

Prevention of Smuggling of Migrants Act, 2018 & Prevention of Smuggling of Migrants Rules, 2020



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Title:

Prevention of Smuggling of Migrants Act, 2018 and Prevention of Smuggling of Migrants Rules, 2020

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ISLAMABAD, THURSDAY, MAY 24, 2018

PART I

Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 22nd May, 2018

No.F.9 (21)/2018-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on 18th May, 2018 and is hereby published for general information:—

ACT No. XXVIII OF 2018

An Act to prevent the smuggling of migrants

WHEREAS it is necessary to provide for effective measures to prevent the smuggling of migrants by land, sea and air, to promote and facilitate national and international co-operation in this regard and to protect the smuggled migrants and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows,—

(1) **Short title, extent and commencement.**—(1) This Act may be called the Prevention of Smuggling of Migrants Act, 2018.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) This Act shall apply to any person who commits an offence under section 3, 4, 5, 6 or 7 where-

(a) the offence is committed within the territory of Pakistan;

(b) the offence is committed on board a vessel or aircraft that is registered under the laws of Pakistan at the time of commission of the offence; or

(c) the offence is committed outside the territory of Pakistan by a citizen of Pakistan.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) ‘benefit’ includes monetary profit, proceeds or payment in cash or in kind;
- (b) ‘Code’ means the Code of Criminal Procedure, 1898;
- (c) ‘Government’ means the Federal Government;
- (d) ‘illegal entry’ means crossing borders through any port or place other than the designated port or place or without complying with the legal requirements for entering into Pakistan or another country;
- (e) ‘harbour’ shall have the same meaning as in section 52-A of the Penal Code;
- (f) ‘migrant’ means a person who travels or intends to travel from one country another;
- (g) ‘organized criminal group’ means a structured group of two or more persons acting in concert for benefit, with the aim of committing any offence under this Act;
- (h) ‘Penal Code’ means the Pakistan Penal Code (Act XVI of 1860);
- (i) ‘smuggling of migrants’ means the facilitation, for benefit, of illegal entry of another person who,—
 - (i) is a foreigner, as defined in clause (a) of the Foreigner’s Act, 1946 (XXXI of 1946), into Pakistan or from Pakistan into country of which the person is not a national or a permanent resident; or
 - (ii) is a citizen of Pakistan, as specified in the Pakistan Citizenship Act, 1951 (11 of 1951), into another country of which the person is not a national or a permanent resident; and
- (j) ‘smuggled migrant’ means any person in relation to whom an offence under section 3,4,5,6 or 7 is committed irrespective of the fact whether or not the perpetrator is identified, apprehended, prosecuted or convicted.

3. Punishment of smuggling of migrants.—Whoever intentionally engages in or attempts to engage in the smuggling of migrants shall be punished with imprisonment which may extend to five years but which shall not be less than three years and with fine up to one million rupees.

4. Offences in relation to documents.—(1) Whoever intentionally, for the purpose of

getting benefit,—

- (a) produces or attempts to produce a document for the purpose of enabling the smuggling of migrants; or
- (b) procures, provides, or possesses, or attempts to procure, 'provide, or possess a document for the purpose of enabling the smuggling of migrants,— commits an offence.

(c) Whoever commits or attempts to commit an offence under sub-section (1) shall be punished with imprisonment which may extend to three years but which shall not be less than one year and with fine up to one million rupees.

5. Offence of harbouring illegal residents for benefit.—Whoever intentionally, for the purpose of getting benefit, harbours or attempts to harbour a person who is not a citizen or permanent resident of Pakistan and who has not complied with the necessary requirements for legally remaining in Pakistan commits an offence and shall be punished with imprisonment which may extend to three years but which shall not be less than one year and with fine up to one million rupees.

6. Aggravated offences.—The offences under sections 3,4, and 5 shall be punished with imprisonment for a term which may extend to fourteen years but which shall not be less than five years and with fine up to two million rupee in any of the following circumstances,—

- (a) where the offence involves serious injury, life-threatening illness, or death, or other circumstances that endanger, or are likely to endanger, the life o' safety of the smuggled migrant or another person;
- (b) where the offence involves cruel, inhuman or degrading treatment of another person; or
- (c) where the offence was committed as part of the activity of an organized criminal group.

7. Offence of abetment and criminal conspiracy.—(1) Whoever abets any of the offences under section 3,4,5 or 6, shall be punished in accordance with Chapter V of the Penal Code.

(2) Any person who is party to a criminal conspiracy to commit an offence under section 3,4,5 or 6 shall be punished in accordance with Chapter V-A of the Penal Code.

8. Non-criminalization of smuggled migrants.—Without prejudice to the applicability of other laws establishing criminal offences, smuggled migrants shall not become liable to criminal prosecution under this Act for the fact of having been the object of conduct set forth in section

3,4,5,6 or 7 and may be a witness in the case.

9. Offences to be cognizable offences etc.—All offences under this Act shall be cognizable, non-bailable, and non-compoundable as construed by the Code.

10. Cognizance of offences.—Notwithstanding anything contained in the Code, a Magistrate of the First Class shall try an offence punishable under this Act and may impose any punishment provided under the Act.

11. Investigating agency.— The Federal Investigation Agency, or such other agency as may be specially empowered by the Government through notification in the official Gazette, shall be responsible for investigation of offences under this Act.

12. National and international cooperation.— The Federal Investigation Agency, or such other agency notified under section 11 may,—

- (a) co-operate with relevant authorities in Pakistan and in other countries of origin, transit and destination of smuggled migrants and make reciprocal arrangements after due administrative process to share, request and receive information relating to smuggling of migrants; and
- (b) maintain liaison with all relevant national or international authorities, organizations, bodies, associations and societies and represent Pakistan.

13. Applicability of Code.—The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provision of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings under this Act.

