

CURSOR OF DEVELOPMENT
AND EDUCATION PAKISTAN



REPORT NATIONAL CONSULTATIONS ON AFGHAN REFUGEES IN PAKISTAN 2017

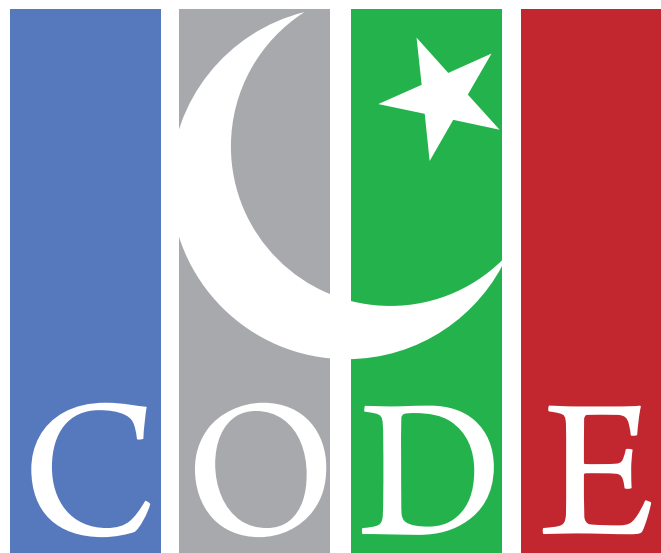


CODE PAKISTAN



Report

NATIONAL CONSULTATIONS ON AFGHAN REFUGEES IN PAKISTAN 2017



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

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List of Acronyms

AJK	Azad Jammu and Kashmir
ARC	American Refugee Committee
CAR	Commissionerate Afghan Refugees
CCAR	Chief Commissioner Afghan Refugees
CNIC	Computerized National Identity Card
CODE	Cursor of Development and Education
CSO	Civil Society Organization
DG	Director General
FIA	Federal Investigation Agency
GIZ	Gesellschaft für Internationale Zusammenarbeit
ICRC	International Committee of the Red Cross
IUI	International Islamic University Islamabad
IOM	International Organization for Migration
IS	Islamic State
KP	Khyber Pakhtunkhwa
LUMS	Lahore University of Management Sciences
MD	Managing Director
NGO	Non-government Organization
NRC	Norwegian Refugee Council
NUML	National University of Modern Languages
PHC	Peshawar High Court
PHF	Pakistan Humanitarian Forum
PICSS	Pakistan Institute for Conflict and Security Studies
PIHRO	Pakistan International Human Rights Organization
PIMS	Pakistan Institute of Medical Sciences
RAHA	Refugee Affected Hosting Areas
RSIL	Research Society of International Law
SAFRON	States and Frontier Regions
SHARP	Society for Human Rights and Prisoners' Aid (SHARP)
SOPs	Standard Operating Procedures
UNHCR	United Nations High Commissioner for Refugees

About CODE PAKISTAN

CODE PAKISTAN—an independent not-for-profit organization—is an effort to build an inclusive and prosperous Pakistan through development and education initiatives. We aspire to amplify the message of peace, tolerance, and inclusivity in Pakistan through our initiatives. We plan to offer sustainable empowerment by engaging communities in developing their capacities in helping themselves. We believe that only a peaceful, tolerant, and inclusive Pakistan can be a prosperous Pakistan.

By holding the *National Consultations on Afghan Refugees in Pakistan* and sharing its findings with key government officials through the Ministry of SAFRON, we are hoping to augment Pakistan’s international standing, improve Pak-Afghan relations, and most importantly, help the Afghan refugees in securing a better future. To learn more about what we are doing for promoting peace, tolerance, and inclusivity in Pakistan, please visit our website www.codepak.org.



Acknowledgments



We would like to thank the office of the Chief Commissioner Afghan Refugees (CCAR), Ministry of States and Frontier Regions (SAFRON), Government of Pakistan, and United Nations High Commissioner for Refugees (UNHCR) for their support to us in conducting *National Consultations on Afghan Refugees in Pakistan*. We would especially like to thank Chief Commissioner Afghan Refugees Dr. Imran Zeb and Representative UNHCR Mr. Indrika Ratwatte for having faith

in our abilities for undertaking such a monumental task.

We would like to thank National Security Adviser Lt. Gen. (Retd.) Nasser Khan Janjua, Secretary SAFRON Mr. Muhammad Shehzad Arbab, Chief Commissioner Afghan Refugees Dr. Imran Zeb, Representative UNHCR Mr. Indrika Ratwatte, Commissioner Afghan Refugees Islamabad Mr. Saleem Khan, Commissioner Afghan Refugees Punjab Mr. Riaz Hameed Chaudhry, Commissioner Afghan Refugees Sindh Mr. Ghazanfar Ali Agha, Director General Commissionerate Afghan Refugees Peshawar Mr. Waqar Maroof, Deputy Secretary Ministry of Interior Tariq Aleem Gill, Director General NACTA Mr. Mohammad Jaffer, Project Manager/Assistant Director NADRA Ms. Ishrat Ramzan, Chairman Pakistan Institute for Conflict and Security Studies (PICSS) Maj. Gen (Retd) Saad Khattak, and Pakistan's former ambassador to Afghanistan Amb. Arif Ayub for participating in the consultative session with senior Government of Pakistan officials on February 28, 2017.



We would like to thank all the participants of the two rounds of consultations on January 10 and January 24, 2017, without whose input we could not have compiled this report. Last but not the least, we would also like to thank all the students from the School of International Law (SIL) who volunteered with us to take notes and help with organizing the events. We are also grateful to the administration and faculty of SIL, especially the principal Ms. Nida Tareen, who

allowed and encouraged their students to support us.

Introduction

There are an estimated 2 million displaced persons of Afghan ancestry or origin presently living in Pakistan, many as refugees (see Annex I for details). The only official policy on the subject is the National Policy on Voluntary Repatriation and Management of Afghan Refugees, which was adopted by the Government of Pakistan in July 2013. With the approval of a national refugee policy in a Federal Cabinet meeting on February 7, 2017, however, there is a hope that long-standing challenges to the Afghan refugees could be addressed.

Pakistan is neither a signatory to the 1951 Convention relating to the Status of Refugees, including its 1967 Protocol, nor has it promulgated any specialized law for dealing with the issue of refugees. As a result, the state's dealings with refugees continue to be regulated by a set of statutes that were framed for other purposes. For instance, the Foreigners Act, 1946; the Pakistan Citizenship Act, 1951; and the Naturalization Act, 1926 were designed for an earlier era and do not respond sufficiently to the exigencies of the present times.



Once again, in the February 7, 2017, meeting of the Federal Cabinet, the adoption of the National Refugee Law was approved to take care of the legal anomalies related to Afghan refugees. It was approved once before in a meeting of the Federal Cabinet on August 15, 2013. The Ministry of States and Frontier Regions (SAFRON) had then prepared the draft of the legislation with technical assistance from UNHCR.

The absence of a comprehensive legal and administrative policy governing the issue of refugees is detrimental to Pakistan on many fronts; from security and border management to the regulation of labor and migration. Moreover, the lack of a long-term, comprehensive, and well-thought-out national legal and policy framework for the management and voluntary repatriation of Afghan Refugees is causing the government of Pakistan a good deal of embarrassment on the international stage.

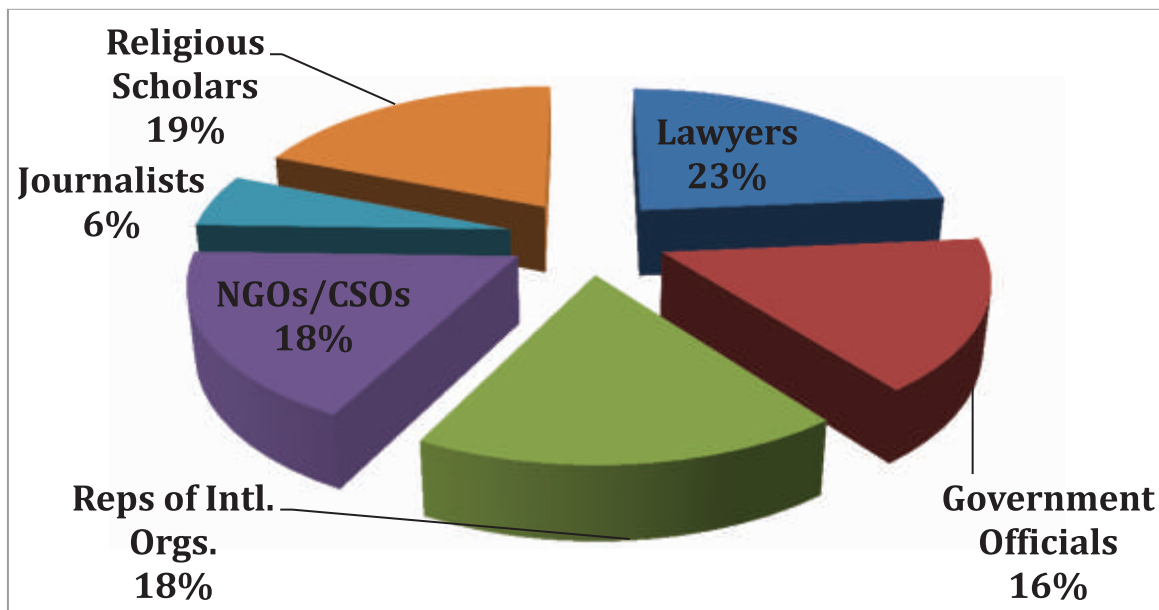
In order to respond to the challenges caused by this legal and policy vacuum, UNHCR, in collaboration with CCAR, commissioned CODE PAKISTAN to hold *National Consultations on Afghan Refugees in Pakistan* in order to generate practical recommendations for a comprehensive policy on the management and voluntary repatriation of Afghan refugees in Pakistan.

The national consultations were held in two rounds in Islamabad on January 10 and January 24. Each round of consultations comprised of simultaneous consultative sessions on the following six themes:

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

The first round of consultations was aimed at a general discussion around the six themes, while the second round was meant for converging on practical recommendations on each of them. As shown in the figure below, CODE PAKISTAN gathered a diverse group of relevant experts and stakeholders for the consultations. The participants of the consultations included Government of Pakistan officials, representatives of international organizations, members of NGOs/CSOs, lawyers, journalists, and religious scholars in the consultative process on the important issue of Afghan refugees in Pakistan.

Composition of the Participants of the Consultations



This report presents the findings and recommendations of the two rounds consultations in January 2017. Since the consultations were held around six themes, this report dedicates a chapter each to the six themes of the consultations. CODE PAKISTAN gave a presentation of the findings of the two rounds of consultations to senior government officials on February 28, 2107. The aim of the consultative session with senior Government of Pakistan officials was to solicit their valuable feedback on the key takeaways and recommendations of the two rounds of consultations. This report summarizes the discussion of the consultation with government officials in the chapter before the conclusion.

Legal Perspective on the Management of Afghan Refugees in Pakistan

The Government of Pakistan recognizes those Afghans as refugees who opted to register and have POR cards. All others remain undocumented and face more legal challenges than those in possession of POR cards. The POR cards were first issued in October 2006 and have since been renewed a number of times. In June 2016, a six-month extension was granted, which was further extended in September 2016 by another six months until March 31, 2017. In November 2016, the deadline was once again extended, and December 2017 has been announced as the reapproved date for the expiry of POR cards. The government's avowed commitment to the voluntary repatriation of all Afghans is premised on its viewing of them as foreigners residing within a country that is not theirs. The POR card holders, however, are considered *prima facie* refugees.



The government's avowed commitment to the voluntary repatriation of all Afghans is premised on its viewing of them as foreigners residing within a country that is not theirs. The POR card holders, however, are considered *prima facie* refugees.

The protracted duration of stay of Afghan refugees in Pakistan has, according to some jurists, created legal issues with respect to their treatment as foreigners under the law. Besides the legal confusion about Afghan refugees as foreigners under the existing laws of the country, the absence of national legislation with regard to refugees has led to *ad hoc* policy measures under laws whose application on Afghan refugees could itself be questioned. This is the reason CODE PAKISTAN chose legal aspects of Afghan refugee management as the first session of its deliberations on Afghan refugees in the country.

List of Participants

CODE PAKISTAN gathered a group of eminent lawyers and legal academic to discuss and analyze the subject along with a few journalists. Following is the list of participants of the session:

- | | | |
|----|----------------------------|--|
| 1. | Dr. Martin Lau (Moderator) | Dean, Sheikh Ahmad Hassan School of Law, Lahore University of Management Sciences (LUMS) |
| 2. | Dr. Cristina Bunea | UNHCR |
| 3. | Dr. M. Aslam Khaki | Advocate Supreme Court |
| 4. | Mr. Ahmad Nazir Warraich | Legal Advisor to Ministry of Foreign Affairs |
| 5. | Mr. Attaullah Hakim Kundi | Advocate High Court, Partner, Kundi and Misbah |
| 6. | Mr. Aurang Zeb | Deputy Director NACTA |
| 7. | Mr. Fahad Qaisarani | Research Society for International Law |

- | | | |
|-----|------------------------------|---|
| 8. | Mr. Indrika Ratwatte | Representative UNHCR |
| 9. | Mr. Liaqat Banori, | Advocate High Court, Legal Advisor, SHARP |
| 10. | Mr. M. Haider Imtiaz | Advocate High Court |
| 11. | Mr. Osman Khan | ICRC |
| 12. | Mr. Oves Anwar | Research Society for International Law |
| 13. | Mr. Rizwan Shahzad | Correspondent, <i>The Express Tribune</i> |
| 14. | Mr. Umer Gilani | Advocate High Court, Partner, The Law and Policy Chambers |
| 15. | Mr. Ummar Ziauddin | Advocate High Court, Partner, Saad Rasool Associates |
| 16. | Mr. Waqar Maroof | Additional Commissioner Afghan Refugees KP |
| 17. | Mr. Zulfiqar Khan | Correspondent, <i>The Dawn</i> |
| 18. | Ms. Hadiya Aziz, | State Counsel, Islamabad High Court |
| 19. | Ms. Iman Zainab Hazir-Mazari | Advocate, Associate, Mandviwala and Zaffar |
| 20. | Ms. Memoona Batool Khan | Project Director SHARP |
| 21. | Ms. Sara Hyder | ICRC |

Discussion



The participants of the session pointed out that there was an urgent need to legally scrutinize the language used in all discourse on Afghan refugees. It was argued that by calling them refugees, Pakistan had imposed pre-conceived notions on them and shut the doors of further inquiry. The anomalies created by the use of different legal instruments for Afghan refugees also came under discussion. Some participants maintained that there was a need to take a fresh look at

Pakistan's domestic laws relating to refugees. It was observed that the numerous domestic legal instruments relating to Afghan refugees could be turned into a national refugee legislation that would be in line with the international law.

