

## Refugee Rights and the Repatriation of Afghan Nationals: A Legal Perspective in Pakistan

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### Abstract

*Pakistan, the state that crowds a substantial number of Afghan citizens, is in a predicament where the legal status of Afghan refugees living within its borders is unclear because the country has not formally ratified the 1951 Convention or its 1967 Protocol and has not passed any domestic legislation pertaining to the management of refugees. This article examines Pakistan's treatment of Afghan refugees in spite of the country's non-participation in the 1951 Refugee Convention and its 1967 Protocol, as well as the legal status of the refugees since their arrival in 1979. These people had difficulties because there was no national legislation that addressed refugee matters; instead, they were subject to the Foreigner's Act of 1946, which does not normally apply to them. This paper examines how the legal void has affected the lives of Afghan refugees, focusing on their arrival in Pakistan, changes in government policy, and the resulting legal complications. Pakistan has taken in Afghan refugees in spite of the lack of both international agreements and a national refugee statute. This has led to an analysis of the legal implications.*

**Keywords:** *Refugees, National security, Voluntary Repatriation, Resettlement, Local integration*

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### 1. Introduction:

Refugees are frequently the victims of grave violations of human rights. Most of the time, a significant portion of modern refugees is expected to experience a couple of violations: the first offense in their home state, which usually acts as a catalyst for their migration to another state; and the denial of full protection of their basic rights and freedoms in the host state. The concept of state sovereignty and its attendant notions of regional domination and self-defense, on the one hand, intimately define the legal framework that supports the status of refugees. On the other hand, the opposing power is represented by humanitarian ideals based on established treaties and basic international law. Furthermore, the junction of different legal frameworks frequently exacerbates the predicament of refugees, creating a tangled web of rights, obligations, and responsibilities. The complexities of a state-centric strategy based on sovereignty require a careful balancing act with the overriding humanitarian imperatives that international legal instruments promote. The conflict between humanitarian obligations and state sovereignty emphasizes the necessity for careful legal research and interpretation of refugee rights. The intersection of these conflicting legal theories creates a dynamic legal environment that necessitates close examination, especially with regard to

the effectiveness of international institutions in preserving the rights and dignity of people compelled to seek asylum abroad. This complex legal framework is where the difficulties that refugees experience are identified, and it is where the continuous conversation about their rights and protection is formed (Goodwin-Gill, McAdam, & Dunlop, 1985).

The 1951 United Nations (UN) Convention Relating to the Status of Refugees (the 1951 Convention) and its 1967 Protocol serve as the foundations of the international legal system for the protection of refugees. These groundbreaking documents are intended to protect against any violations of the rights and welfare of those who are fleeing persecution. However, the treaties also outline particular duties and obligations that states must fulfil when handling refugees and asylum seekers. When the fighting in Afghanistan erupted in the latter half of 1970, a large number of refugees fled to neighboring countries, most notably Pakistan and Iran. The international community is now faced with the urgent task of resolving the complex problems resulting from the relocation of people who are seeking asylum as a result of this historic situation. Following the coup d'état carried out by the Marxist People's Democratic Party of Afghanistan (PDPA) against Muhammad Daoud's rule in April 1978, a large-scale exodus of Afghan citizens left their country. Muhammad Daoud took rule in 1973 through a bloodless coup, toppling his cousin, King Muhammad Zahir Shah, who had been in power since 1973. Afghan nationals were forced to flee their homes due to the political unrest, which began a massive migration flow. The Union of Soviet Socialist Republics' (USSR) subsequent invasion of Afghanistan in 1979 gave the refugee crisis more vigor. By the beginning of 1981, there were an astounding 3.7 million refugees, most of whom were fleeing to Iran and Pakistan, two nearby countries. With the backdrop of political unrest and military action, this exceptional humanitarian situation forced a substantial percentage of the Afghan population to seek shelter beyond. A catastrophic humanitarian crisis was brought on by the geopolitical events' complex aftereffects, which ranged from internal political unrest to foreign military involvement. Millions of Afghan nationals have fled their country, highlighting the need for international action and attention to solve the difficulties associated with relocation, safety, and resettlement (Margesson, 2007).

In the last thirty years or more, around thirty-five percent of Afghanistan's refugees have resided in Pakistan. A relatively small number of further refugees arrived in the mid-1980s during a period of intense fighting, and in 1990 following Russia's exit. The UN High Commissioner for Refugees oversees camps inhabited by almost one-third of Pakistan's 1.8–2.0 million officially recognized refugees. It was not until 2005 that the number of Afghan refugees in Pakistan was known, as the GoP had never formally acknowledged them. The UNHCR and the Pakistani government decided to collaborate on a census in 2005. As a result, the UNHCR began recording the names of those who had received assistance in returning home in 2005, and the majority of this group was listed in 2007 (Masudi & Mustafa, 2022). By the early 1990s, the number of internally displaced individuals had increased to over 6.2 million, including Afghans who were forced to live outside of their country (Schmeidl & Maley, 2008). As of right now, the United Nations High Commissioner for Refugees (UNHCR) estimates that there are close to 2.5 million Afghan refugees who are legally registered (UNHCR). In addition, the UNHCR expects the ongoing complexity of the humanitarian crisis that exists in Afghanistan. Detailed analyses from the UNHCR indicate that since 2002, an impressive 5.2 million Afghan refugees have returned home under UNHCR supervision. 4.7 million refugees have returned home as part of the UNHCR's voluntary repatriation program since 2002 till 2015. Over the years, fewer have been present. The return amount was 16,769 in 2014, which was 56% less than in 2013. But thus far in 2015, the number of returns has skyrocketed, with 50,503 before the end of August. 97% of those who have

