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GOODBYE TO AFGHANS: WHAT IS THE PROMISE OF HUMAN RIGHTS TO HUMAN RIGHTSLESSNESS AFGHAN MIGRANTS IN PAKISTAN?

Sayed Qudrat Hashimy

University of Mysore, Karnataka, India

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The Genealogies of complicity and the Afghanistan and Pakistan struggle date back to an 1893 single-page Agreement (Duran line) and the invasion by the Union of Soviet Socialist Republics (USSR) in 1979. The squabble of the World towards Pakistan with its inglorious policy to deport undocumented 1.7 million refugees to a war-stricken country is inhuman and treats them as political pawns. The Mass Exodus of Afghan Refugees and the anti-immigrant policy of Pakistan trigger some legal questions: Why is Pakistan deporting Afghans at this point? Who hears the voice of suffering at the dark noon? What happens next to these deportees? The existing article is poignant in examining the status of human rightslessness of sans-papiers under the human rights paradigm in Pakistan. In tandem with this, the paper also examines the human rights dimension from the lens of the perplexing situation that prevails in Afghanistan. This article is percolated by axiomatic development in the theory and practice of human rights supplanted by wretched migrants. Thus, this paper offers a series of thoughts concerning ways of understanding the changing human rights paradigms in Afghans.

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1. PREFATORY

In retrospect, it appears that the 1978 Afghan refugee crisis was a repercussion to the first of several (foreign-backed) regime changes.¹ Usually, the outcome was an oppressive government that led to an armed reaction. This led to in what seemed to be an unending internal conflict that destroyed the nation's infrastructure and resulted in a large-scale exodus of people. Though Afghan refugees made their way to nearly a hundred states, the majority of them found safety in Iran and Pakistan [18]. Indeed, Pakistan is home to the greatest number of refugees in the world, primarily Afghans who have arrived over the past four and half decades. The Afghans have migrated to Pakistan chronologically and lived in Pakistan in an *ad hoc* manner in the following phases *viz*, First, some lived as refugees under the auspices of the U.N. Convention 1951. The second category lived under the aegis of tribal praxis, where some were sheltered among their kin [17]. The third group survived based on the theocratic belief of Hijrat. Hijrat refers to the Prophet Mohammad 's flight from Mecca to Medina 622 A.D. The notion of Muhajireen and Ansar have been given historic and religious paramount in the Islamic model of behaviors. The fourth group of migrants have been granted ad hoc stay permits based on Pakistan's strategic benefits, such as international fund flows to Pakistan stationing of premier NGOs in Pakistan. The initial genesis of Afghan migration to Pakistan dates back to April 1978, when the Marxist People's Democrat Party of Afghanistan (PDPA) ousted the Government (Republic) of the erstwhile president Muhammad Dawood Khan [19]. The subsequent trickle of refugees to Pakistan accelerated on the Soviet Union invasion of December 1979 [4]. By the beginning of 1981, some 3.7 million Afghans had fled to Iran and Pakistan².

In 1988, on the USSR withdrawal, UNHCR repatriated several Afghan refugees [24]. In 1992, on the collapse of Dr. Najibullah's regime (the USSR installed president) [8], millions of Afghans returned to Pakistan [9]. Then Kabul descended into armed conflict among the Mujahideen factions, and many have left for Iran, Pakistan and other countries. In 1996, the Taliban gained control of the country, and most of the Afghan figureheads were exiled to Pakistan³. In the latest migration wave since August 2021, prompted by the Taliban takeover of Afghanistan, 600,000 to 800,000 Afghan nationals sought refuge in Pakistan⁴.

¹ *Afghanistan: Conflict and displacement 1978 to 2001 | Forced Migration Review*. (n.d.). Retrieved November 29, 2023, from <https://www.fmreview.org/september-11th-has-anything-changed/ruiz> (accessed 23.02.2024).

² *Afghanistan-Pakistan: Timeline of Afghan displacements into Pakistan*. <https://www.refworld.org/docid/4f4cd0702.html> (accessed 23.02.2024).

³ Taliban are back—What next for Afghanistan? *BBC News*. <https://www.bbc.com/news/world-asia-49192495> (accessed 23.02.2024).

⁴ *Pakistan brings down the axe on Afghan migrants*. (2023, November 17). Himal Southasian. <https://www.himalmag.com/pakistan-deportation-afghanistan-migrants-refugees-taliban/> (accessed 23.02.2024).

Pakistan served as a transit route for Afghans heading to European countries. Those facing deportation are now being resettled in the U.S., UK, Germany, and Canada. Additionally, Afghans returning face heightened police harassment, unlawful detention, property and business seizures, and demolition.

Pakistan is not a signatory to either the 1951 Convention on the Status of Refugees or the 1967 Protocol on the Status of Refugees [14]. Therefore, it is questionable what the legal status of Afghan refugees in Pakistan is. It sounds like the issue of refugee definition is actually avoided in practice with regard to states that are not parties to any of the pertinent refugee law instruments. It seems that the necessity of international protection is the main focus instead. Wherein in order to ensure the protection of refugees in those states, customary international law regulations most notably the ban on refoulement are typically invoked⁵. Treaties on human rights that the host state has ratified may provide further rights. Nonetheless, it appears that since Pakistan granted Afghan refugees presumptive refugee status, such redirected activity is not necessary in that regard. Customary international law, in particular the ban on refoulement, need not be invoked in light of the agreements that were reached. In light of this, it is important to note that significant concerns have been raised regarding non-refoulement as a standard of customary international law [10].

This paper delves into the case of *sans-papiers* (undocumented) Afghan migrants who are stipulated with a deadline to repatriate to Afghanistan. This paper touches on the realities and social fabrics of Afghans from the lens of humanitarian law and politic theory. To deliberate further, the following questions can be pondered: *What are the impediments to voluntary repatriation? What is the social-economic impact of this repatriation on the Afghans?* To conflate the debate around the questions, Afghans are passing through an era of crisis in the preceding century of human history, and the massive exodus of refugees (Muhajir) embraces huge scales of poverty, unemployment, and uncertain future in Afghanistan. The country faces multiple humanitarian, economic, and financial crises, and the situation is dire.

Therefore, Pakistan no longer accepts recently arrived Afghan refugees due to a change in policy; they risk being repatriated⁶ (*Pakistan*, 2023). If so, there is a detour in the recognition of collective rights, refugee status determination, and human rights law. The implications of this for non-signatory states like

⁵ *The principle of non-refoulement in the migration context: 5 key points—Humanitarian Law & Policy Blog*. (n.d.). Retrieved November 29, 2023, from <https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/> (accessed 23.02.2024).

⁶ *Pakistan concludes 'drive' to issue smartcards to registered Afghan refugees – UNHCR Pakistan*. (n.d.). Retrieved November 28, 2023, from <https://www.unhcr.org/pk/13723-pakistan-concludes-drive-to-issue-smartcards-to-registered-afghan-refugees.html> (accessed 23.02.2024).

