THE ROLE OF THE UNHCR IN THE REPATRIATION OF AFGHAN REFUGEES FROM PAKISTAN: POST 9/11 ERA

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Abstract
The post 9/11 armed conflict in Afghanistan resulted in the displacement of millions of Afghans and many of these displaced persons entered Pakistan as refugees. Repatriation is considered as a durable solution of the refugee problem. It is the responsibility of the host state to plan for safe and voluntary return of refugees and the UNHCR plays a supportive role in complying with this responsibility. Despite, efforts of the Government of Pakistan in collaboration with the UNHCR, Afghan Refugees keep struggling in getting repatriated. UNHCR has been helping and assisting the government of Pakistan in planning and executing the safe and voluntary Afghan refugees under international legal framework. Although, this cooperation between the UNHCR and Pakistan has remained effective in achieving the goal of repatriation of Afghan Refugees in the context of ongoing conflicts in both Afghanistan and Pakistan in the context of difficult circumstances, however, the achievement of a safe and voluntary return of Afghan Refugees remains a big issue in this process. To comply with the legal framework for refugees regarding repatriation, Pakistan had been struggling a lot in the context of the ongoing armed conflict in both Afghanistan and Pakistan. This paper discusses the repatriation of the Afghan refugees from Pakistan, engineered by the UNHCR and Pakistan, under the legal framework applicable for safe and voluntary return of refugees, amid waves of repeated displacements due to the ongoing conflicts in Afghanistan and Pakistan.

Key Words: Afghan Refugees, Return, UNHCR, Pakistan

1. INTRODUCTION
Afghanistan became one of the world’s largest refugee-producing country in 2013.1 Today, Afghanistan is the second largest refugee-producing country in the world after Syria.2 Pakistan has always remained a second home for Afghans in the times of displacements. From 2.6 million registered Afghan refugees all over the world, Pakistan

hosts 1.5 million officially registered and approximately 1 million unregistered Afghan refugees according to an estimate. Most of these refugees have faced multiple displacements during various waves of displacements.

This increasing influx of refugees, political concerns, internal displacement crisis, and security concerns caused Pakistan to put a check on allowing more Afghan refugees as refugee status in December 2016. Amid efforts of making safe and voluntary return of refugees, Pakistan stopped the entry of Afghan refugees after 31st March 2017. This strict policy was adopted after a terrorist attack on a school in Peshawar claimed to be connected with Afghanistan. A comprehensive policy was adopted by the Pakistani Government on Afghan refugees that opposed the entry of more refugees into Pakistan while expediting the efforts to make their return to Afghanistan. UNHCR had helped and assisted the Pakistani government helping the return of these Afghan refugees through voluntary repatriation from 2001 till date.

The incident of terrorist attacks in the USA on September 11, 2001, changed the scenario of the world. The aftereffects of this incident involved the rest of the world. With the announcement of the war on terrorism, the demands were made to the global community to participate in fighting against terrorism. Pakistan was put on a great test, as being the neighbour of Afghanistan with the close ties between the people of both the countries, to participate in fighting against the terrorists in Afghanistan. President Musharraf addressed the nation on September 19, 2001, in an open and candid manner to explain the gravity of the situation in straightforward and direct words. He took the nation into confidence by asking the nation to trust and support his decision.

The security agencies of Pakistan, due to the porous nature of the border between Pakistan and Afghanistan, had not been able to have a strict check on the movement of Afghans into Pakistan. After the NATO operation in Afghanistan, almost five million people left Afghanistan and entered Pakistan. In general, states are held responsible for the situations that lead towards the creation of refugees; they have the ultimate responsibility to provide a durable solution to the problems of refugees. UNHCR has the mandate of helping and assisting states towards the durable solution of the matter of refugees.

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7 Marinos Diamantides and Adam Gearey, (eds), Islam, Law and Identity (Routledge 2011)
9 Manzoor Ahmad, 'Implications of the War on Terror for Khyber Pakhtunkhwa, Pakistan' (2013) 22 JCGS 101
2. REFUGEE PROTECTION

The term ‘Refugee’ is defined under article 1 of the 1951 Convention Relating to the Status of Refugees as:

‘A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.¹⁰

There is two important documents, named the Refugee Convention, 1951 and its Additional Protocol 1967, that regulate the refugee law. There are some other legal instruments relating to refugee law, but they have been signed separately by different contracting states and various regional bodies. International Refugee Law applies only to the people that enter into another state by crossing the international border. The United Nations High Commissioner for Refugees has powers to deal with the matters of the displaced persons, but they are not in the same condition as refugees, having not crossed the international border in extreme circumstances.¹¹

The 1951 Refugee Convention recognized the international scope of the refugee crisis and the duties of the states regarding cooperation between the states to resolve it. The convention was initially binding on the European states; later the 1967 protocol made it a universal document applying to the whole world, dealing with human rights, violations and political or armed conflicts in the home countries of the refugees as well. It was framed to offer international legal protection and other assistance to help refugees begin a new life.

