



**PROTECTION FOR FORCIBLY  
DISPLACED AFGHAN  
POPULATIONS IN  
PAKISTAN AND IRAN**

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**ROGER ZETTER**  
EMERITUS PROFESSOR, UNIVERSITY OF OXFORD

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**MINISTRY OF FOREIGN AFFAIRS OF DENMARK**



## ACRONYMS

ACC	Afghan Citizen Cards
ARC	American Refugee Committee
ARIS	Afghan Returnee Information System (Pakistan)
ASRS	Afghan Self-Regulated Schools (Iran)
BAFIA	Ministry of the Interior Bureau for Aliens and Foreign Immigrants' Affairs (Iran)
CCAR	Commissionerate for Afghan Refugees in (SAFRON) (Pakistan)
CNIC	Computerized National Identity Card
CRRF	Comprehensive Refugee Response Framework
CSR 1951	1951 Convention on the status of refugees and the 1967 Protocol
DRC	Danish Refugee Council
DTM	Displacement Tracking Matrix
EU ECHO	European Union European Civil Protection and Humanitarian Aid Operations
FNECC	Foreign Nationals Executive Coordination Council (Iran)
HAMI	Association for Protection of Refugee Women and Children (Iran)
ICMC	International Catholic Migration Commission
ICLA	Information, counselling and legal assistance
IGPRA	Income Generating Projects for Refugee Areas (Pakistan)
IMC	International Medical Corps
INGO	International Non-Governmental Organisation
IRC	International Rescue Committee
KP	Khyber Pakhtunkhwa
NADRA	National Database and Registration Authority (Pakistan)
NGO	Non-Governmental Organisation
NRC	Norwegian Refugee Council
PCM	PoR Card Modification
PoR	Proof of Registration
RI	Relief International
RIC	Refugee Identity Card
RSD	Refugee Status Determination
SAFRON	Ministry of States and Frontier Regions (Pakistan)
SHARP	Society for Human Rights and Prisoners' Aid
SSAR	Solution Strategy for Afghan Refugees
UAAR	Union Aid for Afghan Refugees
UNHCR	United Nations High Commissioner for Refugees
UPHI	Universal Public Health Insurance (Iran)

# EXECUTIVE SUMMARY

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Respectively the second and fifth largest refugee hosting countries world-wide, Pakistan and Iran between them accommodated 2.343 million registered Afghan refugees in 2017, and an estimated further two to four million undocumented Afghans. Characterised by cycles of repatriation, deportation and subsequent episodes of re-exile, it constitutes both the second largest refugee situation globally and one of the world's dominant protracted refugee situations.

Thus both countries have carried a substantial burden since 1979 and, despite their own economic and developmental challenges, have made considerable efforts to accommodate the Afghan population and to afford minimum standards of protection.

Against this background the report investigates the legal, governance and policy frameworks for the rights and protection regimes for the Afghan population in both countries (including both recognised refugees and other forcibly displaced without a formal protection status). Key protection benchmarks (refugee status determination (RSD) and protection, repatriation and deportation, freedom of movement, right to work, and access to education) are deployed. These benchmarks establish important prerequisites for refugee livelihoods and economic well-being, significant in situations of protracted displacement such as the Afghan's experience in Iran and Pakistan.

The overall aim is to clarify the complex international and domestic legal protection frameworks and contingent rights related to this population. The findings provide a platform for humanitarian and development actors to tackle key operational challenges and to enhance their advocacy for improved protection guidelines and strategies for the Afghan population in exile in these two countries.

The report is in four parts: Introduction and Methodology, Synthesis Overview and Comparative Analysis, Recommendations and Ways Forward, and Country Profiles.

## METHODOLOGY

A qualitative, desk study method has been used, accessing a wide range of secondary data related to the case study countries, including: government legal and policy documentation; NGOs, INGOs and international agencies' reports; academic and research literature. Providing a strong descriptive account, there are analytical limitations to this 'remote' method, including a dearth of up to date research, documentation and data on many aspects of the study population and the lack of programme evaluations. The study has not used primary data collection, such as interviews with key stakeholders, which would have provided a more detailed and nuanced account of the issues being reviewed.

These methodological constraints are accentuated by the complex and sensitive political conditions that govern the availability and content of documentary and other data on the Afghan population in both Iran and Pakistan.

## SYNTHESIS OVERVIEW AND COMPARATIVE PRESENTATION

Mediated by their contrasting domestic and international political and economic circumstances, Iran and Pakistan manifest both some sharp differences, but also significant similarities in their response to Afghan refugees and other forcibly displaced which are elaborated in the main part of the study.

***Setting the Context - Policy drivers:*** The return of Afghans is the dominant policy objective of both countries, manifest in their strong support for the Solution Strategy for Afghan Refugees (SSAR) and pressure for repatriation and periodic deportation, a policy driven by contrasting economic and political interests. For Pakistan this has been shaped by securitisation concerns and the 'War Against Terror' precipitated by the spill-over of four decades of Afghan conflict, in parallel with pressures on the country's fragile economic and social fabric which has struggled to host such a large exiled population. Similarly in Iran, prolonged financial and economic crisis, in this case precipitated by the international trade and investment embargo coincidentally commencing with the initial arrival of Afghan refugees in 1979, as well as the strains caused by the 1980-88 Iran-Iraq war, underpin its firm commitment to the policy of return.

***The 1951 Convention and RSD:*** The protection framework differs significantly between the two countries, although this does not lead to fundamentally different policies and practices for refugee protection and assistance. Iran is party to the 1951 Refugee Convention and the 1967 Protocol (CSR 1951), yet few Afghans have received refugee status since 1997 thus establishing fundamental distinctions between Afghans with refugee status and undocumented Afghans with no formal protection and rights. Pakistan is not party to CSR 1951: de facto, refugees are covered by national immigration laws and refugee registration protocols. Distinctions between refugees and undocumented Afghans also exist but are more fluid. In both countries the authorities are responsible for all aspects of refugee status determination and protection.

Irrespective of the designations, since 1997 in Iran and 2007 in Pakistan there has been increasing resistance to the forcibly displaced Afghans marked by the denial of protection to the majority of Afghans present in their territory until 2017. Since then, changes in the protection policies for Afghans in both countries, discussed below, may signal some relaxation of the policy of resistance.

The de facto distinctions between refugees and the undocumented in both countries suggest that recourse to international legal and normative standards and rights-based reasoning will offer little leverage in closing the gap between the protection standards for these two groups.

***Refugees and the Forcibly Displaced – the Labels:*** The distinction between refugees (i.e. with a recognised refugee status), and those without this status is of paramount importance to the protection that Afghans receive from the host governments, the rights and assistance to which they may be entitled and also, by extension, from international and national humanitarian actors. Until 2017, estimates suggest that between 600,000 and 1.0 million Afghans in Pakistan and between 1.5 and 2 million Afghans in Iran remained undocumented.



Iran has made, and retains today, a much more clear-cut distinction than Pakistan between the two categories. Until 1992, Afghans were given a prima facie right to remain (initially with 'blue cards' and post-2003 with Amayesh cards) although not officially designated as refugees. From 1992 only temporary residency permits were provided, and then in 1997, the government effectively stopped granting newly arriving Afghans residency rights (and thus protection) altogether, whilst intensifying efforts to register and repatriate those already in the country. This policy was further enforced in 2002/3 until 2017 when another registration exercise was conducted which has recorded 800,000 previously undocumented Afghans and, in principle at least, provides them with some immunity from deportation. However, as many as 1.2m Afghans may still remain unregistered.

In Pakistan the demarcation is more fluid but with broadly similar outcomes. Until 2006, Afghan refugees in Pakistan did not require legal documents. Commencing in 2007, Proof of Registration (PoR) cards were instituted, which are subject to periodic renewal, but which afford some protection against deportation and other rights leaving an increasing number (those without such cards) unprotected. In 2017 the governments of Afghanistan and Pakistan and UNHCR commenced a documentation process with a view to providing Afghan Citizen Cards (ACC) to all Afghans, affording those so far unregistered some heavily qualified protection. 800,000 formerly undocumented Afghan nationals had been registered and 275,000 cards distributed so far.

Distinguishing between arrival dates and the conferment or withholding of refugee status and protection is arbitrary since there is no difference in the circumstances of flight from Afghanistan and the needs- and rights- based requirements for protection and assistance of all forcibly displaced Afghans. NGOs and INGOs seem to be deterred from, or face constraints to, providing services to undocumented Afghans rendering them even more vulnerable and precarious. Meantime, documentation/registration exercises in both countries have ambiguous purposes, often seemingly prelude to large scale deportations to Afghanistan, not the provision of protection.

**Return, Repatriation and Deportation:** The return of Afghans to their country of origin has been and remains the only feasible durable solution advocated by Iran and Pakistan. Of the other two durable solutions, neither offers any traction: resettlement is very limited and local integration is strongly resisted. 'So-called' voluntary return programmes have involved more than 950,000 Afghan from Iran (2002-2016) and as many as 400,000 returning supposedly spontaneously. Approximately 3.9 million Afghans voluntarily returned from Pakistan between 2002 and 2015. In 2018 over 800,000 undocumented Afghans returned from Iran and Pakistan (767,600, over 95% from Iran), whilst in 2016 more than 1 million documented and undocumented Afghans returned to their country. Both countries, and the main international actors (UNHCR, IOM), have strongly supported the comprehensive framework of the Solution Strategy for Afghan Refugees (SSAR) which promotes voluntary repatriation and development-led policies for sustainable reintegration.

Return is not only driven by the political climate in these two countries but also by persistently volatile economic conditions that effect the livelihoods of the Afghans. For example, the 2018 returns are attributed in part to Iran's massive currency devaluation which has drastically diminished demand for labour in the informal sector in which Afghans primarily work.

Periodic mass deportations of undocumented Afghans take place, although numbers are large they are hard to verify. In 2018, of 767,000 Afghans returning from Iran over 410,000 were estimated to have been in effect deported, whilst as many as 13,000 were forcibly returned in 2017. Deportation with impunity, the coercive conditions of 'spontaneous return', and lack of certainty about the voluntariness of assisted return highlight serious protection issues potentially

amounting to refoulement. Moreover, in Afghanistan, violence, insecurity, lack of basic rights protection, the devastating economic conditions and lack of services indicate that the return of Afghans in safety and dignity is infeasible. In any case, many of the returnees become IDPs or become refugees again.

Despite a general recognition by the international community that most returns to Afghanistan since 2015 have taken place under increased pressure, little has been done - at least in public, given the sensitive political environment in which the international organisations operate in both countries - to restrain Pakistan and Iran or to condemn the harassment and violence that accompanies repatriation.

**Protection Benchmarks:** Freedom of movement, right to work, and access to education constitute significant challenges for Afghans in both countries.

Iran imposes formal freedom of movement restrictions on all Afghans but no-go locations, at one stage encompassing approximately two-thirds of the country, have been slightly reduced recently. Pakistan permits freedom of movement and settlement for those with refugee status but applies restrictions to unregistered Afghans. However, both countries implicitly sanction informal restrictions on movement – harassment, police checks and so on – irrespective of status. These restrictions have severe impacts on economic opportunities for the Afghans, their livelihoods strategies, and their socio-economic networks and social capital.

In both Iran and Pakistan there is a sharp distinction on the right to work between Afghans with refugee status and undocumented Afghans. In Iran, documented refugees are permitted to work but employment is severely limited by the restrictions on freedom of movement, place of residence and only 16 designated categories of occupation. The cost of the mandatory work permit and its annual renewal is a further constraint. For undocumented Afghans, there has been an unconditional ban on their employment since 2001 with heavy fines, imprisonment and business closure for breaking this law.

With no dedicated refugee legislation to clarify refugee rights in Pakistan, the legal position on the right to work is not clear cut; moreover, policy and practice have varied over time. Usually refugee status is considered sufficient proof for accessing employment while those with ACC and the undocumented are not able to access formal employment.

Informally the governments accept some NGO livelihood programming for undocumented. But like the protection situation as a whole, this is pragmatic and unsystematic with differing standards of application and implementation that render the undocumented Afghans highly vulnerable and precarious.

Whether in possession of refugee status or not, most Afghans struggle to find employment, given these restrictions and structural weaknesses of both countries' economies, largely ending up consigned to the informal sector with the added risks this presents for vulnerability and economic marginalisation as well as detection, arrest and possible deportation.

On access to education, the demographic of the displaced Afghan population and its protracted condition creates a very large school age population in both countries. Literacy rates for Afghan children both in Afghanistan and in exile are amongst the lowest in the world. The right to access education in both Iran and Pakistan is complicated. In Iran, Afghan children without refugee status have only been able to access Iranian schools since 2015, although access is not straightforward and fees are high. As a result there has been a heavy demand for the large number of autonomous Afghan schools which, until recently, have been unregulated and provided very poor quality education.

The protection of Afghans whose children attend school is a new and significant enhancement of their rights and status. In Pakistan, in principle, children of registered Afghan refugees have the right to access state schools although, as in Iran, fee levels severely limit access. In the past, undocumented Afghan children did not have the right to access state education: it is not yet clear if new registration processes will accord them the right.

These conditions, as well as the parlous state of the countries' economies drive Afghan children into child labour, already a severe problem in both countries given the lack of livelihood opportunities. There are also far reaching implications for Afghanistan too, limiting opportunities for sustainable return by displaced Afghan youth and the resources for social and economic mobility.

***International Organisations, INGOs and NGOs:*** International organisations (UNHCR and IOM), and a small number of INGOs and NGOs play a very significant role in the humanitarian assistance programmes in both Iran and Pakistan. Less clear and somewhat ambiguous is their role in advocating or defending international protection norms and standards for the Afghan refugees and, especially for undocumented Afghans. This is politically a much more sensitive area for these organisations, given that both Pakistan and Iran are very firmly committed to refugee repatriation and the periodic forced return of undocumented Afghans.

Both IOM and UNHCR have been firm supporters and active participants in the SSAR. Although the process barely accords with international standards of dignity and security, neither agency has been willing to use its mandate, in public at least, to challenge the force with which these two countries press repatriation.

Whether willing or not, INGOs and national NGOs have also felt unable to engage with the two governments, in public at least, over the severe denial of international protection standards. A 'protection by presence' argument, whilst persuasive, is hard to document and analyse. Like the intergovernmental organisations, their assistance programmes are almost exclusively directed to refugees, not the far more vulnerable and needy undocumented Afghans. Failure to provide humanitarian assistance to undocumented Afghans endorses their marginalisation and extreme vulnerability.

***Conditions in Afghanistan:*** Focused on conditions and recommendations for Afghans in Iran and Pakistan, the deteriorating conditions in Afghanistan gives added impetus to the need to strengthen protection norms and standards in the two main host countries since return is untenable despite the unshakable commitment of Iran and Pakistan and the support of international organisations.

## RECOMMENDATIONS

The report makes 20 recommendations on advocacy and operational challenges for refugee protection, three recommendations for training and four recommendations for further research.

The report recommends '**Soft Policy' advocacy strategies** which may offer better traction for incremental improvements to the protection regimes in both countries.

A **comprehensive review and evaluation of the SSAR 2012-2018** is proposed with the aim of promoting and strengthening the SSAR alongside **strengthening the quality of and adherence to international protection norms**, standards and guidelines in the SSAR. Within both countries the report recommends **scaling up development-led and protection programming** that could lead to more sustainable livelihoods for displaced Afghans and local host communities.





On **undocumented Afghans in Iran and Pakistan**, recommendations are proposed to: sustain advocacy with both governments to uphold minimum standards of international protection; catalyse INGOs and NGOs to develop and collectively agree coherent messaging on protection; encourage the main international organisations (UNHCR and IOM) to adopt a higher advocacy profile on the protection of undocumented Afghans particularly in relation to deportations and 'enforced' spontaneous return; and engage with international human rights organisations on promoting compliance with international protection standards.

On **protection benchmarks**, the report recommends strengthening advocacy on: freedom of movement in Iran; promoting the right to work and other rights pertaining to livelihoods and employment in both countries; clarifying and stabilising the rights of Afghan children to education in Iran; and promoting government-led awareness raising campaigns on the rights of refugees and undocumented Afghans in both countries.

**Country specific recommendations** address the need for the Iranian government to further promote the citizenship rights of children of Afghan fathers and Iranian mothers in Iran, and for the government of Pakistan to clarify and solidify the protection rights and standards of the PoR and ACC registration of Afghans.

**Training recommendations** are: 1) Building protection capacities; and 2) Building local NGO capacity.

**Proposals for further research are:** 1) The protection of undocumented Afghans; 2) The right to work; 3) Gender, rights and protection; and 4) Deportation and refugee return: dynamics and preferences.

## COUNTRY PROFILES

The Annex profiles the two countries' refugee regimes provide the detailed evidence base on which the synthesis and recommendations are based. The profiles are organised as follows: Context and summary profile: 1. Legislative Framework, Policy and Practice - national legislation and institutional set-up for migrants and refugees; protection apparatus for refugees and other 'forcibly displaced people'; protection and assistance benchmarks including freedom of movement, right to work, right to property, education and health; durable solutions policy framework; impact of the political and security context in Afghanistan. 2. Mapping of International and National Protection Actors - engagement of international actors; local NGOs; 3. Mediating Protection and Rights - The Role of Humanitarian Actors; 4. Summary and Conclusion.

# SECTION 1: INTRODUCTION AND METHODOLOGY

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## 1.1. OVERVIEW

Almost 40 years since the first large scale exodus of Afghan refugees in 1979, Pakistan and Iran now between them host 2.343 million registered Afghan refugees (from a global total of 2.624 million)<sup>1</sup> and, depending on the estimate, up to a further two to three million forcibly displaced but undocumented Afghans in exile. Pakistan (with 1,393,000 UNHCR documented refugees) and Iran (with 979,000), are respectively the second and fifth largest refugee hosting countries world-wide. Characterised by a number of cycles of voluntary and spontaneous repatriation and deportation back to Afghanistan, reversed by further episodes of large scale forced displacement and exodus associated with recurrent periods of violence and instability, it constitutes both the second largest refugee situation globally, after the Syrian crisis and excluding Palestinian refugees under the UNRWA mandate, and one of the world's dominant protracted refugee situations. The persistent insecurity and fragile governance of Afghanistan, with almost 1.8 million Afghans internally displaced, combined with dire economic conditions and a shortage of livelihood opportunities, remain huge impediments to the sustainable repatriation of Afghans - the strongly advocated policy of both Pakistan and Iran. Despite intermittent hopes for a settlement to the conflict – for example with periodic Taliban ceasefires - there seems little prospect that these conditions will change in the foreseeable future. Moreover, a very large number of Afghans have been born in exile in Pakistan and Iran.<sup>2</sup> The socio-economic, cultural and psychological experience of this second generation raised in exile, and now a third generation born in exile, and the misleading term 'returnees' to describe them, further complicate the prospect of return as a durable solution.

## 1.2. OBJECTIVES

Against this background, the objective of this report is to describe and assess two structural factors that govern the protection and rights of displaced Afghans in Pakistan and Iran:

- the legal, governance and policy framework for the forcibly displaced Afghan population (both recognised refugees and the wider population of forcibly displaced people without a formal status); and
- the political economy context that influences the rights and protection of this population.

Recognising the sensitive political context of this study, and based on a detailed analysis of each country, the core

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<sup>1</sup> UNHCR (2018) Global Trends in Forced Displacement 2017, Annex 2 page 70, Geneva: UNHCR [www.unhcr.org/5b27be547.pdf](http://www.unhcr.org/5b27be547.pdf).

<sup>2</sup> Already in 2006 it was estimated that almost half of the refugees in Iran were born in exile (Wickramasekara, P. J., Sehgal, F., Mehran, L., Noroozi, and Eisazadeh, S. (2006) "Afghan Households and Workers in Iran: Profile and Impact," ILO-UNHCR Cooperation Towards Comprehensive Solutions for Afghan Displacement. ILO-UNHCR: Geneva, [https://www.researchgate.net/publication/238707241\\_AFGHAN\\_HOUSEHOLDS\\_AND\\_WORKERS\\_IN\\_IRAN\\_PROFILE\\_AND\\_IMPACT](https://www.researchgate.net/publication/238707241_AFGHAN_HOUSEHOLDS_AND_WORKERS_IN_IRAN_PROFILE_AND_IMPACT)). In Pakistan a census of Afghans conducted back in 2015 showed that the majority was born in exile (UNHCR (2015) "Pakistan's census of Afghans provides first detailed profile of the population", [www.unhcr.org/news/latest/2005/8/430c80954/pakistans-census-afghans-provides-first-detailed-profile-population.html](http://www.unhcr.org/news/latest/2005/8/430c80954/pakistans-census-afghans-provides-first-detailed-profile-population.html).) In 2018, it is estimated that 74% percent of Afghan refugees in Pakistan are second or third generation born in the country (UNHCR Pakistan (2017) "Community Based Protection and Urban Outreach Strategy 2017-2019," <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>); see also Abbasi-Shavazi, M., Glazebrook, D., Jamshidiha, G., Mahmoudian, H., and Sadeghi, R. (2008) "Second-generation Afghans in Iran: Integration, Identity and Return", Kabul: Afghanistan Research and Evaluation Unit (AREU), Case Study Series.

objective is to explore, and to the extent possible, clarify the complex international and domestic legal protection frameworks and the contingent rights that relate to the protection of the displaced Afghan population. This analysis provides a platform for humanitarian and development actors to tackle key operational challenges, in particular to enhance protection guidelines and strategies to support the displaced Afghan population in the two countries through strengthened programming, advocacy and civil society engagement.

## 1.3. METHODOLOGY

This study has been conducted using a qualitative, desk study method. Accessing only secondary data, mainly but not exclusively related to the case study countries, this has comprised a review of:

- refugee, immigration, and other relevant national legislation, legal apparatus, policies, practices and instruments (including in Farsi), particularly but not exclusively related to protection;
- benchmarking standards for refugee status determination (RSD), repatriation and deportation, health, education, residency, civil documentation, visas; freedom of movement; right to work employment conditions and labour rights. These are key benchmarks which establish important prerequisites for refugee livelihoods and economic well-being in situations of protracted displacement such as the Afghans in Iran and Pakistan;
- reports on the economic and social conditions and protection related to migrants, asylum seekers, refugees, undocumented people, 'forced migrants', and returnees in the two countries;
- UNHCR and NGO/INGO documents, reports and evaluations;
- academic and research literature exploring refugee, socio-economic, forced displacement/ refugee, and political issues and context in the two countries
- other relevant reports (e.g. on regional issues) related to the study topic.

The desk study method, involving the consultation of extensive secondary literature, provides a baseline understanding of the protection conditions, policies and practices in the two countries, on which the synthesis is based. The method provides a broad-based analysis of context and also documents the evolving characteristics of the protracted Afghan 'refugee crisis' – a critical element in understanding and explaining how the protection policies have evolved in the two countries.

The desk study method provides a strong descriptive account of the subject matter, whilst recognising the analytical and explanatory limitations of this approach particularly given the complex and sensitive political conditions that surround the theme of the study. Working remotely without conducting primary field research and questionnaire surveys, for example, it has not been possible to gain detailed insight into the structure, role, capacities, operational constraints and motivations of the principal actors involved in providing protection in the case study countries. It appears that behind the scenes advocacy takes place with both governments to avoid public confrontation over serious violations of protection and rights obligations. By definition this operational detail is not documented and so it has not been possible to assess the extent and effectiveness of these informal mechanisms. Neither has it been possible, with the lack of primary data, to triangulate and test out many of the assumptions made in the report.

The study has relied heavily on official documents from governments and humanitarian actors. These sources provide essential information on policies and programmes, but they are primarily descriptive, not analytical, and do not



offer an evaluative dimension. Nor do they offer critical insights into operational matters, policy outputs and, more importantly, outcomes. And there is imbalance: the volume of literature is more limited for Iran. Lack of hard data and discrepancies in certain areas, around deportation numbers for example, should also be noted.

For both countries, but especially Iran, there is limited recent research literature on the protection, socio-economic and livelihood conditions of Afghans, in particular related to the differential between refugees and undocumented Afghans. Likewise, given the linkage between protection and refugee policies on the one hand and the political and governance framework in both Iran and Pakistan, on the other – a relationship core to this study - the absence of research literature in this area poses significant limitations to the study. A reasonable volume of up to date, independent scholarly research literature could have provided much richer insights and in-depth analysis of the context, experiences and impacts of the conditions reported in this study. This might have enabled a more nuanced interpretation of the evidence, and thus the scope of recommendations. It would also have enabled better triangulation of the findings. Unfortunately, the literature that exists is both dated and limited in scope.

It has not been possible to access programme evaluation reports of INGO/NGO/ Intergovernmental actors. These reports would have provided another angle on the situation of Afghans in the two countries. They could have furnished more information and findings on current conditions for refugees and undocumented Afghans and the scope, impact and outcomes of assistance programmes that might have a bearing on protection issues, such as the right to work and livelihood strategies of Afghans which are the subject of this study.

# SECTION 1: INTRODUCTION AND METHODOLOGY

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## 2.1. INTRODUCTION

Mediated by their contrasting domestic and international political and economic circumstances, the two countries manifest both some sharp differences, but also a significant number of similarities in their response to Afghan refugees and other forcibly displaced. These are now elaborated.

The markedly different protection statuses and rights accorded to different segments of the displaced Afghan population in Pakistan and Iran, constitute the point of departure for, and the driving narrative of this study. An initial distinction is made between refugees (i.e. those with 'refugee' status in the two countries) and the wider and much larger group of 'forcibly displaced' Afghans who are termed undocumented in this report. This typology is a short hand to define a broad grouping of Afghans who have been forced to leave Afghanistan in the same circumstances as those who have subsequently received refugee status, but who, despite identical reasons for fleeing, might only have subsidiary forms of protection, or remain undocumented without any recognised protection. Many hundreds of thousands of returnees without protection are also included in this terminology as are the much smaller numbers of asylum seekers and failed asylum-seekers.

## 2.2. SETTING THE CONTEXT – THE DRIVERS OF IRAN'S AND PAKISTAN'S POLICIES FOR REFUGEES AND THE FORCIBLY DISPLACED

Before presenting the main synthesis, a brief contextual explanation of the drivers of Iran's and Pakistan's policies toward Afghan refugees and forcibly displaced people is presented. The return of the Afghans is the dominant policy objective of both countries. This underscores their strong commitment to internationally-brokered voluntary assisted return strategy – the Solution Strategy for Afghan Refugees (SSAR) – and other common dominators of their policy apparatus to achieve this objective such as deterrence of local settlement and integration, pressure for spontaneous (i.e. unassisted) return, and at times widespread deportation. Despite this common agenda, the rational differs between the two countries.