Pakistan regarding the human rights and status of refugees remain ambiguous under international law. Does this mean that someone's status as a refugee will only be recognised if their eligibility is determined strategically, or does it mean that foreign policy will be the only factor that decides someone's status? Does this imply that legal requirements will take precedence to political theory when determining the status of refugees? Does it refer to a status that can only be terminated in accordance with, or comparable to, the fully detailed cessation provisions found in the UNHCR Statute, the 1951 Convention, and/or the 1967 Protocol? Drawing from the UNHCR's observations stated earlier, a person with prima facie granted refugee status can only have their status revoked in cases where conditions in their country of origin warrant it. However, UNHCR's approach to the Afghan refugees seems to be different and at odds with what UNHCR says about the rights of people who are recognised as refugees collectively. One can ascertain the applicable definition of a refugee by making reference to the agreements it has signed over the years, mostly but not exclusively with UNHCR. The notion of a refugee in countries without conventions pertaining to refugees is therefore not problematic; rather, attention should be directed onto the need for protection, particularly the principle of non-refoulement. It is possible to use human rights conventions. However, Pakistan has already given Afghan residents who are seeking refuge the presumptive status, enabling UNHCR to engage with the refugees.

2. THE COMPLEXITY OF REFUGEEHOOD

The very term “Refugees” attributed to humanitarian laws is constantly problematic. The abundance of its meanings may not be reduced to a false totality, such as *sans-papiers* or undocumented aliens, unregistered foreigners, illegal migrants, or legal migrants. Looking from the lens of human rights pragmatism, those who are deprived, disadvantaged, dispossessed, and restricted freedom of movement. It is poignant to see the continual reproduction of migrants in various ways. While the terms “migrant”, “refugee” and “Asylum Seeker” are frequently used synonymously, it is crucial to understand the distinctions between them because of the legal implications. To whom is a refugee called? People who flee their home countries due to fear of persecution and human rights violations seek safety due to the government's inability or unwillingness and are granted international protection. Who is a person who requests asylum? People who have left their country without official recognition in search of protection from persecution and violations of human rights in another nation are known as asylum seekers. It is their

human right to go overseas and seek asylum⁷. Article 13(2) asserts that "everyone has the right to leave and return to any country, including his own." Thus, everyone, including refugees, has the fundamental right to leave and return to their country of origin at anytime⁸. A migrant is who? People who are in travel, have fled their countries, and have crossed borders are referred to as "migrants," who are not "refugees," and "asylum seekers." Amnesty International defines migrants as individuals living outside their country of origin⁹, however, who are not refugees or asylum seekers. To take into account the possibility of its potential mass Afghan deportation, it is necessary to identify the definition that was used as a criterion to grant refugee status to Afghans in Pakistan. It remains in force and cannot be taken away unless it indicates that the situation calls for it, adhering to all relevant laws and mechanisms. Despite the absence of a relevant definition of refugees based on treaties, the Afghan refugees in Pakistan were granted official recognition as such. However, the yardstick for refugee determination that was applied was never stated. Moreover, it appears that the syllogistic reasoning in question implicitly accepts the standard by which one ought to determine the status of a refugee as defined in Article 1(A) (2)¹⁰.

The 1951 Convention states in article 1(A)(2)¹¹ that the term 'refugee' shall apply to any person who [.....] owing to a well-founded fear of being persecuted, on the reason of race, religion, nationality, social group membership, or political opinion, are unable or unwilling to return.

The persecution should be for reasons of race, religion, nationality, membership of any social group or political opinion is outside the country of his[er] nationality. The individual who is unable or unwilling to return due to a well-founded fear of prosecution based on alluded reasons or unable to vail the protection by his/her country. Many may not fit the legal criteria of a refugee, yet they are afraid and reticent to go back home. By this definition, people who are internally displaced (IDPs) do not qualify as refugees. But in a place like Afghanistan, people have fled their homes as IDP out of fear of armed conflict and persecution by the ISK in Jalalabad. The majority of Afghans fled the villages and districts during the collapse of the country, seeking safety in the large cities of Mazar Sharif, Herat, Kandahar, and especially Kabul. Some former military officers and commanders of the former regime now reside in the capital and

⁷ *Universal Declaration of Human Rights*. United Nations; United Nations. <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 23.02.2024).

⁸ *Stand up for Human Rights*. (n.d.). from <http://www.standup4humanrights.org/en/> (accessed 23.02.2024).

⁹ *Who is a refugee, a migrant or an asylum seeker?*, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>(accessed 23.02.2024).

¹⁰ *Convention relating to the Status of Refugees*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees> (accessed 23.02.2024).

¹¹ *Asylum & the Rights of Refugees*. <https://ijrcenter.org/refugee-law/> (accessed 23.02.2024).

are unable to return to their homes. The question is how refugee law could tackle this uncertainty and challenge.

Notwithstanding its broad definition, it makes sense to consider that it has both a chronological and a geographic restriction, with recognition as a refugee limited to events that took place in Europe prior to January 1, 1951. Sixteen years later, with the 1967 Protocol Relating to the Status of Refugees, these restrictions were lifted. Thus, the 1951 Convention has only truly developed into a useful international instrument for the protection of refugees after the 1967 revisions. In addition to the above, the following instrument also attributes to the definition of refugee. The article states, "Everyone has the right to seek and enjoy asylum from persecution"¹². The convention on migrant workers of 1990 enunciates for the protection of migrant and their families [15]. Likewise, the Regional Instruments, including the European asylum system and Convention of 1984, stipulate the protection of migrants¹³. The expression of refugee and limited human rights shelters only in the least developed countries, whereas the developed countries are enunciated on the right to health, clean environment and sustainable development. The mystification of refugees and migrants is incredibly dominated by conflicts, war, poverty, unemployment, low standard of living, and insurrection politics.

The synergy between Refugee Law and Human Rights Law is fundamental in upholding the life, dignity, and liberty of individuals, constituting an overarching principle without exceptions. The Principle of Non-Refoulement, embedded in both refugee and human rights law, acts as a safeguard against forceful repatriation, shielding refugees from threats to life, liberty, and freedom, particularly crucial during armed conflicts as addressed by the collaboration of International Humanitarian Law (IHL) and Refugee Law. However, the application of the Non-Refoulement Principle is not absolute, subject to scrutiny concerning "national security" and "public order," creating challenges when states prioritise national interests over refugee rights. The existing legal framework under the 1951 Convention and its 1967 Protocols may require a review aligned with international best practices, considering the narrow definition of "Refugee" poses limitations in protecting the rights of a substantial number of displaced individuals worldwide. Recommending a revisitation or formulation of a new international instrument becomes imperative to address the rights of the ninety-six million displaced people not covered by the current refugee definition.

