

[AS INTRODUCED IN THE SENATE]

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BILL

to combat the smuggling of migrants by land, sea and air

WHEREAS, this Act is not discriminatory on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status;

AND WHEREAS, it takes into account the special needs of victims of trafficking in persons who are women and children or who otherwise have special needs;

AND WHEREAS, it is consistent with other obligations arising from Pakistan's obligations under international laws;

It is hereby enacted as follows:-

**Part I
General Provisions**

1. Short title, extent, and commencement.- (1) This Act may be called the Smuggling of Migrants Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) "Child" means any person under 18 years of age;

(b) "Financial or other material benefit" includes any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service (including sexual or other services);

(c) "Fraudulent travel or identity document" means any travel or identity document:-

(i) that has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of Pakistan or another country; or

2

- (ii) that has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (iii) that is being used by a person other than the rightful holder;
- (d) "Illegal entry" means crossing borders without complying with the necessary requirements for legal entry into Pakistan or another country;
- (e) "Harbour" means the supplying of a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person by any means, whether of the same kind as those enumerated in this section or not to evade apprehension;
- (f) "Organized criminal group" means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Act, in order to obtain, directly or indirectly, any financial or other material benefit;
- (g) "Smuggling of migrants" means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit of the illegal entry of another person who:-
 - (i) is a foreigner, as defined in section 2(a) of the Foreigners Act, 1946, into Pakistan or into a country of which the person is not a national or a permanent resident; or
 - (ii) is a citizen of Pakistan, as specified in the Citizenship Act, 1951, into another country of which the person is not a national or a permanent resident;
- (h) "Smuggled migrant" means any person who has been the object of the conduct criminalised under section 4, 5, 6 and 7 of this Act, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted; and
- (i) "Vessel" shall have the same meaning as the definition in section 48 of the Pakistan Penal Code.

3. Geographical Jurisdiction.-This Act shall apply to any offence established under Part II of this Act when,-

- (a) The offence is committed within the territory of Pakistan;
- (b) The offence is committed on board a vessel or aircraft that is registered under the laws of Pakistan at the time the offence was committed;

- (c) The offence is committed outside the territory of Pakistan by a citizen of Pakistan as specified in the Citizenship Act, 1951;
- (d) The offence is committed by a citizen of Pakistan as specified in the Citizenship Act, 1951 whose extradition is refused on the grounds of nationality.

**Part II
Offences**

4. Offence of Smuggling of Migrants.-Any person who intentionally engages or attempts to engage in the smuggling of migrants commits an offence and shall be punishable by imprisonment of ten years, a fine, or both.

5. Offences in Relation to Fraudulent Travel or Identity Documents.-Any person who intentionally, in order to obtain directly or indirectly a financial or other material benefit, produces, procures, provides, or possesses, or attempts to produce, procure, provide, or possess a fraudulent travel or identity document for the purpose of enabling the smuggling of migrants, commits an offence and shall be punishable by imprisonment of five years, a fine, or both.

6. Offence of Harboring Illegal Residents for Benefit.-Any person who intentionally, in order to obtain directly or indirectly a financial or other material benefit, harbours or attempts to harbour a person who is not a citizen or permanent resident of Pakistan without complying with the necessary requirement for legally remaining in Pakistan commits an offence and shall be punishable by imprisonment of ten years, a fine, or both.

7. Aggravated Offences.- The offences under sections 4, 5, and 6 of this Act shall be punishable by imprisonment of twenty years, a fine, or both in any of the following circumstances,-

- (a) Where the offence involves serious injury, life-threatening illness, or death, or other circumstances that endanger, or are likely to endanger, the life or safety of the smuggled migrant or another person;
- (b) Where the offence involves cruel, inhuman or degrading treatment of another person;
- (c) Where the offence was committed as part of the activity of an organized criminal group; or
- (d) Where, in the commission of the offence, the offender abused his or her position as a public official.

