

Dard Kush II: A comprehensive desk review of refugee policies in Pakistan

1. Introduction: Contextual Overview and Summary

For nearly four decades, Pakistan has hosted the world's largest protracted refugee population. There are 1.4 million registered Afghan refugees in Pakistan, making Pakistan the second-largest refugee hosting country in the world.¹ This number does not include an estimated 0.5 million Afghans that remain undocumented² as well as a population of approximately 4.4 million Afghans that has returned to Afghanistan through the repatriation programme.³

The influx of Afghan refugees into Pakistan is rooted in political instability in Afghanistan. Pakistan received the first wave of Afghan refugees in 1978 when the Afghan military staged a coup and took over the government. Subsequently, forced displacement of Afghans underwent through several phases in the 1980s and 1990s, and the last major phase took place after 9/11 when the United States led an invasion to topple the Taliban regime.⁴ In the years of mass exoduses, the United Nations High Commissioner for Refugees (UNHCR) accorded *prima facie* recognition to Afghan refugees, taking into account the impossibility of determining refugee status on a case by case basis.⁵

¹ United Nations High Commissioner for Refugees (UNHCR), 'Operational Data Portal,' accessed June 9, 2020, <https://data2.unhcr.org/en/country/pak>; United Nations High Commissioner for Refugees (UNHCR), *Solutions Strategy for Afghan Refugees 2018 – 2019 (SSAR)* (Geneva: United Nations High Commissioner for Refugees, 2018), 6, <https://data2.unhcr.org/en/documents/download/66534>.

² Data retrieved from Chief Commissionerate for Afghan Refugees (with author).

³ UNHCR, 'Operational Data Portal.'

⁴ Waseem Ahmad, "The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan," *Seattle Journal of Social Justice* 15, no. 3 (2017): 603 – 608, <https://digitalcommons.law.seattleu.edu/sjsj/vol15/iss3/10>

⁵ Ibid., 612; Rüdiger Schöch, "Afghan Refugees in Pakistan During the 1980s: Cold War Politics and Registration Practice," *UNHCR Policy Development and Evaluation Service*, June 2008, 8, <https://www.refworld.org/docid/4c2325650.html>.

The solution to resolving the protracted refugee situation is multifaceted and requires cooperation at the national, regional and international levels. While some progress has been made at both the regional level, in the shape of bilateral and multilateral agreements, platforms and mechanisms, and the domestic level with the adoption of a management policy, the protection regime in Pakistan warrants a critical examination to address fundamental flaws.

The UNHCR concedes that Pakistan has generally adhered to global standards of refugee protection.⁶ However, significant gaps still exist in Pakistan's national refugee policy framework. The most notable of these deficiencies include the absence of national refugee legislation and the inability to look beyond repatriation as a lasting solution to the protracted refugee situation. Although there is an indication of a shift with the Prime Minister's suggestion of granting citizenship to refugees born in Pakistan,⁷ ethnic and political tensions obstruct comprehensive revisions to approach and policy, which leaves Afghan refugees in a state of social, political, economic and legal insecurity. Along with strengthening its relationship with Afghanistan, seeking regional cooperation and supporting the peace process, Pakistan must improve its governance and engagement at home to better advocate for the rights of Afghan refugees.

2. Examination of Multilateral and Bilateral Agreements and Mechanisms

2.1 International Conventions

Pakistan is neither a party to *the 1951 Convention Relating to the Status of Refugees* nor its *1967 Protocol*. Both the 1951 Convention and its additional protocol obligate states to grant protective rights to refugees - including the right to naturalization - by enacting and adopting national refugee legislation and reporting on their progress to bring their national legal regimes and policy frameworks into conformity with the provisions and principles of international refugee law.

⁶ United Nations High Commissioner for Refugees (UNHCR), *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Pakistan* (Geneva: UNHCR, 2012), 4, <https://www.refworld.org/docid/4f9663d12.html>.

⁷ Memphis Barker, "Pakistan's Imran Khan Pledges Citizenship for 1.5m Afghan Refugees," *The Guardian*, September 17, 2018, <https://www.theguardian.com/world/2018/sep/17/pakistan-imran-khan-citizenship-pledge-afghan-refugees>.

2.2 Bilateral Multilateral Agreements and Instruments

Under multilateral agreements, Pakistan cooperates with other states and UNHCR in extending protection to Afghan refugees and enhancing their resilience for facilitating voluntary return and sustainable reintegration in Afghanistan.

