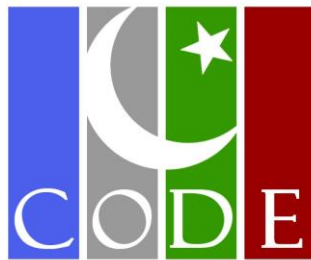




## Introductory Booklet

# **NATIONAL CONSULTATIONS ON AFGHAN REFUGEES IN PAKISTAN**



CURSOR OF DEVELOPMENT  
AND EDUCATION PAKISTAN



This Introductory Booklet for National Consultations on Afghan Refugees in Pakistan is prepared by CODE PAKISTAN with support from the Chief Commissionerate Afghan Refugees (CCAR), Ministry of States and Frontier Regions (SAFRON), Government of Pakistan, and United Nations High Commissioner for Refugees (UNHCR). The views and opinions expressed in this booklet are CODE PAKISTAN's, and do not necessarily represent the views and opinions of CCAR or UNHCR.



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## **About Us**

CODE PAKISTAN—an independent not-for-profit organization—is an effort to build an inclusive and prosperous Pakistan through development and education initiatives. We aspire to amplify the message of peace, tolerance, and inclusivity in Pakistan through our initiatives. We plan to offer sustainable empowerment by engaging communities for developing their capacities in helping themselves. We believe that only a peaceful, tolerant, and inclusive Pakistan can be a prosperous Pakistan. By holding National Consultations on Afghan refugees and sharing its findings with key government officials through the Ministry of SAFRON, we are hoping to augment Pakistan’s international standing, improve Pak-Afghan relations, and most importantly, help the Afghan refugees in securing a better future. To learn more about what we are doing for promoting peace, tolerance, and inclusivity in Pakistan, please visit our website [www.codepak.org](http://www.codepak.org).

## **Program**

### **Tuesday, January 10, 2017**

9:30 am-10:00 am	Arrival/Welcome Tea
10:00 am-10:05 am	Welcome remarks by UNHCR Representative Mr Indrika Ratwatte
10:05 am-10:10 am	Welcome remarks by Chief Commissioner Afghan Refugees Dr Imran Zeb
10:10 am-10:20 am	Seating in Board Rooms for simultaneous consultative sessions
10:20 am-10:30 am	Opening remarks by moderators of consultative sessions
10:30 am-11:30 am	Open Discussion on the thematic area
11:30 am-11:45 am	Tea Break
11:45 am-12:45 pm	Open Discussion
12:45 pm-01:00 pm	Wrap-up
01:00 pm-02:00 pm	Lunch



**Tuesday, January 24, 2017**

- 9:30 am-10:00 am Arrival/Welcome Tea
- 10:00 am-10:05 am Opening remarks by  
UNHCR Representative Mr  
Indrika Ratwatte
- 10:05 am-10:10 am Opening remarks by Chief  
Commissioner Afghan  
Refugees Dr Imran Zeb
- 10:10 am-10:20 am Seating in Board Rooms for  
simultaneous consultative  
sessions
- 10:20 am-10:30 am Opening remarks by  
moderators of consultative  
sessions
- 10:30 am-11:30 am Discussion on the Report of  
the first round of  
consultative sessions
- 11:30 am-11:45 am Tea Break
- 11:45 am-12:45 pm Drafting of  
Recommendations
- 12:45 pm-01:00 pm Wrap-up
- 01:00 pm-02:00 pm Lunch

## **Afghan Refugees in Pakistan: A Backgrounder**

### **Demographics**

It is estimated that there are around 2 million displaced persons of Afghan ancestry or origin presently living in Pakistan, mostly as refugees. The National Database and Registration Authority (NADRA) issued Proof of Registration (POR) cards to some 1,470,000 of these refugees during a country-wide registration in 2006-07. There are, in addition, an estimated 500,000 undocumented Afghans living in Pakistan who do not have POR cards. In 2014-15, relevant government departments proposed registration of the undocumented Afghan nationals accompanied by issuance of identity and/or travel documents by the Government of Afghanistan. This remains an exercise under consideration though.

