

FLIGHT NO.	DESTINATION	TIME	REMARKS
DB 3542	DHABAN JAIL	06:10	ON TIME
DL 5268	DAMMAM JAIL	06:35	ON TIME
KF 7856	KHAFFI JAIL	07:05	ON TIME
JD 8153	JEDDAH JAIL	07:45	ON TIME
AS 9856	AL-SADR JAIL	08:00	ON TIME
BI 7459	BARRIMAN JAIL	08:15	ON TIME
AQ 1275	AL-QATIF JAIL	08:30	ON TIME
KT 9642	KUWAIT JAIL	08:45	ON TIME
0001	DUBAI JAIL	09:00	ON TIME

THROUGH THE CRACKS

THE EXPLOITATION OF PAKISTANI MIGRANT WORKERS
IN THE GULF RECRUITMENT REGIME



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CONTENTS

1	Executive Summary	1
	1.1 Recommendations	4
	1.2 Methodology	5
	1.3 Case Study: Farooq	6
2	Pakistan's Recruitment Regime: Failing to Protect Migrant Workers from Exploitation	7
	2.1 The Recruitment Process Under Pakistani Law	7
	2.2 Failures in the Recruitment Process	9
	2.2.1 <i>Trading of Illegal Azad Visas</i>	10
	2.2.2 <i>Pre-Departure Briefing</i>	11
	2.2.3 <i>The Role of Subagents in Labour Migration</i>	13
3	Grievance Mechanisms in Origin and Destination Country	16
	3.1 Inadequate Coordination Between State Authorities	17
	3.2 Imprisoned without Consular Assistance	19
	3.3 Narcotics Control	22
	3.4 Criminalisation	23
4	Conclusion	25

Endnotes

GLOSSARY

<i>AHTUC</i>	Anti Human Trafficking Units
<i>ANF</i>	Anti Narcotics Force
<i>BEOE</i>	Bureau of Emigration and Overseas Employment
<i>CNC</i>	Control of Narcotics Court
<i>CWA</i>	Community Welfare Attache
<i>FIA</i>	Federal Investigation Authority
<i>GCC</i>	Gulf Cooperation Council
<i>ILO</i>	International Labour Organization
<i>Migration</i>	Emigration
<i>OEP</i>	Overseas Employment Promoters
<i>OEC</i>	Overseas Employment Corporation
<i>OPF</i>	Overseas Pakistani Foundation

SECTION 1

EXECUTIVE SUMMARY

“When he met a few people who told him they were Overseas Employment Promoters, he asked them to find him a job. Over the next few months, these agents forged a close relationship with Ali¹. He came to trust them. Finally, they told him that his ticket was ready and he would have to travel to Islamabad. From the capital, Ali was taken to Mardan, where, to his utter shock, he was locked up in a room. Those few hours were spent in confusion and growing fear.”²

- Asma Shafī, sister of Ali, a migrant worker currently on death row in Saudi Arabia

Migrant workers are an important part of Pakistan’s economy and the labour market.³ Yet the regulation of labour migration in Pakistan remains weak, leaving thousands of mostly male low-wage workers vulnerable to human trafficking, forced labour, ill-treatment in detention overseas and even death. There are close to 11,000 Pakistanis imprisoned in foreign jails, of which over 7,000 are in the Middle East.⁴ The Pakistan-Saudi migration corridor, in particular, is considered one of the costliest in the world in terms of recruitment costs for economically disadvantaged workers.⁵ Yet individuals and groups who seek to coerce and deceive individuals seeking employment overseas to smuggle prohibited drugs to Saudi Arabia and other Gulf countries, operate with significant impunity.

This report documents the cases of migrant workers who in seeking work and better life prospects abroad ended up being deceived and coerced into smuggling prohibited drugs to the Gulf countries and, ultimately, sentenced to death and executed. It points to the gaps in the recruitment regime for low-wage migrant workers in Pakistan and the inadequacies of the Pakistani government in responding to the incarceration of migrant workers abroad. Section 2 of the report documents the loopholes within the recruitment regime that are exploited by unauthorized intermediaries who operate, illegally, alongside the private firms responsible for the recruitment of workers for jobs overseas known as Overseas Employment Promoters (OEPs). Pakistani law prohibits the use of unauthorized intermediaries. But, in practice, these prohibitions are poorly enforced, and unregistered subagents remain the critical intermediary between prospective workers and employers overseas. This is especially the case for individuals from rural areas who account for a significant portion of all labour migration from Pakistan. Pakistan’s 2,157 licenced OEPs are spread out over the seven cities of Karachi, Lahore, Rawalpindi, Peshawar, Malakand District, Quetta and Multan. Due to this, in order to recruit semi-skilled or unskilled workers from more remote areas, licenced OEPs rely on subagents to transmit job offers and to connect with workers. The government’s Overseas Employment Corporation has even fewer branches and lower accessibility, located in just five cities of Pakistan. Because of this, the first contact many individuals have with an “agent” to facilitate work overseas is an unlicensed individual or company operating outside the system that is supposed to regulate labour migration from Pakistan.

These OEPs and subagents can coerce or deceive migrant workers looking to work or travel abroad because of a lack of oversight in regulating the illegal trading of so-called Azad Visas, and the lack of attendance at pre-departure briefings, among other reasons. Many migrants use Direct or Process visas (also known as Azad Visas), which can be bought and sold in the unregulated “migration market”, to travel to the Gulf. Individual citizen visas are granted by the governments of the Gulf Cooperation Council (GCC) countries to local sponsors for the hiring of household workers such as female domestic staff, drivers, gardeners and cleaners. But instead of being used for its intended purpose, the visa is often sold to those wishing to come to the GCC but unable to find appropriate job opportunities. With direct visas, there is less oversight, no need for a Foreign Service Agreement,⁶ or even a contract with the employer. For OEPs who have obtained Azad Visas for workers, the entire documentation process is carried out by a third-party actor, and individuals seeking to work abroad have little to no input in the process.

Low-wage migrant workers also remain at risk of exploitation from unscrupulous recruiters and criminal actors, including individuals and groups involved in drug smuggling, because of a lack of information about the process of migration. The Emigration Ordinance 1979 seeks to remedy this by requiring that all prospective migrant workers attend a mandatory pre-departure briefing. The briefing is an essential tool to provide intending migrants with information to protect them and alert them to the life-threatening dangers of fraudulent recruitment practices. However, most low-skilled migrants, especially those coming from rural areas, fail to appear before the Protector and attend the briefings. All migrants looking to acquire a work visa must get their passport stamped by the Protectorate of Emigrants.

A survey known as the Survey of Returned Migrants conducted in 2007 by the International Labour Organization demonstrates that of all their respondents, only 10 percent attended the “mandatory” pre-departure briefings at the protector’s office.⁷ The somewhat haphazard nature of these briefings where workers simply go to the Protector’s office and wait (sometimes for up to 6 hours) for a 30-minute briefing is a deterrent for people deciding whether or not to attend the briefing. The low attendance rate and the lack of checks and balances to enforce attendance lead to workers being handed counterfeit contracts, having problems with payment of wages stipulated in the contract, receiving inadequate accommodations or being asked to do a job different than the one initially promised.

Section 3 of the report highlights how various government actors fail to fulfil their responsibility to protect vulnerable migrant workers before, during, and after they are incarcerated. Insufficient steps are taken at home to prosecute the individuals and groups responsible for the trafficking of migrant workers who end up imprisoned on drug smuggling offences in Gulf countries. The arrest of domestic perpetrators of drug smuggling could help clear the name of those falsely imprisoned in foreign jails. Despite first information reports filed by the families of those wrongfully imprisoned, none of the OEPs or their subagents were taken to account for their involvement. Only in one of the cases documented in this report was an OEP arrested in Khushab, only to be set free 12 days later on no charges. Adequate investigations were, therefore, not carried out to prevent vulnerable and coerced victims of the drug trafficking trade from paying for the crimes of others.

There are several institutions dedicated to narcotics control in Pakistan. There exist six Control of Narcotics Courts spread out over Karachi, Lahore, Quetta, Peshawar and Islamabad. However, the courts have a reputation for a very low rate of conviction and protracted delays. They have not locally investigated any one of the cases of Pakistani detainees in GCC jails, nor has there been any move to request information from these detainees to carry out domestic investigations. Even those individuals or licenced agents that have had successful complaints lodged against them, can disappear and not respond to the show cause notice or close their offices. The lack of coordination between the Federal Intelligence Agency (FIA) – a border control, criminal investigation, counter-intelligence and security agency – and Bureau of Emigration and Overseas Employment, among other agencies, or simple indifference clearly jeopardizes the lives of Pakistani migrant workers seeking employment opportunities abroad.

At present, there exists no common database for these complaints and many often end up being duplicated and remain unresolved. There is a need for coordination between authorities responsible for oversight of OEPs and subagents and those dealing with smuggling and trafficking. The governance of migratory movements when seen as a clearly demarcated area, with responsibilities delineated between the various institutions, hinders joint efforts to prevent victims of drug trafficking from being exploited by fraudulent actors. To date, no relief has been provided to detainees on death row on narcotics smuggling charges by any of the various institutions responsible for controlling migration, trafficking and smuggling.

