

Repatriation of Afghan Refugees from Pakistan: A Legal Analysis (Part-II)

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Abstract

Voluntary repatriation is the most preferred solution to refugee situations; however, for a repatriation to be permanent, pull factors in the country of origin need to be more profound than push factors in the host country. Such pull factors should force the refugees decide to return 'voluntarily', in 'safety' and 'dignity'. Among other things, voluntary repatriation requires an overall general improvement in the situation of the country of origin. This paper examines the return of Afghan refugees from Pakistan and finds out that the situation in Afghanistan has not improved to warrant return of millions of refugees. This is alarming; as it also appears that, the decision of refugees to return is not voluntary, Instead, they are treated as political instrument and are forced to return for becoming an economic burden or for various other perceptions. The Government of Afghanistan and the UNHCR therefore need to revisit their policy of welcoming repatriation of refugees and should ensure that Afghan refugees return only when they can be properly integrated and absorbed in Afghanistan. The paper also calls upon the UNCHR to play its role effectively and stop forced return of Afghans from Pakistan, which amounts to refoulement in violation of the principle of non-refoulement.

Keywords: Afghans Refugees, Pakistan, UNHCR, Voluntary Repatriation, Non-Refoulement, Safety and Dignity

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Introduction

Consequent to the Bonn Agreement of December 2001, an Interim Administration headed by Hamid Karzai was formed in Afghanistan. In June 2002, the United Nations (UN) administered an emergency *Loya Jarga* (Grand Assembly) presided over by the formerly exiled King Zahir Shah, which appointed the Transitional Administration to rule Afghanistan for a further two years. It was admitted that Afghans residing outside Afghanistan's borders had the right to return and that they could play a vital role in reconstruction of their homeland.

In this context, the President of Afghanistan,¹ Hamid Karzai, in his decree issued in 2001 declared that the Bonn Agreement of 5th December 2001 has "laid down the foundation for lasting peace, stability and social and economic progress in Afghanistan" and that the Agreement "safeguards the right and freedom of all returnees". To elaborate as to what does this encompasses, the Decree "observes the freedom of returnees to establish residence, to participate in the process of reconstruction, consolidation of peace, democracy and social development". To facilitate the returnees integrate into the society, the Decree asserts, "AIA guarantees their safe and dignified return".² It offered gratitude to every country hosting Afghan refugees during the difficult times, over the past years, nonetheless, expressed that Afghans will be given the opportunity to decide *freely* if they wish to return to their homeland in conformity with the principle of "voluntary repatriation".³

In the first part of this paper, we looked at the meaning and scope of repatriation and emphasized that repatriation not only needs to be voluntary, it must be conducted orderly, in safety and with dignity. We also noted that voluntary repatriation requires an overall general improvement in the situation of the country of origin, in this case, Afghanistan. In this second part of the paper, our focus is on the repatriation of Afghan refugees from Pakistan as we enquire whether the requirements mentioned in the first part were met and Afghans returned to their homeland voluntarily, in safety and with dignity.

2 Registration of Afghan Refugees in Pakistan

Not being a signatory to the 1951 Convention or the 1967 Protocol, Pakistan did not issue any identification documents to Refugees⁴ and apparently treated them as *prima facie* refugees.⁵ The legal problems in relation to coping with Afghan refugees, primarily, stemmed from the lack of a unified policy towards refugees and of the identification documents.⁶ For this, and other reasons, which remain outside the scope of our current discussion, Pakistan's treatment of refugees has been inconsistent and

changeable, depending not upon a clear-cut policy or law but upon changing sets of political imperatives related to internal economic constraints, and regional and international pressures.⁷