2.2.1 Solutions Strategy for Afghan Refugees for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries (SSAR)

The Solutions Strategy for Afghan Refugees (SSAR) is the principal regional framework advanced by Afghanistan, Pakistan, Iran and UNHCR to address the refugee crisis and provide support to host countries and communities. The SSAR was the result outcome of the quadripartite consultative process involving Afghanistan, Pakistan, Iran and UNHCR. It was endorsed by the international community in 2012.⁸

The SSAR provides an overarching framework to guide joint interventions to facilitate voluntary repatriation and sustainable integration. It also acts as a multilateral platform for strengthening coordination among host countries and engaging stakeholders. The Quadripartite Steering Committee supervises the implementation of the Strategy. The implementation process is further supported and monitored by country-level structures such as the National Steering Committees.⁹ The 6th meeting of the Committee took place in June 2019 where it was decided that the SSAR will be extended December 2021.¹⁰

2.2.2 The Tripartite Agreement Governing the Voluntary Repatriation of Afghan Citizens Living in Pakistan

In 2003, Pakistan, Afghanistan and UNHCR signed the Tripartite Agreement, which governs the voluntary repatriation of registered Afghan refugees. The Agreement regulates the process of

⁸ United Nations High Commissioner for Refugees (UNHCR), *Solutions Strategy for Afghan Refugees 2018 – 2019 (SSAR)* (Geneva: United Nations High Commissioner for Refugees, 2018), 7, <https://data2.unhcr.org/en/documents/download/66534>.

⁹ Ahmad, "The Fate," 650.

¹⁰ United Nations High Commissioner for Refugees (UNHCR), "Conclusions of the 6th Meeting Of The Quadripartite Steering Committee," <https://unhcrpk.org/conclusions-of-the-6th-meeting-of-the-quadripartite-steering-committee/>.

voluntary repatriation of refugees possessing PoR cards, with a focus on sustainable reintegration of returnees. When signed, the Agreement recognized voluntary repatriation as the “preferred durable solution” for resolving the Afghan refugee crisis. To that end, it established the Tripartite Commission to act as a facilitator, steer policy direction, and advise parties.¹¹ Under the Agreement, the UNHCR is responsible for supervising and facilitating the repatriation process and verifying the voluntary nature of returns.¹²

The Agreement also establishes safeguards to prevent forcible returns. Afghan refugees are free to select the area in Afghanistan in which they wish to settle in after their return,¹³ which must occur under conditions of safety, freedom and dignity.¹⁴ Repatriation must be voluntary and gradual, and refugees intending to return should be provided with updated and comprehensive information on living and security conditions in Afghanistan before the repatriation process.

Registered Afghan refugees are entitled to temporary legal stay in Pakistan. The Tripartite Agreement states that registered refugees receive Proof of Registration (PoR) cards. These are registration and identification documents that recognize the holders as Afghan citizens that are temporarily residing in Pakistan. In this way, PoR cards are the key tools protecting registered refugees against refoulement and deportation under the Foreigners Act, 1946. They also grant Afghan refugees the right to freedom of movement.¹⁵

2.2.3 Afghanistan Pakistan Action Plan for Peace and Solidarity (APAPPS)

The Afghanistan Pakistan Action Plan for Peace and Solidarity (APAPPS) is a bilateral framework between Afghanistan and Pakistan for enhancing cooperation in areas of mutual interest. The two states developed the Plan in May 2018 to improve their relationship and mitigate the trust

¹¹ United Nations High Commissioner for Refugees (UNHCR), *Agreement Between the Government of Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan*, 2007, art. 3 <https://www.refworld.org/docid/555ae4254.html>

¹² Ibid., art. 11.

¹³ Ibid., art. 8.

¹⁴ Ibid., art. 7 and art

¹⁵ United Nations High Commissioner for Refugees (UNHCR), “Protection”, <https://unhcrpk.org/protection/>.

deficit that has long defined it. It envisions strengthening of engagement between Pakistan and Afghanistan in the realms of peace, security, counterterrorism, intelligence, reconciliation, bilateral trade and refugees. The initiative led to the establishment of five working groups, one of which is for the repatriation of Afghan refugees.¹⁶ However, the utilization of this forum has stalled, and, to date, it has only held three meetings.

