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## **The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan**

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Waseem Ahmad\*

A protracted refugee situation is always critical and challenging in terms of finding durable solutions. The Afghan population in Pakistan is complex and one of the world's most protracted refugee case load.<sup>1</sup> The response to Afghan refugees has almost always been structured within the framework of "Durable Solutions."<sup>2</sup> However, such traditional approaches are unable to overcome the specific challenges stemming from a refugee population that has remained in exile for over 37 years. This grave issue needs out-of-the-box solutions. The international community has focused largely on refugee emergencies, but the complexity of a protracted situation is that it has moved

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<sup>1</sup> See *Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://unhcrpk.org/> (last visited Dec. 26, 2016).

<sup>2</sup> The United Nations High Commissioner's basic functions are defined in paragraph 1 of the Statute (G.A. Res. 428(V) at 48). Article 1 of the UNHCR Statute defines Durable Solutions under two distinct headings: voluntary repatriation and assimilation into new national communities. The second of these headings covers two alternatives: local integration in the country of first asylum and resettlement in a third country.

beyond the emergency phase and no longer requires mere lifesaving protection and humanitarian assistance. Therefore, the political and strategic aspects must also be addressed. The return of Afghan refugees in 2002 was considered the single largest repatriation by the United Nations High Commissioner for Refugees (UNHCR) as of that date.<sup>3</sup> Nevertheless, the phenomenon of recycling remains a common practice in Pakistan.<sup>4</sup> In this context, serious questions have been raised over the viability, sustainability, and durability of the return and reintegration of refugees in Afghanistan. The induction of Solution Strategy for Afghan Refugees (SSAR) as a regional approach is a constructive step, though the implementation could be challenging and would demand huge efforts. The Afghan case is most perplexing because of its long duration, and not because of the numbers of refugees involved. Despite the high level of response in terms of humanitarian aid, the issue was, and still is, the victim of power politics, as well as geopolitical and economic interests.

This article unfolds the historical aspects of the Afghan refugee situation to find the root cause of the massive displacement of Afghan refugees, the missing links in addressing the issue, and the common grounds for forced displacement in the region to reset the direction of Durable Solutions. The main purpose of this article is to examine the effectiveness of the preferred durable solution and the fit of the regional solution strategy in the local scenario of Afghan refugees in Pakistan. Furthermore, the article seeks to assess the available government machinery's capacity and legal response, and assistance from UN agencies and humanitarian organizations. Additionally, the article aims to highlight the challenges of a sustainable return to

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<sup>3</sup> *Afghanistan: Largest Single Refugee Repatriation Since 1972*, U.N. HIGH COMMISSIONER FOR REFUGEES (Sept. 3, 2002), <http://unhcr.org/3d748f4b19.html>.

<sup>4</sup> Susanne Schmeidl, *Repatriation to Afghanistan: Durable Solution or Responsibility Shifting*, 33 PROTRACTED DISPLACEMENT 20, 20, <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR33/20-22.pdf> (last visited Mar.10, 2017).

Afghanistan to help draw a future road map that will address those challenges.

The article first describes the roots of instability in Afghanistan that led to the massive displacement of Afghan refugees. This is followed by historical evidence of the massive influx of Afghan refugees, along with other recent displacements in South Asia. This article then focuses on finding a way to tackle challenges of the protracted refugee situation based on an analysis of the durable solutions available to the UNHCR and the Government of Pakistan's response in handling Afghan refugees. Recycling and the urbanization of Afghan refugees provide the basis for analyzing durable solutions by identifying missing links and gaps in the UNHCR and governmental responses. The lack of domestic legislation for refugees in Pakistan and the fact that the country is not a signatory to relevant international legal instruments have led to gaps in the legal status of Afghan refugees, as well as shifts in their legal status over time. Comparing Afghan Management and Repatriation Strategy (AMRS) with SSAR clarifies the viability of both strategies. Therefore, the article offers a comprehensive context for analyzing the case of Afghan refugees. Lastly, the article offers recommendations for policy improvements, based upon the conclusions drawn from analysis. These improvements specifically target all levels of pragmatic policies and practices for relevant stakeholders to bring about the end of the protracted refugee situation in Pakistan.

#### I. ROOTS OF INSTABILITY IN AFGHANISTAN

Since hitting world headlines in December 1979, Afghanistan is still believed to be one of the most severely war-affected and politically unstable countries in the world.<sup>5</sup> In the last four decades, the political instability in Afghanistan has led to an economic recession that propelled the social,

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<sup>5</sup> *Timeline: Soviet War in Afghanistan*, BBC NEWS, <http://news.bbc.co.uk/2/hi/7883532.stm> (last visited Jan. 13, 2017) [hereinafter BBC NEWS].

religious, and ethnic volatility in the country.<sup>6</sup> The Soviet invasion of Afghanistan in December 1979 was a decisive event during the Cold War. While many historians have claimed that the Eastern and Western bloc nations did not engage in direct warfare in the landlocked country of Afghanistan; however, each bloc released its political pressure, and the weapons of both were decidedly used in Afghanistan.<sup>7</sup>

To justify their occupation of Afghanistan, the Soviets claimed that they were stabilizing the government's writ and trying to get rid of the "CIA-supported mercenaries."<sup>8</sup> Furthermore, the Soviets validated their occupation under the umbrella of cooperation as a result of the Soviet-Afghan Friendship Treaty.<sup>9</sup> This treaty was signed in Moscow on December 5, 1978, between Noor Muhammad Taraki (President of Afghanistan in 1978) and Leonid Ilyich Brezhnev (President of USSR in 1978).<sup>10</sup> According to Article 4 of the Friendship Treaty, the high contracting parties agreed to cooperate with each other on military matters to strengthen the defense capacity of both countries.<sup>11</sup> However, to establish close and secure relations, beginning in

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<sup>6</sup> *The Economic Disaster Behind Afghanistan's Mounting Human Crisis*, INT'L CRISIS GROUP (2016), <https://www.crisisgroup.org/asia/south-asia/afghanistan/economic-disaster-behind-afghanistan-s-mounting-human-crisis> (last visited Jan. 13, 2017).

<sup>7</sup> "Eastern bloc" refers to the communist states of Central and Eastern Europe, which were the allies of the Soviet Union during the Cold War. "Western bloc" or the "Capitalist bloc" refers to the countries that were the allies of the United States and NATO during the Cold War. *The Soviet Invasion of Afghanistan and the U.S. Response, 1978-1980*, OFF. HISTORIAN, <https://history.state.gov/milestones/1977-1980/soviet-invasion-afghanistan> (last visited Jan. 13, 2017).

<sup>8</sup> Alam Payind, *Soviet-Afghan Relations from Cooperation to Occupation*, 21 INT. J. MIDDLE EAST STUD. 107, 107–28 (1989), <http://www.jstor.org/stable/163642>.

<sup>9</sup> American Society of International Law, *Afghanistan-Union of Soviet Socialist Republics: Treaty of Friendship, Good Neighborliness and Cooperation* 3 (1980), [http://www.jstor.org/stable/10.2307/20692120?ref=search\\_gateway:655e8b53ff323800528abfe85aa8ba13](http://www.jstor.org/stable/10.2307/20692120?ref=search_gateway:655e8b53ff323800528abfe85aa8ba13).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2; Article 4 (1) stated, "The high contracting parties, acting in the spirit of the traditions of friendship and good neighborliness, as well as the UN charter, shall consult each other and take by agreement appropriate measures to ensure the security, independence, and territorial integrity of the two countries."

1950 the Union of Soviet Socialist Republics (USSR) worked persistently with Afghanistan to provide economic and military assistance.<sup>12</sup> Despite all the aid provided by the USSR to Afghanistan, the People's Democratic Party of Afghanistan (PDPA) regime failed to promote the Soviet's agenda in Afghanistan.<sup>13</sup> This led to the frequent change of presidents and the end of the monarchy system in Afghanistan.<sup>14</sup> The resulting unstable political situation provided the opportunity for the USSR to convert its cooperation into an occupation in December 1979.<sup>15</sup> The USSR's invasion of Afghanistan was the largest Soviet military action since World War II.<sup>16</sup> On the one hand, the USSR's invasion was the climax of the Cold War, where tensions reached a peak; on the other hand, it was a strategic challenge for the Western bloc. According to David N. Gibbs, Professor of History at the University of Arizona, President Jimmy Carter considered the Soviet invasion of Afghanistan a solemn challenge to the West and considered it "the greatest threat to peace since second World War[.]"<sup>17</sup>

The Soviet occupation of Afghanistan exposed the tense relations between the superpowers.<sup>18</sup> If this was the USSR's first attempt to use military power to expand its territory since World War II, it was also the first time the

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<sup>12</sup> BBC NEWS, *supra* note 5.

<sup>13</sup> *Id.*; The PDPA was a socialist political party in Afghanistan and was strongly supported by the Soviet communist government. It was established on June 1, 1965, and in 1967 split in to two factions, "Khalq" and "Parcham." As a minority, the party assisted former Prime Minister Daud Khan in overthrowing King Zahir Shah and established the Republic of Afghanistan. In 1978, the party also seized power from Daud Khan during the Saur Revolution with the help of the Afghan National Army. Beverly Male, REVOLUTIONARY AFGHANISTAN 25, 29, 33, 35, 39, 50 (1982), <https://www.marxists.org/history/afghanistan/archive/revolutionary-afghanistan.pdf>.

<sup>14</sup> BBC NEWS, *supra* note 5.

<sup>15</sup> Payind, *supra* note 8, at 107.

<sup>16</sup> David Gibbs, *Afghanistan: The Soviet Invasion in Retrospect*, 37 INT'L POL. 233, 233 (June 2000),

<http://dgibbs.faculty.arizona.edu/sites/dgibbs.faculty.arizona.edu/files/afghan-ip.pdf>.

<sup>17</sup> *Id.*

<sup>18</sup> Payind, *supra* note 8, at 107.

superpowers' exposition of military force led to a mass exodus of Afghans.<sup>19</sup> The resulting political instability, "Clash of the Titans" (superpowers), failure of the PDPA, Soviet invasion, weak rule of law, fall of Najib's government, civil war, Talibanization, and U.S. intervention were all critical factors in making Afghanistan the most unstable area in the region.<sup>20</sup> This dreadful situation left the population of Afghanistan in tatters for an indefinite period of time.

The victory and the victor are still undefined in Afghanistan; however, the mass destruction in the country brought chaos to every level in Afghanistan. The turmoil compelled millions of Afghans to seek refuge in the neighboring countries of Iran and Pakistan.<sup>21</sup> Such a mass influx drew an image of human and societal insecurity.<sup>22</sup> The causal factors of this massive displacement are explained in the section below regarding the Afghan refugees' crisis timeline in Pakistan.

## II. DISPLACEMENT IN THE MODERN HISTORY OF SOUTH ASIA

To contextualize the particular case of Afghan refugees, it is important to describe the history of forced migration in the region. The South Asian region has been exposed to some of the largest population displacements in recent history as a result of "the reorganization of political communities."<sup>23</sup> According to Susanne Schmeidl, a Lecturer in Development Studies at the

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<sup>19</sup> *Id.*

<sup>20</sup> "Talibanization" is a term used for the rise of the Taliban movement in Afghanistan. It was also referred to as a regime when the Taliban defeated the ruling Mujahideen factions and seized control over Afghanistan in 1996 until 2001. The Taliban is a fundamentalist Islamic group in Afghanistan and western Pakistan and known for its military activities, strict codes, human rights violations, and for the forced imposition of Islamic Sharia Law. Razia Sultana, *A Study of Talibanization in Pakistan*, XXIX (2) J. OF HIST. & CULTURE, 119, 133 (2008)

<sup>21</sup> Susanne Schmeidl, *(Human) Security Dilemmas: Long-term Implications of the Afghan Refugee Crisis*, 23 THIRD WORLD Q. 8 (2002), <http://www.jstor.org/stable/3993574>.

<sup>22</sup> *Id.* at 7.

<sup>23</sup> *Id.* at 8.

University of New South Wales in Sydney, Australia, in this process of reorganization, the effect is sometimes immediate and fast, such as in the case of Bangladesh.<sup>24</sup> On the other hand, in cases like Afghanistan and Kashmir the effect has remained protracted and stagnant. However, all of these cases do share the unfortunate common ground of resulting from the mishandling of power politics, political volatility, and the presence of political mistakes leading to massive forced displacements in the region.

The first massive displacement in recent history was in the aftermath of the subcontinent's partition in August 1947.<sup>25</sup> The partition was an attempt to create two states based on religious lines, one for Hindus (India) and the other for Muslims (Pakistan), leading to a demographic imbalance in many areas of the newly established states.<sup>26</sup> The communal violence in the wake of that partition resulted in massive bloodshed, as well as the exodus of millions of Muslims and Hindus in opposite directions.<sup>27</sup> The period of carnage and mayhem was just before the creation of the UNHCR in 1951.<sup>28</sup> Prior to 1951, approximately 14 million people were displaced, which at the time was most likely "the largest and most concentrated" forced displacement in modern history.<sup>29</sup> The lack of attention and willpower by the West and the international community was quite clear during this massive exodus, which resulted in widespread humanitarian crises.<sup>30</sup> Despite the frequent requests from the newly established states, the international community gave only modest amounts of aid to assist the displaced population, and no specialized agency had been established.<sup>31</sup> The partition in 1947 resulted in the establishment of two sovereign states: India and Pakistan;<sup>32</sup> nevertheless,

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 7-8

<sup>28</sup> *Id.* at 8

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 9

<sup>31</sup> *Id.*

<sup>32</sup> Hasan-Askari Rizvi, *Afghan Refugees in Pakistan: Influx, Humanitarian Assistance and*

historians consider it as one of the most violent episodes of South Asian history.<sup>33</sup>

The second largest displacement arose due to the East Pakistan Crisis, which led to the division of Pakistan and the creation of a new state, Bangladesh, in December 1971.<sup>34</sup> As a result of Pakistan's military action, millions of Bengalis migrated from East Pakistan to India in March 1971.<sup>35</sup> Consequently, after the creation of Bangladesh, the non-Bengalis (known as Beharis)—persecuted by the Bengali nationalists during the movement of the Awami League—left the country and fled to Pakistan.<sup>36</sup> In contrast to the first displacement, this move captured international attention as a result of the geopolitical interest of the West.<sup>37</sup>

The third displacement, which was the largest and most recent protracted displacement, was the migration of Afghans to Pakistan in 1973 and onwards, particularly to the northwestern province of Khyber Pakhtunkhwa and the southwestern province of Balochistan.<sup>38</sup> The flow initially started due to political instability; however, the USSR's invasion accelerated the flow in December 1979. The displacement not only attracted a huge interest by the international community but also led to an indirect confrontation between the Western and Eastern bloc powers.<sup>39</sup> Thus, the Soviet-Afghan War was considered a crucial and decisive phase during the Cold War.

The involvement of the USSR in the Afghan civil war between the PDPA government (the Soviet-supported group) and the Mujahideen had disastrous

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*Implications AFGHAN*, 37 PAKISTAN HORIZON 40, 41 (1984), <http://www.jstor.org/stable/41403907>.

<sup>33</sup> Schmeidl, *supra* note 21, at 9.

<sup>34</sup> Rizvi, *supra* note 32, at 41.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Schmeidl, *supra* note 21, at 9.

<sup>38</sup> Rizvi, *supra* note 32, at 41.

<sup>39</sup> Schmeidl, *supra* note 21, at 9.

results, creating significant turmoil for the people of Afghanistan.<sup>40</sup> The situation morphed into an endless civil war that left severe, long-lasting political fallout and had tragic effects on the people of Afghanistan and their neighboring countries.<sup>41</sup> Likewise, the 1979 USSR invasion had a devastating effect on the Afghan population. The intensity of this destruction has taken decades to overcome.<sup>42</sup>

The most recent displacement of Afghan refugees was caused by the same level of political instability that led to the earlier displacements resulting from the 1947 subcontinent partition and the 1971 fall of Dhaka. In terms of the international response to these displacements, it became clear that Western powers were only willing to act in their own political interests by limiting their role to humanitarian assistance. The West's minimal response to one of the most violent displacements in the modern history of the subcontinent, the 1947 partition, highlights just how little geopolitical interest it initially held in the subcontinent region. This contrasts greatly to the enormous political interest generated by the USSR invasion years later and the resulting massive humanitarian aid. This change in responsive behavior reflects the political drivers underlying the humanitarian assistance.

### III. THE EXODUS OF AFGHAN REFUGEES INTO PAKISTAN AND THE INTERNATIONAL RESPONSE

The influx of refugees from Afghanistan into Pakistan has been the major displacement of persons in the region, which created the longest running

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<sup>40</sup> "Mujahideen" is an Arabic word, which means those who are involved in Jihad (holy war), which is mostly referred to as a guerilla-type war. In this article, the word Mujahideen referred to the Afghan fighters who fought against the Soviet Union. Jihad is allowed in Islam when an Islamic confederation feels a threat from non-Muslims. In order to protect the Islamic confederation, Muslims are obliged to initiate Jihad upon order of the supreme leader of the Islamic confederation. See *Mujahideen*, ENCYCLOPEDIA BRITANNICA (May 11, 2016), <https://www.britannica.com/topic/mujahideen-Islam>.