¹² *Chapter I: Purposes and Principles (Articles 1-2)*. <https://www.un.org/en/about-us/un-charter/chapter-1> (accessed 23.02.2024).

¹³ *Persons covered by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and by the Cartagena Declaration on Refugees* <https://www.unhcr.org/in/publications/persons-covered-oau-convention-governing-specific-aspects-refugee-problems-africa-and> (accessed 23.02.2024).

3. HUMANS WITHOUT HUMAN RIGHTS

The logic and paralogic of having rights is technocratic imaging, and human rights have not evolved with an alternative paradigm against the voice of suffering in Afghanistan. The geographies of injustice in Afghanistan emerged in early August 2021, and international law can be invoked to ameliorate the Afghan miseries arising from repression, governmental lawlessness, and international community deviance. There is no common language of humanity for convicted prisoners, women in custody, children without juvenile institution, bonded and migrant labourers, unorganised labourers, child marriage, child soldiers, female education, landless agricultural labourers who fall prey to faulty mechanisation, women who are bought and sold to old age men, slum dwellers and pavement dwellers, extra-judicial executions, sexual abuses, poverty, unemployment, high death rate, low health condition, low standard of living and many more kinds of now flock to the 'united nations' seeking human rights. The perplexities of human rights in Afghanistan concern the question of who is to count as [hu](wo) man or bearer of the right(s). Can only having animals exist be regarded as 'human'? What is the capacity to entitle these rights remains a question under modern human rights. The promise of human rights to humanhood is the question of theory and society. A profusion of human rights enunciated on the establishment of Afghan Independence Human Rights Commission (AIHRC) particularly has been a privileged to minorities and women between 2001- 2021. The IHRC was dedicated to educating, promoting and protecting human rights in Afghanistan.

Thus, the thin concept of human rights is unease haunts for Afghans. In this sense, what human rights law attributes depends on how imaginatively the international community define that. The transformative vision of world politics does not outline the language of pain and suffering of Afghans either in Afghanistan or as migrants. Article 3 of the ICCPR¹⁴ states that "No State Party shall expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he would be subjected to torture." Therefore, Pakistan is required by international law to refrain from returning refugees whose safety, freedom, or life may be in jeopardy if they return home. Accordingly, the UN Convention against Torture and the 1951 Refugee Convention are crucial international human rights instruments that uphold the principle of non-refoulement, stating that no Contracting State can expel or return a refugee.

¹⁴ *The International Covenant on Civil and Political Rights—Manual for Human Rights Education with Young people.* <https://www.coe.int/en/web/compass/the-international-covenant-on-civil-and-political-rights> (accessed 23.02.2024).

Article 33 of the 1951 Convention states that “No Contracting State shall expel or return (“refouler”) a refugee in any matter whatsoever to the frontier of territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Despite Pakistan not being a signatory, it must uphold this right, which has evolved into customary law. In its articulations of human rights, the save when convenient, centralised discourse on human rights does not allude to languages of suffering. On the other hand, people's resistance to governments that engage in cruel politics stems from their firsthand knowledge of suffering. It is still necessary, though, to "problematise" ideas of suffering. Suffering is so commonplace as to be considered natural, and it has the power to both unleash and limit human potential. war impart a cosmology to human suffering towards which man become refugee. Additionally, recent social theory understanding of human suffering evinces many ways of enacting a boundary between "necessary" and "unnecessary" suffering, sensitive to the problematique of the cultural/professional appropriation of human suffering. Crucial for present purposes is the fact that some human rights regimes enact a hierarchy of pain and suffering.

The practices of globalisation impose and employ a novel dramaturgy of "justifiable" human suffering. It is disastrous for Afghan human rights to link it to suffering. Failures in international law also give rise to new types of decisions and new means of subsistence. The notable developments that have emerged in recent years are manifestations of these evolving dynamics. *viz*, increased internal displacement triggered by Afghanistan's political unrest, conflict, and lack of development funding; Population outflows from Afghanistan into other countries, particularly to neighbouring countries Iran and Pakistan, with Limited returns; Improbable prospects for widespread voluntary repatriation and long-term reintegration in the near future; Absence of female employment and education and lacking official recognition for the flow of international trade and technology.

International law should not fall silent against political resistance encapsulated by an anthropomorphic illusion. Nor do we succumb to a wide range of inhuman wrongs such as tyranny, deprivation, destitution, pauperisation, powerlessness, desexualisation, and degradation. Human rights law should shield migrants against any torture, inhuman degradation and forced deportation. The member states must not override principles established by international law against existing cruelty and inhuman treatment, fight against injustice, and uphold the norms and standards of human rights law, which is among the paramount of the state responsibilities attributed under international law. Regardless of the quibbles

on whether the discourse refers to Afghan refugees, the state should know that the U.N. has the power of intervention under the UN Charter [25].

Article 2 of the existing Charter enunciate that member state should fulfil their obligation in good faith. The innovative politics of cruelty torment the echoes of vibrant suffering. The multifarious world politics have been contingent and continually fragment their liberty and dignity based on the metaphysics of morals of human rights [2]. The sonorous exodus of Afghan women and children turning Pakistan cruelty swords into ploughshare.

4. ROLE OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

The role of the UNHCR is pivotal in addressing the complexities surrounding mass deportations, exemplified by the case of Afghan refugees in Pakistan. UNHCR is the primary institution responsible for safeguarding and assisting refugees and asylum seekers, ensuring their safety, well-being, and access to fundamental rights. Additionally, the organisation aids in integrating refugees into new national communities by providing support for education, healthcare, employment, and other essential services. Through humanitarian diplomacy, the UNHCR advocates for the rights and protection of refugees globally, engaging with governments and international organisations. Notably, the UNHCR's involvement ensures the protection of refugee rights, even in countries not signatory to relevant conventions, advocating for freedom of movement, access to legal assistance, and protection from arbitrary deportation. Under the mandate conferred by the U.N. General Assembly Resolution 428 (v) in 1950¹⁵, (Refugees, n.d.-d) the UNHCR is legally obligated to safeguard and assist refugees and asylum seekers. The articulated purpose and mission in the UNHCR statute underscore the commitment to facilitating voluntary repatriation and integration into new national communities [8].

In the current scenario of mass deportation, the UNHCR holds the potential to address and ameliorate the situation by engaging with Pakistan. Through diplomatic efforts, the UNHCR can seek to persuade Pakistan to provide humanitarian support and cooperation. This may involve advocating for the rights and protection of those facing deportation, emphasising the importance of international collaboration in addressing the needs of displaced individuals. The UNHCR's role extends to facilitating

¹⁵ Statute of the Office of the United Nations High Commissioner for Refugees. <https://www.refworld.org/docid/3ae6b3628.html> (accessed 23.02.2024).

dialogue and encouraging a humanitarian approach to ensure the well-being and rights of those affected by mass deportation. The legal gap in Pakistan underscores the significance of international organisations like the UNHCR. The 1993 cooperation agreement between Pakistan and the UNHCR enables the latter to represent the former, addressing refugee issues within the country. The UNHCR's multifaceted mission encompasses facilitating voluntary repatriation, addressing root causes of displacement, and fostering stability.

