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**HUMAN TRAFFICKING, HUMAN SMUGGLING AND ILLEGAL
MIGRATION TO AND FROM PAKISTAN:**

REVIEW OF GOVERNMENT POLICIES AND PROGRAMMES

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To date there has not been any systematic attempt to conduct a study on illegal migration in Pakistan. The information and data on the subject are not readily available and, for the present study, were collected through prolonged interviews with key officials of the government, international development partners and NGOs, and extensive internet searches.

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A Brief Introduction of The Author:

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LIST OF ABBREVIATIONS

ABT	Ansar Burney Trust
ADB	Asian Development Bank
AHTC	Anti Human Trafficking Circles
AIDS	Acquired Immune Deficiency Syndrome
AJK	Azad Jammu and Kashmir
ATU	Anti Trafficking Unit
BBC	British Broadcasting Corporation
BEFARe	Basic Education for Awareness Reforms and Empowerment/ Basic Education for Afghan Refugees
BISP	Benazir Income Support Programme
BOE	Bureau of Emigration and Overseas Employment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CATW	Coalition against Trafficking of Women
CPMIS	Child Protection Management Information System
DFD	Document Fraud Detection
DOSW	Department of Social Welfare and Women Development
DVI	District Vulnerability Index
EBDM	Enterprise for Business and Development Management
EO	Emigration Ordinance
FANA	Federally Administered Northern Areas
FATA	Federally Administered Tribal Areas
FIA	Federal Investigation Agency
HIV	Human Immunodeficiency Virus
HRCP	Human Rights Commission of Pakistan
HTP	Human Trafficking Potential
IATF	Inter Agency Task Force
ICMC	International Catholic Migration Commission
ICMPD	International Centre for Migration Policy Development
IDP	Internally Displaced Person
ILO	International Labour Organisation
IOM	International Organisation for Migration
LHRLA	Lawyers for Human Rights and Legal Aid
MOFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
MOLMOP	Ministry of Labour, Manpower and Overseas Pakistanis
MOSW	Ministry of Social Welfare and Special Education
MOU	Memorandum of Understanding
NADRA	National Database and Registration Authority
NARA	National Aliens Registration Authority
NCCWD	National Commission for Child Welfare and Development
NCPP	National Child Protection Policy
NET	Noor Education Trust
NMP	National Migration Policy
NWFP	North West Frontier Province
OPF	Overseas Pakistanis Foundation
PA	Passport Act
PACHTO	Prevention and Control of Human Trafficking Ordinance
POCA	Protection of Children Act
PPAF	Pakistan Poverty Alleviation Fund

RSPN	Rural Support Programme Network
SAARC	South Asian Association for Regional Cooperation
SDPI	Sustainable Development Policy Institute
SIU	Special Investigation Unit
SOP	Standard Operating Procedures
SPARC	Society for the Protection of the Rights of the Child
TET	The Earth Times
THTP	The Human Trafficking Project
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act
UAE	United Arab Emirates
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Funds for Women
UNFPA	United Nations Fund for Population Activities
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
UNODC	United Nations Office on Drugs and Crime

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HUMAN TRAFFICKING, HUMAN SMUGGLING AND ILLEGAL MIGRATION TO AND FROM PAKISTAN: REVIEW OF GOVERNMENT POLICIES AND PROGRAMMES

Farooq Azam

I. INTRODUCTION

I.1 Context of Policy Review

The current policy review is a part of the project entitled “Promotion of Rights, Capacity Building Measures and Initiatives to Curb Illegal and Temporary Migration Including Human Smuggling and Trafficking”. The project is funded by the European Union and is implemented by ActionAid, Pakistan in partnership with BEFARe (Basic Education for Awareness Reforms and Empowerment/ Basic education for Afghan Refugees), in Peshawar, Karachi and Quetta and JAAG Welfare Movement in Rahim Yar Khan.

The policy review is sponsored by BEFARe. The focus of the review is Pakistan government’s policies and programmes for curbing illegal migration, including human trafficking and human smuggling, especially of Bangladeshi and Afghan origin, while taking into account the relevant international and regional conventions and bilateral agreements to deal with the problem. The main objectives of the review are to identify gaps and obstacles in the policies and their implementation; analyse effectiveness of policies in the light of results achieved so far; and make recommendations to improve policy effectiveness.

I.2 Methodology of the Study

The methodology followed for the study mainly consisted of consulting relevant materials, analysis of data that could be obtained and interviews with a range of stakeholders. The documents consulted were mainly related to the evidence of human trafficking, human smuggling and other forms of illegal migration to and from Pakistan; international and regional instruments and agreements; government policies, laws and programmes; evidence from other countries; and donor project support to the government. The effort was directed at establishing the scale of the problem faced by the country and adequacy of government’s efforts at solving it in view of the internationally accepted standards and norms. The role of donors and other international development partners was also assessed in the same context. The meetings with government officials, international development partners and NGOs were aimed at supplementing the knowledge gained from the study of materials, learning from their experience of dealing with the issues and about their future plans, and obtaining any additional materials, data compiled or assessments made by them. The interviews were based on a list of open ended questions prepared in advance. Given the nature of the task, majority of the meetings took place in Islamabad where the relevant ministries and international development partners are based. A visit to the North-West Frontier Province (NWFP) helped to assess the challenges of working in the field and access the knowledge gained from programme implementation at local and grassroots levels. Based on these resources a critical assessment of the government’s effort underway to deal with the problem of illegal migration was possible, which is presented in the sections below.

I.3 Presentation of the Study

The first section deals with the definitions of illegal migration forms, mainly human trafficking and human smuggling, and the factors causing them. It also briefly describes the broad global

trends in illegal migration in order to understand the relative enormity of the problem faced by Pakistan. The second section discusses evidence from various sources in an effort to establish the scale of the problem of human trafficking, human smuggling and other illegal migration forms, and highlights data gaps and limitations of the information available. The third section explains the main international and regional instruments that define standards for government action in dealing with various illegal migration forms. The fourth section discusses the government policies and legal instruments to control human trafficking and human smuggling, and to promote legal migration as an alternative. Adequacy of the policies and instruments is discussed not only from the perspective of international and regional standards but also the appropriateness of strategy in the country's context. The fifth section assesses the donor strategy to support the government through their projects, which are mainly in the area of human trafficking. The sixth section analyses the challenges encountered in implementing the programmes and highlights bottlenecks encountered and limitations of the approach adopted. The seventh and final section offers some recommendations to make the government's response and donor support more meaningful.

I.4 Forms and Prevalence of Illegal Migration

Human trafficking, human smuggling and other forms of illegal migration are subsets of a large and complex phenomenon of overseas migration. Overseas migration is mainly governed by a set of strong "push" and "pull" factors across countries, which also apply to the subsets. When the resulting migration flows are in consonance with the policies and laws of the countries of origin and destination, the migration is usually "legal" or "lawful". Judged from this perspective both human smuggling and human trafficking would be categorized as "illegal", "unlawful" or "irregular", and so would be some other forms of migration flows.

From destination countries' point of view, the term "illegal migrant" applies to any one who is in a country illegally. The illegal migrants may include victims of trafficking, smuggled migrants, those entering a country fraudulently and those breaching the terms of their visa. The origin countries would also judge someone as an illegal migrant who leaves the country in violation of their laws.

The human trafficking, however, is more than just an illegal migration flow – it is a modern form of slavery. There has been a global consensus since long to outlaw and abolish slavery and there have been almost 300 international agreements between 1815 and 1957 to achieve this objective. It was in November 2000 that an international instrument specifically addressing the challenges of human trafficking was approved, which also presented an elaborate definition of the phenomenon as follows.

Human trafficking means "the recruitment, transportation, transfer, harbouring 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 and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs" (UN 2000a).

Human smuggling was also defined in a separate international instrument that was approved simultaneously with the trafficking instrument, as below.

“Smuggling of migrants” or human smuggling means “the procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state Party of which the person is not a national or a permanent resident” (UN 2000b).

It is critical not to confuse the phenomenon of human trafficking with human smuggling as there are fundamental differences between the two. A person can be trafficked within a country or abroad whereas human smuggling invariably involves crossing of international borders. The person trafficked is a victim of extreme exploitation and deception while the smuggled migrant is not a victim, entering into the arrangement with the smuggler with full knowledge of the goal and the means to achieve the goal. There is no valid consent of the person being trafficked, which is the case for the migrant being smuggled. The trafficked victim remains under full control of the trafficker during the transit and at destination, often the control being exercised through coercion; this is not the case for a migrant being smuggled (Iselin 2003). In addition, there are trafficking situations where a person either migrates legally or is smuggled to another country but ends up there facing oppressive, exploitative and coercive work conditions. Human trafficking is considered to be a far greater crime than human smuggling or any other form of illegal migration.

Both the “push” and “pull” factors, and the way they are mediated by the origin and destination states, have strong implications for legal and illegal migration. A good understanding of these factors is essential to formulate realistic policies for minimising illegal migration. On the push side, prevalence of poverty and inequality are thought to be the most common reasons for illegal migration, including human trafficking and human smuggling. On the pull side it is usually the existence of employment opportunities and demand for certain services not met by the local labour force, which spur cross border flows. Where the legal flows remain much smaller compared to the demand, the situation serves as an incentive for illegal migration to both the migrants and the employers. The role of government policy on both the push and pull sides, therefore, is critical in minimising the illegal flows. Once the illegal flows are set in motion, however, the role of transit countries is no less important in stemming them.

Some sources estimate the total number of migrants in the world, both legal and illegal, to be 200 million. This makes up about three percent of the world’s population. The stock of migrants in the world has doubled over the last four decades. Illegal or irregular migration has been increasing at a faster rate than the legal form of migration especially over the last decade. In the total global stock of migrants the share of illegal migrants would be roughly 15 to 20 percent, which in terms of numbers is between 30 and 40 million. Not all migrants, however, go to rich countries; an estimated two out of every five migrants move to another poor or middle income country. (The Economist 2008; Papademetriou 2005).

According to the US State Department’s Trafficking in Persons (TIP) Report 2008 about 800,000 people are trafficked across national borders annually. The figure does not include “millions” trafficked within their own countries. The report estimates that about 80 percent of transnational trafficked victims are women and girls; minors make up nearly 50 percent of the victims. Females are mainly trafficked into commercial sexual exploitation (US Department of State 2008).

Another source suggests that around 225,000 women, children and men are trafficked annually from South Asia involving Bangladesh, India, Nepal, Pakistan, Sri Lanka and Afghanistan. Over the last 30 years an estimated 30 million Asian women and children have become victims of trafficking for sexual exploitation (Huda 2006).

II. SCALE OF ILLEGAL MIGRATION IN PAKISTAN

II.1 Estimates and Trends of Illegal Migration to Pakistan

To arrive at a relatively reliable estimate of illegal migration in any country is an enormous challenge and Pakistan is no exception. Even the accuracy of data on legal migration is varied as the methods used for counting even the legal migrants differ from one country to another, often leaving gaps. Counting illegal migrants is far more problematic as they escape any data capturing systems. The figures provided in this section are mostly anecdotal, based on some more frequently quoted estimates in reports from varied sources. Each source typically quotes the other, never explaining what method was used to arrive at the estimate. The figures provided in this section to indicate the problem's magnitude and trends, therefore, should be viewed with this caveat in mind.

Data on illegal migrants in Pakistan

According to the webpage of Pakistan's National Alien Registration Authority (NARA) working under Ministry of Interior (MOI), the estimated number of illegal immigrants in Pakistan is 3.35 million (MOI 2009). On request, the breakup of the estimate was provided by NARA as shown in Table 1.

Table 1: Estimated Number of Illegal Migrants in Pakistan

Nationality	Number (in millions)
Bangladeshi	1.030
Afghani	2.210
Burmese	0.100
Nigerian	0.002
Somali	0.002
Other	0.006
Total	3.35

Source: NARA, n.d.

NARA said that the bases of their estimates were some "Shigri report" of 1998 and their own field staff reports. Both the reports were not shared so it is not possible to ascertain the methodology followed to arrive at the estimates. Also, no further breakdown of the data, especially according to gender, and the year of estimates were provided (NARA 2009).

According to a presentation by Director General of NARA, there are 1,906,631 "aliens" in Karachi alone (NARA n.d.). If the number of Afghans in Table 1 is taken out from the total, the number of aliens with rest of the nationalities comes to 1.14 million. A presentation by JAAG Welfare Movement quoting NARA reported that over half a million Afghans were in Karachi. This means almost all aliens with other nationalities are located in Karachi.

The presentation by NARA Director General also provides the distribution of aliens in various regions of Karachi, as shown in Table 2.

Table 2: Main Areas of Aliens' Residence in Karachi

Karachi Zone	No.
East	804,200
West	473,573
Central	472,448
Malir	25,000
South	81,410
Total	1,906,631

Source: NARA, n.d.

NARA was established to register aliens in Pakistan and issue them work permits. The same presentation mentions that so far only 125,897 aliens have been registered, pointing towards some serious limitations of the registration scheme. NARA's registration scheme is discussed later in the study. The breakdown of the registration data according to nationality, gender and age groups was not provided by NARA.

According to a newspaper article the Burmese population in Karachi is primarily concentrated in the localities of Landhi, Korangi, Orangi Town, Suurjani Town and some *katchi abadis* (shanty towns) near Gulshan-i-Iqbal. The main localities of Bangladeshi migrants in the city are Moosa Colony and Bengali Para. The majority of Pakistani women trafficked internally or abroad were said to belong to Punjab province, followed by Sindh and North West Frontier Province (NWFP) (Hassan 2007).

According to NARA, Afghan nationals were registered only in the beginning as their registration was stopped by MOI in 2003. Perhaps the decision to stop the registration was made due to a planned exercise of first conducting a census and then the registration of all Afghan nationals in the country, accomplished in 2005-06.

Registered or unregistered, Afghans in Pakistan are essentially taken by the government as refugees who should ultimately, preferably in the near future, return to their own country. The government does not recognise that any Afghan is an economic migrant; NARA, therefore, could not register them or give them work permits. However, the majority of Afghans in Pakistan continue to work and many of them repatriated as refugees come back to take up jobs. There are many second or third generation Afghans in Pakistan now, and most of them would not like to go back in the near future.

Pakistan government and UNHCR conducted a census of Afghan nationals in Pakistan between 25 February and 11 March 2005, resulting in the enumeration of 3,049,268 Afghans countrywide. This was followed by their registration conducted by National Database and Registration Authority (NADRA) during April 2005 and March 2006, which resulted in the registration of 2,153,088 Afghan nationals. The difference between the enumerated and registered Afghan population is explained by UNHCR in terms of 582,535 Afghans being repatriated in the intervening period and 313,645 Afghans opting not to register. Of those registered 64 percent were in NWFP, 21 percent in Balochistan, 11 percent in Punjab and Islamabad, and four percent in Sindh. The proportions living in camps and outside the camps were 45 percent and 55 percent, respectively (UNHCR 2007).

Data on human trafficking to Pakistan

The TIP Report 2008 describes Pakistan as “a significant source, destination, and transit country for men, women, and children trafficked for the purposes of sexual exploitation and forced labour”. Women and children from Afghanistan, Bangladesh, Burma, India, Iran, Nepal, Sri Lanka and many central Asian republics are brought in here for this purpose. Pakistan is also used as a transit country for women from Bangladesh, Burma, Nepal and Sri Lanka who are trafficked to the Gulf (US Department of State 2008).

The most common estimates about trafficking from Bangladesh suggest that about 200,000 women and girls have been trafficked so far to other countries including girls as young as nine years of age. About 10,000 to 15,000 women and children are trafficked to India annually mainly to the sex industry. An estimated 200-400 women and children are smuggled and trafficked to Pakistan and the Gulf countries annually. In Bangladesh, girls under 18 years of age from the villages are sold for US\$1000 to the traffickers. Most of the trafficking flows from Bangladesh to Pakistan pass through India (Chowdhury 2004). According to the Asian Development Bank (ADB) the most cited estimate is that about 200,000 women from Bangladesh have been trafficked to Pakistan over an unspecified period (ADB 2003).

A newspaper report said that the Bangladeshi and Burmese women are kidnapped by the traffickers or married off to agents by unsuspected parents. They are trafficked under false pretences or otherwise enticed by prospects of a better life in Pakistan but actually landing into brothels in the country (Khalid, 2004). Another report said that the usual way was that the traffickers brought the girls in the country, and took them out, posing as their husbands (Hassan 2007).

The estimates of Bangladeshi and Burmese women trafficked into Pakistan are also available from some reports appearing in the national press. These reports largely depend on the sources often quoted but some provide estimates that are based on the experience of organisations working with the trafficked victims. A newspaper article of April 2004 reported that between 100-150 women enter Pakistan illegally every day, quoting a Karachi-based NGO named Lawyers for Human Rights and Legal Aid (LHRLA), which provides legal support to the trafficked victims. The NGO estimates that there are approximately 1,500 Bangladeshi women in jails in Pakistan. According to the article a Bangladeshi or a Burmese woman is sold in Pakistan for US\$1,500-2,500, depending on age, looks, docility and virginity status. Bangladeshis make up about 80 percent and Burmese 14 percent of Karachi’s undocumented immigrant population (Khalid 2004).