<sup>41</sup> Schmeidl, *supra* note 21, at 10-11.

<sup>42</sup> *Id.* at 12.

caseload for the refugee agency in modern history. In terms of security, this exodus of displaced Afghans created severe economic and social implications, not only for Afghanistan but also for the neighboring countries of Pakistan and Iran.<sup>43</sup> Although it went unnoticed until the Afghan refugee numbers were at their peak, Susanne Schmeidl has managed to draw a link between Afghan refugees and the security dilemmas in Pakistan based not upon the size of the refugee population, but the duration of their stay.<sup>44</sup> In general, the security of the countries providing asylum has been linked to refugee influxes.<sup>45</sup> However, the high volume of Afghan refugees is not a vital predictor of insecurity in South Asia, particularly in Pakistan.<sup>46</sup> Whereas it is also well-known that security in Afghanistan is of the utmost importance for the security of the South Asian region, particularly for Pakistan; otherwise, the whole region would face significant challenges.<sup>47</sup>

The protracted nature of the Afghan refugee crisis creates its most obvious dilemma. On the one hand, this protracted situation makes it a complex case; on the other hand, it also raises questions over the effectiveness of the UNHCR's "Framework for Durable Solutions" for refugees.<sup>48</sup> The situation also emphasizes the importance of finding political solutions and self-determined approaches in addressing Afghan refugee problems, rather than remaining dependent on foreign humanitarian aid.

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<sup>43</sup> *Id.* at 10.

<sup>44</sup> *Id.* at 7.

<sup>45</sup> *Id.* at 13.

<sup>46</sup> *Id.* at 7.

<sup>47</sup> Sanam Noor, *Afghan Refugees After 9/11*, 59 PAKISTAN INST. INT'L AFFAIRS 59, 62 (2006), <http://www.jstor.org/stable/41394381>.

<sup>48</sup> The "Framework for Durable Solutions" for refugees and persons of concern is a framework that aims to achieve, through development assistance for refugees, repatriation, reintegration, rehabilitation, reconstruction, and development through local integration, sharing burdens and responsibilities more equitably and building capacities to receive and protect refugees. *Framework for Durable Solutions for Refugees and Persons of Concern*, U.N. HIGH COMMISSIONER FOR REFUGEES 3 (May 2003) (on file with author).

A. *Protracted Refugee Situation*

When refugees have lived in exile for a period of more than five years, and they still have no prospects of finding a durable solution to their plight, their situation can be termed a “protracted refugee situation”.<sup>49</sup>

To understand the nature of Afghan refugee situation, it is important to be familiar with the term *protracted refugee situation*. According to the UNHCR, the term was introduced to the international policy and research agenda in 2000 and 2001.<sup>50</sup> The term was defined by the UNHCR as:

One in which refugees find themselves in a long-lasting and intractable state of limbo. Their lives may not be at risk, but their basic rights and social, psychological and essential needs remain unfulfilled after years in exile. A refugee in this situation is often unable to break free from enforced reliance on external assistance.<sup>51</sup>

The unstoppable influx of Afghan refugees’ to Pakistan started in May 1978.<sup>52</sup> One opinion documents an average, 44,118 individuals had taken refuge between May 1978 and December 1983,<sup>53</sup> whilst, in another opinion, the influx of Afghan refugees in Pakistan had risen from 12,000 in November 1978 to 462,000 in January 1980.<sup>54</sup> Initially, Pakistan did not realize the magnitude of the exodus; however, it soon realized the scope of the Afghan influx, and requested international assistance in April 1979.<sup>55</sup> After two assessment missions, the UNHCR established an office in Islamabad in

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<sup>49</sup> Nasreen Ghufuran, *Afghans in Pakistan: A ‘Protracted Refugee Situation’*, POL’Y PERSPECTIVES 117 (Apr. 2008), <http://www.jstor.org.proxy.seattleu.edu/stable/pdf/42909537.pdf>.

<sup>50</sup> *The State of the World’s Refugees 2006: Human Displacement in the New Millennium*, U.N. HIGH COMMISSION FOR REFUGEES 121 (2006), <http://www.unhcr.org/publ/PUBL/4444afcb0.pdf>.

<sup>51</sup> Executive Comm. of the High Commissioner’s Programme, Standing Committee, 30<sup>th</sup> Meeting, *Protracted Refugee Situations*, ¶3, U.N. Doc. EC/54/SC/CRP.14 (June 10, 2004), <http://www.unhcr.org/40c982172.pdf>.

<sup>52</sup> Rizvi, *supra* note 32, at 41.

<sup>53</sup> *Id.*

<sup>54</sup> Noor, *supra* note 47, at 62.

<sup>55</sup> *Id.*

October of 1979, and raised 15 million dollars to assist Afghan refugees.<sup>56</sup> Additionally, in 1980 the UN agency, keeping in mind the gateway of the influx, opened its Sub Office (SO) in Peshawar, the capital of the Khyber Pakhtunkhwa province in Pakistan.<sup>57</sup> In the context of the refugee influx, the UNHCR SO in Peshawar recorded that the influx was accelerated by the Soviet invasion, which had reached two million in 1981.<sup>58</sup> While estimates may differ regarding the number of Afghan refugees who started pouring into Pakistan, an interesting commonality among all the sources is that the influx of refugees in Pakistan is directly correlated with the tensions in Afghanistan during the first decade of displacement.<sup>59</sup>

### 1. Timeline of Afghan Refugee Crises

Since the 1970s, Pakistan has experienced several waves of refugees as a tragic consequence of over 30 years of conflict in Afghanistan. The intensity of the waves was contingent upon the uproar and strife in Afghanistan.<sup>60</sup> The intensity of the turbulence in Afghanistan was too high to affect the whole region; however, its impact on Pakistan was, and is, quite visible because of the geography and similar demographics of the conflicted (Afghanistan) and the host (Pakistan) countries, particularly in the border areas.<sup>61</sup> In order to understand the various movements of refugees into Pakistan, it is important to know about the Durand Line, the border between Afghanistan and Pakistan that was drawn in 1893.<sup>62</sup> Afghanistan shares a border with Pakistan in the east and south, Iran in the west, China in the northeast, and Turkmenistan,

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 63.

<sup>58</sup> *Id.*

<sup>59</sup> Rizvi, *supra* note 32, at 41.

<sup>60</sup> *Id.*

<sup>61</sup> Noor, *supra* note 47, at 61-62.

<sup>62</sup> Ijaz Hussain, *The Durand Agreement in the Light of Certain Recent International Conventions*, 18 NOMOS VERLAGSGESELLSCHAFTMBHVERLAGSGESELLSCHAFTMBH255, 255 (1985) (Available at <http://www.jstor.org.proxy.seattleu.edu/stable/pdf/43109459.pdf>.)

Tajikistan, and Uzbekistan in the north.<sup>63</sup> The Durand Line is the longest border of both Afghanistan and Pakistan (1,200 miles approximately), and also the most dangerous and porous.<sup>64</sup> From both historical and modern geopolitical and geostrategic perspectives, the Durand Line border has held huge strategic importance not only for both Afghanistan and Pakistan but also for the super-powers. It is impossible for both Afghanistan and Pakistan to monitor and control the movements of persons, especially refugees, through the border.<sup>65</sup> The creation of the Durand Line led to the division of major ethnicities, Baloch and Pashtuns.<sup>66</sup> During the displacement of Afghans, most of the displaced population from the eastern and northeastern provinces, such as Kunar, Kunduz, and Nangarhar, took refuge in the northwestern province of Khyber Pakhtunkhwa of Pakistan.<sup>67</sup> Similarly, the religious ethnicities of Afghan refugees also played a vital role in determining their eventual destinations.<sup>68</sup> For example, the Persian Shia-Muslims moved to Iran, whilst the Pashto-speaking Sunni-Muslims settled in the province of Khyber Pakhtunkhwa of Pakistan.<sup>69</sup>

The various crises in Afghanistan compelled the people of Afghanistan to flee several times for refuge in the neighboring countries, mostly Pakistan and Iran. As a result of various awful crises in Afghanistan, the different influxes of refugees into Pakistan have been recorded as different historical phases:

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<sup>63</sup> Noor, *supra* note 47, at 61.

<sup>64</sup> *Study on Cross Border Population Movements Between Afghanistan and Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES 5, 13 (July 2009), <http://www.unhcr.org/4ad448670.pdf>.

<sup>65</sup> *Id.* at 5, 13.

<sup>66</sup> *Id.* at 13.

<sup>67</sup> Mehmet Ali Emir Aydintan, *Soviet-Afghan War: The Factors Beneath the Invasion* 133 (Sept. 2013), <http://repository.bilkent.edu.tr/bitstream/handle/11693/15658/0006376.pdf?sequence=1&isAllowed=y>.

<sup>68</sup> Noor, *supra* note 47, at 60-61.

<sup>69</sup> *Id.* at 61.

- The mass exodus of Afghan refugees to Pakistan started in 1979 as result of the military coup of 1978.<sup>70</sup> However, the first migration of Afghan refugees started in 1973, shortly after Muhammad Daud Khan overthrew King Zahir Shah in a military coup on July 17, 1973.<sup>71</sup> Daud Khan ended the monarchy and declared himself the first president of Afghanistan.<sup>72</sup> As a result of this political shift, some 1,400 “political dissidents” sought asylum in Pakistan.<sup>73</sup> Most of these dissidents were politically prominent and had assets and contacts in Pakistan.<sup>74</sup> Most of them settled in Europe and North America, for business and family reunification purposes.<sup>75</sup>
- The second phase (1978-1988) was considered the most prolonged phase in terms of displacement. The largest influx of Afghan refugees started in 1978 as a result of the attempt to establish “a socialist state.”<sup>76</sup> The influx of Afghan refugees in Pakistan was triggered by the “Soviet-sponsored Saur Revolution” in 1978 and then by the USSR invasion in December 1979.<sup>77</sup> As a result of the Saur Revolution, Noor Muhammad Taraki of the PDPA, with the support of Colonel Abdul Qadir, seized power from Muhammed Daud Khan in April of 1978.<sup>78</sup> The political power had been equally

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<sup>70</sup> *Id.* at 60.

<sup>71</sup> Rizvi, *supra* note 32, at 41 n.3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 42-43.

<sup>75</sup> *Id.*

<sup>76</sup> Noor, *supra* note 47, at 60.

<sup>77</sup> The “Saur Revolution” was a Soviet-sponsored revolution led by the PDPA against the rule of self-proclaimed Afghan President Muhammad Daud Khan on April 27, 1978. “SAUR,” the Dari (Persian-language of Afghanistan) name for the second month of the Persian calendar, is the month in which the uprising took place. Later on, the revolution led to the 1979 intervention by the Soviets and the 1979–89 Soviet-Afghan War against Mujahideen. Noor, *supra* note 47, at 62.

<sup>78</sup> Colonel Abdul Qadir was born in Herat (Afghanistan) and trained as a pilot in the Soviet Union. He participated in the 1973 coup of Daud Khan as well as in the coup of Saur revolution in 1978. He remained Head of State for three days (April 28-30, 1978). He died on April 22, 2014. Henry S. Bradsher, *Afghanistan and the Soviet Union*, Ch. 5, at 1–6 (Duke U. Press, 1985) <http://online.sfsu.edu/mroozbeh/CLASS/H-606-pdfs/Af&USSR>.

distributed among the two factions of the PDPA(Khalq and Parcham).<sup>79</sup> As a head of state in 1978, Noor Muhammad Taraki introduced various reforms that faced huge opposition by traditional Afghans.<sup>80</sup> Many parties were involved as the opposition reached its peak, including:Mujahideen, tribal factions, intellectuals, who had declared a common enemy, the USSR and the Soviet-sponsored PDPA, which were finally suppressed by the U.S.-led military intervention in Afghanistan in 2001.<sup>81</sup> It was considered the most intensified phase, because the intensity of the destruction in Afghanistan was directly correlated with the massive influx of refugees in the neighboring countries of Pakistan and Iran.<sup>82</sup> As noted above, according to the UNHCR SO Peshawar, the refugee population reached to two million in Pakistan, when more than one million refugees arrived at the northwestern province of Pakistan (Khyber Pakhtunkhwa) in 1981.<sup>83</sup> However, from another view, by 1983 the number of Afghan refugees reached 3.9 million in the neighboring countries of Pakistan and Iran.<sup>84</sup> The high volume of refugees provided not only the justification for the intensified conflict in Afghanistan, but it also unleashed the facts regarding colossal involvement of the Western and Eastern blocs in the crucial and decisive phase of the Cold War. During this phase, the UNHCR had also opened its sub-office in Peshawar (Pakistan) in 1980.<sup>85</sup>

- Phase three (1989-1995) started with the withdrawal of Soviet troops, but also with a wave of massacre, civil war, and

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<sup>79</sup> Khalq and Parcham were the two factions of the PDPA. Khalq was led by Noor Muhammad Taraki and Parcham was led by Babrak Karmal. Rizvi, *supra* note 32, at 41-42.

<sup>80</sup> Noor, *supra* note 47, at 60.

<sup>81</sup> *Id.* at 60.

<sup>82</sup> Rizvi, *supra* note 32, at 41.

<sup>83</sup> *Timeline of Afghan Displacements into Pakistan*, IRINNEWS.ORG, (Feb. 27, 2012) <https://www.irinnews.org/news/2012/02/27/timeline-afghan-displacements-pakistan> [hereinafter *Timeline*].

<sup>84</sup> Susanne Schmeidl, *Protracted Displacement in Afghanistan: Will History be Repeated?*, MIDDLE EAST INST. 4 (Aug. 8, 2011), [http://www.refugeecooperation.org/publications/afghanistan/pdf/10\\_schmeidl.pdf](http://www.refugeecooperation.org/publications/afghanistan/pdf/10_schmeidl.pdf).

<sup>85</sup> *Timeline*, *supra* note 83.

factional fighting.<sup>86</sup> Despite the chaos created by the fight between Najib's government and Mujahideen fighters, repatriation was also an ongoing process.<sup>87</sup> Nonetheless, this phase saw a perplexing migration trend.<sup>88</sup> While those who fled due to the Soviet invasion repatriated, the victims of the civil war took refuge in Pakistan.<sup>89</sup> Despite the outflow, the number of refugees in Pakistan stayed high.<sup>90</sup> The conquest of Kabul (defeat of the communist-sponsored government of Najib) by the Mujahideen raised the curve of repatriation, and, within six months, 1.2 million Afghans were repatriated in 1992.<sup>91</sup> However, the curve did not maintain its trend because the war did not come to an end for another four years, until 1996.<sup>92</sup> Subsequently, the failure of powersharing between the different factions of Mujahideen dragged Afghanistan into another devastating phase of the war.<sup>93</sup> According to the UNHCR SO Peshawar, 74,000 refugees arrived in Pakistan following infighting between Hezb-e-Islami and Jamiat-e-Islami (different factions of Mujahideen) for the control of Afghanistan.<sup>94</sup> To settle this new influx of Afghan refugees, 334 refugee camps were established in the Khyber Pakhtunkhwa, Punjab, and Balochistan provinces of Pakistan.<sup>95</sup>

- The fourth phase (1996-2001) revolved around the emergence of the Taliban to power in Afghanistan. According to the UNHCR SO Peshawar, in 1996, 50,000 Afghan refugees arrived in the province of Khyber Pakhtunkhwa, Pakistan following the fall of the cities of Kabul and Jalalabad to the Taliban.<sup>96</sup> During this phase, the various factions of the Mujahideen grouped together "to form the United Front" to

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<sup>86</sup> Noor, *supra* note 47, at 60-61.

<sup>87</sup> Schmeidl, *supra* note 21, at 10.

<sup>88</sup> Noor, *supra* note 47, at 61.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 61.

<sup>91</sup> Schmeidl, *supra* note 84, at 4; Schmeidl, *supra* note 21, at 10.

<sup>92</sup> Noor, *supra* note 47, at 61.

<sup>93</sup> Schmeidl, *supra* note 84, at 4.

<sup>94</sup> *Timeline*, *supra* note 83.

<sup>95</sup> *Id.*; Noor, *supra* note 47, at 62.

<sup>96</sup> *Timeline*, *supra* note 83.

combat the Taliban”); yet the Taliban took control of over 90 percent of Afghanistan’s territory in 1996.<sup>97</sup> However, the fight between the Taliban and the newly established Northern Alliance (an alliance of some of the former Mujahideen factions) ended in 1999 upon the fall of the northern Afghan city of Mazar-e-Sharif to the Taliban regime, which led to a new influx of refugees in Pakistan.<sup>98</sup> With the fall of Mazar-e-Sharif, the Taliban completely took over Afghanistan, which compelled thousands of refugees to enter and reenter (recyclers) in Pakistan.<sup>99</sup> According to UNHCR SO Quetta, 30,000 refugees, mostly ethnic Hazaras, fled to Balochistan (southwestern province of Pakistan) fearing discrimination and persecution.<sup>100</sup> According to Schmeidl, the tenure of the Taliban was somehow credited with restoring law and order and upholding the security situation.<sup>101</sup> However, historians will never forget the brutality, bloodshed of the religious minorities, violations of women’s rights, strict code for the imposition of Islamic Sharia law, and ill treatment with the educated and moderate politicians. Furthermore, during this particular phase, Afghanistan also faced the worst drought in past 30 years.<sup>102</sup> The situation caused many Afghans to be displaced internally.<sup>103</sup>

- Phase 5 (2001-2002) started with the 9/11 terrorist attacks, which was followed by the US-escorted military invasion of Afghanistan and the fall of the Taliban regime. Around 1.5

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<sup>97</sup> Schmeidl, *supra* note 21, at 11.