Understanding the main domestic and international political and economic factors that shape their policies helps to define the room for manoeuvre for international actors to advocate and engage with these governments to strengthen protection policies and guidelines, and human rights norms for these populations.

Pakistan's refugee policy has been shaped by two conditions. The first is the politically charged securitisation agenda precipitated by the spill-over of four decades of conflict in Afghan. Heavily influenced by the country's relationship with the United States, the 'War Against Terror' and counter terrorism policies since the 2000s have given added impetus to this agenda, in which the refugees are portrayed as a security threat triggering violence and instability within Pakistan and a vector for wider global insecurity. Growing hostility to Afghans, without explicitly distinguishing between registered, 'protected' refugees and undocumented Afghans, has been manifest in indiscriminate action against both groups, such as significantly increasing the frequency for renewing refugee identification cards, increased harassment,

and sustained pressure for return.

Alongside the direct correlation to its securitisation agenda, the second factor which determines the status and treatment of Afghans in Pakistan is the socio-economic context. A poor low-middle income country, with a high population growth rate as the sixth most populous country in the world, an annual labour force growth rate of more than three percent, about a quarter of its population living under the poverty line, and ranked 147th on the human development index, Pakistan's economic and social fabric has struggled to host such a large exiled population.

In Iran, the security situation for the refugees and forcibly displaced Afghans bears no comparison to the episodic violence and instability of Pakistan; they are not incorporated into a securitisation agenda as in Pakistan. Instead, Iran's policy leaves the Afghans trapped in a no man's land of entrenched resistance to their presence and settlement on the one hand, manifest in the denial of refugee status to all Afghans effectively arriving after 1997 – approximately 70% of all Afghans in Iran – and, on the other hand, coerced return to severe physical and livelihood insecurity in Afghanistan.

As in Pakistan, an economic imperative also underpins Iran's policies of deterrence and return. Despite its status as a middle income country, the response to the burden of the refugees has been governed by the prolonged financial and economic crisis the country has experienced as a result of the international trade and investment embargo which commenced, coincidentally, at the same time as the Afghan refugees first arrived in 1979 as well as the strains caused by the 1980-88 Iran-Iraq war. These factors underpin its firm policy of return.

The backcloth of high rates of inflation and dramatic currency depreciation, combined with high unemployment (approaching 12% in the formal sector) and concealed unemployment, have rendered the refugees a target for the declining socio-economic conditions experienced by Iranians. Whilst the removal of the embargoes in 2016 allowed the economy to expand, which might have been expected to ease living conditions for Iranians and the Afghans, this did translate into any relaxation of the country's policies towards Afghans before sanctions were reimposed in 2018 precipitating a massive currency devaluation which has drastically diminished demand for labour in the informal sector in which Afghans primarily work.

## **2.3. THE 1951 CONVENTION AND RSD**

The legal framework for refugees differs significantly between the two countries, although in practice this does not lead to fundamentally different policies and practices for refugee protection and assistance.

Iran is party to the 1951 Refugee Convention and the 1967 Protocol (1951 CSR), the provisions of which were incorporated into the country's 1979 Constitution and are detailed in the 1963 Regulations Related to Refugees. The government is responsible for refugee registration, status determination, and for issuing of refugee identity cards. Despite its adherence to the Convention, few Afghans have received refugee status since 1997 and even fewer since 2002 thus establishing fundamental distinctions between documented Afghans with refugee status and undocumented Afghans who have no protection and rights, the significance of which will be discussed in more detail in the next sub-section. The reason for the clampdown at these dates was a seemingly arbitrary decision not to extend RSD to new waves of Afghan refugees thereby curtailing the country's responsibilities under the 1951 CSR. A 2017 registration process involving 800,000 previously undocumented marks a potentially significant departure, the implications of which remain

unclear as yet. Another potentially positive development is the extension of protection from deportation to Afghans whose children attend school now permitted under 2015 provisions which extend the right of access to education to all Afghan children (whether from documented or unregistered Afghan families).

Iran maintains some important reservations to the 1951 Convention – for example freedom of movement, right to work, changing conditions for access to education - which will be also discussed in more detail later in relevant sections of this synthesis.

Pakistan is not party to the 1951 Refugee Convention or 1967 Protocol. Although other laws governing immigration contain no specific provisions relating to the protection of refugees and asylum-seekers, de facto they are covered by these provisions. National refugee legislation was drafted in 2013, but has yet to be enacted. As in Iran the government is responsible for all aspects of refugee status determination and processes, whereas in 2016 it decided to disengage from the Individual Case Management RSD (under UNHCR's mandate). As in Iran, there is a distinction between Afghans who arrived in earlier eras (in the case of Pakistan up to 2006) and effectively have refugee status and those who arrived later and have remained, until the 2017 Afghan Citizen Cards (ACC) undocumented. Although distinct from refugee status, this large scale documentation exercise covering 800,000 Afghans and the issuance of 275,000 cards will afford them some heavily qualified protection.

Some paradoxes emerge from the contrasting legal frameworks in the two countries. Iran, a signatory to the Convention, provides inferior protection by arbitrarily excluding possibly more than two million Afghans from seeking refugee status determination, as well as other reservations from the Convention outlined above. Conversely, Pakistan, a non-signatory state, is now starting to provide protection for formerly undocumented Afghans, albeit very much more qualified than those who have refugee status, and with the potential for much greater control over this category. Despite Pakistan's non-accession to the Refugee Convention, it appears to have closer working relationships with UNHCR than Iran, a party to the Convention and a member of Excom.

### **The implications are the following**

Both countries have deliberately created de facto distinctions between refugees and the undocumented - much more categorical in the case of Iran. In addition, Pakistan lacks comprehensive legal policy apparatus for refugees and has developed its own bespoke refugee instruments, whilst Iran is highly selective in the application of the international standards of the Convention.

In closing the gap between the standards of protection for the two groups, it seems unlikely that recourse to international legal and normative practice and status-and rights-based reasoning will offer much leverage to encourage these countries to enhance national protection guidelines and strategies for Afghan refugees or the undocumented Afghans.

Other strategies may be needed which focus on needs-based rationale and the gains, especially for the hosts, that may be achieved by enhancing protection.

## 2.4. REFUGEES AND THE FORCIBLY DISPLACED – THE LABELS AND THEIR IMPLICATIONS

Both Iran and Pakistan have demarcated between refugees (i.e. those with a recognised status although the technical term refugee is not used in either country) and those without this status. But the situation appears to be changing in both countries since 2017. Until this date the distinction has been of paramount importance to the protection that Afghans received from the host governments, the rights and assistance to which they may be entitled from those governments and also, by extension, from international and national humanitarian actors.

Iran has made a much more clear-cut distinction than Pakistan. Until 1992, most Afghans who fled to Iran were automatically given the right to remain in the country on a prima facie basis, although not officially designated as refugees. They were issued with refugee identity cards (initially known as ‘blue cards’ and then from 2003 Amayesh cards) and had access to social benefits and work permits. Currently some 951,000 Afghans are documented in this way. From 1992 onwards this policy changed: only temporary residency permits were provided, on an individual basis, and often on seemingly arbitrary criteria.

In 1997, the government effectively stopped granting newly arriving Afghans residency rights (and thus protection) altogether and intensified efforts to register and repatriate those already in the country. This policy was further enforced in 2002/3 and effectively remained the situation until 2017. Those arriving after these dates were considered, in effect, economic migrants – echoing earlier periods of labour migration to Iran – with no recourse to lodge applications for refugee status and protection on arrival or in country. Although extensive registration exercises have been periodically conducted since then, these have not manifestly extended protection, even in a limited way for potentially vulnerable people. Rather the implicit purpose seems to have been to identify Afghans without refugee or other approved status with the possible objective of facilitating the extensive deportation or repatriation exercises that have taken place.

The embargo on documentation rendered possibly more than two million Afghans lacking protection and experiencing a high degree of precarity. However, two more recent policy changes have potentially improved protection conditions. As a result of the 2015 education decree, discussed below, whether documented or not those families who have enrolled their children in schools are ostensibly protected from deportation. In 2017 another large scale registration of undocumented Afghans – the Head Count Plan – was undertaken this included inter alia: undocumented Afghans with children enrolled in schools; spouses and children of valid Amayesh card holders without valid documents; undocumented Afghans married to Iranian nationals; and Afghans holding expired Amayesh cards. Some 800,000 have been registered. Although there is no decision on the rights they will receive, if any, in contrast to earlier registrations it appears that they too are immune from the risk deportation.

In Pakistan the demarcation is more fluid but with broadly similar outcomes. A comprehensive Afghan refugee policy in Pakistan that respects basic human rights while protecting Pakistan’s national security is missing. Until 2006, Afghan refugees in Pakistan did not require legal documents. Commencing in 2007, Proof of Registration (PoR) cards were instituted for Afghan refugees, possession of which means designation as ‘documented refugees’ or ‘registered Afghans, affording protection against deportation and other rights such as freedom of movement. Initially time limited there have been six renewals/extensions since then, the latest prolonging the PoR until June 2019. As of March 2018, some 1.39 million Afghans held a PoR card. A second, and very limited means of registration is the Refugee Identity Card (RIC), the outcome of the UNHCR’s RSD. The RIC is generally accepted, allowing asylum seekers and





recognised refugees to remain in Pakistan but is more circumscribed: for example although renewable, protection status is only valid for 12 months. As of September 2016, UNHCR stopped RSD processes for Afghan asylum seekers, replacing it with an 'Enhanced Registration' through which potential refugees get protection through a registration certificate instead of the RIC.

Those without PoR and RIC have, until recently, been undocumented, mainly comprising persons who arrived after 2007, or who were present there but not registered when the government, as in Iran in 2002, closed the registration (PoR) process. Afghans who repatriated to Afghanistan, but subsequently returned to Pakistan after 2007 have also remained undocumented.

However, as in Iran, the government of Pakistan has also relented on its intransigence to documenting and affording protection to Afghans arriving after 1997. In 2017 the governments of Afghanistan and Pakistan and UNHCR commenced a documentation process for this undocumented population with a view to providing Afghan Citizen Cards (ACC). The ostensible aim was to legalise residency and provide basic legal protection from arbitrary arrest and deportation but with more circumscribed conditions. Whilst the extension of protection is to be welcomed, the ACC extends Pakistan's control of the displaced Afghan population and potentially enhances the scope for repatriation exercises. Some 800,000 formerly undocumented Afghan nationals had been registered and 275,000 cards distributed so far.

Highlighted already, and alongside protection, rights and return, a main theme of this report, is the complicated and highly vulnerable situation of the remaining undocumented Afghans in both countries – numbering between 600,000 and 1 million in Pakistan and between 1.5 and 3 million in Iran before the 2017 registration exercises in both countries. The country profiles elaborate the reasons for this but a brief overview here frames the main parameters.

Essentially, the predisposition of both countries has been to try to limit, as far as possible, RSD and thus their obligations to refugees under national and international law, as new waves of Afghan refugees arrived from the mid-1990s onwards. Changes to eligibility and the creation of subsidiary protection categories produce shifts in and out of some form of documented protection status. In both countries somewhat arbitrary 'cut off' dates – 1997, 2002/3, 2007 - have been invoked. Other previously registered refugees who returned to Afghanistan but who have subsequently sought refugee status a second time have been excluded by changing RSD policies. The complexity and shifting nature of the procedures has created obstacles to RSD excluding others from documented status even if they might have been eligible but had no proof of when they entered the country before regulations changed. And, of course, as in most refugee situations, a significant number of those who are eligible for status do not avail themselves of the right, preferring, for a variety of reasons, to remain below the 'radar' attempting to avoid the common experience of most Afghans in these two countries – avoiding harassment, easing access to employment where there is no right to work, fear of deportation if RSD fails, fear of being exposed to existential threats from opposing factions in Afghan civil war.

### ***The implications are the following***

First, and most significant, the status-based distinctions made between documented Afghan refugees and undocumented Afghans, whom the governments perceive to be economic migrants, have been arbitrarily imposed by both governments according to the time of entry: in the case of Iran the 'breakpoint' was around 1997 and for Pakistan, 2007. Distinguishing between arrival before these dates (with the conferment of refugee status), or after (when limited or no protection has been provided), is artificial. There is no difference in the circumstances of their flight from

Afghanistan: the causes of their displacement remained and remain the same, as do the needs- and rights- based requirements for protection and assistance of all forcibly displaced Afghans, regardless of when they arrived in exile. Essentially both Iran and Pakistan invoke legal instruments as a technique to manage the volume of displaced people entering the countries by regulating the rights and assistance to which they might be entitled in the host country, irrespective of the identical grounds for seeking asylum. Whilst both Iran and Pakistan relented on this categorical distinction in 2017 (Iran's Head Count Plan and Pakistan's ACC), it is unclear how constrained the subsidiary protection now afforded in both countries remains – for example, beyond apparent protection from deportation, are there rights to work and freedom of movement?

Second, there is no access to due process in status determination to ascertain potential protection rights or needs. Until the 2017 registration exercises Afghans in Iran after 1997/2003 and in Pakistan after 2007 were, a priori, ineligible for documentation and thus any form of protection. Now, the registration exercises in both countries appear to impose some limited form of government-determined protection status on a prima facie basis to an arbitrarily defined, albeit large, group. Thus, in addition to the fact that status is imposed through these new registration processes, there appears to be no recourse to due process for those still excluded either from the Head Count Plan/ACC registration, or for those seeking access to the more preferable PoR in Pakistan or the Amayesh card in Iran.

Although UNHCR could be expected to advocate the need for RSD procedures so that a claim for asylum could at least be lodged in Iran as a signatory to the 1951 CSR, it does not appear to do so in public. In Pakistan, it appears to acquiesce to government policy which is not to provide a RSD process for Afghans and while it claims to ensure access to asylum for persons seeking international protection, in practice very few received refugee status.

Third, documentation/registration exercises in both countries have ambiguous purposes as the country profiles explain in more detail. In the case of Iran, documentation/registration – at least in the past – has been a prelude to large scale deportations to Afghanistan, not the provision of protection. Beyond the immediate process, any future implications of the 2017 Head Count Plan are not clear. In Pakistan, although the ACC registration appears to provide a 'subsidiary' form of protection, it is not clear whether the process might leave registered Afghans vulnerable to eventual deportation or involuntary return.

Fourth, without the basic right of protection, the still large number of undocumented Afghans are potentially subject to the existential threat of deportation, which has been extensive in Iran and less from Pakistan. Harassment, and the threat of arbitrary arrest and detention are also widely reported in both countries especially for those who are undocumented.

Fifth, in both countries undocumented Afghans have no right to work, do not enjoy freedom of movement, and cannot access education or health services (although even for refugees this access is conditional). Moreover, NGOs and INGOs seem to be deterred from providing services to undocumented Afghans. These exclusions render undocumented forcibly displaced Afghans highly vulnerable to, for example, precarious livelihoods, exploitation in the informal sector, child labour, forced repatriation.

Sixth, frequently changing or onerous conditions for documented refugees - withdrawal or modifications of rights and services, increasing service charges, time limited approvals and demanding renewal requirements, lack of citizenship (until recently) for children of Afghan fathers and Iranian mothers in Iran which are all elaborated in more detail in the country profiles – as well as periodic large-scale registration processes for the undocumented - introduce a pervasive

sense of insecurity for all Afghans. Conversely, occasionally pragmatic policy changes can work to the advantage of Afghans. It is generally assumed that an edict from the Supreme Leader in Iran requiring that all Afghan children should be entitled to schooling transformed a policy of denial to a policy of access in a very short space of time.

## **2.5. RETURN, REPATRIATION AND DEPORTATION**

Despite the slightly more fluid regime in Pakistan, for both Pakistan and Iran the return of Afghans to their country of origin has been and remains the only acceptable durable solution normally but not exclusively under the auspices of the Solution Strategy for Afghan Refugees (SSAR). Over many years Iran, and to a lesser extent Pakistan, have deployed a variety of measures to pressurise Afghans to return to Afghanistan - refusal to document large numbers of Afghans, periodic suspension of, or stringent condition and frequent changes applied to residency permits, episodic large scale deportations, restrictive policies on the right to work and education, and persistent harassment.

Of the other two durable solutions, neither have offered any clear traction: local integration has been resisted and resettlement is marginal.

Restrictions on the rights that Afghan refugees can enjoy in both countries and opposition, until 2017, to documenting the larger number of forcibly displaced Afghans indicate the embedded resistance to local integration. The fact that both countries currently appear more open to documenting Afghans does not necessarily imply that they are any more open to their local integration. In Pakistan, courts have dismissed legal cases whereby claimants tried to obtain the extension of citizenship to Afghan refugees. They pronounced that the children of Afghans refugees cannot claim citizenship by birth as their parents were deemed foreigners under the citizenship laws of the country. However, a still-disputed Prime Ministerial decision in September 2018 to grant citizenship, inter alia, to people born in Pakistan of Afghan parentage, if enacted clearly has significant implications for an estimated up to 60% of the Afghan population born in exile in Pakistan. In Iran a recent decree now allows what were, effectively, stateless children of Iranian mothers and Afghan fathers to claim Iranian citizenship. So there is some marginal progress at least in principle, on local integration policies in both countries.

Third country resettlement offers little prospect for significantly reducing the number of Afghan refugees. From Iran just over 18,500 refugees have been resettled from 2005-14, despite Iran being amongst the top 10 host countries for resettlement submissions to the UNHCR. Between 2014-2016, 5,314 persons have been submitted for resettlement for Pakistan and 2,761 from Iran. Compared to previous years, numbers dropped significantly in Pakistan since September 2016 when UNHCR communicated to refugee communities and its implementing partners that resettlement was no more an option available to the wider Afghan refugees. It however continues to remain available only to highly vulnerable/emergency or urgent cases comparing to past years where more resources were available and good number of cases were considered.

The reasons for low take up are unclear but probably derive from a combination of: resettlement countries not perceiving applicants to be sufficiently vulnerable (a standard resettlement 'condition' for many countries); resistance to Afghan refugees evidenced by many potential resettlement countries now contending that Afghanistan is a safe country for repatriation in their RSD procedures for spontaneous arrivals; lack of resources put forward for resettlement; and lack of consistent and persistent application of resettlement procedures by UNHCR.

Over many years both countries have actively supported the third durable solution, ‘so-called’ voluntary return programmes. From 2002 to the end 2016, UNHCR assisted 950,000 Afghan refugees to return from Iran, supposedly on a voluntarily basis. As many as 400,000 Afghans (both documented and undocumented) may have returned spontaneously. Approximately 3.9 million Afghans have voluntarily returned from Pakistan to Afghanistan between 2002 and 2015 under the UNHCR’s largest and longest running voluntary repatriation operation. Some 384,000 Afghan refugees from Pakistan returned to Afghanistan just in 2016. Both countries have strongly supported the comprehensive framework of the Solution Strategy for Afghan Refugees (SSAR) which promotes voluntary repatriation and development-led policies for sustainable reintegration. Since its adoption in 2012, UNHCR-assisted voluntary repatriation of more than 660,000 Afghan refugees has taken place (from both Iran and Pakistan) and remains, in the UNHCR’s words ‘a vital regional platform for solutions’.<sup>3</sup>

For undocumented Afghans, the picture of return is unclear but in 2018 over 800,000 undocumented Afghans returned from Iran and Pakistan (767,600, over 95% from Iran) to their country. Undoubtedly return was in part precipitated by the severe economic conditions in Iran. Yet of this total over 410,000 were purportedly deported, not spontaneous returns. Indeed, periodic crackdowns in both countries have been the prelude to large scale deportations. This has been the main instrument by which both countries seek to prevent permanent settlement and diminish the number of Afghans on their territories. Although it is hard to verify numbers, some indication of the scale of deportation is evident in over 692,000 unregistered Afghan nationals returning to Afghanistan from Pakistan in 2016. Data on Iran, where deportation is a much more widely used instrument, suggest that about 146,000 undocumented Afghans were deported in 2006, possibly as many as 490,000 in 2008, while some 130,000 may have been forcibly returned in 2017, and over 180,000 undocumented Afghans have repatriated in the first half of this year. There is no clear data on numbers of actual deportations from Pakistan. The government have threatened Afghans with deportation and created conditions that coerced Afghans to leave, potentially amounting to refoulement. Yet these coercive processes have continued to be called ‘returns’ by most stakeholders.

### **The implications are the following**

Serious protection issues arise in relation to these largely coercive strategies of return.

First, irrespective of their status, violence, insecurity, lack of basic rights protection, and the devastating economic conditions and lack of services in Afghanistan indicate that the return of Afghans in safety and dignity is infeasible even though it has been undertaken, at times, under the auspices of the SSAR. In any case, as evidence from repatriation processes to date emphasises, many of the returnees become IDPs or become refugees again.

Second, for undocumented forcibly displaced Afghans in Iran and Pakistan, large numbers have been deported with impunity raising profound questions about their existential and rights protection both during the deportation process and on return. In Pakistan, where the formal registration process has been more subject to change, the lack of documentation [to prove refugee status] also makes this group of Afghans vulnerable to deportation. But for both groups, not being formally registered as refugees also deprived them from receiving the same level of support as registered refugees when they return to Afghanistan.

<sup>3</sup> UNHCR (2017) Global Report – Regional Focus, Asia and the Pacific, [http://reporting.unhcr.org/sites/default/files/gr2017/pdf/05\\_Asia.pdf](http://reporting.unhcr.org/sites/default/files/gr2017/pdf/05_Asia.pdf).

Third, both voluntary assisted return and deportation have been accompanied by large-scale spontaneous (i.e. unassisted) return movement. Here the protection issues pertain a) to extensive reports that spontaneous return is often, in fact, under duress, and b) spontaneous returnees do not have access to assistance to facilitate their return. Fourth, although the statelessness of children of Afghan fathers and Iranian mothers without effective protection has been overcome, in principle at least, the uncertain situation of their undocumented fathers remains.

Fifth, whilst external human rights organisations have been more forthcoming in tackling the legality and legitimacy of government-led actions towards the forced and coerced return of Afghans, most international actors and INGOs/NGOs based in the two countries have remained silent, in public at least, over the pressure which Iran and Pakistan have put on Afghans to return. Despite a general recognition by the international community, notably including the UNHCR and IOM who have been the main actors facilitating Afghan repatriation, that most returns to Afghanistan since 2015 have taken place under increased pressure, these organisations have done relatively little - at least publically - to restrain Pakistan and Iran from pursuing their policies or to condemn the harassment and violent actions that accompany it. Nevertheless, in mitigation it must be recognised that the operating environment in both countries means INGOs, and especially NGOs, have to carefully consider public advocacy and usually seek to conduct advocacy behind closed doors in order to preserve working relationships with the governments and to retain their mandates. As such, with the desk study method, it has not been possible to evaluate the scale, effectiveness or accountability.

Facilitating voluntary repatriation remains a key priority of UNHCR. Both UNHCR and IOM privilege the large scale returns and the populations once they have reached Afghanistan rather than preventing deportation, pressurised spontaneous return and refoulement. Violation of the latter principle is thus very problematic.

## 2.6. PROTECTION BENCHMARKS

The 'existential' protection concerns discussed above – status of legal protection within the two countries and the repatriation situation of returnees (voluntary and spontaneous) and those who are deported – are mirrored in the policies and practices that regulate the rights afforded to Afghan refugees and the undocumented Afghans in their daily lives. Of the benchmarks explored in the country profiles, freedom of movement, right to work, and access to education are the most significant considered here since they directly affect the long term sustainability of livelihoods under conditions of protracted displacement. The two country case studies in the Annex provide detailed analysis of each country's policy apparatus: this subsection highlights the overall scope and impact of these policies.

**2.6.1. FREEDOM OF MOVEMENT:** Iran imposes formal restrictions on freedom of movement on all Afghans – refugees and the undocumented. Pakistan permits freedom of movement and settlement for those with refugee status but applies restrictions to unregistered Afghans. However, both countries implicitly sanction informal restrictions on movement – harassment, police checks and so on – irrespective of those with refugee status or undocumented Afghans, although in the latter case their situation is far more vulnerable.

Invoking national security concerns, Iran maintains a reservation to the 1951 CSR provision for freedom of movement and, since 2001, has increasingly imposed more restrictions on locations where foreign nationals - i.e. including all Afghans whether refugees or undocumented - can legally reside. These no – go locations at one stage encompassed approximately two-thirds of Iran although there has been some reduction recently. The no – go areas enforced significant numbers of Afghans (both refugees and undocumented), to relocate to designated areas, thereby disrupting

their livelihoods and social and economic networks. Although some Afghans still remain in these no-go areas, breaching the regulations is punishable by arrest, detention, and even deportation which further underscores their precarity. More generally, the coercive nature of Iran's policies towards undocumented Afghans leaves them vulnerable to detection and deportation, thus imposing tacit limitations on their freedom of movement.

In contrast to Iran, in Pakistan there are no official regulations that limit freedom of movement or embargo areas for the Afghans whether refugees, those with 'subsidiary' protection (such as the ACC), and the undocumented. However, the gradual tightening up of registration processes, accelerated repatriation, and increasing harassment, imprisonment, and threats of deportation have undermined their freedom of movement, in practice creating, as in Iran, an informal coercive environment especially for the undocumented: Afghans have restricted movements outside the refugee villages or their homes, thereby also limiting access to better-paying economic opportunities.

### **The implications are the following**

Irrespective of whether freedom of movement should be a right of itself, restrictions have severe impacts on economic opportunities for the Afghans, their livelihoods strategies, and their socio-economic networks and social capital.

Even without formal reservations on the right to freedom of movement, informal restrictions, harassment and the generally coercive nature of the regimes in both countries undermine the scope for freedom of movement with similar impacts as formal reservations.

### **2.6.2. RIGHT TO WORK:**

In both Iran and Pakistan there is a sharp distinction on the right to work between Afghans with refugee status and undocumented Afghans.

In Iran, documented refugees are permitted work. However, employment is severely limited by the restrictions on freedom of movement (discussed above), and place of residence - refugees are only allowed to work within their designated area of residence which they cannot leave without obtaining a *laissez-passer*. These designated areas may be so limited that refugees have difficulty finding employment. In addition, Iran exercises further reservations: refugees with the right to work in Iran can only engage in 16 occupations – predominantly low income, low skill and dangerous jobs which further limits their options for employment and thus income. Those detected working in proscribed sectors risk deportation. The cost of the mandatory work permit and its annual renewal is a further constraint on exercising the right to work. Complex limitations on opening bank accounts, owning immovable property and engaging in business without specific approvals are further significant constraints governing the right to work for refugees.