According to the TIP Report 2008 Afghan women and girls are trafficked to Pakistan, Iran, Saudi Arabia, Oman and other Gulf countries for commercial sexual exploitation (US State Department 2008). A study on sex trafficking in South Asia says that Afghan children are trafficked to Pakistan, Iran and Saudi Arabia for prostitution, begging and labour. Afghan women and girls are also sold into forced marriages and prostitution in Pakistan. The study mentions that Saudi Arabia had repatriated 200 Afghan children in 2004 (Huda 2006). Ansar Burney Trust, a Pakistan human rights organisation, says that there is a two-way trafficking of women and young girls between Pakistan and Afghanistan (ABT 2006).

A study by LHRLA reports that Afghan women from Kabul and Qandahar are forced into prostitution in Quetta and surrounding areas, and from there they are often trafficked to other cities. Besides prostitution, they are forced into dancing and pornography. The study reported similar practices relating to Afghan women in Peshawar where they are first married to a local man and then sold onwards (Ghaus n.d.).

Data limitations

Once again, most of the reports quoted above do not provide the basis of their estimates, and in some cases do not mention how prevalent is the phenomenon being reported upon. In the absence of the knowledge about the methodologies followed, it is not possible say if the phenomena of human trafficking and human smuggling were not mixed together, which is often the case in most countries.

II.2 Estimates and Trends of Illegal Migration from Pakistan

There are no reliable estimates of stock and annual flow of Pakistani illegal migrants abroad. The Human Rights Commission of Pakistan (HRCP) in its annual report for 2006 quoted the figure of 300,000 people leaving the country by illegal means every year (HRCP 2007). The basis for this figure is not given, and the report does not clarify if the figure includes other nationalities besides Pakistani citizens.

Trends in deportation of illegal migrants

An assessment of the trend in illegal migration from Pakistan can be made from the data on deportation of Pakistani nationals from abroad and the illegal migrants caught within Pakistan before crossing the border, which FIA calls "interceptions". Recently, Advisor to Prime Minister on Interior informed the Senate, the upper house of Parliament, that a total of 313,153 Pakistani nationals were deported by various countries from January 1999 to October 2008 (BBC 2009). This comes to an average of 31,846 deportees per annum or 2,654 deportees per month. It is safe to assume that the overwhelming majority of the deportees were illegal migrants entering another country illegally or staying there without due authorisation.

Another set of data obtained from FIA on deportations of Pakistani nationals from abroad and interception of illegal migrants within the country is presented in Table 3.

Table 3: Use of Legal and Illegal Use by Deportees and Interception of Illegal Flows

Year	Total No. of Deportees	Deportees Using Illegal Routes (1)	Deportees Using Legal Exits	Illegal Migrants Intercepted (2)	Probable Trafficked or Smuggled Migrants (1+2)
2005	24,555	24,377	178	2,463	26,840
2006	14,003	13,919	84	7,432	21,351
2007	12,371	12,311	60	10,703	23,014
2008*	15,665	15,626	39	7,709	23,335

*For 2008, the deportees' data is up to 12 November 2008 and the interceptions' data is up to 06 November 2008.

Source: FIA 2008

The average number of deportees in the last 4 years has drastically declined by 47 percent to 16,824 per annum or 1,402 per month over the average of last 10 years, as mentioned above. There has been a considerable drop of 36 percent in the number of deportees even in the last four years, from 2005 to 2008. Importantly, the declining trend in the deportations is

accompanied by a rising trend in the number of illegal migrants intercepted before crossing the country's border. Between 2005 and 2007 the interceptions rose by 77 percent. Less than one percent of the deportees had used a legal way to exit; almost all the deportees had used illegal routes. From 2005 to 2008, the number of deportees using legal exits declined by 78 percent.

Use of illegal routes an indication of migrants' trafficking and smuggling

The data on the use of legal routes in the table involves cases such as an individual travelling abroad on a visit visa but taking up, or being engaged in, an employment clandestinely. The category could also include cases where individuals stayed beyond the permitted duration or even those who were trafficked and were rescued or were caught by the law enforcement agencies. The use of illegal routes mainly entails cases where the individuals did not use the officially recognised travelling routes to leave Pakistan and enter the other country. In the latter case there is a greater likelihood that the individuals involved were either being smuggled or being trafficked by criminal groups; the same would largely apply to the individuals intercepted before crossing the border.

Bearing in mind that both the deportations and interceptions do not reflect the actual stock of Pakistani illegal migrants abroad or illegal migration flows from Pakistan to the other countries, the official data trends show a considerable decline in the incidence of illegal migration from Pakistan mainly due to greater effectiveness of law enforcement agencies. The phenomenal rise in interceptions could also be argued in another way: the actual incidence of illegal migration is rising sharply so more illegal migrants are being caught but many more continue to slip through to the other countries. In such a scenario the number of deportees should have also risen, as one would expect most transit and destination countries to have reinforced border security arrangements in place in the current global climate of heightened security threats. But given the extremely lucrative "businesses" of human trafficking and human smuggling many strong barriers could be brought down. Whether illegal migration is increasing or decreasing is a question that could probably be answered through more rigorous analysis of the existing data and research.

In all probability the deportees using illegal routes are actually caught at the entry points and sent back without being incarcerated for long¹. As the numbers being deported far exceed the numbers being intercepted, the implication could be that still a large number of illegal migrants succeed in crossing the border from Pakistan. This, however, could only be ascertained if more disaggregated data on the reason of deportation and the length of incarceration in destination country is available as deportations could reflect an accumulated stock of illegal migrants in or outside the jail in destination countries.

The disaggregated data on deportees in terms of gender, age group, occupation abroad, working conditions, etc. was not provided that would allow for further analysis and distinguishing between various forms of illegal migration, including human trafficking and human smuggling. The disaggregated data on interceptions in terms of nationality, gender, age group and intended occupation abroad would also help to conduct a similar assessment.

Estimates of trafficked and smuggled migrants

Assuming that the deportees using illegal routes and the migrants intercepted who would have also used illegal routes, and the border crossing using illegal routes could only be done with the involvement of criminal groups, the number of migrants trafficked or smuggled out of the country

¹ In case of deportations from Turkey, discussed later in the section, the number of apprehended migrants and deportees for a given year are exactly the same.

and captured by official systems averaged 23,335 over the last four years, the year to year variation not being very significant. This means about 64 migrants falling in the hands of criminal groups every day for cross border trafficking or smuggling. It should be noted that interceptions are likely to include foreign nationals besides Pakistani nationals whereas the deportees would only involve Pakistani nationals.

Improvement in document fraud detection

The deportation data trends do not themselves prove that illegal flows through legal routes actually are so small. However, at least the cases are on the decline where individuals travel by the recognised or legal routes but use forged travel documents, as shown in Table 4.

Table 4: Document Fraud Detection Cases at International Travel Points

Travel Points	2005 (No.)	2006 (No.)	2007 (No.)	2008 (No.)
Islamabad	36	34	31	12
Karachi	83	20	17	14
Lahore	44	10	01	06
Peshawar	15	19	11	07
Quetta	-	01	-	-
Total	178	84	60	39

Source: FIA 2008

The decline in the number of document fraud detection (DFD) cases is evident at all international travel points in the country, which is due to increased vigilance at the travel points, as reported by FIA. This has implication that the illegal migration flows, especially involving traffickers and smugglers, would tend to use the illegal routes more than the legal ones.

Countries deporting illegal migrants

In 2007, the year for which more disaggregated data was available from FIA, the three main countries deporting illegal migrants to Pakistan were Turkey, Iran and Oman; together they sent back 13,680 illegal migrants with their respective share as 43.5 percent, 43.4 percent and 13.1 percent. Both Iran and Turkey are transit countries while Oman is a destination country for the illegal migrants.

Turkey reported apprehending and deporting 11,001 Pakistani migrants involved in “border violations” in 2005; in 2006 this number was reduced to 3,508 but remained significant. During 2005 and 2006, Cyprus reported deporting 196 and 210 Pakistani migrants, respectively and apprehending 26 human smugglers from Pakistan in 2005 (ICMPD 2006 & 2007).

Deportees’ areas of origin

The distribution of 2007 deportees in terms of their area of origin shows that 98 percent sent from Turkey and 93 percent from Iran belonged to Punjab province. In case of Oman, 43 percent of them belonged to Punjab, 21 percent each to NWFP and Sindh, 14 percent to Balochistan and one percent to Azad Jammu and Kashmir (AJK). The deportees from Oman, therefore, originated from more dispersed areas than from the other two countries, but little inference can be drawn on the basis of data for one year only. Within Punjab, most of the deportees belonged to Gujrat and Gujranwala districts, followed by Sialkot and Mandi Bahauddin districts. The data on areas of origin for other years were not provided.

Legal migrants also being trafficked

The TIP Report also mentions another form of trafficking where the migrant workers in the destination countries are subjected to conditions akin to trafficking, including “involuntary servitude or debt bondage, including restrictions on movement, non-payment of wages, threats, and physical or sexual abuse” (US Department of State 2008). The report does not mention how widespread the practice is, though it is possible to compile some data on the basis of complaints made by migrant workers against their employers to the Community Welfare Attaches (CWA), Bureau of Emigration and Overseas Employment (BOE) and Overseas Pakistanis Foundation (OPF). It would still not reflect the actual prevalence of the problem as most workers find it futile to file complaints that don't get resolved. The report also cites some NGOs reporting that Pakistani girls are trafficked to the Middle East for sexual exploitation though, again, no indication of its prevalence is given.

Internal human trafficking on the rise

According to the NGOs interviewed there are well established links between human trafficking within the country and abroad and the latter cannot be controlled without dealing with the former. There are hardly any estimates available for human trafficking within the country. However, according to the NGOs, law enforcement agencies and some international agencies interviewed this form of trafficking has grown substantially over the last three to five years.

A news report also asserted that the internal trafficking was taking place at a large scale and it was linked to cross border trafficking. The report mentioned trafficking of 40 flowers selling women to the Gulf via Lahore. The majority of Pakistani women trafficked internally or abroad belonged to Punjab province, followed by Sindh and NWFP (Hassan 2007).

The study by LHRLA also reported extensive trafficking of women, girls and boys within Pakistan for prostitution and other sexual exploitation and forced labour (Ghaus n.d.).

Human trafficking in Sindh province: A study by the Society for the Protection of the Rights of the Child (SPARC) on trafficking of children in Sindh estimates that from 2001 to 2003 the boys and girls trafficked by criminal groups numbered 8,244. During the same period, an additional 39,157 boys and 2,061 girls were trafficked from rural to rural and from rural to urban areas in the province but no criminal groups were involved in these cases; the parents did not have any knowledge that their children would be exposed to forced labour and harmful and hazardous work conditions. In some cases the children were kept like slaves and sexually exploited for commercial as well as personal gains (Shujaat et. al. 2006). Needless to say many more studies on the lines conducted by SPARC are needed especially in the areas from where human trafficking is taking place to estimate the number and trends involved.

Human trafficking in NWFP: Some of the law enforcement officials and NGOs interviewed stressed that the trafficking of women and children for sexual exploitation and forced labour was increasing rapidly. Many internally trafficked women and girls were sent onwards to the Gulf countries mainly for sexual exploitation. Noor Education Trust (NET) has been helping the internally trafficked victims in their rehabilitation. In a study of 195 cases of the victims who had managed to escape their ordeals, the NGO has highlighted some key characteristics of the “trade”. The major cause of trafficking was poverty as all the girls came from poor households of labourers, small vendors and tenant farmers. About half of the girls were 15 years or less in age when they were trafficked, some as small as seven years old. The age of nearly 86 percent of the victims was 20 years or below at the time of being trafficked. The majority of the victims, 83 percent, were Pashtoons and the rest belonged to Hindko, Urdu and Punjabi speaking communities. The victims mainly belonged to Peshawar, Mardan, Swabi and Naushehra

districts while their “clients” were mainly from Punjab followed by Kashmir, Sindh and Balochistan. The usual method adopted by the traffickers was to “marry” the girl to the client by making use of the traditional practice of *Walwar*², where bridegroom pays an agreed amount to the bride’s family. On average an amount of Rs41,000 was paid to the girl’s parents while more than Rs100,000 went to the traffickers and other middle men. In most cases there was no documentary proof of the “marriage”, and *nikah*³ was performed only verbally in a place away from the residential area of the girl’s family where the girl’s consent was never asked. The area police and some *Maulvis*⁴ were reported to be fully involved in the unholy affair. Complicity of the girl’s family acquaintances and local marriage brokers was also evident, but the most disturbing finding was that in some cases the girl’s father, brothers or uncles were also involved who sold and even re-sold the girl. Some of the men had taken up arranging the selling of girls from their community as a regular “business”. The girls, despite the confusion relating to the circumstances of their “marriage”, had tried to believe that they were genuinely married but soon discovered that they had been actually bought for sexual pleasure of their “husband” and his friends and hard labour at his farm and home (NET 2008).

Vulnerability of IDPs to human trafficking: According to NET the trafficking of girls from NWFP has risen sharply due to the upsetting condition resulting from the conflict raging in the tribal agencies and neighbouring Afghanistan. The internally displaced persons (IDPs) from Bajaur, Swat and Waziristan are very vulnerable to trafficking. In addition, girls from the poor families of Chitral have been trafficked extensively. They reported having strong evidence of the girls being trafficked to Afghanistan and to the Gulf states, especially UAE and Qatar, often after being trafficked within the country.

Another NGO Khwendo Kor has been working with poor and vulnerable communities in NWFP; they confirmed the rise in the incidence of girls’ trafficking from the province especially in recent times, after the displacement of people from the conflict zones. Besides the areas named by NET, the traffickers were also reported to be active in Charsadda district.

UNHCR has been working with the IDPs in NWFP. According to the registration data provided by them, nearly 41,300 IDPs were living in camps whereas the majority of IDPs numbering 93,000 was living outside the camps. The data on the area of origin was only provided for the IDPs outside camps, 77 percent of whom belonged to Bajaur, 9 percent to Swat and 8 percent to South and North Waziristan. UNHCR also confirmed receiving reports that the incidence of girls’ trafficking was increasing and the IDPs were especially affected.

Surge in IDPs and human trafficking expected: A recent newspaper article reported that according to a projection made by the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) the aggravating situation in Swat valley and the tribal areas would cause an additional displacement of up to 625,000 people during 2009. The projected displacement would exacerbate an already complex humanitarian situation. About half of the 1.8 million inhabitants of Swat district are already affected by the raging conflict. The report says that 232,720 IDPs have already been registered in nine districts of the NWFP (Dawn 2009). An already large population vulnerable to human trafficking would thus swell to more than two-and-a-half times its present size. The situation calls for a combined effort on war footing by all tiers

² “Walwar” traditionally is meant as a support to the bride’s family from the bridegroom’s family to meet the expenses on marriage.

³ “Nikah” is recitation usually by a religious man to solemnise the marriage.

⁴ “Maulvi” is a religious person appointed in mosques to lead prayers. They are also usually invited to solemnise marriages.

of the government, NGOs and international development partners to prevent the otherwise inevitable surge in human trafficking from taking place.

Source districts for human trafficking and human smuggling: The following information on the main source areas of human trafficking and human smuggling has been collected from various sources including those interviewed during the course of the study.

Table 5: Main Source Districts for Human Trafficking and Human Smuggling

Province	Districts
Balochistan	Gawadar, Quetta, Taftan,
NWFP	Mardan, Peshawar, Swat, Takhtbai, Swabi, Naushehra, Chitral, Charsadda
Punjab	Muzafargarh, Rahim Yar Khan, Gujrat, Gujranwala, Sialkot, Mandi Bahauddin, Dera Ghazi Khan
Sindh	Jacobabad, Naushero Feroze

II.3 Routes of Illegal Migration

According to the sources already quoted on the trafficking of Bangladeshi and Burmese women to Pakistan, the usual route followed by the traffickers is through India. It is also reported that a very large number of women and girls from both the countries are used in a burgeoning sex industry in India. It is possible that many of the women and girls brought to Pakistan are also forced to work first in the Indian sex industry. They are subjected to the same fate after arrival in Pakistan and then trafficked to the Gulf and other countries for the same purpose.

A newspaper article has reported that the entry points for human trafficking from India to Pakistan are Lahore, Kasur and Bahawalpur in Punjab province and Chhor and Badin in Sindh province. These entry points are being used for trafficking both Burmese and Bangladeshi women who are made to transit through India on their way to Pakistan. (Khalid 2004).

According to FIA the main routes followed by human smugglers and human traffickers out of Pakistan are the following:

Pakistan → Iran → Oman → United Arab Emirates (UAE)

Pakistan → Iran → Turkey → Greece

Pakistan → Gulf Countries → West African Countries → Spain

Pakistan → East Europe → West Europe

A report in daily Dawn, also quoted in the HRCP's annual report for the year 2007, states that besides the Bangladeshi and Burmese women, Indian and Pakistani women are also being trafficked to the Gulf mainly to UAE. Karachi has become a major transit point for women being trafficked to the Gulf and further west via Mandh Billoh border in Iran (Hassan 2007; HRCP 2008).

A study conducted by Sustainable Development Policy Institute (SDPI) for ILO on the conditions governing the trafficking of children in Pakistan reported the main destinations of the children trafficked as Dubai, Abu Dhabi, Muscat and Bahrain. To Dubai and Abu Dhabi the children were taken mainly for camel jockeying (SDPI 2006).