Afghan Refugees and Pakistani Citizenship

The issue of the possibility of granting citizenship to certain segments of Afghan refugees was thoroughly discussed during the session. Advocate High Court Mr. Umer Gilani presented a review of Pakistan's citizenship law. He pointed out that in the period from 1949 to 1951, the framers of Pakistan's constitution consciously decided that definition of the term "citizen" would not be provided in the constitution; instead, the matter would be dealt with through a sub-constitutional statute, i.e., the Pakistan Citizenship Act, 1951.¹



He argued that the Citizenship Act of 1951 did not define citizen directly but mentioned five alternative pathways to citizenship:

- i. Birth inside Pakistan;²
- ii. Descent from Pakistani parents;³
- iii. Marriage with a Pakistani man;⁴
- iv. Migration from India to Pakistan before 1951;⁵ and
- v. Naturalization.⁶

He maintained that the conditions for acquiring citizenship by naturalization were stated in Section 3 of the Naturalization Act, 1926:⁷ spending around 8 years in Pakistan, being 18 or more years of age, possessing knowledge of at least one local or national language, and having good character.

¹ <http://www.refworld.org/pdfid/3ae6b4ffa.pdf>

² Section 4, Pakistan Citizenship Act, 1951. "Every person born in Pakistan after the commencement of this Act shall be a citizen of Pakistan by birth: Provided that a person shall not be such a citizen by virtue of this section if at the time of his birth: --(a) his father possesses such immunity from suit and legal process as is accorded to an envoy of an external sovereign power accredited in Pakistan and is not a citizen of Pakistan; or (b) His father is an enemy alien and the birth occurs in a place then under occupation by the enemy."

³ Section 5, *ibid.* "... a person born after the commencement of this Act, shall be a citizen of Pakistan by descent if his parent is a citizen of Pakistan at the time of his birth..."

⁴ Section 10, *ibid.*

⁵ Section 6, *ibid.*

⁶ Section 9, *ibid.* "The Federal Government may, upon an application made to it in that behalf by any person who has been granted a certificate of naturalization under the Naturalization Act, 1926 register that person as a citizen of Pakistan by naturalization."

⁷ <http://www.punjabcode.punjab.gov.pk/public/dr/THE%20NATURALIZATION%20ACT,%201926.doc.pdf>

Mr. Gilani claimed that around 74 percent of Afghan refugees were Pakistan-born and that there were yet others who had either one Pakistani parent or a Pakistani spouse. He was of the view that since most of them had lived in Pakistan for more than eight years, they met the criteria for obtaining citizenship of Pakistan by naturalization. “Therefore, almost all of the Afghan refugees would be legally entitled to claim Pakistani citizenship,” said Mr. Gilani.

Dr. Martin Lau, Dean, Sheikh Ahmad Hassan School of Law, Lahore University of Management Sciences (LUMS), who was also moderating the session, pointed out that Pakistan’s citizenship laws continued to be, at least on paper, some of the most liberal anywhere in the world and that Afghans could stand to benefit from them.

Mr. Attaullah Kundi, former legal advisor to the National Database and Registration Authority (NADRA), noted that while Pakistan’s citizenship laws were actually very generous, they had thus far been generally honored only in the breach. He said that in sharp contrast to the warmth and hospitality extended by Pakistan’s people to their Afghan brothers and sisters, the Government of Pakistan had tenaciously withheld from them the benefit of the country’s laws.



Mr. Kundi further pointed out that even courts had not been immune from an anti-immigrant bias in their interpretation of citizenship laws. He cited a judgment of the Divisional Bench of the Peshawar High Court (PHC) in *Ghulam Sanai v. National Registration Office* as an example.⁸ In this case, a Pakistan-born son of Afghan refugee parents, who claimed citizenship under Section 4, was turned down. The Court ruled that having been born in Pakistan was not enough and that one must also

have Pakistani parents to claim citizenship.

Mr. Gilani pointed out that the *Ghulam Sanai* judgment should be considered *per incurium* as the PHC’s interpretation of Section 4 defied all the recognized canons of statutory interpretation because of its reading of two different sections of a statute as if they were conjunctive clauses.⁹ He argued that Sections 4 and 5 dealt with two alternative pathways to citizenship: birth-place and parentage, and that reading the two of them in conjunction made no legal sense. He further maintained that the *Ghulam Sanai* judgment was not binding on

⁸ PLD 1999 Peshawar 18

⁹ Conjunctive reading of Sections 4 and 5 (relating to citizenship by birth and citizenship by descent, respectively) runs contrary to the general principles of statutory interpretation.

anyone except the PHC, and that recourse could still be made to the superior courts of Pakistan for the enforcement of Section 4.

Dr. Sadaf Aziz highlighted the historical background in which the Pakistan Citizenship Act, 1951, was drafted. She said that when Pakistan came into being in 1947, it received around five million refugees, possibly the largest contingent of refugees any country has received in modern history. From 1947 to 1951, every refugee who came to Pakistan was welcomed and granted refuge. But after a while, a lid had to be put on it. This, she maintained, was the reason that the Citizenship Act of 1951 adopted an extreme position of not making any provision whatsoever for the right to refuge.

Dr. Aziz also opined that the lack of enforcement of Pakistan's citizenship laws needed to be viewed in the context of historical circumstances. She was of the view that until recently, Pakistani and Afghan authorities had a very lenient view toward registration and cross-border movement of people. She shared that Pakistan started issuing its citizens computerized national identity cards (CNICs) and machine-readable passports only after the War on Terror started in 2001 and started issuing POR cards to Afghan refugees very recently as well. She said that since the rise in importance of the CNICs and POR cards as a daily necessity, the state could not be allowed to avoid its obligations under citizenship laws. "If the Afghan Refugee community stands to benefit from an enforcement of the law, so be it," she said.



The Concept of Refugee under Pakistani Law

Dr. Martin Lau pointed out that despite its frequency in public discourse, the word refugee was nowhere to be found in the entire corpus of Pakistani law. This, he argued, meant that as per the statutory provisions, no one, no matter how deserving, could claim asylum in Pakistan. He added that such a person could even be sentenced to imprisonment under Section 14 of the Foreigners Act, 1946. "This is a little ironic since thousands of refugees from Pakistan regularly claim asylum in various countries of the world," said Dr. Lau.

Chairman of Society for Human Rights and Prisoners' Aid (SHARP) Pakistan Mr. Liaqat Bannori called for political will for finding a solution to the problem. He added that an amendment could be introduced in the Foreigners Act, 1946,¹⁰ or an altogether new National Refugee Law could be brought in to create the category of refugee in Pakistani law, a special category of foreigners who are permitted to stay in the country.

¹⁰ <http://www.refworld.org/docid/3ae6b4f314.html>

Ms. Iman Zainab Hazir-Mazari, Associate at Mandviwala and Zaffar, pointed out that in 1981 the Government of Pakistan had introduced a definition of refugee in a Handbook on Refugee Management. She added, however, that this definition was subsequently removed since the government did not want to be bound by it. She further maintained that in the absence of a statutory backing, no government-provided definition of refugees could be considered binding.

International Refugee Law and the Right to Voluntary Repatriation

The participants also discussed in detail Pakistan's existing obligations under the international law. Ahmad Warraich, Legal Advisor to the Ministry of Foreign Affairs said that Pakistan was not a party to the Convention on Refugees, 1951, or its 1967 Protocol. He added that as a sovereign state, Pakistan had every right to decide whether or not to join the Convention. Mr. Warraich was of the view that the international community had no legal right to be pressuring Pakistan over any such issue. Instead, he called attention toward Pakistan's unparalleled efforts at hosting more refugees than any other state in modern history for 38 years. Therefore, he maintained that the international community had no moral authority to press Pakistan. Mr. Warraich emphasized the moral obligation of the international community to do more for Pakistan.



Other participants pointed out that while Pakistan was not a party to the Convention on Refugees 1951, it was party to seven out of the nine international human rights conventions. And that these conventions also created certain obligations on the state with regard to the Afghan population in Pakistan, which had to be honored.

Are the Tripartite Agreements Binding?

Mr. Ummar Ziauddin read out some of the clauses of the Tripartite Agreements between Government of Pakistan, Government of Afghanistan, and UNHCR. He argued that under these agreements Pakistan was obliged to ensure that repatriation of refugees was voluntary.

Mr. Ziauddin argued that the Government of Pakistan was also bound under domestic law to respect its promise of 'voluntary' repatriation contained in the Tripartite Agreement and added that in case the government violated this promise, a victim would be entitled to seek redress through the courts. Most participants, however, disagreed with Mr. Ziauddin's view and opined that the Agreements were not domestically enforceable by anyone except those who were party to it, i.e., Government of Afghanistan and UNHCR. It was added by the participants, however, that if the government were to translate its commitment under Tripartite Agreements through the introduction of a bill on refugee law in the parliament, it would be a more comprehensive response.

International Customary Law and the Right to Non-refoulement

Mr. Ziauddin contended that even though Pakistan was not a signatory to the 1951 Convention on the Rights of the Refugee, it was still bound to respect the principle of non-refoulement because it had attained the status of international customary law. He contended that the term “law” under Article 4 included international customary law, except where the international customary law had been expressly overruled. He quoted *Najib Zarab Ltd vs the Government of Pakistan*,¹¹ a case

where the Sindh High Court held that the community of nations required that rules of international law may be accommodated in the municipal law even without express legislative sanction, provided they did not run into conflict with the Acts of the Parliament and maintained that collective expulsion of any community was illegal. He added that before repatriating an Afghan, the Government of Pakistan was obliged to individually process his or her case



in order to determine whether or not such person would qualify as a refugee under international law. He further stated that in making such determination, the government would seek assistance from impartial experts on international law such as UNHCR.

Mr. Ahmad Warraich, Legal Advisor of the Ministry of Foreign Affairs, and State Counsel Ms. Hadiya Aziz vehemently opposed Mr. Ziauddin’s stance. They maintained that by not signing the Convention, Pakistan had, through its conduct, affirmed its objection to the non-refoulement principle. Therefore, they argued that it could not be held responsible for upholding this principle.

Key Takeaways

Following are the key takeaways from the consultative session on “Tapping into the Economic Growth Potential of Afghan Refugees:”

- The existing legal instruments governing the management of Afghan refugees in Pakistan leave room for contradictory interpretations and create confusions about the legal rights and obligations of the Afghan refugees as well as the Government of Pakistan. Following are some of the examples of the legal questions that arise out of the existing legal instruments concerning Afghan refugees:
 - Those children of Afghan Refugees who were born in Pakistan (estimated to be around 74 percent of the total community) could be entitled to citizenship of Pakistan under Section 4 of the Pakistan Citizenship Act, 1951.

¹¹ PLD 1993 Karachi 93

- While the PHC has denied such claim to an applicant in *Ghulam Sanai v. National Registration Office*¹² (PLD 1999 Peshawar 18), it is considered *per incurium* by some jurists because it reads two different sections of a statute as if they were conjunctive clauses.¹³
 - Some jurists also maintain that most of the remaining 26 percent of Afghan refugees in Pakistan who cannot avail the benefit of Section 4 of the Citizenship Act could, nevertheless, claim the benefit of Section 3 of the Naturalization Act, 1924. Having lived in Pakistan for well over the prescribed period, possessing knowledge of Pakistani languages, and having a crime-free record, these persons cannot be arbitrarily denied the benefit of Pakistan's naturalization law.
 - If children of Afghan refugees born in Pakistan are accepted as citizens of Pakistan, their parents would be entitled to stay in Pakistan, if they are the primary caregivers of their children.
 - The interpretation of Section 10 of the Citizenship Act, 1951, adopted by the Federal Shariat Court in *Suo Moto* is a proper, rights-protective interpretation.¹⁴
 - Even though Pakistan is not a signatory to the 1951 Convention relating to the Status of Refugees, it is still bound to respect the international customary law principle of *nonrefoulement* (prohibition against forced return of persons whose life or liberty would be at risk in their country of origin). To uphold voluntariness is the main safeguard against a breach of the principle of *nonrefoulement*.
- In light of the aforementioned lack of clarity regarding the various legal instruments dealing with Afghan refugees, the Government of Pakistan needs to introduce a comprehensive National Refugee Law. Although it could be achieved through amendments to the Foreigners Act, 1946, a more comprehensive approach, would be to introduce a separate National Refugee Law dealing exclusively with refugees.

¹² The Court denied the claim of the applicant, a second-generation Afghan born in Peshawar claiming citizenship to Pakistan under Section 4 of the Pakistan Citizenship Act (*jus soli*), by stating that Sections 4 and 5 of the Pakistan Citizenship Act should be read in conjunction, i.e. a child of a foreign national born in Pakistan would only be entitled to citizenship if the father was also a citizen of Pakistan at the time of the child's birth.

¹³ Conjunctive reading of Sections 4 and 5 (relating to citizenship by birth and citizenship by descent, respectively) runs contrary to the general principles of statutory interpretation.

¹⁴ Afghan women married to Pakistani men are entitled to citizenship on account of Section 10 of the Citizenship Act. In a 2007 decision in the *Suo Moto* Case 1/K of 2006, the Federal Shariat Court (FSC) extended this right to Afghan husbands of Pakistani women too. However, the FSC's judgment is presently not enforceable since the government has filed an appeal against that decision in the Supreme Court, which is still pending before the Apex Court.

Institutional Mechanisms for the Management of Refugees in Pakistan

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

1. The office of the Chief Commissioner Afghan Refugees (CCAR) and the provincial Commissionerates Afghan Refugees (CARs) under the Federal Ministry of States and Frontier Regions (SAFRON);
2. The Ministry of Interior and its Directorate of Immigration and Passports; and
3. NADRA.

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

1. UNHCR; and
2. International Organization for Migration (IOM).

The only official policy on Afghan refugees is the National Policy on Voluntary Repatriation and Management of Afghan Refugees, which was adopted by the Government of Pakistan in July 2013. With the approval of a national refugee policy in a Federal Cabinet meeting on February 7, 2017, however, there is a hope that long-standing challenges to the Afghan refugees could be addressed. The adoption of a comprehensive policy is necessary for a more predictable and solutions-oriented approach to managing the refugee population, in line with the national interest of Pakistan, and the demands of the domestic and international law. A long-term strategy would further support efforts to mobilize resources from the international community, which will be needed for facilitating voluntary repatriation of Afghan refugees and continued support to Pakistani host communities pending the return of Afghan refugees to their homeland.