For undocumented Afghans, there has been an unconditional ban on their employment – as for all foreign workers – since 2001. Heavy fines, imprisonment and business closure are imposed on businesses breaking this law. Nevertheless there is tacit government acknowledgment that large numbers of Afghans work in the informal economy.

With no dedicated refugee legislation to clarify refugee rights in Pakistan, the legal position on the right to work is not clear cut; moreover, policy and practice have varied over time. However, despite the lack of clarity, the PoR card (i.e. refugee status), is considered sufficient proof for accessing employment. By contrast, although Afghans registered with the ACC now have some minimal protection against deportation and arbitrary arrest, the ACC does not extend to the right to work; they are in the same position as undocumented Afghans in not being able to access formal employment. Irrespective of

their status, Afghans in Pakistan cannot hold immovable property and face difficulties in owning businesses rendering them in an inferior position to refugees in Iran who have these rights, albeit highly constrained. As in Iran it is tacitly acknowledged that many Afghans work in the informal economy.

### ***The implications are the following***

First, the outcome of the prohibitions on the right to work is that undocumented Afghans in both countries are consigned to the informal sector with the added risks this presents for detection, arrest and possible deportation.

Second, in practice, despite the distinctions between the refugees' right to work and the prohibition of undocumented Afghans from working, both groups struggle to find employment given the meagre condition of the economy in both countries: both groups end up in the informal sector where they face the same challenges as the undocumented Afghans of very low and marginal incomes, exploitation and little or no contractual protection of rights in the work place.

Third, acknowledging the structural weaknesses of the economies of Iran and Pakistan, restrictions on the right to work, combined with restrictions on freedom of movement, undermine the livelihood capacities of both refugees and undocumented Afghans, and obviously deter local integration. This markedly increases their vulnerability and economic marginalisation, reduces the scope for socio-economic mobility, and limits the development of skills and resources that would support sustainable return to, and development potential in Afghanistan. In short these restrictions actively impede progress towards two of the three durable solutions to refugee displacement and potentially make resettlement a less attractive prospect for receiving countries.

### **2.6.3. EDUCATION:**

The demographic of the displaced Afghan population and its protracted condition creates a very large school age population in both countries. Literacy rates for Afghan children both in Afghanistan and in exile are amongst the lowest in the world.

The right to access education in both Iran and Pakistan is complicated. Basically registered Afghans have access to public and private education; but distinctions in access between documented and undocumented children are not clear cut.

In Iran, following an edict from the Supreme Leader Ali Khamenei in 2015, Afghan refugee children can now access education in Iranian schools, although this is not straightforward. Against the backcloth of Iran's restrictive and the periodic 'on-off' attitude towards Afghan access to education in the past, combined with the high cost and frequent changes in the fee levels, and other costs such as for uniforms and equipment (although the same level for Afghans and Iranians), disproportionately affect the poorer Afghans and are a deterrent to uptake.

The outcome of these constraints has been a heavy demand for the large number of autonomous Afghan schools for both refugee and undocumented children. Unregulated, they provided very poor quality education and were, in any case, frequently closed in the past by the Iranian government. These schools can now legally exist, as a result of the Supreme Leader's intervention, standards are regulated, qualifications are recognised, and fees are much lower than Iranian state schools.

In Pakistan, in principle, children of registered Afghan refugees have the right to access state schools (in addition to private schools), although, as in Iran, fees can be restrictive and this severely limits uptake. The situation of undocumented Afghan children is not clear. In the past they did not have the right to access state education and it is not clear, yet if the ACC registration process will change this.

### ***The implications are the following***

Lack of clarity of the right to education in both countries, has severely diminished attendance and thus the opportunity for Afghan children to benefit from education especially given the high illiteracy rates. The situation may be changing in both countries but will take time to produce positive outcomes.

Frequent changes to access and increases to fees disrupt access to education and attendance, thereby diminishing the value of provision.

By diminishing the ability or willingness to access education, these limitations have the effect of driving Afghan children into child labour, already a severe problem in both countries given the lack of livelihood opportunities.

Limited access to education by refugee and undocumented children has far reaching implications for Afghanistan too, limiting opportunities for sustainable return, constraining the potential for displaced Afghan youth to contribute to national development, and limiting resources for social and economic mobility.

## **2.7. INTERNATIONAL ORGANISATIONS, INGOS AND NGOS**

International organisations and a small number of INGOS and NGOs play a very significant role in the humanitarian assistance programmes in both Iran and Pakistan, with UNHCR and IOM the main intergovernmental organisations.

Less clear and somewhat ambiguous is their role in advocating or defending international protection norms and standards for the Afghan refugees and, especially for undocumented Afghans. This is politically a much more sensitive area in both countries, given that both Pakistan and Iran are very firmly committed to refugee repatriation and the periodic forced return of undocumented Afghans.

Both IOM and UNHCR have actively promoted the SSAR, although refugee repatriation barely accords with international standards of dignity and security. Neither agency has been willing to use their mandate to challenge the two countries' pressure for repatriation, nor do they appear to mediate the timing and modalities of return to better protect the repatriating refugees – except by suspension of voluntary return programmes from Pakistan during winter. Even though they acknowledge the high levels of pressure imposed by the governments, they have been unwilling to condemn the repatriation and deportation exercises. For undocumented Afghans, the intergovernmental agencies do not appear to play a role, in public at least, in advocating improvements in the standards of international protection which Iran and Pakistan provide. Without rights and protection the undocumented Afghan population is very vulnerable both within Iran and Pakistan and in Afghanistan with forced return.

More generally there does not appear to be information sharing by UNHCR and IOM with other humanitarian actors. This absence prevents the development of a collective knowledge base which potentially would help to support more concerted collective advocacy.



Whether willing or not, INGOs and national NGOs have felt unable to engage with the two governments over the denial of international protection standards for Afghans. And, also like the intergovernmental organisations, their assistance programmes are almost exclusively directed to documented/registered Afghans, not the far more vulnerable and needy undocumented Afghans. Whilst there is tacit acceptance by the governments that INGOs and NGOs do deliver some assistance to undocumented Afghans, this is inevitably pragmatic and unsystematic.

Compared to the leverage which mandated intergovernmental organisations have, the lower profile of INGOs and NGOs on rights and protection to safeguard their operations in each country is understandable; and the argument that the vulnerability of the Afghan population would be even worse without their presence is persuasive. But, it is hard to determine any effective 'protection by presence' or encouragement to the governments to improve protection standards.

### ***The implications are the following***

Clearly, conditions for both mandated duty bearing international agencies such as UNHCR, as well as INGOs and NGOs, as precept-guided advocates for the rights of displaced people, are not readily conducive to open dialogue in either Pakistan or Iran. Nevertheless, without changing their strategies for engaging with the governments, these agencies risk continuing compliance with these governments' denial of rights and their failure to maintain standards international protection for Afghan refugees and the undocumented Afghans.

The almost total lack of provision of humanitarian assistance to undocumented Afghans tacitly endorses their marginalisation and extreme vulnerability in the two countries.

Lack of information sharing by UNHCR and IOM with other humanitarian actors presents a barrier to the development of a joint understanding of the context, or of a joint advocacy process.

## **2.8. CONDITIONS IN AFGHANISTAN**

Although the focus of this study and the recommendations are on conditions for Afghans in Iran and Pakistan (both refugees and other forcibly displaced), this cannot be divorced from the wider regional situation and, in particular, the deteriorating conditions in Afghanistan. Recognising the severity of these conditions gives added impetus to the need to strengthen protection norms and standards in the two main host countries.

The security situation in Afghanistan is characterised by increased armed clashes, intensified activity by militant groups and indiscriminate violence within a context of very limited governance. Large-scale returns and intensified conflict, combined with rapid urbanisation and the lack of livelihood opportunities have severely strained the absorption capacity of local communities and overstretched local services: a situation which is barely sustainable despite significant external humanitarian and development assistance. The combination of the increased returns of Afghans and the rise of IDPs (already over 1.7 million) set the ground for an unfolding humanitarian crisis. The worsening state of security has prompted many Afghan returnees to once again flee their homeland and seek safety elsewhere either by secondary and tertiary 'forced' displacement within Afghanistan, or by becoming refugees again – reprising the process of the last few decades. In 2017, 30 out of Afghanistan's 34 provinces were affected by forced displacement.



These conditions underscore the growing secondary (refugee) displacement of Afghans manifest in the increase of arrivals of refugees in Europe mainly in 2015 and European policy response that has favoured return: this has significant implications for the safe country of return.

***The implications are the following***

Afghanistan is not a safe country of return despite the resolute commitment of Iran and Pakistan and the support of international organisations. Under these conditions, strengthening protection and adherence to human rights norms, as well as extending the reach of assistance in the host countries, are essential. At the same time the pressure for return prompts concerns about roles and responsibilities of NGO advocacy around this issue.

# SECTION 3: WAYS FORWARD AND RECOMMENDATIONS

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## 3.1. INTRODUCTION

Drawing on the detailed narrative profiles of Iran and Pakistan (Annex 1), and the Synthesis Overview (Section 2), the study now proposes a series of recommendations and ways forward aimed at helping humanitarian and development actors to improve the standards of protection for the displaced Afghans in Iran and Pakistan.

## 3.2. ADVOCACY AND OPERATIONAL CHALLENGES ON REFUGEE PROTECTION

This section makes recommendations to address the advocacy and operational challenges in interpreting and applying international norms, standards and guidelines on refugee protection by the governments of Iran and Pakistan, international organisations, and INGOs/NGOs.

### 3.2.1. STRATEGY

#### ***Recommendation 1:***

*'Soft Policy' strategies, proposed subsequently, which do not confront the challenge the limited application of international protection norms and standards 'head on', may offer better traction for incremental improvements to the protection regimes in both countries. These should emphasise a needs- and rights-based, rather than a status-based, rationale; traction may be enhanced by providing gains not only for Afghans (mainly the undocumented) but also for the host populations, in for example development-led programmes (Recommendations 6-8 below).*

This is an overarching, strategic recommendation which acknowledges the reluctance of both Iran and Pakistan to host Afghans (refugees and especially the undocumented), on their territories, underpinned by national political, security and economic concerns. These conditions are reflected, as the study has frequently pointed out, in their tough application of international protection norms and standards for refugees, the denial of (or provision of only minimal) protection for those without refugee status, combined with episodes of extensive deportation/forcible return.

Thus, Recommendation 1 recognises the fact that, in seeking to close the wide gap between the standards of protection for refugees and other Afghans, and to improve the quality of protection for those with refugee status, it seems unlikely that recourse to international legal and normative practice and status-based reasoning will offer much leverage to encourage these countries to enhance national protection guidelines and policies for Afghans in either category. Other strategies are needed which are elaborated later, although the team recognises the limited room for manoeuvre.

### 3.2.2. SOLUTION STRATEGY FOR AFGHAN REFUGEES (SSAR)

**Recommendation 2:**

*A comprehensive and independent review and evaluation of the SSAR 2012-2018 is recommended that would provide lessons learned and future protection needs, modalities and conditions for return programmes.*

**Recommendation 3:**

*It is recommended that NGOs, INGOs and international organisations, and the governments of Iran and Pakistan, should promote and strengthen the SSAR as **the comprehensive and primary instrument for the voluntary return of all Afghans**, irrespective of status, from Iran and Pakistan.*

**Recommendation 4:**

*NGOs, INGOs and international organisations, are encouraged to work with the governments of Iran and Pakistan, to **strengthen the quality of and adherence to international norms, standards and guidelines in the SSAR**, in order to ensure that: a) assisted refugee return is fully compliant with these norms and standards of voluntary return; b) spontaneous return of all Afghans (in the context of the SSAR), irrespective of status, is also fully compliant with these norms and standards of voluntary return in safety and dignity; c) undocumented Afghans in Iran, and ACC registered Afghans in Pakistan, also benefit from this programme.*

**Recommendation 5:**

*Humanitarian actors should encourage UNHCR, IOM and international donors to expand and implement more proactive investment and development-led strategies in Afghanistan under the auspices of the SSAR instrument, to ensure that return is fully sustainable.*

Despite the substantial limitations pointed out in the study, the SSAR is the only instrument currently available to manage repatriation to Afghanistan in a reasonably systematic fashion and that acknowledges protection norms and standards. With this in mind, this suite of recommendations is designed to enhance this instrument but ensure that protection standards are improved. At the same time, these recommendations firmly align with the interests of Iran and Pakistan, committed as they are to return as the only durable solution and strong supporters of the SSAR. Extending the compass of SSAR to include all returning Afghans, irrespective of status, is ambitious. Yet if successful it would reduce the vulnerability of Afghans to pressures for spontaneous return or indiscriminate deportation, make return more sustainable, whilst helping to achieve a more coherently managed and consistent process of return.

In this way the ‘soft policy’ strategy inherent in these recommendations could act as a win:win – acceding to the interests of the two host countries whilst improving the quality of protection for all returning Afghans.

Recommendation 3 centralises SSAR as the instrument of return for all Afghan displaced, whilst Recommendations 4 and 5 seek to ensure that this only happens in association with enhancing both protection standards for the returning populations and also the development-led policies to accommodate returnees in Afghanistan.

Specifically on Recommendation 4, suggested approaches are as follows.

INGOs and NGOs should ensure shared and coherent messaging of protection guidelines and development-led policies and strategies to the principal international interlocutors - the UNHCR, IOM, and governments - and encourage their independent upholding of these guidelines and policies.

With governments of Iran and Pakistan, whilst recognising the political sensitivities of expanding SSAR to include all Afghans, INGOs and NGOs, in calling for more cautious deployment of the return strategy, should advocate the win:win outcome that could be achieved in the medium term.

Advocacy for the SSAR must, at the same time, guard against it becoming another instrument legitimising involuntary repatriation and putting returnees at risk in Afghanistan – a criticism which the main report has identified. For this reason, a cautious approach to promoting SSAR with the two governments and the intergovernmental actors is recommended, (Recommendation 5) at the same time as calling for a comprehensive review of the SSAR 2012-18 (Recommendation 1).

### 3.2.3. SCALING UP DEVELOPMENT-LED AND PROTECTION PROGRAMMING

**Recommendation 6:**

*NGOs and INGOs should engage with more contemporary models of development-led programming. This could lead to more sustainable livelihoods for displaced Afghans and by supporting local host communities could encourage better acceptance of the Afghans.*

**Recommendation 7:**

*Local NGOs should be encouraged and supported in expanding their capacity to deliver protection- and rights - related assistance to Afghan refugee and undocumented populations.*

**Recommendation 8:**

*INGOs should advocate more strongly to support more capacity building for local CSO and NGO engagement with development-led programmes for refugee and undocumented Afghans.*

The Afghan displacement situation is clearly not a ‘forgotten refugee crisis’ but it is no longer a ‘priority refugee crisis’ and is among the six UNHCR priority situations that have suffered from a lack of funding. As the research for the country case studies indicates, the protractedness of the situation has rendered the assistance programme very stretched as donor commitment and funding has shifted to other regions such as in the MENA region. That the UNHCR Iran programme runs at only one third of its proposed budget is one example. The number of humanitarian actors in both countries is quite limited, the range of projects appears to be quite conventional in relation to current development-led policies and practices, and capacity building for local humanitarian actors is slender. The lack of actors engaged with protection assistance is noticeable.

Against this background, and acknowledging that reconfiguring the programmes in Iran and Pakistan rather optimistically calls for an increased injection of funds, these recommendations seek to reinvigorate key parts of the humanitarian and development assistance programmes for Afghans.

The recommendations, again, largely fit the ‘soft policy’ category. Whilst not directed to improving fundamental protection standards per se, they cover a wider compass of protection issues that include socio-economic vulnerability and marginalisation, aiming to enhance sustainable assistance for the Afghan displaced population, improve their self-sufficiency, and ensure that host communities also benefit from these initiatives. Development-led programming and the inclusion of development actors, after the MENA region experience, is now

de rigueur for protracted displacement conditions and provides the rationale for Recommendation 6. Briefly, the methodology involves moving beyond conventional, and on often not viable small scale projects, to promoting more sustainable employment opportunities for both displaced populations and their host communities. This requires, inter alia, the involvement of development actors to support mobilising small and medium-sized enterprises (SME) finance and entrepreneurship for refugees and host populations, infrastructure provision where needed, easing restrictions on business start-up ownership and the right to work for displaced populations. Joint host-displaced programming can be one variable helping to reduce friction between these two communities, thus reducing the potential for harassment and indirectly improving protection.<sup>4</sup>

Amongst the case study findings is the limited presence of local NGOs/CSOs serving the refugee and especially the undocumented Afghan population. Their engagement in protection/legal assistance to refugees and especially undocumented Afghans is limited in Pakistan, even more so in Iran. The reasons for this are not clear – whether it is lack of funding or political control for example. Given the centrality of protection concerns in these countries, Recommendation 7 seeks to remedy this situation by encouraging the expansion of NGO/CSO protection-related assistance for example: through training and capacity building in management finance and administration; developing relevant protection guidelines to the two countries’ situations; and sharing good practice.

Recommendation 8 seeks to further NGO/CSO capacity building more specifically in the development-led sector where they could play a valuable role in community-based and micro enterprise development.

### 3.2.4. UNDOCUMENTED AFGHANS IN IRAN AND PAKISTAN

#### ***Recommendation 9:***

*International actors – principally INGOs – should enhance advocacy principally but not exclusively toward the government of Iran over the need to uphold minimum standards of international protection for undocumented Afghans who currently lack any recognition and halt indiscriminate and large scale deportations. Such advocacy will likely be discrete and informal.*

<sup>4</sup> . For background introduction to the humanitarian:development nexus, see e.g.

- Zetter, R. (2014). Reframing Displacement Crises as Development Opportunities. Policy Brief prepared for the Global Initiative on Solutions, Copenhagen Roundtable, 2-3 April, 2014 <https://www.rsc.ox.ac.uk/publications/reframing-displacement-crises-as-development-opportunities>.
- Zetter, R. and Ruaudel, H. (2016) Refugees' Right to Work and Access to Labor Markets – An Assessment, KNOMAD Study, <https://www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-part-1>
- Forced Migration Review (2018) Refugee Economies, FMR 58, <http://www.fmreview.org/economies.html>.
- Forced Migration Review (2016) Thinking ahead: displacement, transition, solutions, FMR 52, <http://www.fmreview.org/solutions/contents.html>.
- World Bank. (2017). Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts, Washington DC: World Bank Group Chapters 4-6, pps 79-133
- <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=11&isAllowed=y>.
- World Bank/UNHCR (2017) The Economics of Hosting Refugees – A Host Community Perspective from Turkana, Report No: 113183, World Bank/UNHCR.
- <http://documents.worldbank.org/curated/en/695271488823317264/The-economics-of-hosting-refugees-a-host-community-perspective-from-Turkana>.
- ILO (International Labour Organisation). (2017). Work Permits and Employment of Syrian Refugees in Jordan Towards Formalising the Work of Syrian Refugees, International Labour Organization Regional Office for Arab States 2017, [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_559151.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_559151.pdf).
- Betts, A., Bloom, L., Kaplan, J., and Omata, N. (2016) Refugee Economies: Forced Displacement and Development, Oxford: Oxford University Press

**Recommendation 10:**

*INGOs and NGOs (principally in Iran) should develop and collectively agree coherent messaging to both governments to uphold protection norms and standards, offering to develop minimal protection guidelines for undocumented Afghans and halt indiscriminate and large scale deportations. Such advocacy will likely be discrete and informal.*

**Recommendation 11**

*INGOs and NGOs should extend assistance programming to undocumented Afghans and provide, between them, a portfolio of minimal protection standards and practices.*

**Recommendation 12:**

*INGOs and NGOs, principally in Iran, should advocate that the main international organisations (UNHCR and IOM):*

- *adopt a higher profile, independent position on the protection of undocumented Afghans;*
- *engage in much stronger advocacy with the government of Iran on the importance of compliance with international conventions and the need to develop protection guidelines for undocumented Afghans and responsibilities to uphold them;*
- *halt indiscriminate and large scale deportations.*
- *in addition UNHCR and IOM should be encouraged to:*
- *provide an evidence base of good practice for the protection of undocumented Afghans (drawn from the practices of all the interlocutors) to help improve standards*
- *increase (with donor support if needed) their protection capacities and resources for the undocumented population.*
- *share information and engage dialogue more systematically with INGOs and NGOs over the protection of refugees to ensure common understanding and as an eventual prelude to coordinated advocacy process.*

**Recommendation 13:**

*INGOs and NGOs should engage more systematically with international human rights organisations to provide an evidence base on compliance with protection standards and practices to help independent and public dissemination of protection issues and challenges and to support the termination of indiscriminate and large scale deportations.*

Substantial protection concerns exist in both countries, although perhaps more severe in Iran. These recommendations provide avenues to mitigate these conditions.

The government of Iran refuses to recognise as refugees many hundreds of thousands of Afghans arriving after 1997, or even affording them minimal subsidiary protection, despite the similar conditions propelling their search for asylum as those who have refugee status. The protection and livelihood conditions for undocumented Afghans in Iran constitute a very hostile environment. They experience high socio-economic vulnerability, precarity and susceptibility to deportation and forced return, conditions which most severely discriminate against women. The existential and

rights protection in exile, during the deportation process and on return to Afghanistan of all Afghans are a grave concern. Yet Iran has been intransigent in applying its harsh regime for post-1997 arrival Afghans. In this regard it is failing to comply with the basic conditions of the 1951 Convention yet it is acting with impunity.

Conditions are little better in Pakistan: the number of undocumented Afghans is fewer and the ACC registration process signals a significant, albeit still uncertain, shift in protection policies.

Moreover, the apparent lack of leverage exerted by the two main intergovernmental actors – UNHCR and IOM – has enabled Iran to sustain its especially hard line non-compliance with international norms and standards, especially with respect to deportation. In Pakistan similar ‘assent’ to these policies has been highlighted in the country profile.

The study has also found that INGOs and NGOs have, in general, also adopted a very low profile on providing protection for undocumented Afghans.

In these circumstances, and given this hard line stance of the Iranian government for more than two decades (and the government of Pakistan more recently), Recommendations 9 and 10 are challenging to say the least. They will certainly not change Iranian policy in the short term but could set in progress an incremental and slow process of reform as perhaps appears to be occurring in Pakistan. In the case of Pakistan it is difficult to really assert what changes INGO/ NGO advocacy has achieved: government policy is ambiguous - harsher with the recent push for return/ deportation/ short period of renewal for PoR but also potentially some improvement, yet to materialise though, with the ACC. These recommendations, however, recognise that continuing their behind the scenes advocacy is probably the only way forward for INGOs and NGOs. Nevertheless, in this context, it is important to record that NGOs have made significant inroads in recent years through an incremental low-key engagement strategy in Iran, for example, with the Ministry of the Interior Bureau for Aliens and Foreign Immigrants’ Affairs (BAFIA). In 2012 NGOs were not allowed to work with undocumented Afghans, but today they are able to include them in beneficiary target groups following discrete negotiation with BAFIA.

Nevertheless, these recommendations (Recommendations 9 and 10), seek to offer some possible avenues first, for enhancing the coherence and solidarity of INGOs’ and NGOs’ position with respect to this fundamental denial of basic protection. And, second, to develop advocacy strategies that INGO and NGO collaborative partners might adopt to help reduce and, possibly, in time, to reverse this adverse situation. Recognising the need to reverse particularly adverse protection conditions for women will be an important part of this task.

Mindful of the challenges of seeking to encourage governments to reform their protection policies, advocating ‘soft policy’, win:win approaches (Recommendations 3-5 above for strengthening the SSAR), could be posited as a possible quid pro quo for minimal protection standards for undocumented Afghans.

Evidence, in the main report, points to the fact that most if not all the humanitarian actors, disregard undocumented Afghans in their assistance programmes, giving strong preference to Afghan refugees. This tacitly endorses their marginalisation and vulnerability. Recommendation 12 seeks to remedy this neglect.

An Important facet of the strategy being proposed in these recommendations is added pressure on UNHCR and IOM themselves to uphold international protection standards and to more clearly oppose indiscriminate and large scale deportations. As well the recommendations seek to induce UNHCR to adopt a firmer public line with the Iranian government on the need to uphold international norms and standards of protection for all Afghans, especially the undocumented, and desist from associated deportation practices (Recommendation 11).



As in the previous suite of recommendations on the SSAR, these recommendations envisage INGOs and NGOs adding weight to, rather than superseding the responsibilities of international organisations for protection norms and standards. Their independence allows these actors to act as mediators and interlocutors with international organisations and governments.

Greater international awareness of the situation can be achieved through support for the work of human rights organisations to put protection issues more fully in the public domain, (Recommendation 12).

### 3.2.5. PROTECTION BENCHMARKS

This section addresses other protection standards, which although not dealing with what might be termed ‘existential’ protection norms and rights discussed so far, still play a significant role in the lives and socio-economic well-being of refugees and undocumented Afghans.

#### **Freedom of movement**

##### **Recommendation 14:**

*Advocating for the reduction of formal and informal restrictions on the movement of refugees and undocumented Afghans would reinstate/safeguard an important right, permitting better access to employment opportunities and strengthening the socio-economic networks and social capital of these populations.*

Iran imposes formal restrictions on movement - with no-go areas covering large parts of the country - and requires refugees to obtain consent for movement outside their locality of residence. Pakistan does not impose formal restrictions on refugee movement, but, as in Iran, there are many informal barriers such as police checks and harassment. These constraints are imposed with particular vigour on undocumented Afghans who fear detection but have no recourse to protection. For both populations, living under the fear of being deported undermines their confidence in freedom of movement, de facto restricting their movements and limiting potential access to employment opportunities. Diminishing the extent of Iran’s no-go areas seems unlikely. But tackling the informal constraints by encouraging both governments to reduce administrative requirements and improve police conduct could go a long way to improving a protection standard which is significant in the daily lives of the displaced (Recommendation 14).