14. Power to make rules.—The Government may, by a notification in the official Gazette, make rules to carry out the purposes of this Act.

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

16. Act not in derogation.—The provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force.

17. Repeal.—The Prevention of Smuggling of Migrants Ordinance, 2018 is hereby repealed.

Case Laws on Prevention of Smuggling of Migrants Act of 2018

Similarly, sections 3/6 of Prevention of Smuggling of Migrants Act, also provides 14 years' punishment, hence, from tentative assessment of record, petitioner is prima facie connected with a crime, which falls within the prohibitory clause of section 497, Cr.P.C. and therefore, he is not found to be entitled for grant of bail. **Muhammad Ejaz Versus The State and 2 others 2023 M L D 1415 [Peshawar (Abbottabad Bench)] Bail refused.**

In the event of charge of such a heinous nature, no leniency could be shown to the accused involved in such crimes. Section 345, Cr.P.C, has tabulated the offences which may be compoundable. The legislature has put a bar in respect of offences which cannot be compounded by the parties, nor the Court shall allow the composition of offence not mentioned in section 345, Cr.P.C.

at the same time due to the current alarming situation of deceiving young generation on pretexts of sending them abroad and demanding huge amount/s from their parents by the agent mafias (human traffickers), large number of young peoples are losing their lives in the hope of better future, hence, any leniency towards such elements would amount to encourage the evil of human trafficking, hence, petitioner does not deserve to be released on bail on the fresh ground of compromise **Muhammad Ejaz Saeed Versus The State and 2 others 2023 P Cr. L J 1476 [Peshawar (Abbottabad Bench)] Bail declined.**



GOVERNMENT OF PAKISTAN
(INTERIOR DIVISION)
MINISTRY OF INTERIOR

Islamabad, the 22 October, 2020.

NOTIFICATION

S.R.O.(I)/2020.- In exercise of the powers conferred under Section 14 of the Prevention of Smuggling of Migrants Act, 2018 (XXVIII of 2018), the Federal Government is pleased to make the following rules:

CHAPTER I

1. Short title and commencement: (1) These preliminary rules may be called Prevention of Smuggling of Migrants Rules, 2020.

(2) They shall come into force at once.

2. Definitions- (1) In these rules unless, there is anything repugnant in the subject or context,

- (i) "Act" means the Prevention of Smuggling of Migrants Act, 2018 (XXVIII of 2018);
- (ii) "Agency" means the Federal Investigation Agency established under the Federal Investigation Agency Act 1974 (VIII of 1975);
- (iii) "authorized officer" means an officer of the investigation agency authorized to perform any function on behalf of the investigation agency by or under the Act;
- (iv) "broadcasting" means transmitting, relaying or distributing by wireless telegraphy, digital means or by any other means, or by wireless telegraphy in conjunction with any other means, of communications, sounds, signs, visual images or signals intended for reception by any person whether such communications, sounds, signs, visual images or signals are received by that person or not, that are likely to lead any person to identify a person as a victim or witness of any offence under the Act; but excluding broadcasting for navigational or for securing safety purposes;
- (v) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (vi) "controlled delivery" means the investigative technique of allowing illicit or suspect consignments including passports and travel documents to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;
- (vii) "case property" means items seized during enquiry or investigation;

- (viii) "child" means any person under eighteen years of age;
- (ix) "conveyance" means any vehicle, aircraft, railways, animal, vessel or ship used for the transportation of migrants;
- (x) "foreigner" has the same meaning as in the Foreigners Act, 1946 (XXXI of 1946);
- (xi) "fraudulent travel or identity document" includes any travel or identity document -
- (a) that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of Pakistan or another country; or
 - (b) that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (c) that has been unlawfully obtained with direct or indirect assistance of, or in connivance with any person or agency lawfully authorized to make or issue such document; or
 - (d) that is being used by a person other than the rightful holder.
- (xii) "device" means any machinery or instrument that may be used or intended to be used for the purpose of forgery or counterfeiting any document, passport, visa, entry permit or travel ticket;
- (xiii) "dependent" means any person, who is related to a migrant and is also dependent on that migrant;
- (xiv) "Additional Director" means Additional Director of the Federal Investigation Agency;
- (xv) "court" means the court having jurisdiction to try the offences under the Act;
- (xvi) "deception" includes making false representations or submitting false documents, or failing to disclose material facts;
- (xvii) "Deputy Director" means a Deputy Director of the Federal Investigation Agency;
- (xviii) "Director" means Director of the Federal Investigation Agency;
- (xix) "Director General" means Director General of the Federal Investigation Agency;
- (xx) "identity document" includes any kind of document that may be used to establish the identity of a person in Pakistan or any other country under the law or procedures of Pakistan or that country;
- (xxi) "informed consent" means given that the person is given complete relevant information to get that person's approval without any pressure or coercion and shall be called an informed consent only when —
- (a) all relevant information is conveyed to the person;
 - (b) possible advantages and disadvantages of a decision are discussed with the person;

- (c) it is given without any stress, pressure or coercion; or
- (d) the person is in a safe and comfortable place.

