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Pakistan's Law Enforcement Response to the Smuggling of Migrants and Trafficking in Persons



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Table of Contents

Table of Contents	3
Abbreviations	5
About the Authors.....	6
Acknowledgments.....	7
Executive Summary.....	8
Key findings	8
Key recommendations.....	8
Part I: Outline and Introduction	10
1 Background	10
United Nations Office on Drugs and Crime (UNODC).....	10
2 Purpose, Concept, and Objectives.....	11
2.1 Purpose.....	11
2.2 Concept & Methodology	11
2.3 Obstacles & Limitations	15
Part II: Assessment	16
1 Enforcement Agencies	16
1.1 Enforcement Mandates.....	16
1.2 Legislative frameworks	24
1.3 Management of investigations.....	28
1.4 National Coordination and Partnerships	30
1.5 NGO and community involvement.....	36
2 Human Resources	40
2.1 Staffing.....	40
2.2 Recruitment.....	43
2.3 Training: Availability & Delivery.....	46
2.4 Training: Contents	52
3 Criminal Intelligence	58
3.1 Intelligence Gathering and Exchange	58
3.2 Covert Investigation Techniques	62
3.3 Informants	67
3.4 Patrols and physical surveillance.....	70
3.5 Proactive Investigations.....	71
4 Enforcement Powers.....	75
4.1 Sources of Enforcement Powers	75
4.2 Types of Investigative Powers	77
4.3 Exercise of Enforcement Powers.....	79
4.4 Facilities & Equipment.....	81
5 Investigation Procedures & Techniques	86
5.1 Reporting Crime.....	86
5.2 Case Management and Data Storage.....	91
5.3 Information and Evidence Gathering	94
5.4 Border Control	97
5.5 Crime Scene Work	103
5.6 Forensics.....	107
5.7 Identification of Suspects	109
5.8 Interviewing and Treatment of Suspects.....	111
5.9 Financial Investigations	114

5.10	Confiscation of Assets.....	117
6	Victims & Witnesses	120
6.1	Identifying Victims.....	120
6.2	Interviewing Victims & Witnesses.....	123
6.3	Protection of Victims of Trafficking in Persons	126
6.4	Protection of Smuggled Migrants.....	132
6.5	Witness Protection	137
Appendix: FIA Immigration and Anti-Human Trafficking Offices		142
List of References.....		144
	Reports, articles, and other literature.....	144
	Expert consultation	145

Abbreviations

AFPIS	Automated Finger Print Impression System
AHTC	Anti-Human Trafficking Circles (FIA), Pakistan
ATU	Anti-Human Trafficking Unit (FIA), Pakistan
CMS	Case Monitoring System
CSI	Crime Scene Investigation
DNA	Deoxyribonucleic Acid
FIA	Federal Investigation Agency, Pakistan
FIU	Financial Intelligence Unit
FMU	Financial Monitoring Unit, Pakistan
HUTIS	Human Trafficking Information System
IATF	Inter-Agency Taskforce
IB	Intelligence Bureau, Pakistan
IBMS	Integrated Border Management System
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
IIU	Immigration Intelligence Unit, FIA
IOM	International Organisation for Migration
ISI	Inter-Services Intelligence, Pakistan
MoU	Memorandum of Understanding
NFSA	National Forensic Science Agency, Pakistan
NAS	Narcotics Affairs Section (US Department of State)
NDRA	National Database & Registration Authority, Ministry of Interior, Pakistan
NGO	Non-Government Organisation
PISCES	Personal Identification Secure Comparison and Evaluation System
SOCA	Serious and Organised Crime Agency, United Kingdom
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNODC	United Nations Office on Drugs and Crime
US	United States of America
USD	United States Dollar

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- *Smuggling of Migrants by Land, Air, and Sea in Pakistan: A Review of National Laws and Treaty Compliance*, report for UNODC Country Office Pakistan, Islamabad, August 2010 (with J Jolly)
- *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance*, report for UNODC Country Office Pakistan, Islamabad, May 2010 (with J Jolly)
- *Wildlife and Forest Crime Assessment Toolkit*, prepared for ICPO-INTERPOL, CITES Secretariat, World Bank, UNODC, May 2010
- *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs*, report for UNODC Country Office Pakistan, Islamabad, Feb 2010 (with B Hall)
- *Corruption in the Forestry, Wildlife, and Fisheries Sectors of Tanzania: An Assessment of Investigative and Prosecutorial Capacities*, report for UNODC, Vienna & PCCB, Dar es Salaam, Sep 2009 (w A Graham)

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- *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance*, report for UNODC Country Office Pakistan, Islamabad, May 2010 (with A Schloenhardt)

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We hope that this report will assist the Government of Pakistan, UNODC, and other working to eradicate these heinous crimes. We, for our part, stand ready to continue our work in this field and assist UNODC, the FIA, and others in their efforts.

Andreas Schloenhardt, Jarrod Jolly
Brisbane, Qld, July 5, 2011

Executive Summary

This report assesses the legal frameworks, law enforcement strategies, capacities, and methodologies pertaining to migrant smuggling and trafficking in persons in Pakistan, focusing specifically on the mandate, organisation, and operations of Pakistan's Federal Investigation Agency. The report identifies, maps, outlines, and explores existing law enforcement responses and assess these against international law requirements and against the standards set by international best practice guidelines. This report reveals strengths of existing arrangements and identifies areas where further development or reform may be needed.

Key findings

This report shows that Pakistan has solid policy, legislative, and organisational frameworks to combat trafficking in persons and, to a lesser degree, the smuggling of migrants. The Government of Pakistan has to be commended for setting up a *National Action Plan for Combating Human Trafficking* in 2004 and enacting the *Prevention and Control of Human Trafficking Ordinance* two years earlier. This report shows enforcement mandates pertaining to trafficking in persons, especially those of the FIA, are sufficiently clear and are supported by relevant enforcement powers.

Legislative and law enforcement frameworks for migrant smuggling are not well developed or, as confirmed by other reports, non-existent and concerns remain over ongoing confusion between migrant smuggling and trafficking in persons in Pakistani law and by Pakistani authorities. Pakistan is also not a Signatory to the United Nations *Protocol against the Smuggling of Migrants by Land, Air, and Sea* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. Pakistan has, however, signed the *Convention against Transnational Organised Crime*.

Pakistan's relatively sound policy, legal, and organisational frameworks are, however, not matched by consistent implementation and execution; words are often not followed by actions.

This assessment has found major deficiencies in the training of FIA personnel and in the facilities and equipment used by and available to FIA investigators and front-line officers. Most FIA officers working in units charged with investigating migrant smuggling and trafficking in persons obtain no training at all and frequently lack the most basic equipment to carry out their duties. FIA facilities in local areas are often in poor condition and lack reliable electricity supplies.

Practical mechanisms for the protection of smuggled and migrants and, in particular, victims of trafficking in persons are, for the most part, non-existent, under-developed, or are only addressed in very rudimentary and ad-hoc ways.

Also of concern are deficiencies in inter-departmental cooperation, national coordination, human resources, case management and data storage, information and evidence gathering.

Key recommendations

Expectations of change have to be realistic. In particular, it is not feasible to challenge the very foundations of Pakistan's approach to migrant smuggling and trafficking in persons at

this point. Processes to change policy and legislation are slow and cumbersome and will not produce any immediate benefits to Pakistan's law enforcement responses, especially to the persons most affected by it, as investigators, perpetrators, or victims. This is not to say that law reform and policy change are not possible; indeed, existing laws and policies require constant monitoring and adaptation. Some of the structural arrangements within and between national agencies may also need to be reviewed. UNODC, along with other members of the international community should continue to work with the Government of Pakistan to achieve ratification of and full compliance with relevant international treaties, but this work is beyond the mandate of this report.

Attempts to enhance Pakistan's law enforcement response to migrant smuggling and trafficking in persons should focus simultaneously on long-term goals as well as on providing advice and assistance in areas where immediate intervention is necessary. Accordingly, this report sets out a range of recommendations to suit short, medium, and long-term needs. The recommendations are not static; they are flexible in their adaptation and tailored for a variety of organisational and operational law enforcement needs. For this reason, recommendations are not ranked or prioritised in any way.

However:

Any effort to enhance Pakistan's law enforcement response to migrant smuggling and trafficking in persons – and any assistance offered to the Government of Pakistan and its agencies – must be targeted at improving the very basic working conditions of front-line officers. The single most important recommendation in this assessment is that first priority must be given to enhancing the office space, basic equipment, and mobility of FIA investigators working in the Anti-Human Trafficking Circles across Pakistan. The protection of smuggled migrants and, in particular, victims of trafficking in persons, also requires urgent attention.

Without immediate and significant intervention and assistance at this level, all other efforts to prevent and suppress migrant smuggling and trafficking in persons in Pakistan will remain severely hampered and will continue to jeopardise investigations and prosecution. The poor facilities and equipment available to FIA officers enable migrant smugglers and human traffickers to operate without any risk of being apprehended and arrested and causes many smuggled migrants and victims of trafficking in persons to remain undetected and unprotected.

A further area requiring significant improvement is the availability and delivery of training. It is absolutely essential that those working in the front line possess the necessary skills and a basic understanding of the complexities of migrant smuggling and trafficking in persons. Law enforcement officers who encounter smuggled migrants and victims of trafficking in persons also need to be made aware of the rights and assistance available to these people, of whom many have suffered severe exploitation and unimaginable hardship. To that end, the use of coercive interrogation and evidence gathering methods must also be halted immediately. The development of comprehensive and flexible training modules combined with the creation of a human resources department to monitor recruitment and staff development within the FIA will go a long way in addressing these issues.

While this assessment focuses specifically on law enforcement responses to cross-border smuggling and trafficking, it should be noted that Pakistan's principal problem relating to trafficking in persons involves internal trafficking, especially bonded labour and other forms of labour and sexual exploitation of men, women, and children. Urgent action is needed to address this problem more effectively.

Part I: Outline and Introduction

This report identifies and examines Pakistan's law enforcement response to the smuggling of migrants and trafficking in persons. Specifically, it outlines and analyses the mandate, organisation, and operation of the Federal Investigation Agency (FIA), Pakistan's premier national law enforcement agency charged with combatting these crimes. The report reviews current law enforcement arrangements in the light of international law and best practice guidelines and develops recommendations to enhance Pakistan's capacity to prevent and suppress migrant smuggling and trafficking in persons more effectively.

1 Background

Irregular migration, especially in the form of migrant smuggling and trafficking in persons, and associated criminal activities such as money laundering, document fraud, and corruption, are of imminent concern to Pakistan. Recent reports confirm that Pakistan is simultaneously a sending, transit, and destination point for smuggled migrants and for victims of trafficking in persons.

Virtually every country in the world is affected by these crimes. The challenge for all countries is to target the criminals who take advantage of desperate people and to protect and assist smuggled migrants and victims of trafficking in persons, many of who endure unimaginable hardships. In response to the emergence of migrant smuggling and trafficking in persons, the Government of Pakistan has taken decisive action to develop national strategies and implement enforcement measures to prevent and suppress these heinous crimes.

The *Prevention and Control of Human Trafficking Ordinance* (Pakistan) was enacted in 2002. This was followed by the development of a *National Action Plan for Combating Human Trafficking* in 2004.

Pakistan's Federal Investigation Agency (FIA), as the country's chief national law enforcement agency, has the mandate to prevent and suppress migrant smuggling and trafficking in persons and is in a unique position to comprehensively combat these phenomena, along with associated crime such as money laundering and document fraud.

United Nations Office on Drugs and Crime (UNODC)

UNODC, the United Nations Office on Drugs and Crime, is the guardian of the United Nations (UN) *Protocol against the Smuggling of Migrant by Land, Air, and Sea (the Migrant Smuggling Protocol)*,¹ the *Protocol to Prevent and Suppress Trafficking in Persons, especially Women and Children (the Trafficking in Persons Protocol)*,² and of the *Convention against Transnational Organised Crime*.³ UNODC leads international efforts to comprehensively prevent and suppress migrant smuggling and trafficking in persons and to protect smuggled migrants and trafficked victims. UNODC's Country Office in Islamabad stands ready to assist Pakistan's authorities in their efforts. To this end, in March 2011, UNODC requested the

¹ UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime*, UN Doc A/55/383 (2 Nov 2000) Annex I; 2241 UNTS 507; 40 ILM 384 (2001).

² 40 ILM 377 (2001).

³ 2225 UNTS 209; 40 ILM 335 (2001).

services of independent experts to examine Pakistan’s law enforcement response to smuggling of migrants and trafficking in persons by assessing the compliance of national laws, regulations, enforcement mandates and capacities in Pakistan against the requirements of international law and international best practice.

2 Purpose, Concept, and Objectives

This report assesses the legal frameworks, law enforcement strategies, capacities, and methodologies pertaining to migrant smuggling and trafficking in persons in Pakistan, focusing specifically on the mandate, organisation, and operations of Pakistan’s Federal Investigation Agency.

This report identifies, maps, outlines, and explores existing law enforcement responses and assess these against international law requirements and against the standards set by international best practice guidelines. This report reveals strengths of existing arrangements and identifies areas where further development or reform may be needed.

The goal of this report is to set out a range of recommendations that

- improve Pakistan’s law enforcement response to migrant smuggling and trafficking in persons in the medium and long-term and,
- subject to compliance with domestic law, ensure Pakistan’s law enforcement response to migrant smuggling and trafficking in persons meets the requirements of international law and, wherever possible, follows international best practice guidelines.

2.1 Purpose

The aim of this report is to provide a comprehensive assessment of Pakistan’s law enforcement response to the smuggling of migrants and trafficking in persons, focusing specifically on the mandate and operation of the Federal Investigation Agency (FIA), Pakistan’s premier anti-smuggling and anti-trafficking entity.

The purpose of this assessment is to enhance Pakistan’s law enforcement capacities in order to create a greater degree of risk for criminal involvement in the illicit trade and transfer of human beings, and the unscrupulous exploitation of desperate persons; a trade that has all too often been characterised by low risk and high profit. To that end, the assessment contains a great number of components that are crucial to curtailing smuggling of migrants and trafficking in persons.

This report facilitates the sharing of knowledge and information among policy-makers, law enforcers, judges, prosecutors, researchers, administrators, and members of civil society who are working at different levels towards these objectives.

2.2 Concept & Methodology

The research undertaken during this assessment involved the examination of open source material, as well as collaboration and personal interviews with Pakistani government agencies, foreign missions, and international organisations. The assessment also benefited greatly by drawing on a wide range of assessment ‘toolkits’, training manuals, and other

guidelines developed by UNODC and the United Nations' Global Initiative to Fight Human Trafficking (UN.GIFT).

A period of twenty working days over a three-months period (April 9-July 9, 2011) was allocated to carry out and complete this assessment. An initial period of two months was spent compiling and analysing open-source background information on international law and international best practice guidelines, along with other literature on migrant smuggling and trafficking in persons.

This was followed by the collection and examination of material about the operation and structure of relevant laws and law enforcement agencies in Pakistan, focusing specifically on the mandate and activities of the FIA. This work was complemented by a visit to Islamabad from June 6 to 10, 2011. This period was used to validate initial research and collate details to bridge information gaps (including those discovered both prior to and during the fieldwork period), to consult with a wide range of relevant experts, and to identify areas for reform. As part of this process the authors visited the FIA headquarters and its Training Academy, and interviews were conducted with representatives of the FIA, UNODC, International Organisation for Migration (IOM), Ministry of Interior, Australian Federal Police (Australian High Commission, Islamabad), Foreign and Commonwealth Office (British High Commission, Islamabad), Serious and Organised Crime Agency (SOCA) (British High Commission, Islamabad), Embassy of Spain, US Department of Homeland Security and US Department of Justice (US Embassy, Islamabad). The UNODC Country Office Pakistan also provided office space, transportation, and administrative assistance as required.

The final phase of the project involved the examination of findings from the fieldwork conducted, and the producing and tailoring of recommendations to enhance and develop Pakistan's law enforcement response to migrant smuggling and trafficking in persons.

This report was completed and presented to UNODC on July 9, 2011. The information presented within this report is current as of that date.

Structure

The components of this assessment are organised thematically to ensure ease of use and to assist in understanding the key issues confronting the system being assessed. The assessment (Part II of this report) is divided into six sections:

1. Enforcement Agencies
2. Human Resources
3. Criminal Intelligence
4. Enforcement Powers
5. Investigation Procedures & Techniques
6. Victims & Witnesses

Approach

Within each section, the assessment explores four separate matters.

(1) Relevance

First, the general relevance of each component of the assessment is explained within the general context of law enforcement and, where applicable, in relation to the specific nature of migrant smuggling and trafficking in persons.

(2) Requirements

Second, the assessment identifies and outlines international benchmarks for each section as set out in the mandatory and optional requirements contained in the United Nations (UN) *Protocol against the Smuggling of Migrants by Land, Air, and Sea*⁴ (the *Migrant Smuggling Protocol*) and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*⁵ (the *Trafficking in Persons Protocol*). Complementary provisions under the *Convention against Transnational Organized Crime*⁶ are also identified. The *Interpretative notes for the official record (travaux préparatoires) of the negotiations for the United Nations Convention against Transnational Organized Crime and the Protocols thereto* [hereinafter *Travaux Préparatoires*] complement these documents.⁷

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

- UNODC, *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, New York, NY: UN, 2004 [hereinafter *Legislative Guides*];
- UNODC & UN.GIFT, *First Aid Kit for Use by Law Enforcement First Responders in Addressing Human Trafficking*, Vienna: UNODC & UN.GIFT (undated);
- UNODC & UN.GIFT, *Model Law against Trafficking in Persons*, Vienna: United Nations, 2009;
- UNODC, *Model Law against the Smuggling of Migrants*, New York, NY: United Nations, 2010;
- UNODC & UN.GIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking*, New York, NY: United Nations, 2010
- UNODC, *Criminal Justice Assessment Toolkit*, New York, NY: United Nations, 2006
- UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling*, Vienna: United Nations, 2011 (unedited draft – restricted)
- UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol*, New York: NY: United Nations, 2009
- UNODC, *Toolkit to Combat the Smuggling of Migrants*, Vienna: UNODC, 2010; and

⁴ 2241 UNTS 507.

⁵ 40 ILM 377 (2001).

⁶ 40 ILM 335 (2001)

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

- UNODC, *Toolkit to Combat Trafficking in Persons*, Vienna: UNODC, 2009.

Based on this information, each section contains a set of assessment questions that are set out separately.

##	Assessment: [...]
	→ [...]
	→ [...]

(3) Review

Next, each section reproduces and reviews the available information on the specific law enforcement response to migrant smuggling and trafficking in persons in Pakistan. Depending on the individual assessment component, this includes, inter alia, relevant laws, organisational models, procedures, practices, and other frameworks.

This review of current law enforcement responses is not static. Law enforcement exists in dynamic environments as the patterns and levels of migrant smuggling and trafficking in persons — and the efforts to combat it — change constantly, often at short or without notice. This assessment is based on the best available and most comprehensive information at the time of writing and every effort was made to ensure that relevant information is as current and as complete as possible. Relevant gaps and discrepancies are identified within each section.

For confidentiality reasons and to protect interviewees, conversations with FIA officials, representatives of other government agencies, international organisations, and foreign missions, and other experts are not reproduced verbatim and are not attributed by reference to individual persons. A list of expert consultation is set out at the end of this report.

(4) Recommendations

Based on the review of Pakistan’s law enforcement response, recommendations are identified at the end of each assessment component. These recommendations seek to articulate avenues of reform to address perceived weaknesses and improve Pakistan’s efforts to prevent and suppress migrant smuggling and trafficking in persons.

Recommendations are set out within each section separately:

##	Recommendations: [...]
	→ [...]
	→ [...]

In formulating effective countermeasures, it is important that local patterns of smuggling of migrants and trafficking in persons and concerns of key stakeholders and the wider community in Pakistan are recognised and integrated into policy, legislation, and law enforcement. This assessment is intended to provide a range of options that — in various combinations — will enable Pakistan to assemble an integrated strategy that will be as effective as possible in meeting the country’s own unique needs.

Not further explored here are the timeframes, resources, and processes necessary for the implementation of these recommendations, though every effort has been made to develop recommendations that are feasible and suitable for immediate action. The authors are ready to assist UNODC, the FIA, and other Pakistani agencies, international agencies, and donor countries with the implementation of the recommendations in this report and participate in future reviews of all matters pertaining to migrant smuggling and trafficking in persons in Pakistan.

2.3 Obstacles & Limitations

2.3.1 Scope

This assessment is primarily concerned with Pakistan's law enforcement response to the smuggling of migrants and trafficking in persons. Other parts of the criminal justice sector, including prosecutors, the judiciary, and correctional services, along with law makers and the wider community also have an important role in curtailing these phenomena, but are not further examined here. International law enforcement cooperation arrangements are also not assessed in this report.

It is also recognised that the criminal justice system alone cannot reduce or eliminate the smuggling of migrants and trafficking in persons. Much can be achieved through crime prevention, education, awareness raising, and demand reduction. It is acknowledged that a comprehensive response to the smuggling of migrants and trafficking in persons in Pakistan will require consideration of all of these matters and it is anticipated that future assessments will focus on matters not further discussed here.

Measures against the smuggling of migrants by sea, Articles 7–9 *Migrant Smuggling Protocol* are not further discussed here as they fall outside the mandate of the FIA.

Sources

The preparation of this assessment is based exclusively on open source material; classified and other confidential information has been deliberately left out. A complete list of sources referenced and of experts consulted is set out at the end of this report.

Expert consultation during this assessment was limited to Islamabad. While much of the information included in this report covers all of Pakistan, the authors were unable to validate information and experience first hand law enforcement responses outside the national capital.

It has not been possible to ascertain the currency of a number of documents and other information obtained from Pakistani agencies and from several government websites. This also includes legislation and subordinate legislation. Every effort has been made to obtain and use the most current information and, wherever possible, relevant publication dates are identified throughout the report.

This version of the report was completed, and the information presented is current as on July 9, 2011.

Part II: Assessment

One of the principal tools to combat migrant smuggling and trafficking in persons is through law enforcement activity. Law enforcement involves any government action or intervention taken to determine or respond to non-compliance. It is the most immediate and often most visible way to suppress migrant smuggling and trafficking in persons. The level and quality of law enforcement influences the costs to perpetrators through the probability of being caught, the probability of conviction, and the sanctions that apply if convicted. Accordingly, well-regarded and highly skilled police services are prerequisites for the proper functioning and positive perception of justice.⁸

1 Enforcement Agencies

The role that policing agencies play in the enforcement of migrant smuggling and trafficking in persons requires analysis and understanding if better practices and policies are to be developed. However, before such analysis is possible there is a need to identify relevant enforcement agencies in the field of migrant smuggling and trafficking in persons at national, provincial, and local levels.

The first part of this assessment explores the national context in which the policing of migrant smuggling and trafficking in persons occurs.

1.1 Enforcement Mandates

The first step in assessing law enforcement capacities in relation to migrant smuggling and trafficking in persons involves an understanding of law enforcement macro-structures and responsibilities. It is important to bring clarity to the 'who is who' and 'who does what' of migrant smuggling and trafficking in persons enforcement as doubts about who has authority to enforce relevant laws may lead to difficulties, discrepancies, and duplication.⁹

Requirements

International law and best practice principles do not require or advocate a particular organisational model for law enforcement relating to migrant smuggling and trafficking in persons. Which agency or agencies are tasked to investigate these offences will depend on the individual country and will also be determined by its internal structures.

Migrant smuggling and trafficking in persons are phenomena that usually involve a variety of government sectors. Accordingly, in most jurisdictions, there will be more than one entity with responsibility for enforcing the many aspects of criminal, immigration, passport, labour, and other laws. Usually, there will be several national agencies, organisations or institutions with regional or local agencies offering either complementary or similar coverage. Even in jurisdictions with a single national police force, there are likely to be additional law enforcement organisations with either highly specialised skills or with specific functions.

⁸ UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 1.

⁹ UNODC & UN.GIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010) 21; UNODC, *Toolkit to Combat Smuggling of Migrants* (2010) Tool 4: Problem assessment and strategy development, 29–30.

Jurisdictions with federal structures – such as Pakistan – usually have multiple layers of law enforcement, with a single federal law enforcement agency that complements local, state, or provincial police forces. Federal/national police forces are generally authorised to address crime issues of national concern or those with inter-state implications. Immigration offences – including those involving migrant smuggling and trafficking in persons – usually also fall into this category. However, the terms of reference and mandate for the different jurisdictions and areas of competence involved may not always be as clear as they should be, and there is potential for a clash between local and federal approaches.¹⁰ In countries with a federal system, additional questions may arise about how state/provincial and local investigators cooperate with federal law enforcement officers.¹¹

UNODC and UN.GIFT recommend that countries establish specialised anti-migrant smuggling and trafficking in persons units that are trained and equipped to face the complexities of these crimes.¹²

1.1	Assessment: Enforcement Mandate
	<ul style="list-style-type: none"> ➔ Which organisations, agencies, or bodies are involved in investigating migrant smuggling and trafficking in persons in Pakistan? Is the jurisdiction of each agency clear or is there disjuncture? ➔ What does each agency do? Are the duties of relevant units clearly defined and understood by its staff and the agencies with which it interacts? ➔ Are they part of one or several government ministry/ministries? Which ministries are involved? ➔ Are these units dedicated exclusively to migrant smuggling and trafficking in persons or do they have also responsibilities for other crime types (e.g. illicit drugs, organised crime, money laundering, etc)?

Review

Provincial Police Force

As a federal republic, primary policing and law enforcement duties are vested in provincial and local police forces in Pakistan’s four provinces and two territories: Balochistan, Federally Administered Tribal Areas, Islamabad Capital Territory, Khyber Pakhtunkhwa (formerly North-West Frontier Province), Punjab, and Sindh.

Provincial police forces exercise no formal functions under the *National Action Plan for Combating Human Trafficking* and communication with the FIA confirms that cross-border ‘migrant smuggling and trafficking in persons are not a priority for provincial police forces’.

By and large, provincial police forces are concerned with offences under the *Penal Code* and, insofar as trafficking in persons is concerned, also under the *Bonded Labour System (Abolition) Act*. To that end, provincial police forces are responsible for all forms of internal trafficking in persons.

¹⁰ UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 1.

¹¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 21.

¹² UNODC & UN.GIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010) 19; UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 17.

It has to be noted that most foreign sources, including the US State Department's, *Trafficking in Persons Report*, describe internal trafficking in persons, especially various forms of bonded labour, as Pakistan's 'largest human trafficking problem'.¹³ Legislation and law enforcement responses to domestic trafficking in persons are, however, poorly developed and it was recently noted that despite the scale of the problem, there have not been any criminal convictions of 'any bonded labour offenders or officials who facilitated trafficking in persons.'¹⁴

Moreover, given their general policing mandate, provincial police forces will also frequently have first-hand access and exposure to victims and perpetrators of (international) migrant smuggling and trafficking in persons. According to information provided by the FIA, all provincial police forces have set up Anti-Trafficking Units based at their respective headquarters to collect information about trafficking in persons from local police stations and to act as contact points for cooperation with the FIA's Anti-Trafficking Unit in Islamabad.

Federal Investigation Agency

Pakistan's national policing agency, the Federal Investigation Agency (FIA) — established in 1974 and governed by the *Federal Investigation Agency Act 1974* (Pakistan)¹⁵ — has primary responsibility for investigating and preparing cases for migrant smuggling and trafficking in persons and for the prosecution of offenders.¹⁶ The FIA is also involved in the apprehension of fake recruitment and employment agencies.¹⁷

Despite its national mandate, the FIA has no jurisdiction over the Federally Ministered Tribal Areas and over Azad Jammu & Kashmir State.

The FIA is a department within the Ministry of Interior of Pakistan. The Director-General acts as head of the FIA¹⁸ and is assisted by three Additional Director-Generals (Immigration, Crime, and Administration). Six Directors assist the Director-General at the Islamabad Headquarters in controlling the Functional Wings of Administration, Crime, Immigration and Anti-Trafficking, PISCES (Personal Identification Secure Comparison and Evaluation System, now Integrated Border Management System (IBMS)), Special Investigations, and Technical Assistance. Five Directors are further responsible for supervising the zones of Lahore, Karachi, Peshawar, Quetta, and Islamabad.¹⁹

¹³ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285.

¹⁴ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285, 286.

¹⁵ The complete text of the *Federal Investigation Agency Act 1974* (Pakistan) is available at Pakistan, FIA, *Anti Introduction to FIA*, www.fia.gov.pk/abt_background.htm (accessed 17 June 2011).

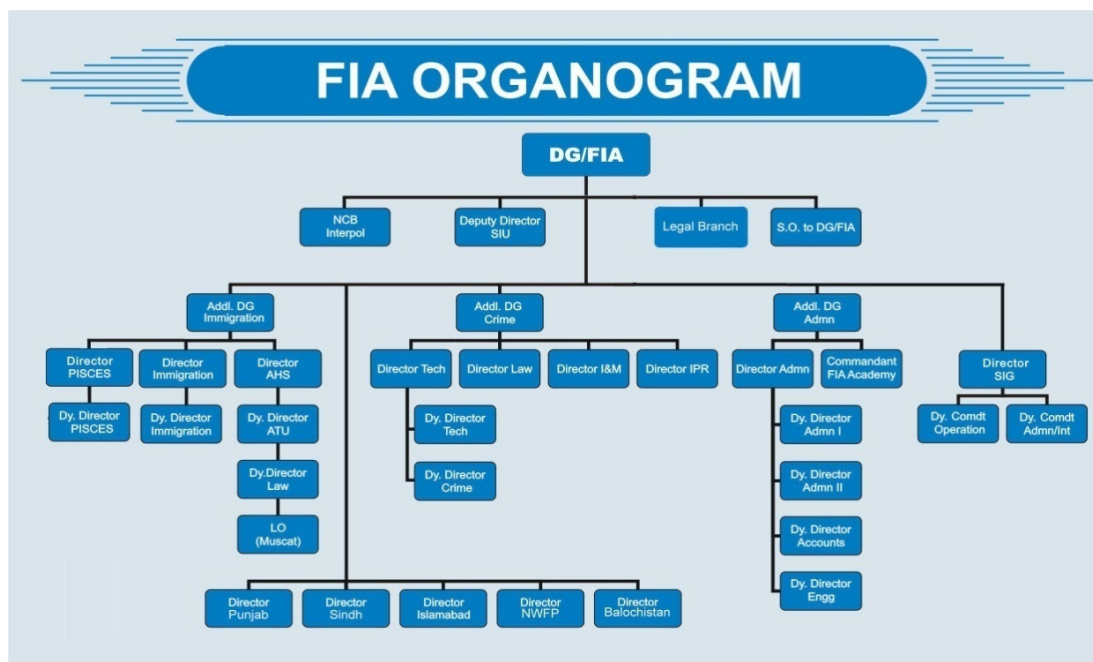
¹⁶ *Federal Investigation Agency Act 1974* (Pakistan), Schedule; s 9 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

¹⁷ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

¹⁸ Section 3(2) *Federal Investigation Agency Act 1974* (Pakistan).

¹⁹ Pakistan, FIA, *Organisational Structure*, available at www.fia.gov.pk/abt_organization.htm (accessed 17 June 2011).

Figure 1: FIA Organisational Structure²⁰



Immigration Wing

On June 9, 1975,²¹ the FIA established an Immigration Wing which is divided into three branches that are each headed by a Director: the Immigration Branch, the Anti-Human Trafficking Branch, and a separate branch responsible for the management of PISCES/IBMS.

The Immigration Branch has the mandate to control and monitor the arrival and departure of international travellers, as well as to prevent and detect instances of human smuggling at Pakistan's 25 airports, land border crossings, seaports, and (international) railway stations.²² Officers assigned to the Immigration Branch examine travel documents of arriving and departing passengers at border checkpoints, while also seeking to prevent, detect, arrest, and detain passengers travelling on forged and fake documents. Officers are further charged with arresting offenders on the request of police and other law enforcement agencies, as well as implementing orders and instructions conveyed by the Government in respect of passengers included in various watch lists, stop lists, and black lists.²³

According to the FIA, approximately 500-600 officers are currently assigned to duties within the Immigration Wing. It should be noted, however, that all FIA officers rotate between different parts of the FIA every two to three years (with the exception of some female officers who are exclusively posted at international airports).

Anti-Trafficking Unit (ATU)

The FIA has established an Anti-Human Trafficking Unit (or Anti-Trafficking Unit (ATU)) as a separate branch within the FIA's Immigration Wing to deal with all trafficking in persons and migrant smuggling related matters. The Anti-Trafficking Unit is led by a Deputy Director and

²⁰ Pakistan, FIA, *Organisational Structure*, available at www.fia.gov.pk/abt_organization.htm (accessed 17 June 2011).

²¹ Prior to 1975, immigration checkpoints were operated by provincial immigration authorities.

²² Pakistan, FIA, *Immigration Wing*, available at www.fia.gov.pk/dep_immigration.htm (accessed 17 June 2011).

²³ Pakistan, FIA, *Annual Administration Report 2008 (2009)* 7. See further Section 3.1 below.

based at the FIA headquarter in Islamabad. The Deputy Director (ATU) reports to the Director of the Anti-Human Trafficking Branch in the FIA's Immigration Wing.

The Anti-Trafficking Unit also maintains sub-units in the zonal directorates in Karachi (Sindh), Lahore (Punjab), Islamabad/Rawalpindi,²⁴ Peshawar (Khyber Pakhtunkhwa), and Quetta (Balochistan).²⁵

The principal tasks of the Anti-Trafficking Unit, as articulated by the FIA, include:

- The prevention and protection of victims of trafficking;
- The investigation and prosecution of cases;
- The building and maintenance of a database of persons involved in trafficking in persons or migrant smuggling;²⁶
- Liaison with NAS²⁷ of the US Embassy in Islamabad, non-government organisations, provincial police et cetera; and
- The development of a referral system for the transfer of victims to shelter homes and to facilitate the repatriation of victims of trafficking and smuggling to their countries of origin.²⁸

In practice, the Anti-Trafficking Unit has primarily a coordinating role. It monitors and coordinates the provincial/zonal sub-unites and liaises with provincial police forces on matters pertaining to domestic trafficking. Contrary to statements on the FIA website, the ATU does not independently carry out any operations, investigations, or prosecutions of migrant smuggling or trafficking in persons cases.

Anti-Human Trafficking Circles (ATHC)

Under the Immigration Wing, the FIA also operates so-called 'Anti-Human Trafficking Circles' in all major cities across Pakistan. These Circles (previously called Passport Circles) are tasked with enforcing the offences under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) and relevant immigration laws, including the *Immigration Ordinance 1979*, *Passport Act 1974*, *Foreigners Act 1946*, *Exit from Pakistan (Control) Ordinance 1981*, and various provisions under Pakistan's *Penal Code*.²⁹

Contrary to their title, the Anti-Human Trafficking Circles deal with all forms of undocumented immigration, migrant smuggling, as well as trafficking in persons.³⁰ The Anti-Human Trafficking Circles 'are the FIA's mainstream operational circles' (referred to as 'police stations' by the Federal Government) tasked with investigating and prosecuting cases of migrant smuggling and trafficking in persons. Members of the Anti-Human Trafficking Circles are also involved in the deportation and return of persons entering Pakistan on

²⁴ The Anti-Human Trafficking Circle in Islamabad/Rawalpindi simultaneously serves as an Anti-Trafficking Unit.

²⁵ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 17 June 2011).

²⁶ A 'list of most wanted traffickers' is available at Pakistan, FIA, *Most Wanted Human Traffickers*, available at www.fia.gov.pk/Most_Wanted_Human_Traffickers.htm (accessed 17 June 2011).

²⁷ NAS is the acronym used by the US Department of State for Narcotics Affairs Sections at US embassies.

²⁸ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 17 June 2011); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

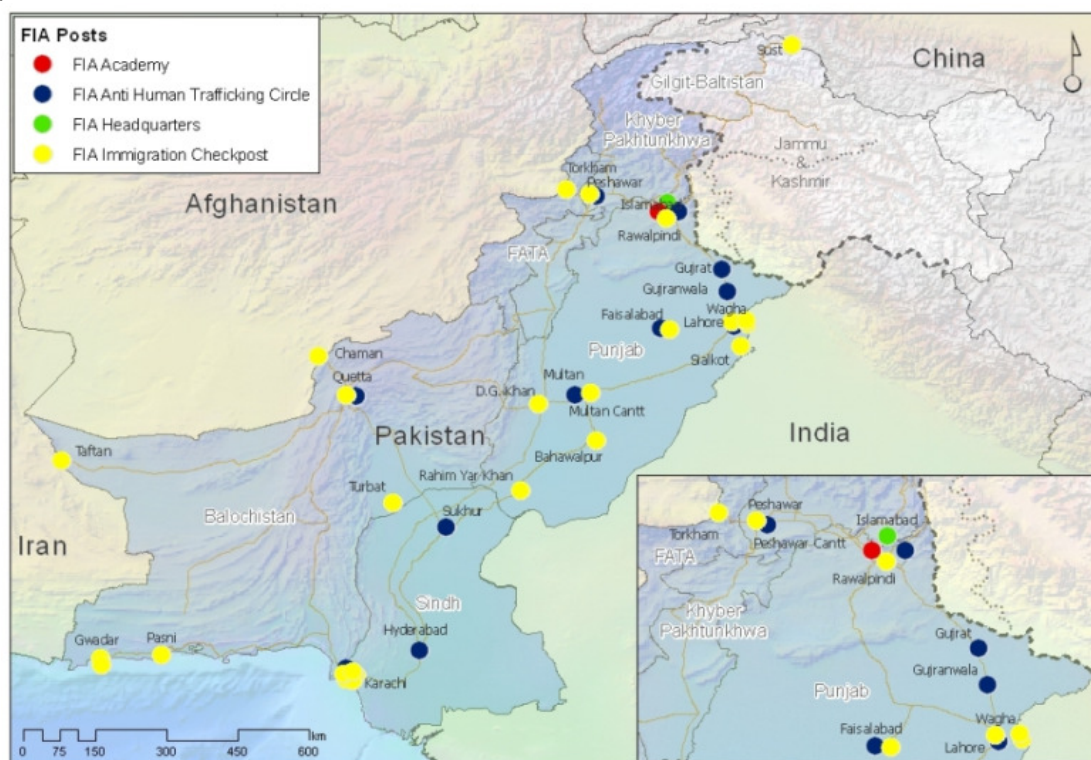
²⁹ Pakistan, FIA, *Immigration Wing*, available at www.fia.gov.pk/dep_immigration.htm (accessed 17 June 2011).

³⁰ See also US, Department of State, *2011 Trafficking in Persons Report* (2011) 286.

forged documents or who make false representations and declarations in relation to their immigration.³¹ The current number of Anti-Human Trafficking Circles across Pakistan is between 12³² and 16.³³

Below is a map identifying the locations of FIA offices and posts with mandates relating to immigration control and trafficking in persons; a complete list of these offices and posts is set out in the Appendix to this report.

Map 1: FIA offices and posts with mandates relating to immigration control and trafficking in persons



Other Agencies

Pakistan's response to migrant smuggling and trafficking in persons represents a whole-of-government approach that is not only focused on law enforcement. The *National Action Plan for Combating Human Trafficking* mandates a great range of agencies with duties relating to the prevention and suppression of trafficking in persons. The following sections briefly identify some of the key departments.

