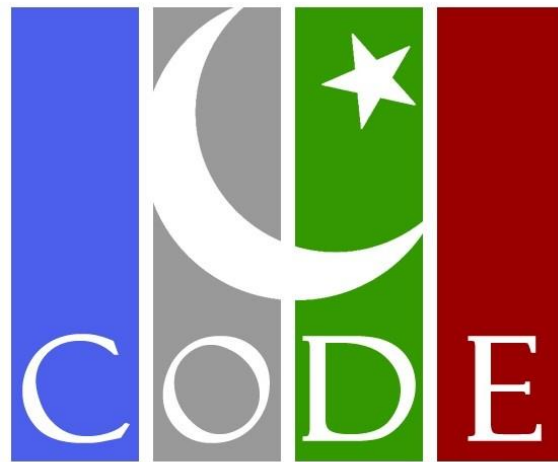


AFGHAN REFUGEES IN PAKISTAN

The Road Ahead



CURSOR OF DEVELOPMENT
AND EDUCATION PAKISTAN

CODE PAKISTAN

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The views expressed in this publication are those of CODE PAKISTAN and do not reflect the views of UNHCR or other parties.

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List of Acronyms

ACC	Afghan Citizen Card
ALAC	Advice and Legal Aid Center
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APS	Army Public School
ARV	Afghan Refugee Village
CAR	Commissionerate for Afghan Refugees
CCAR	Chief Commissioner Afghan Refugees
CDA	Capital Development Authority
CNIC	Computerized National Identity Card
CODE	Cursor of Development and Education
CRC	Convention on the Rights of Child
DFI	Development Finance Institution
DRA	District Registration Authority
FATA	Federally Administered Tribal Areas
FATF	Financial Action Task Force
FIA	Federal Investigation Agency
ICCPR	International Covenant on Civil and Political Rights
ICEM	Intergovernmental Committee for European Migration
ICESCR	International Covenant on Economic, Social and Cultural Rights
IG	Inspector General
IGP	Inspector General of Police
IHC	Islamabad High Court
IIUI	International Islamic University Islamabad
INGO	International Non-government Organization
IOM	International Organization on Migration
ISSRA	Institute for Strategic Studies, Research and Analysis
LEAs	Law Enforcement Agencies
MI	Military Intelligence

NACTA	National Counter Terrorism Authority
NADRA	National Database and Registration Authority
NARA	National Alien Registration Authority
NDU	National Defence University
NGO	Non-government Organization
NIC	National Identity Card
PHC	Peshawar High Court
PIMS	Pakistan Institute of Medical Sciences
POR	Proof of Registration
RAHA	Refugee Affected Hosting Areas Program
SAFRON	States and Frontier Regions
SHC	Sindh High Court
SIM	Subscriber Identity Module
SRO	Statutory Regulatory Order
SSP	Senior Superintendent of Police
U.S.	United States
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics

Executive Summary

While initially welcomed in Pakistan, the public and policy perception about Afghan refugees gradually changed from acceptability on humanitarian grounds to their denunciation as a threat to national security and an economic liability. The *Shigri Report*, published in 1998, was the first manifestation of such policy-level perceptions with regard to Afghan refugees. It linked Afghan refugees to crimes such as drug trafficking, arms smuggling, vehicle thefts, etc., blamed them for terrorism and the introduction of the so-called “Kalashnikov culture” in Pakistan, accused them of illegally obtaining Pakistani identity documents, criticized their commercial activities in Pakistan, and even criticized them for introducing differing social values and cultural traits, such as “a ferocious temperament and tribal character.” On the other hand, however, the report also highlighted some of the problems the refugees faced in Pakistan, such as their exploitation in the labor market, extortion of money from them by the police, and their lack of access to basic facilities and education.

The public and policy perception about Afghan refugees being a security threat has since surfaced every now and again with the ups and downs in the diplomatic relations between Afghanistan and Pakistan. Alongside the perception about Afghan refugees being a security threat, they are also perceived as an economic burden causing the economy a loss of \$200 billion, according to some senior-level government representatives. Open manifestation of such concerns at the highest policy levels has led to calls for their early repatriation and to media narratives depicting Afghan refugees as a cause of frustration among Pakistanis. Resultantly, Afghan refugees have been targets of hostile social media campaigns, such as #KickOutAfghans and #AfghanRefugeesThreat.

Data suggests, however, that the incarceration rate among the 1.4 million Afghan refugee population in Pakistan comes down to 6 prisoners per 100,000 population, which is considerably lower than the national incarceration rate of 41 prisoners per 100,000 population for Pakistan. It means that a Pakistani national is seven times more likely to be incarcerated for criminal activity than an Afghan refugee. The incarceration rates are as low even in provinces with high concentrations of Afghan refugees like Khyber Pakhtunkhwa (KP). Moreover, contrary to being an economic burden, Afghan refugees have been contributing to Pakistan’s economy in business sectors like the carpet industry, honeybee-keeping, fresh fruits, and operating heavy machinery, besides providing cheap labor for some other local industries. The around 565,000 mobile phone SIM cards obtained on the basis of the POR Cards by the refugees substantiates the economic footprint of Afghan refugees in the country. They have also been allowed recently to open bank accounts with their POR Cards. The refugees are still, however, unable to access a number of essential services such as renting or purchase of property, booking hotel rooms, registration of companies, trade permits, trade and business insurance, acquiring a driving license, and booking a ticket for public transport. If provided with these facilities on the basis of their POR Cards, the

contribution of Afghan refugees to Pakistan's national economy could be considerably enhanced.

The federal cabinet on Feb 7, 2017, agreed on enhanced border management, flexible visa regime for Afghan passport holders, documentation and registration of undocumented Afghans, extension of the validity of the POR Cards and the Tripartite Agreement, continued voluntary repatriation, and enactment of the national refugee law. So far, however, the cabinet decision had been only partially implemented. The cabinet decision is still valid, though, and cannot be overruled by the Prime Minister or any other individual or entity, except the cabinet. In a judgment of May 2016, the Supreme Court of Pakistan laid down that even the decision of the Prime Minister could not be equated with the decision of the federal government as the government under the Constitution of Pakistan, 1973, consisted of the Prime Minister and Cabinet.

Acquiring an Afghan passport and then obtaining a short-term single entry visa over and over again is another serious hurdle for Afghan refugees wanting to forego their refugee status for acquiring higher education in Pakistan or any other similar objective. While the implementation of the flexible visa regime as per the decision of the federal cabinet in February 2017 is still inconclusive, there is a need for introduction of a long-term flexible visa for Afghan nationals that would allow for stays of durations longer than 30 days, with more flexible provisions of third country visits and multiple visit visas. In addition to that, the Government of Pakistan would benefit from granting trade licenses to Afghan companies and allow them registration in Pakistan on PORs. This might encourage more and more Afghan entrepreneurs to invest in Pakistan and employ skilled labor in the form of Afghan refugees as part of a scheme for voluntary repatriation that would strengthen the potential for anchoring skilled labor returning to Afghanistan. This would also be helpful in improving the bilateral trade between Afghanistan and Pakistan that crossed the \$2 billion mark in 2017-18, most of it being exports from Pakistan to Afghanistan, including sugar, fresh fruit, vegetables, rice, wheat, flour, cement, petroleum products, and medicines.

The Pakistani Law of citizenship allows nationality to all persons who are born in Pakistan. All persons include the foreigners but in case of Afghan refugees, the jurisprudence has been moulded by the Superior Courts, by holding that Section 4 of the Pakistan Citizenship Act of 1951 would not be applicable to Afghan refugees. Recently, the Islamabad High Court, while relying on the ruling of the Peshawar High Court in Ghulam Sanai's case, went a step ahead and observed that the Afghan refugees in Pakistan would be subject to the UN Convention on the status of refugees, and not the national law of citizenship. While Prime Minister Imran Khan had pledged to grant citizenship to the Afghan refugees in Pakistan in September 2018, when a bill for amending the Pakistan Citizenship Act of 1951 was moved in the parliament pursuant to his announcement by one of the ruling party Members of the National Assembly (MNAs), the National Assembly's Standing Committee on Interior as well as the Interior ministry unanimously rejected the said bill on August 30, 2019, observing, once again,

that the proposed amendment would have serious repercussions for the security and economy of the country.

The first step to facilitate the process for streamlining of the economic activity of Afghan refugees to better benefit from its potential, is to address the ambiguity in relation to their legal status. From the legal discourse on Afghan refugees in Pakistan, it appears that Afghan refugees are singled out as different from refugees from other countries by the law and the courts of law in Pakistan, which is a contravention of the Constitution of Pakistan. Adoption of national refugee legislation is, perhaps, the best approach to address the legal confusion and challenges faced by Afghan refugees in lieu thereof. The draft legislation was developed by the Government of Pakistan in 2013 and had been shared with relevant stakeholders for review and comments. There is, however, a paucity of knowledge among some key decision-makers on refugee issues including the adoption of a national refugee legislation.

Since the current legal POR status of Afghan refugees in Pakistan presents challenges to Pakistan in terms of fully benefitting from their economic potential, there is a need to generate an informed policy level debate in parliament on the subject of Afghan refugees in Pakistan. Such a debate, covering not only the humanitarian angle to the refugee situation and the security aspect but also the economic contribution of Afghan refugees, would help in rationalizing the policy-level discourse on the subject as well as perceptions of the most relevant stakeholders. This could lead to a conducive atmosphere for the adoption of the national refugee legislation, which is a pre-requisite for alleviating the situation of Afghan refugees in Pakistan and enabling the country to benefit from their economic potential.

Introduction

In February 2017, the federal cabinet approved a Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals, which called for continued voluntary repatriation of Afghan refugees, as well as registration of the undocumented Afghans residing in Pakistan. In addition, the policy also called for the introduction of a flexible visa regime for various categories of Afghan refugees (health, education, unskilled labor, businessmen and spouses), adoption of the national refugee legislation, and enhanced border management. While there has been important progress in registering the undocumented Afghans, and in working towards enhanced border management, there has been limited progress on the implementation of the remaining elements of the February 2017 Policy, despite the fact that the government is obliged to implement the decisions of the federal cabinet.

Notwithstanding the February 2017 decision of the federal cabinet, Pakistan's policy toward Afghan refugees has, at times, varied from its implementation on the ground. For instance, up until recently, the policy discourse in Pakistan has largely focused on prioritizing "early repatriation" of Afghan nationals to Afghanistan, which could be perceived as a disregard toward the rights of Afghan refugees that are safeguarded by the Constitution of Pakistan, Customary International law, as well as various other laws, regardless of whether Pakistan is a party to the United Nations Convention Relating to the Status of Refugees, 1951, or its Additional Protocol of 1967. While there is a need for greater clarity on the rights of refugees as per the Constitution of Pakistan and other laws, Pakistan's prioritization of "early repatriation" is largely grounded in the following perceptions:

1. Afghan refugees in Pakistan pose a security threat.¹

¹ The concern about Afghan refugees being a security threat has been expressed at the highest level of the military command by the Chief of the Army Staff Gen. Qamar Javed Bajwa. See "Afghan refugees' return must for defeating terror: Bajwa" in *The Nation*, February 18, 2018. While commenting on Gen. Bajwa's statement, Hamid Saeed, former chief of Pakistan's military intelligence and a defense analyst, said, "There is evidence that terrorists hiding among the Afghan refugees were behind most of the recent terrorist attacks. Terrorists cross into Pakistan and stay in the refugee camps, making it humanly impossible to carry out any sort of surveillance." See <https://www.voanews.com/a/afghan-refugees-in-spotlight-amid-debate-over-sources-of-unrest/4260429.html> (last accessed on April 25, 2018). Former Federal Minister for Interior Chaudhry Nisar Ali Khan also once referred to Afghan refugees being used as facilitators in terrorist attacks. See Imran Mukhtar, "Afghan refugees used as facilitators in terror attacks: Nisar," *The Nation*, February 19, 2017. According to a letter written by the Inspector General (IG) Islamabad police to Islamabad Capital Territory (ICT) administration, a number of Afghan nationals residing in various slums in and around Islamabad were found involved in crimes of heinous nature. See Tahir Niaz, "Criminal Afghans to be repatriated with families," *The Nation*, June 8, 2015.

2. Afghan refugees are a burden on the economy of Pakistan.²
3. Pakistan is not getting the desired level of assistance from the international community in recognition of its long-lasting hospitality and support for Afghan refugees.³

Therefore, besides enhancing clarity on the rights of Afghan refugees in Pakistan, there is also a need to ascertain whether the aforementioned policy perceptions are in sync with the reality of the Afghan refugee situation in Pakistan or not. This report represents an effort at revisiting some of the following fundamental questions: Who is a refugee under Pakistan's national laws and international legal obligations and whether Afghan refugees constitute an exception in Pakistan's legal discourse on refugees? What rights are accrued to Afghan refugees living in Pakistan according to Pakistan's domestic laws, including the Constitution of Pakistan? What are the national and provincial institutions of Pakistan that need to be involved in any shift in the Afghan refugee policy? Do Afghan refugees pose a threat to the national security of Pakistan? Are Afghan refugees a burden on Pakistan's economy? And, most importantly, what would the future look like for Pakistan and the refugees living within its borders, given the current policy discourse on Afghan refugees, especially in view of the statements of Prime Minister Imran Khan in connection with the need for the review of the existing refugee policy?

The first chapter of the report provides an overview of the Afghan refugee situation in Pakistan, including the timeline and context of their arrival in Pakistan, the exigencies of their management, and the geographical spread of their settlement. The second chapter gives a comprehensive overview of the legal and administrative framework governing the management of Afghan refugees in Pakistan. The third chapter of the report describes how the policy perception in Pakistan changed from benevolent to apprehensive over the period of time and its causes. The fourth chapter provides an analytical commentary on the disconnect between the policy perception in Pakistan and the realities on the ground, including the perceptions about the involvement of Afghan refugees in crime and the economic burden associated with their protracted presence in Pakistan. The fifth chapter discusses the road ahead for the management of Afghan refugees in the country. These five chapters are followed by a conclusion and recommendations for the way forward.

² See Sanaullah Khan, "Afghan refugees granted sixth extension for their stay in Pakistan," *Dawn Karachi*, January 30, 2018; Editorial, "The burden of extensions," in *The Express Tribune*, March 31, 2018. Pakistan's Federal Minister of State and Frontier Regions (SAFRON) Lt. Gen. (Retd.) Abdul Qadir Baloch said in 2013 that Pakistan had spent more than \$200 billion in the last 30 years on Afghan refugees and could not afford to host them further. See "Burdened economy: 'Pakistan has spent \$200b on Afghan refugees'" *The Express Tribune*, October 26, 2013.

³ See "Afghan refugees' repatriation to be expedited," *The Nation*, February 21, 2018.

Afghan Refugees in Pakistan

Afghans had started fleeing their country in 1978, even before the Soviet invasion. The communist takeover by the People's Democratic Party of Afghanistan (PDPA) forced the Islamist Afghans to leave, and by June 1979, 109,000 Afghans sought asylum in Pakistan. The second communist coup of September 1979 was another motivating factor for a large-scale exodus⁴. Due to internal conflicts between the Marxist and Islamist groups, a large number of Afghan citizens migrated to Pakistan in search of asylum. Pakistan was chosen as the preferred country of destination due to its geographic proximity and cultural affiliations with Afghanistan, but also due to its benevolent refugee policy at that time.⁵ Poor border management on the western frontier was another enabling factor for population movements. More importantly, the Government of Pakistan implicitly accepted all Afghans crossing the borders into the then FATA and Balochistan without demanding significant documentation, registration or any other legal arrangement. With the Soviet invasion of Afghanistan, there was a significant increase in refugee influx, and from January to December 1980, an estimated 80,000 to 90,000 refugees made their way across the border every month. According to UNHCR statistics, the total number reached an unprecedented high of 3,270,000 in 1989, which amounted to more than 3% of Pakistan's total population at the time. Up until 2002, the Afghan refugees in Pakistan were the single largest refugee population in the world.⁶

Timeline of the Afghan Refugee Settlement in Pakistan

Pakistan received the first wave of Afghan refugees in 1979, prior to the Soviet invasion of Afghanistan. It was estimated that at least one million Afghans reached Pakistan by 1979, with a total of 3.3 million having fled to Pakistan and Iran by 1980⁷. Due to the large number of refugees arriving in Pakistan, UNHCR set up its first office in the same year. According to official government figures, the number of registered refugees reached 2 million by 1981, and 3.2 million by 1990, in addition to an estimated 500,000 unregistered refugees. As the influx continued in response to conflict, UNHCR established 334 official refugee camps in the then North West Frontier Province (NWFP) now called Khyber Pakhtunkhwa, Balochistan, and Punjab provinces.⁸

⁴ The Afghan Refugees in Pakistan, By Frédéric Grare and William Maley

⁵ Dr. Hidayet Siddikoglu, "Pakistan's Inconsistent Refugee Policy: Identity and Cultural Crisis of Afghan Refugees in Pakistan," January, 2016.