(xxii) “Investigating officer” means an officer of the Federal Investigating Agency assigned to enquire or investigate complaints or cases under the Act;

(xxiii) “medical officer” means a registered medical practitioner in the service of the Government or a Provincial Government or Government of Azad Jammu and Kashmir, or Government of Gilgit Baltistan, and includes a registered medical practitioner in any teaching hospital of a University;

(xxiv) “Ministry” means the Ministry of Interior of the Government of Pakistan;

(xxv) “parent” includes

- (a) the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership;
- (b) the stepmother of a child whose mother is dead; and
- (c) an adoptive parent, where a child was adopted in accordance with a decision taken by the competent administrative authority or court in a country whose adoption orders are recognized by Pakistan;

(xxvi) “premises” means any building, structure, land, place, location, tent or conveyance or any part thereof and includes any source, transit or destination of transportation of persons;

(xxvii) “publishing” means publishing to any person, and includes publishing on the internet;

(xxviii) “return” means the process of a foreign national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

- his or her country of origin, or
- a country of transit in accordance with a bilateral readmission agreement or other arrangements, or
- another third country, to which such foreign national concerned voluntarily decides to return and in which he or she will be accepted;

(xxix) “return decision” means an administrative or judicial decision or act, stating or declaring the stay of a foreign national to be illegal and imposing or stating an obligation to return;

(xxx) “removal” means the enforcement of the obligation to return, namely the physical transportation out of Pakistan;

(xxxi) “schedule” means schedule annexed to these rules;

(xxxii) “separated child” means a child separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative;

(xxxiii) “ship” has the same meaning as in Section 2(47) of the Pakistan Merchant Shipping Ordinance, 2001;

(xxxiv) “travel document” includes any kind of document required, under the law of Pakistan or any other country, to enter or leave Pakistan or any other country;

(xxxv) “unaccompanied child” means a child not cared for by another relative or an adult who by law or custom is responsible for doing so;

(xxxvi) “vessel” means any type of watercraft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service; and

(xxxvii) “wireless telegraphy” means and includes any system of communicating messages, spoken words, music, images, pictures, prints, or other communications, sounds, signs, or signals by means of radiated electro-magnetic waves originating in an apparatus or device constructed for the purpose of originating such communications, sounds, signs, or signals.

(2) Words and expression used but not defined in these rules shall have the same meaning as in the Act.

CHAPTER II

Protection and assistance to smuggled migrants

3. Protection of smuggled migrants —

(1) An officer of the Federal Investigation Agency dealing with a matter related to an offence under sections 5, 6, 7 or 8 of the Act shall at the earliest stage determine whether the smuggled migrant is a victim of trafficking within the meanings of the Prevention of Trafficking in Persons Act, 2018 (XXXIV of 2018) and the rules framed thereunder.

(2) In case a smuggled migrant is determined by the officer of the Federal Investigation Agency to be a victim as defined in the Prevention of Trafficking in Persons Act, 2018 (XXXIV of 2018), notwithstanding anything provided in these rules, such smuggled migrant shall be treated as a victim thereunder and the provisions of the Prevention of Trafficking in Persons Act, 2018 (XXXIV of 2018) and the rules framed under the said Act shall apply to such smuggled migrant.

(3) The Agency and officers of the Agency receiving information disclosing an offence under the Act shall take appropriate actions as are necessary to protect the immediate safety and security of persons who may be smuggled migrants, especially those whose lives or safety are endangered by reason of being the object of conduct set forth in sections 5, 6, 7 or 8 of

the Act, and shall take appropriate measures to afford smuggled migrants adequate protection against any harm that may be inflicted upon them, whether by individuals or groups.

- (4) An officer of the Agency shall respond to a request by any person who is, or is suspected to be a smuggled migrant for assistance and shall offer protection and assistance in a case under the Act in accordance with these rules.
- (5) A failure to respond to a request for assistance or to inquire into or investigate the alleged offence under the Act shall be deemed to be a misconduct and the officer who fails to respond to a request for assistance or to initiate inquiry or investigation shall be subject to disciplinary action according to applicable rules and procedure.
- (6) An officer of the Agency may, if deemed appropriate and expedient by such officer, refer a person who is, or is suspected to be, a smuggled migrant to a shelter home or a facility established by the Government or a Provincial Government for temporary lodging of smuggled immigrants. Where a shelter home or facility established by the Government or a Provincial Government is not available, or it is not feasible to lodge a smuggled migrant in a Government shelter home in view of reasons of safety or otherwise, other residential institutions of a Non-Governmental or an International Organization duly approved by the Government for the said purpose may be additionally treated to as shelter homes for this specific purpose.

4. Special Needs of Smuggled Child and Vulnerable Migrants —

- (1) All assistance provided to smuggled migrants shall take due account of the special needs of children and other persons in a vulnerable position including, but not limited to, disabled persons, elderly persons, pregnant women, single parents with children under the age of eighteen years, victims of human trafficking, persons with mental disorders and persons who have been subjected to torture, rape, or other serious forms of psychological, physical or sexual violence.
- (2) The immigration officer, investigating officer or any other officer of the Agency, or a child protection officer assisting such officer of the Agency, dealing with the smuggled migrant who is, or appears to be under eighteen years of age, shall —
 - (i) identify the level of risk that the child may be exposed to, including any gender related needs;
 - (ii) identify actual and potential protective and supportive factors in the home and broader environment to minimize risk to the child; and
 - (iii) decide on the appropriate protective measures or intervention as provided for in the Act and these rules.

- (3) If the smuggled migrant is a child who is not accompanied by an adult who is taking responsibility for the care and protection of the child, the officers concerned of the Agency, and any child protection officer or social welfare officer assisting any officer of the Agency in the matter, shall -
- (i) take all necessary steps to establish his or her identity and nationality;
 - (ii) notify the relevant department or agency of the Government or a Provincial Government entrusted with protection of children of that fact;
 - (iii) make every effort to locate his or her family when this is in the best interest of the child;
 - (iv) where the child's guardian or parent is identified, immediately notify such guardian or parent of the smuggled child migrant, subject to considerations of safety and security of the child; and
 - (v) if the guardian or parent of the smuggled child migrant is not identified, refer the child to a facility of the Government or a Provincial government providing shelter and care to unaccompanied children or, where no such facility is available or it is not convenient to place the child at the facility for any reason, refer the child to a similar facility or shelter home run by a Non-Governmental Organization duly registered by the Government.
- (4) The investigating officer or any other officer of the Agency making the referral of an unaccompanied or separated smuggled child migrant to any agency or body of the Government or a Provincial Government or to a registered Non-Governmental Organization, shall forthwith inform his or her supervisory officer of the fact with details of the agency, body or organization to whom referral has been made and shall submit a report of the fact to the Magistrate having jurisdiction in the matter. Such Magistrate may pass an appropriate order for placing the smuggled child migrant in care for the duration of the court order and a copy of the said order shall be handed to the investigating officer and the prosecutor dealing with the matter.
- (5) Assistance to children shall, when possible, be provided by specially trained professionals and in accordance with special needs of the smuggled child or vulnerable migrants.
- (6) When the age of the smuggled migrant is uncertain and there are reasonable grounds to believe that the smuggled migrant is a child under eighteen years of age, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age and special protective measures shall be taken in relation to him or her until his or her age is identified.

