short analysis above demonstrates that there are some discrepancies within Pakistan's laws that require further examination. It is thus desirable to identify and examine further the laws and regulations pertaining to domestic trafficking in persons and to the protection of victims who are nationals or permanent residents of Pakistan.

Recommendation 41:

Commission an independent assessment of domestic laws relating to domestic trafficking in persons of Pakistani nationals and permanent residents.

4.2 Repatriation of Pakistani Nationals

Pakistan also has obligation in relation to victims of trafficking in persons who are Pakistani nationals or permanent residents and who have been apprehended in a foreign country. As the country of origin, international law creates several requirements relating to the return and repatriation of these victims to Pakistan.

Specifically, Article 8(1) *Trafficking in Persons Protocol* creates an obligation for the country of which the victim 'is a national or in which the person had the right of permanent residence'²¹³ prior to being trafficked to facilitate the person's return, equip the person with

²¹⁰ Section 22 *Emigration Ordinance 1979* (Pakistan).

²¹¹ *Trafficking in Persons Protocol* art 3(a).

²¹² UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 259; UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 7; David McClean, *Transnational Organized Crime* (2007) 330.

²¹³ "Permanent residence" in this paragraph means long-term residence, but not necessarily

the necessary documents, and accept the return of that person. Such return must be allowed without undue or unreasonable delay and with due regard for the safety of the victim, Article 8(2), (3).²¹⁴ To this end, the competent authorities and the diplomatic and consular authorities abroad of the country of nationality or permanent residence of the victim also have an obligation to verify the legitimacy and validity of any documents issued by that country, Article 13 *Trafficking in Persons Protocol*.²¹⁵

While it is not immediately clear whether the obligations arising from Article 8(1) require legislative implementation, the *Model Law against Trafficking in Persons* suggests that countries introduce statutory provisions to ensure that the competent authorities facilitate and accept the return of victims ‘without undue or unreasonable delay and with due regard for his or her rights and safety.’ It is further recommended that the country of nationality or permanent residence legislates to ensure that victims who are without proper documentation abroad are issued with the necessary documents to travel and re-enter their territory.²¹⁶

These issues are not addressed by Pakistan’s *Prevention and Control of Human Trafficking Ordinance 2002* which applies exclusively to victims of trafficking in persons that are apprehended in Pakistan. Without additional documentation and direct access to the relevant Pakistani authorities it is not possible to conclude with certainty whether Pakistan complies with the requirements in international law.

indefinite residence’: *Travaux Préparatoires*, para 72.

²¹⁴ See further, David McClean, *Transnational Organized Crime* (2007) 346–347.

²¹⁵ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 80–82.

²¹⁶ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 77–78.

5. Summary of Recommendations

Use of Terms

Recommendation 1:

Redefine the term ‘benefit’ in s 2(a) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include non-financial benefits. Alternatively, the term may be left undefined such that there is no limit to the potential scope of benefits a trafficker may receive from trafficking in persons or use to facilitate it.

Recommendation 2:

Remove uncertainty in the definition of ‘coercion’ by amending s 2(d) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to specifically include a wider range of psychological, mental or legal forms of coercion.

Recommendation 3:

Substitute the definition of ‘exploitative entertainment’ in s 2(f) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) with a more general definition of ‘exploitation’ that lists the forms of exploitation required by the *Trafficking in Persons Protocol*. If necessary, any unique forms of exploitation specific to Pakistan may be included in the definition on exploitation.

Recommendation 4:

Amend the acts of trafficking listed in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to also include the transport and transfer of persons.

Recommendation 5:

Amend the specified means of trafficking set out in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include the ‘abuse of a position of vulnerability’. Amend the definition of ‘human trafficking’ such that the giving or receiving of payments or benefits is recognized as a means of trafficking only where it is used to achieve the consent of a person having control over another person.

Recommendation 6:

At a minimum, criminalize forms of exploitation listed in the *Trafficking in Persons Protocol*. Consider the inclusion of additional forms of exploitation into s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Recommendation 7:

Retain separate offences but merge the definition of ‘human trafficking’ currently in s 2(h) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) into the offence description. Alternatively, the definition of ‘human trafficking’ could be consolidated with individual offences that refer to it.

Recommendation 8:

Amend any references in the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ‘human sports’ to read ‘inhuman sports’.

Recommendation 9:

Consider the introduction of a broad definition of ‘exploitation’ that includes ‘inhuman sports’ as a form of exploitation. Alternatively, consider a specific offence criminalizing trafficking for the purpose of ‘inhuman sports’.

Recommendation 10:

Implement a definition of ‘structured group’ to remove any ambiguities. Alternatively, remove the requirement of a ‘structured group’ from s 2(j) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to facilitate prosecution of those who act together in the immediate commission of an offence.