List of Participants:

CODE PAKISTAN gathered the following group of relevant participants to the discussion on the theme of Institutional Mechanisms for the Management of Refugees in Pakistan:

- | | | |
|----|---------------------------|--|
| 1. | Dr. Imran Zeb (Moderator) | Chief Commissioner Afghan Refugees, Ministry of SAFRON |
| 2. | Brig. (Retd.) Masood Khan | Commissioner Afghan Refugees, Balochistan |

- | | | |
|-----|-----------------------|---|
| 3. | Mr. Agha Ghazanfar | Commissioner Afghan Refugees, Karachi |
| 4. | Mr. Arif Hussain Shah | Islamabad Police |
| 5. | Mr. Ashar Ahmad | Senior Project Manager National Database and Registration Authority (NADRA) |
| 6. | Mr. Azaz Syed | Reporter, Geo News |
| 7. | Mr. Chaudhry Riaz | Commissioner Afghan Refugees, Punjab |
| 8. | Mr. Ishrat Ramzan | Project Manager/Assistant Director NADRA |
| 9. | Mr. Johann Siffointe | UNHCR |
| 10. | Mr. Shahid Ilyas | Research Officer, Institute of Regional Studies |
| 11. | Mr. Tariq Hayat | Joint Secretary, Ministry of SAFRON |
| 12. | Ms. Inna Gladkova | UNHCR |
| 13. | Ms. Rabia Sabri | Membership and Partnership Coordinator, Pakistan Humanitarian Forum (PHF) |
| 14. | Ms. Sidrah Hamayoun | Director Program, Morango Films |

Discussion:

Political Will for Administrative Reform concerning Afghan Refugees in Pakistan



Afghan refugees in the country.¹⁵

The session was moderated by Chief Commissioner Afghan Refugees Dr. Imran Zeb. Dr. Imran Zeb and his colleagues from the Ministry of SAFRON gave an overview of the existing administrative setup concerning Afghan refugees in the country and highlighted the role of different state institutions in the management of Afghan refugees. Dr. Imran Zeb shared that a summary had already been put for the approval of the cabinet for reforming the administrative regime governing

¹⁵ It was subsequently approved by the Federal Cabinet in its meeting on February 7, 2017.

Commissioner Afghan Refugees for Balochistan Brig. (Retd.) Masood Khan assured the participants that the Prime Minister of Pakistan Mian Muhammad Nawaz Sharif had taken a personal interest in the issues related to Afghan refugees. He added that under the leadership of the Prime Minister, the whole administrative machinery was working to ensure that refugees received a dignified treatment.

The POR Cards

Brig. (Retd.) Khan further clarified that the primary administrative tool for handling refugees in the country was the POR cards. He said that although the POR cards did not state the law under which they had been issued, it was generally understood that they had been issued by the Federal Government in the exercise of its powers conferred upon it under the Foreigners Act, 1946. He added that issuance of the POR cards was a requirement because it is a criminal offense for any foreigner to be present in Pakistan without registration with the Government of Pakistan under the Foreigners Act. Brig. (Retd.) Khan further clarified that the POR cards gave a legal cover to the stay of Afghan refugees in Pakistan.

The Need for a New Visa Policy

Tariq Hayat, Joint Secretary at the Ministry of SAFRON, shed some light on the existing visa policies in Pakistan. Chaudhry Riaz, Commissioner Afghan Refugees for Punjab, pointed out that there was a need to develop a sophisticated visa policy to distinguish between the following categories of Afghans coming to Pakistan:



- Those who come to Pakistan to access health facilities;
- Those who come to Pakistan to attend family events;
- Those who come to Pakistan for business or trade;
- Those who come here as laborers; and
- Those who come to Pakistan as students.¹⁶

He maintained that it was in the national interest of Pakistan to grant different visas to these different categories of travelers from Afghanistan. He shared that a visa policy had already been drafted on these lines and that it would be submitted for the approval of the Prime Minister of Pakistan soon. He added that the proposed policy would either be implemented through a presidential order or through an act of the parliament. Mr. Hayat from

¹⁶ This was approved in the cabinet meeting on February 7, 2017.

the Ministry of SAFRON confirmed that progress on the new visa policy was expected in the next meeting of Federal Cabinet.¹⁷



Membership and Partnership Coordinator of PHF Ms. Rabia Sabri urged Government of Pakistan to deliver on its promises regarding a comprehensive policy with respect to Afghan refugees in Pakistan. Ms. Sabri pointed out that the issuance of new POR cards to Afghan refugees had been stopped since 2013. Mr. Hayat responded by stating that approval processes for the POR cards were already on the Ministry of SAFRON website and that once the new visa policy would be approved, it

would be on the Ministry of SAFRON website as well as on the web-pages of the Ministry of Foreign Affairs and the Ministry of Interior.

The Peculiar Case of Afghan Refugees in Balochistan

Brig. (Retd.) Khan explained that the case of Afghan Refugees in Balochistan was a little different from that of KP, the other major host province for Afghan refugees. He said that the mostly Pashtun refugees in KP largely came in and settled in districts with an overwhelming Pashtun population. He added, however, that in Balochistan the refugees came and settled in areas with large ethnic Baloch populations. This demographic change, he maintained, had created some ethnic tensions. Brig. (Retd.) Khan observed that while the tensions continued to exist under the surface, a vast majority of refugees in Balochistan were no longer confined to the camps and were living in Pishin, Loralai, and Chaaghi as fully assimilated into the local population. He added that Afghan refugees had entered into marriages and businesses with the locals.

Brig. (Retd.) Khan pointed out that most of the refugees were being repatriated from KP. He said that 11,000 refugees were repatriated from Balochistan in 2016, but that the numbers rose to 37,000 in 2017. He called, however, for further analysis of the breakdown of those who were being repatriated.

Census and Afghan Refugees

Brig. (Retd.) Khan pointed out that Baloch nationalist politicians were not in favor of an early census because of the demographic shift mentioned above and that sensitivity had to be shown to the concerns of every segment of the society involved during the census. Mr. Arif

¹⁷ According to the briefing given to the media by Federal Minister for Information Ms. Marrium Aurangzeb on the February 7, 2017 meeting of the cabinet, the policy calls for strict implementation of Pakistan's immigration laws along the Pakistan-Afghanistan border and ensuring that those without visas are not allowed entry into the country. It further permitted an extension in the stay of registered refugees in the country until December 31, 2017. See Sanaullah Khan, "Cabinet approves policy for repatriation of Afghan refugees" *Dawn Islamabad*, February 8, 2017.

Hussain Shah, a senior police officer, pointed out that census was not only a problem in Balochistan but also in Sindh. He also talked about the issuance of CNICs to Afghans at the behest of politicians who wanted to increase their vote banks.

Refugees in Punjab

Chaudhry Riaz, Commissioner Afghan Refugees for Punjab, stated that Punjab was host to 14,000 Afghan students. He said that there was no discrimination against Afghan refugees in government-run schools and hospitals in Punjab. He was of the view that no forced return to Afghanistan of the refugees was taking place in Punjab. Mr. Riaz emphasized that Pakistan's treatment of Afghan refugees was much better than the neighboring countries like Iran where the movement of refugees was seriously restricted. He shared that in order to facilitate refugees who kept moving across the border and had families on both sides, the Bank of Punjab and Habib Bank, as well as telecom companies like Mobilink and Warid, had started providing services in Afghanistan.

Need for a Standard Operating Procedures (SOPs)

Correspondent of Geo News Azaz Syed was of the view that all was not well with the state of affairs in Pakistan for Afghan refugees. He pointed out that in various cases, law enforcement agencies and district management showed insensitivity to Afghan refugees. He shared that he knew of several cases of arrests of Afghan refugees without any evidence of a crime. He added that refugees were being put behind bars for months or years for not possessing POR cards. He also referred to the case of Sherbet Gula—the woman gaining international popularity because of appearing on the cover of National Geographic as a child—who was unceremoniously deported despite having young children and being seriously ill.



In order to deal with this, Mr. Syed suggested notification of Standard Operating Procedures (SOPs) instructing the police and the district administration on how to deal with refugee cases—the two government institutions the refugees had to deal with most frequently. He proposed two different kinds of trainings for the officer cadre and the non-officer cadre of the police.

Key Takeaways:

Following are the key takeaways from the session on “Institutional Mechanisms for the Management of Refugees in Pakistan:”

- The regional Solutions Strategy for Afghan Refugees (SSAR) signed by the Government of Pakistan jointly with Afghanistan, Iran, and UNHCR in May 2012 remains the main framework for the identification and implementation of lasting solutions for Afghan refugees

in Pakistan. As per this strategy, voluntary repatriation remains a key priority, which is closely linked with reintegration support from Afghanistan.

- The SSAR and the 27th Tripartite Commission held in Bhurban on July 19, 2016, also emphasized the strictly voluntary nature of the return to Afghanistan, which shall underpin refugee policies and practice in Pakistan in accordance with international law.
- The Government of Pakistan's efforts are needed to develop a new framework for managing Afghan refugees as well as establishing alternative arrangements for non-refugees, including the issuance of visas to specific categories, such as the following:
 - those coming to Pakistan to access health facilities;
 - those coming to Pakistan to attend family events;
 - those coming to Pakistan for business or trade;
 - those coming to Pakistan as laborers; and
 - And those coming to Pakistan for study.¹⁸
- Some institutional national mechanism should be developed to bring undocumented Afghans within the official migration management system or at least to estimate their numbers, needs, and costs.
- There are many Afghans, POR card holders or otherwise, that are married to Pakistanis and entitled only to a 45-day visa under the existing administrative regime regulating Afghan refugees. If they work, they need to apply for a work permit, which is a long process. To address this issue, the facility of Pakistan Origin Cards (POC), which was stopped in 2013, needs to be reactivated for Afghans married to Pakistani nationals. In the presence of POC, there will be no need for issuance of visa and work permits for such individuals.
- The CARs should issue SOPs for the benefit of police and district administration who frequently handle Afghan refugee issues. The SOPs should instruct officials on how to deal with the frequently occurring issues of Afghan refugees as well as informing them of rights and obligations of refugees.
- In addition, regularly enhanced information dissemination and access to UNHCR, dialogue with communities, continued advocacy, and sensitization of law enforcement authorities on the rights of refugees are important.
- Sensitization activities should be conducted by the Government of Pakistan and UNHCR for all segments of the society to promote the idea of being more accommodative of the needs of refugees.
- A systematic appraisal of Pakistan's administrative policies toward Afghan refugees over the last few years should be conducted by impartial public administration experts and lessons should be shared with the international community which is grappling with the Syrian refugee crisis.

¹⁸ Already approved by the Federal Cabinet in its meeting on February 7, 2017.

The Emerging International Climate on Refugee Management: Pakistan's Choices

The Government of Pakistan is not a new entrant in the field of refugee management. With 38 years of experience in dealing with this issue, Pakistan is well placed to share both expertise and a vision with the world on this subject. Pakistan's expertise in dealing with the refugee issue has become internationally significant in the emerging international climate where the refugee crisis has emerged as one of the biggest challenges for the international community. The Syrian



refugee crisis is the biggest such crisis since World War II. Every day, international media presents numerous reports of people dying while attempting to flee from the cross-hairs of someone else's war. The media is saturated with images of mothers crying over their dead children and of little girls and boys sitting alone scared and confused with no one left in their world to take care of them.

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

List of Participants

To deliberate on the subject, CODE PAKISTAN gathered the following representatives of international organizations as well as relevant serving and retired Government of Pakistan representatives:

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|----|--------------------------------|---|
| 1. | Amb. Arif Ayub (Moderator) | Former Ambassador to Afghanistan |
| 2. | Col. Jawad Shah | National Defense University |
| 3. | Dr. Aziz Bangash | Director, Pakistan Institute of Medical Sciences (PIMS) |
| 4. | Maj. Gen. (Retd.) Saad Khattak | DG Pakistan Institute for Conflict and Security Studies |
| 5. | Mr. Arshad Hussain | Voice of America |
| 6. | Mr. Babur Ghani | Associates in Development (AiD) Pvt. Ltd. |

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|-----|------------------------|---|
| 7. | Mr. Davide Terzi | Head, International Organization for Migration (IOM) Pakistan |
| 8. | Mr. Naeem Shah | Program Director, NRC |
| 9. | Mr. Najam ul Saqib | ICRC |
| 10. | Mr. Obaid Farooq | NACTA |
| 11. | Mr. Reto Stocker | Head of ICRC delegation in Pakistan |
| 12. | Ms. Kristina Zitnanova | UNHCR |

Discussion

Is Pakistan's Policy toward Afghan Refugees Damaging its International Image?

One of the primary questions in front of the participants of the session was whether Pakistan's current policies toward Afghan refugees were damaging its international image. Pakistan's former Ambassador to Afghanistan Amb. Arif Ayub, who was also moderating the session, cautioned against forced or involuntary return of Afghan refugees to their war-torn homeland. He was of the view that sending them back to such turbulent conditions would amount to sending them to certain misery, which would wash away all the work Pakistan has done in the past to accommodate the Afghan refugees. He urged Pakistan's decision-makers to follow international guidelines. He also added that the solution to the security and economic concerns of the state must meet the humanitarian requirements because forcing refugees back into Afghanistan could result in a catastrophe.



Head of the Delegation of the International Committee of the Red Cross (ICRC) Mr. Reto Stocker appreciated Pakistan's support to Afghan refugees over the years. He maintained that developed countries of Europe were finding it difficult to deal with a refugee crisis, so the efforts of Pakistan in hosting Afghan refugees for such a long time were commendable. He cautioned against an ill-planned repatriation of Afghan refugees to their home country, though. "Afghanistan's capability to absorb the influx of refugees is quite low," he said. Mr. Stocker added that considering the current feelings of resentment from the other side of the border, Pakistan needed to take steps to reconstruct its friendship with Afghanistan. He called for a long-term thinking in Pakistan vis-à-vis Afghan refugees. "Using antibiotics with short term effects and lots of side effects is not a wise decision," said Mr. Stocker.

Country Director of International Organization for Migration (IOM) Mr. Davide Terzi also cautioned against forced return of Afghan refugees. Instead, he called for efforts at local integration through documentation and regularization of visa processes. Mr. Terzi was of the view that if Pakistan provided favorable conditions to the Afghan refugees, not only would it help in neutralizing Pakistan's western border but would also alleviate Europe's concerns regarding the influx of more refugees from Afghanistan, which will result in the international community being favorable toward the 8.5 million Pakistanis living abroad.

Mr. Najam ul Saqib from the ICRC said that Pakistan was seen through the international media as forcibly expelling Afghan refugees to a war-torn Afghanistan with a resurgent Islamic State (IS). He added that a forced return of Afghan refugees could overshadow all that Pakistan had done for the Afghan refugees over the years. Mr. Saqib maintained that repatriating Afghan refugees to an unstable Afghanistan could jeopardize Pakistan's security because Afghan refugee youth could end up in IS camps.

The Director General of Pakistan Institute for Conflict and Security Studies (PICSS) Maj. Gen. (Retd.) Saad Khattak also cautioned against forced return of Afghan refugees. He said that after hosting Afghans for three generations, such a short-sighted policy could negatively affect Pakistan's image. Maj. Gen. (Retd.) Khattak was of the view that although Afghans were seen as being linked to crimes, it could not be overlooked that if they had been properly managed such problems would not have arisen in the first place. He called for a better management of Afghan refugees in Pakistan and involving the international community with respect to any major decision regarding the repatriation of Afghan refugees. He added that management of Afghan refugees was a shared responsibility of the Government of Pakistan and the international community.



Program Director of Norwegian Refugee Council (NRC) Mr. Naeem Shah also favored a cautious approach toward repatriation of Afghan refugees. "It is important that the conditions in Afghanistan and the status of the institutions be considered before a decision is made," he said. He warned that the deteriorating law and order situation in Afghanistan and unfavorable response from Pakistan could turn Afghan refugees toward Europe. Mr. Shah strongly advocated for the need of registration of undocumented Afghans in order for better strategies to be brought about to alleviate the burden on the state and the international community as a whole.