Once migrant workers are imprisoned abroad, they must navigate an unfamiliar criminal justice system without consular assistance. Based on interviews conducted with detainees, their family members, and Pakistanis in the GCC advocating for the rights of detainees, most of the prisoners did not seek consular services because they felt they would be wasting their time, energy and limited phone calls since the Pakistani embassy in Riyadh and consulate in Jeddah had a reputation of being unresponsive and unhelpful. According to them, embassy officials rarely visited them or provided any assistance, unlike embassy officials from other countries who regularly visited their prisoners. As one detainee noted, “Who could I ask for help for the appeals process? Our embassy doesn’t even come to see Pakistani citizens in jail, why would they help us in an appeals process? They just don’t have time.”⁸ Those who did contact Pakistani officials only received assistance with matters such as deportation or, at most, the payment of fines. Pakistan has yet to implement a consular policy that provides adequate protocols to officials to provide financial and legal assistance to Pakistanis imprisoned abroad, despite having a significant number of its citizens in prisons all over the world.

Inadequate oversight and the lack of proper enforcement of existing protections is a literal death sentence for scores of Pakistanis who simply seek a better life and improved prospects for loved ones by working abroad.

1.1 RECOMMENDATIONS

1. Increase government oversight over procedures of recruitment and monitoring of information passed through informal networks by:
 - a. Strict checks on the so-called “Azad Visa”
 - b. Enforce the mandatory attendance rule of pre-departure briefings for prospective migrants as stipulated under The Emigration Ordinance 1979
 - c. Amend the Emigration Ordinance and Rules to include specific operating procedures for the handling of complaints against OEPs, subagents and other groups or individuals for recruitment-related exploitation
 - d. Amend the Emigration Ordinance and Rules so that it has the authority to monitor and enforce recruitment-related protections over currently unregulated intermediaries including subagents, tour operators, education consultants, and others
 - e. Improve outreach programs at airports, and in cities and towns with a high volume of labour migration
2. Improve coordination between different government and non-government actors involved in ensuring the welfare of low-wage migrant workers and individuals vulnerable to drug trafficking
3. Increase accountability for licensed OEPs through a periodic and transparent review of complaints against them. Enforce existing penalties against OEPs found responsible for recruitment violations, such as the use of unauthorised intermediaries, failure to advertise job vacancies in newspapers, or eliciting fees from migrant workers
4. Improve responsiveness to the requests of families of those imprisoned abroad by simplifying the process by which relatives may seek consular assistance and ensuring formal procedures do not create undue delays and challenges
5. Seek to protect rather than prosecute individuals deceived and coerced into trafficking drugs while migrating abroad for work by:
 - a. Formulating and applying a coherent, effective and non-discriminatory consular protection policy to provide adequate legal and financial support to Pakistani prisoners
 - b. Providing legal aid and ensuring the presence of a *tarjuman* (translator) during trial
 - c. Conduct appropriate domestic investigations of narcotics-related crimes
 - d. Carry out international coordination between Pakistan and host country authorities responsible for labour migration
6. Ratify the Migration for Employment Convention (Revised), 1949 (No. 97) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

1.2 METHODOLOGY

This report is based on the stories of 10 Pakistani nationals, as narrated by their family members in conversations with Justice Project Pakistan (JPP) in 2014 and 2015, who were arrested in Saudi Arabia on narcotics-smuggling charges, court and other documents relevant to their cases, and analyses of Pakistani law and international conventions. Interviews were also conducted with ten individuals representing Overseas Employment Promoters (OEPs) in Lahore, Peshawar and Karachi in 2018, as well as with former detainees imprisoned in Saudi Arabia conducted in 2015 and 2016. Two of the interviews with OEP representatives were conducted over the phone. All of the names of OEP representatives, current and former detainees interviewed have been withheld to protect their identities or as per their request.

The report also includes similar informal conversations with various stakeholders in the process, including the Bureau of Emigration and Overseas Employment, the Anti Narcotics Force and recorded responses received by Justice Project Pakistan (JPP) in the process of their public interest litigation, advocating for the rights of these detainees. The responses include those from Pakistan Diplomatic Missions in Saudi Arabia, the United Arab Emirates (UAE), Bahrain, Kuwait, Qatar and Oman, from the Overseas Pakistani Foundation, from the Ministry of Foreign Affairs (MoFA) and from the Ministry of Interior (MoI). Research for this report is also based on official data, including statistics, from the Government of Pakistan, as well as data from the International Labour Organization (ILO) and the Gulf Research Center, an independent non-governmental organisation.

1.3 CASE STUDY

FAROOQ

Farooq, a married man with two daughters, is a Pakistani citizen who has been imprisoned in Al-Ha'ir Jail in Riyadh, Saudi Arabia since 2010 and is currently facing execution by beheading.

Before travelling to Saudi Arabia, he was the sole earning member of his family in Pakistan, working as a rickshaw driver in Sargodha, Punjab. Farooq never received formal education and, therefore, was unable to find better employment in Pakistan. However, Farooq needed a more reliable source of income to provide for his family, educate his children, and save enough money to one day get his daughters married.

In 2010, two subagents approached Farooq's father and offered to help his son travel to and find employment in Saudi Arabia for a fee of Rs.150,000 (USD 1,060). Having no other opportunities to improve his family's meagre living conditions, Farooq sold his rickshaw and everything else of value. The family had to raise some money to meet the full amount and Farooq paid the subagents. They then processed his visa. Farooq's father was told that they were securing Farooq's visa through a company.

On 16th May 2010, the two subagents took Farooq to Charsadda district in Khyber Pakhtunkhwa province. *"This was the last time I heard from my son until one and a half months later when I learned that Farooq was imprisoned in Saudi Arabia and that he had been sentenced to death for drug smuggling. I was shaken,"* Farooq's father told JPP.

On the day Farooq was taken to Charsadda, the subagents threatened Farooq's life and that of his family and forcibly made him swallow heroin capsules. Two days later, they forced Farooq to travel to Karachi with them, where they made him board the flight to Saudi Arabia under severe duress, informing him that somebody will be collecting him upon his arrival in Saudi Arabia. However, when Farooq landed in Saudi Arabia, he was arrested by the Saudi police and was subsequently sentenced to death by beheading. Farooq's trial and sentencing were in violation of both Pakistani and international laws.

At no point after Farooq's arrest, prosecution, conviction and execution in Saudi Arabia did the Pakistani government contact his family to notify them of his situation, nor did it provide him with any consular assistance. As far as could be determined, the Pakistan government never attempted to contact the Saudi Arabia government with regards to Farooq's case.

Farooq's case was part of a petition filed by Justice Project Pakistan (JPP) in the Lahore High Court in 2014, on behalf of the families of ten men sentenced to death on drug-related offences in Saudi Arabia. Of the ten men, eight have been executed and the remaining two are on death row in Saudi Arabia.

SECTION 2

PAKISTAN'S RECRUITMENT REGIME: FAILING TO PROTECT MIGRANT WORKERS FROM EXPLOITATION

2.1 THE RECRUITMENT PROCESS UNDER PAKISTANI LAW

Under Pakistani law, the recruitment of workers for work overseas must either be through a registered OEP, the state-run Overseas Employment Corporation (OEC), or through an employment visa obtained directly by a worker from an employer overseas. Most migrant workers secure their jobs through Overseas Employment Promoters (OEPs), which are private recruitment agencies registered with the Bureau of Emigration and Overseas Employment (BEOE). The BEOE, and its seven Protector of Emigrant Offices,⁹ are responsible for issuing licences for OEPs and for overall monitoring and regulation of overseas labour migration of nationals from within Pakistan. The BEOE is also responsible for handling all complaints made against OEPs and supervising and monitoring their activities under Section C of the Procedure for Overseas Employment.¹⁰

OEPs must seek a licence under the Emigration Ordinance 1979 from the Ministry of Labour, Manpower and Overseas in order to recruit workers for overseas jobs. The Ministry typically issues a three-year licence for each individual OEP on the recommendation of the BEOE.¹¹ OEPs can be fined or have their licences cancelled by the BEOE in the event of misconduct or misuse.

When putting in a request for workers, prospective overseas employers issue what is known as a Demand Letter, attested by the Pakistani Embassy in the destination country or the Ministry of Foreign Affairs of the employer's country, detailing the number of workers required, the types of positions, salaries and other relevant terms and conditions. OEPs receive the Demand Letter and then proceed to recruit workers either by advertising the position, going through an existing database of workers they may already have, or using local contacts in various locations in the country. A demand letter can be for an individual worker or for a group of workers. All of the OEPs representatives interviewed said that most workers they source for job orders from employers overseas come from pre-existing contacts, such as specific employers or recruitment agencies in destination countries.