Ministry of Interior

The Ministry of Interior, which also oversees the FIA, has several divisions with mandates relevant to migrant smuggling, trafficking in persons, and other immigration related matters. The Joint Secretary (Security) in the Ministry of Interior acts as the national coordinator for all efforts pertaining to (international) migrant smuggling and trafficking in persons in

³¹ Pakistan, FIA, *Annual Administration Report 2008* (2009) 9.

³² Pakistan, FIA, *Immigration Wing*, available at www.fia.gov.pk/dep_immigration.htm (accessed 17 June 2011).

³³ Pakistan, FIA, *Annual Administration Report 2008* (2009) 9.

Pakistan³⁴ and also appears to be the focal point for Pakistan's involvement in regional and sub-regional cooperation on migrant smuggling and trafficking in persons.

The Director-General of the Immigration and Passport Bureau of the Ministry of Interior has responsibility for some aspects relating to immigration control and for ensuring the legitimacy, security, and control of travel and other identity documents.³⁵

The National Database & Registration Authority (NDRA) under the Ministry of Interior is responsible for ensuring that Pakistani travel and identity documents are of adequate quality to prevent forgery.³⁶ This Authority also verifies any Pakistani documents that are apprehended at border control points.

The Ministry of Interior also maintains a small Migration Management Cell, staffed by two or three persons. Its main mandate seems to relate to policy and strategy development, though there has been conflicting information about the exact function and operation (and size) of this unit, with some suggestions that the Migration Management Cell is 'not running well'. These suggestions, however, could not be independently verified.

The paramilitary Pakistan Rangers (a division under the control of the Ministry of Interior) carry out border control functions in Punjab and Sindh.

Ministry of Labour

The Ministry of Labour oversees labour emigration from Pakistan. To that end, the Ministry's Labour and Manpower Division developed a new *National Emigration Policy* in 2009.³⁷ Through the Bureau of Emigration, the Ministry of Labour exercises several functions in relation to the monitoring and regulation of recruitment and employment agencies.³⁸

Ministry of Foreign Affairs

Pakistan's Ministry of Foreign Affairs has responsibility for 'signing, ratification and implementation of the necessary international conventions, protocols, agreements and other instruments'³⁹ relevant to migrant smuggling and trafficking in persons and to increase 'efforts to make international cooperation among countries of transit and designation more effective, and cooperation and exchange of information with international organisations'.⁴⁰ The Ministry of Foreign Affairs is also tasked with coordinating awareness raising about the 'negative consequences of smuggling of and trafficking in human beings'.⁴¹

³⁴ See Section 1.4 below.

³⁵ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁶ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁷ Pakistan, Ministry of Labour, *National Emigration Policy: Promoting Regular Emigration and Protecting Emigrants* (2009).

³⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁴⁰ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁴¹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

Ministry of Law & Justice

The Ministry of Law & Justice has responsibility for the development and reform of laws relating to trafficking in persons and migrant smuggling.⁴²

Ministry of Defence/Pakistan Defence Force

Pakistan's Maritime Security Agency (or Coast Guard) is responsible for maritime border control and sea-borne anti-smuggling operations. The paramilitary Frontier Corps, a division of the Pakistani Army, carries out border control and anti-smuggling functions in Khyber Pakhtunkhwa, Balochistan, and in the Federally Administered Tribal Areas.

Recommendations

Pakistan has made considerable effort to consolidate the enforcement mandate for migrant smuggling and trafficking in persons in a single agency that has national reach. Today, migrant smuggling and trafficking in persons are core components of the FIA's organisation and operations and the agency has set up highly specialised divisions dedicated exclusively to the investigation and prosecution of these offences. The FIA's Anti-Trafficking Unit and its Anti-Human Trafficking Circles have representation and investigators across Pakistan and central coordinating functions are carried out at the FIA's headquarter in Islamabad.

To further increase the reach of the FIA's anti-migrant smuggling and anti-human trafficking efforts and to conduct investigations more efficiently and effectively across Pakistan, Deputy Directors of the Anti-Human Trafficking Circles have suggested that it would be desirable to create a greater number of Anti-Human Trafficking Circles across the country so that the geographical size (and thus the investigative load) of each circle is reduced.⁴³ On the other hand, the resources of existing circles are already severely stretched⁴⁴ and any increase in the number of Anti-Human Trafficking Circles has to be contingent on better resourcing and staffing of existing circles. Any further increase in the number or size of Anti-Human Trafficking Circles must not be to the detriment of existing circles and must be supported by adequate facilities, equipment, and human resources. In this context it may, however, be timely to review the existing structure, size, workload, and resourcing of all Anti-Human Trafficking Circles and of the Anti-Human Trafficking Unit and its five branches.

There are some uncertainties (and possible concerns) about migrant smuggling and trafficking in persons enforcement activities and those parts of Pakistan that are not under the jurisdiction of the FIA, including Azad Jammu & Kashmir and in the Federally Administered Tribal Areas. It has not been possible to assess law enforcement responses to migrant smuggling and trafficking in persons in these areas.

There are some uncertainties about law enforcement responses to instances of internal trafficking in persons, especially women and children. This responsibility is vested in provincial police forces, though no information has been obtained about their capacity and mandate in that respect. There have been some suggestions that provincial police forces are not sufficiently 'sensitised' to deal with the issue of internal trafficking adequately and effectively.⁴⁵ Domestic trafficking in persons in Pakistan is also clouded by uncertainties over

⁴² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁴³ See also Section II.2.1 below.

⁴⁴ See Section II.3.4 below.

⁴⁵ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.x [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009 (Trafficking in Persons)* para 6.1.ix [copy held by authors].

the application (and existence) of relevant laws.⁴⁶ It is thus recommended that a separate assessment is conducted to focus exclusively on legislation and law enforcement responses to internal trafficking in persons in Pakistan.

In a country with a federal structure and with a population base and geography the size of Pakistan, it is to be expected that a myriad of agencies are involved in the law enforcement response to migrant smuggling and trafficking in persons. While, at the national level, the enforcement mandate of the FIA is relatively clear, the involvement of numerous departments that fall under multiple government ministries makes it more likely for clashes and conflicts between agencies to arise. This, in turn, emphasise the importance of national coordination and collaboration, which is further explored in Section II.1.4 below.

1.1 Recommendations: Enforcement Mandate

- ➔ Review the location, size, staffing, resources, and workload of all Anti- Human Trafficking Circles.
- ➔ Review law enforcement responses to migrant smuggling and trafficking in persons in Azad Jammu & Kashmir and in the Federally Administered Tribal Areas.
- ➔ Conduct a separate assessment which focuses exclusively on legislation and law enforcement responses to internal trafficking in persons in Pakistan

1.2 Legislative frameworks

National legislation relating to migrant smuggling and trafficking in persons may be set out in general criminal laws and/or codes of criminal procedure, or may be found in specific laws pertaining to these phenomena. Only some countries – usually those that are not signatories to the *Migrant Smuggling Protocol* and the *Trafficking in Persons Protocol* – will not have any laws relating to these issues.⁴⁷

The mandate to enforce relevant laws pertaining to migrant smuggling and trafficking in persons also usually has a legislative basis. In most countries, general statutes assign the task to enforce criminal offences to relevant law enforcement agencies; some countries also have special legislative frameworks that assign the responsibilities of policing of migrant smuggling and trafficking in persons to specific entities.

Requirements

International frameworks, including treaties and best practice guidelines, contain strict requirements and many details about the criminalisation of migrant smuggling and trafficking in persons in national laws. UNODC has also developed model laws to facilitate the implementation of the *Migrant Smuggling Protocol* and the *Trafficking in Persons Protocol* into domestic legal systems.

While these frameworks advocate the creation of national committees or other oversight bodies designed to coordinate domestic efforts to prevent and suppress migrant smuggling and trafficking persons, they are largely silent on the questions of where and how relevant investigative and enforcement powers are to be assigned to specific agencies. There is a general understanding that enforcement mandates – especially the use of coercive powers

⁴⁶ See further, Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan: A review of national laws and treaty compliance* (2009) 70–71.

⁴⁷ UNODC, *Toolkit to Combat Smuggling of Migrants* (2010) Tool 5: Legislative Framework, 1.

(as discussed in Section II.4.2 below) – have legislative footing, but international laws and best practice principles refrain from advocating specific types of legislative frameworks.

1.2 Assessment: Legislative Frameworks	
➔	Is there legislation assigning responsibilities of policing migrant smuggling, trafficking in persons, and related crimes to specific agencies in Pakistan?
➔	Does the legislation assign and distinguish between the roles of different agencies in delivering policing?

Review

Pakistan's laws on migrant smuggling and trafficking in persons have been updated following the country's accession to relevant international treaties. On December 14, 2000, Pakistan signed the United Nations (UN) *Convention against Transnational Organised Crime*.⁴⁸ The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*,⁴⁹ and the *Protocol against the Smuggling of Migrants by Land, Sea and Air*,⁵⁰ which supplement the *Convention against Transnational Organised Crime* have, to date, not been signed by Pakistan⁵¹ although elements of these treaties have been introduced into domestic law. There are some suggestions that the Government of Pakistan has initiated a process aimed at ratifying and implementing the *Migrant Smuggling and Trafficking in Persons Protocols*,⁵² but this information could not be independently verified.

Trafficking in Persons

The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan)⁵³ is the principal instrument to prevent and suppress trafficking in persons. The Ordinance is based in large parts on provisions under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.⁵⁴

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

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 of the Ordinance creates a suite of criminal offences relating to human trafficking, debt-bondage and coercion/exploitation of workers, and child trafficking. An offence is

⁴⁸ 40 ILM 335 (2001)

⁴⁹ 40 ILM 377 (2001) [hereinafter *Trafficking in Persons Protocol*].

⁵⁰ 40 ILM 384 (2001) [hereinafter *Migrant Smuggling Protocol*].

⁵¹ UNODC, *Signatories to the United Nations Convention against Transnational Crime and its Protocols*, available at www.unodc.org/unodc/en/treaties/CTOC/signatures.html (accessed 9 May 2011).

⁵² Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 2.2 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 2.3 [copy held by authors]

⁵³ The full text of the Ordinance is available at Pakistan, FIA, *Prevention and Control of Human Trafficking Ordinance 2002*, available at www.fia.gov.pk/pchto2002.htm (accessed 17 June 2011).

⁵⁴ See further, Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan: A review of national laws and treaty compliance* (2010).

aggravated if it is committed by an ‘organised criminal group’,⁵⁵ or is committed repeatedly.⁵⁶

Section 3(1) of the *Federal Investigation Agency Act 1974* (Pakistan) in conjunction with Section 22 of the Schedule to the Act assign responsibility ‘for inquiry into, and investigation of the offences specified in’ the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) to the FIA.

The *Prevention and Control of Human Trafficking Ordinance 2002* is supplemented by a set of regulations introduced in 2004/05 which set out investigation and prosecution procedures, mechanisms in relation to security, welfare, and accommodation of victims, the involvement of non-government organisations, and provisions relating to the repatriation of victims to their countries of origin.⁵⁷

Migrant Smuggling

Pakistan’s laws relating to the smuggling of migrants are not models of clarity and it is difficult to identify relevant laws with certainty. A UNODC report published in 2009 also noted that ‘[t]here are important gaps in current legislative frameworks and law enforcement approaches. Some facilitating activities and some categories of unauthorised migration are not criminalised.’⁵⁸ As seen throughout this report, Pakistani authorities, including the FIA, interpret the offence of migrant smuggling differently to the way in which it is conceptualised in the *Migrant Smuggling Protocol*.⁵⁹

Many difficulties stem from the fact that Pakistan, like several countries, struggles to distinguish the concept of migrant smuggling from that of trafficking persons. The absence of comprehensive legislation on migrant smuggling is further explained by the fact that Pakistan has not (yet) signed the *Protocol against the Smuggling of Migrants by Land, Air, and Sea*, although – as mentioned previously – it is understood that the Government of Pakistan has taken steps towards acceding to this treaty.

At present, offences and other provisions relating directly and indirectly to migrant smuggling are scattered across a large number of legislative and regulatory instruments. Of particular significance are the *Foreigners Act 1946*⁶⁰ and the *Emigration Ordinance 1979*⁶¹ which regulate the entry into and departure from Pakistan for foreign nationals and, separately, for Pakistani nationals. These statutes are supplemented by regulatory instruments, including the *Foreigners Order 1951* and the *Emigration Rules 1979*. The *Passport Act 1974*⁶² and the *Exit from Pakistan (Control) Ordinance 1981*⁶³ also contain some offences that may be relevant to migrant smuggling.

⁵⁵ Section 4 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan). ‘Organised criminal group’ is defined in s 2(j) of the Ordinance.

⁵⁶ Section 5 *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).

⁵⁷ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁵⁸ UNODC, Country Office Pakistan & Country Office Afghanistan, *Crime Facilitating Migration from Pakistan and Afghanistan* (2009) 5.

⁵⁹ See further, Andreas Schloenhardt & Jarrod Jolly, *Smuggling of Migrants by Land, Air, and Sea in Pakistan: A review of national laws and treaty compliance* (2010) 11–17.

⁶⁰ No XXXI of 1946.

⁶¹ No XVIII of 1979.

⁶² No XX of 1974.

⁶³ No XLVI of 1981.

Section 3(1) in conjunction with the Schedule of the *Federal Investigation Agency Act 1974* (Pakistan) grant the FIA the power ‘for inquiry into, and investigation of the offences specified in’ the *Foreigners Act 1946*,⁶⁴ the *Passport Act 1974*,⁶⁵ the *Emigration Ordinance 1979*,⁶⁶ and the *Exit from Pakistan Control Ordinance 1981*.⁶⁷

In the literature and among some Pakistani agencies, the *Prevention and Control of Human Trafficking Ordinance 2002* is often — and mistakenly — referred to as the principal anti-migrant smuggling instrument in Pakistan. These assumptions are based on widespread confusion in Pakistan between the phenomena of migrant smuggling and trafficking in persons. While this confusion is, to a degree, understandable (as is examined in Section II.2.1 below), the *Prevention and Control of Human Trafficking Ordinance 2002* has no relevance for migrant smuggling.⁶⁸

Law Enforcement Framework

As mentioned earlier, law enforcement responsibilities pertaining to migrant smuggling and trafficking in persons are consolidated in a single agency. As Pakistan’s national policing agency, the FIA has primary responsibility for investigating and preparing cases for migrant smuggling and trafficking in persons and for the prosecution of offenders. It is also involved in the apprehension of fake recruitment and employment agencies.⁶⁹

The FIA is governed by the *Federal Investigation Agency Act 1974* (Pakistan).⁷⁰ Under s 3(1) of this Act the FIA has a mandate for ‘inquiry into, and investigation of the offences specified in the Schedule, including an attempt or conspiracy to commit, and abetment of, any such offence’. As mentioned previously, the Schedule to the *Federal Investigation Agency Act 1974* (Pakistan) sets out relevant offences that fall within the mandate of the FIA, including those offences that relate specifically to migrant smuggling and trafficking in persons. These offences are set out, inter alia, in the *Foreigners Act 1946*,⁷¹ *Passport Act 1974*,⁷² *Emigration Ordinance 1979*,⁷³ *Exit from Pakistan (Control) Ordinance 1981*,⁷⁴ and the *Prevention and Control of Human Trafficking Ordinance 2002*.⁷⁵

The FIA’s enforcement powers are, for the most part, legislated in the *Code of Criminal Procedure*. These provisions are examined separately in Section II.4.1 below.

Recommendations

Pakistan’s legislative framework pertaining to migrant smuggling and trafficking in persons — and to the enforcement of relevant offences — is very clear and unambiguous. All offences

⁶⁴ Section 4, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁶⁵ Section 17, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁶⁶ Section 19, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁶⁷ Section 20, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁶⁸ See further, Andreas Schloenhardt & Jarrod Jolly, *Smuggling of Migrants by Land, Air, and Sea in Pakistan: A review of national laws and treaty compliance* (2010) 11–17.

⁶⁹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁷⁰ The complete text of the *Federal Investigation Agency Act 1974* (Pakistan) is available at Pakistan, FIA, *An Introduction to FIA*, www.fia.gov.pk/abt_background.htm (accessed 17 June 2011).

⁷¹ Section 4, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁷² Section 17, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁷³ Section 19, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁷⁴ Section 20, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

⁷⁵ Section 22, Schedule *Federal Investigation Agency Act 1974* (Pakistan).

relating to cross-border smuggling and trafficking fall squarely within the jurisdiction of the FIA. This also includes offences relating to document fraud.

To monitor compliance with relevant laws and identify areas of law reform the FIA has created a team comprising the Director (Law), the Director (Anti-Human Trafficking), and the Assistant Director (Anti-Human Trafficking Unit) to 'review the existing laws and quantum of punishment and recommend if amendments [of] laws are required.'⁷⁶

Law reform is, however, a challenging task in Pakistan and consultation with relevant experts confirmed that it is very difficult to change legislation. As part of the executive branch of government, the FIA also has no clear mandate to propose or draft new legislation, though it is important that the agency is consulted when relevant laws are reviewed. To that end, the FIA's Director (Law) exercises a particular important function and it may be desirable to enhance avenues of communication between the FIA's senior management, relevant Ministries, and members of the legislative branch of government to ensure that laws remain current and relevant.

Comprehensive assessments of Pakistan's laws relating to migrant smuggling and trafficking in persons were conducted by the authors in 2010 and need not be reproduced here.⁷⁷ It is, however, important to stress that the legislative framework relating to migrant smuggling and also to domestic trafficking in persons remains unsatisfactory and that it would be desirable to initiate a process to ensure greater compliance with international instruments in these fields.

1.2 Recommendations: Legislative Framework

- ➔ Ensure compliance of Pakistan's offences with the requirements of the *Migrant Smuggling Protocol*.
- ➔ Ensure compliance of Pakistan's offences relating to domestic trafficking in persons with the requirements of the *Trafficking in Persons Protocol*.

1.3 Management of investigations

There are significant variations between the ways in which criminal investigations can be instigated, managed, and monitored. In some systems, only prosecutors or investigating judges can launch, manage, and oversee investigations, while in other systems police officers or other enforcement authorities have the power to do so. These variations usually stem from the differences between common law systems (where police agencies usually manage investigations) and civil law systems (which give that responsibility to a prosecutor or judicial officer). The way in which investigations are instigated and managed will thus depend on the criminal justice system of the individual country.⁷⁸

⁷⁶ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 2.1 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009 (Trafficking in Persons)* para 2.1 [copy held by authors].

⁷⁷ Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan: A review of national laws and treaty compliance* (2010); Andreas Schloenhardt & Jarrod Jolly, *Smuggling of Migrants by Land, Air, and Sea in Pakistan: A review of national laws and treaty compliance* (2010).

⁷⁸ See further, UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 1.

Requirements

The *Migrant Smuggling and Trafficking in Persons Protocols* contain no specific requirements relating to management and oversight of relevant investigations. The question who carries the responsibility to manage and oversee migrant smuggling and trafficking in persons related investigations is left to the discretion of individual countries. Other international guidelines and best practice principles also do not advocate particular models for the management of investigations.

1.3 Assessment: Management of Investigations

- ➔ Who has responsibility for managing a criminal investigation involving migrant smuggling or trafficking in persons: a prosecutor, investigating judge, a police officer, or another agency?
- ➔ Is the responsibility for managing an investigation unambiguous so as to ensure a coordinated investigation and avoid loss of evidence?

Review

As a country with strong common law traditions, the management of criminal investigations in Pakistan usually rests with law enforcement agencies.

Anti-Human Trafficking Circles

For migrant smuggling and trafficking in persons investigations, that responsibility is vested in the Anti-Human Trafficking Circles of the FIA.⁷⁹ As mentioned earlier, the Anti-Trafficking Units have a coordinating role and exercise no investigative or prosecutorial functions.⁸⁰

Within the Anti-Human Trafficking Circles, investigations are managed by Assistant Directors or their superior, the Deputy Director who heads each circle. The Deputy Director's role is a purely managerial one, while the Assistant Directors exercise managerial and investigative (operational) function. They are assisted by investigators who are of the rank of Inspector or Sub-Inspector.

The Anti-Human Trafficking Circles maintain oversight of migrant smuggling and trafficking in persons cases throughout the entire criminal justice process. In the absence of an independent prosecution service in Pakistan, FIA prosecutors file charges against identified offenders and lead prosecutions in criminal trials. Generally, each Anti-Human Trafficking Circle has a prosecutor or legal officer on staff, or has access to one at the zonal directorate.⁸¹ In some, albeit rare, instances the FIA hires lawyers to act as prosecutors in individual cases.

Other immigration matters

Investigations pertaining to other immigration matters, especially at airports and other border control points, are equally managed by Deputy Directors and Assistant Directors who are assisted in their duties by Sub-Inspectors who generally exercise frontline officer

⁷⁹ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 17 June 2011); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁸⁰ See further Section 1.1 above.

⁸¹ See further Section 2.1 below.

checking passports and other document. The Sub-Inspectors are supervised by shift managers at Inspector level.

Suspicious passengers or documents that are apprehended by FIA Sub-Inspectors at airports or other border control points are initially referred to the managing Inspector, who will usually conduct a short interview and record basic details of the passenger and/or documents. If initial concerns and suspicions are confirmed, the Inspector will refer the matter to the relevant Assistant Directors or Deputy Director for full investigation. Assistant Directors are rostered to receive investigations 24 hours a day, 7 days a week. In rare situations, Deputy Directors may refer a matter to the zonal director in charge.

The structure and geographical organisation of FIA immigration units at airports and other border control points is somewhat more decentralised than that of the Anti-Human Trafficking Circles. Officers above the level of Inspector are generally not located at airports and other border control points and in some parts of Pakistan there are great distances between control points and the offices of Assistant Directors and Deputy Directors. This may, in some instances, limit access to senior officers, delay referral processes, and hamper investigations.

Recommendations

The management of investigations pertaining to migrant smuggling, trafficking in persons, and other immigration matters in Pakistan is very clearly organised and responsibilities are assigned unambiguously. Concerns about the capacity to conduct investigations and prosecutions effectively and efficiently are discussed elsewhere in this report.

As a minor point, it may be advisable to review access to and communication between the Inspector and Assistant Director levels to ensure that relevant matters are referred to those instigating and managing investigations without delay.

1.3 Recommendations: Management of Investigations

- ➔ Review access to and communication between Inspector and Assistant Director levels to ensure that relevant matters are referred to those instigating and managing investigations without delay.

1.4 National Coordination and Partnerships

The investigation of migrant smuggling and trafficking in persons is a challenge for multiple branches of government and is not limited to law enforcement agencies. It usually involves a variety of government departments and other entities, each of which helps to bring an additional dimension to the response. Accordingly, dealing with migrant smuggling and trafficking in persons in isolation, especially without the buy-in of enforcement agencies such as police and immigration, affects the ability to effectively address the causes and consequences of these phenomena.

For these reasons, national coordination, consultation with key stakeholders, and building partnerships among them are crucial in combating migrant smuggling and trafficking in persons. An environment should be created where seizures and arrests for migrant smuggling and trafficking in persons offences do not end in themselves but are linked to the wider fight against serious criminality. This requires close collaboration of relevant officials

with the wider law enforcement community dealing with criminal intelligence and the criminal justice system as a whole.⁸²

Consultation and partnership-building can occur at various levels and may be formalised in a national coordination framework, memoranda of understanding (MoUs), in committee structures, or may be ad hoc and informal, based on changing needs and developments. In some jurisdictions, inter-departmental committees have been set up to coordinate control and enforcement measures across government sectors.

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

Collaboration between different agencies — often with conflicting or opposing mandates and objectives — is, however, not always easy. Some organisations and entities may be reluctant to assist law enforcement agencies because of concerns they might alienate their constituents, because their priorities may be different, because sufficient resources may not be available, or because there are legal constraints (for instance, in the case of classified information and data protection).⁸³

Requirements

International law relating to migrant smuggling and trafficking in persons recognises the importance of inter-agency cooperation within (and also among)⁸⁴ countries. Article 10(1) of the *Trafficking in Persons Protocol* — along with Article 26 of the *Convention against Transnational Organized Crime* — states that:

Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

- (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
- (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
- (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

Article 10 of the *Migrant Smuggling Protocol* equally requires State Parties to exchange information ranging from general research and policy-related material about migrant smuggling and related problems to more specific details of methods used by smugglers.⁸⁵

⁸² UNODC, *Model Law against the Smuggling of Migrants* (2010) 78.

⁸³ UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Delivery Service, 17; UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 21.

⁸⁴ International law enforcement and judicial cooperation is not further discussed in this report.

⁸⁵ *Legislative Guides*, 385.

Unlike Article 10(1) of the *Trafficking in Persons Protocol*, the *Migrant Smuggling Protocol* is aimed primarily at cooperation between countries, rather than inter-departmental cooperation.⁸⁶

Neither the *Migrant Smuggling* and *Trafficking in Persons Protocols* nor the *Convention against Transnational Organised Crime* set out specific requirements about how communication and information exchange between national agencies should be encouraged or formalised. The *Legislative Guides* note that

the mere exchange of information is not likely to require legislative action. Given the nature of some of the information that may be exchanged, however, amendments may be needed to domestic confidentiality requirements to ensure that such information can be disclosed, and precautions may be needed to ensure that it does not become public as a result. The interpretative notes also raise the need for prior consultations in some cases, especially before sensitive information is shared spontaneously and not on request (A/55/383/Add.1, para. 37). These may involve changes to media or public access-to information laws, official secrecy laws and similar legislation to ensure an appropriate balance between secrecy and disclosure.⁸⁷

To facilitate and coordinate information exchange and cooperation between domestic agencies, several international guidelines, including the *Model Law against the Smuggling of Migrants* and the *Model Law against Trafficking in Persons*, recommend the creation of a national anti-trafficking coordinating body or an inter-agency taskforce.⁸⁸ These documents specifically recommend the creation of a committee or other body which brings together officials from relevant national, provincial, and local agencies, as well as non-government service providers. UNODC further notes that:

Inter-agency cooperation is a prerequisite for achieving the intended outcomes of a national anti-human trafficking [and migrant smuggling] strategy. Anti-human trafficking [and anti-migrant smuggling] policies need to be coordinated, monitored and negotiated by all national stakeholders on a regular basis.

[A] multidisciplinary structure should be set up encompassing all relevant non-governmental, governmental and international actors. Such a national sustainable coordination structure or body is essential for facilitating an adequate response to [migrant smuggling and trafficking in persons].

In order to be effective, the cooperation mechanisms need to be based on a clear understanding of the roles of the various stakeholders involved. The structure should define the methods and means used to collaborate (through regular status meetings, ad hoc working groups [...]).

A national coordinator might be appointed to chair the multidisciplinary group. She or he could make suggestions with regard to the organisation of work, the schedule of meetings, the composition and size of the secretariat and the membership of the group and the topics to be discussed. The group should aim at providing all stakeholders with feedback on their role in the [anti-migrant smuggling and] anti-human trafficking strategy, facilitating information flow (including on case patterns and case work) and adhering to an internal systems of checks and balances.

Eventually, such a group should be able to monitor the implementation of [anti-migrant smuggling and] anti-human trafficking policies, assess what kinds of training and capacity-building are needed, and decide on how to meet those needs.

⁸⁶ International law enforcement and judicial cooperation is not further discussed in this report.

⁸⁷ *Legislative Guides*, 307, 309.

⁸⁸ UNODC, *Model Law against the Smuggling of Migrants* (2010) 77–79; UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 84, 88–89; UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 45; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 75–86; cf UNODC, *Toolkit to Combat Smuggling of Migrants* (2010) Tool 4: Problem assessment and strategy development, 57–61.

Further, States could consider appointing a national rapporteur or comparable function, whose task it would be to monitor the effects of the implementation of national policies (or a national action plan) and to systematically gather and analyse information from different actors.⁸⁹

To achieve these goals, the *Model Laws* suggest that the national coordinating body should have a mandate to

- (a) oversee and coordinate the implementation of relevant laws;
- (b) develop policies, regulations, guidelines, procedures and other measures to facilitate the implementation of relevant laws;
- (c) develop a national plan of action to ensure comprehensive and effective implementation of relevant laws, which shall include a process of periodic review of achievement of aims of objectives;
- (d) develop, coordinate, and monitor the implementation of a national referral mechanisms to ensure the proper identification of, referral of, assistance to, and protection of victims of trafficking in persons, including child victims, to ensure that that they receive adequate protection;
- (e) oversee and report to the relevant Minister or Parliament on the implementation of obligations under the *Migrant Smuggling Protocol* and the *Trafficking in Persons Protocol*;
- (f) facilitate inter-agency and multidisciplinary cooperation between the various government agencies, international organisations, and non-governmental organisations; and
- (g) facilitate cooperation with relevant countries of origin, transit, and destination, in particular border control agencies;
- (h) establish procedures to collect data and promote research on the scale and nature of migrant smuggling and trafficking in persons.⁹⁰

1.4	Assessment: National Coordination and Partnerships
	<ul style="list-style-type: none"> ➔ What coordination and partnerships to prevent and suppress migrant smuggling and trafficking in persons exist among law enforcement agencies and between enforcement agencies and other public service departments in Pakistan? ➔ If a national coordinating body/committee exists, which agencies are represented on it? Who chairs the body/committee? ➔ What are the tasks and duties of the national coordination body/ committee? ➔ Has a national plan of action to prevent and suppress migrant smuggling and trafficking in persons been adopted? ➔ In relation to migrant smuggling and trafficking in persons, are there mechanisms in place to enable and facilitate cooperation between law enforcement officers, prosecutors' offices, and judicial entities? ➔ Are there partnerships between the FIA and other law enforcement and government agencies? How do these partnerships work in practice? Are there written protocols, MoUs, committees, etc? ➔ Are joint operations undertaken? Can 'strike forces' or joint taskforces be convened?

⁸⁹ UNODC & UN.GIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010) 51–52.

⁹⁰ UNODC, *Model Law against the Smuggling of Migrants* (2010) Article 18; UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) Article 35.

Pakistan's *National Action Plan for Combating Human Trafficking*, published in 2004, sets out a comprehensive and ambitious framework to prevent and suppress migrant smuggling and trafficking in persons.⁹¹ Relevant elements of the Action Plan are identified and discussed throughout this report.

In recognition of the national and international significance of migrant smuggling and trafficking in persons, the Ministry of Interior of Pakistan has established a steering committee to monitor and review anti-trafficking/smuggling efforts in Pakistan. The Joint Secretary (Security) in the Ministry of Interior has been chosen as the focal point for coordination and information exchange on these issues.

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

- 1) Identification of requirements arising from implementation of the National Action Plan, and taking appropriate actions to resolve them;
- 2) Provision of information to relevant authorities ensuring that ministries and other agencies are properly informed on the activities of the Plan;
- 3) Direction, co-ordination and liaison with all stakeholders, including other ministries, agencies and organisations;
- 4) Supervision over activities of the Anti-Trafficking Units;
- 5) Convening meetings of appropriate actors within the nucleus organisations in order to resolve functional problems;
- 6) Accordingly, ensuring that adequate support resources are available from appropriate Government bodies for the Plan; and
- 7) Maintaining close contacts for potential donor support through international partners.⁹²

In 2007, an Inter-Agency Taskforce was set up to facilitate communication and coordination on migrant smuggling and trafficking in persons between key law enforcement agencies. The Inter-Agency Taskforce (IATF) is chaired by the FIA's Director General and involves a range of senior FIA representatives of the level of Deputy Director or higher. It also has representatives from all provincial police forces, the Inter-Services Intelligence (ISI) agency, and a range of other government entities. It is understood that representatives of foreign missions and international organisations, are invited to attend meetings of the Inter-Agency Taskforce. The Taskforce meets quarterly at the FIA headquarter in Islamabad.⁹³

⁹¹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁹² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁹³ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 1.3x [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009 (Trafficking in Persons)* para 1.3 [copy held by authors]; see also US, Department of State, *2011 Trafficking in Persons Report* (2011) 287.

According to the FIA's *Annual Action Plan – 2009* (Trafficking in Persons), the Director of the FIA's Anti-Human Trafficking branch – 'under the guidance and supervision of the Additional Director General (Immigration)' – acts as 'focal person' between the FIA, 'various segments of provincial law enforcement', and the Inter-Agency Taskforce.⁹⁴

There are conflicting views on the effectiveness of the Inter-Agency Taskforce with some suggesting the Taskforce is very effective, while others suggest national coordination between agencies is very poorly developed. Some persons speak openly about a perceived 'antipathy between the FIA and provincial police forces'. The FIA's, *Annual Action Plan – 2009* (Trafficking in Persons) also proposes to 'sensitize' provincial law enforcement agencies in order to take the issue of internal trafficking more seriously.⁹⁵

It has not been possible to independently verify these claims and assess both the high-level and day-to-day cooperation between provincial police forces and the FIA (as well as other government entities). Collaboration is, however, hampered by the fact that outside the quarterly Taskforce meetings no formal relationships and no MoUs or other agreements exist between these agencies. Several commentators also noted that law enforcement agencies in Pakistan have a culture of keeping policing services strictly separate and do not, or not easily, share information and experience with other agencies. There also appears to be no cooperation and information-sharing between agencies at the investigator level and no mechanism to create joint taskforces, strike teams or the like, although the FIA did acknowledge that provincial police forces are sometimes called upon for reinforcements.

Concern has also been expressed about frequent and considerable intervention by the Ministry of Interior affecting all levels of the FIA. According to some sources, the Ministry of Interior (which oversees the FIA) appears to be an obstacle rather than an advocate of the FIA. Indeed, previous Directors General of the FIA have challenged the Ministry of Interior which led to their departure from the agency.

Information-sharing through and access to databases is assessed separately in Section II.3.1 of this report.

Recommendations

The Government of Pakistan has gone to some length to enable and encourage national coordination and information exchange between the many agencies involved in the prevention and suppression of migrant smuggling and trafficking in persons. The creation of a specific Inter-Agency Taskforce to monitor and review anti-migrant smuggling and anti-human trafficking efforts in Pakistan is particularly commendable. This is complemented by the designation of several senior officials in the FIA and the Ministry of Interior as focal points for communication and coordination.

It is beyond the scope of this report to examine the day-to-day information exchange between relevant agencies, and comment on the operation of the Inter-Agency Taskforce, the frequency of its meetings, the depth of the Taskforce's consultation, or assess Pakistani

⁹⁴ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 1.3 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 1.3 [copy held by authors].

⁹⁵ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.x [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 6.1.ix [copy held by authors].

privacy and freedom of information laws which may hamper the sharing of information and criminal intelligence.⁹⁶

There are, however, some concerns about the depth and quality of cooperation between law enforcement agencies in Pakistan, much to the detriment of the country's efforts to effectively prevent and suppress migrant smuggling and trafficking in persons. The relationship between provincial police forces and the FIA is of particular concern as these agencies have a mutual dependency in order to report, refer, and investigate relevant cases. The inability of investigators to collaborate across agencies constitutes another obstacle – which, in turn, may work to the advantage of perpetrators. Accordingly, this report proposes a number of basic measures to enhance inter-agency cooperation at all levels. Recommendations pertaining to joint workshops and other forms of training are set out separately in Section II.2.3 below.

1.4 Recommendations: National Coordination and Partnerships

- ➔ Review the relationship and cooperation between the FIA and provincial police forces with a view to developing formal procedures, including MoUs, for the referral of cases and other forms of cooperation.
- ➔ Create mechanisms for the creation of joint taskforces staffed by FIA and provincial police officers.

1.5 NGO and community involvement

Non-governmental organisations (NGOs) and the wider community play important roles in the fight against migrant smuggling and trafficking in persons. Specifically, they exercise a crucial function in apprehending instances of these crimes and identifying smuggled migrants and victims of trafficking in persons who may be reluctant to contact or cooperate with government agencies for fear of repercussions, especially deportation. As seen in Section II.6 of this report, NGOs, if properly resourced, may also be better equipped and better suited than government agencies to offer certain support services to smuggled migrants and victims of trafficking in persons.

Accordingly, it is important to integrate NGOs and other elements of civil society into national action plans and law enforcement responses to migrant smuggling and trafficking in persons. Strong partnerships between government agencies and NGOs (and also among NGOs) provide the most effective means of offering coordinated services and, ultimately, of preventing and suppressing these crimes.⁹⁷

Requirements

Article 6(3) of the *Trafficking in Persons Protocol* encourages cooperation of government agencies with NGOs, other relevant organisations, and other elements of civil society in providing accommodation and other assistance to victims of trafficking in persons. The *Legislative Guides* further note that:

⁹⁶ See further, Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 45. Criminal intelligence and databases are discussed separately in Section II.3.1 below.

⁹⁷ UNODC, *Toolkit to Combat Trafficking in Persons* (2009) 410; cf UNODC, *Toolkit to Combat Smuggling of Migrants* (2010) Tool 4: Problem assessment and strategy development, 30.

States Parties are required, where appropriate, to cooperate with non-governmental organisations, other relevant organisations and other elements of civil society in matters relating to the prevention of trafficking and the provision of assistance to its victims. This recognises the knowledge possessed by such organisations and other bodies in this field, as well as the fact that many victims fear deportation or prosecution in their countries of destination and are reluctant to come forward and approach officials or agencies that are too closely associated with the State. The value and principal role of non-governmental organisations in such situations lies in their independence and ability to act on behalf of victims, often serving as a bridge between otherwise isolated victims and officials. Apart from consideration of the question of whether to regulate the organisations themselves, States may not require legislative amendments to implement these requirements. Officials can be instructed to cooperate using administrative means, reinforced by training if necessary.⁹⁸ If needed, amendments might take the form of measures to ensure that organisations have the resources and security needed to perform their functions, directing officials to cooperate with and protect facilities such as victim shelters. As noted above, however, legislation that links victim organisations too closely with the State or that compromises their actual or perceived autonomy may prove counterproductive, since it may deter victims from coming forward at all.⁹⁹

The *Model Law against Trafficking in Persons* emphasises that victims of trafficking in persons ‘shall be provided information on [...] the possibilities of assistance and support by non-governmental organisations and other victim agencies [...] in a language that the victim understands.’¹⁰⁰ It is further recommended that governments develop, in collaboration with NGOs and community groups, policies and programs relating to health care, employment opportunities, training, and education for victims of trafficking in persons.¹⁰¹

There is no equivalent provision in the *Migrant Smuggling Protocol* and the model laws and guidelines to the *Migrant Smuggling Protocol* contain no recommendations regarding the involvement of NGOs in assisting smuggled migrants or working with government entities.

1.5 Assessment: NGO and Community Involvement	
→	What formal and informal cooperation and relationships exist in Pakistan between law enforcement agencies and NGOs and community groups in relation to migrant smuggling and/or trafficking in persons? How are these relationships organised and maintained?
→	What funding is provided by government agencies to NGOs working with smuggled migrants and/or victims of trafficking in persons?
→	Does Pakistan’s legal and regulatory framework foresee or allow for the possibility of drawing a contract between criminal justice authorities and victim service providers, including NGOs?

Review

NGOs play an important role in providing accommodation and other assistance to victims of trafficking in persons in Pakistan. It has even been suggested that NGOs are ‘legally entitled’ to participate in all activities beneficial to victims of trafficking in persons.¹⁰² There is,

⁹⁸ See also, UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 27.

⁹⁹ *Legislative Guides*, 313.

¹⁰⁰ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 55.

¹⁰¹ UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 30, 31, 46–47.