<sup>98</sup> *Id.*; *Timeline*, *supra* note 83.

<sup>99</sup> The term “recyclers” is used to describe those Afghan refugees who are repatriated but later reenter Pakistan due to certain factors including lack of livelihood opportunities, volatile security situation, and insufficient absorptive or reintegration capacity in Afghanistan. According to the UNHCR Pakistan, in terms of repatriation cash grant, those individuals who have availed UNHCR’s repatriation assistance in the past and whose records are already enrolled in the IRIS data base. *Voluntary Repatriation Update*, *infra* note 192, at 1.

<sup>100</sup> Noor, *supra* note 47, at 62; *Timeline*, *supra* note 83.

<sup>101</sup> Schmeidl, *supra* note 84, at 5.

<sup>102</sup> *Id.* at 5.

<sup>103</sup> *Id.*

million Afghans left their homes,<sup>104</sup> whereas 3,000-3,400 civilian deaths were recorded as a result of the aerial bombardments during the first 20 weeks of the invasion.<sup>105</sup> This era also experienced anti-Pashtun violence in western and northern Afghanistan.<sup>106</sup> According to the UNHCR SO Peshawar, due to the US-led military invasion, about 60,000 new Afghan refugees arrived in Khyber Pakhtunkhwa, Pakistan and camped in nine new refugee villages.<sup>107</sup> Moreover, this fresh wave of Afghan refugees contributed to the total figure of five million Afghans who have crossed into Pakistan since 1979.<sup>108</sup>

#### IV. ANALYSIS OF THE SITUATION OF AFGHAN REFUGEES IN PAKISTAN

##### A. *The Response to Afghans in Pakistan*

The Durand Line divided the territory between the Indian subcontinent and Afghanistan; however, the strong religious, ethnic, and linguistic ties among the Pashtuns living on both sides of the border kept this border between Afghanistan and Pakistan as extremely porous.<sup>109</sup> There is a long history of mobility between the Pashtuns of eastern Afghanistan and those living in the

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<sup>104</sup> *Id.*

<sup>105</sup> *Id.*; Marc W. Herold, *US Bombing & Afghan Civilian Deaths - Official Neglect of 'Unworthy' Bodies*, 26 INT'L J. URB. & REG'L RES. 626 (2002), <http://web.a.ebscohost.com.proxy.seattleu.edu/ehost/pdfviewer/pdfviewer?sid=c39ea907-267c-46e4-9f6d-5c418deb64bf%40sessionmgr4010&vid=1&hid=4107>.

<sup>106</sup> Schmeidl, *supra* note 84, at 5.

<sup>107</sup> *Timeline*, *supra* note 83.

<sup>108</sup> *Id.*

<sup>109</sup> "Pashtuns" or "Pakhtuns" is a dominant ethnic group in Afghanistan and one of the majors in Pakistan. They speak "Pashtu," which is considered as one of the ancient languages in the region. Pashtu-speaking people residing primarily in the region that lies between the Hindu Kush in northeastern Afghanistan and the northern stretch of the Indus river in Pakistan. They are famous for their honor codes. During the Afghan war, Pashtuns became a major displaced population and more than 80 percent of the Afghan refugees living in Pakistan are Pashtuns. See Noor, *supra* note 47; see Hussain, *supra* note 62.

Khyber Pakhtunkhwa province of Pakistan.<sup>110</sup> Various Pashtun tribes living on both sides of the border did not accept the Durand Line as an international border.<sup>111</sup> In this context, those Afghans who entered the territory of Pakistan as a result of the first military coup in 1973, sought refuge in their relatives' houses.<sup>112</sup>

### **1. The Response of the Government of Pakistan**

In 1978, when the Afghan families initially started pouring in to Pakistan seeking refuge, the provincial governments and local administrations of Khyber Pakhtunkhwa and Balochistan received them.<sup>113</sup> As these two provinces of Pakistan share borders with Afghanistan, and the majority of the influx was also Pashtun, these two provinces became the main hosts of Afghan refugees.<sup>114</sup> In April 1978, because of the military coup of Nour Muhammad Taraki, followed by the Soviet invasion in 1979, the exodus of Afghan families exceeded the handling capacity of the local administration and provincial governments.<sup>115</sup> In this regard, the subject of the Afghan influx in Pakistan was assigned to the Ministry of States and Frontier Regions (SAFRON) in early 1980, upon the special direction of the President of Pakistan.<sup>116</sup>

Assigning the special responsibility to the Ministry of SAFRON was a first definite step in structuring an administrative setup for humanitarian assistance for the Afghan influx in Pakistan. An office of the Chief Commissioner for Afghan Refugees (CCAR) was created at the federal level as an attached department of the Ministry of SAFRON. The CCAR office

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<sup>110</sup> Noor, *supra* note 47, at 62.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Rizvi, *supra* note 32, at 45.

<sup>114</sup> *See id.* at 45-46.

<sup>115</sup> Noor, *supra* note 47, at 60.

<sup>116</sup> Chief Commissionerate for Afghan, MINISTRY STATES & FRONTIER REGIONS GOV'T PAKISTAN, (2012 – 13), <http://www.safron.gov.pk/frmDetails.aspx?opt=misclinks&id=17>.

operates in four provinces of Pakistan, with four offices of Commissionerate for Afghan refugees (CAR).<sup>117</sup> The CCAR is mandated to coordinate with federal and provincial governments, liaise with UN agencies and humanitarian organizations, engage in policy planning for Afghan refugees, give administrative support, and access provisions for Afghan refugees in Pakistan.<sup>118</sup> Some of the core functions of the CCAR office are:<sup>119</sup>

- Monitoring and evaluating programs being carried out by the international organizations and the Non-Governmental Organizations (NGOs) through periodic visits and inspections.
- Maintaining and generating statistics with the collaboration of the UNHCR and coordinating relief work between the federal government and provincial governments.
- Issuance of Non Objection Certificates (NOCs) to NGOs for operations and access to Refugee Villages or Camps (RVs) and urban settlements.
- Provision of required data and assistance in operations to humanitarian actors and aid agencies.
- Maintenance of close liaison with national and international aid-giving agencies and documentation of the relief assistance.
- Streamlining and standardizing procedures and methods of distribution of aid for Afghan Refugees down to the lowest level.
- Maintaining warehouses funded by the UNHCR.
- Coordinating repatriation of Afghan Refugees.
- Raising awareness and ensuring induction of Afghan refugees in various assistance and empowerment programs.

Since the creation of CAR offices, the government of Pakistan has brought changes to these offices as required in various situations. Initially, these offices played a vital role in assisting the aid agencies by providing human resources and making bulk distributions in the refugee camps.<sup>120</sup> However, there has been a shift by widening the scope of operations in managing

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> Rizvi, *supra* note 32, at 46.

Afghan refugee camps and ensuring the involvement of Afghan refugees in implementing assistance programs. Along these lines, developments included the establishment of the Repatriation Cell in 1987 and the Community Development Unit (CDU).<sup>121</sup> In February 2016, a Solutions Strategy Unit was established within the commissionerate office by merging the Repatriation and Education cells, with additional responsibilities assigned to this newly established unit.<sup>122</sup> The Refugees Affected and Hosting Areas (RAHA) unit within the CAR office has also been established under one of the pillars of the Solution Strategy for Afghan Refugees (SSAR).<sup>123</sup> The RAHA program aims to balance the social, economic, and environmental consequences of the presence of Afghan refugees over the past 37 years in Pakistan.<sup>124</sup>

## **2. Cooperation Agreement Between the UNHCR and the Government of Pakistan**

According to UN General Assembly Resolution 428 (V) of December 14, 1950, the High Commissioner for Refugees is mandated with providing international protection and seeking permanent solutions for refugees by assisting governments.<sup>125</sup> Despite hosting millions of Afghan refugees over the course of 37 years, Pakistan still lacks a national legal framework to determine the status of refugees.<sup>126</sup> In this regard, the government of Pakistan

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<sup>121</sup> Chief Commissionerate for Afghan, *supra* note 116.

<sup>122</sup> *Id.*

<sup>123</sup> The RAHA program is a main pillar of the recent and in-practice SSAR. As a signatory of SSAR, Pakistan is contributing to SSAR by implementing RAHA interventions. It is a joint program by the UNHCR and Government of Pakistan in Pakistan. The status of RAHA interventions is explained in detail in one of the main sections (Management of repatriation strategies). Chief Commissionerate for Afghan, *supra* note 116.

<sup>124</sup> *Id.*

<sup>125</sup> UNHCR, G.A. Res. 428 (V), at 4 (Dec. 14, 1954), <http://www.unhcr.org/protection/basic/3b66c39e1/statute-office-united-nations-high-commissioner-refugees.html> (last visited Dec. 9, 2017).

<sup>126</sup> *See* UNHCR in Pakistan, *supra* note 1.

and the UNHCR signed an Agreement of Cooperation in Islamabad on September 18, 1993.<sup>127</sup> According to this agreement, Pakistan generally allows asylees to remain in Pakistan, based on the UNHCR decisions on refugee status determination for identification of durable solutions.<sup>128</sup> The purpose of the agreement is to cooperate with the government of Pakistan within the mandate of the UNHCR. According to Article II of the agreement, the UNHCR shall open offices in the country and carry out its international protection and humanitarian assistance functions in favor of refugees and other persons of its concern in the host country.<sup>129</sup> Furthermore, in accordance with the 1946 Convention on the Privileges and Immunities of the UN organizations, which was implemented in Pakistan under the Act of 1948, privileges and immunities were granted to the UNHCR under Article IX of the cooperation agreement.<sup>130</sup> In addition, the terms, the conditions, and the scope of the authorities were brought into force, including procedures for terminating the agreement for both parties.

*B. The Legal Status of Afghan Refugees and Various Shifts in Their Status in Pakistan*

To date, Pakistan is a signatory of neither the Refugee Convention of 1951 nor the additional protocols of 1967; however, the Afghan population that arrived in Pakistan post-1979 has de facto been considered *prima facie* refugees.<sup>131</sup> Initially, when the exodus began, the status of *Mohajerin* was

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<sup>127</sup> See *Cooperation Agreement Between the Government of the Islamic Republic of Pakistan and the United Nations High Commissioner for Refugee* (September, 1993) [hereinafter *Cooperation Agreement*] (on file with author).

<sup>128</sup> *Asylum System in Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Jan. 30, 2017), <http://unhcrpk.org/about/asylum-system-in-pakistan/>.

<sup>129</sup> *Cooperation Agreement*, *supra* note 127, at 5.

<sup>130</sup> *Id.* at 10.

<sup>131</sup> *Prima facie* refugee status is one the mechanisms that is devised for responding to mass influxes and for group determination of refugee status. *Prima facie* status means the recognition by a State or the UNHCR on the basis of the readily apparent, objective circumstances in the country of origin giving rise to exodus. Its purpose is to ensure

given to the Afghans, and Pakistan adopted an open-door policy.<sup>132</sup> The hosting of Afghan refugees has never been viewed as a legal obligation, but as a humanitarian and religious duty.<sup>133</sup> In this regard, the Afghans received the privilege of hospitality, one of the honor codes of Pashtun culture, because the concentration of Afghan refugees was in the provinces of Khyber Pakhtunkhwa and Balochistan of Pakistan.<sup>134</sup>

Pakistan lacks established procedures to determine the refugee status in its territory because of the absence of a legal instrument at the national level to protect refugees.<sup>135</sup> However, the 1946 Foreigner's Act of Pakistan presents a legal framework for its immigration policy.<sup>136</sup> According to the Act, those who want to enter into the territory of Pakistan must have a valid travel document and a visa.<sup>137</sup> The response of Pakistan to Afghan refugees has been largely consistent with norms in refugee law since the exodus started in 1979; however, even after the provision of prima facie status, certain Afghans still remain under the scope of the Foreigner's Act.<sup>138</sup>

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admission to safety, protection from re foulment, and basic humanitarian treatment to those who are in need. *Asylum System in Pakistan*, supra note 128.

<sup>132</sup> Mohajerin is the plural of Mohajer, which is an Arabic word, and means an immigrant. The concept of Mohajerin in the case of Afghan refugees in Pakistan was referred to the Hijrat (Migration) of The Holy Prophet Muhammad (SAW) from Mecca to Madina, where he and his companions were warmly welcomed by the inhabitants of Madina. In this context, the influx of Afghan refugees was also viewed as a religious responsibility in Pakistan. David Turton & Peter Marsden, *Taking Refugees for a Ride. The Politics of Refugee Return to Afghanistan*, AFGHANISTAN RES. & EVALUATION UNIT 10 (2002), <http://www.refworld.org/docid/47c3f3cb1a.html>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 14.

<sup>135</sup> *Asylum System in Pakistan*, supra note 128.

<sup>136</sup> The Foreigner's Act of Pakistan of 1946 defines "foreigner" and the status of a foreigner in Pakistan. The Act provides guidance to the Government of Pakistan to exercise certain powers with respect of foreigners. *Pakistan: Foreigners Act, 1946*, REFWORLD (Apr. 7, 2017), <http://www.refworld.org/docid/3ae6b4f314.html>.

<sup>137</sup> *Afghans in Pakistan: Broadening the Focus*, AFGHANISTAN RES. & EVALUATION UNIT 7 (2006), <http://www.refworld.org/docid/47c3f3c31a.html>.

<sup>138</sup> *Id.* at 7.

The withdrawal of Soviet troops from Afghanistan in 1989 decreased Western donors' interest in Afghan refugees in Pakistan, bringing about a policy shift in which the government of Pakistan granted refugee status on a prima facie basis.<sup>139</sup> In the 1980s, identity or ration passes had been issued to Afghan families.<sup>140</sup> These passes entitled the Afghan families to get assistance, including food; however, the passes did not provide legal protection in the form of legal status and were used merely for getting assistance.<sup>141</sup> The withdrawal of Soviet troops in February 1989 created the grounds for repatriation.<sup>142</sup> At that time, an assisted repatriation program was started by the encashment of ration passes in 1992.<sup>143</sup> The process of encashment of ration passes was practiced until 1995, and in the same year, the ration passes were stopped, and the refugees were no longer entitled to get assistance.<sup>144</sup> This change in policy created complications to the return process and left the Afghan families in a miserable and vulnerable situation; later on, which added more to the identity crises of Afghans in Pakistan.

In 1995, humanitarian assistance decreased when ration cards ceased to be effective in providing rations.<sup>145</sup> This created a perplexing situation regarding the status of Afghans in Pakistan. This scenario fashioned an ambiguous situation not only for the Afghan families in Pakistan, but also for the humanitarian actors. In order to contextualize the whole situation, the Secretary of the then Kashmir Affairs and Northern Areas and States and Frontier Regions Division (now Ministry of SAFRON) issued a letter in July 1997 to the Ministry of Interior regarding the status of Afghan refugees in Pakistan, stating,

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<sup>139</sup> Turton & Marsden, *supra* note 132, at 12.

<sup>140</sup> *Id.* at 12.

<sup>141</sup> *Id.* at 15.

<sup>142</sup> *Id.* at 12.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* at 13.

<sup>145</sup> *Id.*

During the temporary stay of the Afghan Refugees in Pakistan all laws applicable to the local citizens shall apply to the Afghan Refugees. However, as the Government of Pakistan has provided refuge to the Afghan refugees on humanitarian grounds, the provisions of the Foreigners Registration Act and other such rules pertaining to foreigners residing in Pakistan do not apply to the Afghan refugees.

All along their stay, the Afghan Refugees have never been confined to the camps. The above is also necessitated by the fact that almost all the food and other assistance previously provided by the international agencies, has been discontinued w.e.f. October 1995. The Afghan Refugees have, therefore, to earn their livelihood outside the camps in Pakistan to support themselves as well as their families. The movement/presence of Afghan refugees outside the refugee camps is, therefore, legitimate.<sup>146</sup>

While the above-mentioned letter was a clear statement by the government of Pakistan, it also clarified the lack of humanitarian assistance and interest from the West. The statement by the government of Pakistan had given freedom of movement, but, on the other hand, the movement of Afghan refugees from camps to urban settlements created a huge issue in tracing records; later, it became a vital contributor in making the Afghan caseload a protracted refugee case.<sup>147</sup>

### **1. Era of Ambiguous Identity or Identity Crises**

The urbanization of Afghan refugees created confusion beginning in the mid 1990's, when the urbanization of Afghan families was legitimized, until the first ever census of Afghan families in Pakistan in 2005.<sup>148</sup> Despite the legalization of the stay of Afghan families in urban settlements, as a result of

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<sup>146</sup>The Secretary Ministry of Interior, *Status of Afghan Refugees in Pakistan*, GOV'T PAKISTAN (July 1997) (on file with author).

<sup>147</sup> See *Working Paper for the Meeting on Urban Refugees Management Policy 19-11-2014*, GOV'T PAKISTAN, STATES & FRONTIER REGIONS DIVISION (Nov. 19, 2014) (on file with author) [hereinafter *Working Paper*].