⁶ Frederic Grare & William Maley, "The Afghan Refugees in Pakistan." *Middle East Institute, Fondation pour la Recherche Strategique*. June 30, 2011, p.2. Available at: http://www.operationspaix.net/DATA/DOCUMENT/4042~v~The_Afghan_Refugees_in_Pakistan.pdf

⁷ "Timeline of Afghan Displacement into Pakistan," *IRIN*, February 27, 2012. Available at: <http://www.irinnews.org/news/2012/02/27/timeline-afghan-displacements-pakistan>

⁸ Ibid.

In 1994, Pakistan experienced the second wave of mass refugee influx. It is estimated that 74,000 refugees arrived in Pakistan following the unrest due to the struggle for control in Afghanistan among rival warring factions after the 1989 Soviet withdrawal. With the situation in Afghanistan not improving, in 1996, around 50,000 more fled to Pakistan, specifically to Khyber Pakhtunkhwa, after the capture of the eastern city of Jalalabad and the capital Kabul by the Taliban.⁹

In 2002, two unexpected waves of Afghan refugees occurred in the southwestern province of Balochistan. Despite closing its borders to Afghan refugees in 1998, the Government of Pakistan made an exception for the early 2002 arrivals and let them remain until voluntary repatriation.¹⁰ However, when another wave of Afghan refugees arrived later that year, the Government of Pakistan closed the borders again, leading to an estimated 26,000 stranded in the Chaman-border town in Balochistan. This became known as the “waiting area.” UNHCR Afghanistan and its partners prepared a temporary settlement for those refugees outside Kandahar in Afghanistan.

Voluntary repatriation of Afghan refugees also commenced in 2002 as the Taliban control in Afghanistan ended. UNHCR Pakistan set up voluntary repatriation centers in April and May of that year. To accommodate the growing number of requests for assisted return, UNHCR opened voluntary repatriation centers in major cities of Pakistan, especially where there were higher concentrations of Afghan refugees, i.e. Karachi, Islamabad, Quetta, and Peshawar.¹¹ UNHCR assisted 1.5 million Afghans to repatriate from Pakistan to Afghanistan in 2002. According to the agency, this marked the single largest refugee return in the world since 1972. An estimated 1.1 million others returned to Afghanistan independently, without UNHCR’s assistance.¹²

From 2007 to 2012 the voluntary repatriation decreased rapidly when the conflict in Afghanistan gained momentum once again.¹³ In the 2012 international conference held in Geneva and titled “Solutions Strategy for Afghan Refugees, to support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries,” it was stated by UNHCR that as of May 2011, there were 2 million registered refugees in Pakistan, including some 300,000 persons whose registration needed to be validated. In addition, there were approximately 1 million undocumented Afghans in Pakistan.¹⁴

⁹ Ibid.

¹⁰ “The Global Report 2002,” *UNHCR*, June 30, 2003.

Available at: <http://www.unhcr.org/3edf4ff37.pdf>

¹¹ Ibid.

¹² “Timeline of Afghan Displacement into Pakistan,” *IRIN*, February 27, 2012.

¹³ Ibid.

¹⁴ “International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries,” *UNHCR*, May 2012. Available at: <https://data2.unhcr.org/en/documents/download/62341>

According to UNHCR's data, as of 2019 Pakistan continues to host some 1.4 million registered Afghan refugees with 32% residing in 54 refugee villages and 68% living in their host communities in urban, peri-urban or rural areas. 4,374,208 have successfully repatriated to Afghanistan with the help of UNHCR between 2002 and 2018.¹⁵

Prima Facie Status and Accepting Refugees

The regular process for determining whether a person qualifies for international protection as a refugee under international, regional or national law is termed as refugee status determination (RSD). In most circumstances, RSD is conducted on a case-by-case basis, either by the host country or by UNHCR in cases where the host country does not have the necessary mechanisms in place for providing asylum. In the occurrence of a mass influx where exodus from the country of origin is prompted by circumstances that are recognized under the UNCHR mandate for group determination of refugee status, the principle of "*prima facie* recognition" is adopted, which grants automatic refugee status upon registration.¹⁶ In the context of the Afghans who were fleeing en masse into Pakistan, they were presumptively accepted as refugees under *prima facie* recognition up until 1998, after which the Government of Pakistan decided that new arrivals no longer qualified as refugees on a *prima facie* basis. Nonetheless, this did little to hinder those seeking to enter into Pakistan in order to escape the continued conflict in Afghanistan.¹⁷

According to the paper titled *Afghan refugees in Pakistan during the 1980s: Cold War politics and registration practice* written by Rüdiger Schöch,¹⁸ the Government of Pakistan was not comfortable with the idea of letting UNHCR have complete control over refugees in its territory. In fact, the Government of Pakistan's precondition for granting UNHCR access to its territory was that all aid would be channeled through the Pakistani authorities. In order to coordinate the distribution of relief goods and services in the Afghan Refugee Villages (ARV) for such a large number of refugees, the Government of Pakistan created the Commissionerate for Afghan Refugees (CAR), which selected notable refugee representatives, the so-called "maliks," as intermediaries between

¹⁵ "Operational Portal Refugee Situations: Pakistan," *UNHCR*. Available at: <https://data2.unhcr.org/en/country/pak>

¹⁶ "Guidelines on International Protection No.11: Prima Facie Recognition of Refugee Status," *reliefweb*, June 2015. Available at: <https://reliefweb.int/report/world/guidelines-international-protection-no-11-prima-facie-recognition-refugee-status>

¹⁷ "Jalozai Camp: A Living Cemetery," *Medecins Sans Frontieres*, February 2002. Available at: <https://www.msf.org/jalozai-camp-pakistan-living-cemetery>

¹⁸ "Afghan Refugees in Pakistan During the 1980s: Cold War Politics and Registration Practice," Research Paper No.157, *UNHCR Policy Development and Evaluation Service*, June 2008.

refugees and the administration. Among other tasks, the maliks were also responsible for the distribution of food rations among refugee families.¹⁹

Consequently, the Pakistani authorities started issuing identity papers known as a ‘*Shinakhty Pass*’,²⁰ containing the particulars of the head of each family and the respective family members, entitling them to assistance and providing protection from deportation. The Government of Pakistan determined that such a pass would be issued only if the refugees could produce certified proof of affiliation with one of those Afghan political parties or resistance groups against the Soviets that were recognized by the government. Thus, in order to be eligible for assistance and to be recognized as a refugee, every Afghan refugee had to register with one of the seven resistance groups recognized by the Pakistani government. In addition, the Pakistani authorities used these aforementioned parties to keep track of new arrivals. They were responsible for a preliminary security screening of the new arrivals. The results of the screening were subsequently communicated to the Pakistani authorities. All those Afghans who were designated by the parties to be a security threat were automatically barred from recognition as refugees.²¹

This system gave the parties “a veto over whether a refugee would receive assistance...”²² UNHCR’s role in the registration process was reduced.²³

The majority of Afghan refugees were Pashtuns, Hazara, and Baloch who consequently settled in Khyber Pakhtunkhwa and Balochistan due to their cultural, linguistic and religious affiliations with the local population. They commonly moved in with distant relatives or into refugee camps that were established on the outskirts of the cities.²⁴ Other major Afghan ethnic refugee groups were Uzbeks, Tajiks, and Turkmens from the northern provinces of Afghanistan. Unlike Pashtuns and Hazara, these groups had no ethnic kinfolk in Pakistan. Their languages were different from the host communities in Khyber Pakhtunkhwa and Balochistan. Almost 18,500 Uzbek and Tajik refugees lived

¹⁹ Ibid.

²⁰ <https://www.academia.edu/36616482/REPORT-Refugee-Afghan-Pakistan>

²¹ “Afghan Refugees in Pakistan During the 1980s: Cold War Politics and Registration Practice,” Research Paper No.157, *UNHCR Policy Development and Evaluation Service*, June 2008.

²² J. Rone, “By all Parties to the Conflict. Violations of the Law of War in Afghanistan,” *Helsinki Watch Committee and Asian Watch Committee*, 1988, p.90.

²³ “Afghan Refugees in Pakistan During the 1980s: Cold War Politics and Registration Practice,” Research Paper No.157, *UNHCR Policy Development and Evaluation Service*, June 2008.

²⁴ Emadi Hafizullah, “Resettlement Pattern: The Afghan Refugees in Pakistan,” *Cultural Survival Quarterly Magazine*, December 1988. Available at:

<https://www.culturalsurvival.org/publications/cultural-survival-quarterly/resettlement-pattern-afghan-refugees-pakistan>

in 320 villages established for them in Karachi, the capital of the Sindh Province of Pakistan.²⁵

Presently, 58 percent of the Afghan refugees reside in Khyber Pakhtunkhwa, while Balochistan hosts 23 percent, Punjab 12 percent, Sindh 5 percent, and Islamabad 2 percent of registered Afghan refugees. 85 percent of Afghan refugees in Pakistan are of Pashtun ethnicity, while 6 percent are Tajik, 3 percent are Uzbek, 2 percent Hazara, 2 percent other, 1 percent Turkmen and 1 percent Baloch.²⁶

²⁵ Ibid.

²⁶ “Pakistan: Afghan Refugee Update,” *UNHCR*, November 30, 2018. Available at: <https://data2.unhcr.org/en/documents/download/67433>

Administering Afghan Refugees

The framework for the management of Afghan refugees in Pakistan is governed by various legal and administrative mechanisms at the international and national level to ensure regulation of the refugee population in the country.

Applicable International Legal Framework

The United Nations Convention Relating to the Status of Refugees 1951

The United Nations Convention Relating to the Status of Refugees, adopted in 1951, is the centerpiece of international refugee protection today.²⁷ The 1967 Protocol to the Convention later removed any geographical and time limitations defined in the Convention and thus gave it universal coverage. The Convention provides the most comprehensive codification on the rights of refugees at international level. 145 States are currently Parties to the Convention. It defines the term “refugee,” outlines the rights of refugees and the legal obligations of States to protect them.

A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.²⁸ The emphasis thus is on all forms of persecution.

The Convention further elucidates the rights and protections afforded to refugees and asylum-seekers, including protection against discrimination on the basis of race, religion or country of origin,²⁹ the freedom to practice their religion,³⁰ access to courts,³¹ the right to education,³² and freedom of movement.³³

Although Pakistan is not a party to the Convention, the principle of *non-refoulement*³⁴ as laid down in the Refugee Convention, and other international legal frameworks - such as International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention Against Torture, the Organization of African Unity 1961 and the 1984 Cartagena Declaration on Refugees - still applies to non-signatory States under customary law. The principle safeguards a refugee’s right to not be expelled from a State

²⁷ United Nations General Assembly resolution 429(V) of 14 December 1950. Available at: <http://www.unhcr.org/refworld/docid/3b00f08a27.html>

²⁸ Article 1, United Nations Convention on the Status of Refugees 1951

²⁹ Article 3 of the Refugees Convention, 1951

³⁰ Article 4 of the Refugees Convention, 1951

³¹ Article 16 of the Refugees Convention, 1951

³² Article 22 of the Refugees Convention, 1951

³³ Article 26 of the Refugees Convention, 1951

³⁴ Article 33 (1) of the Refugees Convention, 1951

if there exists reasonable fear that the person of concern may be subjected to persecution on return to the State from which they fled.

Despite the fact that Pakistan is not a State Party to the 1951 Refugee Convention, a recent judgment of May 2018 by the Islamabad High Court held that Pakistan was a signatory to the UN Convention Relating to the Status of Refugees and that matters relating to refugees fell within the domain of the Convention and not that of any Pakistani law, with the exception of a few fundamental guarantees regarding restricted rights to movement, trade, business, liberty, and equality.³⁵

Customary International Law – The Principle of *Non-Refoulement*

The principle of *non-refoulement* is binding on all States - regardless of whether the concerned State is a party to any treaty - on grounds that it is a recognized principle of Customary International Law. According to this principle, no “State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”³⁶

The International Bill of Human Rights.

The International Bill of Human Rights was the name given to UN General Assembly Resolution 217 (III)³⁷ and the two international treaties established by the United Nations. It consists of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (ICCPR) with its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The ICCPR and the ICESCR, mirror the Universal Declaration on Human Rights (UDHR), albeit with some differences, and turn soft law into binding obligations for States.³⁸ Together, they lay down the fundamental rights of all human beings.

Universal Declaration of Human Rights (UDHR) 1948

The Universal Declaration of Human Rights, 1948, recognizes the right of persons to seek asylum from persecution in other countries. It states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.”³⁹ It further lays down important rights, such as the freedom of movement, the right to liberty and security of

³⁵ Saeed Abdi Mahmud v. NADRA (2018 CLC 1588)

³⁶ “NGO manual on international and regional instruments concerning refugees and human rights”, UNHCR, Geneva July 1998, European Series, Volume 4 – No 2 – 1998/07, p. 17. Available at: <http://www.unhcr.org/46e660d70.pdf>

³⁷ UDHR dated 10 December, 1948

³⁸ Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15 (Rev.1), p. 1. Available at: <https://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>

³⁹ Article 14, Universal Declaration of Human Rights, 1948.

a person, the right to education, the right to employment, the right to health facilities and the right of access to courts.

International Covenant on Civil and Political Rights 1966

The International Covenant on Civil and Political Rights (ICCPR) reiterates the principle of *non-refoulement*. Article 2 of the Covenant obligates member States to respect and ensure implementation of the rights guaranteed under the Covenant, for all persons in their territory and all persons under their control. It further contains an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as those contemplated by articles 6⁴⁰ and 7⁴¹ of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed. The relevant judicial and administrative authorities should be made aware of the need to ensure compliance with obligations under the Covenant in such matters⁴². This also means that refugees cannot be subjected to unfair treatment, and cannot be expelled from the State they have taken refuge in. Pakistan co-signed the above Covenant on April 17, 2008 and further ratified it on June 23, 2010.

International Covenant on Economic, Social, and Cultural Rights 1976

According to the International Covenant on Economic, Social and Cultural Rights (ICESCR) “State parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴³ This encompasses refugees too. Moreover, the Covenant also ensures a person’s right to work⁴⁴, right to social security⁴⁵, right to adequate health care facilities⁴⁶, and their right to education⁴⁷. Pakistan signed the ICESCR on November 3, 2004 and ratified the Covenant on April 17, 2008.

⁴⁰ Article 6 (1), ICCPR, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

⁴¹ Article 7, ICCPR, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

⁴² General Comment No. 31 “The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, para. 12. Available at: <http://www.refworld.org/docid/478b26ae2.html>

⁴³ Article 2 of the International Covenant on the Economic, Social and Cultural Rights, 1976.

⁴⁴ Article 6 of the ICESCR, 1976.

⁴⁵ Article 9 of the ICESCR, 1976.

⁴⁶ Article 12 of the ICESCR, 1976.

⁴⁷ Article 13 of the ICESCR, 1976

United Nations Convention on the Rights of the Child (CRC) 1989

The Convention on the Rights of the Child confirms that all member States shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee, in accordance with the applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.⁴⁸ It is important to ensure that this provision is abided by since refugee children are the most vulnerable in situations where they have been forced to migrate to another State, and to provide them safety and guarantee their rights is fundamental to the international humanitarian standards. Pakistan has been a signatory to the above Convention since 1990.

Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment 1987

The Convention against Torture aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world, and it requires States to take effective measures to prevent torture in any territory under their jurisdiction, and forbids states to transport people to any country where there is reason to believe that they will be tortured. The Convention restates the principle of *non-refoulement*, which, as mentioned above, forms part of the customary international law, and holds that “no State party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”⁴⁹ Pakistan co-signed the above in April 17, 2008 and further ratified it on June 3, 2010.