¹⁰² Tariq M Khosa, *Human Trafficking: Victim Support*, presentation by the Additional Director General, FIA, November 2006.

however, no involvement of NGOs in the protection of, and assistance provided to smuggled migrants.

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

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

The *Prevention and Control of Human Trafficking Rules 2004* (Pakistan) set up a very close partnership between government agencies and NGOs in Pakistan, while ensuring that government authorities retain some oversight over the operation of NGOs and have the ability to suspend those organizations that operate inappropriately. Details about the assistance provided to smuggled migrants and victims of trafficking in persons by government and non-government entities are explored further in Sections II.6.3 and II.6.4 of this report

The FIA's *Annual Action Plan – 2009* (Trafficking in Persons) further notes that a 'focal group', headed by the FIA's Additional Director-General Immigration, has been set up to bring together NGOs, government agencies, and other civil society organisations to 'implement and improve' policies and strategies to counter trafficking in persons and develop 'sustainable interventions [...] that are economically viable, socially equitable, politically effective, and culturally acceptable.'¹⁰³ The *Annual Action Plan – 2009* (Trafficking in Persons) also 'encourages' NGOs to play a more effective role in awareness raising and mass media campaigns across Pakistan.¹⁰⁴

From consultation with the FIA's senior management team it appears that the FIA has very limited direct interaction with NGOs and that there is no regular cooperation between the FIA and NGOs (or other community groups). In a general sense, there appears to be a common practice to keep law enforcement agencies and their policing activities strictly separated from any engagement with NGOs.

The principal – and perhaps only – point of contact between the FIA and NGOs is when victims of trafficking in persons are referred to shelters, some of which are operated by NGOs. On some occasions, FIA officials have attended workshops and other seminars held by NGOs.¹⁰⁵

The lack of direct cooperation between the FIA, national coordinating committees, the Inter-Agency Taskforce and NGOs is to some level off-set by the role the International Organisation for Migration (IOM) has assumed in the protection of victims of trafficking in persons. As further examined in Section II.6.3, it appears to be common practice for FIA and provincial police officers to refer victims of trafficking in persons to the IOM for further care,

¹⁰³ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 1.2 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 1.2 [copy held by authors].

¹⁰⁴ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 3.1 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 3.2 [copy held by authors].

¹⁰⁵ Cf US, Department of State, *2011 Trafficking in Persons Report* (2011) 286, 287.

accommodation, and repatriation. The IOM is, however, not involved in any formal relationship with the FIA and is not represented on the Inter-Agency Taskforce.

IOM has also created Counter-Human Trafficking District Taskforces in districts seen as particularly vulnerable to trafficking in persons. The District Taskforces, which are formed at the completion of ‘train the trainer’ programs, comprise of officials from law enforcement agencies such as FIA and provincial police, local government, local NGOs, protection mechanism including Dar-ul-Aman centres,¹⁰⁶ women centres, child bureaus, and NGOs running shelters to provide protection to victims of trafficking in persons. It is anticipated that each District Taskforce will in the future organise trainings and awareness sessions and regular taskforce coordination meetings to discuss the trafficking situation in their respective areas, resulting in enhanced cooperation and linkages between the law enforcement and local community, identifying victims of trafficking, defining referral support mechanisms for victims, and providing them with the necessary support in their areas.

No information was available about any funding provided by the FIA or other elements of the Government of Pakistan to NGOs for migrant smuggling and trafficking in persons related purposes.

At Pakistan’s airport there seems to be good cooperation between the FIA and commercial airlines (and their compliance officers) who are responsible for returning undocumented or fraudulently documented non-citizens arriving in Pakistan to their country of origin or a third country. There is, however, no representation of airline compliance officers or other representatives of airlines and transport companies on the Inter-Agency Taskforce or other national committees.

Recommendations

There appears to be a considerable discrepancy between, on the one hand, national action plans and statements of intent about engagement with NGOs and the wider community, and, the reality of cooperation on the other. Pakistan has set out a policy and legislative framework that acknowledges the role of NGOs, especially in relation to supporting victims of trafficking in persons, but these frameworks are presently not matched by practical measures and comprehensive interaction between the FIA and NGOs.

It is desirable to extend cooperation and further integrate NGOs and other elements of civil society into Pakistan’s law enforcement response to migrant smuggling and trafficking in persons. Policy and legislative frameworks need to be followed by the implementation of practical measures. Moreover, insofar as possible, NGOs and, in particular the IOM, as well as airline compliance officers should be represented regularly on the Inter-Agency Taskforce.

1.5 Recommendations: NGO and Community Involvement

- ➔ Enhance the practical cooperation between the FIA and NGOs.
- ➔ Include representatives of the IOM, airline compliance officers, and (selected) NGOs in meetings of the Inter-Agency Taskforce.

¹⁰⁶ Dar-ul-Aman (translated ‘abode of peace’) centres are shelters offering medical treatment, vocational training, and legal assistance for (female) victims of crime (see US, Department of State, 2011 *Trafficking in Persons Report* (2011) 286).

2 Human Resources

Adequate training and staffing levels are essential to control and curtail the smuggling of migrants and trafficking persons. In a negative sense, lack of law enforcement personnel and poor training of staff may result in many crimes going unnoticed, with offenders evading detection and arrest.

Furthermore, salaries must be commensurate to the workload and responsibilities of enforcement officers, and recruitment processes need to be fair and transparent, to prevent corruption and nepotism as well as to ensure that staff feel responsible and motivated. A detailed assessment of salaries and other matters relating to staff benefits is, however, not included in this report.

2.1 Staffing

Around the world, many units charged with enforcing laws relating to migrant smuggling and trafficking in persons lack the human resources to fulfil their diverse duties. Elsewhere, relevant units suffer from severe staff shortages. Posts remain unfilled for years and salaries and allowances may be months overdue. An assessment of enforcement capacities thus requires a basic 'stocktake' of the human resources available to police migrant smuggling and trafficking in persons. This involves identifying staffing levels, locations, and organisational hierarchies.¹⁰⁷

Requirements

Naturally, States are at liberty to determine the levels of staffing and location of personnel according to domestic needs. The *Migrant Smuggling and Trafficking in Persons Protocols* contain no mandatory and also no non-obligatory provisions relating to the staffing of law enforcement agencies and such measures will generally not require legislative measures. Relevant Toolkits and other international best practice frameworks also contain no particular recommendations on this issue.

While there are no specific requirements or guidelines on this point, it is paramount that units tasked with policing migrant smuggling and trafficking in persons are staffed adequately, that vacancies are filled swiftly, and that personnel are located at border control points, in all major cities, and other locations that are of significance to the local problems associated with these crimes.

¹⁰⁷ UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 7.

2.1 Assessment: Staffing

- ➔ How many people work in FIA units charged with enforcing laws relating to migrant smuggling and trafficking in persons?
- ➔ Do FIA units tasked with enforcing migrant smuggling and trafficking in persons have a full complement of staff? If not, what reason is given for this?
- ➔ Within relevant units, what proportion of enforcement officers is in supervisory or management ranks? How long, on average, do officers stay in the relevant units?
- ➔ What proportion of staff is administrative/investigative?
- ➔ Are enforcement officers deployed strategically in important locations such as airports, seaports, land border crossings, large metropolitan areas, et cetera? Is there an appropriate balance between staff working in the field and in central offices?
- ➔ Does a tenure or secondment system exist where staff are moved to different departments or agencies after a set period of time.
- ➔ Is there provision for drawing upon other agencies to supplement staff needs for operational requirements or during times of shortages?

Review

Current staffing arrangements

The FIA presently employs approximately 3,600 persons throughout Pakistan and across all areas of its mandate, including counter-terrorism, immigration, migrant smuggling and trafficking in persons, cybercrime, anti-corruption, intellectual property crime, international cooperation, et cetera. Approximately 1,800 or 50% of staff work in operational capacities. The remaining staff exercise administrative, managerial or other functions.

In total, approximately 500 FIA officers work as investigators, in addition to 100 Assistant Directors (about 50 of whom also carry out investigative functions, including managing investigations).¹⁰⁸ Approximately 75–80 investigators are assigned to the 16 Anti-Human Trafficking Circles (AHTCs) across Pakistan.

On average each AHTC has 15 investigators who report to one or more Assistant Director and one Deputy Director who heads each AHTC. Each Circle usually has a legal officer or prosecutor on staff or has access to one at the zonal headquarter. The AHTC Quetta appears to share its investigators with those of the Economic Crime Circle. Not all Circles appear to be staffed equally.

Deputy Directors of the AHTCs report to the Zonal Director who supervises all circles within each zone. The zones seem to operate rather independently with limited, if any, formal communication between them.

Staffing levels vary greatly between different immigration control points at airports, railway stations, and border crossings, depending on the volume of traffic and passengers and the physical size of the control point. Frontline officers at immigration control points are generally Constables though special female staff placed at immigration control points are Assistant Sub-Investigators. Shift managers are usually of the rank of Inspectors or sometimes Sub-Inspectors. As mentioned previously, shift managers at immigration control points refer cases to Assistant Directors or Deputy Directors for further investigation.¹⁰⁹

¹⁰⁸ See further Section II.1.3 above.

¹⁰⁹ See Section II.1.3 above.

Staffing levels and obstacles

Consultation with various levels of FIA officials and other stakeholders consistently revealed concerns about the staffing levels of the FIA and about the FIA's capacity to deliver adequate police services across all areas of the agency's mandate. In summary, there appears to be general consensus that the current size of the FIA with 3,600 employees, including 1,800 operational staff, is insufficient to provide effective law enforcement in these areas. Several sources suggest that the FIA is significantly understaffed in the sense that the agency has too few people to carry out the vast mandate of the organisation. The FIA, however, appears to have the ability to draw on staff from provincial police force on a case-by-case basis to carry out large scale operations, including raids and arrests.

More specifically, there have been consistent suggestions that it is 'impossible' for the approximately 500-600 FIA investigators to investigate the wide range of offences under the FIA's mandate effectively. Investigators in the Anti-Human Trafficking Circles also deal with a vast caseload and cases spread over vast geographical areas. As further explored in Section II.4.4, investigators are poorly equipped and have insufficient facilities and resources to conduct investigations effectively.

One of the principal obstacles is the FIA's inability to determine or alter staff contingencies. Specifically, the FIA cannot create (or abolish) any position. Even the FIA's Director General has no ability to create any new position, not even at the constable level. Any new position needs to be created or approved by the Ministry of Interior in conjunction with the Ministry of Finance. It also been reported that any position created by the Government of Pakistan cannot be abolished.

Further contributing to this issue is the fact that the FIA has no human resource department that manages staffing, training, and recruitment matters.¹¹⁰ At some posts, space limitations are an additional factor that makes it difficult, if not impossible, to employ higher numbers of staff.

Attrition and rotation

Specialisation and knowledge building is severely hampered by the frequent rotation of staff; a practice not uncommon for Pakistan's public service generally. The frequency with which FIA staff rotate or otherwise move between roles is of particular concern and affects all levels of the organisation. FIA staff are often moved at short notice. In some instances officers may only be in one role for several weeks or months. This problem is also manifested in frequent leadership change which has plagued the FIA in recent years; in the last two years alone, the FIA had more than four different Directors General.

There also appears to be some difficulty in filling vacant positions, especially when staff retire. Conflicting information has been provided about attrition rates, with some sources suggesting that the FIA lose staff to other agencies, some of which appear to offer better pay and staff benefits. Other sources, however, suggest the contrary.

Salaries

While this report does not assess the levels and adequacy of salaries and staff benefits of FIA officers, a number of salary-related matters appear to affect staffing levels considerably.

¹¹⁰ See also Section II.2.2 and II.2.3 below.

In Pakistan, salaries for public servants, including FIA officers, are set by the government and are generally not negotiated individually (or through unions). Additional staff benefits may, however, vary between agencies and among employees. In recent years, it appears that salary levels for FIA staff have increased disproportionately lower relative to provincial police forces (which had a 100% pay increase).

Within the FIA, pay increases have affected different branches of the organisation differently. Officers in the counter-terrorism branch are said to have gained a 100% increase, while salaries for staff in the immigration branch were raised by 60%. It has been suggested that investigators in the Anti-Human Trafficking Circles only saw a pay rise of 10% or less in recent years, with some sources suggesting that the Anti-Human Trafficking Circles 'are not paid fairly because they are not seen as sufficiently important'; a suggestion that may also be confirmed by their poor equipment and facilities) available to AHTC staff.¹¹¹

While it has not been possible to independently verify some of this information, these suggestions lend weight to widely held views within and outside the FIA that front-line officers and AHTC investigators are vulnerable to bribery and corruption to supplement their income. Multiple sources suggest that supplementing income by way of taking bribes is widespread among AHTC staff, which, in turn, may attract some persons to seek positions in the Anti-Human Trafficking Circles, which have been described, as 'lucrative'.

Recommendations

This assessment has highlighted a number of concerns about FIA staffing levels and salaries. Some of these matters are the result of underlying structural causes that are common to all agencies of Pakistan's public sector, but that are beyond the specific mandate of this report. Furthermore, it is unlikely – and perhaps impossible – for the FIA to change staffing levels and/or increase overall staff numbers in the short and medium term.

As a matter of immediate action, it is recommended that assistance be provided to the FIA in the management of human resources and, as shown in the next sections of this report, in recruitment and training.

In this context, it may also be advisable to review staffing levels in all 16 FIA Anti-Human Trafficking Circles across Pakistan. Deputy Directors of the Anti-Human Trafficking Circles also suggested that to conduct investigations more efficiently and effectively across Pakistan it would be desirable to create a greater number of AHTCs across the country. This measure would make workloads within each Circle more manageable and give AHTCs better access to local communities, especially in regional and rural areas of Pakistan.

2.1 Recommendations: Staffing

- ➔ Provide assistance in human resource management to the FIA.
- ➔ Review staffing levels and locations of the FIA's Anti-Human Trafficking Circles.

2.2 Recruitment

Recruitment procedures for law enforcement personnel need to be fair and transparent to ensure professionalism, and integrity, and avoid nepotism and corruption. The selection of

¹¹¹ See Section II.4.4 below.

staff at all levels must be based on merit, experience, and education, and selection criteria need to be clearly articulated.¹¹² Especially in larger agencies, recruitment should occur at junior, medium, and senior levels. Internal policies can assist in balancing the need to maintain expertise and experience with the desire to rotate staff and bring in new ideas, fresh perspectives, and generational change.

Requirements

As with other matters pertaining to staffing and human resources, international law and best practice guidelines do not contain any specific requirements or recommendations relating to the recruitment of staff. States have full discretion to determine the most suitable way to select and recruit staff for relevant units and agencies tasked with enforcing migrant smuggling and trafficking in persons.

As mentioned before, these processes need to be fair, transparent, and free from corruption and nepotism, and all selections and other decisions relating to recruitment need to be objective and based on merit, taking into account the quality, skills, and professional experience of applicants.

2.2	Assessment: Recruitment
→	What are the selection processes and recruitment procedures for joining the FIA and its units tasked with enforcing migrant smuggling and trafficking in persons? How are people selected?
→	What level of qualification, skills, and professional experience are required to join these units? What are the basic educational requirements for recruitment (e.g. literacy, numeracy, etc)?
→	Is there a vetting procedure for applicants? Is recruitment based on objective assessment and interviews? Does the selection procedure appear fair and objective?
→	Are staff recruited and/or seconded from other agencies?

Review

FIA recruitment takes places at junior, mid, and senior levels and involves candidates from across Pakistan.

- At Constable level, the lowest rank in the FIA, recruitment usually involves secondary school-leavers.
- For mid-level entry (Sub-Inspector and above) minimum requirements include a post-secondary qualification (frequently bachelor degrees) and computer literacy. Some applicants may also hold postgraduate qualifications. In general, recruitment at this level will also require two to five years work experience in a relevant field, but this varies between positions. For recruitment at the level of Inspector or above, applicants must also pass the National Competitive Examination (held by the Federal Public Service Commission).

¹¹² UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 8; UNODC, *Criminal Justice Assessment Toolkit* (2006) The Integrity and Accountability of Police, 40; UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 8.

- The most senior level of recruitment into the FIA is that of Assistant Director. Candidates at this level generally hold postgraduate qualification of masters levels or equivalent.

There is no open and competitive recruitment process for FIA Directors (or above). Vacancies at these levels are generally filled by way of promotion or by persons moving to the FIA from other agencies.

The FIA also appears to recruit extensively from other law enforcement agencies at provincial and federal levels, and internally within the FIA. Many investigators in the Anti-Human Trafficking Circles (and elsewhere in the FIA) initially join the FIA through secondments from other agencies for a period of three to five year, but many are later absorbed into the FIA permanently. Customs, provincial police forces, and Pakistan's Intelligence Bureau (IB) appear to be the most common agencies from which staff move to the FIA.

There are no special recruitment procedures or selection criteria for the FIA's Anti-Human Trafficking Circle. Current processes do not require any specific experience, skills or qualifications.

Eligibility criteria, minimum and mandatory requirements for recruitment into the FIA seek to ensure that selection processes are transparent and determined predominantly by merit and competency of applicants. While recruitment through the Federal Public Service Commission (FBSC) is said to be generally free from corruption and political influence, there are widely held views that other hiring processes of the FIA are influenced by corruption and nepotism, especially at the Constable level.

Other sources also suggest that quality of staff is insufficiently emphasised in recruitment and promotion processes. Particular concerns have been expressed over the quality of staff joining the FIA from other agencies, many of whom have no experience – and obtain no training – in conducting police investigations.

Recommendations

This report has been unable to verify some of the information pertaining to FIA recruitment independently and it may indeed not be possible to validate allegations of corruption and other forms of undue influence beyond general suspicions.

As mentioned previously,¹¹³ some of the concerns and allegations may be addressed by providing assistant in recruitment and human resource management to the FIA. To this end, it may be desirable to assist the FIA in reviewing and developing clear, consistent, transparent, and merit-based recruitment procedures.

It is noteworthy that recruitment into the FIA's Anti-Human Trafficking Circles does currently require any specific skills or experience and does not involve any additional training for those selected to join these Circles. Insofar as possible, it would be most desirable to articulate a set of selection criteria for the recruitment of migrant smuggling and trafficking in persons investigators which are complemented by relevant training modules.¹¹⁴

¹¹³ See Section II.2.1 above.

¹¹⁴ See Section II.2.3 below.

As with all public service entities, the FIA is not immune to allegations about corruption and nepotism. While it is beyond the mandate of this report to investigate these allegation or comment on internal anti-corruption policies and procedures, it may be timely to further explore and address any concerns about corruption, nepotism, and undue influence in the FIA’s staffing and recruitment procedures through a separate assessment.

2.2 Recommendations: Recruitment

- ➔ Assist the FIA in reviewing and developing clear, consistent, transparent, and merit-based recruitment procedures.
- ➔ Identify selection criteria for recruitment into the FIA’s Anti-Human Trafficking Circles.
- ➔ Explore and address concerns about corruption, nepotism, and undue influence in the FIA’s staffing and recruitment procedures through a separate assessment.

2.3 Training: Availability & Delivery

It is crucial that staff at all levels are adequately trained and skilled to meet the many challenges and hazards associated with combating migrant smuggling and trafficking in persons. If alleged crimes are investigated by officers insufficiently familiar with the relevant background, techniques, processes, and legal requirements, then it is possible that the integrity of investigations may be compromised, with potential implications for subsequent prosecutions and trials.¹¹⁵

Training programs can also be designed to build new enforcement networks and partnerships if they involve participants from a variety of backgrounds and agencies, both domestic and international. This is particularly important when developing effective responses to migrant smuggling and trafficking in persons which involve multiple government departments and transcends international borders.

In addition to (or in lieu of) formal training courses, some agencies may also offer opportunities for secondments to other agencies, professional development, and higher education outside the agency, thus enhancing their knowledge-base and skill-set.¹¹⁶

An assessment of law enforcement capacities should therefore involve a comprehensive review of training programs, their delivery and content, and of the types and depth of training available to specialised units, general law enforcement agencies, new recruits, senior investigators, and so on.

Requirements

International law and best practice guidelines recognise training of law enforcement personnel as a crucial element in combating migrant smuggling and trafficking in persons.

Article 14(1) and (2) of the *Migrant Smuggling Protocol* state:

¹¹⁵ UNODC, *Criminal Justice Assessment Toolkit* (2006) The Integrity and Accountability of Police, 11.

¹¹⁶ Article 29(1) *Convention against Transnational Organised Crime*; UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 8–9.

1. States Parties shall provide or strengthen specialised training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

2. States Parties shall cooperate with each other and with competent international organisations, non-governmental organisations, other relevant organisations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. [...]

Article 10(2) of the *Trafficking in Persons Protocol* equally mandates that:

States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.

These Articles relate closely to Article 29 of the *Convention against Transnational Organised Crime* (see below) but set out requirements that are more specific to migrant smuggling or trafficking in persons respectively. They also advocate collaboration with international organisations and NGOs to develop adequate and individualised training modules.

Article 14(2) of the *Migrant Smuggling Protocol* also requires that, in addition to training their own officials, countries cooperate with one another in training to prevent and combat smuggling and in appropriate methods for dealing with smuggled migrants.¹¹⁷

UNODC Toolkits further emphasise that:

As far as possible, local or regional organisations should be given priority in [...] training efforts since they are likely to be more sensitive to domestic needs. International actors should play a steadily declining role while Government, law enforcement, and civil society actors build up their capacity.¹¹⁸

Article 29 of the *Convention against Transnational Organised Crime* provides further requirements relating to training on combating organised crime:

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programs for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programs may include secondments and exchanges of staff. [...]
2. States Parties shall assist one another in planning and implementing research and training programs designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.
3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

¹¹⁷ *Legislative Guides*, 385; UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 10: Capacity-building and training, 15.

¹¹⁸ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 87.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximise operational and training activities within international and regional organisations and within other relevant bilateral and multilateral agreements or arrangements.

Content-specific requirements pertaining to training are discussed in Section II.2.4 of this report.

The development and delivery of training programs will generally not require legislative measures (though the content and material use in such programs will cover domestic and international law in some detail).¹¹⁹ The *Model Law against the Smuggling of Migrants*, however, suggests that a national coordinating body be mandated to

develop and disseminate to professionals, including immigration and criminal justice officers, who are likely to encounter smuggled migrants, information, materials and training to assist them to prevent and combat the smuggling of migrants, while protecting and preserving the rights of smuggled migrants.¹²⁰

Giving responsibility for training to a designated national coordinating body seeks to ensure that this issue is properly coordinated across agencies and receives high priority.¹²¹

The *Model Law against the Smuggling of Migrants* recognises that such legislation ‘is not the only manner in which the obligation in article 14 could be achieved’ and that the obligation can also ‘be met by non-legislative measures such as the development of suitable training programs within individual agencies.’¹²² Indeed, in practice, the responsibility to design and offer training programs is usually vested in learning and development units of relevant agencies, police academies, or other specialised units. In some instances, training may be offered by, or in conjunction with, foreign law enforcement agencies or specialised domestic agencies.

¹¹⁹ *Legislative Guides*, 389; see Section II.2.4 below.

¹²⁰ UNODC, *Model Law against the Smuggling of Migrants* (2010) Article 19(a).

¹²¹ UNODC, *Model Law against the Smuggling of Migrants* (2010) 80.

¹²² UNODC, *Model Law against the Smuggling of Migrants* (2010) 80.

2.3 Assessment: Training – Availability & Delivery

- What foundation training is given to persons joining relevant migrant smuggling and trafficking in persons enforcement units?
- What is the annual capacity for recruit training and for specialised training?
- How often do officers receive refresher training? What specialised training courses are available? How are training needs assessed?
- How is training delivered? Via classroom, self study, computer-based, etc?
- Who delivers the training? What measures are taken to assess the qualifications of trainers?
- Who develops the syllabus for the training? Do partner agencies contribute to syllabus development?
- When were training programs last updated?
- Does the training involve participants from multiple agencies (domestic and foreign)? How are new staff introduced to counterparts in partner agencies?
- Are other countries (and/or their agencies) involved in the delivery, design, or participation in relevant training programs?
- Is there a measure of accreditation applied to ensure the quality and standardisation of training?
- What other training opportunities are available (e.g. further study, professional development, or secondments or attachments to central units or to other agencies)?
- What training is available for general police agencies, immigration and labour departments, etc on relevant migrant smuggling and trafficking in persons related issues?
- Is there a cross-agency training program?

Review

FIA officers joining the organisation at junior levels undertake a mandatory basic training program delivered via the FIA Training Academy in Islamabad. This program is designed to induct new recruits into the Agency and provide them with the basic operational skills and procedural knowledge necessary to discharge their duties across a broad range of FIA mandates. The program was previously delivered over a six-month period, but it has since been condensed to a three-month format.

Theoretically open to all FIA staff who have completed the basic training program, the FIA also delivers a generalist advanced training programme which forms a pre-requisite for most low to mid-level promotions within the Agency. Similar to the basic program, the advanced training seeks to enhance FIA agents' knowledge and skill-base across the broad spectrum of FIA responsibilities, although pitched at officers with a higher level of experience.

In addition to the basic and advanced streams of training delivered by the FIA, selected FIA officers also undertake short-term, specialised training offered on an ad hoc basis by foreign donor countries or international agencies. These specialised programs — varying in length, but typically not exceeding three to six days — generally involve a range of Pakistani law enforcement agencies and cover a range of subject areas including, but not limited to, trafficking in persons, immigration, money laundering, and document fraud. Instructors include a combination of international experts as well as senior FIA officers. FIA Zonal Directors are responsible for selecting FIA participants in specialised programs, though often

face a range of capacity constraints in determining who can be made available to participate in such courses.

Existing FIA training programs relating to migrant smuggling and also trafficking in persons were reviewed by the authors in 2010. That assessment revealed a number of shortcomings of current training arrangements, inadequate resources and facilities, a lack of coordination between donor countries, and a range of other areas for improvement.¹²³ The FIA's *Annual Action Plan 2010–11: Trafficking in Persons* also identifies the '[l]ack of trained human resources and lack of proper training/expertise of data collection, its compilation, scientific analysis and its interpretation' as one of its major challenges.¹²⁴ Particular concern has been expressed about the inability of many FIA officials to adequately differentiate migrant smuggling from trafficking in persons, and the lack of training on this point.¹²⁵

UNODC's Country Office Pakistan has established a computer-based training facility at the FIA Academy and the Regional Directorate in Peshawar, and plans to set-up facilities at the remaining Regional Directorates and at border control points, especially airports. At the facilities that have already been established, UNODC has installed training modules on trafficking in persons, with courses currently being conducted.¹²⁶

In the absence of more detailed information and more in-depth insight into existing training programs, their contents and delivery, it is difficult to make succinct observations and remarks about current FIA training practices and assess the effectiveness of existing programs.

During the current assessment, particular concern was expressed by multiple sources that staff joining the Anti-Human Trafficking Circles or FIA Immigration Control Point from within the FIA, from other agencies, or from elsewhere obtain no induction and no formalised training whatsoever and only acquire relevant skills and knowledge through on the job training and assistance by other colleagues. Persons seconded to the FIA from other agencies do not have any training on FIA matters at all and those joining from government agencies outside the law enforcement realm would have no training – and no experience – in basic investigation skills.

In interviews, frontline officers and investigators openly acknowledged the lack of training and specifically asked for instructional training and regular training on current issues pertaining to trafficking in persons to be provided.

The 2010 *Review of Federal Investigation Agency (FIA) Training Programs* identified limited resources – financial and otherwise – as the most significant impediments to better and more systematic training. Further, there is no strategic plan relating to staff training and capacity building within the FIA.¹²⁷

Moreover, capacity constraints seem to exist in being able to make staff available to participate in specialised programs as there are no officers to fill the void created by those away on training. Consequently, staff are either unable to participate in training or

¹²³ Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 25–26.

¹²⁴ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 5.1.VIII [copy held by authors].

¹²⁵ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285, 286.

¹²⁶ See further UNODC, Country Office Pakistan, *Strengthening Pakistan's Law Enforcement Capacity: UNODC's CBT Roll-Out Plan 2011–2012* (2011).

¹²⁷ Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 25–26.

inappropriate staff are chosen to take part, with little correlation between course topics and participants' duties or required skill-sets.

On the part of foreign donor countries, there is a lack of coordination in offering specialised training to the FIA. Certain foreign agencies appear to have large quotas of funding that need to be expended within specified time frames but training programs does not seem to be offered judiciously or on the basis of carefully assessed needs. There also appears to be significant overlap in the training programs offered. Other programs are offered in complete isolation with no connectivity and most courses are offered once only and not on a sustainable basis.

The frequent rotation of FIA staff between positions and divisions further constrains training and means that many areas are ostensibly lacking experienced staff. It also makes some training redundant if staff are rotated to a new section shortly after completing specialised training.

As a further point, it has to be noted that the Commandant of the FIA Academy changes frequently and that this post is perceived as an undesirable position within the upper ranks of the FIA. The Commandant, effectively the director of the Academy, seems to change regularly. This makes coordination with foreign and international agencies difficult and program proposals are often not developed further. This also highlights the need to create the position of a training coordinator within the Academy to ensure that training is not adversely affected by internal FIA rotations and politics.

Recommendations

The 2010 *Review of Federal Investigation Agency (FIA) Training Programs* developed a suite of recommendations for the introduction of new training programs relating to migrant smuggling well as the improvement of existing programs. It identified general objectives, learning outcomes, as well as obstacles in setting up these programs, and specifically recommended the creation of a specialised intensive training program, an introductory recruit and refresher program, and supported the wider use of computer-based training modules.¹²⁸

In addition, UNODC has recently released a *Basic training manual on investigating and prosecuting the smuggling of migrants*. This manual has been developed in cooperation with INTERPOL, the European Police Office (Europol), and the Serious and Organised Crime Agency (SOCA) of the UK. The manual is an important and easily accessible tool to train investigators and prosecutors on key aspects relating to migrant smuggling, such as concepts and categories of the smuggling of migrants and related conduct, the role of smuggled migrants and smugglers of migrants in investigations, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation, and human rights.¹²⁹

¹²⁸ For further information see Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 23–39. See also Farooq Azam, *Human Trafficking, Human Smuggling and Illegal Migration to and from Pakistan* (2009) 47.

¹²⁹ UNODC, *Basic training manual on investigating and prosecuting the smuggling of migrants* (2010).

It would be highly desirable to introduce some basic training modules pertaining to migrant smuggling and trafficking in persons immediately until any changes to existing FIA training programs are made and new specialised courses have been developed.

This assessment recommends instituting an interim training plan for all (and each) Anti-Human Trafficking Circles. It is suggested that all Circles obtain some structured and regular training one day or, at a minimum, one half-day per month. To facilitate the immediate delivery of such training and reduce associated travel and costs, the training should be conducted at or near each Circle. This form of monthly training, delivered by senior FIA officers, external experts, or representatives from other law enforcement agencies, UNODC, IOM, or foreign police liaison officers should be continued until more formalised courses have been developed and scheduled.

2.3 Recommendations: Training – Availability & Delivery

➔ Provide formal, structured training to each Anti-Human Trafficking Circle for at least one half-day each month.

For further recommendations see Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 23–39.

2.4 Training: Contents

Law enforcement pertaining to migrant smuggling and trafficking in persons requires an understanding of relevant investigative powers and procedures, as well as technical knowledge of the operation of these sectors, of social and cultural issues, general human rights and the specific the rights of refugees and migrants. Moreover, personnel at border control points have to be familiar with visa requirements, immigration and customs procedures, and relevant international obligations.

Where comprehensive training programs exist, it is important that syllabi and curricula are reviewed regularly to ensure they remain up-to-date and keep pace with the ever-changing nature of migrant smuggling and trafficking in persons.¹³⁰

The content of the available training programs necessarily varies between jurisdictions and also depends on the level and type of staff trained, and their seniority and duties. Accordingly, there is no single template for the training of officers in these fields. The following assessment involves some basic indicators of the variety and types of contents that can be included in relevant training programs. A comprehensive *Review of Federal Investigation Agency (FIA) Training Programs* pertaining to migrant smuggling and trafficking in persons in Pakistan was completed by the authors in 2010.¹³¹

Requirements

Relative to other parts of this assessment, the *Convention against Transnational Organised Crime* and the *Migrant Smuggling and Trafficking in Persons Protocols* provide a great amount of detail in relation to the content of training programs.

¹³⁰ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 9.

¹³¹ Andreas Schloenhardt & Brendan Hall *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010).

Article 14(2) of the *Migrant Smuggling Protocol* suggests that:

Such training shall include:

- (a) Improving the security and quality of travel documents;
- (b) Recognising and detecting fraudulent travel or identity documents;
- (c) Gathering criminal intelligence, relating in particular to the identification of organised criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
- (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
- (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.¹³²

The requirements in Article 14 emphasise that training will need to be provided not only on the smuggling of migrants and related conduct, but also on human rights and other relevant issues.¹³³ In addition, the *Toolkit to Combat Smuggling of Migrants* remarks that:

In order for law enforcement officials and other actors to be able to respond better to the smuggling of migrants and to the smuggled migrants they encounter in their work, it is important for them to have an understanding of broader migration issues. This includes understanding issues with respect to smuggled migrants who may be refugees, and also the human rights of the migrants (and smugglers of migrants) they engage with in their work.¹³⁴

Article 10(2) of the *Trafficking in Persons Protocol* equally notes that:

The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues [...].

Further, Article 29(1) of the *Convention against Transnational Organised Crime* recommends that:

Such programs shall deal, in particular and to the extent permitted by domestic law, with the following:

- (a) Methods used in the prevention, detection and control of the offences covered by this Convention;
- (b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;
- (c) Monitoring of the movement of contraband;
- (d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;
- (e) Collection of evidence;
- (f) Control techniques in free trade zones and free ports;
- (g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

¹³² See also, UNODC, *Model Law against the Smuggling of Migrants* (2010) 80.

¹³³ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 10: Capacity-building and training, 3.

¹³⁴ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 10: Capacity-building and training, 10.

- (h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology; and
- (i) Methods used in the protection of victims and witnesses.

The development and design of training programs need to be tailored to suit the local levels and characteristics of trafficking in persons and migrant smuggling. To this end, the UNODC *Toolkit to Combat Trafficking in Persons* articulates two 'key principles':

- [T]raining curricula should only be built on a prior assessment of the situation.
- The approach should foster a clear understanding among stakeholders of gaps and areas for improvement. This can only be achieved where stakeholders themselves are involved in the assessment and contribute to the planning of training.¹³⁵

2.4	Assessment: Training – Contents
	<ul style="list-style-type: none"> ➔ Does the training of FIA officers, especially those working in Anti-Human Trafficking Circles and at immigration control points, cover issues such as: <ul style="list-style-type: none"> ⇒ Domestic laws relating to migrant smuggling and trafficking in persons? ⇒ Levels and characteristics of criminal activity in these sectors? ⇒ Victim and witness protection? ⇒ Visa requirements and immigration procedures? ⇒ Intelligence gathering and dissemination? ⇒ Human rights, rights of refugees, asylum-seekers, and other migrants? ⇒ Investigation techniques and procedures? ⇒ Availability and limitations enforcement powers? ⇒ Use of equipment, technology, forensic procedures? ⇒ International cooperation? ⇒ Partnership building and collaboration with domestic and international agencies? ⇒ Prevention, education, and awareness-raising? ➔ Does the training involve elements relating to accountability, ethics, integrity, and corruption? ➔ Is the training supplemented by manuals summarising these issues?

Review

In Pakistan, official documents recognise the importance of training and outline basic elements of relevant content. Under the *National Action Plan for Combating Human Trafficking*:

- i Training will be provided for all persons and bodies involved with different aspects of human trafficking and working with victims of trafficking. Such training will emphasise the protection of their human rights.
- ii Training will also be provided in the identification of victims for all the stakeholders working with victims of human trafficking and children, including authorities and relevant service-providers.¹³⁶

¹³⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 87.

¹³⁶ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at

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

- i Methods of identification of victims and suspected victims;
- ii Use of relevant surveillance methods and tools;
- iii Obtaining, analysing and presenting as evidence the information, documents, other things possessed by victims, and other sources;
- iv Rules for treatment of victims and suspected victims.¹³⁷

The FIA has also been tasked with:

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

An associated intervention is building capacity to promote competence/professionalism and integrity amongst the anti trafficking staff. Training of ATU staff to augment skills and professionalism in combating human trafficking will be geared up.¹³⁸

Pakistan's *Annual Action Plan – 2009* (Trafficking in Persons) recognises two 'integral parts' of any training pertaining to trafficking in persons: 'First is the sensitivity of the officials in identifying/protecting and treating a victim with sympathy. Second is the proficiency of the investigation process resulting in conviction.'¹³⁹ The *Action Plan* insinuates that training pertaining to migrant smuggling and trafficking in persons has been integrated into courses delivered to all levels of staff. It is also intended to extend these modules to training courses involving members of other law enforcement agencies and NGOs (among others). The Plan also suggests that modules on migrant smuggling and trafficking in persons will be included in professional courses offered by the National Police Academy.¹⁴⁰ The National Police Academy, also located in Islamabad, is involved in the training of Assistant Superintendents of Police from (provincial) police forces from across Pakistan.¹⁴¹

Further information regarding the specific content of existing FIA training programs was not available to the authors. It is not clear to what level issues pertaining to migrant smuggling and trafficking in persons are covered in current programs. As mentioned previously, there is, however, no systematic training plan for persons working in the FIA's Anti-Human Trafficking Circles or at immigration control points. In consultation with external observers, it was remarked that in spite of the training programs currently offered to FIA personnel, staff often lack basic investigative skills. Many officers in lower level ranks are also not computer-literate.

As mentioned in Section II.2.3 above, it is remarkable that there is no requirement for FIA personnel to complete any specialised training prior to or upon transferring into particular sections of the Agency, including the Anti-Human Trafficking Circles. Only generalist training

www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

¹³⁷ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

¹³⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

¹³⁹ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 4 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 4.1 [copy held by authors].

¹⁴⁰ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 4.1 [copy held by authors]; Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 4.2 [copy held by authors].

¹⁴¹ See further www.npa.gov.pk.

is offered by the FIA and all specialist courses are offered only on ad hoc bases. Participants in these courses are not selected systematically.

Recommendations

In shaping and developing training programs, it is important that the delivery, standards, content, and learning resources recognise and build on the experience, background, and prior education and training of different audiences. Separate programs need to be designed for those learning about trafficking in persons and migrant smuggling for the first time, while others may have years of experiences from investigations and collaboration with other agencies. The ever-changing patterns and levels of these phenomena, however, make it necessary that even experienced officers are continuously kept up-to date with new and emerging trends, with policy and legislative developments, investigative techniques, and findings from overseas agencies, international organisations, and independent research.

In reviewing and developing training programs it is also worth noting that the FIA is currently initiating a process to record and catalogue the training undertaken by each officer with a view to improving staff development and deploying officers in the specific fields in which they have obtained special training. This move will also enhance the FIA's expertise in specific areas of policing and assist in identifying future training needs.

It is thus crucial that all officers working in the FIA's Anti-Human Trafficking Circles are properly trained on all aspects relating to migrant smuggling, trafficking in persons, and associated crime, and that they have a comprehensive understanding of relevant laws, procedures, investigative techniques, the role of victims, avenues of international cooperation, et cetera. Given the spread and levels of migrant smuggling and trafficking in persons across Pakistan — and the mandate of the FIA to prevent and suppress these phenomena — it is equally important that all new FIA recruits gain a general understanding of the basic causes and concepts of trafficking and smuggling, and the tools available to fight it. Detailed recommendations for the content specialised and FIA training programs are set out in Andreas Schloenhardt & Brendan Hall *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 27–39.