<sup>148</sup> *Afghans in Pakistan: Broadening the Focus*, *supra* note 137, at 3.

the discontinuation of the aid programs and the exemption from the Foreigners Act of Pakistan, the Afghans faced exploitation in the urban settlements.<sup>149</sup> During this particular phase, the UNHCR's stance on the provision of protection to Afghans in urban areas was unclear.<sup>150</sup> One of the vital factors in this reluctance was the absence of statistics on Afghans living in the urban settlements.<sup>151</sup> They were exposed and subjected to the Foreigners Act of 1946.<sup>152</sup> During this time, when the Afghans living in Pakistan were struggling with the crises related to their ambiguous status, Pakistan was receiving a new wave of Afghans as a result of the fall of the northern city of Mazar-e-Sharif in Afghanistan in 1999, during the Taliban regime.<sup>153</sup> Furthermore, the influx of Afghan families increased as result of one of the worst droughts in Afghanistan's history.<sup>154</sup> As a result of this new wave, the term economic migrant was introduced. Additionally, the government of Pakistan had halted the prima facie refugee status for the new influx of refugees.<sup>155</sup> The influx of Afghans in the late 1990s and in 2000 complicated the ambiguous status of those who were already staying in Pakistan. On the other hand, the government of Pakistan clearly expressed asylum fatigue.

In 2001, after the US-led military invasion of Afghanistan, Pakistan became a hub of Afghans with different status and labels, based on their arrival timeframes in Pakistan.<sup>156</sup> These labels included mohajireen, refugees with prima facie status, economic migrants, illegal immigrants, and migrant workers.<sup>157</sup> However, it was difficult to differentiate these various categories

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<sup>149</sup> Turton & Marsden, *supra* note 132, at 13; *Afghans in Pakistan: Broadening the Focus*, *supra* note 137, at 5.

<sup>150</sup> Turton & Marsden, *supra* note 132, at 19.

<sup>151</sup> See *Working Paper*, *supra* note 147.

<sup>152</sup> *Afghans in Pakistan: Broadening the Focus*, *supra* note 137, at 6.

<sup>153</sup> *Timeline*, *supra* note 83.

<sup>154</sup> Schmeidl, *supra* note 84, at 5.

<sup>155</sup> Noor, *supra* note 47, at 64.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

of Afghan families in Pakistan and to determine the status and level of persecution.

## 2. Registration of Afghans in Pakistan

The scenario discussed regarding ambiguous identity in the section “Status of Afghans in Pakistan” had arisen because of the absence of accurate data on Afghan families living in Pakistan.<sup>158</sup> Admittedly, it was a difficult task to collect data on Afghans, given that the back-and-forth movements between the countries of asylum and origin were a common practice and were recorded on a daily basis.<sup>159</sup> However, the fact that there was a war going on in a neighboring country with which Pakistan shares a 1200-mile (approximately) long porous border raised serious concerns over Pakistan’s internal security.<sup>160</sup> On December 17, 2004, the government of Pakistan and the UNHCR signed a Memorandum of Understanding (MoU) UNHCR to organize a census and register the Afghans living in Pakistan.<sup>161</sup> In order to operationalize the MoU, the government of Pakistan was represented by the Ministry of SAFRON and the Ministry of Interior, whereas the UNHCR was represented by the UNHCR representation in Pakistan.<sup>162</sup> The first ever census of Afghans living in Pakistan was conducted in February and March of 2005, and had two objectives: (1) To issue basic identity documentation in the form of a Proof of Registration (PoR) to each individual of the target population over five years of age who was temporarily living in Pakistan, and (2): To supplement ongoing data collection and analysis required for the

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<sup>158</sup> See *Working Paper*, *supra* note 147.

<sup>159</sup> *Afghans in Pakistan: Broadening the Focus*, *supra* note 136, at 2.

<sup>160</sup> Noor, *supra* note 47, at 59-60.

<sup>161</sup> *Memorandum of Understanding between the Government of the Islamic Republic of Pakistan (GOP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Registration of Afghan Citizens Living in Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES 1 (Apr. 19, 2006), <http://www.refworld.org/docid/55e6a0374.html> [hereinafter *Memorandum of Understanding*].

<sup>162</sup> *Id.* at 2.

further developments of arrangements for the management of Afghan citizens temporarily living in Pakistan.<sup>163</sup>

Following a census, the registration of Afghans began in 2006.<sup>164</sup> According to the MoU, the UNHCR would ensure funds of \$5.995 million for the registration of Afghans in Pakistan.<sup>165</sup> The National Authority for Data and Registration (NADRA) was assigned to issue computerized identity documents capable of storing electronic data.<sup>166</sup> The Government of Pakistan and UNHCR mutually agreed that the target of the registration would be Afghan citizens who entered Pakistan or were born in Pakistan after December 1, 1979.<sup>167</sup> Furthermore, the scope of the registration process was extended to Azad Jammu & Kashmir, and Federally Administered Tribal Areas (FATA).<sup>168</sup> The registration process was planned in two phases: (1) Analyzing data collected from the census and other relevant sources required for the registration process in order to design the technical and financial aspects of the planning and implementation of the registration exercise for all Afghan citizens previously covered in the census; and (2) registration and issuance of Proof of Registration (PoR) to each individual over five years of age of the target population.<sup>169</sup>

Initially, the parties agreed upon a three-year validity period for the PoR cards, which was from 2006 to 2009, and decided that extensions would be based upon the mutual agreement of signatories of the Tripartite agreement.<sup>170</sup> After the expiry of PoR cards in 2009 and 2012, new cards

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<sup>163</sup> *Id.* at 1.

<sup>164</sup> *Registration of Afghans in Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Feb. 16, 2007), <http://www.unhcr.org/news/briefing/2007/2/45d58a692/registration-afghans-pakistan.html>.

<sup>165</sup> *Memorandum of Understanding*, *supra* note 161, at 3.

<sup>166</sup> *Id.* at 1-6.

<sup>167</sup> *Id.* at 2.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 2.

<sup>170</sup> *Id.* at 3; The Tripartite Agreement is an agreement between Afghanistan, Pakistan, and the UNHCR to regulate repatriation of Afghan refugees living in Pakistan. The

were issued in 2010 and 2014, respectively.<sup>171</sup> In July 2013, the Federal Cabinet of Pakistan adopted a National Policy on Management and Repatriation of Afghan Refugees and extended the validity of PoR cards and the Tripartite Agreement on Voluntary Repatriation, until December 31, 2015.<sup>172</sup> In this context, a nationwide PoR card renewal exercise was completed in February 2015 with the support of the UNHCR.<sup>173</sup> A total of 1,208,632 PoR cardholders, 93 percent of the total registered Afghan refugee population in Pakistan, were issued new cards that were valid until December 31, 2015.<sup>174</sup> Besides that, as of August 2015, six Proof of Registration Card Modification (PCM) centers registered some 62,000 births of children to Afghan refugees.<sup>175</sup> A special helpline, mass information campaigns, and SMS services were also provided in support of the renewal process.<sup>176</sup> After the expiry of PoR cards in December 2015, the Ministry of SAFRON extended the validity of the existing PoR cards thrice in the year 2016.<sup>177</sup> The current PoR cards are valid until December 31, 2017, as a result of a notification issued on February 22, 2017, by the Ministry of SAFRON.<sup>178</sup> The extension will be reviewed in the final quarter of 2017 for continuation of the legal stay of Afghan refugees and will be based on the mutual agreement of the signatories' of Tripartite agreement.<sup>179</sup>

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agreement was initially signed in 2003 at Brussels. The agreement is explained in detail in section regarding "Durable Solution and its status in Pakistan."

<sup>171</sup> The members meet twice a year usually, and if required, they grant extension to the validity of PoR cards upon mutual agreement by issuing a notification. *Id.*

<sup>172</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, U.N. HIGH COMMISSIONER FOR REFUGEES 18 (2016), <http://www.unhcr.org/542522922.html>.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 24.

<sup>176</sup> *Id.* at 18.

<sup>177</sup> *Id.*

<sup>178</sup> *Notification*, GOV'T PAKISTAN MINISTRY STATES & FRONTIER REGIONS (Nov. 1, 2016) (on file with author).

<sup>179</sup> *Id.*

It is important to know about some of the entitlements of a PoR card and the legal status of the PoR card bearers, which are<sup>180</sup>

- The PoR card is an identity document and entitles the cardholder to legally remain in Pakistan until the expiry of the card. The card is valid throughout Pakistan.
- Every registered Afghan must carry the new PoR card and present it to law enforcement agencies on demand.
- PoR cardholders have the right to reside in Pakistan and cannot be arrested under the 1946 Foreigners Act. However, the PoR card does not give immunity from criminal prosecution if bearers are involved in criminal activities or breach any other Pakistan's law.
- The PoR card is not a travel document and does not allow its holder to cross international borders, including between Pakistan and Afghanistan.

The government of Pakistan and the UNHCR agreed that the PoR card would carry only personal biographical data. The card would also legitimize the temporary stay of the cardholder as Afghan citizen in Pakistan.<sup>181</sup>

The issuance of PoR cards was vital not only for having statistical records regarding Afghan families in Pakistan but also for putting the legal presence of these families in writing. With these developments, a few missing links were also observed in some key areas regarding entitlements attached to PoR cards. During the announcement regarding urbanization of Afghan refugees in July 1997, it was quite clear that Afghan refugees in Pakistan would not be confined to camps and would be allowed to earn livelihoods.<sup>182</sup> However,

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<sup>180</sup> *Frequently Asked Questions, Services Available at the Proof of Registration Card Medication (PCM) Centres*, U.N. HIGH COMMISSIONER FOR REFUGEES 1-3, <http://unhcrpk.org/wp-content/uploads/2012/11/FAQs-on-PCM-Centre-Services-English.pdf> (last visited Apr. 7, 2017).

<sup>181</sup> *Frequently Asked Questions, Services Available at the Proof of Registration Card Medication (PCM) Centres*, U.N. HIGH COMMISSIONER FOR REFUGEES (Last visited 7/7/17) <http://unhcrpk.org/wp-content/uploads/2012/11/FAQs-on-PCM-Centre-Services-English.pdf>

<sup>182</sup> The Secretary Ministry of Interior, *supra* note 146.

Clause 4, Section 3 of the MoU clearly stated that the PoR card does not grant a right to work or work authorization in Pakistan.<sup>183</sup> This statement meant that those Afghan refugees who were living legally in Pakistan were not allowed to work. The ad hoc nature of the various announcements, notifications, and policies kept the Afghan refugees in Pakistan in a state of continuous uncertainty. However, with the ongoing advocacy by humanitarian organizations and the UNHCR, various developments have been observed regarding entitlements of PoR cards in Pakistan. In this regard, after the extension of PoR cards until December 2015, the Ministry of SAFRON allowed PoR cardholders to use their cards to open bank accounts, receive driving licenses, and obtain SIM cards.<sup>184</sup> This step from the government of Pakistan received a loud applause from humanitarian actors including UN agencies as well.

### *C. Durable Solutions and Its Status in Pakistan*

The UNHCR is mandated to provide international protection.<sup>185</sup> The ultimate aim of refugee protection is to secure permanent solutions for refugees. Finding durable solutions has always been a difficult task in protracted refugee situations and particularly in a case where the back-and-forth movement between countries of asylum and origin is a common practice.<sup>186</sup> The majority of the current Afghan refugee population was born in Pakistan and has never experienced a life in Afghanistan.<sup>187</sup> Article 1 of the UNHCR Statute outlines durable solutions for refugees under two distinct captions, which are voluntary repatriation and assimilation into new national

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<sup>183</sup> *Memorandum of Understanding*, supra note 161, at 3.

<sup>184</sup> Gov't Pakistan Ministry States & Frontier Regions, *100 Days Achievement Report of Ministry of States and Frontier Regions (SAFRON)* (Oct. 28, 2013), <http://202.83.164.29/safron/frmDetails.aspx?id=6&opt=newsevents>.

<sup>185</sup> UNHCR, supra note 125, at 6.

<sup>186</sup> Collective for Social Sci. Res. supra note 136, at 2.

<sup>187</sup> Mamiko Saito and Pamela Hunte, *To Return or to Remain: The Dilemma of Second-Generation Afghans in Pakistan*, REF WORLD 1 (June 2007), <http://www.refworld.org/docid/47c3f3cb0.html>.

communities.<sup>188</sup> Assimilation into new national communities can take two forms: (1) local integration in the country of first asylum, or (2) resettlement in a third country.<sup>189</sup>

Local integration is the integration of refugees in the country of first asylum or principal state of asylum.<sup>190</sup> Pakistan is a signatory to neither the Refugee Convention of 1951 nor any other refugee-related instrument internationally. In this regard, there are no prospects of local integration for Afghans in Pakistan. On the other hand, “resettlement is not a right and there is no obligation on states to accept refugees for resettlement.”<sup>191</sup> It is the equitable sharing of responsibilities to settle the refugees permanently in a third country. Additionally, only extremely vulnerable refugees are eligible for resettlement, particularly those who are unable to repatriate, stay temporarily, or integrate in the country of first asylum.<sup>192</sup>

The success of resettlement cases is not very high. In June 2015, the UNHCR estimated that, globally, almost 1.15 million refugees are in need of resettlement based on their extreme vulnerabilities; however, only 27 countries are willing to resettle refugees.<sup>193</sup> In addition, 86 percent of the total resettled refugees are residing in developing countries, which evidence the unwillingness of developed countries to share and bear the responsibility of integrating refugees in their societies.<sup>194</sup> According to updates issued by the

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<sup>188</sup> UNHCR, *supra* note 125, at 6.

<sup>189</sup> *Id.* at 8.

<sup>190</sup> *UNCHR and International Protection: A Protection Induction Programme*, U.N. HIGH COMMISSIONER FOR REFUGEES 77 (June 30, 2006), <http://www.unhcr.org/en-us/publications/legal/44b4bbcd2/unhcr-international-protection-protection-induction-programme.html>.

<sup>191</sup> *Frequently Asked Questions about Resettlement*, U.N. HIGH COMMISSIONER FOR REFUGEES 2 (Apr. 2012) (on file with author).

<sup>192</sup> *Id.* at 1.

<sup>193</sup> *Global Refugee Crisis – by the Numbers*, AMNESTY INT’L (Oct. 12, 2015), <https://www.amnesty.org/en/latest/news/2015/10/global-refugee-crisis-by-the-numbers/>.

<sup>194</sup> *Id.*

UNHCR Pakistan, the organization had submitted approximately 2,000 resettlement cases to third or resettlement countries in 2015.<sup>195</sup>

In the legal context of Afghan refugees in Pakistan, voluntary repatriation has always been viewed as a possible and agreeable solution not only by the government of Pakistan, but by humanitarian actors including the UN agencies.

#### *D. Voluntary Repatriation Program*

The UNHCR considered repatriation of Afghan refugees as a preferred durable solution in the legal context of Pakistan.<sup>196</sup> However, the sustainability of this solution, in terms of reintegrating returnees in Afghanistan, presents a challenge for the UNHCR and the governments of both countries (Afghanistan and Pakistan), and has also raised questions over the credibility and durability of voluntary repatriation. The UNHCR facilitates voluntary repatriation in Pakistan as part of its mandate.<sup>197</sup> The voluntary repatriation program of Pakistan, which started in 1992, is the world's largest UNHCR repatriation program.<sup>198</sup> The program had stopped in 1999 because of funding constraints; however, it resumed in 2000 and still operates.<sup>199</sup> The UNHCR's voluntary repatriation program was suspended from December 1, 2016 to February 28, 2017 for winter break.<sup>200</sup> This

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<sup>195</sup> *Voluntary Repatriation and Border Monitoring Monthly Update*, U.N. HIGH COMMISSIONER FOR REFUGEES 23 (Dec. 2015), [http://www.unhcr.af/UploadDocs/DocumentLibrary/December\\_\\_2015\\_VolRep\\_Report\\_635918204945770000.pdf](http://www.unhcr.af/UploadDocs/DocumentLibrary/December__2015_VolRep_Report_635918204945770000.pdf).

<sup>196</sup> See *Working Paper*, *supra* note 147.

<sup>197</sup> *Pakistan: Voluntary Repatriation Update*, U.N. HIGH COMMISSIONER FOR REFUGEES 1 (Nov. 2016), [http://unhcrpk.org/wp-content/uploads/2013/12/VolRep\\_Summary\\_20161101\\_v1.pdf](http://unhcrpk.org/wp-content/uploads/2013/12/VolRep_Summary_20161101_v1.pdf).

<sup>198</sup> *Voluntary Repatriation Programme: Chamkani*, U.N. HIGH COMMISSIONER FOR REFUGEES 1 (June 2015) (On file with author).

<sup>199</sup> *Timeline*, *supra* note 83.

<sup>200</sup> *Winter Suspension of Facilitated Repatriation from Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Nov. 7, 2016), <http://unhcrpk.org/wp-content/uploads/2016/11/Winter-suspension-of-facilitated-voluntary-repatriation-from-Pakistan-English.pdf>.

suspension was then extended until March 31, 2017, because of the closure of the border between Afghanistan and Pakistan. The UNHCR has recently announced to resume its repatriation program beginning April 3, 2017. Apart from the winter break, lack of funding was the main factor in the suspension of the repatriation program.<sup>201</sup> The UNHCR Pakistan facilitates the voluntary repatriation program along with relevant government departments, including the Commissionerate Afghan Refugees and humanitarian organizations.<sup>202</sup> The voluntary repatriation program of Afghan refugees in Pakistan can be divided into two phases: (1) Pre-9/11, and (2) Post-9/11.