OEPs are required by law to advertise positions in newspapers.¹² But they often advertise jobs through different means, for example, announcements from loudspeakers in mosques, recruitment through subagents or notices on walls because these are perceived to be more effective methods for attracting job candidates.¹³ OEPs cannot lawfully delegate or subcontract the responsibility of recruitment to a third-party, and the use of subagents is prohibited under the Emigration Ordinance.¹⁴ OEPs are required to provide the men and women intending to work overseas with a range of information on the recruitment process and their rights and responsibilities, are prohibited from charging workers any fees in line with

international standards on responsible recruitment¹⁵, and are also required to run through the contracts with employers in the workers' own language.¹⁶ The law also stipulates that “under all circumstances, the emigrant's copy of the foreign service agreement shall be handed over to him and the contents explained in detail in the presence of the Protector of Emigrants.”¹⁷

Individuals can also procure a visa by looking for jobs themselves or through the assistance of friends and relatives abroad. The prospective employer is required to provide an offer letter, contract and Foreign Service Agreement (FSA) to the worker, verified and attested by the Pakistani embassy in the destination country or, if there is no Pakistani mission in the destination country, through the Foreign Ministry of the country. Regardless of the means workers use to emigrate, the OEP is required by law to arrange the selected persons to appear before the “Protector of Emigrants within 120 days or within such extended period as the Director General [or, any other officer authorized by him] may, for reasons to be recorded in writing, grant in special cases”.¹⁸

In addition to the BEOE, Community Welfare Attaches (CWA) have also been established in various countries of destination, including Saudi Arabia, Qatar, Oman, Bahrain, Kuwait and the UAE. As demonstrated in the figure below, apart from the BEOE and CWA, who are meant to assist the government of Pakistan in furthering the economic interests and social welfare of Pakistani migrant workers abroad, there are various stakeholders involved at the different steps of a migrant's journey from Pakistan. These include the Overseas Pakistani Foundation and the Labour Attache, intended to handle the grievances of overseas Pakistanis, as well as the Airport Security Forces, Anti Narcotic Forces and Federal Investigation Agency, in place to prevent drug and human trafficking and others. In October 2018, the BEOE also launched a biometric verification procedure for intending migrants,¹⁹ to ensure transparency in the process of migration and transfer of remittances. Its impact on the practices of unauthorized subagents, the illegal means of securing employment in the Gulf Visa and the lack of attendance at pre-departure briefings is yet to be seen.

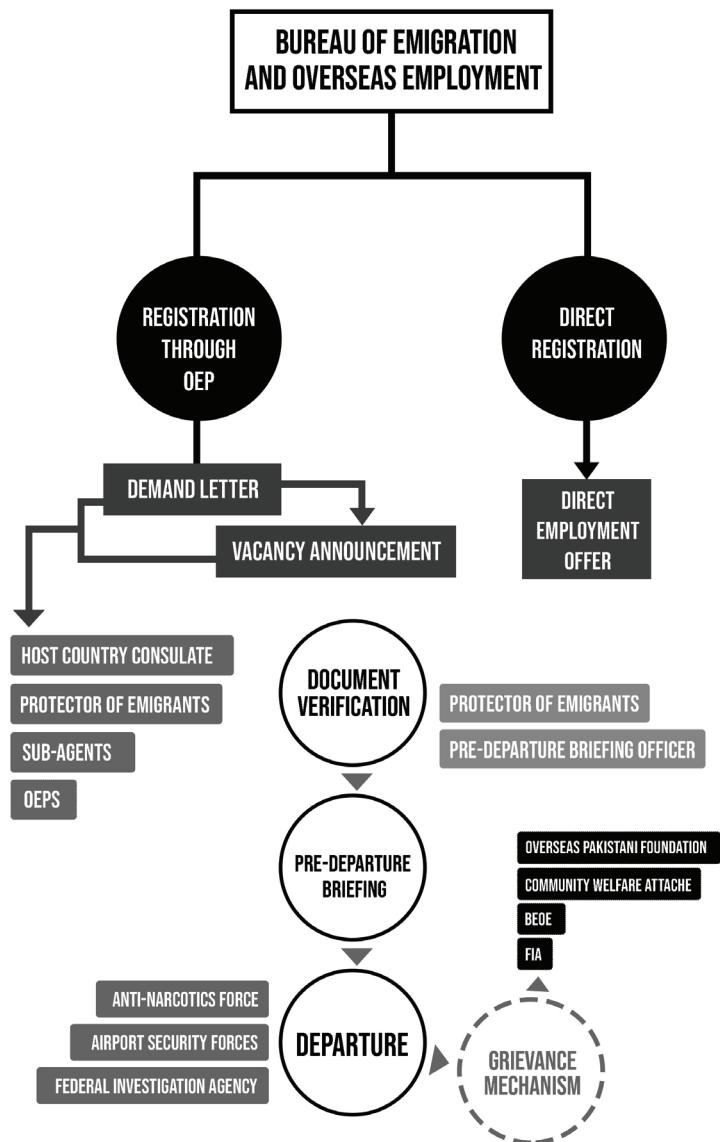


Figure 1 depicts the procedure for obtaining an employment visa through an OEP and the various stakeholders involved in the process. It also shows the same for obtaining a direct visa and the stakeholders responsible for providing redress at the point of arrest.

2.2 FAILURES IN THE RECRUITMENT PROCESS

Abdullah, an iron factory worker from Narowal District, Pakistan, was imprisoned in Briman Jail, Jeddah, Saudi Arabia in 2012 on drug-related offences. Earning a meagre Rs.400 per day (USD 3) working at an iron factory, he heard about an employment opportunity in Saudi Arabia through a friend and decided to migrate. He sold his bike, the only transportation available to his family of nine, to raise money to pay an agent for his migration. Abdullah left for Saudi Arabia and his family did not hear from him for the next two months. Eventually, they discovered that he was imprisoned in Briman Jail after being arrested at Jeddah International Airport on charges of possessing prohibited drugs. The old bag that Abdullah had checked in at the airport in Pakistan on his flight to Saudi Arabia had been switched, his luggage tag fastened onto a new bag.

His father told JPP that, "Abdullah had never gotten into any trouble before he went to Saudi Arabia. Since his departure, we have been having a tough time emotionally and financially. I am too old to earn enough money to run the family. I can't see the face of my grandchild. Instead of having a father, she is like an orphan, and his wife is spending her life like a half-widow. I have no strength left to take legal action against those who defrauded my son."²⁰

"We wrote appeals to then prime minister Nawaz Sharif, chief minister Shahbaz Sharif, Rana Tanvir (a local Member of the National Assembly of Pakistan and, at the time, a government minister), as well as the media but have never received a single response or investigation into his case," said Abdullah's father Shabbir.²¹

Abdullah has been executed by Saudi authorities.

There are three key failures in Pakistan's recruitment regime that leave low-wage migrant workers like Abdullah exposed to the risk of being forced to smuggle drugs to the Gulf and losing their lives:

- the illegal trading of overseas work visas known as 'Azad Visas',
- inadequate enforcement of pre-departure briefing attendance requirements under Pakistani law, and
- the failure to regulate subagents and other actors in Pakistan's recruitment industry that lead to coercive and deceptive recruitment practices.

These failures can have severe consequences for prospective low-wage migrant workers. In all of the cases documented for this report, workers had all of their relevant paperwork approved, their passports stamped by the Protector of Emigrant (a mandatory requirement without which a migrant cannot pass an airport). And yet none of the ten men who wound up being coerced and deceived into smuggling drugs to the Gulf ever came into contact with an official authority or were even aware of the legal visa process. According to the Procedure of Overseas Employment, an 'Overseas Employment Promoter can retain passports of job seekers (in the process of recruitment) and shall maintain records in a Register.'²² With the passport and other documents in the hands of the OEP, the only point of contact a migrant worker has with a government official is at the pre-departure briefings which, as documented in this section, migrants regularly fail to attend. This lack of information about the process and the limited role migrants often play in their own migration process allows both OEPs and subagents to exploit individuals from the lower socioeconomic class.

2.2.1 TRADING OF ILLEGAL AZAD VISAS

Direct or Process visas (also known as Azad Visas) can be bought and sold in the informal visa trading market that is active in the Pakistan-Gulf migration corridor. Individual visas are granted by the governments of GCC countries to local sponsors for the hiring of household workers such as female domestic staff, drivers, gardeners, and a range of other low wage jobs. However, instead of being used for its intended purpose, the visa is often sold to those wishing to come to the GCC but who are unable to find full-time employment or prefer the flexibility of being able to work informally and perceive that it offers greater labour mobility.²³ Visas issued by GCC countries tie foreign labour to a specific employer under the Kafala system. An Azad Visa is essentially a normal work visa tied to a sponsor in a GCC country but in a situation where the sponsor is typically paid a fee by the worker in order to enter the country of destination, rather than given a job.

Azad Visas are perceived to offer a migrant worker the chance to informally work in multiple jobs and thus obtain multiple streams of income, making it viewed as a more attractive option than a regular visa. However, the GCC states consider Azad Visas as illegal and this puts the worker completely at the mercy of her or his sponsor. This makes the worker vulnerable to exploitation such as forced labour or financial extortion for the renewal of residency and exit permits²⁴ while avoiding any of the benefits a sponsor is meant to provide to her or his employee. The practice has been condemned by Saudi, Qatari and Kuwaiti authorities and the Pakistani government but no strategies for raising awareness or preventing people from falling into this trap have been taken. In fact, even a simple search on a local advertising platform for an Azad Visa turns up advertisements allowing people to purchase such a visa.

According to one OEP representative, even when official overseas work orders from Pakistan are low, many Pakistanis are able to obtain an Azad Visa with limited checks and monitoring by the state making it an ideal tool for those who seek to traffic individuals for the purposes of smuggling drugs. The process of trading and obtaining an Azad Visa is informal and often complex, making it difficult to track the exact process by which individuals may have acquired one. Migrants often arrange employment with an Azad Visa secured through relatives or personal contacts leading to situations where both the worker and the employer overseas may very well have no direct interaction with another. Under this

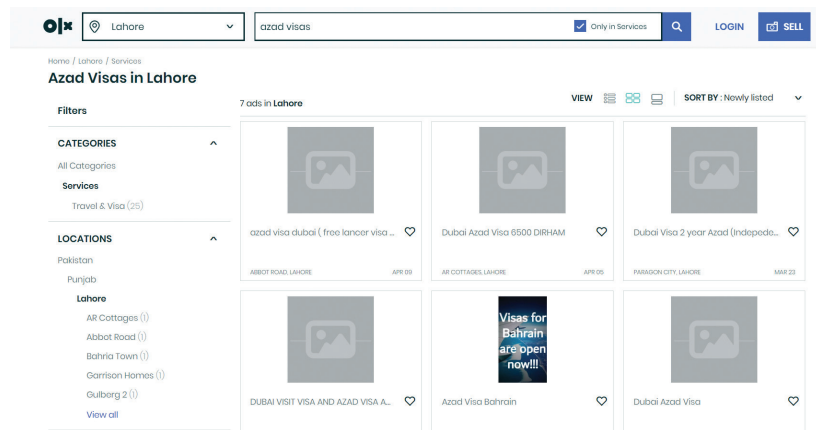


Figure 1.2 Screenshot taken from OLX, an online marketplace where local communities can buy and sell Azad Visas for jobs overseas

uncertain process, it is difficult to distinguish between the use of friends and relatives as providers of visas and fraudulent actors who use the Azad Visa to enable illegal work. The original purpose of the direct visa as a visa sent from a foreign employer to an individual in the origin country is still utilized but the room for misuse allows fraudulent actors to take advantage of such an arrangement.