For the first time, registration of Afghan refugees was conducted by United Nations High Commissioner for Refugees (UNHCR) in collaboration with Ministry of States and Frontier Regions (SAFRON) and National Database and Registration Authority (NADRA) from October 2006 until February 2007. As part of this process, 2,153,088 Afghan refugees out of an estimated 2.46 million Afghans⁸ residing in the country were registered and Proof of Registration (PoR) cards were issued to them. This registration legalized stay of the first category in Pakistan until December 2009.⁹ A grace period of 45 days, 1st March to 15th April was granted to unregistered and hence non holders of PoR cards in order to leave Pakistan or else face prosecution on account of illegal entry therein, thus, of the 357,859 returnees, 205,997 were unregistered refugees utilizing the grace period.¹⁰ However, on 13 March 2009 the Government of Afghanistan and UNHCR signed a new Agreement on the stay of Afghan refugees in Pakistan, extending their stay until December 2012. The move was regarded by UNHCR a “responsible” one and it reiterated that it will support the “voluntary, safe, dignified and gradual repatriation of Afghans from Pakistan”.¹¹ The cards were extended for six months through a formal notification issued by the government and since then, the validity of PoR cards has been extended sometimes for six months and sometimes for three.¹² The Government of Pakistan has declared on many occasions that all Afghan refugees must return to their home country. They however have extended the deadline at least three times in 2018.¹³ The recent extension was until June 2019 with all tacitly accepting that this deadline will shift again.¹⁴

These extensions are unpredictable and vary in their duration due to their political nature. Muhammad Saad Khan, former Pakistani defense attaché in Kabul, believes that “the ups and downs in the relationship between the two countries are reflected in the status of Afghan refugees” and therefore, “when relations between the two countries go south, Pakistan usually says they won’t renew PoR cards, threatens to send refugees back. And when they are slightly better, like right now, the government extends the validity of these cards.”¹⁵

3 History of Return from Pakistan

Afghanistan is the homeland to a community of well-known protracted refugees with every one in three Afghans experiencing displacement, internally, internationally or both with a majority being displaced more than

once. According to UNHCR, Afghans comprise the largest protracted refugee population in Asia, and the second largest refugee population in the world.¹⁶ According to International Organization for Migration (IOM), some 2.6 million Afghans are registered as refugees in more than 70 countries around the world.¹⁷

The first phase of Afghan displacement was consequent to the *Sour* revolution (*aka* April Revolution)¹⁸ and Soviet invasion of the country in 1979 whereas the framework for repatriation of Afghan refugees was set for the first time in the Geneva Accords of 1988¹⁹ signed by Afghanistan and Pakistan.²⁰ The Accords comprised a “Bilateral Agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan on The Voluntary Return of Refugees”.

The Preamble asserts that both parties are convinced that “voluntary and unimpeded repatriation constitutes the most appropriate solution for the problem of Afghan refugees present in the Islamic Republic of Pakistan”. This was important and in line with the safeguards put in place by the International Refugee Law. Voluntary repatriation was indeed the most preferred and durable solution to the refugee problem overall and to the Afghan refugees specifically, due to the large number of them living in Pakistan, Iran and elsewhere. The preamble added that, “having ascertained that the arrangements for the return of the Afghan refugees are satisfactory to them”, the parties agreed that “all Afghan refugees temporarily present in the territory of the Islamic Republic of Pakistan shall be given the opportunity to return voluntarily to their homeland in accordance with the arrangements and conditions set out in the present Agreement”.²¹ We will not comment as to the arrangements in place, however, it is vital to note that the Article does highlight the temporary nature of Afghan refugees’ presence in Pakistan and emphasizes on their return voluntarily, as per conditions set out in the Agreement.

As part of the set out conditions, the Accord called upon the Government of the then Republic of Afghanistan to “take all necessary measures to ensure the following conditions for the voluntary return of Afghan refugees to their homeland:

- a. All refugees shall be allowed to return in freedom to their homeland;
- b. All returnees shall enjoy the free choice of domicile and freedom of movement within the Republic of Afghanistan;
- c. All returnees shall enjoy the right to work, to adequate living conditions and to share in the welfare of the State;