In 1993, the UNHCR faced legal obstacles arising from Pakistan's *de jure* stance on the refugee matter. Nevertheless, a formal cooperation agreement was effectively brokered between Pakistan and the UNHCR in the same year. This agreement designated the UNHCR as Pakistan's legal representative for refugee-related issues, marking a noteworthy advancement. Subsequently, Pakistan commenced the registration of Afghans within its borders, signalling a change in its strategy for dealing with the legal intricacies linked to the refugee situation.

Accordingly, Pakistan's initiative in February 2007 to register Afghan residents, distributing 1.34 million Proof of Registration (PoR) cards and introducing the Documentation Verification and Information Exercise (DRIVE) to extend their validity to two years, initially marked a formal step towards a short-term stay in Afghanistan.

Chronology of Proof of Registration Card (PoR)¹⁶

S/N	POR issue date	POR validity
i	2005-2007	December 2009 ¹⁷
ii	March 2010	31 December 2012 ¹⁸
iii	December 2012	31 June 2013 (six-month extension) ¹⁹
iv	July 2013	31 December 2015 ²⁰
v	January 2016	30 June 2016 (six-month extension) ²¹
vi	June 2016	31 December 2016 (six-month extension) ²²

¹⁶ *Proof of Registration Card (PoR)*, <https://help.unhcr.org/pakistan/proof-of-registration-card-por/https%3A%2F%2Fhelp.unhcr.org%2Fpakistan%2Fproof-of-registration-card-por%2F> (accessed 23.02.2024).

¹⁷ *Still Caught in Regional Tensions? The uncertain destiny of Afghan refugees in Pakistan*. <https://www.afghanistan-analysts.org/en/reports/migration/still-caught-in-regional-tensions-the-uncertain-destiny-of-afghan-refugees-in-pakistan/> (accessed 23.02.2024).

¹⁸ *UNHCR welcomes Pakistan's decision to extend stay of Afghan refugees* <https://www.unhcr.org/in/news/stories/unhcr-welcomes-pakistans-decision-extend-stay-afghan-refugees> (accessed 23.02.2024).

¹⁹ European Union Agency for Asylum. (2022). *Pakistan—Situation of Afghan Refugees*. European Union.

²⁰ *UNHCR Global Report 2013—Pakistan*, <https://www.unhcr.org/in/media/unhcr-global-report-2013-pakistan> (accessed 23.02.2024).

²¹ *Pakistan: Extend Afghan Refugee Status Through 2017*. <https://www.hrw.org/news/2016/01/16/pakistan-extend-afghan-refugee-status-through-2017> (accessed 23.02.2024).

²² *Afghan refugees get another stay extension*. <http://www.dawn.com/news/1283191> (accessed 23.02.2024).

vii	September 2016	31 March 2017 (three-month extension) ²³
viii	February 2017	31 December 2017 (nine-month extension) ²⁴
ix	3 January 2018	31 January 2018 (one-month extension) ²⁵
x	31 January 2018	March 2018 (two-month extension) (Shah, 2018)
xii	March 2018	30 June 2018 (three-month extension) ²⁶
xiii	30 June 2018	September 2018 (three months) ²⁷
xiv	October 2018	30 June 2018 ²⁸
xv	27 June 2019	30 June 2020 ²⁹
xvi	2021 DERIVE	30 June 2023 (issuance of Smart card) ³⁰ .

Afghan refugees residing in Pakistan who are officially registered are provided with a brief legal stay and the freedom to move within the country through Proof of Registration (PoR) cards issued by the Pakistani government. The four main centers for obtaining or renewing these cards are Peshawar, Quetta, Karachi, and Rawalpindi. Furthermore, at these locations, refugees have the opportunity to obtain official birth certificates and register the births of children below the age of 18. However, the recent crackdown order targeting "undocumented" Afghans has placed the lives and livelihoods of an estimated 1.7 million individuals at immediate risk of deportation³¹, leading to tens of thousands waiting at border checkpoints in makeshift settlements with limited access to basic necessities like food, water, and medicine. Additionally, the imposition of an exit fee exceeding \$830 for Afghan refugees awaiting resettlement in Western countries raises serious concerns about fairness and may impede refugees' ability to seek safer environments.

²³ *Afghan refugees get another stay extension.* <http://www.dawn.com/news/1283191> (accessed 23.02.2024).

²⁴ *Sharp \$3 billion overhaul plan could be concluded this week,* <https://www.reuters.com/article/us-sharp-restructuring-idUSKCN0UQ07I20160112/> (accessed 23.02.2024).

²⁵ *Afghan refugees forced to leave Pakistan say they have nothing* <https://www.bbc.com/news/world-asia-67281691> (accessed 23.02.2024).

²⁶ *Solutions Strategy for Afghan Refugees.* <https://ssar-platform.org/> (accessed 23.02.2024).

²⁷ *Pakistan: Afghan Refugees Registration Update (as of 30 September 2018) - Pakistan | ReliefWeb.* (2018, October 18). <https://reliefweb.int/report/pakistan/pakistan-afghan-refugees-registration-update-30-september-2018> (accessed 23.02.2024).

²⁸ *UNHCR welcomes Pakistan cabinet's decision to extend stay of Afghan refugees,* <https://www.unhcr.org/pk/6048-unhcr-welcomes-pakistan-cabinets-decision-to-extend-stay-of-afghan-refugees.html> (accessed 23.02.2024).

²⁹ *Pakistan: Afghan Refugees Registration Update* <https://reliefweb.int/report/pakistan/pakistan-afghan-refugees-registration-update-30-september-2018> (accessed 23.02.2024).

³⁰ *Pakistan: Widespread Abuses Force Afghans to Leave* <https://www.hrw.org/news/2023/11/28/pakistan-widespread-abuses-force-afghans-leave> (accessed 23.02.2024).

³¹ *Thousands Of Afghans, Facing Expulsion From Pakistan, Continue To Cross Border.* <https://www.rferl.org/a/afghanistan-pakistan-refugees-deportations-border/32667409.html> (accessed 23.02.2024).

This seminal instrument seeks to fortify and empower refugees, specifically emphasising non-penalisation for those entering countries without proper documentation, as elucidated in Article 31³². The recognition of refugees as individuals endowed with distinct rights spanning civil, political, and economic dimensions is imperative for a thorough comprehension of their legal status. In the preceding two decades, refugee law has witnessed substantial expansion, wherein national courts, including eminent bodies such as the Australian High Court and the House of Lords, actively engage in a robust judicial dialogue. The interpretation of civil, political, and economic rights by over 30 national courts globally indicates a growing acknowledgment of the nuanced realities confronting refugees at both national and regional levels.