Articles 12-30 of the 1951 Refugee Convention contain the rights of refugees. Although it is very difficult to enforce these rights fully in practice, still they establish criteria for the hosting states, which can be divided into four categories. The first category guarantees refugee the same privileges that are provided to the nationals of the hosting country. The second category requires host states to treat refugees as they treat the nationals of other states. The third category provides refugees right of best possible treatment as provided to the nationals of the hosting country, while the fourth category provides various other rights.¹² The refugees are agreed by state parties under the 1951 Refugee Convention to grant favorable treatment as given to the nationals of foreign countries, mentioned above as the second category of rights.¹³

The refugee convention requires state parties to bring disputes before the International Court of Justice but does not appoint any implementing or supervisory body to

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¹⁰ Refugee Convention 1951, Art. 1 (A) (2)
¹³ Refugee Convention 1951, Art. 15 and 17
implement the refugee convention. Normally, the state parties adapt their domestic asylum and refugee laws, and the political will of the state parties plays a critical role in obliging and implementing the rules of the refugee convention, with discretion to oblige or neglect the rules. The state parties are directed to comply with the provisions of the refugee convention in accordance with the suggestions of the UNHCR. The Executive Committee of the High Commissioner’s Programme (EXCOM) makes recommendations for the protection of refugees in general and particular situations.

3. ROLE OF THE UNHCR

The UN General Assembly has given UNHCR the responsibility to act as the principal institution for the protection and assistance of refugees and asylum seekers. The mandate, mission, and purpose of UNHCR have been established by the UN General Assembly by passing a resolution known as the UNHCR Statute. The UN High Commissioner for Refugees works under the authority of the UN General Assembly and assists the concerned governments and private organizations with their approval by facilitating them in voluntary repatriation and assimilation with the new national communities.

The temporary protection provided to refugees puts their future at stake. The states use temporary refugee protection as a substitute for the traditional refugee protection provided by the Refugee Convention and Protocol, leading towards the exclusion of traditional protection from the sphere of human rights. The states are more likely to offer temporary protection to refugees as to decrease their financial burden and refraining refugees from gaining economic and social benefits. Another threat to the refugee regime is the non-acceptance of refugees by the developed states that control most of the world’s wealth. Most of the refugees are held in developing countries that are not able to meet their needs. It is a collective responsibility of all states to share the burden of refugees, but the number of states that accept refugees is decreasing. Although UNHCR has gained some success in convincing more states to accept the responsibility of refugees, still associating blames of crime and terrorism with refugees keeps their future at stake, blame based on assumptions and adding to the sufferings of refugees whose life and safety are already in danger. The principle of the sovereignty of states empowers states to exercise jurisdiction over their territory, with immigration matters regulated under sovereign competence and laws to allow non-citizens to enter their territory. A state has the power to allow entering, remaining, and expelling non-citizens, with some exceptions for non-citizens.

3.1 Repatriation and UHNCR

14 Refugee Convention 1951, Art. 38
15 Joan Fitzpatrick, ‘Revitalizing the 1951 Convention’ (1996) 9 HHRJ 229
16 Refugee Convention 1951, Art. 35, 36
17 UNHCR Statute 1950
The status of refugee is not a permanent status, that needs to be shifted through seeking durable solution, and refugees are either returned to their home country or the hosting countries integrate them into their own system. Repatriation is the process of returning of refugees to their home country that is mostly adopted for settlement of the problem of refugees. UNHCR has the responsibility, under the Statute of the United Nations High Commissioner for Refugees (UNHCR), for “assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities”. However, such repatriation must be voluntary “The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will.”

The repatriation is only allowed when circumstances favour the return of refugees to their home country. The prevailing conditions of their home country, as refugees flee their country in fear of persecution, must have changed and it is safe for them to return. Therefore, if the hosting country wants to send the refugees back, it is the responsibility of the hosting country to ensure, with their home country, the safety of the refugees. The repatriation agreement between both the countries can serve this purpose. Otherwise, refugees may become victim of forced return that is not permitted under international law.