5. Information to smuggled migrants —

- (1) The immigration officer, investigating officer or an officer of the Agency dealing with a

smuggled migrant shall forthwith provide him or her with the following information in a clear manner and in a language which he or she understands:

- (a) the right to benefit from any of the protection and assistance measures laid as provided in these rules;
 - (b) in the case of foreign citizens without the necessary legal papers, information regarding the possibility of obtaining a temporary stay permit or facilitated return, in accordance with the terms laid down in the law and following the corresponding rules;
 - (c) In the case of a foreign citizen who has the necessary legal papers but whose visa is close to expiry, information regarding the possibility of applying for extension in visa without delay;
 - (d) information about the support resources available; and
 - (e) the possibility of referral to any of the support resources provided by the Government, the Provincial Government, local public authorities or Non-Governmental Organizations and bodies duly registered by the Government.
- (2) In addition to the information in sub-rule 1 above, a smuggled migrant shall also be informed that, depending on the circumstances of the case, he or she might be required to:
- (i) attend any test identification parade procedures;
 - (ii) attend any other investigative procedures that may involve being in the presence of the accused under the provisions of the Act;
 - (iii) testify during trial hearings; if so, whether the smuggled migrant may have to face the accused in the courtroom or whether or not the smuggled migrant adduce evidence from behind a screen, or via a video link or whether there is any provision for the accused to be removed from the courtroom while the evidence is given by the smuggled migrant.
- (3) Smuggled migrants who are children shall be provided with information in a language that they use and understand and in a manner that is understandable to them. Information may be provided to children through their legal guardian or, in case the legal guardian is the alleged offender, any other person selected by the officer concerned of the Agency.
- (4) The investigating officer or any other officer handling the smuggled migrant shall ensure that he or she has understood all parts of the information communicated to that smuggled migrant under this and rule has been provided an opportunity to seek clarification on any point of the information communicated. The officer shall maintain a documentary record of the above actions.
- (5) In the event that the smuggled migrant expressly rejects all or any of the proposed protection

and security measures, this refusal shall be placed on record duly signed by the concerned officer and by the smuggled migrant.

6. Medical treatment of smuggled migrants —

- (1) Smuggled migrants shall be entitled to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of Pakistan. Necessary medical or other assistance to persons who have special needs, such as unaccompanied children or persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence shall also be provided.
- (2) If an immigration officer, or any other officer of the Agency connected with the case is of the opinion that a smuggled migrant is in need of medical treatment, such officer shall ensure that the smuggled migrant requiring medical care is immediately brought and presented to a government hospital or any other medical unit, or a medical officer duly nominated by the Department of Health concerned for the purposes of this rule, or in absence of such nominated medical officer to any other registered medical practitioner for medical treatment.
- (3) Any person whom an immigration officer reasonably suspects to suffer from any physical or mental condition or injury may be required by an immigration officer to submit to examination by a medical officer specifically nominated by the concerned Department of Health for purposes of this rule, or in absence of such nominated medical officer to a registered medical practitioner, and for the purpose of such examination to answer such questions and undergo such tests as the medical officer or the medical practitioner may think fit.
- (4) The officer concerned shall take informed consent of a smuggled migrant for medical examination and treatment.
- (5) In case the smuggled migrant is a child, consent for examination shall be sought from the parent or guardian, if available.
- (6) Medical examination of a child shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
- (7) In case the parent of the child or other person cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a medical personnel nominated by the head of the medical institution in addition to the person conducting the medical examination.
- (8) A medical officer or medical practitioner before whom a person is presented under this rule

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- (a) shall conduct or cause to be conducted an examination of the person;
 - (b) may in examining the person and if so authorized by an officer of the Agency, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person's condition; and
 - (c) shall provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.
- (9) Where the medical officer who examines a smuggled migrant is of the opinion that his hospitalization is necessary for the purpose of medical care or treatment, an officer of the Agency, not below the rank of inspector, may authorize the smuggled migrant to be hospitalized for such period as deemed necessary by the medical officer.
 - (10) Where the smuggled migrant is hospitalized under this rule, the officer authorizing hospitalization shall have control over, and responsibility for, the security and protection of that smuggled migrant.
 - (11) A person who is taken into custody and is medically examined or treated under this rule shall be produced before a Magistrate or the Court within twenty-four hours—
 - (a) of the completion of such examination or treatment; or
 - (b) if the person is hospitalized, on his discharge from the hospital.

7. Access to Consular Office —

- (1) Whenever the smuggled migrant expresses interest in making contact with consular officers, the investigating officer, with the approval of the Additional Director concerned, shall notify the relevant consul or consuls that a national of that state has been arrested or detained, provide the location where the smuggled migrant is being held and facilitate contact.
- (2) If a smuggled migrant indicates in writing that they do not want to have contact with the consular office that choice is to be respected.
- (3) Where a smuggled migrant has been arrested, detained or is in custody, the officer of the Agency dealing with the smuggled migrant is required to inform the smuggled migrant without delay about his or her right to communicate with consular office, and all reasonable steps are to be taken to facilitate such communication.
- (4) Smuggled migrants who are being held in custody or detention, shall be entitled in connection with their respective consular offices, to:
 - (i) to receive visits from consular officers;

- (ii) to converse and correspond with consular officers; and
- (iii) to receive communications sent by consular authorities without delay.