UNHCR’s Mandate and Statute

The UNHCR’s original core mandate covers refugees, that is, all persons outside their country of origin for reasons of feared persecution, conflict, generalized violence, or other circumstances and who, as a result, require international protection, returnees⁵⁰ and

⁴⁸ Article 22, Convention on the Rights of the Child, 1989

⁴⁹ Article 3, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987

⁵⁰ Returnees are former refugees who have returned to their country of origin spontaneously or in an organized fashion but are yet to be fully integrated, including those returning as part of the operationalization of the cessation clauses in the 1951 Convention and regional equivalents. See Art. 1C (5) and (6), 1951 Convention.

stateless persons.⁵¹ Although UNHCR does not have a general mandate for internally displaced people, UNHCR may be involved in certain circumstances to enhance protection and provide humanitarian assistance. UNHCR is primarily mandated to provide international protection and humanitarian assistance to the aforementioned groups of people.⁵²

The Global Compact on Refugees 2018

On 17 December 2018, the United Nations General Assembly affirmed the Global Compact on Refugees, after two years of extensive consultations led by UNHCR with Member States, international organizations, refugees, civil society, the private sector, and experts. It provides a framework for more predictable and equitable responsibility-sharing, based on a premise that sustainable solutions to refugee situations cannot be achieved without international cooperation. It further provides a blueprint for governments, international organizations, and other stakeholders to ensure that host communities get the support they need and that refugees can lead productive lives. Its four key objectives are to ease the pressures on host countries; to enhance refugee self-reliance; to expand access to third-country solutions; and to support conditions in countries of origin for return in safety and dignity.⁵³

Applicable Domestic Laws

The Constitution of Pakistan

Under the 1973 Constitution of Pakistan, in terms of fundamental guarantees, the threshold is either the person or the citizen. Rights to equality before law and equal protection,⁵⁴ security of person,⁵⁵ safeguard against illegal arrest and detention,⁵⁶ right to fair trial,⁵⁷ protection against slavery and forced labor,⁵⁸ protection against

⁵¹ A stateless person is someone who is not considered a national by any State under the operation of its law (article 1 of the 1954 Convention relating to the Status of Stateless Persons). In accordance with GA resolutions 3274 XXIX and 31/36, the Office of the High Commissioner has been designated, pursuant to Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, as the body to which a person claiming the benefits of this Convention may apply for the examination of his or her claim and for assistance in presenting it to the appropriate authorities.

⁵² See the 1950 Statute of the Office of the United Nations High Commissioner for Refugees, paras. 8(c) & (b), 9 and 10.

⁵³ UNHCR, The Global Compact on Refugees, 2018. <https://www.unhcr.org/the-global-compact-on-refugees.html>

⁵⁴ Article 4 of the constitution of Pakistan, 1973.

⁵⁵ Article 9 of the constitution of Pakistan, 1973.

⁵⁶ Article 10 of the constitution of Pakistan, 1973.

⁵⁷ Article 10-A of the constitution of Pakistan, 1973.

⁵⁸ Article 11 of the constitution of Pakistan, 1973.

retrospective punishment,⁵⁹ protection against double punishment,⁶⁰ inviolability of dignity and privacy,⁶¹ protection of property rights,⁶² safeguard against any special taxation,⁶³ and the right to compulsory education for children below the age of sixteen years⁶⁴ are available to all persons. As the term ‘person’ has not been defined in the Constitution or any other legal document, it bears the general connotation, according to which the term would translate to include every human being. Accordingly, refugees, illegal immigrants and stateless persons enjoy domestic legal protection in the aforementioned matters. With reference to Article 4 of the Constitution,⁶⁵ refugees also have the right of equality before law and equal protection of law, which cannot be withdrawn by the executive branch nor the Parliament.

Moreover, refugees, illegal immigrants and stateless persons in Pakistan may also access domestic courts to claim rights that are accrued under customary international law. It has been clarified by the superior courts of Pakistan on multiple occasions that customary international law should be considered a part of the domestic law. It was held by the Sindh High Court 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.”⁶⁶

This judgment by the Sindh High Court implies that - notwithstanding the fact that Pakistan is not a signatory to the 1951 Refugee Convention or its 1967 Protocol, and despite the country’s lack of any national statutory legislation on refugees – refugees in Pakistan can appeal to the court for prohibition of *refoulement*, and enforcement of the principle of *jus soli* (citizenship by birth) as provided under Section 4 of the Pakistan Citizenship Act, 1951.

⁵⁹ Article 12 of the constitution of Pakistan, 1973.

⁶⁰ Article 13 of the constitution of Pakistan, 1973.

⁶¹ Article 14 of the constitution of Pakistan, 1973.

⁶² Article 24 of the constitution of Pakistan, 1973.

⁶³ Article 21 of the constitution of Pakistan, 1973.

⁶⁴ Article 25-A of the constitution of Pakistan, 1973.

⁶⁵ Right of individuals to be dealt with in accordance with law, etc.

(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

⁶⁶ Najib Zarab Ltd v. the Government of Pakistan (PLD 1993 Karachi 93)

Pakistan Citizenship Act 1951

Promulgated on April 13, 1951, the purpose of the Pakistan Citizenship Act was to determine citizenship and nationality of persons residing in Pakistan at the time of its creation, and those who migrated later from the Indian territories and the commonwealth states. It also provided a scheme for acquisition of nationality by other foreigners.

Furthermore, Section 2 of the Act defines the term “alien,”⁶⁷ which later became an important component of the National Alien Registration Authority (NARA)⁶⁸ and the National Database and Registration Authority (NADRA).⁶⁹ It defines the qualifications for citizenship as it pertains to the granting of the said right on the day the Act was effected, and as acquisition of citizenship status stands for those post commencement of the Act.

*Citizenship at the date of Commencement of the Act*⁷⁰

At the commencement of the Act, such persons were considered citizens of Pakistan, who:

- a. Were or any of whose parents or grandparents were born in the territory included in Pakistan and who after the August 14, 1947, had not been permanently resident in any country outside Pakistan; or
- b. Were or any of whose parents or grandparents was born in the territories included in India on March 31, 1937 and on the date of commencement of Act, such persons had a valid domicile under Part II of the Succession Act, 1925, in Pakistan or in the territories now included in Pakistan. Servants of the Government of Pakistan were exempted from this condition of domicile.
- c. Is a person naturalized as a British subject in Pakistan and on or before the date of commencement of the Act, he has renounced nationality of any other country, if already acquired, through a formal declaration in writing.
- d. Migrated to the territories included in Pakistan, with the intention to permanently reside there and from the territories included in the Indo-Pakistan sub-continent⁷¹.

⁶⁷ 'alien' means a person who is not citizen of Pakistan or a Commonwealth citizen.

⁶⁸ National Aliens Registration Authority, established in the year 2000, having its headquarter at Karachi and dissolved in the year 2015

⁶⁹ National Database and Registration Authority, established in the year 2000 under Section 3 of the National Database and Registration Authority (NADRA) Ordinance, 2000

⁷⁰ Section 3 of Pakistan Citizenship Act, 1951.

⁷¹ 'Indo-Pakistan sub-continent' means India as defined in the Government of India Act, 1935. (Section 2 of the Pakistan Citizenship Act, 1951).

Acquiring Citizenship after the Commencement of the Act.

The Pakistan Citizenship Act provides multiple ways of acquiring citizenship, after the commencement of the Act.

Citizenship by Birth⁷²

After commencement of the act, every person born in Pakistan shall be a citizen of Pakistan by birth, except those whose father (not a Pakistani citizen), on the day of birth, was enjoying diplomatic immunity or was an enemy alien and the birth occurs in a place then under occupation by the enemy.

Citizenship by Descent⁷³

A person born of a Pakistani parent in possession of citizenship would be a citizen of Pakistan, by descent. However, persons born abroad and claiming citizenship by descent must register the birth at Pakistan's mission abroad or at a consulate in the country of birth.

Citizenship by Migration⁷⁴

This clause applies to those migrants, who migrated to Pakistan, from any of the territories of the Indo-Pak subcontinent and were registered during the period from the commencement of the Act till December 31st, 1951. Thus, citizenship by migration to Pakistan is not general but qualified.

Citizenship by Naturalization⁷⁵

A person may be registered a citizen by naturalization, provided that the federal government grants him a certificate of naturalization under the Naturalization Act, 1926. The federal government may also exempt a person from a certificate of naturalization under the Act of 1926 and directly grant him citizenship. The term 'naturalization' has not been defined in either of the Acts but Section 3 of the Naturalization Act has provided the conditions that are required for obtaining a certificate of naturalization.

Citizenship by Marriage⁷⁶

Any female foreigner, including an alien is entitled to citizenship in Pakistan, should she marry a Pakistani man holding citizenship status. On the other hand, a male foreigner is not entitled to citizenship on marriage to a Pakistani woman. However, this would not bar acquisition of citizenship by way of naturalization.

⁷² Section 4 of the Pakistan Citizenship Act, 1951

⁷³ Section 5 of the Pakistan Citizenship Act, 1951

⁷⁴ Section 6 of the Pakistan Citizenship Act, 1951

⁷⁵ Section 9 of the Pakistan Citizenship Act, 1951

⁷⁶ Section 10(2) of the Pakistan Citizenship Act, 1951

Citizenship by Incorporation of Territory⁷⁷

If any territory becomes a part of Pakistan, the President may, by order, specify the persons who shall be citizens of Pakistan by reason of their connection with that territory: and those persons shall be citizens of Pakistan from such date and upon conditions, if any, as may be specified in the order.

Naturalization Act 1926

As amended by the Amendment Ordinance of 1949 and the Amendment Act of 1950 (Act 23 of 1951), the Naturalization Act of 1926 was adopted by Pakistan, for naturalization of aliens residing in Pakistan. Under the Act, the federal government has the authority to issue a certificate of naturalization, which is a valid ground for acquiring citizenship under Section 9 of the Pakistan Citizenship Act, 1951. The Act provides for pre-requisites for naturalization, contents and form of application, procedure for certification and revocation, and the effects of revocation. Under Section 3 of the Act, a person may be issued a certificate of naturalization if he/she:

- Is not a minor;⁷⁸
- Is neither a citizen of Pakistan nor a subject of any alien state;
- Has resided in Pakistan throughout the period of one year, immediately before the application, and has, during the last seven years immediately preceding the aforementioned one-year period, resided in Pakistan for an aggregate period of not less than four years;
- Is of good character;
- Has adequate knowledge of a language, declared by the federal government as one of the principal vernaculars of Pakistan; and
- Intends to reside in Pakistan or to enter or continue in service of Pakistan if the certificate is granted.

Foreigners Act 1946

Initially implemented on September 23, 1946, the Foreigners Act was adopted by Pakistan, for the purpose of regulating the entry, presence and departure/exit of all foreigners. The Foreigners Act, 1946 thus regulates the travelling of foreigners to, through and from Pakistan, and provides penalties for those foreigners who illegally stay in Pakistan.⁷⁹ Under the Act, a 'foreigner' has been defined as any person, who is not a citizen of Pakistan.⁸⁰ The Act also empowers the Government to detain or intern any

⁷⁷ Section 13 of the Pakistan Citizenship Act, 1951

⁷⁸ Under Section 2 of the Pakistan Citizenship Act, 1951, minor means a person under the age of 21 years.

⁷⁹ Section 14, Foreigners Act, 1946

⁸⁰ Section 2(a) of the Foreigners Act, 1946

foreigner.⁸¹ Through the Amendment Ordinance No XXV of 2000, dated July 10, 2000, NARA was established, under the Foreigners Act.⁸² For enemy foreigners, however, SRO 141 (R) 65 of 1965 provides a special regulation under Sections 3, 4, 8, and 10 of the Foreigners Act, 1946.

The National Registration Act 1973

The National Registration Act, 1973 - which was enacted and then enforced on July 31st, 1973 - provided for the registration⁸³ of all the citizens of Pakistan, and the issuance of National Identity Cards.⁸⁴ It was the first ever arrangement by the federal government for registration of citizens and the maintenance of records. The Act defined a 'citizen' as one titled as such under the Pakistan Citizenship Act, 1951. As per Section 4 of the Act, all persons above the age of 18 years were required to compulsorily register themselves and obtain National Identity Cards from their concerned District Registration Offices. It was made obligatory on the parents or guardians to register all children/wards that had not attained the age of majority, i.e., 18 years.⁸⁵ Under the Act, it was also incumbent on all citizens to register births and deaths.⁸⁶ According to the Act, any person having attained the age of 18 years, but not in possession of a National Identity Card, was restrained from getting a passport, permit, foreign travel documents, casting of vote, or any other purpose that the federal government would have specified.⁸⁷ The Act also empowered registration officers to inspect and cancel the cards. It further provided penalties for persons who did not apply for registration without a reasonable cause, furnished false information, concealed or refused furnishing information, obliterated or changed any particulars written on the identity card, forged identity cards, failed to report the loss of an identity card, without a reasonable cause, delivered an identity card to an unauthorized person, refused to surrender identity whenever required and knowingly contravened any other provision of the Act or the rules.⁸⁸ Similarly, the verifier/attester was also held equally accountable and liable to penalty.⁸⁹

NADRA Ordinance 2000

Repealing the National Registration Act, 1973, National Database and Registration Authority (NADRA) Ordinance was promulgated in March 2000, with the intent to establish NADRA to facilitate the registration of all persons and the establishment and

⁸¹ Section 4 of the Foreigners Act, 1946

⁸² Section 14-D of the Foreigners Act, 1946

⁸³ Section 4 of The National Registration Act, 1973

⁸⁴ Section 5 of the National Registration Act, 1973

⁸⁵ Section 3 of the Majority Act, 1875

⁸⁶ Section 4 (3) of the National Registration Act, 1973

⁸⁷ Section 8 of the National Registration Act, 1973

⁸⁸ Section 11 of the National Registration Act, 1973

⁸⁹ Section 11(2) of the National Registration Act, 1973

maintenance of multipurpose databases and data warehouses, and for networking, database interfacing, and related facilities. The NADRA Ordinance, 2000, focused on a new, improved, and modernized registration and database system that would cater to the need of the time with multiple beneficial uses and applications in efficiently and effectively running the affairs of the State and the general public, thereby achieving the goals of good governance, public service and minimizing the scope for corruption and inefficiency. The distinct feature of the Ordinance, besides the focus on a digital database, was that it provided for the registration of persons, which included foreigners and emigrants,⁹⁰ and provided for the facility of the ‘Aliens Registration Card’⁹¹

It further provisioned for the issuance of four types of cards, i.e. the Computerized National Identity Card (CNIC)⁹² (including the juvenile card), the Pakistan Origin Card (POC)⁹³, the overseas card (NICOP),⁹⁴ and the Aliens Registration Card.⁹⁵ According to the NADRA Ordinance, persons having valid registration on the day the National Registration Act, 1973 was effected, would be deemed to have registered under the NADRA Ordinance. The Ordinance also empowered the authority to cancel, impound or confiscate the card, and exempt any person or class of persons from its requirement for purposes specified within, it is otherwise mandatory.

Evolution of Policy-Level Perceptions about Afghan Refugees

2019 marks forty years since the beginning of the Afghan displacement and a lot has changed over the past decades in the way the refugees were regarded by the Government and received by their host communities. This section of the report will examine the perceptions and attitudes of the Government and people of Pakistan towards Afghan refugees upon their arrival, how these perceptions have evolved over time, and what factors might have contributed towards this change.

Treatment and Perception of Afghans at the Time of their Migration

Initially, the Afghans fleeing conflict in Afghanistan were welcomed in Pakistan with open arms, but Pakistan’s policies on Afghan refugees have changed over the years from friendly and benevolent in the late 1970s and 1980s to more restrictive during the

⁹⁰ Section 8 of the NADRA Ordinance, 2000

⁹¹ The issuance of Alien Registration Cards was the domain of NARA initially. It was in 2014 that NARA was merged with NADRA. Since then, NADRA has not been issuing Alien Registration Cards. The draft rules have recently been tabled for the Cabinet’s approval, following which NADRA will resume issuance of Alien Registration Cards.

⁹² Section 10 of the NADRA Ordinance, 2000

⁹³ Section 11 of the NADRA Ordinance, 2000

⁹⁴ Section 12 of the NADRA Ordinance, 2000

⁹⁵ Section 13 of the NADRA Ordinance, 2000

1990s. Pakistan’s policies have remained inconsistent, in view of both the changing political and strategic context in the region, and the changing circumstances of international humanitarian assistance provided to Afghan refugees in the post-Cold War era.

At the time when the Afghan refugees migrated to Pakistan, the Afghan-Soviet war was being waged in Afghanistan. During this war, Pakistan received massive military aid from the United States which was used to arm and train Afghan Mujahideen to enable them to fight the Soviets.⁹⁶ In the official narrative of Pakistan at the time, these refugees were “brave Mujahideen” and were on countless occasions commended for their bravery and fearlessness. They were welcomed not only into the country and the refugee villages but also into the hearts of the people. They were, at times, declared to be family. This later on transitioned from an open-door policy to a more restrictive one, and several factors have substantially contributed to this change.