#### **Right to work and other rights pertaining to livelihoods and employment**

##### **Recommendation 15:**

*International actors should facilitate a comprehensive survey of protection and other legal conditions that govern various aspects of employment and livelihoods in each country - the right to work, employment conditions and decent work, work permits, gender dimensions, ownership of immovable property and business, bank accounts – followed by advocacy for reforms and modifications would enable refugees and undocumented Afghans to better sustain their self-sufficiency.*

##### **Recommendation 16:**

*International actors should encourage the governments of Iran and Pakistan to avoid frequent and often onerous changes in regulations and conditions surrounding the right to work (e.g. eligibility, service charges, shrinking the duration of registration and renewal of permits) pertaining to refugees, registered Afghans and (where relevant), undocumented Afghans.*

In Iran the severe impact of Iran's reservation on the right to work for refugees has been documented in the country profile. But beyond these limitations, in both countries the analysis reveals how it is a raft of supplementary regulations and policies (often applying to all foreigners, not just aimed at controlling refugees), that govern how the right to work is exercised that may have an equally constraining impact on access to employment. Often developing incrementally and independently of each other, their combination impact can be significant. Although by no means the main factor consigning large numbers of refugees to the informal sector, these conditions significantly contribute to this outcome.

A comprehensive survey is proposed of the regulatory apparatus governing access to employment including the impact of the right to work norm but also reviewing the whole regulatory environment of employment in each country such as regulations surrounding the issuance and cost of work permits, access to finance, ownership of business and immovable property, rights in the work place, gender dimensions such as exploitation and harassment in the work place, exclusion from work. This would provide a comprehensive evidence base of conditions on which could then be developed into guidelines for advocacy with governments for improving access to employment. The evidence would also point to areas where INGOs/NGOs could better tailor their protection and humanitarian and development assistance (Recommendation 15).

These initiatives would be one part of a strategy, supported by other recommendations, that can assist in reducing the vulnerability and economic marginalisation of Afghan refugees, increase the scope for socio-economic mobility and the development of skills and resources that would support livelihoods in exile but also contribute to sustainable return.

The extent to which these recommendations can support better livelihood and employment opportunities for undocumented Afghans in both countries, remains an open question, given their highly restrictive stance. In the short term they seem unlikely to have traction without, for example, significant structural changes in their economies, improved economic performance, and the injection of more development assistance in both countries.

Not strictly a recommendation dealing with protection norms per se, nevertheless Recommendation 15 seeks to address factors which indirectly diminish the impact of the standard of protection.

Whilst the governments of Iran and Pakistan may have clear policy rationales for such regulatory changes, Recommendation 16 seeks to tackle some of the technical and procedural problems that, in practice, negatively impact on the right to work for Afghans. For example, the validity period of the PoC has kept both changing and shrinking; this has been a major destabilising factor that has pushed some refugees to leave the country. The high cost of work permits and their renewal in Iran is a deterrent to exercising the right to work and thus a factor pushing Afghans into the informal sector. The consequence of these changes is to heighten the insecurity of Afghans and intensify their vulnerability.

## **Education**

### **Recommendation 17:**

*Advocacy for clarifying and stabilising the rights of all Afghan children (refugees and undocumented), to education in Iran is needed to help sustain attendance and provision. Advocacy to enhance the resources dedicated to education and to ensure access by all Afghan children in both countries is essential to the delivery of short and long term socioeconomic benefits.*

The Iran case study highlighted how frequent changes to access and increases to fees diminishes the value of the right to education by disrupting provision and attendance, driving Afghan children into child labour, and thus the loss of the benefits of sustained education. The first part of this Recommendation 17 seeks to support the reversal of this situation.

More generally, education is not only a fundamental right of the child. It has far reaching implications for the country of origin, since repatriation of educated Afghans will more likely contribute to sustainable return and national development and increase potential for social and economic mobility, in a country with notably high levels of illiteracy. For the host country, a better educated population, irrespective of status, will add to the social and economic development and productivity thereby improving general well-being.

## ***Public attitudes and messaging***

### ***Recommendation 18:***

*INGO and NGOs should assist and facilitate the governments of Iran and Pakistan, and other actors, in mounting public campaigns to raise awareness of the rights of Afghan refugees and undocumented people.*

Across the world, harassment, violence (especially against women), social exclusion, exploitation, lack of awareness (or acceptance) of rights which refugees enjoy, are the daily experience of refugees. These attitudes become socialised and politicised into the mainstream of host societies and reinforce governments in denying or restricting protection and fundamental rights to refugees. As the country profiles show, this is also the experience of Afghan refugees and the undocumented in both Pakistan and Iran. Reversing these attitudes is complex, slow and often of limited success; the resistance of host countries and their populations should not prevent public messaging of the fundamental rights of refugees.

## **3.2.6. COUNTRY SPECIFIC RECOMMENDATIONS**

### **IRAN**

#### ***Recommendation 19:***

*The Iranian government should be requested to clarify the position of and, if possible, afford the possibility of citizenship for children of Afghan fathers and Iranian mothers in Iran. A parallel strategy could be to explore the potential for offering Afghan citizenship. The access to citizenship by either strategy must be with the full and voluntary consent of individual households.*

Numbering some tens of thousands of children, this legal exclusion denies a fundamental human right to citizenship, impacting the most vulnerable members of society - children. This further marginalises their social status; it excludes them now, and potentially in the future, from accessing many other rights and services. Moreover, their potential statelessness could complicate repatriation.

### **PAKISTAN**

#### ***Recommendation 20:***

*The government of Pakistan to clarify and solidify the protection rights and standards of the PoR registration of Afghans.*

The short term duration of the PoR cards, due to expire as this study is completed, needs to cease as it intentionally creates a very stressful environment for Afghan refugees, further adding to the insecurity over the protection afforded.

The minimal protection that ACC registration provides to the hitherto many hundreds of thousands of undocumented Afghans is a positive development in protection standards in the region. However, the quality and robustness of

the protection standards is unclear. Harassment, arbitrary arrest and the threat of deportation are widespread. The exercise jointly conducted with the Afghan government gives added reassurance to the government of Pakistan about the status of the refugees, yet also heightens refugees' anxieties that the registration is a prelude to coercive return, especially given the lack of clarity over the quality of protection standards.

Clarifying and reinforcing the standards of protection in both documents would enhance the security of these different categories of Afghans.

More generally in this context, better statistics of documented and undocumented Afghans and their location are also challenges that need to be addressed.

## **3.3. TRAINING**

### **3.3.1. TRAINING FOR BUILDING PROTECTION CAPACITIES**

The failure of Iran and Pakistan to adhere to international protection norms and standards for refugees and other displaced populations dominates this study. This failure appears to be systemic, it occurs at all levels of government activity, and it occurs both through ignorance and as a deliberate strategy. To start to try to reverse this climate of denial, awareness raising and practical training programmes could be provided on basic protection and human rights standards - what they are, what the responsibilities and duties are to protect; how good and bad practice can safeguard refugees, or make them more vulnerable, day to day encounters with protection issues. Although it is doubtful if either government will be receptive, commencing with 'ground level' officials would seem less threatening to national policy priorities; it is also the level where Afghans have extensive day to day experience of the lack of protection – harassment, violence, bribery, gender based violence, denial of access to the right to work. 'Refugee' protection training programmes for police officers, officials who register work permits, transit permits and so on would be a starting point.

#### **3.3.1. BUILDING LOCAL NGO CAPACITY**

The team found evidence of only a very limited number of refugee assisting NGOs/CSOs in each country. It was not possible to discern the reasons. Increasing the presence of local NGOs and CSOs serving the Afghan refugees and undocumented people is important of itself. But their presence also has an important demonstration role, raising awareness of refugee issues, helping to forge better community relations and, by extension, serving to improve local day-to-day protection for the forcibly displaced populations.

Some local NGO capacity building training and support is already offered by INGOs but this appears to be insufficient, at present at least, to stimulate expansion. A concerted effort by INGOs to encourage the foundation of local refugee-assisting NGOs/CSOs, by providing training facilities for them and working in partnership is proposed.

## **3.4. PROPOSALS FOR FURTHER RESEARCH**

The lack of contemporary research on all aspects of the situation of forcibly displaced Afghans in both Pakistan and

Iran is striking. The current study has provided a base-line on which further research on protection can be developed. Recognising that the political sensitivity of the subject matter has, and will, act as a major constraint on what research is possible nevertheless, the following priorities are recommended.

### **3.4.1. THE PROTECTION OF UNDOCUMENTED AFGHANS**

By definition only very little information exists on the large undocumented Afghan population in both countries. Whilst it is possible to conjecture how the lack of protection and status mediates their lives, we have little direct information on this. Research focused on this population - ideally a large scale quantitative survey complimented by more detailed ethnographic study – is needed to understand in more detail: the coping strategies they deploy to manage their socio-economic and protection vulnerabilities; how they perceive their current and future prospects without rights and protection; the minimum changes in law and practice that would potentially remedy the most severe aspects of rights deprivation; and thus the guidelines that could be developed to advocate their needs.

### **3.4.2. RIGHT TO WORK**

A comprehensive survey of the regulatory apparatus governing access to the right to work and employment in both countries, building on an extant study,<sup>5</sup> would help to inform advocacy and policy making. This would include, as noted above in the recommendations, survey of the whole regulatory environment of employment including regulations surrounding the issuance and cost of work permits, access to finance, ownership of business and immovable property, rights in the work place and employer's attitudes. Gender dimensions of this research would be crucial. The findings would provide the basis for the development of guidelines for advocacy with governments. The findings would also assist INGOs/NGOs to refine their protection and humanitarian and development assistance programmes related to employment and livelihoods.

### **3.4.3. GENDER, RIGHTS AND PROTECTION**

Whilst some of the documents surveyed for this study make passing reference to gender issues, detailed knowledge is lacking on how the lack of rights and very weak protection standards affect women and girls and the vulnerabilities they face. Research is needed into protection concerning personal safety, the workplace environment as well as access to other rights.

### **3.4.4. DEPORTATION AND REFUGEE RETURN: DYNAMICS AND PREFERENCES**

Deportation and repatriation feature frequently in this study because they pose the greatest violation of standards of protection for Afghans; the return of Afghans is a dominant policy objective of both countries. Yet, its unsustainability in Afghanistan, and large-scale re-entry to Iran and Pakistan demonstrate its failure. The team has found no reliable research on key facets, for example: the processes of return (voluntary, spontaneous, forced); the motivations and experiences of (re-)returnees; awareness of rights and protection. Research into these conditions and dynamics is

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<sup>5</sup> Zetter, R. and Ruadel, H. (2016) Refugees' Right to Work and Access to Labor Markets – An Assessment, KNOMAD Study, <https://www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-part-1>.



## PROTECTION FOR FORCIBLY DISPLACED AFGHAN POPULATIONS IN PAKISTAN AND IRAN

essential. First, it would help to define more clearly the protection gaps, notably but not exclusively for those who are deported, and how these might be filled. Second, if return remains the core objective of Iran and Pakistan and, increasingly the international community through initiatives such as the SSAR, then detailed analysis is needed of why it is unsuccessful, what interventions would make it more sustainable and, above all how to ensure return in dignity and safety. To this end Recommendation 2 proposes a comprehensive review and evaluation of the SSAR 2012-2018 to provide lessons learned and future protection needs, modalities and conditions for return programmes.

# ANNEX 1: COUNTRY PROFILES – EVIDENCE BASE

## AFGHANS IN PAKISTAN

### CONTEXT

Pakistan hosts the largest population of Afghans worldwide. It is also home to one of the oldest protracted displacement crises, having hosted Afghan refugees since the 1970s — the majority born in Pakistan. Historically the largest refugee crisis in the world, it was also the largest operation of the Office of the United Nations High Commissioner for Refugees (UNHCR) in the 1980s.<sup>6</sup>

Pakistan's refugee policy has been shaped by the politically loaded environment around the Afghan conflict from Cold War politics in the late 1970s and 1980s to the 'War Against Terror' in the 2000s. The 'refugee crisis' in Pakistan continued for decades oscillating between large-scale influxes when conflict peaked in Afghanistan to return phases during periods of relative remission and political pressure towards expedite repatriation.<sup>7</sup> Internal displacement in Pakistan constitutes a great additional challenge for the country.<sup>8</sup>

Beyond political and security factors and the influence of the country's powerful military establishment, that are shaping policies towards Afghans, Pakistan's economy has struggled to host such a large exiled population. The country is faced with a high population growth rate, an annual labour force growth rate<sup>9</sup> of more than 3 percent, among the highest in the world<sup>10</sup> and about a third of its population lives under the poverty line.

The prolonged nature of the exile of many Afghans in Pakistan has not led to greater protection or their integration into their host communities beyond a de facto integration in the socioeconomic sense. The blur legal framework and conflicting policies that provide different statuses have not been safeguards against the recent campaign pushing for their return to Afghanistan.<sup>11</sup>

<sup>6</sup> For years the largest refugee-hosting country, Pakistan has been supplanted by Turkey in 2016, which has been faced with the surge of refugees fleeing the Syrian conflict.

<sup>7</sup> Since March 2002, when the UNHCR's facilitated voluntary repatriation operation was launched, nearly 3.7 million Afghans from Pakistan have returned to Afghanistan—out of a total of 5.8 million who returned from Pakistan, the Islamic Republic of Iran, and other asylum countries—making it the world's largest repatriation operation, UNHCR News Stories (2015) "UNHCR Head 'Extremely Enthusiastic' after Meeting Leaders of Afghanistan," [www.unhcr.org/55561ee4530.html](http://www.unhcr.org/55561ee4530.html).

<sup>8</sup> Internal Displacement Monitoring Centre (2015) "The Global Overview 2015: People Internally Displaced by Conflict and Violence," [www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf](http://www.internal-displacement.org/assets/library/Media/201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf).

<sup>9</sup> Pakistan is the world's sixth most populous country.

<sup>10</sup> Government of Pakistan Labour Policy (2010) [www.eobi.gov.pk/announcement/labour+poilcy+2010.pdf](http://www.eobi.gov.pk/announcement/labour+poilcy+2010.pdf).

<sup>11</sup> Moonzajer, M. F., M.S. Ehsan, S.M.H. Jaffrey, H. Nazir, H. Sohail, S.M. Bukhari, B. Ahmed, M. H. Haroon (2013) "Livelihood of Afghan Refugees: The Influencer of Social and Human Capitals," [www.academia.edu/6047411/The\\_livelihoods\\_of\\_Afghan\\_Refugees\\_in\\_Pakistan](http://www.academia.edu/6047411/The_livelihoods_of_Afghan_Refugees_in_Pakistan).

## PROFILES OF AFGHANS

In 2017 the country counted nearly 1.4 million refugees of a total estimated population of 207 million.<sup>12</sup> The great majority of refugees are Afghans (1,392,600), but the country also hosts a small number of non-Afghan refugees including Somalis and Iraqis. The country also hosts another 600,000 to 1 million undocumented Afghans who reside irregularly in Pakistan but between 2016 and 2017 around 800,000 Afghans have been ‘documented’. This study is concerned with both groups.

The majority of registered Afghans reside in the Khyber Pakhtunkhwa (KP) and Baluchistan provinces bordering Afghanistan, residing in urban, semi-urban and rural areas among host communities for the great majority, while about a third live in 54 ‘refugee villages’ across the country. Refugees in refugee villages have access to humanitarian assistance and protection from UNHCR.<sup>13</sup>

Those residing in urban areas have access to services (education, health...) as long as they are able to pay but there is little or no support from the humanitarian community to the most vulnerable.<sup>14</sup>

Most Afghans in Pakistan are ethnic Pashtuns (about 85% of registered refugees with the remaining 15% of the Afghan refugees from other ethnic groups of Afghanistan, i.e. Tajik, Hazara, Uzbek, Baloch, Turkmen and others). The population is also young with some 64 percent of Afghan refugees being under 25 year old and about 74 percent of Afghan refugees being second or third generation born in the country.<sup>15</sup>

Afghans fall into various socio-economic categories; among the wealthiest are landlords and businessmen, but also refugees who fled following the Soviet invasion bringing their cattle, vehicles, money, and other personal belongings. Coming from a war-torn country, most Afghan refugees are nevertheless impoverished, illiterate, especially those who arrived after 2000, who came mostly from rural areas, with limited education, language skills (most speak Urdu or Sindhi) and few transferable skills except for farming.<sup>16</sup>

<sup>12</sup> UNHCR (2018) Global trends, Forced Displacement in 2017, [http://www.unhcr.org/5b27be547?utm\\_source=NEWS&utm\\_medium=email&utm\\_content=The%20Refugee%20Brief%20-%20External%20Subscribers&utm\\_campaign=HQ\\_EN\\_therefugeebrief\\_external\\_180619](http://www.unhcr.org/5b27be547?utm_source=NEWS&utm_medium=email&utm_content=The%20Refugee%20Brief%20-%20External%20Subscribers&utm_campaign=HQ_EN_therefugeebrief_external_180619) and Government of Pakistan (2017) “Provisional Summary Results of 6th Population and Housing Census-2017” cited in UNHCR Pakistan (2018) “Livelihood Strategy 2018-2021”, <https://unhcrpk.org/wp-content/uploads/2018/06/UNHCR-Pakistan-2018-2022-Livelihood-Strategy.pdf>.

<sup>13</sup> Estimates of the number of registered Afghan refugees living outside camps vary, and some assessments confirm an increase, mostly the result of discontinuation of food assistance in camps, UNHCR (2015) “Sixty-six session of the Executive Committee of the High Commissioner’s Programme, High-Level Segment on the Afghan Refugee Situation,” [www.unhcr.org/562a22979.pdf](http://www.unhcr.org/562a22979.pdf); in 2017 some 68% of Afghan refugees live in urban/semi urban or rural localities whereas 32% continue to live in 54 remaining refugee villages, UNHCR Pakistan (2018) “Livelihood Strategy 2018-2021”, <https://unhcrpk.org/wp-content/uploads/2018/06/UNHCR-Pakistan-2018-2022-Livelihood-Strategy.pdf>.

<sup>14</sup> This is however likely to improve as under UNHCR new strategy there will be a focus of urban outreach and community engagement, UNHCR Pakistan (2017) “Community Based Protection and Urban Outreach Strategy 2017-2019,” <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>.

<sup>15</sup> UNHCR Pakistan (2018) “Livelihood Strategy 2018-2021”, <https://unhcrpk.org/wp-content/uploads/2018/06/UNHCR-Pakistan-2018-2022-Livelihood-Strategy.pdf>.

<sup>16</sup> Segal, U., D. Elliott, and N. Mayadas (2010) “Immigration Worldwide: Policies, Practices and Trends.” Oxford: Oxford University Press; UNHCR and ILO (2012) “Rapid Assessment, Decent Work Deficit of Afghan Refugees and Host Communities in District Quetta, Balochistan,” unpublished.



## 1. LEGISLATIVE FRAMEWORK, POLICY AND PRACTICE

### a) National legislation and institutional set-up for migrants and refugees

Pakistan is not party to the 1951 Refugee Convention. In Pakistan the situation of noncitizens is governed by the Foreigners Act of 1946 and the Foreigners Order of 1951, amended in 2000 and in 2016. Although these laws contain no specific provisions relating to the protection of refugees and asylum-seekers, they are de facto covered by them. In order to manage the refugees, the government of Pakistan developed several policies in 1980 and 1984 that were subsequently replaced by the Management and Repatriation Strategy for Afghan Refugees (AMRS) 2010-2012 and later the SSAR. In 2013 the government of Pakistan drafted a national refugee legislation that outlines the legal status, rights, and obligations of refugees and applicants for refugee status by referring to Pakistan's existing domestic legal framework.<sup>17</sup> Although UNHCR listed among its key priorities for 2018 to “support the government in the process of enactment of the national refugee legislation and capacitating the structures responsible for its implementation”, as of June 2018 this law has not yet been passed.<sup>18</sup>

The Ministry of States and Frontier Regions (SAFRON) is a Federal Ministry mandated to deal with Afghan refugees.<sup>19</sup> Within SAFRON, the **Chief Commissionerate for Afghan Refugees (CCAR)** based in Islamabad and the Commissionerate for Afghan Refugees (CAR) found in each province of the country have responsibility for implementing policy and operations in the field.<sup>20</sup> All foreigners entering Pakistan, including asylum seekers are registered and documented by the **National Database and Registration Authority (NADRA)**, falling under the Ministry of Interior (MOI). The issuance of Afghan Citizen Cards [mentioned above] has been the responsibility of NADRA, the Ministry of States and Frontier Regions and the Afghan Ministry of Refugees and Repatriation with support from the International Organization for Migration (IOM) and UNHCR.<sup>21</sup>

### b) Protection apparatus for refugees and other ‘forcibly displaced people’

Historically, Afghan refugees who are registered and undocumented Afghans are two groups that have been accorded distinct rights and fall under different protection and assistance frameworks, notwithstanding that some undocumented Afghans may have valid international protection needs.<sup>22</sup> According to UNHCR many Afghan families comprise both registered refugees and others family members with no legal status as many people were no longer considered refugees after policy changes or lost their status due to their movement patterns (Afghan refugees returning to Afghanistan and coming back to Pakistan would no longer be considered refugees).<sup>23</sup>

There are currently two parallel processes that give some protective status to Afghans in Pakistan, supplemented by a third process that commenced in 2017. The first is through the possession of **Proof of Registration (PoR) cards**. Afghans with PoR cards are called ‘documented refugees’, ‘registered refugees’ or ‘registered Afghans’. These cards

<sup>17</sup> UNHCR Pakistan (2014) “Refugee Operation,” <http://unhcrpk.org/wp-content/uploads/2013/12/UNHCR-Pakistan-Refugee-Operations-Leaflet2.pdf>.

<sup>18</sup> UNHCR, Global Focus on Pakistan, page visited on 27 May 2018.

<sup>19</sup> Ministry of States and Frontier Regions, [www.safron.gov.pk/](http://www.safron.gov.pk/).

<sup>20</sup> Commissionerate for Afghan Refugees official website, <http://kpkcar.org/carnewebsite/CAR/index.php/page/about-us>.

<sup>21</sup> UNHCR (2017) “UNHCR welcomes registration of a million undocumented Afghans in Pakistan”, [www.unhcr.org/afr/news/briefing/2017/7/5971c2284/unhcr-welcomes-registration-million-undocumented-afghans-pakistan.html](http://www.unhcr.org/afr/news/briefing/2017/7/5971c2284/unhcr-welcomes-registration-million-undocumented-afghans-pakistan.html).

<sup>22</sup> The rights of and protection and assistance frameworks for undocumented Afghans are not entirely clear.

<sup>23</sup> UNHCR (2017) “UNHCR welcomes registration of a million undocumented Afghans in Pakistan”, [www.unhcr.org/afr/news/briefing/2017/7/5971c2284/unhcr-welcomes-registration-million-undocumented-afghans-pakistan.html](http://www.unhcr.org/afr/news/briefing/2017/7/5971c2284/unhcr-welcomes-registration-million-undocumented-afghans-pakistan.html)

(that also include the collection of biometric information) are issued by the government of Pakistan.<sup>24</sup> PoR cards were given to 2.15 million Afghans in 2007 granting them temporary legal status to stay in the country until 2009. At the end of 2009, PoR cards were extended a first time for 3 years to 2012, and a second time to 2015. From 2016, short-term extensions became the norm starting with back-to-back 6-month extensions only, and then even shorter-term extensions of just 1 and 3 months. In January 2017, a 3-month extension to March 2017 was eventually followed by an extension to the end of 2017. After three months of uncertainty between January and March 2018 with conflicting reports about the length of the extension, at the end of March, cards were reportedly extended until the end of June 2018.<sup>25</sup> On 2nd of July, the interim government extended the validity of the PoR cards for 3 months until 30th September leaving it to the newly elected government to make further decision over the status of Afghans in Pakistan. Despite the vital importance of these extensions of protection to the Afghan refugees, the lack of permanency of the PoR inevitably impairs the quality of protection and creates insecurity and uncertainty amongst the Afghan refugees as to their future prospects in exile.

Refugee related issues were not been prioritized in the election campaign. Whilst no major shift in policy was expected with the election outcome, nevertheless, a slightly more relaxed regime seems to have ensued under the new Prime Minister. A sixth extension of the PoR until June 2019 took place in early 2018.<sup>26</sup> A further development in protection was a still-disputed Prime Ministerial decision in September 2018 to grant citizenship, inter alia, to people born in Pakistan of Afghan parentage.<sup>27</sup> If enacted this clearly has significant implications for an estimated up to 60% of the Afghan population born in exile in Pakistan over many decades. And, noted below, there was also a relaxation in restrictions on holding bank accounts.

Despite some incidents at the end of 2016 prompted by the authorities, given that the bulk of the population remains sympathetic to Afghans residing in Pakistan, anti-refugee rhetoric was absent from the political campaign.<sup>28</sup> Furthermore, in KP or Baluchistan, the provinces where the majority of the Afghan live, the local political parties have remained supportive to Afghan refugees and sustain close relations with Afghanistan.

Up until March 2018, some four PoR Card Modification (PCM) centres existed in the country, located in respectively Peshawar, Quetta, Karachi and Rawalpindi to support the modification/replacement of existing cards, the registration of new born children up to the age of five, the provision of PoR cards to registered children who have reached five years of age and who are now entitled to their own cards, as well as the issuance of birth certificates to children under the age of 18 years old.<sup>29</sup>

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<sup>24</sup> Refugees have lived in Pakistan without legal documents since 1978. It was only during the 2006/2007 registration process that the government began to issue PoR cards. In 2010, Pakistan also conducted the temporary registration of unregistered family members of PoR cardholders, Human Rights Commission of Pakistan (2009) "Afghan Refugees in Pakistan: Push Comes to Shove," [www.operationspaix.net/DATA/DOCUMENT/4816~v~Afghan\\_Refugees\\_in\\_Pakistan\\_\\_\\_Push\\_Comes\\_to\\_Shove.pdf](http://www.operationspaix.net/DATA/DOCUMENT/4816~v~Afghan_Refugees_in_Pakistan___Push_Comes_to_Shove.pdf); Abbas Khan M. (2014) "Pakistan's national refugee policy", Forced Migration Review 46, [www.fmreview.org/sites/fmr/files/FMRdownloads/en/afghanistan/khan.pdf](http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/afghanistan/khan.pdf).

<sup>25</sup> The latest extension was decided by the Government's Federal Cabinet in its meeting of 20 February 2018, pending SAFRON submission of a Repatriation plan at which time a further extension will also be considered, UNHCR and Government of Pakistan (2018) "Pakistan: Afghan Refugees Registration Update- March 2018", <https://reliefweb.int/sites/reliefweb.int/files/resources/63308.pdf>

<sup>26</sup> DAWN (2018) "Cabinet extends stay of Afghan refugees for two months", (01.02.2018) <https://www.dawn.com/news/1386488>

<sup>27</sup> Tehreek-e-Insaf (PTI) chief Imran Khan won the July 2018 elections and became Pakistan's new Prime Minister.

