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## IMPACT OF IHL ON THE AFGHAN REFUGEE CRISIS

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### ABSTRACT

An estimated 24 million Afghans require humanitarian aid after more than 40 years of conflict and unrest in their country. One of the largest long-term refugee crises in the world, more than 6 million Afghans were forcibly uprooted from their homes by the end of 2021. Of those, 3.5 million were relocated within Afghanistan and 2.6 million were hosted as refugees. **More than 40 years of war, natural disasters, persistent poverty, food insecurity, the COVID-19 pandemic, and most recently a change in the composition of the government have all caused suffering for Afghans.** The events leading up to the Taliban's occupation of Kabul in August 2021 worsened the country's instability and violence, displacing more people and creating even more suffering. Today, conflict, bloodshed, and poverty have forced more than 6 million Afghans from their homes or their nation. Afghans' and their host communities' capacity for resilience is being tested to the breaking point as the humanitarian catastrophe persists. *However, being a signatory to the 1951 Convention Relating to the Status of Refugees (1951 Refugee Convention) and the Geneva Convention, Afghanistan was guided by a legal framework to ensure protection of its refugees. This paper talks about the role of International humanitarian law (IHL) and its applicability w.r.t. the refugee crisis in Afghanistan.*

**Key Words:** *Afghans, humanitarian aid, refugee crisis, Covid-19, Taliban, IHL, Convention on the Status of Refugees, Geneva Convention*

### INTRODUCTION

International humanitarian law (IHL) provides a framework for addressing the needs and protecting the rights of refugees during times of conflict and violence. Refugees are defined as people who have fled their country of origin due to a well-founded fear of persecution on the basis of race, religion, nationality, political opinion, or membership in a particular social group. **This definition is outlined in the 1951 Convention relating to the Status of**

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*Refugees*, which is one of the most important legal instruments governing the rights and protections of refugees under IHL.<sup>2</sup> The Convention establishes legal obligations for states to provide refugees with protection, assistance, and other necessary support, including the right to seek asylum. Under the Convention, states are obligated to protect refugees from being returned to a country where they would be at risk of persecution or harm. **This principle is known as non-refoulement and is considered a cornerstone of refugee protection under IHL.** The Convention also establishes the right of refugees to work, education, and freedom of movement. In addition to the Convention relating to the Status of Refugees, refugees are protected under the *Geneva Conventions of 1949 and their Additional Protocols*. These legal instruments establish protections for civilians, including refugees, during armed conflicts. The Conventions prohibit violence and discrimination against civilians and require parties to a conflict to take measures to protect civilians and their basic needs. The Additional Protocols strengthen these protections by prohibiting attacks on civilian populations, as well as acts of violence against refugees, such as forced displacement or deportation. *Other legal instruments that protect refugees include the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.* These instruments establish the right to seek asylum and the right to be protected from discrimination and violence. In addition, the Convention on the Rights of the Child, which was adopted in 1989, specifically protects refugee children and requires states to provide them with protection, assistance, and necessary support. The legal protections established under IHL are critical for addressing the needs and protecting the rights of refugees during times of conflict and violence. These protections provide refugees with legal recourse and ensure that states and other actors are held accountable for upholding their obligations to protect refugees. By upholding these obligations, states and other actors can help ensure that refugees receive the protection, assistance, and support they need to survive and rebuild their lives. *These principles were put to the test when the Taliban invaded Afghanistan in 2021 and thereby caused the refugee crisis.*

## **ANALYSIS**

### **THE AFGHAN REFUGEE CRISIS**

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<sup>2</sup> “International Refugee Law and Human Rights : A Study of the Status of Refugees in Northeast India ” (iPleaders)  
<<https://blog.ipleaders.in/international-refugee-law-human-rights-study-status-refugees-northeast-india/>>  
accessed March 20, 2023.

