

**EU – Pakistan Readmission Agreement**

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## **Introduction:**

Pakistan finds itself in a critical position with regard to illegal immigration. The economic realities of this region have forced millions to strive to find better opportunities in more developed parts of the world. These migration flows have often resulted in the growth of rich expatriate communities especially in European Union Member States. Since the 1950's Pakistan has gradually developed a peculiar dependence on its expatriates. The country's economic woes have led it to rely heavily on their foreign remittances and these communities, with established leaders within them, have also granted Pakistan greater clout in its international dealings. Such sizable communities often attract even further migration, some of which is through improper and irregular means. The existence of such communities, therefore, has various policy implications for migration management and readmission both for Pakistan and European Union Member States. The Pakistani State's responsibilities to its own citizens, its expatriate community and to the international community at large often have to be balanced very carefully. What is clear, however, is that in an evolving global paradigm focused on security and the control of borders, Pakistan will have to play a responsible role if it is to maintain its place in the comity of nations.

Within this new paradigm an established legal obligation attracts renewed focus, namely, a State's obligation to readmit its own citizens onto its territory. Although a well-recognized obligation under international law, this obligation has more recently become the core of a new generation of international agreements – Readmission Agreements. In many cases the flow of irregular migrants is asymmetrical and thus the incentive for a reciprocal understanding on their return is not mirrored by the parties to such agreements. It has thus been witnessed that such agreements are often packaged as part of an overall assistance and cooperation arrangement between states. The EU-Pakistan Readmission Agreement (EURA) is no different. Chapter 1 discusses the international law basis for Readmission Agreements and the European Union's stance on them. It also discusses how the EU has deployed Readmission Agreements with various countries and looks to assess the impact that they have had in this regard. Chapter 2 looks at the EU-Pakistan Readmission Agreement and assesses its provisions with regards to their implications for Pakistan.

Pakistan's domestic legislative framework relating to the various aspects of readmission is scattered over several Acts, Ordinances, Rules and Regulations. These touch upon varied areas that all find a link with the readmission process. These issues include constitutional protections on human rights, the entry, exit and regulation of foreigners, their deportation, access to consular and diplomatic staff while in detention, passport rules and regulations, emigration of Pakistanis abroad, human trafficking, and the mandate of certain specific Government ministries and departments. In addition to the law, this study has focused on the implementing organizations tasked with discharging their powers and duties under the legislation. These include the Ministry of Foreign Affairs and its Diplomatic Missions abroad, the Ministry of Interior, the Federal Investigation Agency, the National Aliens Registration Authority, the National Database and Registration Authority, the Directorate General of Immigration and Passports, the District Coordination Offices, and local Police forces. Chapters 3 and 4 of this study examine the relevant domestic law and the implementing government organizations under it. Chapter 4 focusses on an assessment of the gaps in the law and potential hindrances to the implementation of the EURA in Pakistan.

To operationalize the provisions of the EURA, this study makes recommendations in Chapter 5. These recommendations have been developed after extensive consultation with government stakeholders, a review of the relevant law, and Pakistan's international obligations under the EURA. Throughout the period of review, the Research Society of International Law, Pakistan (RSIL) has contributed its recommendations to relevant stakeholders, primarily through the forum of the National Coordination Committee on Readmission (NCCR). These recommendations have fed directly into proposals adopted by the NCCR for implementation of the EURA.

The Annex to this study includes the draft procedural manual developed by the NCCR over successive drafting sessions. It is hoped that after receiving approval through the appropriate government procedures, the readmission process would be greatly improved. The procedural manual reflects many of the recommendations made by RSIL throughout the consultative process.

An effective means of implementing the EURA will allow readmissions to take place smoothly. However, all related government entities will have to pull together to ensure Pakistan's

compliance under the Agreement. This study hopes to facilitate this process and provide the legal analysis relevant to implementing an efficient and effective readmission program between Pakistan and European Union Member States.

# **Chapter 1**

## **Readmission Agreements, International Law and the European Union**

### **INTRODUCTION**

The European Union is fast becoming the focal point of immigration in the world. A necessary corollary of this phenomenon has been a significant increase in the number of irregular immigrants. The management of its external borders has thus become an important priority for the EU. In this regard, readmission agreements have gradually emerged as the primary legal instrument for fighting irregular immigration.

Readmission agreements are concluded to facilitate the removal or expulsion of persons who do not or no longer fulfill the conditions of entry to, presence in or residence on a destination country. Persons to be readmitted or removed under such agreements are a country's own nationals and, under certain conditions, third-country nationals or stateless persons who have passed or transited through the territory of the requested country or otherwise been granted permission to stay there.<sup>1</sup>

The conclusion of readmission agreements between the EU and other countries has steadily gained momentum since the 1990s. Some have viewed this as the 'externalization' of the management of the EU's external borders, in that third States, through readmission agreements, have effectively become the border guards of the EU's external border.<sup>2</sup>

The last ten years have seen readmission agreements evolve into instruments of first importance in the EU. They have been pushed forward in many policy documents and considerable efforts have been made to negotiate and conclude such agreements. Accordingly, the issue of readmission is gradually pervading

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<sup>1</sup>Cassarino, J.P. (2007) Informalising Readmission Agreements in the EU Neighbourhood.*The International Spectator*.42 (2),p. 179.

<sup>2</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice.*European Journal of Migration and Law*. 12. p. 74.

various policy areas of the EU, being no longer limited to its migration and asylum policy but also to its trade and development policy and international relations.

## **BILATERAL COOPERATION ON READMISSION IN INTERNATIONAL RELATIONS**

The readmission of nationals is generally accepted as being part of International Customary Law.<sup>3</sup> According to Oppenheim, whilst it is the *right* of a State to protect its nationals abroad, it is the *duty* of a State to receive “such of its nationals as are not allowed to remain on the territory of other States”.<sup>4</sup>

Territorial sovereignty forms another basis for an interstate obligation to readmit nationals under international law. This is because it is the sovereign right of States to regulate the entry and presence, and thus also the expulsion of aliens, on its soil. If a State refuses to readmit a national who is expelled from the territory of another State, such refusal would infringe upon the latter States’ territorial sovereignty, because it would be forced to keep on its territory an alien, whose residence it has the right to end.<sup>5</sup>

The forced return of a person to his/her country, and the need to facilitate this return, has been mentioned in various international documents. Article 18 of the 2001 Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime (2000), requires State Parties to “facilitate and accept, without undue or unreasonable delay”, the return of persons subject to the Protocol.

Further, the need to facilitate bilateral cooperation on readmission has been reiterated by many states in regional and international forums such as the Berne Initiative, the 5+5 Dialogue, the Prüm Treaty and the 2006 Rabat Declaration on Migration.

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<sup>3</sup> The Communication from the European Commission to the European Parliament and the Council of 23 February, 2011, reiterates this by stating that “it is a principle of (customary) international law that each country should take back its own nationals” [see COM (2011) 76 Final. p. 2].

<sup>4</sup> COLEMAN, N. (2009) *European Readmission Policy: Third Country Interests and Refugee Rights*. MartinusNijhoff Publishers.p. 29 quoting Oppenheim, 1992 at p. 857.

<sup>5</sup> COLEMAN, N. (2009) *European Readmission Policy: Third Country Interests and Refugee Rights*. MartinusNijhoff Publishers.p. 30.

## **LEGAL BASIS FOR THE EUROPEAN UNION READMISSION POLICY**

Article 63(3) of the Treaty of Amsterdam (1999) provided the foundation for a common European policy on immigration. This Article required the European Council to adopt, within a period of five years after the entry of force of the Treaty of Amsterdam, “measures on immigration policy” within certain areas, which included *“illegal immigration and illegal residence, including the repatriation of illegal residents”*.

Pursuant to the Amsterdam Treaty, the Tampere European Council (1999) stressed that the development of a common, integrated EU Asylum and Migration Policy was the only way to effectively manage migration flows within the Union. The Council called for assistance to countries of origin and transit in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively, trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.<sup>6</sup>

The Tampere Conclusions also affirmed that the Amsterdam Treaty had conferred powers on the Community in the field of readmission. In this regard, Conclusion 27 specifically invited the Council to *“conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries”* (Emphasis Added). This competence to conclude readmission agreements therefore gave the EU the ability to conclude specific agreements on readmission with third countries in its own name, rather than bilateral agreements with Member States.

The Seville European Council Conclusions (2002) were significant in that they demonstrated that readmission agreements had become the primary instrument in combating illegal immigration in the EU. The European Council urged that *“any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.”*<sup>7</sup> Thus, readmission agreements became the condition precedent for any partnership between the EU and third countries.

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<sup>6</sup> European Union: Council of the European Union. *Presidency Conclusions, Tampere European Council 15-16 October 1999*. Conclusion 26.

<sup>7</sup> European Union: Council of the European Union. *Presidency Conclusions, Seville European Council 21-22 June 2002*. Brussels. 24.10.2002. 13463/02 POLGEN 52. Conclusion 33.p. 10.

Following the Lisbon Treaty, Article 79 of the Treaty on the Functioning of the European Union now provides an express legal basis for the conclusion of readmission agreements. Article 79(3) states:

*“The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.”*

This new provision therefore gives explicit competence to the EU to conclude such agreements and is expected to clarify the potential scope of such agreements.<sup>8</sup>

### **EU READMISSION WITH THIRD COUNTRIES: STATE OF PLAY**

The European Union has so far concluded 13 readmission agreements with third countries. The first agreements were signed with the Chinese Special Administrative Regions of Hong Kong and Macao between 2002-2003, followed by Sri Lanka, Albania, Russia and Ukraine. Readmission agreements with four Balkan States were concluded simultaneously in September 2007 and included Macedonia, Bosnia & Herzegovina, Montenegro and Serbia. An agreement was signed with Moldova in October 2007 followed by one with Pakistan in October 2009. Georgia is the latest country to enter into a partnership with the EU on readmission, having signed an agreement in November 2010.

On 21 June 2012, a press release issued by the European Commission stated that a readmission agreement had been initialed with Turkey<sup>9</sup>. In addition, mandates have been received for concluding similar agreements with Morocco, Cape Verde, China, Algeria and Belarus. Negotiations are yet to be officially launched with China, Algeria and Belarus. In the case of Morocco, several rounds of negotiations have taken place since the mandate was first received in September 2000. However, no significant breakthrough has been achieved as yet. Statistics on the current state of play on readmission are provided in the tables below.

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<sup>8</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice. *European Journal of Migration and Law*. 12. p. 60.

<sup>9</sup>European Commission.DG Home Affairs. Available at [http://europa.eu/rapid/press-release\\_MEMO-12-477\\_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-12-477_en.htm?locale=en)

**Table 1.1<sup>10</sup>****EU Readmission Agreements in Force**

<b>COUNTRY</b>	<b>MANDATE RECEIVED</b>	<b>FIRST ROUND</b>	<b>AGREEMENT SIGNED</b>	<b>ENTRY INTO FORCE</b>
<b>Hong Kong</b>	April 2001	October 2001	27 November 2002	1 March 2004
<b>Macao</b>	April 2001	October 2001	13 October 2003	1 June 2004
<b>Sri Lanka</b>	September 2000	July 2001	4 June 2004	1 May 2005
<b>Albania</b>	November 2002	May 2003	14 April 2005	1 May 2006
<b>Russia</b>	September 2000	January 2003	25 May 2006	1 June 2007
<b>Ukraine</b>	June 2002	November 2002	18 June 2007	1 January 2008
<b>Macedonia</b>	November 2006	December 2006	18 September 2007	1 January 2008
<b>Bosnia &amp; Herzegovina</b>	November 2006	December 2006	18 September 2007	1 January 2008
<b>Montenegro</b>	November 2006	December 2006	18 September 2007	1 January 2008
<b>Serbia</b>	November 2006	December 2006	18 September 2007	1 January 2008
<b>Moldova</b>	December 2006	February 2007	10 October 2007	1 January 2008
<b>Pakistan</b>	September 2000	April 2004	26 October 2009	1 December 2010

<sup>10</sup> Source: European Commission. DG Home Affairs. Available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/eu\\_readmission\\_agreements\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/eu_readmission_agreements_en.pdf).

<b>Georgia</b>	November 2008	April 2009	22 November 2010	1 March 2010

**Table 1.2**

**EU Readmission Agreements Initialled**

<b>COUNTRY</b>	<b>MANDATE RECEIVED</b>	<b>FIRST ROUND</b>	<b>FINAL ROUND</b>	<b>AGREEMENT INITIALLED</b>
<b>Turkey</b>	November 2002	May 2005	January 2011	21 June 2012

**Table 1.3<sup>11</sup>**

**Ongoing Negotiations and Negotiations not formally launched**

<b>COUNTRY</b>	<b>MANDATE RECEIVED</b>	<b>STATUS OF NEGOTIATIONS</b>
<b>Morocco</b>	September 2000	Ongoing
<b>Cape Verde</b>	June 2009	Ongoing
<b>China</b>	November 2002	Not Formally Launched
<b>Algeria</b>	November 2002	Not Formally Launched

<sup>11</sup> Source: European Commission. DG Home Affairs. Available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/eu\\_readmission\\_agreements\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/eu_readmission_agreements_en.pdf).

<b>Belarus</b>	February 2011	Not Formally Launched
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## **STRUCTURE AND CONTENT OF EU READMISSION AGREEMENTS**

An overview of the readmission agreements thus far concluded by the EU reveals that all the agreements are structured in almost identical fashion. In addition, the content of the various clauses appear to be remarkably similar. This reflects the European Commission’s approach of negotiating readmission agreements with third countries in such a way that the final texts share as many common features as possible. It is clear therefore, that it is the EU which lays down the general structure and terms of the agreement, with the partner country merely negotiating the contents of some of the clauses.

The readmission agreements that the EU has signed so far with Albania, Bosnia, Georgia, Hong Kong, Macao, Macedonia, Moldova, Montenegro, Pakistan, Russia, Serbia, Sri Lanka and Ukraine are divided into seven or eight sections containing approximately 21-24 articles. Every agreement begins with a preamble that lays out the purpose of the agreement and highlights the reciprocal nature of the obligations therein. After providing definitions of key terms, Section I lays down the readmission obligations of the third contracting party followed by obligations for the EU in Section II. The agreements with Ukraine and Pakistan however, jointly address the readmission obligations of both contracting parties under one section. The readmission procedure is then provided in the following section, which specifies time limits, means of evidence, transfer modalities, modes of transport and common application forms.

The remaining sections concern transit operations, costs, data protection and non-affectation of international rights and obligations. There is a section dedicated to the implementation and practical application of the readmission agreement by the establishment of a joint readmission committee and by preserving the possibility to conclude bilateral implementing protocols. The last section is entitled ‘final provisions’ and provides when the agreement is to enter into force, its territorial application, duration, termination and the legal status of annexes. All agreements include several annexes which specify the documents that will be considered proof or prima facie evidence of a national, and of proof or prima facie evidence of the conditions for readmission of third country nationals and stateless persons.

Notwithstanding the similarities in structure and content, some differences can be noted.

- **Readmission Obligations:** As noted above, Ukraine and Pakistan are the only countries with which the agreement does not differentiate between the obligations of the EU and the obligations of the contracting state.
- **Accelerated Procedures:** The agreements with Georgia, Macedonia, Moldova, Russia, Serbia and Ukraine contain provisions for accelerated procedures in case a person is apprehended in the border region after irregularly crossing the border directly from the territory of the requested state. In such a scenario, the requesting state may submit an application within two working days of the person's apprehension.
- **Evidence:** The means of evidence which a party needs to provide for a readmission obviously differ from one country to another. As such, this difference is unavoidable.
- **Relationship with other Bilateral Readmission Agreements:** Some readmission agreements (e.g. Russia, Georgia, Pakistan) explicitly clarify that the EU readmission agreement shall take precedence over the provisions of any bilateral agreement or arrangement on readmission which have been or may, be concluded between individual Member States and the third contracting State, in so far as the provisions of the latter are incompatible with those of the EU agreement.
- **Time Limits:** The major difference between the various EU readmission agreements relates to the applicable time limits for submitting and replying to a readmission application. The notable differences in time limits indicate that this is an area where negotiations between the EU and its partner can actually influence the content of the clauses. The time limits applicable under each agreement concluded so far are provided in the table below.

## Table

### Differences in Time Limits in EU Readmission Agreements with Partner Countries

<b>SR. No.</b>	<b>PARTNER COUNTRY</b>	<b>TIME LIMIT FOR SUBMISSION OF READMISSION APPLICATION</b>	<b>TIME LIMIT FOR REPLYING TO THE REQUEST</b>
1.	Hong Kong	1 Year	Without undue delay, and in any event within a maximum of 1 month
2.	Macao	1 Year	Without undue delay, and in any event within a maximum of 1 month
3.	Sri Lanka	1 Year	Without undue delay, normally within a period of 15 calendar days and not exceeding 30 calendar days
4.	Albania	1 Year	Without undue delay, and in any event within a maximum of 14 calendar days

5.	Russia	180 Days	Within a maximum of 25 calendar days, but shall be extended up to 60 calendar days
6.	Ukraine	1 Year	Without undue delay and in any event within 14 calendar days, but shall be extended up to a maximum of 30 calendar days
7.	Macedonia	1 Year	Within 14 calendar days
8.	Montenegro	1 Year	Within 12 calendar days, may be extended with a maximum of 6 calendar days
9.	Serbia	1 Year	Within 10 calendar days
10.	Bosnia and Herzegovina	1 Year	Within 10 calendar days
11.	Moldova	6 Months	Within 11 working days

12.	Pakistan	1 Year	Without undue delay, and in any event within a maximum of 30 calendar days, may be extended up to 60 calendar days
13.	Georgia	6 Months	Within 12 calendar days

As noted above, the readmission agreements concluded thus far between the EU and partner countries are nearly identical in their structure and content with the only notable difference relating to the applicable time limits. This indicates that the negotiations are controlled, by and large, by the European Commission and that the interests of partner countries are not sufficiently taken into account.<sup>12</sup>

One of the reasons for this inflexibility on the part of the Commission stems from the fact that its mandate is usually too precise and does not leave any room for maneuvering.<sup>13</sup> This is aptly demonstrated by the issue of readmission of third country nationals and stateless persons. During negotiations, this issue has proved to be the biggest stumbling block to successfully concluding agreements. Nevertheless, the mandate given to the Commission does not allow for any concession to be made as to their inclusion in an agreement.