What Caused a Change in the Perceptions?

The following factors have contributed to the rapid change in the perceptions of Afghan refugees: from being celebrated as “brave Mujahideen” to becoming a perceived source of concern for the country.

The Shigri Report

More than two decades into the Afghan refugee inflow to Pakistan, there was a growing recognition of a need for a policy level response to the matter; particularly as the food aid provided by UNHCR and the World Food Program was put to a halt in 1995, and international aid for refugees started to dwindle. It was against this background that the Report on the Illegal Immigrants in Pakistan⁹⁷—formulated by Mr. Afzal Ali Shigri,⁹⁸ and, therefore, also known as the *Shigri Report*—was brought forth in 1996.

The *Shigri Report* became the accepted policy for dealing with the issue of illegal immigrants at that time. It classified Afghan refugees as illegal immigrants due to the following reasons:

- The termination of original factors, i.e. the Soviet invasion, that caused large scale migration.
- Withdrawal of USSR forces from Afghanistan.
- The Afghans were still residing in Pakistan, even after restoration of an independent Afghan government in Afghanistan.
- Prolonged stay, exceeding 10 years.
- Movement away from designated camps into other parts of the country.

⁹⁶ “Stereotyping of Afghan refugees: very unfair,” *Daily Times*, June 22, 2016. Available at: <https://dailytimes.com.pk/74493/stereotyping-of-afghan-refugees-very-unfair/>

⁹⁷ Afzal Shigri, Report on Illegal Immigrants and Afghan Refugees in Pakistan, 1998.

⁹⁸ Inspector General of Police (IGP) of Sindh at the time.

The report further laid down several characteristics of and some general information and perceptions about the Afghans. The report stated that thousands of wealthy Afghans had bought properties and were engaged in commercial activities in Pakistan. Furthermore, a number of instances had reportedly occurred where Afghan refugees were found involved in crimes such as drug trafficking, arms smuggling, vehicle thefts etc. particularly in the provinces of Khyber Pakhtunkhwa, Sindh and Balochistan. According to the report, Afghan refugees were also involved in terrorist activities, including bomb-explosions, and the “Kalashnikov culture” was introduced into Pakistan through them. The report went on to state that “Afghan agents” had “always been active in causing problems of one kind or another”, for instance, they were accused of illegally obtaining identity documents and passports, which they then used to travel abroad as Pakistani nationals. This created concern because their alleged actions abroad reflected badly on Pakistan, considering they had Pakistani identity documents. Furthermore, according to the report, there was also a concern about Afghans having vastly differing social values and cultural traits, such as “a ferocious temperament and tribal character” that often led to social problems and friction. The report also mentions that the Afghan refugees opting to go back to Afghanistan were facilitated with a lump sum “repatriation grant” by UNHCR, along with other assistance for voluntary repatriation.

While Afghan refugees were not coerced into repatriation, the report did not deny that they faced a number of miseries in Pakistan. It stated that refugees were easily blackmailed due to their fear of detection, because of which they could be used as bait, and even as scapegoats in the commission of crimes. This fear of detection also led to their economic exploitation, whereby they were paid lower wages and were further pressurized for the exaction of ‘Bhatta’ or extortion money by law enforcement and civilian agencies. Moreover, these refugees also experienced a lack of basic facilities, such as water, sewerage, electricity, hygiene and sanitation, health care and a severe lack of education facilities, eventually resulting in negative coping strategies such as resorting to child labour in dire circumstances.

The *Shigri Report* went on to systematically explain the reasons for the refugee influx into Pakistan, along with remedial measures or suggestions to address them. The first reason identified was the porosity of Pakistan’s borders and the suggested remedy was the implementation of a closed-camp policy for refugees, under which they would not be allowed to leave the encampment till the time of their repatriation, as well as “proper investigation” of all residents of the camps. An additional suggestion was for the patrolling of the Sindh and Punjab borders to investigate all entrants, and the establishment of a coordination committee consisting of concerned agencies in each province for the purpose of periodic reviews.

The report further attributed the inflow of refugees and foreigners in general to the liberal visa regime that allowed easy access to business/investment visas to foreigners of all nationalities. Some were even exempted from getting work permits, thereby affording many with non-work visas the opportunity to get gainful employment and overstay. As a remedy, it was suggested that the issuance of work permits should fall

solely within the purview of the Ministry of Industries, with attached penalties of a hefty fine or imprisonment where issuance of such documents was traced to an external source other than the Ministry.

Defective registration and monitoring procedures were also regarded as a reason why refugees and foreigners entered Pakistan sans regulation. According to the report, there were no individual records on illegal immigrants in Pakistan, and some departments and agencies frustrated the registration process. The report further observed that some illegal immigrants had even been successful in attaining fake ID cards. As a remedial measure, it was recommended that they should be registered as ‘aliens’ within 4 months of their arrival with an offer of immunity from prosecution and an allowance for temporary stay. It was also suggested that valid documentation from the relevant embassies should be provided and on the basis of such, they could be given entitlement to stay for a period of 2 years there onwards, while those who failed to do so, would be put in closed camps till the time of their deportation. As per the recommendations, the National Alien Registration Authority (NARA) was also set up for the aforementioned purpose. NARA was an independent programme of the Government of Pakistan for registration and regulation of ‘aliens’ settled within the territory of Pakistan. The main purpose of this program was to legally register and document immigrants and other foreign residents in the country.⁹⁹ NARA was eventually merged with NADRA in 2014.¹⁰⁰

Perceived Security Threat

Due to their alleged involvement in the commission of criminal activities, such as theft and kidnappings, or involvement in terrorist activities, the Afghan refugees have been referred to as a security threat and have been told persistently to vacate cities where they have been suspected to have been engaged in criminal activities.¹⁰¹ In recent years, terrorist activities - such as the 2014 Army Public School (APS) attack in Peshawar – have acted as a catalyst to turn the tide of public opinion against Afghan refugees. Despite the initial suspicion that the APS attack had been planned in Afghanistan,¹⁰² investigation into the matter revealed that there was little evidence of significant Afghan involvement. Nonetheless, the damage had been done and the security measures taken

⁹⁹ National Alien Registration System.

<https://www.nadra.gov.pk/local-projects/identity-management/national-alien-registration-system/>

¹⁰⁰ Ministry of Interior letter dated May 20th, 2014 on merging NARA with NADRA.

[http://www.fia.gov.pk/en/sro7\(1\)2014.pdf](http://www.fia.gov.pk/en/sro7(1)2014.pdf)

¹⁰¹ Sikander Shaheen, “Afghan refugees, a persistent problem,” *The Nation*, January 9, 2010.

<https://staging.nation.com.pk/09-Jan-2010/afghan-refugees-a-persistent-problem>

¹⁰² Mushtaq Yusufzai, “Post-APS attack crackdown upsets Afghan refugees,” *The News*,

February 24, 2015. Available at: <https://www.thenews.com.pk/print/25864-post-aps-attack-crackdown-upsets-afghan-refugees>

in conjunction with counter terrorist activities resulted in an increasingly shrinking asylum space for Afghan refugees.¹⁰³

Recent political developments, including the pressure exerted by the U.S. administration on Pakistan and accusations that Pakistan was undermining the US efforts to combat the terrorist threat on Afghan soil, have further created a tense political environment that has adversely effected bilateral relations between Afghanistan and Pakistan, and the situation for Afghan refugees in the country. These tensions came to a head when the U.S. took unilateral action in carrying out a drone strike in the Kurram Agency that allegedly killed militants who were based in what was thought to be a house being used by Afghan refugees.¹⁰⁴ To the detriment of Afghan refugees in Pakistan, the incident reinforced the stance that the presence of so many Afghan refugees in the country presented a security threat as it allowed Afghan terrorists to blend in amongst them.¹⁰⁵

This notion was reiterated by Pakistan's Chief of Army Staff, General Qamar Javed Bajwa, who stated that the return of Afghan refugees was a must for defeating terror in Pakistan.¹⁰⁶ Hamid Saeed, former chief of Pakistan's Military Intelligence (MI) and a defense analyst said that General Bajwa's statement regarding the Afghan refugees should be seen in the right context and that there was evidence that terrorists hiding among Afghan refugees were behind most of the recent terrorist attacks. He went on to state that the terrorists crossed into Pakistan and stayed in the refugee villages, making it humanly impossible to carry out any sort of surveillance.¹⁰⁷ Former Interior Minister Chaudhry Nisar Ali Khan once said that investigations into recent terrorist incidents had brought out the fact that Afghan refugees were used as facilitators in most of the terrorism cases.¹⁰⁸ Former Chief Justice of the Peshawar High Court and Former Chief

¹⁰³ Hassan Belal Zaidi, "Maltreatment of Afghans Peaked Post-APS Attack," *Dawn*, November 18, 2015. Available at: <https://www.dawn.com/news/1220388/maltreatment-of-afghans-peaked-post-aps-attack>

¹⁰⁴ Salman Masood, "U.S. Drone Strike Kills Militants in Pakistan but Angers Its Government," *The New York Times*, January 24, 2018. Available at: <https://www.nytimes.com/2018/01/24/world/asia/pakistan-us-drone-haqqani-network.html>

¹⁰⁵ Javid Hussain, "Pakistan Condemns 'Unilateral' US Drone Strike in Kurram Agency," *Dawn*, January 24, 2018. Available at <https://www.dawn.com/news/1384978>

¹⁰⁶ "Afghan refugees' return must for defeating terror: Bajwa," *The Nation*, February 18, 2018. Available at: <https://nation.com.pk/18-Feb-2018/afghan-refugees-return-must-for-defeating-terror-bajwa>

¹⁰⁷ Shahnaz Nafees, "Afghan Refugees in Spotlight Amid Debate Over Sources of Unrest," *Voice of America*, February 18, 2018. Available at: <https://www.voanews.com/a/afghan-refugees-in-spotlight-amid-debate-over-sources-of-unrest/4260429.html>

¹⁰⁸ Imran Mukhtar, "Afghan refugees used as facilitators in terror attacks: Nisar," *The Nation*, February 19, 2017. Available at: <https://nation.com.pk/19-Feb-2017/afghan-refugees-used-as-facilitators-in-terror-attacks-nisar>

Minister of Khyber Pakhtunkhwa, Dost Muhammad Khan, remarked in November 2013 that a significant percentage of Afghan refugees were causing huge problems for Khyber Pakhtunkhwa and were being used by the country's enemies. Refugees have also been blamed for their alleged involvement in channeling massive amounts of money to terrorist outfits through undocumented and unofficial *hundi* and *hawala* methods of money transactions.¹⁰⁹ According to the Inspector General (IG) of the Islamabad Police, a number of Afghan refugees living in the slums of Islamabad had been found involved in crimes of heinous nature, such as robbery, murder and extortion. The IG, quoting a report of the Senior Superintendent of Police (SSP) Islamabad, stated that it was revealed that the Afghan refugees who were arrested and sent to judicial custody ultimately succeeded in getting released on bail in criminal cases registered against them and returned to their homes within Islamabad and were found involved in criminal activities. The same situation, according to him, was creating hindrance for the Islamabad police to make the federal capital a crime-free city.¹¹⁰

The Afghans were also blamed for the spread of what was termed as the “Kalashnikov culture.” They have been accused of introducing the weapon in Pakistan upon their arrival and selling it in the black market for a much cheaper price, therefore making the weapon widely available to the masses and causing the worsening of the law and order situation in the country.¹¹¹

Perceived Economic Burden

Mr. Abdul Qadir Baloch, the former Minister of States and Frontier Regions, stated in a press conference that the Afghan Refugees in Pakistan were a source of economic burden on the state treasury, and caused Pakistan a loss of \$200 billion in the last three decades.¹¹² On a few occasions in the past, Pakistani government officials have reiterated the same and have stated that the country's economy “has carried the burden of hosting Afghan refugees for a long time and...cannot sustain it further.”¹¹³

Media Narrative and Stereotypes

¹⁰⁹ Dr Raza Khan, “The impact of Afghan refugees,” *The Express Tribune*, August 30, 2015. Available at: <https://tribune.com.pk/story/947773/the-impact-of-afghan-refugees/>

¹¹⁰ Tahir Niaz, “Criminal Afghans to be repatriated with families,” *The Nation*, June 8, 2015.

¹¹¹ “Afghan refugees,” *The Nation*, July 23, 2012; Also, “Afghan Refugees,” *Daily Times*, December 21, 2014; Also, Najma Minhas, “Afghan refugees: Brothers or foes,” *The Nation*, December 5, 2015.

¹¹² “Burdened Economy: Pakistan has Spent \$200b on Afghan Refugees,” *The Express Tribune*, October 23, 2013. Available at: <https://tribune.com.pk/story/622518/burdened-economy-pakistan-has-spent-200b-on-afghan-refugees/>

¹¹³ Neville Lazarus, “Millions of Afghan Refugees Facing Deportation Threat from Pakistan,” *Sky News*, January 31, 2018. Available at: <https://news.sky.com/story/millions-of-afghan-refugees-facing-deportation-threat-from-pakistan-11230513>

Despite the fact that Pakistanis have cultural, religious, and ethnic proximity to Afghans, the significant influx of millions of Afghan refugees into Pakistan within a short period of time has been portrayed, primarily in the media, as a cause of frustration and hostility among Pakistanis towards Afghans.¹¹⁴ Due to this very frustration, the Afghan refugees were, and still are, characterized primarily by their Pashtun heritage, with terms and phrases such as “violent,” “rowdy,” and “difficult to live with” being used to describe them.¹¹⁵

Drugs

Afghanistan is the largest poppy and opium producing country in the world.¹¹⁶ That same opium is then exported to other countries, whereby Pakistan is the main country through which these drugs are then transported to the rest of the world.¹¹⁷ In Pakistan, the perception is that drugs were introduced in the country by the Afghan refugees.¹¹⁸ There is reportedly evidence of people living with a substance use disorder being found in the refugee camps, where most of those involved in substance abuse were found to be women.¹¹⁹ A number of these women have also been reported to have fed the drug to their children in order to calm them down and put them to sleep so they can make ends meet by focusing on their work.¹²⁰ The medicinal use of opium has been common among Afghan refugees for years due to the non-availability of conventional medicine, coupled with high levels of stress associated with loss of family and displacement.¹²¹ Some female refugees living with a substance use disorder have resorted to desperate measures to fund their habit, such as selling their rations to procure drugs and sending their

¹¹⁴ Shahid M. Amin, “Pakistan’s Foreign Policy: A reappraisal 2 ed.” (Pakistan: Oxford University Press 2011), p. 100.

¹¹⁵ Enum Naseer, “Stereotypes we Live with,” *The News*, March 5, 2017. Available at: <http://tns.thenews.com.pk/stereotypes-live/#.XEb3HFwzbIU>

¹¹⁶ “Afghan Opium Production Jumps to Record Level, up 87 Per cent: Survey,” *UNODC*, November 15, 2017. Available at: <https://www.unodc.org/unodc/en/press/releases/2017/November/afghan-opium-production-jumps-to-record-level--up-87-per-cent-survey.html>

¹¹⁷ Hasan Mansoor, “Afghan drugs go to the rest of the world via Pakistan: UN report”, August 24, 2016. Available at: <https://www.dawn.com/news/1279631>

¹¹⁸ “Afghan Refugee camps ‘Safe Havens’ for terrorists: Aziz”, *Dawn*, June 21, 2016. Available at: <https://www.dawn.com/news/1266141>

¹¹⁹ “Afghanistan/Pakistan: ‘The Scourge of Narcotics’”, *UNHCR*, March 7, 2000. Available at: <https://www.unhcr.org/afr/news/briefing/2000/3/3ae6b8244c/afghanistanpakistan-scourge-narcotics.html>

¹²⁰ Aamir Khan, “Afghan Women Feeding Opium to Children at Peshawar Refugees Camp”, *Tribal News Network*, May 1, 2016. Available at: <https://www.tnn.com.pk/afghan-women-feeding-opium-to-children-at-refugees-camp-in-peshawar/>

¹²¹ “Pakistan: Special Report on Drugs and Refugees”, *IRIN*, April 7, 2003. Available at: <https://reliefweb.int/report/afghanistan/pakistan-special-report-drugs-and-refugees>

children to work, thereby exposing them to child labor, exploitation and abuse. The culture of drugs, weapons and sectarian violence in Pakistan is also perceived to have its roots in Afghanistan.¹²²

Illegal National Identity Cards

Since the system of the issuance of the National Identity Cards (NICs) was a manual procedure at the time of the refugee influx, a number of refugees were reportedly able to obtain identity cards due to the absence of an efficient record-keeping mechanism. Others were able to get the computerized national identity cards after 2001, leading to investigations¹²³ resulting in the cancellation of more than 80,000 of these cards by the government on the grounds that they were obtained illegally.¹²⁴

Decrease in International Funding

In 2017, UNHCR's annual report indicated that one person on average was displaced every two seconds.¹²⁵ This statement reflects the emergence of competing crises that have contributed to the ebb and flow of international funding for the Afghan refugee situation as the attention of the global community at large has repeatedly been diverted to managing a response system for disasters that compete for humanitarian resources, including Iraq, Bangladesh and Syria.¹²⁶ The report further revealed that low income countries hosted 85 percent of the world's refugee population,¹²⁷ and with Pakistan having been host to Afghan Refugees for the past forty years, it is the second largest refugee-hosting country with the largest protracted refugee population in the world. Given the prolonged nature of displacement, the Afghan refugee situation has

¹²² "The Afghan Problem", *Daily Times*, December 7, 2017. Available at: <https://dailytimes.com.pk/154076/the-afghan-problem/>

¹²³ "Drive Launched against Afghans holding CNICs," *Dawn News*, January 4, 2015; Also, Javed Aziz Khan, "FIA Investigating Thousands of Afghan Refugees Holding Pakistani CNICs", *The News*, February 25, 2015.

