



UNIVERSAL PERIODIC REVIEW AND PROTECTION OF REFUGEES: A CASE STUDY OF PAKISTAN

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Abstract

The Universal Periodic Review (UPR), introduced by the UN Human Rights Council in 2006, serves as a peer-review mechanism to assess the human rights records of all Member States. Pakistan has gone through four cycles of UPR. Using these reviews as a case study, this article assesses the UPR mechanism’s engagement with the protection of refugees in Pakistan. It analyzes reports, state responses, and recommendations. The article also explores the role of Pakistan’s judiciary in refugee protection and the implications of select case law. It concludes by proposing legal and institutional reforms to align Pakistan’s refugee framework with international standards.

**Keywords:** Afghan refugees, Pakistan, international law, human rights, repatriation, securitization, UNHCR, legal frameworks.

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## INTRODUCTION

Pakistan's handling of refugees, particularly Afghan refugees, has been an ongoing and multifaceted issue. Since 1979, Pakistan has been one of the largest hosts of refugees globally, primarily due to the ongoing conflict in Afghanistan. The country's role in providing refuge to millions of displaced persons has been lauded internationally. However, the lack of a clear legal framework for refugees, coupled with challenges in integration, access to services, and protection against exploitation, has continued to be a source of concern in Universal Periodic Review (UPR) of Pakistan in all four cycles. This study focuses on rights and protection of refugees, discusses key findings from all cycles of UPR in relation to Pakistan, analyzing state's responses and highlighting areas of progress and persistent gaps in refugee protection.

There is sufficient literature available on Afghan Refugee in Pakistan. However, the issue has not been explored in context of UPR. Scholars such as Arjumand Bano Kazmi (Kazmi, 2024), Raja Irfan Azam (Azam, 2021) and Muhammad Zubair, Muhammad Aqeel Khan, and Muzamil Shah (Zubair et al., 2019) discussed several legal and policy challenges, including the lack of empirical studies on the socio-economic impact of refugee exclusion, the absence of regional collaboration mechanisms under frameworks such as the South Asian Association for Regional Cooperation (SAARC), the judiciary's uneven involvement in protecting refugee rights, etc. However, they did not focus on UPR mechanism in context of refugees. This study seeks to address this gap.

This Article is divided into five parts. The first part contains introduction while the second part discusses the UPR mechanism and review of Pakistan's progress in last four UPR cycles focusing on rights and protection of refugees. The third part analyses domestic legal framework on refugee. Next, the role of Pakistan's judiciary in protecting rights of refugees will be explained. Lastly, this article offers some recommendations to align Pakistan's refugee framework with international standards.

## UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review (UPR) is a peer-review mechanism established by the United Nations Human Rights Council in 2006 under General Assembly Resolution 60/251 (General Assembly, 2006). It reviews the human rights performance of all UN Member States on a regular basis. The UPR promotes accountability by assessing how States fulfill their human rights obligations and commitments.

The process is a peer-review, state-led, cooperative, and based on dialogue. It draws on objective and reliable information from multiple sources, including national reports, UN compilation, and stakeholders' submissions. Resolution 5/1, known as the Institution-Building Package, outlines the modalities of the review (HRC, 2007).

The UPR evaluates each State against a set of universal norms. These include the UN Charter, the Universal Declaration of Human Rights, human rights treaties to which the State is party, and voluntary pledges made by the State. Where relevant, it also considers international humanitarian law.

Every Member State undergoes review approximately once every four and a half years. The cycle begins with national consultations and ends with the implementation of recommendations. The process aims to treat all States equally while encouraging constructive engagement and capacity-building.

This article examines Pakistan's first to fourth UPR cycles, conducted in 2008, 2012, 2017 and 2023 respectively (Universal Periodic Review - Pakistan, n.d.). It uses case of refugees in Pakistan to explore how the mechanism addresses their rights and protection.

It also analyses recommendations and responses on issues pertaining to refugees in Pakistan and offers invaluable insights.