Col. Jawad from the National Defence University, however, maintained that Pakistan had done the best it could to cope with a large number of refugees since 1979. He was of the view that time had come for repatriating Afghan refugees to their home country because Pakistan was itself faced security and economic concerns. He added that since certain

segments of unregistered Afghans were linked with criminal activities endangering state security, they needed to be sent back to Afghanistan. He called for an agreement between the governments of Pakistan and Afghanistan to this effect that would be reflective of both Pakistan's interests and international humanitarian law values. Col. Jawad also suggested regulating the freedom of movement of Afghan refugees within the country for the sake of national security. Ms. Zitnanova noted that encampment of refugees hinders their self-reliance, leads to dependency on aid, and exacerbates poverty, which may force people to resort to negative coping strategies. She added that this had been acknowledged by the Government of Pakistan through abandonment of the encampment of Afghan refugees in mid-1990s. Mr. Babur Ghani from Associates in Development (AiD) Pvt. Ltd. also opposed the idea of putting restrictions on the freedom of movement of refugees. He called for a humanitarian approach to the issue rather than using security as an excuse for putting restrictions on refugees against international humanitarian guidelines.

The Distinction between a Refugee and an Undocumented Afghan

Ms. Kristina Zitnanova cautioned against lumping together Afghan refugees and undocumented Afghans, such as the ones who cross the border in search of jobs for reasons other than seeking international protection. She was of the view that since Afghans were not a homogenous group, their management and solutions needed to be undertaken on the basis of their different profiles and needs. She also gave the example of Iran which initiated a process of documentation for Afghans in which over 800,000 refugees obtained passports with the help of the Afghan embassy in Tehran.

Viewing Repatriation through the Prism of Pak-Afghan Relations

Pakistan's former ambassador to Afghanistan Amb. Arif Ayub called the attention of the session toward the impact of political relations between Pakistan and Afghanistan over the plight of refugees in Pakistan. He called for greater people-to-people contacts at different levels



between Pakistanis and Afghans for restoring better relations between the two countries and thus improving the situation of the refugees. He added that every ten years the Pakistani embassy in Afghanistan was burnt down and that Afghanistan had been voting against Pakistan in the United Nations General Assembly (UNGA), which proved that the hostility was not between people directly but between the capitals of the two countries. He emphasized the long history of relations between the people

of Afghanistan and the Indian subcontinent. He called for nurturing that historic relationship. Moreover, he said that Afghan refugees were skillful laborers as well and had been contributing to Pakistan's economy, which needed acknowledgment. Maj. Gen. (Retd.) Saad Khattak also highlighted the importance of border management through Pak-Afghan cooperation for the management of Afghan refugee situation in Pakistan.

Repatriation backed by Reintegration

Mr. Najam ul Saqib from ICRC urged the international community to follow up on repatriated Afghan refugees to find out where they end up after repatriation. In response, Ms. Zitnanova said that it was quite difficult to keep track of the returnees in Afghanistan because of their movement within the country, but that UNHCR was conducting returnee monitoring (including through follow-up by phone). She added that the repatriation and reintegration cash grant, which had been increased from approximately \$200 to approximately \$400 per individual, was greatly helping families to meet their basic needs upon return to Afghanistan. She further noted that the international community should support Afghanistan in ensuring sustainable reintegration of returnees by enhancing its absorption capacity, including through community-based development investments in high return areas.



Key Takeaways

Following are the key takeaways from the consultative session on “The Emerging International Climate on Refugee Management:”

- Pakistan’s hosting of Afghan refugees for 38 years needs international acknowledgment and appreciation. Pakistan needs to make a stronger case at international forums for highlighting its longstanding support to Afghan refugees.
- Forced returns of Afghan refugees after hosting them for so long would tarnish Pakistan’s international image and destroy the goodwill of Afghan refugees toward Pakistan. Keeping in line with the international humanitarian law, the voluntary nature of all repatriation must be ensured at all times. The repatriation is voluntary if a refugee expressed a clear desire to return to his/her country of origin and in the absence of coercion.
- A non-welcoming attitude of the Government of Pakistan toward Afghan refugees could force them to seek refuge in Europe. Given the scale of the influx of refugees into Europe from the Middle East, it could dampen European support to Pakistan.
- Using security as a pretext for forced return of Afghan refugees or putting restrictions on their movement inside Pakistan would not be in line with the sentiments of the international community.
- There is a need for a distinction between undocumented Afghans living in Pakistan and registered Afghan refugees who possess Proof of Registration (POR) cards.
- Diplomatic ties between Pakistan and Afghanistan need to be strengthened and mutual decisions upholding humanitarian values need to be taken regarding the management of refugees in particular.

Tapping into the Economic Growth Potential of Afghan Refugees in Pakistan

The relationship between Pakistan and Afghanistan has the potential to be a great and mutually advantageous one but the current ground realities—where Pakistan has been hosting a substantial Afghan refugee population for 38 years—has led many in Pakistan to question whether Afghan refugees are, in fact, a drain on or a benefit to the Pakistani economy.



Some observers claim that Afghan refugees are a burden on the Pakistani economy. No solid evidence has been brought forward to support this claim, though. On the contrary, some sources suggest that refugees are already contributing to the economy by undertaking some of the most unwanted jobs like garbage collection and staffing brick kilns.¹⁹ If given proper incentives and opportunities, refugees could boost the host country's economy through investment and trade. It is, therefore,

imperative to further investigate and give recommendations on how such a development can be best achieved.²⁰ Attention also needs to be given to the opportunities that may have been created by the presence of Afghan refugees in Pakistan and to outline a future strategy to better capitalize on the economic opportunities that arise from the refugee presence.

List of Participants

CODE PAKISTAN gathered a group of development professional to discuss and analyze the subject. Following is the list of participants of the consultative session on tapping into the growth potential of Afghan refugees in Pakistan:

1. Mr. Gul Najam Jamy World Bank
(Moderator)

¹⁹ See <http://www.unhcr.org/news/latest/2011/1/4d2b1dd96/unhcr-looks-economic-contribution-afghan-refugees-pakistan.html>; <http://www.oecd.org/forum/oecdyearbook/refugees-are-not-a-burden-but-an-opportunity.htm>; and <http://www.worldfinance.com/infrastructure-investment/government-policy/refugees-are-an-economic-benefit-not-burden-to-europe>

²⁰ Studies such as *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities* available at http://reliefweb.int/sites/reliefweb.int/files/resources/C477129C7D41DCFB852577B3006B2818-Full_Report.pdf and *Refugee Economies: Rethinking Popular Assumptions* available at <http://reliefweb.int/sites/reliefweb.int/files/resources/refugee-economies-2014.pdf> could guide further research in this direction in the context of the protracted refugee situation of Pakistan.

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| 2. | Dr. Arslan Malik | Country Manager, American Refugee Committee (ARC) |
| 3. | Mr. Aarish U. Khan | Executive Director, CODE PAKISTAN |
| 4. | Mr. Adil Ahmed | Interim Country Director, Norwegian Refugee Council (NRC) |
| 5. | Mr. Ahmed Hussain | Executive Director, NRC |
| 6. | Mr. Bilal Gilani | Executive Director Gallup Pakistan |
| 7. | Mr. Jamal Abid | International Committee of the Red Cross (ICRC) |
| 8. | Mr. Liaqat Amin | Information Department, Government of KP |
| 9. | Mr. Mohammad Mudassar Javed | Project Director, SHARP |
| 10. | Mr. Qazi Ayaz | Executive Director, National Organization for Renaissance through Mobilization and Services (NORMS) |
| 11. | Mr. Shahzada Zulfiqar | Station Head, BOL TV, Quetta |
| 12. | Mr. Sher Shah Mohammadzai | SHARP |
| 13. | Mr. Talal Anwar | Program Officer, American Refugee Committee (ARC) |
| 14. | Mr. Wahid Gul | Expert on refugee issues |

Discussion

Afghan Refugees: An Economic Asset or a Burden?

The foremost question in front of the participants of this session was to discuss whether the Afghan refugees were perceived as a burden on or an asset for the Pakistani economy.

While some of the participants had anecdotal evidence of the positive contribution of Afghan refugees to Pakistani economy, all of them shared the view that there was a need for further research on the economic contribution of Afghan refugees to Pakistani economy or the negative fallout of certain aspects of the freedom of movement and business accorded to the Afghan refugees for certain sectors of the local economy. Executive Director of Gallup Pakistan Mr. Bilal Gilani quoted a figure of



Rs.30,000 for the per month household income of Afghan refugee families while referring to a

survey conducted by the Danish Refugee Council in five districts of Khyber Pakhtunkhwa (KP) province of Pakistan.²¹ The Danish study had, most significantly, concluded that the Afghan refugees' current livelihoods and socio-economic status, existing skills and vocational training needs were quite similar to the Pakistani average. Mr. Gilani added that since a large proportion of Afghan refugees lived in urban areas and did not grow their own food, it may be speculated with some confidence that Afghan refugees contributed around Rs.104 billion or \$1 billion per year to Pakistani businesses. Most of this money could be going into the pockets of Pakistan's small farmers, retailers, transporters, and private school teachers. Additionally, according to Mr. Gilani, a substantial amount of money could also be going into the national exchequer through indirect taxes (Sales Tax, Customs Duty, and Federal Excise Duty), which are charged on consumer goods. Mr. Aarish Khan from CODE PAKISTAN drew attention toward the large undocumented or black economy in Pakistan to highlight the enormity of lack of economic information in Pakistan.²² Mr. Gul Najam Jamy from the World Bank also added that only 16 percent of Pakistanis used bank accounts, and less than one percent paid income tax.

Mr. Shahzada Zulfiqar called attention to another statistical anomaly in documenting the economic contribution of Afghan refugees to the local economy, that is, issuance of Computerized National Identity Cards (CNICs) to certain Afghan refugees, which has made them Pakistanis in the legal sense. Quoting figures from Pakistan's Federal Investigation Agency (FIA), Mr. Zulfiqar shared that some 300-500 Afghan refugees were caught using Pakistani passports during the Hajj season. He further added that between 25,000 and 30,000 people travel back and forth between Pakistan and Afghanistan due to divided families across the border and that between 5,000 and 8,000 residents of Chaman had businesses in Afghanistan.



Notwithstanding the efforts at documenting the economic contribution of Afghan refugees to local economy such as the study referred to by Mr. Gilani, there was a consensus around the table that there was a need for further research on the economic impact of Afghan refugees in Pakistan, whether positive or negative.

There was also a consensus around the table that the Government of Pakistan had accorded greater freedom of movement and doing business to Afghan refugees than

²¹ Please visit <https://drc.dk/media/1182394/socio-economic-survey-of-afghan-refugees-living-in-pakistan.pdf> for details.

²² For instance, see Ahmed Gulzar et. al., "What is Hidden, in the Hidden Economy of Pakistan? Size, Causes, Issues and Implications" available at <http://www.pide.org.pk/psde/pdf/agm26/Day2/Ahmed%20Gulzar.pdf>

accorded anywhere else in the world to refugees. Refugee issues expert Mr. Wahid Gul shared that refugees are allowed to travel in Thailand, but not allowed to work. He added that Afghan refugees residing in Iran were allowed to travel and work but through a strictly controlled regime.²³ Mr. Gul also appreciated the fact that the Government of Pakistan had given full access to Afghan refugee communities to government schools and hospitals. He added, however, that the freedoms accorded to Afghan refugees were positively contributing to Pakistani economy as well. He cited the example of remittances sent to Afghan refugee families living in Pakistan by their relatives living in the Middle East or elsewhere as well as their contribution to the local economy by taking up some of the hardest jobs. Mr. Gilani cited the use of private schools and hospitals by the relatively affluent members of the refugee communities as examples of their contribution to local economy.

Ways of Tapping into the Economic Potential

The second important question in front of the participants of the session was to find out ways for effectively benefitting from the full economic potential of Afghan refugee population living in Pakistan. Various options like issuing five-year business visas to Afghans with over Rs.20 million investments and citizenship for Afghans with over Rs.50 million investments in Pakistan were discussed in the session. Other options for low-income Afghan refugee households like vocational training were also discussed in the session. Afghan refugee issues expert Mr. Wahid Gul disagreed with the idea of more skill development training to Afghan refugees. He shared the findings of a research study conducted by UNHCR, according to which more than 90 percent of Afghan refugees had received skill development training and 60 percent of them were enrolled in government schools. Instead, Mr. Gul called for efforts at linking up the skilled Afghan refugee labor with businesses in Pakistan or Afghanistan. It was suggested during the discussion that the Afghan skilled workers who surrender POR cards and obtain Afghan passports could be given work visas subject to a condition that their families repatriated to Afghanistan, which might encourage voluntary repatriation.



Mr. Zulfiqar maintained that the Government of Pakistan was doing itself a disservice by acknowledging only Afghan refugees with POR cards as refugees. He was of the view that by doing so the Government of Pakistan was portraying a much smaller figure of Afghan refugees in the country at the international level than was actually the case. He called for stronger efforts at the documentation of the undocumented Afghan refugees in the country for getting greater international recognition for Pakistan's efforts at hosting them.

²³ This point was also made by Station Head BOL TV Quetta Shahzada Zulfiqar in his remarks in the session.

Ways of Reducing Friction between Refugee and Host Populations

It was pointed out during the session that whether the refugees were contributing positively or negatively to the economy of the country overall, there would always be certain segments of the local economy that would get in direct competition with refugee businesses. For instance, Mr. Shahzada Zulfiqar pointed out that the foreign currency market in Quetta was dominated by the Afghans, which was getting them into a direct competition with local currency traders mainly Pashtuns from the Kakar tribe. Mr. Bilal Gilani from Gallup added that according to a survey the resentment against Afghan refugees was greater in rural areas of the country than the urban centers. This, according to the participants of the discussion, called for efforts at reducing friction between Afghan refugees and host communities.

Mr. Wahid Gul called for local level advocacy as well as engaging social media for reducing mistrust between Afghan refugees and host communities. He added, however, that in parts of KP, host communities were getting along well with Afghan refugees because of their cultural similarities with them. He said that Afghan refugees were getting into joint business partnerships with members of the host communities and that in some cases he had also seen intermarriages between the two communities.

Interim Country Director of Norwegian Refugee Council (NRC) Mr. Adil Ahmed said that the change in host community perceptions about Afghan refugees has been gradual and varied across regions. He added that the perception has been dependent upon perceived threats to host community livelihoods. He cited the ups and downs in diplomatic relations between Pakistan and Afghanistan as another reason for friction between Afghan refugee and host communities. Executive Director CODE PAKISTAN Mr. Aarish U. Khan was of the view that



negative perception about Afghan refugees was the result of viewing them through the prism of economic competition. He called for finding out ways and means for giving a human angle to the situation of Afghan refugees in Pakistan who, according to him, had fled their country because of fear for life and lack of security. Mr. Shahzada Zulfiqar suggested involving mainstream media alongside social media for creating positivity between Afghan refugees and their host populations.

In the end, there was a great deal of agreement around the table for engaging social as well as mainstream media on innovative ways to reduce friction between Afghan refugees and host communities.