With direct visas, there is less oversight, no need for a Foreign Service Agreement,²⁵ or even a contract with the employer. For OEPs who have obtained Azad Visas for workers, the entire documentation process is carried out by a third party actor and the migrant has little to no input in the process. The fact that an OEP can legally retain the passport of a potential migrant worker, get his documents processed and visa stamped without the worker in question ever having to appear before the Protector of Emigrants is representative of the very limited role government authorities, or the migrant themselves, play in the migration process.

2.2.2 PRE-DEPARTURE BRIEFING

For those vulnerable citizens who are tricked or coerced into trafficking narcotics across borders, pre-departure briefings could be the difference between life and death. The briefing is an essential tool to provide intending migrants with information to protect them and alert them to the life-threatening dangers of fraudulent recruitment practices. However, most low-skilled migrants, especially those coming from rural areas fail to appear before the Protector and attend the briefings.

The Emigration Ordinance 1979 stipulates that, “Before any person emigrates, he shall appear in person, along with the overseas employment promoter by whom he has been engaged or assisted or recruited for employment abroad or his duly authorized representative, before the protector of Emigrants and furnish to him such information as may be prescribed.”²⁶ However, this is rarely followed in practice despite the pivotal role a pre-departure briefing can play in determining a potential migrant’s experience. It involves several significant steps such as the Protector ensuring that “OEPs [who] are responsible for going through the detailed contents of contracts with prospective migrants, in their own language” have done so.

There are five Protector of Emigrant offices in the country where a migrant is required to go to get papers stamped and receive a briefing on destination country laws, the dangers of smuggling and other relevant matters. A survey known as the Survey of Returned Migrants conducted in 2007 by the ILO demonstrates that of all their respondents, only 10 percent attended the “mandatory” pre-departure briefings at the protector’s office.²⁷ The somewhat haphazard nature of these briefings where workers simply go to the Protector’s office and wait (sometimes for up to 6 hours) for a 30-minute briefing is a deterrent for people deciding whether or not to attend the briefing. Informal conversations with the Protector of Emigrants’ office in Karachi suggested that the office was aware of the small number of people showing up for briefings but felt that there was little they could do to increase attendance.²⁸

The low attendance rate and the lack of checks and balances to enforce attendance lead to workers being handed counterfeit contracts, having problems with payment of wages stipulated in the contract, receiving inadequate accommodations or being asked to do a job different than the one initially promised. The Survey of Returned Migrants 2007 found that "Signing of a contract before departure was not universal, and only direct visa holders kept a copy of the contract. Only one-third of the migrants were aware of the Foreign Service Agreement (FSA)."²⁹ The fact that such a low percentage of workers were aware of the FSA, which lists the details of the employer, their job and other basic information illustrates the lack of agency workers often have in their own migration process. It also demonstrates the perilous, and in the case of JPP's petitioners, life-threatening consequences of being able to migrate without verifying information in person as is required by law. Pakistani missions abroad substantiated the importance of pre-departure briefings, identifying them as a vital step in preventing the trafficking of innocent migrants.

Not showing up to the Protector's office means that workers are often unaware of the fact that they have paid for State Life Insurance or have grievance redressal mechanisms available to them through the Bureau of Emigration. This means that many cases of grievances against OEPs go unreported and even in cases of reporting, conversations with the BEOE and analysis of complaints issues revealed that the cancelling of an OEP's licence was a rarity, with first steps being to issue warnings. In some cases, OEPs, after having engaged in illegal activities, close down their offices and disappear off the radar, or still continue to operate out of their houses. In these cases, the OEP's only loss is the BEOE forfeiting their Rs. 300,000 (USD 2,115) security fee deposit. For many who engage in the narcotics trafficking trade, this is a small price to pay. Our informal interviews with licenced OEPs in Lahore, Karachi, Peshawar and Islamabad showed that it was common practice for a fraudulent OEP to relocate and open an office under another name.

Even if prospective migrants are emigrating through licenced OEPs, the first contact of many workers in their job search is with subagents who are unregulated and unlicensed. Since many migrants do not even make it to the mandatory pre-departure orientation training, they have no way of verifying the authenticity of the licence of their OEP. This also means migrants may have been compelled to pay recruitment costs to various intermediaries. Thus, even while the official costs of recruitment are low, it is common for workers to be charged more than the actual costs of their recruitment. Lack of enforcement of attendance at pre-departure briefings leaves prospective migrants unaware of their rights and protections under Pakistani law and the country they are travelling to.

Briefings adequately administered also have the power of educating workers on the correct procedure for their recruitment and employment, how to identify irregularities in their recruitment, and where and how to lodge complaints about their treatment. In the absence of adequate briefings, workers are unaware that they are required to have a contract in their own language and secondly, unable to enforce or verify the authenticity of their contract

with anyone apart from the OEPs or subagents. Many workers are also unaware of the other stakeholders involved in the process of migration and who they can report any potential issues to. As a Pakistani activist in Bahrain, advocating for the rights of imprisoned Pakistanis, explained in an interview, “the prisoners I’ve spoken to do not even know the name of the Bureau [Bureau of Emigration and Overseas Employment], let alone that such organisations even exist to protect them from abuse.”³⁰

Finally, surveys of returned migrants have shown that workers are usually unaware of pre-departure conditions and largely leave the handling of their documents to the agent arranging their employment and travel abroad.³¹ This is also made possible by certain practices allowed in Pakistan’s legal framework for emigration. For example, the official Procedure for Overseas Employment allows OEPs to retain the passports of job seekers as long as they “maintain the record in a register.”³² In addition to loopholes such as these which sideline the intending low-skilled migrant in his own migration procedure, the section on pre-departure briefings and the information obtained from the detainees in this report points towards a significant lack of enforcement and oversight at best, and extreme corruption and indifference at worst.

2.2.3 THE ROLE OF SUBAGENTS IN LABOUR MIGRATION

Asad, a co-worker of Ibrahim, took Ibrahim to meet the subagent who was to process Ibrahim’s documents and passport for travel to Saudi Arabia. When they reached the agent’s place, Asad left, telling Ibrahim that Ibrahim would go to Saudi Arabia alone and Asad would come at a later time. When Asad left, the subagent injected Ibrahim with something that put him in a semi-conscious state. It was in this state that Asad was forced to swallow heroin capsules. He was then taken to the Islamabad airport where he was made to board the flight to Saudi Arabia.

Although Pakistani law prohibits the use of unauthorised intermediaries, in practice subagents are the critical intermediary between prospective workers and employers overseas, especially for individuals from rural areas who account for a significant portion of all labour migration from Pakistan. Pakistan’s 2,157 licenced OEPs are spread out over the seven cities of Karachi, Lahore, Rawalpindi, Peshawar, Malakand District, Quetta and Multan. Due to this, in order to recruit semi-skilled or unskilled workers from more remote areas, licenced OEPs inevitably rely on subagents to transmit job offers and connect workers with OEPs. The government’s Overseas Employment Corporation has even fewer branches and lower accessibility, located just in five cities. Therefore, the first contact many migrant workers have with an “agent” to facilitate migration is an unlicensed person, with no credible, official source to recommend or monitor him.

The Emigration Ordinance of 1979, which governs the licencing of OEPs, does not provide any rules or regulations on the use of subagents by licenced actors. However, it states, “whoever recruits a citizen of Pakistan (without licensing or official permission) or holds an interview or examination or issues an advertisement for such recruitment, and the editor,

printer and publisher of a newspaper in which such advertisement is published, shall be liable to punishment.” Furthermore, Section S.11-A of the Emigration Rules 1979 restricts the establishment of OEP regional offices, stating that an OEP “shall not shift his office or open more than two branch offices or shift the same except with the prior permission of the Federal Government and on payment of a fee of five thousand rupees.”

The restrictions on official, legally established branches results in many OEPs, regardless of involvement in criminal activities, using subagents to facilitate their work. All the interviewed OEPs confirmed that they relied on subagents or other unregistered actors to connect them with workers. The indispensable nature of the work of subagents and the inevitability of their use by OEPs means that current rules ignoring the role of subagents pushes an integral part of the migration procedure into the realm of illegality, black markets and zero accountability, opening up possibilities of human trafficking and drug smuggling.

Recruitment chains, especially for semi and unskilled migrant workers, have multiple, complex steps that often levy high financial and personal costs on workers. The use of subagents and ineffective enforcement of regulations makes it difficult to identify the individual or organisation that is responsible for misleading and exploiting workers.