The Pre-9/11 phase was driven by the Soviets' withdrawal.<sup>203</sup> However, decreased funding for Afghan refugees in Pakistan was also a compelling factor in the start of the repatriation program in 1992.<sup>204</sup> The Pre-9/11 program was not properly structured to link the assistance (reintegration grant) with actual repatriation.<sup>205</sup> The Post-9/11 program was a comparatively structured program and was based upon the lessons learned from the Pre-9/11 program.<sup>206</sup> However, it is extremely challenging for the host country and humanitarian organizations to facilitate, maintain, and sustain the pace of repatriation program in a situation where back-and-forth movements of refugees is a common practice because of the lack of reintegration drivers in the country of origin.<sup>207</sup>

### 1. Pre-9/11

In February 1989, with the withdrawal of the Soviets, Mujahideen took charge by dethroning the PDPA's government led by Najib.<sup>208</sup> This scenario

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<sup>201</sup> *Id.*

<sup>202</sup> *Voluntary Repatriation Programme: Chamkani, supra* note 198, at 2.

<sup>203</sup> Turton & Marsden, *supra* note 132, at 12.

<sup>204</sup> *Id.* at 13.

<sup>205</sup> *Id.* at 12.

<sup>206</sup> Collective for Social Sci. Res., *supra* note 136, at 7; *Voluntary Repatriation Programme: Chamkani, supra* note 198, at 1.

<sup>207</sup> Collective for Social Sci. Res., *supra* note 136, at 2.

<sup>208</sup> Turton & Marsden, *supra*, note 132, at 12.

laid the groundwork to plan a massive repatriation program.<sup>209</sup> In this regard, the UNHCR launched an assisted voluntary repatriation program.<sup>210</sup> In order to be part of this program, the Afghan refugees had to show willingness to repatriate by cancelling their passes to get a grant of \$100 and 300 kg of wheat grains as a repatriation package.<sup>211</sup> The program also had the implicit outcome of encashment of ration passes.<sup>212</sup> Withdrawal of Soviet troops from Afghanistan was not the only driver of the repatriation program; additionally, a deficit of donor interest was also a compelling factor during the 1990s.<sup>213</sup> The 1990s repatriation program of the UNHCR incentivized the de-registration of Afghan families in the assistance books of aid agencies rather than to support actual return.<sup>214</sup> In short, it was less repatriation and more of a de-registration process.<sup>215</sup>

The families who had lost almost everything in the Soviet transition encashed their ration passes because they were in need of funds, particularly in a situation where donor fatigue had also been expressed in the provision of assistance. Repatriation was at its peak because of the fall of Najib's government and the rise of the Mujahideen regime in Afghanistan; however, it is also worth mentioning that the number of de-registered refugees was greater than the actual number of repatriated refugees.<sup>216</sup> According to the government of Pakistan, between July 1990 and early 1994, only one-third of those refugees who showed willingness and encashed their ration passes were actually repatriated, whereas the rest of them remained in Pakistan.<sup>217</sup> Encashment of ration passes was practiced until 1995, and in the same year, the ration passes were stopped and no longer allowed holders to receive

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<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.* at 12.

<sup>214</sup> *Id.* at 13.

<sup>215</sup> *Id.* at 12.

<sup>216</sup> *Id.* at 13.

<sup>217</sup> *Id.* at 13 n.20.

assistance from aid agencies; however, repatriation was an ongoing process until 1999.<sup>218</sup>

The era between 1995 and 2000 was a perplexing time period not only for Afghan refugees in terms of their status, assistance, and repatriation, but also for the humanitarian actors and the government of Pakistan in terms of funding insufficiency. Additionally, the uproar inside Afghanistan was also at its peak and was directly linked to the influx in Pakistan, when the Taliban took charge over Herat in 1995, Kabul in 1996, Mazar-e-Sharif in 1998, and Taloqan in September 2000, which was directly linked to the influx in Pakistan.<sup>219</sup> Besides that, the war-affected country was brutally hit by terrible drought, which not only raised the number of recyclers (who re-entered the country of asylum after repatriation) in Pakistan, but also increased internal displacement in 2000.<sup>220</sup> During this time period, on one hand, Afghan refugees were compelled to practice back-and-forth movements because of the fight between various factions of Mujahideen and power politics in Afghanistan; on the other hand, humanitarian actors were also muddled because of the unclear status of Afghans in Pakistan and funding insufficiency.<sup>221</sup>

## 2. Post-9/11

The voluntary repatriation program of the UNHCR was suspended in 1999 due to funding constraints.<sup>222</sup> However, even when it resumed in 2000, the Afghan refugees did not view it as one of the preferred durable solutions, due to the volatile security situation and worst ever drought in Afghanistan.<sup>223</sup> Furthermore, in the wake of 9/11, the US-escorted military invasion created

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<sup>218</sup> *Id.* at 13-15.

<sup>219</sup> *Id.* at 13.

<sup>220</sup> Schmeidl, *supra* note 84, at 5.

<sup>221</sup> Turton & Marsden, *supra* note 132, at 12-13.

<sup>222</sup> *Timeline*, *supra* note 83.

<sup>223</sup> Schmeidl, *supra* note 84, at 4.

an unpredictable security situation in Afghanistan.<sup>224</sup> In 2001, according to the UNHCR SO Peshawar, this scenario made Khyber Pakhtunkhwa the host of 60,000 newly arrived refugees, which contributed to the total figure of five million Afghan refugees in Pakistan.<sup>225</sup>

In December 2001, the transitional government in Afghanistan created hopes for a secure and conducive environment for repatriation to Afghanistan.<sup>226</sup> Later, in June 2002, as a result of the *Loya Jirga* (grand assembly), the appointment of Hamid Karzai as interim president was one of the decisive moments for Afghan refugees to rethink of repatriation as a durable solution.<sup>227</sup> These measures acted as a pull factor in Afghanistan and created grounds for a voluntary repatriation program in Pakistan.<sup>228</sup> In September 2002, the UNHCR claimed the single largest assisted repatriation since 1972, which included almost 1.63 million persons.<sup>229</sup> This time, the UNHCR approached the challenge with a well-designed, systematic, and more structured repatriation program.

In 2002, the UNHCR established Voluntary Repatriation Centers (VRCs) in Pakistan to facilitate the return process and to ensure that repatriation was voluntary, dignified, and in accordance with international standards.<sup>230</sup> Initially, it was planned that seven voluntary repatriation centers would be established.<sup>231</sup> Being a leading refugee-hosting province, two VRCs were established in the province of Khyber Pakhtunkhwa at Peshawar and Timergara in the Lower Dir district, while one was established in Quetta at

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<sup>224</sup> *Id.*

<sup>225</sup> *Timeline, supra* note 83.

<sup>226</sup> Schmeidl, *supra* note 84, at 4-5.

<sup>227</sup> *Id.* at 5.

<sup>228</sup> Noor, *supra* note 47, at 67.

<sup>229</sup> UNHCR, *supra* note 3.

<sup>230</sup> DAWN Group Newspapers, *Pakistan: UN to Open 7 Voluntary Repatriation Centres*, RELIEF WEB (Feb. 17, 2002), <http://reliefweb.int/report/afghanistan/pakistan-un-open-7-voluntary-repatriation-centres>.

<sup>231</sup> *Id.*

Baleli (Balochistan).<sup>232</sup> However, later on, the VRC at Timergara was closed because of limited use by refugees, and there were two VRCs operating in Pakistan until August 2016. Recently, in September 2016, another VRC was established at Azakhel (District Nowshera) to respond to the increased number of refugees repatriating from Pakistan, the second VRC in Khyber Pakhtunkhwa province and third in the country.<sup>233</sup>

VRCs in Pakistan are facilitating refugees from camps as well as from urban settlements.<sup>234</sup> The procedure of de-registration from the NADRA database and receipt of Voluntary Repatriation Form (VRF) is a step-by-step process that was clearly explained by the UNHCR, humanitarian organizations, and CAR staff through the distribution of brochures and leaflets in the native languages of Afghan refugees.<sup>235</sup> Families who wish to repatriate are de-registered at VRCs, where they give up their PoR cards and receive a VRF.<sup>236</sup> The VRF is a proof of repatriation kept by the refugees, which also enables them to receive a cash reintegration grant for returnees from the UNHCR at encashment centers (ECs) in Afghanistan.<sup>237</sup>

Presently, there are three ECs in Afghanistan, where returnees receive reintegration grants upon arrival.<sup>238</sup> Initially, the reintegration grant was \$100 per person, but was later increased to \$150 in March 2011 and then to \$200

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<sup>232</sup> *Timeline*, *supra* note 83.

<sup>233</sup> Said Alam Kham, *The UNHCR Centre to Pace Up Afghan Refugees Return*, NATION (Sept. 29, 2016), <http://nation.com.pk/newspaper-picks/29-Sep-2016/new-unhcr-centre-to-pace-up-afghan-refugees-return>.

<sup>234</sup> *Voluntary Repatriation and Border Monitoring Monthly Update*, *supra* note 192; *Voluntary Repatriation Programme: Chankani*, *supra* note 198, at 1.

<sup>235</sup> Humanitarian organizations are facilitating the voluntary repatriation through conducting information sessions regarding VRC procedures in refugee camps and urban areas and distributing leaflets and brochures in native languages including information regarding voluntary return procedures, PoR cards modification, and new births registration procedures. See *Frequently Asked Questions: Voluntary Repatriation of Afghan Refugees from Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (2015), <http://unhcrpk.org/wp-content/uploads/2012/11/FAQs-on-VolRep.pdf>.

<sup>236</sup> UNHCR, *supra* note 125, at 1.

<sup>237</sup> *Id.* at 2.

<sup>238</sup> *Id.* at 1.

in January 2014.<sup>239</sup> In June 2016, the reintegration grant was increased to \$350 along with a transportation allowance of \$30-70 per family member.<sup>240</sup> The transportation allowance depends upon the distance between the residential area in Pakistan and the final destination in Afghanistan.<sup>241</sup> During the months of September, October, and November of 2016, the UNHCR spent over \$130 million in terms of reintegration cash grant.<sup>242</sup>

Recently, on the eve of resuming its repatriation program, the UNHCR has announced to decrease the individual reintegration grant from approximately \$400 to \$200.<sup>243</sup> Apart from funding constraints, human rights organizations critiqued the UNHCR regarding using reintegration grant as a tool for promoting voluntary repatriation, which probably resulted in the decrease of reintegration grant. In contrast, the UNHCR refutes the claim of the promotion of repatriation through the raise in reintegration grant.<sup>244</sup> However, it will be worth watching the pace and numbers of repatriation in 2017 and beyond with the decreased amount of grant.

### **3. Tripartite Agreement**

The repatriation of Afghan refugees is guided by the principle of voluntarism, as embedded in the Tripartite Agreement, initially signed between the Government of Pakistan, the Government of Afghanistan, and the UNHCR in 2003 at Brussels.<sup>245</sup> After being extended several times, the

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<sup>239</sup> *Working Paper*, *supra* note 147, at 2.

<sup>240</sup> UNHCR, *supra* note 125, at 1.

<sup>241</sup> *Id.*

<sup>242</sup> *Suspension of UNHCR's Voluntary Repatriation Program*, Top Lines, U.N. HIGH COMMISSIONER FOR REFUGEES 1 (on file with author).

<sup>243</sup> UNHCR, *supra* note 125, at 1

<sup>244</sup> *Id.*

<sup>245</sup> *Agreement Between the Government of Islamic Republic of Pakistan, The Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan*, U.N. HIGH COMMISSIONER FOR REFUGEES 3 (2003), <http://www.unhcr.org/3f5d97524.pdf> [hereinafter *Agreement Between*].

agreement was recently extended until December 31, 2017.<sup>246</sup> In the agreement, the parties recognized voluntary repatriation as a preferred durable solution; however, the return should be dignified and framed in the context of the security situation in Afghanistan.<sup>247</sup>

The agreement focused on establishing a framework to cooperate, plan, and implement coordinated programs for voluntary repatriation of Afghan citizens in Pakistan with the support of the international community.<sup>248</sup> The agreement has 28 articles.<sup>249</sup> Article 1 of the agreement established a “Tripartite Commission” among signatories of the agreement.<sup>250</sup> The Tripartite Commission Agreement regulates the repatriation of registered Afghan citizens in Pakistan.<sup>251</sup> The agreement thoroughly explained the role and nature of the commission. Article 4 of the commission gives explanation about meetings of the commission.<sup>252</sup> The parties agreed that members of the commission would meet quarterly.<sup>253</sup>

In this regard, the commission met twice in 2015. The 25<sup>th</sup> Tripartite Commission meeting was held on March 11, 2015, at Islamabad, and the 26<sup>th</sup> Commission meeting was organized on August 22, 2015, at Kabul.<sup>254</sup> At the

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<sup>246</sup> *Extension of the Tripartite Agreement between the Government of Islamic Republic of Pakistan, the Islamic republic of Afghanistan and the United Nations High Commissioner for Refugees governing the voluntary repatriation of Afghan Refugees living in Pakistan* (on file with author)

<sup>247</sup> See 25<sup>th</sup> Tripartite, *infra* note 248.

<sup>248</sup> *Id.* at 1.

<sup>249</sup> *Id.*

<sup>250</sup> *Id.* at 2.

<sup>251</sup> *Id.* at 2.

<sup>252</sup> *Id.* at 3.

<sup>253</sup> *Id.* at 3.

<sup>254</sup> See *Conclusions of the 25<sup>th</sup> Tripartite Commission Meeting*, U.N. HIGH COMMISSIONER FOR REFUGEES (2015), <http://unhcrpk.org/wp-content/uploads/2013/12/Conclusions-of-the-25th-Tripartite-Commission.pdf> [hereinafter 25<sup>th</sup> Tripartite]; *Afghanistan, Pakistan, UNHCR Welcome New Policies On Afghan Refugees in Pakistan and Returnees to Afghanistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Aug. 22, 2015), <http://www.unhcr.org/en-us/news/press/2015/8/55dddc4a6/afghanistan-pakistan-unhcr-welcome-new-policies-afghan-refugees-pakistan.html>.

25th Tripartite Commission meeting, it was noted that both governments agreed to develop mutually reinforcing plans for the return and reintegration in Afghanistan, as well as management of Afghan refugees in Pakistan beyond 2015.<sup>255</sup> At the 26<sup>th</sup> Commission, among the topics emphasized were the need for regular exchange of information between governments, cross-border cooperation on livelihood interventions, and prioritization of returnees by the Government of Afghanistan under its new comprehensive voluntary repatriation and reintegration plan.<sup>256</sup> The participants also focused on a comprehensive repatriation package such as an Enhanced Voluntary Return and Reintegration Package (EVRP), to ensure sustainable reintegration of returnees in Afghanistan.<sup>257</sup> Furthermore, the Minister of SAFRON emphasized continued investment in RAHA (Refugee Affected and Hosting Area Program) projects which will enable Pakistan to host Afghan refugees by preserving asylum space in the country.<sup>258</sup> On July 19, 2016, the Commission meeting was held at Bhurban, Pakistan.<sup>259</sup> The meeting concluded with the parties reiterating their commitment of the safe, dignified, and voluntary repatriation as the best solution to end the protracted refugee situation in Pakistan.<sup>260</sup> Pakistan further urged the importance of immediate, concrete, and tangible reintegration measures in Afghanistan for the expected high returns due to the enhanced repatriation grant.<sup>261</sup> Additionally, the

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<sup>255</sup> See *Conclusions of the 25<sup>th</sup> Tripartite Commission Meeting*, U.N. HIGH COMMISSIONER FOR REFUGEES (2015), <http://unhcrpk.org/wp-content/uploads/2013/12/Conclusions-of-the-25th-Tripartite-Commission.pdf>

<sup>256</sup> *Afghanistan, Pakistan, UNHCR Welcome New Policies on Afghan Refugees in Pakistan and Returnees to Afghanistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Aug. 22, 2015), <http://www.unhcr.org/en-us/news/press/2015/8/55dddc4a6/afghanistan-pakistan-unhcr-welcome-new-policies-afghan-refugees-pakistan.html>.

<sup>257</sup> *Id.*

<sup>258</sup> *Id.* at 2

<sup>259</sup> *Conclusions of the 27<sup>th</sup> Tripartite Commission Meeting*, U.N. HIGH COMMISSIONER FOR REFUGEES 1, <http://unhcrpk.org/wp-content/uploads/2013/12/Conclusion-of-27th-Tripartite-Commission-Meeting-19-July-2016.pdf> (last visited Feb 26, 2017) [hereinafter *27th Tripartite*].

