

**Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report -
Universal Periodic Review:**

PAKISTAN

I. BACKGROUND INFORMATION

Pakistan is not a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, and it has not adopted any national refugee legislation. The Government has neither acceded to the *1954 Convention relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*.

Even though Pakistan is not a State party to the *1951 Refugee Convention*, it has generally respected international principles relating to refugee protection. After decades of the protracted refugee situation in Pakistan, the Government and UNHCR have embarked on adopting new approaches that would identify comprehensive durable solutions for Afghan refugees who have lived in a legal limbo for decades.

In March 2010, the Government approved the Management and Repatriation Strategy for Afghan Refugees in Pakistan (AMRS), to be implemented between 2010 and 2012. This paved the way for the extension and replacement of Proof of Registration (PoR) cards, for the issuance of birth certificates, and for the registration of individual members of registered families. The validity of PoR cards were extended until 31 December 2012. A recently established Inter-Ministerial Working Group is formulating a Road Map for implementation of the AMRS and any other strategies beyond 2012.

While the main priority of the Government in the AMRS is to increase voluntary repatriation, the strategy recognizes the specific needs of particular categories of refugees and considers the possibility of alternative stay solutions for students, businessmen or investors and skilled labourers, as well as naturalization for vulnerable single female heads of household. UNHCR will continue to support voluntary repatriation of Afghans in dignity and safety; however, the strategic use of resettlement, particularly for those who are unable to return to Afghanistan or to stay in Pakistan, will have to be enhanced.

Pakistan has hosted one of the world's largest refugee populations for more than 30 years. Presently some 1.7 million registered Afghans reside in Pakistan. The majority of the Afghan refugees come from five provinces in Afghanistan - Nangarhar, Kabul, Kunduz, Logar and Paktia. The majority of the population (63%) lives in urban and rural areas,

while 37% lives in refugee villages (RVs) in Khyber Pakhtunkhwa (69), Balochistan (10) and Punjab (1).

In 2011, 52,096 Afghan refugees (PoR card holders) returned voluntarily with UNHCR's assistance. Iris verification and deregistration at Voluntary Repatriation Centers ensured the integrity of the voluntary repatriation assistance programme. The voluntary return process was governed by a tripartite commission agreement between UNHCR and the Governments of Afghanistan and Pakistan. Since 2002, nearly 3.7 million Afghans from Pakistan have returned to Afghanistan through UNHCR's facilitated voluntary repatriation programme.

In 2012, the Office will provide assistance for increased repatriation due to expected pull factors in Afghanistan (e.g. enhanced reintegration and rehabilitation programmes, including employment opportunities, as a result of the International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries, to be held in Switzerland in May 2012). Push factors in Pakistan (e.g. economic challenges and current lack of predictability of stay beyond 2012 impeding free and informed decision-making on durable solutions by refugees) may also have an impact. The pace of return will largely depend on the security situation and progress in reintegration / development programmes in Afghanistan, as well as the economic, protection and security situation in Pakistan.

UNHCR uses resettlement as a protection and durable solution tool for the most vulnerable categories of Afghan and non-Afghan refugees (e.g. Somalis, Iranians, and Iraqis), who have limited prospects for integration and are more prone to protection risks in Pakistan. UNHCR also uses resettlement strategically as a responsibility-sharing mechanism for the protection of the most vulnerable refugees and for refugees with specific protection needs, as well as to enhance asylum space in Pakistan.

While many Afghans in Pakistan are integrated, to a certain extent, into local communities, the lack of a legal framework to guarantee their access to basic human rights prevents them from finding durable solutions in Pakistan. To generate a more comprehensive and accurate profile of the Afghan population that will assist in formulation of targeted and longer-term solutions for specified groups, UNHCR completed the Population Profiling Verification and Response (PPVR) exercise in December 2011, with a total of 130000 Afghan households (879,135 persons) taking part in the survey. The analysis of the PPVR data will help tailor responses to the various groups of Afghans, particularly populations highlighted in the AMRS. It also will address protection concerns at the individual and household level.