<sup>28</sup> VoA (2018) "Pakistan PM to Offer Citizenship to Afghans Born in Pakistan", (16.09.2018), <https://www.voanews.com/a/pakistan-pm-to-offer-citizenship-to-afghans-born-in-pakistan/4574015.html> and DAWN (2018) "Opposition attacks PM's statement on citizenship for children of refugees", (25.09.2018), <https://www.dawn.com/news/1434933/opposition-attacks-pms-statement-on-citizenship-for-children-of-refugees>

<sup>29</sup> The Lahore PCM centre suspended its activities and closed down in March 2018, UNHCR and Government of Pakistan (2018) "Pakistan: Afghan Refugees Registration Update- March 2018", <https://reliefweb.int/sites/reliefweb.int/files/resources/63308.pdf>.

The cards act as proof of legal residence and recognize the card holders' status as "Afghan citizens temporarily residing in Pakistan". In principle, the cards should protect them against deportation, arbitrary arrest, and extortion and ensure their freedom of movement. Although access to some banking services may be possible, PoR cards do not legally confer other rights (for example, the ability to open a bank account or obtain a driving license). As of March 2018, some 1.39 million Afghans held a PoR card.<sup>30</sup>

The second means to be granted a protected status concerned individuals recognized as refugees at the outcome of the UNHCR's RSD process when they and their family members were issued Refugee Identity Cards (RIC), valid for 12 months and renewable upon expiry. Like the PoR card, the RIC offers temporary stay in Pakistan and protects against any forcible return to the country of origin on the understanding that recognised refugees under UNHCR's mandate will be provided with an appropriate durable solution.<sup>31</sup> There is however little information other than limited UNHCR data over the scale and scope of the UNHCR RSD and a limited number of Afghans appear to have been recognised as refugees as the outcome of this process<sup>32</sup>, implying that those who are not recognised become de facto undocumented. Furthermore, UNHCR has reportedly stopped conducting RSD from September 2016 onwards given that RSD was mainly resettlement oriented (it was a prerequisite for resettlement that essentially came to an end around the same time except for a few extremely vulnerable and urgent cases). UNHCR has, rather, started merged or accelerated processes for all PoR card holders for whom RSD was skipped when resettlement processes were carried out. In 2016, UNHCR Pakistan decided to transition the strategic direction of its protection work in the country, disengaging from the Individual Case Management (RSD) to increased 'enhanced registration', community based protection and urban outreach.<sup>33</sup> Enhanced registration certificates protect Afghans against refoulment but those in possession of such certificates remain asylum seekers for one year extendable – and such certificates do not provide refugees status. It was initially not clear who could apply for enhanced registration and whether PoR card holders were eligible to apply; given that it has since been clarified that the PoR card is a stronger document than the enhanced registration certificate, PoR card holders should therefore not apply. On the other hand, ACC holders (see next paragraph) and undocumented Afghans can apply for enhanced registration certificate and get HCR protection which is valid for one year and extendable.

'Undocumented Afghans' are those who do not possess PoR cards. They include persons who arrived after 2007 or remained unregistered when the government closed the registration process, but also Afghans who repatriated to Afghanistan under the UNHCR assisted voluntary repatriation program and subsequently returned to Pakistan for a variety of reasons.<sup>34</sup>

Following three years of consultations and ruling of higher, superior courts of Pakistan, in July 2017 the governments of Afghanistan and Pakistan and IOM/UNHCR agreed to document this population in a comprehensive database to establish their identities. This is now a third protection process.

<sup>30</sup> UNHCR (2018), "Pakistan: Afghan Refugee Update", <https://data2.unhcr.org/en/documents/download/63011>.

<sup>31</sup> UNHCR Pakistan (2012) "Information Leaflet for Asylum-Seekers in Pakistan," <http://unhcrpk.org/wp-content/uploads/2012/09/Asylum-Seekers-leaflet-English.pdf>

<sup>32</sup> As of 2017 there were reportedly 3,791 Afghan mandate refugees in Pakistan, UNHCR Pakistan (2017) "Community Based Protection and Urban Outreach Strategy 2017-2019," <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>.

<sup>33</sup> UNHCR Pakistan (2017) "Community Based Protection and Urban Outreach Strategy 2017-2019," <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>.

<sup>34</sup> Many undocumented Afghans are part of the family of Proof of Registration (PoR) cardholders. This population does not per se fall under the UNHCR's mandate, but is nevertheless the source of a constant flow of asylum applications, UNHCR Pakistan (2015) "2015–2017 Protection Strategy," <http://unhcrpk.org/wp-content/uploads/2013/12/2015-2017-Protection-Strategy-External.docx>.

Afghans, under this new scheme, receive Afghan Citizen Cards (ACC), biometric cards that aim to provide them legal protection from arbitrary arrests, detention or deportation under Pakistan’s Foreigner’s Act allowing them to remain in Pakistan until issuance of passports by the government of Afghanistan and the regularization of their stay in Pakistan through visa applications.<sup>35</sup> The move to legalize the stay of undocumented Afghans for an indefinite/unspecified period but without granting them refugee status was part of the 20-point National Action Plan (NAP) instituted in late 2014 to curb terrorism and extremism in the country. Under the plan, the government set itself the target to document around one million Afghan citizens, estimated to be staying in Pakistan without valid documents by January 2017. The decision to document the undocumented Afghans was also subsequently included into the Government’s Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals beyond 2015, adopted by the Federal Cabinet of Pakistan in February 2017.<sup>36</sup> The registration process was initiated in July-August 2017 and some 800,000 undocumented Afghan nationals had been documented across the country during the 6 – month campaign. At the end of March 2018, some 275,000 cards had been distributed to Afghan nationals.<sup>37</sup> Even if the ACC cards have no expiry date, unlike the POR cards, to all intents and purposes, they have been treated as interchangeable. As a result, in July 2018 announcements on the extension of POR cards have also referenced ACC cards.<sup>38</sup>

### **c) Protection and assistance benchmarks for refugees and other ‘forcibly displaced people’**

**Freedom of movement.** While the 1973 Constitution explicitly provides only Pakistani citizens with the freedom of movement,<sup>39</sup> the general rights of freedom of movement and choice of residence extend to non-nationals under the International Covenant on Civil and Political Rights to which Pakistan has been party since 2008. In practice, the government imposed no restrictions on the movement or residence of registered Afghans with PoR cards, and historically refugees have been relatively free to settle wherever they wish.<sup>40</sup> However, from the late 2000s, forcibly displaced people, regardless of their nationality and the documents they possessed, were reportedly often required to pay bribes to police officers at checkpoints.<sup>41</sup> As Pakistan has put more drastic measures in place from 2015 to accelerate the repatriation process, including by constantly reducing the lapse of time during which Afghan refugees are entitled to stay in Pakistan and through coercive and violent actions [as described further below], those remaining in the country have faced harassment, imprisonment, and threats of deportation. Living under the fear of being deported has undermine their freedom of movement in practice as Afghans have restricted movements outside the refugee villages or their homes, thereby also limiting access to better-paying economic opportunities.

<sup>35</sup> A committee composed of members of both governments was formed to develop the technical modalities for this registration and documentation exercise, “Conclusions on the 25th Tripartite Commission Meeting,” <http://unhcrpk.org/wp-content/uploads/2013/12/Conclusions-of-the-25th-Tripartite-Commission.pdf>.

<sup>36</sup> UNHCR (2017) “Conclusions of the 29th Tripartite Commission Meeting between the Government of the Islamic Republics of Afghanistan and Pakistan and UNHCR”, <https://data2.unhcr.org/en/documents/download/61184>.

<sup>37</sup> DAWN Group of Newsletter (2018) “Afghans Get Another Extension in Stay,” <https://www.dawn.com/news/1398363>.

<sup>38</sup> Information provided by ADSP.

<sup>39</sup> Article 15 of the Constitution of the Islamic State of Pakistan, [www.na.gov.pk/uploads/documents/1333523681\\_951.pdf](http://www.na.gov.pk/uploads/documents/1333523681_951.pdf).

<sup>40</sup> Grare, F. and W. Maley (2011) “The Afghan Refugees in Pakistan,” Fondation pour la Recherche Stratégique, Middle East Institute, [www.refugeecooperation.org/publications/afghanistan/pdf/09\\_grare.pdf](http://www.refugeecooperation.org/publications/afghanistan/pdf/09_grare.pdf).

<sup>41</sup> United States Committee for Refugees and Immigrants (2009) “World Refugee Survey - Pakistan,” <http://www.refworld.org/docid/4a40d2af1cc.html>.

**Right to work.**<sup>42</sup> There are some ambiguities in the Constitution regarding the rights to work to refugees and migrants in Pakistan. In its Article 18, the Constitution only affords Pakistan's citizens the right to enter into any lawful profession or occupation, and to conduct any lawful trade or business, while Article 17 stipulates that only citizens enjoy the right of association. The 1946 Foreigners Act, prohibits the hiring of "a person who has no permission to stay in Pakistan."<sup>43</sup> However, because the Constitution protects inalienable rights of both citizens and foreigners, most of the country's labour laws are applicable to foreigners including refugees working in Pakistan who also have the right to access justice for any employment agreement violation.<sup>44</sup> A 1997 circular by the Ministry of Interior clarified that registered Afghan citizens living in Pakistan "have been subject to Pakistani labour and employment laws, and were legally authorized to work in the country."<sup>45</sup> Furthermore, in 2008, Pakistan ratified the International Covenant on Economic, Social and Cultural Rights, which recognises a general human right to work.<sup>46</sup>

There is no clear policy in Pakistan regarding work permits and in principle, the PoR card is sufficient proof for performing any lawful occupation – meaning that PoR cards act as work permits. After the withdrawal of food and nonfood support in 1995, the government of Pakistan has given implicit permission to Afghan refugees to access the labour market; it even began issuing temporary driving licenses and other facilitating measures to enable refugees to support themselves. Some Afghans have established businesses in different parts of the country. While there is no precise data available on numbers and profiles, the majority of those running business are registered Afghans (i.e. PoR card holders) who can more easily take shops and places on rent.

Although in theory Afghans who are working out of camps would be liable for the payment of income taxes<sup>47</sup>, in practice tax is not taken. Afghans were, until recently, not allowed to open bank accounts and are mainly doing business in cash. Afghan refugees usually own small businesses (i.e. general stores, cloth business / shops, carpet business / shops, transportation, honey bee etc) in rural and/or urban areas. As all these types of businesses are not required to be registered with government of Pakistan, refugees are allowed to take shops on rent from local owners and pay rent on monthly basis. Those who wish to do business/transactions via banking channels usually opened accounts in a local person's name (needed to be partner in all cases). As part of a national crackdown on money laundering, a Prime Ministerial decision in February 2019 allowed registered refugees to open and maintain bank accounts in Pakistan.<sup>48</sup> This should help to Afghan refugees to develop formal sector business and employment.

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<sup>42</sup> Zetter, R. and H. Ruauudel (2016) "Refugees' Right to Work and Access to Labor Markets-An Assessment- Country Case Studies (Part 2), [www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-country-case-studies-part-2](http://www.knomad.org/publication/refugees-right-work-and-access-labor-markets-assessment-country-case-studies-part-2).

<sup>43</sup> Article 13 B, Pakistan: Foreigners Act, 1946, Foreigners (Amendment) Ordinance, 2000.

<sup>44</sup> The following articles also apply to all persons in Pakistan, without distinction between citizen and noncitizen: Article 11 prohibits slavery, forced labour, trafficking in persons, and child labour. Under Article 37 (e) the State shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and ensuring the provision of maternity benefits for women in employment; and Article 38 (c) provides for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means, and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and ensuring the provision of maternity benefits for women in employment; and Article 38 (c) provides for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means.

<sup>45</sup> UNHCR and ILO (2013) "Policy and Legal Framework Analysis for Afghan Refugees Access to Decent Work in Pakistan," Research Study, unpublished.

<sup>46</sup> UNHCR and ILO (2013) "Policy and Legal Framework Analysis for Afghan Refugees Access to Decent Work in Pakistan," Research Study, unpublished.

<sup>47</sup> They are immune from taxes for business undertaken within their designated camps.

<sup>48</sup> DAWN (2019) "Afghan refugees allowed to open bank accounts", (26.02.2019), <https://www.dawn.com/news/1466055>

In principle, Afghans irrespective of their status cannot formally hold immovable property or own land, and are only allowed to rent land or property. In practice this legal impediment is an obstacle for Afghan workers to run big businesses and officially they need a Pakistani partner whose name is required in every step of the process. In practice however the law appears to have been bypassed- a fact tolerated by the authorities. As a result many refugees have managed to acquire property through informal agreements with the local communities. This however exposes them to a number of vulnerabilities as they cannot access legal recourse in case disputes arise as was made evident during the 2016 large-scale repatriation when many returning refugees had to sell their properties at loss.<sup>49</sup>

In practice a majority of Afghans have struggled to find suitable and sustainable employment opportunities because of their status [as non-nationals] and due to the lack of trust in Afghans generally displayed by some local employers. Further administrative requirements such as the possession of a Computerized National Identity Card (CNIC) and a national tax number further limit their access to the formal job market.<sup>50</sup> The majority of Afghans have therefore been constrained to work in the informal sector for daily wages, with marginal income in the agriculture, transport, construction, and mining sectors.<sup>51</sup> Wages and contractual matters concerning Afghan refugees are not transparent and are often subject to the employer's discretion. The lack of involvement of the Department of Labour or the Ministry of Overseas Pakistanis and Human Resource Development and the absence of coordination between these ministries and SAFRON and the CAR on Afghan workers' affairs weakens further their social status.<sup>52</sup> Their marginalised status and the pressure to meet their economic needs push Afghan workers to accept poor work conditions.<sup>53</sup> But beyond the misunderstood status of Afghans (plus differences between the status types) other factors can facilitate or restrain their access to the labour market. For instance, Afghans with wider networks of social and human capital—such as the Pashtuns, the largest ethnic group among Afghan refugees in Pakistan, who are originally linked with the local Pakistani Pathans—have easier access to the labour market and are empowered to diversify their livelihood strategies. On the other hand, those without human or social capital, especially women, are more prone to be involved in underpaid jobs and to become impoverished, especially if facing shocks.<sup>54</sup> Being illiterate and innumerate and lacking 'agency' makes them more prone to accept low wages, which are often delayed or sometimes not paid.<sup>55</sup>

**Education.** The Afghan population in both Pakistan and Iran is young, with second and third generations of children born into displacement. In Pakistan, school attendance rate of Pakistani children is among the lowest in the world, contrasting greatly with Iran. Two education systems exist in parallel in Pakistan: the government provides free academic education at state schools while religious education is the responsibility of clerics at

<sup>49</sup> UNHCR Pakistan (2018) "Livelihood Strategy 2018-2021", <https://unhcrpk.org/wp-content/uploads/2018/06/UNHCR-Pakistan-2018-2022-Livelihood-Strategy.pdf>.

<sup>50</sup> UNHCR Pakistan (2018) "Livelihood Strategy 2018-2021", <https://unhcrpk.org/wp-content/uploads/2018/06/UNHCR-Pakistan-2018-2022-Livelihood-Strategy.pdf>.

<sup>51</sup> UNHCR and ILO (2012) "Rapid Assessment, Decent Work Deficit of Afghan Refugees and Host Communities in District Quetta, Balochistan," unpublished.

<sup>52</sup> UNHCR and ILO (2013) "Policy and Legal Framework Analysis for Afghan Refugees Access to Decent Work in Pakistan," Research Study, unpublished.

<sup>53</sup> UNHCR and ILO (2013) "Policy and Legal Framework Analysis for Afghan Refugees Access to Decent Work in Pakistan," Research Study, unpublished.

<sup>54</sup> Moonzajer, M. F., M.S. Ehsan, S.M.H. Jaffrey, H. Nazir, H. Sohail, S.M. Bukhari, B. Ahmed, M. H. Haroon (2013) "Livelihood of Afghan Refugees: The Influencer of Social and Human Capitals," [www.academia.edu/6047411/The\\_livelihoods\\_of\\_Afghan\\_Refugees\\_in\\_Pakistan](http://www.academia.edu/6047411/The_livelihoods_of_Afghan_Refugees_in_Pakistan).

<sup>55</sup> Mohmand, R. S. (2010) "The Saga of Afghan Refugees in Pakistan," [Fondation pour la Recherche Stratégique, Middle East Institute, www.refugeecooperation.org/publications/afghanistan/pdf/06\\_mohmand.pdf](http://Fondation.pour.la.Recherche.Strat%C3%A9gique.Middle.East.Institute/www.refugeecooperation.org/publications/afghanistan/pdf/06_mohmand.pdf).

mosques.<sup>56</sup> In principle, children of registered Afghan refugees have the right to access public schools although fees can be restrictive for some Afghan families. Private (or religious) education is also available to registered Afghans. Children can access primary education in schools opened particularly for Afghan refugees in refugee villages and slums. Afghans who reside in urban settlements reportedly do not have access to public schools and must send their children to private schools. In addition, each public college and University get reserved seats under quota system for Afghan refugees that allows a good number of students to get free education across the country and in Khyber Pakhtunkhwa province in particular. Despite some of these policy inflections, the great majority of displaced children are out of school (80% of refugee children with percentages even higher for girls because of socio-cultural factors) resulting in extremely low literacy rate especially among women and girls. This does not only impact the Afghan refugee community in Pakistan but has far reaching implications in Afghanistan too, restricting opportunities for sustainable return, stifling the vast potential of Afghan refugee youth and limiting national progress in education and development.<sup>57</sup>

**Health.** Registered refugees are allowed access to health services while undocumented Afghans also have access provided they can pay for it. There is a high level of infant and maternal mortality rate among the Afghan population partly because births, due to the lack of refugee cards as well as other factors such as language barriers, mostly take place at home in unhygienic and unsuitable conditions in the event of complications.<sup>58</sup>

#### d) Durable solutions policy framework

For the government of Pakistan, local integration (obtaining permanent legal status) is not a durable solution for refugees and resettlement options are extremely low, especially since 2016, being only available to highly vulnerable / emergency or urgent cases comparing to previous years where more resources were dedicated to resettlement and higher numbers of cases were considered.<sup>59</sup> The return of Afghans to their country of origin has been and remains the government's preferred solution.<sup>60</sup> However, the persistence of insecurity following the withdrawal of NATO's International Security Assistance Force, combined with dire economic conditions and a shortage of livelihood opportunities in Afghanistan, remain the main impediments to the sustainable voluntary repatriation of Afghans.<sup>61</sup>

In 2012, the Islamic Republics of Afghanistan, Iran, and Pakistan, with the support of UNHCR, developed the **Solution Strategy for Afghan Refugees (SSAR)**, as a quadripartite consultative process endorsed by the international community at an international conference in Geneva, to support voluntary repatriation, sustainable reintegration and assistance to host countries. To this day, the SSAR remains the overarching comprehensive regional framework for solutions to Afghan displacement.<sup>62</sup> The SSAR, Phase 2 (2015–17), provides a framework for cooperation between humanitarian and development actors to address the needs of Afghan refugees and

<sup>56</sup> UNHCR (2016) Refugee Education Strategy 2016-2018, <https://unhcrpk.org/wp-content/uploads/2018/06/Pakistan-Education-Strategy-2016-18.pdf>.

<sup>57</sup> UNHCR and NRC (2015) "Breaking the Cycle: Education and the Future for Afghan Refugees", [www.unhcr.org/nansen/breaking\\_the\\_cycle\\_report\\_2015.pdf](http://www.unhcr.org/nansen/breaking_the_cycle_report_2015.pdf).

<sup>58</sup> DAWN (2017) "New registration campaign: Afghan refugees hope for a better tomorrow", <https://www.dawn.com/news/1352248>.

<sup>59</sup> As a result, UNHCR' partners have reportedly stopped identification and referring cases for resettlement.

<sup>60</sup> Tyler, D. (2014) "Reframing Solutions for Afghan Refugees", *Forced Migration Review* 46, [www.fmreview.org/en/afghanistan/tyler.pdf](http://www.fmreview.org/en/afghanistan/tyler.pdf).

<sup>61</sup> Moonzajer, M. F., M.S. Ehsan, S.M.H. Jaffrey, H. Nazir, H. Sohail, S.M. Bukhari, B. Ahmed, M. H. Haroon (2013) "Livelihood of Afghan Refugees: The Influencer of Social and Human Capitals," [www.academia.edu/6047411/The\\_livelihoods\\_of\\_Afghan\\_Refugees\\_in\\_Pakistan](http://www.academia.edu/6047411/The_livelihoods_of_Afghan_Refugees_in_Pakistan).

<sup>62</sup> The SSAR is available at: [www.unhcr.org/afghanistan/solutions-strategy.pdf](http://www.unhcr.org/afghanistan/solutions-strategy.pdf).

identify and implement lasting solutions for refugees, while providing assistance to the host communities. The Refugee Affected and Hosting Areas (RAHA) programme is a key element of the SSAR that provide enhanced support to host communities and promote peaceful co-existence.

At the national level, while the main priority of the **Management and Repatriation Strategy for Afghan Refugees in Pakistan (MRSAR)** for 2010–12 was to increase voluntary repatriation, it acknowledged that “Afghan refugees had a stabilizing effect on labour market in Pakistan.” The strategy, among other elements, considered the possibility of alternative stay arrangements for PoR cardholders. As a way to manage investment and employment matters related to the Afghan population for the period 2010–15, it suggested providing 150,000 visas and work permits to skilled and unskilled labourers, entrepreneur permits,<sup>63</sup> and student permits. It also proposed naturalization for Afghan female heads of household while discouraging any illegal employment.<sup>64</sup> However, while some work permits and student visas may have been issued, the MRSAR provisions have by and large not been implemented.

Additionally, in February 2017, the Federal Cabinet of Pakistan approved the **Comprehensive Policy on Voluntary Repatriation and Management of Afghan Nationals** that provides for temporary management arrangements depending on the profiles and the needs of the remaining refugee population. It specifically mentions the following: (i) extension of the validity of POR cards for Afghan refugees and of the Tripartite Agreement until the end of 2017; (ii) implementation of a flexible visa regime for different categories of Afghans, based on their profiles and needs; (iii) adoption of the National Refugee Law; (iv) registration of undocumented Afghans contingent upon mutual accountability between the Governments of Afghanistan and Pakistan; and (v) regulated border management.<sup>65</sup>

### **e) Impact of the political and security context in Afghanistan and Pakistan on Afghan refugees and other ‘forcibly displaced’**

The status and treatment of Afghans are directly correlated to Pakistan’s political agenda that prioritise returns which in turn has been influenced by the country’s relationship with Afghanistan and the United States. Pakistan’s policies and attitude towards Afghans hardened drastically from 2015 in the wake of the December 2014 deadly attack by the Pakistani Taliban on the Army Public School in Peshawar that killed 145 people, including 132 children, in which the alleged participation of Afghan refugees was never clearly proven. This event compelled the Pakistani government to include “a comprehensive policy to deal with the issue of Afghan refugees” in the 2015 NAP on Counter-Terrorism.<sup>66</sup> The second-to-last of the 20 points plan related to “the repatriation of Afghan refugees” [while also referring to the plan to register the 1 million or so undocumented Afghans in view of their

<sup>63</sup> Refugees who have invested more than 5 million rupees (about US\$47,300) in productive business should be allowed to continue their businesses and may be given work permits for the specific period, while any Afghan individual or group wishing to bring investment into Pakistan of more than 50 million rupees (about US\$473,700) may be encouraged to do so.

<sup>64</sup> Other measures included that “All industrial establishments employing Afghan labour should report them for registration; and all businesses run by Afghans like restaurants, shops, and vendors etc. are to be registered and monitored;” Moonzajer, M., M.S. Ehsan, S.M.H. Jaffrey, H. Nazir, H. Sohail, S.M. Bukhari, B. Ahmed, M. H. Haroon (2013) “Livelihoods of Afghan Refugees: The Influencer of Social and Human Capitals,” p. 30, [www.academia.edu/6047411/The\\_livelihoods\\_of\\_Afghan\\_Refugees\\_in\\_Pakistan](http://www.academia.edu/6047411/The_livelihoods_of_Afghan_Refugees_in_Pakistan).

<sup>65</sup> UNHCR Pakistan (2017) Community Based Protection and Urban Outreach Strategy 2017-2019, <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>.

<sup>66</sup> The 2014 NAP makes reference to ‘forcibly displaced persons’ with a focus on the rehabilitation of IDPs and the repatriation or assimilation of refugees.



return by the end of 2017].<sup>67</sup> The NAP did not explicitly distinguish between registered, ‘protected’ refugees and undocumented Afghans, causing indiscriminate action against both groups.<sup>68</sup> The growing hostility manifested in several ways, resulting in both soft and hard pressure. The most obvious soft pressure was the change in the PoR cards extensions policy from long-term extensions of several years to short term extensions of 6 and even 3 months, which significantly increased pressure and the sentiment of anxiety of Afghan refugees.

The securitisation of refugees in Pakistan triggered by the new policy was further reinforced in 2016 and 2017 in light of the Afghanistan’s rapprochement with India and as a result of pressure tactics by the United States.

While Afghans have generally been accepted by host communities over the years, in the last two quarters of 2016 they faced harassment and negative sentiments were developed against them coinciding with the significant deterioration of relations between the two countries, including border tensions, fuelled by the media of both countries that portrayed relations in negative way. The deterioration of the protection environment for Afghans was felt in several areas of Pakistan, particularly in Khyber Pakhtunkhwa and Punjab provinces, with decreased acceptance by host communities and local authorities and loss of economic opportunities.

From 2016, abuses against Afghans from the Pakistani authorities became more widespread and violent in what has been called a ‘campaign of coerced repatriation’ which appears to have targeted Afghans indiscriminately – irrespective of their status. Some organisations nevertheless claimed that registered refugees were somewhat more protected from deportation because of the UNHCR’s protective role. The most common reported abuses to force the return of Afghans took the form of deportation threats from Pakistani government officials, including claims that expired PoR cards were grounds for deportation, widespread harassment and extortion by the police, unlawful use of force, detention of family members, police raids on refugee shelters and homes in Afghan neighbourhoods and refugee villages, threats of eviction or actual evictions and house demolitions, arbitrary arrest and or detention by intelligence agencies. Afghan workers have also been targeted by the police who looted or destroyed a number of shops and businesses, including those of PoR cardholders, arresting and beating some shop owners. This left many unable to work, threatening their livelihood and exposing them to destitution.<sup>69</sup>

Operations against Afghans also unleashed long-term embedded resentment and anti-Afghan sentiment in host communities, particularly in KP where Afghans are blamed for crime, unemployment and persistent militancy.<sup>70</sup> Hostile behaviour therefore extended at least temporarily to the wider Pakistani communities with for instance Pakistani landlords doubling or tripling rent or refusing to extend rental agreements for apartments and businesses occupied by Afghan tenants.<sup>71</sup>

<sup>67</sup> British & Irish Agencies Afghanistan Group and the European Network of NGOs in Afghanistan (2018) “Return and displacement in Afghanistan” Discussion Paper, <https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/Return%20and%20displacement%20in%20Afghanistan%20-%20March%202018.pdf>.