II.4 Complicity of the Powerful

A newspaper report of June 2007 quoted the then Interior Minister Mr. Aftab Sherpao as stating on the floor of the National Assembly that during the last three years 27 high and low ranking officials of the FIA were dismissed or sent on forced retirement on charges of being involved in human trafficking. It was also reported that there are clear links between the local and overseas traffickers and politicians, law enforcement officials and travel agents. The report quoted an unnamed police official as saying that law enforcement officials regularly extort money from the agents involved in trafficking. The report named some human traffickers active in different localities against whom no action has been taken by the law enforcement agencies. According to an unnamed police source in the report, the price of a Burmese girl in Karachi is equivalent to the price of 40 grams of gold. Age and beauty are the main determining factors of the price (Hassan 2007).

Another newspaper report said that the border police and other law enforcement agencies are well aware of the trafficking routes, implying their involvement. The report also highlighted that the trafficking deals are used by the Karachi police as a source of money. On arrival in Pakistan, the Bangladeshi and Burmese women and girls are auctioned off to the highest bidder. Three kinds of buyers take part in the auction: rich visiting Arabs (Sheikhs, businessmen, visitors, state-financed medical and university students), the rich local gentry and rural landlords. The report also quotes the Coalition against Trafficking of Women-Asia Pacific (CATW-AP) that the girls are sold as “wives” to men who may resell them. Some Arabs stationed in Pakistan for short periods take “temporary wives”. Police commission is 16-20 percent of the amount involved for each sold woman or child (Khalid 2004).

The TIP Report 2008 also highlights the involvement of some officials in Pakistan government agencies in human trafficking and urges the government to vigorously follow up and punish such instances. It notes that the extent of complicity in the crime by law enforcement officials is significant and for this reason the government has declared a “zero tolerance” policy for the officials complicit in trafficking (US Department of State 2008).

A senior law enforcement official remarked during interview that the operations of well organised groups of traffickers are facilitated by an equally well organised system of corruption involving politicians and law enforcement and other government officials. Another law enforcement official narrated his own experience: he had gathered enough evidence against a low ranking government functionary who was involved in women trafficking and arrested him. The same afternoon he was transferred to another city and the culprit was released. He managed to get back to his original station after a struggle of two-and-a-half years. To a question why it was not possible to arrest the human smugglers and traffickers in Punjab when there were only a few districts from where they were operating, a senior official of the responsible ministry remarked that they had strong support from highly influential politicians and no one could touch them. Two NGOs working for women’s rights and welfare reported that they received life and other grave threats from the trafficking gangs and immense pressure from political circles and law enforcement officials when they helped some trafficked victims file a case in the court of law against the traffickers. The victims were subjected to trafficking within the country, sexually exploited and forced to do laborious work at farms but had luckily managed to escape from their captivity. Their families also had to face similar threats and pressures and they had to withdraw their cases and decline the help of NGOs in this regard.

II.5 Many Faces of Human Traffickers and Human Smugglers

In March 2007, a newspaper reported the arrest of a gang involved in the trafficking of flower selling girls and beggar girls. The gang was headed by a former police official and his wife. They kidnapped and took the girls to another district in the country, got them new National Identity Cards from the National Database and Registration Authority (NADRA) and then got their passports made from the Passport Office. The girls were then taken to UAE and sold there for prostitution. The case was taken up by the Supreme Court of Pakistan on an application by the father of two of the trafficked girls. Notably, the Islamabad police registered the case under the Protection of Women Act 2006 and started investigating the case. The investigating officer told the newspaper that the case might be transferred to FIA after the girls are repatriated following the completion of their sentence in UAE, where they were arrested for prostitution (Asghar 2007).

Pakistan and India may not have been cooperating in controlling human trafficking but the traffickers from both the countries have joined hands to promote their common interest! The Human Trafficking Project reported the arrest of a human trafficking gang in February 2008 comprising members of Pakistani and Indian origin in the northern Italian city of Brescia. The gang charged €20,000 per head from illegal immigrants to arrange for their travel from India and Pakistan to Europe via Russia. The gang had connections in several other European countries and Brescia was their headquarters (THTP 2008).

In March 2008, the FIA arrested a former state minister for sending three women and 16 boys illegally to Germany, Britain, Austria and Canada during the period 2003-06 when he was the minister. He pretended to be their husband, father or brother and wrote for their visas to the concerned embassies on his official letterhead. He charged up to US\$12,851 per head for his “services”. The FIA registered a case of human trafficking against him (Reuters 2008; TET 2008).

The visa section of the Switzerland Embassy in Islamabad was closed down after its employees were said to be involved in human trafficking. The newspaper report quoted the Swiss Foreign Minister as saying, “we have little doubt that we have been targeted by criminal networks engaged in human trafficking”. People were reportedly smuggled to Europe with the connivance of Swiss embassy officials (Daily Times 2006).

III. INTERNATIONAL AND REGIONAL INSTRUMENTS AND AGREEMENTS TO CURB ILLEGAL MIGRATION

There have been several multilateral initiatives worldwide to address the challenges relating to illegal migration. The initiatives have varied from formal conventions and protocols introduced from the UN platform and the regional platforms such as South Asian Association for Regional Cooperation (SAARC), to relatively less formal cooperative agreements at regional and sub-regional levels including the Bangkok Declaration and Bali Process. The formal conventions and protocols, once signed and ratified by the member states, make it obligatory on the governments concerned to take legislative and other measures for adherence to their various provisions. The cooperative agreements do not entail such obligations and essentially highlight the key areas where measures by the governments could be voluntarily introduced to control illegal migration.

III.1 The Bangkok Declaration

The growing scale of illegal migration, in particular human trafficking and human smuggling, became quite significant by the decade of nineties especially in Asia-Pacific region, leading to a meeting of 16 countries from East and South-East Asia in 1996 to join hands in addressing the challenges entailed. However, the cooperative framework, known as “Manila Process”, did not go far enough for a variety of reasons and barely three year after its inception another initiative by Thailand, which also included some South Asian countries, overshadowed it. The Manila Process has been practically dead now for some years.

The initiative by Thailand in 1999 included countries of the Asia-Pacific region and deliberated on effectively dealing with the challenges of cross-border migration, especially “irregular” or illegal migration. In all 18 countries participated in the conference. Among the South Asian countries Afghanistan, India, Nepal and Pakistan did not participate in the conference while Bangladesh did. The conference resulted in the signing of “Bangkok Declaration on Irregular Migration”, which stressed that regular and irregular migration should not be viewed in isolation from each other and measures should be taken to build the government capacity to manage migration flows. It underlined the need for improving country legislation to deal with the phenomenon of irregular migration and to criminalise human trafficking and human smuggling. The humane treatment of irregular migrants in general and the trafficking victims in particular was emphasised. It urged the development of bilateral and regional mechanisms for cooperation among governments, NGOs and private sector to effectively deal with irregular migration and promote regular migration. In this context the declaration stressed the need for examining the possibility of establishing a “regional migration arrangement” to provide technical and capacity building support to the countries in the Asia-Pacific region for realising the objectives of Bangkok declaration (RTG 1999).

III.2 The Bali Process

Not much work was done for establishing the “regional migration arrangement” under the Bangkok Declaration when another plan known as the Bali Process was introduced in February 2002 at the initiative of Australian government, specifically focusing on human smuggling and human trafficking. A total of 36 countries from the Asia-Pacific region participated in the ministerial meeting at Bali as Indonesia co-hosted the meeting, while several other countries attended as observers. A statement issued by the co-hosts at the end of the meeting noted that transnational crimes of human trafficking and human smuggling “were being orchestrated by criminal networks that were also involved in the trafficking of narcotics, document fraud, money laundering, arms smuggling and other transnational crimes”. The statement also expressed deep concern that terrorist elements could be involved in human smuggling and human trafficking operations and that the smugglers and traffickers could undermine the rule of law and integrity of institutions in states. Importantly, it said that besides human smuggling and human trafficking, other forms of illegal migration including people staying in a country without authorisation were a threat to the countries' regular migration programmes and eroded the states' capacity to protect their borders and safeguard their citizens. The statement urged the countries to criminalise human trafficking and human smuggling and work towards building effective information and intelligence sharing arrangements involving all forms of illegal migration; improving the cooperation between law-enforcement agencies; introducing measures on borders to improve the detection and prevention of illegal movement; increasing public awareness about the hazards of human smuggling and human trafficking; adopting the return of illegal migrants to their country as a strategy to deter illegal migration; and making arrangements for timely verification of the identity and nationality of illegal migrants.

Another meeting of the ministers of the Bali Process participating countries was held in April 2003, and a joint statement by the co-chairs in November 2005 declared that there was no further need for ministerial meetings in the foreseeable future. Since its inception many meetings and workshops have been organised on the issues highlighted by the co-chair statements in the two ministerial meetings. The last workshop mentioned in the summary of activities, posted at the Bali Process website, dates from February 2008 after which, it seems, the summary and the website has not been updated. The frequency of meetings and workshops have declined over time, their numbers in various years being the following: three in 2002; five in 2003; nine in 2004; four in 2005; four in 2006; two in 2007 and one in 2008. In all, between 2002 and 2008 a total of 28 workshops and meetings were held for the Bali Process participating countries. The thematic distribution of the workshops and meetings is as follows: 10 on law enforcement including document fraud detection, targeting human traffickers and human smugglers and intelligence gathering; three on legislation development; three on establishing a person's identity as a trafficking victim, refugee or illegal migrant; two on the protection and rehabilitation of trafficking victims; two on raising public awareness; one on the return of illegal migrants; and 10 on developing work plans, monitoring work progress and coordination. It seems that funding constraints have forced a drastic scaling down of the Bali Process activities.

It should be noted that although a much larger number of countries, including Pakistan, participated in the meeting at Bali the statement was signed only by the co-hosts, as opposed to the Bangkok Declaration where all the participating countries signed and owned the joint declaration. Perhaps a major reason was that many participating countries at Bali did not agree with what they perceived as overemphasis on policing and law enforcement and not giving due consideration to the plight of people who were forced to migrate illegally and the destination country policies to open up their borders for legal flows in proportion to the demand for migrant workers in their economies. The Bangkok Declaration, on the other hand, highlighted the need for understanding the nexus between legal and illegal migration and improving migration management by both origin and destination countries in this context. There is a need to invigorate the Bangkok Declaration process and establish the "regional migration arrangement" in order to give due importance to other aspects of migration management besides law enforcement.

III.3 The Trafficking in Persons Report

There is also a unilateral instrument for controlling human trafficking worldwide, known as the Trafficking in Persons (TIP) Report. The TIP Report is actually an annual report by the US State Department to the US Congress on how much effort each country around the globe is putting in for punishing the human traffickers and protecting victims, and to prevent trafficking. The report is a requirement under the Trafficking Victims Protection Act (TVPA) of 2000. The law defines minimum standards for eliminating trafficking that a country must comply with. The countries are classified on a three point scale where countries in full compliance with the minimum standards are placed in Tier 1. An amendment in the law in 2003 requires foreign governments to provide data to the State Department on prosecutions, convictions and other measures to help in the evaluation. The Tier 3 countries, which have a grave trafficking problem but are not making significant efforts to meet the minimum standards, could be subjected to certain sanctions by the US government and international financial institutions⁵. As it is a report from the US

⁵ According to the TIP Report 2008, penalties could be applied to the countries placed in Tier 3: "The U.S. Government may withhold non-humanitarian, non-trade-related foreign assistance. Countries that receive

government to US Congress on the performance of all other countries to determine how they should be possibly treated, US itself is not classified under the tier system.

Whatever the compulsions, it would have been ideal if a mechanism was found to have a more objective assessment of the countries' performance including US, which would have strengthened the US government's moral authority to make other governments accountable. While the tier placement depends much on the country data relating to minimum standards, this very basis remains the weakest in most countries as data collection systems and meaningful reporting formats remain largely elusive. Perhaps the first major contribution the US government could make in the context of TIP Report is to support introduction of standard reporting formats backed by credible data collection systems.

The TIP Report mentions the following international conventions as relevant to human trafficking.

- (a) Protocol to Prevent, Suppress and Punish Human trafficking, Especially Women and Children. (The Protocol is not signed or ratified by Pakistan)
- (b) ILO Convention 182 on Elimination of Worst Forms of Child Labour (Pakistan has ratified the Convention)
- (c) Optional Protocol to the Convention on the Rights of the Child in Armed Conflict (Pakistan has signed but not ratified the Protocol)
- (d) ILO Convention 29 on Forced Labour (Pakistan has ratified the Convention)
- (e) ILO Convention 105 on Abolition of Forced Labour (Pakistan has ratified the Convention)

III.4 International Protocol on Human Trafficking

The Protocol to Prevent, Suppress and Punish Human Trafficking, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplements the United Nations Convention against Transnational Organized Crime. Both the protocols were adopted by the United Nations in Palermo, Italy in the year 2000.

The Trafficking Protocol, which entered into force in December 2003, states its rationale in the following words: "... despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of human trafficking ... (because) in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected" (United Nations 2000). The statement has implications for the way country laws need to be formulated if the Protocol's intended purpose is to be effectively achieved. Simply put, its very important that a separate, comprehensive law on human trafficking should be formulated that not only criminalises the offense but also provides for the victim's protection.

The Protocol defines the state responsibilities with respect to several aspects of trafficking, including prohibiting trafficking of women and children for commercial sexual exploitation,

no such assistance would be subject to withholding of funding for participation by officials and employees of such governments in educational and cultural exchange programmes. Consistent with the TVPA, a government subject to sanctions would also face U.S. opposition to assistance (except for humanitarian, trade-related, and certain development-related assistance) from international financial institutions such as the International Monetary Fund and the World Bank" (US Department of State 2008). The TIP Report also provides the criteria and procedure of placing the countries in various tiers.

exploitative labour and removal of body organs; ensuring that penalties for crimes relating to trafficking are proportional to the gravity of the crime; strengthening the law enforcement within the country and at borders to prevent trafficking and apprehending the criminals; forging cooperation with other states for apprehending human traffickers and having mechanisms in place for timely sharing of information with other countries in this regard; ensuring the physical, psychological and social recovery of victims; facilitating early and safe return of victims to their home country after it is ensured that the return would not present a significant security risk to the victims or their families; ensuring that victims are provided full legal assistance and information to pursue their case against the traffickers; ensuring privacy of the victims and keeping their identity and legal proceedings relating to them confidential; ensuring that laws provide for payment of compensation to victims for the damage suffered; ensuring physical safety of victims; and implementing a comprehensive programme aimed at preventing human trafficking.

Pakistan has not signed the Trafficking Protocol yet. Irrespective of the reservations, Pakistan now has a law to control human trafficking and it should reflect the standards set by the international Trafficking Protocol.

III.5 International Protocol on Human Smuggling

The Protocol against the Smuggling of Migrants by Land, Sea and Air entered into force in January 2004. The rationale of the Protocol is to forge cooperation among countries at bilateral, regional and international levels to prevent and combat migrants' smuggling and protect the rights of migrants involved. The main provisions focus on criminalising migrants' smuggling; enacting appropriate laws for successful prosecution of the persons and groups responsible for migrant smuggling; exempting the migrants from criminal prosecution for smuggling; enforcing effective border control measures including document fraud detection; promoting cooperation between the countries involved including exchange of information both for prevention and prosecution; capacity building of the law enforcement, immigration and related officials; increasing public awareness about the crime; and ensuring safety of the migrants and facilitating their return to home country.

The Human smuggling Protocol is also not signed by Pakistan yet. But as stated above Pakistan's own laws dealing with human smuggling should reflect the standards set by the international instrument.

Both the protocols on human trafficking and human smuggling, together known as Palermo Protocols after the name of the place where they were first presented and approved, provide frameworks and guidelines to countries to enact national legislations and introduce institutional measures for curbing the crimes. Pakistan's reluctance to sign and ratify them for the last more than five years is incomprehensible. The Palermo Protocols represent the principal international instruments dealing with the two dominant and growing forms of illegal migration involving criminal groups.

III.6 SAARC Convention on Human Trafficking

In 2002 SAARC approved the "Convention on Preventing and Combating Trafficking in Women and Children for Prostitution". As the title implies the convention covers only the trafficking of women and children for prostitution and the trafficking for other purposes, e.g. forced labour, is left out. To its credit the convention, besides the trafficking across borders, also addresses

trafficking within the country⁶. It is important to note that the main purpose of the convention is to promote cooperation among the SAARC countries to effectively deal with various dimensions of trafficking in the region including the repatriation and rehabilitation of victims of trafficking⁷. One of the articles in the convention states that the governments “shall grant to each other the widest measure of mutual legal assistance in respect of investigation, inquiries, trials or other proceedings” (SAARC 2002). There are also articles governing extradition of criminals, and care and rehabilitation of victims including their repatriation⁸.

Pakistan has signed and ratified the SAARC Convention on human trafficking.