The main programme to address cohesion and the impact of Afghan refugee presence on host communities is the Refugee Affected and Hosting Areas (RAHA) initiative, which has gained pace in 2011. The RAHA initiative will continue to be part of the One UN programme, and will become an increasingly important part of the AMRS since it contributes to maintaining asylum space. RAHA interventions are expected to increase, not only in Khyber Pakhtunkhwa (KPK) and Balochistan, but also in the Federally Administered Tribal Areas (FATA), Punjab and Sindh. While some of the RAHA

activities will be reflected in UNDAF 2013-2017, it is expected that UNHCR will continue to play an important role in providing long-term strategic direction and resources until such initiatives are integrated into the annual plans of UN-mandated agencies and eventually into the Government's national strategies and plans.

There are currently some 146,000 families/677,000 internally displaced persons (IDPs) due to military operations against non-state actors in KPK and FATA regions. Since the beginning of the year fresh displacements have significantly increased the number of IDPs, while at the same time a steady return process to areas in FATA declared "safe" by the Government after the conclusion of the operation continues. UNHCR, in collaboration with other humanitarian partners, continues to support the Government's efforts to address the protection and other basic needs of both displaced communities as well as returnees, in line with the "IDP Return Framework" signed by the authorities in 2009 and 2010, and committing to the principles of voluntary, safe and dignified return. Pakistan also is prone to recurrent natural disasters. After the disastrous floods of 2010, the 2011 floods again affected about 5.2 million people in Sindh and Baluchistan Provinces, causing large-scale displacement, loss of life, damage to infrastructure and loss of livelihoods and creating situations of extreme vulnerability. As protection assessments demonstrated, access to assistance was problematic, particularly for persons with specific needs.

Under the humanitarian community's cluster approach, UNHCR's responsibility for IDPs is implemented using an inter-agency approach in support of the Government. Under the cluster approach, UNHCR is the lead agency and co-chair of three clusters that respond to conflict displacement: protection, emergency shelter and non-food items, and camp coordination and camp management (CCCM). For natural disasters, UNHCR is cluster lead on protection, and in Balochistan has cluster lead responsibilities for shelter in the emergency phase.

UNHCR continues to provide protection and limited assistance to non-Afghan refugees such as Somalis, Iraqis, Iranians and others (755 persons), and individually recognized Afghan refugees including persons not registered with GoP (2,361 persons at the end of 2011), and asylum-seekers. The majority of individually recognized refugees and asylum-seekers live in urban areas and face difficulties in integrating because of the absence of socio-legal frameworks that guarantee their protection as well as the lack of socio-economic and legal possibilities for integration. UNHCR will continue to explore durable solutions for these groups, including resettlement and limited assistance possibilities for the most vulnerable.

Even though no in-depth assessment has been undertaken in Pakistan on the scope and magnitude of statelessness in Pakistan, there are clear indications that there are persons with unclear citizenship status who may be of concern to UNHCR. Whereas the exact numbers have not been established, efforts are underway to analyze the situation and to seek possible solutions to the plight of stateless persons.

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes the Government's achievements in the following areas:

- 1. The Government's spirit and long tradition of granting asylum to millions of refugees for well over three decades.**
- 2. The approval of the AMRS for the years 2010-2012:** The strategy, which the cabinet approved on 24 March 2010, proposes alternative legal stay options for PoR card holders, while simultaneously supporting voluntary repatriation of Afghans to their home country. UNHCR stands ready to support the Government of Pakistan with full implementation of this strategy.
- 3. The Government's status as signatory to the *Convention on the Prevention and Punishment of the Crime of Genocide* (since 1957), the *Convention on the Rights of the Child* (since 1990), and the *Convention on the Elimination of All Forms of Discrimination against Women* (since 1996).**
- 4. The ratification of the *International Covenant on Economic, Social and Cultural Rights*; the *International Covenant on Civil and Political Rights*; the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; and the *Convention on the Rights of Persons with Disabilities*:** UNHCR applauds the Government's ratification of these treaties, which took place between 2008 and 2011. Likewise, UNHCR looks forward to the Government's consideration of accession to the *1951 Refugee Convention* and its *1967 Protocol*.
- 5. The enactment of the *Prevention of Anti-Women Practices Bill* and *Acid Control and Acid Crime Prevention Bill*.** In December 2011, the Senate unanimously passed the Acid Control and Acid Crime Prevention Bill 2010 and the Prevention of Anti-Women Practices (Criminal Law Amendment) Bill 2008. The Bill on Acid Control and Acid Crime recommends 14-year to lifetime imprisonment sentences and levies fines up to Rs1 million for the perpetrators of the crime. The Prevention of Anti-Women Practices Act 2011, demanding greater social protection for women, was passed after a stall of three years in various National Assembly committees and then the house itself.
- 6. The approval of the *National Commission for Human Rights Bill* by the Senate in March 2012.** For the bill to be turned into an act of Parliament, it also needs to be approved by the National Assembly.

The return of over 2.6 million IDPs from Malakand and other parts of the KPK and FATA in 2009-2011: UNHCR commends the fact that Pakistan has ensured return of these IDPs who were displaced due to military operations. Pakistan also ensured and rehabilitation of millions of people affected by the unprecedented floods in 2010. The Government of Pakistan, with the support of

the international community, also responded to the needs of about 5.2 million people affected by floods during 2011. The Government is also refining and working on its disaster management and response plans, to adequately prepare the possible response and mitigate the consequences of natural disasters becoming recurrent in the country.

III. CHALLENGES AND RECOMMENDATIONS

A. Refugees and Asylum-Seekers

Issue 1: Lack of appropriate legal framework to effectively protect persons in need of international protection in accordance with international standards

In the absence of a national legal framework for refugees in Pakistan, UNHCR conducts refugee status determination (RSD) under its mandate. Pakistan generally accepts UNHCR decisions on RSD and allows asylum-seekers as well as recognized refugees to remain in Pakistan pending identification of a durable solution.

UNHCR agrees with the view that Pakistan, “. . . despite not being a signatory of the *1951 Convention* ... had abided by all of its provisions. It now is working with UNHCR to look into the possibility of accession to this Convention.”¹ However, non-ratification of the Convention and the absence of a national legal refugee protection framework serve as a practical barrier to ensure refugee protection in Pakistan. The only legislation regulating the situation of non-citizens that exists at the moment is the Foreigners Act, 1947, which is of limited nature and contains no provisions relating to the protection of refugees, asylum-seekers or other persons of concern.

UNHCR endorses the recommendation by the Committee on the Elimination of Racial Discrimination (CERD) that Pakistan should “consider acceding to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* and enact a comprehensive legal framework governing the reception and treatment of refugees and related categories of persons.”²

Recommendations:

Pakistan should undertake the full implementation of the provisions of AMRS endorsed and approved by the Cabinet in March 2010, which offers innovative and potentially sustainable solutions for Afghan refugees. In addition to enhancing voluntary repatriation and reintegration, the strategy, *inter alia*, calls for alternative stay arrangements for POR card holders, including work permits, entrepreneur permits and student permits, as well

¹ Report of the Working Group on the Universal Periodic Review, Pakistan, A/HRC/8/42, at p. 5, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/141/27/PDF/G0814127.pdf?OpenElement>

² UN Committee on the Elimination of Racial Discrimination (CERD), *Consideration of reports submitted by States parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: concluding observations of the Committee on the Elimination of Racial Discrimination: Pakistan*, 16 March 2009, CERD/C/PAK/CO/20, para. 15, available at: <http://www.unhcr.org/refworld/docid/49d48e7f2.html>.

as naturalization for Afghan female heads of households. Furthermore, Pakistan should consider formalizing its traditional hospitality towards refugees and asylum-seekers by acceding to the *1951 Convention* and its *1967 Protocol* and by developing national legislation on refugee protection.