Secondly, the majority of readmission agreements concluded thus far have included countries against which the EU has enjoyed overwhelming bargaining power or leverage, thereby reducing the need for considerable concessions. For example, in convincing Pakistan, the EU appears to have linked the implementation of the cooperation agreement on partnership and development with the signing of a

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<sup>12</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice. *European Journal of Migration and Law*. 12. p. 67.

<sup>13</sup> Ibid. p. 68.

readmission agreement.<sup>14</sup> The fact that the agreement with Russia features notable concessions, serves to reinforce the importance of this factor.

The primary reason for the similar nature of the agreements however, is that the interests of the parties cannot realistically be accounted for in the readmission agreement itself. Although drawn up on a theoretically reciprocal basis, it is clear that, in practice, readmission agreements generally work in the interest of the Union.<sup>15</sup> This is because the EU is likely to be the requesting State in the overwhelming majority of cases and thus stands to benefit from the removal of illegal migrants from its soil.

On the other hand, the interests of the partner country are less evident, since as the likely country of origin, it stands to lose out on the revenues of its expatriates living abroad. A tighter control on migration in such countries is also likely to increase pressure on domestic unemployment rates.<sup>16</sup> Furthermore, the readmission of own nationals and third country nationals involves a substantial financial, technical and administrative burden for the reception countries. As such, readmission agreements are likely to be viewed with hostility and suspicion by the domestic population, restricting the ability of the governments to conclude such agreements.

The unequal nature of the relationship between the contracting parties, coupled with the asymmetrical impact of implementation<sup>17</sup>, means that the ‘reciprocity’ of readmission agreements is more a myth than anything concrete.

Since reciprocal obligations are not sufficient to account for the interests of partners, it follows that other measures need to be relied upon in convincing a partner to negotiate, conclude and effectively implement a readmission agreement. According to the Commission, partner countries normally want to receive something in exchange for concluding a readmission agreement with the EU, since these agreements have few benefits for the third country concerned.<sup>18</sup> To sustain bilateral cooperation of readmission therefore, the EU has been forced to ‘compensate’ partner countries by offering various incentives.

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<sup>14</sup>Ibid. p. 70.

<sup>15</sup>Schieffer, M. (2003) Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations. *European Journal of Migration and Law*.5. p. 356.

<sup>16</sup>Cassarino, J.P. (2007) Informalising Readmission Agreements in the EU Neighbourhood. *The International Spectator*.42 (2).p. 182.

<sup>17</sup> Ibid.

<sup>18</sup>European Commission. *Evaluation of EU Readmission Agreements*. Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. p. 6.

The ‘incentives’ provided by the EU to partner countries have varied with each agreement, depending on practical financial, technical, administrative and security considerations as well as the bargaining power of the negotiating State.

## **THE USE OF INCENTIVES TO OBTAIN CO-OPERATION ON READMISSION**

### **Visa Facilitation Agreements**

Visa facilitation agreements (“VFA’s”) have in recent years emerged as the primary incentive offered by the EU in exchange for signing a readmission agreement. Initially, the use of VFA’s was limited in scope and viewed as an exceptional measure, since the Member States were hesitant to “close a door on irregular immigration [only] to open a window on new potential irregular flows of visa over stayers...”<sup>19</sup>

With time however, VFA’s are increasingly becoming the norm in readmission agreements concluded with countries neighboring the EU since they provide strong leverage to the Union during negotiations while simultaneously addressing the major grievance of neighboring countries by facilitating travel opportunities for bona fide travelers.<sup>20</sup> Today, VFA’s have been concluded with the Western Balkan countries. Meanwhile Russia considered a VFA as a prerequisite for continuing negotiations on readmission agreements. The readmission agreement could therefore not enter into force without the agreement on visa facilitation since the two were mutually conditional and parallel agreements. Following Russia’s example, Moldova, Georgia and Ukraine also insisted on the conclusion of visa facilitation and readmission agreements simultaneously.<sup>21</sup>

The main purpose of VFA’s is to facilitate the issuance of short stay visas. This is done by reducing or waiving the fee for processing visas and expediting the decision time on a visa application. The overall objective is to make the application procedure as simple and transparent as possible.

Although VFA’s go a long way in easing visa regimes and fostering travel opportunities between States, they do not constitute a visa-free travel regime, although that remains the long term objective in most cases. The lifting of visa requirements in return for a readmission agreement is an exceptional concession

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<sup>19</sup>Trauner, F. & Kruse, I. (2008) EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool? In *ECPR Fourth Pan-European Conference on EU Politics*. Riga, September 25-27 2008. p. 2.

<sup>20</sup> Ibid.

<sup>21</sup>Caraoshi, L.I. & Ndoci, I. (2011) Do EU Member States need Readmission Agreements? Analysis of the EC-Albania Readmission Agreement. *Journal of Immigration Asylum and Nationality Law*.p. 5.

which has only been offered so far to Hong Kong and Macao, which are not viewed as “problem countries” for the EU in terms of illegal immigration.<sup>22</sup>

While a more generous visa policy constitutes a powerful incentive for States to conclude a readmission agreement with the EU, security concerns means that they are simply not viable for most countries in practice. This has been aptly demonstrated in negotiations with Sri Lanka, Pakistan, Morocco, Turkey, Algeria and China.

The restricted scope of VFA’s as an incentive has led the Commission to rely on a carrot and stick policy in negotiations with countries where visa concessions are not an option. In the case of Sri Lanka, EU compensatory measures included increased cooperation in law enforcement, including measures against the financing of terrorist activities. In the case of Pakistan however, the EU made the implementation of a cooperation agreement on partnership and development contingent on Pakistan first signing a readmission agreement. According to Billet, it was not a ‘carrot’ but more a ‘stick’ which was used to convince Pakistan to conclude such an agreement.<sup>23</sup>

### **EU-Integration as an Incentive for ‘Candidate Countries’**

For countries aiming at EU integration, the appeal of EU membership provides the Commission with extremely strong leverage during negotiations. Candidate countries such as Serbia, Montenegro, Macedonia and Turkey therefore have strong incentive to cooperate closely with the EU in the field of readmission. The same holds true for ‘potential candidates’ such as Albania and Bosnia-Herzegovina.

### **Financial & Technical Assistance**

One of the main problems in the implementation of EU readmission agreements is that third States usually do not have financial, technical and administrative means to cope with the requirements of the agreement. It has therefore been a policy of the EU to provide partner countries with financial and operation cooperation to help them better fulfill their commitments. Programmes such as ODYSSEUS,

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<sup>22</sup>Schieffer, M. (2003) Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations.*European Journal of Migration and Law*.5. p. 356

<sup>23</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU’s Fight against Irregular Immigration. An Assessment after Ten Years of Practice.*European Journal of Migration and Law*. 12. p. 70

ARGO and ANENEAS have provided specific financial and technical aid to third countries to help improve the management of their migratory flows. The Immigration Liaison Officers network is another form of cooperation whereby representatives from Member States with expertise in the return of undocumented migrants are posted to partner countries to help combat irregular immigration.

In its Communication to the European Parliament and Council, the Commission highlighted financial assistance as an incentive ‘with great potential’.<sup>24</sup> The Commission recommended that the EU should be ready to assist partner countries to create adequate reception facilities for third country nationals who have to await onward readmission to their country of origin. It noted that the EU had already financed several projects which supported reintegration policies and reception capacities in some of the partner countries.

Financial assistance however, is not presently regarded as a major incentive for partner countries. This is because the financial offers from the EU so far have consisted of earmarking funds which were in fact already available under financial geographical programmes. It is therefore not surprising that such offers are considered insufficient by the negotiating partners. In order to be effective as leverage, the money offered had to be ‘substantial’ and ‘on top of what had already been programmed or promised under the relevant EU geographic programmes’.<sup>25</sup>

### **Readmission Agreements within a Broader Co-operation Agenda**

The difficulties faced by the EU during negotiations and ensuring the implementation of readmission agreements have led to the realization that such agreements can only succeed in the long term if they were included within a broader co-operation agenda, which duly takes into account the problems encountered by third countries in effectively addressing migration issues.<sup>26</sup>

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<sup>24</sup>European Commission. *Evaluation of EU Readmission Agreements*. Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. p. 7.

<sup>25</sup> Ibid.

<sup>26</sup>Schieffer, M. (2003) Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations. *European Journal of Migration and Law*. 5. p. 356.

In this regard, the Commission, in its Communication of 3 June 2003, recommended that incentives could encompass measures ranging from economic co-operation, trade expansion, additional development assistance, better market access or WTO compatible tariff preferences.<sup>27</sup>

Mobility partnerships between the EU and third countries are also an incentive currently under consideration. These provide a better framework for cooperation in the management of migratory flows and open up legal migration opportunities for the third country. At present, these are still at an early stage, with pilot partnerships being launched with Moldova and Cape Verde. In the case of Mali, the EU has funded a Migration Information and Management Centre which coordinates job offers and job seekers between Mali and the EU.<sup>28</sup> Such broader partnerships can be regarded as a substantive incentive for concluding readmission agreements in the future.

## **EVALUATION OF EU READMISSION AGREEMENTS**

The previous decade has seen EU readmission agreements gradually mature into instruments of first importance, forming an integral part of European immigration policy. As a result, their effectiveness has attracted considerable academic attention. The European Commission, in its Communication of 23 February 2011, also carried out a reasonably thorough evaluation of these agreements. As will be seen below, the results that have emerged thus far are mixed.

### **Lack of Quality Data**

Perhaps the biggest shortcoming that can be noted relates to a lack of quality data that can be used to determine the effectiveness of these agreements. There has been no comprehensive study, report or assessment on the impact such agreements have had on migrant flows from partner countries. It is therefore unclear how they have helped the EU's attempt to fight irregular immigration and what the consequences have been for the partner countries. There is also no real data on the reintegration of migrants who have been removed under the agreements.

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<sup>27</sup>European Commission. *On the Development of a Common Policy on Illegal Immigration, Smuggling and Trafficking of Human Beings, External Borders and the Return of Illegal Residents*. Communication from the Commission to the European Parliament and the Council. Brussels. 03.06.2003. COM (2003) 323 Final. p. 14.

<sup>28</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice. *European Journal of Migration and Law*. 12. p. 71.

In order to evaluate the effectiveness of readmission agreements, the Commission requested the Member States to provide detailed data and feedback on the application of the agreements. Replies were received from 21 Member States, while 5 did not reply at all. The Commission noted that many Member States provides incomplete data which consisted of rough estimations on the number of readmission applications per third country per year. The data was not harmonized and different Member States included different cases under the same headings.<sup>29</sup>

EUROSTAT data on return also suffers from deficiencies since it does not distinguish between voluntary and forced returns and does not specify whether a person was sent to the country of origin, transit or another Member State.

The lack of quality data on the impact of EU readmission agreements makes it difficult, if not impossible, to carry out an accurate analysis of their effectiveness and threatens to compromise their credibility.

### **Lack of Reliance on Readmission Agreements by Member States**

It is ironic that despite the considerable efforts of the EU to conclude and negotiate readmission agreements, in practice some Member States are continuing to rely on bilateral arrangements which existed before the readmission agreements.<sup>30</sup>

Even more disturbingly, in some cases the Member States are making returns under readmission agreements without complying with the strict procedures contained therein. An analysis of EC-Albania Readmission Agreement reveals that during 2009, 64625 Albanian irregular migrants were returned; however an application for readmission was submitted for only 108 (0.15%). 520 were returned only with prior notification but without following the timeframes and procedures stipulated by the agreement. On the other hand, between 2007-2009, Albanian authorities returned 208 irregular migrants in full compliance of the stipulated procedures.<sup>31</sup>

The informal return of irregular migrants in violation of the spirit and letter of readmission agreements thus creates an administrative nightmare for authorities of the third countries as they scramble to ascertain

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<sup>29</sup>European Commission. *Evaluation of EU Readmission Agreements*. Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. p. 3.

<sup>30</sup>Ibid. p.4.

<sup>31</sup>Caraoshi, L.I. & Ndoci, I. (2011) Do EU Member States need Readmission Agreements? Analysis of the EC-Albania Readmission Agreement. *Journal of Immigration Asylum and Nationality Law*. p. 6.

the identity of the returnees. The irregular migrants in turn are also penalized by having to wait for hours for the interview process.

The reason for non-compliance with readmission procedures in some cases by Member States is not entirely clear. However, one reason that has been advanced by Greek authorities in the case of Albania refers to the lack of an implementing protocol.<sup>32</sup> The rationale behind these implementing protocols was to provide the parties with future tools to facilitate the process through detailing the procedures in accordance with their specific needs.<sup>33</sup> However, as the Commission makes clear, the lack of an implementing protocol is not an excuse for not relying on the readmission agreement or abiding by its stipulated procedures.<sup>34</sup> This is because the Commission, with strong support from the Member States, has repeatedly reiterated that the EU readmission agreements are ‘self-standing, directly operational instruments’ which do not necessarily require further bilateral implementing protocols.

The inconsistent reliance on EU readmission agreements by the Member States and the lack of adherence in some cases to its procedures is major failing on the part of the Union since it greatly undermines the credibility of the EU Readmission Policy and reduces the pressure on third countries to follow the procedures correctly. A disregard for the procedure also greatly slows down the returns process, undermining the human rights and international protection guarantees of the returnees. Realizing the seriousness of this lapse, the Commission has stated that it will closely monitor the correct implementation of EU readmission agreements by the Member States and consider legal action in case of incorrect or non-implementation.

### **Readmission of Third Country Nationals**

Third Country Nationals (“TCN”) clauses in EU readmission agreements allow applications for readmission of persons who do not have the nationality of either of the Parties (including stateless persons) and who transited the territory of one of the Parties. TCN clauses have been included in all the EU readmission agreements, with deferred applicability in some cases.

The TCN clauses have been a source of controversy since the outset and have proven to be the major stumbling block during negotiations. Practical experience has shown that the concerns have, to a large

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<sup>32</sup>Ibid. p. 8.

<sup>33</sup>Ibid.

<sup>34</sup>European Commission. *Evaluation of EU Readmission Agreements*. Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. p. 4.

extent, been justified since most of the partner countries lack the legal, infrastructural and human resource capabilities to effectively process TCN applications. The administrative detention of migrants pending their transfer to their country of origin has raised legal and constitutional concerns in some countries. The construction of reception facilities has been a slow process while in some cases readmission applications have treated TCN's as regular nationals.

In the case of Ukraine however, the TCN clause seems to have worked<sup>35</sup> as TCN applications to Ukraine constitute nearly half of all applications. For all other EU readmission agreements, data provided by the Commission reveals that only 63 applications for TCN have been formulated by all Member States until 2011. While it would be tentative to draw conclusions without further data, a tenuous link may exist between the low application rate and the lack of capability of partner countries to process TCN's. Member States may harbor apprehensions of the human rights implications in returning a TCN to a country which lacks the infrastructure and resources to effectively process the TCN to his/her country of origin. In this regard, it is relevant that the Commission has noted that some Member States only return persons to their country of origin as *a matter of policy*.

### **Joint Readmission Committee's ("JRCs")**

Joint Readmission Committees established under each EURA constitute the primary monitoring mechanism under these agreements. JRCs are charged with monitoring the application of their respective agreements and take decisions which are binding on the Parties. They are co-chaired by the Commission and the third country in question. In addition to being a monitoring mechanism, they constitute a means of continuing cooperation between the EU and the third country on readmission issues, being empowered to address practical difficulties as they arise and responding to the specific needs of the Parties as the relationship progresses.

The overall evaluation of the JRCs' work by the Member States and the Commission is positive.<sup>36</sup> JRC's have been particularly effective in the case of Russia and Ukraine and have convened at regular intervals.<sup>37</sup> On the other hand, they have not been very active in the case of Albania and have failed to

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<sup>35</sup>Ibid. p. 5.

<sup>36</sup>Ibid. p. 10.

<sup>37</sup> Billet, C. (2010) EC Readmission Agreements: A Prime Instrument of the External Dimension of the EU's Fight against Irregular Immigration. An Assessment after Ten Years of Practice. *European Journal of Migration and Law*. 12. p. 77.

foster compliance by the Member States of their readmission obligations.<sup>38</sup> In the case of Sri Lanka, technical issues and the ‘political situation’ have so far prevented the organization of a meeting.<sup>39</sup>

## **CONCLUSION**

An overall evaluation of EU readmission agreements thus far reveals mixed results. The Commission over time has fine-tuned its ability to negotiate these instruments by adopting considerable leverage through a range of incentives. The issue of readmission is gradually becoming strategically embedded within a broader framework of interaction and cooperation with partner countries. At the same time, the credibility and effectiveness of these instruments has been undermined by a lack of quality data that assesses their impact and their underutilization by some Member States. The performance of the JRCs has varied between different agreements and there is clearly scope for improvement by enhancing their roles. However, the European Commission appears to be cognizant of these shortcomings and is pushing for early remedial action. This is to be welcomed and indicates that the EU is not adopting a blind approach towards readmission.

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<sup>38</sup>Caraoshi, L.I. &Ndoci, I. (2011) Do EU Member States need Readmission Agreements? Analysis of the EC-Albania Readmission Agreement.*Journal of Immigration Asylum and Nationality Law*.p. 12.

<sup>39</sup>European Commission.*Evaluation of EU Readmission Agreements*.Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. p. 9.

## **Chapter 2**

### **The EU-Pakistan Readmission Agreement Explained**

The Agreement between the European Community and Islamic Republic of Pakistan on the Readmission of Persons Living without Authorization (“Agreement”) lays down the reciprocal procedures for systematic return of Pakistani nationals residing without lawful authorization within the territory of a Member State of the European Union with the exception of Denmark (“Member State [s]”), and vice versa. Moreover, under certain conditions, it obligates the Parties to readmit third-country nationals holding neither Pakistan’s nor one of the Member States’ nationality as well as stateless persons not holding any nationality. In essence, on the basis of reciprocity, the Agreement seeks to establish effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfill the conditions for entry into, presence in, or residence on the territories of Pakistan or one of the Member States, and to facilitate the transit of such persons in a spirit of cooperation.

The Agreement can be broadly explained as follows:

#### **SCOPE OF APPLICATION**

The Agreement is applicable to nationals of Pakistan and the Member States, and under certain provisos, to third-country nationals and stateless persons as well. The territorial scope of the Agreement extends to Pakistan and all member states of the European Union except Denmark.

#### **TECHNICAL PROVISIONS OF THE READMISSION PROCEDURE**

The Agreement extensively delineates the following necessary technical provisions of the readmission procedure:

- Readmission application;
- Time limits;
- Transfer modalities;
- Modes of transportation.