In the context of trafficking within South Asia, the SAARC Convention provides the basis and the framework for cooperation between the countries to stem the trafficking flows. It also calls for addressing the internal trafficking issue, which has close linkages with cross-border trafficking. A major drawback of the Convention is that it is limited to the trafficking of women, girls and boys for sexual exploitation for commercial purposes and leaves out many other purposes for which they are trafficked. Nevertheless it provides a good basis for the countries of the region to start cooperating to eliminate the criminal groups involved in the most abhorrent form of illegal migration and duly supporting the victims. The Convention, therefore, is most relevant to Pakistan as a transit and destination country for the trafficking flows originating in Afghanistan, Bangladesh, Burma, and other South Asian countries and passing through India. However, as discussed below, this remains the least priority with the authorities in Pakistan and perhaps also with other governments in the region.

III.7 International Instruments on Migrants’ Rights

There are other international instruments that lay standards for the rights and treatment of migrant workers in host countries. Most of these instruments cover both legal and illegal migrants. The instruments are also relevant in the context of situations mentioned in the TIP Report where migrants are caught in involuntary servitude and debt bondage. The ILO’s Migration for Employment Convention No. 97 (1949), Migrant Workers (Supplementary Provisions) Convention No. 143 (1975), and the UN International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990) are particularly relevant. However, Pakistan and most other South Asian countries, and the main migrant labour receiving countries in the Middle East have not signed these conventions (Ahn 2004).

A study sponsored by UNESCO looked at the reasons behind the reluctance of governments to sign and ratify the UN International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families. The main reasons in the origin countries were identified as strong collusion between government officials, recruiting agents and other interest groups, low priority given to the rights of migrants, lack of interest in government circles to give due

⁶ According to the convention: ““Trafficking” means the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without consent of the person subjected to trafficking” (SAARC 2002).

⁷ Article II on the “Scope of the Convention” states: “The purpose of this Convention is to promote cooperation among Member States so that they may effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children; the repatriation and rehabilitation of victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of SAARC region are the countries of origin, transit and destination” (SAARC 2002).

⁸ Article IX of the convention states in the beginning: “The State Parties to the Convention shall work out modalities for repatriation of the victims to the country of origin” (SAARC 2002).

importance to the Convention, reluctance to invest in the provision of recommended services to migrants and fear of losing the overseas markets if any complaints are taken up against the employers abroad. The destination countries generally thought their own laws provided sufficient protection to migrants and they were found protective of the employers' interests. They were least prepared to concede any rights to illegal migrants as mentioned in the Convention, arguing this would give others added incentive to migrate illegally. There was little critical assessment of the causes of illegal migration (Iredale 2003).

IV. GOVERNMENT POLICY TO CURB ILLEGAL MIGRATION

It would not be unfair to say that Pakistan government does not have comprehensive policies to effectively manage the phenomenon of illegal migration. There are several forms of illegal migration, the prominent ones being human trafficking and human smuggling. Both of these forms are prevalent in Pakistan at significant levels not only for migrants going out of the country but also for migrants from other countries coming into Pakistan.

It is difficult to construct a single, comprehensive policy on the issue of illegal migration in Pakistan. Policy making is largely the domain of the federal ministries, which they are expected to accomplish in consultation with the provincial departments concerned. Illegal migration is a multi-faceted phenomenon falling into many domains that are handled by the ministries of Foreign Affairs; Health; Interior; Labour, Manpower and Overseas Pakistanis⁹; Social Welfare¹⁰; and Women's Development. In addition, the ministries of Finance and Planning & Development play a critical role in ensuring programme financing. The experience so far shows that inter-ministerial coordination is hard to achieve and a multi-disciplinary policy involving many ministries would be difficult to implement. Nevertheless if a significant progress is to be achieved on this account inter-ministerial coordination is the key to achieve the goal.

The main policies dealing explicitly with human trafficking, human smuggling and illegal migration are provided in the following documents and instruments.

- (a) Pakistan Action Plan for Combating Human Trafficking
- (b) Prevention and Control of Human Trafficking Ordinance 2002 and Rules
- (c) Draft National Child Protection Policy
- (d) Draft Protection of Child Act
- (e) Emigration Ordinance 1979 and Rules
- (f) Draft National Migration Policy
- (g) Foreigners (Amendment) Ordinance 2000

The Prevention and Control of Human Trafficking Ordinance (PACHTO) deals with cross border human trafficking and not trafficking within Pakistan. The proposed Protection of Child Act (PCA) addresses various vulnerabilities of children, including their trafficking, within Pakistan. In addition, many conditions relating to human trafficking are covered by some provisions of the Pakistan Penal Code (PPC) and Hudood Ordinance 1979. The Protection of Women Act 2006 also amended some existing provisions of, and inserted some new provisions in, the Pakistan Penal Code (PPC) that are relevant to human trafficking.

⁹ Plans have been reportedly finalised to bifurcate the ministry and create a separate Ministry of Overseas Pakistanis. Notably there are no provincial departments dealing with the subject of overseas Pakistanis.

¹⁰ The portfolio of women's affairs was taken away from the ministry and a separate Ministry of Women's Development was created during the government of General (Retired) Pervez Musharaf, while a single department continued to handle both portfolios in the provinces.

The Emigration Ordinance (EO) and Rules deal with labour migration, illegal migration and human smuggling from Pakistan to other countries. The application of EO is restricted to Pakistani citizens. Draft National Migration Policy (NMP) has built on the earlier policy of expanding Pakistan's share of the migrant labour market abroad and introduced measures to bring down the migration cost so that the legal migration channels are opened to wider socio-economic groups. It has also addressed the issue of protecting migrant workers' rights during employment abroad.

The Foreigners Act 1946 and Foreigners (Amendment) Ordinance 2000 deal with the foreign nationals' entry, stay and employment in Pakistan.

It is to be noted that all laws of the country are applicable to Pakistani citizens as well as any foreign nationals who are in the country¹¹, except some laws that only apply to Pakistani citizens. Similarly, certain laws are specific to foreign nationals.

IV.1 Policies on Human Trafficking

Human trafficking is prohibited by the Constitution and it is obligatory on the state to enact appropriate laws to ensure full compliance with the relevant article¹². The promulgation of the anti-trafficking law in 2002 also contributed towards elevating Pakistan the same year to the Tier 2 ranking in the TIP Report. In 2001 Pakistan was placed in Tier 3. Since then Pakistan has remained in Tier 2 except for 2004 when it was put on the Tier 2 Watch List.

Pakistan Action Plan for Combating Human Trafficking

Ministry of Interior (MOI) has the mandate to develop and implement the government's policy on human trafficking. However, the mandates of Ministry of Social Welfare and Special Education (MOSW) and Ministry of Women Development also cover the offenses relating to human trafficking. The MOI policy is reflected in the "Pakistan Action Plan for Combating Human Trafficking", prepared in 2005 and PACHTO issued in 2002. The overall goal of the government is to prevent and control human trafficking. The Action Plan has a three-pronged approach to achieve the goal including prevention of the crime, prosecution of those responsible for the crime and protection of the victims of the crime.

Preventive measures: The preventive measures are identified as raising awareness of general public through mass media campaigns; informing the people planning to migrate about officially allowed channels for legal migration; informing the migrants leaving the country about their rights in destination countries; introducing travel and personal identity documents that could not be easily forged; improving document checks and surveillance at points of entry and departure; strengthening the monitoring of recruiting agencies to check their possible involvement in the crime; and research and data collection on various aspects of trafficking to improve strategies. Poverty alleviation is identified as a central measure to address the root cause of human trafficking including safety nets for poor groups. Conducting a study to understand the dynamics between underdevelopment and human trafficking and carrying out a national survey on human

¹¹ Article 4 of the Constitution of Pakistan states in its first part: "To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan".

¹² Article 11 of the Constitution states: "(1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form; (2) All forms of forced labour and traffic in human beings are prohibited; (3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment".

trafficking with assistance from International Organisation for Migration (IOM) are also included in the Action Plan.

Prosecution measures: The measures aimed at prosecution of offenders include enactment of legislation on human trafficking; strengthening cooperation and sharing of information on criminals between the law enforcement agencies in the country; forging cooperation with the relevant countries of origin, transit and destination for the return of trafficked victims and apprehension and prosecution of criminals; standardization of investigation procedures; training of FIA, Immigration and Passport staff in relevant anti-trafficking measures; sensitization and training of judges and prosecutors to improve performance; and development of a Case Monitoring System for reviewing progress of the trafficking cases.

Protection measures: The victims' protection measures include establishment of secure shelters for the victims with arrangements for legal advice, psychological counselling, medical treatment and food; ensuring victim's safety during trial; maintaining confidentiality of information relating to the victims and sensitising media accordingly; sensitising the law enforcement agencies on how to deal with the victims; and linking the shelter homes to rehabilitation services for the victims.

Programme management: Establishment of four committees is announced in the Action Plan: the National Inter-Ministerial Committee on Human Trafficking for policy development, chaired by the Interior Minister; the Inter-ministerial Committee on Human Trafficking for inter-agency coordination, chaired by Secretary Interior; the National Sub-committee for oversight of implementation of the National Committee decisions; and the Steering Committee on Human Trafficking the role of which is not specified.

The Action Plan also aims at developing a National Migration Policy including all aspects of legal and illegal migration into and out of the country.

Policy and Action Plan limitations: The policy is limited to the cross-border human trafficking and does not deal with the trafficking within the country. It is hard to find an explanation for this evident omission as the seriousness of the crime is the same in both cases.

The policy covers most areas highlighted in the international Trafficking Protocol except that the victim's return to her/his country of origin and rehabilitation have not been dealt with adequately. For instance, the international Trafficking Protocol says that the victim should not be returned if there is a threat to her/his life and an alternative rehabilitation strategy should be worked out. The policy does not address these issues. Although there is a provision for medical treatment of the victim, there is no specific mention of HIV and AIDS that needs special handling. A recent study by UNDP has warned of the danger inherent in ignoring the potential nexus between human trafficking and HIV and AIDS and called for dedicated services to the trafficked victims in this regard (UNDP 2007).

The policy and the Action Plan have deficiencies on account of strategy. It's not clear how programmes under the various components would be implemented. In many cases the agency responsible for implementing the programmes has not been named. For some important components agencies named have no mandate or experience in the programme area. Several committees have been planned to oversee various aspects of policy development and its implementation but the composition and the terms of reference (TOR) of the committees are missing. It seems that wider stakeholder consultations were not held on the policy and Action

Plan document when it was in a draft form, otherwise many of the discrepancies would have been addressed.

Developing a National Migration Policy dealing with both legal and illegal migration is not fully within the expertise and mandate of MOI and this should not have been part of the Action Plan. The way various mandates are divided between ministries, it would be more logical for MOI to take the lead on developing a policy on human smuggling, which is only partly addressed under EO. The policy on labour migration is within the mandate of Ministry of Labour, Manpower and Overseas Pakistanis (MOLMOP) and they are rightfully taking the lead on this. It's not necessary that all policy components should be in one document – there could be more than one documents dealing with various aspects of migration but most importantly their inter-relationship and division of responsibilities regarding implementation of various components should be clearly and rightly stated.

Prevention and Control of Human Trafficking Ordinance 2000

The government introduced PACHTO with the aim of preventing and controlling human trafficking¹³. The law is applicable to human trafficking both into and out of Pakistan and hence covers both Pakistani and foreign nationals involved as perpetrators or victims of the crime. The law provides penalties for various acts relating to human trafficking. Any one carrying out human trafficking for the purpose of “exploitative entertainment, slavery or forced labour or adoption” can be punished with imprisonment of up to seven years and fine. If actual or attempted kidnapping or abduction is associated with the crime the penalty is increased to 10 years imprisonment with fine. The maximum punishment to an individual is up to 14 years imprisonment with fine, for trafficking that involves coercion and actual or attempted kidnapping or abduction. A penalty of up to 7 years imprisonment and fine is also prescribed for confiscating, concealing or destroying any document relating to human trafficking. If any of these offences is committed by an “organized criminal group” (the term is duly defined in the law) the penalty involves a minimum of 10 years imprisonment extendable to 14 years and fine.

Notably, the law also provides for awarding compensation to the victim. If the victim happens to be a destitute woman or an unaccompanied child the government is responsible for providing her/him shelter, food and medical treatment. The “Prevention and Control of Human Trafficking Rules”, notified in 2004, provide for the temporary registration of the victim for issuance of work permit by NARA if the court determines that the victim's prolonged presence in the country is necessary. The court would also decide the timing of victim's repatriation to the origin country, which would be carried out by involving the origin country's diplomatic mission in Pakistan. The Rules say that the Government would allocate appropriate funds for providing legal assistance to the victims and for their repatriation.

Limitations of the human trafficking law: Many quarters have pointed out important gaps and flaws in PACHTO. The Action Plan itself acknowledges that certain amendments in the law might be necessary to make it compatible and responsive to ground realities, complexities and magnitude of the problem. UNIFEM has sponsored an assessment of the law; the report, which is still in draft form, points out that the manner in which the various offences have been

¹³ In PACHTO 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” (section 3 provides punishment for various acts relating to human trafficking).

described in the law makes it difficult to differentiate between them, which causes confusion. The suggestion is to have a separate section for each offence to make it easier to use by the law enforcement officials. Some important gaps in the law include non-inclusion of the crimes of domestic trafficking, aiding and abetting the offences, and the act of transferring a person being trafficked. The law is also silent on the preventive measures to be taken to curb human trafficking. Other loopholes relate to the definitions contained in the law. For instance, penalties for the offences committed by an organized criminal group are higher than those committed by individuals, but the group has been defined as “structured”¹⁴, which leaves out any “non-structured” or “loose” groups. No limits are defined for the fines to be imposed, which leaves the possibility open that the criminals would get away with smaller fines. The report also highlights a lack of harmony with the Pakistan Penal Code (PPC) provisions. For instance, the offences of restricting personal liberty to travel and forced labour are also offences included in PPC, but PACHTO does not establish any correlation with the relevant PPC provisions. Whereas PPC authorizes the First Class Magistrate to pass sentences only up to three years, PACHTO empowers them to pass higher sentences for the offences. The report calls it “contradiction in terms” and maintains that the First Class Magistrate while trying these offences will never pass a sentence that is more than three years (UNIFEM 2008).

Another important limitation is that no lower limits for the imprisonment sentences have been prescribed except in one case, which could lead to the criminals getting lighter sentences.

The UNDP document on Gender, Justice and Protection Project notes that due to the weaknesses on judicial side and in public prosecution the implementation of the law remains weak and not many arrests are leading to convictions.

Similar gaps and difficulties with the law have been pointed out by UNICEF and UNODC, among other stakeholders, who also have plans to suggest amendments from their perspectives. The Advisor to Prime Minister on Interior (holding the charge of Federal Interior Minister) also has plans to change the law. He recently announced in a press conference that his ministry was working on an amendment to the law for awarding death penalty to human traffickers in a bid to control the crime (The News 2008a). The UNIFEM report aptly comments that as the law was promulgated as an Ordinance it was never debated in the parliament and in public and, therefore, lacks collective wisdom. The law drafted by Ministry of Interior with expert help from IOM, nevertheless, constitutes an important step towards preventing and controlling human trafficking.

A prominent lawyer Mr. Zafarullah Khan highlighted the technical weaknesses in PACHTO. The definition of human trafficking is complicated involving several conditions. The prosecution’s case, therefore, could be vulnerable if evidence on any of the conditions involved is lacking. All definitions in the law need to be reviewed and revised if necessary, to remove any ambiguities that could be exploited by the offenders. He observed that law drafting skills in the country are scarce and related quality control mechanisms in the Law ministry have a limited capacity, which leads to technical flaws. FIA has been declared as the main agency to implement the law whereas they have only a limited presence in the country. The police would actually have to deal with the human trafficking cases but in the absence of any training they are more likely to

¹⁴ In PACHTO an “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”.

book the cases under the PPC provisions of kidnapping. It is important to have a strong monitoring mechanism to analyse how the laws are being applied in the cases of human trafficking so that suitable amendments in PACHTO could be made over time. He observed that much effort would be required at multiple levels for the system of prosecution to work effectively and bring the perpetrators to justice including extensive training of law enforcement agencies such as police, FIA, Coastal Guards and Rangers, and familiarization and sensitization of lawyers and judges. The law graduates have little knowledge of the crime of human trafficking as the basic law taught to them is PPC; only 20 to 30 “special laws” are taught that with luck might include PACHTO. Making PACHTO as part of the academic course would help to improve its understanding among the law professionals.

Protection of Women Act 2006

The Protection of Women Act introduced in 2006 has amended criminal law for introducing more stringent punishments for crimes against women, some of which clearly fall in the domain of human trafficking. The crime of kidnapping and abducting, or inducing or compelling a woman for marriage, is punishable by compulsory life imprisonment and possible fine. The crimes of selling and buying a person for the purpose of prostitution are punishable with up to 25 years imprisonment and possible fine. Punishment for rape is prescribed as death or imprisonment that would not be less than 10 years or more than 25 years. If the rape is committed by more than one person then each one of them is liable to be punished with death or compulsory life imprisonment. The crime of cohabiting with a woman deceitfully leading her to belief they are lawfully married is punishable with rigorous imprisonment of up to 25 years and possible fine.

The Protection of Women Act not only has inserted clauses in the PPC with stringent punishments for crimes against women it notably has provided clear limits of punishments to be awarded for certain crimes. How does PACHTO relate to this Act is not clear; for similar crimes PACHTO has much lighter punishments. Given that the responsibility for the Act’s enforcement lies with the police while PACHTO is enforced by FIA, it is probable that the former is not applied to the cases of cross-border trafficking but on the many offenses relating to the trafficking within the country.