- (5) The Agency or any other arresting or detaining authority shall take all reasonable steps to facilitate such visits and communication and shall forward all correspondence from the smuggled migrant that is addressed to the relevant consular office without delay.
- (6) Notwithstanding the above, a consulate may not be contacted if the smuggled migrant has expressed his or her intention to apply for international protection as a refugee or a stateless person or when an application for international protection with the UNHCR is pending.

8. Protection of information regarding smuggled migrants and witnesses —

- (1) In any proceedings, be it at any stage, the immigration officer, investigating officer or any officer or employee of the Agency shall not reveal the name or address, or disclose any particulars calculated to lead to the identification of a smuggled migrant, or a member of the family of a smuggled migrant, or a witness to any proceedings to any person unless disclosure of such information is required under any provision of law, rules, regulation or standard operating procedures or an order of a court.
- (2) The immigration officer, investigating officer or any officer or employee of the Agency shall not share or transmit by any means the picture or other representation of a smuggled migrant, or any member of the family of the such smuggled migrant, or a witness to the proceedings, or of any other person, place or thing which may lead to the identification of the smuggled migrant or any witness to the proceedings unless the same is required under any provision of law, rules, regulation or standard operating procedures or an order of a court.
- (3) The immigration officer, investigating officer or any employ of the Agency, who knows or has reasonable grounds to suspect that an investigating officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted under or for the purposes of the Act shall not disclose to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (4) The immigration officer, investigating officer or any employee of the Agency, who knows or has reasonable grounds to suspect that a disclosure has been made to an investigating officer under the Act, shall not disclose to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (5) A person who commits a breach of the confidentiality enjoined by this Rule shall be deemed to have committed misconduct and shall be liable to disciplinary proceedings under the

relevant rules.

CHAPTER III

Investigative and prosecutorial conduct

9. Guiding principles for conducting Investigation —

- (1) The Agency and its officers shall be responsible to promptly and thoroughly inquire into or investigate possible violations under the Act; to make certain that all investigations are properly coordinated; to ensure the immediate safety and security of the smuggled migrants; and to respect and safeguard the rights of these migrants.
- (2) All inquiries and investigations into offences under the Act shall be independent; timely; involve the family; be adequate and effective.
- (3) In the course of an inquiry or investigation into offences under the Act, the focus of the investigative actions shall be on detection and identification of the organized criminal network involved in the commission of the said offences as well as on the illicit financial flows derived from the smuggling of migrants and possible corruption and complicity of officials involved, if any.

10. Interview of smuggled migrants as witnesses —

- (1) A smuggled migrant or a person suspected to be a smuggled migrant, who is willing to be a witness in the case, shall be interviewed by an immigration officer or any investigation officer not below the rank of a sub-inspector at such time as may be specified by the officer concerned and the person shall make himself or herself available for such interview at the time or times so specified,
- (2) The officer interviewing a smuggled migrant may look for information to establish, among other relevant circumstances of the case
 - (i) the identity of the person;
 - (ii) the nationality of the person;
 - (iii) the country of origin of the person;
 - (iv) the route travelled by the person, the means of transport used and details of any person or persons who assisted or facilitated the person in travelling to Pakistan;
 - (v) the reason why the person came to Pakistan;
 - (vi) the legal basis for the entry into or presence in Pakistan of the person, if any;
 - (vii) whether any of the circumstances referred to in sections 5, 6, 7 or 8 of the Act may apply;
 - (viii) the identity and details of the suspects or possible accused;
 - (ix) the identity, nature, composition, structure, location of organization of criminal groups involved, and
 - (x) the modus operandi of the suspects.

- (3) The officer conducting the interview shall immediately inform the gist of the findings of the interview including the identity of the suspects or possible accused in the case to the Deputy Director concerned who shall decide further action in the matter either on his own or on directions of the senior officer concerned.
- (4) The statement of the smuggled migrant or a person suspected to be a smuggled migrant willing to be a witness in the case shall, without any undue or unreasonable delay, be reduced in writing in accordance with the provisions of section 161 of the Code.

11. Interview of smuggled child migrants and child witnesses —

- (1) In addition to provisions of rule 12, if the smuggled migrant or a witness to the smuggling of migrants is a child under eighteen years of age, interviews, examinations and other forms of investigative questioning shall promptly be conducted by the investigating officer or any other officer of the Agency conducting the interview in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person of the choice of the child unless the officer decides to the contrary and records the reasons for that decision in writing in the case diaries.
- (2) When appropriate and possible, children shall be interviewed or questioned by officers of the same sex, and where necessary, by or through persons trained for the purpose.

12. Investigation report —

- (1) The final investigation report of the case submitted under section 173 of the Code should, where possible, reconstruct the sequence of events from source to destination with all available information to identify the missing links of information and their legal admissibility and should endeavor to identify roles the main accused as well as those of accomplices such as procurers, recruiters, transporters and financiers of the smuggled migrants.
- (2) Because financial transactions may be a key evidential element of the offences under the Act, investigative actions and the investigation report, shall, when relevant, include financial transaction material such as cash received from smuggled migrants or would- be smuggled migrants, payments by credit card or similar means for services like airline tickets, travel documents and accommodation, payments for travel, money transfers to or from other parties locally and from abroad, foreign purchases, receipts that are not commensurate with a person's occupation as well as any material or device used in production, counterfeiting or alteration of identity or travel documents.

13. Use of special Investigative techniques —

- (1) In addition to other evidence, including statements of the smuggled migrant and witnesses, the investigating agency may, depending on the circumstance of the case, employ special investigative and evidence gathering techniques including, but not limited to, covert surveillance

of suspect individuals and premises, analysis of digital data and call records, decoy operations, and controlled deliveries in investigation of cases under the Act.