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”

UNHCR has the responsibility is to ensure lawful and voluntary repatriation by monitoring the voluntary character of refugees’ repatriation and convincing the concerned states to create conditions for facilitating the safe and dignified repatriation. UNHCR has the mandate to ensure the favourable conditions for spontaneous and voluntary return, monitor the status of repatriated refugees, persons who have been repatriated, adequate activities to solve problems relating movement of refugees, collecting and disseminating funds to support governments for repatriation.

The UNHCR has the mandate to become a party to the tripartite agreements for repatriation, concluded among the country of origin and hosting country the country of asylum. However, UNHCR, instead of forcing the states, plays an assistive role in safe and voluntary reintegration in collaboration with both the concerned states. The main role of the UNHCR is selecting areas to promote and facilitate repatriation by looking at the circumstances and guarantees obtained from states.

4. UNHCR AND REPATRIATION OF REFUGEES FROM PAKISTAN

The UN General Assembly has given UNHCR the responsibility to act as the principal institution for the protection and assistance of refugees and asylum seekers. The

20 UNHCR Statute, adopted by the UN General Assembly on 14 December 1950, Resolution 428 [V], Art. 8 (c)
22 Refugee Convention, 1951, Art. 33
23 UNHCR Executive Committee, 1980 (Conclusion 18, Session XXXI)
mandate, mission, and purpose of UNHCR have been established by the UN General Assembly by passing a resolution known as the UNHCR Statute. The UN High Commissioner for Refugees works under the authority of the UN General Assembly and assists the concerned governments and private organisations with the approval of the concerned governments for the protection of by facilitating them in voluntary repatriation and assimilation with the new national communities. The UNHCR performs its duties with the cooperation of other UN agencies including

Despite, the volatile operating environment for humanitarian actors and fragile security, UNHCR has been working for the betterment of displaced persons in Pakistan. The lack of proper facilities and adverse circumstances have been neutralised by UNHCR by involving the local and international donors in their working circle. The social and economic challenges and difficult travelling situations have affected the humanitarian operation, but UNHCR has delivered above standard services throughout. The strategy of UNHCR by working in collaboration with local partners and government counterparts has proved very effective.

The policies and strategies framed by UNHCR enabled Pakistan authorities in dealing with the phenomenon of the displaced persons. It not only helped UNHCR to improve outreach to the population of concern but also helped in building local capacity to deal with the situation. The coalition of UNHCR and its partners has helped the government of Pakistan and Afghanistan to build a favourable environment for the protection and rehabilitation of Afghan refugees and Pakistani IDPs.

Pakistan has been hosting 1.5 million refugees for more than the last three decades. UNHCR mainly facilitates the return of Afghan refugees and support them in their proper reintegration. The other priority of UNHCR, regarding refugees, is to ensure the provision of basic protection and basic services needs to those who cannot return immediately. The Government of Pakistan helps the UNHCR in this regard by providing necessary support and framing proper rules and regulations for the refugees in consultation with UNHCR.

UNHCR helps and supports the local communities of Pakistan where refugees reside. It helps the local community to minimise the effects of overpopulation, and the local community feels comfortable in accepting the refugees as part of their community. This develops a healthy atmosphere of peace and prosperity. The local community and refugees live together with the notions of equality and brotherhood due to the effective intervention of the UNHCR.

UNHCR is not only supporting and assisting the refugees, but the Government of Pakistan has also been thoroughly assisted by the UNHCR in dealing with displacement of the internally displaced persons. The registration, setting up camps, maintenance of basic services, cooperating with other humanitarian actors, supplying core relief and assisting with the return, shelter, and transport for the internally displaced persons have been the areas of concern to the UNHCR.

24 Statute of the Office of the United Nations High Commissioner for Refugees, GA res 428 (V), annex, 5 UN GAOR Supp (No 20) at 46, (1950) UN Doc A/1775 (hereinafter UNHCR Statute)
The efforts made by UNHCR have set the foundation for Pakistan’s accession to the 1951 statutes of refugees and its adoption of national refugee legislation. The Afghan refugee legal status has been advocated by UNHCR in Pakistan to provide more extended rights to Afghan refugees. The matters of registration, determination of refugee status, access to asylum and resettlement have been included in the legal system of Pakistan due to the efforts made by UNHCR. The best possible way of seeking a durable solution of the refugee problem, recommended by UNHCR, is the voluntary repatriation. In this method of solution, arrangements are made with the state from where refugees have been originated, and the return is made completely on a volunteer basis. UNHCR advocates such type of return involving repatriation, reintegration, rehabilitation, and reconstruction.26

After voluntary repatriation, local integration is known to be another way of durable solution of the refugee problem. This way of solution is applied when voluntary repatriation is not possible or impracticable. In this category of the solution, the refugees are integrated or resettled locally into their country of first asylum. The third durable solution, supported by UNHCR, is resettlement. This method of durable solution is employed when repatriation and local integration is not possible. In this approach, the refugees are transferred from the country of their temporary asylum to third countries that are willing to provide them with a permanent settlement.27 Temporary refugee protection is the fourth method of a durable solution. The efforts of UNHCR have resulted in the creation of temporary refugee protection.28 This method of solution provides temporary protection by a state to prima facie refugees during the mass exodus.