Key takeaways

Following are the key takeaways from the consultative session on “Tapping into the Economic Growth Potential of Afghan Refugees:”

- Afghan refugees are positively contributing to the national economy of Pakistan by engaging in business activities and using the services of various Pakistani businesses.
- The Government of Pakistan has accorded considerable freedoms to Afghan refugees. They have freedom of movement throughout the country and freedom to do business. They are also benefitting from the Government of Pakistan’s public sector education and health facilities like Pakistani citizens.
- Although some studies with a limited geographical scope have been conducted on the economic impact of Afghan refugees on the local economy, the area remains mostly unexplored.
- Limited available data on the impact of Afghan refugees on the local economy is linked with the scarcity of available data on the local economy itself as well as the incomplete documentation of all Afghans currently residing in the country.
- After a thorough research on the economic contribution of Afghan refugees to various sectors of the economy, various incentives like flexible visa regimes could be introduced for those Afghan refugees who would forego their refugee status and obtain Afghan passports. Businessmen and skilled laborers of specified sectors could be prioritized for such incentives.
- Although some Pakistani host communities have developed businesses and family relations with Afghan refugees, resentment has been observed in segments of the society. While acknowledging the fact that the magnitude of resentment among the host communities needs to be further researched, there is a need for adopting measures for reducing friction between refugee and host communities. Social media could be one of the tools for the propagation of messages of harmony between the two communities and reiterating the human angle of the situation of refugees. A more lasting impact could be made, however, through involving the mainstream media in the process.
- Particular efforts are required to empower young generation and equip them with the necessary skills and education to encourage them, support their contribution to the local community and envisage their sustainable reintegration in Afghanistan.



Political Response to Afghan Refugees in Pakistan

Shared cultural practices and religious beliefs have allowed the relationship between Pakistan and Afghanistan to grow over many years into one that is stronger than that of many



neighboring states. But the ongoing turbulence in Afghanistan and the Afghan refugee influx into Pakistan over the past four decades has stretched the bonds of this friendship to the tipping point. How Pakistan responds to the question of the Afghan refugees within its border will determine the nature of the relationship between these two neighboring states moving into the future and decide the new regional dynamics.

There have been shifting opinions about the stay of Afghan refugees in Pakistan and the political ramifications of creating an environment that forces their return to Afghanistan. The political opinion remains divided on the prolonged stay of refugees in Pakistan. A point to keep in mind should then perhaps be that frustration with the current situation should not be the deciding factor in making this decision, indeed it would be to the benefit of Pakistan to take a step back to consider the long-term political implications before pursuing any set strategy.

List of Participants

CODE PAKISTAN gathered a group of development professionals to discuss and analyze the subject. Following is the list of participants of the consultative session on Political Response to Afghan Refugees in Pakistan:

1. Maj. Gen. (Retd.) Tahir Habib Siddiqui (Moderator) Consultant, CODE PAKISTAN
2. Brig. (Retd.) Saad Muhammad Security Analyst
3. Dr. Azmat Hayat Former Vice Chancellor, University of Peshawar
4. Mr. Abdullah Khan MD, Pakistan Institute for Conflict and Security Studies (PICSS)
5. Mr. Habib Malik Oragzai Pakistan International Human Rights Organization (PIHRO)
6. Mr. Hashim Khan Senior Technical Advisor, Gesellschaft für Internationale Zusammenarbeit (GIZ)
7. Mr. Juma Khan Writer
8. Mr. Muhammad Jaffer Director General Research, NACTA

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|-------------------------------|---|
| 9. Mr. Patrick Wingate | U.S. Embassy, Islamabad |
| 10. Mr. Rahimullah Yusufzai | Senior Journalist |
| 11. Mr. Sameer Mahmood Ansari | Businessman |
| 12. Mr. Suleman Yousaf | Independent Analyst |
| 13. Mr. Zahid Hussain | Senior Journalist |
| 14. Ms. Amina Khan | Research Fellow, Institute of Strategic Studies (ISSI) |
| 15. Ms. Ayela Ashfaq | Development Practitioner |
| 16. Ms. Duniya Islam Khan | Communication Officer, UNHCR |
| 17. Ms. Farzana Yaqoob | Former minister in the Government of Azad Jammu and Kashmir (AJK) |
| 18. Ms. Maria Van Kruijsdijk | Advisor, GIZ |
| 19. Ms. Puruesh Chaudhary | Futures Researcher |
| 20. Ms. Shazia Ismat Javid | Educationalist |

Discussion

Afghan Refugees: Whose Responsibility are They?

The opening discussions of this session revolved around Afghanistan's ability to absorb and reintegrate the Afghan refugee population. Keeping in mind the poor infrastructure and lack of facilities available in Afghanistan, it was agreed that the country was not yet ready to absorb such a large number of refugees in such a short period of time. Noted journalist and war correspondent, Rahimullah Yusufzai, mentioned this as a contributory factor to why Afghan refugees were not amenable to returning to their country of origin on short notice. "Of those who do return, the majority choose to travel to Kabul on the assumption that as the capital of Afghanistan, the city would be better equipped than other parts of the country to cater to their needs in terms of job opportunities and general facilities," he added. Mr. Yusufzai maintained that it was a false perception due to the fact that Kabul is the capital of a war-torn country desperately struggling to climb out of a fractured state and as such what it could offer to its



returning citizens was severely limited and in most cases underwhelming. He further added that as home to about five million residents and more than one million Afghan returnees, Kabul had been rendered incapable of accommodating any additional crowds. Mr. Rahimullah Yusufzai said, “The drastic rise in populations of people migrating from rural to urban areas in search of basic facilities such as health, education, and employment has severely depleted resources and services within major cities such as Kabul.” This, Mr. Yusufzai argued, was another factor prompting the increasing influx of refugees into Pakistan. While expressing this view, he quoted a young girl in Afghanistan whom he had the opportunity to speak with. When talking about her life after returning to Afghanistan, she said, “I cannot go to school, I’m scared to go to school, I do not have the same atmosphere here as was present in Peshawar.”

Those being uprooted from their homes in Pakistan and sent back across the border are not just limited to Afghan businessmen and the lower and middle classes but also Afghan students in Pakistani universities who have worked hard to receive scholarships and those who came to Pakistan in hopes of receiving better medical care than they would in their own country.



Mr. Yusufzai held that the existing policy toward the refugee crisis was haphazard and uncertain at best and was detrimental most of all to the refugees who had to suffer because of disorganization at the policy level. One of the weaknesses highlighted by Mr. Yusufzai was the complicated entry and exit procedures carried out in Chaman. He further clarified the need for Pakistan to form a consensus at the national level to deal with the matter and not leave it as an issue to be

tackled by Pashtun politicians exclusively.

The Need for a National Policy Framework for Afghan Refugees

The next topic discussed in the session was the need for legislation to regulate the management of Afghan refugees in Pakistan. It was suggested that while the refugees could not be forced to leave the country, a strategy could be devised to ensure that their stay was managed in a manner that did not cause any socio-economic unrest in the country.

Expert on Pak-Afghan relations from the Institute of Strategic Studies Islamabad (ISSI) Ms. Amina Khan was of the view that Pakistan did not have a functional policy toward Afghan refugees and whatever policies had been presented in the past were abrupt and short-sighted. She disagreed with the idea of sending the refugees back to Afghanistan involuntarily because she believed that it would give rise to anti-Pakistan sentiments among them and could lead some of them to migrate to India, which, she argued, was a clear cause for alarm. She further raised her concern for refugees who had no affiliation to Afghanistan, such as the ones born and raised in Pakistan. She suggested that in such cases where there was a clear disconnect between the refugees and their country of origin, the government could consider the option of

offering them citizenship. Ms. Puruesh Chaudhary concurred that naturalization would be a valid solution for third-generation refugees as is the custom in the West. For those who did not qualify, there would obviously be a need to eventually return to Afghanistan but the process for such an undertaking would have to be gradual and executed in a manner that would ensure proper rehabilitation and reintegration of the refugees once they returned to their homeland.

Consultant CODE PAKISTAN Maj. Gen. (Retd.) Tahir Habib Siddiqui, who was also moderating the session, was of the view that the refugee issue was a global one and as such the global community needed to be involved in policy formulation regarding Afghan refugees. He stressed the need for cooperation between Pakistan and Afghanistan on finding a satisfactory solution for handling the matter. He also pointed out that the refugee population was changing the ethnic status quo in Baluchistan as 30 percent of Quetta's population was Afghan. He held that while third-generation refugees could be allowed naturalization, the rest would have to return to Afghanistan eventually.



Senior Technical Advisor at Gesellschaft für Internationale Zusammenarbeit (GIZ) Mr. Hashim Khan agreed that the rush to send back Afghan refugees following the 2014 Peshawar attack was a knee-jerk reaction that could prevent sustainable reintegration of the refugees in Afghanistan, a factor which, he maintained, was of immense importance. Referring to statistics, he quoted that of the 2.5 million Afghans in Pakistan, 1.3 million were registered refugees of which 60 percent were in urban centers like Karachi and Islamabad. To this effect, he suggested the need for an urban refugee management policy that would allow the country to better monitor the refugee population in Pakistan.

Other opinions called for the need for the West to be involved in assisting Pakistan with repatriating Afghan refugees on the basis of a three to four years plan that would facilitate repatriation in a dignified manner with provisions for livelihood, education, and homes for refugees returning to their homeland. Ms. Puruesh Chaudhary disagreed with the specified timeline for the plan, stating that when a population of almost two million is involved, a longer outlook of about 10 to 15 years was needed.

Citing his own personal experiences with refugees, Mr. Habib Oragzai supported the need for management protocols for refugees and recommended that they needed to be properly registered. He recalled an incident where he was approached by a refugee seeking property advice on what to do with a Rs.30 million house in Nathiagali. He mentioned that many refugees register their properties under the name of friends. Similarly, many refugees have Pakistani passports and CNICs, raising the question of why they are then called refugees and emphasizing the need for clear policies that identify and define refugees and their rights.



Noting the current deficit in policy planning, Mr. Abdullah Khan pointed out that certain refugees residing in Pakistan for about four decades could act as ambassadors in Afghanistan to counter the negativity against Pakistan from those refugees who claim that they were never welcomed in the country. He further urged the government to carefully analyze the security situation in Afghanistan before planning for the repatriation of Afghan refugees.

Demonization of Afghan Refugees in Pakistan

There is a perception in Pakistan that since Afghan refugees work for lower wages, they are stealing jobs from the Pakistanis. It has resulted in concerns about the socio-economic implications of Afghan refugees in Pakistan. Communication Officer at UNHCR Ms. Duniya Islam Khan was of the view that the xenophobic environment in Pakistan following the APS attack had aggravated such perceptions. She stated that refugees needed to be seen as human beings rather than agents or targets of political agendas. She further said that the rhetoric surrounding them needed to be shifted so that they were no longer demonized as terrorists and criminals. She continued to say that blaming all refugees for the unrest in Pakistan was unfair



and ignored the benefits they brought to the host country. She added that refugees come with certain skills and if those skills were utilized and nurtured, they could be an asset for Pakistan. Furthermore, she argued that joining a terrorist group was the last resort, taken by those who saw no prospects for themselves. To prevent such scenarios from arising, Ms. Khan maintained that the government could offer opportunities that engaged refugees in a productive manner. It was further noted that while refugees had been linked to petty crimes, there

was no concrete evidence for their involvement in terrorist activities.²⁴

²⁴ For details of the limited involvement of Afghan refugees in serious crimes in Pakistan, see Ismail Khan, "KP prosecution data gives lie to claims against Afghan refugees," *Dawn Islamabad*, January 15, 2017. Available online at <https://www.dawn.com/news/1308486/kp-prosecution-data-gives-lie-to-claims-against-afghan-refugees>

The Way Forward

It was argued during the session that a country's internal security and stability was dependent on the security and stability of its neighboring countries. Maj. Gen. (Retd.) Tahir Habib Siddiqui stated that if dealt with force, Pakistan would only end up making enemies of the refugees that it had hosted for so long. As such he advised all the participants to mull over workable actions that could be taken to address the issue. In response, Mr. Yusufzai recommended the need for political consensus in tackling the refugee issue. This, according to him, included involvement of all major political parties in Pakistan in devising a strategy in tandem with the Government of Afghanistan. He also called for a close evaluation on the matter of what Pakistan had gained from the influx of refugees. He added that refugees might be contributing to the Pakistani economy and before asking them to leave, Pakistan needed to examine all that it might have gained and could continue to gain in the future from their presence. He reiterated the necessity of bringing in the international community in assisting Pakistan with the refugee crisis.



Ms. Puruesh Chaudhary said that refugees needed to be involved in Pakistani cultural settings as a strategy to hinder criminal behavior. The general consensus amongst participants was that while forcing the refugees to leave was not the answer, perhaps investing in them and through them in Pakistan's relationship with Afghanistan would be a better long-term approach. Managing Director (MD) of Pakistan Institute for Conflict and Security Studies Mr. Abdullah Khan added that until peace was achieved in Afghanistan, refugees would remain in Pakistan. As such, Pakistan could consider the possibility of assisting Afghanistan in peace-building efforts. Furthermore, he was also of the view that Pakistan needed to desist from forcing an involuntary return of Afghan refugees that, according to him, could benefit India through the creation of resentment between Pakistan and Afghanistan. Mr. Khan called for viewing Afghan refugees as an asset rather than a threat. This opinion was shared by educationist Ms. Shazia Ismat Javid who asked the participants to consider the possibility of economic activity in Afghanistan as a joint venture with Pakistan as an option to provide refugees with a safety net once they returned to



the session. Ms. Shazia Ismat Javid asked the participants to consider the possibility of economic activity in Afghanistan as a joint venture with Pakistan as an option to provide refugees with a safety net once they returned to

their homeland. Doubts about the willingness of the international community to support Pakistan and Afghanistan during this time of crisis were addressed by Mr. Patrick Wingate who maintained that the international community would not abandon either country at this crucial time.

Key Takeaways

Following are the key takeaways from the consultative session on “Political Response to Afghan Refugees in Pakistan:”

- The Government of Afghanistan is not yet ready to reabsorb its refugee population currently living in Pakistan. Depleted resources, crippling infrastructure, and pervasive instability of the region do not offer long-term security or support to its returning citizens. Forcing Afghan refugees to return in such circumstances would not only invite public backlash against Pakistan but would also benefit India.
- There is a serious need for extensive policy planning at the national level for the management of Afghan refugees. More so, the governments of Pakistan and Afghanistan need to cooperate and coordinate to formulate a practical plan that will take into account the voluntary nature of repatriation and the need for sustainable reintegration of refugees upon return to Afghanistan.



demonizing refugees as terrorists and criminals. The government needs to engage the refugee youth by providing them with opportunities that engender productivity and a sense of community. Cultural integration of refugees should also be promoted to hinder refugee involvement in criminal activity.

- The scarcity of available data measuring refugee contribution to Pakistani society is an issue that needs further attention and should be addressed.

- With regard to refugees born and raised in Pakistan, and in those cases where there is a clear disconnect between the refugees and their country of origin, the Government of Pakistan needs to consider alternative long-term solutions such as the provision of granting citizenship.

