

## Repatriation of Afghan Refugees in Pakistan: Voluntary?

By Valentina Hiegemann

*The repatriation of Afghan refugees continues to be the world's largest repatriation operation, involving more than 5.7 million Afghans who have returned home with the assistance of UNHCR mainly from Pakistan. Evidence suggests that many refugees have been pressured to leave Pakistan despite the unsafe and unfavorable conditions in Afghanistan. Applying relevant international legal principles, this short study calls for urgent research on the repatriation efforts by the Pakistani government, the international community, and UNHCR, which could be violating international refugee rights and breaching the legal principle of non-refoulement.*

### Introduction

Pakistan presently hosts 1,621,525 registered Afghan refugees, one of the largest protracted refugee situations in the world.<sup>1</sup> Although the issue of Afghan refugees is a protracted one, UNHCR has assisted around 5.7 million refugees to return home through its Voluntary Repatriation Programme since March 2002 (UNHCR ud), and returning refugees represent near one quarter of the total population in Afghanistan (UNCHR 2012). Previous studies have been conducted to evaluate whether the repatriation to Afghanistan has been voluntary or not.<sup>2</sup> Evidence demonstrates that many refugees have been pressured to leave Pakistan even though the conditions at home are unsafe and unfavorable (HRCP 2009). Based primarily on one study conducted by the Human Rights Commission of Pakistan, and relevant international legal principle, this study aims to look at the extent to which it could be argued that the Pakistani government, the international community and the agencies allowing and/or facilitating the repatriation are violating refugee rights. Could a case be made that these actors are breaching the legal principle of *non-refoulement*?

### Afghan Refugee Flows

Large numbers of Afghans first fled their homes as a result of the internal conflict following the takeover of Afghanistan by the Marxist-Leninist People's Democratic Party and later due to the invasion of the Soviet Union in 1979. By the 1980s, more than six million people sought refuge in Pakistan, Iran, India, Turkey, the United States and Western Europe. With the support of UNHCR and other organisations, camps were established in Pakistan and Iran to house migrants from Afghanistan. Hostility among Pakistani people began to increase as the country's frontier began to experience large numbers of refugees. Repatriation efforts began in 1992, when around 1.4 million refugees returned to Afghanistan after the mujahidin overthrew the Soviet Union-supported government in Kabul. However, instability and conflict caused by the failure of the mujahidin to successfully establish a government led to the outflow of more Afghans soon after (Vincent and Refslund Sorenson 2001). During this period, further displacement occurred as the Taliban gained control of most of the state. Their extreme Islamic policies, discriminative practices, humanitarian abuses, and bias against non-Pashtuns contributed to the additional 700,000 refugees who fled to Pakistan and Iran. A severe drought starting in 2000 caused additional displacement, resulting in 172,000 refugees in that year alone. After the terrorist attacks of September 11, 2011 forces bombed the Taliban government in Kabul and a temporary government led by Hamid Karzai replaced it. 160,000 Afghans had left their homes by the end of 2011 and fled to Pakistan even though the state had closed its borders. In 2012, the Afghan refugee situation alleviated as the Karzai government provided some stability to the country and massive repatriation efforts began led by the UNHCR (Ghurfran, ud). Nonetheless, refugees have continued to flee their homes due to enduring deteriorating security conditions (Vincent and Refslund Sorenson 2001).

### Pakistan as a Host Country

As of 2014, Pakistan hosts around 1.6 million registered Afghan refugees. Most of them reside in urban areas and refugee villages (UNHCR ud). In nearly thirty years of conflict, many Afghans have been born in Pakistan and integrated into society. This, together with the fact that there have been

<sup>1</sup> As of October 2013, Pakistan is the host of 1,621,525 Afghan refugees. This figure only indicates registered refugees. It is difficult to accurately calculate the number of Afghans because many have returned to Pakistan and later reentered Pakistan. In addition, a significant number reside in urban areas and do not approach UNHCR, and thus remain unregistered (UNHCR 2013).