After Syrian refugees and Venezuelan refugees, Afghan refugees are the third-largest number of internally displaced people in the world. Pakistan and Iran continue to house more than 1.3 million and 780,000 registered Afghan refugees, respectively, and are home to the great majority of Afghan refugees. The UNHCR's mandate continues to include Afghan refugees as one of the largest and longest-lasting displacement situations. The displacement crisis in Afghanistan is one of the biggest and longest in UNHCR's seven-decade history. According to UN High Commissioner for Refugees *Filippo Grandi*, there is already a third generation of Afghan children born in exile. Millions of people in Afghanistan are on the verge of starvation due to four decades of conflict and instability. Due to malnutrition, the country's economic collapse, the climate disaster, a lack of development help, and bitterly cold winters, at least 24 million Afghans need humanitarian aid.<sup>3</sup> The conflict has had a particularly severe effect on women and children; 80 percent of Afghans who have recently been displaced are female and juvenile. The fundamental rights of women and girls are under jeopardy, and a large number of kids are not attending school<sup>4</sup>. More than half of Afghanistan's population, or close to 23 million people, experience severe hunger. Afghanistan has seen several natural calamities including droughts and earthquakes in addition to the continuous conflict. Afghanistan experienced its greatest earthquake in twenty years in June 2022, which resulted in at least 1,000 fatalities and numerous injuries. *The long-running conflict, significant levels of displacement, the effects of COVID-19, natural calamities, and increasing poverty have all put a strain on the Afghan populace.* Furthermore, the Taliban's brutal policies that specifically target and deny Afghans their most basic human rights serve to exacerbate these tragedies. Afghanistan is currently the only nation in the world where women are not allowed to work or attend school. As a result, the nation is basically doomed to a persistent humanitarian crises and poverty that feeds violence. And this aggravating vicious circle of human rights abuses, conflict, poverty, and decreasing resources is what fuels Afghans' constant internal displacement patterns and exodus from their country in quest of safety elsewhere. As a result, over 4.3 million Afghans have so far been internally displaced. *The Taliban and their regional and international terrorist allies jointly carried out devastating offensives and attacks throughout 2021 before the fall of Kabul, dispersing the biggest number of internally displaced people in the world, which includes nearly one million*

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<sup>3</sup> *Susanne Schmeidl*, "(Human) Security Dilemmas: Long-Term Implications of the Afghan Refugee Crisis" (2002) 23 *Third World Quarterly* 7.

<sup>4</sup> *Rory Stewart*, *The Afghan Refugee Crisis: How to Resurrect the Global Refugee Resettlement Coalition* (Atlantic Council 2022).

*Afghans. In addition, 2.7 million Afghans have been forcibly expelled from their country and are now refugees in 98 different nations.*

## **ROLE OF IHL IN THE CRISIS**

### **POSITIVE IMPACT**

As a signatory to the Geneva Convention, Afghanistan was required to uphold the principles of IHL and protect civilians, including refugees, during times of conflict and violence. During the conflict in Afghanistan, the Geneva Convention provided a legal framework for protecting the rights of refugees and other displaced persons. The Convention prohibited violence and discrimination against civilians and required parties to the conflict to take measures to protect civilians and their basic needs. The *International Committee of the Red Cross (ICRC)*<sup>5</sup> played a crucial role in providing assistance to Afghan refugees during the crisis. The ICRC, as a neutral and impartial humanitarian organization, worked to provide protection, assistance, and support to refugees in Afghanistan and neighboring countries. This included providing food, shelter, healthcare, and other basic needs to refugees in camps and other settlements<sup>6</sup>. In addition, the *United Nations High Commissioner for Refugees (UNHCR)* provided assistance to Afghan refugees and worked to promote the protection and rights of refugees in Afghanistan and neighboring countries<sup>7</sup>. It helped to provide protection and assistance to refugees in camps and settlements, as well as to those who were living in urban areas and other informal settlements. The most vulnerable Afghans in Afghanistan and its neighboring countries were provided emergency shelter, food, health, water, and sanitation support, financial aid, and psycho-social support. **In 2021, lifesaving assistance was given to approximately 916,000 people through emergency programming, including the supply of tents, money, hygiene kits, and other necessary supplies** After it was established that an Afghan refugee's return was voluntary and long-lasting, it arranged the voluntary repatriation of Afghan refugees from Iran, Pakistan, and other nations. Almost **5.3 million refugees** were sent back to Afghanistan and 790,000 Afghans who had been internally displaced and 1,400 refugees returned home in 2021. In addition to receiving basic health

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<sup>5</sup> "Humanitarian Law, Human Rights and Refugee Law – Three Pillars" (*International Committee of the Red Cross*) <<https://www.icrc.org/en/doc/resources/documents/statement/6t7g86.htm>> accessed March 20, 2023.