returned are from Pakistan, and they cite deteriorating conditions and a declining tolerance for the presence of refugees as their justifications (UNHCR, 2015). In 2017, the UNHCR successfully oversaw the voluntary return of 58,817 refugees; in 2018, that number was further increased as 15,699 refugees decided to return to Afghanistan with UNHCR assistance (UNHCR, 2018). This shows that there has been a deliberate effort to tackle the various concerns associated with the Afghan refugee situation. The UN High Commissioner for Refugees, aware of the complex humanitarian situation in Afghanistan, is indispensable in promoting the peaceful and voluntary return of Afghan refugees to their home country. This commitment to easing displaced people's return highlights the continuous efforts to address the legal, social, and humanitarian issues entwined with the Afghan refugee diaspora. The dynamic field of repatriation statistics accentuates the inevitability of doing a thorough analysis of the legal structures and viewpoints that impact the path taken by Afghan citizens who are fleeing their country.

As a member to the 1951 Convention and its Protocol, Pakistan is required to uphold certain standards that guarantee the well-being and security of refugees inside its borders. Both standards are based on the tenets stated in both documents. The legal responsibilities delineated in these instruments span a range of rights, including but not restricted to, safeguarding against deportation, having access to healthcare and education, and having the chance to secure legitimate employment. The complex legal environment that governs the status of Afghan refugees in Pakistan highlights the necessity of a thorough assessment of the effectiveness and application of national and international legal frameworks.

Pakistan, the country that hosts a significant number of Afghan citizens, is in a predicament where the legal status of Afghan refugees living within its borders is unclear because the country has not formally ratified the 1951 Convention or its 1967 Protocol and has not passed any domestic legislation pertaining to the management of refugees. The nuances of what constitutes a refugee appear to be avoided by states who have chosen not to ratify accords pertaining to refugees. Under such circumstances, the most important thing to do is to take care of the need for protection, which is a remedy that is usually pursued in accordance with the standards of customary international law. The non-refoulement policy, a crucial tenet intended to ensure the protection of refugees within these states, is foremost among these principles. Pakistan has demonstrated its commitment to offering sanctuary to individuals escaping persecution or conflict by granting Afghan residents seeking asylum under its territory, even if, in contrast to many other countries, it has not legally joined the aforementioned treaties. Although customary international law provides a fundamental basis, further rights for refugees in such nations may also come from human rights conventions that the state has ratified. It is interesting, although, that in Pakistan's situation, this kind of recourse to redirected legal operations is considered superfluous because Afghan people seeking refuge have already been granted *prima facie* recognition. This not only demonstrates Pakistan's dedication to respecting international norms but also demonstrates the legal protection afforded to Afghan refugees, even in the lack of official national legislation (Zeick, 2010). The application of this approach to determine refugee status is not unusual. It is often utilized when interacting with a large group of people. The collaborative approach was a significant change from its prior practice, especially with regard to Pakistan. August 2001 marked this change in policy, as the country moved away from the collective system of status determination and towards a more individual-based approach. This significant modification was particularly noted in the decision-making process pertaining to newly arrived Afghan refugees in assigned camps, as well as perhaps going back and reviewing earlier cases.

Presently, Pakistan is home to between three and four million Afghan migrants and refugees; besides, after August 2021— when the Taliban made a comeback in Afghanistan—at least 600,000 more people entered the nation's border. Of these, 1.3 million have valid refugee status and Proof of Registration cards, while 850,000 have Afghan Citizen Cards from Pakistani authorities, which offer some safeguards but not all of the benefits available to registered refugees. An estimated 1.7 million more Afghans are thought to be in the nation without official documentation. It is important to remember that this latter estimate may well underestimate the actual numbers due to the normal mobility of people who live in the border regions that are hilly and who often cross the border without official travel documents from either state (International Crisis Group, 2023). According to F. Khan (2018), the Government of Pakistan (GoP) exercises its sovereign authority by administratively supervising refugee affairs and coordinating its policies with national internal policies as well as shared political and humanitarian concerns. It is crucial to emphasize that the United Nations High Commissioner for Refugees (UNHCR) does not have formal power within Pakistan's borders. Its participation has been expressly restricted to talks with Afghan refugees until after the Soviet Union's military invasion of Afghanistan. For Afghan refugees registered with the UNHCR, the Ministry of States and Frontier Regions (SAFRON), which is responsible for managing Afghan refugees in Pakistan, regularly grants renewable temporary residence permits. Every Afghan refugee covered by the UNHCR mandate is granted the right to temporary shelter inside Pakistan's borders, as per the stated policy of the government of Pakistan. It is imperative to underscore that Pakistan, as a matter of policy, does not offer prospects for permanent resettlement to individuals granted temporary protection elsewhere. This moral position emphasizes the difference between temporary haven and permanent residency in the context of Pakistan's refugee laws.

Although universal promises to protect refugees are important, they have little effect if they are not supported by additional guarantees found in the national constitutions of the various governments that make up the international community. This emphasizes how important it is for national law and international law to specifically align with one another. This kind of requirement confirms that governments' willingness to acknowledge and apply the rules of international refugee law to the individuals in question is a major, if not the only, factor determining the success of the law. On a practical level, refugees can only fully benefit from the protections embodied in international refugee conventions when these principles are integrated into the national legal framework of the host or receiving State. The interaction between the national and international legal domains highlights the mutually beneficial connection necessary for the comprehensive and successful application of refugee protection measures. It highlights the mutually beneficial connection that is necessary for the thorough and efficient application of refugee protection measures, underscoring the intricate interaction between international standards and national legal frameworks in guaranteeing the welfare and rights of refugees.