- The Government of Pakistan needs to take action in initiating programs that discourage xenophobic rhetoric

Islam and *Muhajireen*: A View through the Lens of Islamic Discourses on *Hijrah*

Immigration and refugees have remained a constant feature throughout Islamic history. To this effect, it is noteworthy to mention that Prophet Muhammad (PBUH) himself was an acknowledged refugee who fled persecution in Mecca to be welcomed and embraced in Medina. A wealth of Islamic resources can be drawn from the Holy Quran, and other sources of Islamic jurisprudence to shed light on the phenomenon of *Hijrah* (migration). In Chapter 8 (*al-Anfaal*) of the Holy Quran, migration has been referred to as the best planning by the Prophet,²⁵ while refugees are referred to as the true believers.²⁶ In Chapter 4 (*an-Nisaa*), the refugees are given the good news of plentiful provisions in this world and God's reward in the life hereafter.²⁷ The Holy Quran teaches its believers to provide shelter for the refugees notwithstanding their religious affiliation.²⁸

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



In line with the importance of the rights of refugees according to Islamic teachings and the current rise in Muslim refugee populations and Muslim host countries, a session on Islamic discourses on migration was incorporated into the *National Consultations on Afghan Refugees in Pakistan*.

²⁵Al-Quran (8:30).

²⁶ Al-Quran (8:74).

²⁷ Al-Quran (4:100).

²⁸ Al-Quran (9:6).

List of Participants

The participants of the consultative session on Islam and *Muhajireen: A View through the Lens of Islamic Discourses on Hijrah* included the following religious scholars and government officials:

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| 1. | Dr. Muhammad Munir
(Moderator) | Professor, Faculty of Shariah and Law, International Islamic University (IIUI) Islamabad |
| 2. | Brig. (Retd.) Obaidullah
Ranjha | Registrar, Mohiuddin Islamic University |
| 3. | Dr. Abdul Ghaffar Bukhari | National University of Modern Languages (NUML) Islamabad |
| 4. | Dr. Muhammad Ilyas | Professor, IIUI |
| 5. | Malik Mazhar Javed | Islamabad Bar Association |
| 6. | Maulana Abdul Qudoos
Muhammadi | Spokesman, Wafaqul Madaris al-Arabia |
| 7. | Maulana Abdul Zahir
Farooqui | Grand Khateeb, Bahria Town, Islamabad |
| 8. | Maulana Abdur Rauf
Muhammadi | Media Director, Pakistan Shariah Council and News Editor, Daily Jinnah |
| 9. | Maulana Mukhtar Javed | Jamia Ittehad-ul-Ulema |
| 10. | Maulana Qazi Shabbir Ahmed
Usmani | Principal, Suffa Islamic Center, Islamabad |
| 11. | Maulana Rahat Hussain | Former Senator, Jamiat Ulema-i-Islam (JUI-F) |
| 12. | Maulana Syed Qasim Shah | Director, al-Ilm Education System, Rawalpindi |
| 13. | Maulana Tanvir Ahmed Alvi | Deputy Editor, Jamia Mohammadia, Islamabad |
| 14. | Maulana Yaqoob Tariq | President, Ahl-i-Sunnat Ulema Council |
| 15. | Mr. Muhammad Farman | National Counter Terrorism Authority (NACTA) |
| 16. | Mufti Shamshad Ahmed | Shariah Advisor, Pak-Qatar Family Takaful |

Discussion

Islam and Refugees

There was a general consensus around the table during the session that Islam has accorded several rights to refugees. It was agreed that since the status of refugees and the state of migration has been mentioned 27 times in the Holy Quran, Islam acknowledges refugee status and accords rights to refugees. Former Senator Maulana Rahat Hussain cited several traditions of the Holy Prophet emphasizing the esteemed status of refugees accorded by Islam. He added that refugees were considered



“guests” according to Islamic teachings and gave examples from the life and traditions of the Holy Prophet and his companions. He cautioned, however, that the guests, according to Islamic teachings, had to follow the rules and regulations of the hosts while staying with them. Maulana Yaqoob Tariq also emphasized the Islamic angle to Pakistan’s assistance to Afghanistan in times of war.

Although the religious scholars agreed on the high status accorded to refugees in Islam, they also emphasized that Islam stood for repatriation of refugees when the situation would change for them. Maulana Tanvir Ahmed Alvi said that migration, according to Islam, was always done for a cause and after the cause would cease to exist, migrants would be required to go back to their place of origin. Registrar of the Mohiuddin Islamic University Brig. (Retd.) Obaidullah Ranjha was also of the view that the situation in which Afghan refugees migrated to Pakistan and the current situation needed to be compared.

The Issue of Children one of whose Parents is Afghan

The religious scholars participating in the session also called attention to the plight of the children one of whose parents is an Afghan and thus they are not entitled to Pakistani citizenship according to the existing legal framework with respect to Afghan refugees. Maulana Ilyas from the International Islamic University Islamabad (IIUI) said that legal ambiguity regarding intermarriages between Afghan refugees and Pakistanis was creating problems for their children. Maulana Rahat Hussain was of the view that although Pakistan was not obliged to consider giving citizenship to Afghan women marrying Pakistanis, the state needed to give them and their children Pakistani nationality to avoid confusion and problems. He also cited the examples of several Afghan families who were well settled in Pakistan, and had deep roots in the country. “The Government needs to keep all this in mind before taking any steps,” he said. Brig. (Retd.) Obaidullah Ranjha said that the birth of a child to an Afghan parent in Pakistan needed to be treated according to the same laws that were applied to children born to parents of other nationalities.

Repatriation of Afghan Refugees

There was a general consensus around the table that the repatriation of Afghan refugees needed to be conducted in a planned and dignified manner, which would not hurt the personal dignities of Afghan refugees. Some scholars gave a high priority to the repatriation of Afghan refugees, though, and urged the Government of Pakistan to take steps for their early but dignified return to Afghanistan.

Maulana Ilyas was of the view that it was time for Afghan refugees to go back to Afghanistan after having spent 37 years in Pakistan. He urged relevant national institutions to take effective measures for the timely but dignified return of Afghan refugees back to



Afghanistan. He called for showing leniency toward registered Afghan refugees, though. Dr Abdul Ghaffar from National University of Modern Languages (NUML) was of the view that Afghan refugees needed to be repatriated in a way that they do not start to resent Pakistan, and that they should be accorded all facilities and the deadlines for their duration of stay extended whenever needed because they were contributing to Pakistan's economy. Mufti Shamshad from Pak-Qatar Family Takaful

agreed that Afghan refugees had been beneficial for Pakistan's economy, but argued that the refugees needed to be sent back to Afghanistan because it was their motherland. He also called for their voluntary and dignified repatriation, though.

Maulana Qasim Shah, Maulana Shabbir Ahmed, and Maulana Yaqoob Tariq also echoed similar sentiments for the repatriation of Afghan refugees in a dignified manner. The emphasis of the three religious scholars was on making sure that Pakistan's image was not tarnished in their minds even after being hosted for such a long time. Maulana Rahat Hussain also agreed with the view and added that Pakistan and its existence were important but the Government of Pakistan needed to keep in mind that fair and respectful repatriation of the refugees would help Pakistan earn a good reputation internationally and leave a lasting positive impression on the minds of repatriating Afghan refugees.

Maulana Abdur Rauf said that the Government of Pakistan should work with international organizations to repatriate the refugees so that they leave this country happily. Maulana Abdul Qudoos also said that this issue must be dealt nationally and the Afghans should be allowed to leave the country respectfully. He said that the enemies of Pakistan must not be allowed to succeed in their heinous mission. He added that Government of Pakistan must set an amount of investment which an Afghan Refugee would want to invest in Pakistan to stay in the country. He also mentioned that Pakistan should benefit from the skills of the Afghan Refugees and shouldn't miss this opportunity.

Chief Khateeb of Bahria Town Islamabad, Maulana Abdul Zahir Farooqui, urged

Pakistanis to imagine being refugees themselves to fully understand the situation of Afghan refugees and expressed his grief over reports of certain Pakistanis looting Afghans of their belongings. Brig. (Retd.) Obaidullah Ranjha went a step further and said that even if Pakistan had to wait for some more time before repatriating Afghan refugees, it should because if Pakistanis could host them for 38 years, they had the capacity to do so. Maulana Tanvir Ahmed Alvi called for greater understanding of the economic implications of the abrupt departure of Afghan refugees from Pakistan.

The Importance of Pak-Afghan Coordination on Refugees

Media Director of Pakistan Shariah Council Maulana Abdur Rauf urged the governments of Pakistan and Afghanistan to work together to incentivize voluntary repatriation of Afghan refugees. Brig. (Retd.) Ranjha also emphasized the longstanding brotherly relations between Pakistan and Afghanistan and urged the two countries to resolve their issues through dialogue. He proposed holding dialogues between *ulema*, lawyers, tribal leaders, and parliamentarians of both countries on tackling issues between the two countries including those related to Afghan refugees.

The Distinction between Afghan Refugee and an Undocumented Afghan

Mr. Muhammad Farman from NACTA emphasized the problem of undocumented Afghans living in Pakistan without POR cards and the security risk they posed to Pakistan. Maulana Abdul Qudoos praised NADRA for its good work in the identification of the Afghan Refugees. He said that NADRA had helped and this had changed the things to some extent. He stressed upon the identification of the Afghan Refugees and said that if was of sheer importance to identify who is a “Pakistani” and who is a “Refugee.” Maulana Abdul Qudoos said that the idea that all the Afghans be thrown out of the “Madrasas” was not in any way supportable. He stressed that the identification problems must be dealt with as soon as possible to curb any future problems.



Maulana Tanvir Ahmed Alvi also referred to the distinctions within the Afghan community in Pakistan when he said that Afghans came to Pakistan in different groups. Some were Mujahideen who got trained here and went back to fight Russia. Some were refugees who were provided with basic necessities and given shelter to live, While there were still others who were in Pakistan for business purposes or work. He called for treating this three groups of people differently.

Key Takeaways

Following is the list of key takeaways from the consultative session on “Islam and *Muhajireen*: A View through the Lens of Islamic Discourses on *Hijrah*.”

- The Holy Quran mentions refugee status or migration 27 times. It is mandatory to give refuge to the ones seeking it, according to Islamic teachings. Therefore, no Muslim society can close its doors to refugees. There is a need for a greater propagation of Islamic teachings on refugee status.
- According to Islamic teachings, however, when the circumstances under which migration took place changed, the refugees should go back to their homeland.
- While attention needs to be paid to the registration of the undocumented Afghans, registered Afghan refugees need to be dealt with respectfully and their repatriation should be planned to ensure their voluntary return in dignity and safety. It is important that the repatriating refugees should not end up resenting Pakistan after 38 years of hospitality accorded to them by the Government of Pakistan as well as Pakistani people.
- There is a need to ponder as to why even after living in Pakistan for almost three generations, the Government of Pakistan and its people have been unable to win the hearts and minds of Afghan refugees. The media can play a role in tackling this issue.
- The issue of citizenship of children of Afghan parents (whether both parents are Afghan or one) born in Pakistan needs to be dealt with on priority. The Government of Pakistan needs to devise ways and means to ensure the rights of such children.
- Repatriation of Afghan refugees should be voluntary and conducted through coordination between the Governments of Pakistan and Afghanistan. After repatriation, Afghan nationals could be given employment and business opportunities in Pakistan as foreigners through a flexible visa regime for Afghan passport holders.
- Dialogues between Afghan and Pakistani *ulema*, tribal leaders, lawyers, and parliamentarians need to be held.



discussing the issue of repatriation of Afghan refugees.

- One should imagine oneself to be a refugee to understand their plight instead of thinking of them as a burden on the society.

- The international community should not only appreciate Pakistan's efforts in hosting Afghan refugees but also learn from the best practices of Pakistan's experience.

- There is a need for grassroots research on the perceptions of Afghan refugees to build their confidence and reduce the communication gap between the community and Pakistani authorities.

- A joint session of the parliament should be called for

Consultative Session with Senior Government of Pakistan Officials

The two-round consultative process for deducing a set of policy recommendations for the Government of Pakistan was a very comprehensive exercise in which various relevant stakeholders from various segments were involved. CODE PAKISTAN, with the support of UNHCR, engaged Government of Pakistan officials, representatives of international organizations, members of NGOs/CSOs, lawyers, journalists, and religious scholars in the consultative process on the important issue of Afghan refugees in Pakistan.



The consultative process would have been incomplete, though, if feedback had not been sought from senior Government of Pakistan officials on the key takeaways and recommendations of the two rounds of consultations with relevant stakeholders on the six themes. The consultation with senior government officials also enabled the alignment of future plans with the plans of the Government of Pakistan.

List of Participants

Almost all the top level relevant Government of Pakistan officials participated in the consultative session with senior government officials. Following is the list of the participants:

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| 1. | Lt. Gen. (Retd.) Nasser Khan
Janjua (Chief Guest) | National Security Advisor |
| 2. | Mr. Muhammad Shehzad
Arbab | Secretary SAFRON |
| 3. | Dr. Imran Zeb | Chief Commissioner Afghan Refugees |
| 4. | Mr. Indrika Ratwatte | Representative UNHCR |
| 5. | Mr. Saleem Khan | Commissioner Afghan Refugees Islamabad |
| 6. | Mr. Riaz Hameed Chaudhry | Commissioner Afghan Refugees Punjab |
| 7. | Mr. Ghazanfar Ali Agha | Commissioner Afghan Refugees Sindh |
| 8. | Mr. Waqar Maroof | Director General Commissionerate Afghan Refugees
Peshawar |
| 9. | Tariq Aleem Gill | Deputy Secretary Ministry of Interior |

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| 10. | Mr. Mohammad Jaffer | Director General NACTA |
| 11. | Ms. Ishrat Ramzan | Project Manager/Assistant Director NADRA |
| 12. | Maj. Gen (Retd) Saad Khattak | Chairman Pakistan Institute for Conflict and Security Studies (PICSS) |
| 13. | Amb. Arif Ayub | Pakistan's former ambassador to Afghanistan |
| 14. | Mr. Dilawar Khan | President CODE PAKISTAN |
| 15. | Mr. Aarish U. Khan | Executive Director CODE PAKISTAN |
| 16. | Maj. Gen. (Retd.) Tahir Habib Siddiqui | Consultant CODE PAKISTAN |

Discussion

Presentation on Consultations by Founder CODE PAKISTAN Mr. Dilawar Khan



Founder and President of CODE PAKISTAN Mr. Dilawar Khan gave a comprehensive presentation to the senior government officials on the findings and recommendations of the two rounds of consultations on Afghan refugees. Mr. Khan elaborated the objective of the consultations and its format to the participants. While explaining the key findings and recommendations of the consultations, Mr. Khan shared with the participants that besides the registration of the undocumented

Afghans and implementation of a flexible visa regime for Afghan passport holders, the need for a national refugee law and a national and international narrative on Afghan refugees were the most discussed subjects across the different thematic discussions.