- d. All returnees shall enjoy the right to participate on an equal basis in the civic affairs of the Republic of Afghanistan. They shall be ensured equal benefits from the solution of the land question on the basis of the Land and Water Reform;
- e. All returnees shall enjoy the same rights and privileges, including freedom of religion, and have the same obligations and responsibilities as any other citizens of the Republic of Afghanistan without discrimination. The Government of the Republic of Afghanistan undertake to implement these measures and to provide, within its possibilities, all necessary assistance in the process of repatriation”.²²

This was a welcome move since it did call upon the Governments of Afghanistan and Pakistan to ensure voluntary repatriation of the Afghan refugees, whereas it mandated the Government of Afghanistan to ensure that refugees return in conditions of legal, physical and material safety and reconciliation.²³ Things did not go as smooth as expected though. Soon after the last Soviet soldier withdrew from Afghanistan, a civil war broke out among the Afghan among the Afghan factions to control the capital, compelling Afghans to opt for refuge once again. However, the *mujahedeen* forces entered Kabul in 1992 and approximately 1.2 million refugees repatriated to their homeland.²⁴

UNHCR commenced an assisted repatriation program in Pakistan in July 1990 and later extended the same to Iran.²⁵ Approximately 2 million Afghan refugees repatriated from Pakistan between the year 1989, when the Soviet troops withdrew, and 1995.²⁶ By the end of 1996, total repatriation had reached 3.84 million refugees mostly assisted by Quick Impact Projects with 120,700 repatriating in the same year.²⁷ Due to the Taliban offensive and insecurity in parts of Afghanistan, UNHCR did not promote repatriation during 1996 but did facilitate the return²⁸ by providing cash-grants or in-kind support and transportation assistance.²⁹ It is also noteworthy that refugees arriving due to the civil war usually returned home after short periods, while refugees arriving during 1980s did not return. Moreover, a generation of Afghans born in Pakistan had never been “home” and probably did not have a desire to “return”.³⁰ Following the takeover of Kabul by the Taliban—the capital city, the repatriation flow decreased dramatically while despite a restrictive policy adopted by the Government of Pakistan (GOP) on the border, the arrival of refugees to Pakistan increased once again.³¹ The number of returnees from Pakistan dropped to 81,000 refugees in the year 1997.³² According to UNHCR, approximately 93,000 Afghan refugees repatriated during the year 1998,³³

while 92,000 of them returned home during 1999³⁴ with a drop in the number of returnees in 2000 to 76,000 refugees³⁵ and in 2001 to 65000.³⁶

Following the events of 9/11 and the subsequent US occupation of Afghanistan, the repatriation flow increased rapidly, thus, almost 1.8 million Afghan refugees returned home with assistance from UNHCR, the Afghan Ministry of Refugees and Repatriation (MoRR) and the Governments of the neighboring countries in the period between December 2001 and December 2002.³⁷ This number was certainly in addition to those returning home 'spontaneously' with no assistance from anyone.³⁸ Nearly 1.7 million Afghan refugees returned home in 2003, 1.56 million of them with assistance from UNHCR and 150,000 on their own³⁹ while the number of returnees remained 343,100 in the year 2004.⁴⁰ 142,700 refugees repatriated to Afghanistan during 2006,⁴¹ as compared to 374,000 refugees returning in 2007.⁴² In total, around 4.4 million Afghan refugees have returned to Afghanistan from Pakistan since 2002,⁴³ whereas some 1.4 million Afghan refugees still remain therein.⁴⁴

4 Repatriation and Problems in Afghanistan

Repatriation is deemed to be a durable solution only when it is voluntary, carried out with "safety and dignity", consequent to refugees' will and choice. The voluntary character of repatriation further demands that refugees should be well-informed about the prevalent situation in the country of origin and for this purpose, should be assisted to pay "go and see" or even "go and work" visits to their homeland.⁴⁵ In addition, it should be triggered and promoted on the basis of improvement in the general situation of the country of origin so that return of the refugees in 'safety' and 'dignity' is both possible and desired.⁴⁶ Hence, push factors in the country of refuge such as arrests, extortion, torture, restriction of movement and other methods to compel the refugees opt for a return amounts to *refoulement* and are hence prohibited in accordance with the principle of *non-refoulement* which is the cornerstone of International Refugee Law.⁴⁷ Moreover, inadequate protection and assistance awarded to refugees, prompting them to return to an insecure situation at their homeland, could not be regarded as exercise of free choice by them.⁴⁸