As mentioned previously, it would be highly desirable to introduce some basic training modules pertaining to migrant smuggling and trafficking in persons immediately until any changes to existing FIA training programs are made and new specialised courses have been developed.

This assessment recommends instituting an interim training plan for all (and each) Anti-Human Trafficking Circles. It is suggested that all Circles obtain some structured and regular training one day or, at a minimum, one half-day per month. To facilitate the immediate delivery of such training and reduce associated travel and costs, the training should be conducted at or near each Circle. This form of monthly training, delivered by senior FIA officers, external experts, or representatives from other law enforcement agencies, UNODC, IOM, or foreign police liaison officers should be continued until more formalised courses have been developed and scheduled.

2.4 Recommendations: Training – Contents

- ➔ Provide formal, structured training to each Anti-Human Trafficking Circle for at least one half-day each month.

For further recommendations see Andreas Schloenhardt & Brendan Hall, *Irregular Migration and Associated Crime in Pakistan: A Review of Federal Investigation Agency (FIA) Training Programs* (2010) 27–39.

3 Criminal Intelligence

Law enforcement is increasingly led by intelligence. This involves, inter alia, the collation, analysis, and dissemination of information and provides a systematic approach to critical thinking which, in turn, can assist in the prevention and suppression of criminal activities. Well-managed, intelligence-led investigations can often prove more resource and cost effective than speculative or reactive methods.

In the fields of migrant smuggling and trafficking in persons, intelligence relating to perpetrators, smuggling and trafficking routes, recruitment and supply patterns, markets, consumers et cetera is often missing or non-existent. In many countries, the subject of intelligence, its gathering, collation, analysis, and dissemination is poorly understood and few countries dedicate staff to this subject. Where it does occur, it can be in a 'standalone' manner, so that it is not incorporated into, or taking account of, intelligence regarding other forms of crime. This restricts the ability to coordinate response to individual cases or to establish strategies, policies, or general operational guidance.

3.1 Intelligence Gathering and Exchange

Information gathering and the exchange of intelligence between relevant authorities is crucial to the success of measures aimed at curtailing migrant smuggling and trafficking in persons. To be of maximum value, intelligence gathering activity should focus simultaneously on the strategic and tactical levels:

- Strategic intelligence is intelligence that enables accurate assessments of the levels and patterns of migrant smuggling and trafficking in persons at local, national, and international levels. Strategic intelligence facilitates law reform, international cooperation, and the development of prevention strategies, education and awareness campaigns.
- Tactical intelligence is intelligence about the activities of specific individuals or groups. It can help identify criminals, give advance information about their activities and help plan proactive, disruptive, and further intelligence-led investigations.

Whilst it is important to gather information from a wide range of sources, it is likely that the information will vary in quality, and the sources will vary in reliability and motivation. It is essential that information is subjected to some form of analysis and grading before it is disseminated or used.

Gathering and analysis of intelligence are not, in themselves, sufficient. It is essential that once gathered and analysed, intelligence is transmitted to the individuals and departments that are able to use it. A vital factor in the expeditious and effective exchange of intelligence is the speed at which material can be transmitted to relevant agencies or investigators who may be in a position to respond to it.

Requirements

The *Migrant Smuggling and Trafficking in Persons Protocols* do not set out specific requirements pertaining to intelligence gathering, but – as mentioned elsewhere – emphasise the importance of information exchange between domestic agencies and

between countries.¹⁴² Article 14(2) of the *Migrant Smuggling Protocol* also explicitly notes that any training to eradicate migrant smuggling should include criminal intelligence gathering

relating in particular to the identification of organised criminal groups known to be or suspected of being engaged in [migrant smuggling], the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of [migrant smuggling], and the means of concealment used in the smuggling of migrant.

Legislative and law enforcement guidelines and other ‘toolkits’ further emphasise the significance of intelligence gathering and exchange in relation to migrant smuggling and trafficking in persons, noting that:

Strategic intelligence:

- Enables accurate assessment of the nature and scale of smuggling and trafficking at the local, national, and regional levels
- Facilitates changes in legislation, international liaison, prevention strategies, education and awareness-raising campaigns etc.
- Assists policymakers in planning
- Obtains a large proportion of the data used to generate a strategic overview, from information and intelligence gathered at the operational level
- Provides fundamental information to raise the awareness of the media and the general public.

Tactical intelligence:

- Forms the basis of investigations
- May lead to the interception of smuggling and trafficking operations
- May lead to the rescue of smuggled migrants and victims of trafficking in persons
- Is fundamental in the preparation and planning of any operation
- Informs the development of training and awareness-raising programs
- Helps identify specific opportunities to prevent, detect, or disrupt smuggling networks.¹⁴³

It is further noted that:

Tactical intelligence must address the following issues:

- What method of recruitment is taking place? (deception, coercion, abduction, etc.)
- What transport is used? (routes used, modes of travel)
- What types of exploitation are found? (labour, sexual exploitation)
- What advertising media are used? (printed media, Internet, word of mouth)
- What types of identity and visa documentation are used and how are they prepared (forged?) or acquired?
- What type of accommodation is used? (where is it? who provided it?)
- What means of communication are used? (e-mail, mobile telephones, fax machines, etc.)

¹⁴² See Section II.1.4 above, and Section II.5.3 below.

¹⁴³ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 45; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 207–208.

- What financial methods have been used? (transactions in respect of all of the above activities).¹⁴⁴

Other forms of relevant intelligence include socio-economic factors that may affect the market for migrant smuggling and trafficking in persons;¹⁴⁵ cultural factors which affect the nature of the crime, how it is committed, and the response of the victim; and international relations, including historical, cultural or colonial connection between source, transit and destination countries.¹⁴⁶

UNODC's *Criminal Justice Toolkit* contains further recommendations that reflect the minimum structure, functionality, and facilities required for a rudimentary, but effective use of police information and intelligence.¹⁴⁷

3.1	Assessment: Intelligence Gathering and Exchange
	<ul style="list-style-type: none"> ➔ Is there existing legislation or other (written) frameworks on the gathering, storage, analysis, and dissemination of criminal intelligence or information for the purpose of policing migrant smuggling and trafficking in persons? ➔ What do existing laws and frameworks allow? What are the constraints and limitations? ➔ Who gathers information? How is it gathered? Who oversees how information and intelligence is gathered, managed, and exchanged? ➔ Where and how is intelligence and information stored? Are specific databases and analysis tools used? Is information recorded manually or electronically? ➔ How is information recovered, analysed, and disseminated? ➔ Are officers encouraged to collect information, write reports, and file them in a central place? ➔ Is there a national crime threat assessment or other strategic crime report? Does it address and describe existing and emerging criminal activities pertaining to migrant smuggling and trafficking in persons? ➔ Do FIA officers receive regular information and intelligence briefings concerning their area of patrol/work?

Review

Under the current regime, the FIA's ability to collect, analyse, and exchange intelligence is severely limited. Set up as a civilian agency, the *Federal Investigation Agency Act 1974* (Pakistan) and the *Criminal Procedure Code* (Pakistan) do not permit the FIA to comprehensively gather store, and exchange criminal intelligence.

The FIA may rely on intelligence (especially telephone-intercepts) obtained by Pakistan's two principal intelligence services, the Intelligence Bureau (IB) and the Inter-Services Intelligence (ISI) agency, on a case-by-case basis, but this happens very infrequently and informally. Furthermore, the capacities of the IB and ISI are limited and it has been suggested that these intelligence agencies 'offer no services' in relation to migrant smuggling and trafficking in persons.

¹⁴⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 208.

¹⁴⁵ Cf Article 15(3) *Migrant Smuggling Protocol*.

¹⁴⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 208–209

¹⁴⁷ UNODC, *Criminal Justice Assessment Toolkit* (2006) Police Information and Intelligence Systems, 11–19.

The reliance on informal use of intelligence has led to calls for the creation of a permanent intelligence unit to enable the FIA to gather, store, analyse, and disseminate intelligence internally. With support from the United Kingdom, the FIA has taken initial steps to set up an Immigration Intelligence Unit (IIU) as a central hub and 'shopfront for intelligence exchange'. To that end, approximately 4 or 5 FIA officers received training from British authorities, and equipment for the storage of intelligence was made available to the FIA in recent years.

Official FIA sources state that the Anti-Trafficking Unit is also charged with 'the building and maintenance of a database of persons involved in trafficking in persons or migrant smuggling'.¹⁴⁸ There are ongoing plans to create a specific Human Trafficking Information System (HUTIS) to be managed by the FIA's Immigration Intelligence Unit, but it could not be independently verified whether this system has been installed and is operational.

Several sources suggest that the Immigration Intelligence Unit 'does practically not exist'. Although several FIA officers have been officially assigned to the Unit and carry titles associated with that role, they do not carry out any practical intelligence functions and instead are seconded to other positions.

The FIA, partly in conjunction with the Ministry of Interior, does, however, use a number of databases that contain some information and criminal intelligence which may be of significance to migrant smuggling and trafficking in persons investigations.

The Immigration Watch List contains information about thousands of people and their movements. The list alerts FIA frontline officers at immigration check points (entry and exit) who will then refer any alert to the shift manager who, in turn, liaises with the relevant Assistant Director. The FIA's Director General and the Ministry of Interior have the ability to place individuals on the Immigration Watch List; this may also be instigated by INTERPOL or foreign law enforcement agencies.

There have been some (conflicting) suggestions that in recent years primary responsibility for the management of the Immigration Watch List has shifted from the FIA to the Ministry of Interior and that, as a result, the Watch List has reduced use by the FIA. Some sources stated that since early 2011, as per instruction from the Ministry of Interior, the FIA can no longer place and maintain fugitives on the Immigration Watch List (and other databases).

In addition, the Ministry of Interior maintains an Exit Control List designed to detect and prevent the departure of certain individual from Pakistan. This list is a formal 'stop list' developed and maintained exclusively by the Ministry of Interior which is checked and acted upon by the FIA at immigration exit control points. The list mandates that persons on this list must not leave Pakistan. The Exit Control List is presently not linked to INTERPOL notices.

The FIA's *Annual Action Plan 2010–11: Trafficking in Persons*, also proposes the development of a user-friendly 'computer-based mechanism to share and compile data in order to analyse short term and long term trends' and to study migrant smuggling and trafficking in persons in Pakistan 'for future policy making and monitoring'.¹⁴⁹

¹⁴⁸ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 17 June 2011); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

¹⁴⁹ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.vii [copy held by authors].

The FIA's Integrated Border Management System (IBMS, formerly PISCES) is assessed separately in Section II.5.4 below.

Recommendations

To enable the FIA to comprehensively gather and exchange intelligence would require far-reaching legislative changes that fall outside the scope of this assessment. In the current environment and given the limited resources of the FIA it may also not be advisable to extend the mandate and duties of the FIA any further.

Instead, it may be advisable to revisit recent plans to set up an Immigration Intelligence Unit in the FIA and ensure that investments made and staff trained by British authorities are fully utilised.¹⁵⁰ In this context, it would also be timely to review the management and operation of the Immigration Watch List and the Exit Control List to ensure these databases are properly maintained, regularly updated, and acted upon.

Further, it would be desirable to set up a basic data collection and research mechanisms to monitor trends and developments in migrant smuggling and trafficking in persons in Pakistan and to produce annual reports about the levels and patterns of these phenomena.

3.1 Recommendations: Intelligence Gathering and Exchange

- ➔ Revisit plans to set up an Immigration Intelligence Unit in the FIA.
- ➔ Review the management and operation of the Immigration Watch List and the Exit Control List.
- ➔ Set up a basic data collection and research mechanisms to monitor trends and developments in migrant smuggling and trafficking in persons in Pakistan and to produce annual reports about the levels and patterns of these phenomena.

3.2 Covert Investigation Techniques

In the investigation of migrant smuggling and trafficking in persons offences, which are often very sophisticated and frequently involve a great number of criminal elements, covert investigation techniques may be extremely useful – and in some cases the only method of investigation.

Covert surveillance is, however, a particularly intrusive method for collecting evidence. The use of covert investigation techniques involves a careful balancing of a suspect's right to privacy against the need to investigate serious criminality. Consequently, most jurisdictions require a number of strict safeguards against abuse including the requirement that the offence be serious, that the use of the technique be vital to the case, and that essential evidence cannot be secured by less intrusive means. Judicial or independent oversight is common and is required under international human rights law.

Routine surveillance of newspapers, internet websites, and other media is an additional method to uncover migrant smuggling and trafficking in persons. This frequently involves an examination of advertisements for unskilled labour migration, domestic workers, adult classifieds, and the like. Internet surveillance recognises that online websites are frequently

¹⁵⁰ Cf Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.xii [copy held by authors].

used to offer services, including sexual services and exploitative forms of labour, that are not otherwise available legally.

Requirements

The *Convention against Transnational Organised Crime* encourages – insofar as possible and permissible under domestic law – the appropriate use of special investigative techniques such as electronic or other forms of surveillance and undercover operations by competent authorities for the purpose of effectively combating organised crime:¹⁵¹

These techniques are especially useful in dealing with sophisticated organised criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in domestic prosecutions, as well as providing mutual legal assistance to other State Parties. In many cases, less intrusive methods will simply not prove effective or cannot be carried out with unacceptable risks to those involved.¹⁵²

Article 20 of the Convention states:

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organised crime.
2. For the purpose of investigating the offences covered by this Convention, State Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.
3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.
4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

The *Migrant Smuggling and Trafficking in Persons Protocols* contain no specific provisions pertaining to covert investigation techniques, but the requirements of Article 20 of the *Convention against Transnational Organised Crime* are applicable to the Protocols.¹⁵³

Controlled delivery

Article 20 is intended to cover a range of special investigative techniques but places particular emphasis on — and creates mandatory requirements for¹⁵⁴ — ‘controlled delivery’ which refers to the technique of

¹⁵¹ Article 20 *Convention against Transnational Organised Crime*. See further David McClean, *Transnational Organized Crime* (2007) 241–247.

¹⁵² *Legislative Guides*, 183; UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 25.

¹⁵³ Article 37 *Convention against Transnational Organised Crime*; Article 1(2) *Trafficking in Persons Protocol*; Article 1(2) *Migrant Smuggling Protocol*.

¹⁵⁴ *Legislative Guides*, 184–185.

allowing illicit or suspect consignments to pass out of, through, or into the territory of a country with the knowledge and under the supervision of that country's authorities, with a view to the investigation of and offence and the identification of persons involved in the commission of that offence.¹⁵⁵

This technique is of particular importance for organised crime activities involving contraband, but is of limited significance to the investigation of migrant smuggling and trafficking in persons.

Undercover operations

Article 20(1) of the *Convention against Transnational Organised Crime* encourages the use of 'undercover operations' 'where it is possible for a law enforcement agent or other person to infiltrate a criminal organisation to gather evidence'.¹⁵⁶ The purpose of undercover operations 'is to determine the nature and extent of criminal activities, identify the people involved, [and] obtain evidence that allows offenders to be prosecuted'.¹⁵⁷ The *Toolkit to Combat Smuggling of Migrants* further explains:

An undercover officer is a law enforcement officer who goes undercover (that is, pretends to be a criminal in order to learn information) to infiltrate a group. It is an extremely difficult and dangerous job; undercover operations should only be carried out by well-managed and properly trained staff.

An undercover officer can provide more information than an informant can; everything that an undercover officer sees or hears is potential evidence. Before an undercover officer is deployed, advice must be sought from a senior officer and/or prosecutor or the judiciary as appropriate.¹⁵⁸

Provisions relating to undercover operations are not mandatory and the *Interpretative Notes* stress that Article 20(1) 'does not imply an obligation on State Parties to make provision for the use of all the forms of special investigative technique noted'.¹⁵⁹

Electronic surveillance

Article 20(1) of the *Convention against Transnational Organised Crime* also encourages the use of 'electronic and other forms of surveillance'. The *Legislative Guides*, along with other international best practice guidelines, note that:

Electronic surveillance in the form of listening devices or the interception of communication [...] is often preferable where a close-knit group cannot be penetrated by an outsider or where physical infiltration or surveillance would represent an unacceptable risk to the investigation or the safety of investigators. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and numerous statutory safeguards to prevent abuse.¹⁶⁰

Provisions relating to electronic surveillance, however, are not mandatory and the *Interpretative Notes* stress that Article 20(1) 'does not imply an obligation on State Parties to make provision for the use of all the forms of special investigative technique noted'.¹⁶¹

¹⁵⁵ Article 3 *Convention against Transnational Organised Crime*.

¹⁵⁶ *Legislative Guides*, 184.

¹⁵⁷ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 192.

¹⁵⁸ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 26.

¹⁵⁹ *Interpretative Notes*, Note 44; see also *Legislative Guides*, 185.

¹⁶⁰ *Legislative Guides*, 184; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191.

¹⁶¹ *Interpretative Notes*, Note 44; see also *Legislative Guides*, 185.

International cooperation

To further capitalise on the use of covert investigation techniques, Article 20(2) of the *Convention against Transnational Organised Crime* advocates standing arrangements between State Parties in the form of bilateral and multilateral accords.¹⁶² In the absence of any such accords, decisions about the use of special investigative techniques should be made on a case-by-case basis.¹⁶³

Considerations and limitations

The use of covert investigation techniques may have implications for the safety of smuggled migrants and victims of trafficking in persons. Accordingly, a key consideration in using covert investigation techniques in operations relating to migrant smuggling and trafficking in persons must be the risk posed to smuggled migrants and victims of trafficking by such techniques.¹⁶⁴ To that end, the *Toolkit to Combat Smuggling of Migrants* recommends the development of 'an intervention plan in the event that evidence emerges that a migrant is being harmed or is likely to be harmed.'¹⁶⁵

Covert investigation techniques may also infringe on basic rights and freedoms of the persons under surveillance and may pick up private information that is unrelated to any criminal act.¹⁶⁶

¹⁶² David McClean, *Transnational Organized Crime* (2007) 245; *Legislative Guides*, 185.

¹⁶³ Article 20(3) *Convention against Transnational Organized Crime*.

¹⁶⁴ See generally, UNODC, *Criminal Justice Assessment Toolkit*, (2006) Police Information and Intelligence Systems, 12.

¹⁶⁵ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 25.

¹⁶⁶ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 26; cf UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191.

3.2 Assessment: Covert Investigation Techniques

- ➔ Do FIA investigators use covert investigation methods? Which ones?
- ➔ Are FIA investigators of migrant smuggling and trafficking in persons aware of and trained in the use of covert investigation techniques including:
 - ⇒ Interception of telecommunications, email traffic, and post/mail;
 - ⇒ Listening devices, tracking and positioning devices;
 - ⇒ Mobile surveillance teams; photographic and video surveillance;
 - ⇒ False personal and company identities;
 - ⇒ Covert search of premises, letters, packages, containers, and vehicles;
 - ⇒ Simulated or test-purchase of an item;
 - ⇒ Internet surveillance;
 - ⇒ Simulation of a corruption offence or 'integrity test';
 - ⇒ Covert real time monitoring of financial transactions;
 - ⇒ Undercover infiltration of networks through operatives posing as criminals or buyers?
- ➔ Are FIA investigators permitted to use such methods?
- ➔ What are the preconditions for the use of covert investigation techniques? Do they require authorisation from a judicial or other independent source? What are the limits and conditions on orders for covert surveillance?
- ➔ Do FIA investigators run undercover 'buying' operations in which they pose as criminals? How and how often is this done? In what kind of cases is this allowed? Is there a legal concept of entrapment?
- ➔ Is Pakistan party to any bilateral or multilateral accords for using covert investigation methods in the context of migrant smuggling and trafficking in persons investigations?

Review

The use of covert investigation techniques by the FIA is extremely limited as the *Federal Investigation Act 1974* (Pakistan) and the *Criminal Procedure Code* do not provide a sufficiently sound legal basis to authorise these types of operations.

At present, the FIA appears to have no capability and no capacity to carry out systematic surveillance and undercover operations. The Agency also does not use listening or positioning devices and does not conduct covert monitoring of financial transactions. The FIA generally does not create false identities in the course of investigations, though it has been suggested that the Agency is not legally barred from doing so and that some very proactive investigators may indeed use this technique.

Several sources suggest that the FIA may occasionally use covert investigation techniques informally, but it is widely accepted that the FIA has no formal authority to engage in covert surveillance and undercover operations.

There has been conflicting information about the FIA's ability to intercept telephone and electronic communication. The majority of sources suggest that the FIA has no authority for such interceptions, though some sources expressed the view that Pakistan's *Telecommunication Reorganisation Act 1996* authorises telephone interception subject to judicial approval. The *Evidence Act* (Pakistan), however, prohibits the use of telephone intercepts as evidence in criminal trials.

As mentioned previously in Section II.3.1, through court order the FIA may be able to access intelligence gathered through covert methods by the Intelligence Bureau (IB) or the Inter-Services Intelligence (ISI) agency. It appears that the FIA has no avenue to request the gathering of intelligence through covert techniques by these agencies.

Recommendations

In view of the existing capacity constraints of the FIA, it is not advisable to significantly expand the Agency's use of covert investigation techniques. Any use of such techniques should also be accompanied by proper training and must have sound legal bases.

In the medium-term, it may be desirable to develop a protocol along with guidelines on the use of covert investigation techniques. For that purpose it will also be necessary to examine existing laws and investigation practices involving the use of covert investigations techniques more carefully.

3.2 Recommendations: Covert Investigation Techniques

- ➔ Examine existing laws and investigation practices involving the use of covert investigations techniques.
- ➔ Develop a protocol along with guidelines on the use of covert investigation techniques.

3.3 Informants

Informants are persons who provide information about a crime to law enforcement agencies about a crime: 'it may be a person who simply lodges a complaint or provides one piece of information to the law enforcement agency or a person who has engaged in a lengthy relationship with members of a criminal group.'¹⁶⁷ Informants may be members of the public, a victim of crime, a perpetrator, or a police officer.¹⁶⁸

UNODC's *Criminal Justice Assessment Toolkit* remarks:

In some countries the use and handling (i.e. "management") of informants is centralised, in others, informants are the unsupervised personal contacts of individual officers. Informants may have many different motivations. They may, on the one hand, be "concerned citizens" providing information out of a sense of civic duty or, on the other, hardened criminals seeking to oust the opposition. Information may be provided as a bargaining chip for some personal advantage, or, most commonly, be traded for cash. Because of the secrecy involved in handling informants, and because of the potentially large sums of money, there is an enormous capacity for abuse. Generally speaking, the reliability and source of any information provided by an informant needs to be carefully assessed and, where possible, corroborated. At the same time, it must also be recognised that the police owe a duty of care to their informants and must protect them from retribution.¹⁶⁹

The information provided by informants can be vital — and sometimes the only way — to prevent or solve a crime. Effective recruitment and handling of informants can prove significantly more cost and resource effective in comparison to other covert methods of

¹⁶⁷ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 25.

¹⁶⁸ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191.

¹⁶⁹ UNODC, *Criminal Justice Assessment Toolkit*, (2006) Police Information and Intelligence Systems, 13.

investigation. The development of a network of informants can be facilitated by means of reward schemes and confidential information hotlines to allow the supply of information.

However, many informants are themselves criminals with a variety of motivations for providing information and therefore require very careful management. It is thus important to examine the systems employed for using, managing, and supervising informants, and the payments made to them.

Requirements

While the *Migrant Smuggling Protocol* and *Trafficking in Persons Protocol* contain no specific provisions relating on this issue, the use of informants is one of the ‘special investigative techniques’ referred to (but not explicitly outlined) in Article 20 of the *Convention against Transnational Organised Crime*.¹⁷⁰

The processes of migrant smuggling and trafficking in persons involves many people — networks are often large and smugglers and traffickers may come into contact with many people; each one of these people is a potential informant.¹⁷¹ In investigations of migrant smuggling and trafficking in persons, informants can be used to provide information, inter alia, about the structure and nature of the criminal organisations involved in these crimes, about whether potential smuggled migrants or victims of trafficking in persons are at certain premises; when migrants or victims are being moved and where they are being moved to; and about the proceeds of migrant smuggling and trafficking in persons (how much money is being paid, where is it being paid from and to, what is the money being used for).¹⁷²

The *Toolkit to Combat Trafficking in Persons* (and equally the *Toolkit to Combat the Smuggling of Migrants*) notes:

Special considerations apply to the use of each type of informant. Some informants are able to provide information from the heart of a criminal organisation and can be given specific tasks to find specific information which they can provide efficiently and cost effectively. However, in recruiting and using informants, consideration must be given to the safety of the informant and any threat posed to actual and potential victims of trafficking in using them. Protection of the informant’s identity is essential. In selecting and using informants, consideration must also be given to the motives for providing information to law enforcers; some of those motives may be unethical, unlawful or even prejudicial to the success of law enforcement operations. Some motives may lead to informants and the information they provided being discredited in court, thereby undermining the prospect of successful prosecutions.¹⁷³

The use of informants must be carried out in compliance with national laws. The transnational nature of migrant smuggling and trafficking in persons means that investigators should be familiar with any relevant legislation in their own jurisdiction and also in the jurisdictions with which they are cooperating.¹⁷⁴

¹⁷⁰ See Section 3.2 above.

¹⁷¹ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191.

¹⁷² UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191; UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 25.

¹⁷³ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191; see also UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 25–26.

¹⁷⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191.

3.3 Assessment: Informants

- ➔ To what extent are informants used by the FIA in the investigation of migrant smuggling and trafficking in persons?
- ➔ How are they managed? What procedures are in place for contact with informants and recording information?
- ➔ Are FIA investigators trained in the management of informants?
- ➔ Is the identity of informants protected throughout the criminal justice system? How?
- ➔ What systems exist to manage the payment of informants?
- ➔ Are there standard operation procedures on the handling of informants?

Review

The use of informants in FIA investigations of migrant smuggling and trafficking in persons is presently not well developed. There is currently no law and no formal procedure on the use of informants. Individual officers may occasionally use unsupervised personal contacts in the course of investigations, but the use of informants is otherwise not general practice. There is, at present, no fund to pay informants or develop a systematic catalogue of informants, though it seems that some rewards are available (and paid) on a case-by-case basis.

The complete legal position on the use and payment of informants is not clear. It was not possible to verify the full extent (if any) to which the FIA may use informants and pay rewards to informants. Some sources suggest that the FIA has a Standing Operational Procedure on this point, but this document was inaccessible at the time of writing.

Recommendations

The FIA's ability to use informants in a systematic and sustainable way is currently very limited. In the present environment, the development of a system and fund to manage and reward informants is not a priority and would further stretch the FIA's limited human and financial resources.

There are some concerns about the unsupervised use of informants in individual investigations. It would be desirable to obtain independent legal advice about the present ability to use informants and, in the medium term, develop clear guidelines on the circumstances and conditions in which informants may be used. In light of frequent allegations of corruption and nepotism, it is also advisable to review any reward scheme for informants and develop clear and transparent procedures on this point.

3.3 Recommendations: Informants

- ➔ Obtain independent legal advice about the FIA's present ability to use informants.
- ➔ Develop clear guidelines on the circumstances and conditions in which informants may be used.
- ➔ Review any reward scheme for informants and develop clear and transparent procedures.

3.4 Patrols and physical surveillance

Smuggled migrants and victims of trafficking in persons are often kept in private homes and businesses or in concealed or clandestine premises that are difficult, if not impossible, to patrol regularly and comprehensively. Law enforcement officials can usually only control a small number of premises and, as a result, rarely see migrant smuggling or trafficking in persons in progress or can be the first to observe evidence of criminal activity. For these reasons, risk management, systematic patrols, and physical surveillance designed to optimise coverage of high-risk premises are basic methods to improve intelligence gathering and detection.

Requirements

Beyond the general statements in Article 20 of the *Convention against Transnational Organised Crime*,¹⁷⁵ there are no specific provisions relating to patrols and physical surveillance in the *Migrant Smuggling Protocol* or the *Trafficking in Persons Protocol*.

International best practice guidelines suggest that routine patrols and conventional (or physical) surveillance (for instance, following suspects on foot or in vehicles) be used to keep particular suspects, premises or locations under observation.¹⁷⁶ Requirements and best practice principles relating to the identification and examination of crime scenes are explored further in section II.5.5 below.

As with other covert investigation methods, if and when investigators become aware through patrols or surveillance that persons are being harmed, they are obliged to intervene.¹⁷⁷

3.4 Assessment: Patrols and physical surveillance

- ➔ How and how frequently are high-risk premises patrolled by FIA officers?
- ➔ How and how frequently are suspects placed under surveillance?
- ➔ Who conducts the patrols and surveillance: FIA officials, local police, ...?
- ➔ What system is used to determine patrol routes, physical surveillance, and the frequency of these measures?

Review

Patrols and physical surveillance are not used as a proactive measure by the FIA. The limited staff and resources, including access to vehicles, make it impossible for the FIA to routinely patrol areas and premises that may be particularly prone to or linked with migrant smuggling or trafficking in persons. There are also no procedures or other mechanisms in place to carry out systematic patrols along designated routes.

Patrols and physical surveillance may, however, be used by other agencies, especially provincial police forces, prior to referring a case to the FIA for further investigation. In addition, the paramilitary Frontier Corp and Pakistan Rangers routinely patrol land borders

¹⁷⁵ See Section II.3.2 above.

¹⁷⁶ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 26.

¹⁷⁷ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 191; UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 26.

with neighbouring countries and, during the course of their patrols, may occasionally apprehend instances of migrant smuggling or trafficking in persons which are referred to the FIA. To that end, the FIA also cooperates with Pakistan's Coastguard for the purpose of detecting migrant smuggling by sea.¹⁷⁸

Recommendations

Enhancing the FIA's capacity to patrol and conduct basic surveillance of premises and areas would go a long way in detecting – and also preventing – migrant smuggling and trafficking in persons in Pakistan more effectively. It would significantly enhance the FIA's ability to investigate these crimes more proactively, disrupt criminal activities, and protect smuggled migrant and victims of trafficking in persons.

To enable the FIA to conduct systematic patrols and physical surveillance will, however, require considerable investment, including financial and material assistance as well as human resources. In the short-term, it would be desirable to conduct a basic needs assessment to identify the material and staffing requirements that would enable the FIA's Anti-Human Trafficking Circles to carry out basic patrol and surveillance functions, taking into account local differences and other settings. This assessment should be followed by the development of a business plan setting out relevant roles, responsibilities, and resources. This business plan can then be addressed to the Ministry of Interior, international organisations, and other donors for consideration and possible funding.

3.4 Recommendations: Patrols and physical surveillance

- ➔ Conduct a basic needs assessment to identify the material and staffing requirements that would enable the FIA's Anti-Human Trafficking Circles to carry out basic patrol and surveillance functions.

3.5 Proactive Investigations

Proactive investigations seek to target prominent and emerging crime threats to reduce the harm they cause, rather than respond to crimes after they have been committed or when they have been reported. It is also a method used in response to intelligence regarding ongoing or planned criminal activity. In such cases, the methodologies for investigators remain similar, but the offences to which they are applied are identified through research and intelligence gathering. This strategy is particularly useful against organised crime and may be of great assistance in curtailing migrant smuggling and trafficking in persons.¹⁷⁹

Requirements

None of the international protocols contain specific requirements relating to proactive investigations; the objectives and means of proactive investigations will also vary from case to case.

On a general level, the UNODC *Toolkits* to combat migrant smuggling and trafficking in persons outline the basic operation and purposes of proactive investigations in the context of these crimes. Generally a proactive investigation will start as the result of an event that is

¹⁷⁸ See further Section II.1.1 above.

¹⁷⁹ UNODC, *Criminal Justice Assessment Toolkit*, (2006) Police Information and Intelligence Systems, 10.

brought to the attention of law enforcement officers. For example, law enforcement officers receive a phone call reporting suspicious activity. That event is usually researched in an attempt to establish if it is a one-off event or part of a series of similar or related events.¹⁸⁰

If investigators work separately from those who collect, collate or analyse intelligence, they must establish a close link that will protect the intelligence while allowing investigators to act when the time is right. Investigators must ensure that their colleagues in an intelligence section understand what they are trying to achieve and what they require from them.¹⁸¹

Once the investigators have a picture of what is going on, they need to look at all potential uses of law enforcement tactics. When commencing proactive investigations, objectives should always be set. Once the objectives of proactive investigations are set, consideration should be given to what can be achieved to gain evidence or intelligence, with the secondary aim of disrupting a group's activities or preventing the illegal entry of some people.¹⁸²

Often, such investigations allow adequate time for investigators to carefully plan all stages of the investigation and to consider all standard and special investigative techniques.¹⁸³ In proactive investigations, the investigators have slightly more control over how they will collect evidence and seek to prove their case.¹⁸⁴

In the context of migrant smuggling and trafficking in persons, proactive investigations provide an avenue

[w]hereby law enforcement agencies can take steps to combat traffickers without the complaint and evidence of the victims. It is not intended to disenfranchise the victims from the prosecution process – far from it; the testimony of the victim will always remain the prime source of quality evidence. This option simply acknowledges the reality that such testimony is rarely forthcoming.¹⁸⁵

To that end, the *International Framework for Action to Implement the Trafficking in Persons Protocol* also recommends the development of 'proactive, intelligence-led investigative techniques without reliance on the testimony of victims'.¹⁸⁶

¹⁸⁰ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 12.

¹⁸¹ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 12.

¹⁸² UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 13.

¹⁸³ See Section II.3.2–II.3.4 above.

¹⁸⁴ UNODC, *Toolkit to Combat the Smuggling of Migrants* (2010) Tool 7: Law enforcement and prosecution, 12.

¹⁸⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 192.

¹⁸⁶ UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 25.

3.5 Assessment: Proactive Investigations

- ➔ Are FIA investigators deployed (individually or in teams) to investigate pre-identified targets, individuals, or groups (rather than in response to crime reports or victim testimony)?
- ➔ Do they use analysis and profiling to build a case against a target? If yes, how are targets chosen?
- ➔ Is there a criminal intelligence cell or unit that collects, collates, and analyses information related to migrant smuggling and trafficking in persons?

Review

The FIA does presently not utilise proactive investigation methods. By and large, the operation of the FIA, especially investigators in the Anti-Human Trafficking Circles and other FIA officers working on the front-line, is reactive rather than proactive. As mentioned earlier, the FIA currently has no capacity to systematically collect intelligence, engage in covert operations, or conduct routine patrols or other forms of physical surveillance.¹⁸⁷

Section II.3.1 of this assessment already mentioned that, with support from the United Kingdom, the FIA has taken initial steps to set up an Immigration Intelligence Unit (IIU) as a central hub and ‘shopfront for intelligence exchange’. To that end, approximately 4 or 5 FIA officers received training from British authorities, and equipment for the storage of intelligence was made available to the FIA in recent years. Several sources, however, suggest that the Immigration Intelligence Unit ‘practically does not exist’. Although several FIA officers have been officially assigned to the Unit and carry titles associated with that role, they do not carry out any practical intelligence functions and instead are seconded to other positions.

Recommendations

It would be desirable to enhance the FIA’s ability to engage in proactive investigations. This would go a long way to facilitate the apprehension of migrant smuggling and trafficking in persons and would reduce the FIA’s reliance on formal complaints and victim statements.

To this end, it would be advisable to revisit recent plans to set up an Immigration Intelligence Unit in the FIA and ensure that investments made and staff trained by British authorities are fully utilised.¹⁸⁸ Once established, the Immigration Intelligence Unit could develop general strategies for proactive investigations, which should then also be incorporated into relevant training modules. It is acknowledged that enhancing the FIA’s ability to systematically and comprehensively conduct proactive investigations is contingent upon the availability of additional human and financial resources.

¹⁸⁷ See Sections II.3.1, II.3.2, and II.3.4 above.

¹⁸⁸ Cf Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.xii [copy held by authors].

3.5 Recommendations: Proactive Investigations

- ➔ Revisit recent plans to set up an Immigration Intelligence Unit in the FIA and ensure that investments made and staff trained by British authorities are fully utilised;
- ➔ Once operational, the Immigration Intelligence Unit should develop strategies and training on proactive investigation methods.

4 Enforcement Powers

Migrant smuggling and trafficking in persons are often complex offences comprising a multitude of criminal elements, with incidents frequently crossing national borders. This can make appropriate and effective enforcement challenging. Investigating migrant smuggling and trafficking in persons involves different proactive,¹⁸⁹ disruptive, and reactive investigation methods. These are time and resource-intensive processes that often require domestic and international cooperation among different agencies, as well as parallel financial investigations.¹⁹⁰

For law enforcement to be meaningful, investigators of migrant smuggling and trafficking in persons, including police, customs, and other agencies need to be equipped with relevant powers that enable them to conduct searches, interview witnesses and suspects, enter premises, seize assets, and make arrests. As these powers are intrusive, they need to be limited and monitored to prevent abuse of powers and unnecessary infringements of human rights and civil liberties.

4.1 Sources of Enforcement Powers

Law enforcement functions, powers, and procedures are usually set out in — and limited by — statute. Usually, police authorities under statutes have broader powers that at times overlap with and/or support the enforcement legislation applicable to other agencies. Relevant legislation may include a *Police Powers and Responsibilities Act*, a *Code of Criminal Procedure*, and/or a *Criminal Code*. Specific *Police Powers Acts* usually encompass organisational elements as well as the relevant powers of a police force, particularly in the public order realm. The police powers relating to criminal investigation are likely to be found in the domestic criminal procedure code.¹⁹¹

Even in jurisdictions where general or codified police legislation has been enacted, these statutes are usually not the sole source of enforcement powers. New statutes are continuously enacted in response to emerging issues (such as environmental crime, organised crime, et cetera) and these statutes often give additional or expanded powers to law enforcement to assist them in dealing with these issues or to clarify their roles.¹⁹²

If other agencies and specialised units are involved in the investigation of migrant smuggling and trafficking in persons, such as immigration departments, customs, serious crime agencies, and the like, their investigative powers are equally set out in separate statutes pertaining to that agency.

Requirements

Neither the *Migrant Smuggling Protocol* nor the *Trafficking in Persons Protocol* contain specific requirements relating to the sources of law enforcement powers. The *Convention*

¹⁸⁹ See Section 3.5 above.

¹⁹⁰ UNODC & UN.GIFT, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010) 19. Financial investigation methods are further explored in Section II.5.9 below.

¹⁹¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 6.

¹⁹² Nigel Stobbs, 'Police Power and Duties', in Roderic Broadhurst & Sara E Davis, *Policing in Context* (2009) 69 at 76.

against Transnational Organised Crime sets out several types of investigative techniques and enforcement powers,¹⁹³ but does not prescribe or suggest a particular model for domestic legislation. Article 34(1) of the Convention creates a general obligation to implement the obligations under the Convention, which ‘may be carried out through new laws or amendments of existing ones.’¹⁹⁴ Other ‘toolkits’ and international best practice guidelines also do not specify requirements relating to the sources of enforcement powers.

In other words, countries are at liberty to decide where they articulate relevant enforcement powers for the investigation of migrant smuggling, trafficking in persons, and other offences. As mentioned earlier, in some countries, these powers can be found in general criminal procedure or police powers laws, while more specific statutes for the enforcement of migrant smuggling, trafficking in persons, and other forms of organised crime may exist elsewhere.