In order to commence the readmission process, the requesting state is required to submit a readmission application to relevant authorities of the requested state for acceptance based on proof of identity. However, no readmission application is required where the person to be readmitted is in possession of a valid travel document, visa or an authorized residence permit.

A readmission application must include the following information:

- The particulars of the person to be readmitted, for example, given name, surname, date of birth, place and the last place of residence;
- Indication of the means for proof of nationality, transit, the conditions for the readmission of third-country nationals and stateless persons, including those relating to unlawful entry and residence.

Additionally, to all possible extent, the application must include:

- A statement detailing the degree of assistance or care required by the person to be readmitted, provided that the person concerned has explicitly consented to such a statement;
- Any other protection or security measure which needs to be necessarily adopted in relation to the particular case.

The Agreement also safeguards against "readmission in error," whereby the Parties are required to take back, without any subsequent delay, any person readmitted by Pakistan or a Member State, if it is authenticated within a period of three months that the stipulated conditions for readmission have not been fulfilled. In such cases, the competent authorities of the respective states involved are obliged to exchange all available information relating to the actual identity, nationality or transit route of the person to be taken back.

## **READMISSION OBLIGATIONS**

In case of nationals of Pakistan and the Member States, the Requested State is obligated to readmit and required to issue the person, whose readmission application has been accepted, with all the necessary travel documentation immediately and without delay, bearing subsequent validity of six months. In circumstances of legal or factual ambiguities, where the person

concerned cannot be transferred within the specified period, the Requested State is required to issue a new travel document with the same validity period within 14 days.

In case of third-country nationals and stateless persons, readmission obligation is contingent upon:

- The person concerned must hold, at the time of submission of the readmission application, a valid visa or residence authorization issued by the Requested State; or
- The person concerned entered the territory of the Requesting State unlawfully.

However, no readmission obligation exists where:

- The third-country national has only been in transit via an international airport within the territory of the Member State;
- The Requested State has granted the third-country national or stateless person with an authorized visa or residence permit prior to or after entry into its territory, which has a longer period of validity.

Furthermore, the Agreement safeguards that no person shall be readmitted solely on the basis of prima facie evidence of nationality.

Evidence of nationality cannot be established through false documentation, and rather is to be furnished through:

- Genuine passports (national, diplomatic, service, collective surrogate passports), computerized national identity cards, and original citizenship certificates as listed in Annexure I of the Agreement, even if the prescribed length of validity has expired. If such documents are presented, the Requesting State and the Requested State are obliged to mutually recognize the nationality without the need of any further investigation measures;
- Digital fingerprints & biometric data, temporary or provisional identity cards, driving licenses, service cards, and other official documentation indicating citizenship as well as

personal statements made by the person concerned as listed in the Agreement's Annexure II.

If none of the documents listed in Annexures I or II can be presented, it is incumbent upon the competent authority of the Requesting State, and the diplomatic or consular representation of the Requested State to, upon request, make arrangements to interview the person for whom a readmission application has been submitted, without undue delay.

For third-country nationals and stateless persons, evidence of the conditions for readmission also cannot be established by false documents, and rather is to be furnished through:

- Entry and/or departure stamps/endorsements in the travel documents of the person concerned, or valid visa and/or residence authorization issued by the Requested State as listed in the Agreement's Annexure III;
- Official statements of relevant officials and bona fide witnesses who can testify about the person concerned crossing the border, description of the place and circumstances by the Requesting State's competent authority under which the person concerned has been intercepted after entering its territory, information related to the identity and/or stay of a person provided by an International Organization, reports/confirmation of information by family members, statement by the person concerned, named tickets as well as certificates and bills of any kind which clearly show that the person concerned stayed on the territory of the Requested State, named tickets and/or passenger lists of air or boat passages showing the itinerary on the territory of the Requested State, and information showing that the person concerned has used the services of a courier or travel agency, as listed under the Agreement's Annexure IV.

## **TRANSIT OPERATIONS**

The Agreement also covers transit operations whereby:

- The Requested State is required to allow the transit of a third-country national or stateless person when such a person cannot be returned to the state of destination directly after

being satisfied, on the basis of written evidence, that the state of destination has committed itself to readmitting its national or the person as the case may be;

- The Requested State may revoke consent if the forward journey through the territories of the possible states of transit or readmission by the state of destination is no longer guaranteed. In such cases, the Requesting State may be compelled to take back the third-country national or the stateless person at personal cost.

Furthermore, the Agreement specifically lays down procedures for submission of applications relating to transit operations, which must contain the following:

- Type of transit, states of transit and final destination;
- Particulars of the person in question; and
- Envisaged border crossing point, time of transfer and potential use of escorts.

Additionally, subject to mutual consultations, the Agreement obligates the competent authorities of the Requested State to support the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose, in accordance with its laws and rules.

#### **ADDITIONAL SALIENT PROVISIONS**

The Agreement also contains the necessary rules on costs as well as data protection and further delineates the composition and the tasks and powers of the Joint Readmission Committee, which would provide mutual legal assistance to the Parties in the application and interpretation of the Agreement.

The final provisions of the Agreement address its entry into force, duration, possible amendments, termination and the legal status of its Annexures.

Moreover, in order to facilitate its implementation, the Agreement encourages Pakistan and individual Member States to conclude bilateral implementing Protocols. Significantly however, the Agreement's provisions shall take precedence over any conflicting provisions contained in any previous bilateral arrangement or future implementing Protocols concluded between Pakistan and individual Member States.

## **Chapter 3**

# **Pakistan's Legislative Framework relating to Readmissions**

Readmission processes often involve a wide variety of government procedures. The national legal framework is evoked on a vast array of issues, all ultimately relating, in some way or the other, to readmission processes. A robust legal framework thus caters to the various eventualities that may arise in relation to irregular migration into and from a given state. Pakistan's legislative framework in this area also offers significant provision to regulate these issues. Yet matters of implementation still leave gaps which can, and often are, exploited. Pakistan's laws relating to readmission are scattered over many different acts and ordinances. To discuss the matter fully we will undertake an examination of the most significant laws that impact readmission policy in Pakistan and deal with foreigners in the country.

These laws include those regulating the entry and exit of foreigners to and from Pakistan, the registration and regulation of foreigners having entered Pakistan, consular access, deportation procedures, issuing of passports, emigration of Pakistani's abroad, and various offences relating to trafficking, forgery of documents, illegal exit from Pakistan, etc.

Various government bodies are tasked with managing or investigating these affairs. This section will, therefore, also discuss the establishment and scope of powers of the National Aliens Registration Authority (NARA), the National Database and Registration Authority (NADRA), and the Federal Investigation Agency (FIA). Additionally, we will look at the Ministries of Interior and of Foreign Affairs with regard to their mandate relating to readmission and repatriation of persons.

In this chapter Pakistan's legal framework relating to readmissions has been divided into eight sections to enhance understanding of their relevance and application:

- I. Constitutional Protections:
  - a. The Constitution of Pakistan, 1973

- II. The Entry, Exit and Regulation of Foreigners
  - a. The Foreigners Act, 1946;
  - b. The Foreigners Order, 1951;
  - c. The Registration of Foreigners Act, 1939;
  - d. The Registration of Foreigners Rules, 1966;
  - e. The Registration of Foreigners (Exemption) Order, 1966; and
  - f. The Exit from Pakistan (Control) Ordinance, 1981
- III. Diplomatic and Consular Access:
  - a. Diplomatic and Consular Privileges Act, 1972
- IV. Passports:
  - a. The Passport Act, 1974;
  - b. The Passport Rules, 1974
- V. Emigration of Pakistani's Abroad:
  - a. The Emigration Ordinance, 1979;
  - b. The Emigration Rules, 1979
- VI. Primary Documents of Identification:
  - a. Passport and Visa Manual
  - b. National Database and Registration Authority Ordinance, 2002
  - c. Pakistan Citizenship Act 1951 and the Pakistan Citizenship Rules 1952
- VII. The Federal Investigation Agency:
  - a. The Federal Investigation Agency Act, 1974
  - b. The Prevention & Control of Human Trafficking Ordinance, 2002
- VIII. Ministry of Interior and Ministry of Foreign Affairs:
  - a. Pakistan Rules of Business, 1973

This Chapter along with the next one helps outline the gaps and areas requiring focus for implementation of the EURA. For the purposes of the EURA, we will analyze the aforementioned laws to see how best the procedures under the EURA may be implemented.

# **I. Constitutional Protections**

## **The Constitution of Pakistan of 1973**

The Constitution of Pakistan was adopted in 1973 by the legislative assembly and returned Pakistan to a more complete democratic structure. A bicameral legislature was envisaged with the Prime Minister as the head and executive of the government and the President as the Head of State. The Judiciary was granted independence and Provincial autonomy was granted to a great degree. Pakistan's affirmation of its Islamic identity was also furthered in this Constitution and a clear definition of an Islamic State was established. The 1973 Constitution has been amended nineteen times over the past several decades; the most recent being the 19<sup>th</sup> Amendment of January 2011. However, it is the 18<sup>th</sup> Amendment of November, 2010 that is of significant contemporary relevance due to its provisions transferring legislative and executive competencies from the Federal to the Provincial governments. Before analyzing the Constitution for its relevance to the field of immigration and readmissions, in particular, we will give a brief overview of its essential structure and fundamental provisions.

The current Constitutional of Pakistan is spread over 280 Articles and divided into twelve parts as described below:

Preamble;

Part I: Introductory – Articles 1-6;

Part II: Fundamental Rights and Principles of Policy – Articles 7-40;

Part III: The Federation of Pakistan – Articles 41-49;

Part IV: Provinces – Articles 101-140A;

Part V: Relations between Federation and Provinces – Articles 141 – 159;

Part VI: Finance, Property, Contracts and Suits – Articles 160 – 174;

Part VII: The Judicature – Articles 175 -212B;

Part VIII: Elections – Articles 213 – 226;

Part IX: Islamic Provisions – Articles 227 – 231;

Part X: Emergency Provisions – Articles 232-237;

Part XI: Amendment of Constitution – Articles 238 – 239;

Part XII: Miscellaneous – Articles 240-280.

The Preamble affirms Pakistan's commitment to Islamic ideals, democracy, religious freedom and tolerance, fundamental human rights, and minority protections. This flows into Part I, the Introductory portion of the Constitution. Part I sets out Pakistan's territories and regions, establishes Islam as the State religion, incorporates the Objective Resolution as a substantive part of the Constitution, eliminates all forms of exploitation, and, importantly, ensures the right of Individuals to be dealt with in accordance with the law. This last provision found in Art. 4 states it shall be the inalienable right of every citizen to enjoy the protection of the law and to be treated in accordance with law, wherever he may be, and of every other person for the time being within Pakistan. Art. 4(2) further clarifies this right by stating that nothing detrimental to life, liberty, body, reputation or property of any person shall be taken except in accordance with the law. Furthermore, no one is prevented from acts that are not prohibited by an express law nor can any person be compelled to do that which the law does not require him to do. The impact of this Article is wide as it applies not only to Pakistani citizens within Pakistan but wherever they may be and also it affords legal protections to all persons, Pakistani and foreign. This article would have implications for Pakistani Diplomatic Missions in foreign countries and would require all Diplomatic Staff to abide by the laws established for the fair processing and treatment of Pakistanis wishing to return home or being sent home via established readmission procedures.

Part II, dealing with Fundamental Rights and Principles of Policy, outlines the various rights that the Constitution guarantees. Art. 8 holds any law void that is inconsistent with or in derogation of these fundamental rights. Art. 8(3), however, provides certain exceptions with regard to laws relating to the Armed Forces, the Police or other such forces charged with maintenance of public order. The Article also exempts all laws found in Schedule 1 of the Constitution from the operation of Part II. We shall return to the implications of Article 8 later on. Articles 9 through 28 provide specific rights and protections relating to security of person, safeguards as to arrest and detention, fair trial, slavery and forced labour, retrospective punishments, double punishment, self-incrimination, dignity of man, freedom of movement, freedom of assembly, association, trade, business and profession, freedom of speech, right to information, freedom to profess religion and manage religious institutions, safeguards against

taxation for religious purposes, provisions relating to property, equality of citizens, right to education, non-discrimination in respect of access to public places, safeguards against discrimination in services, and preservation of language, script and culture.

For our purposes ‘Article 9 – Security of Person – No person shall be deprived of life or liberty save in accordance with law,’ establishes a fundamental right to life and liberty. Only procedures outlined in specific laws may permit the holding/detention of individuals. Such detentions may be required when individuals are returned to Pakistan and will have special relevance to returns of third country nationals or stateless persons who have not violated any laws of Pakistan. There are strong policy considerations to prevent non-citizens from freely entering Pakistan. Other countries have overcome this problem by establishing reception centers to temporarily house such Third Country Nationals or Stateless Persons while they are processed for either entry into their countries or deportation back to their home countries. In Pakistan’s context and in order to comply with Art. 9 specific legal provisions for such detention in reception centers will have to be found or perhaps even enacted to give legal cover this apparent deprivation of liberty of Third Country Nationals or Stateless Persons. Flowing from Art. 9 are the provisions of Art. 10 of the Constitution which provides safeguards as to arrest and detention. This Article ensures rights of informing anyone in custody of the reasons for their detention, access to a legal practitioner for defence, and for producing the individual before a magistrate within twenty-four hours. Yet these provisions are modified for persons being held under law providing for preventive detention. The Article further elaborates that preventive detention may only be authorized for persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services. The maximum period for such detention is three months extendable upon a recommendation by a Review Board established by the Chief Justice of Pakistan or a High Court. This Article may also have relevance for readmitted persons who may possibly be detained for their activities. It is unlikely that such persons are returned by a European Union Member State due to human rights concerns but matters of national security unknown before the return takes place could create such an eventuality.

Article 10A grants individuals the right to fair trial and due process stating that, “For the determination of his civil rights and obligations or in any criminal charge against him a person

shall be entitled to a fair trial and due process.” This has specific relevance to individuals who return to Pakistan having left in violation of domestic laws. Individuals leaving Pakistan on forged documents or through other irregular means are subject to prosecution on their return and the Federal Investigation Agency does pursue such cases. It is essential that returnees are granted their fair trial and due process rights upon their return. Third Country Nationals or Stateless Persons may similarly face prosecution on their return and the same guarantees need to be strengthened to allow those without a base in Pakistan the protections that they deserve.

## **II. The Entry, Exit, and Regulation of Foreigners**

Pakistan exercises wide ranging powers in relation to foreigners entering or exiting its territory. In addition to these powers, the State may also require Foreigners to abide by registration requirements, and limit their activities once they have entered Pakistan's territory. The acts discussed in this section relate to these powers of the State and are exercised by a number of government entities, primarily the Ministry of Interior and its subordinate organ the National Aliens Registration Authority. Some important powers are also exercised by the Federal Investigation Agency, especially with regards to investigation of crimes and control of immigration counters at ports. The powers of the FIA will be discussed in a section VIII of this chapter below.

This section highlights the relevant provision of the Foreigners Act of 1946, the Foreigners Order of 1951 made pursuant to the 1946 Act, the Registration of Foreigners Act, 1939 and the Rules and exemption Order made thereunder of 1966. Finally, we will briefly look at the provisions of the Exit from Pakistan (Control) Ordinance of 1981.

### **Foreigners Act, 1946 (XXXI of 1946):**

Pakistan's primary legislation governing the entry of Foreigners into Pakistan, their presence and departure from the country, is the pre-independence Foreigners Act of 1946. This was amended more recently by the Foreigners (Amendment) Ordinance 2000, which incorporated a number of revisions to strengthen government procedures relating to foreigners. The Foreigners Act, as amended, is structured on 17 sections and deals with several important features relating to foreigners, namely, the definition of a 'Foreigner', certain legal limitations on activities by such foreigners, obligations of individuals to furnish information regarding foreigners, mechanism to determine Nationality of foreigners, penalties for certain offences relating to the Act, deportation of foreigners, custody of foreigners during trial or deportation proceedings, creation of the National Aliens Registration Authority (NARA), registration of foreigners under the NARA, and the permission of foreigners to legally work after registration. Furthermore, in pursuance to Sec.

3 of the Act, the Federal Government issued the Foreigners Order of 1951 (previously of 1939) to further implement the Act.

In relation to the reciprocal obligations found in the EURA, the Foreigners Act would govern the rights of European Union Member State's citizens who enter, stay and/or exit Pakistan. It is important to note here that the Federal Investigation Agency Act of 1974 (Section VIII below) brings all offences entailed in the Foreigners Act within the purview of the FIA and, therefore, grants the FIA a significant role in the implementation of this Act. We will look at the FIA and the NARA to determine the role they play with regards to foreigners in Pakistan.

Sec. 2 of the Act defines a 'foreigner' as, "a person who is not a Citizen of Pakistan." This definition can be read with Sec. 8 of the Act which deals with the determination of nationality and is reproduced below:

**8. Determination of Nationality: --**

**(1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality, if any, is to be ascribed to a foreigner, that foreigner, may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected.**

**Provided that where a foreigner acquired a nationality by birth, he shall, except where the Federal Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.**

**(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court: Provided that the Federal Government either of its own motion or on an application by the foreigner concerned, may revise any such decision.**

It is clear that the definition in Sec. 2 is exclusive in nature, thus anyone who is not a Pakistani citizen by birth or naturalization would be a foreigner. Sec. 8 then goes on further to define how the specific nationality of a foreigner would be determined for legal purposes in Pakistan.

Determining nationality in this sense is critical to further decisions made by Federal authorities such as deportation (Sec. 14B) or internment (Sec. 3(2)(g) and Sec. 4). The determination would also have international law ramifications, since if an arrest or detention of a foreigner takes place, Pakistani authorities would be bound to notify diplomatic missions of the foreigner's country of nationality. The mechanism to determine nationality under the Act is not based on any domestic law but rather affirms the recognition of the individual's nationality if it is so recognized by the laws of another country. Thus, any country that recognizes an individual as its own national will be deemed to be that individual's country of nationality.

The Act, therefore, through extrinsic reference determines nationality. Where uncertainty as to nationality arises the individual will be treated as a national of the country with which he is most closely connected in interest or sympathy or of the country with which he was last so connected. An individual's nationality at birth proves to be a strong indicator of current nationality under the Act and strong evidence to the contrary would have to be furnished by the individual to convince the Federal Government otherwise. Although the Act makes clear how the determination of nationality of a foreigner will take place for the purposes of domestic law, the same determination may not be recognized by the foreign state itself. In cases of uncertain nationality, especially where documentary evidence does not exist, attempts at deportation of a foreigner will be very difficult. It is a clear principle of International law that the domestic laws of one State cannot bind the authorities of another State. Therefore, the wide powers of determination granted to the Federal Government would be of little value in bilateral deportation proceedings.

