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AFGHAN REFUGEES AND APEX COMMITTEE DECISION TO DEPORT ILLEGAL MIGRANTS FROM PAKISTAN

Overview of the Afghan Refugee Situation in Pakistan

Currently, there are approximately 3.7 million Afghans living in Pakistan,¹ around 1.32 million of them are Proof of Registration (PoR) cardholders, approximately 88,299 hold an Afghan Citizen Card (ACC)², and an estimated 775,000 are undocumented.³ Some sources claim the number of unregistered Afghans in Pakistan to be as high as one million. UNHCR and Pakistan government entered into an agreement forty years ago, to provide humanitarian assistance and shelter to Afghans fleeing war.⁴ As a major implementing partner of Pakistan, UNHCR issues asylum certificates to Afghans and helps them get registered in Pakistan under PoR or ACC category or apply for third-state settlement options and reach foreign embassies in Pakistan. Pakistan is not a signatory of the 1951 Geneva Convention nor its 1967 protocols on refugee rights. Despite this, it has cooperated with UNHCR for over four decades by hosting Afghan refugees. In agreement with the previous Afghan governments, and with UNHCR cooperation, several repatriation waves have taken place, but due to unbearable security and living conditions back home, most Afghans seek Pakistan as a safe haven.

Around 69% of Afghans are integrated into Pakistan, and just 31% reside in refugee villages managed by the UNHCR and Pakistan government together. More than 55% live in the KP region and around 26% in Baluchistan.⁵ Instances of ethnic friction with host communities in these areas and competition for local resources have been reported by UNHCR. PoR card holder Afghans have access to health and education, private jobs, can rent a home, and obtain a SIM card.⁶

Since 2021, around 600,000 Afghans⁷ have entered Pakistan that were not entertained by either the Pakistan government or UNHCR under any registered category. Pakistan government has

time and again vocalized its inability to sustain any more refugees on account of its own economic crisis and political instability. After the Ukraine war, donor funding was redirected away from Afghanistan creating push factors in the form of poor living and security conditions in the conflict zone. Meanwhile of the total budget request of \$176.0 million put forward by UNHCR Pakistan for 2023, only 57% was funded by donor states.⁸

Legal Position of Pakistan's Refugee Management

Pakistan has not signed the Refugee Convention of 1951, nor its 1967 protocols that define "certain parts of the convention accord formal status to customary international law, and therefore, are instructive for even non-parties to the convention."⁹

As per Article 33 of the Refugee Convention the principle of "non-refoulement" binds a country under customary international law not to forcibly repatriate the refugees who face threats to their lives in the country from where they have migrated to seek refuge. But this principle does not apply to current environment in Afghanistan where Interim Afghan Government (IAG) claims to have created a peaceful and secure environment for all citizens.¹⁰

Pakistan does not have any domestic laws on Refugees. It deals with all non citizens under the Foreigners Act 1946.

Different Categories of Afghans Residing in Pakistan

1.32 million Afghan Refugees with Proof of Registration (PoR) cards including those born in Pakistan. These are issued by NADRA and renewed with the help of UNHCR and Pakistan government joint campaigns each year.¹³

88,299 Afghan Citizenship Certificate (ACC) card holders, mostly residing in Punjab, registered by NADRA.¹⁴

600,000 Refugees who came after USA's withdrawal in 2021 that were accepted on the condition of seeking resettlement abroad, or in

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need of emergency medical aid or humanitarian response. They are not registered under PoR or ACC.

Apex Committee's Decision on Illegal Migrants

On 3rd October 2023, Pakistan government's Apex Committee approved a massive crackdown on illegal migrants residing in Pakistan, who have forged IDs and are involved in drug trafficking, smuggling, and exchange of illegal finances across the border. Earlier on 29 September 2022, the National Assembly Standing Committee on States and Frontier Regions (SAFRON) held a session and expressed concerns about illegal migrants and their unchecked movement, and the resulting shadow economy flourishing in KP and Baluchistan regions of Pakistan.

The Apex Committee's decision entailed the following:

All illegal migrants in Pakistan are required to leave the country by 31st October 2023. Around 49000 illegal migrants have already left for Afghanistan since 1st Oct 2023.

After 1st November the state will deport any illegal migrants residing without proper and legal identification in Pakistan.

After 10th October 2023, transit and mobility across Pak-Afghan border will only be possible via Electronic Tazkira, and after 1st November only on the basis of a valid visa and passport.

A special task force is created to crack down against illegal ID card holders, and illegal migrants involved in crime, drug trafficking, smuggling, and terrorism.