This informal way of practising recruitment allows official institutions to devolve responsibility for fraudulent practices onto OEPs, and OEPs to devolve responsibility onto notoriously difficult to locate subagents. In cases where families of migrant workers imprisoned abroad did try to initiate legal proceedings against subagents, the subagent either disappeared or the family was unable to move beyond the initial stages of inquiry and investigation.

In addition to subagents, migrants may often take help from friends and relatives or returnee migrants who have knowledge about the migration regime. Therefore, in regions with concentrated migration, such as Punjab and Khyber Pakhtunkhwa provinces, friends and relatives, abroad and at home, play a significant role in relaying their experiences to intending migrants, forming networks that provide job opportunities and visas for others in their town/village/area. The involvement of friends and relatives in fraudulent practices is difficult to ascertain but claims by detainees have hinted at the involvement of such actors in their ordeal and their involvement with OEPs. While the regulation of personal networks is a complex task, the lack of regulation around OEP's use of unauthorised actors and the processes of direct recruitment has exacerbated the problem significantly. This direct recruitment or recruitment through private OEPs (often via subagents or friends and relatives) is the most commonly used recruitment channel.

In 2017, only 2-3 percent of workers going abroad for employment used the Overseas Employment Corporation, a public body which exists to facilitate recruitment.³³ This is indicative of the country's reliance on private (sparsely regulated) or personal networks to migrate; a reliance that allows corrupt individuals to take advantage of innocent and vulnerable citizens.

The OEPs interviewed for the report acknowledged the widespread problem of narcotics smuggling and the deception and coercion of migrant workers into smuggling prohibited

drugs. However, they denied any responsibility and claimed unlicensed actors in rural areas were responsible for running the smuggling rings. Despite public knowledge of the use of subagents, the BEOE has not made any moves to formalise this sector. While a small number of complaints have been registered against the use of subagents, holistic steps to streamline the procedure have not been taken, leaving the use of subagents not only prevalent but also unregulated.

Informal conversations with employees at the BEOE suggested that the institution's role was limited to oversight only over licenced OEPs who are seldom the first (arguably the most crucial) point of contact for an intending migrant worker. Six of the interviewed OEPs claimed the oversight was only limited to extorting fines from these OEPs and no meaningful efforts at resolving real issues were taken. Four of the interviewed OEPs claimed it was unclear whether any money ever reached the complainant migrant worker.

In these interviews, OEPs refused to take responsibility for facilitating or directly participating in the exploitation of vulnerable migrant workers claiming that "the responsibility does not lie with [the recruiter]. How is there any [proof of my] involvement because my job is simply to produce the appropriate paperwork for migration."³⁴ They further stated that it was seemingly a friend or a relative that brought the passports of the workers and that an OEP cannot be expected to tell the difference between a drug trafficker or a relative. According to another OEP, the migrants claimed that the person that was accompanying them or sent on their behalf was a trustworthy person. In cases where "a worker, who has gone through our agency, gets into trouble," the OEP informed JPP, "we are usually told to pay a bribe to the Protector of Emigrants office or detained for a few days after the initial investigation and then we are free to continue our work."³⁵ Hence, there are little to no consequences for OEPs for not performing their duty.

The Emigration Ordinance states "When, in the course of any proceeding in connection with emigration in which an Overseas Employment Promoter is concerned, a breach of the provisions of this Ordinance or of the rules is committed, such person shall be liable to the punishment provided by subsection (2) unless he proved that he was not responsible for and could not have prevented the commission of the breach." In this way then, subagents, while undeniably playing a significant role in the trafficking of victims, easily avoid liability by shifting responsibility onto subagents.

Three hundred and sixteen complaints about OEPs were filed from May 2016 to June 2018. However, the majority of these were marked as settled by the complainant or closed because of non-pursuance by the complainant. Only 28 licences were "suspended until settlement", four were restored after settlements were awarded and three were marked as closed. Two of those closed found the OEP to be not guilty and one was said to have been "amicably settled and the parties being informed accordingly." One of the closed complaints involved the case of a subagent which was then recommended to be referred to the FIA (Figure 1.3 on page 18). Despite the involvement and use of subagents, the licence of the OEP was not affected nor was any penalty charged. The BEOE was named as one of the four respondents on the public interest litigation filed on behalf of the detainees. To date, they have not issued a response.

SECTION 3

GRIEVANCE MECHANISMS IN ORIGIN AND DESTINATION COUNTRY

In 2010, subagent Imtiaz told Umer that he could help him make a lot of money by travelling to and working in Saudi Arabia. The subagent told Umer he would handle all the passport and visa processing. Umer was taken to Mardan, where he was held at gunpoint, his life and that of his family was threatened if he did not swallow the heroin capsules they gave him. Left with no choice, Umer was forced to swallow the capsules and made to board the flight to Saudi Arabia from Lahore under duress.

This section analyzes the effectiveness of existing complaint mechanisms for migrant workers, especially migrant worker prisoners. More specifically, it outlines how multiple actors within the Pakistani government fail to fulfil their responsibility towards Pakistani migrant workers, the lack of consular assistance provided to imprisoned Pakistanis, and the criminalisation of individuals that are victims of drug trafficking.

There are several, online and in person, complaint portals available to migrant workers facing difficulties while working abroad. These include the BEOE's complaint portal, the Overseas Pakistanis Foundation's Grievance Commissioner and Complaint Cell, and/or the Community Welfare Attaches at Pakistani missions abroad. For cases of smuggling and human trafficking, these institutions can forward complaints outside of their jurisdiction to relevant authorities such as the Federal Investigation Agency or the Ministry of Interior.

While Pakistani embassies and consulates are available to provide assistance to migrant workers and Pakistani prisoners, currently, no uniform consular policy for the aid of migrant worker prisoners exists in Pakistani missions abroad. No meaningful efforts have been made to ensure justice for innocent Pakistanis on death row or to protect their rights under the Vienna Convention on Consular Relations (VCCR), which codifies key principles and practices such as *persona non grata* (Art. 23), the inviolability of consular premises (Art. 31), and the obligation on the receiving state to 'inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner' (Art. 36).

Even though Pakistan is a signatory to the VCCR, front line officers who are responsible for enforcing these rights are unmindful of their duties as per the convention. Lack of funding, understaffing and a general disregard for prisoners on death row results in VCCR and consular assistance being seen as a matter of the "state's discretion rather than a legal obligation." Thus, while more than 90 percent of Pakistan's overseas workers are employed in GCC countries, the country has shirked its responsibility towards the difficulties faced by this sizeable overseas population. None of the 10 men part of JPP's petition received adequate procedural or substantive access to justice for the violation of their rights.

3.1 INADEQUATE COORDINATION BETWEEN STATE AUTHORITIES

In 2005, Shahid was approached by Muhammad Arshad Shah, a subagent, who offered him a job in Saudi Arabia. However, Shahid told his father he had won tickets for himself and his mother to travel to Saudi Arabia on Umrah (pilgrimage). The family had no idea who had made travel arrangements for Shahid.

After Shahid paid Shah the necessary money for passport and visa processing, he was taken to Mardan. There, Arshad gave Shahid an injection that made him very drowsy, hazy and semi-conscious and in this state, he was forced to swallow heroin capsules and board a plane to Saudi Arabia. "Shahid rang me from a prison in Saudi. He said there were many inmates from Pakistan and they were cheated in the same way by agents offering an Umrah visit," said Shahid's wife Razia Bibi.³⁶ Shahid was executed in Saudi Arabia following a conviction on drug-related offences.

Inadequate coordination between the different state authorities responsible for aspects of the labour migration process in Pakistan leads to poor enforcement of protections against trafficking. For example, even when complaints are brought against individuals or agents, defendants have been known to simply disappear, close office or simply not respond to show cause notices without facing any punishment from state authorities. In the case of trafficking complaints against certain individuals such as those in the FIA's Red Book of Most Wanted Traffickers (2016), the OEPs that these individuals operated from are not adequately investigated and continue to be licenced and operating. For example, Global Routes and Travels has had several complaints against the licence owner of the company and an FIR is still open for his arrest. Yet the recruitment agency is still fully functional and continues to send workers and others abroad. The lack of coordination between the FIA and BEOE, or simple indifference clearly jeopardizes the lives of Pakistani migrant workers seeking employment opportunities abroad.

The BEOE is responsible for overseeing the activities of its licenced OEPs, checking the validity of migrant's documents and briefing migrants on safety procedures and legal protocols in their destination countries. It is the responsibility of the Bureau of Emigration and Overseas Employment, as the formal regulator and monitoring body for OEPs, to ensure accountability and that the worker is aware of the process of migration and that those who are facilitating his migration are not causing him harm.

There are other actors that can also play a valuable role in providing relief to migrant worker prisoners post-arrest. The Ministry of Interior, which administers the Anti Narcotics Force and presides over a Ministry of Narcotics Control,³⁷ has done little to ensure the apprehension of the actual organised criminal networks behind the drug trafficking trade to the GCC. In the past three years, only one narcotics ring associated with smuggling drugs to GCC countries has been dismantled, that too on the impetus of the UAE police who identified, located and then demanded the arrest of a smuggler located in Pakistan.³⁸

When the Ministry of Interior was contacted in relation to JPP's litigation on the cases of migrant workers arrested on drug smuggling charges, they requested that their name be removed from the

public interest litigation. This was so despite claims by the Overseas Pakistani Foundation (OPF), stating that the “Ministry of Interior deals with illegal migration, drug trafficking and transfer/extradition of prisoners.” The OPF’s response indirectly refuted the Interior Ministry’s claims by stating that in cases where Pakistan had not signed an extradition treaty with the destination country, the Ministry of Interior could take up the problem with the relevant Ministry of Foreign Affairs of the host country to discuss clemency options.