It is pertinent to note here that 74 percent of Afghan refugees are second or third generation born in Pakistan. It is widely

recognized in the international community that Pakistan is one of the very few countries in the modern world that has hosted such a large refugee community over such an extended period of time.

### **Policy Framework**

Despite their sheer number and long duration of stay in Pakistan, along-term, comprehensive, and well-thought-out national policy for the management<sup>1</sup> and voluntary repatriation of Afghan refugees does not exist in the country. At present, the only official policy on the subject is the National Policy on Voluntary Repatriation and Management of Afghan Refugees, which

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<sup>1</sup> Throughout the document, reference has been made conjunctively to two concepts: voluntary repatriation and management. The term management is being used precisely because it is vague and could include any or all of the multiple policy options available to the state of Pakistan: continuing to host the refugees as registered foreigners, issuing them paid-for visas, naturalizing them, repatriating them to a third country or a mixture of all.

was adopted by the Government of Pakistan in July 2013. This document is neither comprehensive nor has it been updated in the wake of the National Action Plan. The adoption of a comprehensive policy is necessary for a more predictable and solutions-oriented approach to managing the refugee population, in line with the national interest of Pakistan, and the demands of domestic<sup>2</sup> and international law. A long-term strategy would further support efforts to mobilize resources from the international community, which will be needed for facilitating voluntary repatriation of Afghan refugees and continued support to Pakistani host communities pending the return of Afghan refugees to their homeland.

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<sup>2</sup> For domestic law supporting enforceable refugee rights, see Article 4 of the Constitution of Pakistan, which the courts have called the single most important clause of our constitution. It says that any “person for the time being in Pakistan” is also entitled to the protection of law.

## **Administrative Framework**

Following are the main administrative institutions involved in managing Afghan Refugees in Pakistan:

- I. The Chief Commissionerate Afghan Refugees (CCAR) and the provincial Commissionerates Afghan Refugees (CARs) under the Federal Ministry of States and Frontier Regions (SAFRON);
- II. The Ministry of Interior and its Directorate of Immigration and Passports; and
- III. NADRA.

In addition, there are two international bodies mandated to deal with refugee and migrant matters respectively:

- I. United Nations High Commission for Refugees (UNHCR); and
- II. International Organization for Migration (IOM).

## **Legal Framework**

The absence of a comprehensive policy is connected with the limited appreciation at the government level for a legal framework governing this issue at the plane of international as well as domestic law.

### *International Law*

Pakistan is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nor has it codified the Convention rights through a domestic statute. Even in the absence of any specific treaty obligations, however, the Government of Pakistan continues to be bound by international customary law on refugee rights. This is not only a rule of international law, but also a rule of Pakistan's domestic law. Pakistan's superior courts have repeatedly asserted that rights conferred by international customary law are enforceable in Pakistan, even in the absence of any specific treaty obligations or statutory backing. In *Najib Zarab Ltd vs the Government of Pakistan* (PLD 1993 Karachi

93), the Sindh High Court held that “the community of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with the Acts of the Parliament.” Therefore, the limited set of rights for refugees that exist independently of the Convention and are recognized under international customary law are, in principle, enforceable in Pakistan.

In addition, the Government of Pakistan signed a tripartite agreement with the Government of Afghanistan and UNHCR on August 2, 2007, which was renewed on July 19, 2016. These agreements reaffirmed the commitment of all involved parties to the Solutions Strategy for Afghan Refugees (SSAR), which remains the regional framework for identifying and implementing lasting solutions for the 1.5 million registered Afghan refugees in Pakistan with voluntary repatriation for Afghan refugees

and sustainable reintegration as the preferred option.<sup>3</sup>

### *Domestic Law*

The domestic legal framework governing Pakistani government's dealings with refugees consists of a set of citizenship-related statutes, namely: the Foreigners Act, 1946; the Pakistan Citizenship Act, 1951; and the Naturalization Act, 1926.