Draft National Child Protection Policy

Two recent news reports indicate that a national child protection policy and legislation would be introduced soon. According to one report the Prime Minister declared that “the national child protection policy, prepared in close consultation with all stakeholders including relevant ministries and provincial governments, will be notified soon”. The other report in the same edition of the newspaper cites Secretary, Ministry of Social Welfare and Special Education (MOSW), as saying that a Child Protection Bill will be introduced soon in the Parliament (The News 2008b).

Policy context: The draft National Child Protection Policy (NCP) is prepared by National Commission for Child Welfare and Development (NCCWD) of MOSW with UNICEF assistance. The policy vision is to promote an environment for all children where they are protected against all forms of violence, abuse and exploitation. The policy document recounts the situation of children in Pakistan (anyone under 18 years of age is defined as a “child”). According to the 1998 Census children comprise nearly half the country’s population of 160 million. Around a quarter of the population has remained below poverty line in the last decade, implying that nearly 1-2 million children are born in poor households every year. Poverty contributes significantly towards child exploitation. The policy document mentions some “studies”, without providing any reference, which show that 15-25 percent of all children in Pakistan endure some form of sexual abuse. About 8 million child labourers are under the age of 14 years, including

children in bonded labour. The document notes that “despite the Government’s efforts to prevent child trafficking, many children are sold, abducted or trafficked. Minor girls are trafficked within and outside the country for the entertainment industry (mainly dancing and singing) and sex work while minor boys are usually trafficked to the Middle Eastern countries to be camel jockeys”. The document further highlights that some harmful traditions and practices make some children vulnerable to abuse and exploitation, e.g. *Swara*, whereby minor girls are given in marriage as a method of dispute resolution; *Walwar* or bride price that has changed into a method of trafficking as poor parents agree to marry their daughters to strangers in far flung places in return for bride price, even on instalments. There are also numerous cases of missing and kidnapped children.

Policy strategy: The policy document highlights strategies and plan of action. One of the key strategies would focus on improving current laws and enacting new laws for protection of children and punishment of offenders. The guiding principles for legislative development, from the point of view of anti-trafficking efforts, include prohibition of child sexual abuse, child sexual exploitation, child labour, prostitution, pornography, child trafficking and any other form of violence against children; addressing any form of child abuse, exploitation and trafficking with penalties; making notification of child abuse, exploitation or trafficking compulsory; and decriminalising status offences such as begging and vagrancy, survival behaviours and victimisation by trafficking or criminal exploitation. The policy also proposes to enhance the minimum age limit of marriage for girls from 16 to 18 years and setup a separate criminal justice system for children, where only the offences against children are tried.

Programmes relating to child trafficking: The programmes to be introduced for anti-trafficking parts of policy implementation fall in the areas of public awareness raising and community mobilization; trainings of professionals including the officials of law enforcement agencies, lawyers and judges, staff of child protection centres and other institutions relating to children, relevant officials of local government, community leaders and NGOs; prevention of child labour; and establishment of child protection and rehabilitation services in districts. Importantly, a “child protection management information system (CPMIS)” will be developed for districts primarily by adding a set of questions in the national (household) surveys carried out routinely by the Federal Bureau of Statistics (FBS). Additionally, community level information would be generated on crimes against children such as physical and sexual abuse, corporal punishment, trafficking, selling of girls in the name of marriage or giving girls for dispute settlement and violence against child domestic workers. Information collected will be used for taking appropriate actions and planning programmes in the district.

Programme management mechanisms: Elaborate mechanisms have been proposed for programme implementation both in the policy document and the draft legislation. A “Commission for the Protection of Children” will be established as a corporate body with administrative and financial autonomy, led by MOSW and including members from the ministries of Education, Finance, Foreign Affairs, Health, Information, Law, Planning & Development, and Youth Affairs; a representative from each province, FATA, FANA and ICT; a male and a female child below the age of 18 years; and a person committed to the rights of children and having related knowledge and experience. The Commission will be responsible for policy development and approving plan of action, proposing legislative reforms, setting standards for child protection services, monitoring child rights violations and programme implementation including application of the law, and mobilising funds for the programmes.

The Commission will administer a “Child Protection Fund” to be established by the government to meet the expenditures relating to Commission’s operation and to support programmes

relating to child protection. Contributions to the fund would be sought from the federal, provincial and local governments as well as international governments and organisations.

A “Child Protection Bureau” would be established in each province. The Bureau would be run by a “Board of Governors” led by DOSW and members drawn from the departments of Education, Health, Home, Information, and Local Government. Additionally seven “non-official” members would be appointed including members of the provincial assembly. The functions to be performed by the Bureau are broadly the same as those of the Commission but with provincial focus.

The Bureau would administer a “Provincial Child Protection Fund” for the same purposes as those of the Commission but focusing the provincial programmes and its sources of funds would also be the same as for the Commission.

The provincial governments have been authorised to appoint “Child Protection Officers” for monitoring any violations of the Act and to assist the court in child protection cases. They would also have the authority to take into custody a child found to be in need of care, who could be admitted to a “Child Protection Centre” to be established by the provincial government for designated areas. The child protection cases would be heard by “Child Protection Courts” to be established by provincial governments in consultation with their High Court.

Policy and programme limitations: The NCPP clearly has an ambitious agenda. While it covers most of the areas relating to child protection, the programme designed to achieve the objective is extensive requiring a large investment of financial resources. In the present situation of resource crunch facing the government, which is expected to persist for quite a while, it is highly unlikely that government funds would be available for the programme expansion. The donor contributions are also likely to remain limited. Under the circumstances the desirable strategy is that MOSW should develop a prioritised and phased programme to be implemented over the next five years. Provincial funds should only be established where the provincial government is willing to make an adequate contribution. Otherwise the federal fund should allocate shares for provincial programmes. The funds should not be used for meeting the expenses on the federal Commission and provincial Bureau, but only for supporting the priority programmes. On the programme side investment in new infrastructure and hardware, especially buildings and vehicles, should be avoided; instead, the use of existing facilities should be optimised. As many programme areas of NCPP and the Pakistan Action Plan for Combating Human Trafficking would have common features, e.g. raising public awareness, training of law enforcement personnel, sensitisation of legal professionals, etc. the resources of both programmes should be pooled.

Draft Protection of Children Act

The draft Protection of Children Act (POCA) includes a range of offences and punishments relating to various offenses against children including, but not limited to, child marriage; cruelty and violence; harmful vocation; administering harmful substances; exposure to seduction, fraud or deceit; sexual abuse; pornography; and dealing in organs. The punishment for dealing in organs of a child is the severest, consisting of death sentence or life imprisonment with fine of up to one million rupees. In terms of severity the next punishment is for sexual abuse consisting of up to life imprisonment and a fine that is not less than Rs100,000. For child pornography the punishment is up to 10 years imprisonment and up to Rs500,000 fine. For exposure to seduction the prison term is up to 10 years or a fine of up to Rs100,000. The punishment for violence, if committed by a group of more than two persons, consists of imprisonment for up to 10 years and a fine of up to Rs100,000 each.

The “sexual abuse” is defined as “any act of actual or threatened physical intrusion of sexual nature when performed by a person either independently or in conjunction with other acts, on the person of a child, whether by the use of threats, coercion, inducement, fraud, deceit or promise, with or without consent shall constitute an offence”.

“Child-in-need-of-care” is defined as who, among others, “is being or likely to be abused or exploited for immoral or illegal purpose or unconscionable gain” or; “lives in a brothel or frequently visits any place being used for sex or is associated with any person who leads an immoral or depraved life” or; “is forced into the worst form of child labour, exploitative labour, or beggary”; or “is subjected to human trafficking within and outside Pakistan”.

Limitations of the law: Although there is substantial discussion in the policy document on the issue of trafficking of children, the legislation does not define what constitutes trafficking. In this sense the grave nature of the crime of trafficking is not given the same importance as in the policy document. Admittedly the proposed Act is not just about trafficking, but it could well define the group of offenses that constitute the crime thereby recognising the seriousness with which it is to be addressed. The proposed legislation does not mention how it is related to PACHTO.

In technical terms the proposed Act addresses many limitations that are found in PACHTO including clearly separating the offenses under different sections, constituting special courts to hear the cases and having senior judges with due authority to award the prescribed punishments. The process of enactment is not of an ordinance but through Parliament involving extensive discussions (the draft policy and legislation are being discussed in six parliamentary committees). However, like PACHTO, the minimum limits of the penalties are mostly not defined leaving much to the discretion of the judges, thus making it possible that the criminals would walk away with lesser penalties. Comparatively, this issue is better addressed in the Women’s Protection Act 2006 where minimum penalties are clearly defined for serious offenses.

All said, the proposed NCPP and POCA are quite comprehensive and aim to establish systems and implement programmes that also have the potential to deal with the issue of trafficking of children within the country and abroad. In fact the national policy on trafficking and plan of action, as well as PACHTO, need to learn from and closely relate to the initiative.

IV.2 Policies on Human Smuggling and Other Illegal Migration

Emigration Ordinance 1979 and Rules

Pakistan government’s Emigration Ordinance (EO), promulgated in 1979, is aimed at governing the process of lawful migration of Pakistani citizens for employment and checking any illegal migration for work that is either undertaken individually by the migrant herself/himself or is induced by other person or persons. The provisions of EO, therefore, are applied to the cases of human smuggling and also to other forms of illegal migration where the migrant herself/himself is solely involved.

The EO considers migration of a Pakistani citizen “lawful” provided the person: (a) is in possession of a letter of appointment or a work permit from a foreign employer or an employment visa or an emigration visa from a foreign government; or (b) has been selected for emigration by the foreign employer through the Director General or by an Overseas Employment Promoter (i.e. recruiting agent) or under an agreement or treaty between Government of Pakistan and a foreign government.

The EO established Bureau of Emigration and Overseas Employment (BOE) for governing the entire process of overseas employment including issuing permissions to recruiting agents and appointing “Protector of Emigrants” with the responsibility to ensure that the workers’ employment contracts meet the minimum standards set by BOE. All migrant workers are required to get clearance from the Protector otherwise they are to be treated as illegal migrants.

The EO prescribes penalties to be imposed on both the migrants who violate the conditions laid out above and anyone else who assists or “causes” the person to migrate in violation of the above conditions. The penalty for the migrant in such cases is up to five years imprisonment or fine or both, and for those assisting or causing a person to migrate under these conditions the penalty is the same when the offence is committed the first time but the maximum imprisonment term is raised to 7 years if the offence is committed subsequently.

The penalty prescribed is much tougher for anyone forging documents relating to migration and for anyone who fraudulently causes or induces a person to migrate, being 14 years imprisonment or fine or both¹⁵. The same penalty is prescribed for any one receiving payments on the pretext of providing employment overseas, except by the licensed recruiting agents when they charge the prescribed fee; otherwise, they too would be subjected to the same penalty.

The Ordinance does not apply to the departure of a foreign national from the country.

The Emigration Rules 1979 prescribe the minimum age as 35 years for women wanting to go abroad for employment as a domestic servant.

FIA has been given the responsibility of enforcing the relevant provisions of EO against the violators. The cases are to be heard by “Special Courts” consisting of a Sessions Judge or an Additional Sessions Judge.

Limitations of the human smuggling law: The main contradiction between EO and the international Human Smuggling Protocol is that the former prosecutes the migrants as well as the smugglers, whereas the latter clearly states that the migrant should not be prosecuted. Some other measures included in the Protocol are also missing, including how the human rights of the illegal migrants would be protected and what steps would be taken for their early repatriation home. Also, the measures for raising public awareness about the crime are also missing from EO.

There is a clear scope for a separate policy on human smuggling that should take into account both the smuggling out of and into the country. The “National Migration Policy” is currently being finalised if focused solely on maximising labour migration from the country and does not substantively address the issue of illegal migration. On the other hand the FIA is taking the lead role in dealing with human smuggling cases under EO and has introduced several border control measures and forged cooperation with other countries to check human smuggling. It is, therefore, logical that MOI should take the lead on developing a comprehensive policy and legislation to control human smuggling.

¹⁵ Clause 18 of Emigration Ordinance 1979 deals with “Fraudulently Inducing to Emigrate” and states that anyone who: “(a) forges any document required for, or relating to, the emigration of any person, or has in his possession or under his control any instrument or article which may be used for the purpose of such forgery, or (b) by means of cause or induces any person to emigrate, or enters into any agreement to emigrate or leaves any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to fourteen years, or with fine, or both.

In the context of the processing of human smuggling cases under EO, the designated judges have the normal authority to award the punishment, which is unlike PACHTO where the designated judge is especially empowered to award the higher punishments surpassing her/his normal authority. Further the judges have more time to devote to the EO cases as they are tried in special courts.

The EO provisions clearly distinguish between various offences making the law easier to understand by the lawyers and judges, unlike the PACHTO provisions that are said to be confusing. The FIA finds dealing with the human smuggling cases under EO much easier than trying the trafficking cases under PACHTO.

Like PACHTO the EO also does not define any limits for the penalties to be imposed with the possibility that the criminals might get away with lighter sentences.

Draft National Migration Policy

Ministry of Labour, Manpower and Overseas Pakistanis has drafted a “National Migration Policy” (NMP) that is currently being discussed and is expected to be finalised in the next few months. In fact this should be more appropriately called the National Labour Emigration Policy, given its exclusive focus on labour export from the country. The policy does not address the migration of labour into Pakistan, which is substantial but remains largely unrecognised by the government as earlier discussed.

The major thrust of the policy is towards increasing the opportunities for overseas employment for Pakistan citizens by exploring the overseas markets more aggressively and methodically, expanding the pool of skilled workers within the country through invigorating vocational and technical training programmes, opening up the doors of international migration to female workers and bringing down the financial cost of migration. To the extent these measures could be accomplished the opportunities for regular (or legal) migration would increase thus raising the expectation that the incidence of irregular (or illegal) migration would decrease.

The policy also discusses the issues confronting prospective migrant workers in Pakistan, which are said to be primarily related to overcharging by officially registered recruiting agents. In addition, there are fake agents and sellers of fake visas who exploit intending migrants. The policy recommends revising the officially prescribed service charges upwards keeping in view the payments made by the recruiting agents to overseas employers.

The policy also addresses, though less exhaustively, the issue of protection of the rights of migrants. The main problems faced by migrants in the country of employment are described as follows: “the expatriate workers in the host countries are known to face problems with regard to protection of their rights. Instances of non-payment of salaries and dues, unpaid overtime, poor working conditions, non-provision of legal holidays and even a disregard to the agreement of employment are not uncommon. Harassment and intimidation are also the *fate accompli* of many of the migrant workers”. Some additional problems migrants face at the hands of overseas employers are listed as: (a) substitution of the original employment contract with a new one with less favourable conditions; (b) provision of substandard medical facilities; (c) provision of substandard boarding and lodging; (d) restriction on freedom of movement by confiscation of passport; (e) forced departure from the country without settlement of payment due; and (f) sexual and moral exploitation by employers.

Clearly the migrants facing a combination of the conditions mentioned above would fall in the category of being trafficked, even though migrating legally. However, the policy does not

describe the migrants subjected to these conditions as being trafficked, though implying that their rights are being violated. The remedial measures proposed in the policy include the following: (a) bilateral accords or MOU with destination countries including clauses for protecting migrants' rights; (b) legal support to migrants, and informing them of their rights, in destination countries; and (c) strengthening pre-departure briefing programmes.

Limitations of the migration policy: Here the substantive sections of draft NMP relating to enhancing migrant labour export from the country are not under discussion, but only the provisions having consequences for illegal migration.

Reducing financial cost of migration: Is the legal migration a substitute for illegal migration? Many think so, but if increasing the opportunities for legal migration is to be adopted as a policy for curbing illegal migration then one needs to look at the possible linkage between the two more closely and systematically. The assumption according to the proposed policy is that the people who choose to migrate illegally are more likely to take up legal migration provided their skill levels are raised and/or the financial cost of migration is brought down. But the cleavage here might be that the training option that is linked to a certain level of education and ability to pay the related cost would not be affordable for the people who become illegal migrants. Secondly, the reduced migration cost, if at all accomplished, might still remain unaffordable for the people who eventually decide to become illegal migrants. Thirdly, making credit available to help the poorer prospective migrants meet the migration cost, as proposed in the policy, might still not work because of their inability to meet the collateral requirements and because the credit might still not be enough to pay for the migration cost due to a large differential between the officially prescribed fee and the actual charges by recruiting agents.

The issue of overcharging by licensed recruiting agents needs more clarification. The draft NMP proposes a review of the currently allowed charges and recommends appropriate enhancement taking into account the actual expenditures incurred by the agents. The policy points to the fact that the agents are facing much competition from other countries and there are now payments involved in securing job orders from overseas employers. The agents, however, are said to have a free hand in deciding what to charge from the migrant, making huge profits in the process. The relevant Emigration Ordinance clause concerning the overcharging, mentioned earlier, is hardly ever applied despite the phenomenon being almost universal for decades now. One of the reasons for the inaction is that the overseas employment business is too lucrative not just for the employment agents but also for many officials responsible for applying the standards and enforcing the law. Although the draft policy recommends that the officially prescribed fee be revised upwards and then any recruiting agent caught overcharging be punished severely, the phenomenon is unlikely to stop given the high stakes involved; in fact there are more chances of the overcharging rate going up after the officially allowed fee is raised, with the agents using this as an excuse to charge more from the migrants. The policy does not mention the corruption of officials, its share in inflating the cost of migration and the measures to eliminate or minimise the factor.