## **2. Voluntary Repatriation as the Preferred Solution:**

International protection for refugees escaping a country because of persecution is typically not granted for an indefinite amount of time and must end with the restoration of national protection, either through a voluntary return to the state of origin, integration into the host nation, or the nation of first asylum (local settlement), or resettlement in a third nation. Therefore, there are primarily three long-term solutions to the challenges associated with refugees:

1. Resettlement,
2. Local integration, and
3. Voluntary repatriation.

The international community concentrated on resettlement as a workable alternative between 1945 and 1985 (Bupinder S Chimni, 2004). As a result of changing political interests at the time and an awareness of the need to reduce the causes of flight, voluntary repatriation became the strongly preferred alternative to resettlement. Furthermore, this change was one of the main goals of the International Refugee Organization, which was founded in the wake of World War II (Goodwin-Gill et al., 1985) but did not view voluntary repatriation as the preferred long-term option for a variety of reasons, as will be detailed in the paragraphs that follow.

Bupinder S Chimni (2004) states that the years 1985–1993 saw the promotion of "voluntary repatriation as the durable solution," albeit with the caveat that it must be voluntary. States were urged by the General Assembly to support UNHCR in its efforts to encourage voluntary repatriation. During the 42nd Executive Committee (Ex-Com) session in 1991, Mrs. Sadako, the High Commissioner for Refugees, brought attention to the deplorable conditions under which refugees were compelled to live across the globe. She said that the right of refugees to apply for asylum abroad is recognized in the same manner as the right of refugees to return home. In addition, she committed herself in 1992 to seizing every chance to guarantee voluntary return as the ideal resolution to the refugee issue. Ex-Com reiterated the above in Conclusion 68 (XLIII) of 1992 (Hatam, 2019):

*Voluntary repatriation of refugees is the preferred solution, where feasible, and endorses UNHCR's efforts to work actively to create, from the outset of a refugee problem, condition conducive to voluntary return in safety and dignity. The success of this solution will depend on a number of factors, including assurances of safety on return, access arrangements and monitoring possibilities for UNHCR, the adequacy of reception arrangements and reintegration possibilities.*

The previous conversation highlights the reality that voluntary repatriation has not been regarded as the best course of action. Due to Cold War politics and the contemporary history of European racial and religious groupings, it was believed that refugee movements were positive and that refugees had no desire to go back "home." It was believed that seeking refuge allowed the oppressed to search for and live an improved life outside of their circumstances and that the nations might use the sentiments of the refugees to their advantage in battles against the adversary (Bhupinder Singh Chimni, 2000).

Most significantly, "the North" needed labor since it was experiencing rapid economic growth. As a result, the refugees were exploited as cheap labor (Bupinder S Chimni, 2004). Given the foregoing, "exile" has received a lot of attention in international treaties pertaining to refugees and asylum. Gervase Coles claimed that this mindset amounted to "exile" bias and that it should be changed (Panjabi, 1990). Similar to this, there was no official protection for people's fundamental rights under the United Nations Relief and Rehabilitation Agency's (UNRRA) refugee regime, which preceded the International Refugee Organization (IRO). As a result, displaced people might have been returned against their choice. The right of individuals to escape persecution and select their refuge destination was acknowledged during the onset of the Cold War and the establishment of the IRO regime, even if UNRRA later condemned this practice (Hatam, 2019). Article 34 of the 1951 Convention pertains to the integration and naturalization of refugees. Other articles in the convention use the terms "settlement" and "resettlement" to imply a status of solutions, excluding repatriation altogether. However, Article 1 (C) of the Convention, which provides for the cessation of refugee status upon voluntary acquisition of a new nationality, voluntary reacquisition of the former nationality, and/or voluntary retrieval of

the protection of the country of origin, could be used to determine the necessity of addressing durable and permanent solutions and the temporary nature of refugees (Benhabib, 2020; Costello, Ioffe, & Büchsel, 2017; Kälin, 2003).

Regarding the 1951 Convention's syntax, Hathaway (2005) notes that there are two different ways to terminate refugee status: voluntary return to one's home country or repatriation as a result of a significant change in circumstances. He notes that "the routine use of this terminology is however problematic" in reference to voluntary repatriation. According to him, "returning" to one's place of origin differs from "repatriation." According to him, the 1951 Convention's Article 1(C)(4) terminates his refugee status "if the voluntary return amounts to reestablishment in the country of origin". However, he feels that this act of return and reestablishment is not properly called repatriation because there is no legal requirement that the outcome of the return home be the restoration of a normal relationship between the government of the country of origin and the "former" refugee. Instead than focusing only on returning to the place they left earlier, it seems that he appreciates and prioritizes the rebuilding of the relationship between the returnee and the government of their home country (Hathaway, 2005).

Similarly, the 1967 Protocol does not address voluntary repatriation as a means of resolving the refugee crisis. The UNHCR Statute was the only document to list voluntary return as one of the long-term solutions to the refugee crisis. Correspondingly, in 1966, when the UN General Assembly (UNGA) was adopting the Declaration on Territorial Asylum, a proposal to include an article stating that "nothing in the declaration shall be interpreted to prejudice the right of everyone to return to his country as stated in Article 13, paragraph 2 of the Universal Declaration on Human Rights" was opposed and rejected. Remarkably, even UNHCR considered external settlement as the standard answer and did not identify voluntary repatriation as the best option (Repatriation, 1996; Weis, 1967; Zimmermann, Dörschner, & Machts, 2011).

In the years that followed, there was a clear shift as more states voiced their opposition to this "bias" and demanded that the idea of preventing the causes of migration be promoted in favor of voluntary return. The Australian government's 1981 claim that there was no humanitarian or political justification for favoring foreign settlement as the long-term answer serves as the best explanation of this. Later, when the "North" no longer needed the labor force but still saw an influx of refugees from the "South," it became clear that the refugee regime's exilic bias needed to be changed and that "a new approach to the refugee problem... based on human rights" needed to be developed (Bupinder S Chimni, 2004).