2.3 Domestic Policy

2.3.1 Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals

The federal cabinet adopted the Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals in February 2017. The principal features¹⁷ of the strategy include:

- Continuation of voluntary repatriation of refugees as per the Tripartite Agreement and extension of validity of PoR cards
- Enactment of national refugee legislation
- Improved border management
- Introduction of a flexible visa regime in which PoR card holders will be allowed to apply for a visa under various groups (business, student, skilled/unskilled labor, family and healthcare)
- Registration of undocumented refugees

The implementation of the policy is still in its infancy. Progress includes finalization of the flexible visa regime, improved border management at Torkham and Chaman entry points and an extension of the validity of PoR cards till June 30, 2020. There is no substantial public data available on the development, shape and adoption of a national refugee framework.

¹⁶ Data retrieved from Chief Commissionerate for Afghan Refugees (with author).

¹⁷ UNHCR, SSAR, 13; Data retrieved from Chief Commissionerate for Afghan Refugees (with author).

2.3.2 Government Decision to Allow Opening of Bank Accounts

In 2019, the government allowed Afghan refugees the facility of opening bank accounts. Registered refugees can now open accounts in banks and Development Finance Institutions (DFI) using their PoR cards as valid identification documents.¹⁸ The decision is a positive step towards the integration of Afghan refugees in the formal economy. However, progress made by this decision is undercut by an absence of privileges in other areas. Refugees are unable to obtain trade permits, purchase property or make public transport bookings.¹⁹ Moreover, the directive seems to be motivated more by the need to regulate informal financial transactions and avoid being blacklisted by the Financial Action Task Force.

3. The Role of the UNHCR

In Pakistan, UNHCR is primarily responsible for cooperating with the government in providing support to asylum seekers, refugees and IDPs. Since Pakistan lacks a national refugee framework, the UNHCR conducts refugee status determination (RSD) on behalf of the government.²⁰ It also facilitates and supervises voluntary repatriation of Afghan refugees. Under the current program, initiated in 2002,²¹ UNHCR operates two Voluntary Repatriation Centres in Quetta and Nowshera where Afghan refugees intending to return are de-registered.²² Once in Afghanistan, the returnees receive \$200 in a UNHCR administered encashment center.²³

UNHCR is also engaged in a number of other activities. It provides refugees with free legal assistance through its Advice and Legal Aid Centers (ALAC) operating in each of the four

¹⁸ Salman Siddiqui, "Bank Account Facility for Refugees to Aid Economy," *The Express Tribune*, March 1, 2019, <https://tribune.com.pk/story/1920562/2-bank-account-facility-refugees-aid-economy/>.

¹⁹ CODE Pakistan, *Afghan Refugees in Pakistan: The Road Ahead* (Islamabad: CODE, 2019), 46, <http://codepak.org/wp-content/uploads/2019/11/Afghan-Refugees-The-Road-Ahead.pdf>.

²⁰ United Nations High Commissioner for Refugees (UNHCR), "Asylum System in Pakistan," <https://unhcrpk.org/asylum-system-in-pakistan/>.

²¹ Umar Rashid, "UNHCR in Pakistan: Analyzing the Global Governance Regime – Repatriation of Afghan Refugees from Pakistan," *LUMS Law Journal*, Article 6, 58, <https://sahsol.lums.edu.pk/law-journal/unhcr-pakistan-analyzing-global-governance-regime-%E2%80%93-repatriation-afghan-refugees>.

²² United Nations High Commissioner for Refugees (UNHCR), *Pakistan: Voluntary Repatriation of Afghans from Pakistan Update | 1 January — 31 Oct, 2019*, <https://data2.unhcr.org/en/documents/download/72452>.

²³ Ibid.

provinces.²⁴ It is engaged in the Refugee Affected and Hosting Areas Initiative (RAHA).²⁵ RAHA is being implemented under the SSAR and seeks to build resilience and enhance social cohesion among refugees and host communities through development interventions.²⁶

4. Gaps in Pakistan's Policy Framework and Protection Regime

4.1 Absence of National Refugee Legislation

Pakistan's lack of a formal legal framework on refugees is the most significant gap in its management of the protracted refugee crisis. In the absence of legislation, there is no national law that regulates the state's treatment and categorization of refugees and asylum seekers, guarantees fundamental rights and provides legal pathways towards integration. Both the lack of a national framework and the non-ratification of the 1951 Convention prevent comprehensive refugee protection reflecting internationally recognized standards.²⁷

4.2 Prioritization of Return over Integration

Pakistan's policy towards Afghan refugees is characterized by an emphasis on facilitating voluntary return rather than integration. The prioritization of return overlooks the social and economic complexities inherent in calling for the repatriation of Afghan refugees who have not known life outside Pakistan. It has been estimated that 74% of Afghan refugees were born in Pakistan,²⁸ and three generations of Afghans have grown up entirely in Pakistan.²⁹ Afghan

²⁴ United Nations High Commissioner for Refugees (UNHCR), *Pakistan: Summary of Legal | Assistance and Aid Programme | January, 2020*, <https://reliefweb.int/report/pakistan/pakistan-summary-legal-assistance-and-aid-programme-january-2020>.