4.1	Assessment: Sources of Enforcement Powers
	<ul style="list-style-type: none"> ➔ Is there a law/statute that empowers the FIA (and/or another agency) in the investigations of migrant smuggling and trafficking in persons offences? ➔ Are relevant enforcement powers set out in special legislation, or are they described in general criminal procedure laws or <i>Police Acts</i>? ➔ What laws, rules or regulations exist to govern the powers and conduct of law enforcement officers? ➔ When were relevant laws last updated?

Review

The Federal Investigation Agency (FIA) is governed by the *Federal Investigation Agency Act 1974* (Pakistan).¹⁹⁵ The Act also gives the FIA primary responsibility for investigating and preparing cases for migrant smuggling and trafficking in persons and for the prosecution of offenders.¹⁹⁶

The *Federal Investigation Agency Act 1974* (Pakistan) does not grant any special enforcement powers to the FIA, but section 5(1) of the Act equips the FIA with same powers as general police forces by referring to the *Code of Criminal Procedure*:

Subject to any order which the Federal Government may make in this behalf, the members of the Agency shall, for the purpose of an inquiry or investigation under this Act, have throughout Pakistan such powers, including powers relating to search, arrest of persons and seizure of property, and such duties, privileges and liabilities as the officers of a Provincial Police have in relation to the investigation of offences under the *Code [of Criminal Procedure]* or any other law for the time being in force.

Subsection 5(2) of the Act provides FIA officers of the rank of Sub-Inspector or above with the same powers as an ‘officer-in-charge of a police station’.¹⁹⁷ This, essentially, equips Sub-Inspectors with general investigative powers. Persons of the rank of Sub-Inspector or higher may also carry out arrests without warrant, if they have been so authorised by the Director General of the FIA: subsection 5(3) *Federal Investigation Agency Act 1974* (Pakistan).

¹⁹³ See further Section II.4.2 below.

¹⁹⁴ *Legislative Guides*, 10.

¹⁹⁵ The complete text of the *Federal Investigation Agency Act 1974* (Pakistan) is available at Pakistan, FIA, *Anti Introduction to FIA*, www.fia.gov.pk/abt_background.htm (accessed 17 June 2011).

¹⁹⁶ *Federal Investigation Agency Act 1974* (Pakistan), Schedule. See also Section II.1.1 above.

¹⁹⁷ Section 4(p) *Code of Criminal Procedure* (Pakistan).

Individual types of enforcement powers granted to FIA officers are further discussed in Section II.4.2 below.

The FIA has no additional or exceptional enforcement powers beyond those granted to provincial police forces. The *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) contains no specific enforcement powers. Instead, section 9 of the Ordinance refers to the *Code of Criminal Procedure* and notes that ‘the investigation of the offences under the Ordinance shall be carried out by only such persons or agencies as are specially empowered by the Government in the behalf.’

Recommendations

The enforcement powers of the FIA are clearly articulated in relevant statutes. Relevant laws are updated as necessary. There is no obvious need for law reform or other intervention on this point.

4.2 Types of Investigative Powers

In some cases, enforcement agencies rely on coercive powers to demand compliance with relevant criminal laws. Accordingly, the power of enforcement officers should be clearly specified. The main powers traditionally exercised by law enforcement agencies in relation to the investigation of offences include search and seizure of property, arrest and questioning, and covert operations (such as surveillance, controlled delivery, and undercover activities).¹⁹⁸ In some instances, special investigative powers have been created for the investigation of migrant smuggling, trafficking in persons, or other forms of organised crime.

Requirements

International laws and best practice guidelines are largely silent about the types of enforcement powers needed to investigate migrant smuggling and trafficking in persons. It appears that international material assumes that relevant law enforcement and specialised units are equipped with standard enforcement powers, including, for instance, the power to search property and premises, arrest and question suspects, et cetera. Special powers relating to intelligence gathering, covert operations, border control, asset confiscation, and financial investigations are discussed elsewhere in this assessment.

¹⁹⁸ Controlled delivery and undercover operations are further explored in Section II.3.2 above.

4.2 Assessment: Types of Investigative Powers

- ➔ Are FIA officers authorised to:
 - ⇒ Stop, question, and conduct searches of people, premises, and conveyances?
 - ⇒ Gather information about persons, places, vehicles et cetera suspected of involvement in migrant smuggling and trafficking in persons?
 - ⇒ Make arrests?
 - ⇒ Seize property?
 - ⇒ Seize vessels, vehicles, aircraft, and other means and equipment used to transport persons?
 - ⇒ Carry firearms or other weapons?
- ➔ Are these powers adequate/sufficient to prevent and disrupt migrant smuggling and trafficking in persons?

Review

The FIA is equipped with the same standard enforcement powers granted to provincial police forces under the *Code of Criminal Procedure*: section 5(1) *Federal Investigation Agency Act 1974* (Pakistan). These powers include, inter alia,

- Powers to arrest, ss 46, 54–67 *Code of Criminal Procedure*;
- Search of places, s 47 *Code of Criminal Procedure*;
- Power to break open doors and windows, s 49 *Code of Criminal Procedure*;
- Search of arrested persons, ss 51, 52, 165 *Code of Criminal Procedure*;
- Power to seize offensive weapons, s 53 *Code of Criminal Procedure*;
- Powers to prevent offences, ss 149–153 *Code of Criminal Procedure*;
- Examination of witnesses, s 161 *Code of Criminal Procedure*.

FIA officers have the power to arrest suspects and hold them for 24 hours.¹⁹⁹ During this period any arrestee needs to be presented to a Magistrate who may order continuing detention for a maximum of two weeks. Should detention still be required after the two-week period the person would be transferred to a remand centre.

As a civilian agency, FIA officers generally do not carry firearms or other weapons, though some officers appear to be keeping firearms in their offices (these may be privately owned weapons). There has been conflicting advice about the need for FIA officers to carry firearms. For general enforcement matters, the FIA may have to seek assistance of local provincial police forces, especially if heavy armoury and additional manpower is needed. At airports, the FIA may call the Airport Security Force for assistance.

As mentioned earlier in this assessment, the FIA has no power to engage in undercover operations or covert investigation techniques.²⁰⁰ Powers relating to financial investigations are assessed in Section II.5.9 below.

Recommendations

During this assessment, there have been no suggestions that the enforcement powers available to the FIA are insufficient to effectively investigate, prevent, and disrupt instances

¹⁹⁹ Section 61 *Code of Criminal Procedure* (Pakistan).

²⁰⁰ See Section II.3.2 above.

of migrant smuggling and trafficking in persons. There are serious concerns about allegations that some FIA officers may carry privately owned firearms during their official duties, but this assessment has been unable to independently validate this information.

While there are some limitations to the enforcement powers available to the FIA, such as the ability to carry firearms and carry out covert operations, any further extension of enforcement powers currently available would require enhanced training and upgrading of relevant skills. Given the concerns about the limited training presently offered to FIA officers,²⁰¹ it is not recommended to alter available enforcement powers at this point. Instead, every effort should be made to ensure that FIA officers are sufficiently familiar and regularly trained with regard to available enforcement powers, their limitations and appropriate use.

4.2 Recommendations: Types of Investigative Powers

- ➔ Ensure that all FIA officers are sufficiently familiar and regularly trained with regard to available enforcement powers, their limitations and appropriate use.

4.3 Exercise of Enforcement Powers

Virtually all enforcement powers are matters for discretion, and some powers may require prior approval by a court or a higher-ranking officer. While most valid police powers are created by law, it is rare for a law to prescribe that a certain power must be exercised. The decision about whether or not to exercise a certain power, and the factors that influence discretion, are important in understanding how law enforcement affects people and communities.²⁰²

An appreciation of the nature and limits of particular [enforcement] powers is obviously necessary if police are to act fairly, effectively, and according to law. An inappropriate or unlawful exercise of power can result in the conviction of innocent people, the acquittal of people who have in fact committed offences, and erosion of public confidence in the administration of justice. The effectiveness of law enforcement agencies in societies that are governed by the rule of law depends to a large degree on the extent to which that society trusts those who are tasked with enforcing and applying the law. The intersection of public confidence and trust and the lawful exercise of power are thus particularly important for a stable society.²⁰³

Indiscriminate and careless use of powers delegated to police officers is a major factor in alienating the public. In most cases, the law will establish some kind of abstract threshold that needs to be attained before police action can be legitimately undertaken. For instance, an officer may need “reasonable grounds” or “probable cause” to suspect a crime before he or she may act. Consequently an officer must be prepared to justify his or her actions against the standard at any subsequent enquiry.²⁰⁴

Requirements

The *Migrant Smuggling and Trafficking in Persons Protocols* and the *Convention against Transnational Organised Crime* contain no provisions relating to the exercise of enforcement

²⁰¹ See further Section II.2.3 above.

²⁰² UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 4; UNODC, *Criminal Justice Assessment Toolkit* (2006) The Integrity and Accountability of Police, 6.

²⁰³ Nigel Stobbs, ‘Police Power and Duties’, in Roderic Broadhurst & Sara E Davis, *Policing in Context* (2009) 69 at 70

²⁰⁴ UNODC, *Criminal Justice Assessment Toolkit* (2006) Public Safety and Police Service Delivery, 4.

powers. Best practice guidelines and ‘toolkits’ pertaining to these crimes also contain no specific recommendations on this point.

Questions about the exercise of discretion and the approval and use of law enforcement powers are, however, not unique to migrant smuggling and trafficking in persons and equally apply to the whole spectrum of law enforcement activities. Accordingly, general laws and regulations pertaining to police powers will usually articulate a range of procedural checks and balances that are implicit in the granting of a particular power. In fact, it is rare that law enforcement agencies are granted a power that does not have some express limitations and delineations.²⁰⁵ In some jurisdictions, different rules and thresholds apply to different offences, providing police with wider powers and greater discretion in instances in which police intervention is particularly urgent.

4.3 Assessment: Exercise of Enforcement Powers

- ➔ Does the law define the grounds and threshold for the application of coercive powers (for example, the concept of “reasonable grounds”, “reasonable belief” or “probable cause”)?
- ➔ Is the application of enforcement powers limited to the use of minimum or reasonable force (or similar) such that officers should only apply that level of force necessary to achieve their lawful purpose?
- ➔ What enforcement actions require the issue of a warrant? Who issues them?
- ➔ What other express and implied limitations for the use of enforcement powers exist?

Review

The exercise of enforcement powers granted to the FIA under the *Code of Criminal Procedure* (Pakistan) is limited in a number of ways. The minimum threshold for arrest without warrant under s 54 of the Code is ‘reasonable suspicion’. For the search of premises and places associated with a person to be arrested the threshold is ‘reason to believe’: s 47 *Code of Criminal Procedure* (Pakistan).²⁰⁶ The Code sets out higher threshold for searches of women; these searches shall only be conducted by female officers and only ‘with strict regard to decency’.²⁰⁷ Other searches necessary during the course of an investigation require ‘reasonable grounds for believing’: s 165.

Arrests can be made without a warrant in the circumstances set out in s 54 of the *Code of Criminal Procedure* (Pakistan) but a person arrested without a warrant must be presented to a Magistrate without any unnecessary delay and may not be held without a Magistrate’s order for more than 24 hours.²⁰⁸ A Magistrate may order continuing detention for an additional 14 days.²⁰⁹ Offences for which an arrest warrant is required are referred to as non-cognisable offences (generally offences attracting a penalty of less than three years imprisonment).²¹⁰

²⁰⁵ Nigel Stobbs, ‘Police Power and Duties’, in Roderic Broadhurst & Sara E Davis, *Policing in Context* (2009) 69 at 78–80.

²⁰⁶ ‘A person is said to have “reason to believe” a thing if he has sufficient cause to believe that thing but not otherwise’: s 26 *Penal Code* (Pakistan).

²⁰⁷ Section 52 *Code of Criminal Procedure* (Pakistan); see also s 48[2].

²⁰⁸ Section 60, 61, 167(1) *Code of Criminal Procedure* (Pakistan).

²⁰⁹ Section 167(2) *Code of Criminal Procedure* (Pakistan).

²¹⁰ Section 4(1)(n) *Code of Criminal Procedure* (Pakistan).

Recommendations

This assessment has not identified any inadequacies or other problems associated with the exercise of enforcement powers by the FIA in the course of migrant smuggling and trafficking in persons investigations. Specifically, there have been no suggestions that the exercise of relevant powers is significantly hampered by existing legal requirements or that FIA officers fail to follow relevant procedures and approval processes.

As a general comment – and as mentioned previously²¹¹ – it should be ensured that all FIA officers are sufficiently familiar and regularly trained about the available enforcement powers, their limitations and appropriate use.

4.3 Recommendations: Exercise of Enforcement Powers

- ➔ Ensure that all FIA officers are sufficiently familiar and regularly trained about the available enforcement powers, their limitations and appropriate use.

4.4 Facilities & Equipment

Powers and responsibilities assigned to law enforcement agencies often bear little relationship to their ability to fulfil them. Investigators of migrant smuggling and trafficking in persons require certain basic facilities, and may also need special equipment to carry out their tasks. This may involve very basic things such as offices, accommodation, stationery, transportation, access to motor vehicles, hand-cuffs, or more sophisticated equipment such as computers, radios to communicate, equipment for forensic procedures,²¹² laboratories, and firearms.²¹³ This also requires sufficient funding to carry out day-to-day functions as well as specialised operations.²¹⁴

Available and required facilities and equipment will vary greatly between jurisdictions, and agencies. It has to take into account the role, training, responsibility, and seniority of investigating officers and their units. The capacity will also depend on the local socio-economic conditions, available resources, and access to financial aid and technical assistance.

Requirements

Availability and standards of facilities and equipment used by law enforcement agencies varies greatly between jurisdictions and between different agencies. International law and best practice guidelines do not set out any minimum standards, though UNODC's *Criminal Justice Assessment Toolkit* recognises that '[i]nvestigators need to have certain basic facilities with which to work, but these must be reviewed in the light of the local socio-economic conditions.'²¹⁵

²¹¹ See Section II.4.2 above.

²¹² Forensic services are discussed separately in Section II.5.6 below.

²¹³ Access to and use of firearms is also discussed in Section II.4.2 above.

²¹⁴ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 9.

²¹⁵ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 9.

4.4 Assessment: Facilities & Equipment

- ➔ What are the physical facilities of relevant FIA migrant smuggling and trafficking in persons enforcement units? Where are they accommodated? Are the buildings structurally sound?
- ➔ Is there a steady and reliable source of electricity? Is there a working back-up generator?
- ➔ Is the office equipment (furniture, stationery, photocopiers, ...) adequate?
- ➔ Does the public have access to these offices?
- ➔ Is the supervisor or manager of the unit located in that facility or nearby? If prosecutors lead the investigation, where are they located? Do they have easy access to the investigators?
- ➔ What communication and word-processing technology is available: computers, internet, phones, cell-phones, walkie-talkies, fax machines?
- ➔ Are front-line FIA officers adequately funded, sufficiently equipped, and trained in equipment use?
- ➔ Do FIA officers have access to personal protective equipment such as batons, handcuffs, tazers, firearms, or other weapons? Are they stored and issued in a secure manner?
- ➔ Do FIA investigators have access to vehicles, vessels, and other means of transport? How many vehicles/vessels are available? Are the vehicles/vessels marked/unmarked? Are they armoured? Is there sufficient fuel available?
- ➔ Are there other non-operational demands placed upon these resources? (shared vehicles)
- ➔ What maintenance and replacement provisions are in place for this equipment?

Review

This assessment of FIA facilities and equipment is limited to FIA premises in and around Islamabad. It was not possible to inspect all FIA facilities across Pakistan. According to FIA sources the selected facilities that were inspected are representative of standards across the FIA. Indeed, facilities in the capital city may be of somewhat higher standard than those in more remote locations. This assessment also focuses specifically on the equipment and facilities available to investigators in the FIA's Anti-Human Trafficking Circles and does not assess those available to higher-ranking officers.

As a first general observation, facilities and equipment available to investigators in the FIA's Anti-Human Trafficking Circles are extremely poor and frequently even very basic equipment is not available. In summary, conditions in relevant posts and officer are not of an acceptable standard and pose a serious risk to health and safety of FIA officers. The lack of and poor conditions of relevant facilities and equipment significantly hamper investigations and are the major impediment to preventing and suppressing migrant smuggling and trafficking in persons in Pakistan more successfully.

Buildings in which the FIA Anti-Human Trafficking Circles (AHTC) are accommodated are generally rented premises and are often shared by several FIA divisions. Deputy Directors and Assistant Directors who lead the Anti-Human Trafficking Circles and supervise investigators are located in the same buildings as their staff. As mentioned earlier, each Circle usually has a prosecutor or legal officer on staff.²¹⁶

²¹⁶ See further Section II.2.1 above.

Security around all FIA facilities has been stepped up considerably, following bomb attacks on the FIA offices in Lahore in 2008 and 2010. Security checkpoints and road-blocks are set up on roads immediately in front of or adjacent to FIA stations and buildings are surrounded by high fences, often reinforced by barbed wire. FIA buildings are guarded by private security forces who are heavily armed. Despite these efforts to increase security, multiple sources suggest that security at FIA buildings remains a major concern and there are reasonable grounds to anticipate further bomb attacks or other forms of extreme violence against FIA premises.

The existing security measures also limit public access to FIA facilities.

Electricity supply is unreliable and restricted throughout most parts of Pakistan and most places, including buildings used by the FIA, suffer power outages for several hours a day. FIA posts (not including airport facilities) generally have no back-up generators and FIA officers will sometimes rely on small battery-powered LED-lights or work without any power at all. Air-conditioning is usually only available to senior officers; many offices are exposed to extreme heat during the summer months and to sub-zero temperatures in winter.

There are serious space issues within the premises allocated to AHTC investigators. Investigators generally share offices but some posts have insufficient space so that undercover car-parks and basements are converted into office space. Conditions are particularly poor in these converted spaces, which sometimes have no natural light thus causing serious health and safety risks in early morning and evening hours and during frequent power outages when investigators literally have to work in complete darkness.

The space limitations also have serious implications on the ability to securely and systematically store files and other equipment. During this assessment, files relating to investigations were found across floors, bundled in random piles, and in generally poor conditions, also due to exposure to heat, humidity, and dirt.²¹⁷ Persons suspected of migrant smuggling or trafficking in persons are sometimes left unattended in investigators' offices where files and other equipment are easily accessible.

Most FIA posts also have facilities to hold persons arrested on suspicion of migrant smuggling and trafficking in persons. These holding cells are usually shared by multiple persons and are only used for the short-term detention of men; women are usually transferred to women prisons or remand centres. No information was available on where (unaccompanied) minors are accommodated. The holding cells inspected during this assessment were very basic, yet clean, and had access to basic sanitary facilities. These facilities would, however, be unsuitable to hold violent offenders, persons with special needs, mental health issues, or persons who would otherwise require isolation.²¹⁸ As mentioned previously, the maximum time for which a person may be detained in these holding facilities by the FIA with Magistrate approval is 15 days.²¹⁹

Each investigator usually has a designated office space though, as mentioned earlier, rooms may be shared between multiple investigators. There have been suggestions that investigators are usually not equipped with office furniture and that chairs and desks are sometimes privately owned items that have been provided by investigators themselves. There also seems to be no supply of basic stationery, with some sources suggesting that FIA investigators generally purchase their own pens, paper, and other office supply. Some

²¹⁷ Case management and data storage are further discussed in Section II.5.2 below.

²¹⁸ Interviewing and treatment of suspects are further discussed in Section II.5.8 below.

²¹⁹ See Section II.4.2 above.

investigators may also use privately owned desktop or laptop computers, though some of this equipment may not be fully functional and are not networked. The use of privately owned computers also raises concerns about privacy issues and the security of stored files. Photocopiers, scanners, and printers are generally not available or may be located with Deputy Directors and Assistant Directors who usually also have access to computers. As a civilian agency, FIA officers generally do not carry firearms or other weapons, though some senior officers appear to be keeping firearms in their offices (these may be privately owned weapons).²²⁰

Mobility and transportation are extremely limited. Each Anti-Human Trafficking Circle usually has one vehicle for the Deputy Director plus two vehicles that are shared between investigators. Vehicles are usually unarmoured; some vehicles are marked. The limited number of vehicles severely limits the ability of investigators to travel across the – often vast – policing districts to carry out investigations, raids, or make arrests, often at very short notice. The authors of this assessment were unable to inspect the condition of FIA vehicles, but it was suggested that fuel is severely rationed, thus further hampering the FIA's ability to carry out investigative functions, especially in rural and remote areas. A separate report also recently urged the Government of Pakistan to 'improve transportation for inspectors'.²²¹

Conditions of FIA posts at international airports appear to be of a higher standard. At Islamabad airport the space available for FIA officers to conduct arrival and departure checks is severely restricted, causing long waiting times for arriving and departing passengers. It has been suggested that conditions as Lahore and Karachi airports, the two other main international airports of Pakistan, are better than at Islamabad airport, though this could not be verified independently. There are plans to build a new and vastly improved airport for Islamabad, but it appears that this development has been stalled. FIA Immigration officers at airports also have no access to official vehicles and will regularly use private cars or taxis to transfer suspects to zonal headquarters for further processing.

Recommendations

Any effort to enhance Pakistan's law enforcement response to migrant smuggling and trafficking in persons – and any assistance offered to the Government of Pakistan and its agencies – must be targeted at improving the very basic working conditions of front-line officers. The single most important recommendation in this assessment is that first priority must be given to enhancing the office space, basic equipment, and mobility of FIA investigators working in the Anti-Human Trafficking Circles across Pakistan.

Without immediate and significant intervention and assistance at this level, all other efforts to prevent and suppress migrant smuggling and trafficking in persons will remain severely hampered and will continue to jeopardise investigations and prosecutions. The poor facilities and equipment available to FIA officers enable migrant smugglers and human traffickers to operate without significant risk of apprehension and arrest. These deficiencies also contribute to many smuggled migrants and victims of trafficking in persons to remain undetected and unprotected.

At a minimum, all investigators in all 16 Anti-Human Trafficking in Circles across Pakistan should:

²²⁰ See also Section II.4.2 above.

²²¹ US, Department of State, *2011 Trafficking in Persons Report* (2011) 286.

- be equipped with basic office furniture that meets occupational health and safety standards;
- be provided with secure, lockable storage facilities for case files, evidentiary material, and other equipment;
- have access to reliable electricity supply, including back-up generators; and
- be furnished with basic office supplies.

These measures must go hand-in-hand with the development of a basic and consistent system to record, report, file, and otherwise manage cases,²²² and the elaboration of replacement plans for existing equipment. These are basic yet essential investments that will have an immediate impact on the processing of cases and the investigative work of the FIA’s Anti-Human Trafficking Circles. It also has the potential to boost staff morale and motivation.

In the medium-term, it will be necessary to review security at FIA posts and the standard and adequacy of buildings used to house Anti-Human Trafficking Circles and other FIA units. Assessments should be conducted for each Anti-Human Trafficking Circle to determine access to and needs for motor vehicles, also including maintenance and petrol.

In the long-term, it will be desirable to move to computer based case recording and management systems and provide greater access to desktop and laptop computers.

Conditions and recommendations pertaining to the accommodation and treatment of suspects are discussed separately in Section II.5.8 below.

4.4	Recommendations: Facilities & Equipment
	<ul style="list-style-type: none"> ➔ Equip all investigators in the FIA’s Anti-Human Trafficking Circles with basic office supplies and furniture that meets occupational health and safety standards. ➔ Provide all Anti-Human Trafficking Circles with secure, lockable storage facilities for case files, evidentiary material, and other equipment. ➔ Provide all Anti-Human Trafficking Circles with reliable electricity supplies, including generators. ➔ Review security at FIA posts and the standard and adequacy of buildings used to house Anti-Human Trafficking Circles. ➔ Assess access to and needs for motor vehicles, including maintenance and petrol.

²²² See further Sections II.5.1 and II.5.2 below.

5 Investigation Procedures & Techniques

Investigating migrant smuggling and trafficking in persons can be complex and may require a variety of methods and approaches. The following Sections set out some core elements of investigation procedures and techniques. This list of elements is, however, by no means exhaustive.

5.1 Reporting Crime

The commission of a migrant smuggling or trafficking in persons offence can come to the attention of police or other enforcement units in a number of different ways. It is important that the relevant law enforcement agencies have mechanisms and procedures in place to ensure instances of migrant smuggling and trafficking in persons are accurately and efficiently brought to their attention in each of these avenues.

The public, victims, and witnesses are common sources of reports of instances of migrant smuggling or trafficking in persons. To increase the number of reports received by the public, some countries have instituted reward schemes – sometimes referred to as ‘whistle blower schemes’ – as an incentive structure for persons furnishing information about trafficking in persons (and less commonly about migrant smuggling). Such systems have thus far only found mixed support, with many critics arguing that rewards only increase the quantity and not the quality of crime reporting, and also create the danger of false allegations.

Some countries and some local communities have also established online or telephone ‘hotlines’ as an alternative avenue to improve and increase the reporting of migrant smuggling and trafficking persons. These systems encourage residents and businesses to report suspicious behaviour in their local area and create a shared sense of responsibility between individuals, neighbours and communities for preventing, reporting, and reducing migrant smuggling and trafficking in persons. They also encourage victims themselves to report their circumstances and seek assistance.

In addition to public reporting, many instances of migrant smuggling and trafficking in persons may be detected by persons working for other agencies in other fields, such as immigration and health, or front-line police officers in the course of their regular duties. Foreign law enforcement agencies may also refer cases to domestic authorities. It is thus important that the law enforcement agency charged with investigating instances of migrant smuggling and trafficking in persons have formal procedures and relationships implemented to effectively facilitate reports from other agencies. This aspect of law enforcement is further examined in Section II.1 above. Proactive investigation methods are further explored in Sections II.3.5 and II.6.1 of this report.

Requirements

The public plays an essential role in bringing instances of migrant smuggling and trafficking in persons to the attention of authorities. Article 31(5) of the *Convention against Transnational Organised Crime*, with which the *Migrant Smuggling and Trafficking in Persons Protocols* must be read, relevantly requires that

States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by transnational organised crime. Information may be

disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

The *Migrant Smuggling Protocol* and *Trafficking in Persons Protocol* both require such prevention measures in similar terms.²²³ The *Legislative Guides to the Convention against Transnational Organised Crime* suggest that ‘prevention measures may in many cases be developed and implemented jointly’ in respect of both migrant smuggling and trafficking in persons.²²⁴

It has been noted that ‘the use of anonymous police hotlines has also been effective as a way of reaching out to the public.’²²⁵ The *Toolkit to Combat to Combat Trafficking in Persons* further suggests:

Whenever possible, hotline and outreach services should be able to respond in foreign languages. Law enforcement, immigration, health care, social services and other professionals may also be able to use these hotline services to help them refer victims to the appropriate services.

[...] It helps professionals and others determine if they have encountered victims of human trafficking and to identify local resources available in their community to help victims. Hotline services for victims of trafficking are often part of services for victims of crime in general, or services for female victims of violence. Hotline numbers are often distributed during outreach attempts and made broadly available through the media.²²⁶

Where an anonymous tip is provided, through either a hotline or directly, there are a number of considerations for law enforcement. It may be difficult to establish the credibility of such sources and the evidence may be of little weight at trial, however, the tip may provide justification for further investigation. It should be noted that certain measures, such as search and seizure, are not justifiable on the basis of an anonymous tips alone.²²⁷ Thus the facilitating and use of public reporting, whilst valuable, can only be considered one small part of the overall investigative process.

Another important consideration in regard to victim reporting is to ensure that victims are aware that their involvement in an investigation will not lead to their own prosecution. International standards of non-criminalisation of smuggled migrants and victims of trafficking in persons are further examined in Sections II.6.3 and II.6.4 below.

²²³ *Trafficking in Persons Protocol*, art 9(2); *Migrant Smuggling Protocol*, art 15(1).

²²⁴ *Legislative Guides*, 300 [79].

²²⁵ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 19.

²²⁶ UNODC, *Toolkit to Combat Trafficking in Persons*, UNODC: Vienna, 2006.

²²⁷ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 10 Covert Investigative Planning, Techniques and Tactics, 182 – 183.

5.1 Assessment: Reporting Crime

- ➔ How do instances of migrant smuggling and trafficking in persons come to the attention of the FIA?
- ➔ Are contact information (telephone, fax number, email address, etc) available to the public to enable them to report or seek advice on migrant smuggling and trafficking in persons? How is this advertised and are the public aware of how to recognise these crimes? Are FIA officers adequately trained to deal with reports in different languages and able to refer victims seeking advice to appropriate services?
- ➔ Does Pakistan have a reward scheme for persons reporting trafficking and smuggling? What are the criteria for receiving a reward?
- ➔ Do victims face potential prosecution for reporting an instance of trafficking in persons or migrant smuggling?
- ➔ Does the FIA have formal relationships with other foreign and domestic agencies to facilitate effective reporting of migrant smuggling and trafficking in persons?
- ➔ How and how often do specialised FIA units/investigators take over investigations that started at the local or provincial level?

Review

There are three principal ways in which the FIA may become aware of instances of migrant smuggling and trafficking in persons. These include

- (1) apprehension and detection by FIA officers,
- (2) by way of referral (including returning deportees), and
- (3) by way of victim reporting or public tip-off.

As shown below, the overwhelming number of investigations conducted by the FIA are referred to the FIA from other agencies or reported by the victims/witnesses/the public.

Apprehension and detection by FIA

As mentioned earlier in this report, the FIA generally does not become aware of cases of migrant smuggling and trafficking in persons by way of patrols, surveillance, criminal intelligence or any other kind of proactive investigation.²²⁸

The only way in which the FIA itself regularly apprehends cases of migrant smuggling and trafficking in persons are through detection at border control posts or through so-called 'offloads', a term used by the FIA to refer to instances in which passengers suspected of irregular migration are prevented from leaving Pakistan. This usually involves a scenario in which passengers are able to pass through border control points and embark on their outgoing flight, but are arrested and offloaded by FIA officials prior to the plane departing.

Conflicting information has been obtained about whether a reward system exists for FIA officers who detect fraudulent documents thus preventing unlawful arrivals or departures. In any event, it was suggested by FIA officers that such a scheme would be valuable.

Referral

Where a case is referred to the FIA, this typically occurs in one of three ways. The first involves referral from foreign law enforcement agencies or overseas Pakistan missions.

²²⁸ See further Section II.3 above.

The second avenue of referral is by interviewing returned deportees. This typically involves Pakistani nationals who have been returned to Pakistan from places such as Iran, Turkey, Oman, Spain, or Greece. Deportees are arrested and detained upon return to Pakistan and are then interviewed by the FIA. Information garnered during an interview may initiate further investigations into the circumstances of their departure, involvement of smuggling/trafficking rings, and so on. Although returnees are detained, the FIA considers them to be ‘victims’ unless they are repeat offenders.

The third avenue of referral is from other domestic law enforcement agencies, particularly provincial police forces. Because migrant smuggling and trafficking in persons are, however, federal offences it would seem that referrals from provincial police are particularly rare. Earlier parts of this report have identified the relationship and communication between provincial police forces and the FIA as an area warranting further improvement.²²⁹

Victim reporting/public tip-off

In relation to encouraging public and victim reporting, Pakistan’s *Annual Action Plan 2010–11: Trafficking in Persons* states that:

Mass media campaigns in local language will be launched and incrementally strengthened depending on response. This would include explaining the rights of victims, encouraging them to come forward and get included in investigations against the traffickers, real stories and hardship of using illegal/informal channels to travel abroad under false promises of greener pastures.

National print and electronic media would be used to stimulate a thought process on the evils of trafficking. A comprehensive media policy including seminars/discussions, talk shows, interviews and walks would be launched to galvanise the silent majority.²³⁰

The focus of this campaign is intended to focus ‘initially on approximately 23 districts of Punjab, Sindh, [Khyber Pakhtunkhwa], and Balochistan that are a hubs of supply for migrant labour and bonded labour and other victims of trafficking.’²³¹ It was noted, however, that there is a ‘lack of support from the print and electronic media in the field of mass awareness.’²³²

In the 2009 *Trafficking in Persons Report*, produced by the US Department of State, it was relevantly stated that:

In 2008, the FIA sponsored anti-trafficking advertisements in major Urdu – and English –language newspapers, and its officers visited the five Punjab districts identified as major source areas to convene discussions with typical source communities. The FIA launched a hotline for reporting cases of trafficking and smuggling that received 811 complaints, but did not specify the number of trafficking-specific calls. In addition, the Ministry of Interior produced and distributed a film about the dangers of trafficking on state television and to vulnerable populations along the border with India.²³³

The recently published *2011 Trafficking in Persons Report* also notes that ‘the government donated radio air time for the FIA to broadcast public service announcements on human trafficking and human smuggling.’²³⁴

²²⁹ See further Section II.1.4 above.

²³⁰ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 3.1 – 3.2 [copy held by authors].

²³¹ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 3 [copy held by authors].

²³² Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 5(vii) [copy held by authors].

²³³ US, Department of State, *2009 Trafficking in Persons Report* (2009) 232.

²³⁴ US, Department of State, *2011 Trafficking in Persons Report* (2011) 287.

In addition to a mass media campaign, Pakistan's *National Action Plan for Combating Human Trafficking* indicates that:

A help line shall be created to provide a free of charge and permanent (7 days a week, 24 hours a day) communication service for victims and potential victims of human trafficking crimes. Help line operators shall closely cooperate with the ATUs.²³⁵

It should be noted that the FIA website also has a 'Citizen's Complaint Centre' which enables public reporting of any crimes that fall within the FIA jurisdiction.²³⁶

It is difficult to assess the impact of the mass media campaign and public reporting channels. Further investigation has revealed, however, that the FIA helpline is rarely ever used to report instances of migrant smuggling and trafficking in persons. Private citizens and victims are more likely to report these offences through local police stations, both provincial and federal. Victims of migrant smuggling usually lodge complaints (in person or anonymously) if smugglers have defrauded them or if smugglers took their money or otherwise made false promises. It is not clear whether victims run a risk of self-incrimination if they report such crime.

Officially there appears to be a reward scheme in place available to civilians for reporting known offenders (listed in the Red Book). There is allegedly a 100,000 rupee reward for this, however the criteria for giving the reward apparently varies from case to case depending on the quality and nature of the information acquired. The availability of this reward does not appear to be advertised in the Red Book or on the FIA website. The effectiveness of this scheme is thus somewhat questionable unless the general public are widely aware of it.

It has been indicated that the FIA is presently developing a crime stoppers program in conjunction with UNODC and Crime Stoppers International. No further information regarding this program is available.

Recommendations

Whilst it appears that there are mechanisms in place to enable the public to report migrant smuggling and trafficking in persons through the FIA website and helpline, the actual use of this method is low. The current situation suggests that many smuggled migrants, victims of trafficking in persons, and other witnesses of these crimes may be deterred from reporting relevant offences for fear of self-incrimination and prosecution.

It is therefore recommended that any mass advertising of these methods of reporting will also have to send a clear message that smuggled migrants and victims of trafficking in persons will not be prosecuted. The effectiveness of this will, however, rely on the FIA treating smuggled migrants and victims of trafficking in persons in an appropriate manner.²³⁷

There are reservations towards instituting a reward scheme for FIA officers, especially in an environment that is plagued by ongoing allegations of corruption. At this stage it would not

²³⁵ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

²³⁶ Pakistan, FIA, *Citizens Complaints Centre*, available at www.fia.gov.pk/casehistory/site/hlp_complaints.php (accessed 28 June 2011).

²³⁷ See further Sections II.6.2–II.6.5 above.

be desirable for rewards be given for the detection of fraudulent documents or for instances of migrant smuggling or trafficking in persons.

The effectiveness of the Red Book reward scheme, if it does indeed exist, is undoubtedly hampered by a lack of awareness. If the FIA intends to rely on this as a method of encouraging the public to report crime, then rewards must be advertised and guidelines for receiving rewards need to be made clear.

As it stands, there appears to only be informal arrangements with regard to receiving reports of migrant smuggling and trafficking in persons from other agencies, in particular provincial police forces. It is recommended that formal reporting schemes and relationships are created between relevant agencies and other stakeholders (such as NGOs) to ensure cases are swiftly brought to the attention of the FIA.

5.1 Recommendations: Reporting Crime

- ➔ Increase awareness of the FIA helpline and website referral mechanisms to report instances of migrant smuggling and trafficking in persons;
- ➔ Better publicise the existence of the Red Book reward scheme and ensure that appropriate guidelines are in place for the circumstances in which a reward may be given;
- ➔ Create formal reporting and referral systems with other domestic law enforcement agencies.

5.2 Case Management and Data Storage

Information is the mainstay of crime investigation; the accurate recording of complaints and allegations of crimes, management of case files and storage of data is crucial. Although many countries still do not operate computer databases, similar results can be achieved through careful and accurate filing of paper files or index cards.

Computer databases represent a significant investment, which is often underestimated. Hardware can soon become obsolete and software licences require regular and expensive subscriptions. However, there are important benefits to be had in terms of managing volume data that would soon become otherwise unmanageable. While the use of information technology can reduce the number of staff required to perform certain functions, any cost-benefit received is greatly reduced where human resources costs are low. Although, of course, a computer is much faster and the level of accuracy much greater, there is little that can be achieved by information technology that cannot be done by manual activity.

The main risk factor in both paper and electronic files is poor information management. Records may not have been properly completed in the first place or cross-referenced and inaccurate data entries or 'key-in' errors (typing mistakes) can mean not only that searches are incomplete, but also that false matches are made. As time goes by, information may become dangerously out of date or incomplete (a significant risk factor where dangerous criminals are involved). Poor security protocols can mean that the data may not be secure from unauthorised access or tampering. All these risks can be offset by proper protocols, but they must be effectively applied, enforced, and supervised.²³⁸

²³⁸ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 10.

Requirements

The *Migrant Smuggling and Trafficking in Persons Protocols* are silent on matters relating to the reporting process and the proper management of reports of trafficking in persons and migrant smuggling. It is relevant, however, that the *Convention against Transnational Organised Crime* requires State Parties to provide originals or certified copies of relevant documents and records as part of their obligation to mutually assist other State Parties.²³⁹ An organised and effective record management system is imperative to meeting this obligation where it arises. More generally, however, it is crucial to the effective investigation of these crimes that there are appropriate systems in place to record and deal with reports of suspected cases.

As with other criminal offences, it is essential that any reports about migrant smuggling and trafficking in persons are accurately, sensitively, and comprehensively recorded. The *Criminal Justice Assessment Toolkit* recommends that

as soon as an offence is reported, a supervisor should review the allegation together with any supporting facts and then allocate sufficient and appropriate resources to deal with it. This decision can be made more difficult when there are competing priorities and only limited resources to deal with them.²⁴⁰

The implementation of clear procedures and guidelines in this regard ensures that all matters are appropriately prioritised and dealt with.

There are also a number of best-practice guidelines relating to the physical recording and storage of reports. It is suggested that, where possible, a computer based recording system is ideal in terms of 'managing volume data that would soon otherwise become unmanageable.'²⁴¹ However, where such a system is in place, there is a clear need for robust security protocols to prevent unauthorised access or tampering. It is acknowledged that 'the least expensive solution is to maintain intelligence on hard copy in chronological or alphabetical order, or arranged by target or project.'²⁴² Regardless of whether a paper-based or electronic system is used, the overriding concern is that records are properly completed in the first instance, cross-referenced with other data, indexed alphabetically or chronologically, easily retrievable, and kept up to date.²⁴³

Those responsible for record keeping must also be aware that 'there are often strict international conventions, domestic legislation such as privacy laws, and regulations governing storage of information.'²⁴⁴ It is important that any record-keeping system is compliant with domestic law in this regard.