The UNHCR designated the decade of 1990 as the decade of repatriation in this exact context. At that time, it was decided that being banished to either the first asylum country or a third country would have the same effects. As a result, the international community's first response to the persecution-related events in the form of external settlement appears hazy and has correctly changed to advocate repatriation as the preferred course of action. Although there has been a shift in the selection of durable solutions, which suggests a change in the relative merits of the three durable solutions, they still work well together and, when used in tandem, provide a unique approach to addressing the refugee crisis (Goodwin-Gill et al., 1985).

Currently, the right to return is included in a number of binding international human rights instruments, such as the International Covenant on Civil and Political Rights (Article 12(4))(United Nations Human Rights, 2002), the International Covenant on the Elimination of All Forms of Racial Discrimination (Article 5(d) (ii)) (UNGA, 2006), the Convention on the Rights of Child (Article 10(2)) (UNICEF, 2013), and other regional and national human

rights instruments. The Universal Declaration of Human Rights 1948 (Article 13(2)) is a non-binding instrument (UNGA, 1948).

### **3. The Meaning of Voluntary Repatriation:**

The opposite of refuge is repatriation, or return. Returnees are regarded as having been re-rooted and placed in their nation of origin, whereas refugees are viewed as having been uprooted and displaced. The guiding concept is still that refugees are granted temporary international protection because they are unable or unwilling to seek protection in their country of origin (Ghanem, 2003). A person's right to leave and return to any country, including their own, is stated in Article 13(2) of the Universal Declaration of Human Rights (UDHR) (UNGA, 1948). As a result, everyone has the fundamental freedom to travel and return to their country of origin at any time, including refugees (Trakroo, 2011).

UNHCR states that voluntary repatriation serves as the utmost desirable long-term solution for refugees and the international community (UNHCR, 1996). As a result, refugees apply for asylum close to the border of their home country in order to be able to return as soon as possible and resume their lives while helping to rebuild their home country (Jastram & Achiron, 2001). In recognition of this reality, two of UNCHR's main missions are listed in the organization's statute as "assisting governmental and private efforts to promote voluntary repatriation." Moreover, Article 35 of the 1951 Convention mandates that the state parties help UNHCR in carrying out its mandate. As a result, they are obligated to support the High Commissioner in advocating for voluntary repatriation as the primary solution to the refugee crisis. Furthermore, as previously stated, the international community has recently moved away from an exile-bias attitude and towards voluntary repatriation as the best course of action—as long as it is carried out "with safety and dignity," which is the accepted norm for return (Trakroo, 2011).

### **4. The Nature of Repatriation:**

As we get to the point about the nature of repatriation, it's crucial to remember that the phrase "voluntary" is typically attached to the idea of "repatriation" as the best course of action. The purpose is to highlight the requirement that all repatriations be voluntary and not the result of coercive measures taken by the host state or other parties in order for them to be considered the preferred option. The reasoning behind this is that only voluntary repatriations have the best chance of being long-lasting, sustainable, and honorable. Regarding repatriation, there is an assumption at the international level that in addition to being voluntary, it needs to be supported and overseen by governments and international organizations in compliance with the conditions of the tripartite agreement reached between the governments of the host country and the country of origin, as well as UNHCR. Furthermore, Conclusion 18 (XXXI) lists the essential conditions for voluntary repatriation, including the requirement that the refugees make their own decision to return home. Put differently, the idea of refugee voluntariness could only be articulated by the refugees themselves, voluntarily expressing their wishes. They should also be given the opportunity and support to return home in "safety" and "dignity." Following the development of a comprehensive theoretical framework for governments to collaborate in encouraging voluntary repatriation, Conclusion 40 (XXXVI) of 1985 was approved in order to bring together current ideas and real-world experience into a single text. When taken as a whole, these findings indicate that although refugees are free to return to their home countries, significant efforts must be made to address the underlying reasons of displacement (Hatam, 2019).

Voluntary repatriation in conditions of safety and dignity, ideally to the refugee's place of residency in the country of origin, is intended to provide the basis for a successful and sustainable return. Therefore, entering the nation of origin only by crossing the border will not be sufficient

and is not recommended. As the main refugee-related forum, UNHCR has learned from its large-scale voluntary repatriation program experience that some basic requirements are absolutely necessary for any voluntary repatriation program to succeed, regardless of its size or nature. These requirements include communication between the main players and a commitment from everyone to uphold the voluntary nature of the repatriation, which must be confirmed by international organizations. To enable a return in "safety" and with "dignity," there should also be a broad improvement in the circumstances in the nation of origin. Furthermore, the return must be conducted in an orderly, "safety," and "dignity" manner. Lastly, a formal agreement outlining the major parties' obligations and an agreement thereto should govern the fundamental terms and conditions of the return (Hatam, 2019).

In reality, fulfilling the requirement for a return that must be done in an orderly, "safe," and "dignity" manner depends on a number of variables. These include the ability of the nation of origin to accept newcomers and the nation of asylum to handle departures. In addition, it includes protocols designed to safeguard marginalized populations, such as women, children, and the elderly, as well as actions taken to guarantee "safety" and avoidance of prejudice both before and after departure. Furthermore, this criterion will specify the means by which humane conditions of departure and arrival can be guaranteed, as well as the means of facilitating UNHCR or other humanitarian organizations' access and reintegration support. Returning in "safety" refers more precisely to circumstances in which refugees return in terms of both material and physical protection as well as reconciliation and legal "safety." Aspects of legal "safety" in this context include, among other things, the establishment and application of amnesty legislation to guarantee that returns are shielded from prejudice or punishment only because they left their country of origin. This condition also includes procedures to assure the recovery of property or, in the event that recovery is not practicable, the entitlement to adequate compensation. Additionally, legislation to ensure a returnee's citizenship status must be in place (Crisp & Long, 2016; Takahashi, 1997).