8. Extensions of Criminal Liability.- (1) Any person who participates as an accomplice, aids, or abets any of the offences under sections 4, 5, 6, and 7 of this Act shall be punished in accordance with Chapter V of the Pakistan Penal Code.

(2) Any person who is a party to a criminal conspiracy to commit an offence under sections 4, 5, 6 and 7 of this Act shall be punished in accordance with Chapter V-A of the Pakistan Penal Code.

(3) Any person who organises or directs one or more other persons to commit any of the offences under sections 4, 5, 6 and 7 of this Act shall be punishable with imprisonment of five years or Rupees two million fine or both.

9. Non-criminalisation of Smuggled Migrants.-Without prejudice to the applicability of other laws establishing criminal offences, migrants shall not become liable to criminal prosecution under this Act for the fact of having been the object of conduct set forth in sections 4, 5, 6 and 7 of this Act.

10. Offences to be Cognizable Offences etc.-All offences under this Act shall be cognizable, non-bailable, and non-compoundable offences as construed by the Code of Criminal Procedure of Pakistan.

11. Cognizance of Offences.-(1) No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Act or a special court, where the cases of Federal Investigation Agency are tried.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure of Pakistan, it shall be lawful for a Magistrate of the First Class to pass any sentence authorized by this Act.

Part III

National Coordination, Cooperation and Prevention

12. Competent Authority.-Only such persons or agencies shall carry out the investigation of offences under this Act as are specially empowered by the Government of Pakistan. The Federal Investigation Agency shall be the competent authority responsible for the investigation of offences under this Act and for the protection of smuggled migrants under this Act, notwithstanding anything contained in any other law, and unless specified otherwise in this Act.

13. Legitimacy and Validity of Travel and Identity Documents.- The competent authority shall, at the request of the appropriate authority or representative of another country, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of Pakistan and suspected of being used for the purposes of smuggling of migrants.

14. Awareness Raising and Prevention.-The National Coordinating Committee shall,-

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

Part IV

Protection and Return of Smuggled Migrants

15. Protection of Smuggled Migrants.- The competent authority shall take appropriate measures to afford smuggled migrants appropriate protection against any harm that may be inflicted upon them, whether by individuals or groups, by reason of having been the object of the conduct set forth in section 5, 6, 7 or 8 of this Act. These measures shall take into account the special needs of women and children.

16. Assistance where Lives or Safety are in Danger.- The competent authority shall afford appropriate assistance to smuggled migrants whose lives or safety are endangered by reason of being the object of conduct set forth in section 5, 6, 7 or 8 of this Act. These measures shall take into account the special needs of women and children.

17. Special Needs and Vulnerabilities of Smuggled Migrants, especially Children.- (1) All assistance provided to smuggled migrants shall take due account of the special needs of children and other persons in a vulnerable position.

(2) When the age of the smuggled migrant is uncertain and there are reasons to believe that the smuggled migrant is a child, he or she shall be presumed to be a child and shall be treated as such, pending verification of his or her age.

6

(3) Assistance to children shall be provided by specially trained professionals and in accordance with their special needs, especially with regard to accommodation, education and care.

(4) If the smuggled migrant is an unaccompanied child the competent authority shall –

- (i) Appoint a legal guardian to represent the interests of the child;
- (ii) Take all necessary steps to establish his or her identity and nationality; and
- (iii) Make every effort to locate his or her family when this is in the best interest of the child.

(5) Information may be provided to children through their legal guardian or, in case the legal guardian is the alleged offender, a support person.

(6) Smuggled migrants who are children shall be provided with information in a language that they use and understand and in a manner that is understandable to them.

(7) If the smuggled migrant or a witness to the smuggling of migrants is a child, interviews, examinations and other forms of investigation shall be conducted by specially trained professionals in a suitable environment and in a language that the child uses and understands and in the presence of his or her parents, legal guardian or a support person.