<sup>6</sup> Jennifer Venis, "Protecting Afghanistan's Refugees" (*International Bar Association*) <<https://www.ibanet.org/Protecting-Afghanistans-refugees>> accessed March 20, 2023.

<sup>7</sup> "The Afghan Refugee Crisis: Implications for Regional States and the European Union" (*Crossfire KM*, November 26, 2021) <<https://www.crossfirekm.org/articles/the-afghan-refugee-crisis-implications-for-regional-states-and-the-european-union>>.

services including malnutrition screening and vaccines, mine risk education, information on enrolling in school, and overnight travel assistance, Afghan returnees received monetary handouts to aid with their urgent needs.

## NEGATIVE IMPACT

However, this was the overall extent to which the Afghans received aid. Under the terms of the 1951 Convention Pertaining to the Status of Refugees and its accompanying protocols, any Afghan requesting asylum in nations that are signatories to the Convention should have been immediately granted refugee status in accordance with this law.<sup>8</sup> Afghan refugees should also have received proper resettlement assistance that could aid in their integration into their host society.<sup>9</sup> *Regrettably, refugees were frequently denied asylum in the first, second, and even third countries<sup>10</sup> of asylum when Afghans departed the nation due to well-founded concerns about widespread persecution, torture, and extrajudicial killings committed by the Taliban and their terrorist organizations.* They were made to go through laborious national immigration procedures, yet those who succeeded after waiting for months or even years without any form of status were frequently denied the kind of fundamental social protection services that are required to be provided to any person who meets the criteria for refugee status under the Convention<sup>11</sup>. Families with small children who were Afghan refugees were especially affected by this scenario, which delayed their assimilation and prevented them from moving up the social ladder in their new place of residence. When this occurred, refugees were viewed unfairly and discriminatorily as being illiterate, lazy, and reliant on welfare programmes. As a result, local politicians frequently opposed and politicized immigration policies that were compliant with their nations' obligations under the 1951 Refugee Convention as well as the provisions of international human rights and humanitarian law. *Afghanistan fell to the Taliban just weeks after the 70th anniversary of the 1951 Refugee Convention, the only global legally binding agreement for the international protection of refugees.* But at the point of the 70th anniversary, the Convention and the wider regime faltered in the face of challenges that were not predicted in the 1950s, such as protracted conflicts and environmental migration due to climate breakdown, as well as a shift

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<sup>8</sup> Maja Janmyr, "The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda" (2021) 33 *International Journal of Refugee Law*.

<sup>9</sup> Vinny Davis, "Dealing with the Afghan Refugee Crisis" (Centre for Public Policy Research (CPPR)) <<https://www.cppr.in/articles/dealing-with-the-afghan-refugee-crisis>> accessed March 20, 2023.

<sup>10</sup> Harshit Raj, "Constitutional Provision Regarding Refugee Law in India" 4 *IJLMH* 261.

<sup>11</sup> M Rafiqul Islam and Jahid Hossain Bhuiyan (eds), *An Introduction to International Refugee Law* (2013).

in global politics<sup>12</sup>. In 2020, the number of forcibly displaced people reached a record high of 82.4 million, 26.4 million of whom were refugees entitled to the Convention's protection, according to the UNHCR. Yet, the rights of refugees and asylum seekers were being chiselled away by states seeking to dodge obligations. As the **UNHCR** outlines, states party to the Convention are obliged to guarantee refugees to human, economic and social rights at least to the same level as other foreign nationals. Under the Convention, they cannot return refugees to countries where they may face persecution. Yet, in 2021, many countries offered only limited support for refugees to access those rights and integrate into the host society, providing instead only temporary protection. Refugees and asylum seekers alike were housed in unsafe accommodation, left languishing in camps for years or detention centres for months, if not indefinitely. Regrettably, many Afghan refugees including in **Iran, Pakistan, Uzbekistan, Tajikistan, Malaysia and Turkey, USA**<sup>13</sup> still do not enjoy their rights under international law. They continue to face brutality, violence, ill-treatment and pushbacks. They face discrimination and struggle to access basic services, education, work, identity and travel documents. **In the worst cases, they face arbitrary detentions, penalties and forced deportation.**