The Refugee Convention and its Additional Protocol are the international legal instrument that is considered as the most important instruments that regulate the refugee law. There are some other legal instruments relating to refugee law, but they have been signed separately by different contracting states and various regional bodies. International Refugee Law applies only to the people that enter into another state by crossing the international border. Anyhow, the United Nations High Commissioner for Refugees has the extended powers to deal the matters of the displaced person, who are not in the same condition as refugees but have not crossed the international border, with some particular circumstances.

In 2001, UNHCR faced a difficult situation when a huge number of people were displaced from Afghanistan after the US-led NATO forces attack on Afghanistan, chasing the terrorists. It was a big challenge for UNHCR to help the safe return of Afghan refugees, their protection and assisting the arriving refugees. UNHCR started working with the Government of Pakistan and established joint screening committees for the refugees who needed international protection. UNHCR continued assisting the refugee camps on

the matters of health, education, basic skills training and supported 1.5 million refugees accessing clean water, health services, education, and other necessities.\textsuperscript{29}

The return of the Afghan refugees was paced up by UNHCR and assisted 20,790 Afghan refugees in their return to Afghanistan. In 2001 more than 77,000 refugees, both new arrivals and relocated from the urban areas were brought to the refugee camps by UNHCR and provided them with basic relief items, healthcare, and education for the children. UNHCR established 133 Healthcare units where both male and female community health workers used to treat the refugees.\textsuperscript{30}

Earlier in 2002, UNHCR, with the help of its partner organisations and the Government of Pakistan, assisted almost 500,000 Afghan refugees to return to their country. The Nasir Bagh camp in Peshawar was closed. Most of the refugees residing in Nasir Bagh camp near Peshawar were included in those returnees, and the remaining were relocated to the new campus set in Chaman, Baluchistan.\textsuperscript{31}

After the relocations, UNHCR hosted and provided more than 240,000 people in the new camps in Khyber Pakhtunkhwa and Baluchistan with food, shelter, health care, education, and relief items to help them settle in. Later in 2002, a new lot of 26,000 Afghan refugees arrived in Khyber Pakhtunkhwa, crossing the Chaman border. They were kept in a waiting area in Chaman by establishing a makeshift camp and were provided with drinking water, primary education, basic healthcare, and community services by UNHCR. Meanwhile, UNHCR continued supporting the old refugees already residing in the refugee camps.\textsuperscript{32}

The returning of refugees remained a priority in 2003 and UNHCR assisted and facilitated another 343,000 Afghan refugees were returned from Pakistan under the tripartite agreement aiming to complete safe and voluntary return.\textsuperscript{33} The issue of waiting for area refugee was resolved with the help of the Government of Pakistan by dismantling the makeshift camp in Chaman.\textsuperscript{34} More than 384,000 Afghan refugees were returned to Afghanistan in 2004 with the help and assistance of UNHCR. IRIS recognition checks were made before the departure of the refugees by UNHCR and its partners to avoid duplication of assistance. At departure from Pakistan, the returnees were

provided with all material assistance and provided with adequate assistance and support when they were received in Afghanistan.\textsuperscript{35}

Almost 450,000 Afghan refugees were facilitated by UNHCR in 2005. In total 2700,000 Afghan refugees were returned to Afghanistan from 2002 to 2005. The government shifted the residents from two camps in Baluchistan to Islamabad because UNHCR refused to assist in those camps due to security reasons. UNCHR continued working on the repatriation assistance program by extending the tripartite agreement between the Governments of Afghanistan, Pakistan, and UNHCR for three more years until December.\textsuperscript{36}

UNHCR kept working to finalise a tripartite agreement with the Governments of Pakistan and Afghanistan on the matter of the voluntary return of the Afghan refugees. UNHCR helped and monitored the potential returnees in saving them from any problems after crossing the Afghan border. The returnees were interviewed to make sure about their willingness to voluntary return. The traditional refugee status was determined, and the refugees were provided with protection in the camps by UNHCR. The advice and legal aid centres for refugees were established in Baluchistan, Khyber Pakhtunkhwa, Islamabad, Rawalpindi and Mianwali by UNHCR with the cooperation of local and international NGOs. The refugees were updated about upon their returning matters and the condition of their home areas by these centres.