18. Access to Consular Officials.-(1) Where a smuggled migrant has been arrested, detained or is in custody, the arresting or detaining authority is required to inform the smuggled migrant without delay about his or her right to communicate with consular officers, and all reasonable steps are to be taken to facilitate such communication.

(2) If the smuggled migrant expresses interest in making contact with consular officers, the arresting or detaining authority is required to notify the relevant consul or consuls that a national of that State has been arrested or detained, provide the location where the smuggled migrant is being held and facilitate contact.

(3) If a smuggled migrant indicates that they do not want to have contact with the consular office that choice is to be respected.

(4) Smuggled migrants who are being held in custody or detention shall have the following rights:

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

(5) The arresting or detaining authority shall take all reasonable steps to facilitate such visits and communication.

(6) The arresting or detaining authority shall forward all correspondence from the smuggled migrant that is addressed to the relevant consular office without delay.

19. Facilitating the Return of Smuggled Migrants to Pakistan.-The competent authority shall,-

- (a) At the request of the appropriate authority or representative of another country, of the smuggled migrant or of its own initiative, facilitate without undue or unreasonable delay, the return to Pakistan of a smuggled migrant who is a citizen of Pakistan or has the right of permanent residence in Pakistan at the time of return;
- (b) At the request of the appropriate authority or representative of another country, of the smuggled migrant or of its own initiative, facilitate the return to Pakistan of a smuggled migrant who had the right of permanent residence in Pakistan at the time of entry into the other country;
- (c) At the request of the appropriate authority or representative of another country, verify without undue or unreasonable delay whether a smuggled migrant is a citizen or has the right of permanent residence in Pakistan;
- (d) At the request of the appropriate authority or representative of another country, facilitate the issue of documents or other authorization as necessary to enable a smuggled migrant who is either a citizen of Pakistan or who has a right of permanent residence in Pakistan, to travel and re-enter Pakistan.

20. Protection of Smuggled Migrants in the Return and Removal Processes.- (1) The competent authority shall ensure that any return of a smuggled migrant to Pakistan and any removal of a smuggled migrant from Pakistan is consistent with international law, including the principle of non-refoulement, the principle of non-discrimination, the right to life, the prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishment, and, where children are involved, the best interests of the child.

(2) In facilitating the return or removal of smuggled migrants, the competent authority shall take appropriate measures to ensure that the return of smuggled migrants occurs in an orderly manner and with due regard for the safety and dignity of the persons involved.

(3) Every effort should be made to limit the use of force in the return or removal process. The only forms of restraint which are acceptable are those constituting responses that are strictly proportional to the actual or reasonably anticipated resistance of the particular person with a view to controlling him or her.

Part V Final Clauses

21. Interpretation of this Act.-This Act shall be interpreted and applied in a way,-

- (a) That is not discriminatory on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or other status;
- (b) That takes into account the special needs of smuggled migrants who are women and children or who otherwise have special needs; and
- (c) That is consistent with other obligations arising from Pakistan's obligations under international law.

22. Power to Make Rules.- The Government of Pakistan may, by a notification in the official gazette, make rules to carry out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

The purpose of this Act is to prevent and combat the smuggling of migrants, which is defined in section 2 (g) of this Act. As a crime that, by definition, crosses international borders, cooperation between agencies within and among countries is essential in these efforts. Often, migrant smugglers take advantage of desperate people, many of whom endure unimaginable hardships in their bid for a better life. Sometimes, migrant smugglers place the lives and safety of smuggled migrants in danger, which makes it necessary for governments to ensure that the rights of smuggled migrants are adequately protected. The act has three separate but equally important purposes (a) the prevention and combating of smuggling of migrants in Pakistan; (b) the promotion and facilitation of national and international cooperation to ensure; protection and assistance of victims of trafficking in person, especially women and children while maintaining full respect of their rights.

SENATOR MUSHAHID HUSSAIN SYED
Member-In-Charge