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THE ROLE OF INTERNATIONAL LAW IN PROTECTING AFGHAN ASYLUM-SEEKERS AND AFGHAN REFUGEES IN IRAN

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ABSTRACT | 摘要 | RESUMEN

Iran, being a neighbouring and easily accessible country, has been the primary host of Afghan refugees for the last four decades. Although Afghan asylum seekers have been living in the country for a long time, they are provided with minimal human rights protection. This article examines international documents, laws, and regulations related to asylum seekers and refugees. It explores the status of asylum seekers and refugees in international law, focusing on Afghan asylum seekers in Iran. This research has been conducted using a descriptive-analytical method to the following research question: To what extent has international law and its related instruments been effective in enhancing protections and improving the situation of Afghan refugees in Iran? The findings reveal that, although international law has provided protective frameworks, it has not been able to compel Iran to respect the rights of Afghan asylum seekers. Domestic policies, economic conditions, and the lack of binding legal instruments have posed hindrances to effectively implementing these commitments.

Keywords:

Afghan asylum-seekers,
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1. INTRODUCTION

Migration, as a growing phenomenon, has emerged to join the ranks of the important global challenges in recent years. While migration is a historical and long-standing occurrence, over the last five decades, it has witnessed unprecedented growth and a continuous uptrend. By current estimates, about 281 million people, or 3.6% of the total population of the world, are living away from their home countries.[30] That is one migrant for every 30 persons in the world today.[17] Afghanistan itself has faced unending crises in recent decades—from war and insecurity to socio-economic upheaval—which have displaced millions of Afghans and sent them packing into both nearby and faraway countries. Currently, Afghanistan is the source of 8.2 million migrants in 103 countries around the world and is considered one of the largest and most protracted displacement crises in the seven-decade history of UNHCR and globally. Afghan asylum seekers make up the third-largest displaced population in the world after Syria and Ukraine, with 70% being women and children.[32] Whereas international migration is nothing new to the world, neither is it a new issue within Afghanistan. The most dramatic flows of Afghan migration started during the second half of the 20th century—that is, during the 1970s and 1980s—following the establishment of the Communist regime, or the so-called Democratic Republic of Afghanistan. This trend increased with the increase in political unrest in the country. The civil wars of the 1990s during the government of the Mujahideen, and further takeover by the Taliban in the late 20th century, increased this migration crisis.[33] However, after the start of the new democratic government in 2001, the rate of migration slowed for a period of time. This was short-lived, and another wave of migration started in 2014 with the announcement of the U.S. military withdrawal from Afghanistan, culminating on August 15, 2021, with the fall of the Republic and the re-establishment of the Islamic Emirate. These forced waves of asylum seekers are at once entangled with complex legal and humanitarian issues.

While contributing immensely to the increased suffering of refugees, massive flows have also created great challenges for host states as well as the international community. Massive Afghan asylum seekers' forced deportations of 2024 from the Pakistani and Iranian territories added, in turn, heightened sensitivity to the existing complexity and sensitivity of the issue. Given geographical proximity, Iranian soil has become easy to reach because of its low cost of living and shared cultural heritage. Indeed, nearly 4.5 million Afghan migrants make Iran their home, overtaking it as the largest host country for Afghan refugees.[18] Despite such friendly gestures, Iran has never been a secure haven for Afghan asylum-

seekers. Afghan migrants also get minimal access to the most basic of services and facilities related to livelihood, even after long stays in Iran.

In that direction, it would be important to gauge: To what extent and in what manner has the applicable international law and corresponding mechanism been employed to bring enhancement of protection and improvement for the Afghan refugees and Afghan asylum seekers in Iran? What is the factor causing its strengthening or weakening vis-à-vis the exercise of these rights within the country?

This study postulates that international law has so far failed to protect Afghan refugees and has not been able to push Iran toward the full implementation of their rights. This paper will attempt to explain the role that international law can play regarding Afghan refugees in Iran, challenges, obstacles toward such implementation, and advanced practical legal solutions in an effort to enhance the situation of the refugees with a view to respecting their basic human rights.

2. THE LEGAL POSITION OF REFUGEES AND ASYLUM-SEEKERS IN INTERNATIONAL LAW

In the international context of new global challenges, at least one prominent subgroup has strongly characterized the world's population of migrants in the past: asylum seekers. They have to cross state boundaries in search of security and protection in foreign countries. Host nations are also in a fix on how to manage such large numbers of refugees, thereby proving a challenge to the government as well as the refugees. Confrontation with this crisis then means that on one hand, control of the situation can be done, but on the other hand, human rights of refugees can be safeguarded only through the institution of international rules and regulations. One of the critical levels at which to explore these issues is through examining international legal frameworks concerning refugees.