Protecting migrants' rights: Similarly, the measures being proposed for protecting migrants' rights do not go far enough to provide reprieve to migrants who are subjected to the exploitation by overseas employers. Many origin countries, e.g. the Philippines, have signed MOU with destination countries that include clauses on protecting migrants' rights. It would be instructive to study their experience. If destination countries seriously wish to check the violation of migrant' rights they would match the MOU with related legislation and law enforcement measures. They would also institute some monitoring mechanism to see how effectively the enforced measures

are working. There is no evidence to suggest that any MOU between the origin and destination countries have actually led to such measures.

For providing legal support to the migrants in destination countries the experience of the Philippines again should be studied as NMP does not indicate how the support mechanism would be actually established. The Migrant Workers and Overseas Filipinos Act of 1995 provides for setting up a Legal Assistance Fund of nearly US\$1.85 million and also requires establishing a resource centre at the embassy to provide legal and other services to migrants. This is in recognition that the migrant is unlikely to have the required resources to pay the legal charges involved. In reality hardly any cases are filed and the embassy tries to reach some settlement with the employer usually only in cases involving financial payment. Other violations are seldom challenged. The resource centres, however, help the migrants in distress in smooth repatriation and providing other welfare services. The limitations of interventions such as legal assistance are thus clearly drawn but it does not mean that this option should be foregone just because the current space available is quite limited. The requirement is to have sufficient capacity in the proposed arrangements overseas, especially with regard to professional expertise and adequate staff and funds, as the number of migrants approaching the centres would be large. In addition to providing the planned services the centres should maintain a comprehensive database of complaints received and taken up with the employers – there is a merit in bringing up all complaints with the employers irrespective of the results – and a report based on the data compiled should be sent to the destination country authorities urging them to take institute measures to check the violations. Pakistan should also discuss with other source countries the possibility of introducing similar arrangements. The other step that origin countries should but most likely would not take is to blacklist the employers who are habitually flaunting migrants' rights and subjecting them to conditions constituting trafficking. Although a coordinated action by origin countries would have a greater impact, it should be adopted by any origin country that does not just want to win the race of labour export irrespective of the cost to its citizens.

Cooperation between agencies and with other countries: The policy is also silent on how interagency cooperation within the country and with the transit and destination countries is to be forged to check human smuggling. It also does not include any programmes to inform the general public about the pitfalls of human smuggling. The research and monitoring arrangements suggested merely focus on increasing the country's share of the labour markets involved and do not take the human smuggling and other illegal migration forms into account.

IV.3 Policy to Regularise Illegal Migrants in Pakistan

Foreigners (Amendment) Ordinance 2000

In the year 2000 Pakistan government took the initiative of providing legal status to the large number of illegal migrants in the country and promulgated the Foreigners (Amendment) Ordinance 2000. The National Aliens Registration Authority (NARA) was established under the Ordinance and entrusted the functions of registering the foreigners staying illegally in the country and issuing work authorisation to the registered foreigners desiring to take up employment or doing a business. Both the registration and work permit are renewable. A registered foreigner is allowed to work anywhere in Pakistan provided she/he gets prior permission from NARA for the change in address. The registration besides giving the permission to stay in the country authorises the foreigners to open a bank account, obtain connections of utilities (water, gas, electricity), obtain a driving license subject to passing the driving test, get a motor vehicle registered in their name and get admission in an educational institution. Children are registered with their parents but would be required to apply for a

separate registration on reaching adulthood. NARA charges fee for registration and issuing a work permit.

It is important to understand that the scheme of registration and work permits is valid only for the foreigners who were already in Pakistan illegally when the Ordinance was promulgated in 2000 and for whom amnesty was granted to get registered within a specified period. It does not apply to illegal foreigners who entered the country after this date; they are liable to be prosecuted according to the provisions of the Foreigners Act 1946 and punished with imprisonment of up to 10 years duration and fine. After completion of the sentence the person would be deported.

NARA notes, however, that government efforts towards deporting the illegal foreigners have met with limited success so far as they usually don't have any identification documents to confirm nationality; in the absence of the identification documents the authorities in their country are not ready to accept them back.

The government's initiative to legalise the stay of illegal migrants needs to be lauded. The registration would save the registered migrants from harassment of law enforcement agencies and reduce their vulnerability to the extent attributable to their illegal stay. Mechanisms for establishing nationality of illegal migrants quickly need to be worked out bilaterally with the countries concerned so that the repatriation could be done smoothly unless there are threats to the security of the migrant involved. For repatriation of trafficked victims Thailand has worked out a mechanism with its neighbouring countries where NGOs help the governments in quickly establishing the victim's identity. Pakistan should consider negotiating similar arrangements with the concerned governments. If this could be achieved Pakistan would be in a position to announce amnesty for illegal migrants periodically making the illegal migrants who came after the promulgation of the Ordinance also eligible for registration.

V. DONOR INITIATIVES IN PAKISTAN TO CURB HUMAN TRAFFICKING

The international development partners' support in Pakistan for curbing illegal migration is largely confined to human trafficking. Their main on-going and planned initiatives are discussed below.

V.1 Inter-Agency Group on Child Trafficking

An Inter-agency Group on Child Trafficking was established in June 2008 jointly led by UNICEF and Save the Children Sweden. Other members of the group include ActionAid, Group Development, ICMC, ILO, IOM, UNDP, UNFPA, UNIFEM and UNODC. Objectives of the group are to improve coordination among various agencies for effective action in support of the children being trafficked or those in the danger of being trafficked. The group aims to be working in collaboration with the government and other relevant national organisations. Some of the outcomes the group intends to achieve include a "technical" review of PACHTO particularly to highlight the gaps relating to various forms of child trafficking and the protection of victims, a comprehensive assessment on the situation of child trafficking in the country to fill important data gaps to be shared with the government and NGOs, and a communication strategy also to be shared with the government and civil society. The group will work with the FIA led Thematic Group and the MOI led Inter-Ministerial Committee on Human Trafficking for legislation revision on the above lines and will also directly support community level programmes for the prevention of child trafficking and protection and rehabilitation of the victims. It is not clear from the

documents available how these planned efforts relate to the draft policy and legislation on child protection, which UNICEF helped the government to develop.

The Group has put together a work plan ending December 2009 that is regularly reviewed and updated. They have also started a “stock-taking” exercise building a directory of NGOs working on child trafficking issues in Pakistan and a list of reports, publications and reference materials on the subject. One of the group members, UNIFEM, has sponsored a review of PACHTO by a legal expert. Some of the future undertakings in the work plan include developing National Plan of Action on Child Trafficking, assessment of the current criminal justice system’s response to the victims of child trafficking, assessment of the rescue, recovery, repatriation and reintegration arrangements for the victims and development of training modules on child trafficking for law enforcement personnel. Starting December 2008, UNICEF is also undertaking a situation analysis of child trafficking in Pakistan that would be completed in two months.

The Group currently has membership consisting of all the UN agencies concerned with the issue and representation from international and national NGOs. The representation from government, by far the main stakeholder, in any capacity is missing so far. There has been some discussion in the group’s meetings about the government’s involvement, but no decision has been taken yet. Continued absence of the government from the group’s deliberations could trigger the risk of having divergent perceptions of the programme priorities.

V.2 ILO Project on Vocational Training

The International Labour Organisation is working with MOLMOP to review and improve the national policy on vocational and technical skills development, revising curricula and upgrading the training facilities. The system of certification will be improved as well. The project includes all the four provinces. What seems to be missing from the agenda is a training needs assessment survey. The last such survey was conducted decades ago and a new one is, therefore, long overdue. Besides assessing the domestic needs, the proposed survey should take into account the composition of current and likely midterm demand for skills in the relevant countries overseas. The training infrastructure needs to be substantially augmented as 150 Tehsils in the country do not have any training facility at all. There is a close linkage between training on one hand and improved employability including potential access to the overseas markets and poverty reduction on the other. A possible strategy of making training accessible especially to the groups vulnerable to trafficking and smuggling needs to be properly assessed.

V.3 UNODC Planned Project on Human Trafficking

The UNODC is finalizing a project document on trafficking, drawing upon the United Nations Global Initiative to Fight Human Trafficking (UN-GIFT). The project is said to have a “holistic approach” on the trafficking issue in Pakistan, aiming to improve the mechanisms in the three areas of prevention, prosecution and protection. The project will be implemented not only at the federal level but also in Punjab with the possibility of extension to other provinces. One of the key project strategies would be to build on the work already done by the government and international and national agencies. The review of PACHTO to address the gaps and to revisit the national plan of action for possible refinements will be, therefore, some of the main thrusts of the project. The project will be implemented jointly with other concerned UN agencies. Further project details were not shared as the document is still under discussion with the partners.

V.4 UNIFEM Initiatives

UNIFEM has carried out a technical review of PACHTO and also a review of the draft NMP from the perspective of women rights and gender issues as enshrined in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), also ratified by Pakistan. The organisation is now developing standard operation procedures (SOP) relating to the proposed changes in PACHTO. An analytical paper on the impact of migration from gender perspective has been commissioned as well.

V.5 UNDP Project on Trafficking in Women

UNDP is implementing a project to strengthen the government capacity to counter the trafficking of women. Funded by DFID, the project focuses on developing a database on trafficked victims and establishing trends; capacity building of law enforcement officials by designing curriculum for their training and training the trainers; review and strengthening of the anti-trafficking laws; awareness raising and sensitization of parliamentarians, judges, lawyers and journalists in NWFP with the assistance of an NGO; and the return of Bengali and Nepali women in jail throughout the country who are suspected of being wrongly charged though being actually the victims of trafficking. It is estimated that close to 2,000 women are currently in jails in this situation; MOI would be responsible for providing their exact number and other details. Project units will be set up with MOI at the federal level and in Home departments in the four provinces to help the government coordinate and implement project activities. Project funds would be transferred to an account to be opened and operated by MOI. The project activities are said to be stalled because of the delay in opening of account. The project is ambitious given the restricted budget available and funding of some of the essential activities remains uncertain. For example, how the rehabilitation programmes for the returned victims in their own countries would be funded and who would implement them remains unclear. The project apparently has many elements in common with the planned initiatives of other UN agencies but reportedly none of them have consulted them so far.

VI. EXPERIENCE OF POLICY IMPLEMENTATION

The government policy implementation framework with regard to human trafficking, involving trafficking of other nationals into and out of Pakistan and trafficking of Pakistani national abroad is elaborated in the “Pakistan Action Plan for Combating Human Trafficking”, compiled by MOI with the help of IOM. The plan highlights a three pronged strategy to combat human trafficking that is centred on prevention of human trafficking, prosecution of offenders and protection of trafficking victims. In addition the policy and strategy review are integral to the strategy to improve results. The discussion in this section would focus on progress on the main agenda of the Action Plan in the three areas. The mechanisms and arrangements put in place to realise the objectives and goals of the Action Plan would also be analysed and recommendations made for improvement as necessary.

The measures introduced to implement the EO provisions for controlling human smuggling and NARA’s programme to legalise illegal migrants in Pakistan would be reviewed on similar lines.

The on-going and planned initiatives of international development partners would also be assessed within the government’s policy framework and programme implementation.

In the sections below the progress with regard to controlling human trafficking and human smuggling is discussed together where the implications for measures introduced are common to

both. The experience of application of the laws on human trafficking and human smuggling is also discussed together to draw comparisons between the two.

VI.1 Policy and Legislative Reforms

Policy and legislation on human trafficking

The MOI established a “National Inter-Ministerial Committee on Human Trafficking” with the aim of conducting policy review and making policy improvements in view of the programme implementation experience. The committee is headed by the Minister of Interior. The exact membership of the committee is not known as MOI could not trace the relevant records due to change in the key ministry personnel, but probably it consisted of representatives of the Ministry of Foreign Affairs and MOLMOP. The committee apparently has not been able to meet regularly.

The Action Plan itself had pointed out that there were gaps in the current policy which needed to be addressed, though the gaps are not specified. Apparently no systematic efforts were initiated by the committee to undertake the policy review. A logical course would have been to appoint an expert subcommittee for policy analysis and holding discussions with the stakeholders and formulating recommendations for review and approval of the National Committee. In the absence of such a step the international development partners have started the process of reviewing the trafficking policy on their own, without much consultation with the government as yet.

As mentioned in a previous section UNIFEM has already started the review of the trafficking policy and PACHTO; UNDP is implementing a project under which the same activity is planned; UNICEF has plans to commission a policy and legislation review; and UNODC also has plans to undertake this activity in their forthcoming project. Each agency would be looking at the policy and legislative development from their own perspective, given their separate mandates. The chances of duplication, however, cannot be ruled out. For instance, UNIFEM wishes to focus its analysis on gender discrimination and women rights and UNDP project’s central concern is the same. Although the Inter-Agency Group on Child Trafficking, of which UNICEF is a part, wishes to sponsor a policy and legislative review from the perspective of child trafficking there has been an attempt to address these concerns in the draft NCPP and POCA, which have been developed by MOSW with UNICEF assistance. It is not clear how the proposed PACHTO review by the Group would relate to the work already done with MOSW, in which the Group apparently has not been involved.

In any case so many policy and legislative reviews are not required as they would only serve to spread more confusion and precious resources would be wasted in a certain duplication of effort. One comprehensive review would suffice where each agency’s concerns are addressed. As coordination of the international development partners’ activities is the government’s responsibility, it is imperative that the National Committee of MOI appoints the expert subcommittee for policy and legislative review at the earliest.

Importantly, the role of programme coordination is the responsibility of a Migration Management Cell (MMC) created by MOI. The MMC is headed by a Deputy Secretary as one of her/his several responsibilities. Four staff members in MMC were earlier supported by a public scheme of internship and through funding by IOM, but as these sources dried up the staff also left. The MMC, which took notable strides in its initial tenure, now has only part-time attention from a Deputy Secretary and a Section Officer. Like any other unit, MMC cannot function properly

without dedicated staff. MOI had developed a PC 1 to ensure staff availability and financing for some programmes but lack of funds has prevented its implementation.

Building a robust monitoring system at MMC is also important to generate periodic data for assessment of how well the programmes are working and what corrective actions need to be taken.

Policy and legislation on human smuggling

The EO and Emigration Rules have been the main sources of policy and legislation to control human smuggling. Under the EO, MOLMOP is responsible for managing legal migration while the responsibility for law enforcement concerning human smuggling and other forms of illegal migration lies with MOI. The gaps in policy for managing legal migration are being addressed by MOLMOP under the draft National Migration Policy, but no process is in place yet to take up policy gaps relating to human smuggling. Again, this is an area where MOI needs to take the lead as it primarily lies within its mandate.

VI.2 Preventing Human Trafficking and Human Smuggling

There is a long list of preventive measures to be introduced or strengthened with regard to human trafficking in the MOI Action Plan. In many cases the agency responsible is not mentioned but most of these activities were to be implemented by MOI in collaboration with donors.

Raising public awareness

One preventive activity planned is raising awareness of general public on the pitfalls of human trafficking and human smuggling, and informing the people about the legal mechanisms and procedures. The means to be used are campaigns on electronic and print media and mass campaigns at grass roots level.

Very few activities could be undertaken to implement this part of the prevention programme as most activities depended on availability of funds. The activities have been restricted to a couple of community level events, some advertisements in the press and a few TV talk shows. MOSW has also implemented a public awareness campaign in a pilot district based on an information kit developed by ILO.

Addressing human smuggling and human trafficking together in the same campaigns might not be the right strategy as the target populations tend to be different in both cases. Human smuggling is not likely to involve the poorest segments of the society but those who are able to pay the required amount of money to the smugglers. Human trafficking, on the other hand, is more likely to involve very poor and vulnerable people who are tricked into the racket on false promises having few better alternative for meeting their very basic needs in life. Awareness-raising of the poorest groups would require working with them at the grassroots level and to expose the designs of those who try to mislead them. Campaigns in electronic and print media are likely to have very limited success with these groups. Seen from this point of view MOI is not the right ministry to run the preventive campaigns on human trafficking as it does not have any district level presence and the capacity to develop partnerships with NGOs to support community level work. On the other hand MOSW is well endowed with district level structures and a history of working with NGOs. Its action plan for child protection also involves awareness-raising of vulnerable communities at grassroots level. Except for the foreign nationals the target communities for MOSW and DOSW in provinces are the same as for MOI as domestic trafficking has clear linkages with the international trafficking. MOSW, therefore, should take the

lead in implementing the public awareness raising activities. The proposed Child Protection Funds, to which both the government and the donors would contribute, could be used to support these activities for MOI as well.

It is important to remember that nearly all the donor supported projects and activities relating to human trafficking have components on public awareness-raising especially targeting vulnerable groups. Again, the planned thrust of activities is linked to the respective mandates of the agencies involved. Instead of implementing individual project activities a better strategy would be to contribute the allocated funds to the provincial Child Protection Funds help DOSW to design integrated public awareness-raising campaigns and activities that include their concerns.