While material security refers, for example, to options for income generation and access to land or a means of livelihood, physical security is not limited to protection from armed attacks and mine-free roads or at least designated settlement locations. Lastly, reconciliation calls for the development of mechanisms and organizations to support coexistence and confidence-building among locals and displaced people, as well as the promotion of equity between them. Now, in order for refugees to return with "dignity," they cannot be mistreated or handled roughly. They ought to be free to come back whenever they want, and if it's a spontaneous return, they ought to be allowed to do it at their own speed. Additionally, it implies that refugees are accepted fully and with respect by their home countries and that their rights are fully restored. It also means that they are not arbitrarily separated from other family members. UNHCR establishes, if needed, a presence in the country of origin for the dual purposes of support and protection until reaching a suitable level of integration since UNHCR and countries of asylum desire a sustainable solution to the problem of refuge. In the interim, it offers support for integration and works to guarantee that returnees are treated equally and that other basic human rights are upheld. Additionally, it could act as a conduit for communication between the opposing parties in the event that a nation still has internal polarization (Hatam, 2019).

As long as refugees are on its soil, the asylum-seeking nation is required to treat them in accordance with internationally recognized norms and is constrained by the fundamental principle of non-refoulement. Additionally, it should make it easier for UNHCR to carry out its leading role in encouraging, enabling, and organizing the return and determining whether it was a voluntary return

in the course of carrying out its duties related to international protection and monitoring refugee well-being. In the same vein, it should guarantee that refugees receive sufficient and impartial information on the circumstances in their country of origin. Each and every host nation must do its part to advance voluntary repatriation as a long-term fix (UNHCR, 1996).

### **5. Types of Repatriation:**

In general, voluntary repatriation can be split into two categories: spontaneous repatriation, or returning by the refugees' own means, and organized repatriation, or returning through UNHCR-organized methods and perhaps in conjunction with additional support. An organized repatriation is typically one that is voluntary and supported by UNHCR. It only happens when the cause(s) of displacement have completely stopped, after agreements are reached between the UNHCR, the countries of origin, and the asylum seekers. Conversely, spontaneous repatriation occurs without formal agreements being reached and is frequently carried out even before hostilities end. Therefore, other characteristics of this type of repatriation include the absence of registration processes and coordinated international aid. But it's crucial to emphasize that UNHCR's obligations for refugee protection and voluntary repatriation support apply to both types of repatriation. Since UNGA Resolution 428 (V) of December 14, 1950, which established the UNHCR Statute and urged governments to collaborate with UNHCR in carrying out its duties, including " assisting the High Commissioner in efforts to promote the voluntary repatriation of refugees," lists voluntary repatriation as one of UNHCR's functions (Hatam, 2019).

### **6. Pakistani Legal Policy for Immigrants and Refugees:**

Pakistan's main legislation governing foreigners on its territory was passed in 1946 and is known as the Foreigners Act. It covers matters pertaining to foreign nationals' entry into Pakistan, stay, and exit. Pakistan is now able to refuse entrance to any foreigner without appropriate travel documents owing to an amendment made to the Foreigner's Order of 1951 in 2000. Although the distinction between refugees and other immigrants has been made, there is currently no mechanism in place specifically for them. Authorities may also impose restrictions on foreigners' travel and housing arrangements within Pakistan and manage their apprehension or arrest (Abraham, 2013; I. Khan & Iqbal, 2009). Unless otherwise stated, all immigrants and refugees in Pakistan are deemed to be illegal aliens, and if they lack the required travel documents and visas, Pakistani authorities reserve the authority to detain them. Most of the petitions and applications for the release of refugees (States and Frontier Regions) are handled by the UNHCR and the Ministry of SAFRON. As undocumented migrants seeking to return home, refugees recognized by the UNHCR are treated as such. The authorization for these Afghan refugees to lawfully stay in Pakistan until September 2018 has long been overdue. A 2005 census and the distribution of over 2.16 million Proof of Registration (POR) cards to Afghan refugees who enrolled at that time made this possible. Any Afghan who is older than five and does not have a POR is seen by the Afghan government as an illegal foreigner. Pakistan's current regulations are inconsiderate to individuals seeking new residences because they lack legislation pertaining to refugees. The relevant federal law, the Foreigners Order, allows immigration officials to give or reject acceptance authorization based only on valid travel documents, in violation of the 1951 Convention Relating to the Status of Refugees (Younas, 2018). Republicans, however, have not ratified any international convention or pact pertaining to refugees, even though they have accepted the second-highest number of refugees from Afghanistan in more than 40 years.