Context of the Decision

The Minister of Interior in Pakistan claimed to have proof that Afghan nationals are responsible for 12 of 24 major terror attacks in Pakistan this year.¹¹ The government has contextualized the urgency of Apex Committee's decision in light of the increasing trans-national potential of terrorist and insurgent groups operational in KP and Baluchistan's, given the permeable borders with Afghanistan and Iran. According to The Ministry of Interior, KP, and Baluchistan have experienced a 59% and 39% increase in terrorist activities respectively for the year 2023.¹² In September 2023, the Afghan Interim Government confirmed capturing 200 TTP fighters from Afghanistan. These were involved in attacks against security forces in the Chitral region of Pakistan.

Pakistan is susceptible to spillover of violence and crime from Afghanistan due to geographical and ethno-cultural proximity of its border areas with Afghanistan. Illegal and unchecked mobility of the people and the goods across KP and Baluchistan terrain, bordering Afghanistan has resulted in spawning of an illegal eco system of organized crime, drug trafficking, smuggling and terrorism. Recent intelligence reports reveal, TTP and ISK indulging in hit-and-run operations from across the Pak-Afghan border

while also using illegal and criminal proceeds to finance terrorist activities.

Implications of Apex Committee's Decision on Refugees

The decision though meant to target illegal settlers involved in crime and terrorism in Pakistan, will affect only unregistered Afghan migrants who are residing illegally in Pakistan besides ensuring better control on cross border movement across the Pak-Afghan border because of a single entry regime through passport and visa. The Ministry of States and Frontier Regions issued an executive order on October 10th 2023, directing authorities to refrain from arresting both PoR and ACC holders unless involved in criminal activities. Recent media reports reveal that hundreds of Afghans have been arrested from Islamabad and Karachi. Semi-permanent illegal Afghan settlements in the suburbs of Islamabad were bulldozed by the government as well. Since the majority of Afghans residing in Pakistan are women and children, the collective crackdown of the government, without much legal cover can expose them to detention and prosecution till proven innocent.

The fact that Pakistan has not been able to legislate on Afghan refugees, during four decades of hosting makes prosecution and deportation of illegal refugees and migrants even more complicated. The task force assigned by Apex Committee and Judiciary will have to work under an executive order rather than clear administrative or legal provisions, putting refugees at the risk of unjust detention till proven innocent and exerting pressure on an already over-burdened security sector in Pakistan. In a recent case, Rahil Azizi, an Afghan national was sentenced to prison under Foreigners Act 1946, which criminalises crossing borders without legal documents. She was later bailed out by IHC after remaining in jail for several months, on the basis of a provision in the 1946 Act: which establishes offense on basis of intent not action. Azizi's intent was to save her life and seek refuge and not to break the law or indulge in criminal activity. She was declared innocent by the court and was released from prison.

The crackdown on illegal Afghans including refugees may also impact adversely upon Pakistan-Afghanistan relations. Taliban spokesman Zabiullah Mujahid called Pakistan's decision to deport refugees, 'unacceptable'. Pakistan's Foreign Office clarified, that the crackdown is not aimed at ethnic profiling of Afghans. Meanwhile, talks are underway between Pakistan and Afghanistan authorities to set up repatriation camps and facilities near the Chaman border to escort the deportees back home. Pakistan's deteriorating internal and border security situation calls for extraordinary measures. As a sovereign state, it has a right to pass laws and implement procedures necessary for its security, economy, and political stability.

Cross-border and transit trade with Afghanistan has transformed the cities of Quetta and Peshawar into

business hubs of the provinces. Informal business and illegal trade across Pak-Afghan border contribute to informal economy. Informal economy in Pakistan accounts for about 40% of gross domestic product (GDP) and about 6% of GDP is stolen every year. The volume of goods smuggled into Pakistan increased nearly threefold from 2014 to 2018.¹⁵ Cross-border trade will also be effected, after government increases transit control and immigration control at border checkpoints. As per a 2011 study of UNCHR, an Afghan refugee can earn up to 25000 to 30,000 rupees per month without paying taxes.¹⁶

This decision is likely to put the government at odds with refugee groups and INGOs. Amnesty International and UNHCR have expressed deep concern on the matter, while still maintaining, that a state has the right to implement laws to strengthen security. The fact that Pakistan is not a signatory of the Geneva Convention and protocols regarding refugee rights, should not have prevented it from passing administrative laws on managing refugees at the domestic level. Lack of proper documentation and categorization in the absence of refugee-specific legislative provisions will demand extra time and effort from the task force to identify, detain and transport the illegal migrants for completion of deportation process.

Recommendations

Pakistan should pass necessary domestic laws on refugees and asylum seekers to bring legal clarity to the issue of refugees and migrants' management even if it does not opt to sign the Geneva Convention 1951 and its 1967 Protocol. The measure is expected to facilitate refugee management besides curbing the illegal migration and stay in the country.