As for the history, it was not until after the creation of the League of Nations that "asylum" gained its standing as a sovereign and independent right under international law. Asylum developed along with other concerns of classical international law, such as the extradition of criminals or the treatment of foreign nationals. Initially, asylum was regarded as nothing more than a means to avoid the horrors of war. Only after the League of Nations was established did the problem of the protection of refugees begin to be addressed in some organized way by the international community. The year 1945 saw the passing of a

resolution by the United Nations, creating a new organization to help refugees. The next one was the "International Refugee Organization (I.R.O)" in 1946. Then, the "Office of the United Nations High Commissioner for Refugees" (UNHCR) came into being as a consequence of Resolution 319 passed by the United Nations General Assembly. This office was given jurisdiction by the International Refugee Organization to handle matters concerning refugees and other functions assigned to it by the General Assembly. The study now moves on to discuss some of the significant international documents that aim to assist and safeguard refugees and persons who seek asylum.

2.1. Group-Based Refugee Status Determination

The *Handbook on Procedures and Criteria for Determining Refugee Status* issued by the UNHCR suggests that group refugee status determination should become the method for handling asylum seeker cases when individual assessments are no longer feasible due to a large inflow of claimants. In this regard, according to this principle, all people belonging to a group are afforded temporary recognition unless evidence to the contrary is made available. This approach, according to the 2015 UNHCR guidelines, is most applicable in instances of large numbers of asylum seekers or when all members of the group are under a common threat.[24] This method aligns with the current situation of Afghan asylum seekers, whose displacement surged after the fall of the Republic government in August 2021.

2.2. Private Rights

There are, however, general rights accorded to foreign nationals under international law, to which refugees become naturally entitled. Among such categories of rights are those relating to private rights. Normally, foreign nationals are accorded such rights since they are considered basic to life and dignity, of which every human being is entitled, irrespective of nationality. In that respect, no distinction should be made between a foreign national and a domestic citizen. States guarantee such rights to aliens through either domestic legislation, international treaties, or on the basis of principles of reciprocity, enabling them to exercise civil and personal rights that are essential to human dignity and a decent life. It follows, therefore, that private rights of aliens are thus protected, and states are under obligation to accord them rights equal to those accorded to their nationals, in accordance with domestic laws or international agreements.

2.2.1. Property Rights in Immovable Assets

- a) The right to possess, acquire, and hold immovable property for residence, profession, or vocation.
- b) The right to transfer, acquire, and possess movable assets.

2.2.2. Personal Status Rights

Another category of private rights accessible to foreigners under the condition of reciprocal treatment involves personal status rights. Some countries adhere to the national law of the foreigner's home country in matters of personal status, while others apply the law of the place of residence. Today, most nations internationally recognize the enforcement of a foreigner's national law regarding personal status. However, such rights of a foreigner can only be exercised in the host country if his home country reciprocally recognizes such rights. [14]

2.3. Temporary Protection for Asylum-Seekers

The 2014 guidelines of the United Nations High Commissioner for Refugees on temporary protection or stay arrangements include large-scale influxes of asylum seekers, wide-scale cross-border displacements, and transitional or unstable conditions, as in Afghanistan, where migration patterns are not yet certain. These guidelines recommend the grant of temporary protection to asylum seekers in border areas of neighbouring countries, especially when individual status determination is either not feasible or not practical. These measures make for short-term solutions in managing asylum seekers at the borders.[41]

In large-scale influxes, the principle of non-discriminatory reception by the country of asylum, guided by the fundamental principle of non-refoulement, shall be strictly followed. Basic rights must be guaranteed for asylum seekers who are admitted on a temporary basis, ensuring they are not subjected to unnecessary punishment or restrictions. Essential resources such as food, shelter, and healthcare must be provided, and protection from inhumane and degrading treatment must be ensured. Interactions with them need to be handled with empathy, and access to courts and other legal powers should be granted.