Recommendation 11:

Amend the definition of ‘victim’ in s 2(k) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure that persons reasonably believed to be a victim of trafficking are given the status of ‘victim’.

Recommendation 12:

Appropriately amend the definition of ‘victim’ in s 2(k) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure Pakistani nationals who are victims of trafficking are recognized as such.

*Criminalization***Recommendation 13:**

Consider specifically criminalizing the conduct of those who organize or direct others to commit the offence and those who participate as an accomplice in the offence under s 3(i) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

Recommendation 14:

Amend the offence in s 3(ii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to appropriately criminalize attempts to commit the offence, organizing or directing others to commit the offence and participating as an accomplice in the offence.

Recommendation 15:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to reflect the acts of trafficking as specified in the *Trafficking in Persons Protocol*.

Recommendation 16:

Include in s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) that the consent of the victim to the intended exploitation is irrelevant where any of the means specified are used.

Recommendation 17:

Include in s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) specific forms of exploitation as opposed to ‘exploitative entertainment’.

Recommendation 18:

Create a dedicated child trafficking offence that does not require any means of trafficking be proved. This offence should not be limited to specific forms of exploitation.

Recommendation 19:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to ensure that the consent of a parent or a person having legal or de facto control of a child victim of trafficking to the intended exploitation shall be irrelevant.

Recommendation 20:

Amend s 3(iii) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to appropriately criminalize attempts to commit the offence, organizing or directing others to commit the offence and participating as an accomplice in the offence.

Recommendation 21:

Expand the offence in s 3(iv) *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to include the 'alteration' and replication' of documents related to human trafficking. Amend s 3(iv) to criminalize the misuse of documents related to human trafficking in order to facilitate any offence under the Ordinance.

Recommendation 22:

Consider setting a maximum term of imprisonment where a member of an organized criminal group commits an offence with a purpose other than 'exploitative entertainment'.

Recommendation 23:

Remove the reference to 'exploitative entertainment' as an aggravating element is from s 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). Clearly specify certain forms of exploitation where an aggravated penalty is to be applied.

*Protection of Victims of Trafficking in Persons***Recommendation 24:**

Identify and assess methods used to identify victims of trafficking in persons in Pakistan and referral of victims to assistance programs.

Recommendation 25:

Insofar as possible, explore extending accommodation and material assistance schemes to adult male victims of trafficking in persons and to family units. These categories of victims may require assistance different to those schemes currently in place.

Recommendation 26:

The requirement of a court order to access accommodation and material assistance should be removed and substituted with a system that allows immediate referral to accommodation and emergency assistance.

Recommendation 27:

Examine access to and availability of accommodation and material assistance to victims of trafficking in persons that are unwilling or unable to cooperate with government authorities in proceedings against traffickers. It should be ensured that, at a minimum, these victims can access emergency support and safe temporary shelter.

Recommendation 28:

Identify and examine procedures and practical measures adopted by prosecution services and judicial authorities to enable views and concerns of victims of trafficking persons to be expressed and presented in relevant legal proceedings. Explore the allocation and spending of government funds as stipulated by s 6(2) *Prevention and Control of Human Trafficking Rules 2004* (Pakistan).

Recommendation 29:

Explore avenues and mechanisms to provide victims of trafficking in persons with compensation in the absence of a criminal conviction of the trafficker.

Recommendation 30:

Identify (and regulate) the circumstances under which compensation may be paid to victims of trafficking in persons, the basis on which compensation is to be calculated, the amount of compensation payable, the application procedure for payment of compensation, and a procedure for review and appeal of decisions with respect to claims for compensation.

Recommendation 31:

Undertake an independent assessment of the quality and accessibility of services offered by NGOs to victims of trafficking in persons in urban and rural parts of Pakistan and the cooperation between government and non-governmental entities to that end.

Recommendation 32:

Consider extending the eligibility for temporary residence and work permits for at least six months to all victims of trafficking in persons irrespective of their participation in legal proceedings.

Recommendation 33:

Explore the feasibility of allowing victims of trafficking in persons and their accompanying dependant(s) to apply for long-term or permanent residence in Pakistan on humanitarian grounds.

Recommendation 34:

Amend s 7 *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) to ensure that any repatriation of victims of trafficking in persons shall be with due regard for their safety. Provisions should also be included to ensure that child victims of trafficking in persons are not returned to their home country if there is an indication following a risk and security assessment that their return would not be in their best interest.

Recommendation 35:

Incorporate provisions into the *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) to ensure that any decision to repatriate a victim of trafficking in persons is

considered in the light of the principle of non-refoulement and of the prohibition of inhuman and degrading treatment.

Recommendation 36:

Risk and security assessments should be carried out prior to any repatriation from Pakistan if victims raise a substantial allegation that they or their families may face danger to life, health, or personal liberty if they are returned to their home country.