4.1 Security Situation

Since improvement in the overall situation of Afghanistan is a pre-requisite for voluntary repatriation to the country, the security situation needs to be analyzed before other factors. United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that "suicide vehicle-borne improvised explosive device, improvised explosive device attacks, airstrikes, fighting and military operations were reported in Kabul,

Kapisa, Logar, Parwan, Khost, Paktya and Maidan Wardak provinces in the week of 21-27 October 2019”.⁴⁹ This is just a glimpse of what the country is going through on daily basis.

UNHCR Reports 12% increase in the number of the People of Concern⁵⁰ during 2018. Overall, 2,759,010 people were of concern in 2018 whereas the figure was 2,454,451 in 2017 and it remained 2,355,622 in 2016.⁵¹ The Report commented that, “Afghanistan remained the largest and most protracted refugee situation in the region. Renewed insecurity, conflict and drought drove displacement in Afghanistan in 2018, with an estimated 270,000 conflict-displaced IDPs and 230,000 displaced by drought. The displacement crisis had a significant impact on the country’s existing services, limiting absorption capacity and creating a challenging environment for the sustainable reintegration of returnees and IDPs”.⁵² It adds that according to UNHCR estimations, conflict and natural disasters displaced at least 2 million Afghans at the end of 2018, including people displaced internally in previous years.⁵³

Human Rights Watch (HRW) reported that “military operations by insurgents, international, and government forces in Afghanistan intensified in 2018” and that “insurgent attacks in urban areas sharply increased”.⁵⁴ The widening armed conflict killed or injured more than 10,000 civilians between January and December of 2018. It added, “Insurgents targeting civilians and carrying out indiscriminate attacks were responsible for the vast majority of these, but an increase in airstrikes by US and Afghan forces also caused hundreds of civilian casualties during the year”.⁵⁵

In September 2019, the UN Secretary General reports that the security situation in Afghanistan remains “volatile” due to a high number of security incidents in the period between June – September 2019. As per his report, United Nations Assistance Mission for Afghanistan (UNAMA) recorded 5,856 security related incidents, with armed clashes accounting for 56% of them, in the period between 10 May and 8 August 2019. 63% of these incidents occurred in the South, the East and South-East regions of Afghanistan. With a 17% increase in comparison to the same period in 2018, incidents relating to the use of improvised explosive devices remained the second highest category of incidents. With an increase of 57% over the same period in 2018, 506 air strikes by Afghan and international military air forces were recorded.⁵⁶

The report adds that, during the reporting period, the most active areas of conflict were Kandahar, Helmand and Nangarhar Provinces respectively. The Afghan National Defense and Security Forces recaptured three district administrative centers, Deh Yak and Khwajah Omari Districts in Ghazni

Province and Bal Chiragh District in Faryab Province whereas the Taliban captured Qush Tepah District in Jowzjan Province and Kiran wa Munjan District in Badakhshan Province. They also temporarily overran Shamulzai District in Zabul Province, Ma'ruf District in Kandahar Province and Dilah District in Paktika Province. In addition, high levels of Taliban activity were reported near the provincial capitals of Farah, Kunduz and Ghazni.⁵⁷