Special consideration should also be extended to vulnerable groups, which include families and children. Measures to maintain family unity and protect children and minors should be prioritized.[37]

2.4. The 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol are the most significant international instruments concerning the rights of refugees. The 1951 Convention defines the fundamental rights of refugees and emphasizes principles such as non-discrimination, freedom of religion, access to courts, the right to work, and access to education. It provides protection against unlawful expulsion and refoulement to countries where their lives would be at risk. Furthermore, the Convention obligates states to ensure the humane reception of refugees, facilitate their residence and naturalization, and cooperate with the United Nations and its agencies to uphold refugee rights effectively. Some of the key provisions in this Convention supporting refugee rights include:

Subject	Explanation
Non-Refoulement	Article 33: States are prohibited from returning refugees to territories where their lives or freedoms may be threatened due to race, religion, nationality, membership in a particular social group, or political opinion. This principle, described as the cornerstone of refugee protection under the 1951 Convention, is widely regarded as a customary rule in international law. Some scholars have debated whether it constitutes a peremptory norm (<i>jus cogens</i>), though no definitive conclusion has been reached. Furthermore, extradition may fall under the scope of this principle, as certain extradition treaties include clauses reflecting the non-refoulement principle.[34]
Public Education	Article 22: Contracting states are required to ensure refugees have access to education, recognition of foreign qualifications, and scholarships. For instance, in Austria, refugees are exempt from paying university tuition fees. Conversely, Ethiopia has entered reservations on Articles 17 and 22, treating public education as a recommendation rather than an obligation.[1]
Right to Work and Social Security	Articles 7, 24, 19, and 18: Refugees should enjoy employment rights and social security in host countries. For example, in Luxembourg, under the Ministerial Decree of May 25, 1955, refugees unemployed due to circumstances beyond their control are treated as Luxembourgish unemployed persons. They are eligible for unemployment benefits provided they are

	permanent residents of the Grand Duchy and possess a travel document issued by the Ministry of Foreign Affairs under Article 28 of the 1951 Convention.[1]
Expulsion of Refugees	Article 33: A contracting state must not expel a refugee lawfully residing within its territory except on grounds of national security and public order. Any expulsion must follow due process of law.[1]
Naturalization	Article 34: Contracting states should facilitate the naturalization and integration of legally residing refugees to the extent possible.[1]
Irregular asylum seekers	Article 31: Refugees who enter a contracting state illegally should not be penalized if they can prove their lives were at risk and they reported to authorities promptly upon arrival. Laws in some countries, such as Austria and Belgium, require refugees to register their asylum applications without undue delay. Otherwise, prolonged stays in a third country or unjustified delays may result in losing residency rights.[1]
Housing	Article 21: Regarding housing, contracting states must ensure that refugees lawfully residing in their territories are treated favorably, as regulated by public laws or authorities. In any case, their treatment should not be less favorable than that generally accorded to other foreigners under similar circumstances.[37]

Table 1: Key provisions present in the 1951 Geneva Convention

Nonetheless, the 1951 Convention was defective in a certain sense, and it was especially set to those who were left behind before January 1951. Furthermore, countries, if they wanted, could have restricted it to the refugees within Europe, thus the rest of the people (the ones outside Europe) would have been deprived of international protection. These limitations became a challenge in the 1950s and 1960s when new refugee waves appeared. In 1964 and 1965, this issue was discussed in the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR). In this light, a conference was summoned in 1965 in Bellagio, Italy, with the aim of addressing these problems. A protocol was created to eliminate the restriction of the Convention, and it was passed by the United Nations General Assembly on December 16, 1966.[22]

At first, the Convention was valid for refugees from Europe only following the World War II. But after the adoption of the 1967 Protocol, this geographical and temporal restriction was removed, and the Convention was given broader scope and application.

2.5. The Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR)

The statute of the United Nations High Commissioner for Refugees (UNHCR), which outlines the main principles of international protection and finding durable solutions for refugees, is one of the significant sources of refugee law. This statute, on the one hand, explains the role of the High Commissioner in international protection of refugees and finding durable solutions, and on the other hand, clarifies the relationship of the High Commissioner with key entities such as the General Assembly, the Economic and Social Council, and other specialized agencies.[16] This body, UNHCR, "officially named the Office of the United Nations High Commissioner for Refugees, was established in 1950 by the United Nations General Assembly after World War II to help millions of people who had lost their homes," and it is now active in 136 countries worldwide.[39]

2.6. The Universal Declaration of Human Rights and the Covenants

The Universal Declaration of Human Rights, adopted in 1948, introduces human rights as a global standard. Some believe that because this document is declaratory in nature and not a binding treaty, it cannot be obligatory. However, due to its widespread acceptance, many consider it a benchmark for assessing countries' adherence to human rights. The Universal Declaration of Human Rights states in Article 13: (a) Everyone has the right to freedom of movement and residence within the borders of each state. (b) Everyone has the right to leave any country, including their own, and to return to their country. According to the Declaration, freedom of movement is one of the human rights that is also considered for foreigners. However, host countries may impose restrictions on the movement of foreigners for security or economic reasons, provided that these restrictions are reasonable and lawful. In addition to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights states in Article 12: (a) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose their residence. (b) Everyone shall be free to leave any country, including their own. (c) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law and are necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in this Covenant.[35]