¹²⁴ "Over 80,000 CNICs Issued to Afghans Cancelled," *Dawn News*, October 13, 2010; Also, Khawar Ghumman, "1m Afghans Living in Country Illegally, PAC told", *Dawn News*, September 26, 2012.

¹²⁵ "Steps Taken to Protect Afghan Refugees in Pakistan," *Business Recorder*, June 22, 2018. Available at: <https://fp.brecorder.com/2018/06/20180622383669/>

¹²⁶ "The Refugee Dilemma: Afghans in Pakistan Between Expulsion and Failing Aid Schemes," *Reliefweb*, March 2015. Available at: <https://reliefweb.int/report/afghanistan/refugee-dilemma-afghans-pakistan-between-expulsion-and-failing-aid-schemes>

¹²⁷ "Steps Taken to Protect Afghan Refugees in Pakistan," *Business Recorder*, June 22, 2018. Available at: <https://fp.brecorder.com/2018/06/20180622383669/>

experienced fluctuations in international funding in response to donor fatigue over an issue that has yet to yield a durable solution.¹²⁸

This is not to say that international aid has been insignificant. UNHCR, for instance, has provided support to Afghan refugees in Pakistan through the implementation of projects in different sectors including water, health and education.¹²⁹ Indeed, in the past five years, UNHCR has spent USD 16.4 million to fund schools in refugee villages, including significant support to the education of the Afghan refugee children in Khyber Pakhtunkhwa, which is where a majority of the Afghan refugee population is concentrated. Furthermore, international assistance has also been used to ease the burden on host communities through the Refugee Affected and Hosting Areas Program (RAHA),¹³⁰ which over the past 10 years has funded projects amounting to USD 220 million with some 12.41 million beneficiaries, 85 percent of whom were the Pakistani host communities. While 21 percent of the overall funding for RAHA – which is equivalent to USD 45 million - was spent on education, the remaining has been utilized to implement projects for water and sanitation (USD 71 million), infrastructure (USD 48 million), health (USD 36 million), livelihood (USD 15 million), and social protection (USD 3.5 million).¹³¹ Thus, despite the overall decrease in international funding that has been experienced over the years, the international community has made a consistent effort to provide a level of support to the Afghan refugees and their host communities in Pakistan.

In recent recognition of the burden carried by developing countries in this regard, the UN General Assembly affirmed the Global Refugee Compact in 2018, which acknowledged the need for “equitable responsibility sharing” among international stakeholders in assisting host communities to support refugee populations and in enabling refugees to lead better lives.¹³² For countries like Pakistan, the Global Refugee Compact is a positive step that offers a measure of relief from the pressures of hosting refugees as its objectives are to “ease pressure on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries

¹²⁸ Susannah Price, “Afghan Refugees Face Donor Fatigue,” *BBC News*, September 2000.

Available at: http://news.bbc.co.uk/2/hi/south_asia/926797.stm

¹²⁹ “The Global Report,” *UNHCR*. June 30 2006, p.305. Available at:

<https://www.unhcr.org/449267800.pdf>

¹³⁰ The RAHA programme was initiated in 2009 by the Government of Pakistan, through the Ministry of States and Frontier Regions (SAFRON) and the Economic Affairs Division (EAD), in partnership with a consortium of UN -agencies. RAHA is one of the key component in supporting Government’s Regional Solutions Strategy for Afghan Refugees.

¹³¹ RAHA Factsheet. *UNCHR*, September 2019. Available at: <https://unhcrpk.org/wp-content/uploads/2019/09/RAHA-Factsheet.pdf>

¹³² “The Global Compact on Refugees,” *UNHCR*. Available at: <https://www.unhcr.org/the-global-compact-on-refugees.html>

of origin for return in safety and dignity.”¹³³ The agreement provides for national and regional arrangements for burden sharing and community support through funding, technical assistance, partnerships, data gathering and sharing, etc.¹³⁴ The framework further introduces a mechanism for implementation through the Global Refugee Forum, which ensures that the objectives of the Global Refugee Compact are collectively observed and respected by Member States. The Global Refugee Forum, the first of which is expected to take place from 17-18 December 2019, will be held every four years and will provide international stakeholders with a platform to discuss, review and make arrangements for follow-up actions on selected issues.¹³⁵

Social Media Campaigns

After the Army Public School incident in 2014, Afghan refugees were forced under the national spotlight and placed under strict scrutiny.¹³⁶ Hate was spread through various mediums, including social media where Afghan refugees were subjected to negative attention with derogatory hashtags such as #KickOutAfghans and #AfghanRefugeesThreat.¹³⁷ These social media campaigns had an impact on the public perception that Afghan refugees represented “a menace” to the country and affected the treatment they were afforded by the Government and host communities alike.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ “The Global Refugee Forum 16 (Advance Session), 17 & 18 December 2019 (High-Level Session),” UNHCR. Available at: <https://www.unhcr.org/global-refugee-forum.html>

¹³⁶ “30,000 Afghans left Pakistan after Army Public School attack: IOM”, *Dawn News*, February 08, 2015. Available at: <https://www.dawn.com/news/1162313>

¹³⁷ “The Reverse Exodus of Pakistan's Afghan Refugees”, *BBC News*, August 28, 2016. Available at: <https://www.bbc.com/news/world-asia-37163857>

The Perception and the Reality

Initially, the Government of Pakistan did not maintain a proper record and database of refugees entering and leaving Pakistan. Since Pakistan's national registration system was newly established at the time of the arrival of the refugees, and the mechanism for enquiry and verification of nationality was inadequate, some Afghan refugees also managed to register with the District Registration Authorities as citizens of Pakistan and to obtain CNICs, which later became a serious concern for NADRA. Presently, about 20,000 CNICs are suspended for being verified as belonging to Afghan refugees.¹³⁸ On April 17, 2018, Mrs. Nusrat Sahar Abbasi, a member of the Sindh Assembly stated on the floor of the house that about 500,000 foreigners, including Afghan refugees, had fraudulently obtained Pakistan's CNICs and had registered themselves as voters.¹³⁹

The Shigri Report and Assumption on Status of Refugees

Over a period of time since 1979, many Afghan refugees left the refugee villages and blended with the urban population. This situation made the process of registration and census very challenging. The former IG Police Sindh and author of the *Shigri Report*, Afzal Ali Shigri, asserted in his report that those refugees who had left the refugee villages were "violating the tripartite agreement as illegal immigrants", and stated that in doing so they had relinquished their status as refugees.¹⁴⁰

The first ever census of Afghan citizens living in Pakistan was carried out in February/March 2005 and established the number of Afghans in Pakistan at 3.40 million. It served as a primary database for the issuance of POR cards - an exercise that resulted in the registration of 2.153 million Afghans with NADRA. Some 1.5 million PoR cards were distributed to those Afghans who were of the age of 5 years and above.

Establishment of the National Aliens Registration Authority

Under Section 2 of the Pakistan Citizenship Act 1951, every person who is not a citizen of Pakistan or a commonwealth citizen is an alien. On the recommendation of the *Shigri Report*, the 1946 Foreigners Act was amended¹⁴¹ and a new clause was inserted for the establishment of an authority for the registration of illegal immigrants. This authority was called the National Aliens Registration Authority (NARA). NARA was merged into NADRA on 20 May 2014 by virtue of an official notification, and as such ceased to be an independent authority.

¹³⁸ A high level official from NADRA informed CODE PAKISTAN.

¹³⁹ Azeem Samar, "500,000 Illegal Immigrants Issued CNICs in Sindh: PML-F leader," *The News*, April 18, 2018. Available at: <https://www.thenews.com.pk/print/305832-500-000-illegal-immigrants-issued-cnics-in-sindh-pml-f-leader>

¹⁴⁰ Afzal Shigri, *Report on Illegal Immigrants and Afghan Refugees in Pakistan*, 1998.

¹⁴¹ Section 14 D Foreigner's Act 1946 added by Ordinance XXV of 2000, dated 10.07.2000.

Strictly under the law, all Afghan refugees living in Pakistan fall within the definition of aliens.¹⁴² NARA, however, soon after its establishment renounced any responsibility for Afghan refugees on grounds of repudiating their status as aliens. Furthermore, since Pakistan is not a signatory to the UN Convention relating to the Status of Refugees, in principle, all Afghan immigrants could safely fall within the category of aliens as defined in the Citizenship Act, but NADRA has denied this categorization for all registered refugees and other Afghans in the country.

The Government of Pakistan is of the view that the PoR cards are determinants of special status for Afghan refugees, thus exempting them from operation under ordinary laws such as the NADRA Ordinance and the Pakistan Citizenship Act.¹⁴³ Following this line of argument, undocumented Afghans in the country would fall within the definition of aliens and illegal immigrants, and Section 13 of the NADRA Ordinance, read in conjunction with Section 14-D of the Foreigners Act, would entitle them to alien registration, stay, and work permits on humanitarian grounds, and under the defined terms and conditions of the principle of *non-refoulement* in customary international law.

This legal vacuum - regarding the status of registered refugees and other Afghans in the country, the application of the laws related to foreigners, aliens, and immigrants, and the enforcement of the fundamental guarantees under Chapter 2 of the Constitution of the Islamic Republic of Pakistan 1973 – could be addressed, inter alia, through the enactment of a national refugee legislation.

Afghan Refugees – Entitlement to Pakistan’s Citizenship.

Under the Pakistan Citizenship Act 1951, all persons born in Pakistan shall be citizens of Pakistan with two exceptions, i.e. those born to alien enemies or those enjoying diplomatic immunity.¹⁴⁴ The ambiguity of the legal terminology, especially in the context of the term ‘person’ that is left undefined, even by the General Clauses Act 1897, leaves room for interpretation of the term to constitute human being. Furthermore, while it is true that a special law would exclude the application of general law, in particular cases, such as where Pakistan is neither a signatory to the 1951 Refugee Convention nor does it have special laws in place for refugees, Section 4 of the Citizenship Act would principally apply to Afghan refugees. As such, the interpretation of Section 4 of the Act by the Peshawar High Court (PHC) and Islamabad High Court (IHC) in the cases of *Ghulam Sanai v. The Assistant Director, National Registration Office, Peshawar and Another*,¹⁴⁵ and in *Saeed Abdi Mahmud v. NADRA*¹⁴⁶ is especially significant.

¹⁴² Interview with a senior-level official of the FIA in Peshawar on October 29, 2018.

¹⁴³ Interview with senior-level official, NADRA

¹⁴⁴ Section 4 of the Pakistan Citizenship Act, 1951

¹⁴⁵ PLD 1999 Peshawar 18

¹⁴⁶ 2018 CLC 1588 (Islamabad High Court)

Ghulam Sanai v. the Assistant Director, National Registration Office, Peshawar and Another

The petitioner in this case was an Afghan national born in Peshawar whose father had obtained a Pakistani NIC and passport. On attaining the age of 18 years, the petitioner applied to the District Registration Authority (DRA) for the issuance of a CNIC. On observing that the father of the petitioner was in possession of an invalid NIC, the DRA cancelled his identity card and refused the issuance of an NIC to the petitioner on grounds of him being an Afghan national. The petitioner challenged the order of the DRA before the PHC in a writ petition, and claimed nationality by birth under Section 4 of the Pakistan Citizenship Act. The court held that the mere long stay of a person in a foreign country would not automatically entitle the said person to citizenship in that country, and that in such a case, nationality could only be acquired through the legal process. According to the court, Afghan refugees had been provided refuge in Pakistan temporarily, and as such they were governed by the Foreigners Act 1946 (Act XXXI of 1946) and not by the provisions of the Citizenship Act which was not applicable to them as they were not citizens of Pakistan. According to the definition of “foreigner” given in Section 2(a) of the Foreigners Act (XXXI of 1946), “foreigner means a person who is not a citizen of Pakistan,” hence an Afghan refugee being a foreigner and not a citizen of Pakistan cannot be issued an NIC under Section 4 of the National Registration Act 1973 (Act LVI of 1973). The court held that since the petitioner was neither a citizen, nor deemed to be a citizen of Pakistan under the Citizenship Act, he was not entitled to the issuance of a CNIC.

Analysis:

While it is true that the petitioner was not a citizen by descent and Section 4 of the Registration Act 1973 applies to those born of Pakistani parents, the most appropriate option for the PHC, on declaring that citizenship by birth could not be determined by the Registration Authority but the Ministry of Interior, would have been to let the petitioner apply to the Ministry of Interior. Grant or refusal of nationality under Section 4 of the Pakistan Citizenship Act 1951 is the executive authority of the Federal Government under the Citizenship Rules 1952. Thus, outright rejection of the petition holding that Afghan refugees were not entitled to relief under Section 4 of the Citizenship Act, was not the most technically applicable. The PHC further observed that the Foreigners Act and not the Pakistan Citizenship Act, applied to Afghan refugees living in Pakistan, but Section 4 of the latter does not discriminate between persons and applies to all born in Pakistan. Similarly, Section 16 of the Foreigners Act, provides that said Act would apply in addition to, and not in derogation of any other law. Therefore, application of the Foreigners Act does not exclude the application of any other law.

The aforementioned judgment of the High Court was left unchallenged and potential legal interrogatories arising from the case were left unclarified. The verdict was reinforced by the Islamabad High Court (IHC) in the latest judgment of May 2018.

Saeed Abdi Mahmud v. NADRA.

Born to Somalian nationals and living in G-11, Islamabad, the petitioner was born on September 9, 1997 in the Pakistan Institute of Medical Sciences (PIMS) hospital and his birth was registered with the Capital Development Authority (CDA). The petitioner completed his secondary education from Saudi School Islamabad and was pursuing a law degree in the International Islamic University Islamabad (IIUI). On August 21st, 2017, the petitioner applied to NADRA for issuance of CNIC but NADRA rejected his claim by holding that his parents were not Pakistanis. The petitioner challenged this decision before the IHC and pleaded that he was entitled to citizenship by birth under Section 4 of the Citizenship Act, 1951. The IHC discussed the Bill presented by the select committee before the parliament and the contents of the Bill, along with the justification and objectives clauses and the speech of the then Minister for Interior. The IHC mentioned five cases for acquiring citizenship in Pakistan. The IHC gave the examples of the U.S, France, UK, and 26 other prominent countries that provided citizenship on the principle of *jus soli*, irrespective of whether the parents were legal immigrants or not. The court also referred to the judgment of the PHC where it was held that mere prolonged stay would not entitle a person to nationality of Pakistan, except by due process and operation of law.