Since 2004, the GoP has approved a number of international agreements, including but not limited to the 1990 Convention on the Rights of the Child, the 1996 Convention on the

Elimination of All Forms of Discrimination Against Women, and the 1996 Convention on the Elimination of All Forms of Racial Discrimination. In Pakistan, refugees are regarded as illegal migrants as long as it isn't demonstrated otherwise. Because of this, a number of them are in a precarious position and are frequently singled out by national authorities, subjected to extortion, and threatened with detention or removal. In a community like this, women and children bear an excessive degree of the abuse. The Interior Ministry of Pakistan is at the helm of handling refugee visas and maintaining refugee status records. Since 2001, non-citizens have been registered as "outsiders" by the ministry branch known as the National Aliens Registration Authority (NARA). The Commission for Afghan Refugees (CAR), a branch of the Ministry of SAFRON, manages Afghan refugees in conjunction with the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and other international agencies. Because the nation's borders are open and the government lacks a plan for handling them, illegal immigrants and asylum seekers are pouring into the nation. Pakistan has treated refugees inconsistently due to a combination of unhelpful circumstances and political concerns about security. Individuals who entered Pakistan illegally due to various issues are handled accordingly. As a result, over 2 million Bengalis live in Pakistan without authorization. They are employed as housekeepers in private residences as well as in the carpet and fishing businesses. Individuals who are fleeing persecution in countries such as Iran, Somalia, Iraq, Burma, or Iran are not protected by the state since these countries have not accepted them as refugees in line with international law. Tens of thousands of Afghan refugees were pouring across the border in the late 1970s, forcing Pakistan to grant the UNHCR permission to establish a presence on its territory. This was done in order for the UNHCR to assist and facilitate their situation. Until 2003, when the government struck an agreement with the UNHCR to allow refugees from other nations to work as well, Pakistan officially prohibited refugees from working on its territory (Masudi & Mustafa, 2022).

### **7. Invisible urban refugees:**

Generally speaking, the rules and strategies used by the host nation to influence refugees show how welcoming it is to them. There is a clear correlation between the way migrants approach their quest for safety and support and their level of happiness in their new nation of first refuge or resettlement. As to the 1951 Convention on the Status of Refugees, individuals who escape situations characterized by untrustworthiness and/or cruelty are immediately awarded refugee status, meaning their status is determined by the group as a whole rather than by an individual's assessment. This is especially important given the number of persons moving to developing nations where they lack the resources—financial and human—to finish the process of "person status determination." In actuality, registration is crucial for obtaining legal protection, assistance, and accurate data on the quantity and distribution of refugees; yet, it is not always achievable. As previously mentioned, Pakistan recognizes Afghans who have applied for asylum after the invasion of the USSR as refugees even though Pakistan is not a party to any convention pertaining to refugee-related concerns. According to the 1981 Handbook on Afghan Refugee Management released by the Government of Pakistan, Afghan citizens who apply for refuge may be granted temporary status on humanitarian grounds since they share social, religious, and ethnic values with people residing across the border. The GoP's position states that they attempted to register the migrants as soon as they arrived. Because of this, the process of registering refugees in Pakistan became sporadic in the late 1970s and eventually vanished entirely from the country's general populace. In the middle of the 1980s, the GoP provided pass-books, or personality/Shanakhti

papers, to refugees and their families in order to fulfil two purposes: to provide identification documents and aid (Zubair, Khan, & Shah, 2019).

The GoP started registering recently arrived migrants on occasion a few years ago. They were given passbooks, which they could only use to collect support and not for any other purpose, like verifying their identification or shielding them from danger. Since then, neither the government nor the United Nations Refugee Agency (UNHCR) have made any attempts to register refugees, provide them with identity documents (IDs), or provide them legal status. The UNHCR ordered that these refugees register by the middle of 2007 after confirming the enumeration review of Afghan refugees in camps and non-camps in 2005. Damned is international law. However, since most refugees in Pakistan did not face many protection issues between 1980 and 1990, the UNHCR and a large portion of the international community disregarded the absence of legal rights for refugees. Despite having no official status, many of them had been able to successfully integrate socially and economically into Pakistani culture because to the country's host community, which was typically supportive of the country's refugee population. As a result of their lack of legal standing, many educated Afghans were compelled to work as domestic servants or as laborers in the brick, carpet, and construction industries, among other non-formal sectors (Masudi & Mustafa, 2022).

When Pakistan closed its borders with Afghanistan in 2000, those who had crossed illegally but had not reported it to the UNHCR vanished. The quantity of "invisible urban refugees" increased as a result. Outside of camps, refugees are typically forced to live in rural areas or ghettos, which are frequently marked by dangerous conditions, a high concentration of illicit social activities, and substandard living conditions. Under such conditions, urban Afghan migrants experienced a growing hostility from the community. The local population's financial alternatives have decreased and leases have increased as a result of immigration and low wages for jobs. Everyone concerned was put in danger and in a hopeless situation as a result of the local government's harassment of these urban exiles and the growing animosity of the community. The GoP's declared stance that refugees had no right to look for work in this nation made their predicament worse. But the GoP formally reversed course in May 2004 and let UNHCR-registered refugees work (F. Khan, 2018). In the formal and informal sectors, migrants experienced harassment and mistreatment from their employers. All kinds of families, even those with young children, had to make deals with meager salaries and a lot of labor to get by. Despite the invasion, which was directed by the US and carried out in conjunction with Pakistan, nothing changed. Even though a significant proportion of Afghan refugees were travelling to adjacent nations by the end of 2001, the US government continued to maintain the border's closure. With the Taliban's defeat, the international world began to entertain the prospect of Afghan refugees, for the first time in a very long time, coming home. It had been a very long time since this had happened. As part of the Tripartite Arrangement, which also involved the Afghan government and the United Nations High Commissioner for Refugees (UNHCR), the Pakistani government promised to give Afghan refugees until March 2006 the chance to return home with UNHCR's assistance. Later, this chance was extended twice, first to December 2006 and again to December 2009. The federal cabinet considered the arrangement, and it was further extended until June 2020 (Hatam, 2019).

#### **8. Deporting Afghan refugees:**

In November 2023, the Pakistani government initiated an expulsion campaign targeting nearly 4 million Afghan refugees in Pakistan, asserting that 1.7 million among them were undocumented. This move, which commenced on November 1, was purportedly prompted by the government's attribution of a surge in attacks by armed groups, particularly the Tehreek-e-Taliban Pakistan

(TTP), also known as the Pakistani Taliban, to Afghan refugees. The government's stance was articulated by Sarfraz Bugti, the caretaker Interior Minister, who claimed that 14 out of 24 suicide bombings in the country that year were executed by Afghan nationals (Abid Hussain, 2023).