The *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* makes some further recommendations regarding the storage of data:

²³⁹ Articles 18(3)(f), 29 *Convention against Transnational Organised Crime*.

²⁴⁰ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 10.

²⁴¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 15.

²⁴² UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 9.7: Storage and Analyses, 166.

²⁴³ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 15; UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 9.7: Storage and Analyses, 166.

²⁴⁴ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 9.7: Storage and Analyses, 165.

Data storage systems should comply with industry standards so information can be shared and processed easily between regions and countries.

Collation, analysis and storage should be interconnected. The information should be indexed to permit efficient retrieval of the information, for example, so it is searchable by first or last name, by country, or by other identifiers.

Information must be stored in the manner that makes it most accessible. For example, information stored on micro-fiche is often time consuming to access such that information is no longer relevant by the time it is retrieved.

Information may be stored in one format, but if that format is about to become outdated, it should be transferred to the newest format so later retrieval information will be efficient. These practical steps become critical when key information is required on a time sensitive basis for an investigation or prosecution.²⁴⁵

5.2 Assessment: Case Management and Data Storage

- ➔ What happens when a migrant smuggling or trafficking in persons crime is reported to the FIA? Who records it? Are procedures in place for processing such reports?
- ➔ Is there a set format for recording initial crime reports? Does the format include information about date, persons involved, type of event/offence, and suspect?
- ➔ How is immediate action identified and managed? Who has to be notified about the crime?
- ➔ Is the person who reported the crime kept up to date with the progress of the investigation?
- ➔ How and where are reports recorded? Is it recorded on paper or electronically? How are reports stored and filed?
- ➔ What measures are in place to protect the security of the records (whether physical or digital)? Are record-keeping systems in compliance with international and domestic law regarding privacy and the storage of information?

Review

Consultation with the FIA and inspection of FIA premises indicate that the FIA does not have a computerised case management system. Rather, reports are recorded on paper and filed, with no computers or printers generally available to FIA officers. There have been suggestions that FIA officers are required to purchase and maintain their own stationary supplies.²⁴⁶ Some FIA officers elect to use their personal computer to record and store case information (which raises some concerns over privacy and security of files).

Inspection of the Islamabad zonal headquarters revealed that file keeping and management is extremely poor or non-existent. Files are exclusively produced manually and neither securely stored nor filed systematically. Indeed there are serious concerns about the conditions, quality, and organisation of case files. The current system creates a high risk of files being lost, damaged or disappearing. There also appears to be no possibility that cases can be cross-referenced. Whilst there were two computers in the headquarters available for

²⁴⁵ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 9.7: Storage and Analyses, 165.

²⁴⁶ See further Section II.4.4 above.

investigators to use, they were not networked and constant power failures would render them unreliable.²⁴⁷

Pakistan's *National Action Plan for Combating Human Trafficking* indicates that a Case Monitoring System (CMS) in the Anti-Trafficking Unit's Coordination and Monitoring Cell is currently being developed for review and monitoring of cases under the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan).²⁴⁸ In consultation with officials it was also indicated that a case management system is under development and will be based at the FIA headquarters, though it was also suggested that the proposed case management system was not likely to be operational 'any time soon'. Some FIA officers have been trained in Australia and the UK in relation to similar databases there.

Recommendations

A computer based case management system used by all FIA investigators is unlikely to be installed and operational in the near future. The acquisition, installation, and maintenance of such a system would require material, human, and financial resources also including uninterrupted power supply, networking, and an internet connection. The FIA does not have such resources and will not be able to obtain them in the short and medium term.

It is thus important that the current paper-based system is improved to meet best-practice standards. A starting point is to ensure that all FIA officers have appropriate stationery, that standard case files are used, and that officers are adequately trained in their use. Furthermore, it is imperative that a system is implemented to ensure files are properly and systematically filed, capable of cross-referencing and revisited regularly. Files need to be securely stored with restricted access to ensure privacy of information.

5.2 Recommendations: Case Management Systems and Data Storage

- ➔ Create formal procedures for the accurate recording of reports of migrant smuggling and trafficking in persons;
- ➔ Ensure staff are provided with adequate materials to record and track cases (including pens, standard forms, etc);
- ➔ Implement a secure and logical filing system for current and archived case files.

5.3 Information and Evidence Gathering

The outcome of a criminal case will depend on the quality and weight of the evidence. The decision as to what information or material should be collected or recorded needs to be made by someone competent in evidence gathering. This will ensure that no evidence is compromised or lost at the scene,²⁴⁹ thus jeopardising further investigations and prosecution. Accordingly, it is important that evidence is collected and recorded thoroughly and systematically.

The rules of evidence adopted by a criminal justice system may preclude some types of information from being considered by the trier of fact if the evidence's prejudice to the defendant (and its tendency to bias the trier of fact assessing the evidence) may outweigh its

²⁴⁷ See also Section II.4.4 above.

²⁴⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

²⁴⁹ Crime scene work is explored further in Section II.5.5 below.

usefulness (probative value). Other types of evidence, such as hearsay, may be precluded because they are considered by some systems to be inherently unreliable.²⁵⁰

Requirements

The *Convention against Transnational Organised Crime* and the *Migrant Smuggling and Trafficking in Persons Protocols* do not offer detailed guidance on appropriate information and evidence gathering techniques. There is, however, a broad requirement under Article 29(1) of the *Convention against Transnational Organised Crime* that each State Party 'to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel [...]'. This Article makes specific mention of developing programmes that focus on the 'collection of evidence'.²⁵¹ Front-line officers are often responsible for identifying victims and ensuring their safety, for collecting and preserving evidence, and for detaining suspects until specialised investigation teams take over the case.²⁵² It is thus particularly important that these officers are trained in the rules of evidence.

On a related matter, it is also imperative that law enforcement personnel be trained not to use 'physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding'.²⁵³ Article 23 of the *Convention against Transnational Organised Crime* also requires that this conduct be established as a criminal offence dealing with the 'obstruction of justice'. The *Legislative Guides* further highlight that

the use of force, threats and inducements to false testimony can occur at any time before the commencement of the trial, whether a formal "proceeding" is in progress or not. Therefore, the term "proceeding" must be interpreted broadly to cover all official governmental proceedings, including pretrial processes.²⁵⁴

The role of FIA officers clearly falls within 'government proceedings' and thus it is vital that such investigators are both trained and carefully supervised to ensure this obligation is fulfilled.

5.3 Assessment: Information and Evidence Gathering

- ➔ Are all relevant FIA officers trained in the rules of evidence? Are they trained in what to look for and how to protect evidence?
- ➔ In major cases, is an officer designated to ensure continuity and preserve the integrity of evidence and exhibits?
- ➔ Are FIA officers trained to ensure they do not intentionally or unintentionally induce false testimony or evidence?

Review

Pakistan's *National Action Plan for Combating Human Trafficking* indicates that staff from the Anti-Trafficking Units are trained specifically on 'obtaining, analysing and presenting as

²⁵⁰ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 11.

²⁵¹ Article 29(1)(e) *Convention against Transnational Organized Crime*.

²⁵² UNODC, *Needs Assessment Toolkit on the Criminal Justice Response to Human Trafficking* (2010) 27.

²⁵³ Article 23(a) *Convention against Transnational Organized Crime*.

²⁵⁴ *Legislative Guides*, 92 at [202].

evidence the information, documents, other things possessed by victims, and other sources.²⁵⁵ No further detail regarding this training is provided in the document.²⁵⁶

Consultation with FIA officials, however, indicates that provincial police officers and FIA investigators only receive very basic training on how to collect, analyse, and store evidence. There have been some suggestions that when evidence is obtained from victims, witnesses, and suspects coercive methods are used. In one instance it was mentioned that such methods might involve threats and or use of physical violence (e.g. beatings). Such practices clearly amount to an obstruction of justice and violate international standards and best practice.

It appears that some Anti-Human Trafficking Circles have evidence storage facilities whilst some others do not. Where a Circle has an evidence storage facility there appears to be a security guard in charge, with a receipt system in place such that any evidence taken can be accounted for. It was suggested that the effectiveness of such a system depended entirely on the particular office and manager in charge of supervising. The authors were unable to inspect any facility used to store evidence, thus some of the information cannot be verified independently.

Recommendations

The use of coercive methods to induce information from victims, suspects, and witnesses is of very grave concern. Accordingly, it should be a high priority that the FIA work to stamp out such practices swiftly.

The use of these practices also demonstrates the urgent need to improve relevant training. It is recommended that relevant training modules be reviewed and that it is ensured all FIA officers receive comprehensive instructions on proper information and evidence gathering techniques. The sensitive nature of migrant smuggling and trafficking in persons demands strict adherence to evidentiary procedures. It would also be ideal for frontline provincial officers to be trained in basic evidence preservation skills.

Whilst it appears that some Anti-Human Trafficking Circles have secure evidence storage facilities it must be ensured that all stations have appropriately implemented such systems.

5.3 Recommendations: Information and Evidence Gathering

- ➔ Abolish and prohibit the use of coercive interrogation and evidence gathering methods;
- ➔ Review relevant training modules and ensure that all FIA officers receive comprehensive instructions on proper information and evidence gathering techniques;
- ➔ Train provincial police officers on the basic skills of evidence preservation;
- ➔ Review evidence storage facilities and processes at all Anti-Human Trafficking Circles.

²⁵⁵ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

²⁵⁶ It should be noted that it would be more appropriate for the *National Action Plan* to refer to Anti-Human Trafficking Circles rather than Anti-Trafficking Unit on this point.

5.4 Border Control

Land border crossings, seaports, and airports play a crucial role in the smuggling of migrants and trafficking in persons. Many borders are porous; long coastlines and mountainous and remote borders are difficult to patrol and thus easily penetrated by international smugglers and traffickers. At the same time, border crossings and ports can constitute important points for intervention by customs and other law enforcement officers.

Law enforcement along with customs officers posted at border control points are tasked to enforce a good number of national laws covering physical movements across the borders. On the one hand, they are faced with increasing volume and complexities of international trade, increased security threats and organised crime, while on the other hand, they have to facilitate the cross-border movements of people. Accordingly, it is crucial that police forces, along with other border control and customs authorities, are adequately equipped and trained to detect and disrupt cross-border migrant smuggling and trafficking persons.

It has to be remembered that even well trained and highly resourced police, border and customs authorities can only ever physically inspect a tiny fraction of the huge volume of shipments that cross international borders. It is therefore important that law enforcement, customs, and border control agencies operate on a targeted risk management basis by acting on information or suspicions that suggest migrant smuggling and trafficking occurs. This approach, once more, highlights the need for comprehensive data and intelligence systems and information exchange between agencies and with other countries, which is explored elsewhere in this report.²⁵⁷

Requirements

The *Migrant Smuggling* and *Trafficking in Persons Protocols* contain similar requirements in relation to border measures, albeit with some minor differences.

Strengthening border control

Under Article 11 of the *Trafficking in Persons Protocol* and Article 11 of the *Migrant Smuggling Protocol* State Parties are required to strengthen border controls to the extent possible and – in addition to measures pursuant to Article 27 of the *Convention against Transnational Organised Crime*²⁵⁸ – to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. The qualification ‘to the extent possible’ must be read as referring to the means and resources available to each State Party as well as the practical questions posed by the nature of borders, land or sea, which may make effective border controls very difficult.²⁵⁹ Many of the issues raised by cooperation between border control agencies will be similar to those raised by cooperation between law enforcement agencies, and Article 27 of the *Convention against Transnational Organized Crime*.²⁶⁰ These measures are further examined in Section II.1.4 above.

The practical outcome of the requirement to strengthen basic border controls is to make it more difficult for smugglers and traffickers to use conventional means of transport and

²⁵⁷ See further Section II.1.4 above.

²⁵⁸ Article 27 *Convention against Transnational Organized Crime* sets out provisions relating to ‘Law enforcement cooperation.’

²⁵⁹ David McClean, *Transnational Organized Crime* (2007) 358.

²⁶⁰ *Legislative Guides*, 312 at [93].

travel routes to enter countries.²⁶¹ The *Toolkit to Combat Trafficking in Persons* suggests that this outcome can be achieved through measures such as ‘making border controls more effective and preventing the misuse of passports and other travel or identification documents’ and that ‘cross-border cooperation is recommended.’²⁶²

Travel and identity documents

With advances in technology the falsification of legal documents is occurring on an increasing and more sophisticated scale. The use of fraudulent documents plays a key role in facilitating migrant smuggling and trafficking in persons. Under Article 12 of both Protocols, State Parties are required to ensure travel and identity documents are of sufficient quality such that they cannot easily be misused, falsified, unlawfully altered, replicated or issued. Furthermore, State Parties must ensure the integrity and security of their travel documents to prevent unlawful creation, issuance and use.

The *Legislative Guides* suggest that setting or amending technical standards for the production of travel or identity documents may require legislative implementation.²⁶³ The *Toolkit to Combat Trafficking in Persons* notes, however, that ‘administrative and security elements are required to protect the production and issuance process against corruption, theft or other means of diverting documents.’²⁶⁴ The *Toolkit to Combat Trafficking in Persons* also promotes that:

Several kinds of technology that are new or in the process of being developed offer considerable potential for the creation of new types of documents that identify individuals in a unique manner, can be rapidly and accurately read by machines and are difficult to falsify because they rely on information stored in a database out of reach of offenders, rather than on information provided in the document itself.²⁶⁵

Under Article 13 of the *Migrant Smuggling Protocol* and Article 13 of the *Trafficking in Persons Protocol*, State Parties are also required, at the request of another State Party, to ‘verify within a reasonable time’ the legitimacy and validity of documents purported to have been issued by them. The *Legislative Guides* indicate that implementing this requirement will not generally require legislative implementation but may ‘require resources or administrative changes to permit the process to be completed in the relatively short time frames envisaged by the Protocol[s].’²⁶⁶

Whilst cross-border information sharing is not further examined in this report, it should be noted that both Protocols require State Parties to exchange information regarding travel and identity documents. Specifically, Article 10(b) of the *Trafficking in Persons Protocol* requires information exchange regarding ‘the types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons.’ In slightly different terms, Article 10(c) of the *Migrant Smuggling Protocol* requires information exchange regarding ‘the authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents.’

²⁶¹ UNODC, *Toolkit to Combat Trafficking in Persons* (2008), 200; UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7: Law enforcement and prosecution, 36.

²⁶² UNODC, *Toolkit to Combat Trafficking in Persons* (2008), 200.

²⁶³ *Legislative Guides*, 312 at [94].

²⁶⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008), 201.

²⁶⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008), 201–202.

²⁶⁶ *Legislative Guides*, 313 at [94].

Both Protocols also require improved training programmes for law enforcement and relevant officials in targeting trafficking and smuggling generally.²⁶⁷ The *Migrant Smuggling Protocol* specifically (and separately) requires that

States Parties shall cooperate with each other and with competent international organizations, non-governmental organisations, other relevant organisations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

- (a) Improving the security and quality of travel documents;
- (b) Recognising and detecting fraudulent travel or identity documents;
- [...]
- (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; [...].

Cooperation with commercial carriers

The *Migrant Smuggling* and *Trafficking in Persons Protocols* require that States ensure commercial carriers are obliged to ascertain that all passengers possess the necessary travel documents required for entry into the destination State and that failure to do so results in ‘carrier sanctions’.²⁶⁸ Whilst this largely requires legislative implementation, the role of law enforcement in ensuring carrier compliance is a necessity.

5.4	Assessment: Border Control
	<ul style="list-style-type: none"> ➔ What measures are in place to foster cooperation among border control agencies? Are there direct channels of communication? ➔ What measures are in place to detect instances of trafficking or smuggling at conventional and non-conventional points of entry and exit? ➔ Are FIA officers trained to recognise and detect fraudulent travel or identity documents? ➔ What procedures are in place to ensure travel and identity documents are of sufficient quality that they cannot easily be misused, falsified, unlawfully altered, replicated or issued? ➔ Does the FIA ensure the integrity and security of travel documents to prevent unlawful creation, issuance and use? What technology is used? ➔ What measures are available to assist other countries to verify the legitimacy and validity of documents purported to have been issued by them? Within what timeframe is this done? ➔ Are commercial carriers, including any transportation company or the owner or operator of any means of transport, obliged to ascertain that all passengers are in possession of valid travel documents? How does the FIA assess compliance?

²⁶⁷ See further Section II.2.3 above; Article 10(2) *Trafficking in Persons Protocol*; art 14(1); *Migrant Smuggling Protocol*.

²⁶⁸ Article 11(2)–(3) *Trafficking in Persons Protocol*.

Strengthening border control

As mentioned earlier, the FIA does not conduct any systematic or routine patrols or surveillance activities at Pakistan's land and sea borders.²⁶⁹ The FIA also would have no manpower and capacity to carry out these functions at current staff levels. Instead, any suspicious activity along or across Pakistan's land and sea borders would usually be apprehended by the paramilitary border control forces, the Coastguard and Navy. However, there appears to be no institutionalised avenues of communication between the FIA and the relevant border control agencies.

Pakistan's *Annual Action Plan 2010-11: Trafficking in Persons* specifically recognises that '[t]he long and porous border between Pakistan, Afghanistan, and Iran is difficult to [control] and stop human smuggling [and that] effective border control has to be achieved.'²⁷⁰ The *National Action Plan for Combating Human Trafficking* sets out a range of policy measures designed to improve border control and the apprehension of victims and perpetrators involved in migrant smuggling and trafficking in persons at Pakistan's main airports, seaports, and land-border control points:

- i. Also planned is strengthening of measures related to permission of entry, or denial of entry, revocation of visas, or temporary detention of persons accused of being involved in immigration/trafficking related offences, through strengthening of Passport Cells which are being staffed and equipped with additional resources. Responsibility: Director General FIA, Director General Immigration & Passports.
- ii. Efforts will be made for strengthening of immigration controls to reduce human trafficking particularly to Middle East and Europe. The proposed measures include creation of additional positions and provision of transport to strengthen Passport circle Gujranwala, sanction of posts and provisions of transport for establishment of new Passport Circles at Taftan, Turbat and Gawader. Manning of all immigration counters by ASIs is also Planned. Responsibility: Ministry of Interior.²⁷¹

Whilst it is difficult to specifically assess the feasibility and achievement of these goals, the majority of sources suggest that the Immigration Wing was severely understaffed in all areas.

An important measure used to strengthen Pakistan's borders is the use of so-called 'C-forms'. Nationals arriving from 'negative countries' are issued with a C-form and required to report to police regularly throughout their stay in Pakistan and surrender the completed form to the FIA upon departure from Pakistan. Negative countries are those states declared by Pakistan's Foreign Office as hostile or high-risk including, for example, India, Nigeria, and Tanzania.

Border management systems

In 2006 the Ministry of Interior reported that:

To prevent, forgery and travel document fraud, specialized system called Personal Identification Secure Comparison Evaluation System (PISCES) is now operational at nearly all exit/entry point. Other interventions include computerized NIC, Machine Readable Passport and Automated Finger Print Impression System (AFPIS).

²⁶⁹ See further Section II.3.4 above.

²⁷⁰ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 5(i) [copy held by authors].

²⁷¹ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

Forgery detection equipment has been installed at all major checkpoints.²⁷²

PISCES, the Personal Identification Secure Comparison and Evaluation System, is an electronic database, provided by the United States in 2002 and operated by the FIA, to collect information on persons entering and exiting Pakistan. It allows officers to collect and compare information, identify persons and, if necessary, question and detain persons of interest. PISCES was initially introduced at all international airports in Pakistan in 2004 and now operates at twelve airports, four seaports, five land border crossings, and two (international) railway stations across Pakistan.²⁷³

The database records all incoming and outgoing passengers and links all points of entry and exit. Since its inception, the database has been vital in identifying persons travelling on forged and stolen passports, and fraudulent visas. It is also of great use in identifying cases and patterns of migrant smuggling and trafficking in persons, and assists in the identification and arrest of persons wanted by INTERPOL and foreign law enforcement agencies.²⁷⁴

The PISCES system has been criticised in the past for a number of reasons. These include (unjustified) fears that the United States maintains unrestricted access to the PISCES database, that PISCES maintains no link to visa-issuing authorities, and that information could not be shared with domestic law enforcement or intelligence agencies.²⁷⁵

The PISCES system is currently undergoing a comprehensive upgrade, which also involves a name change to the Integrated Border Management System (IBMS). The system, funded by the Government of Pakistan, will functionally remain the same. Upgrades include the integration of biometric data, access to visa-issuing authorities, and read-only access by Pakistan's intelligence agencies.²⁷⁶ Other law enforcement agencies will only be able to access data on a case-by-case basis through requests made to the Ministry of Interior. The IBMS also combines the immigration watch list, exit control list, lists of blacklisted people, other wanted criminals and persons sought by INTERPOL as well as information about stolen passports.²⁷⁷

The implementation of IBMS involves six stages; at the time of this assessment, stage two had been completed. It is anticipated that full implementation will be complete within six months at all 26 border control points. IBMS is now fully deployed at Islamabad airport and is expected to be implemented at Karachi and Peshawar airports in mid-2011.²⁷⁸

The upgrades being made to IBMS appear to quell many concerns raised in consultation with immigration officers. It was highlighted that a system is currently in place at Islamabad airport whereby passports and visas issued by Saudi Arabia can easily be verified online (by

²⁷² Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 9-10 [copy held by authors].

²⁷³ Pakistan, FIA, *Personal Identification Secure Comparison and Evaluation System (PISCES)*, available at www.fia.gov.pk/prj_pisces.htm (accessed 17 June 2011).

²⁷⁴ Pakistan, FIA, *Personal Identification Secure Comparison and Evaluation System (PISCES)*, available at www.fia.gov.pk/prj_pisces.htm (accessed 17 June 2011).

²⁷⁵ Saba Imtiaz, *Pakistan to replace 'insecure' US border watch software* (2011) *The Express Tribune*, available at <http://tribune.com.pk/story/184568/pakistan-to-replace-insecure-us-border-watch-software/> (accessed 25 June 2011).

²⁷⁶ Saba Imtiaz, *Pakistan to replace 'insecure' US border watch software* (2011) *The Express Tribune*, available at <http://tribune.com.pk/story/184568/pakistan-to-replace-insecure-us-border-watch-software/> (accessed 25 June 2011).

²⁷⁷ See further Section II.3.1 above.

²⁷⁸ Saba Imtiaz, *Pakistan to replace 'insecure' US border watch software* (2011) *The Express Tribune*, available at <http://tribune.com.pk/story/184568/pakistan-to-replace-insecure-us-border-watch-software/> (accessed 25 June 2011).

validating passport and visa numbers). FIA officers suggested that it would be useful if other countries made similar mechanisms available. It appears, however, that the IBMS system will be capable of incorporating such measures.

Types of document fraud

The FIA distinguishes two categories of document fraud:

- 'DFDA' (detected fraudulent documents, category A) involves instances in which fraudulent documents are used to depart from Pakistan, i.e. instances in which FIA officers failed to apprehend the fraud on exit.
- 'DFDB' (detected fraudulent documents, category B) refers to situations where a person departs from Pakistan on genuine documents but obtains or seeks to obtain fraudulent documentation in another country for onward travel.

One source suggested that the most common type of document fraud involves the use of fake visas or stolen or fraudulently obtained visas from foreign embassies in Pakistan. It was suggested that many if not most fraud cases involve documents from Middle Eastern and European countries. These claims could not be verified independently.

It should be noted that Pakistan maintains a 'Red Book' of suspected migrant smugglers and human traffickers that was prepared and first issued in September 2006.²⁷⁹ More recent editions also include persons in respect of whom INTERPOL has issued Red Notices. A similar 'Black Book' of convicted migrant smugglers and human traffickers is also under development.²⁸⁰ These measures and their incorporation in the IBMS are important steps to restricting the movements of known traffickers and smugglers.

Cooperation with commercial carriers

There is no formalised system of cooperation between the FIA and commercial air carriers, however some airlines employ compliance officers to ensure that outgoing passengers hold valid travel documentation. It was not possible to assess the frequency and quality of collaboration between airline compliance officers and the FIA.

Recommendations

A major hurdle to the effectiveness of the FIA in addressing migrant smuggling and trafficking in persons appears to be the lack of communication and cooperation with other border control agencies. The capacity of the FIA is clearly limited in this way, however, it is recommended that these relationships be formalised and strengthened to better address the issue of cross-border migrant smuggling and trafficking in persons.

The proposed implementation of IBMS is a promising development, however, it will be important to monitor its deployment and effectiveness in the coming years. It is recommended that relationships be established with other countries to enable online access to visa-issuing authorities to check visa validity.

²⁷⁹ Pakistan, FIA, *Annual Action Plan – 2009 (Trafficking in Persons)* para 6.1.i [copy held by authors].

²⁸⁰ Pakistan, FIA, *Annual Action Plan – 2009 (Trafficking in Persons)* para 6.1.ii [copy held by authors]; see also Section II.3.1 above.

5.4 Recommendations: Border Control

- ➔ Formalise and strengthen relationships with other border control agencies to ensure cases of migrant smuggling and trafficking in persons are appropriately referred.
- ➔ Establish relationships with other countries to enable online access to visa-issuing authorities to check visa validity.

5.5 Crime Scene Work

Crime scenes are the starting point of the forensic process. At this stage, the investigation involves a process that aims to record the scene as it is first encountered and recognise and all collect all physical evidence potentially relevant to the solution of the case.²⁸¹ Crime scenes can be persons, places or objects that are the subject of a criminal investigation.²⁸² Trafficking and migrant smuggling crime scenes are somewhat unique in that there is likely to be more than one crime scene due to the movement of the persons involved. A serious consideration is that the main source of evidence is often the victim, that is the smuggled or trafficked person.

In crime scene work, as in other forms of forensic endeavour,²⁸³ it is vital, that the investigations are meticulous, that detailed records are kept, and that a proper chain of custody (the continuity of evidence) is maintained for each item of evidence. Such a chain will minimise the chance of loss, contamination, or substitution of material and helps to prove the origin and veracity of specimen or exhibits.

Crime scene work involves proper preparation for and rapid preservation of the crime scene. It requires special equipment, ranging from protective clothing to specimen containers, as well as personnel familiar with crime scene management and record keeping.

Requirements

Dealing with crime scenes in relation to migrant smuggling and trafficking and persons is, in many ways, the same as any other crime. However, there are a number of important considerations given the target of these crimes are human beings.

The *Convention against Transnational Organised Crime* and the *Migrant Smuggling and Trafficking in Persons Protocols* are silent on requirements in relation to crime scene work. There is only a broad requirement that each State Party ‘to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel [...]’, particularly in terms of the ‘collection of evidence.’²⁸⁴ There are, however, a number of tools and publications produced by UNODC that offer best practice guidance on dealing with the specifics of migrant smuggling and trafficking in persons crime scene work.²⁸⁵ The following sections explore some of the basic requirements of effective crime scene investigation.

²⁸¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure, 13.

²⁸² UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 12: Crime scene and physical evidence examination, 230.

²⁸³ See further Section II.5.6 below.

²⁸⁴ Article 29(1) *Convention against Transnational Organised Crime*.

²⁸⁵ See further, UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure, 13-16; UNODC & UN.GIFT, *First Aid Kit for use by Law Enforcement First Responders in Addressing Human Trafficking* (2009) 10–13; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) Chapter 5: Law enforcement and prosecution (Tool 5.9); UNODC, *Toolkit to Combat Smuggling of Migrants*

Evidence

It is important that first responders and investigators are aware of what constitutes evidence at a crime scene. Whilst not intended as an exhaustive list, the *Toolkit to Combat Trafficking in Persons* notes the following types as critical forms of evidence:

- Biological samples such as DNA from blood, semen, saliva and breath, hair, fingerprints and body part prints, urine, teeth
- Fibres such as pieces of material torn from clothing, or pieces of weapons broken during an attack
- Photographs, videos, drawings and plans
- Documentary evidence such as receipts, travel tickets or bank statements²⁸⁶

The Toolkit further notes that crime scene investigations are resource intensive and complicated but that ‘even very simple actions — such as taking photographs of victims and scenes or making drawings and plans of premises — can significantly improve the chances of successful, fair prosecution.’²⁸⁷

Establishing/organising a crime scene

The *Toolkit to Combat Trafficking in Persons* emphasises that it is important investigators are trained to properly secure a crime scene. This involves ensuring that victims and evidence at the location are not interfered with, there is controlled access to a scene, records are kept of everyone who has access to a scene, fingerprints and DNA of staff attending the scene are taken prior to entry and that there are adequate procedures for packaging of recovered material to prevent deterioration or contamination.²⁸⁸

It is also crucial that recovery, transport, storage, and analysis of samples from crime scenes are organised. The *Toolkit to Combat Trafficking in Persons* recommends that crime scenes be organised to include the following elements:

- Samples should be obtained by appropriately trained staff. Staff conducting medical examinations will need to be highly trained; other examinations will require only basic training.
- Staff should be provided with appropriate equipment, including health and safety clothing, bags, boxes and bottles to store samples and material, and labels and record sheets to identify them clearly.
- Appropriate and secure storage facilities should be provided where material is held before it is taken for further analysis, and places of analysis should be clean and have procedures in place to protect samples and materials.
- Material should be transported in a way that does not allow contamination; there should be a system of tracking samples by recording who placed them in storage, who removed them and who received them for analysis.²⁸⁹

First responders

First responders to crime scenes, typically police officers, are instrumental to the ‘preservation of the scene and the integrity of the evidence, as well as early documentation of the crime scene, its evidence and all activities at the scene.’²⁹⁰ It is thus important that

(2008) Tool 7.10 Investigating the smuggling of migrants: crime scenes.

²⁸⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 194.

²⁸⁷ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 194.

²⁸⁸ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 194.

²⁸⁹ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 194.

²⁹⁰ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure, 13.

first responders have adequate training to deal with crime scenes in the manner outlined above until specialised crime scene investigators take over the work. It should be noted that first responders also inevitably deal with victims and witnesses before others.

The *Convention against Transnational Organized Crime* and Protocols have a number of requirements in respect of training law enforcement to protect victims and witnesses. These requirements are further discussed in Section II.6 of this report but it should be noted that such requirements are important in the context of crime scene work. Securing a trusting relationship with victims and witnesses is crucial to subsequent evidence gathering and successful prosecutions.

Crime scene investigation (CSI) services

Trafficking in persons and migrant smuggling are unique crimes that require specialised investigation services. The use of dedicated CSI services, trained to deal with the specifics of these crimes, ensures the best possible chance for a successful prosecution. For this reason it is also important that these services have quality assurance procedures in place. Furthermore, there needs to be a clear and established relationship between crime scene investigators, first responders, police, investigators/detectives, forensic experts and prosecutors.²⁹¹

CSI facilities and equipment

Crucial to the work of CSI services is the use of appropriate equipment necessary to process a crime scene and a mechanism to secure and transport the evidence to either a laboratory or police facilities. For specific crimes, such as migrant smuggling and trafficking in persons, the *Criminal Justice Assessment Toolkit* suggests that specifically designed crime scene investigation kits are used for the collection of evidence.²⁹² Whether CSI services have access to dedicated cars, mobile laboratories, IT equipment, portable equipment and evidence protection materials will also affect their ability to effectively respond.²⁹³

CSI staff recruitment and training

The capacity of CSI services to effectively carry out crime scene work largely depends on the training of staff. To this extent it is important that education and training is provided with specific courses on migrant smuggling and trafficking in persons.

²⁹¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure 15.

²⁹² UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure 15.

²⁹³ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure 15.

5.5 Assessment: Crime Scene Work

- ➔ Are FIA investigators trained in identifying, protecting, and collecting relevant evidence?
- ➔ Are FIA investigators trained in the proper technique for establishing and organising a crime scene?
- ➔ Are first responders provided with adequate training to ensure preservation of the crime scene and victims/witnesses?
- ➔ Are there specialist personnel for crime scene management?
- ➔ Are all staff aware of the importance of securing and preserving a crime scene in order to facilitate a thorough examination of it?
- ➔ Are relevant staff properly trained in record keeping, electronic data collection, use of equipment, photography, et cetera? Are they aware of potential cross-contamination issues? Do they know how to bag, label, and record evidence and exhibits?
- ➔ Are dedicated crime scene investigation (CSI) services available in Pakistan? Are there quality assurance procedures regarding their work? What is the relationship between CSI services and other relevant agencies?
- ➔ Do CSI services have access to specially designed kits designed for migrant smuggling and trafficking in persons investigations?
- ➔ How are CSI services staff recruited? Is there specific training?

Review

It has been difficult to establish the qualification and abilities of FIA officers to conduct crime scene work thoroughly or professionally. From the limited information available it appears FIA staff generally obtain no particular training on matters relating to crime scene work and that the FIA does not maintain a dedicated crime scene investigations unit.

There is, however, a possibility that the FIA may utilise or rely on crime scene investigation services provided by other agencies. Within the FIA, counter-terrorism and computer crime units receive some training pertaining to crime scene work, though it is not evident that these skills and expertise are shared with the Immigration Wing and Anti-Human Trafficking Circles.

Recommendations

It is essential that basic skills in crime scene work are incorporated into future training modules received by FIA staff. Whilst a dedicated CSI unit would be desirable, as a first priority it is more effective to ensure all relevant staff have basic skills. Where possible, some FIA officers should be trained at a higher level as designated as specific crime scene investigators with management duties in relation to crime scenes.

5.5 Recommendations: Crime Scene Work

- ➔ Ensure all FIA staff are trained in basic crime scene work.
- ➔ Designate higher trained FIA officers as lead crime scene investigators.

5.6 Forensics

Forensic services are key to an effective and fair criminal justice system because they provide objective and timely information for multiple phases at different stages of the criminal justice process. The ultimate objective of forensic science is to contribute to finding the truth, more precisely to provide the criminal justice system with answers, using objective evidence, and by questions aimed at determining the guilt or innocence of an offender. It is therefore essential that forensic services are provided by a highly qualified and impartial entity.²⁹⁴

Requirements

The *Convention against Transnational Organised Crime* and its Protocols do not have any specific requirements in relation to forensic work. Secondary material produced by UNODC to deal more specifically with migrant smuggling and trafficking in persons is also of limited instructive value. The *In-depth Manual on Investigating and Prosecuting Migrant Smuggling* does note that fingerprints, biological materials and deoxyribonucleic acid (DNA) are all particularly important when investigating migrant smuggling. By analogy, these are also likely to be important in an investigation into trafficking in persons.

Types of forensic evidence

Some of the most important types of forensic evidence are fingerprints, biological materials and Deoxyribonucleic Acid (DNA). Fingerprints may be found on travel or identity documents, on vehicles or other items such as weapons. It is important in linking traffickers/smugglers to their victims, particularly where travel documents have been confiscated. Biological materials are useful in proving ‘aggravating factors’ as well as that the trafficking/smuggling took place. For example, sexual exploitation can often be established through the collection and analysis of biological material. It is recommended that

gender, cultural and privacy issues must be respected when seeking to obtain biological evidence either with the consent of the individual, pursuant to judicial authorization or under legislative authority.²⁹⁵

DNA is also of value as forensic evidence as it carries genetic information and can be found on items such as cell phones or cigarette butts. Specialised resources are necessary to collect DNA evidence but it may be used to link persons to crime scenes or victims. It is noted that ‘extracting a DNA sample involves a significant invasion of privacy and in most jurisdictions is governed by strict laws.’²⁹⁶ To this end, it is important that those involved in forensic services are properly trained to be compliant with these laws.

Provision of forensic services

The *Criminal Justice Assessment Toolkit* notes that

²⁹⁴ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure.

²⁹⁵ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 12: Crime scene and physical evidence examination, 232.

²⁹⁶ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 12: Crime scene and physical evidence examination, 233.

The provision of forensic services depends on the national legal systems and therefore the mandate and structure of forensic service providers are influenced by the political views and traditions in individual countries. There is no single model for the provision of forensic services.²⁹⁷

The *Criminal Justice Assessment Toolkit* further notes that

under ideal circumstances, a close relationship is established between the forensic science laboratory and crime scene investigators to ensure that the best samples are identified, collected and submitted to the laboratory. It might also happen for laboratory personnel to be called to crime scenes.²⁹⁸

5.6 Assessment: Forensics	
→	Is there a dedicated forensics team/laboratory?
→	What procedures are there to ensure the integrity and identity of evidence throughout the forensic process? Are forensic personnel trained to deal with victims in a sensitive nature?
→	Is there equipment available to collection fingerprints, DNA and biological materials? Is this equipment portable?
→	What is the scope of forensic services provided by forensic laboratories?
→	What is the relationship between forensic services and investigation personnel?

Review

Types of forensic evidence

In 2006, Pakistan's Ministry of Interior reported that 'to prevent forgery and travel document fraud' the Automated Finger Print Impression System (AFPIS) was introduced.²⁹⁹ While details about this System and its operation were not available, fingerprint scanners are installed at all immigration and emigration points at Pakistan's international airport. The practical use of the AFPIS appears to be very limited and some sources suggest that it is not a routine feature of investigations to take fingerprints of suspects.

The Integrated Border Management System (IBMS) which has been installed to replace PISCES also has a capacity to store fingerprints as well as photos and other biometric information of all arriving and departing passengers.

Currently Pakistan does not have a collection system or legal basis for the admission of DNA evidence. Furthermore, there appears to be a limited or non-existent capacity to forensically analyse biological material.

Forensic capacity of the FIA

Presently the FIA has limited forensic capacity that can assist in the validation of Pakistani documents, including foreign passports, national identity cards, and fingerprints. The FIAs forensic team is part of the agencies Technical Wing, which also has computer forensics capabilities. Suspicious Pakistani documents are usually sent to the National Database & Registration Authority (NDRA) in the Ministry of Interior for verification. In so far as foreign documents are concerned, the FIA relies on foreign missions and law enforcement agencies,

²⁹⁷ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure, 1.

²⁹⁸ UNODC, *Criminal Justice Assessment Toolkit* (2006) Forensic services and infrastructure, 13.

²⁹⁹ Pakistan, Ministry of Interior, *Combating Human Trafficking* (2006) para 9-10 [copy held by authors].

though such cooperation takes, on average, two to three months. The FIA does, however, have dedicated hand-writing analysis experts.

The FIA is seeking to enhance its forensic and laboratory capacity by establishing laboratory facilities at its Islamabad headquarter and at Pakistan's five main airports. The laboratories envisaged for the airports are based on similar facilities used by Thai immigration authorities at Bangkok's Suvarnabhumi airport, which was visited by FIA officials in early 2011. The plans are only in their infancy and contingent on foreign aid while any capital works would be borne by the Government of Pakistan. It was suggested that once a forensic laboratory was operational at the FIA headquarter in Islamabad, all other FIA posts would need to refer material for forensic examination to Islamabad.

In a separate development, the Government of Pakistan has taken steps to set up a new National Forensic Science Agency (NFSA) in Islamabad to serve all Pakistani law enforcement agencies.³⁰⁰ It is unclear when this Agency will be fully operational and how relationships with individual law enforcement agencies, including the FIA, will be formalised and managed.

In addition, Pakistan has recently received five vehicles equipped with mobile forensic laboratories from Germany. It was not possible to independently assess the practical use of these vehicles and establish whether the FIA has access to them.