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 2.

parties reaffirmed their commitment to uphold the letter and spirit of the SSAR, as a regional framework and platform for coordinated actions to identify and implement lasting solutions for Afghan refugees.<sup>262</sup> Besides that, the need for international solidarity, equitable responsibility sharing, development investment, and active engagement was also focused on, to end the chapter of Afghan refugees in Pakistan.<sup>263</sup>

The 28<sup>th</sup> Tripartite Commission meeting was held in Islamabad, Pakistan on February 15, 2017.<sup>264</sup> All parties of the commission welcomed the new national policy of the Government of Pakistan regarding management of the Afghan refugees and Afghan nationals living in Pakistan.<sup>265</sup> The policy includes (1) extension of Proof of Registration (PoR) cards and the Tripartite Agreement until December 31, 2017; (2) approval of a visa regime for different categories of Afghan refugees including students, businessmen/traders, skilled/unskilled laborers, intermarriages, and healthcare; (3) commitment to adoption of a national refugee law, including agreement to document the undocumented Afghan refugees; and (4) improvement in border management.<sup>266</sup> All the parties reaffirmed their commitment to uphold the principle of voluntarism in repatriation under the Tripartite Agreement as well as to pursue and implement lasting solutions for Afghan refugees within the regional framework of SSAR.<sup>267</sup> The participants agreed that the Afghanistan government would host the 29<sup>th</sup> Tripartite Commission meeting during the year 2017.<sup>268</sup>

The agreement is a complete document that not only upholds the commitment of its signatories regarding dignified voluntary repatriation as a preferred durable solution, but also defines the supervisory role of the

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<sup>262</sup> *Id.* at 1.

<sup>263</sup> *Id.* at 2.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

UNHCR, including movement and security of the UNHCR staff.<sup>269</sup> The document covers almost all the aspects involved in the repatriation of registered Afghan citizens in Pakistan. The agreement not only covers the international access to Afghan citizens before and after repatriation but also focuses on the preservation of family unity (Article 16), special measures for vulnerable groups (Article 17), and immigration, customs, and health formalities (Article 19).<sup>270</sup> However, the effectiveness of this agreement is directly contingent upon the commitment, seriousness, and dedication of both governments towards making extraordinary efforts for the dignified, voluntary return and sustainable reintegration in Afghanistan.

#### **4. Voluntary Repatriation Process and Facilitation at VRCs**

The UNHCR assists voluntary repatriation in three VRCs (Voluntary Repatriation Centers) in Pakistan, and offers this assistance with relevant government authorities and implementing partners including CAR, NADRA, Project Directorate Health (PDH), and the Ministry of Refugees and Repatriation (MoRR).<sup>271</sup> VRC Chamkani at Peshawar has the ability to process approximately 1,800 refugees per day, and all the VRCs deal with only registered Afghan refugees in Pakistan.<sup>272</sup>

VRCs have been equipped with the latest biometric technology.<sup>273</sup> It has been observed that the repatriation process has been equipped with passage of time, and new technologies were introduced in the UNHCR's VRCs to cover the gaps in the repatriation process. In 2002, when repatriation was at its peak, the issue of recyclers emerged as a challenge for the UNHCR. Those families that had repatriated reentered in Pakistan and invoked the same

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<sup>269</sup> *Agreement Between, supra* note 245 at 1, 5, 8.

<sup>270</sup> *Id.* at 6-7.

<sup>271</sup> *Voluntary Repatriation Programme: Chamkani, supra* note 198, at 2.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

process to re-earn the cash grant.<sup>274</sup> As of 2002, there was no record of Afghan families in the NADRA database.<sup>275</sup> In this situation, an Iris recognition test was introduced to ensure the secure receipt of cash grants, as well as to prevent recycling.<sup>276</sup> The technology enabled the UNHCR to trace the recyclers. It was vital to maintain authenticity and accuracy in records of repatriated families to make it more transparent, as well as accessible for the authorities involved in the process. Those registered Afghan refugees who underwent the Iris checks are now unable to get cash grants, even after getting the PoR cards in 2006.<sup>277</sup> The following are the various facilitation steps to process Afghan refugees for voluntary repatriation at VRCs:<sup>278</sup>

- **Verification:** To check authenticity of PoR cards, verify family composition, ensure a free and informed decision to return, and check vulnerability of persons requiring special attention;
  - i. De-registration—individual refugee is checked against the Afghan Citizen Registration (ACR) biometric database and is de-registered.
  - ii. Iris Recognition Test ensures individuals receive repatriation assistance once; prevents re-cycling.

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<sup>274</sup> The PoR cards were not available during the massive repatriation of 2002; however, the open-door policy of Pakistan enabled most of the Afghan citizens to re-enter Pakistan even after availing the return grant of UNHCR back in 2002. The recyclers, identified with an Iris recognition system, are not allowed to avail the grant for second time. In the year 2016, 12,000 recyclers were identified, through the Iris recognition system, and were not eligible for reintegration cash assistance although they were de-registered from the NADRA database. *Pakistan: Voluntary Repatriation Update*, *supra* note 195, at 1.

<sup>275</sup> Afghan refugees were registered in 2006 as a result of the MoU signed between Government of Pakistan and the UNHCR on December 17, 2004 (on file with author). See *Memorandum of Understanding*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/en-us/subsites/afghancrisis/449aaa1a2/memorandum-understanding-government-islamic-republic-pakistan-gop-office.html> (last visited Mar. 3, 2017).

<sup>276</sup> *Voluntary Repatriation Programme: Chamkani*, *supra* note 198 at 2.

<sup>277</sup> See *supra* text accompanying note 263.

<sup>278</sup> *Voluntary Repatriation Programme: Chamkani*, *supra* note 198, at 3.

- **Protection Desk:** Ensure protective presence in voluntary repatriation centers to Persons of Concern (POC,) with particular focus on Persons with Specific Needs (PSNs).
- **Health & Sanitation Facilities:** For minor emergencies an ambulance service is available. In addition, safe drinking water and toilet facilities have been provided at the centers, including toilets for PSNs.
- **Validation:** VRFs are validated and assigned consecutive numbers to enable individuals to receive cash grants at the Encashment Centers (ECs) in Afghanistan.
- **Luggage Verification:** Luggage is checked to ensure compliance.
- **Transport:** Self-organized transport both in Pakistan and Afghanistan.
- **Cash Grant:** Each returnee receives a reintegration grant at the ECs upon arrival in Afghanistan.

To ensure the safe and dignified return of Afghan refugees, implementing and operational partners of the UNHCR are patrolling the major return routes. The responsible staff is in continuous contact with law enforcement agencies and returnees to address any unpleasant incidents during the return.

### 5. Urbanization of Afghan Refugees as a Missing Link

In the early years, Afghan refugees were kept in camps across the country.<sup>279</sup> However, the discontinuation of food assistance inside the camps during 1995 led the Pakistani government to implement a policy shift in July 1997.<sup>280</sup> The Secretary of Kashmir Affairs and Northern Areas and States and Frontier Regions Division issued a notification regarding the status of Afghan families living in Pakistan.<sup>281</sup> The notification clearly justified the movement of Afghan refugees into urban settlements and lifted the restrictions on staying within the refugee camps. While, Afghan families that started work

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<sup>279</sup> *Working Paper*, *supra* note 147, at 3.

<sup>280</sup> Turton & Marsden, *supra* note 132, at 16.

<sup>281</sup> *Id.*

to earn bread faced discriminative treatment in the urban communities, the issue was addressed after being brought up by the UNHCR and humanitarian actors.

In the context of urbanization policy, almost 70 percent of the PoR cardholders are currently living outside the camps, mostly as urban refugees.<sup>282</sup> The movement of refugees in the 1990s from camps to urban communities created huge issues in tracing the records and later became a vital contributor in making the Afghan case a protracted refugee case.<sup>283</sup> During the 1990s, along with the integration in urban settlements, repatriation was an ongoing process, whereby the UNHCR and the World Food Program (WFP) shrank their support and aid programs for refugee camps.<sup>284</sup> Because of the urbanization policy, the number of refugees in camps decreased, and the burden was reduced on aid agencies.<sup>285</sup> On the other hand, a large number of legal and administrative issues arose.<sup>286</sup>

The move to urban settlements simply changed the title of Afghans from camp refugees to urban refugees and became a shift in state, not in status. Furthermore, the reduced number of refugees in camps, as a result of urbanization of refugees in the 1990s, had created an impression of a high number of repatriated refugees; however, an increased number of refugees in urban settlements had never been monitored due to the lack of proper communication channels.<sup>287</sup> There is still a visible disconnect between the Provincial Commissionerates and the urban refugees, given that the Provincial Commissionerates are designed and trained for camp management.<sup>288</sup> There is lack of a policy or any formal mechanism to

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<sup>282</sup> *Working Paper*, *supra* note 147, at 3.

<sup>283</sup> *Id.*

<sup>284</sup> Turton & Marsden, *supra* note 132, at 13.

<sup>285</sup> *See id.*

<sup>286</sup> *Working Paper*, *supra* note 147, at 3.

<sup>287</sup> Turton & Marsden, *supra* note 132, at 16.

<sup>288</sup> *Working Paper*, *supra* note 147, at 3.

effectively manage urban refugees.<sup>289</sup> Due to urbanization, the repatriation trend has dropped down and hosting fatigue between host communities has also increased.<sup>290</sup>

## 6. Repatriation trend in Pakistan

The post-9/11 phase of voluntary repatriation was methodically approached by the UNHCR; however, the repatriation program was extensively affected by the unstable security situation in Afghanistan.<sup>291</sup> According to the UNHCR, 4,301,171 refugees had been repatriated from Pakistan from 2002 until November 30, 2016, with the UNHCR's assistance.<sup>292</sup> Despite the stable government between 2002 and 2015 and a comparatively better security situation, Afghan refugees showed reluctance to repatriation in 2006, 2009, and onwards due to lack of economic resources and livelihood opportunities in Afghanistan.<sup>293</sup> According to the UNHCR, in 2016, 38 percent of the repatriating families preferred to remain in Pakistan due to secure income in Pakistan; whereas 28 percent disclosed the fact of lack of employment opportunities in Afghanistan during repatriation.<sup>294</sup> Lack of secure income and livelihood opportunities are the major constraints in voluntary repatriation.<sup>295</sup> Apart from cash grants provided at ECs, there is no other considerable assistance provided to returnees in Afghanistan.<sup>296</sup> The UNHCR facilitates returnees via shelter projects, and this facilitation occurs on an as-needed basis.<sup>297</sup> However, the shelter project covers those vulnerable returnees who have their own land in their places of origin; whereas, for the

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<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Pakistan: Voluntary Repatriation Update*, *supra* note 195, at 1.

<sup>293</sup> *Working Paper*, *supra* note 147, at 1.

<sup>294</sup> *Pakistan: Voluntary Repatriation Update*, *supra* note 195, at 2.

<sup>295</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 11.

<sup>296</sup> *See Go & See Visit to Dawlatabad District (Balkh Province) Afghanistan*, DANISH REFUGEE COUNCIL & U.N. HIGH COMMISSIONER FOR REFUGEES (Dec. 2013) [hereinafter *Go & See Visit (Balk)*] (on file with author).

<sup>297</sup> *Id.*

majority of returnees, land is another gargantuan issue.<sup>298</sup> The Ministry of Refugees and Repatriations (MoRR) is the guardian for Land Allocation Schemes (LAS) in Afghanistan.<sup>299</sup> Huge levels of corruption and thousands of pending applications in LAS submerged the hopes of returnees for a sustainable reintegration in Afghanistan.<sup>300</sup> Similarly, in Afghanistan, the policy of provision of assistance by the UNHCR and MoRR to only those returnees who have VRF put the unregistered returnees in a nowhere situation.<sup>301</sup> These policies not only create barriers for reintegration of returnees in Afghanistan but also compel the undocumented returnees to recycle.<sup>302</sup>

Several times the UNHCR and humanitarian organizations in Pakistan have sought to speed up and strengthen repatriation; however, the temporary nature of those efforts was unable to generate a constant positive impact in repatriation. In 2012, the UNHCR Pakistan bore the transportation cost of returnees, which raised the graph of repatriation. However, after ending the transportation allowance on December 31, 2012, a clear depression has been observed in repatriation in the following years. Similarly, the situation generated in the wake of the terrorist attack on the Army Public School (APS) in Peshawar on December 16, 2014, created a push factor for Afghan refugees, particularly in urban settlements.<sup>303</sup> The law enforcement agencies started large-scale arrests, deportations, and harassment of Afghan refugees, which not only refoiled, but also compelled huge numbers of Afghan families to opt for repatriation.<sup>304</sup> The UNHCR responded well and controlled

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<sup>298</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172 at 11.

<sup>299</sup> *See Go & See Visit from Baluchistan to Northern Afghanistan*, U.N. HIGH COMMISSIONER FOR REFUGEES (Nov. 2013) [hereinafter *Go & See Visit (Balochistan)*] (on file with author).

<sup>300</sup> Amina Khan, *Afghan Refugees in Pakistan*, INST. STRATEGIC STUD.4- 5 (2017), [http://issi.org.pk/wp-content/uploads/2017/03/Final\\_IB\\_Amina\\_dated\\_14-3-2017.pdf](http://issi.org.pk/wp-content/uploads/2017/03/Final_IB_Amina_dated_14-3-2017.pdf).

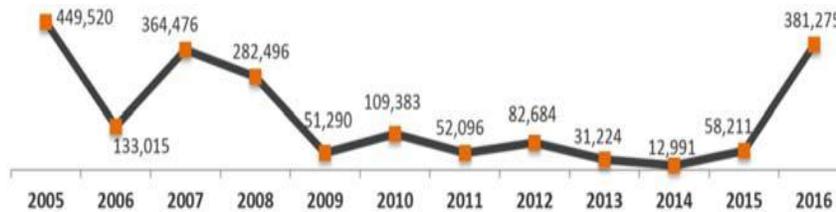
<sup>301</sup> *Working Paper*, *supra* note 147, at 9.

<sup>302</sup> Schmeidl, *supra* note 21, at 20.

<sup>303</sup> *See Voluntary Repatriation Programme: Chamkani*, *supra* note 198.

<sup>304</sup> *Id.* at 3.

the situation with time by doing advocacy at different levels; however, the role of the UNHCR seems limited in such situations.<sup>305</sup> The APS incident exposed the organization as only a humanitarian organization and reaffirmed the mandate of the UNHCR, which is international protection and support of governments in the return and development process.<sup>306</sup> The trend of voluntary repatriation of Afghan refugees from Pakistan since 2005 is shown below:<sup>307</sup>



The 58,211 refugees in 2015, as noted on the graph above, consist of 10,294 families that were repatriated; however, it is quite interesting that women headed 20 percent of those repatriated families, whereas their husbands stayed back in Pakistan and for most, the reason was secure income in the country.<sup>308</sup> This trend clearly depicts the shrinking asylum space in Pakistan, which is a significant contributor in the unprepared returns irrespective of the worsening security situation and lack of integration drivers inside Afghanistan. In 2016, the UNHCR had planned to assist 150,000

<sup>305</sup> *Id.*

<sup>306</sup> UNHCR, *supra* note 125, at 6.

<sup>307</sup> *Voluntary Repatriation and Border Monitoring Monthly Update*, *supra* note 192, at 1.

<sup>308</sup> *Id.* at 2.

refugees through its repatriation operation.<sup>309</sup> However, the figure has reached to 58,981 families, including 381,275 refugees, due to various factors, including (1) tight border management policy by the Government of Pakistan, (2) short-term extensions of the validity of PoR cards resulting in heightened anxiety and lack of predictability, (3) intensification of security operations in Pakistan against undocumented Afghan refugees under the National Action Plan (NAP) against terrorism, (4) a deteriorating protection environment for Afghans in Pakistan, (5) doubling of the voluntary repatriation and reintegration cash grant, and (6) strong appeal for refugees return and proactive repatriation campaign by the President Ghani regime.<sup>310</sup>

The extension of the legal stay of Afghan refugees until December 31, 2017, is a prudent move by Islamabad. However, the Afghan refugee situation is at a critical juncture now in Pakistan. Currently, the political standoffishness between Afghanistan and Pakistan is acting as a primary factor, which generates certain other factors discussed above that put the Afghan refugees in a chaotic situation. The high repatriation numbers of 2016 do not signify a high level of absorptive capacity in Afghanistan, both economically and socially. On the other hand, shrinking asylum space in Pakistan and short-term extensions of the validity of PoR cards resulted in heightened anxiety that compelled the Afghans to opt for repatriation. The emergence of ISIS and active movements of Taliban in certain cities of Afghanistan is another gargantuan threat for the Afghan government.<sup>311</sup> These same factors, coupled with the unstable socioeconomic situation and lack of livelihood sources, will be decisive factors for refugees in assessing repatriation as a durable solution.

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<sup>309</sup> *Pakistan: Voluntary Repatriation Update*, *supra* note 194, at 2.

<sup>310</sup> *Id.* at 2.

<sup>311</sup> Muhammad Rasool Shah, *Emergence of ISIS Is in Afghanistan Is a Fear Propaganda!*, DAILY OUTLOOK AFGHANISTAN (Jan. 24, 2015), [http://outlookafghanistan.net/topics.php?post\\_id=11552](http://outlookafghanistan.net/topics.php?post_id=11552).