HRW also reported on 31st October 2019 summary executions and other grave abuses without accountability, forced disappearances, and attacks on healthcare facilities in Afghanistan. The Report provides that civilian casualties from these raids and air operations have dramatically increased in the last two years”.⁵⁸ Whereas UNAMA asserts that the armed conflict in Afghanistan continues to harm civilians at “unacceptably high levels”, with overall civilian deaths, including child deaths, “reaching record high levels”. 10,993 civilian casualties (3,804 deaths and 7,189 injured) as a result of the armed conflict were recorded by UNAMA which representing a five per cent increase in overall civilian casualties and an 11 per cent increase in civilian deaths as compared to 2017.⁵⁹ The Armed Conflict Location & Event Data Project (ACLED) of the University of Sussex reported that 43,750 people (civilians and non-civilians) were killed in reported conflict events in 2018 in Afghanistan, as compared to 41,689 in 2017.⁶⁰ Finally, President Ghani of Afghanistan admits that more than 45,000 members of the Afghan security forces have been killed since he became President of the country in 2014.”⁶¹

Figure 1: Incidence of Conflict, Internal Displacement and Disruption of Services in Afghanistan (October, 2019)



Source: *Afghanistan Weekly Humanitarian Update (Oct 21 – Oct 27, 2019)*⁶²

Realizing the insecurity prevalent in Afghanistan, HRW in 2017 criticized the promotion of repatriation and titled it “Pakistan Coercion, UN Complicity: *The Mass Forced Return of Afghan Refugees*”.⁶³ Shockingly, it had done the same in 2002 terming the repatriation conducted by UNHCR to be sending a “misleading message”, because according to the HRW Report,

Afghanistan was unsafe for refugee return at that time.⁶⁴ It added, “...preconditions clearly have not been met in Afghanistan” and “by advocating for repatriation, UNHCR is sending the message to governments that conditions in Afghanistan are sufficiently stable for a large-scale return. This is misleading and is contradicted by conditions on the ground”.⁶⁵ It nonetheless had to rise the same concern again fifteen years later.

4.2 Human Rights Situation

The security situation elaborated above largely represents the situation of human rights Afghanistan. Nonetheless, it is warranted to shed light on the prevalent human rights situation of the country. UNHCR admits that abuses of human rights are widespread in Afghanistan and therefore, it issued “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan” in August 2018.⁶⁶ On 30th July, UNAMA released its 2019 Midyear update on the Protection of Civilians in Armed Conflict. The Mission documented 3,812 civilian casualties (1,366 dead and 2,446 injured) in the first six months of 2019, a 27% decrease compared with the same period the previous year. Civilian casualties were attributed to anti-government elements, while pro-government forces were responsible for more civilian deaths than anti-government elements. UNAMA attributed 52% of civilian casualties to anti-government while some 37% of civilian casualties were attributed to pro-government forces. The remaining civilian casualties were from incidents attributed to both anti-government elements and pro-government forces, including crossfire.⁶⁷ As per UNICEF report, the number of Afghan children in school was falling for the first time since 2002, affecting girls the most. It added that up to 3.7 million children, which makes almost 50% of the children in Afghanistan, are out of school, compared with 3.5 million in 2016, 60 percent of them girls.⁶⁸

In relation to women and girls’ rights, HRW reports that impunity for perpetrators of violence against women continued in 2018. It adds that police routinely refuse to register cases, instead telling victimized women to return to their families. In May 2018, UNAMA reported that even cases of murder and rape often never reach the courts. Afghan authorities routinely turn victims away or pressure them to accept mediation. UNAMA also reviewed murders of women in honor killings; the vast majority of these were never prosecuted but instead settled through mediation”.⁶⁹

Afghanistan Independent Human Rights Commission (AIHRC) noted in June 2018 that the government had not significantly reduced torture and did not prosecute any senior officials accused of torture despite the fact that Afghanistan ratified the UN Optional Protocol on the Convention

against Torture and enacted legislation criminalizing torture, and established a government commission on torture.⁷⁰

4.3 Capability of the Country of Origin to Offer Protection to Returnees

UNHCR has proposed an integrated approach in post-conflict situations in countries of origin known as “Repatriation, Reintegration, Rehabilitation and Reconstruction (4Rs)”.⁷¹ For a successful and “durable” return, therefore, UNHCR and the country of origin must undertake the function of reintegration and must not ignore the returnees to face an exilic life after returning from situation of the same kind. In case of repatriation, an important element to focus on is the capacity of the country of origin to absorb and offer protection to the returnees, because the homeland is a country surviving a conflict.