Refugee law, ideally conceived as a safeguard akin to a hospital or insurance, should afford protection during times of risk. It is imperative to accord refugees the right to work, engage in business activities, and ensure their children receive education. Instances where refugees encounter restrictions in employment opportunities and educational access run counter to the humanitarian principles that underpin refugee protection. Challenges persist within the extant system, marked by impediments such as detention, deportation, and a conspicuous absence of an international administration dedicated to hearing refugee voices. The United Nations High Commissioner for Refugees (UNHCR), lacking binding force to implement the UN Convention of 1951, accentuates the imperative of establishing an apex body, akin to the Human Rights Council, to effectively address refugee concerns. The resolution of these challenges is paramount for safeguarding the sanctity of international law and preserving the fundamental rights of refugees on a global scale.

5. CHRONOLOGY OF AGREEMENTS BETWEEN AFGHANISTAN, PAKISTAN AND THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

These agreements systematically tackle the key aspects of the legal status of Afghan refugees in Pakistan, constituting official documents arranged in chronological order. They specifically pertain to the refugee status granted to Afghans residing in Pakistan, aiming to establish the legal implications for individuals of Afghan origin living within the country.

³² *Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949. <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-134> (accessed 23.02.2024).

The 1998 Agreement

The initial agreement, signed on June 8, 1988, addressed the voluntary repatriation of Afghan refugees residing in Pakistan under the collaboration of UNHCR and Pakistan [22]. The legal analysis of the situation arising from the 1988 agreement highlights concerns in the voluntary repatriation of Afghan refugees from Pakistan. Despite the collaboration between the UNHCR and the Government of Pakistan, subsequent agreements lack safeguards for individuals unwilling to return voluntarily. The absence of explicit provisions protecting those who choose not to return raises concerns about potential coercion. Moreover, the introduction of a provision by the Government of Pakistan, aiming to eliminate the option for refugees to stay voluntarily, contradicts the spirit of voluntary repatriation. This challenges the protection of refugees' rights under international law, including non-refoulement principles. The legal implications question the conformity of such provisions with the 1951 Convention relating to the Status of Refugees and international refugee law, despite UNHCR's efforts to safeguard against non-voluntary returnees.

The 1993 Agreement

The tripartite agreement between the GoA and GoP and the UNHCR was established on August 17, 1993³³. This agreement specifically focused on the voluntary repatriation of Afghan refugees. [16]. Consequently, the terms of this agreement suggested that all Afghan refugees in Pakistan, irrespective of their choice to return or not, were considered refugees and could solely depart their host country on a voluntary basis. The emphasis on voluntary repatriation aligns with fundamental principles of international refugee law. The agreement reflects a commitment to respecting the autonomy and free will of refugees in deciding whether to return to their country of origin. This is consistent with the spirit of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

The 1993 cooperation agreement between the Government of Pakistan (GoP) and the United Nations High Commissioner for Refugees (UNHCR) represents a unique and collaborative approach to addressing refugee-related matters. Unlike typical agreements, it stands out for its collaborative nature, jointly formulating an extensive framework for refugee-related regulations that surpass customary international law standards [26]. This distinctive agreement is founded on the UNHCR's expanded mandate, contributing significantly to a comprehensive body of legal provisions dedicated to the treatment

³³ *APRRN Urges Pakistan Not to Deport Afghans Seeking Safety within its Borders*<https://reliefweb.int/report/pakistan/aprrn-urges-pakistan-not-deport-afghans-seeking-safety-within-its-borders> (accessed 23.02.2024).

and protection of refugees. It serves as a model for collaborative efforts, reflecting a progressive commitment to addressing refugee challenges beyond conventional international law limitations. The agreement underscores the commitment of the GoP and UNHCR to innovatively enhance the treatment and protection of refugees.

The 2001 Agreement

In 2001, an agreement was established to define the screening procedures for determining the eligibility for international protection among Afghans residing in the Jalozai Makeshift Camp, Nasirbagh Camp, and Shamshatoo Camp [20]. Pakistan, having withdrawn its recognition of refugee status that same year, collaborated with the UNHCR to implement a screening process for newly arriving refugees. This process aimed to assess the individual status of each refugee based on factors such as fear of persecution or threat from armed conflict. The exact number of refugees subjected to one-on-one screening remains unclear, but the initiative was initially halted after Pakistan refouled 150 Afghans³⁴.

The 2001 Screening Agreement marked a departure from granting automatic refugee status to newly arrived Afghans in Pakistan. Instead, a nuanced approach designated qualifying individuals as "persons of concern" without clear criteria. The lack of transparency in this designation process has led to confusion and raised concerns about compliance with legal standards. Critics argue the agreement may be a strategic move to avoid obligations under the 1951 Convention, questioning the sincerity of assessing individual refugee claims. The agreement's lack of specificity raises concerns about procedural fairness, hindering affected individuals' ability to assert their rights. The process was further disrupted when the U.S. closed its borders to a new wave of Afghan refugees.

The 2003 Agreement

The 2003 agreement involving the GoP and GoA, in collaboration with UNHCR³⁵, addresses the repatriation of Afghan citizens residing in Pakistan. This agreement echoes a historical pattern observed a decade earlier, wherein a voluntary repatriation agreement was established in response to a significant return of Afghan refugees. The impetus for this particular agreement was notably influenced by the signing of the "Bonn Agreement." The "Bonn Agreement," a pivotal diplomatic accord, played a central role in

³⁴Closed Door Policy. <https://www.hrw.org/report/2002/02/27/closed-door-policy/afghan-refugees-pakistan-and-iran> (accessed 23.02.2024).

³⁵ Collection of International Instruments and Legal Texts Concerning Refugees and Others of Concern to UNHCR (June 2007). <https://www.unhcr.org/in/publications/collection-international-instruments-and-legal-texts-concerning-refugees-and-others> (accessed 23.02.2024).

shaping the context and parameters of the 2003 repatriation agreement. Its influence underscores the interconnectedness of regional diplomatic initiatives and the cooperative efforts of the GoP, GoA, and the UNHCR in managing the complex dynamics associated with the repatriation process.

The voluntary nature of the repatriation agreement reflects a commitment to respecting the autonomy of Afghan citizens residing in Pakistan, aligning with international principles governing the voluntary return of refugees. This approach is consistent with established norms aimed at ensuring that repatriation occurs under conditions conducive to the safety and dignity of the individuals involved.

Furthermore, the collaboration between the GoP, GoA, and the UNHCR in crafting and implementing the repatriation agreement underscores the importance of a multilateral approach to address the challenges associated with large-scale refugee movements. The involvement of international organisations, such as the UNHCR, contributes expertise and resources to facilitate a coordinated and humane repatriation process.