## **FIRST CYCLE OF UPR**

In the national report, Pakistan stated that it has been hosting over 3.5 million Afghan refugees for almost three decades and continues to host over 2.1 million Afghan refugees (Government of Pakistan, 2008, p. 22). The Registration of the refugees was carried out under a Tripartite Cooperation Agreement, which was signed by and between the Government of Pakistan, the Government of Afghanistan and the United Nations High Commissioner for Refugees (UNHCR) in 1993. It acknowledged that Pakistan has not ratified the 1951 Refugee Convention however it applies this convention in practice in dealing with refugee matters. Pakistan emphasized that Afghan refugees return to their homeland on voluntary basis “with dignity”.

It also stated that Pakistan is considering several amendments to strengthen existing legal discourse on refugees. These amendments would incorporate a definition of refugees in Pakistani law for the first time and would exempt asylum seekers from the punitive provisions of the Foreigners Act.

Pakistan informed that the Lawyers for Human Rights and Legal Aid (LHRLA), in collaboration with UNHCR, had established the Advice and Legal Aid Centre, catering to the legal needs of Afghan refugees in Karachi. The centre imparted legal assistance to refugees and asylum seekers and investigated cases of refugees charged with civil or criminal offences to ensure that their substantive and procedural rights were not violated. For this purpose, UNHCR has also trained Pakistani law enforcement officials.

It was further stated that there is no domestic legal framework system that assesses applications to grant refugee status, therefore these cases are processed by UNHCR. Pakistan accepts UNHCR's decision with regard to grant of refugee status and allowed asylum seekers who were still undergoing the procedure in accordance with the 1993 Cooperation Agreement between the Government of Pakistan and UNHCR.

On the other hand, UN compilation informed the UPR mechanism that Pakistan is not party to the 1951 Refugee Convention and its 1967 Protocol (OHCHR, 2008). Its legal framework for protection of refugees and asylum seekers is weak required reforms. It maintained that Afghan refugees are at heightened risk of forcefully repatriation and suggested that in presence of cooperation agreement, Afghan Refugees need not to expel, return (“refouler”), extradite or in any other way transfer to their State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. UNHCR explained that that diplomatic assurances for humane treatment of refugees do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.

## **THE SECOND UPR CYCLE**

In its second national report 2012, Pakistan stated that it has hosted one of the world's largest refugee populations for over 30 years, with 1.7 million registered Afghan refugees under UNHCR, adding 83,000 births annually (Government of Pakistan, 2012). Despite not being a party to the 1951 Refugee Convention, Pakistan follows international refugee protection principles under its 2010 Afghan Refugees Management and Repatriation Strategy (AMRS). The country continues to host refugees humanely despite reduced international assistance, social and economic pressures, and security challenges. Pakistan emphasizes the dignified return of Afghan refugees to contribute to Afghanistan's reconstruction.

However, the UN Compilation Report noted gaps, such as Pakistan's failure to ratify the Refugee Convention, Afghan refugees and Internally Displaced Persons (IDPs) faced hardships, while counter-terrorism efforts raised human rights concerns.(OHCHR, 2012, p. 13)

## **THE THIRD UPR CYCLE**

In its third national report in 2017, Pakistan stated that the country continued to host one of the world's largest refugee populations, with 1.7 million registered Afghan refugees, despite not being a party to the 1951 Refugee Convention. Pakistan emphasized its humanitarian approach under AMRS while advocating for dignified repatriation.(Government of Pakistan, 2017)

In third cycle, the UPR mechanism raised concerns about the safety and dignity of repatriating refugees, particularly given the ongoing instability in Afghanistan. While voluntary repatriation may be a preferable option for some refugees, many refugees are reluctant or unable to return due to security risks and lack of opportunities in Afghanistan. Therefore, Pakistan's emphasis on repatriation, without providing long-term solutions for integration, further exacerbates the precarious situation of refugees in Pakistan. As long as the security situation in Afghanistan remains fragile, long-term integration and legal protection of refugees in Pakistan are necessary to prevent further social, economic, as well as human rights concerns.(OHCHR, 2017)