Oxfam reported in 2018 that more than 2 million people have returned to Afghanistan since 2015, “while the country is still highly fragile, with ongoing fighting and internal displacement in many areas and high levels of poverty”.⁷² This is alarming since the research work conducted by this organization in the four provinces of Herat, Kabul, Kunduz and Nangarhar, also indicates that unless the current conditions improve, “forced returns remain dangerous, as safety and dignity cannot be guaranteed”. The report adds that “people who are unable to return to areas in which they own land – or can be supported by their family or community – often end up in situations of internal displacement, increasing the country’s fragility”. More importantly, it emphasizes, “The capacity to absorb returnees and meet humanitarian needs is limited”.⁷³

A joint Report by the World Bank and UNHCR suggests, “Afghan refugees who returned to Afghanistan between 2014 and 2017 tend to be worse off financially and face multiple economic difficulties compared to refugees who stayed in Pakistan”. It was also found that returnees face significantly higher unemployment or they resort to more precarious or unstable jobs like day laboring, and earned lower wages than they did back in Pakistan.⁷⁴ It is important to clarify that although economic conditions do not serve as cause of refuge, and whoever leaves his or her country for better economic opportunities outside is an economic migrant and not refugee, they do serve as cause for extending the term of refuge. Therefore, refugees could not be returned to a place where they would have to live without means of subsistence and income generation opportunities.⁷⁵ Oxfam underlines government’s limited capacity to address the proper reception and reintegration of returnees as well as lack of clear government policy for coping with the corresponding humanitarian needs, especially the needs of women and children, who constitute the largest part of

returnees.⁷⁶ High levels of internal displacement, limited services and few jobs combined with high number of returns, drought and flooding witnessed across the country in 2018 further burden the already over-stretched absorption capacity.⁷⁷ These challenges make the refugees believe “they were better off as refugees”.⁷⁸

5 Conclusion

Appreciating the evidence provided above, it can safely be asserted that the situation in Afghanistan is still that of a country going through conflict, undermining its capacity to safeguard return of refugees in ‘safety’ and with ‘dignity’. Though legal amnesty is issued in favor of all Afghans, returnees still have to cope with challenges such as land ownership and dispute over possession of farms and gardens, which make them live like “refugees” in their own country. They do not have proper shelter, access to food, education, and medical care. Security remains fragile and human rights abuses are rampant. Thus, attempts made by the Government of Pakistan and UNHCR to repatriate refugees amounts to *refoulement* and should be avoided. The frequent extension of deadline for repatriation of Afghan refugees from Pakistan is physiologically affecting the refugees since they live in an uncertain situation and suspense without being able to decide what to do or to plan for their future. Return against their will or to insecure areas further aggravates the situation.

We suggest that refugees should be facilitated to return and pull factors should be created in Afghanistan. To pull refugees to their homeland, UNHCR and the Government of Afghanistan need to address their primary needs. These needs are basic human rights, security, food, employment, access to land, long-term shelter, and access to services, such as healthcare, education and legal assistance and support if needed.

Therefore, the Government of Afghanistan should primarily work on improving the situation of human rights in Afghanistan, because unless refugees feel they are protected after return and have chances of having a better life than that they enjoy in Pakistan, they will not want to return. Focus should be on freedom from arrest and torture, access to food, healthcare and basic shelter in the place of origin of the returnee, right to education, and equality before law.

In addition, the Government of Afghanistan needs to declare an emergency to highlight the need for a coordinated effort, more like adopting a ‘cluster approach’, in dealing with returnees. For doing so, it should launch a comprehensive strategy of repatriation and integration of refugees in the country in consultation and coordination with donors and international partners. This strategy should include land allocation scheme

as a priority by incorporating lessons learnt from previous schemes it launched. Moreover, the Government of Afghanistan should work on job creation for people that do not have formal education or are currently working as skilled workers in Pakistan.