*E. Management and Repatriation Strategies for Afghan Refugees in Pakistan*

The Tripartite Commission Agreement focuses on the voluntary nature of repatriation and regulates repatriation of Afghan refugees;<sup>312</sup> however, the protracted nature of the Afghan case required a shift in policy to manage the Afghan population in Pakistan and to explore possible alternatives for the unique nature of Afghan case load. In this context, two strategies were formulated for Afghan refugees, which are (1) the Afghan Management Repatriation Strategy (AMRS) 2010-2012, and (2) Solutions Strategy for Afghan Refugees (SSAR) 2013-2017.

Voluntary repatriation is the core component of these two strategies.<sup>313</sup> The formulation of these strategies reflected a sense of realism among policy makers that the complexity of the Afghan caseload required a broader lens to identify alternative solutions and to make feasible grounds for voluntary repatriation as a preferred durable solution. In order to manage the Afghan refugees and to view their repatriation and reintegration in a broader scope, a shift in policy by the Government of Pakistan was observed in 2008.<sup>314</sup> The cabinet of Pakistan approved the repatriation strategy for Afghan refugees on May 9, 2007, with consultation of relevant stakeholders for the years 2007-2009.<sup>315</sup> However, the relevant stakeholders raised several reservations.<sup>316</sup> In this context, the UNHCR focused on an open-ended policy and criticized the limited timeframe of the repatriation strategy.<sup>317</sup> Similarly, the Government of Afghanistan also raised reservations and requested to review the numerical targets for repatriation in regards to a weak absorptive capacity and an

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<sup>312</sup> *Agreement Between*, *supra* note 245, at 1.

<sup>313</sup> *Voluntary Repatriation Programme: Chamkani*, *supra* note 198, at 1.

<sup>314</sup> *Management and Repatriation Strategy for Afghan Refugees in Pakistan for the Years 2010–2012*, MINISTRY STATES & FRONTIER REGIONS 1 [hereinafter *Management and Repatriation Strategy*] (on file with author).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*

unpredictable security situation in Afghanistan.<sup>318</sup> In order to review the strategy and to respond to the reservations, a meeting was held between the Prime Minister of Pakistan and the UNHCR in August 2008 to review the strategy for extension.<sup>319</sup> Afterwards, on August 29, 2008, at the 15<sup>th</sup> Tripartite Commission Meeting at Islamabad, it was decided that the repatriation strategy would go beyond 2009 and would be linked with the Afghan National Development Strategy for the years 2009-2013.<sup>320</sup>

Based on the announcements in the 15<sup>th</sup> Tripartite Commission meeting and in order to regulate repatriation and management of Afghan refugees in Pakistan, a revised management and repatriation strategy was introduced for the period of 2010-2012.<sup>321</sup> The strategy was named the Afghan Management and Repatriation Strategy (AMRS). Inputs from all relevant stakeholders were included to cover all the issues related to Afghan refugees, including repatriation and reintegration.<sup>322</sup> In March 2010, after consulting all government departments, the cabinet approved AMRS for the period of 2009-2012, which inter alia extended the validity of PoR cards and the Tripartite Commission until December 2012.<sup>323</sup> It was decided that AMRS would focus on the following areas:<sup>324</sup>

- Repatriation to and reintegration of refugees in Afghanistan
- International support for refugees and repatriation
- Host community development
- Development of refugee-affected areas
- Addressing security concerns in Pakistan due to refugee presence
- Border management/crossing to control recycling

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<sup>318</sup> *Id.*

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 2.

<sup>322</sup> *Id.* at 1.

<sup>323</sup> *Bulletin Afghan Management & Repatriation Strategy (AMRS)*, MINISTRY SAFRON & UNHCR ISLAMABAD1 (Mar. 2011) [hereinafter *AMRS*] (on file with author).

<sup>324</sup> *Id.* at 2.

- Constitution of a high-powered body to address Afghan refugee issues both in Pakistan and Afghanistan for durable solutions
- Joint bilateral commission
- Temporary management of Afghan refugees living in Pakistan during the period of 2010-2012

The introduction of temporary management of Afghan refugees in Pakistan depicted a shift in policy by the Government of Pakistan; however, voluntary repatriation remained the core component of the management and repatriation strategy.<sup>325</sup> AMRS clarified and reaffirmed the illegal status of undocumented Afghan citizens living in Pakistan.<sup>326</sup> The undocumented Afghans would be deported and treated under the law of the land, which is the 1946 Foreigners Act of Pakistan.<sup>327</sup> AMRS, in particular, focused on the legal status of Afghan students, female heads of households, and the Afghan investors in Pakistan.<sup>328</sup> It was mentioned that those Afghans who had invested five million Pakistani Rupees (PKR) in a productive business would be issued work permits by Government of Pakistan.<sup>329</sup> Similarly, groups of Afghans interested in bringing investments of over fifty million PKR would be welcomed and encouraged.<sup>330</sup> In addition, Afghan students would be allowed to complete their education, and single women that have lost their breadwinners would be allowed to stay in Pakistan.<sup>331</sup> To retain the effect of Afghan refugees on Pakistan's labor market, it was decided that the Government of Pakistan would grant renewable visas to 150,000 skilled and unskilled Afghans living in Pakistan.<sup>332</sup>

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<sup>325</sup> *Voluntary Repatriation Programme: Chamkani, supra* note 198, at 1.

<sup>326</sup> *Management and Repatriation Strategy, supra* note 314, at 8.

<sup>327</sup> *Id.* at 9.

<sup>328</sup> *Id.*

<sup>329</sup> *Id.* at 8.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.* at 9.

<sup>332</sup> *Id.* at 8.

For implementation of AMRS, a High-Powered Body was established under the authority of the Minister of SAFRON.<sup>333</sup> The body was chaired by the Minister of SAFRON and included the Chief Commissioner for Afghan Refugees, the Secretaries of the Interior and Foreign Affairs Ministries, and the representatives of other concerned departments.<sup>334</sup> The High-Powered Body established five committees to guide the subjects of AMRS in a meeting held on December 2, 2010.<sup>335</sup> The committees are as follows:<sup>336</sup>

- Repatriation and Reintegration & Bilateral/Trilateral Consultations
- Visas and Legal Residence Considerations & Regulations
- Border Management and Exit/Entry Regime
- Protection and Third Country Resettlement
- Security and Legal Channels for Registration

After forming the committees in the presence of the Home Secretary, the Chief Commissioner, the Joint Secretary of SAFRON, the UNHCR, and other relevant stakeholders, it was decided in a meeting to constitute province-based subcommittees.<sup>337</sup> In this context, the Secretary of SAFRON designated provincial Home Secretaries to coordinate the subcommittees.<sup>338</sup> While revealing the achievement concerning AMRS, three strategic pillars were mentioned in a joint bulletin regarding AMRS, which was issued by the Ministry of SAFRON and the UNHCR in March 2011. The pillars are as follows:<sup>339</sup>

- Socioeconomic profiling of registered Afghans in Pakistan.
- Legal framework including accession to the 1951 Convention et al.

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<sup>333</sup> AMRS, *supra* note 323, at 1.

<sup>334</sup> *Id.*

<sup>335</sup> *Id.* at 2.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

- Operational framework to implement solutions envisaged under AMRS.

In regards to issuance of visas and work permits claimed in AMRS, the UNHCR mentioned that evidence-based data on vulnerability and economic status of Afghan families could be a constructive step in socioeconomic groupings.<sup>340</sup> The data would also be capable of organizing voluntary repatriation and assisting the Government and the UNHCR Afghanistan in the reintegration of Afghan returnees.<sup>341</sup> In this framework, the UNHCR Pakistan conducted two surveys, which are,<sup>342</sup> (1) a pilot project on vulnerability entitled population, Profile and Verification (PPV) Survey (January-March 2011); and (2) the Afghan Citizens Contribution to Economy (ACCE) Survey.

AMRS was a first-rate concept, but it remained a draft and the proper homework for its implementation was never done by the stakeholders. In order to give permits and permission for settlement of students and single women, a change in the law was required, which was not considered by the executives and stakeholders involved in the issue. The policy makers of AMRS were well aware that the complex nature of the Afghan case needed priority consideration by the governments of both countries. Consequently, policy makers linked the preferred durable solution (repatriation) with the Afghan National Development Strategy (ANDS) to create a pull factor in Afghanistan and to practice high-level communication between MoRR and the Ministry of SAFRON.<sup>343</sup> The participants of AMRS also agreed upon the fact that “repatriation-at-once” in the case of Afghans was not feasible and it was decided that repatriation figures would be planned in accordance with the absorptive capacity of reintegration in Afghanistan.<sup>344</sup> In this regard, a

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<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Management and Repatriation Strategy*, *supra* note 314, at 3.

<sup>344</sup> *Id.*

stake for the Government of Pakistan was created in ANDS.<sup>345</sup> It was a very vital step to understand the inhuman sufferings of returnees in a country where the absorptive capacity is below the required level.

The implementation of AMRS was a huge challenge. In this regard, some efforts have been made, but have not been compelling enough to implement a strategy which covers all the issues related to Afghan's case, including repatriation, reintegration, and temporary management of registered Afghan refugees living in Pakistan. The government of Afghanistan failed to create pull factors in Afghanistan due to minimal absorptive capacity, lack of infrastructural capacity, and a non-conducive environment.<sup>346</sup> The Government of Pakistan was also unsuccessful in bringing policy level changes to prioritize the issue of Afghan refugees in Pakistan. In addition, unpleasant political relations between the two countries played a critical role in diverting attention from the most important regional issue. This situation was enough to confirm the failure of AMRS.

The Afghan case is intricate and demanded solutions, which was the reason to revamp AMRS. Due to lack of legislation, a deficit of political will, and indecisive efforts for the management of Afghan refugees under the umbrella of AMRS in Pakistan, policy makers shifted their attention from management of refugees in the host country to sustainable reintegration of Afghan refugees in Afghanistan. The management and repatriation strategy was replaced by a regional solution strategy, SSAR, in May 2012.<sup>347</sup> The governments of

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<sup>345</sup> *Id.*

<sup>346</sup> UNHCR, *supra* note 125. (The word "non-conducive" refers to mainly the Government of Afghanistan's lack of infrastructural capacity, unstable security situation of Afghanistan, and required level of focus on the returnees' issues in Afghanistan. The word has been used several times in the working paper on the urban refugee management and in the Management and Repatriation Strategy for Afghan refugees).

<sup>347</sup> *International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries*, U.N. HIGH COMMISSIONER FOR REFUGEES12 (May 3, 2012), <http://www.unhcr.org/afghanistan/solutions-strategy.pdf> [hereinafter *International Conference*].

Afghanistan, Iran, and Pakistan adopted the strategy.<sup>348</sup> The inclusion of the Islamic Republic of Iran ensured that the Afghan case would be viewed as a regional issue.<sup>349</sup> SSAR focused on voluntary repatriation, sustainable reintegration, and assistance to host communities to decrease the refugee fatigue in hosting areas.<sup>350</sup> The governments of Afghanistan, Iran, and Pakistan, along with the UNHCR established the Quadripartite Steering Committee to coordinate, guide, and implement the strategy.<sup>351</sup> The three main themes of SSAR are:<sup>352</sup>

- Creating conditions conducive to voluntary repatriation through community-based investments in areas of high return.
- Building Afghan refugee capital based on livelihood opportunities in Afghanistan in order to facilitate return.
- Preserving asylum space in host countries, including enhanced support for refugee hosting communities, alternative temporary stay arrangements for the residual caseload, and resettlement in third countries.

To address these subjects, it will be vital for the Quadripartite committee to establish a coordinated engagement of humanitarian actors and governments concerned, underpinned by a commitment to sustained and tangible support by the international community. SSAR adopted a systematic approach by including country specific portfolios in its overall policy

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<sup>348</sup> *Id.*

<sup>349</sup> The Islamic Republic of Iran hosts over 950,000 registered Afghan refugees, according to Government figures. *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 6. Ninety-seven percent of these refugees reside in urban or semi-urban areas across the country. The majority of Afghan refugees in the Islamic Republic of Iran originate from central, western, and Northern provinces of Afghanistan. To present solutions for the protracted Afghan situation, it was the first time to establish a quadripartite steering committee where Iran would have a defined role to end the protracted refugee situation in the region. *Id.* at 6.

<sup>350</sup> *International Conference*, *supra* note 347, at 12.

<sup>351</sup> *Id.* at 12.

<sup>352</sup> *Id.*

framework. Five outcomes were named to assess the implementation of the main subjects of SSAR:<sup>353</sup>

- Support to voluntary repatriation.
- Access to shelter and essential social services for refugees, returnees, and host communities.
- Improved and diversified livelihood opportunities and enhanced food security.
- Social and environmental protection of refugees, returnees, as well as assistance and support to host communities.
- Capacity development of national authorities, associations, organizations, and communities concerned with refugees, returnees, and host communities.

During a Quadripartite meeting held in Iran on May 9, 2015, the concerned governments and the UNHCR endorsed a second phase of SSAR, which is from 2015-2017, for the unremitting support to the safe, dignified, and voluntary return of Afghan refugees.<sup>354</sup> SSAR is a well-structured regional approach to address the need for a conducive environment in Afghanistan for reintegration of returnees and investment in refugee-hosting areas to reduce hosting fatigue.<sup>355</sup> The strategy focuses on support for Afghan refugees and prioritizes the needs of the Afghan population in each country to address the main pillars of SSAR.<sup>356</sup> In Afghanistan, the focus would be on reintegration, and for this purpose, 48 pilot sites were identified in 19 high-return provinces to assist with shelter, social services, employment, and food security.<sup>357</sup>

In this context, the UNHCR Afghanistan, along with MoRR, successfully coordinated with 12 of the line Ministers in 2012 to prioritize development of high-return zones via the National Priority Program.<sup>358</sup> In order to support sustainable reintegration of returnees, Iran would launch programs, including

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<sup>353</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 8.

<sup>354</sup> *Id.* at 10.

<sup>355</sup> *Id.* at 8.

<sup>356</sup> *International Conference*, *supra* note 347, at 28.

<sup>357</sup> *Id.* at 28.

<sup>358</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 8.

vocational trainings, to add a skilled labor force in the Afghan market, which would ultimately create a pull factor in Afghanistan.<sup>359</sup> In responding to SSAR, Pakistan would emphasize voluntary repatriation and would support refugee-hosting communities in order to contribute to the third pillar of SSAR (Assistance to Host Communities).<sup>360</sup>

Pakistan hosted the third regional Quadripartite Steering Committee meeting in Islamabad on September 18-19, 2013.<sup>361</sup> All the relevant stakeholders and delegates from the three countries participated with the aim to strengthen cooperation, jointly mobilize resources, and to establish strong partnership with the international community to end the protracted Afghan refugee situation.<sup>362</sup> The participants reaffirmed that the preferred durable solution for Afghan refugees is still voluntary repatriation; however, the sustainability of repatriation is contingent upon a conducive environment in Afghanistan.<sup>363</sup> Furthermore, the parties to the SSAR confirmed unanimously that more funds and efforts are needed to achieve the goals of SSAR; whereas, the education and livelihood sectors need more attention and improvement in Afghanistan to create a pull factor for returnees.<sup>364</sup> The Minister of SAFRON reassured the long-lasting commitment of Pakistan to the principle of voluntary and dignified return of Afghan refugees and urged the international community to invest more in the RAHA program.<sup>365</sup>

The basic spirit for the implementation of SSAR is to invest in human capital in Afghanistan, via creating livelihood opportunities, and to compensate the refugees' affected hosting areas.<sup>366</sup> In 2014, to operationalize

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<sup>359</sup> *Id.* at 29.

<sup>360</sup> *Id.* at 18.

<sup>361</sup> Press Release, UNHCR, Afghanistan, Iran, Pakistan and UNHCR Meet to Discuss Implementation of the Solutions Strategy for Afghan Refugees, U.N. PRESS RELEASE (Sept. 19, 2013).

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 8.

SSAR, the concerned governments, along with their relevant humanitarian and development actors, developed country-specific portfolios.<sup>367</sup> These portfolios provided a pragmatic and integrated framework for multilateral cooperation and focused particularly on the health, education, and livelihood sectors.<sup>368</sup> However, each portfolio was unique and was designed in accordance to the country-specific realities.<sup>369</sup> The implementation of these projects in a country-specific framework was structured within the five outcomes of SSAR in order to bring coherence and to ensure coordinated efforts.<sup>370</sup> Coordination is imperative at the national and regional level among concerned authorities not only for implementation of the regional solution strategy but also to trace the progress of interventions and to guide the coordinated efforts.

In this regard, National Steering Committees (NSCs) were established in respective countries to monitor and supervise the pace of interventions under the umbrella of SSAR.<sup>371</sup> NSCs composed of representatives of key government ministries will guide the implementation of SSAR in the national spheres of concerned countries.<sup>372</sup> In addition, platforms such as UN Country Team (UNCT), Humanitarian Country Team (HCT), and “Friends of SSAR” were established in Afghanistan to strengthen joint efforts in the context of SSAR.<sup>373</sup> The UNHCR uses these platforms to create awareness regarding returnees’ issues in Afghanistan and work in close coordination with MoRR.<sup>374</sup> “Friends of SSAR” was considered one of the best practices in Afghanistan and a valuable addition to SSAR.<sup>375</sup> The platform recommends policy issues to the Government of Afghanistan and the UNHCR, which

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<sup>367</sup> *Id.* at 20.

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.* at 22.