<sup>2</sup> E.g. Human Rights Commission of Pakistan. 2009. Afghan Refugees in Pakistan: Push Comes to Shove.

several waves of refugees fleeing Afghanistan and refugees returning to Afghanistan, rendered it difficult to accurately calculate the number of refugees (HRCP 2009).

Despite the fact that Pakistan hosts such a large refugee population, the local situation of the state is far from favorable. Pakistan is not a signatory of the 1951 Refugee Convention and the national legislation of Pakistan does not directly address refugee rights. In addition, the judiciary and police generally do not have knowledge of refugee law, making the refugees vulnerable to injustice and unfair treatment (HRCP 2009). Furthermore, refugees have lived in Pakistan without legal documents for over 28 years. Only during the 2007 registration did the Government of Pakistan begin to issue PoR<sup>3</sup> cards that allowed refugees to stay until 2009 and protected them against deportation, arbitrary arrest and extortion (HRCP 2009). The temporary stay of Afghans was extended until 2012 and later until the end of 2015.

### ***Non-refoulement***

The most significant relevant international human rights instruments, which powerfully express the principle of *non-refoulement*, are the UN Convention against torture and the 1951 Refugee Convention. Article 33 of the 1951 Convention 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”. Although Pakistan is not a signatory of the Convention, it is bound to respect this right, which is now customary law. Furthermore, article 3 of the CAT<sup>4</sup> stipulates “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 in danger of being subjected to torture (Stoyanova 2009). International law therefore binds Pakistan not to return refugees whose life, liberty, and safety could be in danger upon return to their home country.

### **Voluntary or Forced Repatriation?**

Due to the tense relationship between Pakistan and Afghanistan, security concerns, and the decrease in aid given to the country, Pakistan has pushed for repatriation by creating harsh conditions for Afghan refugees. It has created an environment of fear and persecution to force many refugees out (HRCP 2009). Electricity has been cut off in the villages and camps, houses have been destroyed, camps have been closed down and thousands of refugees have been pressured to leave against their will. Also, state policy has given the police power to make random arrests without warrants and refugees are often victims of harassment and beatings by the officials (HRCP 2009). Claims that refugee camps have served as recruiting grounds for armed groups have accelerated the efforts to close the camps (Witte 2009). Refugees have further suffered from the fact that governments and agencies have failed to differentiate between civilians in need and armed militants in camps and refugee areas because they are able to blend in with the population (HRCP 2009). Another reason that has pushed Pakistan to adopt such drastic measures has been the decrease of international aid. The international community has significantly reduced the aid it gave to Pakistan in previous years and it has to be acknowledged that Pakistan does not have the necessary resources to cope with the massive population of refugees without international support (HRCP 2009). The financial and political support of the United States and its allies has also further facilitated and encouraged the repatriation of the refugees. The perceived voluntary return of refugees demonstrates the “success” of the war on terror against Al Qaeda and the Taliban, and legitimizes the military actions in the country (HRCP 2009).

Repatriation efforts primarily led by UNHCR continue to occur. The UNHCR Manual on Voluntary Repatriation of 1996 stipulates that refugees’ repatriation must be spontaneous and occur at their own pace. The Pakistani authorities have also always insisted on voluntary repatriation being their preferred solution (Zieck 1997). It is certainly true that, although some were forcibly evicted from the camps, Afghan refugees were not physically forced to leave Pakistan. However, they were forced to live in conditions that shed doubts on how the extent to which their departure was ‘voluntary’.