Recommendations

There appears to be a duplication of efforts to grow Pakistan's forensic science capabilities and a lack of coordination between different branches of government and between donor countries.

As a first priority, it would be desirable to formalise the relationship between the FIA and the new National Forensic Science Agency. This would provide the FIA with access to forensic services in the medium term. In the absence of better training and additional human resources, it may not be desirable to develop forensic and laboratories capabilities within the FIA at this point, though these arrangements may require further review in a few years time.

5.6 Recommendations: Forensics

- Establish a formalised relationship between the FIA and National Forensic Science Agency for the use of forensic services with regard to migrant smuggling and trafficking in persons cases.

5.7 Identification of Suspects

The investigation process is aimed at identifying the perpetrator of a crime, and a case will be greatly strengthened by good identification evidence. However, the procedures by which a suspect can be identified have to be strictly controlled in order to prevent a miscarriage of justice. Poor identification procedures can lead to unacceptable bias and to all resulting evidence being ruled inadmissible.³⁰¹

³⁰⁰ See Pakistan, Ministry of Interior, *National Forensic Science Agency (NFSA)*, available at <http://nfsa.gov.pk/> (accessed on 30 June 2011).

³⁰¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 12.

Requirements

The *Convention against Transnational Organized Crime* and its Protocols do not have any specific requirements in relation to the processes and methods used to identify suspects. Secondary material produced by UNODC specific to the issues of migrant smuggling and trafficking in persons is also of little value on this particular topic.

The *Criminal Justice Assessment Toolkit*, however, does provide the following guidance:

Suspects may already be known to the victim, in which case identification will not be an issue. More challenging are those situations where the suspect is a stranger to the victim. On these occasions, the suspect will be identified by forensic traces left at the scene, or because they have been seen by the victim or other witness, or because of they have confessed.

Eyewitness testimony can be influenced by many factors and has been found not to be as reliable as once thought. One of the chief difficulties is the way in which a police officer may inadvertently (or even deliberately) seek to influence a witness in their identification. Consequently, a number of practices have developed in order to present eyewitness identification in a form that is more objectively reliable. These include the use of books containing photographs of known criminals (“mug-shots” – often used when there is no known suspect), the use of photographic databases and, of course, the classic identification parade, also known as a line-up. In each of these procedures, care must be taken to ensure that the investigator does not signal a preference or indication as to whom he or she believes is responsible. The images in the photographs shown and those persons standing in a parade must be comparable to the suspect in terms of size, body shape, and ethnicity. A bad identification procedure can lead to unacceptable bias and to all resulting evidence being ruled inadmissible.

A further method for identifying a suspect can involve officers accompanying the victim or witness to the locality of the crime scene shortly after the offence has taken place or at similar times in the following weeks. This is done in the hope that the suspect may still be in the area (or normally frequents it) and that he or she will be picked out by the victim or witness. When a suspect has been identified in this way, any written description taken before the procedure can help to corroborate a positive sighting.³⁰²

5.7 Assessment: Identification of Suspects

- ➔ What laws and procedures are in place to enable and facilitate the identification of suspects? Are there special procedures for perpetrators of migrant smuggling and trafficking in persons?
- ➔ Do FIA investigators have the means to take fingerprints and DNA from suspects of crime for the purposes of identification?
- ➔ Do FIA investigators have ledgers, files, or databases containing photographs, fingerprints, and other biometrical information of known criminals? How is this information stored and organised? Is it updated regularly?
- ➔ Do FIA investigators have access to identification facilities and equipment, such as ‘identification suites’, and cameras?

³⁰² UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 12.

Review

Of most relevance to the identification of suspects is the FIA's 'Red Book' of suspected migrant smugglers and human traffickers that was first issued in September 2006.³⁰³ More recent editions also include persons in respect of whom INTERPOL has issued Red Notices.

A similar 'Black Book' of convicted migrant smugglers and human traffickers will also be compiled in the future.³⁰⁴ Such initiatives are important avenues by which the public, the FIA, and other law enforcement are able to identify suspects.

It has been previously canvassed in this report that the taking of fingerprints, DNA, and other biological material is rare and that the FIA has limited forensic capabilities for this type of identification measures.³⁰⁵ The use of photos and biometric data in the IBMS at border checkpoints is an emerging practice that will undoubtedly assist in the identification of suspects.³⁰⁶

Recommendations

The most obvious constraints in relation to the identification of suspects in Pakistan relates to the limited forensic capabilities of the FIA and law enforcement generally. The recommendations made in Section II.5.6 'Forensics' are thus salient on this point.

5.7 Recommendations: Identification of Suspects

- ➔ Improve forensic capabilities as per recommendations in Section II.5.6 of this report.

5.8 Interviewing and Treatment of Suspects

Interviewing is a cornerstone of any investigation. There are two basic types of interview conducted by investigators: interviews with suspects and victim/witness interviews (see Section II.6.2 below). Suspects will normally be trying to avoid giving truthful answers to investigators' questions and therefore, by implication, such interviews are more adversarial.³⁰⁷

International law and best practice guidelines, along with many domestic laws, limit the use of coercive interviewing techniques and strictly prohibit the use of torture. It is therefore important that investigators have a clear understanding about the boundaries of permissible interviewing techniques.

Requirements

The *Convention against Transnational Organised Crime* and the *Migrant Smuggling and Trafficking in Persons Protocols* are silent on matters relating to the interviewing of suspects and the rights of accused persons in general. There are other sources of international law,

³⁰³ Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 6.1.i [copy held by authors].

³⁰⁴ Pakistan, FIA, *Annual Action Plan – 2009* (Trafficking in Persons) para 6.1.ii [copy held by authors].

³⁰⁵ See Section II.5.6 above.

³⁰⁶ See further Section II.5.4 above.

³⁰⁷ See further UNODC, *Criminal Justice Assessment Toolkit* (2006) Crime Investigation, 17–18.

however, that do offer some guidance on how suspects should be interviewed. The UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, UN *Code of Conduct for Law Enforcement Officials*, and the *Universal Declaration of Human Rights* are the most instructive instruments on this matter.

Among other relevant international instruments are the *International Covenant on Civil and Political Rights (ICCPR)*, the *Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the UN *Declaration on the Elimination of All Forms of Racial Discrimination*, the *Standard Minimum Rules for the Treatment of Prisoners*.

It is outside the scope of this report to comprehensively examine all these elements of international law. The important point here is that any interviewing of suspects must abide by the principles laid by these instruments to which Pakistan is a Signatory. In any event, these instruments provide a minimum benchmark by which interviews should be conducted as a matter of best practice.

It is suggested in the *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* that suspects should be informed of their rights, a record of relevant data be kept, the arrest record communicated to the detainee or his or her legal counsel, and, where necessary, an interpreter provided during the interview.³⁰⁸ Authorities must follow procedural guidelines when questioning suspects. Suspects may not be forced to incriminate themselves; they should have an opportunity to seek legal assistance before being questioned and be cautioned that information they provide may be used against them in criminal proceedings.³⁰⁹ It is clear that such recommendations are also applicable to interviews involving suspected traffickers.

Furthermore, authorities should not make promises, threats, or offer inducements or benefits to the smuggler to provide information: Article 23 *Convention against Transnational Organised Crime*. If a smuggler is providing information in exchange for reduced charges or money, specific procedures should be followed so as to comply with this Article.

Article 23. Criminalisation of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention.

³⁰⁸ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 9: Human rights, 11.

³⁰⁹ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 13: Debriefing, Interviews and Testimony, 252.

5.8 Assessment: Interviewing Suspects

- ➔ Do FIA investigators receive training in interview techniques? What does the training consist of?
- ➔ Are interviews of suspects recorded? If yes, where and how?
- ➔ Are there guidelines or codes of practice on interviewing suspects? Do these guidelines reflect international standards?
- ➔ Are suspects entitled not to answer questions? Is there a right against self-incrimination? Do suspects have the right to have a lawyer present during the interview? Are suspects informed of that right?
- ➔ Are investigators aware of the risk of interviewing vulnerable persons?
- ➔ Do investigators adhere to international (and national) standards or is there evidence that severe interviewing techniques and/or torture are used?
- ➔ Are suspects treated according to international standards? How long are they detained for and in what conditions?

Review

Interviewing of suspects

Several sources suggest that FIA investigators are not given any training on interviewing techniques specific to migrant smuggling and trafficking in persons. There are also no guidelines on the matter.

During consultation with relevant officials it was suggested that coercive methods are being used to gain information from suspects. More specifically, these methods might sometimes include threats and use of physical violence, especially beatings. As was mentioned previously, such reports are of great concern and in breach of international standards and best practice. Furthermore, evidence gained in this manner is at risk of being deemed inadmissible during a trial thus jeopardising the prospect of a conviction.

It was also suggested that victims are not warned of their legal rights and do not have any legal representation present whilst being interviewed.

If suspects, who are Pakistani nationals, are apprehended at immigration control points they will be referred by the frontline officer to the shift manager who will conduct a short interview and record basic personal details and other information of the suspect before referring the person to the Anti-Human Trafficking Circles. Interviews are generally not structured and are only recorded on paper. Computer and recording equipment are generally not available for this purpose. Further information about interviewing techniques at Anti-Human Trafficking Circles was not available.

Treatment of suspects

There are significant concerns about practices relating to the detention of suspects and the conditions in which they are held. All Anti-Human Trafficking Circles have a detention cell where a suspect can be kept for 24 hours. After this time period permission from a court is required and physical remand can be extended to a period of 14 days.³¹⁰ It was indicated that suspects are usually only kept for a period of 7–10 days. Once charged and following the relevant judicial processes the suspect will be transferred to a remand centre until

³¹⁰ See also Section II.4.3 above.

completion of the trial. Consultation with officials indicated the current processes in this respect are 'cumbersome'.

Zonal headquarters have holding facilities for adult male suspects while women are referred to general female prisons. There appears to be no capacity to accommodate minors. Holding facilities at zonal headquarters only provide the most basic accommodation for suspects who are accommodated in one large room with sleeping mats and rudimentary sanitary facilities. There are concerns about the suitability of holding facilities, especially during extreme weather (heat or cold). It is not clear what services including food, access to lawyers and other support are available to persons held there.³¹¹

It should be noted that suspects (as well as victims) who are non-nationals and are apprehended at immigration control points at airports are generally referred to airline staff. Commercial airlines have the responsibility to arrange return travel to the country of origin or third country at the airline/passengers expense. There are no facilities to hold foreign suspects or victims at international airports for any length of time.

Recommendations

Current interviewing techniques used by the FIA are of great concern. Immediate steps must be taken to ensure coercive methods are not used in the interviewing of suspects. Furthermore it is suggested that interviews are recorded on an audiotape. Suspects should also be alerted to their legal rights prior to the interview process.

Recommendations pertaining to the facilities and equipment available to the Anti-Human Trafficking Circles, including facilities to detain suspects are set out in Section II.4.4 above.

5.8 Recommendations: Interviewing Suspects

- ➔ Ensure that coercive methods are not used in the interviewing of suspects.
- ➔ Interviews should be recorded on audiotape.
- ➔ Suspects should be informed about their legal rights prior to the interview process.

5.9 Financial Investigations

Financial investigation involves the collection, collation and analysis of all information available to assist in the prosecution and to deprive the migrant smugglers and human traffickers of the proceeds of crime. The action may target an individual, an entity or criminal organisations involved in the crime.³¹² Migrant smugglers and human traffickers commit their crimes for direct or indirect financial benefit; examining a suspect's finances is therefore vital to facilitating an investigation.³¹³

Money is involved at all levels of the criminal enterprise; the initial investment into infrastructure and personnel, the ongoing management of the proceeds of the

³¹¹ See further Section II.4.4 above.

³¹² UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 4: Financial investigations, 3.

³¹³ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 4: Financial investigations, 1; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 187.

exploitation/smuggling, the laundering and movement of the profits, and the use of said profits to pursue a desirable lifestyle (travel, luxury items, jewellery et cetera).³¹⁴

Regardless of whether financial gain is needed to establishing an offence, an investigation of finances can lead to opportunities to seize assets and ultimately secure a conviction. Consequently, the investigation of financial transactions and the analysis of the results often provide important information that can be used to ensure that the operation progresses more efficiently. For example, an investigation of the purchase of travel tickets may reveal details of travel arrangements, and analysis of credit card expenditure can reveal airlines, hotels, restaurants or other venues regularly used by perpetrators. This information can be the basis for the allocation of surveillance resources and may be valuable evidence.³¹⁵

It is ideal to coordinate the arrest phase with financial sequestration procedures in order to arrive at the optimal situation of synchronised arrest of offenders and confiscation of their assets.³¹⁶

Requirements

A number of international instruments can guide and assist countries in creating and improving financial investigation mechanisms. The *Convention against Transnational Organised Crime*, for instance, advocates the institution of adequate financial regulations, including enforcement measures, to deter and detect all form of money laundering.³¹⁷ Measures requiring legislative or regulatory implementation are outside the scope of this report but there are a number of important provisions relating to the role of law enforcement. Article 7(1) of the Convention, which deals with money laundering, requires that law enforcement and other authorities dedicated to combating money laundering

[h]ave the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money- laundering.

Article 29(1)(d) further requires that State Parties shall, to the extent necessary, initiate, develop or improve specific training programs for its law enforcement personnel to deal, inter alia, with

detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes.

Relevantly, the *Toolkit to Combat Migrant Smuggling* suggests that

where there is no trained financial investigator, unless legal opinions or the advice of senior officers indicates otherwise, investigators might approach senior banking staff for guidance about financial systems. That could help investigators to understand how money is moved and suggest opportunities for attacking an organised criminal group.³¹⁸

³¹⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 187.

³¹⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 187.

³¹⁶ See Section II.5.10 below.

³¹⁷ Article 7 *Convention against Transnational Organised Crime*. See further David McClean, *Transnational Organized Crime* (2007) 92–108.

³¹⁸ UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7: Law enforcement and prosecution, 18.

The *Basic Training Manual on Investigating and Prosecuting Migrant Smuggling* importantly advises that ‘law enforcers [...] should be aware of privacy considerations throughout their investigations; otherwise, the investigation or prosecution can be put at risk.’³¹⁹

The *Toolkit to Combat Trafficking in Persons* makes the point that a financial investigation in the pre-arrest phase is particularly valuable for investigators but that it has to be ‘considered against the risk of disclosing the law enforcement operation.’³²⁰ Accordingly, there must be strong procedures and legislation in place to ensure such investigations are not disclosed (i.e. an institution disclosing an investigation to the account holder).

5.9 Assessment: Financial Investigations	
	<ul style="list-style-type: none">➔ Does Pakistan have a Financial Intelligence Unit (FIU)? What are its resources? How does it operate? To which agencies does it disseminate information?➔ Are FIA investigators authorised, trained, and equipped to conduct financial investigations? Do they cooperate with financial investigation units? Are they aware of privacy considerations?➔ Have measures been implemented to ensure that authorities dedicated to combating money laundering have the ability to cooperate and exchange information both at the national and international levels?➔ Are there any special anti-money laundering provisions in relation to migrant smuggling, trafficking in persons, and organised crime generally?➔ Are there measures to ensure parallel financial investigations are not disclosed or compromised?

Review

The FIA has a financial investigations capability vested in its Economic and Banking Crime Circles, which exist across Pakistan. These Circles are usually involved in the investigation of financial crimes and money laundering. It appears that these circles have limited interaction with the Anti-Human Trafficking Circles and that the FIA rarely uses its powers pertaining to financial investigations and proceeds of crime in relation to migrant smuggling and trafficking in persons investigations.

Beyond the FIA, in 2010, Pakistan enacted the *Anti-Money Laundering Act* which establishes a framework to criminalise and combat money laundering as well as the financing of terrorism. Under the Act, the Financial Monitoring Unit (FMU) is created under the authority of the Ministry of Interior. The FMU serves as Pakistan's central financial intelligence unit and is in charge of handling suspicious transaction reports. The FMU works with several Pakistani law enforcement agencies that are responsible for enforcing financial crime laws, including the National Accountability Bureau (NAB), the Anti-Narcotics Force (ANF), the Directorate of Customs Intelligence and Investigations (CII), and the FIA. Neither the *Anti-Money Laundering Act 2010* (Pakistan) nor the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) contain measures unique to the financial investigation of migrant smuggling and trafficking in persons operations.

³¹⁹ UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 4: Financial investigations, 4.

³²⁰ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 187.

Recommendations

As a general point, it would be beneficial to place greater emphasis on financial investigations in future investigations of migrant smuggling and trafficking in persons. This may result in more effective confiscation of proceeds of crime and other assets which, in turn, may have the potential to disrupt and deter larger and more organised migrant smuggling and trafficking in persons operations.

It is recommended that the FIA build upon its existing financial investigation capacities in the Economic and Banking Crime Circles to assist the Anti-Human Trafficking Circles in their investigations. Further to this, any existing and potential relationship between the FIA and the Financial Monitoring Unit should be reviewed and strengthened.

5.9 Recommendations: Financial Investigations

- ➔ Increase emphasis on using financial investigations to target larger migrant smuggling and trafficking in persons operations, particularly in the pre-arrest phrase.
- ➔ Improve communication and cooperation between the FIA's Banking and Economic Crime Circles and the Anti-Human Trafficking Circles.
- ➔ Consider forming a relationship between the FIA and the Financial Monitoring Unit.

5.10 Confiscation of Assets

Effective action against migrant smuggling and trafficking in persons must include measures to deprive perpetrators of the proceeds of crime. The ability of law enforcement agencies to identify, investigate, sequester, and confiscate assets derived from these offences sends a message to criminals that these activities are not high profit.

Accordingly, most jurisdictions have mechanisms to enable the tracing, freezing, seizing, and confiscation of assets and proceeds of crime. As a general rule, relevant officers should be authorised to exercise the power to confiscate whenever they have reason to suspect that migrant smuggling and trafficking in persons takes place. Furthermore, it is important that seized items are stored securely to ensure that they are available as evidence in prosecutions and other proceedings.

There are considerable differences between domestic laws as to which authorities, whether administrative or judicial, can order the confiscation of assets, the respective powers of these authorities, and the procedures they must follow. In some countries, for instance, confiscation may be imposed by a judgment rendered by a court of law. Confiscation by court order may be either mandatory under the law or left to the discretion of the court itself. Elsewhere, confiscation can be ordered by administrative authorities. This order may be mandatory if certain conditions are met, or the authority may have discretion to issue the confiscation

Requirements

Proceeds of migrant smuggling and trafficking in persons and the property or instrumentalities used in their commission, will almost always be located in two or more jurisdictions.³²¹ As in many other areas of investigations into the smuggling of migrants and

³²¹ UNODC, *In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2011)

trafficking in persons, international assistance or cooperation may be required in order to trace money; and rather than confine their investigation to domestic boundaries, investigators should pursue all lines of enquiry. INTERPOL may be able to assist if other bilateral agreements (formal or informal) are not in place or are not effective. The *Convention against Transnational Organised Crime* can also be relied upon to facilitate cooperation in the absence of other agreements.³²²

Article 12 of the *Convention against Transnational Organised Crime* addresses the issue of asset seizure and the confiscation of proceeds of crime. Article 13 of the Convention governs international cooperation with respect to confiscation and seizure. Article 14 addresses the final stage of the confiscation process: the disposal of confiscated proceeds of crime or property. While such disposal is to be carried out in accordance with domestic law, Article 14(2) requires State Parties requested to carry out confiscation to give priority consideration to returning the confiscated proceeds of crime or property to the requesting State for use as compensation to crime victims or for restoration to legitimate owners. These provisions largely require legislative implementation and are thus outside the scope of this report.³²³

Importantly for law enforcement, Article 29(1)(d) of the *Convention against Transnational Organised Crime* requires State Parties to initiate, develop or improve specific training programs for its law enforcement personnel that, inter alia, deal with

detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes.

5.10	Assessment: Confiscation of Assets
	<ul style="list-style-type: none"> ➔ What is Pakistan’s legal framework regarding criminal and non-criminal asset recovery, confiscation, and forfeiture? Are there special provisions in relation to migrant smuggling and trafficking in persons? Are these frameworks adequate/sufficient? ➔ What mechanisms exist to identify, trace, seize, or freeze property and other assets, including bank, financial, or commercial records, as well as equipment and other instrumentalities used in, or destined to be used in, the commission of crimes? ➔ Are FIA officers trained in detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes?

Module 7: International Cooperation in Criminal Matters, 125.

³²² UNODC, *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (2010) Module 4: Financial investigations, 14.

³²³ See further, Andreas Schloenhardt and Jarrod Jolly, *Smuggling of Migrants by Land, Air, and Sea in Pakistan: A Review of National Laws and Treaty Compliance* (2010); Andreas Schloenhardt and Jarrod Jolly, *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance* (2010).

Review

Based on communication with Pakistani officials, it appears that confiscation of proceeds of crime and other assets is not common in migrant smuggling and trafficking in persons cases.

Under the *Criminal Procedure Code* (Pakistan) it is possible to declare a person a ‘proclaimed offender’ which may result in the confiscation of that persons property. Section 87 of the *Criminal Procedure Code* (Pakistan) allows a court to declare a person a ‘proclaimed offender’ where a person has a warrant issued for their arrest and that person has absconded or is concealing himself such that the warrant cannot be executed. Section 88 of the Code allows for the ‘attachment’ of any property belonging to a proclaimed person. Section 517 of the *Criminal Procedure Code* (Pakistan) also appears to allow a court to order the confiscation of property following the conclusion of a trial or inquiry in any criminal court. Whilst there does appear to be a legal process by which assets can be confiscated, the reality is that these powers are not used in relation to migrant smuggling and trafficking in persons offenders.

The *Anti-Money Laundering Act 2010* (Pakistan) sets out procedures by which proceeds of crime may be seized and the manner in which requests from other foreign nations (with whom Pakistan has a bilateral agreements) for mutual assistance are dealt with. Consultation with officials indicated that that such assistance would occur only on a case-by-case basis but was not a regular occurrence in relation to migrant smuggling and trafficking in persons.

Recommendations

In order to effectively target the lucrative crimes of migrant smuggling and trafficking in persons the use of asset confiscation methods needs to be better incorporated into investigations and prosecutions. It appears the necessary legal framework is in place but there is a lack of capacity by the FIA to pursue these methods of law enforcement.

Similar to recommendations made in Section II.5.9 above, the FIA should increase its emphasis on the confiscation of assets by involving the Banking and Economic Crime Circles in investigations. Furthermore, establishing a collaborative relationship with the Financial Monitoring Unit for the purpose of confiscating proceeds of crime would be beneficial.

5.10	Recommendations: Confiscation of Assets
	<ul style="list-style-type: none"><li data-bbox="395 1536 1302 1630">➔ Increase emphasis on using financial investigations to target larger migrant smuggling and trafficking in persons operations, particularly in the pre-arrest phrase.<li data-bbox="395 1641 1302 1704">➔ Improve communication and cooperation between the Banking and Economic Crime Circles and the Anti-Human Trafficking Circles.<li data-bbox="395 1715 1302 1776">➔ Consider forming a relationship between the FIA and the Financial Monitoring Unit.

6 Victims & Witnesses

Trafficking in persons and migrant smuggling are, by their very nature, crimes against people. Acquiring an adequate quantity and quality of evidence to prosecute traffickers and smugglers thus heavily relies on the relationship between investigators and victims and witnesses. The following sections examine the identification of victims, the appropriate techniques to be used when interviewing victims and witnesses, and the protection that is to be offered to smuggled migrants and victims of trafficking in persons throughout the criminal justice process.

6.1 Identifying Victims

There is an inherent difficulty in accurately classifying victims as having been smuggled or trafficked given that the lines are often blurry and the indicators subtle. Indeed it is perhaps best to think of the identification of victims as being on a continuum as opposed to two discreet categories. For example, a migrant who is smuggled may, after arrival into the destination, be subjected to exploitation. This would then constitute an instance of trafficking in persons. It is therefore important for law enforcement to be aware of the intricacies involved in classifying a victim as having been trafficked or smuggled. International and domestic laws, however, draw a clear (albeit artificial) distinction between 'smuggled migrants' and 'victims of trafficking in persons' and refuse to use the term 'victim' in the context of migrant smuggling.

A crucial component of investigating migrant smuggling and trafficking in persons is the capacity of law enforcement to accurately identify smuggled migrants and victims of trafficking in persons. It has been noted that persons who are likely to be in contact with victims (particularly police, immigration officers, border guards) 'should receive training in order to enable them to identify victims and to be sensitive to their needs.'³²⁴ On this point the *Trafficking in Persons Protocol* highlights the importance of protecting victims in this process over the 'rush to achieve objectives', such as prosecutions.³²⁵ Proper training in this area ensures smuggled migrants and victims of trafficking in persons can be referred to the appropriate support organisations. Referral processes are further discussed and assessed in Sections II.6.3 and II.6.4 of this report.

Requirements

A common criticism of the *Trafficking in Persons Protocol* and *Migrant Smuggling Protocol* has been that neither document provides clear guidance on the correct procedures for identifying victims or how to distinguish between trafficked persons and smuggled migrants.³²⁶ Both Protocols do, however, broadly require that the rights of the smuggled migrant and victims of trafficking to be protected. To this end, the *International Framework for Action to Implement the Trafficking in Persons Protocol* notes that to implement this obligation, State Parties should develop or strengthen the identification process, including identification guidelines and procedures.³²⁷

³²⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 251.

³²⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 251.

³²⁶ See for example, Anne Gallagher, 'Trafficking, smuggling and human rights: tricks and treaties' (2002) 12 *Forced Migration Review* 25, 27.

³²⁷ UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (2009) 27.

International best practice models, including the *Model Law against Trafficking in Persons*, suggest that law enforcement agencies develop guidelines to assist in the identification of victims and their referral to appropriate assistance agencies.³²⁸ Such guidelines should include a list of indicators that could be reviewed and updated periodically as needed.³²⁹ It is outside the scope of this report to exhaustively list all indicators of migrant smuggling and trafficking in persons, however, there are a range of best-practice ‘toolkits’ and guidelines that should be referred to in producing law enforcement procedures on this matter.³³⁰

The *Toolkit to Combat Trafficking in Persons* also recommends that

[a] network of professionals and agencies should be involved in the identification of potential victims and should work together in order to protect victims and ensure a referral network without gaps.³³¹

6.1	Assessment: Identifying Victims
	<ul style="list-style-type: none"> ➔ Are there guidelines and procedures available to assist the FIA, stakeholders and other frontline agencies to detect instances of trafficking in persons and migrant smuggling as well as the victims of these crimes? ➔ Are FIA investigators trained to identify victims of trafficking in persons and smuggled migrants? ➔ Do FIA investigators proactively seek to identify victims or wait for them to be reported? ➔ Is there coordination between the FIA and other relevant agencies and stakeholders regarding the proper identification of victims?

Review

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

ATUs will be responsible for all aspects of the investigation and prosecution of suspected human trafficking crime in addition to the identification and protection of potential or actual victims. Any suspected victim or indication of the pursuit of human trafficking discovered by any other domestic ministry or agency shall be communicated to the ATUs without delay, at the same time providing all relevant data to it and other support. ATUs will arrange to provide protection to actual and potential victims.³³²

It is also stated that Anti-Trafficking Units (ATUs) are to be trained on ‘methods of identification of victims and suspected victims.’³³³ Further details and guidelines are not set out in the *National Action Plan*.

³²⁸ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53 – 54.

³²⁹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53 – 54.

³³⁰ See further, UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53 – 54; UNODC & UN.GIFT, *First Aid Kit for use by Law Enforcement First Responders in Addressing Human Trafficking* (2009) 14 – 15; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) Chapter 6: Victim Identification; UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7.11 Indicators of smuggling of migrants (and trafficking in persons), 32.

³³¹ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 251. On this point, it would be more accurate for the *National Action Plan* to refer to Anti-Human Trafficking Circles.

³³² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³³³ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

The recent *Annual Action Plan 2010-11: Trafficking in Persons* further recognises ‘the sensitivity of the officials in identifying/protecting and treating a victim with sympathy’ as an ‘integral part’ of any training pertaining to trafficking in persons.³³⁴

Pakistan’s *National Action Plan for Combating Human Trafficking* also indicates that

[t]raining will also be provided in the identification of victims for all the stakeholders working with victims of human trafficking and children, including authorities and relevant service-providers.³³⁵

The responsibility for implementing this training falls to authorities and stakeholders in their own fields of activity.³³⁶

Whilst the available documentation suggests that guidelines and training are in place, consultation with officials suggest that FIA investigators are not trained in the identification of victims or recognition of indicators of trafficking in persons and migrant smuggling. It appears investigators only gain a basic understanding of the crimes of migrant smuggling and trafficking in persons in formal FIA training modules, if indeed they receive any training at all.³³⁷ There are also no FIA guidelines pertaining to the identification of victims or coordination with other agencies that may have a need for such guidelines. The 2011 *Trafficking in Persons Report*, produced by the US Department of State, similarly concludes that the ‘government continued to lack adequate procedures to identify trafficking victims among vulnerable populations’.³³⁸

In practice it appears that the great majority of smuggled migrants and victims of trafficking in persons are brought to the attention of Pakistani authorities through return from another country or through victims or their families who self-report to law enforcement directly.³³⁹ Indeed, it appears that actual identification of victims by way of proactive detection or apprehension is the exception rather than the rule.

Recommendations

Despite ambitious policy statements, FIA officers are not sufficiently trained to identify smuggled migrants and victims of trafficking in persons. It is doubtful that any guidelines pertaining to victim identification exist and, if they do, they are not sufficiently understood and followed.

It is thus recommended to develop a victim identification checklist or guidelines based on international standards and best practice and circulate these to FIA investigators.³⁴⁰ There is a parallel need for officers to be trained in identification practices with the distinction between migrant smuggling and trafficking in persons properly explained.

³³⁴ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 4 [copy held by authors].

³³⁵ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³³⁶ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³³⁷ See further Section II.2.3 above.

³³⁸ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285.

³³⁹ See further Section II.5.1 above.

³⁴⁰ See further, UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 53 – 54; UNODC & UN.GIFT, *First Aid Kit for use by Law Enforcement First Responders in Addressing Human Trafficking* (2009) 14–15; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) Chapter 6: Victim Identification; UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7.11 Indicators of smuggling of migrants (and trafficking in persons), 32.

It is suggested that uniform guidelines would serve to facilitate more effective collaboration between the FIA and other agencies or stakeholders on the identification of victims. It would be beneficial for other agencies or stakeholders to be able to identify victims or instances of these crimes on the same basis as the FIA and then refer identified cases to the FIA.

6.1 Recommendations: Identifying Victims

- ➔ Create and disseminate victim identification checklists or guidelines that can be used by officers to determine whether a person is a smuggled migrant or victim of trafficking in persons.
- ➔ Ensure officers are trained in identification techniques and the distinction between migrant smuggling and trafficking in persons and the indicators of each crime.

6.2 Interviewing Victims & Witnesses

The approach taken to interviewing victims and witnesses of migrant smuggling and trafficking in persons requires particular sensitivity to ensure a relationship of trust is built with the investigators. Often cases of migrant smuggling and trafficking in persons involve persons who have an illegal immigration status and as such are inherently fearful of authorities. Additionally the distinction between victims and witnesses can be difficult to draw, as persons will often fall into both categories.³⁴¹

Requirements

Whilst the *Trafficking in Persons Protocol* and *Migrant Smuggling Protocol* do not set out specific requirements regarding the interviewing of victims and witnesses, there are some general principles that need to be followed. The *Trafficking in Persons Protocol* requires that the privacy and identity of the victim be protected,³⁴² that a victim be enabled to present his or her views and concerns at the appropriate stages of the criminal justice process,³⁴³ and that the victim or witness is counselled about their legal rights in a language that the victim can understand.³⁴⁴

The *Migrant Smuggling Protocol* does not mirror these requirements and merely requires that the special needs of women and children be taken into account.³⁴⁵ It is also considered best practice that smuggled migrants and victims of trafficking in persons are not criminalised.³⁴⁶ As such, interviews should not be used to gather evidence against smuggled migrants or victims of trafficking in persons.

The *Toolkit to Combat Trafficking in Persons* highlights that:

The primary goal of the initial interview is to ascertain whether there are reasonable grounds to believe that the person being interviewed is a possible victim of trafficking. It is equally important to provide the person being interviewed with all relevant information that will enable him or her to access support and assistance, and to make an informed decision about his or her future actions

³⁴¹ UNODC, *Criminal Justice Assessment Toolkit* (2006) Tool 5: Crime Investigation, 17.

³⁴² Article 6(1) *Trafficking in Persons Protocol*.

³⁴³ Article 6(2)(b) *Trafficking in Persons Protocol*.

³⁴⁴ Article 6(3)(b) *Trafficking in Persons Protocol*.

³⁴⁵ Article 16(4) *Trafficking in Persons Protocol*.

³⁴⁶ See further Sections II.6.3 and II.6.4 below.

(i.e. whether he or she will assist law enforcers in investigation and prosecution). Lastly, law enforcement officials must ascertain whether there are any immediate safety risks for the individual being interviewed or others.³⁴⁷

This general advice is also applicable to the interviewing of smuggled migrants or witnesses of migrant smuggling. Specifics on best practice for interviewing techniques are provided for in the *Toolkit to Combat Trafficking in Persons*, the *Toolkit to Combat Smuggling of Migrants*, and a range of other training manuals.³⁴⁸ The details of these techniques are too exhaustive to cover here, although compliance with these techniques is obviously desirable.

It is crucial that victim and witness statements are recorded by written notes, video or audio equipment. Whatever the method, it should be used in such a way that it does not detract from the quality of the interview being conducted.³⁴⁹ Furthermore, best practice guidelines indicate that ‘interviews will not result in valuable information for investigation or prosecution purposes unless special circumstances are considered.’³⁵⁰ Interviews of the victim and/or witness during criminal proceedings should also take place with due respect for the victim/witness, and away from the presence of the public and media.³⁵¹

Children

Both the *Model Law against Trafficking in Persons* and the *Model Law against Smuggling of Migrants* provide best practice guidelines on interviewing children either as victims or witnesses. The Model Laws suggest that interviews, examinations and other forms of investigation should be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands, and, insofar as possible, in the presence of his or her parents, legal guardian or a support person.³⁵²

6.2	Assessment: Interviewing Victims & Witnesses
	<ul style="list-style-type: none"> ➔ Do FIA investigators receive training in interviewing victims and witnesses of migrant smuggling and trafficking and persons? What does the training consist of? ➔ Are interviews of victims and witnesses suspects recorded? If yes, where and how? ➔ What are the rules for the interviewing of victims and witnesses? Does the interviewer inform witnesses of their right to freedom from self-incrimination during the interview? Does a victim or witness have the right to have a lawyer present during the interview? ➔ Who takes a victim or witness statement? Do victims and witnesses have the opportunity to read their statements and certify that each page is accurate? ➔ Are victims and witnesses entitled not to answer questions? Is there a right against self-incrimination? Are victims and witnesses informed of that right? ➔ Are children interviewed? If so, what procedures are involved?

³⁴⁷ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 265.

³⁴⁸ See further, UNODC, *Toolkit to Combat Trafficking in Persons* (2008) Chapter 6: Victim Identification, 289; UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 13: Debriefing, interviews, and testimony.

³⁴⁹ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 13: Debriefing, interviews, and testimony, 278

³⁵⁰ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 13: Debriefing, interviews, and testimony, 278

³⁵¹ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 65.

³⁵² UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 61; UNODC, *Model Law against Smuggling of Migrants* (2010) 71.

Review

Pakistan's *Annual Action Plan 2010-11: Trafficking in Persons* suggests that a legal team has been set up within the FIA to monitor and increase the 'inclusion of victims (including foreign victims) in investigations and anonymity of victims when required for security and confidentiality.'³⁵³ This is a promising step in achieving the requirements set out in the *Trafficking in Persons Protocol*.

The *Annual Action Plan 2010-11: Trafficking in Persons* also recognises 'the sensitivity of the officials in identifying/protecting and treating a victim with sympathy' as an 'integral part' of any training pertaining to trafficking in persons.³⁵⁴ It further notes that the '[r]eluctance of victims to testify against human smugglers as they often are equal partner[s] in the crime. Moreover the promises made by human smugglers to return the money are also a factor of their hesitation in giving evidence.'³⁵⁵ This indicates, officially at least, that there is recognition of the need to sensitively interview victims and witnesses.

It is difficult to ascertain and make general observations about the practical treatment of victims and witnesses of migrant smuggling and trafficking in persons in Pakistan and there appear to be conflicting views on interviewing techniques used by FIA officers. On the one hand there have been some suggestions that interviews of victims and witnesses are free from pressure, while on the other hand there have also been suggestions that coercive methods (including beatings) are used to obtain statements from victims and witnesses. It was also suggested that victims are not alerted to their legal rights and do not have any legal representation present whilst being interviewed. Consultation indicated that, in general, children would not be subject to interviews. There does not appear to be specific training or guidelines on how to interview victims or witnesses in a manner specific to trafficking in persons and migrant smuggling.

Consultation with IOM indicated that where a person has been initially identified specifically as a victim of trafficking (as opposed to smuggling), including Pakistani and foreign nationals, these persons would be interviewed by FIA officers. Sometimes these interviews may be conducted outside police stations in environments more convenient and comfortable for the interviewee. This is a practice that should be further maintained and encouraged.

It has been said that all returning deportees are treated as 'victims of migrant smuggling', rather than offenders of Pakistan's emigration laws, unless a person is identified as a repeat offender. When a person is offloaded or returned to Pakistan, an FIA officer will initially interview that person. If it is a 'typical case' the person will then be escorted to the closest Anti-Human Trafficking Circle. In some instances a person will be allowed to leave whilst their visa or documents are further examined. If any document is found to be fraudulent, legal action will then be taken against that person.

Recommendations

The first step to enhance the interviewing of victims and witnesses of migrant smuggling and trafficking in persons must involve basic training of FIA officers on relevant techniques and the relevant legal requirements and limitations. The development of basic guidelines to that end would also go a long way.

³⁵³ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 2 [copy held by authors].

³⁵⁴ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 4 [copy held by authors].

³⁵⁵ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 5(v) [copy held by authors].

Of particular concern are suggestions that victims and witnesses may be coerced during interviews, a practice that must immediately cease. Furthermore, there is a clear need for victims and witnesses to be informed about their legal rights.

6.2 Recommendations: Interviewing Victims & Witnesses

- ➔ Develop basic training and guidelines on interviewing victims and witnesses of migrant smuggling and trafficking in persons.
- ➔ Ensure that interviews are conducted free from threats, violence, or other coercive methods.
- ➔ Inform victims and witnesses about their legal rights.

6.3 Protection of Victims of Trafficking in Persons

The most effective anti-trafficking law enforcement approaches are those that focus not only on the prosecution of offenders, but also on the identification and protection of victims of trafficking in persons, especially women and children. Trafficking in persons constitutes a serious violation of fundamental human rights and freedoms, and for that reason policies and laws should be in place to address the harm done to victims, and to prevent further traumatising or victimisation through the criminal justice system.³⁵⁶

Many victims of trafficking in persons fear intimidation and retaliation if they cooperate with law enforcement agencies or testify in court. These fears are particularly acute when there is a close relationship between the victim and the offender, or when the offender is part of an organised criminal group. In the case of victims of corruption or abuse of power, the fear of intimidation or retaliation is often linked to a distrust of government officials, law enforcement, and the judiciary. Many victims also fear maltreatment by government authorities, deportation or other potential risks to their physical safety.