2.7. Declaration on Territorial Asylum

This declaration, proposed by the United Nations Commission on Human Rights, was unanimously adopted by the United Nations General Assembly on December 14, 1967. Resolution No. (33/12), associated with the 1967 Declaration, is considered one of the key sources of refugee law. A significant aspect of this declaration is the identification of the international community's responsibility, represented by the United Nations, to grant asylum to individuals who meet the required conditions and to provide them with international protection and assistance. The declaration also emphasizes that individuals who face violations of the principles of the Universal Declaration of Human Rights and whose lives and freedoms are at risk have the right to seek asylum.[22]

2.8. Resolutions of the United Nations General Assembly and Decisions of the Executive Committee of the United Nations High Commissioner for Refugees

The United Nations General Assembly has played a significant role in supporting and advancing the rights of refugees and asylum seekers. Through the issuance of resolutions, this body has expanded the responsibilities and duties of the United Nations High Commissioner for Refugees (UNHCR) without directly altering its statute. These resolutions, by introducing new definitions, have broadened the scope of individuals eligible for UNHCR protection. In the 1960s and 1970s, such developments and resolutions were particularly instrumental in the operations of the UNHCR, enabling the inclusion of asylum seekers, stateless persons, and other specific national or geographic groups under its protection.

Moreover, the Executive Committee of the United Nations High Commissioner for Refugees (ExCom), in its annual meetings, adopts decisions on issues related to refugees and asylum seekers, commonly referred to as "Conclusions." Although these decisions are not legally binding, they often reflect a near-international consensus due to the participation of representatives from numerous countries in the committee. These decisions address gaps in refugee protection at the international level and draw global public attention to the need for enhanced support.[16]

2.9. Other International Instruments Concerning Refugees

The documents discussed so far specifically address refugee issues and constitute the core framework of international refugee law. However, beyond these instruments, a broader set of human rights texts establishes principles and guidelines for addressing the needs of refugees and asylum seekers, which

deserve special attention. This section focuses on states' obligations to uphold the human rights of refugees, as derived from treaties, conventions, and other human rights instruments.

Only the names of some of these key instruments are mentioned below. These include: the Fourth Geneva Convention of 1949 on the protection of civilians and its 1977 Additional Protocols; the Convention Relating to the Status of Stateless Persons; the Convention on the Reduction of Statelessness; the Convention on the Rights of the Child; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the Additional Protocol to the 1949 Geneva Conventions on the Protection of Victims of Armed Conflicts; the Convention on the Prevention and Punishment of the Crime of Genocide; and the International Convention on the Elimination of All Forms of Racial Discrimination.[22]

2.9.1. The Convention on the Rights of the Child

The Convention on the Rights of the Child, adopted by the United Nations General Assembly in 1989, has become an international standard for the protection of children's rights worldwide. This convention consists of 54 articles, many of which directly pertain to the rights of migrant and refugee children. Some of the most relevant provisions related to the protection of migrant children's rights are as follows:

Article	Text of the convention	Explanation
Article 2	<ol style="list-style-type: none"> 1. States Parties shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or their parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. 	<p>This article emphasizes that all rights enshrined in the convention must apply to all children, regardless of nationality, residency, or migration status. This includes migrant, refugee, and stateless children.</p>

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- Article 7**
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and, as far as possible, the right to know and be cared for by their parents.
 2. States Parties shall ensure the implementation of these rights in accordance with their national laws and their obligations under relevant international instruments, particularly in cases where the child would otherwise be stateless.
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This article underscores the importance of birth registration and the legal recognition of every child. This provision is particularly significant for migrant children who may live in a country without proper legal documentation.

- Article 22**
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or is considered a refugee in accordance with applicable international or domestic law, whether unaccompanied or accompanied by parents or others, receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in this Convention and other international human rights or humanitarian instruments to which the said States are parties.
 2. For this purpose, States Parties shall cooperate with efforts by the United Nations and other competent intergovernmental or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other family members of any refugee child to obtain information necessary for reunification with their family. In cases where no parents or other family members can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of their family environment under this Convention.
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This article focuses on the protection of refugee children and obligates States Parties to take necessary measures to safeguard their rights, including access to education, healthcare, and social services. It also emphasizes family reunification efforts.

- Article 28**
1. States Parties recognize the right of the child to education and, with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - a) Make primary education compulsory and available free to all;
 - b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the
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This article emphasizes access to education and underscores the obligation of States Parties to ensure the right to education for all children, including migrant and refugee children. It mandates free and compulsory primary education and introduces measures to facilitate access to education for vulnerable groups.