The government and its lawyers treat almost all Afghan refugees as “foreigners.” Accordingly, it has issued them POR cards under the authority of the Foreigners Act, 1946. The POR cards were first issued in October 2006, and have since been renewed a number of times. In June 2016, a six-month extension was granted, which was stretched out in September 2016 by another three months until March 31, 2017. In

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<sup>3</sup> Conclusions of the 27<sup>th</sup> Tripartite Commission Meeting Between the Governments of the Islamic Republic of Afghanistan and Pakistan and UNHCR, Bhurban, Pakistan (19 July 2016).



November 2016, the deadline was once again extended, and December 2017 has been announced as the reapproved date for the expiry of POR cards. The government's avowed commitment to the voluntary repatriation of all Afghans is premised on its viewing of them as foreigners residing within a country that is not theirs.

Some jurists have pointed out, however, that the categorization of most persons of Afghan origin living in Pakistan as "foreigner" or even as "refugees" is legally questionable. These jurists argue that most members of the Afghan refugee community in Pakistan have become entitled to Pakistani citizenship on account of any one of the following four grounds:

*Citizenship by Birth-place (jus soli):* Under Section 4 of the Pakistan Citizenship Act, everyone born in Pakistan can claim Pakistani citizenship. Although some exemptions to the rule of *jus soli* have been stated in Section 4 (such as for the children

of diplomats or enemy soldiers born on Pakistani soil), no exception has been made for the children of refugees. While one would assume that 74 percent of Afghan refugees could thus qualify for Pakistani citizenship, it is not the case owing to the ruling of the Peshawar High Court in *Ghulam Sanai v. National Registration Office* (PLD 1999 Peshawar 18). In this case, a Peshawar-born son of an Afghan claimed Pakistan citizenship under Section 4 of the Pakistan Citizenship Act. The court denied his claim by stating that Sections 4 and 5 of the Act must be read in conjunction. It follows from such a reading that the Pakistan-born child of a foreigner (including an Afghan refugee) would only be entitled to citizenship if his father was also a citizen of Pakistan at the time of his birth. While one could disagree with reading two different sections of a statute as if they were conjunctive clauses, this gives the government a justification for its refusal to grant refugees the benefit of Section 4 of the Citizenship Act.

*Citizenship by Descent:* Section 5 of the Citizenship Act gives Pakistani citizenship to children whose either parent is a Pakistani. Children born out of the intermarriage of an Afghan refugee with a Pakistani could technically qualify.

*Citizenship by Naturalization:* According to Section 3 of the Naturalization Act, 1926, the government may grant naturalization to anyone who has spent eight years in Pakistan, provided that they possess knowledge of at least one Pakistani language, have good character, and in the case of certain nationalities, are willing to give up the existing citizenship. Most of the 26 percent Afghan refugees who are not Pakistani-born could qualify for naturalization under this section. The Government of Pakistan, however, treats it as an enabling, non-enforceable provision, for the use of the word “may” in it. Another route to naturalization is through investment of Rs.5 million or more in Pakistan.

*Citizenship by Marriage:* Afghan women married to Pakistani men are entitled to citizenship on account of Section 10 of the Citizenship Act. In a 2007 decision in the *Suo Moto Case 1/K of 2006*, the Federal Shariat Court (FSC) extended this right to Afghan husbands of Pakistani women too. However, the FSC's judgment is presently not enforceable because the government has filed an appeal against that decision in the Supreme Court.

The foregoing suggests the existence of multiple legal instruments for the management of Afghan refugees has generated a host of legal questions, which need to be addressed. It is also worth noting that unlike Pakistan, several other countries with large refugee populations do have specialized laws on refugees.