The voluntary repatriation centres were established by UNHCR in Pakistan. The purpose of the repatriation centres was to assist the refugees in their return. The refugees residing both in urban and rural areas were served by the mobile teams in case of any help needed. UNHCR also established three help station between Quetta and Karachi to provide overnight facilities to the returnees. A survey was conducted as to know the tendency of the Afghan refugees towards their return to Afghanistan and the steps were taken per the wishes of the refugees.

The principle of the voluntary and safe return of Afghan refugees was followed by the Government of Pakistan. In 2003, the discussions and debates were held regarding the matters of refugees in the legal context. The top civil servants, judicial experts, and law enforcing officials participated in high-level workshops, conferences, and discussion groups. The amendments were made in the Foreigner’s Act, and Afghan refugees were given the right to birth registration and refugees were given a recognised status.\textsuperscript{37}

The legal framework provided by the Tripartite Agreement, signed in 2003, helped UNHCR in deciding for the voluntary return of the Afghan refugees. In 2004, the pros and cons of the voluntary return were discussed in several meetings. The operational and protection aspects of the repatriation operation were discussed, and policies were framed in these meetings. The efforts were made to keep the return voluntary. In 2004,

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a total of 576 people in these categories were recognised by UNHCR arrangements were made for their resettlement through voluntary repatriation. In 2004, Memorandum of Understanding was signed between UNHCR and various universities of Pakistan to include refugee laws in their curriculum. UNHCR helped the government of Pakistan to assist those refugees and decide for their return. Different programs were initiated for the registration and documentation of refugees living outside refugee camps. In 2005, almost 450,000 refugees returned voluntarily to Afghanistan with the support and assistance of UNHCR under the tripartite agreement.38

In 2007, approximately 357,000 Afghans were repatriated from Pakistan. The Afghan authorities were made responsible for providing land to the returnees for building their houses. Furthermore, the Afghan Minister of Refugees and Repatriation promised to build 48 towns for Afghan returnees from Pakistan and Iran, in various parts of Afghanistan. The UNHCR helped another successful return of 229,000 Afghan refugees from Pakistan between 2010 to 2012. A large-scale return was completed in 2016 when 380,884 Afghan refugees returned to Afghanistan. According to an estimate, about 1.3 million registered Afghans were present in Pakistan till February 2017.39 The UNHCR helped and assisted the repatriation of approximately 4.6 million Afghan refugees from 2002 to 2020.

The efforts of the UNHCR in collaboration with the government of Pakistan remained successful in the context of repatriation of the Afghan refugees. However, refugees were not provided with the opportunity to participate in the process of decision-making in terms of seeking a durable solution to their problem. The government of Pakistan, with the help of UNHCR and its partner organizations, planned for return and resettlement of refugees.

5. CONCLUSION

Afghanistan is among the few countries that have witnessed several waves of displacements from the last four decades, mainly due to armed conflicts and internal disturbances. Millions of people have been displaced in during the post 9/11 conflict between Afghan fighting armed groups and NATO led armed forces. Most of these people have entered Pakistan as refugees that caused Pakistan to suffer a two-tier problem. At one hand dealing with the results of participating in the war against terrorism in the shape of internal armed conflict in Pakistan. On the other hand, managing the Afghan refugees who entered Pakistan.

UNHCR is working in Pakistan in collaboration with the Government of Pakistan to support the Refugees and Internally Displaced Persons. Despite, security threats, access problems social and economic challenges and volatile operating environment for humanitarian actors; UNHCR has been delivering excellent services in assisting and supporting the displaced persons in Pakistan.

Perhaps, it was the best part of the working of UNHCR with close relation to the government of Pakistan, and it’s partner organisations to aid and decide for a safe and secure return of displaced persons, both Afghan refugees, and internally displaced persons. As compared to the complaints by displaced persons regarding their protection and return to their homes, UNHCR has put unceasing efforts and played a remarkable role in making the return possible, despite, difficult situations and unfavourable circumstances.

Repatriation, although considered as one of the durable solutions of the problem of refugees, it still needs to be done by considering the safety, dignity and voluntariness of the refugees. A forced or pressured return of refugees to their country of origin compromises the respect, dignity and voluntariness. The repatriation of the Afghan refugees from Pakistan with the help and assistance of the UNHCR, based on the planning of the UNHCR and Pakistan, has mostly been considering the respect and dignity of the refugees but has been lacking the element of voluntariness. The urgency of the matter and the ongoing conflict at both the sides of the borders, to some extent, justifies the omission of voluntariness but still it must have been considered as per legal framework for the protection of refugees.