<sup>68</sup> Roerhs, C. (2015) “The Refugee Dilemma: Afghans in Pakistan between Expulsion and Failing Aid Schemes,” Afghanistan Analysts Network, <https://www.afghanistan-analysts.org/the-refugee-dilemma-afghans-in-pakistan-between-expulsion-and-failing-aid-schemes/>.

<sup>69</sup> Human Rights Watch (2015) “‘What Are You Doing Here?’ Police Abuses against Afghans in Pakistan,” <https://www.hrw.org/report/2015/11/18/what-are-you-doing-here/police-abuses-against-afghans-pakistan>.

<sup>70</sup> The majority of Afghans reside in Khyber Pakhtunkhwa (KP) province, where the refugee population is still growing by 83,000 each year. This province has also consistently showed, together with the Federally Administered Tribal Areas, the lowest human development indicators and the highest youth unemployment; Roerhs, C. (2015) “The Refugee Dilemma: Afghans in Pakistan between Expulsion and Failing Aid Schemes” Afghanistan Analysts Networks, <https://www.afghanistan-analysts.org/the-refugee-dilemma-afghans-in-pakistan-between-expulsion-and-failing-aid-schemes/>.

<sup>71</sup> British & Irish Agencies Afghanistan Group and the European Network of NGOs in Afghanistan (2018) “Return and displacement in Afghanistan” Discussion Paper, <https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/Return%20and%20displacement%20in%20Afghanistan%20-%20March%202018.pdf>.

## 2. MAPPING OF INTERNATIONAL AND NATIONAL PROTECTION ACTORS

### a) Engagement of international actors

**UNHCR** remains the main international organisation concerned with the assistance and protection of refugees in Pakistan. UNHCR's involvement in Pakistan started in the late 1970s and the organisation established a permanent country office in 1980. With the rapid growth of refugee numbers, the scope of UNHCR's role and the range of its activities expanded. In the absence of a national legal framework for refugee status determination, for a significant number of years the UNHCR has conducted RSD under its mandate amid the complexities of a mixed migration context and lack of clear migration management. Since UNHCR stopped conducting RSD in 2016 (replaced by enhanced registration), some of its resources have been allocated to larger community protection and urban outreach, for example skills development, education, health and community based protection intervention.<sup>72</sup>

UNHCR has also taken a lead role in supporting [or at time moderating] the government's evolving return policies. A Tripartite Agreement between Pakistan, Afghanistan, and the UNHCR signed in 2007 and renewed in 2016 regulates the management and gradual repatriation of registered Afghan refugees.<sup>73</sup>

**IOM** initiated its work in Pakistan in 1981 following a government request for assistance with the influx of Afghans into the country and the organisation has since expanded its programmes to support a broad range of activities from humanitarian response to migration management. Pakistan has been a Member State of IOM since 1992 and in 2000 Pakistan established a Cooperation Agreement with IOM. The organisation is also present in Afghanistan and has provided border management technical assistance including by supporting in late 2016 the Afghan Ministry of Refugees and Repatriation to roll out the Afghan Returnee Information System (ARIS), a digital registration process for both undocumented and refugee returnees.<sup>74</sup> In early 2017, IOM launched the Displacement Tracking Matrix (DTM) to track and monitor population movement of both returnees and IDPs.<sup>75</sup>

**The World Bank** A donor trust fund, the Income Generating Projects for Refugee Areas (IGPRA) administered for 12 years by the World Bank from 1984 supported Afghan refugees in Pakistan with its main objectives being to create jobs and income, mainly for Afghan refugees but also for the local poor, through labour-intensive rural projects; mitigate the environmental impact caused by the presence of refugees and create lasting assets for the host country. IGPRA's achievements have been significant even if some of these, especially around job-creation and training had short-term impact and presented shortfalls like the lack of women's participation in job schemes.<sup>76</sup>

In 2017 Pakistan became one of eight countries eligible under the 18th replenishment of the International

<sup>72</sup> Information provided by UNHCR Pakistan (2017) "2017–2019 Community Based Protection and Urban Outreach Strategy," <https://unhcrpk.org/wp-content/uploads/2018/06/Community-Based-Protection-and-Urban-Outreach-Strategy-2017-2019-1.pdf>.

<sup>73</sup> "Agreement between the Government of the Islamic Republic of Pakistan, the Government of the Islamic Republic of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan," [www.unhcr.org/46c98acd2.pdf](http://www.unhcr.org/46c98acd2.pdf).

<sup>74</sup> IOM (2017) "IOM Assessment Aims to Improve Afghan Border Management as Thousands Return from Pakistan", <https://afghanistan.iom.int/press-releases/iom-assessment-aims-improve-afghan-border-management-thousands-return-pakistan>.

<sup>75</sup> IOM (2017) "IOM Launches Displacement Tracking in Afghanistan as Humanitarian Crisis Looms", <https://afghanistan.iom.int/press-releases/iom-launches-displacement-tracking-afghanistan-humanitarian-crisis-looms>.

<sup>76</sup> Operations Evaluation Department Précis (1996) "Generating Income for Afghan Refugees in Pakistan", <http://documents.worldbank.org/curated/en/838311468762956336/pdf/28698.pdf>.

Development Association (IDA18) – the Bank’s fund for the poorest countries – a \$2 billion financing window available to help manage refugee crises with longer term solutions, aimed to benefit both refugees and host communities. At the same time, the World Bank has also significantly increased its support inside Afghanistan assisting the country in dealing with the large numbers of returnees and other displaced people. In June 2017 the World Bank approved a \$520 million package of funding for projects to boost Afghanistan’s economy, build critical infrastructure, and support Afghan refugees sent back from Pakistan and elsewhere with the largest chunk of the package (\$205.45 million) to support communities with IDPs and returnees.<sup>77</sup>

**Relevant international NGOs** A number of organisations have been operating in Afghanistan since the inception of the refugee crisis in the late 1970s or 1980s like the **International Rescue Committee (IRC)**, among the first established INGOs and the **International Medical Corps (IMC)** which has worked with refugees in Pakistan since 1985.<sup>78</sup> Others established a presence in the country in the late 1990s or the early 2000s including the **International Catholic Migration Commission (ICMC)** who started to operate in Pakistan in 1998, the **Norwegian Refugee Council (NRC)** that opened an office in Pakistan in 2001 and the **American Refugee Committee (ARC)** who started their operations in the country in 2002.<sup>79</sup> Others came in the country later (like **Secours Islamique- France** in 2009<sup>80</sup> and the **Danish Refugee Council (DRC)** in 2010).<sup>81</sup>

Most INGOs working in Pakistan have been assisting ‘registered’ refugees (Afghans and non-Afghans) rather than undocumented Afghans for the simple reason that a good number are implementing partners of UNHCR. Very few mention the experience or even the mere existence of the large ‘undocumented Afghan’ population. In general the benefits of activities they implement have extended to local communities hosting refugees and also displaced Pakistani populations (rather than the large undocumented Afghan population). IRC, nevertheless, appears to be assisting various groups or at least the organisation does not use status as a basis for assistance but is targeting “temporarily displaced persons, refugees, communities affected by humanitarian crises, and other vulnerable groups”.<sup>82</sup>

Another noticeable trend is that most assistance is directed towards refugees in villages with more limited support to the displaced in urban area who however constitute the majority of the forcibly displaced. Most organisations run their programmes in the provinces of Khyber Pakhtunkhwa (KP) near the border and Baluchistan.

## b) Local NGOs

Local organisations display a far reaching range of activities. Some focus on protection and legal advice, with for instance, the **Society for Human Rights and Prisoners’ Aid (SHARP)** that seeks to protect Afghan refugees from harassment, extortion and illegal detention, build capacity of civil society organisations (CSO), media, lawyers and relevant government authorities on human and refugee rights, national and international obligations and promote social cohesion at community level to ensure refugees protection).<sup>83</sup> Others work on health and

<sup>77</sup> World Bank (2017) “World Bank Announced + USD 500 Million Afghanistan Financing”, [www.worldbank.org/en/news/press-release/2017/06/13/world-bank-announces-usd500-million-afghanistan-financing](http://www.worldbank.org/en/news/press-release/2017/06/13/world-bank-announces-usd500-million-afghanistan-financing).

<sup>78</sup> IMC (2018) “Capacity Statement Pakistan”, [https://cdn1.internationalmedicalcorps.org/wp-content/uploads/2018/03/CS2015\\_Pakistan.pdf](https://cdn1.internationalmedicalcorps.org/wp-content/uploads/2018/03/CS2015_Pakistan.pdf).

<sup>79</sup> ICMC (2015) “Pakistan”, <https://www.icmc.net/sites/default/files/documents/resources/icmc-pakistan-factsheet-2015.pdf>.

<sup>80</sup> Secours Islamique France- Pakistan, <https://www.secours-islamique.org/40-site/qui-sommes-nous/435-missions-sif-pakistan.html>

<sup>81</sup> DRC- Pakistan, <https://drc.ngo/where-we-work/asia/pakistan>.

<sup>82</sup> IRC (2017), “IRC 2020 Global Strategy Overview”, <https://www.rescue.org/sites/default/files/document/611/2017jul3externalsappakistan.pdf>.

<sup>83</sup> SHARP Pakistan, <https://sharp-pakistan.org/>.

education (two areas of expertise of the **Union Aid for Afghan Refugees (UAAR)** which provides health services to encamped Afghan refugees as well as running a primary and a high school for girls, a vocational centre and a scholarship programme).<sup>84</sup> Other focus on livelihood assistance. Local NGOs are also more diverse in terms of the types of exiles they support [Afghans and non-Afghans, those in refugee villages and in hosting areas] and their geographical coverage. Like their international counterparts, the majority operate in the province of Khyber Pakhtunkhwa where most refugees are concentrated but some organisations are working in Southern Pakistan like **Rights Now Pakistan** which provides training in refugee rights to urban refugees, including to non-Afghans, support them understand their rights and accessing services especially health, education and employment. The organisation conducts research on refugee rights, provides resources for training and keeps a protective presence at places where refugees reside, monitoring their security situations and reporting to the UN and other international organisations.<sup>85</sup>

### 3. MEDIATING PROTECTION AND RIGHTS – THE ROLE OF HUMANITARIAN ACTORS

In March 2015 while the policy environment towards Afghans became increasingly tense, the 25th Tripartite Commission meeting between the Afghan and Pakistani governments and the UNHCR confirmed that the residual population of refugees would be under continuing protection in accordance with international norms and benefit from temporary stay arrangements for employment, study, and business purposes.<sup>86</sup>

Irrespective of these engagements and despite the government's parallel move to legalise the stay of unregistered Afghans, according to UNHCR and IOM, some 692,157 unregistered Afghan nationals went back to Afghanistan in 2016 when law enforcement agencies launched crackdowns against them. In parallel some 384,000 Afghan refugees returned to Afghanistan that same year (a 12-year high - compared to just over 58,000 the year before).<sup>87</sup> The majority of returns took place between July and December 2016. The pace of returns slowed down significantly at the beginning of 2017 only to increase again around March 2017, affecting mostly unregistered Afghans who felt forced to leave because they lacked registration documents. In 2017 some 60,000 refugees had returned to Afghanistan from Pakistan, a figure comparable to the 2015 one. There were another 100,000 undocumented returnees from Pakistan.<sup>88</sup>

The lack of documentation [to prove refugee status] has reportedly made people more vulnerable to deportation but not being formally registered as refugees in Pakistan has also deprived them from receiving the same level of support as registered refugees when they return to Afghanistan.<sup>89</sup>

<sup>84</sup> Union Aid in Pakistan, <http://www.unionaid.org/>.

<sup>85</sup> Right Now Pakistan, [www.rightsnowpk.org/humanrights/refugee\\_rights.php](http://www.rightsnowpk.org/humanrights/refugee_rights.php).

<sup>86</sup> Conclusions on the 25th Tripartite Commission Meeting, <http://unhcrpk.org/wp-content/uploads/2013/12/Conclusions-of-the-25th-Tripartite-Commission.pdf>.

<sup>87</sup> UNHCR (2017) "Tough Choices for Afghan Refugees Returning Home After Years in Exile", [www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html](http://www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html).

<sup>88</sup> IOM and UNHCR (2017) "Returns to Afghanistan in 2017, Joint IOM-UNHCR Summary Report", [https://www.iom.int/sites/default/files/press\\_release/file/joint\\_returnee\\_report\\_iom\\_unhcr\\_final.pdf](https://www.iom.int/sites/default/files/press_release/file/joint_returnee_report_iom_unhcr_final.pdf).

<sup>89</sup> NRC (2017) "Thousands of Unregistered Refugees Return from Pakistan to Afghanistan", <https://www.nrc.no/news/2017/april/thousands-of-unregistered-refugees-return-to-afghanistan/>.

Although only registered refugees are falling under UNHCR's 'population of concern' and included in the refugee agency global statistics UNHCR nevertheless took part in the documentation process of undocumented Afghans in Pakistan (described above). It is also worth noting that UNHCR's budget has been decreasing from 2014, despite the increase of its population of concern from 2014 to 2015. Furthermore, while the guarantor of international refugees norms and of the customary law principle of non-refoulement in particular, and despite a general recognition by the international community that most returns to Afghanistan since 2015 have taken place under increased pressure, UNHCR has done relatively little at least publically to restrain Pakistan from pursuing its policy or to condemn violent actions. One of the few reference to the 'involuntary returns' of both registered refugees and undocumented Afghans is found in a 2017 joint publication by UNHCR and IOM which mention that "high levels of pressure imposed by authorities and local host communities in the second half of 2016 resulted in an increasing rate of return among registered refugee returnees, undocumented Afghan returnees as well as a higher rate of deportation."<sup>90</sup> In early 2017 UNHCR conducted an analysis of returnee monitoring data that put forward as main determinants for their decisions to leave Pakistan in the latter half of 2016, factors relating to pressure by authorities, particularly in Khyber Pakhtunkhwa, as well as fear of arrest and deportation. Other push factors included heightened anxiety over PoR cards validity, its extension and registered Afghans future stay in Pakistan and the enhanced implementation of Pakistan's NAP. The campaign of the Afghan government in Pakistan – Khpal Watan, Gul Watan ("home sweet home") asking Afghans to return home, the government's promises of land and shelter upon arrival, UNHCR's assistance package (that increased in 2016) and a desire to reunite with their families were among the pull factors that also influenced the decisions of some returnees.<sup>91</sup>

Among the key stated priorities of UNHCR for 2018 features only "facilitating voluntary repatriation in close collaboration with the Governments of Afghanistan and Pakistan".<sup>92</sup>

UNHCR acknowledges that Afghans have been impacted by the shifting regional political and security dynamics and refers to the "tough decisions to return or stay" they had to make – which implied that they had options. Yet UNHCR mentions that they intervened in 5,895 reported cases of unlawful arrest and detention of registered Afghans in Pakistan, securing the release of almost all.<sup>93</sup>

Rapid review of UNHCR strategic documents show that while some actions took place in Pakistan, the organisation may have privileged addressing the effect of these large scale returns once populations reached Afghanistan rather than preventing their deportation from Pakistan [thus addressing the effects rather than tackling the causes].<sup>94</sup>

Similarly IOM has done very little to confront the government of Pakistan policy over the forcible returns. It has

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<sup>90</sup> UNHCR and IOM (2017) "Afghanistan Refugee & Returnees Chapter Response Strategy, [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/refugee\\_and\\_returnee\\_chapter\\_response\\_strategy\\_-\\_12\\_mar\\_2017.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/refugee_and_returnee_chapter_response_strategy_-_12_mar_2017.pdf), p.2.

<sup>91</sup> Study based on face-to-face interviews with 4,285 people at their point of arrival and telephone interviews with some 1,300 returnees through a random sampling after people had been back for three months, UNHCR (2017) "Tough Choices for Afghan Refugees Returning Home After Years in Exile", [www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html](http://www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html).

<sup>92</sup> UNHCR (2017) "Operation Pakistan, 2018 Planning summary", UNHCR Global Focus, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-Pakistan-eng.pdf>.

<sup>93</sup> UNHCR (2017) "Tough Choices for Afghan Refugees Returning Home After Years in Exile", [www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html](http://www.unhcr.org/news/briefing/2017/2/589453557/tough-choices-afghan-refugees-returning-home-years-exile.html).

<sup>94</sup> IOM (2017) "IOM Assessment Aims to Improve Afghan Border Management as Thousands Return from Pakistan", <https://afghanistan.iom.int/press-releases/iom-assessment-aims-improve-afghan-border-management-thousands-return-pakistan>.

also been focusing on what takes place at the receiving end “paying particular attention to promoting good governance, respect of human rights and the rule of law, and the special needs of vulnerable populations in the border areas”.

Otherwise, despite the significant policy developments and the violent campaign to force Afghans to leave from 2015 few of the above listed humanitarian NGOs- USA based organisations for the majority- have publicly stated their position towards these events or shared information over any action put forward to prevent it. The dominant feeling is that it is ‘work as usual’. This may be a deliberate strategy from their part to preserve the relationship with the Government of Pakistan and maintain a presence in the country.

International organisations and INGOs have nevertheless emphasised how these policy practices collide with the deteriorating security situation in Afghanistan characterised by increased armed clashes with militant groups and the rise of Islamic State’s attacks.<sup>95</sup> Many have also put forward how large-scale returns and intensified conflict, combined with rapid urbanization, have strained the absorption capacity of local communities and overstretched local services. For IOM, the absorption capacity is currently maintained through a ‘patched-up support structure’ comprised of often-improvised family arrangements and external humanitarian assistance, which is not sustainable.<sup>96</sup> The combination of the increased returns of Afghans and the rise of IDPs set the ground for an unfolding humanitarian crisis. The worsening state of security has prompted many Afghan returnees to once again flee their homeland and seek safety elsewhere.<sup>97</sup> In 2016, the level of new displacement affected 360,000 people while in 2017, 30 out of Afghanistan’s 34 provinces were affected by forced displacement. Hundreds of thousands of returnees risk joining the estimated 2 million IDPs already in the country. The risk of secondary and tertiary displacement is high and reports indicate that the majority of returnees are displaced upon return and an even higher percentage is willing to re-migrate, pointing out that the return policy is unsuitable.

A number of organisations, especially human rights organisation that have been more forthcoming have tackled the legality and legitimacy of government led actions towards the forced and coerced return of Afghans, and some put forward that it risks violating the principle of non — refoulement, the legal principle which means countries cannot return anyone to a place where their life or freedom would be threatened. Human Rights Watch called the phenomenon the ‘world’s largest unlawful mass forced return of refugees in recent times.’ In 2017 several key international NGOs and human rights organisations have highlighted that policies of governments hosting Afghans were inappropriate and disconnected from the situation on the ground in Afghanistan.<sup>98</sup>

Albeit questioning the legality of these coercive measures, certain organisations have highlighted ethical and societal concerns over sending people back to a country they may have left for several decades or would have

<sup>95</sup> In 2016 civilian casualties were the highest on record and doubled in comparison to 2009 recorded data. The year 2017 saw the deadliest single suicide blast in Kabul killing 92 civilians, only to be surpassed by an even deadlier explosion, killing 100 persons in the capital in January 2018, British & Irish Agencies Afghanistan Group and the European Network of NGOs in Afghanistan (2018) “Return and displacement in Afghanistan” Discussion Paper, <https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/Return%20and%20displacement%20in%20Afghanistan%20-%20March%202018.pdf>.

<sup>96</sup> IOM (2017) “IOM Launches Displacement Tracking in Afghanistan as Humanitarian Crisis Looms”, <https://www.iom.int/news/iom-launches-displacement-tracking-afghanistan-humanitarian-crisis-looms>

<sup>97</sup> Deutsche Welle (2018) “Afghan refugees in Pakistan face mass deportation”, [www.dw.com/en/afghan-refugees-in-pakistan-face-mass-deportation/a-42167366](http://www.dw.com/en/afghan-refugees-in-pakistan-face-mass-deportation/a-42167366).

<sup>98</sup> The organisations are Amnesty International, European Council on Refugees and Exile (ECRE), Human Rights Watch (HRW), Oxfam, and Norwegian Refugee Council (NRC), British & Irish Agencies Afghanistan Group and the European Network of NGOs in Afghanistan (2018) “Return and displacement in Afghanistan” Discussion Paper, <https://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/Return%20and%20displacement%20in%20Afghanistan%20-%20March%202018.pdf>.

never seen for all those [the majority] born in Pakistan. This bears the question of what is legally a ‘country of origin’ in a refugee context for those [born in Pakistan] who would not have fled that country in the first place. Under such a scenario, referring to ‘returnees’, even if many were born in Pakistan is misleading. For organisations like Amnesty International deportation practices are unethical and cruel. Afghans in Pakistan stressed that under such a scenario, returning to Pakistan would be ‘like a new migration’.

Local organisations seem to have been more reactive to the shifting policy environment than their international counterparts and even if they have predominantly been supporting registered refugees they have expressed concerns over protection gaps for undocumented displaced people and involved in initiative to fill some of these gaps. For instance, SHARP set up a helpline service for refugees requiring assistance especially if harassed by the police and being the victims of illegal detention to ensure immediate action.

## 4. SUMMARY AND CONCLUSION

Despite the scale and protracted nature of Afghan displacement, Pakistan’s policy has been to consider the presence of refugees temporary. Pressures on Afghans to return intensified from 2015 triggered by an unstable political and security situation and economic fragility that translated into decreasing tolerance by the Pakistani authorities toward Afghans and increasing violent pressure towards returns. National law and policies related to refugees’ rights in Pakistan are ambiguous and protective measures have mostly been disregarded, overridden by policies accelerating the return process which reached a peak in the second half of 2016. Because of their insecure status and fear of arrest and deportation, undocumented Afghans remain invisible and more vulnerable. Furthermore, it is premature to assess the protection outcome of the 2017 documentation campaign for the undocumented population; for them to date humanitarian assistance has been more limited and protection nearly non-existent.

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## AFGHANS IN IRAN

### CONTEXT

The Islamic Republic of Iran (alongside Pakistan) has hosted Afghan refugees since the inception of their displacement in the late 1970s and through more recent displacement episodes, thus constituting one of the world's most protracted refugee crisis.

Shaped by a number of domestic and international political and economic factors, the Islamic Republic of Iran's policy towards Afghan refugees – the overwhelming majority - is demarcated by two distinct phases.

Until 1992, most Afghans were automatically given the right to remain in the country on a prima facie basis, although not officially designated as refugees. They were issued with refugee identity cards known as Amayesh cards and had access to social benefits and work permits.<sup>99</sup> From 1992 onwards this relaxed policy changed. The government stopped automatically granting residency status to newly arriving Afghans, only providing temporary residency permits often on seemingly arbitrary criteria. Many Afghans were thus undocumented and subject to pressure to return to Afghanistan, and deportation increased. In 1997, the government effectively stopped granting newly arriving Afghans residency rights altogether and intensified efforts to register and repatriate those already in the country. This policy was further enforced in 2002. Repatriation remains the overarching policy of the government which, since 2012, has actively supported the *Solutions Strategy for Afghan Refugees (SSAR)*.<sup>100</sup>

Despite its status as a middle income country, shouldering the burden of the refugees has been demanding. Resistance to refugees has been governed by the prolonged financial and economic crisis the country has experienced, mainly the result of international economic sanctions. The backcloth of high rates of inflation and dramatic currency depreciation (although both rates have been declining since 2016<sup>101</sup>), combined with high unemployment (approaching 12% in the formal sector<sup>102</sup>) and concealed unemployment, have rendered the refugees a target for the declining socio-economic conditions experienced by Iranians.

Accentuating these burdens on the country itself, and thus its increasingly negative stance, is the consistent underfunding of the humanitarian programme<sup>103</sup>, a consequence in part of the relative political and economic isolation of the country.

Overall, the political and economic conditions render Afghan refugees in Iran highly vulnerable to fragile protection standards, impoverishment and resistance to integration.

<sup>99</sup> Koepke, B. (2011) 'The Situation of Afghans in the Islamic Republic of Iran Nine Years After the Overthrow of the Taliban Regime in Afghanistan,' February 4, 2011, Middle East Institute Fondation pour la Recherche Strategique, and Human Rights Watch (2013) *Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights*, New York: Human Rights Watch, p.19.

<sup>100</sup> UNHCR (2018) *Islamic Republic of Iran: Global Focus*, <http://reporting.unhcr.org/node/2527> The SSAR strategy has been endorsed by the governments of Afghanistan, Iran, and Pakistan, UNHCR (2012) "Solutions Strategy for Afghan Refugees to support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries," <http://unhcr.org/afghanistan/solutions-strategy.pdf>.

<sup>101</sup> World Bank (2018) *Islamic Republic of Iran: Overview*, Washington DC: World Bank, <http://www.worldbank.org/en/country/iran/overview>.

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## PROFILES OF AFGHANS

The Islamic Republic of Iran is the fifth largest refugee hosting country globally – with almost 980,000 refugees in 2017. It is the second largest host country for Afghan refugees, after Pakistan, with approximately 950,000, the majority of whom have been born in exile. The number of registered refugees has remained stable for a number of years. But, given the country's restricted approach to refugee status recognition, the number of Afghans in Iran is much higher. The government estimate is between 1.5-2 million with some estimates indicating a total in excess of three million<sup>104</sup>, <sup>105</sup>. In addition, there are some 620,000 Afghan passport holders with valid visas. The Afghans arrived in two major waves, 1978-85, 1996-2001.<sup>106</sup>

Substantially declining in number in recent years, just under 30,000 refugees, are from Iraq.