### **Situation of Afghanistan**

According to the 1996 UNHCR guidelines cited above,<sup>5</sup> another condition for voluntary repatriation is that the situation in the home country must have improved to ensure the safe return of the individual. In truth, the situation in Afghanistan has not sufficiently improved to provide accommodations and offer security for its returning population. Many refugees in Pakistan originate from the troubled areas in the south and southeast of Afghanistan where the security concerns are higher (HRCP). There are military operations, suicide attacks and armed conflicts. Suicide and improvised explosive devices have caused more civilian

<sup>3</sup> Proof of registration

<sup>4</sup> Pakistan is signatory to the United Nations Convention against Torture

deaths than any other method of attack (IDMC 2010). In addition, land mines prevent people from returning and restrict cultivation of the land. Statistics show that around 15 percent of Afghans live in mine-affected areas. Another significant obstacle that returning Afghans face is the lack of access to land that often results in disputes. It is stated in the SSAR<sup>6</sup> that around 60% of returning refugees encounter difficulties rebuilding their lives. The country is the poorest in the region and individuals are subjected to a lack of shelter, jobs, schools, electricity, and a limited access to basic services such as potable water. As a result, many refugees return to later become internally displaced.

## Conclusion

Despite the principle of *non-refoulement*, the evidence presented above suggests that Pakistan has pressured refugees to repatriate to a country where the conditions are anything but favorable. The government has created an environment of persecution and fear in refugee areas and has closed down camps without proper arrangements for its residents. “Western” governments claim that Afghanistan is safer than it was before 2001 when the Taliban held power. However, it is safe to claim that the country is not capable of properly accommodating and ensuring the security of the returnees. Albeit repatriation efforts will continue to occur, UNHCR predicts that security conditions in Afghanistan are likely to remain poor due in part to the withdrawal of international security forces. It also predicts additional internal displacement for the remainder of 2014 (UNHCR ud). Repatriation to Afghanistan has not taken into account the willingness of many refugees to go back or the harsh security and socio-economic conditions of the state. In such a context, it is doubtful how ‘voluntary’ the repatriation of Afghan refugees has been. If it has occurred involuntarily, and if it was shown that upon return to Afghanistan, the life and freedom of the refugees are at risk, one could argue that Pakistan, with the cooperation of the international community and the agencies involved, may be violating international refugee rights and breaching the legal principle of *non-refoulement*. The answer to this question is not within the scope of this paper, but it does call for urgent research on the matter, given the seriousness and gravity that such accusation would entail.

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## References Cited

**GHURFRAN N.** (undated), Afghan refugees in Pakistan Current Situation and Future Scenario, *Policy Perspectives*. Vol. 3 (2), Available at: [http://www.ips.org.pk/the-muslim-world/1023-afghan-refugees-in-pakistan-current-situation-and-future-scenario.html#\\_ftn26](http://www.ips.org.pk/the-muslim-world/1023-afghan-refugees-in-pakistan-current-situation-and-future-scenario.html#_ftn26) [accessed 27 May 2014]

**HUMAN RIGHTS COMMISSION OF PAKISTAN.** (2009), *Afghan Refugees in Pakistan: Push Comes to Shove*.

**IDMC** (2010) *Armed conflict forces increasing numbers of Afghans to flee their homes*. Available at: <http://www.internal-displacement.org/countries/afghanistan>.

**STOYANOVA, V.** (2008), *The Principle of Non-Refoulement and the Right of Asylum Seekers to Enter a Territory*. CASIN. Available at: <http://www.americanstudents.us/IJHRL3/Articles/Stoyanova.pdf>.

**UNHCR** (2012), *Solutions Strategy for Afghan Refugees (SSAR)*, Geneva. 2-3 May 2012. Available at: <http://www.unhcr.org/afghanistan/solutions-strategy.pdf> [accessed 27 May 2014]

**UNHCR** (undated), *Pakistan*. UNHCR Available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e487016&submit=GO> [accessed 27 May 2014]

**VINCENT, M. AND B. REFSLUND SORENSON** (2001), eds. *Caught between borders: response strategies of the internally displaced*. Pluto Press

<sup>5</sup> UNHCR Handbook on Voluntary Repatriation: International Protection 1996

<sup>6</sup> Solutions Strategy for Afghan Refugees

**WITTE, G.** (2009), 'Pakistani Refugee Camps Seen as Recruiting Grounds for Extremists'. *The Washington Post*, 25 May. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/05/24/AR2009052402963.html> [accessed 27 May 2014]

**ZIECK, M.** (1997), *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*. Martinus Nijhoff Publishers