The government may consider investing in capacity building and training of border security forces and immigration apparatus of the state like FC, FIA, Police, and Customs to prevent illegal movements across the Pak-Afghan border.

Visa process should be made easy and corruption free, to facilitate Afghans who want to enter Pakistan legally for business, education, or familial visits. Pakistan should not let people-to-people contact and trade ties with Afghans get adversely impacted due to stringent border control measures.

For illegal migrants, especially those involved in criminal or terrorist activity in Pakistan, the identification, detention and deportation process needs to be followed through and applied consistently to illegal migrants of all nationalities.

The administrative details and logistics of the deportation process including coordination with the Afghan Interim Government should be properly factored in while planning a whole of the government response for the deportation of illegal migrants.

Afghan Interim Government (IAG) should be taken on board to accept deported migrants who were involved in illegal activities in Pakistan. IAG should be reminded of its responsibility to provide a conducive living environment for the Afghan citizens, so that they do not opt to leave the country and seek refuge elsewhere.

Widening the donor pool to sustain registered Afghans can help Pakistan better fulfill its obligations as a host state. KP and Baluchistan provinces already rank low on the development index; their governments need help to sustain the burden of refugees through education, health, and small livelihoods-based initiatives of INGOs and NGOs.

UNHCR or any other INGO cannot be given jurisdiction to govern mobility across borders or give identity documents to migrants. All INGOs and states demanding lenient border controls and the stay of refugees in Pakistan should be encouraged to share this international humanitarian responsibility. It may be done via enabling resettlement to third states, increase funding of UNHCR operations in Pakistan, and investing in capacity building of Pakistan's border security forces, local institutions of education, health and housing, since 70% Afghans are living outside of camps. The Ministry of SAFFRON, the Chief Commission of Afghan refugees, and the Provincial governments may be consulted to implement any such cooperative mechanism.

Pakistan can use international forums to highlight its inability to sustain illegal Afghans and not be demonized for prioritizing its own security needs.

Notes

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³ Country of Origin Information Report: Pakistan - Situation of Afghan refugees (European Union Agency for Asylum, May 2022) <https://euaa.europa.eu/news-events/euaa-publishes-report-afghan-refugees-pakistan>

⁴ "UNHCR in Pakistan," Country Profile Pakistan, UNHCR, <https://www.unhcr.org/pk/unhcr-in-pakistan#:~:text=Forty%20years%20ago%2C%20UNHCR%2C%20the,the%20protection%20of%20Afghan%20refugees>.

⁵ UNHCR: Fact Sheet, Pakistan (UNHCR Pakistan, August 2023) <https://reporting.unhcr.org/pakistan-factsheet-5426>

⁶ "Help Pakistan, Proof of Registration Card (PoR)," UNHCR, <https://help.unhcr.org/pakistan/proof-of-registration-card-por/#:~:text=PoR%20cards%20must%20be%20verified,card%20in%20coordination%20with%20NADRA>.

⁷ "Overview of Pakistan operations," UNHCR, <https://data.unhcr.org/en/country/pak>.

⁸ Funding Update, Pakistan, (UNHCR, Pakistan, 4 October 2023), <https://reporting.unhcr.org/pakistan-funding-2023>.

⁹ Ahmar Bilal Sufi, "Afghan refugees and International Law", DAWN, Oct 13, 2023, <https://www.dawn.com/news/1780838>.

¹⁰ Ibid.

¹¹Ayaz Gul & Sarah Zaman, “Pakistan to begin Deportation of 1.7 million undocumented Afghans”, Voice of America, Oct 3, 2023. <https://www.voanews.com/a/pakistan-to-begin-deportation-of-1-7-million-undocumented-afghans/7294939.html#:~:text=%22We%20have%20come%20under%2024,southwestern%20Baluchistan%20province%20were%20Afghans>.

¹²Azaz Aayed and Umar Cheema, “Horrible statistics about terrorism, Afghan refugees & Solution?”, Talk Shock Youtube video, Oct 4, 2023. https://www.youtube.com/watch?v=cq_6k7H-Hcg

¹³Ibid, UNHCR.

¹⁴Ibid, <https://car.punjab.gov.pk/faqs>.

¹⁵Kahlid Husnain, “Pakistan's shadow economy accounts for 40pc of GDP, says study”, DAWN, June 5, 2022. <https://www.dawn.com/news/1693195>.

¹⁶UHNCR Stories, UNHCR looks at the economic contribution of Afghan refugees in Pakistan, UNHCR Pakistan, Jan 10, 2011. <https://www.unhcr.org/news/stories/unhcr-looks-economic-contribution-afghan-refugees-pakistan>