Despite criticism from the United Nations and rights groups over the forceful expulsion of refugees and migrants, there was a notable absence of visible outrage within Pakistan. This silence stood in stark contrast to the public outcry over Israel's forced displacement of Palestinian civilians in Gaza. A survey conducted by Gallup Pakistan in the first week of November revealed that 84 percent of respondents strongly approved of the government's move to expel "illegal" refugees and migrants, predominantly from Afghanistan. Additionally, 64 percent of respondents believed that the repatriation of Afghans would contribute to improved security and peace in Pakistan (Abid Hussain, 2023).

Muhammed Rehan, a bookshop owner in Karachi, expressed agreement with the government's decision, citing the presence of criminal elements among undocumented Afghan residents. Adil Musa, a real estate dealer in Islamabad, also endorsed the government's move, attributing it to enhancing the law and order situation and addressing the impact on the rental market. However, Pakistani sociologist Nida Kirmani pointed out a "great deal of racism" against Afghans in Pakistan, attributing it to years of "state-sponsored brainwashing" framing Afghans as enemies. Kirmani argued that the portrayal of Afghans as terrorists, despite the Pakistani state's historical involvement with groups like the Taliban in Afghanistan, has influenced public perception. She emphasized the role of xenophobic discourses during times of economic insecurity in creating a trend where Afghans become convenient scapegoats. Sara Malkani, a Karachi-based lawyer, highlighted that civil society groups showed some resistance to the government's decision, suggesting that muted public outrage may stem from fears of state suppression of anti-government protests. Malkani urged for greater transparency in expulsion processes and emphasized the need to educate the public about the conditions in Afghanistan that led Afghans to seek refuge in Pakistan. She underscored the humanitarian crisis in Afghanistan, expressing concern over forcibly deporting individuals to a country facing gender apartheid and widespread issues in education and employment under the Taliban government (Abid Hussain, 2023).

All "unregistered foreigners" who are still in Pakistan as of November 1, 2023, are subject to the deportation order. The majority of those impacted are Afghans, of whom there are over 4 million living in Pakistan and an estimated 1.7 million who lack proper documentation. Many have been residents for many years after fleeing Afghanistan during the Soviet Union's takeover of the nation in the 1980s. This new approach also poses a threat to the smaller populations of Yemenis and Somalians living in Pakistan without proper documentation. Pakistan's government was forced to establish 49 new deportation centers quickly in order to implement the program and reports state that the circumstances there are appalling. Every day, about 15,000 Afghans cross the border; 450,000 have reportedly already departed. Although Pakistani officials have promised that those who are Afghan and have proper documentation will not be deported, there have been rumors that some have nonetheless been singled out. Many lawful inhabitants have fled the country in anticipation of being intimidated by Pakistani officials and facing eviction from their landlords as a result. The nation's Supreme Court has started hearing challenges to the ruling in the meantime. In response to the escalating security concerns along the disputed Pakistan-Afghanistan border, Islamabad has asserted that its recent policy measures are primarily designed to combat terrorism. The border, colloquially known as the "Durand Line," has long been a stronghold for various extremist groups, including the Tehrik-e-Taliban Pakistan (Pakistani Taliban) and the Islamic State in Khorasan, an offshoot of the broader Islamic State group. Pakistani authorities have attributed

a surge in high-profile terrorist attacks to Afghan nationals, implicating Afghanistan's Taliban-led government of harboring militants. Prime Minister Anwaar-ul-Haq Kakar underscored this perspective in November 2023, stating that "a significant portion of those involved in criminal and terrorist activities are among these illegal immigrants" (Megan Fahrney, 2023).

The complex relationship between security needs, geopolitical factors, and the legal standing of Afghan nationals living in Pakistan presents a challenge to legal scholars. This changing environment makes it necessary to investigate the possible effects of the current immigration crackdown on the rights, protections, and general well-being of Afghan individuals. The historical background shows that such security-driven actions have happened before, most notably in 2016 when Pakistan deported some 600,000 Afghan migrants, which Human Rights Watch denounced as "the world's largest unlawful mass forced return of refugees in recent times." After then, Pakistan started building a fence along the Durand Line. Coinciding with a politically sensitive atmosphere and economic concerns, the forthcoming national elections in February 2024 add another level of difficulty (Megan Fahrney, 2023).

The current political environment in Pakistan provides insights into the possible course of migration policies. It is characterized by polarization and notable changes in leadership dynamics. The military's significant influence, particularly during the transitional administration, begs the question of what incentives underlie the deportation strategy. Given the widespread anti-immigrant sentiment and the military's overwhelming power, neither potential candidate—Imran Khan or Nawaz Sharif—appears to have much wiggle room on the migration issue, regardless of the election results. The anti-immigrant sentiment in Pakistan is exacerbated by the country's worsening economic situation, which is marked by skyrocketing food and gasoline costs, depreciating currency, and power outages. The difficulties faced by Afghan refugees have been made worse by the government's decision to impose a \$830 exit tax on unauthorized migrants due to financial duress. The United Nations, the US, and human rights organizations have strongly reacted to Pakistan's deportation program, calling on Islamabad to stop deportations and fulfill its international commitments to treat refugees with dignity. Notably, since the deportations are thought to violate international human rights standards, Pakistan's refusal to ratify the 1951 Geneva Convention presents legal concerns. The geopolitical implications of this migration policy are highlighted by the tense relations between Pakistan and Afghanistan as well as the possible humanitarian crisis that may arise in Afghanistan after the deportations (Megan Fahrney, 2023).