This diffusion of responsibility amongst the actors most able to give redress to prisoners prevents the actual provision of assistance. The Ministry of Interior’s jurisdiction covers the Pakistan Narcotics Control Board, the administration of Pakistan’s Anti Narcotics Force. Their National Anti-Narcotics Policy states that they would “actively participate in bilateral, regional and international efforts to combat Drugs.” The Mol is also responsible for prisoner transfer and extradition treaties with other countries.

When required, the Ministry of Interior has stepped up to their role, arranging the extradition and transfer of prisoners, as was the case with the repatriation of Pakistani prisoners from the Bagram prison in Afghanistan, formerly under the control of the U.S. It is important to note, that if adequate investigations were carried out, those who were unfairly arrested could have been saved from a brutal end. It is not unheard of governments campaigning on behalf of their innocent citizens. Cases such as that of Mary Velosovo from the Philippines³⁹ demonstrate the beneficial consequences of domestic authorities adequately investigating and proclaiming the innocence of their falsely imprisoned citizens abroad. However, instead of being patrons of their citizens, Pakistani authorities have failed to respond to several entreaties by the families of detainees and those advocating on their behalf.

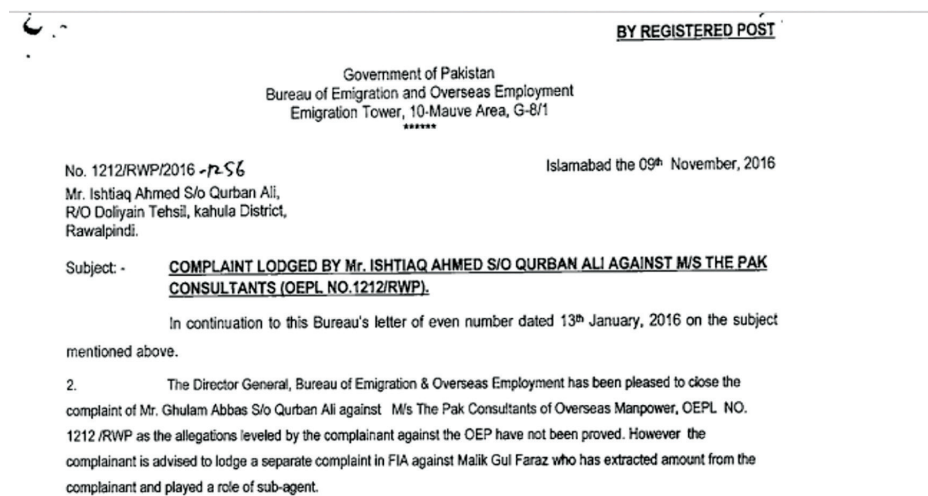


Figure 1.3 A complaint lodged by the Bureau of Emigration and Overseas Employment against an OEP which requires the complainant to separately go through the FIA after the complaint was handled by the BEOE.

The Ministry of Interior is also responsible for domestic regulation such as the Prevention and Control of Human Trafficking Ordinance (PACHTO) 2002 and the Federal Government’s Anti-Human Trafficking Cells (AHTCs), neither of which have managed to significantly curb the problems associated with Pakistan being a source, transit and destination country for migrant smuggling. The conviction rate under PACHTO is 12 percent and sentences are usually light, not fully apprehending facilitators

and agents of smuggling and trafficking. There is a need for collaboration between the BEOE and the AHTCs acting under PACHTO since the BEOE is responsible for penalizing OEPs for transgressing the Emigration Ordinance of 1979. Most migration-related offences usually end up in fines that cause little, if any, deterrence to sophisticated networks and transnational actors who earn substantial sums from smuggling and trafficking activities. As demonstrated by the information in Section 1 on BEOE complaints, the compounding nature of migration offences means if any such cases come to light, they are settled through compensation or fines and rarely result in licence cancellations or prosecution.

There exists no common database for these complaints and many often end up being duplicated and remain unresolved. There is a need for coordination between authorities responsible for oversight of OEPs and subagents and those dealing with smuggling and trafficking. The governance of migratory movements when seen as a clearly demarcated area, with responsibilities delineated between the various institutions, hinders joint efforts to prevent migrant workers coerced into smuggling prohibited drugs from being exploited by fraudulent actors. To date, no relief has been provided to detainees on death row on false narcotics smuggling charges by any of the various institutions responsible for controlling migration, trafficking and smuggling.

3.2 IMPRISONED WITHOUT CONSULAR ASSISTANCE

In all of the cases documented for this report, none of the families of migrant worker prisoners were informed of the arrest of their relatives. They came to know of their relatives' arrest several weeks or months after their incident, and only after the prisoner was able to call back home. None of the families of the detainees mentioned in the 2014 petition by JPP had any communication by the Riyadh embassy or Jeddah consulate regarding the imprisonment of their family member. "The government never notified us about Anwar or his imprisonment or his criminal case. We are alone in this process," said Anwar's family.

Based on interviews conducted with detainees, family members, and Pakistanis in the GCC advocating for the rights of detainees, most of the prisoners did not seek consular services because they felt they would be wasting their time, energy and limited phone calls since the Pakistani embassy in Riyadh and consulate in Jeddah had a reputation for being unresponsive and unhelpful. According to them, embassy officials rarely visited them or provided any assistance, unlike embassy officials from other countries who regularly visited their prisoners. As one detainee noted, "Who could I ask for help for the appeals process? Our embassy doesn't even come to see Pakistani citizens in jail, why would they help us in an appeals process? They just don't have time."⁴⁰ Those who did contact Pakistani officials, only received assistance with matters such as deportation or, at most, the payment of fines.

Without consular assistance, Pakistanis imprisoned abroad are left to navigate an unfamiliar criminal justice system on their own, often without lawyers or translators. As documented in a Human Rights Watch report, written in collaboration with JPP,

“With one exception, none of the 21 Pakistani defendants in these trials had a defense lawyer largely because they did not have the resources to locate or pay a lawyer while in prison. Largely due to this lack of legal assistance, only the one detainee had possession of court documents or copies of their convictions ... Four of the detainees said that court-appointed translators did not provide adequate services, sometimes intentionally misrepresenting detainees’ statements to judges or failing to accurately describe the contents of Arabic-language court documents. Three defendants said that court-appointed translators misrepresented their statements to judges, which they were able to understand having learned limited Arabic living in Saudi Arabia. They said that translators told judges that defendants were pleading for forgiveness while they were actually disputing the charges or conviction. Seven of the former detainees said that they remained in prison up to eight months following the expiry of their sentences for various reasons, including apparent negligence by prison officials and slow processing of deportation procedures.”

The provision of appropriate lawyers and *tarjumans* (translators) by Pakistani missions abroad could have encouraged fairness in the proceedings of the trial. The Pakistan Community Welfare and Education Fund allows for the “Provision of legal aid through local lawyers to protect Pakistani workers abroad from exploitation by foreign employers” but no specific funds have been allocated for those tricked by fraudulent actors at home. Saudi Arabia uses the death penalty disproportionately against foreigners, particularly those from South Asia. Despite being a key geopolitical ally, the Kingdom executes more Pakistanis than any other foreign nationality, with at least 20 executions in 2014, 22 in 2015, 7 in 2016, 17 in 2017, and 30 in 2018 – nearly a 100 in the last five years.

International observers have criticised Saudi Arabia’s court system for failing to meet fair trial standards and for the disproportionate and discriminatory enforcement of punishments involving foreigners, many of whom are migrant workers.⁴¹ The violations derive from deficiencies both in Saudi Arabia’s law and practices. Saudi Arabia has not promulgated a penal (criminal) code. Previous court rulings do not bind Saudi judges, and there is little evidence to suggest that judges seek to apply consistency in sentencing for similar crimes. Accordingly, citizens, residents, and visitors have no means of knowing with any precision what acts constitute a criminal offence. The Saudi Arabia criminal justice system imposes the death penalty following procedures that do not meet international fair trial standards and violate other human rights such as through the imposition of severe forms of corporal punishment like public floggings which is inherently cruel and degrading. Saudi authorities also consistently fail to follow through on their obligation under Article 36(b) of the VCCR to inform Pakistani officials when a Pakistani citizen is arrested or detained.⁴² However, despite this, no concerted efforts have been made to prevent innocent Pakistanis from being subjected to various judicial irregularities. The deficiency in effective action for prisoners is in part due to the lack of a consular policy.

In 2010, under the direction of the Supreme Court of Pakistan, the Ministry of Foreign Affairs devised 'Guidelines For Streamlining The Institutional Mechanism For Implementing The Directive Of The Honorable Supreme Court On Securing Release and Repatriation Of Pakistanis Detained/Imprisoned Abroad'. As per these guidelines, missions have been directed to:

- i. 'Maintain close contacts with local authorities with a view to collecting all relevant information about cases of arrest/detention/imprisonment of Pakistani nationals in the country/countries of accreditation and keep the Ministry informed'
- ii. 'Remain in contact with the Pakistani nationals arrested/detained/imprisoned by seeking consular access and ensuring consular visits at least once per month with a view to addressing their genuine problems and keep the Ministry informed', and
- iii. 'Maintain and regularly update a database, including a separate file for each case, containing information regarding charges, date of arrest/trial/conviction, sentence, period served and remaining and fine imposed, if any'⁴³

However, these guidelines are inadequate in protecting the lives of victims of drug trafficking because, among other reasons, the criteria laid down in the Guidelines do not take into account the cases in which Pakistani citizens imprisoned abroad have been charged with crimes punishable by death. The categories that are listed in the Guidelines involve the most minor of offences, which neglect that a significant portion of Pakistanis imprisoned abroad, especially in the Gulf, are imprisoned for heinous crimes.