Issue 2: Access to healthcare, education and other services for Afghan refugees

Although Afghans have *de facto* access to most public services, including health facilities, there is a need to initiate steps to formally include Afghans in the national and provincial development plans for equal access to services. This is particularly important in the education sector to facilitate enrolment of Afghans in Pakistani education institutions.

UNHCR is providing community-based sectorial support within refugee villages, including primary education to approximately 70,400 students in over 173 schools, and health care through 54 Basic Health Units, and water and sanitation support. UNHCR has initiated Memoranda of Understanding with sister UN agencies (WHO, UNICEF, ILO, UNESCO, UN-HABITAT, UN WOMEN) in an effort to tap into the capacity of the whole UN system to mainstream traditional UNHCR humanitarian assistance in national development programmes.

Recommendations:

Consider inclusion of registered Afghans in national development plans, particularly in the health and education sectors, to allow access to services on par with nationals.

B. Internally Displaced Persons

Issue 3: Need for a full respect of principles and standards of IHL and IHRL and for a comprehensive IDP policy

The present pattern of displacement of Pakistani civilians, most notably from FATA, continues. The present displacement in KPK and FATA will endure as a result of Pakistan's continued military engagement with NSAG. With the support of the humanitarian community, the Government should ensure that the population is properly registered and receive basic assistance, with proper measures to ensure the inclusion of persons with specific needs, particularly women, children, elderly, minorities and persons with disabilities. These trends and increase in the size of the displaced population will be partially offset by the return of IDPs from camps and hosting communities to areas determined as "safe" by the Government with the conclusion of military operations. The Government's encouragement of the swift return of the IDPs, which remains the preferred solution, should be balanced with alternative options available to the displaced population in search of durable solutions, particularly in case of well-grounded protection concerns, in line with the 2009 and 2010 "IDP Return Framework" endorsed by the provincial authorities. The process should be voluntary and should involve the full participation of IDP Communities themselves.

Pakistan is a signatory to the Geneva Conventions I-IV, but has not signed the Additional Protocols (AP) and most notably the AP II relating to the Protection of Victims of Non-International Armed Conflicts. Particularly by virtue of its ratification of the four Geneva Conventions, the Government of Pakistan remains bound to respect Art. 3 on the protection of civilians in non-international armed conflicts.

In the context of natural disasters, the Government of Pakistan has twice faced an unprecedented scale of displacement and humanitarian needs. The response from the authorities has been forthcoming but a series of protection issues have emerged in both the 2010 and 2011 flooding. Some of these issues stemmed directly from the natural disaster situation, others revealed endemic patterns of violations and human rights concerns. These included difficulties in access to assistance and services by vulnerable individuals/groups (notably female headed households, child headed households, persons with disabilities, elderly); exclusion from assistance on discriminatory grounds (religious/ethnic minorities); politicisation of aid; child protection issues (family separation, early marriages, exploitative child labour, violence and abuse, cases of child trafficking); gender-based violence, including domestic violence, harassment and lack of privacy for women; lack or loss of civil documentation hindering access to assistance; land rights and security of tenure. The National Disaster Management Authority is in process of approving a "Framework for Action on Disaster Management", to mainstream the needs (and rights) of persons with specific needs in all phases of the natural disaster management cycle.

Recommendations:

The Government of Pakistan should continue its visible efforts to respond and fulfil the recommendation tabled in the 2008 Universal Periodical Review to adopt specific measures to safeguard the promotion and the protection of the human rights of IDPs.³ The Government should facilitate increased access to humanitarian organizations for activities and monitoring in areas of displacement and return; and in the context of humanitarian evacuations put in place mitigating measures and support persons with specific needs during and after the evacuation.