The EURA goes a long way in settling such potential problems. By setting out mutually acceptable evidence of nationality it obviates problems associated with determinations of nationality under domestic laws. It is pertinent to note, however, that although under domestic law the Foreigners Act may be able to make a determination of nationality, an EU Member State would still require the evidence listed in the EURA as part of the Readmission Application submitted by the requesting State.

Sec. 3 of the Act grants wide ranging powers to the Federal Government for, "prohibiting, regulating or restricting the entry of foreigners into Pakistan, or their departure therefrom or their presence therein." This section allows the Federal Government to prohibit entry into Pakistan or limit it to certain times, ports, or routes for foreigners. It also grants powers to prohibit departure

from Pakistan or order expulsion from the country or any specific area therein. The Federal Government may also confine a foreigner to a specific area, prescribe a place for him to reside in, impose restrictions on his movement, require identification documents to be furnished including biometric data such as fingerprints and photographs, require that the individual submit to medical examinations, and prohibit him from associating with specific persons or engaging in certain activities. The foreigner may be asked to enter into a bond (with or without sureties) to ensure compliance with the aforementioned restrictions. Sec. 3 also permits the arrest of a foreigner in the interest of the security of Pakistan for up to two months extendable upon a review by a Judicial Board.

The wide powers granted under Sec. 3 allow the Federal Government to regulate all affairs relating to foreigners who wish to enter Pakistan, have entered Pakistan, or wish to leave Pakistan. This has significant implications for irregular migrants from EU Member States in Pakistan. Most important is the provision for arrest and detention for up to 2 months (extendable) if the foreigner or his activities are found not to be in the interest of the security of Pakistan. This applies even in situations where the foreigner is lawfully present in Pakistan, and is not triggered only when his stay becomes irregular.

Sec. 4(1) of the Act makes provisions for foreigners to be made 'Internees' if arrested under Sec. 3. Such internees shall be subject to 'conditions as to maintenance, discipline, and the punishment of offences and breaches of discipline' that the Federal Government will determine. Foreigners restricted under Sec. 3 to reside in a particular area are also subject to such conditions and are referred to as 'persons on a parole'. The Foreigners (Parolees) Order, 1965 sets out the conditions for such parole and deals with the establishment and administration of Parole Centres and disciplinary measures therein.

Sec. 4 makes legal space for the lawful internment of foreigners when the need arises and subjects them to special rules that the Federal Government would determine. As national security is the only end to which arrest or detention (internment) is permitted, it is envisaged that these provisions would be used sparingly. However, in the current climate of high insecurity in Pakistan the provisions may be more widely used against foreigners. It is clear, however, that actions taken under Sec. 3 and 4 may be challenged before a Board consisting of a Supreme Court Judge and a senior officer in the service of Pakistan (Sec.3 (g)).

Sec. 5 prohibits foreigners from changing or altering their name except where granted permission by the Federal Government or married women changing their names to their husband's name. This is important with regards to the details furnished in a Readmission Application under the EURA. Prohibition of changing a name would facilitate verification of identity and nationality.

Sec. 6 and 7 impose a duty on masters of vessels and hotel-keepers to furnish information to the relevant authorities regarding any foreigners utilizing their services. Vessels include ships and aircraft utilizing any of Pakistan's ports.

Sec. 10, importantly, gives the Federal Government the power to completely waive or modify applications of the Foreigners Act on any individual foreigner or class of foreigners.

Sec. 13 creates offences for the contravention of any provision of the Foreigners Act. These apply to anyone assisting the foreigner to 'prevent, hinder, or otherwise interfere with his arrest, trial or punishment' for violations under the Act. Furthermore, a master of any vessel or the pilot of any aircraft shall be deemed to have contravened this Act if he has not exercised due diligence to prevent the entry or exit of a foreigner contravening this Act. Sec. 13A prohibits the assistance of illegal entry to any foreigner and Sec. 13B prohibits the employment of an illegal entrant. Penalties for such violations are listed in Sec. 14 and include imprisonment for a term which may extend to five years, a fine, and forfeiture of a bond, if applicable. Sec. 14A denies bail to a foreigner if there appear reasonable grounds for believing that he has been guilty of such offence.

It is pertinent to reiterate that the Federal Investigation Agency is charged with investigating and prosecuting all offences under the Foreigners Act 1946. The Agency's Immigration Wing is best positioned to deal with such offences as it controls the exit and entry of individuals at the officially designated ports of Pakistan.

Sec. 14B and 14C relate to deportation of the foreigner concerned. Sec. 14B states that any foreigner for whom trial is pending or who is undergoing a sentence of imprisonment will be permitted by the Court or the Federal Government to depart from Pakistan. However, this provision is limited to trials and imprisonment given as a violation of this Act. A foreigner convicted of other offences cannot avail this section. Sec. 14C relates to custody pending deportation and states that any foreigner having no permission to stay in Pakistan and having

been convicted and sentenced to imprisonment under this Act will not be released for a period extendable to three months after the end of his sentence so as to arrange for his deportation. It is to be noted that judicial decisions of the High Court of Lahore have precluded the application of Constitutional protections afforded to individuals against unlawful detention or the powers of interference by the High Court under Art. 199 of the Constitution to individuals detained under this section.

Sec. 14D makes provision for the registration of foreigners by establishing an Aliens Registration Authority. This registration is open to any foreigner who immediately prior 10 July, 2000 lacked legal permission to stay in Pakistan. This registration affords foreigners authorization to seek employment. The National Aliens Registration Authority deals with all such registration of foreigners.

These provisions of registration of foreigners are in addition to the Registration of Foreigners Act, 1939 (below) and do not derogate from them.

### **Foreigners Order, 1951**

The Federal Government issued the Foreigners Order under Sec. 3 of the Foreigners Act. The Order is structured upon 16 sections and gives detailed instructions regarding powers to grant or refuse entry into Pakistan, the landing of seamen, grant permission to depart from Pakistan, the liability of master of vessels, restrictions on sojourn in Pakistan, prohibiting foreigners from prohibited or protected places, restricting their movement, restricting employment of foreigners, removal of foreigners from cantonments, closure of clubs or restaurants, and the arrest and detaining of foreigners. In essence the Order lends clarity and detail to the Foreigners Act 1946, making it operational for government functionaries.

Sec. 2 of the Order defines 'Registration Officer' as someone appointed by the Federal Government under Rule 3 of the Registration of Foreigners Rules 1966, for performance of function under the Registration of Foreigners Act, 1939 and its Rules. The section further defines a 'Civil Authority' as an authority appointed by the Federal Government for such area as it thinks fit.

Sec. 3 grants powers to grant or refuse permission to enter Pakistan. It prohibits the entry into Pakistan from any port or place of entry duly appointed by a Registration Officer or Civil Authority. Sec . 3(2) deals with refusal of entry by a Civil Authority and is reproduced below:

**Sec.3 (2) Leave to enter shall be refused if the civil authority is satisfied that :-**

**(a) the foreigner is not in possession of a passport or visa valid for Pakistan or has not been exempted from the possession of passport or visa; or**

**Provided that this clause shall not apply in relation to the nationals of Tanzania, Malaysia, Hong Kong, Zambia, Uganda, Trinidad, Tobago, Singapore, Ireland and Maritius and, in relation to the nationals of a country which has a reciprocal agreement with Pakistan shall have effect Subject to the provisions of such agreement.**

**(b) he is of unsound mind or is mentally defective ;**

**(c) he is suffering from a loathsome or infectious disease in consequence of which, in the opinion of the medical officer of the port or the place of entry, as the case may be, his entry is likely to prejudice the public health; or**

**(d) he has been sentenced in a foreign country for an extradition offence within the meaning of the Extradition Act, 1903 (XV of 1903); or**

**(e) his entry is prohibited under an order issued by a competent authority or under the specific orders of the Federal Government.**

Sec. 3 (3) further allows the civil authority to attach other conditions as it thinks fit and Sec. 3(4) allows the same authority to prohibit entry of any foreigner in the interests of public safety.

The provisions of Sec. 3(2) sets out a clear list of criteria, however, coupled with Sec. 3(3) and 3(4) the matter becomes vaguer. The Order gives a large degree of discretion to the Civil Authority to prevent entry into Pakistan. Although the Federal Government is authorized to oversee the actions of the Civil Authority and, under these Subsections, modify or cancel the orders issued by the Civil Authority.

Sec. 3(5) states:

**Where leave to enter is refused to a foreigner, he may be detained at some place approved by the civil authority and may if he has come by sea, be placed temporarily on shore for that purpose, and whilst he is so detained he shall be deemed to be in legal custody and not to have entered Pakistan.**

Thus a refusal to enter without immediate repatriation would lead to the foreigner being in ‘legal custody’ and would not be considered to have entered Pakistan. This is pertinent for a number of reasons. Firstly, individuals sent back to Pakistan from the EU who are not Pakistani nationals and who do not have the necessary permission to be in Pakistan shall be placed in legal custody. Secondly, this imposes a duty on the sending EU Member State not to send individuals to Pakistan who have no lawful permission to be heard, otherwise they shall be subject to detention. To alleviate this problem it is imperative to verify the nationality of individuals before sending them to Pakistan. Thus protecting the rights of the individual concerned and preventing a mere transfer of administrative responsibilities from the European Member State to Pakistan. It is also worthy of note that the inclusion of provisions relating to the return and readmission of Third Country Nationals and Stateless Persons will further complicate this area and may subject TCNs and Stateless Persons to unnecessary detention and uncertain prospects of release. This is a gap in the structure and needs to be resolved.

Sec. 5 empowers the Registration Officer and Civil Authority to grant permission to foreigners to depart from Pakistan. All foreigners are required to leave via designated ports or places of departure as appointed by a Registration Officer or Civil Authority. Sec. 5(2) deals with the refusal of leave to depart by the Civil Authority and is reproduced below:

**(2) Leave shall be refused if the civil authority is satisfied that -**

**(a) the foreigner has failed to comply with the formalities of departure prescribed under the Registration of Foreigners Rules, 1939; or**

**(b) his presence is required in Pakistan to answer a criminal charge; or**

**(c) his departure will prejudice the relations of the Federal Government with a foreign power; or**

**(d) his departure has been prohibited under an order issued by a competent authority.**

Furthermore, Sec.5(3) gives the Civil Authority powers to prohibit the departure of a foreigner where it is satisfied that such departure would be contrary to the public interest. Taken together these are significant restrictions on foreigners wishing to leave Pakistan. It is not merely a matter of having a valid visa but rather one relating to fulfilling extrinsic responsibilities such as those relating to the Registration of Foreigners Act and Rules or answering a criminal charge. Furthermore, Pakistan's relations with third countries also come into play as foreigners may be denied departure from Pakistan if this prejudices Pakistan's relations with another country. Sec. 5(3) gives significant discretion to the Civil Authority to prohibit departure when the public interest could be harmed. However, the Federal Government may cancel or modify any such order of the Civil Authority as it deems fit.

Sec. 6(1) allows the Civil Authority to require any master of a vessel or pilot of an aircraft to remove from their vessel or aircraft any foreigner who has been refused permission to enter Pakistan. Sec. 6(2) states any master of vessel or pilot of aircraft may be required to receive a foreigner for whom an order of deportation has been made and take him along to a particular destination.

Sec. 7 imposes restrictions on the sojourn of foreigners in Pakistan. Thus, any foreigner entering Pakistan (except Commonwealth citizens of India, Bangladesh, Kenya or Uganda) is required to obtain a permit indicating length of stay in Pakistan and may not stay in Pakistan beyond this stated period. This requirement will not apply to foreigners visiting on category, 'A', 'D', or transport workers on 'E', those visiting for less than 15 days, or those on gratis or courtesy visas. It is also to be noted that the Federal Government is not required to furnish any reasons for why it does not want a foreigner to stay in Pakistan beyond a certain date.<sup>40</sup>

Sec. 10 imposes restrictions on the employment of foreigners. These are limited to the supply to the Government or the public of light, petroleum, power or water and any other such undertaking that the Federal Government may specify.

Sec. 8, 9, and 11 deal with restrictions on residence and movement of foreigners. Prohibited or protected places are areas where foreigners may not enter or reside in without approval from the

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<sup>40</sup>*Saeed Muhammad v. Registration Officer*, 1962 PLD Kar. 595 (DB).

Civil Authority. Sec. 11 empowers the Civil Authority to impose conditions in respect of place of residence, movement, association with certain persons, or possession of certain articles.

Sec. 15 allows the Civil Authority to arrest any foreigner without warrant if it deems it necessary in the interest of the Security of Pakistan. Such arrest and subsequent detention must be in line with the provisions for arrest and detention under the Foreigners Act, 1946 and may be cancelled or modified by the Federal Government.

Sec. 14 deals with expenses relating to deportation of a foreigner and permits applying any money or property belonging to the foreigner concerned towards his deportation costs. The wording of this Section is important as it states what categories of persons could be subject to deportation i.e. foreigners against whom an order has been passed directing that he shall not remain in Pakistan, a foreigner at a port or elsewhere refused permission to enter Pakistan, and a foreigner who has entered Pakistan without permission. This seems to cover the entire gamut of persons who may be deported.

### **Registration of Foreigners Act, 1939 (XVI of 1939)**

The Registration of Foreigners Act, 1939 provides for the registration of foreigners entering, being present in, and departing from Pakistan. This brief Act is structured on nine sections. Along with the Foreigners Act, 1946, this act ensures a comprehensive regulation of the activities of foreigners in Pakistan. The registration requirements adopted by the Registration of Foreigners Act, 1939 and the other powers granted to the Federal Government are significant though listed in a manner seeming brief. Much of this Act is echoed by the Foreigners Act, 1946 and, therefore, the two are read in conjunction and not in derogation of each other.

A foreigner is considered a person who is not a Citizen of Pakistan (Sec. 2). This is the same wording used in Sec. 2 of the Foreigners Act, 1946. Sec. 3 entails the main powers granted to the Central Government (Federal Government) under this Act and is reproduced below:

**3. Power to make rules.-The Central Government may, after previous publication, by notification in the official Gazette, make rules with respect the foreigners for any or all of the following purposes, that is to say-**

**(a) For requiring any foreigner entering, or being present in Pakistan to report his presence to a prescribed authority within such time and in such manner and with particulars as may be prescribed;**

**(b) For requiring any foreigner moving from one place to another place in Pakistan to report on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;**

**(c) For requiring any foreigner who is about to leave Pakistan to reopen the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as prescribed;**

**(d) For requiring any foreigner entering, being present in, or departing from, Pakistan to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;**

**(e) For requiring any person having management of any hotel, boarding house, saral or any other premises of like nature to report the name of any foreigner residing therein for whether duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;**

**(f) For requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from Pakistan in such vessel or aircraft and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;**

**(g) For providing for such other incidental or supplementary matters as .may appear to the Central Government necessary or expedient for giving effect to this Act.**

These powers, much like those in the Foreigners Act, allow closer regulation of the activities of foreigners in Pakistan. They are a demanding set of requirements and ensure that foreigners report their presence, movement, and departure from Pakistan. It also imposes requirements on the management of hotels and other places of residence, as well as masters and managers of vessels and aircraft.

Unlike the Foreigners Act, however, no detailed guidelines are given to determine nationality and Sec.4 of this Act merely states that the Burden of Proof is on the individual to prove he is not

a foreigner. This is stringent and raises a presumption of being a foreigner unless the individual concerned can prove that he is a citizen of Pakistan.

Penalties for contravention of this Act are more limited than the Foreigners Act, 1946 and apply differently to foreigners than to citizens of Pakistan. Foreigners may incur imprisonment for up to one year and a fine of one thousand rupees. Citizens of Pakistan, on the other hand, are only subject to a five hundred rupee fine.

### **Registration of Foreigners Rules, 1966**

The rules made pursuant to the Registration of Foreigners Act, 1939 are found in the Registration of Foreigners Rules 1966. These rules outline the specific procedures to follow and the proper forms to be used for the registration purposes listed in the Act. All foreigners entering Pakistan, by whatever means are required to report their arrival to a Registration Officer through a prescribed form (Sec. 4 and 5). A separate form is required to be submitted to a Registration Officer which serves as the Registration Report of a foreigner. The said report contains details of the individual's purpose in Pakistan and intended address, as well as various other details. A registration officer will then issue a temporary Certificate of Registration. This may be exchanged for a regular Certificate of Registration once the foreigner arrives in his final destination within 30 days. The certificate is to be carried at all times and presented when required by the prescribed authorities. Furthermore, any temporary absence by a foreigner for longer than 7 days from the place of registration must be reported. Upon departure from Pakistan the Registration Certificate will be returned to the authorities in exchange for a travel permit to the individual concerned. Sec. 14 exempts Tourists from the registration requirements. Tourists are defined as persons not staying in Pakistan for longer than 3 months and falling in prescribed categories.

### **Registration of Foreigners (Exemption) Order, 1966**

The stringent requirement of the Registration of Foreigners Act 1939 and the Registration of Foreigners Rules 1966 are tempered by the Registration of Foreigners (Exemption) Order, 1966. This Order exempts various classes of foreigners from the registration requirements in the

Registration of Foreigners Act and Rules. The classes include, Commonwealth Citizens and specifically citizens of India and Bangladesh holding certain types of visas as well as transport workers from these countries. Also diplomats or other foreigners holding similar functions, and persons in transit through Pakistan are exempt. Citizens of Iran and Turkey remaining in Pakistan less than three months are also exempt.

This Order seems a necessary addition to alleviate some of the onerous requirements of the previous two pieces of legislation discussed. Yet citizens of EU Member States other than the UK do not fall within the categories mentioned under the Order and would be required to register under the mentioned procedures.

## **The Exit from Pakistan (Control) Ordinance, 1981**

This Ordinance provides for the control of individual's exiting Pakistan. Sec. 2 grants the essential power of control and is reproduced below:

### **2. Power to prohibit exit from Pakistan**

**(1) The Federal Government may by order, prohibit any person or class of persons from proceeding from Pakistan to a destination outside Pakistan, notwithstanding the fact that such person is in possession of valid travel documents.**

**(2) Before making an order under sub-section (1), it shall not be necessary to afford an opportunity of showing cause against the order.**

**(3) If, while making an order under sub-section (1) it appears to the Federal Government that it will not be in the public interest to specify the grounds on which the order is proposed to be made, it shall not be necessary for the Federal Government to specify such grounds.**

These provisions allow the Federal Government to, in effect, prevent the departure of any individual from Pakistan without showing cause or furnishing reasons for the same. Although a mechanism for review is granted under Sec. 3 of the Ordinance, it is a review by the Federal Government itself and Sec. 3(3) ousts the jurisdiction of the courts once a review decision has been made, thus preventing any form of judicial review of the decision.