- (2) Use of special investigative techniques shall be undertaken when necessary and proportionate and must be implemented in strict compliance with the applicable law, rules, policy and standard operating procedures of the Agency.

14. Involvement of a body corporate in an offence —

- (1) Where any offence against any provision of the Act has been committed by a body corporate, any person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, or was in any manner responsible for the management of any of the affairs of such body corporate, or was assisting in such management, may be treated as an accused of that offence unless he proves that the offence was committed without his knowledge, consent or connivance, and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and to all the circumstances.
- (2) Where the affairs of a body corporate are managed by its members, sub-rule 1 shall apply in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

15. Involvement of employees or agents in an offence —

Where any person would be liable under the Act to any punishment or penalty for any act, omission, neglect or default, such person shall be deemed to be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of his or of the employee of such agent, if such act, omission, neglect or default was committed by the person's employee in the course of his employment, or by the agent when acting on behalf of the person, or by the employee of such agent in the course of his employment by such agent, or otherwise on behalf of the agent.

16. Disruptive actions —

The Agency may employ disruptive actions to prevent commission of any one or more of the offence under the Act. A decision to employ disruptive actions aiming to interrupt criminal activities punishable under sections 5, 6, 7 or 8 of the Act can be taken by an officer of the Agency not below the rank of a Director:

- (i) where there is a high risk to smuggled migrants demanding an immediate response that precludes proactive investigation;
- (ii) where a proactive investigation is not practicable for operational reasons, such as where geographical and/or topographical features make surveillance difficult, or where it is impossible to achieve undercover penetration of the network;
- (iii) where procedural or resource implications preclude the use of proactive techniques;

- (iv) where there is strong suspicion that an offence is about to be committed but insufficient evidence to warrant initiating prosecution; and
- (v) where a disruptive tactic forms part of an investigation.

17. In camera proceedings in the court —

- (1) In proceedings for an offence under in sections 5, 6, 7 or 8 of the Act, if the Court is satisfied that there is a likelihood of harm to any person as a result of the proceedings being open and it is in interest of justice, the Court may direct that all persons, other than officers of the court, persons directly concerned in the proceedings and such other persons, if any, as the Court may determine, may be excluded from the Court during the proceedings.
- (2) In any proceeding involving a smuggled migrant who -
 - a) is a child under eighteen years of age;
 - b) is mentally or physically challenged;
 - c) has been injured or traumatized by the experience of being smuggled; or
 - d) has been subjected to sexual abuse, commercial sexual activities or forced marriage the Court shall order that such proceedings are held to be in camera.

18. Recording of evidence by live video link

- (1) In any proceedings under the Act in the Court, a person other than the accused may give evidence through a live video link if the Court is satisfied as to the arrangements for the giving of evidence in that manner by that witness and the rules applicable to the Court permit the same.
- (2) The authorized prosecutor may apply to the Court in which the proceeding is to take place for passing an order for assistance in facilitating the giving of evidence by that witness through a live television link. An application under this sub-rule shall be granted only if the Court is satisfied that—
 - (a) the evidence which it is averred the witness is able to give is necessary for the proper adjudication of the trial; and
 - (b) the granting of the application —
 - (i) is in the interests of justice; and
 - (ii) in the case of an application by the authorized prosecutor, is not unfair to the accused.
- (3) The smuggled migrant or any other witness may, at any stage of trial or proceedings under the Act, request for provision of assistance of a translator or interpreter, including a sign-language interpreter, and the Court may issue an appropriate order on such request.

19. Restriction on media reporting and publication —

- (1) The Court in which proceedings for an offence under sections 3, 4, or 5 of the Act, are brought may, on an application by the investigating officer, or on basis of an oral or written request by the victim, or in its own discretion by an order in writing prohibit publishing or broadcasting through printed or any electronic medium of any information, including—
 - (i) the name or address, or include any particulars calculated to lead to the identification of any person who is, or is suspected to be a smuggled migrant or the family members of such a person, or those of any witness to the proceedings, or
 - (ii) any photograph of, or that includes a depiction of, any person who is, or is suspected to be a smuggled migrant or his or her family members, or that of a witness to the proceedings, or
 - (iii) any other representation of the physical likeness, or any representation that includes a depiction of the physical likeness, of any person who is, or is suspected to be a smuggled migrant, or a witness to the proceedings that is likely to enable the identification of a smuggled migrant, or a witness to the proceedings, or
 - (iv) a photograph or a representation of any other person, place or thing which may lead to the identification of the any person who is, or is suspected to be a smuggled migrant, or a witness to the proceedings.
- (2) A person who commits a breach of the order of the Court shall be guilty of contempt of court.
- (3) Where the Court considers that the interests of justice so require, by a written order containing reasons thereof direct that such information as the court shall specify in the order may be published or broadcast in such manner and subject to such conditions as the court may specify in the order.

CHAPTER IV

Return and removal of smuggled migrants

20. General principles of the return and removal processes —

- (1) Whether transported or removed by air, land or sea, individuals who are, or are suspected to be smuggled migrants entitled to return to Pakistan or return or removal of individuals who are foreign nationals to their country of origin, shall be returned or removed in a safe, dignified and humane manner.
- (2) In facilitating the return or removal of smuggled migrants, the Agency and all officers concerned shall take appropriate measures to ensure that the return of smuggled migrants occurs in an orderly manner and with due regard for the safety of the persons involved.

- (3) The individuals returning to Pakistan, or returning or being removed from Pakistan shall be protected from torture and other forms of cruel, inhuman or degrading treatment or punishment.
- (4) Any return of a smuggled migrant to Pakistan and any return or removal of a smuggled migrant from Pakistan shall, as far as possible, be consistent with norms of international law recognized by Pakistan, including the principles of non-discrimination and nonrefoulement, and, where children are involved, the best interests of the child.

