

PAKISTAN

Prevention and Control of Human Trafficking Ordinance, 2002

An

ORDINANCE

to prevent and control Human Trafficking

WHEREAS the offences relating to traffic in human beings are incompatible with the dignity and worth of human being and endanger the welfare of the individual, the family and the community.

AND WHEREAS it is expedient and necessary to provide effective measures to prevent offences related to human trafficking and to protect and assist victims of such trafficking

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

1. Short title, extent and commencement.

- (1) This Ordinance may be called the Prevention and Control of Human Trafficking Ordinance, 2002.
- (2) It extends to the whole of Pakistan
- (3) It shall come into force at once

2. Definition. In this Ordinance, unless there is anything repugnant in the subject or context

- (a) "benefit" includes monetary profit, proceeds or payment in cash or in kind
- (b) "child" means any person who has not attained the age of eighteen years
- (c) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898)
- (d) "coercion" means the use of force, violence, physical restraint, deception, fraud or acts or circumstances not necessarily including physical force but calculated to have the same effect, such as the credible threat of force or of infliction of serious harm
- (e) "document" related to human trafficking includes a passport, a travel documents and any identification document used by law enforcement authorities
- (f) "exploitative entertainment" means all activities in connection with human sports or sexual practices or sex and related abusive practices
- (g) "Government" means the Federal Government
- (h) "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

- (i) "inhuman sports" include all sports involving, as a matter of normal course, infliction of physical or mental injury on a person against his will, intention or reasonable expectation
- "organized criminal group" means a structured group of two or more persons, existing for a period of time and acting in concert with the aim of committing any offence under this Ordinance, in order to obtain, directly or indirectly, any financial or other material benefit and includes a person knowingly receiving or disbursing benefits accruing from the commission of any offence in relation to human trafficking by an organized criminal group; and
- (j) "victim" means the person who is the subject of or against whom any offence under this Ordinance has been committed.
- (k)

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.
- (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.
- (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 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.
- (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.

4. Offences committed by organized criminal groups. ---Where an organized criminal group is guilty of any offence under clauses (i),(ii),(iii) or (iv) of section 3, the term of imprisonment or each member of such group involved in

the commission of such offence shall not be less than ten years imprisonment and may extend to fourteen years where the purpose of trafficking of a victim is exploitative entertainment and shall also be liable to fine.

5. Repetition of commission of offences. --Whoever repeats the commission of an offence under this Ordinance, the term of imprisonment may extend to fourteen years and the off under shall also be liable to fine.

6. Compensation to the victim. The court trying an offence under this Ordinance may where appropriate direct:

- (i) The competent authorities of the Government, at any stage of the trial to allow or extend the stay of the victim in Pakistan till such time, as the court deems necessary.
- (ii) Payment of compensation and expenses to the victim in accordance with section 545 of the Code.
- (iii) Government to make arrangements for the shelter, food and medical treatment of victim being an unaccompanied child or a destitute woman.

7. Proceedings under the Ordinance to be in addition to and not in derogation of any other law. The proceedings under the Ordinance shall be in addition to and not in derogation of any other proceedings initiated under any other law for the time being in force.

8. Offences to be cognizable etc. All offences under the Ordinance shall be cognizable, non bailable, and non-compoundable as construed by the Code.

9. Investigation. Notwithstanding anything contained in the Code or any other law for the time being in force, the investigation of the offences under the Ordinance shall be carried out by only such persons or agencies as are specially empowered by the Government in that behalf.

9. Investigation. Notwithstanding anything contained in the Code or any other law for the time being in force, the investigation of the offences under the Ordinance shall be carried out by only such persons or agencies as are specially empowered by the Government in that behalf.

10. Cognizance of offences etc. No court inferior to that of a Magistrate of the First Class shall try an offence punishable under this Ordinance.

Notwithstanding anything contained in section 32 of the Code, it shall be lawful for a Magistrate of the First Class to pass any sentence authorized by this Ordinance.

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

12. Power to make rules. The Government may, by a notification in official gazette, make rules to carry out the purposes of this Ordinance.

GENERAL
PERVEZ MUSHARRAF
President.

Mr. JUSTICE
MANSOOR AHMED
Secretary

PREVENTION AND CONTROL OF HUMAN TRAFFICKING RULES, 2004

Islamabad, 29 November 2004

S.R.O.970 (1)/2004_ In exercise of powers conferred by section 12 of the Prevention and Control of Human Trafficking Ordinance, 2002, (LIX of 2002), the Federal Government is pleased to make the following rules, namely:

1. Short title and commencement

- (1) These rules may be called the Prevention and Control of Human Trafficking Rules, 2004
- (2) They shall come into force at once.

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

- (a) "court" means the court having jurisdiction to try the offences under the Ordinance
- (b) "Government" means the Federal Government
- (c) "Non-Governmental Organizations" means the Non-Governmental Organizations notified by the Government under these rules from time to time
- (d) "Ordinance" means the Prevent and Control of Human Trafficking Ordinance 2002 (LIX of 2002); and
- (e) "victim" shall have the same meaning as defined in the Ordinance
- (2) Words and expression used but not defined in these rules shall have the same meaning as in the Ordinance.

3. Recording statement and custody of the victim.

- (1) A victim of an offence under the Ordinance, shall be produced before the court for recording his statement under section 164 of the Code of Criminal Procedure, 1998 (V of 1998), except where the victim is unable, or otherwise not feasible for any reason to be recorded in writing, to get his statement recorded
- (2) In case the victim is an un-accompanied child or a destitute women, the court before whom such victim is produced may pass an order to keep him in a shelter home established by the Government or by the Non-Government Organizations for accommodation, food and medical treatment

Provided that where the victim is not satisfied with the Non-Governmental Organization to which his custody was given by the court, he may apply to the court for alternate shelter.

- (3) The court may, for the welfare of the victim, hand over the custody to any of his blood relation after requiring a bond from the custodian for safe custody of the victim and his production before the court at the time and place mentioned in the bond and shall continue to produce until other wise directed.

4. Establishment of shelter homes and security arrangements. – The Government shall establish shelter homes for safe custody of the victims and shall also make necessary security arrangement for the protection of the victims in the shelter homes whether established by the Government or the Non-Governmental Organizations.

5. Responsibilities of Non-Governmental Organizations.

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

6. Legal assistance to the victim.

- (1) The Government shall and the Non-Governmental Organizations may provide necessary legal assistance to the victim during trial of the case and other legal proceedings under the Ordinance.
- (2) The Government shall allocate appropriate funds for providing legal assistance to the victims.

7. Recording evidence and repatriation of the victim

- (1) Where a victim is not a citizen of Pakistan, the court shall record the evidence of the victim at the earliest. If the victim is no more required for the trial, the court may direct the Government to facilitate such victim for this repatriation.

Provided that the victim whose presence is considered necessary by the court for the trial of the case or his immediate repatriation is not possible, shall be entitled to apply to the National Alien Registration Authority for his temporary registration as alien or for work permit.

- (2) If the repatriation of the victim is decided, the Government shall in consultation with the concerned Embassy or, as the case may be, the High Commission of the country to which the victim belongs, make necessary arrangements for its safe return.
- (3) The Non-Governmental Organizations may provide assistance to the Government in the process of repatriation of the victim.
- (4) The Government shall establish special funds for repatriation of the victim
- (5) The Government shall establish special funds for preparation of the victim [Ministry of Interior No.13/54/2002-FIA (PO)]

MRS. AMNA IMRAN KHAN
Deputy Secretary (FIA)