Furthermore, nothing in the Ordinance states that this does not apply to non-Pakistani citizens and, therefore, its application would extend to foreigners in Pakistan wishing to depart.

### **III. Passports**

This section deals with the Passport Act of 1974 and the rules made thereunder. Whereas the previous two sections focused on the regulation of foreigners and the consular access they may be entitled to, this section focusses on the passport issuing regime in Pakistan and certain offences related thereto.

#### **The Passport Act 1974**

The Passport Act of 1974 is aimed at regulating the departure from and entry into Pakistan and visit to foreign countries of the citizens of Pakistan. The Act is structured on fifteen sections and primarily creates offences for certain violations and also grants powers to the Federal Government.

Sec. 3 of the Act prohibits the departure from Pakistan without a passport. The section states:

**3. Prohibition of departure from Pakistan without passport, etc.**

**No citizen of Pakistan shall:**

**(a) depart from Pakistan by any means whatsoever unless he is in possession of a passport, nor otherwise than from such port or place, by such route and in accordance with such conditions, as may be prescribed; or**

**(b) visit a foreign country unless his passport is valid for such country.**

It is evident from this section that departure from Pakistan requires the fulfillment of three elements. Firstly, the Pakistani citizen must be in possession of a Passport, and secondly, he must exit the country from such specified ports and in such manner as the Federal Government may prescribe. Thirdly, the individual may not visit a foreign country for which his passport is invalid. This applies most directly to Israel and wording to this effect is placed on every passport issued.

Contravention of Sec. 3 will attract a penalty of up to one year imprisonment or with a fine or with both (Sec. 4). The offence is also non-bailable.

Sec. 5 extends the offence to anyone who assists an offender under this Act with intent or hinders his arrest. The section also extends liability to master of vessels who knowingly allows a person to depart from Pakistan in contravention of Sec. 3.

Sec. 6 creates further offences relating to passports including using false statements to obtain a passport, willfully concealing facts, forging or tampering with passports, using a forged passport, etc. The punishment for such offences shall not be less than six months rigorous imprisonment and a fine of one thousand rupees.

It is pertinent to note that forgery or alteration of passports, especially of manual passports, is a known problem allowing human trafficking and smuggling to take place. The provisions of this section would apply, therefore, not only to the actual document forger but also to those using such passports for travel outside of Pakistan. Thus, individuals returned to Pakistan who may have used a forged or tampered passport would be liable to prosecution under this section.

Sec. 7 grants any police officer not below the rank of Sub-Inspector the power to arrest without warrant any person deemed to be contravening the provisions of this Act and also to seize any means of transport by which an individual contravening this act has departed from Pakistan. An individual arrested under the act is to be produced before a magistrate within 24 hours.

Sec. 8 grants powers to a Secretary of the Federal Government to cancel, impound or confiscate any passport after giving notice of the same and giving the individual concerned an opportunity to show cause as to why the order should not be made.

This brief Act seems primarily to create a number of offences with regard to passports and the abuse of the system of passports in Pakistan. It also grants powers to issue or cancel, impound, or confiscate passports. Sec. 8 notes that all passports are the property of the Federal Government of Pakistan and therefore it retains power over it.

### **The Passport Rules 1974**

Subsequent to Sec. 13 of the Passport Act, 1974, the Federal Government issued the Passport Rules of 1974. There are sixteen rules issued under the Act. Rule 3 makes it a condition that any

person departing from Pakistan must do so from a specified check post. The rest of the rules specify the modes and forms of applying and receiving passports and Rule 4 states that anyone may personally apply for a passport or do so through a passport agent. The remainder of the Rules relate to licensing for passport agents and the requirements for the same.

## **IV. Emigration of Pakistani's Abroad:**

Pakistan has provided the definition for numerous skilled and unskilled workers under Inter-governmental agreements. With a large population and high poverty, these emigrants have provided much needed remittances and play a major part in the economic development of Pakistan. Emigrants sent through governmental mechanisms are legal workers in the host state and the Government of Pakistan has taken steps to protect their rights. In this regard the office of the Director-General, Bureau of Emigration and Overseas Employment (DG, BEOE) has been of prime importance. Tasked with the promotion of legal emigration and the protection of emigrants the DG, BEOE plays a pivotal role on how Pakistani's lawfully enter and exit foreign countries. This is important from the point of view of readmission as migrant workers overstaying their legal work permits/visas come within the framework of readmission as envisaged by the EURA. The checks in place by the DG, BEOE on the return of workers is important to grasp for our purposes and this section seeks to analyze the legal framework under which legal emigration is permitted.

### **The Emigration Ordinance 1979**

The Emigration Ordinance of 1979 was promulgated to establish the office of Director-General, Bureau of Emigration and Overseas Employment (DG, BEOE). It also establishes two further positions, namely, the Protectors of Emigrants and Labour Attachés that are deployed abroad. The Ordinance is generally designed to regulate the emigration of Pakistani's abroad. It is structured on 28 sections and deals with a number of offences and their penalties. Pursuant to Sec. 16 of the Ordinance, the Federal Government is entitled to make rules and these were issued as the Emigration Rules of 1979.

Sec. 2 lists definitions of certain terms used in the Ordinance. It is pertinent to mention the following definitions found in this section:

- Sec. 2(g) “ **‘Emigrant’ means any person who emigrates or has emigrated or who has been registered as an emigrant under this Ordinance and includes any dependent of an emigrant.’**”
- Sec. 2(h) “ **‘Emigrate’ and ‘emigration’ means the departure by sea, air or land out of Pakistan of any person for the purpose, or with the intention, of working for hire or engaging in any trade profession or calling in any country beyond the limits of Pakistan.’**”

Sec. 3 creates the Office of the Director-General, Bureau of Emigration and Overseas Employment who will be a person appointed by the Federal Government. Importantly, Sec. 4 outlines the functions of the DG, BEOE which include the promotion of emigration of citizens of Pakistan (Sec.4(a)), the control and regulation of such emigration (Sec.4(b)), and looking after the interest and welfare of emigrants (Sec.4(c)). Sec. 4-A also establishes the Overseas Employment Corporation Ltd. to promote emigration of citizens of Pakistan. Sec. 5 and 7 create the positions of Protector of Emigrants and Labour Attachés, respectively. Labour Attachés are to be stationed abroad for facilitating and promoting the emigration of citizens of Pakistan.

Sec. 8 regulates emigration and stipulates that emigration from Pakistan to all countries of the world will only be lawful if the individual is in possession of a letter of appointment of a work permit from a foreign employer or an employment visa or an emigration visa from a foreign Government. Additionally, the individual may also lawfully emigrate if he has been selected for emigration by a foreign employer through the DG, BEOE or an Overseas Employment Promoter or under an agreement or treaty between the Government of Pakistan and a foreign Government (Sec. 8(1) and (2)).

The Federal Government is empowered to regulate the emigration of persons of certain occupations or professions if it deems that their emigration is not in the public interest. Emigration of these classes outside of the stipulations of the regulations would be unlawful (Sec 8(3)). The Federal Government may also outright prohibit any class of occupation or profession from emigration abroad (Sec. 8(4)).

Sec. 8 would, in effect, have wide implications for anyone leaving Pakistan for employment abroad in case they do not meet the requisite criteria for lawful emigration. This would mean that

any Pakistani citizen not authorized to work in a foreign country would be committing an offence under Sec. 8 and would be liable to punishment under Sec. 17 (below).

Sec. 11 empowers the DG, BEOE, a Protector of Emigrants, or any officer authorized by the Federal Government to search and detain any vessel to prevent contravention of this Ordinance or the smuggling on board of an individual. This section also empowers the aforementioned officers to enter any port or point of entry or departure for the purposes of inspection.

It is pertinent to note that Sec. 11 gives the DG, BEOE, the Protector of Emigrants and other authorized officers a role in the prevention of human smuggling outside of Pakistan. This role would be shared with the Federal Investigation Agency (discussed below).

Sec. 17 lists offences and their penalties under this Ordinance. It is an important section which has implications to counter human smuggling. Sec. 17(1) states that anyone emigrating in violation of the provisions of this Ordinance shall be punishable with imprisonment for a term extendable to five years or with a fine, or with both. Separate offences exist relating to making of agreements with persons to emigrate outside of the provision of the Ordinance or assisting any such emigration. These offences may initially be punished with a five year term of imprisonment with or without fine and on subsequent convictions with imprisonment of up to seven years with or without fine.

Sec. 18 deals with fraudulently inducing an individual to emigrate and is reproduced below:

**“Sec. 18. Fraudulently Inducing to Emigrate:**

- (a) [If an individual] Forges any document required for, or relating to, the emigration of any person, or has in his possession or under his control any instrument or article which may be used for the purpose of such forgery, or**
- (b) By means of cause or induces, any person to emigrate, or enters into any agreement to emigrate or leaves any place with a view to emigrating, shall be punishable with imprisonment for a term which may extend to fourteen years, or with fine, or with both.”**

This section deals primarily with those involved in the illegal emigration of persons. The individuals who facilitate such illegal emigration often involve complex methods of forgery to send individuals to countries where they do not have any lawful employment ready for them.

Often such individuals or groups of individuals can create forged documents posing as officially appointed overseas employment promoters and deprive aspiring emigrants of large sums of money. Sec. 18 aims to suppress such activities and gives a far heavier penalty for such criminal activity than it does for other offences under the Ordinance. Sec. 19 and 22 further support the provisions of Sec. 18 by criminalizing the false representation to anyone of engagement by the Government for emigration and also the receiving money for providing foreign employment. Sec. 20 of the Ordinance makes the violation of the terms of agreement with a foreign employer punishable with a fine extendable to ten thousand rupees.

Sec. 27 limits the application of this Ordinance to Pakistani citizens and exempts anyone who is not a citizen of Pakistan.

This Ordinance has significance especially in relation to individuals illegally exiting Pakistan for employment abroad. It also has implications for individuals who overstay in a foreign country after expiration of their work permits/visas. The Ordinance, by creating several offices, especially the office of DG, BEOE, ensures a level of oversight over outgoing Pakistani migrants. The offences it creates also have a deterrent value if enforced correctly. It is encouraging that there is emphasis on the investigation and punishment of those who smuggle or assist in the smuggling of humans outside of Pakistan. However, it is the level of coordination between the DG, BEOE and the FIA that will determine the ultimate impact that these legal provisions will have as it is the FIA that is charged with investigating and prosecuting offences under the Emigration Ordinance 1979.

### **The Emigration Rules, 1979**

Issued under Section 16 of the Emigration Ordinance 1979, the Emigration Rules of 1979 flesh out and operationalize the Ordinance. The Rules go into detail regarding the duties and functions of the office of Protector of Emigrants and the Labour Attachés. Furthermore, they outline procedures for the licensing of Overseas Employment Promoters. The Rules list what service charges may be charged from prospective emigrants. Importantly Sec. 16 relates to the passage from Pakistan to the place of employment and the return journey. The remaining rules deal with the processing of demands for manpower from foreign governments and the roles of the different

offices in this regard created by the Emigration Ordinance, 1979. The Rules also outline the various protections that Overseas Employment Promoters, Labour Attachés and Pakistani Missions are to afford emigrants. The Rules provide a thorough operationalizing framework for the promotion of emigration and facilitation of emigrants abroad.

Rule 4 lists the duties and functions of the Protector of Emigrants. Among these is the duty to inquire into the treatment received by returning emigrants during the period of their residence abroad, and return journey, and report findings of such inquiry to the DG, BEOE. Furthermore they are to aid and advise emigrants, when departing from, or returning to Pakistan. This would give the Protector a role in advising against overstay of emigrants or allowing themselves to become irregular in a foreign country. Protectors may thus facilitate the readmission process where overstaying emigrants seek their advice.

Rule 5 lists the power and function of Labour Attachés and includes the responsibility to promote overseas employment, the welfare of emigrants, safeguarding the interest of emigrants in the host country including the settling of disputes and negotiations with employers, attend to all complaints of the emigrants and find adequate remedies for them, and report to the DG, BEOE on all activities such as labour market trends, inflation and cost of living. Such protections may reduce the risk of legal migrants turning irregular by finding other means of employment. If Labour Attachés adequately perform their duties, then the burden created by irregular migrants could be mitigated.

Rule 16 deals with the passage from Pakistan to the place of employment and return. All costs in this regard are to be borne by the employer. If, however, the employer finds an emigrant to be unfit for employment then the Overseas Employment Promoter that recruited the individual concerned shall be liable to pay for passage of the emigrant and his return.

Rule 25 relating to the Code of Conduct for Overseas Employment Promoter states, in sub-rule xvi, that, “No Overseas Employment Promoter shall get involved, help or assist any person in illegal activities, like forged visas, bifurcation of group visas, use of visit, study or Umra visas for employment abroad. The unique position of Overseas Employment Promoters makes them susceptible to the temptation to engage in illegal activities in relation to migrants. Their knowledge and know-how of legal emigration may be abused by those involved in human

smuggling. Therefore, the aforementioned sub-rule is of paramount importance in reducing the temptation and holding Overseas Employment Promoters responsible.

The remainder of the Rules relate to the settlement of complaints against employers and on certain restrictions regarding who can be sent abroad for employment. The Rules thus supplement the Emigration Ordinance and give detailed guidance to the different offices created therein. The settlement of disputes is vital to reduce the risk of legal emigrants becoming irregular in a foreign country and should be promoted as far as possible.

## **V. Primary Documents of Identification:**

Under Annex I of the EURA, three documents are to be treated as unequivocal proof of nationality. These are Genuine Passports of any kind, Computerized National Identity Cards, and Genuine Citizenship Certificates. Thus in accordance with Art.2(1) and Art. 6(2) of the EURA if any of these documents are presented to the competent authority of a Party to the Agreement, it shall have to accept the readmission of the individual concerned.

### **The Passport and Visa Manual and the Passport Act 1974**

Passports are issued under the Passports and Visa Manual and certain provisions of the Passports Act 1974 also apply. Pakistani passports are of three kinds, Diplomatic, Official and Ordinary. Ordinary passports may be issued to any citizen of Pakistan and are now valid for a period of ten years. In Pakistan, all passports now issued are Machine Readable Passports (MRP) and have suppressed forgeries. Several Pakistani Diplomatic Missions abroad are also able to issue MRPs, however, most Missions still issue manual passports. Thus the potential for forgery of passports still exists.

Diplomatic passports are issued by the Ministry of Foreign Affairs to Diplomats of Pakistan and other entitled categories pursuant to Paragraph 45 of the Passport and Visa Manual, 2006. Official passports are issued to Pakistani Nationals who are Senators, MNAs, Provincial Ministers, Judges of the Supreme and High Courts, and Officers serving with the Government proceeding abroad on official assignments pursuant to Paragraph 9 of the Passport and Visa Manual 2006.<sup>41</sup>

As the EURA envisages genuine passports to be proof of readmission, authorities in both EU Member States and Pakistan may have to verify passports presented to them. It is easier in the case of MRPs but more difficult where manual passports are presented.

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<sup>41</sup>Official website of the Directorate General of Immigration and Passports. Available at: <http://www.dgip.gov.pk/Files/Passport.html>  
[Accessed 12 November, 2012]

## **The National Database and Registration Authority Ordinance 2000**

Computerized National Identity Cards in Pakistan are issued by the National Database and Registration Authority (NADRA). The law governing its establishment and powers is the National Database and Registration Authority Ordinance 2000. Under Sec. 9 of the Ordinance every citizen of Pakistan is required to register with NADRA if they have not already done so. Under Sec. 10, NADRA shall issue, upon application, to all citizens who have attained the age of eighteen years a National Identity Card (CNIC). It is pertinent to note that although NADRA also issues other cards such as Pakistan Origin Cards, Overseas Identity Cards, and Alien Registration Cards, among others, only CNICs would fulfill the requirements of the EURA under Art. 6(2) and Annex I. Furthermore, although CNICs are issued to any Pakistani citizen and proof of citizenship is a requirement for issuance of such a card, NADRA Officials have been quick to note that a CNIC is not proof of citizenship of Pakistan. However, no legal provision in the Ordinance has been found to correspond to this view, and, therefore, its implications are unclear at this moment.

Sec. 19 of the Ordinance states that no passport, permit or travel document will be issued to a person without a CNIC. CNIC are required for casting of vote in elections and is primarily to be used as a proof of identity of the bearer to the extent of the information available on the card.

Sec. 30 deals with certain offences including the provision of false information when applying for a CNIC and the forgery of such cards. Therefore, an individual who has forged a CNIC would be liable to imprisonment of up to one year or with a fine of up to one hundred thousand rupees or both.

## **The Pakistan Citizenship Act, 1951 and the Pakistan Citizenship Rules, 1952**

Certificates of citizenship are issued under the Pakistan Citizenship Act, 1951 and the Rules established thereunder. Citizenship certificates are issued to a number of categories of persons.

The Act of 1951 and its Rules allow for the issuance of such a certificate to the following categories:

- i) Citizens at the date of commencement of the Pakistan Citizenship Act 1951 (i.e. 13<sup>th</sup> April, 1951).
- ii) Citizens by birth in Pakistan provided that the father of the child is not a foreign diplomat or an enemy alien,
- iii) Citizen by descent if the individual's father is a citizen of Pakistan,
- iv) Citizen by migration undertaken between 13<sup>th</sup> April 1951 and 1<sup>st</sup> January 1952
- v) Citizen by naturalization under the Naturalization Act, 1926,
- vi) Citizen by virtue of marriage to a Pakistani male citizen, and
- vii) Citizen by virtue of incorporation of territory as Pakistan.

These categories may be issued certificates of citizenship for the purposes of verifying nationality under the EURA. As already stated, the three documents listed in Annex I of the EURA must be genuine. False or forged documents cannot prove citizenship. Under the Rules of 1951, it is the Provincial Government which issues these certificates of citizenship and verification of the document would lie with it. As readmission is primarily a Federal activity concerning Federal entity, the verification of a citizenship certificate may cause delays in the verification process. Therefore, strong mechanisms of coordination between Federal and Provincial Government entities would have to be established by the competent authority to process Readmission Applications in an efficient and timely manner.