21. Facilitating the return of smuggled migrants to Pakistan —

- (1) The Government and the Agency, at the request of the appropriate authority or representative of another country, of the smuggled migrant or of its own initiative, facilitate without undue or unreasonable delay, the return to Pakistan of a smuggled migrant who is a citizen of Pakistan or has the right of permanent residence in Pakistan at the time of return.
- (2) The Government and the Agency, at the request of the appropriate authority or representative of another country, of the smuggled migrant or of their own initiative, facilitate the return to Pakistan of a smuggled migrant who had the right of permanent residence in Pakistan at the time of entry into the other country;
- (3) The Ministry and the Agency, at the request of the appropriate authority or representative of another country, facilitate the issue of documents or other authorization as necessary to enable a smuggled migrant who is either a citizen of Pakistan or who has a right of permanent residence in Pakistan, to travel and re-enter Pakistan.
- (4) The Agency shall respond without undue delay to a request of the appropriate authority or representative of another country, to verify whether a smuggled migrant is a citizen or has the right of permanent residence in Pakistan.
- (5) The Agency shall respond without unreasonable delay to a request of the INTERPOL or an appropriate authority or representative of another country to verify identity or travel documents of a person who is or is suspected to be a smuggled migrant or an accused under the provisions of the Act.

22. Voluntary departure of a smuggled migrant from Pakistan —

- (1) Where there are no reasons to believe that it would undermine the purpose of a return procedure, voluntary return of a smuggled migrant who is a foreigner shall be preferred over deportation or coerced or forced return.
- (2) Where, as a last resort, coercive measures to carry out the removal of a foreign national who resists removal are to be resorted to, such measures shall be proportionate proportional to the actual or reasonably anticipated resistance of the particular person with a view to controlling him

or her and shall not exceed reasonable force and shall be implemented as provided for in law in accordance with fundamental rights and with due respect for the dignity and physical integrity of the foreign national concerned.

- (3) A return decision by a designated officer of the Ministry may provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in sub-rule (8) of this Rule.
- (4) Where necessary, an extension of the period for voluntary departure may be provided for when considered necessary because of the specific circumstances of an individual case.
- (5) The following shall be taken into account as far as possible in relation to foreign nationals during the period for voluntary departure granted in accordance with sub-rule 3 and during periods for which removal has been postponed in accordance with sub-rule 4:
 - (i) medical condition, emergency health care and essential treatment of illness are provided;
 - (ii) children are granted access to the basic education system subject to the length of their stay;
 - (iii) special needs of vulnerable persons are taken into account.
- (6) The time period provided for in the rule 2 shall not exclude the possibility for a foreign national concerned to leave earlier.
- (7) The Ministry, through its designated officer, may impose obligations aimed at avoiding the risk of absconding, such as regular reporting to the Agency or police, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place for the duration of the period for voluntary departure.
- (8) If there is a reasonable risk of absconding, grant of a period for voluntary departure may be denied. In addition, the Ministry may deny grant of or extension in the period of voluntary departure, if
 - (a) the person who is or has been a member of or adherent to an organization or association utilizing crime or terrorism to pursue its ends notified by the Government or proscribed by the Government; or
 - (b) the person believes in, advises, advocates or teaches the overthrow by force and violence of the Government of Pakistan, or advises, advocates, or teaches the assault or assassination of public officials of Pakistan because of their office, or who advises, advocates, or teaches the unlawful destruction of property, or who is a member of or affiliated with any organization entertaining, advocating or teaching such doctrines, or who in any manner whatsoever lends assistance, financial or otherwise, to the dissemination of such doctrines; or

- (c) there are reasonable grounds for regarding the smuggled migrant exist that he or she poses a danger to the security of the Pakistan or, having been convicted by a final judgment of an offence, poses a danger to the citizens of Pakistan.

23. Return and removal of unaccompanied and separated children —

- (1) A decision on the future of an unaccompanied smuggled child migrant shall be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child as a primary consideration.
- (2) Before deciding to issue a return decision in respect of an unaccompanied child, assistance by appropriate Governmental and/or Non-Governmental Organizations or bodies may be facilitated with due consideration being given to the best interests of the child.
- (3) Before removing an unaccompanied child from the territory of Pakistan, the Agency and other authorities concerned should be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the state of return.

CHAPTER V

Deportation of smuggled migrants from Pakistan

24. Decision to deport smuggled migrants

- (1) The Ministry, through its designated officer, or an Additional Director General may take a decision to deport a smuggled migrant in accordance with these rules, either in his own discretion or on direction from a Court.
- (2) When a decision for deportation has been taken otherwise than on the directions of a court, a notice will be given to the person concerned informing him of the decision.
- (3) A person against whom a decision for deportation has been taken shall normally be removed from Pakistan so as to secure the person's return to the country of which he is a national, or which has most recently provided him with a travel document.
- (4) The person against whom a decision for deportation has been taken may file an application for review of the decision before the Ministry within seven days of the communication of such decision.
- (5) In the case of a person who has been deported following conviction for an offence, the continuation of a deportation decision against that person will be the proper course:
 - (a) in the case of a conviction for an offence for which the person was sentenced to a period of

imprisonment of less than five years, consideration may be given on a case by case basis to whether the deportation order should be maintained, or

- (b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least five years, at any time.