Notes and References

- ¹ Previously, President of the Afghan Interim Administration (AIA).
- ² A similar decree was issued by the Islamic Government of Afghanistan in 1997, but assured the protection to the returnees within the area under its control. It, nonetheless, called for voluntary repatriation to take place in ‘safety’ and ‘dignity’. For full decree see, *Statement of the Islamic Government of Afghanistan Concerning Invitation of Afghan Refugees to Return to their Homeland (Afghanistan)*, 16th August 1997, available at: <<https://www.refworld.org/docid/3ae6b52723.html>> (Last accessed: 20.10.2019).
- ³ *Decree of the President of Afghan Interim Administration*, Ref# 207, dated: 13.03.1380 (03 June 2001), available at: <<https://www.unhcr.org/3f5d990c4.pdf>> (Last accessed: 20.10.2019).
- ⁴ Although Afghan refugees were issued *Shinakhti Passes* for identity purposes and booklets for assistance and identity purposes but were not in a channelized manner as only those applying for it were issued. Nevertheless, later on the passbooks were used for assistance purposes only and did not provide any identification and hence did not provide any legal protection. It should also be noted that Ex-Com Conclusion#91 calls for registration of refugees. An important matter that needs to be properly evaluated is whether Afghans residing in Pakistan for all these years qualify to be called “refugees” and whether Pakistan has given them this status. Notwithstanding, we use the term “refugees” for these Afghans.
- ⁵ Nonetheless, states have recognized the 1951 Convention’s relevance to mass influx situations, and have expressed the ‘view that refugees recognized on a *prima facie* basis are entitled to the same rights as refugees recognized under an individual refugees status determination scheme’ and have stated that ‘it is quite possible, within the Convention, to develop a response to large-scale group arrivals. See, Jean Francois Durieux and Jane McAdam, “Non-refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies”, *International Journal of Refugee Law*, 16:10 (2004).
- ⁶ In fact, however, the identification documents would have been issued subsequent to formal recognition of the refugees as such; hence, once Afghan refugees were not recognized as refugees, the question of issuing documents seems illogical. For further details, see: *Special Essay, Impact of International Jurisdiction on Afghan Refugee Rights*, 1.
- ⁷ *Report on Stakeholder Consultations on the Future of Afghan Refugees in Pakistan*, 1.