²⁵ United Nations Pakistan, "UNHCR," <https://www.un.org.pk/unhcr/>.

²⁶ Ibid.; UNHCR, SSAR, 36.

²⁷ UNHCR, *Submission*, 5.

²⁸ United Nations High Commissioner for Refugees (UNHCR), *Population Profiling, Verification and Response Survey of Afghans in Pakistan 2011*, 12, <https://www.unhcrpk.org/wp-content/uploads/2018/05/Population-Profiling-Verification-and-Response-Survey-of-Afghans-in-Pakistan.pdf>; Data retrieved from Chief Commissionerate for Afghan Refugees (with author).

²⁹ Ikram Junaidi, "Force Should Not Be Used to Send Afghans Back Home, Says Senate Panel," *Dawn*, January 8, 2020, <https://www.dawn.com/news/1526962>.

refugees are involved in various sectors of the economy such as construction, agriculture, transit trade, and mining³⁰ and some have established businesses and commercial interests.

In such a context, it is highly impractical to call for the return of Afghan families whose children were born and raised in Pakistan and those that have economic interests and livelihoods in the country. In some cases, refugees have integrated into local communities and live side by side with host communities with whom they have formed indelible social bonds. These ground realities warrant a shift in approach, preferably, towards one that explores possible strategies for sustainable integration rather than voluntary and gradual return.

4.3 Inadequacy of PoR Cards as Protection Tools

The extent of protection granted to registered refugees through PoR cards is limited. Afghan refugees cannot work or gain employment.³¹ Another critical drawback is that PoR cards are valid only for 3 years from the date of issuance,³² and the federal cabinet approves extensions of the validity of PoR cards. According to the last government notification issued in June 2019, PoR cards are valid only till June 30, 2020.³³

Although the government has demonstrated a consistent record of granting extensions, the imminent expiration of PoR cards generates a climate of fear, uncertainty and insecurity. Afghan refugees in Pakistan remain continually unsure as to when their temporary stay will abruptly come to an end. If the government refuses to extend the validity, Afghan refugees will be deprived of their legal right to stay as well as risk closure of their bank accounts.³⁴ Unregistered refugees are even more at risk since their status is equivalent to that of an illegal

³⁰ Ibid.; Siddiqui, "Bank Account."

³¹ United Nations High Commissioner for Refugees (UNHCR), *Memorandum of Understanding between the Government of the Islamic Republic of Pakistan (GOP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Registration of Afghan Citizens Living in Pakistan*, 2006, sub-clause 3.4, [https://www.refworld.org/type,MEMORANDA,,AFG,55e6a0374,0.html](https://www.refworld.org/type/MEMORANDA,,AFG,55e6a0374,0.html).

³² Ibid., sub-clause 3.3.

³³ Ministry of States and Frontier Regions (SAFRON), "Notification for Extension in PoR and ACC cards," <https://sharip-pakistan.org/notification-for-extension-in-por-and-acc-cards-jun2019/>.

³⁴ Tooba Masood, "Bank Accounts Promise to Afghan Refugees in Pakistan Comes True," *Dawn*, June 5, 2019, <https://www.dawn.com/news/1486613>.

immigrant under the Foreigners Act, 1946, which gives the government the authority to deport them.³⁵

4.4. Refusal of Citizenship

Despite decades-long residence in Pakistan, Afghan refugees are not entitled to Pakistani citizenship. Although citizenship by birth is recognized by the Pakistan Citizenship Act, 1951,³⁶ legal, political and administrative roadblocks deprive Afghan children born in Pakistan of the right to citizenship. In a case that set a legal precedent, the Islamabad High Court noted that Afghan refugees were not entitled to citizenship status either through birth or naturalization, because the Pakistan Citizenship Act, 1951, does not apply to those seeking temporary asylum under the mandate of UNHCR.³⁷ The Prime Minister's recommendation that Pakistan grant citizenship to refugees of Afghan and Bengali origin was met with censure by the opposition, and there has been no progress on the proposal since its announcement in 2018.