Mr. Khan said that the documentation of undocumented Afghans and a flexible visa regime were already in an implementation phase on the part of the Government of Pakistan. He called for initiation of a consultative process on the adoption of a national refugee law, though. Mr. Khan maintained that since the Federal Cabinet had already approved the adoption of national refugee legislation, Rule 16(1)(a) of the Rules of Business of the Government of Pakistan that called for prior approval by the cabinet for initiation of a process for legislation by the SAFRON Division no longer applied. He said that the Ministry of SAFRON needed to send a draft of the legislation to the Ministry of Law and Justice to check for inconsistencies with the constitution or any other existing law. He added that the Ministry of Law and Justice would then convert the draft into a bill for introduction in the parliament. Mr. Khan shared that the bill would have to pass through the stages of first reading, second reading, committee stage,

and third and final reading in both houses of the parliament (National Assembly and Senate) for approval. He added that the Ministry of Law and Justice could only notify the law after passage from the parliament and getting the required presidential assent.

Mr. Khan further stated that in order to reduce resentment of the host communities across Pakistan against Afghan refugees, a need for engaging mainstream print and electronic media in Pakistan with respect to positive messaging about Afghan refugees was pointed out during the consultations. He shared the recommendation of the consultations in this regard that with the support of local NGOs/CSOs, the Government of Pakistan could encourage/facilitate briefings for journalists on matters related to Afghan refugees. He added that the Government of Pakistan could also engage the mainstream print and electronic media in countering negative/irresponsible social media messaging by independent social media activists.

Mr. Khan informed the participants that another important issue highlighted across various thematic discussions during the consultations was that Pakistan's longstanding efforts in support of Afghan refugees were not getting the required international recognition. He shared that the participants of the consultations had recommended strong efforts on the part of the Government of Pakistan, at both international forums and through bilateral channels, to appeal to the international community for greater responsibility-sharing in hosting Afghan refugees and finding lasting solutions for them. For that, Mr. Khan suggested that the Ministry of SAFRON might support the Ministry of Foreign Affairs in creating a brief that could be communicated to Pakistan missions abroad, putting forward a request for equitable burden sharing.

Remarks by Secretary SAFRON Muhammad Shehzad Arbab

Secretary SAFRON Mr. Muhammad Shehzad Arbab appreciated the fact that the Government of Pakistan was already working on implementing some of the recommendations



of the consultations and that the thinking of the government was in sync with the recommendations of the experts. He added that a long and tedious process had culminated in the approval of the national policy on Afghan refugees in Pakistan in a cabinet meeting on February 7. He also highlighted the fact that the national policy on Afghan refugee was drafted after input from the political party leadership of the country. "The national refugee policy is thus a consensus document," he said. Secretary SAFRON Mr. Muhammad

Shehzad Arbab shared that documentation of undocumented Afghans and the implementation of a flexible visa regime for Afghan passport holders were priority areas for the Government of Pakistan.



Remarks by Chief Commissioner Afghan Refugees Dr. Imran Zeb

Chief Commissioner Afghan Refugees Dr. Imran Zeb highlighted that the most preferred solution for Afghan refugees was their voluntary repatriation to Afghanistan. “We will have to work with the government of Afghanistan to create an enabling environment for that,” he said. Dr. Zeb completely rejected the idea of citizenship for Afghan refugees born in Pakistan. “It is a legal, administrative, and political non-starter because several such communities are living in Pakistan and it would open up a plethora of unwanted problems,” he said. Dr. Zeb further said, “I would suggest that this aspect is not taken any further.” He added, however, that the subject of the national refugee law was very important. “Since the cabinet has already given approval for it, we can start the process,” he said. He was of the view, however, that there was a need for having an inclusive process for the drafting of the national refugee law. Dr. Zeb called for involving the political parties into the process once again for the drafting of the national refugee law alongside inter-ministerial and inter-provincial consultations. “CODE could play a very important role in that,” said Dr. Zeb. He said that although Pakistan was according all sorts of facilities to the Afghan refugees, an institutional mechanism was still lacking that could come about with the adoption of a comprehensive national refugee law. “For that, we would be happy to work with CODE and UNHCR,” he said.



Remarks by Representative UNHCR Mr. Indrika Ratwatte

Representative UNHCR Mr. Indrika Ratwatte was of the view that although Pakistan had done a lot for refugees in the spirit of brotherliness and generosity, it had not been able to get its message across to the international community as effectively as it would have desired. He added that it was in the best interest of Pakistan to have a national refugee law that would distinguish between a refugee and a non-refugee. He said that UNHCR would support a process to that end. He further added that registration of undocumented Afghans was very important for the national security of Pakistan. “Afghans happen to be the largest undocumented population in Pakistan,” he said.

Mr. Ratwatte was of the view that a flexible visa regime would facilitate the Afghans who come to Pakistan not as refugees but for other reasons such as

livelihood, family relations, healthcare, education etc. “Documented entry and exit through a flexible visa regime would really help,” he said. Mr. Ratwatte shared that UNHCR had prioritized youth empowerment with respect to refugees for making them agents of stability rather than instability. Mr. Ratwatte appreciated the generosity extended to Afghan refugees not only on the part of the Government of Pakistan but also on the part of its people.

Remarks by Other Participants

Consultant CODE PAKISTAN Maj. Gen. (Retd.) Tahir Habib Siddiqui called for including Afghans in the census exercise. “Since the government is undertaking the census, it could actually make provision for documenting the Afghans as refugees or otherwise,” he said. Maj. Gen. (Retd.) Siddiqui was of the view that documentation of Afghans could be helpful in creating a structure for the reintegration of Afghan refugees. Maj. Gen. (Retd.) Siddiqui was unsure whether the Afghan government was able to issue passports that could not be forged.

Director General NACTA Mr. Mohammad Jaffer was of the opinion that without addressing the issue of border management, the issues of undocumented Afghans and implementing a visa regime could not be tackled. Mr. Jaffer called for differentiating between Afghans coming to Pakistan as refugees or for economic opportunities.

Chairman Pakistan Institute for Conflict and Security Studies Maj. Gen. (Retd.) Saad Khattak highlighted the role that could be played by *ulema* in narrative-building about Afghan refugees. “Maybe we could also consider involving the Sufi *ulema* in building the narrative and bringing the people of the two countries together,” he said. Pakistan’s former ambassador to Afghanistan Amb. (Retd.) Arif Ayub said that Pakistan needed to avoid actions that could spoil the goodwill of Afghans toward Pakistan after hosting them for so long as refugees.

Concluding Remarks by the National Security Adviser Lt. Gen. (Retd.) Nasser Khan Janjua HI(M)

The National Security Adviser Lt. Gen. (Retd.) Nasser Khan Janjua HI(M) was the chief guest of the event and the final speaker of the session as well. In his remarks, Lt. Gen. (Retd.) Janjua called for viewing the issue of Afghan refugees in connection with other related issues like regional security and connectivity. “For me, it is not an isolated dot,” he said. He called attention toward the political relations between Pakistan and Afghanistan as well as the relations between Pakistan and India on the one hand and India and Afghanistan on the other. Lt. Gen. (Retd.) Janjua said that Afghanistan needed to realize its potential of becoming a trade conduit with Central Asia. “In fact, becoming a trade corridor is the future of Afghanistan, which it is not realizing at the moment,” he said.

The National Security Adviser recounted Pakistan’s efforts in hosting such a large concentration of refugees for an extended period of time. “Pakistan is a great country with great people who are warmhearted. Hence, we shared our bread and our homes with Afghan refugees and have always been accepting them as a good



part of our society,” he said. He further added that Pakistan had not put restrictions on their travel within the country or denied them opportunities to prosper economically. Lt. Gen. (Retd.) Janjua said, “Compare it with the way the rest of the world is treating refugees from Syria. Even if we continue to host Afghan refugees like no other and produce the best of narratives to convince people, the world is indifferent to our efforts. Look at the extent of UN’s support Pakistan has been receiving and compare it to the support Europe is receiving: There is such a dichotomy.”

Lt. Gen. (Retd.) Janjua was of the view that Pakistan was not having a national refugee law because Pakistan never treated Afghans as refugees. “Now it’s being pointed out as a vacuum of legislation, but it has been because of our warmth,” he said. He appreciated all efforts at holding *National Consultations on Afghan Refugees in Pakistan* with the contribution of UNHCR and urged to continue providing support to the Ministry of SAFRON on the legislation.

Key Takeaways

Following are the key takeaways from the Consultative Session with Senior Government of Pakistan Officials:

- Since the Federal Cabinet has given it a go-ahead in its February 7, 2017, meeting, the consultative process for drafting national refugee legislation involving inter-ministerial and inter-provincial consultations as well as consultations with political leadership needs to be started in earnest.
- The Government of Pakistan is taking the lead on documentation of undocumented Afghans as well as the implementation of a flexible visa regime for Afghan passport holders.
- Giving Pakistani citizenship to Afghan refugee children born on Pakistani soil is a legal, administrative, and political non-starter for the Government of Pakistan. No further deliberations on the subject are required.
- There is a serious need for building a narrative on Afghan refugees for national and international audiences. The narrative for national audiences would focus on promoting harmony between Afghan refugees and host communities, while the narrative for international audiences would focus on effectively disseminating information about Pakistan’s efforts at hosting Afghan refugees for a long time with an aim to appeal to the international community for greater responsibility-sharing in hosting Afghan refugees and finding lasting solutions for them.
- The management of Afghan refugees cannot be viewed in isolation of other inter-related national security imperatives as well as regional and international political dynamics.

Conclusion

In a meeting of the Federal Cabinet on February 7, 2017, the Government of Pakistan pledged to continue to support Afghan refugees and extended the stay of registered Afghan refugees holding POR cards as well as the validity of the Tripartite Agreement on voluntary repatriation until December 31, 2017. The cabinet also agreed on the implementation of a flexible visa regime for different categories of Afghan refugees such as students, businessmen, skilled/unskilled labor, and Afghans traveling to Pakistan because of inter-marriages with Pakistanis or for healthcare. Legislation of a comprehensive national refugee law and documentation of the unregistered Afghans as well as improved border management were some other points agreed during the cabinet meeting on February 7, 2017. Thus, many of the recommendations that have emerged from the consultations have already been approved by the parliament. Now, the challenge is the implementation.

The Government of Pakistan has already initiated a process on some important issues related to Afghan refugees in Pakistan. As Secretary SAFRON Mr. Muhammad Shehzad Arbab said that the thinking of the government was in sync with the recommendations of the experts. The Government of Pakistan has prioritized issue areas such as the documentation of undocumented Afghans as well as the implementation of a flexible visa regime for Afghan passport holders.

For documentation of the undocumented Afghans, the action plan devised by NADRA in cooperation with the Government of Afghanistan and collaboration with the Ministry of SAFRON and IOM is already in place, while the Government of Pakistan is in the process of finalization of the modalities for issuance of different categories of visas to Afghan passport holders coming to Pakistan for study, business, family relationships, or healthcare.



Another important aspect related to Afghan refugees that came under discussion was that the longstanding efforts at hosting the Afghan refugees on the part of the government and people of Pakistan needed to be recognized. It was observed that if the Government of Pakistan would return Afghan refugees to their country against their consent, it could destroy the goodwill generated through 38 years of hosting them. The need for promotion of harmony among Afghan refugees and their host communities was also highlighted in a similar context. In different sessions in both rounds of consultations, it was observed that there was a need for positive narrative-building with respect to Afghan refugees among Pakistani host communities in particular and the population of Pakistan in general. Mainstream print and electronic media were identified as the primary avenues for the projection of a positive narrative about Afghan refugees.

In various sessions in both rounds, the limited international recognition of Pakistan's longstanding contribution to the Afghan refugee cause was also highlighted. Several participants urged the international community to acknowledge Pakistan's role in hosting Afghan refugees for 38 years. Some of the participants, however, urged the Government of Pakistan to project its positive image with respect to the hosting of Afghan refugees at the international forums as well as the bilateral channels. Some other issues that were highlighted across various sessions in both rounds of consultations were: the need for quantifying the economic contribution of Afghan refugees to Pakistan's economy for tapping into its potential, the need for greater coordination between Pakistani and Afghan governments, and the pressure on Pakistan's public infrastructure because of catering to the needs of Afghan refugees.

While the specific key takeaways from each session are listed at the end of the chapter dedicated to the theme of the session in this report, the recommendations from each session were collected and have been presented in one consolidated list in the next chapter because some of the recommendations were repeated across various sessions. The recommendations of



the consultations listed in the next chapter take into account the recommendations of each round of consultations as well as the feedback received from senior Government of Pakistan officials in the consultative session with them on February 28, 2017. Another important element of the list of recommendations derived from the two rounds of consultations as well as the consultative session with senior Government of Pakistan officials is that each recommendation comes with a practical action plan.

Recommendations

Following are the key recommendations of the two rounds of consultations on Afghan refugees held in Islamabad on January 10 and January 24, 2017, as well as the consultative session with senior Government of Pakistan officials on February 28, 2017.

- The Government of Pakistan needs to adopt a National Refugee Law that would not only get rid of the legal confusion related to Afghan refugees but would also be aligned with international humanitarian law.

Action Plan: CCAR takes the lead on reviewing the draft National Refugee Law (prepared in 2013). The draft would require a thorough review in view of the National Action Plan (NAP). It would also require inter-ministerial review and discussions at relevant levels. The consultations may include parliamentarians, journalists, civil society members, officials from the ministries of law and justice and foreign affairs. Once the review stage is completed, the draft is moved to the Ministry of Law and Justice. Detailed attention paid at CCAR level would ensure a quick response by the Ministry of Law and Justice and would take less time in converting it into a bill for parliamentary review and approval.

- The Federal Cabinet should positively consider the All Parties Conference recommendations, including registration of the irregular migrants from Afghanistan.

Action Plan: The action plan devised by NADRA, in cooperation with the Government of Afghanistan and collaboration with the Ministry of SAFRON and IOM,

is already in place, with the Government of Pakistan having sanctioned funds for the registration process. With the approval from the cabinet in its meeting on February 7, 2017, all parties need to move forward on the documentation of the irregular migrants from Afghanistan (the undocumented Afghans without the POR cards or valid visas).

- Border management on the Pak-Afghan border needs to be improved in accordance with international standards, including ensuring access to asylum procedures, *non-refoulement*, and regularization of cross-border travel under a visa regime.

Action Plan: The policy on Afghan refugees approved in the cabinet meeting on February 7, 2017, calls for a strict implementation of Pakistan's immigration laws along the Pakistan-Afghanistan border and ensuring that those without visas are not allowed entry into the country. The Governments of Pakistan and Afghanistan need to negotiate to agree on an informed and practical border management policy.

- The Federal Cabinet should positively consider the APC recommendation on a visa regime for Afghans.