The 2004 Agreement

The 2004 agreement³⁶, manifested as a Memorandum of Understanding (MoU), focuses on the census and registration of Afghan citizens residing in Pakistan. This joint effort between the GoP and the UNHCR underscores a commitment to addressing the complex issue of Afghan population documentation. The Afghan population in Pakistan is recognised as mixed-race, and the lack of a precise count of Afghans poses challenges for both the UNHCR and the Pakistani government.

The initiative to conduct a census and registration process signifies a proactive approach to tackle the uncertainties surrounding the number and demographics of Afghan residents in Pakistan. By jointly signing the MoU, the GoP and the UNHCR recognise the importance of accurate data in formulating and implementing policies related to Afghan citizens, particularly in the context of their legal status and humanitarian needs.

The characterisation of the Afghan population in Pakistan as mixed-race adds a layer of complexity to the census and registration process, requiring careful consideration of diverse ethnic and cultural

³⁶ *Memorandum of Understanding between the Government of the Islamic Republic of Pakistan and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Census and Registration of Afghan Citizens Living in Pakistan.* <https://www.refworld.org/docid/55e6a3534.html> (accessed 23.02.2024).

backgrounds. The MoU likely establishes a framework for collaboration in developing methodologies that capture this diversity while ensuring the protection of individual rights and identities.

The challenges encountered by the UNHCR and the GoP due to the lack of precise information highlight the significance of the 2004 agreement. The need for accurate data is fundamental not only for effective policy planning and implementation but also for safeguarding the rights and well-being of the Afghan population in Pakistan. The agreement likely outlines mechanisms for addressing these challenges, such as defining methodologies for data collection, ensuring the protection of sensitive information, and establishing standards for verification and registration processes.

The 2006 Agreement

The 2006 MoU on the Registration of Afghan Citizens in Pakistan signifies a crucial step in the ongoing collaboration between the UNHCR and the GoP³⁷. As a follow-up to the Census Agreement, this MoU addresses the evolving circumstances of Afghan citizens in Pakistan, particularly in light of the Tripartite Agreement's expiration in December 2006. The primary goal is to formulate policies guiding the treatment and protection of Afghans choosing to remain in Pakistan. The emphasis on registration highlights the establishment of a comprehensive system for documenting and recognising Afghan presence, facilitating legal identity, access to services, and the protection of rights. This agreement underscores the dynamic nature of migration issues, showcasing the commitment of the GoP and the UNHCR to adapt their collaborative efforts to changing circumstances affecting the Afghan population in Pakistan.

The 2007 Agreement

The 2007 Agreement pertained to the repatriation of Afghan citizens residing in Pakistan and was formulated among the GoP, GoA, and UNHCR [6]. Building upon the foundation of the 2003 Voluntary Repatriation Agreement, the tripartite commission was established. In February 2007, at the outset of the year, the commission decided to prolong the voluntary repatriation program until December 2009. However, after a subsequent tripartite commission conference in June 2007, a reassessment took place. On

³⁷ UNHCR and Pakistan sign new agreement on stay of Afghan refugees <https://www.unhcr.org/in/news/stories/unhcr-and-pakistan-sign-new-agreement-stay-afghan-refugees> (accessed 23.02.2024).

August 2, 2007, rather than extending the 2003 Agreement, a new voluntary repatriation agreement was signed³⁸.

The central legal issue arises from the decision to replace the 2003 Agreement with a new voluntary repatriation agreement in August 2007. Key considerations include whether the new agreement terminated established legal obligations, and if the original agreement contained provisions for successor agreements or termination. Central concerns involve the protection of refugee rights and compliance with international law, specifically questioning how the new agreement affected rights under the 2003 Agreement and whether evolving conditions were considered. Procedural fairness is critical, assessing if the June 2007 reassessment followed fair principles and ensured adequate access to information and legal representation for affected Afghan citizens. The issue also raises questions about the new agreement's compliance with international refugee law, transparency, and the establishment of mechanisms for accountability and monitoring. Addressing this issue requires a meticulous analysis of both agreements within the broader legal framework governing refugee protection and repatriation.

6. VOLUNTARY REPATRIATION MECHANISM

The legal framework guiding the United Nations High Commissioner for Refugees (UNHCR) in voluntary repatriation is grounded in a multifaceted array of texts, instruments, and established practices. Evolving over time, UNHCR's mandate has expanded beyond a mere focus on border crossings to encompass a substantive commitment to securing protection and providing assistance to returnees within their home countries. While the 1951 Convention on the Status of Refugees does not explicitly address voluntary repatriation, its provisions are pertinent to UNHCR's statutory functions. Article 33, which establishes the principle of non-refoulement, prohibits the expulsion or return of refugees to territories where they would face persecution. The convention implicitly recognises the necessity for voluntary repatriation and recognises that the cessation of a well-founded fear of persecution is a pivotal consideration. The UNHCR Statute, as outlined in General Assembly Resolution 428 (V) of 14 December 1950, explicitly calls upon governments to collaborate with the High Commissioner in advancing the voluntary repatriation of refugees³⁹. This statutory foundation entrusts the High Commissioner with the

³⁸ *Agreement on Afghan repatriation from Pakistan extended three years* from <https://www.unhcr.org/in/news/stories/agreement-afghan-repatriation-pakistan-extended-three-years> (accessed 23.02.2024).

³⁹ *Statute of the Office of the United Nations High Commissioner for Refugees* <https://www.refworld.org/docid/3b00f0715c.html> (accessed 23.02.2024).

responsibility of seeking permanent solutions, thereby laying the groundwork for the fundamental principle that repatriation should be a *'voluntary process'* involving both governmental and non-governmental entities. General Assembly Resolutions consistently underscore UNHCR's role in promoting voluntary repatriation. Resolutions such as 1672 (XVI) and subsequent ones, although characterised as "soft law," reflect an international consensus on the critical involvement of UNHCR in repatriation operations, particularly within the country of origin [11].

The UNHCR Executive Committee's Conclusions further elucidate UNHCR's role in voluntary repatriation. Notably, Conclusion 18 (XXXI) emphasises UNHCR's responsibility in establishing the voluntary nature of repatriation [11], cooperating with governments, arranging guarantees from the country of origin, advising refugees, monitoring returnees, and assisting in reintegration. Conclusion 40 (XXXVI) builds on these principles, outlining practical strategies to ensure the durability of repatriation through rehabilitation and reintegration assistance [11].