## **VI. The Federal Investigation Agency and Human Trafficking:**

This section deals with the Federal Investigation Agency (FIA) and some of the major offences it is tasked with investigating and prosecuting. Prime amongst these offences, for our purposes, is human trafficking. This offence and associated activities is dealt with the Prevention and Control of Human Trafficking Ordinance, 2002. It is the mandate of the FIA to investigate and prosecute all offences under the 2002 Ordinance. This section, therefore, looks at the powers and functions of the FIA under the Federal Investigation Agency Act 1974 with specific focus on certain offences it is tasked to police found in the Pakistan Penal Code, and the Prevention and Control of Human Trafficking Ordinance, 2002.

### **Federal Investigation Agency Act 1974 (VIII of 1975)**

The Federal Investigation Agency Act of 1974 (FIA Act) created a specialized federal body for the “investigation of certain offences committed in connection with matters concerning the Federal Government.” The FIA Act of 1974 is structured on 10 Sections and a Schedule listing all the offences that fall within the purview of the FIA. The FIA is empowered to deal with a wide range of offences, the bulk found in the Pakistan Penal Code (PPC). Among the PPC offences falling within the purview of the FIA include:

#### **Sec. 366-B - Importation of a girl from a foreign country:**

**Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.**

Although a specific offence relating to the trafficking of girls for the sex trade, this section has bearing on the FIA’s overall role in preventing illicit trafficking into Pakistan. With respect to the EURA the import of women under the age of twenty-one years from European Member States would create an offence, their repatriation under the EURA scheme would be facilitated

by quicker processing and a uniform procedure. Special instructions relating to health and protection of such victims may also be made under EURA Readmission Applications.<sup>42</sup> However, the FIA would have to be made cognizant of such options available to them under the EURA Readmission Application.

**Sec. 471 - Using as genuine a forged document.**

**Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.**

This section of the PPC criminalizes the intentional use of forged documents for any purpose. This would, therefore, also apply to cases of individuals using forged passports or visas to enter or exit Pakistan. Thus, in matters of immigration or readmission its application would, in all likelihood, come into effect when the individual makes actual use of the forged document at an immigration counter or presents his documents before an official. As the FIA mans all immigration counters at Pakistani ports this would be a matter for their involvement. Although the introduction of Machine Readable Passports in Pakistan has reduced the potential for forging passports, manual passports are still widely used. The majority of Pakistani embassies abroad are not equipped to issue Machine Readable Passports and, therefore, the potential for forged passports is still high. Additionally, Pakistani visas are forged by individuals wishing to enter Pakistan, often for the purposes of onward travel to European destinations.

Additionally, this section states that anyone using as genuine a forged document would receive the same punishment as if he had forged such document himself. The punishment for forging a document is found in Sec. 465 of the PPC which states, "Punishment for forgery: Whoever commits forgery shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine, or with both." The FIA tasked with enforcing these sections has to make a significant dent in forged documentation if it is to have an impact on illegal trafficking and human smuggling into Pakistan or outside of it.

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<sup>42</sup> EURA Annex I.

The FIA Act further enumerates a number of offences found in other legislation that fall within the purview of the Federal Investigation Agency. For our purposes the relevant offences are found in:

- 1) The Foreigners Act, 1946 (XXXI of 1946);
- 2) The Passport Act, 1974 (XX of 1974);
- 3) Emigration Ordinance, 1979 (XVIII of 1979);
- 4) Exit from Pakistan (Control) Ordinance, 1981 (XLVI of 1981);
- 5) Prevention & Control of Human Trafficking Ordinance 2002; and
- 6) National Database and Registration Authority Ordinance 2002.

These offences have been discussed in previous sections of this chapter and the FIA's role in enforcing these has been highlighted. The Prevention & Control of Human Trafficking Ordinance 2002 will be discussed below.

### **The Prevention and Control of Human Trafficking Ordinance, 2002**

The Prevention and Control of Human Trafficking Ordinance, 2002 was promulgated to suppress human trafficking into and out of Pakistan. It has a specific focus on the use of persons for exploitative entertainment, slavery, and forced labour. As listed in the Schedule to the Federal Investigation Agency Act of 1974, the offences contained in this Ordinance, are inquired into or investigated by the Federal Investigation Agency. Although structured on merely 12 sections, the Ordinance goes a long way in providing the FIA with the legal tools required to fight human trafficking.

Sec. 2 lists certain definitions including the definition of a 'victim' and of 'human trafficking'. A victim is defined as, "the person who is the subject of or against whom any offence under this Ordinance has been committed." This has implications for readmission as a victim may even be an individual who pays for transport outside of a country, not knowing what his fate may be. If such an individual is returned to Pakistan under the readmission process envisaged by the EURA, it is conceivable that the criminal offences may not be framed against him. These offences include those already discussed above, such as leaving Pakistan without a passport or

on a forged passport, etc. Much will depend on how the readmitted individual is treated on his arrival by FIA staff at the port of arrival. A strong case can, however, be made for the individual to be treated as a victim and not an offender when economic considerations are taken into account. Additionally, for an EU citizen trafficked into Pakistan, the status of victim would, conceivably, absolve him of any offences he or she may have committed to enter Pakistan. The definition can only be read rationally if this is the intended purpose of the definition of a victim.

The definition of ‘human trafficking’ under Sec. 2 is reproduced below:

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

This definition is wide in its ambit and can be broken down into the following elements:

- i) Obtaining, securing, selling, purchasing, recruiting, detaining, harbouring, or receiving a person,
  - ii) With or without the individual’s explicit or implicit consent,
  - iii) Through means of:
    - a. coercion, kidnapping, or abduction;
- or
- b. by giving or receiving any payment or benefit, or sharing or receiving a share,
  - iv) for the subsequent transportation out of or into Pakistan by any means whatsoever,
  - v) for any of the purposes mentioned in section 3.

The purposes mentioned in Sec.3 will be discussed shortly; however, we will now look at the offence in a little more detail. The first element pertains to dealing with the individual victim and includes a wide array of dealings. Obtaining, securing, selling, purchasing, detaining, and receiving may all have a link to forms of coercive or non-coercive acts. They may be linked to kidnapping, as in selling a kidnapped person onward or detaining such a kidnapped individual.

The words obtaining, securing, recruiting, harbouring, or receiving may contain an element of the individual's implicit or explicit consent and would not be an offence if not related to the subsequent act of trafficking. Thus, an individual may harbor a person for some benefit for onward transportation out of Pakistan and fulfill those elements of the offence.

The second element relates to the victim's consent. The law does not recognize consent as a mitigating or vitiating factor in the commission of the offence of human trafficking. Therefore, an individual who willingly pays a trafficker to be transported out of Pakistan for a purpose mentioned in section 3 does not absolve the trafficker of culpability under this Ordinance.

The third element relates to the means employed to obtain, secure, sell, purchase, recruit, detain, harbor, or receive a person. These may be coercive in nature such as kidnapping or abduction or through threats, alternatively they may be voluntarily agreed to by the victim exhibited through the payment of monies or other benefits provided to the trafficker. Furthermore, this applies to individuals at different stages of the trafficking process. Thus, an individual who has kidnapped people may deliver that person to another who receives him and detains him for onward transportation out of Pakistan. In this case both the kidnapper and the detainer would be part and parcel of the crime of human trafficking.

The fourth element relates to aspect of cross-border trafficking into or out of Pakistan. This limits the offence to those which involve victims crossing international boundaries.

The fifth element is concerned with certain purposes mentioned in Sec. 3 of the Ordinance. Sec. 3 contains four subsection and each will be analyzed in part:

**3. Punishment for human trafficking. The human trafficking shall be punishable as under.**

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

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

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

The purposes mentioned in Sec.3(1) includes attaining benefit, exploitative entertainment<sup>43</sup>, slavery, forced labour, or adoption. Specifically this subsection relates to the planning and execution of plans for human trafficking. Such planning, on its own, carries a penalty of five years imprisonment and a fine. Execution of the plan for human trafficking carries a seven years imprisonment penalty with fine. Whereas planning or executing a plan for human trafficking that also involves kidnapping or abduction or any attempt thereof, carries a term of imprisonment of ten years and a fine.

**Sec. 3 (ii) Whoever knowingly provides, obtains or employs the labour or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:**

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

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

This sub-section deals with forced labour or coerced labour. It carries a punishment of up to seven years with fine, whereas, if kidnapping or abduction are involved the term may extend to ten years with fine. Also if an individual is remunerated for the coerced or forced labour or services, then this remuneration shall not be taking into consideration as a mitigating circumstance during sentencing.

**Sec. 3 (iii) Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has received or expects to receive some benefit in lieu**

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<sup>43</sup> Exploitative entertainment is defined in Sec. 2(e) as, "all activities in connection with human sports or sexual practices or sex and related abusive practices."

**thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine:**

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

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

Sec.3(iii) focusses on the trafficking of women and children for the purposes of exploitative entertainment. Thus ‘exploitative entertainment’ is also a purpose under the fifth element of human trafficking. The offence under this sub-section carries a prison term of ten years with fine and in the case of kidnapping or abduction associated with the offence it is up to a term of fourteen years with fine.

**Sec. 3 (iv) Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person’s liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.**

This sub-section relates to activities associated with human trafficking, namely, the taking, confiscation, possession, concealment, removal, or destruction of certain documents such as passports, travel document and identification documents of a victim by an individual. This offence carries a penalty of seven years with fine.

Sec. 3 is an expansive section and looks at various stages of the human trafficking process; from the initial securing of the victim, through coercion, kidnapping or abduction, to the transportation out of or into Pakistan and all processes in between. Essentially, however, it is the transportation of an individual beyond international boundaries for the purpose of any benefit, exploitative entertainment, slavery, forced labour, or adoption that makes up the offence of human trafficking under the Ordinance.

The offences in section 3 are aggravated if committed through an organized criminal group and repeat offenders are dealt with a more severe imprisonment of fourteen years and a fine (Sec. 4 and 5).

Under Sec. 6 the court is empowered to provide compensation to a victim of human trafficking, including shelter, food, and medical treatment for women and children.

The Federal Government has promulgated rules under the Prevention and Control of Human Trafficking Ordinance 2002 . Rule 7 relates to the repatriation of victims of human trafficking who are foreign citizens. Such victims, pending repatriation, are entitled to apply for registration to the National Alien Registration Authority and may receive work permits during their stay in Pakistan. Under Rule 7(4) the Federal Government shall establish special funds for the repatriation of the victim and necessary arrangements will be made for repatriation with the Embassy of the home country of the victim.

The Ordinance and the Rules made thereunder, provide a strong tool to law enforcement agencies for the suppression of human trafficking into and out of Pakistan. The Federal Investigation Agency is the department tasked with this duty and is in the best position to undertake this responsibility. The implications of the Ordinance with regard to readmission are significant especially regarding the potential for protection of victims for the application of penal laws in Pakistan. The Ordinance does not in any way state that a victim shall be liable for any offence under it, though it is conceivable that other laws may have been broken by the victim entering or exiting Pakistan outside of the prescribed procedures. It is, therefore, unclear what the status of a victim would be under domestic law and whether other laws may be invoked against such a victim. The FIA's practice in certain ports, such as Islamabad, does indicate that even those individuals who have paid or actively attempted to exit Pakistan through irregular channels are treated as victims upon their return and released after an interview. However, this has not proven to be a uniform practice at all ports.

## **VIII. The Mandate of the Ministry of Foreign Affairs and the Ministry of Interior, Pakistan**

The Pakistan Rules of Business of 1973 enumerate the responsibilities of the various divisions of the Federal Government. Certain divisions on their own, and other divisions grouped together form a Ministry. The Ministry of Foreign Affairs consists solely of the Foreign Affairs Division while the Ministry of Interior consists of the Interior Division. This section lists their mandate with regards to readmission and related activities.

### **The Rules of Business 1973**

Under the Pakistan Rules of Business, 1973 the procedures for government operation and conduct of ministries and divisions is outlined. The Rules of Business outline in detail the lines of communication between divisions and ministries. Importantly, they also apportion duties and responsibilities to the various divisions. This is essential for efficient government functioning and control. Overlaps between such issues can cause delay and turf conflict. For our purposes, it is important to understand the functioning of the Ministry of Foreign Affairs and the Ministry of Interior, as both play a significant role in the readmission process.

The Ministry of Foreign Affairs:

Schedule II of the Rules of Business of 1973 list the ‘Distribution of Business between Divisions’. The Foreign Affairs Division (numbered 13) is tasked with a number of duties relating to the international affairs of Pakistan. Item 8 relates to the Administration of the Foreign Service of Pakistan and its Missions abroad. This thus grants the Ministry of Foreign Affairs administrative powers over its Embassies and High Commissions in foreign country. This is relevant for any change in procedure that may flow out of the implementation of the EURA. Foreign Service members posted abroad may require training or special guidance in new procedures and it would be the responsibility of the Ministry of Foreign Affairs to do this.

Item 11 states:

11. (i) Policy regarding extradition to and from other countries.

**(ii) Repatriation of Pakistan nationals from abroad (other than those handled by other Divisions)**

Although extradition does not come within the framework of the EURA, it is evident here that the Ministry of Foreign Affairs is responsible for the repatriation of Pakistan nationals from abroad. This would mean it plays a critical role in the readmission of Pakistani citizens. This role is reflected in current procedures that exist for the readmission and return of Pakistani citizens from abroad. The Pakistani Diplomatic Missions abroad deal with cases of readmission and is often the entity involved in verification of identity or nationality of the individual concerned. Although this is an important function it fulfills, the lack of coordination with other government divisions or ministries hampers efficient and timely processing of readmission requests. The process is not formalized and no real statistics are retained for review or policy development. Considering that NADRA retains all information relating to Computerized National Identity Cards, the Directorate General of Immigration and Passports retains information relating to Passports, and the Federal Investigation Agency retains information relating to entry and departure of individuals from Pakistan, all organizations function under the oversight of the Ministry of Interior, it is imperative to create a strong link between the Ministry of Foreign Affairs and the Ministry of Interior to process readmission applications.

Another important function that Pakistani Diplomatic Missions perform is that of interviewing individuals to ascertain their nationality. This process mentioned in Art. 6(4) of the EURA, is important to determine nationality where documentary evidence is either insufficient or non-existent. Once interviews are conducted, the information gleaned may be transmitted to District Coordination Offices in Pakistan for on-ground verification through local Police. Although this process is fundamental to the verification of identity and subsequently nationality of an individual it is painstakingly slow. There is a need to establish an effective oversight mechanism to ensure that the process is made more efficient and that requests are not left pending indefinitely.

The Interior Divisions distribution of business is at number 18 of Schedule II of the Rules of Business of 1973. Item 3 relates to matters of nationality, citizenship and naturalization. The Ministry of Interior is, therefore, tasked processes dealing with such matters, although it is the Provincial Governments that issue Citizenship Certificates.

Item 4 states:

**4. Admission of persons into, and expulsion of persons from Pakistan, including: -**

**(a) policy regarding entry, exit, and sojourn of foreigners and aliens; and**

**(b) regulation of movement in Pakistan of persons not domiciled in Pakistan.**

These relate primarily to the laws discussed in sec. II of this Chapter, especially the Foreigners Act and Order.

Item 5 relates to the following:

**5. Admission of persons into, and departure of persons from Pakistan including: -**

**(a) policy regarding immigration;**

**(b) passports, visas, permits for entries and exists and other such certificates; and**

**(c) extradition and expulsion from Pakistan.**

Item 5(b) grants the Ministry of Interior the authority to allow entry into Pakistan of persons, especially foreigners. With regards to the EURA and the procedures envisaged by it, authorization for readmission of a third country national or a stateless person would have to come from the Ministry of Interior under this item head. This is added reason for enhanced coordination between Pakistan Diplomatic Missions in European Member States, the Ministry of Foreign Affairs, and the Ministry of Interior. Furthermore, this brings the functioning of the Directorate General of Immigration and Visas under the oversight of the Ministry of Interior.

Item 8 relates to, “National Database and National Data Warehouse for issuance of National Identity Cards, Pakistan Origin Cards, and Aliens Registration Cards.” These bring the overall functioning of both NADRA and the National Aliens Registration Authority (NARA) within the oversight of the Ministry of Interior. Additionally, item 31 states that the Ministry of Interior is tasked with, “All administrative matters relating to the Federal Investigation Agency”.

Having looked at these functions and tasks, it is warranted to say that the Ministry of Interior is in the best position to take over a role of verifying identity and nationality under the framework envisaged by the EURA. Such a role would not, in any way, detract from the role of the Ministry of Foreign Affairs and its Diplomatic Missions abroad in the repatriation of Pakistani’s abroad.

Whereas Pakistani Diplomatic Missions can receive Readmission Applications under the EURA, the process of verification should be transferred to the Ministry of Interior for greater efficiency.

## **Conclusion:**

This chapter has looked at the various legal provisions impacting readmission in Pakistan. These provisions have been analyzed with regards to their impact on the implementation of the EURA. Whereas no significant legal hurdles have been noted, there are areas of ambiguity which would need clarification in any implementing procedure under the EURA adopted by the Government of Pakistan. These areas specifically relate to the control of foreigners in Pakistan with special regard to their rights when detained and consular access. Secondly, questions exist as to the application of the various offences under the aforementioned laws to returning Pakistani nationals. Will they be treated as victims or offenders? And does the status of 'victim' absolve an individual of wrongdoing or violations of the law? Thirdly, how are Third Country Nationals and Stateless Persons to be dealt with upon return to Pakistan? What mechanisms for their detention and determination of legal status exist, if any? The laws do not address these issues satisfactorily and these may cause problems in implementing the EURA. Furthermore, the roles of the various government departments have been outlined in significant detail, however, no mechanism of coordination exists to maximize efficiency and process readmission applications in a timely manner. This too will have to be addressed by any implementing procedure under the EURA.

It is encouraging to note that the legal framework does not pose any insurmountable hurdles to the implementation of the EURA. Yet matters of implementation and administrative control may prove problematic. Readmission Applications, under the EURA, need to be processed within 30 days of receipt by the competent authority. This period is extendable by another 30 days under certain circumstances. Unfortunately, inter-departmental communication is considerably slow in relation to the demands of the EURA. A mere file transfer can take up to a week. While the laws may not pose problems, the administrative deadlock certainly might. To avoid these problems an effective coordination mechanism would need to be installed. This goes beyond the legal sphere and is primarily administrative in nature. The legal framework would not preclude such an administrative arrangement.