Forging inter-agency cooperation

Another important activity included in the prevention programme is forging cooperation between various law enforcement agencies in the country to thwart illegal migration flows including human trafficking and human smuggling. The establishment of Inter-Agency Task Force (IATF) in 2005 has led to an increasing number of interceptions of illegal migration flows as shown in Table 3 earlier. However, the number of intercepted illegal migrants in a year remains much below the number involved in yearly deportations, implying further gearing up of the efforts by law enforcement agencies. An assessment of reasons for the slippages would help to address the limitations involved. FIA also prepares a “Red Book” containing the particulars and criminal history of human traffickers and human smugglers in the country and updates and shares it regularly with other law enforcement agencies in the IATF. The task force is headed by FIA and meets regularly both at the federal and provincial levels.

Strengthening border controls

With reference to Table 4, the significant improvement in document fraud detection has already been discussed.

Developing cooperation with other countries

The FIA has established cooperative frameworks with the law enforcement agencies of the countries through which the human trafficking and human smuggling routes pass, as well as some destination countries. Information is exchanged regularly among the members of the “groups” established and the group meetings take place periodically to improve the measures for controlling illegal flows. The following international groups have been established so far.

Bilateral Groups:

- Pakistan-Oman
- Pakistan-UK

Trilateral Groups:

- Pakistan-Iran-Turkey
- Pakistan-Turkey-Greece

Quadrilateral Group:

- Pakistan-Greece-Turkey-Iran

There is a round the clock communication with the Interpol as well and “Red Corner Notices” are conveyed through Interpol on the wanted human traffickers and human smugglers. By December 2008 a total of 17 such notices were sent to the Interpol.

Pakistan has also signed agreements and MOU with various countries for cooperation in controlling transnational crimes including human smuggling and human trafficking, as listed below.

Agreements:

- Pakistan-Turkey
- Pakistan-Saudi Arabia
- Pakistan-Hellenic Republic
- Pakistan-China
- Pakistan-Sri Lanka
- Pakistan-Iran-Turkey-Greece

MOU/Letter of Intent

- Pakistan-Thailand
- Pakistan-United Kingdom
- Pakistan-Singapore
- Pakistan (FIA)-Australia (Federal Police)

Pakistan also has extradition treaties with 29 countries for apprehending and transferring criminals to the country where they are wanted for trial.

What one finds missing is similar cooperation between Pakistan and Afghanistan, Bangladesh, Burma, Sri Lanka and some Central Asian countries from where much human trafficking to Pakistan reportedly takes place. Cooperation with India is also necessary as it is the main transit country for the illegal flows from Bangladesh and Burma. FIA informed that meetings with the South Asian countries were held to discuss progress in relation to the implementation of SAARC convention on trafficking. Much more coordinated efforts need to be put in place through cooperation of the law enforcement agencies of the countries concerned not only to check the illegal migration flows but also for the early return of the victims where it does not threaten their safety.

The FIA reported arresting an increasing number of “human smugglers” over the last few years, numbering 1,006 in 2005; 1,462 in 2006; 1,526 in 2007; and 1,265 up to end September 2008. It is highly probable that many human traffickers are also included in these numbers but the data apparently does not distinguish between the two categories. As reported by FIA, their cooperation with other countries has significantly helped to nail down the criminals. In the absence of the data linking arrests with the smuggling routes, and trafficking and smuggling flows into and out of Pakistan, it is difficult to objectively assess where the cooperation has had the maximum impact. FIA could be helped in designing more meaningful reports from its database.

Research studies

The other activities of the prevention programme include a set of research studies to improve the understanding of human trafficking dynamics in order to improve policy and programmes. The main studies include survey of human trafficking to be conducted by IOM and a study on exploring the link between poverty and vulnerability and trafficking. The survey on human trafficking hopefully would make an assessment of the incidence of human trafficking and its dynamic, which would be an important contribution; its report, therefore, needs to be finalised soon. This is no indication of any progress on the other study. There is also a need for a comparative study on human trafficking and human smuggling to improve the understanding of the different dynamic involved in the two cases.

MOI would require substantial assistance in fulfilling the research agenda. International development partners should provide the financial resources and expert assistance in conducting the studies.

VI.3 Prosecution of Human Trafficking and Human Smuggling Cases

Capacity building of officials

The Action Plan includes training of various law enforcement officials, prosecutors and lawyers, members of judiciary and immigration and passport officials. Training of Anti-trafficking Unit (ATU) staff, established at the FIA Headquarter in Islamabad and in the four provincial capitals, is also included.

According to FIA training of some of the ATU staff was organised with IOM help but more trainings were needed. UNODC has developed a computerised training programme for the ATU staff using a self-teaching model.

Almost all the projects, planned or being implemented, by the international development partners have a provision for training of law enforcement officials and members of judiciary. The trainings are planned to reflect the individual international agency mandates. Again, much confusion would be caused if the international agencies are allowed to carry out the trainings individually, resulting in wastage of resources and the trainees' time. MOI needs to coordinate with these agencies so that their concerns are reflected in one integrated training programme and the resources saved are spent on taking the effort to scale, given that a very large number of officials need to be trained.

The possibility of incorporating the curriculum on human trafficking into the main training curricula for the FIA officials should also be examined. The FIA trainers could then be trained accordingly. A similar approach should be followed for the training of police officials in the provinces who are already dealing with the internal trafficking related offenses without having much knowledge of the phenomenon. In addition, the training should also focus on the members of judiciary hearing the cases of human trafficking and human smuggling. There are officials of other law enforcement agencies posted on borders who would also require the training, as mentioned in the Action Plan. The international development partners should help MOI to develop a prioritised training plan and cost-effective strategies workable on a sustainable basis, and to establish a mechanism for monitoring implementation of the training plan.

Standardising investigation procedures

A "Trafficking Investigation Manual" was to be prepared to standardise the investigation procedures followed by the training of FIA investigators in the use of procedures. The FIA has developed SOPs for investigators in line with the legal requirements for human trafficking cases. The measure is also aimed at helping the prosecutors to prepare their cases according to the requirements of law.

Database on human traffickers and human smugglers

The FIA has developed a database of human traffickers and human smugglers to trace their networks. The database is shared by all "Anti Human Trafficking Circles" (AHTC) in the country to help them track the traffickers and smugglers and to update the database. By now FIA has notified 15 AHTCs out of which 12 are fully functional at the following places: Peshawar, Rawalpindi, Lahore, Gujranwala, Faisalabad, Multan, Karachi, Quetta, Chaman, Gawadar, Turbat and Special Investigation Units (SIU) present at a few places.

Computerised case management system

The Action Plan also envisaged development of a computerised case management system at the ATU Coordination and Monitoring Cell, Islamabad. The following analysis is based on the data on court cases generated through the system. The data includes cases of both human trafficking and human smuggling, providing an opportunity to have a comparative analysis.

Experience of Implementing PACHTO, EO and PPC

The experience of implementing PACHTO, EO and Passport Act (PA)/PPC is examined here based on the data provided by FIA. Table 6 provides year-wise distribution of the cases.

Table 6: Number and Status of Illegal Migration Court Cases 2004-2007

Case Status	2004	2005	2006	2007
Total no. of cases	5704	7899	9426	14306
No. of cases decided (as % of total cases)	737 (13%)	1271 (16%)	1710 (18%)	5238 (37%)
No. of cases consigned to record (as % of total cases)	326 (6%)	383 (5%)	689 (7%)	860 (6%)
Pending cases carried to next year (as % of total cases)	4641 (81%)	6245 (79%)	7027 (75%)	8208 (57%)

Source: FIA 2008

The absolute number of cases has been rising steadily each year, as shown in the table. The main reason for the yearly increase is a large number of cases remaining pending and carried over to the next year, though the number of new cases has also been increasing over time. The good sign is that the share of cases decided by the courts in the total number of cases has been rising, more than doubling in 2007 over the last year. The number of pending cases would further increase if the cases “consigned to record” are added, as these are the cases where proceedings are stopped for the time being for some reason. The growth in pending cases is an endemic problem that needs government’s attention on priority basis if it adheres to the proverb “justice delayed is justice denied”.

PACHTO cases piling up: To see if the delay in case decisions is linked to any of the laws being applied, the ratio of decided cases to pending cases is presented in Table 7.

Table 7: Ratio of Decided Cases to Pending Cases 2004-2007

Law Title	Case Status	2004	2005	2006	2007
PACHTO	No. of cases decided	18	92	81	63
	No. of pending cases (Ratio)	118 (1:7)	301 (1:3)	394 (1:5)	558 (1:9)
EO	No. of cases decided	487	704	1194	3770
	No. of pending cases (Ratio)	3375 (1:7)	4803 (1:7)	5324 (1:4)	6391 (1:2)
PA/PPC	No. of cases decided	232	475	435	1405
	No. of pending cases (Ratio)	1148 (1:5)	1141 (1:2)	1309 (1:3)	1259 (1:1)

Source: FIA 2008

Clearly, the number of pending cases to every decided case is much higher for the cases filed under PACHTO than the cases filed under the other two laws. In 2007, for every case decided there were nine cases pending under PACHTO. The situation under EO has improved in 2006 and 2007 compared what it was in 2004 and 2005. For the cases filed under PPC the number of cases decided exceeded the number of pending cases in 2007, which is the trend one would like to see if the backlog of the other types of cases is to be reduced.

It seems that the factors mentioned while discussing the complexity and limitations of PACHTO are at work causing the delay in related cases. The relative contribution of these factors, however, needs to be established to devise an effective strategy to address the issue. One also needs to determine the time required by FIA to prepare a case under PACHTO as compared with the other two laws as this would have implications for improving their human resources and capacity.

Places with case pendency rates: The percentage of pending cases in courts in various cities, representing Anti-Human Trafficking Circles, in year 2007 is shown in Table 8.

Table 8: Incidence of Pending Cases in Various Cities in 2007

Station	No. of Total Cases Before Courts			Percentage of Cases Still Pending		
	PACHTO	EO	PA/PPC	PACHTO	EO	PA/PPC
Peshawar	87	92	263	78	79	70
Rawalpindi	57	2269	337	61	90	72
Lahore	96	2054	190	84	59	44
Gujrat	220	2278	118	98	76	79
Faisalabad	25	502	15	60	39	100
Multan	57	1135	46	86	51	67
Karachi	98	1613	935	89	28	64
Quetta	12	792	237	25	10	8
Chaman	-	-	292	-	-	0
Gwadar	-	-	194	-	-	0
Turbat	-	-	268	-	-	0
SIU*	05	11	8	100	73	75
Total	657	10746	2903	85	59	43

*Special Investigation Unit

Source: FIA 2008

Gujrat seems to be the most problematic place where one-third of all cases under PACHTO were filed and 98 percent of these cases were still pending. Some of the other problematic places were Karachi, Multan and Lahore. Rawalpindi topped the list with the greatest proportion of pending cases under EO. Overall, Quetta was doing quite well.

The overall picture involving the three types of cases by end of 2007 is presented in Table 9.

Table 9: Progress of Court Cases Relating to Human Trafficking and Smuggling and Other Illegal Migration in Year 2007

Title of Law	No. of Cases Before Courts			No. of Cases Resolved			No. of Cases Consigned to Record (as % of total cases)	No. of Pending Cases (as % of total cases)
	Cases From Last Year	New Cases Filed	Total	Convicted	Acquitted	Total (cases decided as % of total cases)		
PACHTO	394	263	657	52	11	63 (10%)	36 (5%)	558 (85%)
EO	5324	5422	10746	3624	146	3770 (35%)	585 (5%)	6391 (60%)
PA/PPC	1311	1592	2903	1346	59	1405 (48%)	239 (8%)	1259 (44%)
Total	7029	7277	14306	5022	216	5238 (37%)	86 (6%)	8208 (57%)

Source: FIA 2008

The new cases filed each year exceed the cases brought over from last year except for the cases filed under PACHTO. The number of newly filed cases under EO is expected to decrease over the next years as FIA now generally does not register cases against the deportees. The pendency rate is the highest for cases under PACHTO.

Rates of conviction satisfactory: The rates of conviction in the small number of cases decided, filed under the three laws, are given in Table 10.

Table 10: Convicted Cases as Percentage of Decided Cases 2004-2007

Title of Law	2004 (%)	2005 (%)	2006 (%)	2007 (%)
PACHTO	94	96	80	83
EO	85	80	85	96
PA/PPC	82	93	86	96

Source: FIA 2008

The rate of conviction for all three types of cases was generally on a higher side, underlining a sound case preparation by FIA. For PACHTO the success rate somewhat declined over the last two years but for both EO and PPC it went up in 2007 compared to the last year.

Meagre punishments: The duration of imprisonment, as part of the sentence awarded, for convicted cases in 2006 and 2007 is given in Table 11 for cases under the three laws.

Table 11: Imprisonment Awarded in Convicted Cases in 2006 & 2007

2006

Law Title	No. of Cases Convicted	Sentence Less than 6 Months	Sentence 6 Months to 2 Years	Sentence 2+ Years to 10 Years
PACHTO	65	42 (65%)	17 (26%)	06 (9%)
EO	1010	813 (80%)	129 (13%)	68 (7%)
PA/PPC	373	333 (89%)	36 (10%)	04 (1%)
Total	1448	1188 (82%)	182 (13%)	78 (5%)

2007

Law Title	No. of Cases Convicted	Sentence Less than 6 Months	Sentence 6 Months to 2 Years	Sentence 2+ Years to 10 Years
PACHTO	52	47 (90%)	04 (4%)	01 (2%)
EO	3624	3463 (96%)	119 (3%)	42 (1%)
PA/PPC	1346	1308 (97%)	34 (3%)	04 (0%)
Total	5022	4818 (96%)	157 (3%)	47 (1%)

Source: FIA 2008

The average fine imposed in the convicted cases was Rs 20,397 in 2006 and Rs 16,865 in 2007.

In both the years in large majority of cases the imprisonment awarded was less than six months. For all types of cases the incidence of less than six months imprisonment increased in 2007 compared to 2006, but the change was the greatest for the cases under PACHTO involving 25 percentage points. The intervals in the other two categories of imprisonment are very large and it is not possible to judge the severity of the punishment given. The average fine in both the years was very small.

Data limitations: In the absence of information linking sentences with the nature of offences it is not possible to say if the offenders got away with lighter sentences and if there was a tendency in the courts not to give higher sentences, which would strengthen the case for defining limits of the prescribed punishment.

The data also do not show if the offenders involved were individuals or criminal groups. The number of cases under EO being very large, it seems that the caseload is dominated by deportees, who are no longer being charged due to lack of jail capacity, as informed by FIA¹⁶. The continuation of this policy should bring down the caseload for EO over the next few years.

¹⁶ According to HRCP, in 2007 there were 95,016 prisoners in Pakistani jails against an authorised capacity of 40,825 (HRCP 2008).

No information is available as to how many cases involved trafficking in women and foreign nationals. Were any of the groups involved in trafficking of Bangladeshi and Burmese women and girls in Karachi, for example, apprehended and punished? How many Pakistani women and girls being trafficked were involved in the cases and to which districts do they belong? It is hard to deduce such precise information from the available data.

It is quite difficult to draw many inferences from the data presented in the tables above. For any meaningful analysis further disaggregation in the data would be needed, which would require defining relevant parameters for data processing by FIA. Undoubtedly much useful information is available with FIA that, if properly analysed, will help the government in policy reforms and strategy review and better targeting of resources.

The data presented, however, shows that the number of new cases each year is increasing, which could be due to increased vigilance by the law enforcement agencies or due to a rising trend in human trafficking and smuggling, or both. The cases under PACHTO are piling up at a faster rate than the other cases as a large number of cases remain undecided each year. The conviction rate in the cases decided seems to be satisfactory. The punishments and fines awarded in all cases are dismally low.

FIA observations on PACHTO cases: The FIA's own experience corroborates the results from data analysis. The judges find it difficult to disentangle the confusion caused by some definitions and have problem relating to clauses regarding similar offenses in PPC and PACHTO. The First Class Magistrates hearing the trafficking offenses are also reluctant to award more than three years imprisonment to the offenders following their powers defined in PPC, ignoring that under a special provision of PACHTO they can actually do so. Due attention is not given by the court to the definition of human trafficking. The reason is not merely a lack of awareness about the nature of the crime but also that the judges do not have the time to pay attention to the intricacies of trafficking cases. The judges in the general criminal courts are very busy trying so many other offenses as well and there is usually a huge backlog of cases. The prosecutors find it difficult to establish their cases under some provisions of PACHTO, e.g. it is hard to prove a criminal group's existence according to the definition given. The definition of victim is also not clear and the law does not guide what criteria should be applied for establishing someone's status as a victim. Actually evolution of the law has not taken place yet for which it is necessary that the judges interpret the law. The experience of dealing with the human smuggling cases under Emigration Ordinance is very different: the law is easily comprehended by everyone (judge, prosecutor and defence lawyer) and judges have time to devote to the cases as they are tried in special courts. Awareness-raising and capacity building of the lawyers, judges and law enforcement agencies is very much required.

VI.4 Protection and Rehabilitation of Victims

In the PPP (prevention, prosecution, protection) chain, both prevention and protection stand out as the weakest links as very little seems to have been done in these critical areas either by the government or by the international development partners in support of the government.