## **THE FOURTH UPR CYCLE**

In the fourth UPR cycle in 2023, Pakistan continued to lack national legal framework for rights and protection of refugees aligned with international standards, though it continued to host millions of Afghan refugees. (Government of Pakistan, 2022)

Throughout these UPR cycles, UNHCR consistently recommended that Pakistan should ratify the 1951 Refugees Convention and create formal national refugee laws to ensure protection and secure rights for refugees. Despite these consistent calls for reform, Pakistan's reluctance to ratify international conventions casts doubts on its commitment respect, protect and promote rights of refugees. Without such a framework, refugees remain vulnerable to arbitrary detention, deportation, and harassment, particularly those who lack proper documentation.(OHCHR, 2022)

## **PAKISTAN'S LEGAL FRAMEWORK ON REFUGEES**

Pakistan is not a party to the 1951 Refugee Convention and 1967 Protocol. The legal status of all refugees in Pakistan is largely governed by the Foreigners Act 1946, and The Foreigners Order, 1951 which relate to the entry and residence of foreign aliens or non-citizens.(Kazmi, 2024, pp. 400-403) These instruments are outdated and punitive. The Foreigners Act, 1946, classifies refugees as 'illegal migrants', subjecting them to arrest and deportation. The Foreigners Order, 1951, restricts movement and residency, requiring refugees to obtain permits for travel or employment. The Pakistan Citizenship Act, 1951, denies birthright citizenship (jus soli) to children of Afghan refugees, creating statelessness.

Pakistan, while not a signatory to the 1951 Refugees Convention and the 1967 Protocols, is still subject to the rules of customary international law, especially on non-refoulement. Pakistan has legal responsibilities towards Afghan refugees under the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all Forms of Discrimination against

Women (CEDAW), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). (Zubair et al., 2019, pp. 18–22)

## JUDICIAL INTERVENTIONS

Judicial interventions have been sporadic and inconsistent. In *Ghulam Sanai v. The Assistant Director, National Registration Office* case, the Peshawar High Court decided that merely having lived in Pakistan for a long time or owning property does not grant citizenship. Afghan refugees, governed by the Foreigners Act, 1946 are not eligible for citizenship under the Citizenship Act, 1951. (*Ghulam Sanai v. The Assistant Director, National Registration Office*, 1998)

Likewise, in *Saeed Abdi Mahmud v. NADRA* case, the Islamabad High Court discussed the mechanisms of acquiring citizenship and noted that while countries like UK and US grant citizenship regardless of parental status, refugees from Afghanistan are an exception, as they are bound by particular limitations. The court emphasized that refugees, governed by the 1951 Refugee Convention, are not entitled to citizenship but are entitled to socio-economic rights. The court directed the petitioner to approach the Interior Ministry, as the executive has the final say on citizenship matters. This judgment had implications for Afghan refugees, highlighting ambiguities in their status and Pakistan's failure to align domestic law with the Refugee Convention, 1951. (*Saeed Abdi Mahmud vs. NADRA*, 2022)

However, in another judgment, the Islamabad High Court ruled in favor of an Afghan woman, *Rahil Azizi*, who fled Afghanistan in 2021 due to Taliban persecution. Azizi entered Pakistan without a visa and sought international protection. She was detained and subjected to deportation proceedings. The High Court quashed the First Information Report and set aside the decisions of the subordinate courts denying her acquittal. It affirmed her refugee status as recognized by UNHCR. The judgment also acknowledged the absence of a domestic asylum framework in Pakistan. The court emphasized Pakistan's obligations under international law, particularly the principles of non-refoulement in the ICCPR and CAT, and the lack of a statutory asylum system. It directed the government to create procedures for refugees to register upon arrival, ensuring they are not detained unnecessarily. The judgment also emphasized how the UNHCR and the state play complementary responsibilities in refugee protection. Azizi's case is noteworthy because it positively addresses international refugee law and has ramifications for enhancing Pakistan's refugee policies. It set a precedent in dealing with Afghan refugees and the issue of their legal status, offering guideline on the proper treatment of asylum seekers. (*Rahil Azizi. Vs. The State and others*, 2023)