Action Plan: Since introduction of a flexible visa regime for Afghan travelers has already been approved in the meeting of the Federal Cabinet on February 7, 2017, the Government of Pakistan may start the process to introduce a comprehensive visa classification regime for different kinds of Afghan travelers such as students, businessmen, skilled and unskilled laborers, persons visiting friends and family, and persons coming to Pakistan for health treatment. The Government of

Pakistan could introduce on-arrival visas for some of these categories and establish on-arrival visa issuance offices on all legally recognized entry points on the Pakistan-Afghanistan border. Since most of the Afghans (refugee and non-refugee) consider CARs as the go-to offices for any issues related to the Government of Pakistan, the Ministry of Foreign Affairs could also open visa renewal offices in CARs to facilitate frequent travelers from Afghanistan of different categories. For that to happen, though, the Government of Pakistan will have to further strengthen and equip the CARs offices to deal with the excess workload.

- A three-year extension, up to December 2020, needs to be considered for the Afghan refugees in possession of POR cards.

Action Plan: While the cabinet has already approved the extension of the validity of POR cards up to the end of 2017, it needs to positively consider an extension of the validity of the POR cards for three years, i.e., until the end of 2019.

- The Government of Pakistan, in partnership with UNHCR, needs to initiate a nationwide study on the economic contribution of Afghan refugees to various sectors of Pakistan's economy so that policies could be devised to tap into the untapped potential of the economy involving Afghan refugees.

Action Plan: A plan for conducting the study is already underway. The office of the Chief Commissioner Afghan Refugees, Ministry of SAFRON, Government of Pakistan, is engaged with UNHCR on initiating the study and a contract will soon be awarded to a research institution to undertake the work.

- Owing to the pressure on Pakistan's public infrastructure like schools and hospitals as a result of catering to the needs of Afghan refugees, there is a need for continuation of the on-going projects that support Pakistan's public infrastructure and initiation of new similar projects with the financial support of the international community.

Action Plan: The on-going projects like the Refugee Affected Hosting Areas (RAHA)²⁹ may be continued. New projects and ideas in support of strengthening public sector infrastructure in the country could also be encouraged because it would not only be helpful in rehabilitating public sector infrastructure catering to the needs of Afghan refugees and host communities but would also engender harmony and discourage resentment between them. Education and livelihood to empower youth needs to be prioritized.

- In order to reduce resentment of the host communities across Pakistan toward Afghan refugees, there is a need for engaging mainstream print and electronic media in Pakistan with respect to positive messaging about Afghan refugees.

Action Plan: With the support of local NGOs/CSOs, the Government of Pakistan could encourage/facilitate briefings for journalists on matters related to Afghan refugees. It could also encourage/facilitate publication/dissemination of advertisements for promotion of harmony and social cohesion between Afghan refugees and Pakistanis through the print and electronic media. The Government of Pakistan could also engage the mainstream print and electronic media in countering negative/irresponsible social media messaging by independent social media activists.

- The Government of Pakistan may allow all Afghans in possession of passports to open bank accounts in Pakistan to facilitate them as well as to help in better documentation of their financial transactions and better benefit from their allow them to participate in and contribute to the economy.



Action Plan: CCAR may move a summary for the perusal of ministries of Finance and Foreign Affairs to take necessary measures on the issue of allowing Afghans to open bank accounts in Pakistan.

- Strong efforts need to be made by the Government of Pakistan, at both international forums and through bilateral channels, to appeal to the international community for greater responsibility-sharing in hosting Afghan refugees and finding lasting solutions for them.

²⁹ Refugees Affected and Hosting Areas Program (RAHA) is a Joint Program Component within the UN Delivering as One. This project aims at ensuring peaceful coexistence of Afghan refugees with the local communities until the situation in Afghanistan becomes conducive to their return. The program, which also aims at strengthening the Government of Pakistan's governance and public service delivery, has been primarily developed to improve the living standard of more than one million Pakistanis who have hosted or are still hosting Afghan refugees.

Action Plan: The Ministry of SAFRON may support the Ministry of Foreign Affairs in creating a brief that could be communicated to Pakistan missions abroad putting forward a request for equitable burden sharing.

- There is a need for greater involvement of the Government of Afghanistan in the facilitation of Afghan refugees in Pakistan.

Action Plan: The Governments of Pakistan and Afghanistan need to negotiate for the opening of Afghan consulates in main cities close to large concentrations of Afghan refugees. The consulates could help in issuing equivalency certificates to students with education certification from Pakistan, which, at the moment, is a major hurdle for students wishing to return.



Annex I: Afghan Refugees in Pakistan: A Backgrounder

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

It is pertinent to note here that 74 percent of Afghan refugees are second or third generation born in Pakistan. It is widely recognized in the international community that Pakistan is one of the very few countries in the modern world that has hosted such a large refugee community over such an extended period of time.

Policy Framework

Despite their sheer number and long duration of stay in Pakistan, a long-term, comprehensive, and well-thought-out national policy for the management³⁰ and voluntary repatriation of Afghan refugees does not exist in the country. At present, the only official policy on the subject is the National Policy on Voluntary Repatriation and Management of Afghan Refugees, which was adopted by the Government of Pakistan in July 2013. This document is neither comprehensive nor has it been updated in the wake of the National Action Plan. The adoption of a comprehensive policy is necessary for a more predictable and solutions-oriented approach to managing the refugee population, in line with the national interest of Pakistan, and the demands of the domestic³¹ and international law. A long-term strategy would further support efforts to mobilize resources from the international community, which will be needed for facilitating voluntary repatriation of Afghan refugees and continued support to Pakistani host communities pending the return of Afghan refugees to their homeland.



³⁰ Throughout the document, reference has been made conjunctively to two concepts: voluntary repatriation and management. The term management is being used precisely because it is vague and could include any or all of the multiple policy options available to the state of Pakistan: continuing to host the refugees as registered foreigners, issuing them paid-for visas, naturalizing them, repatriating them to a third country or a mixture of all.

³¹ For domestic law supporting enforceable refugee rights, see Article 4 of the Constitution of Pakistan, which the courts have called the single most important clause of our constitution. It says that any “person for the time being in Pakistan” is also entitled to the protection of law.

Administrative Framework

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

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

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

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

Legal Framework

The absence of a comprehensive policy is connected with the limited appreciation at the



government level for a legal framework governing this issue at the plane of international as well as domestic law.

International Law

Pakistan is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, nor has it codified the Convention rights through a domestic statute. Even in the absence of any specific treaty obligations, however, the Government of Pakistan continues to be bound by

international customary law on refugee rights. This is not only a rule of international law but also a rule of Pakistan's domestic law. Pakistan's superior courts have repeatedly asserted that rights conferred by international customary law are enforceable in Pakistan, even in the absence of any specific treaty obligations or statutory backing. In *Najib Zarab Ltd vs the Government of Pakistan* (PLD 1993 Karachi 93), the Sindh High Court held that "the community of nations requires that rules of international law may be accommodated in the municipal law even without express legislative sanction provided they do not run into conflict with the Acts of the Parliament." Therefore, the limited set of rights for refugees that exist independently of the Convention and are recognized under the international customary law are, in principle, enforceable in Pakistan.

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

implementing lasting solutions for the 1.5 million registered Afghan refugees in Pakistan with voluntary repatriation for Afghan refugees and sustainable reintegration as the preferred option.³²

Domestic Law

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

The government and its lawyers treat almost all Afghan refugees as "foreigners." Accordingly, it has issued them POR cards under the authority of the Foreigners Act, 1946. The POR cards were first issued in October 2006, and have since been renewed a number of times. In June 2016, a six-month extension was granted, which was stretched out in September 2016 by another three months until March 31, 2017. In November 2016, the deadline was once again extended, and December 2017 has been announced as the reapproved date for the expiry of POR cards. The government's avowed commitment to the voluntary repatriation of all Afghans is premised on its viewing of them as foreigners residing within a country that is not theirs.

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



Citizenship by Birth-place (jus soli):

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

³² Conclusions of the 27th Tripartite Commission Meeting Between the Governments of the Islamic Republic of Pakistan and Afghanistan and UNHCR, Bhurban, Pakistan (19 July 2016).

different sections of a statute as if they were conjunctive clauses, this gives the government a justification for its refusal to grant refugees the benefit of Section 4 of the Citizenship Act.

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

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



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

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

Acknowledging the need for such legislation, in a meeting on August 15, 2013, the Federal Cabinet approved the adoption of a National Refugee Law. The Ministry of SAFRON prepared the draft of the legislation with technical assistance from UNHCR. Yet, it has neither been widely discussed amongst stakeholders nor tabled in the parliament.

Afghan Refugees and the Economy

Some observers claim that Afghan refugees are a burden on the Pakistani economy. No solid evidence has been brought forward to support this claim, though. On the contrary, some sources suggest that refugees are already contributing to the economy by undertaking some of

the most unwanted jobs like garbage collection and staffing brick kilns.³³ If given proper incentives and opportunities, refugees could boost the host country's economy through investment and trade. It is, therefore, imperative to further investigate and give recommendations on how such a development can be best achieved.³⁴ Attention also needs to be given to the opportunities that may have been created by the presence of Afghan refugees in Pakistan and to outline a future strategy to better capitalize on the economic opportunities that arise from the refugee presence.

The Emerging International Climate on Refugee Management

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



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

³³ See <http://www.unhcr.org/news/latest/2011/1/4d2b1dd96/unhcr-looks-economic-contribution-afghan-refugees-pakistan.html>; <http://www.oecd.org/forum/oecdyearbook/refugees-are-not-a-burden-but-an-opportunity.htm>; and <http://www.worldfinance.com/infrastructure-investment/government-policy/refugees-are-an-economic-benefit-not-burden-to-europe>

³⁴ Studies such as *In Search of Protection and Livelihoods: Socio-economic and Environmental Impacts of Dadaab Refugee Camps on Host Communities* available at http://reliefweb.int/sites/reliefweb.int/files/resources/C477129C7D41DCFB852577B3006B2818-Full_Report.pdf and *Refugee Economies: Rethinking Popular Assumptions* available at <http://reliefweb.int/sites/reliefweb.int/files/resources/refugee-economies-2014.pdf> could guide further research in this direction in the context of the protracted refugee situation of Pakistan.

future steps on the matter of refugees will determine whether it can deter any negative spotlight from shining on it.

Islam and Muhajireen (Refugees):

Immigration and refugees have remained a constant feature throughout Islamic history. To this effect, it is noteworthy to mention that Prophet Muhammad (PBUH) himself was an acknowledged refugee who fled persecution in Mecca to be welcomed and embraced in Medina. A wealth of Islamic resources can be drawn from the Holy Quran, and other sources of Islamic jurisprudence to shed light on the phenomenon of *Hijrah* (migration). In Chapter 8 (*al-Anfaal*) of the Holy Quran, migration has been referred to as the best planning by the Prophet,³⁵ while refugees are referred to as the true believers.³⁶ In Chapter 4 (*an-Nisaa*), the refugees are given the good news of plentiful provisions in this world and God's reward in the life hereafter.³⁷ The Holy Quran teaches to provide shelter for the refugees notwithstanding their religious affiliation.³⁸

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



drawing upon Islamic discourses. This Islamic perspective would be relevant not only in Pakistan but also globally for at least two reasons: First, the Islamic tradition has played some role in mobilizing the tremendous hospitality Pakistan's ordinary people have accorded to Afghan refugees for several decades, which is found wanting in some other cultural contexts where refugees are now going. Second, most of the world's refugee populations are being hosted in Muslim-majority countries where

the perspectives offered by Islamic jurisprudence are socially relevant and publicly resonant. In Pakistan, as in other countries with Muslim majorities, there is a need to investigate Islamic resources for determining how best to approach the issue of the rights and duties of refugees.

Brief Introduction to Consultations

The discussion in the backgrounder highlights the need for national legislation and long-term policy formulation on the issue of Afghan refugees to jettison the confusion caused by the existence of multiple legal instruments for the management of Afghan refugees as well as the lack of a comprehensive long-

³⁵Al-Quran (8:30).

³⁶ Al-Quran (8:74).

³⁷ Al-Quran (4:100).

³⁸ Al-Quran (9:6).

term policy to deal with the issue. Therefore, CODE PAKISTAN, in collaboration with the office of the Chief Commissioner Afghan Refugees (CCAR), Ministry of States and Frontier Regions (SAFRON), Government of Pakistan, and the United Nations High Commissioner for Refugees (UNHCR), has taken the initiative to hold national consultative sessions on developing strategies for the voluntary repatriation and management of Afghan refugees in Pakistan. The consultative sessions will be held in two



rounds in Islamabad on Tuesday, January 10, and Tuesday, January 24. Each round of consultative sessions will comprise of simultaneous consultations on the following six themes:

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

The first round of consultations is aimed at a general discussion around the six themes; while the second round is meant for converging on practical recommendations on each of them. We are aiming to have the same participants in both the rounds. Your cooperation in this regard will be highly appreciated. We hope to conclude the two rounds of consultations with a comprehensive report including policy recommendations on the matter of Afghan refugees in Pakistan, which will be shared with key government officials through the Ministry of SAFRON.



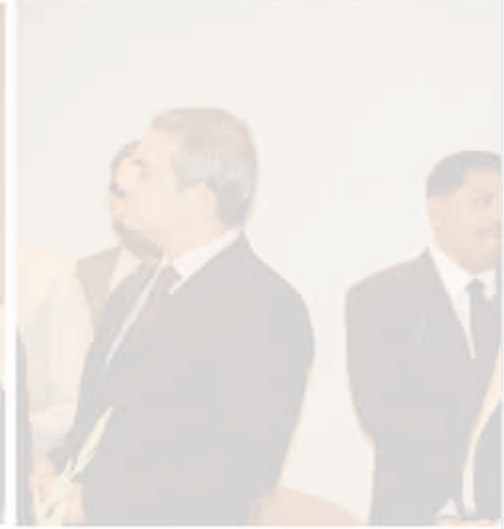
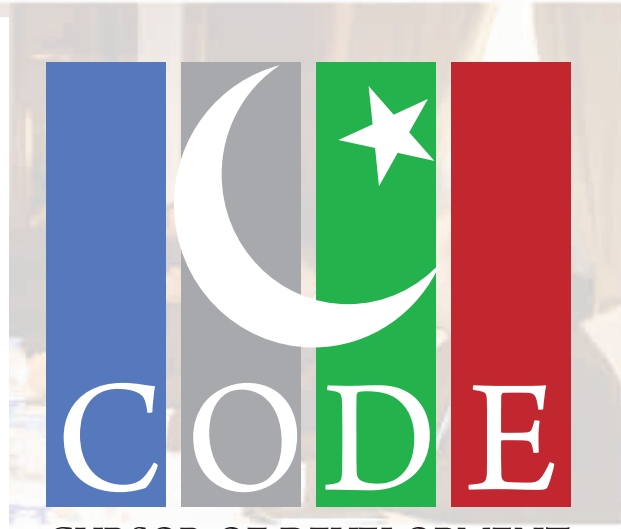
In making this effort, we are following in the footsteps of the Government of Pakistan, which has approved the adoption of a National Refugee Law in a Federal Cabinet meeting on August 15, 2013.

We believe that the absence of a comprehensive legal and administrative policy governing the issue of refugees is detrimental to Pakistan on many fronts; from security and border management to regulation

of labor and migration. We also believe that such an undertaking would be beneficial for promoting regional stability by strengthening Afghanistan-Pakistan relations.

Format of Discussion

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



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