Establishment of shelters

The Action Plan includes a number of measures aimed at protection of the victims of trafficking, the foremost among them being establishment of shelters. The aim of establishing the shelters is to provide secure, temporary residence to the victims to help them overcome their psychological trauma, receive medical attention if necessary, help the law enforcement

agencies in the legal process to prosecute the traffickers involved, and find a suitable course for rehabilitation.

To assist MOI in its protection of victims programme, IOM established a model shelter with financial assistance from the US government. The plan was to train MOI officials in the shelter management so that more shelters could be established by them in the provinces. The SOPs for shelter management were also prepared addressing reception, treatment and security of victims. The model shelter was run for two years when its funding ended and its furniture and equipment were handed over to a women crisis centre run by the Ministry of Women Development. MOI was responsible for preparing a PC1 for establishing more shelters but apparently this was not done. During its life the model shelter was home to 23 foreign women trafficking victims who were provided medical, psychological, and legal services.

It is understood that MOI now refers the women trafficking victims to the women crisis centres run by Ministry of Women Development and provincial DOSW. The personnel running these centres have not been provided any training in the handling of trafficking victims and addressing their special needs. The crises centres are also not open to new admissions and do not provide services to the clients round the clock, which is required for the trafficked victims.

Strategy for victims' rehabilitation

The MOI was also to develop a strategy for assisting the victims in their rehabilitation, which for the foreign nationals included assessing the options for their continued stay in Pakistan, resettlement in another country or repatriation to their country of origin, and for Pakistani nationals consisted of return to their original community and area of residence or resettlement in another area. Apparently this could not be accomplished.

The Action Plan component dealing with the rehabilitation of victims is rather vague. Although the possibility of a foreign national victim staying in the country is mentioned, how would the victim's rehabilitation process work is not explained. Similarly how the possible resettlement of a Pakistani victim in another area would work is not clear. The choice of the victim's return and rehabilitation to her/his own country could be more challenging. NARA reports on its website that the illegal migrants generally don't have identification documents and their own countries refuse to accept them on repatriation as their identity is not established. But even when this hurdle is crossed the next challenge is that the victim's are not prosecuted on return. There should be a clear understanding with the countries concerned, therefore, that the returned victims would not be prosecuted. It would also need to be ensured that adequate arrangements are in place in the country of return for the victim's rehabilitation.

Much can be learned from the experience of South-East Asian countries that cooperate with one another in establishing the identity of the victims and then help them in rehabilitation on return. Formal MOU exist between the countries¹⁷ to institutionalise the relevant processes and both national and international NGOs work closely with the governments to meet the challenges involved, from establishing identity of the victim to her/his return and rehabilitation. The return of trafficked victims from Thailand to Laos, Cambodia and Myanmar is well organised on these lines.

¹⁷ Social welfare ministries take the lead and are aided by home, law and foreign affairs ministries in finalising the MOU.

Capacity limitations at MOI

MOI does not have any experience in providing welfare services to the poor and working for their rehabilitation, and collaborating with NGOs in the process. It is not the appropriate ministry to run the victims' shelter and rehabilitation programme, although its role of providing protection to the victims and the witnesses would remain central to the process. More appropriate ministries for the role are the Ministry for Women Development and MOSW, the former being bifurcated from the latter¹⁸ during the last government though in the provinces the Department of Social Welfare and Women Development continues to deal with both the subjects together. Both the ministries and the provincial departments are managing centres for women and children in distress for a long time, and MOSW and its allied provincial departments have plans to expand and strengthen the services further as part of the action plan associated with the proposed child protection policy. The provincial departments are also running the women crises centres in the provinces and districts. As mentioned earlier, MOI does not have any district level presence that is necessary to coordinate the rehabilitation programmes for the trafficking victims with the involvement of NGOs, whereas the DOSW have the required infrastructure.

For protecting and rehabilitating the trafficked victims the international development partners need to pool their project resources for building the capacity of MOSW and DOSW to run the shelter homes for trafficking victims and implement a rehabilitation programme for them by involving NGOs. The international agencies could help MOSW and DOSW to conduct a needs assessment of the existing centres and devise a plan for meeting these needs to be reflected in a PC1. The PC1 should clearly delineate the government and donor responsibilities and specify the time when the government would finance all activities through its own budget. A workable scheme seems to be that that the international agencies and donors should provide funds for any expansion in the facilities' infrastructure and purchase of any equipment and other hardware while the government finances all the recurrent expenditures including staff salaries.

VII. RECOMMENDATIONS

The following recommendations are mostly based on the analyses made and proposals offered in the preceding sections.

VII.1 Data Collection and Reporting on Human Trafficking

Household surveys in vulnerable communities

Household surveys in the vulnerable communities identified by NGOs would provide a good basis to estimate the scale and trends of human trafficking. NGOs and district officials of DOSW should collaborate in the exercise and involve others as necessary (Population Welfare department in NWFP has appointed district demographers and trained them in survey techniques).

Identification of vulnerable districts and human trafficking potential

A "district vulnerability index" (DVI) should be developed based on indicators such as poverty, unemployment, child labour, school dropout rates, violence against women and children, rates of crime against women and children, and presence of oppressive "traditional" practices, e.g. *Swara* and *Walwar*. The districts should then be ranked accordingly. At the community level, the "human trafficking potential" (HTP) could be measured using the same indicators through the

¹⁸ The former ministry dealing with both the subjects was called Minister of Women Development, Social Welfare and Special Education.

household surveys. The FBS should be consulted for measuring DVI using their district level routine surveys.

Survey of human trafficking in Pakistan

IOM has reportedly carried out a survey of human trafficking in the country as part of their commitment to MOI under the Action Plan. The survey report should be finalised and circulated soon.

Data on interceptions and deportations

Arrangements need to be worked out with FIA for collection and reporting of the data on deportees and interceptions on more meaningful indicators, nationality (for interceptions only), gender, age groups, promised job abroad (for interceptions and deportees arrested at the border of destination country), reason for deportation, and any adverse conditions of employment in abroad (for deportees who had been working abroad). FIA should also be able to distinguish and report on the trafficked victims, people smuggled and other illegal migrants among those intercepted and deported.

Data on human traffickers and smugglers and referral of victims

The data and reports on human traffickers and smugglers arrested needs to be disaggregated in terms of arrests made, cases prepared for prosecution and time taken in the process, offenses for which charged and time taken in completion of trial, bail granted or not, nature of offenses on which punishment is awarded and the nature of punishment awarded. The nationality (for foreign nationals), area of residence (for Pakistan nationals), gender and age brackets of the victims or migrants involved, and where the victims or migrants were referred or sent should be part of the datasets. Again, a clear distinction should be made between human trafficking and smuggling cases. A good part of the data mentioned is already being collected by FIA, but they might need help in designing meaningful reporting formats.

As police force is already dealing with the cases of human trafficking within the country their data capture systems would need to be modified to identify such cases. The provincial Research and Development sections of the Police Department should have the responsibility of collating the data on required formats.

Data on migrants facing exploitation and coercion abroad

MOLMOP needs to be helped in developing the data input and reporting formats for complaints received by their CWAs in embassies from migrants regarding their employment conditions in destination countries. The other two agencies that also receive these complaints are OPF and BOE in Pakistan, but they generally refer them to the concerned CWA for further processing. The reports based on the complaints' data should also show the remedial measures taken by CWAs and results achieved.

VII.2 Human Trafficking Policy Reforms

Comprehensive human trafficking policy

The policy and work plan would need substantive revision in the light of the limitations pointed out in the previous sections.

Need for a multi-disciplinary approach

Unlike the current policy where most tasks are assigned to MOI, the revised policy should allocate various sets of responsibilities to the competent ministries, departments and organisations, including NGOs and private sector.

The DOSW through their district setup and NGOs should have the main responsibility of awareness-raising in vulnerable communities and protection of victims in their centres for women and children. The human trafficking policy, therefore, should clearly define its interface with the proposed child protection policy and vice versa.

The policy should include the role of National AIDS Control Programme (NACP) in addressing the vulnerability of victims to HIV and AIDS. This support to the victims should also be part of the proposed Child Protection Policy and NACP's strategic plans.

The policy should clearly spell out various alternatives for rehabilitation of victims as different strategies might be needed for Pakistani and foreign nationals. For foreign nationals an understanding with their government should be reached that they would provide rehabilitation support to the victims on return. MOSW and Ministry of Women Development should be jointly designated to negotiate and agreements with their counterparts in the main origin and transit countries, namely Bangladesh, India and Nepal, for early confirmation of the victims' credentials and providing rehabilitation support on return. MOFA and MOI should arrange and also participate in the meetings in the context of SAARC Convention on human trafficking.

On the law enforcement side similar cooperation needs to be forged with Afghanistan, Bangladesh, India and Nepal, and the policy should name these and other relevant countries. Here MOI needs to take the lead in cooperation with MOFA.

Inclusion of human trafficking within the country

The most glaring gap in the current policy is the omission of human trafficking within the country. Addressing this gap would require defining the role of police and their enhanced cooperation with FIA for which the framework of IATF already exists.

Prevention of human trafficking by legalising aliens

The NARA's scheme of registering illegal foreign nationals and issuing them work permits should also be seen as a preventive strategy against human trafficking and promoted under the policy.

Prevention of human trafficking through safety nets and poverty alleviation

The policy should include a strategy for identifying vulnerable communities and districts, as mentioned previously, and target the short to medium term safety nets and longer term poverty alleviation programmes on those communities. MOSW and DOSW should collaborate with Benazir Income Support Programme (BISP), Pakistan Poverty Alleviation Fund (PPAF) and the Rural Support Programme Network (RSPN) to achieve these targets.

Capacity building trainings

The current policy has an elaborate provision for building staff capacity through trainings, but the challenge is to take the training to scale. The trainings are not yet targeting the police and some other border security agencies. Clearly, the policy would need to include a cost effective and workable strategy to train such a large number of law enforcers. A possible approach could be to include a module on human trafficking and human smuggling in the regular training curricula of the law enforcers and train their regular trainers. The law enforcers already working should then undergo refresher trainings in their regular training institutions in a phased manner, for which a training plan should be prepared and its implementation monitored.

Data generation and reporting

The policy should pay special attention to generating data and reporting in meaningful formats as mentioned in the previous section. Additionally, the planned district level Child Protection Management Information System (CPMIS) should also be used as a data resource on trafficking of children and related indicators should be incorporated in the system by MOSW and DOSW.

Monitoring policy and programme implementation

Monitoring of the arrangement should be carried out at both federal and provincial levels. In provinces the Home department or the Additional Chief Secretary should head the Provincial Steering Committee. At the federal level the National Steering Committee should be led by MOI. Only the departments or ministries and organisations having a direct implementation role should be included in the committees as members, and others should participate on invitation as required. The committees should approve the work programme and monitor its progress. The ministerial committee headed by federal Interior minister and having representation from the relevant ministries, provinces, and special areas of FATA, FANA and AJK should conduct policy review and approve policy reforms.

The Migration Management Cell should be fully staffed and its PC1 should be approved and financed on a priority basis. The current situation reflects a weak commitment of the government to control human trafficking.

Achieving stakeholder consensus on policy

It is important that the policy and the work programmes are first thoroughly discussed and then finalised at provincial and federal levels. A wide range of stakeholders from government, NGOs, private sector and international development partners (including UN organisations, bilateral donors and international NGOs) should be involved in the deliberations.

VII.3 Human Trafficking Law Reforms

Revision of scope

The scope of current trafficking law PACHTO should be revised to include internal trafficking and the role of police. The revised law should also define its linkage to the other relevant laws already in force and the (proposed) Protection of Children Act when approved. The revised law should bridge the current gaps to include related offences, e.g. aiding and abetting the crime, as pointed out in the review by UNIFEM and others.

Inclusion of main measures

The current law is silent on the measures to be introduced to prevent human trafficking, services to victims relating to HIV and AIDS and their rehabilitation. The revised law should also make it mandatory on law enforcement agencies to maintain and disseminate human trafficking data duly disaggregated according to nationality, gender and age groups.

Improvement of technical aspects

The revised law should address the technical weaknesses amply experienced in the current law by separating each offence and its punishments under separate sections, doing away with conditions that are hard to prove (e.g. "structured groups"), reviewing all definitions of terms to remove any ambiguities that could be exploited by offenders to their advantage, and defining minimum punishment levels so that criminals do not walk away with lighter sentences.

Correction of anomalous judicial arrangement

The revised law should follow the normal arrangement and designate only those judges who have the powers to award the punishments involved. Also, the human trafficking offences should be tried by special courts as is the case with human smuggling offences.

Adoption of normal course for passage of law

The revised law should be passed following the due process of its review and approval by the Parliament, which would help to remove any weaknesses and anomalies. The revised law should also incorporate or amend the PPC clauses where necessary, as opposed to its current status of a special law, so that it is more integrated with the main criminal law and hence in the academic courses of the law students.

Sensitisation of law personnel

The current policy provides for the sensitisation of lawyers and judges on the concept of human trafficking to help them interpret the law. This is a pivotal activity expected to contribute significantly towards successful prosecution. The challenge is to take it to scale.

Monitoring arrangement for law enforcement

A monitoring mechanism needs to be established to review how the trafficking law is being implemented, including trends in arrests made, cases presented in courts, interpretation of the law, offenses punished and the nature of punishment awarded. The issues in case preparation and prosecution should also be examined. This measure would help to identify any limitations of the law and problems in its execution. It is important that the mechanism should be independent of those involved in law enforcement and interpretation but should take into account their experience of the process.

VII.4 Data Collection and Reporting on Human Smuggling

Survey of human smuggling

A national survey to estimate the number of people smuggled annually and the dynamics of human smuggling should be conducted. The data on deportees and on Pakistani nationals imprisoned abroad for illegal entry or stay, and information collected from the households of deportees could help to achieve the objective.

Publicising source districts

Based on the data for interceptions and deportations the districts in the country should be ranked and this information should be publicised widely to build advocacy for corrective actions by law enforcement agencies. Apparently there are only a few source districts for human smuggling but law enforcement is hindered by political interference.

Document fraud detection

The reports based on the data already available should provide more details on the nationality, gender and age group of the travellers involved. The nature of document fraud also needs to be reported to determine where the weakness lies.

Data on interceptions and deportees

The recommendation made for data on human trafficking under this heading also holds here.

Data on illegal foreign nationals and registered aliens

NARA should be assisted in conducting a reliable survey of the foreign nationals (with the exception of Afghan nationals) in Karachi, as a first step. The survey should identify the main

localities, and provide distribution according to nationality, gender and age brackets of the surveyed population. Reporting formats for data on registered aliens, which NARA already has, should be developed on similar lines.

Survey of migrants to determine migration cost

Periodic surveys of migrants should be conducted to determine if official policy against overcharging by recruiting agents is actually working to bring down the migration cost. Together with the household survey of deportees the proposed survey would help to determine if the cost reduction achieved is helping to divert the illegal flows to the legal channels. This measure needs to be included in draft NMP.

VII.5 Human Smuggling Policy Reforms

Policy on human smuggling

MOI should take the lead to formulate a comprehensive policy on human smuggling, keeping in view the standards laid down in the international Protocol on Human Smuggling. Besides reviewing the current EO provisions, the exercise should include preventive programmes, cooperation between law enforcement agencies, strengthening border protection measures, and standards of treatment with illegal migrants to ensure their human rights are not violated. The policy should also include human smuggling of other nationals into and out of the country, and bilateral arrangements for their repatriation. Efforts to reach bilateral agreements for law enforcement with the origin and transit countries involved in illegal migration flows to Pakistan should also be included in the policy priorities.

The proposed policy should pay special attention to the selected districts where most of the deportees belong for awareness-raising programmes. Given a limited geographical area from where most illegal migration takes place, it should be possible to enforce the law strictly.

Monitoring policy implementation

An inter-ministerial committee led by MOI should monitor implementation of the proposed policy on human smuggling. The committee should also have representation from provinces and special areas.

Programme funding

A detailed work programme should be developed to implement the proposed policy provisions, which should be discussed and agreed by the whole range of stakeholders from the government (including federal, provincial and district), NGOs and private sector. The funding to implement the work programme should come from BOE and OPF; both the organisations have accumulated huge funds through mandatory charges from the migrants.

Reduction in migration cost

The measures proposed in draft NMP for bringing down the legal migration cost need to be strengthened to include graft by officials. The policy is also silent on how any overcharging by the recruiting agents would be monitored.

Curbing exploitation of migrants overseas

More effective measures to check the exploitation of migrants by employers need to be put in place than those proposed in draft NMP. Pakistan embassies should record the complaints by migrants and take them up regularly with the destination country authorities and negotiate with other migrant labour countries of origin to do the same. The countries should also consider

pooling their financial resources to file cases against and blacklisting the employers who frequently violate migrants' rights.

VII.5 Human Smuggling Law Reforms

Amendments in Emigration Ordinance

The EO and any other relevant laws should be reviewed to include the suggestions made for the proposed policy on human smuggling. The revised EO should clearly specify the lower limits of punishment awards and how the overcharging by recruiting agents would be monitored. It should also provide for maintenance of a database on overcharging complaints and the action taken on them. The revised law should be presented to the Parliament for approval, which is the normal course.

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