- ⁸ UNHCR, SAFRON, NADRA, *Registration of Afghans in Pakistan (2007)*, 5-6. (Hereinafter, Registration 2007).
- ⁹ *World Refugee Survey 2007*.
- ¹⁰ *Registration 2007*, 8.
- ¹¹ For full report see, *UNHCR and Pakistan Sign New Agreement on Stay of Afghan Refugees*. Online at: <https://www.unhcr.org/news/latest/2009/3/49ba5db92/unhcr-pakistan-sign-new-agreement-stay-afghan-refugees.html> (Last accessed: 20.11.2019) and *UNHCR and Pakistan Government Sign Letter of Mutual Intent*. Available online at: <https://www.unhcr.org/news/briefing/2009/3/49ba3df02/unhcr-pakistan-government-sign-letter-mutual-intent.html> (Last accessed: 20.11.2019).
- ¹² Zuha Siddiqui, *For Afghan Refugees, Pakistan Is a Nightmare—but Also Home*. Available online at: <https://foreignpolicy.com/2019/05/09/for-afghan-refugees-pakistan-is-a-nightmare-but-also-home/> (Last accessed: 11.09.2019).
- ¹³ *Pakistan Grants New Extension before Forced Return of Afghan Refugees*. Available online at: <https://www.rferl.org/a/pakistan-extension-forced-repatriation-afghan-refugees/29329599.html> (Last accessed: 11.10.2019). Title of the news item requires focus since it talks about “forced return” of Afghan refugees, which is violation of the Principle of *Non-Refoulement*. It however appears that since the Government in Pakistan has reiterated its position on ensuring return of these refugees, the element of “forced return” has been accepted by all. In addition, it is vital to note that refugees could not be psychologically traumatized by frequent extensions of 3 and 6 months or whatever period. This appears to be
- ¹⁴ Aasim Saleem, *Neither Here, Nor There – the Plight of Afghan Refugees*. Available online at: <https://www.infomigrants.net/en/post/16791/neither-here-nor-there-the-plight-of-afghan-refugees> (Last accessed: 11.09.2019).
- ¹⁵ Zuha Siddiqui, *For Afghan Refugees, Pakistan Is a Nightmare—but Also Home*.
- ¹⁶ Afghanistan. Available online at: <https://www.unhcr.org/afghanistan.html> (Last accessed: 11.09.2019).
- ¹⁷ Aasim Saleem, *Neither Here, Nor There – the Plight of Afghan Refugees*.
- ¹⁸ “The Saur revolution ended the neutrality of Afghanistan in the Cold War following the invasion of the Soviet Union in 1979. The Soviet Union launched attacks on Afghanistan to maintain its grip on the country and Asia”. For Details, see: *What Was the Saur Revolution?* Available online at: <https://www.worldatlas.com/articles/what-was-the-saur-revolution.html> (Last accessed: 10.09.2019) and for a Marxist view of the Revolution, see: Adnan Khan, *Afghan Saur Revolution 1978: What It Achieved, How It Was Crushed*. Available online at: <https://www.marxist.com/afghan-saur-revolution-1978-what-it-achieved-how-it-was-crushed.htm> (Last accessed: 11.09.2019).
- ¹⁹ The Geneva Accord that facilitated withdrawal of the Red Army from Afghanistan was signed on 14th April 1988 between Afghanistan and Pakistan, while the USA and the USSR served as guarantors. For full text of the Accords, visit:

- <<https://www.badloon.net/english/articles/pdf/THE%20GENEVA%20ACCORDS%20ON%20AFGHANISTAN.pdf>> (Last accessed: 20.10.2019).
- ²⁰ SDPI, *Report on Stakeholder Consultations on the Future of Afghan Refugees in Pakistan*, presented to UNHCR Islamabad (September 2006), 12. See, <<http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=462cb46b5>> (Last accessed: 20.10.2019).
- ²¹ Article 01 of the Bilateral Agreement between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Voluntary Return of Refugees.
- ²² Full text of the Geneva Accords is available online at: <<https://www.badloon.net/english/articles/pdf/THE%20GENEVA%20ACCORDS%20ON%20AFGHANISTAN.pdf>> (Last accessed: 20.10.2019).
- ²³ For details of the meaning and scope of legal, physical and material safety and reconciliation, see: UNHCR, *Handbook for Repatriation and Reintegration Activities* (Geneva, 2004), 3. Available online at: <<https://www.unhcr.org/411786694.pdf>> (Last accessed: 20.10.2019).
- ²⁴ Schmeidl, Susanne & Maley, William. *The Case of the Afghan Refugee Population: Finding Durable Solutions in Contested Transitions* (2008). The ratio of Afghan refugees' arrival in Pakistan, according to the census of 2007, indicates that 76.8% refugees arrived in Pakistan during the Soviet Occupation (1979-88), 5.5% during the Najibullah regime (1989-92), 3.5% of the arrived during the inter-Mujahedeen war (1993-95), 5.1% took refuge during the Taliban regime (1996-2001) while 9.1% of the refugees arrived in Pakistan during the post-Taliban period (2002+). See, *Registration 200*), 13.
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- ⁴⁷ Very briefly, *Non-Refoulement* is the prohibition of sending, expelling, returning or otherwise transferring (*refoulement*) a refugee to a territory where he or she would face persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion. For detailed analysis, see: Gill, *The Refugee in International Law*, 69.
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- ⁵³ *Ibid.*
- ⁵⁴ Human Rights Watch, *World Report 2019: Afghanistan: Events of 2018*. Available online at: <<https://www.hrw.org/world-report/2019/country-chapters/afghanistan>> (Last accessed: 11.11.2019).
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