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

includes integration of national policy framework, response gaps, and resource mobilization for reintegration activities.<sup>376</sup> The establishment of such kinds of platforms justified the struggle of humanitarian actors for joint efforts to reintegrate returnees in Afghanistan. However, the successful and sustainable reintegration of returnees would only be possible if the Government of Afghanistan ensured a conducive environment for return and humanitarian space for interventions.

Pakistan effectively continues its contribution by implementing RAHA interventions to the third pillar (Assistance to host communities) of SSAR.<sup>377</sup> The revision and extension of the RAHA program until 2017 in line with SSAR was endorsed by participating countries in early May 2015.<sup>378</sup> RAHA is a government-led initiative in Pakistan and a joint program with the UNHCR.<sup>379</sup> The RAHA program is an integral component of SSAR and the government's management and repatriation strategy for Afghan refugees in Pakistan.<sup>380</sup> It remains a primary solidarity platform for maintaining temporary protection space and enhanced community acceptance of refugees in Pakistan.<sup>381</sup> In this context, it is essential for international donors to invest in RAHA to create asylum space in hosting countries and to support developmental interventions inside Afghanistan for a planned and sustainable return of refugees.<sup>382</sup> Since its launch, nearly 3,500 RAHA projects have been implemented across the country, in the sectors of health, infrastructure, livelihoods, water and sanitation, education, and social protection benefitting over 10.6 million people.<sup>383</sup> RAHA interventions promote communal approaches and also mobilize and empower communities.<sup>384</sup> In this regard, a

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<sup>376</sup> *Id.*

<sup>377</sup> *Id.* at 8.

<sup>378</sup> *Id.* at 18.

<sup>379</sup> Chief Commissionerate for Afghan, *supra* note 116.

<sup>380</sup> *Id.*

<sup>381</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 18.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.* at 24.

<sup>384</sup> *Id.*

total of 3,390 community organizations, 285 village organizations, and 24 local support organizations are now actively engaged in planning and implementing projects related to social services and infrastructure.<sup>385</sup>

RAHA interventions particularly focused on primary health, education, and capacity building of poor and vulnerable individuals through skill development in saleable trades.<sup>386</sup> In this perspective, an estimated 50 percent of the total targeted 4,935 individuals were trained and engaged in income-generating trades.<sup>387</sup> Primary health care services were provided to nearly 580,000 patients in Afghan refugee villages across the provinces of Khyber Pakhtunkhwa, Balochistan, and Punjab through Basic Health Units (BHUs).<sup>388</sup> Free primary education was provided to over 71,000 refugee children in 54 refugee villages in Pakistan.<sup>389</sup> Access to free primary education was ensured through 174 conventional schools, 4,848 satellite classrooms, and 13 early child education centers, with a total of 1,455 teachers.<sup>390</sup> In this regard, particular attention was given to girls' education by focusing on increasing girls' enrollment and retention.<sup>391</sup>

Being a host of 62 percent<sup>392</sup> of registered and thousands of undocumented Afghan refugees in Pakistan, a total of 38 RAHA projects worth approximately \$7.43 million were implemented in 2015 in the province of Khyber Pakhtunkhwa.<sup>393</sup> To implement RAHA interventions, approximately \$32.036 million was spent from 2009 to 2015 in the major hosting province of Khyber Pakhtunkhwa.<sup>394</sup>

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<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Id.* at 5.

<sup>393</sup> RAHA-UNHCR, *Khyber Pakhtunkhwa*, U.N. HIGH COMMISSIONER FOR REFUGEES 2 (Apr. 2016) (on file with author).

<sup>394</sup> *Id.*

Resettlement is an integral component of SSAR and one of the three durable solutions.<sup>395</sup> It is not only an appropriate protection tool for those Afghan refugees who are unable to return and unable to stay in principal hosting states, but also serves as an expression of solidarity on the part of international community.<sup>396</sup> Resettlement of Afghan refugees has remained a priority of the UNHCR in the implementation of SSAR and is considered as an important subject of the country-specific portfolios of Iran and Pakistan.<sup>397</sup> For the year 2015, 2,200 places were secured for resettlement from Pakistan, particularly to the United States of America, Canada, Australia, and New Zealand.<sup>398</sup> Compared to this target number, 1,242 cases of Afghan refugees were filed by the end of August 2015.<sup>399</sup> These cases included extremely vulnerable Afghan refugees, such as chronic medical conditions, survivors of violence and torture, and female-headed households, etc.

The required implementation budget of SSAR for 2015-2016 was one billion dollars.<sup>400</sup> The outcomes of SSAR were prioritized by allotting the required budget to each outcome. In this regard, SSAR allotted \$573 million for access to essential services and shelter, \$180 million for livelihood and food security, \$112 million for social and environmental protection and resettlement, \$162 million for voluntary repatriation, and \$21 million for capacity development.<sup>401</sup>

### 1. A Comparison of AMRS and SSAR

AMRS was more focused on management of Afghan refugees in Pakistan, while SSAR focuses on voluntary repatriation, reintegration in Afghanistan, and development of refugee-affected areas in Pakistan. However, the

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<sup>395</sup> *Supra* note 2 accompanying text.

<sup>396</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, *supra* note 172, at 30.

<sup>397</sup> *Id.* at 23.

<sup>398</sup> *Id.*

<sup>399</sup> *Id.*

<sup>400</sup> *Id.* at 2.

<sup>401</sup> *Id.*

effective implementation of these strategies will only be possible if the Afghan refugee issue becomes a priority case of all three concerned governments: Afghanistan, Iran, and Pakistan. The voluntary nature of repatriation remains at the heart of Pakistan's National Refugee Policy, reflecting a sense of realism among policymakers and an awareness that Afghanistan's poor law-and-order situation and shortage of livelihood opportunities remain very significant hurdles to repatriation and sustainable reintegration inside Afghanistan. To find solutions for the protracted displacement of Afghan refugees, progress cannot be achieved without the support of the international community. The support of SSAR and the implementation of the Enhanced Voluntary Return and Reintegration Package (EVRRP) will be decisive contributors to the sustainable reintegration in Afghanistan.

#### V. A WAY FORWARD

Presenting solutions for a protracted refugee situation has always been challenging. The back-and-forth movements of Afghan refugees between the country of origin and principal state of asylum, lack of legislation regarding refugees in Pakistan, and the ad hoc nature of various announcements and notifications by the policy makers in Pakistan made it a complex case to be resolved. This study attempted to classify suggestions in the mentioned categories in order to highlight the operating areas for the concerned governments, international political players, and humanitarian actors, including UN agencies.

##### *A. Recommendations for International Political Players*

**Political issues need political resolutions.** The primary root cause of the migration of Afghans was, initially, political instability—which was later accelerated by the USSR invasion, civil war, Talibanization, and the US-led

military intervention.<sup>402</sup> In this context, it is important for stakeholders to note that political stability and the establishment of the government's writ in Afghanistan is the only way to attract returnees. The role of humanitarian actors, including the UN agencies, is limited given their narrow scope, and is restricted to supporting the governments in the return and development process. Afghan refugees need international attention more than ever before, and the utmost priority should be given to the resolution of this protracted humanitarian crisis in any future political settlement regarding Afghanistan.

**Pakistan, India, China, and the United States should closely cooperate and contribute to the international strategy for stabilization in Afghanistan, including the fostering of Afghan-Pakistan amity.** Pakistan is not only a neighbor of Afghanistan sharing a very long border, but also has been hosting Afghan refugees since Russian invasion. The bond is stronger due to same tribes living on both sides of the border. The landlocked nature of geographical boundaries is making Pakistan the easiest route to trade with the international market for Afghanistan. The reality of the situation is making Afghanistan a very important determinant of Pakistan's foreign policy. Therefore, restoring peace in Afghanistan is of high importance for international power players like the United States and China, and regional players like Pakistan and Iran.

**The issue of Afghan refugees needs to be a priority issue for both governments irrespective of the political tensions between the two governments.** The major constraints in voluntary repatriation should not be addressed through responsibility shifting. In order to deal with the protracted case of Afghan refugees, it is imperative for the governments of Afghanistan and Pakistan to practice regular exchange of information, to encourage efforts, and to develop a sustainable, integrated approach among UN agencies, non-governmental organizations (NGOs), and concerned

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<sup>402</sup> *Working Paper, supra* note 147, at 1.

governments authorities (MoRR and Ministry of SAFRON) to implement a comprehensive solutions strategy.

**Pakistan needs an international push to end the protracted refugee situation.** The international community must redouble its efforts to support Afghan refugees and should express solidarity not only in resettling Afghan refugees but also to finance the RAHA interventions in order to support the hosting communities who have welcomed, hosted, and supported Afghan refugees for over 37 years in Pakistan.

*B. Recommendations for the Government of Afghanistan*

**The repatriation must be linked with the national development and favorable conditions in Afghanistan.** The returnees' concerns and qualms regarding sustainable reintegration should be allied with the National Priority Programs (NPP). It is essential to ensure the inclusion of SSAR's outcomes in NPP. Furthermore, the need for assessment of returnees in the host country would be decisive and favorable not only in terms of facilitating returnees through NPP interventions, but also to highlight the actual needs of returnees that could guide and drive the NPP. Despite the existence of an exit questionnaire in VRCs, information on the needs assessments of returnees are still deficient, containing loop holes in coordination mechanisms between the concerned quarters of the two countries.

**Security and economic concerns are the two most significant reasons for the continued exile of Afghan refugees.** Both of these concerns are entirely dependent upon political stability in Afghanistan. Recently, the complex transition has largely affected the willingness to return of Afghan refugees.<sup>403</sup> Most of the refugees decided to postpone their return and adopted wait-and-see policy in order to get a better picture of the impact of presidential elections.<sup>404</sup>

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<sup>403</sup> *Regional Overview: Solutions Strategy for Afghan Refugees*, supra note 172, at 11.

<sup>404</sup> *Id.*

**Corruption remains endemic in Afghanistan, which is a huge challenge in transforming foreign investments into pull factors for returnees.** The government of Afghanistan must root out corruption and incompetency in order to strengthen and streamline its institutions. There is a need for transformational shifts in relevant institutions in terms of strength and capacity to curb different forms of corruption hindering reintegration.

**Priority must be given to extremely vulnerable, poor, and less influential returnees in Afghanistan rather than powerful lobbies and their supporters.** Provisions and practices that discriminate against the most vulnerable and impoverished landless returnees should be curbed. Besides that, the UNHCR Afghanistan, MoRR, and DoRR should speedup registration, tracking, and mapping of returnees at places of origin in order to address and fulfill their needs for sustainable reintegration.

**Land disputes and land encroachment issues must be resolved in Afghanistan.** Land disputes are long-pending and complex issues faced by returnees in Afghanistan. However, the resolution of these issues needs commitment, strong coordination, and rule of law in Afghanistan. UNHCR Pakistan, along with CAR offices, can refer land-confiscated cases to MoRR, DoRR, and UNHCR Afghanistan. In this regard, UNHCR Pakistan and CAR, along with Implementing Partners (IPs), need to maintain information about proper records of land-dispute cases. These cases can be shared through an extensive sharing mechanism with the concerned organizations (working on legal assistance) through UNHCR Afghanistan with the collaboration of MoRR and DoRR.

**Lack of community acceptance, ethnicity issues, and lack of harmony still exist in Afghanistan.** The government of Afghanistan can address these issues with the fair and nondiscriminatory distribution of resources. Furthermore, the intertribal tolerance among different lingual and multiethnic groups could reach the highest level if fair and equal distribution of assistance to returnees is maintained by the humanitarian actors, including UN agencies.

**The issues of landlessness and urbanization need immense efforts in Afghanistan.** A transparent approach is required in terms of allotting plots in the Land Allocation Scheme (LAS) with the coordinated efforts of other humanitarian organizations, including UN agencies, in order to ensure fair distribution of land. In the future, the number of reintegration sites needs to be increased by UNHCR Afghanistan in the provinces where the returnees' arrivals are high. Besides that, the reintegration sites need to be fully equipped, at least with basic services, which not only address the needs of returnees but also plays a role in the discouragement of urbanization of returnees. In this regard, it is important to make available viable land schemes, sponsored by the government, in order to support comprehensive reintegration interventions with livelihood strategies to ensure sustainability in return. In addition, plots in the LAS should be distributed fairly and should not be associated with certain social groups such as teachers, doctors, parliamentarians, judges, etc.

**The three main needs of returnees in Afghanistan are access to shelter, land, and livelihood opportunities.** These needs are somehow the subject of international donors and humanitarian actors; however, they are dependent upon the security situation in Afghanistan, and provision of a secure environment is the utmost responsibility of the Government of Afghanistan and international political players. The Afghan government could only convince international donors to intervene in Afghanistan if it ensures access of beneficiaries to interventions by creating a secure and conducive environment.

*C. Recommendations for Humanitarian Actors*

**The UNHCR Afghanistan policy of intervening in high-return areas should be reviewed to include comparatively peaceful areas in order to also make those areas livable and attractive for returnees.** In this regard, significant efforts and investment are needed in the sectors of health and education by humanitarian organizations in rural areas. The attention of

humanitarian actors will not only create a pull factor, but will also reduce the urbanization trend among returnees, which is a huge challenge for the Afghan government in the current setup of rehabilitation.

**The investment in human development in Afghanistan requires joint efforts by humanitarian actors and concerned government authorities to create synergies.** Certainly, it is a challenging task for the Afghan government to invest in human development; however, a pull factor can be created through provision or creation of livelihood opportunities and humanitarian space in a country where every fifth citizen is a returnee.

**Afghanistan should be considered in a state of conflict, which still requires huge efforts in the humanitarian and development sectors.** The focus on the dilemma of Afghanistan should not be diverted to other newly aroused crises around the globe in terms of budget allocations.

**The Enhanced Voluntary Return and Reintegration Package (EVRRP) must be implemented.** This multipurpose cash grant has the capacity to create a compelling pull factor in Afghanistan for returnees, which will ultimately ensure the sustainability of reintegration. A step towards joint resource mobilization, led by Afghanistan with the support of Pakistan and UNHCR, for EVRRP shows the willingness of the parties. However, budget constraints and corruption would be huge hurdles in the implementation. The successful implementation of SSAR could only contribute to one of its main themes (repatriation) if the stakeholders ensure the voluntariness and sustainability in repatriation via implementation of EVRRP.

#### *D. Recommendations for the Government of Pakistan*

**The protracted nature of the Afghan case demands legislation in Pakistan.** The majority of Afghan refugees living in Pakistan are youth.<sup>405</sup> In this context, it is very essential to bring the Afghan refugees in to the national sphere and to consider them part of Pakistan's socioeconomic system.

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<sup>405</sup> *Id.* at 21.

Certainly, the emphasis on sustainable reintegration in Afghanistan and assistance to host communities in the current regional solution strategy (SSAR) is a constructive approach; however, none of the solution strategies can work if the needs of the second or even third generation refugees are not addressed, particularly in terms of local integration in the host country.

**Urban refugee management is a weak link in the overall refugee framework in Pakistan.** The lack of management is creating administrative, social, and legal issues not only for the government and humanitarian actors, but also for the genuine refugees overall. In the past, while formulating policies for refugees, the emphasis of the government and the UNHCR was extensively on the refugees residing in camps. Currently, almost 70 percent of the PoR cardholders are living outside the camps, mostly as urban refugees.<sup>406</sup> As a result, there is a visible disconnect between the Provincial Commissionerates and the refugees. Provincial Commissionerates are designed and trained for camp management in Pakistan.<sup>407</sup> There is no policy or any formal mechanism to effectively manage the out-of-camp or urban refugees.<sup>408</sup> Thus, in the absence of any clear policy and necessary outreach, urban refugees in Pakistan are facing countless dilemmas. This is purely an issue of management that needs to be addressed for the welfare of Afghan refugees. It is, therefore, important to have an Urban Refugee Policy, which will provide institutional guidelines for effective management of urban refugees. The Ministry of SAFRON along with the UNHCR, in this respect, should devise an urban refugee management policy in Pakistan.

**The undocumented or unregistered Afghan refugees are in a nowhere situation in both countries.** Only those Afghan returnees who have Voluntary Repatriation Forms (VRF) are entitled to receive the UNHCR and MoRR assistance in Afghanistan.<sup>409</sup> Similarly, the undocumented Afghan

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<sup>406</sup> *Working Paper*, *supra* note 147, at 3.

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

refugees in Pakistan are not the persons of concern of any humanitarian organization, including the UNHCR, and are the subject of the 1946 Foreigner's Act of Pakistan. It is therefore important to include such kinds of returnees in the National Priority Program (NPP), without discrimination, because otherwise they would be compelled to become recyclers in Pakistan. The government of Pakistan should grant visas or register the undocumented Afghans living in Pakistan. It is not only significant for security measures in Pakistan but will also capture a clear image of resources utilized by the overall Afghan population in Pakistan.

**The legal stay of Afghan refugees must be long-term in Pakistan.** The government of Pakistan is well aware of the complexity of the Afghan case, and in this regard, the short-term temporary legal stay will not only misuse the resources through issuance of new PoR cards but will also create impasses in the implementation of an in-practice regional solution strategy. The Government of Pakistan must allow Afghan refugees for a long-term temporary legal stay in Pakistan. A realistic deadline for repatriation should be linked with the absorptive capacity of Afghanistan with no compromise on the principles of voluntarism and gradualism.