On 15th December 2017, the Ministry of Foreign Affairs submitted a draft consular protection policy to the Lahore High Court as a party to the aforementioned litigation on migrant workers. However, it leaves many gaps and provides few redressal opportunities for the abovementioned problems. Primarily, the policy does not take into account the nuances of human trafficking, stating that Pakistani missions abroad would only be able to provide for the "general welfare" of Pakistanis implicated in crimes such as drug trafficking. The fact that those facing drug trafficking and human trafficking charges are not entitled to legal assistance is troubling since, as demonstrated, many are coerced into such activities and not provided a fair trial. The severity of the punishment of these crimes makes it imperative to pay special attention to those victimized under the guise of criminality. Added to this list of things consulates "can" and "cannot do" is the stated inability of consulates to "get any Pakistani out of prison or detention". Such a list and statement which excludes certain categories of prisoners altogether or ignores discussions of repatriation and prison transfer agreements is counterproductive to the essence of a consular assistance policy. Duty of a higher standard of care for the most vulnerable Pakistanis on death row in foreign countries, facing severe human rights violations, is not provided.

In addition to a need for basic legal assistance, migrant worker prisoners face well-documented violations of their fundamental human rights in foreign prisons. However, the draft policy makes no mention of intervention in such cases, limiting its responsibility only to ensuring the welfare of migrant worker

prisoners without any explicit mention of what this would entail. Finally, the onus of responsibility is removed from consular authorities as the draft policy leaves the provision of consular aid up to the discretion of host country laws and the missions abroad.

Moreover, catering to the unfair whims of the host country, often in violation of international law, means embassies frequently claim they are unable to do anything once a citizen is arrested. The Pakistani mission in Saudi maintains that “it becomes very difficult for this Mission to provide assistance in such cases” because of the “strong evidence against such persons” which is namely, merely the “recovery of a large number of capsules containing drugs concealed in their stomach”. Missions, therefore, devolve responsibility onto other actors such as the FIA, the Ministry of Interior and the BEOE to either prevent the smuggling of drugs through awareness raising or provide relief for those arrested by apprehending the masterminds behind the drug smuggling syndicates. No mention of coordination with domestic authorities to ensure fair and efficient legal proceedings for migrant worker prisoners is made in the draft policy. Rather, it limits the role of the consulate and renders them incapable of initiating any legal proceedings on behalf of any imprisoned Pakistanis abroad.

3.3 NARCOTICS CONTROL

The prosecution of individuals and groups responsible for the trafficking of migrant workers who end up imprisoned on drug smuggling offences in Gulf countries is inconsistent and inadequate in Pakistan. This has a significant impact on individuals who end up prosecuted in Gulf countries and who may ultimately be executed. The arrest of domestic perpetrators of drug smuggling could help clear the name of those falsely imprisoned in foreign jails. Despite First Information Reports (FIRs)⁴⁴ filed by the families of those wrongfully imprisoned, none of the OEPs or their subagents were taken to account for their involvement. Only in one case was an OEP arrested in Khushab, only to be set free 12 days later on no charges. Adequate investigations were, therefore, not carried out to prevent vulnerable and coerced migrant workers from paying for the crimes of others.

There are several institutions dedicated to narcotics control in Pakistan. There exist six Control of Narcotics Courts spread out over Karachi, Lahore, Quetta, Peshawar and Islamabad. The Control of Narcotics Substances Act 1997 governs the operations of the court and also enables the Federal Government to “make request on behalf of Pakistan to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced, or proceeding instituted, in Pakistan relating to an offence committed” [Chapter VIII.56.(2a)]. It also allows for mutual legal assistance requests by Pakistan where the Federal Government, or a person authorized by the Federal Government, can request a foreign state to “transfer in custody to Pakistan a person detained in the foreign State who consents to assist Pakistan in the relevant investigation or proceedings.”⁴⁵ However, the courts have a reputation for a very low rate of conviction and protracted delays. They have not locally investigated any one of the cases of Pakistani

detainees in GCC jails, nor has there been any move to request information from these detainees to carry out domestic investigations.

According to an exchange with the Pakistani mission in Saudi Arabia, attempts have been made to obtain information “disclosed by (Pakistani) nationals” to the Saudi Ministry of Foreign Affairs so investigations can be conducted regarding the “perpetrators/masterminds back home”. However, they have been of no avail and according to the consulate in Jeddah, Pakistani missions do not get information about arrested Pakistanis and are only provided with a list of prisoners twice a year. In situations such as these, the Pakistani MoFA has an important role to play, coordinating with foreign governments to not only increase security measures at home but prevent harm to innocent Pakistani citizens. The failure to do so shows indifference manifested in a lack of coordination between the different institutions capable of providing relief to falsely imprisoned migrant worker prisoners.

3.4 CRIMINALISATION

Pakistani consular authorities and domestic anti-narcotic operations have turned somewhat of a blind eye to the unjust convictions and subsequent mistreatment of its citizens languishing in foreign jails. In fact, the language of the draft consular policy and the perception that individuals deceived and coerced into smuggling drugs are responsible for their own plight, adds a discriminatory and unwarranted layer of criminality to the migrant worker prisoners’ plight abroad. Government officials, however, see victims as perpetrators. As one Pre-Departure Briefing Officer remarked, “We take every step possible to warn intending migrants of the dangers of smuggling drugs, however, their greed often overshadows any concerns for personal safety.”⁴⁶

The criminalisation of victims of trafficking is not a novel phenomenon. Neither is the shifting of accountability onto the exploited migrant, rather than acknowledging and tackling the systemic inefficiencies that lead to the intimidation and harassment of innocent citizens. The Trafficking Protocol recognises the pervasiveness of this dangerous mindset, advocating for the enactment of laws that de-criminalise any acts carried out by a trafficked person under duress.⁴⁷ Moreover, the recognition of individuals who are forced to smuggle drugs as the lowest in the hierarchy of drug syndicates is a vital step towards acknowledging the defencelessness of citizens as puppets in the narcotics trade. Instead of advocating for the innocence and lives of their prisoners, domestic stakeholders play a role in contributing to the criminalisation of Pakistani migrant worker prisoners.

In 2009, a family of three was arrested while on their way to perform Umrah.⁴⁸ Their travel agent had provided them with special sandals that he told them would help them be identified by his counterpart agent in Saudi. However, the sandals contained heroin and the family was arrested at Jeddah airport.

The Ambassador to Saudi at that time, Ali Awad Al Aseeri stated, "If any injustice and excess was done to the Pakistani family arrested in heroin smuggling case, the matter would be probed thoroughly and any innocent would not be punished for the crime not committed." He also added that the real culprits behind the crime should be punished. Similarly, following a raid on a heroin smuggler based in Pakistan and using migrant workers to smuggle prohibited drugs, Major General Abdul Al Jaleel Al Mahdi, the head of the anti-narcotic department at Dubai Police said: "They are taking advantage of poor people to make them smuggle these drugs inside their bodies for as little as US\$ 300 dollars."⁴⁹

The Pakistani government has failed to provide individual defences and grievance mechanisms for these citizens and no concerted effort has been made to apprehend those who are responsible for controlling this trade. No attempts have been made to identify these migrant worker prisoners as either victims of trafficking in persons or at the very least as not the primary initiators or profiteers behind narcotics operations. No attempts at enacting legislation or forming bilateral agreements that provide protection mechanisms for victims of human trafficking have been made. In this way, those who are themselves victims of heinous crimes such as trafficking, are held responsible as the perpetrators of narcotics smuggling activities.

None of the detainees interviewed for this report had any previous criminal record, all had similar backgrounds of low literacy and great economic vulnerability, and all had to go through a series of actors with questionable intent. The system was unable to provide them with information before their departure and similarly unable to offer them aid post their arrest. As a low-wage migrant worker, they possessed little social capital to prevent their exploitation at the hands of experienced, fraudulent agents or as a result of faulty information passed down to them. Examples of high-profile involvement by airline officials, cargo handlers, politicians involved in the transnational drug trade demonstrate how an individual drug mule is the lowest in the hierarchy of drug rings. It is also clear from the list of prisoners named in the petition that the vast majority of victims are low-wage workers.

SECTION 4

CONCLUSION

"We kept looking for him, asking relatives, brothers and sisters and friends about his whereabouts but we remained clueless until we received his call after four months. Only then we came to know that he is [imprisoned] in Saudi Arabia and what had happened. The very people who took him for an Umrah used him as a mule to take drugs. I felt like I lost everything."⁵⁰

- Razia Bibi, wife of a migrant worker imprisoned and executed in Saudi Arabia

As this report has documented, the thousands of men and women leaving Pakistan for work in the Gulf face a serious risk of exploitation, human trafficking, and even being sentenced to death through no fault of their own. Central to this situation is the systemic failings of the recruitment regime in Pakistan. Low-wage migrant workers are continuously exploited by criminal actors who exploit the loopholes documented in this report with relative impunity. The common threads of low literacy, dire financial need, no prior experience in foreign countries, and a lack of any history of involvement with the criminal justice system leaves individuals looking for work overseas vulnerable to unscrupulous individuals and groups operating as OEPs or recruitment subagents. The situation is exacerbated by the lack of coordination between authorities responsible for oversight of OEPs, the significant lapses in controlling the flow of narcotics outside of Pakistan, and the treatment of victims of drug trafficking as perpetrators.