25. Detention or arrest of a foreigner after a decision to deport —

- (1) An immigration officer or any officer of the Agency concerned, following the communication of a decision to deport, may arrest a foreign national or cause him or her to be arrested, without need for a warrant and shall irrespective of whether such foreign national is arrested, deport him or her or cause him or her to be deported.
- (2) The immigration officer or any officer of the Agency concerned referred in sub-rule may, pending deportation of the foreign national, detain him or her or cause him or her to be detained in a manner and at the place under the control or administration of the Agency as determined by the Director General, provided that the foreign national concerned
 - (a) shall be notified in writing of the decision to deport him or her and of his or her right to appeal or review such decision in terms of the relevant provisions of law and these rules;
 - (b) may at any time request any officer attending to him or her that his or her detention for the purpose of deportation be confirmed by directions of a Court, which, if not issued within twenty-four hours of such request, shall cause the immediate release of such foreign national;
 - (c) shall be informed upon arrest or immediately thereafter of the rights set out in the preceding paragraphs a and b, when possible, practicable and available in a language that he or she understands; and
 - (d) shall be held in detention in compliance with minimum prescribed standards protecting his or her dignity and relevant human rights
- (3) A person who is arrested and detained under sub-rule (1) may be detained—
 - (a) in a prescribed place, or
 - (b) for the purpose of his or her being placed in accordance with this rule and for a period or periods each not exceeding twenty-four hours—
 - (i) in a vehicle, for the purposes of bringing the person to the port from which the ship, railway train, road vehicle or aircraft concerned is due to depart, or
 - (ii) within the port referred above.
- (4) A person arrested and detained under this Rule may be placed on a ship, railway train, road

vehicle or aircraft, or other conveyance about to leave Pakistan by an immigration officer or any other officer of the Agency, and shall be deemed to be in custody whilst so detained and until the ship, railway train, road vehicle or aircraft leaves Pakistan.

- (5) Sub-rules 1, 2 and 3 shall not apply to a person who is under the age of eighteen years. Where a child under the age of eighteen years is in the custody of any person, whether a parent or a person acting *in loco parentis* or any other person and such person is detained pursuant to the provisions of this rule, the immigration officer or the officer of the Agency concerned shall, without delay, notify the department or agency of the Government or a Provincial Government mandated for protection of children of the detention and of the circumstances thereof.

CHAPTER VI **International Cooperation**

26. International Cooperation

- (1) The Agency shall be the designated agency for extending or requesting international cooperation under the Act.
- (2) The Agency may, subject to the approval of the Additional Director General concerned, request for information, assistance or evidence to, or entertain and respond to a request for information, assistance or evidence by
- (a) the International Criminal Police Organization (INTERPOL); or
 - (b) anybody or person competent to receive it under any provisions adopted under a treaty or bilateral or multilateral agreement or a mutual legal assistance agreement.
- (3) The Agency, in addition to the information mentioned in sub-rule (2), may periodically exchange information with the International Criminal Police Organization or another foreign authority under the terms of a bilateral or multilateral agreement or a mutual legal assistance agreement in respect of -
- (i) the identity, whereabouts and activities of persons suspected of involvement in offences under sections 5, 6, 7 or 8 of the Act or the location of other persons concerned;
 - (ii) the movement of proceeds of crime or property derived from the commission of offences under the Act;
 - (iii) the movement of property, equipment or other instrumentalities used or intended for use in the commission of offences under the Act;
 - (iv) specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false or forged identities, altered or false documents or other means of concealing their activities; and
 - (v) information deemed necessary to coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences under the Act.
- (4) All requests or recommendation of extradition of an accused shall be made by the Director

General through the Ministry.

CHAPTER VII

Prevention and capacity enhancement

27. Awareness Raising and Prevention —

The Agency, on its own initiative or in collaboration with any department, agency or body of the Government, an international organization or a Non-Governmental Organization, shall -

- (a) develop and disseminate information programmes to increase public awareness of the fact that the smuggling of migrants is a criminal activity and that it involves serious dangers to smuggled migrants.
- (b) promote and strengthen development programmes and national and international cooperation in order to address the root-causes of smuggling of migrants, such as poverty and underdevelopment, paying special attention to economically and socially depressed areas.
- (c) establish procedures to collect data and to promote research on the levels and characteristics of smuggling of migrants in Pakistan, the factors that cause the smuggling of migrants, and on the best practices to prevent the smuggling of migrants, prosecute offenders, and protect smuggled migrants in Pakistan.

28. Training and capacity enhancement —

- (1) The Agency shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, and other staff members charged with the prevention, detection and control of the offences covered by the Act and in the humane treatment of migrants who have been the object of such offences while respecting their rights as set forth in the law and these rules, on its own or in collaboration with competent international organizations, Non-Governmental Organizations, other relevant organizations and other elements of civil society.
- (2) Such specialized training shall deal, in particular and to the extent permitted bylaw, rules and policies applicable to the Agency, with the following:
 - (a) methods used in the prevention, detection and control of the offences covered by the Act;
 - (b) routes and techniques used by persons suspected of involvement in offences covered by the Act and appropriate countermeasures;
 - (c) means and methods of concealment and transportation of migrants;
 - (d) monitoring of the movement of smuggled migrants;
 - (e) improving the security and quality of travel documents;
 - (f) recognition, identification and detection of fraudulent, altered or substituted travel or identity documents used in commission of offences under sections 5, 6, 7 or 8 of the Act;

- (g) the humane treatment of migrants and the protection of their rights;
- (h) 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 a combating money-laundering and other financial crimes;
- (i) collection of evidence in cases involving smuggling of migrants;
- (j) modern specialized law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;
- (k) methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology;
- (l) methods used in the protection of victims and witnesses; and
- (m) Other pertinent, scientific and technological information useful to law enforcement, so as to enhance ability to prevent, detect and investigate the offences under the Act and to prosecute those involved.

29. Applicability of the Rules to any designated Investigation Agency —

In case the Government, in pursuance of provisions of section 11 of the Act, empowers any investigating agency other than the Federal Investigation Agency to be responsible for investigation of offences under the Act, these Rules shall, mutatis mutandis, be applicable to such investigating agency.

30. Standard Operating Procedures and Guidelines —

The Director General may, from time to time, issue such operational procedures and guidelines for observance by the officers of the Agency during inquiry, investigation, and prosecution of offences under the Act, as deemed appropriate in conformity with the provisions of the Act, the Code and these rules.