Prevention, Education, and Awareness

Recommendation 37:

Commission an independent assessment of the scope, design, impact, and quality of anti-trafficking education and awareness campaigns in Pakistan.

Criminal Proceedings

Recommendation 38:

Conduct an independent assessment of the availability, scope, and operation of victim and witness protection programs in Pakistan.

Law Enforcement & Border Measures

Recommendation 39:

Conduct an independent assessment of the border control and customs processes and procedures in Pakistan.

Recommendation 40:

Commission an independent assessment of international law enforcement, prosecutorial, and judicial cooperation laws, regulations, and procedures in Pakistan.

Trafficking in Persons involving Pakistani Nationals

Recommendation 41:

Commission an independent assessment of domestic laws relating to domestic trafficking in persons of Pakistani nationals and permanent residents.

Appendix A: *Prevention and Control of Human Trafficking Ordinance 2002 (Pakistan)*

An Ordinance to prevent and control Human Trafficking

WHEREAS the offences relating to traffic in human beings are incompatible with the dignity and worth of human being and endanger the welfare of the individual, the family and the community.

AND WHEREAS it is expedient and necessary to provide effective measures to prevent offences related to human trafficking and to protect and assist victims of such trafficking

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

1. Short title, extent and commencement.

- (1) This Ordinance may be called the Prevention and Control of Human Trafficking Ordinance, 2002.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once

2. Definition.

In this Ordinance, unless there is anything repugnant in the subject or context

- (a) "benefit" includes monetary profit, proceeds or payment in cash or in kind
- (b) "child" means any person who has not attained the age of eighteen years
- (c) "Code" means the *Code of Criminal Procedure 1898* (Act V of 1898)
- (d) "coercion" means the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or of infliction of serious harm
- (e) "document" related to human trafficking includes a passport, a travel documents and any identification document used by law enforcement authorities
- (f) "exploitative entertainment" means all activities in connection with human sports or sexual practices or sex and related abusive practices
- (g) "Government" means the Federal Government
- (h) "human trafficking" means obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction, or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in section 3
- (i) "inhuman sports" include all sports involving, as a matter of normal course, infliction of physical or mental injury on a person against his will, intention or reasonable expectation
- (j) "organized criminal group" means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Ordinance, in order to obtain, directly or indirectly, any financial or other material benefit and includes a person knowingly receiving or disbursing benefits accruing from the

commission of any offence in relation to human trafficking by an organized criminal group;
and

- (k) "victim" means the person who is the subject of or against whom any offence under this Ordinance has been committed.

3. Punishment for human trafficking.

The human trafficking shall be punishable as under.

- (i) Whoever knowingly plans or executes any such plan for human trafficking into or out of Pakistan for the purpose of attaining any benefit, or for the purpose of exploitative entertainment, slavery or forced labour or adoption in or out of Pakistan shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:

Provided that in case of an accused who, in addition to committing an offence as aforesaid has also been guilty of kidnapping or abducting or any attempt thereto in connection with such offence, the imprisonment may extend to ten years with fine:

Provided further that whoever plans to commit an offence under this clause but has not as yet executed the same shall be punishable with a term of imprisonment, which may extend to five years and shall also be liable to fine.

- (ii) Whoever knowingly provides, obtains or employs the labour or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:

Provided that if the commission of the offences under this clause involves kidnapping or abduction or any attempt thereto, the term of imprisonment may extend to ten years with fine:

Provided further that payment of any remuneration in lieu of services or labour of the victim shall not be treated as mitigating circumstance while awarding the punishment.

- (iii) Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine:

Provided that if the commission of the offence under this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine:

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

- (iv) Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.

4. Offences committed by organized criminal groups. ---

Where an organized criminal group is guilty of any offence under clauses (i),(ii),(iii) or (iv) of section 3, the term of imprisonment or each member of such group involved in the commission of such offence shall not be less than ten years imprisonment and may extend to fourteen years where the purpose of trafficking of a victim is exploitative entertainment and shall also be liable to fine.

5. Repetition of commission of offences.

Whoever repeats the commission of an offence under this Ordinance, the term of imprisonment may extend to fourteen years and the offender shall also be liable to fine.

6. Compensation to the victim.

The court trying an offence under this Ordinance may where appropriate direct:

- (i) The competent authorities of the Government, at any stage of the trial to allow or extend the stay of the victim in Pakistan till such time, as the court deems necessary.
- (ii) Payment of compensation and expenses to the victim in accordance with section 545 of the Code.
- (iii) Government to make arrangements for the shelter, food and medical treatment of victim being an unaccompanied child or a destitute woman.

7. Proceedings under the Ordinance to be in addition to and not in derogation of any other law.

The proceedings under the Ordinance shall be in addition to and not in derogation of any other proceedings initiated under any other law for the time being in force.

