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## Global Backlash of Afghan Refugees: When is Enough, Enough?

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## Global Backlash of Afghan Refugees: When is Enough, Enough?

*How countries treat those who have been forced to flee persecution and human rights abuse elsewhere is a litmus test of their commitment to defending human rights and upholding humanitarian values. Yet, fifty years after its inception, the states that first established a formal refugee protection system are abandoning this principle, and the future of the international refugee regime is under serious threat.<sup>1</sup>*

The Afghan refugee crisis has its origins dating from twenty years of foreign invasion, civil war, political turmoil and continuing human rights abuses that displaced five million of Afghanistan's twenty-seven million people prior to the September 11<sup>th</sup> attack on the United States.<sup>2</sup> The vast majority of refugees over the past two decades have fled to Afghanistan's nearest neighbors—Pakistan, Tajikistan, China, Turkmenistan and Uzbekistan.<sup>3</sup> Weary after years of hosting huge refugee populations with minimum international interest or support for their plight and little prospect of a solution, many of these countries have tightened their refugee policies in recent years.<sup>4</sup> Other countries, such as Australia, have also responded harshly to Afghan asylum seekers and refugees.<sup>5</sup> In the weeks following the September 11<sup>th</sup> attack, the humanitarian crisis worsened considerably. More specifically, Afghan refugees were, and are, still turned away at the borders, and the approximately 900,000 people who are internally displaced inside the country are facing starvation because security efforts prevent humanitarian re-

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<sup>1</sup> HUMAN RIGHTS WATCH, 50 YEARS ON: WHAT FUTURE FOR REFUGEE PROTECTION?, (April, 2002), available at <http://www.hrw.org/campaigns/refugees/index.htm>

<sup>2</sup> HUMAN RIGHTS WATCH, HUMAN RIGHTS BACKGROUNDER: NO SAFE REFUGE - THE IMPACT OF THE SEPTEMBER 11<sup>TH</sup> ATTACK ON REFUGEES, ASYLUM SEEKERS AND MIGRANTS IN THE AFGHANISTAN REGION AND WORLD WIDE (October 18, 2001) available at <http://www.hrw.org/campaigns/refugees/index.htm>.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* (In August of 2000, Australia turned away a boatload of mainly Afghan asylum seekers who had been rescued by a Norwegian freighter, the *Tampa*, from a sinking Indonesian ferry-and refused to allow them to land on Australian territory).

lief from reaching them.<sup>6</sup> Despite each country's national security concerns, does this treatment of Afghan refugees conflict with international refugee and human rights law and standards?

#### CHRONOLOGY OF AFGHAN REFUGEE CRISIS

The Afghan refugee crisis began in 1973 after Mohammed Daoud ousted King Zaher Shah in a military takeover.<sup>7</sup> Five years later, Daoud was killed in a coup and the revolutionary council declared Nier Mohammed Taraki President of Afghanistan.<sup>8</sup> As a result, the Mujahedeen protested the government's communist policies and the exodus of Afghan refugees began.<sup>9</sup> By the end of 1979, approximately 600,000 refugees were reported to have fled Afghanistan. In this year, Soviet troops also entered the country spreading war, and intensifying arms flow to rebels increased.<sup>10</sup> Although the last Soviet soldier departed Afghanistan on February 25, 1989, the internal war within Afghanistan continued between the Northern Alliance and the Taliban. By 1990, the number of Afghan refugees swelled to 6.2 million.<sup>11</sup>

In 1996, the Taliban took control of the country. Severe drought, however, caused the refugee crisis to continue. On October 7<sup>th</sup> 2001, in response to the September 11<sup>th</sup> attack, the United States and Great Britain initiated air strikes on Afghanistan. By early November of 2001, the Taliban government fell, leaving millions of Afghans in a state of uncertainty about their safety and livelihood.