Additionally, the Magna Carta, enacted in 1215, is likely the earliest document to introduce the concept of a "right" to enter one's own country, coupled with the government's obligation to respect this right. Article 41 of the Magna Carta grants citizens the freedom "to go out of our kingdom, and to return, safely and securely, by land or water, saving his allegiance" [23]. The League of Nations addressed a similar matter in the Havana Convention Regarding the Status of Aliens, emphasising states' obligation to receive their nationals expelled from foreign soil seeking entry. The 1948 Universal Declaration, adopted by the United Nations General Assembly, further asserted in Article 13(2) the right to leave any country, including his own, and to return to his country." Following the UDHR, the United Nations established the convention Relating to the Status of Refugees in 1951. These institutions place the responsibility of caring for refugees on UN member states. The Refugee Convention defines a "refugee" based on a well-founded fear of persecution, extending protection to those fleeing war-related conditions since 1967. The United Nations Convention on the Elimination or Reduction of Future Statelessness, although not explicitly mentioning terms like "refugee," "return," or "repatriation," imposes substantial obligations on signatories regarding loss of citizenship and the right to enter. It emphasises that loss of citizenship is prohibited unless the individual possesses another nationality, with a narrow exception for naturalised persons residing abroad for a specified period. The International Covenant on Civil and Political Rights (ICCPR) binds signatories not to arbitrarily deprive anyone of the right to enter their own country. However, Article 4(1) allows derogation in cases of a national emergency threatening the nation's life.

The International Convention on the Elimination of All Forms of Racial Discrimination ensures equality in the right to return to one's country, prohibiting racial discrimination [21]. While it allows states to regulate border transit legally, it prohibits any discriminatory application based on ethnic or racial grounds. Early UN documents primarily "urged" or "encouraged" states to assist in voluntary repatriation, but recent language in resolutions is increasingly asserting an "obligation" for countries to create conditions conducive to the return of their nationals. This shift suggests that states are increasingly perceived to have a legal obligation to accept back their nationals following the cessation of hostilities.

Several regional human rights conventions safeguard the right of nationals to enter their countries, with no explicit qualification when individuals become refugees. For instance, in 1950, the Council of Europe adopted The European Convention, and later, Protocol No. 4 in which the right to enter one's national territory is affirmed without specific reference to refugees [7]. Despite the absence of the term "refugee" in the convention and its protocols, this right is safeguarded. Similar to the ICCPR, this convention permits derogation in times of emergency. The American Convention on Human Rights also mandates that no one can be expelled from their country or denied the right to enter it with a provision for derogation in emergencies [12]. Similarly, the African Charter on Human and Peoples' Rights explicitly grants individuals the right to leave any country, including their own, and to return to their country. While the language is clear, these provisions can be restricted by states in certain situations, although the obligation is unequivocal in the absence of a national emergency.

The Geneva Conventions impose obligations related to repatriation, particularly in Article 134 of the Fourth Convention, which urges the contracting parties to facilitate the return of internees to their last place of residence at the close of hostilities. The language emphasises the effort to ensure return, but its interpretation can raise concerns of refoulement, contradicting international law. The obligation for repatriation is applicable to all parties, irrespective of whether they are host countries or repatriating countries.

A notable document, the "Principles Concerning Treatment of Refugees" from the Afro-Asian Legal Consultative Committee, is one of the few international or regional documents explicitly obligating a state to accept back refugees [13]. Customarily, refugee crises have three solutions: voluntary repatriation, integration into the host country, or resettlement [5]. Currently, voluntary repatriation is considered the best option, while other solutions are seen as temporary measures. The sending State, in collaboration with the receiving State, must arrange for the safe return of refugees upon their voluntary

request. The country of origin should facilitate their resettlement with full rights and privileges as nationals, along with corresponding obligations. UNHCR may assist in voluntary repatriation when refugees express a genuine desire to return, free from any external pressures.

It is essential to highlight that while there might not be a mandatory obligation under international law to grant asylum, states are still obligated to adhere to the principle of non-refoulement. The non-refoulement principle, a fundamental aspect of international refugee protection and recognised as customary international law, is outlined in Article 33(1) of the 1951 Refugee Convention. This principle applies to individuals meeting the refugee criteria in Article 1A(2) of the Convention, known as the "inclusion" criteria, and who do not fall under any of its exclusion provisions⁴⁰. The legal issues arising from the scenario center on safeguarding the human rights of refugees amid the complexities of state sovereignty, international law, and evolving perspectives on migrant rights. The key considerations encompass the imperative to protect refugees from human rights violations in their home countries, with a focus on the responsibility of receiving states to grant asylum and prevent further harm. The tension between state sovereignty and humanitarian principles forms a critical issue, prompting reflections on how states reconcile their sovereign rights with the rights and needs of refugees within the existing legal framework. Navigating international treaties and common law adds another layer of complexity, raising questions about the efficacy of current legal instruments in providing robust safeguards for refugees and the potential need for further development or consistency in international legal standards. The rediscovery of migrant human rights challenges traditional notions of state sovereignty, presenting a legal dilemma in harmonising state autonomy with the imperative to protect the rights of migrants. Additionally, examining Kant's assertion regarding the right to exist outside the legal concept of "dignity" prompts legal inquiries into its relevance within contemporary legal frameworks and its potential implications for extending protection to migrants [1].

The legal scrutiny extends to the critical analysis of border control practices, questioning their effectiveness and fairness. This involves an exploration of whether existing border control folkways align with human rights legal standards and whether reforms are necessary for a more equitable and rights-centric approach. In essence, addressing these multifaceted legal issues necessitates a thorough and critical examination of existing legal principles, calling for the development of more effective standards to ensure the comprehensive protection of the rights of refugees and migrants [3]. The voluntary nature of

⁴⁰ *The Refugee in International Law*. Oxford University Press. <https://opil.ouplaw.com/display/10.1093/law/9780199207633.001.0001/law-9780199207633> (accessed 23.02.2024).

repatriation is questionable when political factions in the host country disseminate misleading information or use coercion to influence refugees. The UNHCR assesses safety and dignity factors during return, including physical safety, family unity, attention to vulnerable groups, streamlined border processes, belongings allowance, freedom of movement, and human rights protection.

7. WHY IS PAKISTAN DEPORTING AFGHANS AT THE DARK NOON?

Pakistan's policy towards Afghanistan has always been an agathokakological approach. The paradoxical relationship of Pakistan with Afghanistan is convoluted. The snollygostic decision of Pakistan's PM to evacuate Afghans during the harsh winter shows iniquity, which depicts a circumlocution of not having goodwill in Afghanistan. This article is not to be a cacology, but it is a limpid discourse on the Kakistocracy of Pakistan that always has farrago diplomacy with Afghanistan. Pakistan has the certitude that Afghans face poverty and unemployment. The atavistic policy of the Pakistani government in Afghanistan is a quotidian to everyone. Pakistan hosted millions of Afghans and showed predilection towards the influx of those seeking refuge in 1979. Pakistan is neither a signatory to the U.N. Convention of 1951 nor the Geneva Convention of 1967. Today, nevertheless, the repatriation of Afghans with assiduous ingenuity could make supplications of Pakistan being esurient of the refugee crisis. The Taliban are trying to cull the livery of suave figureheads who treacherously worked for other countries either as renegade or sublime. So, Pakistan has not seen sybarite those. Pakistan finds the present ruler of Afghanistan as a savant. Pakistan declaims the exodus of Afghans and try to establish a cozen relationship, but these ties could take Afghanistan in benight peripatetic, which is a reified relationship. This desideratum evacuation is not apocryphal but would be on populism acquiescence. Pakistan always had the exhortation to collapse the previous regimes by rabble-rousing, and the ISI believed that the Taliban would be intransigent on Pakistan and, particularly, the Durand line. Sending refugees would be petulant and bring the current regime to a hamstring, and they may feel chagrin and namby-pamby that there will be a comeuppance; Pakistan feels beatitude of retribution of Afghans. The sudden influx of migrants and refugees causes difficulties for Afghanistan. However, it was inexorable for some families to live ephemeral. Pakistan never had a commiserate, and they had an invective credo towards refugees during the Afghan crises. Afghans are used to the crisis. In the humanitarian crisis of the year 2021, the international community were engaged in the Ukraine–Russia conflict. Furthermore, now, with Pakistan's decision to mass exodus of Afghans, international attention is attracted to Israel's merciless bombing of