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- introduction of free education and offering financial assistance in case of need;
- c) Make higher education accessible to all based on capacity by every appropriate means;
 - d) Make educational and vocational information and guidance available and accessible to all children;
 - e) Take measures to encourage regular attendance at schools and reduce drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.
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Table 2: Most relevant provisions of the Convention on the Rights of the Child related to migrant children's rights. Source: UNICEF, 1989

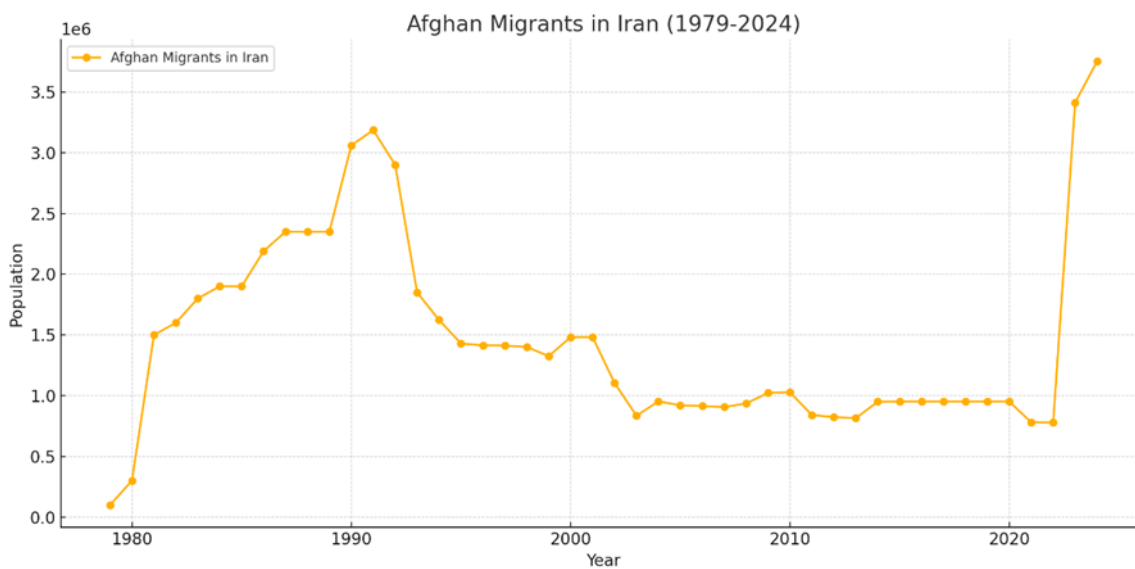
The Convention on the Rights of the Child explicitly states that all children, regardless of their nationality or residency status, must enjoy access to social, educational, and healthcare services. These provisions are designed to ensure the rights of migrant and refugee children in host countries.

3. THE LEGAL STATUS OF AFGHAN ASYLUM-SEEKERS IN IRAN

Over the past half-century, Iran has been one of the largest hosts of Afghan asylum seekers. Following the Islamic Revolution and the Soviet invasion of Afghanistan in the 1980s, Iran adopted an "open-door" policy. This policy, rooted in the principles of the founder of the Islamic Republic and the country's commitment to supporting Muslims and the oppressed globally, facilitated the easy entry of Afghan refugees into Iran.

As a result, a massive wave of migration ensued, with Afghans fleeing the war, poverty, and instability caused by Soviet aggression. With the growing presence of Afghan refugees and to manage its impact on the labor market, the Iranian government introduced laws in subsequent years that restricted Afghans to specific jobs, often hard, low-paying, and labor-intensive roles. These measures, aimed at reducing competition with the local workforce, effectively created a monopoly of certain types of employment for Afghan asylum seekers.

Image 1: The Presence of Afghan Migrants in Iran Between 1979 and 2024



Source: UNHCR, 2024a

The situation of asylum seekers has been continuously evolving. To better understand the legal status of asylum seekers in Iran, it is essential to examine it across different periods, from the initial waves of migration in the 1980s to the present.

3.1. The Open-Door Policy

In the aftermath of the Islamic Revolution in Iran and the Soviet invasion of Afghanistan during the 1980s, Iran announced an immigration policy known as the "open-door" policy. This policy was influenced by the revolutionary political climate and was rooted in the ideals of welcoming and supporting Muslims and the oppressed worldwide, inspired by the views of Ayatollah Khomeini, the founder of the Islamic Republic of Iran.[33]

Under this policy, Afghan asylum seekers were allowed to enter and reside in Iran without the need for complex procedures or permits. This created a unique opportunity for Afghans fleeing war, poverty, and hardship caused by the Soviet invasion and internal conflicts to find refuge. Consequently, a massive wave of migration began, with millions of migrants entering Iran over the years and becoming a source of cheap labor in the country.[15]

However, this situation did not last long. Over time, the growing number of asylum seekers and the lack of proper management led to challenges. As a result, Iran's immigration policies underwent significant changes to address these emerging issues.