Acknowledging the need for such legislation, in a meeting on August 15, 2013, the federal cabinet approved the adoption of a National Refugee Law. The Ministry of SAFRON

prepared the draft of the legislation with technical assistance from UNHCR. Yet, it has neither been widely discussed amongst stakeholders nor tabled in the parliament.

### **Afghan Refugees and the Economy**

Some observers claim that Afghan refugees are a burden on the Pakistani economy. No solid evidence has been brought forward to support this claim though. On the contrary, some sources suggest that refugees are already contributing to the economy by undertaking some of the most unwanted jobs like garbage collection and staffing brick kilns.<sup>4</sup> If given proper incentives and opportunities, refugees could boost the host

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See

<http://www.unhcr.org/news/latest/2011/1/4d2b1dd96/unhcr-looks-economic-contribution-afghan-refugees-pakistan.html>;  
<http://www.oecd.org/forum/oecdyearbook/refugees-are-not-a-burden-but-an-opportunity.htm>;  
and  
<http://www.worldfinance.com/infrastructure-investment/government-policy/refugees-are-an-economic-benefit-not-burden-to-europe>

country's economy through investment and trade. It is, therefore, imperative to further investigate and give recommendations on how such a development can be best achieved.<sup>5</sup> Attention also needs to be given to the opportunities that may have been created by the presence of Afghan refugees in Pakistan, and to outline a future strategy to better capitalize on the economic opportunities that arise from the refugee presence.

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<sup>5</sup> Studies such as *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities* available at <http://reliefweb.int/sites/reliefweb.int/files/resources/C477129C7D41DCFB852577B3006B2818-Full-Report.pdf> and *Refugee Economies: Rethinking Popular Assumptions* available at <http://reliefweb.int/sites/reliefweb.int/files/resources/refugee-economies-2014.pdf> could guide further research in this direction in the context of the protracted refugee situation of Pakistan.

## **The Emerging International Climate on Refugee Management**

The Government of Pakistan is not a new entrant in the field of refugee management. With over 37 years of experience in dealing with this issue, Pakistan is well placed to share both expertise and a vision with the world on this subject. This expertise in dealing with the refugee issue has become internationally significant in the emerging international climate where the refugee crisis has emerged as one of the biggest challenges for the international community. The Syrian refugee crisis is the biggest such crisis since World War II. Every day, international media presents numerous reports of people dying while attempting to flee from the cross-hairs of someone else's war. The media is saturated with images of mothers crying over their dead children and of little girls and boys sitting alone scared and confused with no one left in their world to take care of them. The election of a former United Nations High Commissioner for Refugees as

the UN's Secretary-General could enhance international focus on refugee issues.

Despite the opportunity for Pakistan to contribute and its potential, Pakistan has not been able to devise a workable system that effectively tackles the refugee issue both inside the country and on a global scale. In fact, while the sympathy of the world has risen to unprecedented heights for the displaced, Pakistan—after more than three decades of hosting refugees—has emerged with a worn and lackluster outlook leaving the country in a globally precarious situation. The Government of Pakistan's future steps on the matter of refugees will determine whether it can deter any negative spotlight from shining on it.

### **Islam and *Muhajireen* (Refugees):**

Immigration and refugees have remained a constant feature throughout Islamic history. To this effect, it is noteworthy to mention that Prophet Muhammad (PBUH) himself was an acknowledged refugee who fled



persecution in Mecca to be welcomed and embraced in Medina. A wealth of Islamic resources can be drawn from the Holy Quran, and other sources of Islamic jurisprudence to shed light on the phenomenon of *hijrah* (migration). In Chapter 8 (*al-Anfaal*) of the Holy Quran, migration has been referred to as the best planning by the Prophet,<sup>6</sup> while refugees are referred to as the true believers.<sup>7</sup> In Chapter 4 (*an-Nisaa*), the refugees are given the good news of plentiful provisions in this world and God's reward in the life hereafter.<sup>8</sup> The Holy Quran teaches to provide shelter for the refugees notwithstanding their religious affiliation.<sup>9</sup>

Therefore, one of Pakistan's unique contributions to the international refugee crisis could be to present an Islamic perspective on this issue, i.e., develop a

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<sup>6</sup>Al-Quran (8:30).