## **Chapter 4**

### **Gaps in Pakistan's Legislative Framework relating to Readmissions:**

Pakistan's legislative framework associated with the various aspects of readmission have certain gaps that hinder the effective implementation of a comprehensive readmission program as envisaged under the EURA. In this regard, we have already discussed certain provisions in the previous chapter that either lead to ambiguities or stand in the way of an effective readmission program. This Chapter looks to discuss these gaps in greater detail and to facilitate an understanding of how the EURA readmission mechanism may be implemented in Pakistan given the legal framework within which it will have to operate.

#### **Legal Provisions relating to Foreigners:**

The legal provisions relating to foreigners are not geared specifically to readmission. This poses several problems to the readmission process, especially with regards to the readmission into Pakistan of Third Country Nationals or Stateless Persons (TCN or SPs). Firstly, the legal status of readmitted TCNs or SPs is unclear. If they are allowed to return but denied entry into the territory of Pakistan beyond the port of arrival and rather placed in 'legal custody' in accordance with Sec.3(5) of the Foreigners Order 1951, would, in effect, place the TCN or SP in a state of legal limbo. Furthermore, no specified detention or reception centers exists to accommodate such returnees. The situation may be somewhat ameliorated for TCNs who may be deported back to their country of origin, however, for Stateless Persons the situation is more grim. Without Pakistan having bilateral arrangements with countries of origin for the readmission of TCNs or SPs, Pakistan will be burdened by having to keep these people on its territory. Additionally, what legal recourse do such individuals have whilst in legal custody under Sec. 3(5) and what rights are they entitled to? These again are questions requiring clarification by the courts and ideally by the Federal Government or Parliament through an amendment to the laws.

### **Consular Access:**

With regards to Consular Access, The Diplomatic and Consular Privileges Act, 1972 omits the enactment of Art. 36 of the Vienna Convention on Consular Relations 1960. Without this protection there is no legal right of detained foreigner's to be granted consular access to representatives of their home state. This is problematic in relation to both EU Member State citizens arrested or detained in Pakistan and the category of TCNs or SPs. Without a legal duty placed on Police officials, practices will remain arbitrary and the internationally recognized rights of individuals may be violated.

### **Emigration of Pakistani's Abroad:**

The Emigration Ordinance of 1979 gives significant powers to the DG, Bureau of Emigration and Overseas Employment as well as subordinate offices for the welfare and promotion of emigrants from Pakistan. The Ordinance does not, however, mandate any check on emigrants once their employment contracts or work permits/visas have expired. The DG, BEOE occupies a special position and along with the supporting offices of Protector of Emigrants, Labour Attaches, and Overseas Employment Promoters, can have a significant impact on reducing emigrants who overstay their period of employment. It would be prudent to overcome this gap to better deal with these problems.

### **Verification of Identity and Nationality:**

As previously discussed the verification of identity and nationality can involve a range of government organizations. These may include but are not limited to Pakistani Diplomatic Missions abroad, NADRA, NARA, DG Immigration and Passports, the FIA, District Coordination Offices, and local Police. Under the EURA, provision is also made for verifying the status of TCNs or SPs through international organizations such as the United Nations High Commission for Refugees or the International Organization for Migration. Currently, it is the Pakistan Diplomatic Missions that are tasked with verifying identity and nationality without any formal procedure to do so and lacking any official coordination mechanism. This is a serious gap and can significantly hinder readmissions. Although legislation would not be the best vehicle to address this gap, administrative measures may go a long way in overcoming the problems that

arise in this regard. A centralized coordination office is imperative to efficiently process readmission applications under the EURA and meet the stringent time limits imposed therein.

### **Human Trafficking and the Federal Investigation Agency:**

As previously discussed, the Prevent and Control of Human Trafficking Ordinance, 2002, makes defines victims as those against whom human trafficking has taken place. The definition of human trafficking, in turn, states that it may be through coercive means or with the implicit or explicit consent of the individual being trafficked. Therefore, individuals who willingly consent to be transferred outside of Pakistan would also be considered victims. This definition, however, does not state whether consenting victims would be prosecuted for other offences outside of the 2002 Ordinance. The status of ‘victim’ has prevented the FIA from framing charges against individuals once they have returned to Pakistan, however, this policy is not a uniform one and different ports and FIA teams have varying responses to victims of human trafficking. The matter is also unclear where a Stateless Person is a victim of trafficking. Although provision is made in the 2002 Ordinance for shelter and support of non-citizen victims, how long would this be provided for where problems relating to return to country of origin arise.

## **Chapter 5**

### **Recommendations:**

Having analyzed Pakistan's obligations under International Law and the EURA, and having reviewed its domestic legal framework the following recommendations are proposed for the effective implementation of the EURA in Pakistan:

- i) **Transferring identity and nationality verification responsibilities to the Ministry of Interior from the Pakistan Diplomatic Missions in EU Member States.** This is advised as the Ministry of Interior is ideally placed to effectively deal with the verification process involved in readmission requests. As NADRA, NARA, DG Immigration and Passports, the FIA, and Federal Police bodies come within the oversight of the Ministry of Interior, coordinating between them would be easier and oversight would be more complete.
- ii) **The creation of a Cell for Coordination of Readmission Processes in the Ministry of Interior.** Flowing from the previous recommendation, a dedicated cell may be established to coordinate and oversee the readmission process from the Ministry of Interior. The Cell will establish close links with the relevant verifying entities such as NADRA, DG Immigration and Passports, etc. Furthermore, once verification results are received the Cell shall authorize the Pakistan Diplomatic Mission in the requesting State to issue the relevant travel documents to the individual concerned. Finally, the Cell must also be tasked with generating statistical data for consumption by relevant stakeholders. This data will enhance policy making in areas of migration management and assist stakeholders in fine tuning their programmes to best facilitate legal and suppress irregular migration.
- iii) **Formulate rules and procedures for the return and readmission of Third Country Nationals and Stateless Persons.** As was observed in the preceding chapters, TCNs and SPs do not figure highly in the domestic legal framework of

Pakistan. Their status upon return to Pakistan is also ambiguous. This may have major implications with regards to their fundamental human rights. It is important that effective procedures are adopted for the return, reception, holding, and onward deportation or regularization of these individuals, as the case may be.

- iv) **Involve Provincial Social Welfare Departments and the Civil Society in the resettlement and re-integration of returnees.** Irregular migrants have often invested a great deal monetarily in reaching a EU Member State and, therefore, may be significantly worse off financially upon their return to Pakistan. To facilitate their re-integration back into society, Social Welfare Departments and the Civil Society may play an active role through vocational training or other assistance. Such assistance will also stem the flow of repeat irregular migrants as cogent opportunities for economic uplift are provided to them in Pakistan.
- v) **Treating returnees as victims.** Individuals involved in irregular migration are often hostage to numerous economic and social difficulties pushing them towards their chosen course of action. They are usually subjected to terrible conditions when being trafficked to their country of destination. While the Prevention and Control of Human Trafficking Ordinance recognizes even consenting individuals as victims, this is not the case for other laws. Violations of passport laws, forgery of documents, illegal emigration of Pakistan, etc. are just some of the offences irregular migrants may be prosecuted for upon their return. Whereas the need to deter irregular migration is strong, this must be balanced with the need to protect vulnerable categories of persons. It is advised that the FIA focus on the prosecution of human smugglers and traffickers while showing leniency towards victims of this illegal activity.
- vi) **Training Government Personnel on the EURA and its implementing Procedures.** It is imperative that all government personnel involved in the readmission process are trained in the provisions of the EURA and its implementing procedures. Such trainings should focus specifically on Pakistan Diplomatic Mission staff, FIA personnel receiving returnees at the ports of Pakistan, NADRA personnel, members

of the Ministry of Interior dealing with readmission and migration management, and other concerned departments.

- vii) **Ensuring an effective Joint Readmission Committee.** Experience has shown that the implementation of EURA's has been effective where the JRC's have played a pro-active role in monitoring the agreement. It is therefore imperative that the JRC under the EURA convene for regular meetings and adopt transparent procedures. The EURA with Pakistan is likely to pose specific and unique challenges for both partners. An empowered JRC will go a long way towards fostering enhanced cooperation between the Parties and addressing their specific needs.

As suggested by the European Commission, the JRC may also consider inviting relevant NGOs and international organizations to JRC meetings so as to enable it to get relevant information of the situation 'on the ground'.<sup>44</sup> The participation of experts from the Member States and Pakistan may also be encouraged. The Rules of Procedure for JRC's offer the possibility of inviting external experts to meetings.

The participation of experts and relevant NGOs and international organizations is likely to bring value addition in terms of quality data and expert opinions and will help the JRC discharge its duties in a better fashion.

- viii) **Concluding bilateral implementing protocols.** Pursuant to Article 17 of the EU-Pakistan EURA, bilateral implementing protocols should be concluded between Pakistan and the Member States, especially those Member States which face a large influx of irregular migratory flows from Pakistan. As seen above, a lack of an implementing protocol has in some cases resulted in Member States not using the EURA for their returns and instead relying on previous bilateral arrangements. More disturbingly, a lack of implementing protocols have resulted in some Member States making returns under EURA's without complying with its strict procedures.

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<sup>44</sup>European Commission. *Evaluation of EU Readmission Agreements*. Communication from the Commission to the European Parliament and the Council. Brussels. 23.02.2011. COM (2011) 76 Final. pp 10.

The EU Member States and Pakistan may therefore consider the conclusion of bilateral implementing protocols which can facilitate the process of readmission through detailing the procedures in accordance with their specific needs. This can include the designation of competent authorities and the appointment of focal points to deal with return/readmission from one country to the other.

# **ANNEX I**

## **DRAFT**

### **PROCEDURES FOR THE RETURN AND READMISSION OF PAKISTANI NATIONALS**

#### **1. INTRODUCTION**

The process for readmission of Pakistani nationals into Pakistan is conducted through the cooperation of a number of Government Stakeholders. The Ministry of Foreign Affairs (MoFA) through its Missions abroad is empowered to issue Emergency Travel Documents (ETD) to Pakistanis for their return. Yet almost all other matters pertaining to verification, processing, and return are primarily undertaken by the Ministry of Interior (MOI), the National Database and Registration Authority (NADRA), and the Federal Investigation Agency (FIA).

The readmission and return process requires a number of complex internal procedures to be completed before nationality can be ascertained or the eligibility of the individual to be issued an ETD determined. In the current security climate of Pakistan, readmission matters have direct bearing on national security and, therefore, post-arrival processing of the individual is also a major component of the overall readmission process.

Existing mechanisms for readmission and return provide a cumbersome means by which to verify an individual's identity/nationality and then grant approval for his eventual return. The mechanism does not adhere to any strict time-limits and the verification process can often exceed a month. These delays stem, primarily, from the strict adherence to the established modes of inter-departmental communication. The process is in need of streamlining to facilitate the efficient flow of work.

The instructions laid out in this manual are not aimed at supplanting the existing mechanisms but rather to facilitate uniformity and efficient processing. The streamlining of the readmission process has been undertaken through consultation with relevant officials from the MoFA, MoI, FIA, Board of Emigration and Overseas Employment, and NADRA. On 10<sup>th</sup> April, 2012, a Simulation Workshop was held at the Marriot Hotel, Islamabad to develop the specific processes in relation to the European Union – Pakistan Readmission Agreement (EURA). The key outcomes of the Workshop have been incorporated into this document and include the following:

- Pakistan Missions abroad are authorized to issue Emergency Travel Documents valid for return to Pakistan only.
- The process of verification of identity/nationality primarily involves NADRA but may also include a number of other departments, the Police, the District Coordination Office, etc.
- The Ministry of Interior, as the designated Competent Authority, must designate a Cell to receive applications from the concerned Pakistan Diplomatic Mission (PDM) and then initiate the verification process. Upon being satisfied of the nationality of the individual the Competent Authority will inform the PDM for further issuance of an ETD. This shall ensure that the time limits under the EURA are strictly adhered to.
- MoI and FIA will be informed on the issuance of any ETD by the PDM.
- Adequate and sufficient notice of all returns, including those on valid Pakistani passports, must be given to the Competent Authority through the respective Pakistani mission in the EU. This should include returnees possessing a valid passport who are being deported.

The instructions in this document cover procedures to be followed by Pakistan's Diplomatic Missions abroad, the Ministry of Interior, and post arrival procedures will be implemented at specified ports with FIA Immigration presence. The procedures will apply specifically to Readmission Applications submitted under the EURA.

## **2. TARGET GROUP**

The instructions contained in this document are applicable to Pakistani Nationals:

- Who are currently living on the territory of a Member State of the European Union (EU) and entered the EU Member State after 1 December 2010; and
- Who have been found to be illegally entering or illegally being present in a Member State of the EU; and
- Whose return to Pakistan is imminent either by voluntary or non-voluntary means; and
- Who do not possess valid Pakistani travel documents to return (and are not in a position to prove his/her entry in EU Member States prior to 1 December 2010).

## **3. GENERAL INSTRUCTIONS**

**3.1** The Competent Authority, as envisaged by the EURA, shall be the MoI, Pakistan, and shall have overall responsibility for the return and readmission of individuals in Pakistan.

**3.2** For the purpose of managing and facilitating the efficient processing of readmission applications, the MoI shall designate a Cell (the Cell) comprising of all relevant stakeholders such as NADRA, FIA etc.

**3.3** The Cell shall be responsible for approving or rejecting readmission applications after receiving input from the concerned departments verifying the identity of those concerned.

**3.4** All Applications must be processed and replied to within 30 days of receipt from the Requesting State. A further 30 days may be requested if delays occur in the processing of the Application. If the Readmission Application is not replied to within this time then under Art.8(2) of the EURA the readmission request will be deemed to have been agreed to.

**3.5** For the purposes of communication and submission of readmission applications all concerned departments shall contact the Cell, directly, at the following address:

Joint Secretary, Law Wing,  
Ministry of Interior, Islamabad,  
Pakistan. 44000  
Tel: 051-9202527 (Section Officer)

Fax: 051-9202515

Fax: 051-9219738

Additional Support:  
Migration Management Cell,  
Ministry of Interior, Islamabad,  
Pakistan. 44000  
051-9208977 (Section Officer)

#### **4. PRE-DEPARTURE PROCEDURES:**

Pre-Departure procedures will be handled by the concerned Pakistan Diplomatic Mission (PDM) in the requesting Member State of the EU for initial assessment and, if necessary, for onward submission to the Cell. This phase will include:

- Receipt of application from the requesting Member State of the EU,
- Establishment of identity, determination of nationality,
- Approval for and issuance of Emergency Travel Document.

#### **4.1 RECEIVING APPLICATION:**

Receiving of Application will be the responsibility of the concerned PDM in the requesting Member State of the EU:

**4.1.1** Every Readmission Application under the EURA should include all or some of the following information.

- Full Name \*
- Date and place of birth \*
- Sex \*
- Photograph of the individual concerned \*
- Biometrics, including complete finger prints\*
- Father's name \*
- Mother's name
- Tribe or Caste
- Civil status – If married then include name of spouse \*
- Names and age of children (if any)
- Names of brothers/sisters and other next of kin (if any)
- National Identity Card (NIC) number
- Passport Number
- Last address in the requesting Member State of the EU\*

- Address in Pakistan\*
- Names (and time periods) of schools attended in Pakistan
- Profession and names of former employers in Pakistan (if any)
- Copies of any documents issued in Pakistan, if available, including National Identity Card (NIC), Birth Certificate (BC), Driving License (DL), & Marriage Certificate (MC).
- Date of entry into EU Member State with proof, if any\*
- Or any other relevant information / document.

**(\* Mandatory Information)**

**4.1.2** This information shall be provided on the standard Readmission Application found in Annex V of the EU-Pak Readmission Agreement. Further details may be provided on additional paper.

**4.1.3** All applications should be submitted to the accredited PDM in the requesting Member State and should be addressed to the Head of Mission.

**4.2 AT THE PAKISTAN DIPLOMATIC MISSION (PDM):**

Upon receipt of application, the PDM should:

**4.2.1** Record the receipt of all Readmission Applications using a registry.

**4.2.2** The application will be scrutinized for authenticity and completeness by the concerned officer.

**4.2.3** If the application is found to be complete and ready for processing, the concerned officer shall forward the application to the MoFA in Pakistan for onward submission to the Cell under direct intimation to the Ministry of Interior by fax.

**4.2.4** If, however, the concerned officer at the PDM determines the application to be incomplete he shall return it to the concerned authority of the requesting state, requesting more information.

**4.2.5** If the concerned authority of the requesting state cannot furnish any further information or the information it furnishes is not relevant, then the PDM may interview the individual concerned and record his statements. These statements shall be signed by the individual and attested by the PDM and may be sent for verification to the Cell.

**4.2.6** If all mandatory requirements cannot be furnished after this interview but the PDM Officer determines that enough information is available to initiate an investigation then the same shall be forwarded to the Cell.

### **4.3 WHEN THE APPLICATION REACHES THE MINISTRY OF INTERIOR CELL**

The Cell shall be responsible for verifying the identity and nationality of the individual concerned and then forwarding this information to the Pakistan Diplomatic Mission for issuance of Emergency Travel Document.

**4.3.1** Upon receiving the Readmission Application and/or a record of the Statements made by the individual to PDM officials, either via fax or hard copy, the Cell shall record receipt in its registry.

**4.3.2** The Cell shall then check the application for completeness. If the information is incomplete the Application shall be sent back to the PDM through MoFA with a request for requisite information.

**4.3.3** If the information seems complete then the Cell shall initiate a process of verification of the information from the relevant departments. This may include communication with NADRA, FIA, Police, District Coordinators Office, etc. (NADRA may provide verification facilities to the Focal Person in the Cell to expedite the verification process – e.g. Verisys).

**4.3.4** If the verification process concludes that the individual is a Pakistani national, then the same will be forwarded to the MoFA for onward submission to the PDM in the requesting state.

### **4.4 AT THE PAKISTAN DIPLOMATIC MISSION AFTER VERIFICATION CONCLUDES:**

**4.4.1** Upon receipt of the results of verification, if the verification confirms nationality, then PDM shall issue an Emergency Travel Document to the individual concerned.

**IMPORTANT:**

- The ETD shall have a minimum validity period of 6 months from the date of issue.
- If the return cannot take place within the validity of the ETD, a new ETD shall be issued to the individual concerned.