Gaza. Here, Pakistan seized the opportunity to escape global scrutiny. At this point, inaptly, it is not comparable to the Pakistani's decision and Israel's action bombing infants and hospitals or destruction of property. It is called a war crime. Likewise, the mass deportation of Afghan refugees for an uncertain future is unjustifiable, and it is a violation of human rights laws. Similarly, both countries' actions and decisions trigger the provision of international humanitarian law. Apart from the legal responsibilities, there are moral ones. Pakistan goes against its chanting brotherhood and neighbourhood, one people (*Pashtuns* on both sides of the border), one religion (Muslim). Pakistan also transgresses the essence of its constitution. Article 40 of 1973 Constitution stipulates that "The State shall endeavour to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity, support the common interests of the peoples, foster goodwill and friendly relations among all nations".

8. CONCLUSION

The intricate historical and geopolitical ties between Afghanistan and Pakistan, marked by the 1893 Durand Line Agreement and the 1979 Soviet invasion, have significantly shaped the complex narrative of Afghan displacement. The paper underscores Pakistan's initial benefits from hosting Afghan refugees, evolving from financial and military support to a more liberal approach. However, shifting policies, reduced international aid, and UNHCR assistance have altered Pakistan's stance over time, contributing to challenges faced by Afghan refugees.

The legal ambiguity surrounding the status of Afghan refugees in Pakistan, compounded by the absence of international conventions and human rights laws, raises critical questions about the ethical dimensions of mass deportations. The paper delves into the plight of sans-papiers Afghan migrants facing repatriation, exploring the multifaceted challenges through the lenses of humanitarian law and political theory. The overarching humanitarian crisis in Afghanistan amplifies the complexity of the situation, with dire implications for poverty, unemployment, and uncertain futures. As Pakistan changes its policy, refusing recently arrived Afghan refugees and risking their repatriation, the recognition of collective rights, refugee status determination, and adherence to human rights law become key concerns. The paper poses thought-provoking questions about the strategic determination of refugee eligibility, the role of foreign policy in status decisions, and the precedence of legal requirements over political theory. The ambiguity surrounding the human rights and status of refugees in non-signatory states like Pakistan underlines the intricate intersection of international law, political considerations, and the evolving refugee

crisis. The contrasting approaches of UNHCR to Afghan refugees add complexity to the understanding of refugee status determination and challenge established norms.

Thus, the paper contributes valuable insights into the changing paradigms of human rights in the context of Afghan displacement, emphasizing the need for comprehensive and collaborative approaches to address the legal, humanitarian, and socio-economic dimensions of the ongoing crisis. The plight of Afghan refugees underscores the urgency of global attention and concerted efforts to ensure the protection of their rights and futures.

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ABOUT THE AUTHOR



Sayed Qudrat Hashimy – BA, LLB (5 years), LLM (International Law), LLM (Intellectual Property Rights), PhD Scholar (Law) at the Department of Studies in Law at the University of Mysore, Karnataka, India
e-mail: sayedqudrathashimy@law.uni-mysore.ac.in
ORCID ID: [0000-0001-9835-0575](https://orcid.org/0000-0001-9835-0575)

ABOUT THIS ARTICLE

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ADIÓS A LOS AFGANOS: ¿CUÁL ES LA PROMESA DE LOS DERECHOS HUMANOS A LOS INMIGRANTES AFGANOS EN PAKISTÁN?

RESUMEN

Las genealogías de la complicidad y la lucha entre Afganistán y Pakistán se remontan a un Acuerdo de una sola página de 1893 (Línea Durán) y a la invasión de la Unión de Repúblicas Socialistas Soviéticas (URSS) en 1979. La disputa del mundo hacia Pakistán con su ignominiosa política deportar a 1,7 millones de refugiados indocumentados a un país azotado por la guerra es inhumano y los trata como peones políticos. El éxodo masivo de refugiados afganos y la política antiinmigrante de Pakistán desencadenan algunas preguntas legales: ¿Por qué Pakistán está deportando afganos en este momento? ¿Quién escucha la voz del sufrimiento en el oscuro mediodía? ¿Qué pasará después con estos deportados? El artículo existente es conmovedor al examinar la situación de falta de derechos humanos de las personas sin papeles bajo el paradigma de los derechos humanos en Pakistán. Paralelamente, el documento también examina la dimensión de los derechos humanos desde la perspectiva de la desconcertante situación que prevalece en Afganistán. Este artículo se filtra en el desarrollo axiomático en la teoría y la práctica de los derechos humanos suplantados por los miserables inmigrantes. Así, este artículo ofrece una serie de fragmentos de pensamiento sobre algunas formas de entender los cambiantes paradigmas de derechos humanos en los afganos.

Palabras clave: refugiados afganos, crisis afgana, relaciones entre Afganistán y Pakistán, conflictos entre Afganistán y Pakistán

与阿富汗人道别：在巴基斯坦无人权可言的阿富汗移民，人权承诺何在？

摘要

阿富汗和巴基斯坦的联合与斗争可以追溯到1893年单页的《杜兰线协议》和1979年苏联的入侵。世界各国对巴基斯坦不光彩的政策表示不满，将170万无证件难民驱逐到一个战乱国家，这是不人道的错误，也是政治上的操作。阿富汗难民的大规模流亡和巴基斯坦的反移民政策引发了一些法律问题：为什么巴基斯坦在这个时候驱逐阿富汗人？谁在黑暗的正午听到了苦难的声音？这些被驱逐者接下来会发生什么？现有文章尖锐地审视了巴基斯坦人权范式下移民无人权的状态。与此同时，本文还从阿富汗普遍存在的复杂局势的角度检视了人权问题。本文加入了悲惨移民相关的人权理论与实践的公理化发展。因此，本文提供了一系列关于理解阿富汗人人权范式转变的思路。

关键词：阿富汗难民，阿富汗危机，阿富汗与巴基斯坦的关系，阿富汗与巴基斯坦的冲突。