In the cases of *M/s Najib Zarab Limited v. Government of Pakistan through Secretary Ministry of Finance, Islamabad and 4 others*, *Farooq Ahmad Khan Laghari v. Federation of Pakistan* and in *Human Rights Case No. 29388-K of 2013*, the Supreme Court ruled that if Pakistan has not ratified any human rights convention including the 1951 Refugees Convention and its 1967 Protocol, it is still bound by other ratified international legal instruments such as the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966), the Convention Against Torture (CAT, 1987), and the Customary International Law Principles like Non-refoulement Principle. (*Farooq Ahmad Khan Laghari v. Federation of Pakistan and in Human Rights Case No. 29388-K of 2013*, 2013)



In *Mumtaz Bibi v. Qasim and Others*<sup>1</sup>, the Islamabad High Court held that where expressed municipal law of Pakistan does not contradict with the obligations of Pakistan under a treaty, such law cannot be construed to be in conflict with obligations under International Law. (*Mst Mumtaz Bibi Vs. Qasim others*, 2022)

## CONCLUSIONS AND RECOMMENDATIONS

Ultimately, for Pakistan to move forward, Pakistan needs to address these gaps through legislative reforms, increased protection, and greater alignment with international guidelines for the protection of refugees and asylum seekers. Pakistan must embrace a holistic approach to refugee protection—one that ensures legal rights, social integration, and long-term solutions for the displaced populations it hosts. Without these changes, the plight of refugees and asylum seekers in Pakistan will remain unresolved, and the country will continue to face criticism for its lack of commitment to international refugee standards.

Legal reforms are necessary to improve refugee protection in Pakistan. Ratifying the 1951 Refugee Convention would align domestic laws with international standards. Enacting a national refugee law could define asylum procedures, work rights, and access to justice. Amending the Foreigners Act to exempt refugees from "illegal migrant" classifications would provide legal clarity. Strengthening judicial oversight through judicial training on refugee law and international obligations is crucial. Ensuring voluntary repatriation and expanding UNHCR's legal authority to monitor refugee rights are also essential steps.

In the light of above, there remain significant gaps in protecting refugees and asylum seekers' rights and ensuring their integration into Pakistani society. The repeated recommendations from international bodies reflect the urgency of the situation. The following steps are essential for improving the refugee situation in Pakistan:

### RATIFY THE 1951 REFUGEE CONVENTION AND ITS 1967 PROTOCOL

Pakistan should consider ratifying 1951 Refugee Convention and its 1967 Protocol. This will create a formal legal framework for protecting refugees and asylum seekers. It will clarify their status, rights, and entitlements. It will also bring Pakistan's practices in line with international standards.

### ENACT NATIONAL REFUGEE LEGISLATION

Pakistan should adopt laws that protect refugees and asylum seekers from arbitrary detention, deportation, harassment, and discrimination. These laws should ensure fair and equal treatment. They must align with international human rights norms.

### TAKE STEPS TO END STATELESSNESS

Pakistan should reform laws to guarantee birth registration for all children, including those born to refugees. It should ensure stateless children access to education and healthcare. These steps will help break the cycle of exclusion.

### PROMOTE REFUGEE INTEGRATION

Pakistan should integrate refugee rights in national development policies. It should focus on access to healthcare, education, and jobs. Additionally, it should recognize refugees as active contributors to society.

### ENSURE THE PROTECTION OF REFUGEES AND ASYLUM SEEKERS

Pakistan should adopt policies that prevent arbitrary detention, harassment, and exploitation of refugees. It should provide safe and valid documentation and make sure refugees and asylum seekers can access services without fear or discrimination.

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