- 4.4.2 Upon the issuance of an ETD, the PDM shall inform the MoI and the FIA of the particulars of the individual concerned, including the arrival date, time, and port of arrival as ‘advance passenger information’.
- 4.4.3 All travel costs required for the re-admission of the individual concerned shall be borne by the requesting EU Member State.
- 4.4.4 The designated ports of arrival shall be Karachi, Lahore and Islamabad only.
- 4.4.5 If the verification results do not confirm nationality, then the PDM may initiate the process for interview of the individual, if it has not done so already (4.2.6). If an interview is undertaken then a record of the statement and the PDM’s recommendation will be sent to the Cell for verification in the manner already prescribed. If the PDM deems it necessary, then a request for extension in time may be made to the relevant authority in the requesting state.
- 4.4.6 In the eventuality, the Cell may re-initiate the process of verification and submit the results to the PDM in the manner prescribed.
- 4.4.7 The PDM upon receipt of a positive verification will issue an ETD to the individual.
- 4.4.8 In case of non-verification, the Application will stand rejected and the PDM shall immediately inform the relevant authorities of the requesting state.

## **5. ARRIVAL PROCEDURES**

All passengers arriving in Pakistan on an ETD issued under this system shall report to Immigration passenger clearance counters:

### **5.1 Interview by FIA Immigration Officials:**

- 5.1.1 The FIA Immigration Official at the port of entry shall examine the ETD/travel documents and verify it with the ‘advance passenger information’ provided by the PDM.
- 5.1.2 The FIA Immigration Official shall interview the individual according to a prescribed interview form specially designed for this purpose (**Annexure A**). The said form shall be forwarded to the FIA Anti-Human Smuggling Cell and the MoI Cell.
- 5.1.3 At the conclusion of this interview stage the individual will be allowed entry into Pakistan and allowed to go home.

**5.1.4** The MoI Cell shall maintain record of all Readmission Returnees and accurate statistics in this regard.

**5.1.5** The MoI Cell shall transfer the data of Deserving Returnees to the concerned Social Welfare Department or any other relevant Department/Organization for their rehabilitation and re-integration into the Society.

## **DRAFT**

# **PROCEDURES FOR THE READMISSION OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS INTO PAKISTAN**

## **6. INTRODUCTION**

Pakistan's obligations under the EU-Pakistan Readmission Agreement (EURA) extend to the readmission of Third Country Nationals (TCN) and Stateless Persons (SP) as well. These TCNs and SPs are to be readmitted into Pakistan under strict criteria set forth in the EURA. The criteria requires that the TCN or SP must:

- i) hold, at the time of submission of the readmission application, a valid visa or residence authorization issued by the Requested State; or
- ii) have entered the territory of the Requesting State unlawfully coming directly from the territory of the Requested State i.e. arriving directly by air or ship onto the territory of an EU Member State (EUMS) without having entered another country in-between.

These obligations, found in Article 3 of the EURA, do not apply if the TCN or SP has only been in airside transit via an international airport nor do they apply if the Requesting State (EUMS) has issued a visa to the TCN or SP that extends longer than the visa/residence authorization issued by the Requested State (Pakistan).

A valid visa or residence authorization shall be proof for the readmission of the person concerned. With regards to individuals directly arriving in the EUMS, entry and/or departure stamps/endorsements in the travel document of the person concerned shall be considered as evidence of the conditions for readmission.

Furthermore, the following evidence may initiate investigations for the readmission of the TCNs and SPs:

- i) official statements made, in particular, by border authority staff and other official or bona fide witnesses (e.g. airline staff) who can testify to the person concerned crossing the border;
- ii) description, by the competent authorities of the Requesting State, of the place and circumstances under which the person concerned has been intercepted after entering the territory of the Requesting State;

- iii) information related to the identity and/or stay of a person which has been provided by an International Organization (e.g. UNHCR);
- iv) reports/confirmation of information by family members;
- v) statement by the person concerned;
- vi) named tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the Requested State;
- vii) named tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the Requested State;
- viii) information showing that the person concerned has used the services of a courier or travel agency.

Under the EURA, Pakistan is obligated to issue valid travel documents (e.g. Visa, etc.) to a TCN or SP for whom the above mentioned conditions are proved.

## **7. TARGET GROUP**

The instructions contained in this document are applicable to Third Country Nationals (TCN) and Stateless Persons (SP) who cumulatively:

- Possess a valid visa/residence authorization for Pakistan or have entered an EUMS directly from Pakistan via air or ship without entering any other country in between; and
- Are currently living on the territory of a Member State of the European Union; and
- have been found to be illegally entering or being present in a Member State of the EU.

## **8. GENERAL INSTRUCTIONS**

**8.1** The Ministry of Interior's designated Cell (the Cell) shall process all Readmission Applications for TCNs and SPs forwarded to it by the Pakistan Diplomatic Missions (PDM) in the Requesting State.

**8.2** The Cell shall coordinate with other ministries for the investigation of TCN and SP Readmission Application.

**8.3** All Applications must be processed and replied to within 30 days of receipt from the Requesting State. A further 30 days may be requested if delays occur in the processing of the Application. If the Readmission Application is not replied to within this time then under Art.8(2) of the EURA the readmission request will be deemed to have been agreed

to.

**8.4** Communication between departments shall be identical in all respects to the Readmission Procedures adopted for Pakistani Nationals.

## **9. PRE-ARRIVAL PROCEDURES:**

Pre-arrival procedures will be handled by the concerned Pakistan Diplomatic Mission (PDM) in the requesting EUMS for initial assessment and, if necessary, for onward submission to the MoI Cell for further investigation. This phase will include:

- Receipt of application from the requesting EUMS,
- Determination of eligibility of TCN or SP to return to Pakistan
- Approval for and issuance of the necessary Travel Document (e.g Visa, etc.).

### **9.1 RECEIVING APPLICATION:**

Receiving of Application will be the responsibility of the concerned PDM in the requesting EUMS:

**9.1.1** All applications should be submitted to the accredited PDM in the requesting EUMS and should be addressed to the Head of Mission.

**9.1.2** Every Readmission Application under the EURA should include all or some of the following information:

- Full Name \*
- Date and place of birth \*
- Sex \*
- Photograph of the individual concerned \*
- Biometrics, including complete finger prints\*
- Father's name \*
- Mother's name
- Tribe or Caste
- Civil status – If married then include name of spouse \*
- Names and age of children (if any)
- Names of brothers/sisters and other next of kin (if any)
- National Identity Card (NIC) number
- Passport Number
- Last address in the requesting EU Member State\*
- Address in Pakistan\*

- Names (and time periods) of schools attended in Pakistan (if any)
- Profession and names of former employers in Pakistan (if any)
- Copies of any documents issued in Pakistan, if available, including National Identity Card (NIC), Birth Certificate (BC), Driving License (DL), & Marriage Certificate (MC).
- Date of entry into EU Member State with proof\* (entry should be after 1<sup>st</sup> December, 2010)
- Or any other relevant information / document.

**(\* Mandatory Information)**

**9.1.3** Additionally, the Readmission Application should include:

- a) valid visa and/or residence authorization issued by the Requested State;
- b) entry and/or departure stamps/endorsements in the travel document of the person concerned.

Such documents shall be considered evidence of the conditions for the readmission of TCNs or SPs.

**9.1.4** If the evidence outlined in **4.1.3** is not available then the following may be submitted for the purpose of initiating investigation to fulfill the conditions for the readmission of TCNs or SPs:

- a) official statements made, in particular, by border authority staff and other official or bona fide witnesses (e.g. airline staff) who can testify to the person concerned crossing the border;
- b) description, by the competent authorities of the Requesting State, of the place and circumstances under which the person concerned has been intercepted after entering the territory of the Requesting State;
- c) information related to the identity and/or stay of a person which has been provided by an International Organization (e.g. UNHCR);
- d) reports/confirmation of information by family members;
- e) statement by the person concerned;
- f) named tickets as well as certificates and bills of any kind (e.g. hotel bills, appointment cards for doctors/dentists, entry cards for public/private institutions, etc.) which clearly show that the person concerned stayed on the territory of the Requested State;
- g) named tickets and/or passenger lists of air or boat passages which show the itinerary on the territory of the Requested State;
- h) information showing that the person concerned has used the services of a courier or travel agency.

Such information may initiate the process of investigation but cannot of itself be deemed to be conclusive proof of the individual's eligibility to return under the EURA.

- 9.1.5** All information shall be provided on the standard Readmission Application found in Annex V of the EU-Pak Readmission Agreement. Further details may be attached to the Application.

## **9.2 AT THE PAKISTAN DIPLOMATIC MISSION (PDM):**

Upon receipt of application, the PDM should:

- 9.2.1** Record the receipt of all Readmission Applications using a registry.
- 9.2.2** The concerned officer will check the application for completeness.
- 9.2.3** If the PDM determines that the evidence provided in accordance with **4.1.2** and **4.1.3** is genuine and correct then it shall provide the necessary travel documents (e.g. visa) to the TCN or SP concerned, provided, however, that the TCN or SP concerned has not been issued a currently valid visa or residence authorization by the Requesting State.
- 9.2.4** Any travel document (e.g. visa, etc.) issued on the basis of a Readmission Application shall be notified to the Ministry of Interior, the Cell, and the Federal Investigation Agency.
- 9.2.5** If the application does not include documents as required by **4.1.3** but does include documents or information listed in **4.1.2** and **4.1.4** then the application shall be forwarded to the Ministry of Foreign Affairs in Pakistan (MoFA) for onward submission to the MoI Cell under direct intimation to the Ministry of Interior by fax.
- 9.2.6** If, however, the concerned officer at the PDM determines the application to be incomplete he shall return it to the concerned authority of the Requesting State, requesting more information.

## **9.3 WHEN THE APPLICATION REACHES THE MINISTRY OF INTERIOR'S CELL**

The Cell shall be responsible for investigating the Readmission Application of the concerned TCN or SP to determine his/her eligibility for return to Pakistan under the EURA.

- 9.3.1** Upon receiving the Readmission Application, either through email or hard copy, the Cell shall record receipt in its registry.
- 9.3.2** The Cell shall then check the application for completeness. If the information is incomplete the Application shall be sent back to the MoFA with a request for the requisite information.
- 9.3.3** If the information seems complete then the Cell shall initiate a process of investigation of the information from the relevant departments.
- 9.3.4** If the investigation process concludes that the TCN or SP has indeed travelled from Pakistan directly to the Requesting State, without entering any other country in between then it shall authorize the individual's return. This authorization shall be forwarded to the MoFA for onward submission to its PDM in the Requesting State.
- 9.3.5** In case the Cell does not find sufficient grounds for the return of the TCN or SP then the same shall be notified to the PDM through the MoFA as a rejection of the Readmission Application.

**9.4 AT THE PAKISTAN DIPLOMATIC MISSION AFTER INVESTIGATION CONCLUDES:**

- 9.4.1** Upon receipt of the authorization the PDM shall issue the necessary Travel Documents (e.g. visa, etc) to the TCN or SP concerned.

**IMPORTANT:**

- The Travel Documents shall have a minimum validity period of 6 months from the date of issue.
- If the return cannot take place within the validity of the Travel Documents, then the Documents shall be renewed.

- 9.4.2** Upon the issuance of the Travel Documents, the PDM shall inform the MoI and the FIA of the particulars of the TCN or SP concerned, including the arrival date, time, and port of arrival as 'advance passenger information'.
- 9.4.3** All travel costs required for the re-admission of the individual concerned shall be borne by the Requesting State.

**9.4.4** The designated ports of arrival for Pakistan shall be Karachi, Lahore and Islamabad only.

**9.4.5** If the PDM receives a rejection of the Readmission Application from the Cell then it shall notify the concerned authorities of the Requesting State.

## **10. ARRIVAL PROCEDURES**

All passengers arriving in Pakistan on the Travel Documents issued under this system shall report to Immigration passenger clearance counters:

### **10.1 Interview by FIA Immigration Officials:**

**10.1.1** The FIA Immigration Official at the port of entry shall examine the travel documents and verify it with the 'advance passenger information' provided by the PDM.

**10.1.2** The FIA Immigration Official shall interview the TCN or SP according to a prescribed interview form specially designed for this purpose (**Annexure B**). The said form shall be forwarded to the FIA Anti-Human Smuggling Cell and the MoI Cell. The form must be completed at the Airport and the TCN or SP cannot be taken off premises for this purpose.

**10.1.3** At the conclusion of this interview stage, the process of immediate deportation to the individual's country of origin will be initiated.

**10.1.4** Information regarding deserving cases or those individuals who cannot be returned to their country of origin will be forwarded to International Organizations (e.g. UNHCR and IOM).

**10.1.5** The MoI Cell shall maintain record of all Readmission Returnees and accurate statistics in this regard.

## **DRAFT**

# **INSTRUCTIONS ON PROCEDURES FOR THE RETURN OF NATIONALS OF EU MEMBER STATES**

## **11. INTRODUCTION**

The process for return of nationals from the EU Member States (EUMS) is relatively straightforward. Once a national of an EUMS is found to be illegally present on Pakistani territory, a Readmission Application shall be sent to the Diplomatic Mission of the individual's nationality. All communication shall be through official channels.

Furthermore, any individual who is not a national of Pakistan, who is illegally found on Pakistani territory, and who either possesses a valid visa for an EUMS or who has entered Pakistan coming directly from an EUMS, shall also be subject to return to the respective EUMS under the EU-Pakistan Readmission Agreement (EURA).

## **12. PROCEDURE:**

- 12.1** Any department or agency of the state that determines an individual to be illegally residing in or illegally entering the territory of Pakistan shall initiate proceedings for the return of the said individual pursuant to the EURA if:
- (a) The individual is a national of an EUMS; or
  - (b) The individual is suspected to be a national of an EUMS; or
  - (c) Is a national of any other country or a stateless person who holds a valid visa for an EUMS; or
  - (d) Is a national of any other country or a stateless person who has entered the territory of Pakistan having arrived directly from the territory of an EUMS.
- 12.2** The concerned individual's case shall be forwarded to the Ministry of Interior's designated Cell (the Cell) along with any and all documents or other information available.
- 12.3** If the individual has valid travel documents and, as the case may be, a valid visa for the EUMS, then the Cell shall inform the Ministry of Foreign Affairs (MoFA) to notify the concerned Diplomatic Mission of the EUMS of the imminent return of the individual. It shall then book the individual on a flight back to the EUMS. There must be a period of no less than 7 days between the notification sent to the Diplomatic

Mission of the concerned EUMS and the return flight.

- 12.4** All charges and costs are recoverable directly from the individual concerned.
- 12.5** In case the individual does not possess valid travel documents then the Cell shall assemble all information on the individual from the relevant departments and submit a Readmission Application as found in Annexure 'C'.
- 12.6** The MoFA will examine the information for completeness and then send the application to the relevant Diplomatic Mission of the EUMS. The time limit for return processing shall start from the date of submission of the Readmission Application.
- 12.7** If the Diplomatic Mission requests more information on the individual concerned then the Cell shall furnish all available information and/or arrange an interview of the individual with officials of the Diplomatic Mission.
- 12.8** If the Diplomatic Mission confirms the nationality of the individual concerned and issues travel documents to the individual then he/she shall be returned immediately.
- 12.9** The Cell shall then close the case and keep records of all returns.

**Questionnaire to be filled by Pakistani Nationals returning under the EURA  
Readmission Framework.**

S. No.	Question	Answer
1	Full Name	
2	Age	
3	Date of Birth	
4	Place of Birth	
5	Gender	
6	CNIC No./NICOP/POC	
7	Father's Name and whether alive or deceased.	
8	Mother's Name and whether alive or deceased.	
9	Finger prints (can be submitted electronically or on a separate sheet) [If feasible]	
10	Marital Status - If married then name of spouse.	
11	Name and age of children, if any	
12	Passport No. Date of Issue Place of Issue	
13	Emergency Travel Document No. Date of Issue Place of Issue	
14	Educational Qualifications:	

15	<p>Address in Pakistan:</p> <p>i) Temporary Address:</p> <p>ii) Permanent Address:</p>	
16	Address in the Requesting State	
17	<p>Telephone No.</p> <p>Mobile No.</p> <p>Email (if any)</p>	
18	<p>What challenges do you expect to face on your return:</p> <p>Assistance of basic needs and technical assistance as provided for by Donor.</p>	
19	Date of Departure from Pakistan	
20	Route adopted to enter the EU (provide information in detail)	
21	Documents used for travel – whether legal or otherwise.	
22	<p>Name of Agent/Facilitator</p> <p>Other</p>	

23	Amount paid for emigration/travel/documents	
24	Address and Telephone No. Of agent/facilitator	
25	Amount and Mode of Payment to the agent/facilitator.	
26	Professions or Occupations held in the Requesting State.	
27	Reasons for Return:  a) Rejection of Asylum b) Overstay of Visa c) Criminal Act d) Any other:	
28	Were you registered with Protector of Emigrants:  If yes then date of registration and name of the Protector of Emigrants.	
29	Have you been victimized/exploited in the Requesting State or State(s) of transit?  If yes then please explain: (you may explain on a separate sheet of paper).	

**Questionnaire to be filled by Third Country Nationals or Stateless Persons  
returning under the EURA Readmission Framework.**

S. No.	Question	Answer
1	Full Name:	
2	Age:	
3	Nationality:	
4	Date of Birth:	
5	Place of Birth:	
6	Gender:	
7	Identity Card No. or any other Identification Documents.	
8	Father's Name (whether alive or deceased)	
9	Mother's Name (whether alive or deceased)	
10	Finger prints (can be submitted electronically or on a separate sheet)	
11	Marital Status - If married then name of spouse.	
12	Name and age of children, if any.	
13	Passport No.  Date of Issue:  Place of Issue:	

14	Emergency Travel Document No.  Date of Issue:  Place of Issue:	
15	Educational Qualifications:	
16	Address in Pakistan during stay:	
17	Address in the Requesting State:	
18	Telephone No.  Mobile No.  Email (if any)	
19	Address in the Country of Origin:	
20	Date of Departure from Pakistan:	
21	Route adopted to enter the EU: (provide information in detail)	
22	Documents used for travel – and whether genuine documents or otherwise:	

23	Name of Agent/Facilitator  Other	
24	Amount paid for emigration/travel/documents:	
25	Address and Telephone No. of agent/facilitator:	
26	Amount and Mode of Payment to the agent/facilitator:	
27	Professions or Occupations held in the Requesting State.	
28	Reasons for Return:  a) Rejection of Asylum b) Overstay of Visa c) Criminal Act d) Any other:	
29	Were you registered with Protector of Emigrants:  If yes then date of registration and name of the Protector of Emigrants.	
30	Have you been victimized/exploited in the Requesting State or State(s) of transit?  If yes then please explain: (you may explain on a separate	

	sheet of paper).	
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