Although, the petitioner was neither an Afghan refugee nor a migrant from Afghanistan, the judgment of the IHC (para no. 16, 17, 18 and 19 of) focused on the Afghan refugee issue. The following were the observations of the IHC:

- The IHC reinforced the view of the PHC, and held that all persons born in Pakistan were entitled to citizenship, except the Afghan refugees, as they had sought temporary asylum under defined terms and conditions.
- The status of refugees was to be considered under the UN Convention of 1951, which initially focused on the European refugees of the Second World War but the Protocol of 1967 extended its scope to all refugees across the world. The definition of refugee as mentioned in the convention would be relevant for Pakistan.
- Pakistan had no separate local law for refugees but being signatory to the UN Convention, the refugees fall within the mandated responsibility of UNHCR under the Refugee Convention and the Citizenship Act would not apply to them. They may be entitled to other social and limited economic constitutional guarantees based on the principle of equal treatment but not to citizenship.
- Except for Afghan refugees, all other foreigners born in Pakistan were entitled to citizenship under Section 4 of the Citizenship Act to be processed under Rule 8 of the Pakistan Citizenship Rules 1952.

The writ petition was allowed and the petitioner was directed to approach the Ministry of Interior to fulfill the relevant requirements and seek desired relief from the Ministry under the law.

Analysis:

The principle applied by the IHC in this case should have been applied by the PHC in the earlier case, whereby the petitioner could have been referred to the Ministry of Interior for an executive decision. The IHC relied on the previous judgment of the PHC, which if it had been challenged at that time, would have cleared much of the legal confusion arising from the case. This subsequent judgment has serious legal implications for Afghan refugees, not only in terms of their entitlement to Pakistani citizenship by birth but also with regard to other fundamental rights guaranteed under the Constitution of Pakistan. The IHC was operating under the false assumption that Pakistan was a signatory to the UN Convention and that refugees were a subject of UNHCR, but since this is not, in fact, the case, there is once again a legal vacuum for the management of Afghan refugees. However, the court did imply the need for local legislation as an alternative for operation of the UN Convention. It referred to the definition of refugees as provided in the UN Convention and thus, those Afghans who arrived later in Pakistan, purely in search of livelihood and better standard of living would not qualify the category of refugees as relied upon by the IHC. Furthermore, the court emphasized on “persons who have been declared refugees under UNHCR,” which would automatically exclude unregistered Afghan migrants from the judgment.

The aforementioned two categories of Afghan nationals, as per the ruling of the IHC, would not be classified as refugees, and in the absence of any special legislation for the management of Afghan migrants, they would fall within the definition of illegal immigrants under the Foreigners Act 1946. Illegal immigrants are not an exception to the principle of *jus soli* under customary international law or the Pakistan Citizenship Act 1951.

In September 2018, Prime Minister of Pakistan, Imran Khan, proposed to grant Pakistani citizenship to those Afghans and Bengalis who were born in Pakistan. The Prime Minister’s announcement drew a mixed reaction as some welcomed the decision, while others expressed serious reservations. In 2019, Mr. Riaz Fatyana, a senior parliamentarian from the ruling party, moved a private member’s bill for amending the Pakistan Citizenship Act of 1951 in the National Assembly of Pakistan. The bill proposed citizenship of Pakistan for foreigners who are born in Pakistan or are living in Pakistan for a continuous period of 20 years and who have registered themselves with NARA, NADRA, UNHCR or any other entity that is duly authorized in this behalf. The National Assembly’s Standing Committee on Interior unanimously rejected the said bill on August 30, 2019, observing that the proposed amendment would have serious repercussions on the security and economy of the country. Mr. Fatyana had argued before the Committee that all non-citizens living in Pakistan should either be mainstreamed or expelled but the Committee was of the view that the provinces of Sindh, Khyber Pakhtunkhwa, and Balochistan held serious reservations against the

statement made by the Prime Minister.¹⁴⁷ In light of the rejection of the amendment bill by the Standing Committee, the judgement of the Islamabad High Court in the case of Saeed Abdi Mahmud¹⁴⁸ stands as the sole legal/judicial precedent in this domain, i.e. Afghan refugees cannot claim citizenship in Pakistan on the basis of either birth or naturalization.

Afghan Refugees and Crime

There is a strong policy level perception in Pakistan that Afghan refugees living in Pakistan pose a serious security threat to the country. Pakistani officials maintain that the involvement of Afghan refugees in crime in Pakistan is a serious threat to the country. The concern about Afghan refugees being a security threat has been expressed at the highest level of the military command by the Chief of the Army Staff Gen. Qamar Javed Bajwa.¹⁴⁹ While commenting on Gen. Bajwa's statement, Hamid Saeed, former chief of Pakistan's military intelligence and a defense analyst, said, "There is evidence that terrorists hiding among the Afghan refugees were behind most of the recent terrorist attacks. Terrorists cross into Pakistan and stay in the refugee camps, making it humanly impossible to carry out any sort of surveillance."¹⁵⁰ Former Federal Minister for Interior Chaudhry Nisar Ali Khan also once referred to Afghan refugees being used as facilitators in terrorist attacks.¹⁵¹ According to a letter written by the Inspector General (IG) Islamabad police to Islamabad Capital Territory (ICT) administration, a number of Afghan nationals residing in various slums in and around Islamabad were found involved in crimes of heinous nature.¹⁵² More recently, high level officials of the current administration in Pakistan have also voiced their concerns about the security threat posed by Afghan refugees.

While such assertions have been made from the highest decision-making positions in Pakistan, evidence to back them has not been presented. There is no data available that could definitively prove that Afghan refugees living in Pakistan could be associated with crime in the country. One way to prove that could be to gather data of the reported

¹⁴⁷ Tahir Amin, "NA Standing Committee rejects amendment in Pakistan Citizenship Act," *Business Recorder*, August 28, 2019. <https://www.brecorder.com/2019/08/30/520794/na-standing-committee-rejects-amendment-in-pakistan-citizenship-act/>

¹⁴⁸ Saeed Abdi Mahmud v. NADRA 2018 CLC 1588 (Islamabad High Court)

¹⁴⁹ "Afghan Refugees' Return Must for Defeating Terror: Bajwa," *The Nation Lahore*, February 18, 2018.

¹⁵⁰ Shahnaz Nafees, "Afghan Refugees in Spotlight amid Debate Over Sources of Unrest", February 18, 2018. <https://www.voanews.com/a/afghan-refugees-in-spotlight-amid-debate-over-sources-of-unrest/4260429.html>

¹⁵¹ Imran Mukhtar, "Afghan Refugees Used as Facilitators in Terror Attacks: Nisar," *The Nation Lahore*, February 19, 2017. Available at: <https://nation.com.pk/19-Feb-2017/afghan-refugees-used-as-facilitators-in-terror-attacks-nisar>

¹⁵² Tahir Niaz, "Criminal Afghans to be Repatriated with Families," *The Nation Lahore*, June 8, 2015. Available at: <https://nation.com.pk/08-Jun-2015/criminal-afghans-to-be-repatriated-with-families>

crimes all across the country and to extract the numbers of the reported crimes in which Afghan refugees are nominated. Gathering such a large quantity of data from all over the country, however, would be a difficult undertaking. The data gathering problem could be overcome by limiting its scope and restricting it to only certain districts or police stations that are located in areas with high concentrations of refugee populations. However, such data would not be representative of the whole population of the refugees or the country and could, thus, be misleading.

This study adopts another approach toward ascertaining the level of involvement of Afghan refugees in crime throughout the country. We have gathered data about the Afghan refugee prison population, including convicted and under-trial prisoners to ascertain the involvement of Afghan refugees in crime in Pakistan. The number of convicted Afghan prisoners can be used as an effective indicator for the involvement of Afghan refugees in crime in the country. Even the numbers of under-trial prisoners in various prisons across the country could be added to the numbers of the convicted prisoners because most of the serious offenses, called cognizable offenses, can lead to an arrest and judicial detention prior to conviction.¹⁵³ This list includes criminal offenses ranging from murder and attempt to murder to obstruction in the duties of a police officer.¹⁵⁴

Afghan Refugee Prisoners having POR Cards					
	Conde- mned	Convi- cted	Under- trial	Intern- ed	Total
Baloch- istan	0	0	0	0	0
KP	0	17	33	0	50
Punjab	2	10	20	6	38
Sindh	0	0	0	0	0
Total	2	27	53	6	88

Source: Data obtained, as of September 2018, from the provincial prison authorities through the Law and Justice Commission of Pakistan.

According to the data received from the provincial prison authorities, shown in the table above, there were a total of 88 Afghan refugee prisoners having POR cards in the four provinces of the country as of the end of September 2018.¹⁵⁵ 53 out of those 88

¹⁵³ See Section 4(f) and 4(n) of Code of Criminal Procedure 1898.

¹⁵⁴ See Schedule II Code of Criminal Procedure 1898.

¹⁵⁵ The data was obtained by the Law and Justice Commission of Pakistan and shared with the National Defense University.

imprisoned Afghan refugees were not convicted of any crime at the time the data was obtained. In other words, they were under-trial prisoners. Compared with the total number of 83,160 prisoners,¹⁵⁶ Afghan refugee prisoners are less than 0.1 percent of the total prison population. The data also suggests that incarceration among Afghan refugees, i.e., the number of imprisoned population as compared to the total population, is much lower than the incarceration rate for Pakistan. Incarceration rate among the 1.4 million Afghan refugee population in Pakistan comes down to 6 prisoners per 100,000 population, which is considerably lower than the national incarceration rate of 41 prisoners per 100,000 population for Pakistan.¹⁵⁷ It means that a Pakistani national is seven times more likely to be incarcerated in prison for criminal activity than an Afghan refugee. Since all violent crimes and even some non-violent crimes of serious nature are non-bailable (it means that they could land a person in prison before conviction), it can be safely argued that the involvement of Afghan refugees in crime in Pakistan is much lower than the involvement of Pakistani nationals in crime.

Provincial level analysis of the data reveals similar results. For instance, the total population of Khyber Pakhtunkhwa province is 30,523,371, according to the 2017 official census,¹⁵⁸ while the total number of Afghan refugees in the province, having POR cards, is 815,607.¹⁵⁹ This puts the refugee population in the province at 2.6 percent of the total population. On the other hand, the total prison population of Khyber Pakhtunkhwa is 10,358,¹⁶⁰ with only 50 Afghan refugees amongst them, i.e., around 0.5 percent. This shows that as compared to their total population, Afghan refugees are incarcerated at a rate lower than the Pakistani prisoners.

Are Afghan Refugees an Economic Burden?

Forty years ago, Pakistan opened its borders and offered protection to a population of displaced people fleeing conflict in war-torn Afghanistan. Over the years, the inflow of Afghans crossing the border to escape the ubiquitously unstable environment in Afghanistan has continued to bring about, what is considered today, one of the most protracted refugee situations in the world.¹⁶¹ In this time, the citizens of Pakistan have shared their homes and their resources in a display of unparalleled hospitality that in

¹⁵⁶ “Addressing Overcrowding in Prisons by Reducing Pre-conviction Detention in Pakistan,” *CODE PAKISTAN, NACTA, and ICRC*, May 2018, p.28.

¹⁵⁷ *Ibid.*, p.26.

¹⁵⁸ Province Wise Provisional Results of Census – 2017. Available at:

http://www.pbs.gov.pk/sites/default/files/PAKISTAN%20TEHSIL%20WISE%20FOR%20WEB%20CENSUS_2017.pdf

¹⁵⁹ “Pakistan: Afghan Refugee Update,” *UNHCR*, December 31, 2018.

¹⁶⁰ “Addressing Overcrowding in Prisons by Reducing Pre-conviction Detention in Pakistan,” *CODE PAKISTAN, NACTA, and ICRC*, May 2018, p.28.

¹⁶¹ Waseem Ahmad, “The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan,” *Seattle Journal for Social Justice*, Volume 15, Issue 3, September 2017. Available at:

<https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1866&context=sjsj>

recent years has seen a gradual decline amidst a growing perception about the refugee population as an economic drain on the country.

This shift in attitude can largely be attributed to the protracted displacement of Afghan refugees in Pakistan, which has over the years taken a toll on the country and turned the generosity of the refugee hosting communities to fatigue and frustration. Although the RAHA program was established to counter the asylum fatigue by reducing the economic and social vulnerability in refugee hosting communities, the problem has persisted with refugees being stigmatized for their perceived role in weighing down the economy of Pakistan.

Indeed, the rising demand for the return of Afghan refugees to their country of origin has been echoing for some time now with repeated assertions that the economy of Pakistan had for too long hosted a sizable refugee population that it could no longer sustain. In 2013, the Minister of States and Frontier Regions commented that in the last 30 years, Pakistan had spent more than USD 200 billion on Afghan refugees and did not have the capacity to continue doing so.¹⁶² Similarly, a statement released by the Pakistani cabinet in January 2018 reported that with a population of 208 million, the country simply could not afford providing continued assistance to the Afghan refugee population.¹⁶³

But it is the *Shigri Report* of 1998 that has provided one of the more damning accounts on the impact of the Afghan refugees in Karachi on the economy of the country. The document is referenced to date when debating on the issue. The report holds refugees to blame for the loss of employment opportunities for the local population and for additional strain on the civic infrastructure of the city.¹⁶⁴ A study conducted in 2005, revealed, however, that the Afghan refugees represented only an estimated 4.2 percent of the approximate workforce in Karachi, most of whom accounted for a tenth of the overall workforce in the fields of construction, transport, and whole and retail trade.¹⁶⁵

Such narratives, based on the assumption that Afghan refugees were detrimental to the economy of Pakistan, have persisted for long now with little evidence to support such claims or suggest otherwise. Indeed, continued repetition of such statements from the highest levels, in addition to the absence of any empirical research on the economic impact of Afghan refugees have largely influenced the public opinion to the effect that

¹⁶² “Burdened Economy: Pakistan has Spent \$200b on Afghan Refugees,” *the Express Tribune*, October 26, 2013. Available at: <https://tribune.com.pk/story/622518/burdened-economy-pakistan-has-spent-200b-on-afghan-refugees/>

¹⁶³ Sana Jamal, “Pakistan Mulls Over Granting Extension to Afghan Refugees,” *Gulf News Asia*, January 18, 2018. Available at: <https://gulfnews.com/world/asia/pakistan/pakistan-mulls-over-granting-extension-to-afghan-refugee-1.2159493>

¹⁶⁴ Afzal Shigri, Report on Illegal Immigrants and Afghan Refugees in Pakistan, 1998, p.86.

¹⁶⁵ “Afghans in Karachi: Migration, Settlement and Social Networks,” *Collective for Social Science Research & Afghanistan Research and Evaluation Unit (AREU)*, March 2005. p.6.

little economic benefit is attributed to refugees. Yet investigation into the matter suggests that refugees can, in fact, positively contribute to the economy of a host country provided that they are given the resources and the opportunity to do so.¹⁶⁶

Representation of Afghan Refugees in Pakistan's Economic Landscape

The economic contribution of Afghan refugees in Pakistan was highlighted in a recent meeting at the Federation of Pakistan Chambers of Commerce and Industry by the Pakistan and Afghanistan business community who claimed that a significant percentage of the labour market in Pakistan was dominated by Afghan workers, with a majority of them concentrated in four specific industries; namely, carpet-weaving, fresh fruits, heavy machinery, and honey-bee keeping.¹⁶⁷

Interestingly enough, more than 75 percent of the traders in the honey business in Pakistan were found to be Afghan refugees based in Peshawar. These refugees were accredited for the expansion of the industry that in 2016 employed over 600,000 people. With countless Afghan refugees migrating into Pakistan in the late 1970s, the United Nations High Commission for Refugees (UNHCR) set up livelihood opportunities for refugees that included a startup package for bee-keeping that comprised training and equipment with bees imported from Australia and Italy to facilitate them in finding a means of support and a source of income.¹⁶⁸ Up until 2004, Pakistan used to export an average of Rs.15 billion worth of honey, an amount that has since fallen to Rs.3 billion in 2019. This decline in the honey trade has been attributed to climate change and deforestation, among other triggers that have drastically affected the mortality rate of bees, and therefore, the production of honey.¹⁶⁹

While Afghan refugees in Pakistan were most prominently found to be engaged in daily wage labour, agricultural activities, and transportation, a significant number had also entered into the working and business class community by setting up small and large scale businesses, mainly in the clothing, carpet-weaving, heavy machinery, and gemstone industry. In Punjab, 40 percent of heavy machinery used in construction sites was owned by Afghan refugees.¹⁷⁰ Similarly, in Peshawar, the gemstone business was

¹⁶⁶ "Afghan Refugees Contributing to Pak Economy: Khattak", *MENAFN*, December 12, 2018. Available at: <https://menafn.com/1097821256/Afghan-refugees-contributing-to-Pak-economy-Khattak>

¹⁶⁷ Shared during the two-day consultation dialogue meeting on Bridging the Business Gaps between Pakistan and Afghanistan, October 17th & 18th, 2018, at the Federation of Pakistan Chambers of Commerce and Industry.