3.2. The Presidency of Akbar Hashemi Rafsanjani

During Akbar Hashemi Rafsanjani's presidency, following the end of the Iran-Iraq War, Iran shifted its "open-door" policy toward Afghan refugees. During this period, Iranians began rebuilding the country, and the availability of cheap Afghan labor played a significant role in reconstruction efforts during the eight years after the war. Afghan refugees were still allowed access to services such as education and healthcare.[6] Consequently, Afghan migrants were initially granted refugee status and provided with "blue cards" as proof of this status.[2]

However, starting in the early 1990s, economic difficulties and a lack of international aid prompted Iran to adopt policies aimed at encouraging the return of Afghan refugees and preventing illegal entry. These policies included legal restrictions on Afghan access to public services and employment, as well as stricter border controls to curb unauthorized migration. In 1992, the Iranian government began implementing identification and deportation programs targeting undocumented Afghans.

These changes marked a transition from Iran's broad refugee acceptance policies to more restrictive approaches, emphasizing refugee self-reliance and tighter border controls.[6]

3.3. The Presidency of Mohammad Khatami

During Mohammad Khatami's presidency, extensive debates emerged regarding the expulsion of Afghans from Iran. Rising unemployment rates were increasingly attributed to the presence of Afghan refugees, leading to conflicts between groups supporting and opposing their continued stay in the country.

Some intellectuals and artists advocated for Afghan refugees and attempted to portray them in an innocent light through films and other media.

In 1997, the government enacted a law imposing high tuition fees for foreign students and restricted their access to higher education to six Iranian cities. Amidst growing economic and social challenges, refugee policies shifted toward stricter control over illegal entry and facilitating the return of Afghan refugees to their homeland. Iran undertook several measures to register and identify Afghan nationals to encourage voluntary repatriation and implemented policies aimed at reducing the services available to them, including in the education and healthcare sectors.

In 2003, a set of 11 articles titled the "Regulations for Accelerating the Return of Afghan Nationals" was approved by the Council of Ministers Coordinating Committee for Foreign Nationals Affairs. These regulations aimed to expedite the repatriation of Afghan refugees and included measures such as:

- Prohibiting the employment of Afghans without work permits,
- Restricting their access to administrative and financial services, and
- Preventing the rental of housing to undocumented Afghans.

Additionally, Iran's national broadcaster was tasked with promoting the return of Afghan nationals and warning Iranians about the illegal employment of Afghan workers.[6]

Under an agreement between Iran, the Afghan government, and UNHCR, over three-quarters of Afghan migrants in Iran returned to Afghanistan voluntarily between 2002 and 2004 as part of a repatriation operation.[26]

3.4. The Presidency of Mahmoud Ahmadinejad

During Mahmoud Ahmadinejad's presidency, Afghan asylum seekers entered a new phase of restrictions. Unprecedented pressures were placed on Afghan migrants in Iran, and the exclusion of migrant students from continuing their education in Iranian universities during his presidency was an issue that had not occurred before. However, a larger crisis unfolded in the winter of 2007 when tens of

thousands of Afghan asylum seekers were forcibly expelled from Iran. These expulsions, alongside the inability of the Afghan government to absorb them, led to widespread crises in Afghanistan.[8]

During this period, Afghan asylum seekers also witnessed the implementation of the "Ban on Afghan Settlement" program. Under this program, Afghan refugees were completely or partially prohibited from settling and living in 28 out of the 30 provinces of Iran. Among these, 14 provinces were fully prohibited, and in the remaining 14 provinces, restrictions were applied in specific regions.[9]

Research on the health status of Afghan migrants during this period shows that approximately 1.5 million undocumented Afghan migrants in Iran, due to a lack of health insurance, had limited access to healthcare services, while many of them worked in hard and hazardous jobs such as construction, which have a high risk of physical injury. Over 99% of Afghan workers lacked occupational insurance, and most were in poor and vulnerable economic groups, earning between 10% to 23% less than Iranian workers. This situation often forced Afghan migrants, due to financial incapacity and high costs, to seek medical care only when their illnesses had reached advanced stages. A study revealed that end-stage renal disease (ESRD) was the most common reason for Afghans seeking medical attention, as they were unable to afford consultation fees and medications during the early stages of illness.[13]