In 2012, up to half the registered Afghan refugee population was below the age of 18, a proportion that is likely to have declined with the large scale deportations of, mostly, young documented and undocumented Afghans.<sup>107</sup>

Iran has one of the highest proportions of urban refugees in the world: some 97% live in urban/peri-urban areas and the remainder in 20 UNHCR managed settlements.<sup>108</sup>

The majority of Afghan refugees come from just three ethnic groups, Hazara, Tajiks and Pashtuns, with Hazara constituting 31%.<sup>109</sup> Almost 60% of the Afghan population (documented and undocumented) live in just three provinces - Tehran, Khorsan-e Razavi, and Esfahan<sup>110</sup> - whilst, conversely, foreign nationals are banned from a substantial number of other provinces.

Afghans are present in all socio-economic sectors with a preponderance in low-wage, low status, unskilled jobs. Some have achieved upward mobility into more skilled and higher social status employment.<sup>111</sup> Despite heavy penalties, they are also heavily represented in Iran's flourishing informal economy and child employment is reportedly widespread.<sup>112</sup> Anecdotal evidence suggests that up to one half of Afghans in Iran live below the absolute poverty line.<sup>113</sup>

<sup>104</sup> UNHCR (2018) Islamic Republic of Iran Global Focus, <http://reporting.unhcr.org/node/2527?y=2017#year>

<sup>105</sup> In 2015 the Ministry of Interior reported the total number of Afghans in Iran to be as high as 2.5 million (including registered refugees, Iranian visa holders those who entered illegally). According to estimates by Iran's official Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA), there are 1.4 to 2 million undocumented Afghan migrants living and working in Iran today. Together with the registered refugee population, that makes for a total of between 2.4 and 3 million Afghans in Iran, cited in Human Rights Watch (2013) Unwelcome Guests: Iran's Violation of Afghan Refugee and Migrant Rights, New York: Human Rights Watch, p.19. <https://www.hrw.org/report/2013/11/20/unwelcome-guests/irans-violation-afghan-refugee-and-migrant-rights>.

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## 1. LEGISLATIVE FRAMEWORK, POLICY AND PRACTICE

### a) National legislation and institutional set-up for migrants and refugees

The Islamic Republic of Iran is party to the 1951 Refugee Convention and the 1967 Protocol, the provisions of which were incorporated into the country's 1979 Constitution<sup>114</sup> and are detailed in the 1963 Regulations related to Refugees.<sup>115</sup> However, the country maintains some reservations in relation to employment, public welfare, labour legislation, social security, and freedom of movement<sup>116</sup>, but not ownership of immovable property.<sup>117</sup> As relevant, these reservations will be discussed later in terms of their impacts on the well-being of the forcibly displaced population. Further reservations apply in relation to claims for refugee status from persons from its regional allies and partners: claimants who are nationals of States with which Iran has regional customs, economic and political agreements are not accorded the 'most favourable treatment'.<sup>118</sup>

The 1963 Regulations require those seeking asylum to present themselves to "the first border guard station or competent government official upon entry into the Iranian territory" and provide that "refugees should not be forcibly returned to the country where their life and freedom is endangered for political, racial or religious reasons or for their membership in a particular group."<sup>119</sup>

The Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA), which operates under the Ministry of Interior, has overall responsibility for coordinating refugee affairs in cooperation with other line ministries and is charged under Iranian law with processing refugee claims.

### b) Protection apparatus for refugees and other 'forcibly displaced people'

The government is responsible for refugee registration, status determination, and for issuing of refugee identity cards (known since 2003 as the Amayesh card). Responsibility for the refugee status determination procedure has changed over time. The Foreign Nationals Executive Coordination Council (FNECC), chaired by the Ministry of Interior, has overall responsibility for international relations and the "arrival, settlement, deportation, expulsion, training, employment, health, and medical treatment" of foreigners.<sup>120</sup> The law provides for individual refugee status determination under the charge of the FNECC or a committee designated by the FNECC. Because the FNECC is the higher-level council mainly concerned with general policy development, in effect, refugee affairs are administered

<sup>114</sup> Islamic Republic of Iran's Constitution of 1979, Article 155 (with Amendments through 1989), [www.constituteproject.org/constitution/Iran\\_1989.pdf](http://www.constituteproject.org/constitution/Iran_1989.pdf).

<sup>115</sup> Regulations relating to Refugees (1963), 16 December 1963, the Council of Ministers, [www.refworld.org/pdfid/3f4a23767.pdf](http://www.refworld.org/pdfid/3f4a23767.pdf).

<sup>116</sup> Regulations prevent refugees and foreign nationals from accessing some provinces –periodically new provinces are added. Determination of Areas restricted for the Movement and Stay of Foreign Nationals in Border Areas of the Country, Ministry of the Interior 1/1/2002, <http://www.ghavanin.ir/detail.asp?id=16934> and Amendment of Article 1, Section A of Determination of Areas Restricted for the Movement & Stay of Foreign Nationals in Border Areas of the Country approved on 1/1/2002, 25/09/2004, <http://rc.majlis.ir/fa/law/show/123765>.

<sup>117</sup> The government of Iran considers the stipulations contained in Articles 17 (wage-earning employment), 23 (public relief), 24 (labour legislation and social security), and 26 (freedom of movement) as being recommendations only, "Reservations and Declarations to the 1951 Refugee Convention," [www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention).

<sup>118</sup> The government of Iran considers the stipulations contained in Articles 17 (wage-earning employment), 23 (public relief), 24 (labour legislation and social security), and 26 (freedom of movement) as being recommendations only, "Reservations and Declarations to the 1951 Refugee Convention," [www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3d9abe177&query=1951%20Refugee%20Convention).

<sup>119</sup> Articles 2 and 12 of the Regulations relating to Refugees (1963), [www.refworld.org/pdfid/3f4a23767.pdf](http://www.refworld.org/pdfid/3f4a23767.pdf)

<sup>120</sup> Afghanistan Research and Evaluation Unit (2005) Return To Afghanistan? A Study of Afghans Living in Mashhad, Islamic Republic of Iran, [www.unhcr.org/434f69e92.pdf](http://www.unhcr.org/434f69e92.pdf).

by the Ministry of the Interior's Bureau for Aliens and Foreign Immigrants' Affairs (BAFIA). One of BAFIA's functions, as part of the Ministry of Interior, is to act as the secretariat of the FNECC and the Standing Committee on Foreign Nationals which was set up in 2001 to review claims for asylum. According to existing laws and regulations, BAFIA is expected to process applications for asylum, which should in principle be received by the police, and to present the case for a decision to the Standing Committee on Foreign Nationals.

As in all aspects of Iran's government, the role of the Supreme Leader inevitably extends to refugee law and policy although it is hard to discern exactly how this authority is exercised. One example has been the edict of the Supreme Leader Ali Khamenei in 2015 that Afghan refugee children should receive education after years of denial of access. Apparently, this produced rapid change by opening up Iranian schools to these children. Given this demonstration of power, it might be assumed that successive Supreme Leaders' default position has been to not authorise other liberalisation of Iranian policy towards refugees and to sustain the hard line legal and policy apparatus. That has persisted of over two decades.

From this perspective, the increasingly hostile environment for Afghans, and the incidence of deportations, although focused on undocumented Afghans, indicate a generally harsher protection regime. These changes have introduced a pervasive sense of insecurity among all Afghans in Iran.<sup>121</sup> There is a clear, and on the face of it, dramatic demarcation of protection standards and rights for Afghans who have refugee status, or a valid work permit, or a valid passport holders, compared to those who are undocumented.

**Documented Afghans.** Afghans who arrived in Iran in the 1980s were granted refugee status on a prima facie basis and issued with "blue cards" confirming their status as mohājerin, granting them indefinite permission to stay legally in Iran and associated entitlements to social benefits. However, in response to shifting domestic economic and social concerns, the government has increasingly regulated the presence of all Afghans including those with refugee status, with repeated reports of harassment and pressure to leave, even for "blue card" holders. Thus, since the 'comprehensive registration' programme of refugees in 2001, all Afghan asylum seekers had their status determined by the government on an individual basis, not prima facie. Then, in 2003, Iran introduced a new system known as Amayesh to reregister all Afghan nationals who had been granted residency rights in the 1980s and 1990s. Under the Amayesh scheme, the BAFIA undertakes annual re-registrations of refugees; renewal is required in order for refugees to retain the right to access basic services and work permits. Moreover, the cards issued in 2003 were only valid for three months for individuals and for six months for families, requiring periodic extension procedures. But because of these repeated re-registrations, which is a complex and bureaucratic process accompanied by onerous fees, many refugees have lost their status.<sup>122</sup> Commentators argue that these registration exercises (āmāyeš), and the standardisation of refugee documents are largely intended to facilitate repatriation and refugee management.<sup>123</sup>

<sup>121</sup> Encyclopaedia Iranica (2011) Afghan Refugees in Iran, University of Columbia <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

<sup>122</sup> Human Rights Watch (2013) Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights, [www.hrw.org/sites/default/files/reports/iran1113\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf).

<sup>123</sup> See e.g. Adelpah, F., and Olszewska, Z. (2007) 'The Iranian Afghans,' Iranian Studies, 40:2 pps. 137-165, and Encyclopaedia Iranica (2011) Afghan Refugees in Iran, University of Columbia, <http://www.iranicaonline.org/articles/afghanistan-xiv-afghan-refugees-in-iran-2>.

In addition to those who have refugee status, the long history of labour migration – both seasonal and longer term – between Afghanistan and Iran accounts for the presence of about 620,000 Afghan passport holders legally resident with visa in Iran.<sup>124</sup> They have protection rights as foreign nationals, not refugees, but they are increasingly subject to arbitrary regulation.<sup>125</sup> However the interplay between labour migration and earlier era of persecution of religious minorities, for example the Hazaras, makes the distinction between labour and forced migration difficult to establish.<sup>126</sup> Thus, somewhat in contradiction to the rising trend of deportations of Afghans, by 2014 some 620,000 Afghan passport holders, who were previously undocumented, or Amayesh cardholders had been issued with Iranian visas legalising their residence in the country.<sup>127</sup>

**Undocumented Afghans.** The majority of Afghans in Iran are undocumented. Whereas in 1992 76% of the then Afghan population in Iran, estimated to be about at 2.8 million, were registered and only 14% unregistered (the remaining 10% were in camps),<sup>128</sup> now only a little over 30% are registered.<sup>129</sup> For example, in 2017, a national exercise – the Head Count Plan – identified more than 800,000 undocumented persons,<sup>130</sup> a total, incidentally, which is hard to reconcile with estimates of up to three million undocumented Afghans.

From about 1997, and with increasing force from 2002/3, and especially after 2007, newly arriving Afghans have been prevented from lodging refugee claims. Instead they have been considered to be economic migrants with no rights to lodge claims for refugee status: they are in effect undocumented with respect to protection needs and rights until the 2017 Head Count Plan. Yet this distinction is seemingly arbitrary since the vast majority of Afghans arriving after these dates have faced the same existential threats in Afghanistan as those arriving in earlier periods. The fact that 600,000 Afghans have work permits either confirms the arbitrariness of designation or, less likely, that the Iranian government does indeed conduct rigorous status determination. The reason for the clampdown at these dates was a seemingly arbitrary decision not to extend RSD to new waves of Afghan refugees as a technique to curtail the number of refugees coming under the country's responsibilities under the 1951 CSR.

In 2010, Iran's Supreme National Security Council, an advisory body charged with safeguarding the national interest, sovereignty, and territorial integrity, passed a law called the Plan for Registering Afghan Nationals, also referred to as the Comprehensive Regularization Plan. The law encourages undocumented Afghans to register and acquire a passport (if they do not already have one), an Iranian residency visa, and a work visa if they wish to work. This process is, however, reportedly both expensive and logistically difficult for many Afghans.<sup>131</sup>

<sup>124</sup> Cited in NRC (2018) Afghan Children's Access to Education in the Islamic Republic of Iran, Briefing note, April 2018. - Unpublished

<sup>125</sup> Adelhah, F., and Olszewska, Z. (2007) 'The Iranian Afghans,' Iranian Studies, 40:2 pps. 137-165

<sup>126</sup> Monsutti, A. (2004) 'Guerres et Migrations: Reseaux Sociaux et Strategies Economiques des Hajaras d'Afghanistan (Neuchatel/Paris), cited in Adelhah, F., and Olszewska, Z. op. cit.

<sup>127</sup> UNHCR (2014) Refugees in Iran, Geneva: UNHCR, <http://unhcr.org.ir/en/menu/88/Refugees-in-Iran-7/24/2014>.

<sup>128</sup> UNHCR data from 2001 cited in Adelhah, F., and Olszewska, Z. (2007) 'The Iranian Afghans,' Iranian Studies, 40:2 pps. 137-165.

<sup>129</sup> This percentage is based on the figure of 950,000 registered Afghan refugees in relation to estimates of over 3 million Afghan in total cited earlier.

<sup>130</sup> UNHCR (2018) Global Focus Planning Summary, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-IslamicRepublicofIran-eng.pdf>.

<sup>131</sup> As of 2012 the BAFIA reported that 560,000 Afghans had regularized their status; however, because of legal and logistical barriers, in many cases the Afghan government was unable to issue valid legal documents to individuals registered under the Comprehensive Regularization Plan, Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," [www.hrw.org/sites/default/files/reports/iran1113\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf)

Just one reference has been found reporting a meeting between the Foreign Ministers of Iran and Afghanistan in May 2017 which claimed that the Iran and Afghan governments were purportedly preparing to work on procedures to legalise the residence of Afghan refugees in Iran.<sup>132</sup> Since those with refugee status already have legal right of residence, this may well refer to undocumented Afghans to which the article referred.

However, no other reference has been found to this meeting or any follow up. Thus, for the undocumented, as noted earlier, arrest and periodic episodes of deportation or pressure to return ‘voluntarily’ to Afghanistan for unlawful presence in Iran, have been widespread despite acknowledgment that continuing “human rights violations and other consequences of exposure to conflict-related violence [in Afghanistan] may amount to persecution”.<sup>133</sup>

However, 2017 marks a potentially significant change in the highly restrictive stance of the Iranian government. The Head Count Exercise included inter alia: undocumented Afghans with children enrolled in schools; spouses and children of valid Amayesh card holders without valid documents; undocumented Afghans married to Iranian nationals; and Afghans holding expired Amayesh cards. Although there is no decision on the documentation they will receive it appears, in contrast to earlier registrations, that those registered in this process are immune from the risk deportation.

A relatively small group, but one that was increasing in size and was severely disadvantaged by the country’s uncompromising protection regime comprises the Afghan husbands of Iranian women and their children. They exist in a quasi-undocumented ‘no man’s land’. Iranian women could not pass on their citizenship to their husbands or, far more disturbingly, to their children who were, in effect, rendered stateless. A study in 2007 reported that some 40,000 marriages were affected and up to 100,000 children of such marriages lacked Iranian birth certificates and identity documents. They were deprived of the right to education, formal work, and marriage.<sup>134</sup> The law was reformed in 2006, and then again in 2012, to provide permanent residency rights, to access social, health and education services and to allow children born in Iran to Iranian mothers to apply for citizenship on reaching the age of 18, under certain conditions, which included registration of the marriage with the state. A recent decree, as yet to be fully enacted, makes further provision for these children to claim Iranian citizenship, although the status of the fathers has not been clarified.<sup>135</sup>

### c) Protection and assistance benchmarks for refugees and other ‘forcibly displaced people’

**Freedom of movement.** Iran maintains a reservation to the 1951 Refugee Convention’s provision for freedom of movement, and the 1963 Regulations allow the government to restrict refugees’ residence locations.<sup>136</sup> Until 2001, refugees had no difficulty moving freely from one location to another. However, the 2001 Decree which instituted the process of regularising and legalising the status of Afghans in Iran, through the issuance of residency cards, also led to significant movement restrictions.<sup>137</sup> Refugees’ freedom of movement became increasingly restricted with prohibitions on travel in many areas of the country. Pursuant to the 2001 Decree, Iran gradually imposed more restrictions on areas,

<sup>132</sup> Middle East Institute (2017) “Tehran Says Ready to Work with Kabul to Legalize Residence of Afghans living in Iran”, Middle East Institute, Washington DC, <http://www.mei.edu/content/io/tehran-says-ready-work-kabul-legalize-residence-afghans-living-iran>.

<sup>133</sup> UNHCR (2013) ‘Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,’ [www.refworld.org/pdfid/51ffdca34.pdf](http://www.refworld.org/pdfid/51ffdca34.pdf) p. 5.

<sup>134</sup> Zahedi, A (2007) ‘Transnational Marriages, Gendered Citizenship, and the Dilemma of Iranian Women Married to Afghan Men,’ Iranian Studies, pp. 225-39. See also Adelpkhan, F., and Olszewska, Z. (2007) ‘The Iranian Afghans,’ Iranian Studies, 40:2, pps. 137-165.

<sup>135</sup> MEHR News Agency (5/11/2028) Iran gives citizenship to children with foreign fathers, Iranian mothers, <https://en.mehrnews.com/news/1393338/Iran-gives-citizenship-to-children-with-foreign-fathers-Irania>

<sup>136</sup> United States Committee for Refugees and Immigrants (2009) World Refugee Survey “Iran,” [www.refworld.org/docid/4a40d2a84a.html](http://www.refworld.org/docid/4a40d2a84a.html).

<sup>137</sup> Farzin, F., and Jadali, S. (2013) ‘Freedom of Movement of Afghan Refugees in Iran,’ Forced Migration Review 44, [www.fmreview.org/en/detention/farzin-jadali.pdf](http://www.fmreview.org/en/detention/farzin-jadali.pdf)

cities, and provinces in which foreign nationals could legally reside. Breaching these requirements became punishable by arrest, detention, and even deportation of refugees at the discretion of the authorities.<sup>138</sup> These conditions forced significant numbers of refugees to relocate to designated areas. Approximately two-thirds of Iran's territory is now designated as no-go areas for foreigners, a restriction on the freedom of movement that the Iranian authorities justify mainly on the basis of national security and that de facto discriminates between Iranian citizens and noncitizens.<sup>139</sup>

**Right to work.** In the 1980s most refugees were allowed to live and work throughout Iran without too much regulation, although annually renewable work permits were required.<sup>140</sup> But over the last two decades, the government has steadily introduced restrictions on where non-nationals can legally live as noted above, and work. The 2000 legislation on employment restrictions, implemented from 2001 by the Ministry of Labour and Social Affairs, imposed heavy fines and imprisonment on employers of undocumented foreign workers – predominately unregistered Afghan refugees - and shut down many small businesses that employed Afghans, while also revoking some Afghans' work permits.<sup>141</sup> The government was reportedly more lenient with employers employing Iraqi refugees.<sup>142</sup>

Despite the right to work, registered refugees in Iran face many restrictions. Most refugees cannot afford the cost of the work permit or its annual renewal and the related payment of municipal taxes.<sup>143</sup>

Employment opportunities are severely limited by the restrictions on place of residence and freedom of movement, given that refugees are only allowed to work within their areas of residence. These designated areas may be so limited that refugees have difficulty finding employment, and they cannot leave without obtaining a *laisser-passer*, which involves bureaucracy and issuance fees.<sup>144</sup>

Refugees can only engage in a limited number of occupations, a provision that clearly limits their options for employment and thus income. They are only permitted to work in 16 professional categories, including plaster manufacture, making acid for batteries, digging, brick-making, laying asphalt and concrete, herding sheep, slaughtering animals, burning garbage, loading and unloading trucks, stone cutting, road building, mining, and farming.<sup>145</sup> Consigned to low-income, low-skilled labour in a narrow range of sectors of the Iranian economy, most of these jobs are heavy manual labour, mainly menial and potentially dangerous jobs that have been selected based on labour market demands and to ensure that Afghans do not take jobs away from Iranian citizens. Refugees found

<sup>138</sup> Farzin, F., and Jadali, S. (2013) 'Freedom of Movement of Afghan Refugees in Iran,' *Forced Migration Review* 44, [www.fmreview.org/en/detention/farzin-jadali.pdf](http://www.fmreview.org/en/detention/farzin-jadali.pdf).

<sup>139</sup> Along Iran's eastern border with Afghanistan and Pakistan, the authorities justified the restriction as related to security and drug-smuggling issues. The designation of other provinces or districts as no-go areas may reflect economic or social variables, Koepke, B. (2011) 'The Situation of Afghans in the Islamic Republic of Iran Nine Years after the Overthrow of the Taliban Regime in Afghanistan,' Middle East Institute Fondation pour la Recherche Stratégique, [www.refugeecooperation.org/publications/afghanistan/pdf/03\\_koepke.pdf](http://www.refugeecooperation.org/publications/afghanistan/pdf/03_koepke.pdf).

<sup>140</sup> Islamic Republic of Iran Labour Law, Ministry of Cooperatives, Labour and Social Welfare – approved 20/11/1990 [https://eakh.mcls.gov.ir/icm\\_content/media/image/2014/09/48221\\_orig.pdf](https://eakh.mcls.gov.ir/icm_content/media/image/2014/09/48221_orig.pdf).

<sup>141</sup> Afghanistan Research and Evaluation Unit (2005) 'Return To Afghanistan? A Study of Afghans Living in Mashhad, Islamic Republic of Iran,' [www.unhcr.org/434f69e92.pdf](http://www.unhcr.org/434f69e92.pdf).

<sup>142</sup> United States Committee for Refugees and Immigrants (2009) World Refugee Survey-"Iran," [www.refworld.org/docid/4a40d2a84a.html](http://www.refworld.org/docid/4a40d2a84a.html).

<sup>143</sup> The work permit fee is established in the Annual Budget Law that is submitted by the government and passed by the Parliament. The average cost for issuance of work permits in the course of Amayesh 10 (2015) was about US\$108, and the average cost for extension of work permits was about US\$80. While no change to the cost of the work permit has been indicated for Amayesh 11 (2016), in view of the constant devaluation of the Iranian rial against the U.S. dollar, the cost would be equivalent to US\$96 for issuance and US\$70 for extension of work permits (information provided by the UNHCR).

<sup>144</sup> . Farzin, F., and Jadali, S. (2014) 'Freedom of Movement of Afghan Refugees in Iran,' *Forced Migration Review* 44, [www.fmreview.org/en/detention/farzin-jadali.pdf](http://www.fmreview.org/en/detention/farzin-jadali.pdf).

<sup>145</sup> Human Rights Watch (2013) "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," [www.hrw.org/sites/default/files/reports/iran1113\\_forUpload.pdf](http://www.hrw.org/sites/default/files/reports/iran1113_forUpload.pdf).

working in unauthorised occupations are considered to have violated the terms of their refugee status under the Amayesh system and could be subject to deportation to Afghanistan. However, in practice a number of refugees engage in business activities and are employed in jobs other than those stated on their work permits.

If the right to work conditions are demanding for refugees, for undocumented Afghans - the majority - they are much worse. The undocumented Afghans are not allowed to work legally. As a result they are consigned to the informal sector where, not only are they susceptible to arrest and deportation, but without employment contracts and social protection they are also subject to abuse and violation of rights.<sup>146 147</sup> Thus, for example, a 2013 United Nations Economic and Social Council report expressed concern that “Afghan workers are often paid less than the minimum wage, or are faced with non-payment of wages.”<sup>148</sup>

**Banking and Right to Property.** Afghans are not allowed to open bank accounts, although Amayesh holders can, in principle, open bank accounts and rent properties including agricultural lands. Given the extent of informal banking systems, the limitations on holding bank accounts may not be too much of a constraint. In Iran, foreigners including refugees cannot engage in business without appropriate visas and work permits. To obtain a specific permit to engage in business, refugees must abandon their status and return to the country of origin to obtain a passport (if they did not have one already) and an Iranian visa. Like other foreign nationals, refugees can own movable property, but are not allowed to own immovable property, unless they obtain specific approvals.

**Education.** A somewhat more positive, although still uneven, assessment of protection and assistance benchmarks obtains for education. With very low literacy rates as an indicator of access to education in pre-1980 Afghanistan – estimated to have been between 5-10% for males and 1% for females<sup>149</sup> - the situation in Iran provides a remarkable contrast. Exposure to Iranian society demonstrated the value of education as a means for social and economic mobility. But access to education for Afghan children has a checkered history as an unpublished NRC Briefing Note describes.<sup>150</sup> Without the intervention of the Supreme Leader, whose 2015 edict authorised unrestricted access for Afghan children (both refugees and undocumented) to Iranian schools, it is doubtful if these aspirations would have been satisfied. Afghan refugee children can now benefit from access to education although this has not been straightforward and uptake is not complete. BAFIA estimated that 280,000 Afghan refugee children attended primary and secondary school pupils in 2012<sup>151</sup> : more recent data indicates that between 420,000 (2016 data) and 400,000 (2018 data) and children are enrolled in primary and secondary school, out of which over 72,000, in 2018, are undocumented Afghan children.<sup>152</sup> An important adjunct to this new provision is the extension of protection to Afghans whose children attend school: this is a significant enhancement of their rights and status.

<sup>146</sup> Justice for Iran (2013) ‘Weapons of Mass Discrimination: The Islamic Republic Policies and the Economic, Social and Cultural Rights of Citizens in Iran’, Briefing to the UN Committee on Economic, Social and Cultural Rights on the Occasion of the Review of Islamic Republic of Iran in the 50th Session of UN Committee on Economic, Social and Cultural Rights, [www2.ohchr.org/English/bodies/cescr/docs/ngos/JusticIran\\_Iran\\_CESCR50.pdf](http://www2.ohchr.org/English/bodies/cescr/docs/ngos/JusticIran_Iran_CESCR50.pdf).

<sup>147</sup> Altai Consulting and ILO-UNHCR Cooperation Towards Solutions (2008) “Research Study on Afghan Deportees from Iran,” [www.unhcr.org/49ba32772.pdf](http://www.unhcr.org/49ba32772.pdf).

<sup>148</sup> United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, Concluding observations on the second periodic report of the Islamic Republic of Iran, adopted by the Committee at its fiftieth session (29 April-17 May 2013), E/C.12/IRN/2, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FIRN%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FIRN%2F2&Lang=en).

<sup>149</sup> Evidence cited in Adelhah, F., and Olszewska, Z. (2007) ‘The Iranian Afghans,’ *Iranian Studies*, 40:2, p. 145.

<sup>150</sup> NRC (2018) Afghan Children’s Access to Education in the Islamic Republic of Iran, Briefing note, April 2018.

<sup>151</sup> Cited in Human Rights Watch (2013) *Unwelcome Guests: Iran’s Violation of Afghan Refugee and Migrant Rights*, New York: Human Rights Watch, p.60.

<sup>152</sup> UNHCR (2018) Global Focus Planning Summary, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-IslamicRepublicofIran-eng.pdf> and NRC (2018) Afghan Children’s Access to Education in the Islamic Republic of Iran, Briefing note, April 2018.