### **RECOMMENDATIONS**

In the face of the Afghan crisis and the faltering conduct of countries to adhere to Refugee law<sup>14</sup>, urgent redressal needs to be undertaken. In compliance with the IHL and Refugee law, all necessary measures to ensure the safe passage out of Afghanistan for all those targeted by the Taliban and other parties should be taken. **This includes ensuring that border crossings remain open, visas are expedited, support for evacuations is delivered, and relocation and resettlement support is provided.** States should immediately end forcible return of Afghan refugees and heed the call of the United Nations High Commissioner for Refugees (UNHCR) to suspend the forced return of nationals and former habitual residents, including

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<sup>12</sup> "70 Years on, the Refugee Convention Still Struggles to Gain Traction in the Asia-Pacific" (*The Diplomat*) <<https://thediplomat.com/2021/07/70-years-on-the-refugee-convention-still-struggles-to-gain-traction-in-the-asi-a-pacific/>> accessed March 20, 2023.

<sup>13</sup> "How Does the U.S. Refugee System Work?" (*Council on Foreign Relations*) <<https://www.cfr.org/backgrounder/how-does-us-refugee-system-work-trump-biden-afghanistan>> accessed March 20, 2023.

<sup>14</sup> Susan Musarat-Akram, "The World Refugee Regime in Crisis: A Failure to Fulfil the Burden-Sharing and Humanitarian Requirements of the 1951 Refugee Convention" (1999) 93 Proceedings of the Annual Meeting (American Society of International Law) 213.

anyone whose asylum claims have been rejected, until the situation in the country has stabilized sufficiently as determined by an independent human rights assessment, and the security, rule of law and human rights situation in Afghanistan has significantly improved to permit returns in safety and dignity. They should allow all Afghan seekers to access a clear, transparent and functioning asylum system, lodge a claim for international protection and apply for resettlement. They should provide individuals at particular risk including **human rights defenders, journalists, women leaders and activists, and LGBTQ+ persons**, immediate practical support at all levels, including through diplomatic and political channels, with specific and enhanced protection measures for women human rights defenders and women journalists.

### CONCLUSION

Humanitarian support has been given to Afghan refugees and asylum seekers by various host nations over the past 40 years. However, to avoid forcible deporting Afghan refugees and asylum seekers, countries hosting sizable populations of Afghan refugees and asylum seekers should uphold the principle of **non-refoulement**, which is anchored in both international and Islamic law. In the USA, Since August 2021, 80,000 Afghans applied for *Special Immigrant Visas(SIVs)*. Yet, only 10,096 of these were accepted. Individuals who entered the country on humanitarian parole run the possibility of being denied access to employment, healthcare, and their right to live in the country once their two-year humanitarian parole period has passed. The country of USA owes support and aid to Afghans and their families who put their lives in danger while collaborating with the American military and civilian institutions during their 20-year deployment to the nation. *This support shouldn't be withheld in a country of immigrants where the "American dream" was promised to Afghans, inspiring them to risk their lives to support U.S. military and civilian programmes throughout Afghanistan despite constant threats of violence from the Taliban, al-Qaeda, ISKP, and other organizations that continued to undermine international security and destabilize Afghanistan.* In fact such assistance would pay tribute to the 2,448 American service members who lost their lives while serving with the Afghan SIV candidates between August of 2001 and 2021. The tragedy of losing their lovely country to the archaic forces of terrorism and extremism is no less bearable for Afghans. There is an urgent need for easing the immigration procedures to countries such as the USA, especially when it has been the cause for the Taliban to invade Afghanistan and cause incessant suffering and trouble to the Afghan populace. To resolve the



refugee crisis, the principles of IHL in terms of refugee law should be followed in totality, especially the principle of non-refoulement. UNHCR has the responsibility to uphold the principle, and prevent forced displacements of Afghan nationals until the country is determined by it to be able to provide a safe and dignified life to its citizens. The 1951 Refugee Convention guarantees refugees the freedom to work, education and dignity. However, these principles only remain active in name when countries such as the USA provide undignified treatment to these refugees and they do not get basic human rights in these so-called developed nations. Theoretically, there are more than enough conventions and agreements under IHL to guarantee rights of Afghan refugees. However, the degree of rights and protection which they actually receive in these countries remains a question mark.