3.5. The Presidency of Hassan Rouhani

With the end of Ahmadinejad's presidency, which was regarded as the most difficult period for Afghan migrants due to restrictions and pressures, expectations among migrants increased with the arrival of the new president. Upon taking office, Rouhani announced that he would "register undocumented Afghan migrants," and it was expected that this would be a positive step towards supporting Afghan asylum seekers.[28] However, with the intensification of U.S. sanctions against the Iranian government during his term and the subsequent economic recession and unemployment in the country, negative views toward Afghans grew among Iranians. In response to the sanctions imposed by the U.S., Iranian policymakers increased internal pressure to cut government benefits for Afghan asylum seekers, portraying them as a burden on the country's resources. Meanwhile, the media promoted nationalist ideas and spread hateful rhetoric against Afghans. In January 2014, Rouhani's government declared that all ministries, organizations, and state-owned companies must hire only Iranian workers. The situation worsened further as the deportation of Afghans increased, and physical abuse, torture, and inhumane

treatment of Afghan asylum seekers during arrests and in detention centers became a disturbing reality during this period. This harsh treatment also affected Afghan children born to Iranian mothers.[6]

3.6. The Presidency of Ebrahim Raisi

Although Afghan asylum seekers in Iran have always faced various pressures from the country's anti-migration policies, the presidency of Ebrahim Raisi can be considered a "period of leniency." This leniency can largely be attributed to the coinciding collapse of the Republic system in Afghanistan, the mass exodus of Afghans, and the subsequent open-door policies of governments, particularly Western countries, towards Afghan asylum seekers. Notable positive actions taken to support refugees during this period include: 1) the registration and documentation of undocumented migrants; 2.5 million Afghan asylum seekers were provided with residency documents. 2) The establishment of a National Migration Organization, aimed at eliminating parallel institutions and streamlining services for migrants.[23] Despite widespread media campaigns against the presence of Afghan migrants in the country, these efforts did not lead to an escalation of pressure on refugees.

3.7. The Presidency of Masoud Pezeshkian

Masoud Pezeshkian, who came to power with election promises such as "completely sealing the borders to prevent further Afghan migration and organizing the existing migrants in Iran," initiated a new phase of increased pressure on Afghan asylum seekers.[11] In this context, on September 16, 2024, he announced that by the end of the current year, two million undocumented migrants would be deported [31], marking the largest forced deportation of Afghan asylum seekers. This forced deportation process is being pursued with great seriousness, to the extent that even individuals with legal documents have been deported. As reported by Tolo News, quoting an expelled refugee, "Afghans are being sent across the border, and even if you have a passport, some of the officers tear it up and say you have no documents at all, and they send you to the camp." According to the country's announcement, more than 750,000 Afghan refugees have been deported thus far (as of the time of writing this article), representing an unprecedented.[36] Under the new government's strict pursuit of this issue, thousands of migrants are deported daily, and "factory owners, shopkeepers, and landlords have been ordered not to employ or rent homes to unauthorized migrants." [11] Following the country's new policy on forced deportations, the most severe pressures are being applied, including a "ban on selling dry bread" to Afghan asylum seekers in some regions, particularly in the Kerman province, which has faced widespread criticism.[3] The new

Iranian government under Masoud Pezeshkian has imposed unprecedented pressures on Afghan asylum seekers, and this process is rapidly escalating.

However, as observed, Afghan asylum seekers in Iran have not been treated as refugees and asylum seekers in the true sense of the word. Thus, the legal status of Afghan asylum seekers in Iran is fraught with complexities and challenges. Despite the acceptance of this large population, many refugees lack the necessary legal rights and facilities. Some, even with valid documentation, have limited residence and work permits, while many others, due to lacking documents or failing to update them, face the risk of detention, deportation, and restrictions in accessing essential services such as education and healthcare. Strict laws regarding employment and inadequate living conditions have also negatively impacted their situation.

4. DISCUSSION

Iran, despite not being a signatory to the 1951 Geneva Convention and the 1967 Protocol, faces numerous challenges in implementing international refugee law, particularly concerning Afghan refugees. The country has forcibly deported millions of Afghan asylum seekers, in violation of the principle of non-refoulement, leading to human rights violations and a serious departure from international standards. Additionally, Afghan asylum seekers in Iran are deprived of the right to equal employment opportunities compared to host country citizens and are restricted to low-wage jobs, with the process of obtaining work permits being fraught with obstacles. Public education for refugee children is hindered by high tuition costs and a lack of resources, leaving many of these children without access to free education. Adequate housing remains another critical issue, as many refugees live in poor conditions in informal settlements. Iran's nationality laws have also prevented many Afghan refugees from acquiring citizenship, with only a few exceptions, such as through marriage or special circumstances. Finally, despite Iran's membership in the 1989 Convention on the Rights of the Child, many Afghan children are excluded from educational and healthcare services due to the lack of identification documents. Iran urgently requires significant reforms to improve the situation of refugees, particularly in the areas of housing, employment, education, nationality, and children's rights.