#### HUMAN RIGHTS ABUSES

As the closet geographical neighbor to Afghanistan, Pakistan is currently host to more than two million Afghan refugees, thus sheltering one of the largest refugee concentrations anywhere in the world.<sup>12</sup> However, Pakistan has come under criticism about its treatment of Afghan refugees. Pakistan adopted a strict screening

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<sup>6</sup> *Afghan Refugees: Afghan Humanitarian Crisis Deepening*, (Feb. 2002), available at [http://www.afghanrefugees.com/new\\_page\\_6.htm](http://www.afghanrefugees.com/new_page_6.htm)

<sup>7</sup> *Afghanistan online: History*, (Feb. 2002), available at <http://www.afghan-web.com/history>

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

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

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

<sup>11</sup> *Id.*

<sup>12</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 6.

process, turning back “economic migrants” and allowing only those with severe health problems or documented fears of persecution.<sup>13</sup> As a result of such policies, the United Nations (hereinafter “UN”) accuses Pakistan of forcing several thousand Afghan refugees across the border, under the cover of darkness, in direct violation of the Geneva Convention.<sup>14</sup>

Countries beyond Afghanistan’s geographical neighbors have tightened their immigration and asylum policies. British Home Secretary David Blunkett has vowed to stop Afghan refugees from “spreading across the world” and has equated asylum seekers with terrorists.<sup>15</sup> Furthermore, countries such as the United States and Great Britain, have proposed increased use of prolonged detention with limited judicial review, and have suggested that international human rights standards and due process protections become secondary to security concerns.<sup>16</sup> Although countries may have probable reason to close their borders because of lack of international economic support, and all countries may have legitimate reasons to increase security, these actions should not compromise basic human rights standards that are guaranteed to them under international human rights law.

#### INTERNATIONAL HUMAN RIGHTS LAW

The Universal Declaration of Human Rights provides, in Article 14, that “everyone has the right to seek and enjoy in other countries asylum and protection.”<sup>17</sup> However, this principle of international human rights is at risk when countries must rightfully protect their own citizens and land from attack. However, the problem that emerges is that in seeking such protection, a country may be unjustly discriminating against innocent individuals who need this same protection.

##### A. *The Principle of Nonrefoulement*

The right of refugees not to be returned to a country where their lives or freedom are threatened is the cornerstone of interna-

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<sup>13</sup> *Afghan Refugees*, *supra* note 5.

<sup>14</sup> *Afghan Refugees*, *supra* note 5.

<sup>15</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 5.

<sup>16</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 5.

<sup>17</sup> Universal Declaration of Human Rights, Dec. 10, 1948, art. 14(1).

tional refugee protection.<sup>18</sup> Article 33 of the 1951 Convention related to the Status of Refugees states that:

No contracting party shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, nationality, membership of a particular social group or political opinion.<sup>19</sup>

Thus, by closing the borders to Afghan refugees and denying them entry, governments are placing refugees at risk of being returned to a country where their lives are seriously at risk, thereby violating their obligations of nonrefoulement.<sup>20</sup> Four of Afghanistan's six neighbors (Iran, China, Tajikistan and Turkmenistan) are all parties to the Refugee Convention and its 1967 Protocol.<sup>21</sup> In addition, although Pakistan and Uzbekistan are not signatories to the convention, the obligation of nonrefoulement is now a generally accepted principle of customary international law and so binding on these states.<sup>22</sup>

The principle of nonrefoulement is necessary in a world where eliminating cultural, political, religious or any type of unjustified persecution is of paramount importance. However, how does a nation-state assist innocent refugees, while not allowing guilty parties to benefit from such international humanitarian assistance?

### B. Exclusion

The countries that have instituted such procedures argue that they are ultimately concerned with their country's own national protection. This is a valid reason, as all potential terrorists or criminals should be screened and refused any sort of protection under the Refugee Convention. However, all screening should be performed in a fair, non-discriminatory manner, with full procedural guarantees and international monitoring. Thus, persons should not be excluded from refugee protection solely on the grounds of their race, nationality, ethnic origin and political or religious beliefs.

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<sup>18</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 12.

<sup>19</sup> United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, July 28, 1951, art. 33(1).

<sup>20</sup>

<sup>21</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 13.

<sup>22</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 13.

Unfortunately, this appears to be the justification for refusing aid and assistance to Afghan refugees.

Currently, international refugee law includes provisions for screening and excluding persons who pose a threat to national security and who are not entitled to international refugee protection. Individuals excludable under the Refugee Convention are individuals who have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions with respect to such crime.<sup>23</sup> Thus, countries must make every effort to try to find these individuals, rather than make blanket assumptions that can prove to be discriminatory and in violation of international law.