In addition, most trafficking victims are heavily traumatised due to the physical, psychological, and/or sexual violence to which they were subjected. Some victims may also require medical treatment and psychological counselling. Many have no place to stay or means of support upon their return to their home country and may be stigmatised and rejected by their families. They are generally in need of accommodation, financial assistance, education, and vocational training programs, as well as assistance with finding employment. Without this support, victims are vulnerable to being re-trafficked.

In order to successfully prosecute traffickers, law enforcement must implement victim-sensitive policies to allay the fears of trafficked victims and to ensure their safety. Moreover, it has been noted that although the setting-up of appropriate assistance and protection measures may be expensive, 'addressing the social, educational, psychological and other needs of victims as soon as they are discovered may ultimately prove less costly than dealing with them at a later stage.'³⁵⁷

³⁵⁶ UNICEF et al, *Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime* (2004) 27.

³⁵⁷ UNODC & UN.GIFT, *Model Law against Trafficking in Persons* (2009) 55; UNICEF et al, *Assessment of the Legal System in Vietnam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime* (2004) 27.

Requirements

Article 25 of the *Convention against Transnational Organised Crime* includes a number of broad provisions requiring State Parties to take measures to assist and protect victims, though these provisions only extend to offences in the Convention involving organised criminal groups.

Article 25 Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.
2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.
3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Importantly, Article 29(1)(i) of the Convention also requires that State Parties develop or improve specific training programmes for relevant law enforcement personnel to deal with, inter alia, 'methods used in the protection of victims and witnesses.'

The *Trafficking in Persons Protocol* adds to the broad requirements of the *Convention against Organised Crime* in relation to the protection of victims of trafficking. Specifically, Article 6(3) of the *Trafficking in Persons Protocol* mandates the provision of assistance and protection to victims of trafficking in persons. This requirement only applies to victims who are in the territory of the respective country, i.e. the receiving State until the victim has returned to his or her country of origin and to the country of origin thereafter.³⁵⁸

Article 6(3) is discretionary, not mandatory,³⁵⁹ and only encourages State Parties

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

In particular, these measures should include:

- a) appropriate housing;
- b) counselling and information, in particular as regards to their legal rights, in a language that the victim can understand;
- c) medical, psychological and material assistance; and
- d) employment, educational and training opportunities.³⁶⁰

In applying these provisions, State Parties should, where possible, differentiate the available support depending on the special needs of different categories of victims of trafficking in persons. Specifically, they shall take into account 'the age, gender, and special needs of victims, in particular the special needs of children, including appropriate housing, education, and care.'³⁶¹ 'So far as children are concerned', notes David McClean, 'it will usually be

³⁵⁸ *Travaux Préparatoires*, para 71.

³⁵⁹ See further, David McClean, *Transnational Organized Crime* (2007) 337.

³⁶⁰ Article 6(3) *Trafficking in Persons Protocol*.

³⁶¹ Article 6(4) *Trafficking in Persons Protocol*.

desirable to appoint some person to act as guardian of the child, both in terms of its social welfare and also in the context of any legal proceedings that may take place.³⁶²

Article 6(5) of the *Trafficking in Persons Protocol* reiterates the points raised by paragraph (3) by calling on State Parties to endeavour to provide for the physical safety of victims of trafficking while they are within its territory.³⁶³ This requirement extends to all victims of trafficking, whether or not they are witnesses in criminal proceedings.

Referral mechanisms

Where law enforcement officers encounter a trafficked person they are encouraged to involve members of local non-governmental organisations who may be helpful in approaching, contacting, and interviewing suspected victims. Where this is the case, there is a need for clear follow-up procedures 'in order to ensure the safety of individuals identified as victims and place them within a support system.'³⁶⁴

Non-criminalisation of victims

Neither the *Convention against Transnational Organised Crime* nor the *Trafficking in Persons Protocol* includes an explicit provision regarding the non-criminalisation of victims (unlike the *Migrant Smuggling Protocol*), however the *Toolkit to Combat Trafficking in Persons* notes there a number of non-binding guidelines, action plans, declarations, and resolutions that instruct State Parties to prevent trafficked persons from being prosecuted for their illegal entry or residence.³⁶⁵ Ideally these measures should be legislatively implemented, however, law enforcement may simply choose to produce and follow guidelines that are compliant with these principles.

6.3 Assessment: Protection of Victims of Trafficking in Persons	
→	What measures are available in Pakistan to protect victims of trafficking in persons against intimidation and retaliation?
→	What capacity is there to offer effective physical protection to victims?
→	Are there procedures to ensure victims are not detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked/smuggled persons?
→	Does the FIA have procedures to ensure trafficking victims are referred to the appropriate services? Does Pakistan or the FIA have any involvement in the provision of accommodation and material assistance to trafficked persons?

Review

Accommodation and material assistance/protection

Pakistan's *National Action Plan for Combating Human Trafficking* specifically outlines a plan aimed at protecting victims of trafficking in persons:

- i. Establishing shelters for the protection and other needs of the trafficking victims in order to provide safety, access to independent advice and counselling, medical health and rehabilitation from trauma, while giving special attention to security of the victims,

³⁶² David McClean, *Transnational Organized Crime* (2007) 340.

³⁶³ See also Article 25(1) *Convention against Transnational Organized Crime*.

³⁶⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 276.

³⁶⁵ See further UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 254.

confidentiality and privacy. These shelters will also be provided the linkage to facilitating the victims' future reintegration.

- ii. A model shelter has been established at Islamabad with the cooperation of IOM and [the] US Embassy. It is planned to establish more shelters in other places for which a PC-I is under prosecution offer whose approval funds will be allocated and more shelters will be established.
- iii. The purpose of providing secure accommodation shall be to protect victims, suspected victims and witnesses, help them, meet their relevant needs, and create a safe environment for those persons. A shelter shall in no case be considered a place of confinement and the persons placed therein shall be treated as victims or suspected victims. Secure accommodation shall also ensure suitable conditions for rehabilitation and reintegration. At the same time, secure accommodation shall provide a safe environment to the victims awaiting their repatriation and that of witnesses that have presented evidence.
- iv. Secure accommodation shall have the following facilities: properly secured building with appropriate living conditions; access to telephone; access to medical care; and psychological counselling; possibility of legal assistance; opportunity to have a translator; and a separate place for conversation; ensuring confidentiality of information about the person placed in the accommodation.³⁶⁶

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

A previous report by the authors determined that

the current policy, legal, and regulatory frameworks in Pakistan pertaining to accommodation and material assistance provided to victims of trafficking in persons are consistent with international legal principles. Pakistan has set up a system that provides victims with the essential support, accommodation, medical care, counselling, et cetera. The provisions also recognize the vulnerability of unaccompanied minors and women who may find it difficult to find safe accommodation without Government or NGO assistance.

The available information suggests that accommodation and other material support is not available to male victims and to children who are accompanied by a parent(s) or guardian(s). While the current support mechanisms, especially shelter homes, may be unsuitable to accommodate adult men and families, and while the number of such victims may be small compared to women and unaccompanied minors, the legislative and regulatory system should not preclude adult men and families from accessing essential assistance.³⁶⁷

This report did not assess the quality of these support services, including their administration and delivery.

From consultation with the FIA, it appears that the agency denies having any direct involvement in the protection of victims of trafficking in persons. It was indicated in a number of interviews that the Government of Pakistan has no system or facilities for the protection or rehabilitation of victims of trafficking. This is in stark contrast to relevant policy and legislative frameworks. The US State Department's *2011 Trafficking in Persons*

³⁶⁶ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁶⁷ For further analysis and recommendations relating to the policy, legal and regulatory framework for trafficked victims see, Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan: A Review of National Laws and Treaty Compliance* (2010).

Report also highlights the continuous to lack adequate protection for victims of trafficking.³⁶⁸ These findings are in stark contrast to the relevant policy and legislative frameworks.

Pakistani nationals who have been returned by way of deportation are usually detained upon return. According to information provided by the FIA, after formal interviews of victims have been concluded, victims who are Pakistani nationals are returned to their relatives. Victims who are foreigners are referred to protection houses operated by NGOs.

There is however, no standardised system in the FIA to assist victims of trafficking in persons and any assistance that may be provided would be obtained through informal mechanisms.

Pakistan's, *Annual Action Plan 2010–11: Trafficking in Persons* notes that:

Some initial arrangements [exist] to provide assistance and protection to the victims of trafficking in the form of Child Protection Centre at Peshawar, Child Protection Center (under [the] Ministry of Social Welfare and Special Education at Islamabad), Victim Protection Center and Shelter Home (for women and children victims of trafficking) under Ministry of Women Development at Islamabad, Edhi Homes and Child Protection Bureau in Punjab, definitely exist but there is a dire need to extend such infrastructure all over the country.³⁶⁹

The FIA claims it does not have a broader mandate or a mechanism to protect victims of trafficking in persons and will refer victims to provincial police forces in instances in which victims are specifically threatened or at risk of coercion.

NGO involvement

NGOs provide support for victims of gender based violence but, contrary to the *National Action Plan*, provide no specific shelters for victims of trafficking in persons. According to consultation with the IOM it appears to be common for provincial police and FIA to refer foreign victims of trafficking in persons who cannot be repatriated immediately to the IOM who will assist victims on a case-by-case basis and facilitate the return to their home country. For that purpose the IOM will liaise with foreign missions in Islamabad and IOM country offices abroad, especially in central Asian countries.

According to the IOM there are approximately 20 or more NGOs involved in anti-human trafficking efforts across Pakistan, however not all of these are involved with protection and rehabilitation.

In 2005, the IOM set up a shelter for trafficked women and children in Islamabad.³⁷⁰ The IOM operated this centre until 2007 at which point it was handed over to the Ministry of Women Development. Approximately 25 foreign victims of trafficking in persons were referred to the centre while it was managed by the IOM. Most of these women were from central Asian countries. The centre provided medical and psychological support. Now that the centre is under the control of the Ministry of Women it appears that it is used as a general women's shelter for any gender-based crime. Outside Islamabad, women and children who are victims of trafficking in persons are referred to the Ministry of Social Welfare.

The IOM has created a number of Counter-Human Trafficking District Taskforces across Pakistan, especially in those areas that are considered to be particularly vulnerable to

³⁶⁸ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285.

³⁶⁹ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 6.1.xv [copy held by authors].

³⁷⁰ See also Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

trafficking in persons. Following a 'train the trainer' program on counter trafficking held in Bangkok and attended by FIA and IOM officials from Pakistan, trainings have been replicated in all the target districts, including Bahawalpur, Gujranwala, Gujarat, Mandi Bahauddin, Rahimyar Khan, Karachi, Larkana, and Sukkur.

The District Taskforces, which are formed at the end of the training programs, comprise of officials from law enforcement agencies, local government, local NGOs, Dar-ul-Amans, Women Centres, Child Bureaus, and other NGOs running shelters to provide protection to victims of trafficking. Each District Taskforce will further organise training and awareness sessions and regular taskforce coordination meetings to discuss the trafficking situation in their respective areas, resulting in enhanced cooperation and linkages between the law enforcement and local community, identifying victims of trafficking, defining referral support mechanisms for victims of trafficking, and providing them with the necessary support in their areas.

Referral mechanisms

A principal task of the Anti-Trafficking Unit, as articulated by the FIA, includes:

The development of a referral system for the transfer of victims to shelter homes and to facilitate the repatriation of victims of trafficking and smuggling to their countries of origin.³⁷¹

In addition to these arrangements, Pakistan has also set up a helpline on human trafficking which is run by the FIA.³⁷² As mentioned earlier, the helpline has had limited success and does not account for a great deal of victim referrals to the FIA.³⁷³

During consultations it emerged that FIA frontline officers and investigators do not have a list of contact points for NGOs they could consult to obtain shelter or other assistance for persons who have been identified as victims of trafficking in persons. The *2011 Trafficking in Persons Report* further notes that

[t]he FIA has a process to refer trafficking victims to protective services, although universal application of this process remains problematic. There is no coordinated process to refer victims of internal trafficking to protective services, and access to protective services varies within the country.³⁷⁴

Non-criminalisation and victim treatment

Prior to the enactment of the *Prevention and Control of Human Trafficking Ordinance 2002* (Pakistan) it was said that victims were regularly prosecuted for their involvement in instances of trafficking. Although the law appears to have changed on this point, some sources suggest that if a victim does not cooperate with law enforcement authorities they may face charges, although there is 'no hard rule on this'.

Pakistan's *Annual Action Plan 2010-11: Trafficking in Persons* recognises 'the sensitivity of the officials in identifying/protecting and treating a victim with sympathy' as an 'integral

³⁷¹ Pakistan, FIA, *Anti Trafficking Unit*, available at www.fia.gov.pk/dep_trafficking.htm (accessed 17 June 2011); Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁷² Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

³⁷³ See Section II.5.1 above.

³⁷⁴ US, Department of State, *2011 Trafficking in Persons Report* (2011) 285.

part' of any training pertaining to trafficking in persons.³⁷⁵ Consultation with FIA officials indicate that there is a general understanding that victim statements are essential to judicial proceedings and it is unlikely that convictions can be achieved without the victim testifying in court. The *Annual Action Plan* notes that, there is a significant level of out-of-court settlement of cases, suggesting that many prosecutions fail due to the unwillingness of victims to participate in criminal proceedings.³⁷⁶

Recommendations

Whilst the relevant policy material and legislation would suggest Pakistan has a detailed system for the protection of victims of trafficking, there is little to no evidence to suggest that these frameworks are followed by implementation.

For the purposes of this assessment, it should be noted that victim protection is not a primary responsibility of and priority for the FIA. It may thus be necessary to undertake a separate assessment of Pakistan's delivery of its promised assistance to victims of trafficking and the role of relevant NGOs in this context. In the medium and long-term it is important that a program be designed to fill this gap and provide the FIA with a proactive role.

In the current circumstances it is important that relevant law enforcement officials are aware of where to refer suspected and confirmed victims of trafficking. A basic solution to this would be to provide front-line officers with a contact list with details of the relevant NGOs that may be able to assist. This will also warrant a further strengthening of the relationship between relevant NGOs and the FIA to ensure there is ongoing communication regarding the referral of victims of trafficking.

6.3 Recommendations: Protection of Victims of Trafficking in Persons

- ➔ Conduct an independent analysis of victim assistance measures in Pakistan and design a program for future delivery of appropriate assistance throughout Pakistan.
- ➔ Ensure all FIA officers (and provincial police officers where possible) are aware of victim support organisations and are capable of referring victims to them.
- ➔ Further develop the relationship between the relevant NGOs and the FIA to ensure ongoing communication regarding the referral of victims of trafficking.

6.4 Protection of Smuggled Migrants

Smuggled migrants are frequently exposed to exploitation, deception, threats, and violence. They are particularly vulnerable if they reside in the host country illegally or clandestinely, if they do not speak the local language, and are unfamiliar with local procedures and customs. Often they fall victim to gangs and other criminals, and may sometimes engage in petty crimes as they cannot engage in legitimate ways to earn money to support themselves and their families. For these reasons it is important that domestic laws and policies provide basic protection and support to smuggled migrants. This also increases the likelihood that smuggled migrants will cooperate with government authorities and assist in the prosecution of their smugglers.

UNODC further notes:

³⁷⁵ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 4 [copy held by authors].

³⁷⁶ Pakistan, FIA, *Annual Action Plan 2010–11: Trafficking in Persons*, para 2 [copy held with authors].

Regardless of their immigration status, smuggled migrants have the right to expect that their human rights and dignity will be upheld and prioritised at all stages by those who intercept and identify them, those who detain them and those who remove them from the country [...].³⁷⁷

Furthermore:

It is a fundamental principle of international human rights law that all persons have a right to be recognised as a person before the law, are to be treated as equal before the law and are entitled without any discrimination to equal protection of the law.³⁷⁸

Measures aimed at protecting smuggled migrants are mostly reliant on legislative implementation and rules of the judicial process. The following section focuses on the role of law enforcement in achieving effective protection for smuggled migrants.

Requirements

Article 16 of the *Migrant Smuggling Protocol* contains several provisions relating to protection and assistance measures. In summary, ‘the provisions are intended to set an appropriate standard of conduct for officials who deal with smuggled migrants and illegal residents and to deter conduct on the part of offenders that involves danger or degradation to the migrants.’³⁷⁹ These provisions equally apply to the receiving State and the country of origin or habitual residence of smuggled migrants.

Article 16(1) contains a general statement to protect the basic human rights of smuggled migrants:

In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

While this paragraph refers to specific rights such as life and protection from torture, cruel, inhuman or degrading treatment or punishment, Article 16(1) is generally seen as emphasising the protection of all fundamental human rights and freedoms as accorded in relevant international treaties, especially the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social, and Cultural Rights (ICESCR)*.³⁸⁰ The paragraph does not create any new obligations for State Parties.³⁸¹ The *Interpretative Notes* further stress that Article 16(1) only refers ‘to migrants who have been smuggled [and] is not intended to refer to migrants who do not fall within the ambit of Article 6.’³⁸²

³⁷⁷ UNODC, *Basic training manual on investigating and prosecuting the smuggling of migrants* (2010) Module 9: Human Rights, 3.

³⁷⁸ UNODC, *Basic training manual on investigating and prosecuting the smuggling of migrants* (2010) Module 9: Human Rights, 2.

³⁷⁹ *Legislative Guides*, 364.

³⁸⁰ *Interpretative Notes*, Note 108: The intention in listing certain rights in this paragraph was to emphasize the need to protect those rights in the case of smuggled migrants, but the provision should not be interpreted as excluding or derogating from any other rights not listed. The words “consistent with its obligations under international law” were included in the paragraph to clarify this point further.’ Cf David McClean, *Transnational Organized Crime* (2007) 427.

³⁸¹ *Interpretative Notes*, Note 109; *Legislative Guides*, 365.

³⁸² *Interpretative Notes*, Note 107: ‘In accordance with articles 3 and 4, the phrase “persons who have been the object of conduct set forth in article 6 of this Protocol” refers only to migrants who have been smuggled as set forth in article 6. It is not intended to refer to migrants who do not fall within

Article 16(2) requires Signatories to protect smuggled migrants from physical violence:

Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

The paragraph contains no specific guidelines about the way in which such protection shall be provided. For example, there is no explicit requirement that the host country provide safe accommodation or other types of physical protection. While the wording of Article 16(2) is mandatory, State Parties have discretion to provide protection as they consider 'appropriate'. The reference to 'individuals or groups' is seen to draw particular 'attention to the vulnerability of migrants who may meet intense opposition from groups of people who do not wish them to enter or remain in' the country.³⁸³

Article 16(3) calls on State Parties to provide assistance to smuggled migrants whose lives or safety may be at risk. Article 16(4) recognises the particular vulnerability of women and children. Neither paragraph contains mandatory requirements relating to specific assistance measures:

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

Some receiving countries detain persons who are suspected of illegal entry in order to investigate their situation or facilitate their removal to their home country or another place. Article 16(5) seeks to ensure that persons in immigration detention have access to consular assistance as mandated by the 1963 *Vienna Convention on Consular Relations*:³⁸⁴

In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the *Vienna Convention on Consular Relations*, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 16 of the *Migrant Smuggling Protocol* does not create any specific obligations; by and large it reiterates international obligations articulated in other international human rights treaties. Accordingly, the *Legislative Guides* note:

Assuming national conformity with the basic pre-existing rights and the instruments in which they are established, none of the requirements to protect or preserve the human rights of migrants and illegal residents should raise legislative issues, although they should be carefully considered in developing administrative procedures and the training of officials.³⁸⁵

As a general point, the *Legislative Guides* recommend:

Where a State is not already in conformity with the pre-existing standards, they may have to be established to the extent necessary to conform to the Protocol. [...] Where existing national laws do not meet the basic requirements of the Protocol, the following amendments to the laws may be needed:

the ambit of article 6. This is clearly set forth in article 19 (saving clause), which provides that nothing in the Protocol shall affect the rights of individuals under international law, including humanitarian law and international human rights law.'

³⁸³ *Interpretative Notes*, Note 110; David McClean, *Transnational Organized Crime* (2007) 428.

³⁸⁴ 596 UNTS 261.

³⁸⁵ *Legislative Guides*, 366.

- (a) To preserve and protect the basic rights of smuggled migrants and illegal residents (art. 16, para. 1);
- (b) To protect against violence (art. 16, para. 2);
- (c) To provide information on consular notification and communication (art. 16, para. 5).³⁸⁶

The *Convention against Transnational Organised Crime* includes a number of provisions requiring State Parties to take measures to assist and protect victims, and to cooperate with other enforcement authorities to offer protection to victims and witnesses.³⁸⁷

Non-criminalisation of smuggled migrants

Article 5 of the *Migrant Smuggling Protocol* states that that State Parties should not hold smuggled migrants criminally liable for their involvement in the smuggling process. The *Legislative Guide* to the *Migrant Smuggling Protocol* further notes that it

is the intention of the drafters that the sanctions established in accordance with the Protocol should apply to the smuggling of migrants by organised criminal groups and not to mere migration or migrants, even in cases where it involves entry or residence that is illegal under the laws of the State concerned [...]³⁸⁸

The principle articulated in Article 5 is limited to criminal prosecutions relating to migrant smuggling offences (set out in Article 6 of the *Migrant Smuggling Protocol*). Consequently, smuggled migrants should not be held criminally liable for being the object of migrant smuggling,³⁸⁹ for offences involving document fraud,³⁹⁰ and for remaining in the host country clandestinely or otherwise illegally.³⁹¹ This provision does not, however, grant blanket immunity to smuggled migrants and they may face criminal prosecution for any offence unrelated to migrant smuggling.³⁹²

Ideally these measures should be legislatively implemented, however, law enforcement may simply choose to produce and follow guidelines that are compliant with these principles.

6.4	Assessment: Protection of Smuggled Migrants
	<ul style="list-style-type: none"> ➔ Is the intimidation of smuggled migrants criminalised? ➔ What measures are available to protect smuggled migrants from intimidation and physical violence? ➔ What capacity is there to offer effective physical protection to smuggled migrants? ➔ Are there procedures to ensure smuggled migrants are not detained, charged or prosecuted for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as smuggled migrants?

Review

The majority of sources suggest that most prosecutions of migrant smuggling in Pakistan involve and depend on testimony of smuggled migrants. Only in exceptional cases it is

³⁸⁶ *Legislative Guides*, 366.

³⁸⁷ Articles 24–26 *Convention against Transnational Organised Crime*. See further David McClean, *Transnational Organized Crime* (2007) 259–274.

³⁸⁸ *Legislative Guides*, 340.

³⁸⁹ Article 6(1)(a) *Migrant Smuggling Protocol*.

³⁹⁰ Article 6(1)(b) *Migrant Smuggling Protocol*.

³⁹¹ Article 6(1)(c) *Migrant Smuggling Protocol*.

³⁹² David McClean, *Transnational Organized Crime* (2007) 389.

possible to conduct prosecutions without their testimonies so long as there is sufficient evidence to establish the liability of the accused. This highlights the importance of protecting smuggled migrants throughout the criminal justice process in order to secure convictions.

Protection of smuggled migrants

While Chapter 1 of the *Constitution of Pakistan* sets out a catalogue of ‘fundamental rights’, neither the *Emigration Ordinance 1979* nor the *Foreigners Act 1946* contain specific measures to protect the safety and human rights of smuggled migrants.

The *Penal Code* (Pakistan) sets out relevant criminal offences designed to protect the life, physical integrity, health, and liberty of any persons. Violations of *Penal Code* offences attract severe penalties depending on the harm caused and the blameworthiness of the offences. To this extent there is some legal protections against intimidation of victims.

The FIA claims that it has no broader mandate to protect smuggled migrants and will refer them to provincial police forces in instances in which they smuggled migrants have been threatened.

Material assistance and treatment of victims

The Government of Pakistan has set up comprehensive policy and legal frameworks designed to offer victims of trafficking in persons safe temporary accommodation, access to food and medical assistance, and to counselling and rehabilitation programs,³⁹³ but these mechanisms are not available to smuggled migrants who are generally not seen as victims.

Consultation with officials indicate that there is no mechanism in place to provide any formalised assistance to smuggled migrants. Foreigners who have been identified as entering the country illegally will be removed from Pakistan as swiftly as possible. If they arrive by air they will be returned to the custody of the airline that brought the person into Pakistan. It is unclear how smuggled migrants are removed from Pakistan if they enter the country by land or sea.

Smuggled migrants who are Pakistani nationals and have been returned from overseas (returning deportees) or who have been apprehended prior to departure (offloads) will be detained at Anti-Human Trafficking Circles.³⁹⁴ This is especially the case if smuggled migrants are unwilling to cooperate with Pakistani law enforcement agencies or if they are repeat offenders. Such detention of victims is contrary to international standards and best practice.

It was claimed by some persons that deportees are frequently assisted by the FIA in order to return to their home and in some instances the FIA may even equip returning deportees with money to enable their return to their family in Pakistan. There is, however, no formalised assistance or protection given to smuggled migrants. Whilst in cases of trafficking in persons there are some avenues for non-governmental involvement, for smuggled migrants there appears to be no assistance at all.

Non-criminalisation of smuggled migrants

Contrary to international requirements (to which Pakistan is not a Signatory), smuggled migrants are often charged in relation to their unlawful departure from Pakistan or their

³⁹³ See further, Andreas Schloenhardt & Jarrod Jolly, *Trafficking in Persons in Pakistan* (2010) 38.

³⁹⁴ See further Section II.4.4 above.

attempt to do so. It was said this was more likely where the smuggled migrant was a repeat offender.

Recommendations

To ensure minimum compliance with international law and best practice guidelines, it is strongly recommended that the practice of criminalising smuggled migrants be discontinued. This may also greatly increase the willingness of smuggled migrants to cooperate with Pakistani authorities, including the FIA.

Mindful of the necessary resources, it would be desirable to establish a basic program to offer protection and temporary accommodation to smuggled migrants and develop more formalised and streamlined programs for returning deportees and separately for smuggled migrants who are foreign nationals.

6.4 Recommendations: Protection of Smuggled Migrants

- ➔ Ensure smuggled migrants are not unduly detained or charged for their involvement in migrant smuggling.
- ➔ Develop more formalised and streamlined programs for returning deportees.
- ➔ Develop more formalised and streamlined programs for smuggled migrants who are foreign nationals.

6.5 Witness Protection

It is well recognised that witnesses are a strong resource in the prosecution of migrant smuggling and trafficking in persons, but that the rights and safety of witnesses need to be taken into account throughout the criminal justice process.³⁹⁵ Witnesses can be either simple observers of a crime or victims of the crime. Witnesses can also be individuals who formerly belonged to an organised criminal group or who committed a crime and then decided to collaborate with the justice system.³⁹⁶ The need for witness protection may arise as a result of a police initiative or at the witness's initiative.³⁹⁷

Witnesses of migrant smuggling and trafficking in persons often fear intimidation and retaliation if they cooperate with law enforcement agencies or testify in court. These fears are particularly acute when there is a close relationship between the witness and the offender, or when the offender is part of an organised criminal group. Hence it is vital that effective measures are taken to protect the safety and privacy of witnesses and their families.³⁹⁸ It is important to note that in many cases of migrant smuggling and trafficking in persons, witnesses may also be victims. For this reason the following section must be read in conjunction with Sections II.6.4 and II.6.3 dealing with the protection of victims.

³⁹⁵ UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7: Law enforcement and prosecution, 55; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 227.

³⁹⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 229.

³⁹⁷ UNODC, *In-depth Training Manual on Investigating and Prosecuting Migrant Smuggling* (2011) Module 6: Witness protection and assistance, 104.

³⁹⁸ UNODC, *Criminal Justice Assessment Toolkit* (2006) Victims and Witnesses, 14–15; UNODC, *Criminal Justice Assessment Toolkit* (2006), International Cooperation, 14–15.

Many witness protection measures are reliant on legislative implementation and rules of the judicial process. The following section focuses on the role of law enforcement in achieving effective witness protection.

Requirements

The *Convention against Transnational Organised Crime* includes a number of provisions requiring State Parties to take measures to protect witnesses and to cooperate with other enforcement authorities to offer protection to witnesses.³⁹⁹ The requirements of the *Convention against Transnational Organised Crime* apply to offences within the Protocols and are thus relevant to trafficking and smuggling. There is, however, nothing in either of the Protocols specific to the protection of witnesses of migrant smuggling and trafficking in persons.

Article 24 of the *Convention against Transnational Organised Crime* is the principal Article dealing with the protection of witnesses:

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.
2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:
 - (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

[...]
4. The provisions of this article shall also apply to victims insofar as they are witnesses.

The term 'witnesses' is not defined, but Article 24 limits the scope of witnesses to whom the obligations apply to 'witnesses in criminal proceedings who give testimony concerning offences covered by this Convention, and, as appropriate, for their relatives or other persons close to them'. It has been noted that securing the effective cooperation of witnesses with investigations and prosecutions may require that protection be extended in the following cases:

- (a) to all persons who cooperate with or assist in investigations until it becomes apparent that they will not be called upon to testify; and
- (b) to persons who provide information⁴⁰⁰

It should be reinforced that the obligation to provide protection also arises only where such protection is within the 'means', such as available resources and the technical capabilities, of the State Party concerned.

³⁹⁹ Articles 24–26 *Convention against Transnational Organised Crime*. See further David McClean, *Transnational Organized Crime* (2007) 259–274.

⁴⁰⁰ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 238.

Further to these requirements, Article 29(1)(i) of the *Convention against Organised Crime* also requires State Parties to initiate, develop or improve specific training programs that, inter alia, deal with ‘methods used in the protection of victims and witnesses.’

Principles of protection

In implementing these requirements, the *Toolkit to Combat Smuggling of Migrants* and *Toolkit to Combat Trafficking in Persons* suggest that there are three key principles to bear in mind. These include physical protection, psychological protection, and protection from unfair treatment.⁴⁰¹ It is suggested that physical protection can range from simple measures such as giving a witness a mobile phone to more complicated and resource-intensive measures, such as relocation or identity changes. Other types of physical protection can include police protection from intimidation/threats made by offenders or their accomplices, police escorts to and from the courtroom, protection within the courtroom, and physical protection for family and close associates.

Psychological protection can be provided by ensuring the witness avoids further stress, remains informed throughout proceedings, is allowed access to counsellors and specially trained law enforcement experts sensitive to the specific needs of the witness, and the prevention of encounters between the witness and suspects/defendants.

The principle of ‘protection from unfair treatment’ involves ensuring witnesses have their rights and dignity respected throughout the criminal justice process. This ensures that witnesses do not feel as though they are ‘tools in the process’. The provision of adequate legal services from an early stage, even before they have agreed to serve as a witness is useful in this regard.

Obstruction of justice

Whilst largely a matter of legislative implementation, law enforcement agencies should note that Article 23 of the *Convention against Transnational Organised Crime* targets the obstruction of justice. It should therefore be ensured that witnesses are protected from those who attempt to influence them through both corrupt means (such as bribery) as well as intimidation or the use of threat of violence. Ideally there are offences that criminalise such conduct.

Protecting witnesses requested from other State Parties

Article 18 of the *Convention against Transnational Organised Crime*, which deals with issues of mutual assistance, has an important requirement directed at protecting witnesses who are foreign nationals. Relevant to law enforcement is paragraph 27 of this Article, which requires witnesses from other State Parties who,

at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity

⁴⁰¹ UNODC, *Toolkit to Combat Smuggling of Migrants* (2008) Tool 7: Law enforcement and prosecution, 56; UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 227.

of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

Protection programmes after trial

In some cases participation in extended police witness protection programs following the conclusion of a trial may be needed to guarantee the safety of the witness.⁴⁰² Such programs are intended to prevent offenders or their accomplices from approaching or intimidating witnesses. The nature of organised crime and the involvement of criminal organisations in migrant smuggling and trafficking in persons makes this a particularly pertinent consideration for law enforcement. Unfortunately, these programs are extremely expensive and require a great deal of resources. The *Legislative Guides* note that ‘many elements of witness protection schemes are administrative or operational in nature’ but that there are some aspects that would require legislative implementation.⁴⁰³

The *Toolkit to Combat Trafficking in Persons* sets out details about how a police protection programme would ideally be implemented.⁴⁰⁴ Witness protection programmes can include relocating of witnesses, changing of the witness’ identity, police escorts and financial and social assistance. Other provisions can include ‘the installation of panic alarms in the home or place of business of witnesses and the provision of mobile telephones, supplemented by daily contact by law enforcement officials or police escorts.’⁴⁰⁵

The *Toolkit to Combat Trafficking in Persons* notes that persons close to witnesses, such as family members, may also face threats and thus require assistance through such a program.⁴⁰⁶

6.5	Assessment: Witness Protection
	<ul style="list-style-type: none">➔ What measures are available to protect witnesses of migrant smuggling and trafficking in persons and their relatives/close associates?➔ What involvement does the FIA have in providing protection to witnesses?➔ Are FIA officers trained in the methods/principles of witness protection?➔ What capacity is there to offer effective physical protection to witnesses? What capacity is there to offer effective psychological protection and protection from unfair treatment to witnesses?➔ Does national law establish limitations on the disclosure of information concerning witnesses’ identity or whereabouts, and in exceptional circumstances, protecting the anonymity of the person giving evidence?➔ Does the FIA have guidelines/procedures to ensure it does not disclose the information and details about witnesses?➔ Is the intimidation of witnesses criminalised and investigated?➔ Are there specially trained officers to deal with child witnesses?

⁴⁰² UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 238.

⁴⁰³ *Legislative Guides*, 173 at [378].

⁴⁰⁴ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 238 – 240.

⁴⁰⁵ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 239.

⁴⁰⁶ UNODC, *Toolkit to Combat Trafficking in Persons* (2008) 239.

Review

Pakistan's *National Action Plan for Combating Human Trafficking* provides for the establishment of shelters for, inter alia, witnesses of trafficking:

The purpose of providing secure accommodation shall be to protect victims, suspected victims and witnesses, help them, meet their relevant needs, and create a safe environment for those persons. A shelter shall in no case be considered a place of confinement and the persons placed therein shall be treated as victims or suspected victims. Secure accommodation shall also ensure suitable conditions for rehabilitation and reintegration. At the same time, secure accommodation shall provide a safe environment to the victims awaiting their repatriation and that of witnesses that have presented evidence.⁴⁰⁷

A further objective outlined in the *National Action Plan* is for the Anti-Trafficking Units, in coordination with the local police, to provide 'effective protection from possible intimidation of the witnesses or retaliation to prevent them from giving evidence in criminal proceedings against human traffickers.'⁴⁰⁸

Consultation with the FIA revealed, that there is no formalised witness protection program and there is apparently no legislation that enables the FIA to equip key witnesses with new identities. It was conceded that witnesses were very vulnerable in migrant smuggling cases. It was suggested that where a witness was specifically at threat for their involvement, provincial police might be contacted. The FIA claims to have neither the capacity nor mandate for this kind of protection.

In terms of protecting witness' identities it was said that details of witnesses would only be shared with other agencies, officers et cetera, on a needs basis. There do not appear to be any particular protections or procedures in place to ensure vulnerable witnesses had their details kept confidential.

Recommendations

The vast resources needed to set up comprehensive witness protection programs may prevent the development of such programs for the FIA in the short and medium term. For the time being, it is important to ensure that vulnerable witnesses are identified and provincial police contacted to arrange for protection. This is particularly the case during the investigation and trial stages.

6.5 Recommendations: Witness Protection

- ➔ Formalise a relationship with provincial police to protect vulnerable witnesses.
- ➔ Consider the implementation of a witness protection program for the FIA.

⁴⁰⁷ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011).

⁴⁰⁸ Pakistan, FIA, *Pakistan National Action Plan for Combating Human Trafficking*, available at www.fia.gov.pk/HUMAN.htm (accessed 17 June 2011). It would be more appropriate to refer to the Anti-Human Trafficking Circles on this point.

Appendix: FIA Immigration and Anti-Human Trafficking Offices

	FIA Office (Type)	Location	No. of FIA staff
1	FIA Headquarters, Immigration and Human Trafficking Wing	Islamabad	70
2	FIA Academy	Islamabad	50
3	FIA Anti Human Trafficking Circle	Islamabad	59
4	FIA Anti Human Trafficking Circle	Peshawar	27
5	FIA Anti Human Trafficking Circle	Lahore	73
6	FIA Anti Human Trafficking Circle	Multan	65
7	FIA Anti Human Trafficking Circle	Gujranwala	73
8	FIA Anti Human Trafficking Circle	Gujrat	*
9	FIA Anti Human Trafficking Circle	Faisalabad	61
10	FIA Anti Human Trafficking Circle	Karachi	76
11	FIA Anti Human Trafficking Circle	Hyderabad	48
12	FIA Anti Human Trafficking Circle	Sukhur	46
13	FIA Anti Human Trafficking Circle	Quetta	125
14	FIA Immigration Checkpost, Benazir Bhutto International Airport	Rawalpindi	60
15	FIA Immigration Checkpost, Peshawar International Airport	Peshawar	62
16	FIA Immigration Checkpost, Allama Iqbal International Airport	Lahore	82
17	FIA Immigration Checkpost, Jinnah International Airport	Karachi	108
18	FIA Immigration Checkpost, Quetta International Airport	Quetta	60
19	FIA Immigration Checkpost, Gawadar Airport	Gawadar	17
20	FIA Immigration Checkpost, Turbat Airport	Turbat	*
21	FIA Immigration Checkpost, Pasni Airport	Pasnit	*
22	FIA Immigration Checkpost, Faisalabad International Airport	Faisalabad	*
23	FIA Immigration Checkpost, Multan International Airport	Multan	*
24	FIA Immigration Checkpost, Pak-Indian Land Route Border	Wagha	27
25	FIA Immigration Checkpost, Sialkot Airport	Sialkot	*
26	FIA Immigration Checkpost, Rahim Yar Khan Airport/Shaiikh Zaid International Airport	Rahim Yar Khan	*
27	FIA Immigration Checkpost, Dera Ghazi Khan Airport	D.G. Khan	*
28	FIA Immigration Checkpost, Bahawalpur Airport	Bahawalpur	*
29	FIA Immigration Checkpost, Pak-Afghan Land Route Border	Torkham	4
30	FIA Immigration Checkpost, Pak-China Land Route Border	Sust	29
31	FIA Immigration Checkpost, Pak-Afghan Land Route Border	Chaman	42
32	FIA Immigration Checkpost, Pak-Iran Land Route Border	Taftan	43
33	FIA Immigration Checkpost, Wagha Railway Station, Paki-India Border	Wagha	17
34	FIA Immigration Checkpost, Zero Point, Khokhra Par Railway Station, Paki-India Border	Karachi	*
35	FIA Immigration Checkpost, Seaport, Karachi Port	Karachi	33

	FIA Office (Type)	Location	No. of FIA staff
	Trust		
36	FIA Immigration Checkpost, Seaport, Ghasbandar	Karachi	30
37	FIA Immigration Checkpost, Seaport, Port Bin Qasim Roast	Karachi	33
38	FIA Immigration Checkpost, Gawadar Seaport	Gawadar	*
		Total Number of Personnel	1,430

*The FIA Regional Directorate responsible for the location provides staff on a temporary basis in order to carry out immigration services on particular dates depending on the schedule for international flights.

Note: This information was provided by FIA and cannot be independently verified.

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