The refusal to grant citizenship violates Pakistan's human rights commitments as well as customary international law. Though not a signatory to the United Nations 1951 Convention on the Status of Refugees, Pakistan has signed and ratified the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), and the Convention on the Rights of the Child (1989) – all of which recognize the right to citizenship.

4.5 Problems in Access to Public Services

While national identity cards allow citizens of Pakistan unhindered access to public services, the same cannot be said for Afghan refugees who repeatedly face barriers in availing healthcare, accessing education and securing formal employment on the basis of PoR cards. They manage to gain *de facto* access to basic services.³⁸ Moreover, some Afghans leverage social ties with host communities to use their national identity cards to avail healthcare facilities, purchase

³⁵ CODE Pakistan, *Afghan Refugees*, 51.

³⁶ Republic of Pakistan, *Pakistan Citizenship Act, 1951*, Section 4, <https://www.refworld.org/docid/3ae6b4ffa.html>.

³⁷ CODE Pakistan, *Afghan Refugees*, 37-38.

³⁸ UNHCR, *Submission*, 6.

public transport tickets and rent property. However, access to public services remains informal and unpredictable. The UNHCR has recommended in the past that the government's development planning should also incorporate the needs of Afghan refugees.³⁹ However, a sustained discussion in legislative circles around the provision of social services specifically catering to refugees has not yet transpired.

4.6 Disparities in Provision of Assistance

68% of registered Afghan refugees are settled in urban areas. However, the assistance provided under UNHCR programs and initiatives tends to be limited to the 32% residing in camps administered by Provincial Commissionerates. The state's lack of concern for urban and out-of-camp refugees stems from the absence of a coherent policy on how to manage these two sections of the refugee population.⁴⁰ As a result, urban and out-of-camp refugees struggle to receive humanitarian and development assistance, and government interventions in these areas are occasional and ad hoc.

4.7 Inflexible Visa Regime

Even though the Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals envisions a flexible visa regime, it has not yet been implemented. Moreover, there are restrictive administrative measures in place that discourage cross-border economic activity and go against the SSAR principle of building resilience. In January 2019, Pakistan abolished its on-arrival visa facility that granted visas to Afghan citizens for 30 days and introduced extra vetting procedures as part of a revised security policy.⁴¹ The facilities of multiple-entry and third-country visas are also not available to Afghans.⁴² Pakistan's inflexible visa regime restricts labour migration for those Afghans unable to secure livelihood opportunities in Afghanistan's ailing economy and divides refugee families.

³⁹ Ibid.

⁴⁰ Ahmad, *The Fate*, " 660.

⁴¹ Ayaz Gul, "Pakistan Stops Issuing 'On Arrival' Visas for Afghans," *Voice of America*, January 3, 2019, <https://www.voanews.com/south-central-asia/pakistan-stops-issuing-arrival-visas-afghans>

⁴² CODE Pakistan, *Afghan Refugees*, 53.

5. Conclusion: Prospects and the Way Forward

The implementation of the Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals in its entirety will significantly improve national protection standards. Priority should be given to the enactment of national refugee legislation, and more policy attention should be devoted towards further improvement of the protection regime as well as the incorporation of local integration principles in the policy framework. The current approach - with its ad hoc interventions, sole reliance on repatriation and temporary extensions of PoR cards - does not constitute a realistic long-term solution. Ultimately, the solution to Pakistan's protracted refugee crisis lies in long-term planning and consensus-building with all relevant stakeholders, domestic, regional and international.

Such a strategy will not be without detractors or challenges. The introduction of remedial legislation may be obstructed by political opposition. Nationalist political parties in Balochistan fear that the inclusion of Afghan refugees in population surveys will lead to demographic changes, making the Baloch people a minority in their province.⁴³ Therefore, Baloch politicians will strongly oppose any policy proposal seeking to grant citizenship to Afghan refugees. One of the keys to solving the refugee crisis, therefore, lies in the creation of political will and public acceptance. Only sustained efforts by the federal government to improve governance and initiate dialogue with provincial actors can generate the parliamentary consensus necessary for introducing appropriate legislation and reforms to mitigate the plight of Afghan refugees ensnared for decades in an oppressive state of socio-legal limbo.

⁴³ Baloch parties allege that Afghan refugees obtain fake identity documents with the assistance of Pashtun political parties. See Kiyya Baloch, "Census Rekindles Old Controversies In Pakistan's Restive Balochistan," *Radio Free Europe/Radio Liberty*, March 6, 2017, <https://gandhara.rferl.org/a/pakistan-balochistan-census/28353763.html>.

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