Although now permitted to do so<sup>153</sup>, initially, children not registered as refugees could not attend state schools. As a result, dozens of informal (i.e. unregistered) autonomous schools (of very uneven quality)- so called Afghan Self-Regulated Schools (ASRSs) – were set up and run by Afghans but were periodically shut down by the authorities, while their teachers risked arrest and eviction for their activities. Broadly following the Iranian curriculum and with the involvement of the Embassy of Afghanistan in Iran in maintaining the schools and standardising qualifications, now, provision is made in the law for these schools to be registered, standards to be regulated, and for the schools to be supported by NGOs.<sup>154</sup> The qualifications from these schools are recognised up to second grade of secondary school.

Since the Iranian government does not guarantee access to education for undocumented Afghan children (i.e. not possessing an Amayesh card), few undocumented Afghan children attend formal Iranian schools, and thus the demand for autonomous Afghan schools remains high. Moreover, demand has undoubtedly further increased since the imposition of substantial fees (for Iranian as well as refugee and undocumented Afghan children) in Iranian schools in 2004.

Sustaining attendance through the full duration of education remains a major challenge given the frequent changes in the fee levels, and the periodic ‘on-off’ access regulations of the Iranian government, against the backdrop of its generally restrictive attitude towards access to education for both refugee and (especially) undocumented Afghan children. Indeed the cycle of provision, withdrawal or modifications of access to education can be imputed to be a significant instrument in the wider policies of repatriation and deportation of the Iranian government.<sup>155</sup> For example, in 2002, the Iranian government declared ASRSs illegal because they encouraged Afghans to remain in Iran.<sup>156</sup>

On the other hand, there is clear evidence that whether in state schools or ASRSs educational provision has improved literacy levels among Afghan refugees. Both first and, more markedly, second generation Afghan have experienced upward mobility in their education compared with their parents. Most importantly, upward mobility is greater for females than males.<sup>157</sup>

**Health.** For Afghan refugees, but not those that are undocumented, the health provision afforded by the Iranian government also offer some positive outcomes. Where as many hosting countries provide parallel health services for refugees, Iran has opened access to all refugees into the country’s Universal Public Health Insurance (UPHI). This provides documented refugees with health insurance services similar to that of Iranian nationals. In 2017, for example, more than 110,000 extremely vulnerable refugees, were enrolled in the third cycle of UPHI scheme (providing coverage for 12 months).

Supported by UNHCR, the initiative is administered through an agreement between UNHCR, BAFIA, the Ministry of Health and the Iran Health Insurance Organisation. The scheme is funded by several donors including the EU- ECHO.<sup>158</sup>

<sup>153</sup> The change to allow undocumented Afghan children to attend schools is in accordance with Iran’s ratification of the International Covenant on Economic Social, and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).

<sup>154</sup> Foreign Nationals Education Regulations 20/04/2016 <http://rc.majlis.ir/fa/law/show/963800>

<sup>155</sup> Hugo, G., Abbasi-Shavazi, M., and Sadeghi, R (2012) ‘Refugee Movement and Development – Afghan Refugees in Iran’, Migration and Development, 1:2, pps. 261-279.

<sup>156</sup> Hugo, G., Abbasi-Shavazi, M., and Sadeghi, R (2012) ‘Refugee Movement and Development – Afghan Refugees in Iran’, Migration and Development, 1:2, pps. 268.

<sup>157</sup> Hugo, G., Abbasi-Shavazi, M., and Sadeghi, R (2012) ‘Refugee Movement and Development – Afghan Refugees in Iran’, Migration and Development, 1:2, pps. 268-271.

<sup>158</sup> UNHCR (2018) ‘Trailblazing health scheme benefits refugees in Iran’, Geneva:UNHCR 04.05.2018, <http://www.unhcr.org/news/stories/2018/5/5ad616a44/trailblazing-health-scheme-benefits-refugees-iran.html>.

## d) Durable solutions policy framework

Over many years Iran has deployed a variety of measures to pressure Afghans to return to Afghanistan - refusal to document large numbers of Afghans, periodic suspension of, or stringent condition applied to residency permits, episodic large scale deportations, restrictive policies on the right to work and education, and persistent harassment. These indicate firm adherence to one durable solution which is the return of Afghans to Afghanistan. Of the other two durable solutions, settlement and integration are clearly resisted, and third country resettlement from Iran (just over 18,500 refugees from 2005-14) is negligible, despite Iran being amongst the top 10 host countries for resettlement submissions to the UNHCR.<sup>159</sup>

Unsurprisingly Iran has actively supported a succession of formal repatriation programmes.<sup>160</sup> The first Tripartite Agreement (Iran, Afghanistan, UNHCR) in 1992 saw the repatriation, a year later, of over 300,000 Afghans and a similar number returned spontaneously – the latter, of course, not benefitting from assistance to return.<sup>161</sup> In the same year ‘blue card’ holders began to have their cards confiscated in conjunction with this repatriation programme.<sup>162</sup> Meantime the repatriation programme continued intermittently until 1998.

While the fall of the Taliban in 2001 coincided with large numbers of voluntary returns, some refugees were reportedly pressured by the government to leave Iran. By September 2004, one million Afghans had returned under the repatriation programmes, in addition to almost 568,000 ‘spontaneous returnees’ who did not receive assistance.<sup>163</sup> And, over a slightly different time period, between 2002 and 2006, 1.4 million Afghans returned home, some 847,000 of them with UNHCR’s assistance.<sup>164</sup>

From 2002 to the end 2016, UNHCR assisted 950,000 Afghan refugees to voluntarily return. As many as 400,000 may have returned spontaneously.<sup>165</sup>

Fast forwarding to 2012 Iran has been an active participant in the SSAR, the regional, multiyear strategy developed by the Islamic Republics of Afghanistan, Iran, and Pakistan, with the support of UNHCR,<sup>166</sup> aimed at a “holistic approach to enhancing prospects for sustainable returns and attaining a permanent solution for the protracted refugee situation.”<sup>167</sup> Since its adoption in 2012, UNHCR—assisted voluntary repatriation of more than 660,000 Afghan refugees has taken place (from both Iran and Pakistan) and remains, in the UNHCR’s words, ‘a vital regional platform for solutions’.<sup>168</sup>

<sup>159</sup> UNHCR (2016) ‘UNHCR Refugee Resettlement Trends 2015,’ [www.unhcr.org/559e43ac9.pdf](http://www.unhcr.org/559e43ac9.pdf).

<sup>160</sup> Harild, N., Christensen, A., and Zetter, R. (2015) Sustainable Refugee Return: Triggers, constraints, and lessons on addressing the development challenges of forced displacement, World Bank Global Program on Forced Displacement, Cross Cutting Solutions Area on Fragility, Conflict and Violence, Washington DC: World Bank Group <http://documents.worldbank.org/curated/en/542611468188337350/pdf/99618-WP-PUBLIC-Box393206B-Sustainable-Refugee-Return-15Sept-WEB-PUBLIC.pdf>.

<sup>161</sup> Turton, D., and Marsden, P., (2002) Taking Refugees for a Ride? The Politics of Refugee Return to Afghanistan, <https://areu.org.af/archives/publication/208>.

<sup>162</sup> Adelkhah, F., and Olszewska, Z. (2007) ‘The Iranian Afghans,’ *Iranian Studies*, 40:2, pps. 145.

<sup>163</sup> IRIN (2004) ‘Iran: Interview with UNHCR Head to Mark the Return of One Million Afghan Refugees,’ (2 September 2004), [http://www.irinnews.org/report.asp?ReportID=\\_Asia42985&SelectRegion=Central\\_Asia](http://www.irinnews.org/report.asp?ReportID=_Asia42985&SelectRegion=Central_Asia).

<sup>164</sup> UNHCR (2006) Global Report 2006, Geneva:UNHCR <http://www.refworld.org/pdfid/466d416a2.pdf>.

<sup>165</sup> UNHCR (2018) Global Focus Planning Summary, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-IslamicRepublicofIran-eng.pdf>.

<sup>166</sup> UNHCR (2017) “Operation Pakistan, 2018 Planning summary”, UNHCR Global Focus, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-Pakistan-eng.pdf>.

<sup>167</sup> UNHCR (2015) ‘UNHCR Global Appeal Update 2015,’ [www.unhcr.org/5461e609b.pdf](http://www.unhcr.org/5461e609b.pdf). The strategy has been endorsed by the governments of Afghanistan, Iran, and Pakistan, UNHCR (2012) ‘Solutions Strategy for Afghan Refugees to support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries,’ <http://unhcr.org/afghanistan/solutions-strategy.pdf>

<sup>168</sup> UNHCR (2017) Global Report – Regional Focus, Asia and the Pacific, [http://reporting.unhcr.org/sites/default/files/gr2017/pdf/05\\_Asia.pdf](http://reporting.unhcr.org/sites/default/files/gr2017/pdf/05_Asia.pdf).

Yet, voluntary repatriation continues to decrease: only 930 refugees voluntarily repatriated between January and September 2017<sup>169</sup> despite the focus of SSAR, Phase 2 (2015–17) on co-operation between humanitarian and development actors to facilitate sustainable return. Conversely ‘forced’ returns and deportations are significant. For example, in 2018 large scale return (in excess of 767,000 Afghans) is attributed to the severe economic downturn in Iran. Yet of this total over 410,000 were deported, not spontaneous returns.<sup>170</sup>

## **e) Impact of the political and security context in Afghanistan and Iran on Afghan refugees and other ‘forcibly displaced’**

Afghans in Iran, both refugees and the much larger number of undocumented forcibly displaced, are trapped in a no man’s land of uncompromising political resistance to their presence in Iran and persistent and severe physical and livelihood insecurity in Afghan.

The security situation for the refugees and forcibly displaced Afghans in Iran bears no comparison to the episodic violence and instability of Pakistan; they are not incorporated into a securitisation agenda as in Pakistan. On the other hand widespread and sustained harassment of Afghans (both undocumented and refugees), frequent changes to refugees’ entitlements, the constant threat and conduct of deportation, and the strong backing for SSAR, together create a very unstable protection regime and underpin a pervasive sense of insecurity. There is however little recent, hard, independent evidence of these detrimental conditions.

In terms of the impact of security conditions in Afghanistan on the situation of Afghans in Iran, returnees have been confronted with ongoing insecurity and the presence of unexploded ordnance, loss of livelihoods, the dire lack of services and facilities, and conflict. Together with the challenge of reclaiming land and property, many returnees have no option but to undertake secondary displacement, mostly to urban areas.

The no man’s land is dramatically illustrated by data on Afghan return. The total number of undocumented returnees from Iran in the first six month of 2018 was over 311,000 (compared to little over 15,000 from Pakistan), of whom just under 60% were deportees and 40% spontaneous returnees.<sup>171</sup> By contrast the pitifully low number of voluntary returnees in the first nine months of 2017 – 930 - underscores the fact that freely chosen return is not a viable option. Yet, paradoxically, there is some compelling evidence that despite the adverse structural conditions – the Iranian government’s unrelenting commitment to Afghan return (refugees as well as the undocumented), constant changes in the regulatory apparatus for refugees which perpetuate insecurity, and large scale deportation - Afghans are settling, adapting and integrating. Although the evidence base is small scale, not conclusive and in some details, contradictory, research reported in several studies identifies this same trend of socio-cultural adaptation, socio-economic mobility within Iranian society, and the enhanced economic status of Afghans.<sup>172</sup>

<sup>169</sup> UNHCR (2018) Global Focus Planning Summary, <http://reporting.unhcr.org/sites/default/files/pdfsummaries/GA2018-IslamicRepublicofIran-eng.pdf>.

<sup>170</sup> . IOM (2018) Return of Undocumented Afghans (weekly Sit Rep 23-29 Dec 2018 and annual aggregate) [https://afghanistan.iom.int/sites/default/files/Reports/iom\\_afghanistan-return\\_of\\_undocumented\\_afghans-\\_situation\\_report\\_23\\_-\\_29\\_dec\\_2018\\_003.pdf](https://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan-return_of_undocumented_afghans-_situation_report_23_-_29_dec_2018_003.pdf)

<sup>171</sup> IOM (2018) Return of Undocumented Afghans, Weekly SitRep 27 May- 2 June 2018 [https://reliefweb.int/sites/reliefweb.int/files/resources/iom\\_afghanistan-return\\_of\\_undocumented\\_afghans-\\_situation\\_report-\\_27\\_may\\_-\\_02\\_june\\_2018.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/iom_afghanistan-return_of_undocumented_afghans-_situation_report-_27_may_-_02_june_2018.pdf).

<sup>172</sup> Hugo, G., Abbasi-Shavazi, M., and Sadeghi, R (2012) ‘Refugee Movement and Development – Afghan Refugees in Iran’, *Migration and Development*, 1:2, pps. 261-279. Adelkhah, F., and Olszewska, Z. (2007) ‘The Iranian Afghans,’ *Iranian Studies*, 40:2, pps. 137-165. Abbasi-Shavazi, M., and Sadeghi, R. (2014) ‘Socio-cultural Adaptation of Second-generation Afghans in Iran’, *International Migration*, 53:6, pps. 89-110.

## 2. MAPPING OF INTERNATIONAL AND NATIONAL PROTECTION ACTORS

### a) Engagement of international actors

**UNHCR** has a longstanding presence in Iran with a substantial assistance programme for the refugees. Whilst it also safeguards protection standards, since Iran has its own national legal framework for refugee status determination (RSD) and refugee protection, the scope of UNHCR's mandated role in this field is more limited. As in Pakistan, the UNHCR has also mediated the Iranian government's repatriation policies. In this context it has taken an active role in the SSAR programme.

With programme expenditure rarely exceeding 30% of the budget, the UNHCR has, over many years, sustained its efforts in encouraging and supporting the Iranian government to provide basic needs and services, principally access to education for children (both refugees and the undocumented) and the extension of access to the health system (UHPI) to refugees.<sup>173</sup> Typically basic services and assistance accounts for about two thirds of annual expenditure (\$27m of \$41m total expenditure in 2017), for example.<sup>174</sup> Support for vulnerable refugees (by cash support), and projects to build refugee-led, community based resilience also figure in its programme.

**IOM** started its engagement in Iran in 1990, facilitating evacuation of third country nationals caught in the Iraq-Kuwait conflict. But since 2000, when Iran ratcheted up its repatriation and deportation programmes, IOM's principal role has been to assist the orderly return of Afghans (both refugees and the undocumented) from Iran to Afghanistan, collaborating with UNHCR where refugees have been repatriated. In 2000, IOM was involved in the voluntary return of approximately 370,000 Afghan nationals to Afghanistan. Co-incidentally, Iran was accepted as a full member in IOM's Governors' Council in 2001.<sup>175</sup>

IOM sustains its continuing role in monitoring Afghan return through its Displacement Tracking Matrix (DTM) and its more limited role in assisting Afghan return – for example IOM has assisted only 13,565 of the more than 311,000 returning Afghans since the beginning of 2018.<sup>176</sup> In this context, IOM runs an assistance programme for the return and reintegration of qualified and skilled Afghans from Iran to Afghanistan which aims to contribute toward the reconstruction and rehabilitation.<sup>177</sup>

Alongside these activities, since 2004, IOM has developed a wider programme to assist Iran in developing a coherent migration policy and management capacity and institutional structures, recognising Iran's regional situation as a country of origin, transit, and destination for migrants as well as its large refugee population. Inter alia, in the context of this evaluation, this programme includes: facilitating voluntary return and reintegration from and to Iran; cooperation in border management; developing national and regional migration policies and strategies; combating irregular migration, including human trafficking and migrant smuggling.<sup>178</sup>

<sup>173</sup> 2015 budget \$75m, expenditure \$22m; 2016 budget \$76m, expenditure \$41m; 2017 budget \$97m, expenditure \$35m. Source UNHCR (2018) Global Focus: Iran, <http://reporting.unhcr.org/node/2527?y=2015#year>. See also UNHCR (2000) Global Report, Geneva: UNHCR, <http://www.refworld.org/pdfid/466d416a2.pdf>.

<sup>174</sup> UNHCR (2018) Global Focus: Iran, <http://reporting.unhcr.org/node/2527?y=2015#year>.

<sup>175</sup> IOM (2015) IOM in Iran, <http://iomtehran.net/index.php/en/iom-in-iran>

<sup>176</sup> IOM (2018) Return of Undocumented Afghans, Weekly SitRep 27 May- 2 June 2018, [https://reliefweb.int/sites/reliefweb.int/files/resources/iom\\_afghanistan-return\\_of\\_undocumented\\_afghans\\_-\\_situation\\_report-\\_27\\_may\\_-\\_02\\_june\\_2018.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/iom_afghanistan-return_of_undocumented_afghans_-_situation_report-_27_may_-_02_june_2018.pdf)

<sup>177</sup> IOM (2018) Iran: Return and Reintegration of Qualified and Skilled Afghan Nationals from the Islamic Republic of Iran to the Islamic Republic of Afghanistan (RRQSA), <https://www.iom.int/countries/iran>

<sup>178</sup> IOM (2018) Iran, <https://www.iom.int/countries/iran>.

More specifically, the positive dimensions of IOM's programme include: trainings and awareness raising for government in the field of refugees and migration and development; and facilitating refugee resettlement from Iran.

**The World Bank** Before the 1979 Iranian revolution, Iran was an active borrower from the World Bank. But for almost 40 years since then the Iranian economy has operated under international trade and investment sanctions. World Bank lending stopped in 1979, briefly resuming again between 1991 and 1993 for projects including primary health, earthquake recovery assistance, drainage and irrigation projects. The USA then successfully blocked World Bank lending until 2000, under the sanctions policy against Iran's uranium enrichment programme. After 2000 the USA was no longer able to prevent lending which, although it resumed, the USA succeeded in delaying disbursements.<sup>179</sup> However sanctions were ratcheted up after 2010 with other G7 members (besides the USA) and the EU imposing various trading bans notably on import of Iranian oil – Iran holds the world's second largest reserves of oil.<sup>180</sup>

In 2016 the sanctions and embargoes were lifted. Removal of the oil embargo alone has and will continue to have (assuming sanctions are not re-imposed) significant macro- and micro- economic impact on Iran (and the rest of the world).<sup>181</sup> It is too soon to assess the trickle-down effects of these impacts on Afghan livelihoods.

**International NGOs** Only a small number of international NGOs operate in Iran, including, for example the **Norwegian Refugee Council (NRC)**<sup>182</sup> (since the mid-1980s), **Relief International (RI)**<sup>183</sup> (first commencing operations in 1990 in response to the severe Manjil-Rudbar earthquake), and more recently, the **Danish Refugee Council (DRC)** (since 2012).<sup>184</sup> The limited INGO presence can be attributed to several factors: donor reluctance to fund assistance; this reluctance is a corollary of the protracted international economic sanctions on Iran discussed above; the possible reluctance of Iran to mandate INGOs given its harsh predisposition to refugees.

Although briefly acknowledging the existence of the large number of undocumented Afghans in Iran, the INGOs only work with registered refugees with the exception of RI that has a (small) programme for the undocumented Afghans. None of the three INGOs appear to work with local host communities in joint programming that now characterise many refugee relief operations.

Located in urban areas (where 97% of the refugee population live), the INGO programmes cover a relatively narrow range of humanitarian assistance activities. This may reflect possible constraints on their mandates or, more likely, the focus on the main vulnerability exposure of the refugees - limited ability of sustaining sufficient economic livelihoods and a minimum of protection - described in earlier parts of this profile.

The projects include: livelihood promotion through vocational training, business training and start up support (RI and DRC); access to healthcare and education (NRC, RI, DRC); basic needs assistance such as food and clothing (RI, NRC); WASH and shelter (RI and NRC); targeted programming for vulnerable groups, for example cash assistance, and

<sup>179</sup> Weiss, M., and Sanford, J. (2008) 'The World Bank and Iran', Congressional Research Service, Library of Congress, <https://fas.org/sgp/crs/mideast/RS22704.pdf>.

<sup>180</sup> Ianchovichina, E., Devarajan, S., and Lakatos, C. (2016) 'Lifting Economic Sanctions on Iran Global Effects and Strategic Responses', Washington DC: World Bank, Policy Research Working Paper 7549, <http://documents.worldbank.org/curated/en/298681467999709496/pdf/WPS7549.pdf>.

<sup>181</sup> Even with the embargo, oil accounts for about 64% of Iranian export revenue and Iran has a relatively large share, at 8%, of total world exports.

<sup>182</sup> Norwegian Refugee Council (2018) 'NRC in Iran', <https://www.nrc.no/countries/middle-east/iran/>.

<sup>183</sup> Relief International (2018) 'Iran', <https://www.ri.org/reach/asia/iran>.

<sup>184</sup> Danish Refugee Council (2018) 'Iran', <https://drc.ngo/where-we-work/asia/iran>.

health and hygiene awareness for families, headed by women, seniors and people with disabilities (RI, DRC). These projects are for registered refugees. Cash transfers are the main modality.

Support for local capacity building is also a feature of some INGOs programmes. Examples are: training programmes to build local NGO fundraising, financing administrative and management skills (RI); and strengthening stakeholder capacity through socio-economic research and evidence-based programming and policy development for refugees' livelihood activities (DRC).

Significant by its almost total absence, is the existence of 'existential' protection activities – i.e. in relation to RSD, deportation and voluntary repatriation. Only the NRC has one programme broadly in this area of protection for information, counselling and legal assistance (ICLA).

Likewise, there is a dearth of projects for the undocumented. Since 2016, RI has run a project in the remote and impoverished Sistan-Baluchistan province, which borders Afghanistan and Pakistan. This is a no-go area but some Afghans remain there and with ECHO funding RI provides for basic urgent needs of 1500 undocumented Afghan households in Mashhad and Yazad.

## b) Local NGOs

Although a dated source estimated that there were over 8000 local NGOs in Iran in 2008 (their resurgence at this time has been linked to the tenure of former president Mohammad Khatami (1997-2003))<sup>185</sup>, only a handful, today, serve the Afghan refugee population. As with the INGOs their scope appears to be mainly limited to serving refugees.

In all, 11 NGOs have been identified as relevant to this study, although there may be others that are either not registered or cannot be identified as serving the forcibly displaced Afghan population. These NGOs provide only a narrow range of services: five of the 11 provide a range of educational and literacy programmes, five provide health services and one provides poverty alleviation and empowerment activities. Six of the NGOs are partnered with either or both UNHCR and UNICEF. The NGO projects are urban based.

**HAMI (Association for Protection of Refugee Women & Children)** established in 1991 and partnered with RI, is the most well established having provided a range of projects for teacher training, literacy classes for Afghan children, vocational training for Afghan women, and female health and reproductive care. **Kiana** has provided education for those trapped in child labour for up to 2,000 children and workspace for women-headed families, whilst PDA has been very active in schooling Afghan children. The websites give little information on the programmes, such as whether they serve both Afghan refugees and the undocumented Afghan population, whether they also serve Iranian communities (this seems not to be the case), and there are no evaluations to be able to judge the quality of services and impacts.

Significant gaps in the assistance local NGOs provide to undocumented Afghans are clearly in protection activities - it could be assumed that this is too politically sensitive and could damage their mandate - and livelihoods assistance.

<sup>185</sup> PARSAs Community Foundation Newsletter (2008) Iranian NGOs: Sowing the Seeds of Civil Society <http://www.payvand.com/news/08/jan/1136.html>.

### 3. MEDIATING PROTECTION AND RIGHTS – THE ROLE OF HUMANITARIAN ACTORS

Although evidence is hard to discern in a desk study the role that humanitarian actors play in Iran's protection regime and policies is unclear but appears to be ambiguous.

UNHCR's large scale funding of Iran's assistance programme seems to be offset by a low profile role with regard to RSD and protection norms and standards for Afghan refugees, where the organisation appears to collude with rather than confront Iran's constrained interpretation of protection and the reservations it makes to rights. The UNHCR has also actively supported refugee repatriation in the SSAR programme despite the extreme vulnerability that returnees face.

More problematic has been the UNHCR role with respect to the politically sensitive issue of the much larger number of undocumented Afghans who have no protection. Although UNHCR operations have not been examined in this study, there is a reasonably strong impression that UNHCR focuses on 'soft' policy relating to access to asylum and registration of refugees but provides limited, if any, public advocacy for undocumented Afghans. Neither is there evidence, at least in the public domain, that it recognises the extreme vulnerability of this group through for example channelling assistance to this category, nor any indication that it has restrained the Iranian government in its hard line resistance to protecting undocumented Afghans and desisting from deportation. UNHCR does not, in public at least, contest either the absence of due RSD process (even though Iran is a signatory to the 1951 CSR), for Afghans who have arrived after 1997/2003 when the provision of refugee status effectively terminated, or the contention that they are all economic migrants.

IOM's assistance to Iran appears to be similarly ambiguous. Bearing in mind that Iran is strongly predisposed to deportation and repatriation, IOM highlights its role in 'Regulating Migration' with programme support for assisted voluntary return and for re-integration.<sup>186</sup> Again, no programme details are available, but it seems to be only aimed at refugee return and ignores the much more profound protection and assistance needs of undocumented Afghans who are forcibly returned in large numbers.

For both UNHCR and IOM, rights- and needs- based advocacy and assistance are remarkable by their absence.

The lacuna amongst international organisations in more strongly mediating the protection norms and standards for refugees and undocumented Afghans in Iran is mirrored in the stance of INGOs and NGOs. With only very limited exceptions, given the scale of need, INGO and NGO assistance is only provided to refugees. It appears that neither set of actors wants to risk their mandates in providing assistance or advocacy for undocumented Afghans; or they may have been refused mandates to do so.

<sup>186</sup> IOM (2018) Iran, <https://www.iom.int/countries/iran>.

## 4. SUMMARY AND CONCLUSION

For almost three decades, Iran's policies with regard to the forcibly displaced Afghans has been resolutely geared towards their temporary presence and pressure on them to return has been persistent. Despite being a signatory to the 1951 Convention, Iran's national laws and policies are directed to this end and protection norms and practices are weak. Unwillingness to document and give protection to the majority of Afghans, coupled with periodic large scale deportations, as well as repatriation of those with refugee status are symptomatic of this policy. Constant changes of protection policies and rights (such as education, mobility, right to work) create insecurity for Afghans with refugee status. Conditions for the undocumented Afghans are far worse. With no formal access to livelihoods, and harassment and the threat of deportation constant risks, they are highly vulnerable and lack even minimal protection.

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