8. Offences to be cognizable etc.

All offences under the Ordinance shall be cognizable, non-bailable, and non-compoundable as construed by the Code.

9. Investigation.

Notwithstanding anything contained in the Code or any other law for the time being in force, the investigation of the offences under the Ordinance shall be carried out by only such persons or agencies as are specially empowered by the Government in that behalf.

10. Cognizance of offences etc.

No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Ordinance.

Notwithstanding anything contained in section 32 of the Code, it shall be lawful for a Magistrate of the First Class to pass any sentence authorized by this Ordinance.

11. Indemnity.

No suit, prosecution or any other legal proceedings shall lie against the Government or any other person exercising any power or performing any function under this Ordinance or the rules made thereunder for anything done in good faith.

12. Power to make rules.

The Government may, by a notification in official gazette, make rules to carry out the purposes of this Ordinance.

GENERAL
PERVEZ MUSHARRAF
President.

Mr. JUSTICE
MANSOOR AHMED
Secretary

Appendix B *Prevention and Control of Human Trafficking Rules 2004* (Pakistan)

Islamabad, 29 November 2004

S.R.O.970 (1)/2004 In exercise of powers conferred by section 12 of the *Prevention and Control of Human Trafficking Ordinance 2002*, (LIX of 2002), the Federal Government is pleased to make the following rules, namely:

1. Short title and commencement

- (1) These rules may be called the Prevention and Control of Human Trafficking Rules, 2004.
- (2) They shall come into force at once.

2. Definitions

In these Rules, unless there is anything repugnant in the subject or context.-

- (a) "court" means the court having jurisdiction to try the offences under the Ordinance;
 - (b) "Government" means the Federal Government.
 - (c) "Non-Governmental Organizations" means the Non-Governmental Organizations notified by the Government under these rules from time to time;
 - (d) "Ordinance" means the Prevent and Control of Human Trafficking Ordinance 2002 (LIX of 2002); and
 - (e) "victim" shall have the same meaning as defined in the Ordinance.
- (2) Words and expression used but not defined in these rules shall have the same meaning as in the Ordinance.

3. Recording statement and custody of the victim

- (1) A victim of an offence under the Ordinance, shall be produced before the court for recording his statement under section 164 of the *Code of Criminal Procedure 1998* (V of 1998), except where the victim is unable, or otherwise not feasible for any reason to be recorded in writing, to get his statement recorded.
- (2) In case the victim is an un-accompanied child or a destitute women, the court before whom such victim is produced may pass an order to keep him in a shelter home established by the Government or by the Non-Government Organizations for accommodation, food and medical treatment;
Provided that where the victim is not satisfied with the Non-Governmental Organization to which his custody was given by the court, he may apply to the court for alternate shelter.
- (3) The court may, for the welfare of the victim, hand over the custody to any of his blood relation after requiring a bond from the custodian for safe custody of the victim and his production before the court at the time and place mentioned in the bond and shall continue to produce until otherwise directed.

4. Establishment of shelter homes and security arrangements

The Government shall establish shelter homes for safe custody of the victims and shall also make necessary security arrangement for the protection of the victims in the shelter homes whether established by the Government or the Non-Governmental Organizations.

5. Responsibilities of Non-Governmental Organizations

- (1) The Non-Governmental Organizations to which the victims are handed over, shall be responsible for proper shelter, food and medical treatment at a notified place which shall be open to inspection by an inspecting officer notified by the Government.
- (2) In case any Non-Governmental Organization is found involved in maltreatment with the victim or fails to fulfil its responsibilities of providing proper shelter, food and medical treatment, its notification may be cancelled, after giving an opportunity of being heard.

6. Legal assistance to the victim

- (1) The Government shall and the Non-Governmental Organizations may provide necessary legal assistance to the victim during trial of the case and other legal proceedings under the Ordinance.
- (2) The Government shall allocate appropriate funds for providing legal assistance to the victims.

7. Recording evidence and repatriation of the victim

- (1) Where a victim is not a citizen of Pakistan, the court shall record the evidence of the victim at the earliest. If the victim is no more required for the trial, the court may direct the Government to facilitate such victim for this repatriation;
Provided that the victim whose presence is considered necessary by the court for the trial of the case or his immediate repatriation is not possible, shall be entitled to apply to the National Alien Registration Authority for his temporary registration as alien or for work permit.
- (2) If the repatriation of the victim is decided, the Government shall in consultation with the concerned Embassy or, as the case may be, the High Commission of the country to which the victim belongs, make necessary arrangements for its safe return.
- (3) The Non-Governmental Organizations may provide assistance to the Government in the process of repatriation of the victim.
- (4) The Government shall establish special funds for repatriation of the victim.
- (5) The Government shall establish special funds for preparation of the victim

[Ministry of Interior No.13/54/2002-FIA (PO)]

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