<sup>7</sup> Al-Quran (8:74).

<sup>8</sup> Al-Quran (4:100).

<sup>9</sup> Al-Quran (9:6).

framework for dealing with refugees drawing upon Islamic discourses. This Islamic perspective would be relevant not only in Pakistan but also globally for at least two reasons: First, the Islamic tradition has played some role in mobilizing the tremendous hospitality Pakistan's ordinary people have accorded to Afghan refugees for several decades, which is found wanting in some other cultural contexts where refugees are now going. Second, most of the world's refugee populations are being hosted in Muslim-majority countries where the perspectives offered by Islamic jurisprudence are socially relevant and publicly resonant. In Pakistan, as in other countries with Muslim majorities, there is a need to investigate Islamic resources for determining how best to approach the issue of the rights and duties of refugees.

## **Brief Introduction to Consultations**

The discussion in the backgrounder highlights the need for national legislation and long-term policy formulation on the issue of Afghan refugees to jettison the confusion caused by the existence of multiple legal instruments for the management of Afghan refugees as well as the lack of a comprehensive long-term policy to deal with the issue. Therefore, CODE PAKISTAN, in collaboration with Chief Commissionerate Afghan Refugees (CCAR), Ministry of States and Frontier Regions (SAFRON), Government of Pakistan, and the United Nations High Commissioner for Refugees (UNHCR), has taken the initiative to hold national consultative sessions on developing strategies for the voluntary repatriation and management of Afghan refugees in Pakistan. The consultative sessions will be held in two rounds in Islamabad on Tuesday, January 10, and Tuesday, January 24. Each round of consultative sessions will comprise

of simultaneous consultations on the following six themes:

1. Existing Legal Mechanisms to Manage Afghan Refugees in Pakistan: The Application of National and International Legal Instruments;
2. Institutional Mechanisms for the Management of Refugees in Pakistan: Past and Future;
3. The Emerging International Climate on Refugee Management: How should Pakistan Respond?
4. Tapping into the Economic Growth Potential of Afghan Refugees in Pakistan;
5. Political response to Afghan Refugees in Pakistan;
6. Islam and *Muhajireen*: Viewing Pakistan's Afghan Refugee Phenomenon from the Lens of Islamic Discourses on *Hijrah*.

The first round of consultations is aimed at general discussion around the six themes; while the second round is meant for converging on practicable recommendations on each of them. We are aiming to have the same participants in both the rounds. Your cooperation in this regard

will be highly appreciated. We hope to conclude the two rounds of consultations with a comprehensive report including policy recommendations on the matter of Afghan refugees in Pakistan, which will be shared with key government officials through the Ministry of SAFRON.

In making this effort, we are following in the footsteps of the Government of Pakistan, which has approved the adoption of a National Refugee Law in a federal cabinet meeting on August 15, 2013.

We believe that the absence of a comprehensive legal and administrative policy governing the issue of refugees is detrimental to Pakistan on many fronts; from security and border management to regulation of labor and migration. We also believe that that such an undertaking would be beneficial for promoting regional stability by strengthening Afghanistan-Pakistan relations.

**Format of Discussion**

The discussions on the six themes will take place simultaneously in each round on January 10, and January 24. A moderator will be moderating each of the sessions. After giving his introductory remarks, the moderator will open the floor for discussion. We request all our honorable guests to please help the moderators in conducting the discussions in a congenial atmosphere.

### **Further Assistance**

In case you would need any further assistance regarding the consultations, please do not hesitate to contact us. You could contact the following representatives of CODE PAKISTAN for any queries related to the consultations:

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