#### **9. Stance of Human Rights Watch:**

In a disconcerting turn of events, the Pakistani government has initiated a mass deportation campaign targeting Afghan refugees and asylum seekers, resulting in a surge of human rights abuses, as reported by Human Rights Watch on November 28, 2023. The report reveals that, since mid-September 2023, Pakistani authorities have forcibly expelled over 375,000 Afghans to Afghanistan, deporting 20,000 among them. This alarming trend has been accompanied by severe human rights violations, including mass detentions, property and livestock seizures, and the destruction of identity documents. These coercive measures have created a precarious environment for Afghans, compelling their return to Afghanistan, even when faced with life-threatening conditions. Of significant concern is the expulsion of Afghans born in Pakistan who have never lived in Afghanistan, as well as individuals at risk of persecution in Afghanistan, including women, girls, human rights defenders, journalists, and former government employees who fled after the Taliban takeover in August 2021. The discriminatory nature of these deportations underscores the urgency of examining the legal frameworks governing the rights and protections of Afghan nationals in Pakistan. Human rights activists and journalists report a campaign involving night

raids, beatings, threats, detentions, and even sexual harassment of Afghan women and girls by Pakistani police. The United Nations and the International Organization for Migration (IOM) have documented that 92 percent of Afghans leaving Pakistan expressed fear of detention by Pakistani authorities. The United Nations High Commissioner for Refugees (UNHCR) has acknowledged the gravity of the situation, particularly in light of the arriving hundreds of thousands of Afghans in Afghanistan during winter and an economic crisis. This influx, compounded by Pakistan's restrictions on carrying more than 50,000 Pakistani rupees out of the country, has left many arriving virtually destitute (Human Rights Watch, 2023).

#### **10. Pakistan's stance:**

The fact that Afghan refugees have been living in Pakistan for more than 40 years has highlighted Pakistan's excellent role as a host country. However, in light of Pakistan's substantial duties to millions of Afghan refugees, it is crucial to critically evaluate whether the present Afghan population in Pakistan is rightfully entitled to refugee status under international law. Although Pakistan has not formally ratified the 1951 treaty on the Status of Refugees and its 1967 Protocol, even non-parties to the treaty are guided by some of the convention's provisions, which have legal force under customary international law. According to Article 1 of the convention, a person who cannot return to their place of origin because of a "well-founded" fear of persecution for one or more specific reasons is considered a refugee.

One of the fundamental principles, non-refoulement, as stated in Article 33, forbids sending refugees to areas where their freedom or life would be in danger. But Pakistan's changing circumstances—which are typified by its political unrest, economic difficulties, and national security—have made it necessary to reassess the country's ability to support the substantial refugee population. When evaluating Afghanistan's stability, one can see that the circumstances that warrant refugee protection are becoming fewer in number. These reports come from the UN Interregional Crime and Justice Research Institute, the UNSC Monthly Forecast, and the UNSG/UNGA report on Afghanistan, which were published in May, June, and September of 2023, respectively.

Although the principle of non-refoulement is applicable beyond the 1951 agreement, it is worth noting that certain nations have limited their application after 9/11 by using the 'national security' exception. Australia is one such country. The combination of political, economic, and national security issues in Pakistan makes it extremely difficult to support a refugee population that is no longer eligible for international protection. The Afghan government bears the primary obligation to ensure security against persecution, as stipulated in the constitution of the Afghan monarchy from 1964. Notably, Abdul Hakeem Sharaee, the acting minister of justice for the Taliban, declared in September 2021 that the 1964 Afghan constitution would govern all matters pertaining to the state.

As such, once the official protection of refugee status evaporates, those of Afghan descent are reduced to the position of "migrants." According to the International Organisation for Migration, people who migrate across borders without authorization frequently do so in order to pursue livelihood opportunities and are subject to laws and regulations. When neighboring governments such as Pakistan are involved, the receiving state is responsible for taking the initiative to begin the deportation process of unlawful migrants. It is important to comprehend the various categories that exist within the Afghan people in Pakistan, as evidenced by the recent decision to expel unregistered Afghan nationals and the registration deadline of October 31. These groups include those who were born and raised in Pakistan, those who have proof of registration, those who have

received an Afghan Citizen Card, and those who entered after the Taliban took control of Afghanistan in 2021.

To guarantee due process and address the citizenship rights of persons born in Pakistan, a customized strategy that takes into account the unique circumstances of each category is necessary. Local variations require different rules that adhere to the legal and fair norms. Administrative frameworks that take these factors into account will promote a fair and all-encompassing response to the complex issues that Pakistan's Afghan community poses.

### **11. Conclusion:**

It can be concluded that Pakistan has continued to take a specifically liberal position towards Afghan refugees, coordinating with the refugee definition stated in the 1969 Organization of African Union (OAU) Convention. In spite of the fact that Pakistan is not a signatory to any international refugee agreements and does not have any national legislation pertaining to refugees, the government of Pakistan professes to have provided adequate administrative protection for Afghan refugees over the last forty years. Nevertheless, it is clear that more than just formal procedures are needed to address the refugee problem. Developing comprehensive national legislation that takes into account all relevant possibilities is an urgent requirement of the hour. Pakistan, struggling with its own shortcomings, needs outside help to find a long-term solution to the Afghan refugee crisis. Support from the international community is essential to Pakistan's efforts to meet the needs of Afghan refugees who have been living in the nation since the Soviet Union invaded Afghanistan almost 40 years ago. Given the persistent nature of this issue, cooperative initiatives are essential to guarantee the security and safety of Afghan citizens, highlighting the pressing need for global collaboration in conjunction with the establishment of strong domestic laws.

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