### C. *International Covenant on Civil and Political Rights (ICCPR)*

The right to "liberty and security of person" is guaranteed under the 1966 International Covenant on Civil and Political Rights, to which the United Kingdom, Australia, Afghanistan, Iran, Tajikistan and Uzbekistan are all parties, and to which China is a signatory.<sup>24</sup> Article 9 of the ICCPR provides that everyone "has the right to liberty and security of person" and "no one shall be subjected to arbitrary arrest or detention."<sup>25</sup> Thus, to ensure freedom from arbitrary detention, Article 9 also requires that such detention must be examined for its lawfulness by an impartial adjudicator.<sup>26</sup> The United Nations Human Rights Committee has expressly stated that the guarantee of Article 9 applies to all aliens.<sup>27</sup> Thus, it is clear that recent legislation by the United States, the United Kingdom and Australia, to place non-citizens, including asylum seekers, into detention centers with severely limited access to review by an impartial adjudicator, violates this fundamental right in international law.<sup>28</sup>

### CONCLUSION

The preamble of the Refugee Convention underlines the "unduly heavy burdens" that sheltering refugees may place on certain

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<sup>23</sup> United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, July 28, 1951, art. 32.

<sup>24</sup> G. A. Res. 2200A (XXI), Int' l Cov. Civil & Political Rts (1966).

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

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

<sup>27</sup> HUMAN RIGHTS WATCH, *supra* note 2, at 16.

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

countries, and states, "that a satisfactory solution of a problem to which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation."<sup>29</sup> Therefore, the United Nations and the international community need to assist such countries as Pakistan and Iran in sheltering Afghan refugees. Japan has led the way by providing 4.7 billion yen (approx. 40 million US dollars) to be extended in the form of refugee assistance and emergency budgetary assistance.<sup>30</sup>

Furthermore, on January 21, 2002, the United Nations High Commission for Refugees (hereinafter "UNCR") called on representatives attending the two-day Afghan Reconstruction Conference in Tokyo, to remember the acute needs of millions of returning refugees.<sup>31</sup> The interim Afghan authority has also accepted the United Nations refugee agency's proposed plan to assist the return of thousands of refugees this year.<sup>32</sup> UNHCR's draft proposal covers cross-border issues with Pakistan and Iran, practical matters, which include providing transportation and assistance to returnees, as well as how to help with their reintegration into their home communities.<sup>33</sup>

#### EMERGENCY ECONOMIC ASSISTANCE TO PAKISTAN

Following Prime Minister Koizumi's announcement on September 19 concerning the measures in response to the simultaneous terrorist attacks in the United States, Japan has decided on measures to assist Pakistan which were urgently needed.

##### 1. Bilateral assistance.

4.7 billion yen (approx. 40 million US dollars) will be extended in the form of refugee assistance and emergency budgetary assistance.

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<sup>29</sup> United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, July 28, 1951.

<sup>30</sup> Press Release, The Ministry of Foreign Affairs of Japan, Japan Extends The Emergency Economic Assistance To Pakistan (Sept. 21, 2001) (on file with the author).

<sup>31</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: *UNCR calls on Tokyo Conference to remember 3.5 million Afghan Refugees*, available at <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/bcc9359d4fb96707c1256b49002f6e6b?OpenDocument> (January 21, 2002)

<sup>32</sup> UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES: *Afghanistan Humanitarian Update No. 51*, available at <http://www.reliefweb.int/w/Rwb.nsf/vID/86A6AC579E4C40A7C1256B4B00588DC3?OpenDocument> (January 24<sup>th</sup> 2002)

<sup>33</sup> *Id.*

- (a) Refugee assistance (1.7 billion yen). This aims to assist measures that deal with the many Afghan refugees who are already in Pakistan and those who are expected to come in the future. Emergency grant aid and food aid will be provided. Grass-root grant aid also will be provided through NGOs and others.
- (b) Emergency budgetary assistance (3 billion yen). In view of the risk of worsening chronic economic difficulties in Pakistan such as a serious shortage of foreign currency, Japan will provide financial assistance to purchase materials in order to assist Pakistan's structural adjustment efforts, which are being undertaken in consultation with the IMF and the World Bank.

## 2. Official debt rescheduling.

Prompt rescheduling will be made based on the Paris Club agreement for Pakistan, which faces difficulty in repaying its debt.<sup>34</sup>

## 3. Assistance through international financial institutions.

Japan will positively support and assist loans by the IMF, the World Bank, etc. directed toward alleviation of economic difficulties and poverty reduction in Pakistan.

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<sup>34</sup> The amount to be rescheduled is expected to be about 64.7 billion yen (equivalent to about 550 million US dollars).

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