5. CONCLUSIONS

Iran, as the largest host of Afghan refugees and asylum-seekers over the past four decades, has nurtured multiple generations of migrants. However, despite this significant role, refugees and asylum-seekers in Iran continue to be deprived of fundamental human rights in certain instances. While international law has sought to establish legal frameworks through various documents and institutions to protect refugees, the implementation of these principles remains a significant challenge, particularly in host countries like Iran. Domestic policies and the socio-economic conditions of these countries hinder the fulfilment of their international obligations. Many Afghan asylum seekers remain deprived of basic rights such as the right to education, employment, and adequate housing. Furthermore, stringent policies, such as forced deportations, social discrimination, and restrictions on access to legal and economic rights, have complicated the living conditions of these refugees. The legal status of Afghan refugees and asylum seekers in Iran stands in stark contrast to that of Afghan refugees and asylum seekers in Western countries. It reflects the broader violation of international refugee law in Iran, highlighting the inadequacies of the country's adherence to international standards. Iran, despite not being a signatory to the 1951 Refugee Convention and the 1967 Protocol, argues that it is not bound to implement international rules. However, its membership and commitment to documents such as the Convention on the Rights of the Child, the Universal Declaration of Human Rights, the International Covenants, UN General Assembly Resolutions, and the Executive Committee of the UNHCR's decisions cannot be ignored. Consequently, it can be concluded that international law has had a limited impact in supporting Afghan refugees in this host country. This outcome is understandable given the lack of binding mechanisms for enforcing these international obligations. The findings of this research confirm the article's hypothesis that international law has had little impact on supporting Afghan refugees and asylum seekers and has failed to compel the relevant countries to fulfil their obligations toward these asylum seekers.

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ABOUT THIS ARTICLE

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EL PAPEL DEL DERECHO INTERNACIONAL EN LA PROTECCIÓN DE LOS SOLICITANTES DE ASILO Y REFUGIADOS AFGANOS EN IRÁN

RESUMEN

Irán, al ser un país vecino y de fácil acceso, ha sido el principal receptor de refugiados afganos durante las últimas cuatro décadas de la crisis afgana. Si bien los solicitantes de asilo afganos llevan mucho tiempo viviendo en el país, la protección de sus derechos humanos es mínima. Este artículo tiene como objetivo examinar documentos, leyes y normativas internacionales relacionados con los solicitantes de asilo y los refugiados, y explorar su situación en el derecho internacional, con especial atención a los solicitantes de asilo afganos en Irán. Esta investigación se ha realizado mediante un método descriptivo-analítico, y la pregunta de investigación se plantea de la siguiente manera: ¿En qué medida el derecho internacional y sus instrumentos relacionados han sido eficaces para mejorar la protección y la situación de los refugiados afganos en Irán? Los hallazgos del estudio revelan que, si bien el derecho internacional ha proporcionado marcos de protección, no ha logrado obligar a Irán a respetar los derechos de los solicitantes de asilo afganos. Las políticas internas, la situación económica en Irán y la falta de instrumentos jurídicos vinculantes han obstaculizado significativamente la implementación efectiva de estos compromisos.

Palabras clave: Solicitantes de asilo afganos, refugiados afganos, derechos de los refugiados, derecho internacional, Irán.

国际法在保护伊朗境内阿富汗寻求庇护者和阿富汗难民中的作用

摘要

伊朗作为邻国，交通便利，在过去四十年的阿富汗危机中一直是阿富汗难民的主要接收国。尽管阿富汗寻求庇护者在伊朗长期生活，但他们的人权保障却微乎其微。本文旨在考察与寻求庇护者和难民相关的国际文书、法律和法规，并探讨寻求庇护者和难民在国际法中的地位，特别关注伊朗境内的阿富汗寻求庇护者。本研究采用描述性分析方法，研究问题如下：国际法及其相关文书在多大程度上有效地加强了对伊朗境内阿富汗难民的保护并改善了他们的处境？研究表明，尽管国际法提供了保护框架，但却未能迫使伊朗尊重阿富汗寻求庇护者的权利。伊朗的国内政策、经济状况以及缺乏具有约束力的法律文书，对有效履行这些承诺构成了重大障碍。

关键词：阿富汗寻求庇护者、阿富汗难民、难民权利、国际法、伊朗。