The governance of migratory movements cuts across a range of government responsibilities, and inadequate coordination or indifference hinders efforts to prevent victims of human trafficking from being exploited by individuals and groups. Low-wage workers from Pakistan risk harsh punishments in the Gulf countries, including the death penalty, simply due to their lack of understanding of and assistance with the legal process, incapability to communicate directly with the court, and inability to produce evidence from Pakistan in their defence. Compounding the suffering faced by victims of these abuses, to date no relief has been provided to detainees on death row on narcotics smuggling charges by any of the various institutions responsible for controlling migration, trafficking and smuggling.

The Pakistani authorities can ensure its nationals are protected from these abuses by introducing new legislation and policies, and implementing existing laws. There is an urgent need for coordination between authorities responsible for oversight of OEPs and subagents and those dealing with smuggling and trafficking. The Pakistani government must also fundamentally reshape how it engages with its citizens imprisoned abroad. The authorities should not treat individuals charged with a crime in a foreign country as criminals before they are even sentenced. The authorities should instead take action to prevent migrant workers from Pakistan being left at the mercy of local courts without access to lawyers, impartial translators, or consular assistance from the Pakistani diplomatic missions.

The situation need not be this dire. By understanding the gaps in Pakistan's labour migration framework and adopting policies and practices that lead to adequate enforcement of existing protections, the Pakistani authorities can ensure the men and women who journey for work overseas are safe from human trafficking, exploitation and avoid being sentenced to death.

ENDNOTES

- 1 All names of current and former detainees have been changed to protect their identities.
 - 2 Asma Shafi. "My brother came home from a Saudi Jail. Then I woke up from my dream". December 18, 2018. Available at: <https://www.dawn.com/news/1451971/my-brother-came-home-from-a-saudi-jail-then-i-woke-up-from-my-dream>. Accessed April 14, 2019.
 - 3 Pakistan's economy benefits particularly from the outflow of labour. The country was ranked 7th on the list of top remittance receiving countries in 2017 with remittances received in the year amounting to \$20 billion (USD) "Migration And Remittances: Recent Developments And Outlook". KNOMAD. 2019. The World Bank Group. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/29777/125632-WP-PUBLIC-MigrationandDevelopment-Brief.pdf?sequence=1&isAllowed=y>. Accessed April 13, 2019
 - 4 Rizvi, Yumna. "The Time to Demand Saudi Arabia to Treat Pakistani Workers Properly Is Now". dawn.com. October 2, 2018. Available at: <https://www.dawn.com/news/1436145>. Accessed January 23, 2019
- On 18th February, Crown Prince of Saudi Arabia Mohammed bin Salman announced the immediate release of 2,107 Pakistani prisoners imprisoned in the country. However, only 250 Pakistanis have returned as of yet, as per official sources.
- 5 "Migrant Recruitment Costs," Migration Data Portal. January 10, 2019. Available at: <https://migrationdataportal.org/themes/migrant-recruitment-costs>. Accessed January 23, 2019.
 - 6 The Foreign Service Agreement is signed between the individual and foreign employer / OEP and counter signed by the Protectorate of Emigrant (PE) to ensure the implementation of the terms and conditions of that contract. "Frequently Asked Questions". 2019. Bureau Of Emigration & Overseas Employment. Available at: <https://beoe.gov.pk/faqs>. Accessed March 29, 2019.
 - 7 Cited in G.M. Arif. "Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities". International Labor Office. Available at: http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcm_041928.pdf. Accessed March 13, 2019.
 - 8 Interview with detainee in Saudi Arabia, November 10, 2015.
 - 9 Located in Karachi, Lahore, Multan, Rawalpindi, Peshawar, Quetta and, Batkhela Malakand District, Pakistan.
 - 10 Procedure for Overseas Employment. Bureau of Emigration and Overseas Employment. Available at: <https://beoe.gov.pk/files/legal-framework/procedure-for-overseas-employment.pdf>. Accessed April 16, 2019.
 - 11 G.M. Arif, "Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities".
 - 12 Rules and regulations vary for workers going to Malaysia, for instance, but are applicable to Saudi Arabia.
 - 13 Conversations with OEP in February, 2018 in Lahore.
 - 14 Emigration Ordinance of Pakistan 1979, Article 7.
 - 15 The Dhaka Principles for Migration with Dignity, 18 December 2012. Institute for Human Rights and Business. Available at: https://www.ihrb.org/uploads/member-uploads/DPs_-_English_Short_Version.pdf. Accessed April 16, 2019
 - 16 Emigration Ordinance of Pakistan 1979, Article 21
 - 17 Emigration Ordinance of Pakistan 1979, Article 25 (viii).
 - 18 Emigration Ordinance of Pakistan, 1979, Article 20.
 - 19 "Zulfi Bukhari inaugurates biometric verification system," Pakistan Today, October 31, 2018. Available at: <https://www.pakistantoday.com.pk/2018/10/31/zulfi-bukhari-inaugurates-biometric-verification-system>. Accessed 12 April, 2019

- 20 Interview with Shabbir on October 25, 2014 in Sheikhpura, Pakistan
- 21 Ibid
- 22 Procedure for Overseas Employment, Bureau of Emigration and Overseas Employment. Section A (19)
- 23 Conversation with OEPs in March 2018 in Peshawar
- 24 Foreigners need to obtain an exit permit i.e. permission to travel from their sponsor before they can be allowed to exit the country.
- 25 The Foreign Service Agreement is signed between the individual and foreign employer / OEP and counter signed by the Protectorate of Emigrant (PE) to ensure the implementation of the terms and conditions of that contract. "Frequently Asked Questions". 2019. Bureau Of Emigration & Overseas Employment. Available at: <https://beoe.gov.pk/faqs>. Accessed March 29.
- 26 Emigration Ordinance of Pakistan, 1979. Chapter V, sec. 15.
- 27 G.M. Arif. "Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities".
- 28 Interviews on 17 April 2018 in Karachi, Pakistan.
- 29 Cited in G.M. Arif. "Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities".
- 30 Skype interview in March 2018
- 31 G.M. Arif. "Recruitment of Pakistani Workers for Overseas Employment: Mechanisms, Exploitation and Vulnerabilities".
- 32 Procedure for Overseas Employment, Section A, 19. Available at: <https://beoe.gov.pk/files/legal-framework/procedure-for-overseas-employment.pdf>. Accessed on 13 April, 2019.
- 33 The OEC currently only deals with official demands for workers from foreign country governments.
- 34 Conversations with OEP on 20th February, 2018 in Lahore
- 35 Conversations with OEP on 20th February, 2018 in Lahore and 17th April 2018, Karachi
- 36 Interview with Razia Bibi in Faisalabad, Pakistan on Oct 9, 2015.
- 37 The Ministry of Narcotic Control is responsible for "Policy on all aspects of narcotics and dangerous drugs, such as production, processing, marketing, import, export and transshipment, trafficking etc., in conformity with national objectives, laws and international conventions and agreements" Mandate, Schedule II [Rule 3(3)] Rules of Business 1973. Available at: <http://narcon.gov.pk/index.php?page=mandate>. Accessed 13 April, 2019.
- 38 "UAE busts heroin smugglers gang with Pakistani cooperation". 15 July, 2015. India Times. Available at: <https://economictimes.indiatimes.com/news/international/world-news/uae-busts-heroin-smugglers-gang-with-pakistani-cooperation/articleshow/48083454.cms?from=mdr>. Accessed 11 March, 2019.
- 39 Mary Jane Fiesta Veloso is a Filipino woman who was sentenced to death for allegedly smuggling heroin into Indonesia in 2010. Her case sparked debate on the death penalty, drug trafficking and the need for leniency towards victims of human trafficking.
- 40 Justice Project Pakistan interview with Ejaz, November 10, 2015.
- 41 "Caught in a Web: Treatment of Pakistanis in the Saudi Criminal Justice System". March 2018. Human Rights Watch and Justice Project Pakistan. Available at: https://www.hrw.org/sites/default/files/report_pdf/saudiarabia0318_web.pdf. Accessed 10 January, 2019.

42 Ibid

43 “Guidelines For Streamlining The Institutional Mechanism For Implementing The Directive Of The Honourable Supreme Court On Securing Release And Repatriation Of Pakistanis Detained/Imprisoned Abroad”. 2010. Available at: http://www.mofa.gov.pk/documents/guidelines_sc.pdf. Accessed 13 April, 2019.

44 A First Information Report (F.I.R.) is a written document prepared by police organizations in Pakistan when they receive information about the commission of a cognisable offence.

45 Control of Narcotics Substances Act 1997. ChapterVIII.57.1f. Available at: <http://www.fmu.gov.pk/docs/laws/Control%20of%20Narcotic%20Substances%20Act.pdf>. Accessed 13 April 2015.

46 Interview with members of Protectorate of Emigrants Office. 17 April 2018. Karachi (Translated from Urdu)

47 “Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime”. 15 November 2000. Available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>. Accessed 13 April, 2019.

48 Umrah refers to a religious pilgrimage Muslims perform in Mecca, Saudi Arabia.

49 Wafa Issa, “Police bust drug gang”. April 15, 2012. Available at: <https://www.thenational.ae/uae/police-bust-drug-gang-1.388507>. Accessed 10 April 2015.

50 Interview on February 1, 2018 in Faisalabad, Pakistan.

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