¹⁶⁸ Izhar Ullah, "From Modest Farms to Millions: Peshawar's Neglected Honey Industry," *Dawn*, January 25, 2016. Available at: <https://www.dawn.com/news/1234013>

¹⁶⁹ Zahor ul Islam, "Faced with Climate Change, Pakistani Honey Producers Search for 'Plan Bee,'" *Arab News*, January 8, 2019. Available at: <http://www.arabnews.pk/node/1432421/pakistan>

¹⁷⁰ Interview with relevant senior-level government official on November 8, 2018.

established by Afghan refugees¹⁷¹ and according to 2016 reports is said to have generated USD 27.562 million over a span of 5 years.¹⁷²

Even so, it is the carpet weaving and selling trade that is considered as notably the best example of where the Afghan refugee community has exercised extensive influence in generating revenue for Pakistan.¹⁷³

Pakistan's Carpet Industry

In the late 1970s, Pakistan experienced a significant boost in the carpet industry which coincided with, inter alia, the arrival of the Afghan refugees into the country.¹⁷⁴ An overwhelming majority of these refugees, which at present equals to 57 percent of the total Afghan refugee population, settled in the province of Khyber Pakhtunkhwa where more than 70 percent of carpet weavers are from Afghanistan.¹⁷⁵ The sudden rise of demand in the global market for Pakistani carpets was attributed to the weaving skills, techniques, natural dyes, and fabrics that the Afghan refugees brought¹⁷⁶ with them and utilized to the effect of earning Pakistan recognition for its rugs and a ranking whereby every fourth carpet in the world was produced by Pakistan.¹⁷⁷ With 15,000 square meters of carpets weaved in Pakistan per month and 35,000 square meters weaved in Afghanistan, a total of 50,000 square meters of carpets were being exported per month to the Middle East, Europe and America.¹⁷⁸ This flourishing industry provided

¹⁷¹ Riaz Ahmed, "The Gemstone Industry Loses its Gleam," *The Express Tribune*, October 28, 2017. Available at: <https://tribune.com.pk/story/1541986/1-gemstone-industry-loses-gleam/>

¹⁷² Abdul Mateen, "Gemstones Business in Pakistan in Doldrums as Afghan Traders Forced to Repatriate," *Daily Times*, October 4, 2016. Available at: <https://dailytimes.com.pk/53845/gemstones-business-in-pakistan-in-doldrums-as-afghan-traders-forced-to-repatriate/>

¹⁷³ Shared during the two-day consultation dialogue meeting on Bridging the Business Gaps between Pakistan and Afghanistan, October 17th & 18th, 2018, at the Federation of Pakistan Chambers of Commerce and Industry.

¹⁷⁴ Sayed Nasrat & Abdul Tamim Karimi, "The Afghan Carpet Industry: Issues and Challenges," *Economic Alternatives*, Issue 4, 2016, p.479

¹⁷⁵ Abdur Razzaq, "With Afghan refugees leaving, is Pakistan waving goodbye to carpet-weaving?" *The Express Tribune*, January 24, 2017. Available at: <https://tribune.com.pk/story/1305311/afghan-refugees-leaving-pakistan-waving-goodbye-carpet-weaving/>

¹⁷⁶ Sayed Nasrat & Abdul Tamim Karimi, "The Afghan Carpet Industry: Issues and Challenges," *Economic Alternatives*, Issue 4, 2016, p.479

¹⁷⁷ Rozina Shaheen, "Carpet Industry in Pakistan," *Pakistan & Gulf Economist*, August 15, 2004. Available at <http://www.pakistaneconomist.com/issue2004/issue32/i&e2.php>

¹⁷⁸ Shared during the two-day consultation dialogue meeting on Bridging the Business Gaps between Pakistan and Afghanistan, October 17th & 18th, 2018, at the Federation of Pakistan Chambers of Commerce and Industry.

jobs to more than 1.5 million people and supplemented the income of an additional 3 million.¹⁷⁹

However, in 2015, Pakistan's Carpet Manufacturers and Exporters Association (PCMEA) shared figures indicating a decline in carpet exports over the last 7 years from USD 320 million to USD 120 million that cost millions of people their jobs. This fall in carpet exports was linked to the repatriation of Afghan refugees who were skilled carpet weavers and who left less skilled workers to take up the trade in their absence, further signifying the extent to which Afghan refugees have influenced this industry, and therefore the economy of Pakistan.¹⁸⁰

Mobile Subscriber Identity Module (SIM) Cards

The economic footprint of Afghan refugees in Pakistan has not been limited to their involvement in trade and industry but has also permeated into other facets of the country's economic infrastructure including the tax revenue generated from the sale and activation of mobile Subscriber Identity Module (SIM) cards by Afghan POR card holders.

According to a recent report developed by the National Defense University (NDU) titled "KP FATA Merger: Challenges and Way Forward," the absence of empirical data on the economic contribution of Afghan refugees in Pakistan could be addressed by taking steps to measure their economic impact through quantification of their SIM card activity. The report cited open-source data, according to which approximately 565, 000 SIM cards were currently being operated by Afghan POR cardholders. On the basis of the provided figure, it was suggested that a study could be conducted to calculate the revenue generated from the activity of the quoted number of SIM cards that would translate into revenue generated by Afghan POR cardholders in possession of operational mobile SIM cards.¹⁸¹

Although the acceptance of POR cards as sufficient proof of legal identity for the purchase of mobile SIM cards has been a step in the right direction towards incentivizing economic contribution of Afghan refugees, it raises the question as to why the same principle of verification cannot be applied in the accessibility of other services to Afghan refugees; services which, if made available, would provide further financial benefit to the country.

¹⁷⁹ Sam Cameron & Khair-uz-Zaman, "Export Function Estimates for the Pakistan Carpet Industry," *Pakistan Development Review*, February 2006, p.1288.

¹⁸⁰ Sayed Nasrat & Abdul Tamim Karimi, "The Afghan Carpet Industry: Issues and Challenges," *Economic Alternatives*, Issue 4, 2016, p.480.

¹⁸¹ "KP FATA Merger: Challenges and Way Forward," *ISSRA, NDU*, p.30.

Opening of Bank Accounts for Afghan POR Card Holders

The rights accorded to Afghan refugees are protected by the possession of a Proof of Registration (POR) card that confirms the identity and status of the holder while offering limited freedoms such as temporary legal stay within Pakistan, freedom of movement, and entitlement to access certain services such as health, education, and the purchasing of mobile SIM cards. However, the POR card until recently did not permit the holder accessibility to other essential facilities, such as the opening of bank accounts, that were required for participating in the formal economy of the country.¹⁸² As a result, refugees were sidelined to the informal space where their only recourse for conducting financial transactions was through irregular channels such as the *hundi* and *hawala* system which is an informal and unauthorized system for banking and transfer of foreign exchange run by unregistered and private dealers. Due to the unauthorized nature of such transactions, those found to be involved run the risk of being prosecuted under the law.¹⁸³ Additionally, in compliance with the recommendations of the Financial Action Task Force (FATF) targeted towards the combating of terrorist financing through informal channels, Pakistan has instituted and implemented harsher punitive measures against offenders.¹⁸⁴

More so, unauthorized financial systems adversely affect the formal economy by diverting financial activity and its dividends from the mainstream to the grey sector. As such systems operate unregistered, the transactions conducted within the system are not reflected in official records, which negatively impacts government revenue as no tax can be collected from the remittance of funds when no official trail of money movement exists. Without the option of opening a bank account with a POR card, Afghan refugees had little choice but to work within the informal sector to carry out any and all financial transactions. As a result, they were left with no other option but to operate outside of the national tax net, which translated to financial loss for Pakistan.¹⁸⁵ The carpet trade, as discussed above, provides a very relevant example in this context as an estimate of USD 47.4 million is generated annually through this industry and directly processed into the informal economy.¹⁸⁶

In recognition of the drawbacks of disallowing Afghan refugees access to opening bank accounts, senior government officials have suggested that those registered with NADRA

¹⁸² Bridging the Business Gaps between Pakistan and Afghanistan, *International Research Council for Religious Affairs (IRCRA)*, November 15, 2018.

¹⁸³ In accordance with Article 35 of the State Bank of Pakistan Act, 1956, no person in Pakistan other than the Bank or an entity expressly authorized; is allowed to accept, make, or issue any bill of exchange, hundi, promissory note or engagement for the payment of money.

¹⁸⁴ Interview with a senior-level official of the FIA in Peshawar on October 29, 2018.

¹⁸⁵ Ibid.

¹⁸⁶ Bridging the Business Gaps between Pakistan and Afghanistan, *International Research Council for Religious Affairs (IRCRA)*, November 15, 2018.

should be given the right to open bank accounts as POR cardholders, in order to mainstream them into the formal economy, which in turn would strengthen the administrative oversight of the government regarding Afghan refugees, and improve financial management in the country.¹⁸⁷ Moreover, channeling the Afghan refugees from the informal to the formal sector has become a necessity, in view of the FATF recommendations and for improved executive oversight on security matters.¹⁸⁸

For these reasons, the issue has been taken up by the Ministry of Finance, which requested the State Bank of Pakistan to amend the existing guidelines for opening bank accounts in Pakistan as contained in the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Regulations.¹⁸⁹

In line with the realization of the aforementioned need, the Prime Minister of Pakistan released a statement on February 25th, 2019, expressing his intent to include registered Afghan refugees in the formal economy of the country by allowing them to open bank accounts.¹⁹⁰ Subsequently, on February 28th, the State Bank of Pakistan issued a notification to all banks and Development Finance Institutions (DFIs), legitimizing the use of POR cards held by Afghan refugees as valid documents for proof of identity for the purpose of opening bank accounts.¹⁹¹

Hurdles in Trade and Investment for Afghan POR Card Holders

While recent action has been taken in addressing the need for opening bank accounts for Afghan POR cardholders, they are unable to access a number of essential services such as renting or purchase of property, booking hotel rooms, registration of companies, trade permits, trade and business insurance, acquiring a driving license, and booking a ticket for public transport.¹⁹² Aside from the general inconvenience associated with the lack of access to the abovementioned resources, the situation also presents a significant challenge in terms of trade and business opportunities for the Afghan refugee population. In the context of the honey business, Afghan traders reported that the government crackdown against refugees, following the Peshawar Army Public School

¹⁸⁷ Interview with relevant senior-level government official on November 8, 2018.

¹⁸⁸ Interview with a senior-level official of the FIA in Peshawar on October 29, 2018.

¹⁸⁹ Interview with senior-level official from the Ministry of Interior on December 19, 2018

¹⁹⁰ Tweet by Prime Minister, Imran Khan, on February 25th, 2019. Available at: <https://twitter.com/ImranKhanPTI/status/1099991879431671808> (last accessed on March 14, 2019)

¹⁹¹ Acceptance of Proof of Registration (POR) Card held by Afghan Refugees as Valid Identity Document for Account Opening, Official Circular by Banking Policy and Regulations Department,

State Bank of Pakistan, February 28, 2019. Available at:

<http://www.sbp.org.pk/bprd/2019/CL2.htm> (last accessed on March 14, 2019).

¹⁹² Bridging the Business Gaps between Pakistan and Afghanistan, *International Research Council for Religious Affairs (IRCRA)*, November 15, 2018.

attack in 2014, brought to head visa and work permit issues that interfered with the production and selling of honey, and negatively impacted their livelihood and the industry as a whole.¹⁹³ The lack of proper work and trade permits for Afghan traders and businessmen in Pakistan were identified as one of the many deterrents to their continued business and investment in the country.¹⁹⁴ As a consequence of such impediments, Afghan refugees were now taking their business to other countries such as the UAE and Turkey;¹⁹⁵ leaving the economy of Pakistan to lose out on a significant revenue from trade, taxes and remittances.¹⁹⁶

Access to Higher Education for Afghan POR Card Holders

In discussing a durable solution for Afghan refugees, an often overlooked avenue has been repatriation and sustainable reintegration in Afghanistan through access to quality education, which has been identified as an essential factor for supporting the successful reintegration of refugees in their country of origin.¹⁹⁷ While both formal and informal education is freely accessible to registered refugee children until the age of 16, only 40 percent of Afghan refugee children were found to be attending Pakistani schools with problems highlighted in quality and access to education with the latter being specifically relevant to girls.¹⁹⁸

In recognition of the problem, the government has reportedly taken up initiatives through the creation of a task force on education to formulate recommendations for reforms in the educational sector, especially with regard to the quality of education and out of school children, to ensure that access to education is available to all children, including refugees. More so, under the umbrella of the RAHA program, UNHCR has continued to invest efforts into improving the educational service delivery near refugee

¹⁹³ Izhar Ullah, “From Modest Farms to Millions: Peshawar’s Neglected Honey Industry,” *Dawn*, January 25, 2016. Available at: <https://www.dawn.com/news/1234013>

¹⁹⁴ Bridging the Business Gaps between Pakistan and Afghanistan, *International Research Council for Religious Affairs (IRCRA)*, November 15, 2018.

¹⁹⁵ Interview with senior-level official from the Ministry of Interior on December 19, 2018

¹⁹⁶ “Afghan Refugees Contributing to Pak Economy: Khattak”, *MENAFN*, December 12, 2018. Available at: <https://menafn.com/1097821256/Afghan-refugees-contributing-to-Pak-economy-Khattak>

¹⁹⁷ “Breaking the Cycle: Education and the Future for Afghan Refugees,” *UNHCR & Norwegian Refugee Council (NRC)*, September 2015, p. 16. Available at: https://www.unhcr.org/nansen/breaking_the_cycle_report_2015.pdf

¹⁹⁸ Jamila Achakzai, “UNESCO Report Calls for Fulfilling Education Needs of Migrants,” *The News*, November 28, 2018. Available at: <https://www.thenews.com.pk/print/397056-unesco-report-calls-for-fulfilling-education-needs-of-migrants>

villages and in areas with a high concentration of Afghan refugees, to facilitate access to education for both the local and refugee populations.¹⁹⁹

With respect to higher education, UNHCR has also implemented tertiary education scholarship programmes to promote access to higher education for Afghan refugee students. The Scholarship programme DAFI (the Albert Einstein German Academic Refugee initiative) has funded the education of 1,200 students since it was started in Pakistan in 1992. Registered Afghan refugees in possession of valid POR cards from both rural and urban settings have benefited from this scholarship. However, there have been few female applicants due to a gap in the accessibility of secondary and post-secondary education for Afghan refugee women; this gap is being addressed through the provision of higher secondary school level scholarships.²⁰⁰

The Government of Pakistan has also made a concerted effort to ensure that Afghan students interested in pursuing a higher education have the facility to do so through access to scholarship awards, such as the Allama Muhammad Iqbal Scholarships for Afghan Nationals, which offers 3,000 scholarships aimed at building the capacity of Afghan youth in various fields, including medicine, engineering, agriculture etc.²⁰¹ Under such government led schemes, universities have reserved a specific quota of seats for Afghan nationals. The University of Engineering and Technology (UET) Peshawar is noted to have reserved 23 seats for the academic session of 2018-2019 under the Award of 2000 scholarships for Afghan Nationals.²⁰² While some universities require the applicants to present a valid passport and a visa, particularly if applying for “foreigner seats;” PoR card holders are, by and large, able to access tertiary education on the basis of the possession of a valid PoR card. The benefit to access to education cannot be stressed enough, especially as available research suggests that there is a threefold increase in the success rate for repatriation amongst educated Afghan refugees.²⁰³

¹⁹⁹ Jamila Achakzai, “UNESCO Report Calls for Fulfilling Education Needs of Migrants,” *The News*, November 28, 2018.