As a way to fulfil this recommendation and to address the humanitarian and protection needs of the displaced population, irrespective of the situation and the nature of displacement, the Government of Pakistan should consider the opportunity to start a nationally-owned dialogue leading to the enactment of a national IDP policy that is consistent with the UN Guiding Principles on Internal Displacement, the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, and other commitments made by the Government of Pakistan.⁴ In cooperation with other protection

³ Report of the Working Group on the Universal Periodic Review – Pakistan, A/HRC/8/42

⁴ UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement*, 11 February 1998, E/CN.4/1998/53/Add.2, available at: <http://www.unhcr.org/refworld/docid/3d4f95e1.html>. See also UN Human Rights Council, *UN Human Rights Council: Addendum to the Report of the Representative of the Secretary-General on Human Rights of Internally Displaced Persons, Operational Guidelines on Human Rights and Natural Disasters*, 23

agencies and with the Special Rapporteur on the Human Rights of IDPs, UNHCR stands ready to support the Government of Pakistan in this endeavour.

The Government should also be encouraged to adopt the above-mentioned Framework for Action on Disaster Management.

The Government should take specific measures to provide protection and assistance to vulnerable groups including to children who are affected by conflicts, in line with the 2009 recommendations of the Committee on the Rights of the Child.⁵ The Government of Pakistan should also continue to work to ensure equitable and non-discriminatory access to assistance and protective services during natural disasters, particularly for populations with specific needs such as women, children, the elderly, persons living with disabilities and minorities. It should also continue to reinforce its institutional mechanisms in child protection, gender based violence, land, housing and property, minority rights to effectively address protection concerns that situations of natural disasters contribute to exacerbate. Central and provincial authorities should also facilitate access to registration and documentation by IDPs particularly vulnerable groups.

C. Statelessness

Issue 4: Assessment of the scope of statelessness in Pakistan and accession to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness

Pakistan is not a State party to the *1954 Convention relating to the Status of Stateless Persons*, or to the *1961 Convention on the Reduction of Statelessness*. As set forth below, accession to these Conventions is recommended as an important step to prevent and respond to statelessness.

According to the Pakistan Citizenship Act 1951, citizenship is acquired on the basis of birth on territory (*jus soli*) as well as descent (*jus sanguinis*). The Act also offers citizenship by naturalisation and marriage, while citizenship by migration has been acknowledged for those persons who came to Pakistan for permanent settlement as a consequence of the creation of Pakistan in 1947. The Citizenship Act has no safeguards against statelessness for foundlings (abandoned children), which may result in statelessness.

The Act also defines ‘certain persons to lose and others to retain citizenship’ under Section 16-A – which sets out the conditions for being considered a Pakistani citizen at the time of the separation of East and West Pakistan in 1971. It is nevertheless believed that a number of Biharis and Bengalis have not acquired Pakistani Citizenship due to a range of political and social reasons.

January 2006, A/HRC/4/38/Add.1, available at: <http://www.unhcr.org/refworld/docid/461e43ba2.html> [accessed 19 April 2012]

⁵ Concluding Observations: Pakistan, CRC/PAK/Co-3-4.



UNHCR

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While the GoP considers Bengalis, Biharis and Burmese as illegal immigrants and aliens, these population groups consider themselves as citizens of Pakistan. The governments of Bangladesh and Myanmar do not consider these groups as their nationals. Such individuals are neither handed over to law enforcement agencies for penal action or deportation, nor referred to the National Aliens Registration Authority (NARA) for registration.

Statelessness has not been properly mapped in Pakistan and there are no procedures in place for determining whether a person is stateless. The issue is not a priority for the GoP and other actors, and is sensitive due to its political dimensions.

Recommendations:

The Government of Pakistan, with the support of UNHCR, should consider undertaking an assessment of the scope of statelessness in the country, examine national legal and administrative frameworks and consider acceding to the 1954 Convention and the 1961 Convention.

Accession to the 1954 Convention would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met. Furthermore, the 1961 Convention establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth. Therefore, this treaty is complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

UNHCR will work with research institutes, government entities and humanitarian agencies in addressing issues of statelessness. This will include filling research gaps on stateless populations and advocating for an independent evaluation of the numbers and situation of stateless persons in Pakistan. UNHCR will equally collaborate with the GoP, including the Ministry of Law and Justice, to improve the Citizenship Act in accordance with international standards for the prevention and reduction of statelessness.

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