²⁰⁰ “The Albert Einstein German Academic Refugee Initiative – DAFI in Pakistan,” UNHCR. Available at: <https://unhcrpk.org/dafi/>

²⁰¹ “Award of Allama Muhammad Iqbal Scholarships for Afghan National Students,” *Higher Education Commission*, Pakistan. Available at: <http://hec.gov.pk/english/scholarshipsgrants/amisp/Pages/default.aspx>

²⁰² “Quota /Reserved Seats at B.Sc Level in UET, Peshawar,” *Directorate of Admissions, UET Peshawar*. Available at: <http://enggentrancetest.pk/modules/prospectus/quota-seats/>

²⁰³ “Breaking the Cycle: Education and the Future for Afghan Refugees,” *UNHCR & Norwegian Refugee Council (NRC)*, September 2015, p. 16

Contemporary Policy Discourse and the Future of Afghan Refugees in Pakistan

The foregoing indicates that the policy perception about Afghan refugees in Pakistan regarding their association with crime is not supported by empirical evidence. Moreover, instead of being a burden on the economy of Pakistan, Afghan refugees have contributed to Pakistan's economy in a variety of ways. But since they are largely operating in the extensive undocumented informal economy of the country, due to restrictions on their transactions and ability to formally work and operate businesses, their economic contribution cannot be easily quantified. Bringing Afghan refugees into the folds of the formal economy by removing certain restrictions on their formal transactions, such as renting properties, registering their businesses, staying in hotels, or traveling by air, would not only help Pakistan's economy but could also improve financial oversight of the contribution made by Afghan refugees which is currently unmonitored as part of the informal economy. To ensure that Afghan refugees are able to meaningfully contribute to the formal economy of Pakistan, complications regarding their legal status in Pakistan will have to be addressed.

Pakistan's policy response to Afghan refugees and migrants, however, is to a certain degree dependent on bilateral diplomatic relations between Afghanistan and Pakistan. This is one of the major reasons for variations in the policy application throughout the Afghan conflict. Notwithstanding Pakistan's coupling of its policy toward Afghan refugees with its relations with Afghanistan, restoration of peace in Afghanistan is a prerequisite for voluntary repatriation of Afghan refugees.

The withdrawal or drawdown of US forces from Afghanistan has long been a stipulation of Taliban for negotiating an end to conflict in the country²⁰⁴. The US administration has already scheduled the withdrawal of 7,000 of the roughly 14,000 US troops stationed in Afghanistan.²⁰⁵ However, in the likelihood of such a scenario materializing, there are grave concerns of some as to how the internal dynamics in Afghanistan may alter, and what implications would the resulting shift have on Pakistan and the Pak-Afghan relations.

In response to the US decision to downsize its troops in Afghanistan, many have been attempting to predict the impact of such a move on Afghanistan. According to 2018 reports, Taliban is active in 70 percent of the districts in Afghanistan with full control

²⁰⁴ Mujib Mashal, "U.S. Officials Meet with Taliban Again as Trump Pushes Afghan Peace Process," *The New York Times*, October 13, 2018. Available at:

<https://www.nytimes.com/2018/10/13/world/asia/us-talks-taliban-afghanistan.html>

²⁰⁵ Robert D. Kaplan, "Time to Get Out of Afghanistan," *The New York Times*, January 1, 2019.

Available at: <https://www.nytimes.com/2019/01/01/opinion/afghanistan-war-american-troops-withdraw.html>

of 4 percent of the country and operational presence in 66 percent.²⁰⁶ As such, it has been suggested that withdrawal and even significant reduction of US troops could create a void in the country, bringing about civil war, in which the Afghan government would not be able to survive for long, not in the face of a Taliban offensive.²⁰⁷ The future of Afghanistan, in such a scenario, would be dependent on Taliban's strategy for governance. Some reports have observed that Taliban has already taken a turn in its leadership practices with a focus on presenting themselves as a legitimate authority for effective administration in order to win the support of the people in a long-term plan to show the local and international community that the competence of their leadership surpasses that of the present government.²⁰⁸

However, if past experience is any indication and Taliban reverts to its rule of rigidly interpreting and implementing their brand of Islamic Sharia, then it is possible that Afghanistan could once again experience internal unrest and conflict as well as increasing internal displacement. If a deterioration of the situation in Afghanistan continues, Afghans may seek refuge elsewhere, particularly in the other neighboring countries that have historically hosted Afghan refugees.

There are various contending issues that would have to be kept in mind in such a case. First and foremost, the formulation of a national policy for the management of Afghan refugees would have to be expedited, as Pakistan is still paying the cost of having neglected to do so, 40 years ago, when the first mass influx of refugees arrived into the country. The refugee villages that were set-up for this purpose have drastically reduced in number, as in the absence of any refugee management policy tool, the majority of Afghan refugees left the refugee villages in search of better opportunities in urban settlements. Along with the drafting of a legal framework, Pakistan would also need to build capacity on the administrative front to ensure that there is institutional capacity to meet the demand of hosting a potential new mass inflow of refugees.

Other urgent issues to attend to would be the border management protocol in such a situation, given Pakistan's prioritization of national security in the wake of the 2014 APS terrorist attack, and the border fencing that was undertaken in an effort to regulate cross-border movement, which in line with the international principle of *non-*

²⁰⁶ Phil Stewart & Robert Birsel, "Taliban Active in 70 Percent of Afghanistan, BBC Study Finds," *Reuters*, January 31, 2018. Available at: <https://www.reuters.com/article/us-afghanistan-taliban-study/taliban-active-in-70-percent-of-afghanistan-bbc-study-finds-idUSKBN1FK03C>

²⁰⁷ Asif Durrani, "Taliban's Revival in Afghanistan: Lessons for Pakistan," *Daily Times*, January 9, 2019.

²⁰⁸ Ashley Jackson, "The Taliban's Fight for Hearts and Minds," *Foreign Policy*, September 12, 2018. Available at: <https://foreignpolicy.com/2018/09/12/the-talibans-fight-for-hearts-and-minds-afghanistan/>

refoulement, would indubitably have to take a back seat in the event of another refugee crisis.²⁰⁹

In addition, Pakistan's strategy with regard to the implementation of a flexible visa regime, in accordance with the Federal Cabinet decision of February 2017 on adopting a Comprehensive Policy on Voluntary Repatriation and Management of Afghan Refugees, would also have to be revisited. This is specifically relevant for former POR cardholders in possession of visas, in terms of incorporating legal safeguards that accord continued international protection to them should their visas be cancelled or denied for renewal.

Since the issuance of POR cards in 2007, the cards have come up for expiration on numerous times and on each occasion the government has granted the extension. In compliance with international standards for protection of refugee rights, the government has consistently introduced extensions to the deadline to ensure that the principle of non-refoulement and the requirement of voluntariness of repatriation is respected. The government continues to maintain this stance and has given no indication to suggest that the present deadline – which is June 30th 2020 – would not be further extended or would be implemented to the effect of forcibly repatriating Afghan refugees.

Under the flexible visa regime, which is referenced in the 2017 Government of Pakistan Policy on Voluntary Repatriation and Management of Afghan Refugees, PoR cardholders will have the option to voluntarily, and on an informed basis, obtain Afghan passports for converting their status to one of the proposed categories of visa-holders in Pakistan (including business, student, skilled / unskilled laborer, investors, inter-marriages, health/medical) when the Government of Pakistan commences its implementation.²¹⁰ Afghans who currently hold an Afghan Citizenship Card (ACC) will be required to return to Afghanistan to obtain an Afghan Passport and apply for a relevant Pakistan visa. Afghan nationals found to still be in Pakistan, without valid PoR cards, without mandate refugee status, without ACC or without a valid passport and visa, would become illegal immigrants whom the Pakistan government would then, legally have the right to deport under the Foreigner's Act of 1946.

In terms of the economic impact of a potential Afghan refugee influx, Pakistan would not be able to carry the burden of supporting a new wave of refugees alone. The economy of the country is already overstretched with its many domestic issues along with

²⁰⁹ Katy Long, "No Entry! A Review of UNHCR's Response to Border Closures in Situations of Mass Refugee Influx," *UNHCR & Policy Development and Evaluation Service (PDES)*, June 2010, p. 10-11. Available at: <https://www.unhcr.org/en-my/4c207bd59.pdf>

²¹⁰ For details, please refer to <https://www.pakembassykabul.org/en/consular-services/visa-application>.

supporting the existing Afghan refugee population of the country;²¹¹ an additional influx would simply not be within the capacity of the country to sustainably manage in isolation. As such, the international community would have to come into play with assistance and support, for which the role of UNHCR would be integral in pursuing extraordinary appeal mechanisms with international donors to cope with a humanitarian crisis of such level, should it occur.²¹²

Since the possibility of such a scenario cannot be excluded amidst recent international and regional developments, there is a need for relevant authorities within Pakistan and the international community to collectively devise a national strategy that ensures Pakistan's preparedness for such an eventuality.

The federal cabinet on Feb 7, 2017, agreed on, enhanced border management, flexible visa regime for POR card holders, documentation and registration of undocumented Afghans, extension of the validity of the POR Cards and the Tripartite Agreement, continued voluntary repatriation, and enactment of the national refugee law. So far, however, the cabinet decision had been only partially implemented. Under the Rules of Business, 1973, the Secretary Cabinet Division is responsible for sending the cabinet decision to the concerned ministries and Divisions and follow up on the implementation. The Secretary and Minister in-charge of the ministry concerned, which moved a summary to the cabinet, under Rules 24 and 5, respectively, are under obligation to ensure implementation of the cabinet decision. In the present case, while there has not been any progress for the enactment of a national refugee law ever since the first draft was developed by the Government of Pakistan in 2013, limited headway has been made with respect to the preparation of modalities for a flexible visa regime, and the execution of an enhanced border management policy, which was taken up by the Defense Ministry due to security concerns. Except for the Torkham border crossing, no other entry/exit point has got a proper immigration and documentation desk.²¹³ Even the immigration desk at Torkham border has no access to the database of the POR cards at the time of entry/exit, they are unable to ensure whether the immigrant was a refugee and, if so, whether validly registered or otherwise. The cabinet decision is still valid and cannot be overruled by the Prime Minister or any other individual or entity, except the cabinet. In a judgment of May 2016,²¹⁴ the Supreme Court of Pakistan laid down that even the

²¹¹ "Burdened Economy: Pakistan Has Spent \$200b on Afghan Refugees," *The Express Tribune*, October 26, 2013. Available at: <https://tribune.com.pk/story/622518/burdened-economy-pakistan-has-spent-200b-on-afghan-refugees/>

²¹² "While 'Host' States Shoulder Burden of Massive Refugee Influx, Delegates Tell Third Committee 'Resources Are Not Unlimited', Long-Term Solutions Needed," United Nations Meetings Coverage and Press Releases, GA/SHC/4150, November 4, 2015. Available at: <https://www.un.org/press/en/2015/gashc4150.doc.htm>

²¹³ Interview with a senior-level official of the FIA in Peshawar on October 29, 2018.

²¹⁴ *Mustafa Implex and Others v. Federal Government*

decision of the Prime Minister could not be equated with the decision of the federal government as the government under the Constitution of Pakistan, 1973,²¹⁵ consisted of the Prime Minister and Cabinet. The role of the Prime Minister is thus that of an executer and not the sole decision maker.

In the recent past, the Government of Pakistan launched an operation against informal banking in the shape of informal financial transaction methods of *Hundi* and *Hawala* under the umbrella of compliance with the Financial Action Task Force (FATF) recommendations, which has caused problems for the business community of Afghan refugees. Under the Anti-Money Laundering Regulations, the State Bank of Pakistan restrained all banks from opening bank accounts for Afghan refugees against their PORs. However, in light of the Prime Minister's latest announcement on including Afghan refugees into the formal economy by providing them the facility to open bank accounts, the State Bank has revisited its previous policy in favour of accepting POR cards as sufficient documents for establishing proof of identity for opening bank accounts for registered Afghan refugees.

The Afghan citizens are not allowed multiple entry visas nor third country visas from Pakistan. On the flexible visa regime, the Ministry of Interior said that it was working on it,²¹⁶ but in December 2018, the federal government made the decision to ban issuance of visa on entry to Afghan citizens. Throughout Pakistan, Afghan refugees are not allowed air ticket, tickets in luxury bus service, and reservation in hotels.²¹⁷

Although there is a great amount of legal ambiguity regarding refugees in Pakistan in general and Afghan refugees in particular, the Government of Pakistan has not progressed significantly towards the adoption of a national refugee legislation, regarding the need to adopt a national refugee legislation. The 2018 judgment of the IHC referred to above in the report provides ample legal ground for the need of a national refugee law that would not only address the economic, social, and political aspects of the issue of Afghan refugees but would also decrease the burden on the Government of Pakistan and address the confusion regarding application of the registration, citizenship, naturalization, immigration, and foreigners' laws.

²¹⁵ Article 90 and Article 99 of the Constitution of Pakistan, 1973

²¹⁶ Interview with a senior-level official from the Ministry of Interior on December 19, 2018.

²¹⁷ Interview with a senior-level government official on November 8, 2018.

Conclusion

Empirical data on the numbers of Afghan refugees in prisons of Pakistan indicates that the incarceration rate among Afghan refugees is lower than the incarceration rate of Pakistani nationals in the country. The data further suggests that there is a negligible number of Afghan refugees allegedly involved in serious crimes such as murder and terrorism. This suggests that Afghan refugees do not pose a security threat to the country. Although there is no comprehensive data available on the economic contribution of Afghan refugees in Pakistan, the record of issuance of SIM cards to Afghan refugees on the basis of their POR cards as per a 2018 report referred to above in this report indicates that 565,000 SIM cards are being used by Afghan refugees, which is one indicator of the fact that they are contributing to the national economy. Afghan refugees are substantially contributing to various trade sectors in the economy of Pakistan, including the carpet-weaving and honey bee-keeping cottage industries. Now, that all banks have received and internally circulated the State Bank of Pakistan's notification on the legitimacy of POR cards as accepted proof of identity for opening bank accounts, the economic contribution of Afghan refugees can be shifted into the mainstream economy.

This policy decision will also eliminate the need for Afghan refugees to conduct financial transactions through informal channels, such as the *hundi/hawala* system. The unregistered nature of such processes meant that financial activity could not be traced, resulting in financial loss as the government was unable to collect taxes through formal channels of remittances. Furthermore, in the absence of a money trail for relevant authorities to track, these informal channels also presented a significant security risk that at times jeopardized Pakistan's compliance with the FATF recommendations. Should the policy be applied as intended, and provided that Afghan refugees are further allowed to travel by Pakistani airlines, rent properties, acquire drivers' licenses, and stay in hotels on their POR cards, their contribution to economic activity in Pakistan could be substantial.

Acquiring an Afghan passport and then obtaining a short-term single entry visa over and over again is another serious hurdle for Afghan refugees wanting to forego their refugee status for acquiring higher education in Pakistan or any other similar objective. While the implementation of the flexible visa regime as per the decision of the federal cabinet in February 2017 is still inconclusive, there is a need for introduction of a long-term flexible visa for Afghan nationals that would allow for stays of durations longer than 30 days, with more flexible provisions of third country visits and multiple visit visas. In addition to that, the Government of Pakistan would benefit from granting trade licenses to Afghan companies and allowing them registration in Pakistan on the basis of PORs. This might encourage more and more Afghan entrepreneurs to invest in Pakistan and employ skilled labor in the form of Afghan refugees as part of a scheme for voluntary repatriation that would strengthen the potential for anchoring skilled labor returning to Afghanistan. This would also be helpful in improving the bilateral trade between Afghanistan and Pakistan that crossed the \$2 billion mark in 2017-18, most of

it being exports from Pakistan to Afghanistan, including sugar, fresh fruit, vegetables, rice, wheat, flour, cement, petroleum products, and medicines.

The first step to facilitate the process for streamlining of the economic activity of Afghan refugees to better benefit from its potential, is to address the ambiguity in relation to their legal status. From the legal discourse on Afghan refugees in Pakistan, it appears that Afghan refugees are singled out as different from refugees from other countries by the law and the courts of law in Pakistan, which is a contravention of the Constitution of Pakistan. Adoption of national refugee legislation is, perhaps, the best approach to address the legal confusion and challenges faced by Afghan refugees in lieu thereof. The draft legislation was developed by the Government of Pakistan in 2013 and had been shared with relevant stakeholders for review and comments. There is, however, a paucity of knowledge among some key decision-makers on refugee issues including the adoption of a national refugee legislation.

While the current legal POR status of Afghan refugees in Pakistan presents challenges to Pakistan to fully benefitting from the Afghan refugee community's economic potential. Therefore, there is a need to generate an informed policy level debate in parliament on the subject of Afghan refugees in Pakistan. Such a debate, covering not only the humanitarian angle to the refugee situation and the security aspect but also the economic contribution of Afghan refugees, would help in rationalizing the policy-level discourse on the subject as well as perceptions of the most relevant stakeholders. This could be coupled with another parallel approach aimed at creating awareness about the refugees through young journalists and columnists. Together, these actions could lead to a conducive atmosphere towards the adoption of the national refugee legislation, which is a pre-requisite for alleviating the situation of Afghan refugees in Pakistan and enabling Pakistan to benefit from their economic potential.