

**PAKISTAN: ALTERNATIVE REPORT
TO THE HUMAN RIGHTS COMMITTEE
IN REGARDS TO TREATMENT OF
REFUGEES, ASYLUM-SEEKERS,
MIGRANTS**

SEPTEMBER 16, 2024

SUBMITTED BY:

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I. Executive Summary

This report seeks to provide an alternative, unbiased and impartial reflection on the situation facing refugees, asylum-seekers and migrants in Pakistan. The authors recognize Pakistan's long-standing provision of safety to millions of Afghan refugees over the last many decades. However, our monitoring, provision of legal assistance, and targeted interviews with affected communities indicate a number of systematic and specific violations of rights provided by the ICCPR to such individuals, particularly in the aftermath of the October 2023 Deportation Order. The Government of Pakistan's replies to the Committee's list of issues did not address a number of critical areas that we elaborate on in this report. Specifically, this report will detail deficiencies in the Order's substantive content and observe a series of violations that occurred during the Government's attempt to implement the Order. The violations impact different groups of refugees, asylum-seekers, and even citizens, and thereby implicate different Articles of the ICCPR: registered Afghans faced violations of Articles 13, 24, 2(1), 16, 17, and 26; unregistered Afghans faced violations of Articles 2, 9 and 24 ; finally, all Afghans, regardless of status, as well as many Pakistani citizens, faced violations of Article 2.

In sum, the Government issued an unclear and ambiguously worded Order that resulted in an atmosphere ripe for harassment and intimidation. Individuals with proper legal status and documentation were caught in the campaign without a proper opportunity to challenge their expulsion. Thousands were detained in substandard conditions and many more harassed. The entire Deportation Order ignores customary international law and the principle of nonrefoulement given the widely documented challenges facing several profiles of individuals who may be at risk in Afghanistan.

The authors put forward a number of concrete recommendations and are open to assisting the Government of Pakistan in pursuing them. They include reversing, or at the least revising the Deportation Order and its ongoing phases, to more clearly identify as well as outline a rights-respecting procedure for the removal of foreigners without legal authorization to stay in Pakistan. This recommendation may be read in conjunction with the recommendation to sign on to the 1951 Refugee Convention and to put in place national legislation that will more clearly provide procedures and legal status for those foreigners in need of international protection.

II. Introduction

A. Overview

This report is submitted to the 142nd session of the Human Rights Committee (HRC). It is a joint submission by the Joint Action Committee on Refugees (JAC-R) and the Refugee Solidarity Network (RSN). Based in Pakistan, JAC-R is a collective of concerned lawyers, human rights workers, and citizens whose mission is to provide legal and humanitarian support to Afghan refugees in Pakistan and to document the many human rights abuses Afghan refugees in Pakistan have faced both before and after October 2023. The Refugee Solidarity Network (RSN) is a U.S.-based 501(c)(3) nonprofit that works in global partnership with advocates and stakeholders to develop capacity in refugee host countries outside the U.S. and to advance legal frameworks that uphold human rights.

JAC-R was initiated in 2023 following the formal announcement of Afghan refugee deportations to Afghanistan. In the initial days, JAC-R released a press statement signed by nearly 400 people from different walks of life including prominent human rights activists in Pakistan. JAC-R provided pro-bono legal services to a range of Afghan detainees in court. When the Government of Pakistan set up a detention camp which was called “holding camp” in the Sultanabad area of Karachi, JAC-R set up their own complaint desk outside the detention desk. It was an informal setup without proper chairs or tables, with our volunteers standing on the footpath in front of the gate with pen, paper, and legal documents. We have documented a range of human rights violations that are discussed in this report. Some of the cases were quoted in the Supreme Court and Sindh High Court Petitions, filed to challenge the government’s deportation policy. Furthermore, JAC-R has coordinated with the UNHCR and district administration including the police officers to release many children from the detention camp.

This report comments on the Government of Pakistan’s Reply to the List of Issues in relation to its second periodic report, submitted to the HRC in May 2024. Specifically, it responds to, and is meant to be read in conjunction with Section 14 (paras 112-117) of Pakistan’s reply: Treatment of Aliens, including Migrants, Refugees and Asylum-Seekers.

B. Methodology

All case studies and stories detailed in this report have been gathered by JAC-R volunteers between October 2023 and August 2024. The first round of data collection took place from November through December 2023 when volunteers set up a consultation desk outside Haji camp Sultanabad detention centers in Karachi. No one, including the lawyers, were granted permission to enter the facility and speak with the detainees.

The second round of data collection occurred in August 2024, when the team returned to Afghan Refugees Basti, Northern Bypass, Super Highway Karachi to obtain details from affected Afghans about the nature of abuse, harassment, and detention they experienced at the hands of law enforcement officials and private citizens. The JAC-R team conducted interviews with seven participants from the camp of which six were male and one was female. The team used a qualitative interview guide of 11 questions which sought to categorize the experience of refugees when first entering the country and since the announcement and efforts of the deportation drive and the circumstances which led to their life in the refugee basti (settlement or camp where refugees reside). These interviews shed light on the methods used against refugee families to detain them and carry out refoulement orders. Five of the participants are refugees who hold status of some kind and still face severe harassment while two interviews detail the experiences of refugees who do not hold any legal status in Pakistan.

C. Context: Pakistan's Legal and Policy Framework for Refugees

Afghan refugees have been in Pakistan for more than four decades, and it is important to recognize that the people and Government of Pakistan have shown great generosity by providing access to territory, education and healthcare to communities fleeing instability and conflict in Afghanistan. Despite the immense responsibility Pakistan has shouldered, it is difficult to see how the international community has provided sufficient support for a situation that is global in scope.

Pakistan has hosted Afghan refugees since the 1970s after the Soviet Union's invasion of Afghanistan and as of 2022, the UNHCR reported that there are approximately three million Afghans living in Pakistan.¹

Despite these staggering numbers, Pakistan has not ratified the United Nations Convention on the Status of Refugees, 1951 (Refugee Convention) or the 1967

¹ "Afghanistan Situation Regional Refugee Response Plan 2022," UNHCR Report, 12 January 2022, p. 27, available at <https://reliefweb.int/attachments/c467e2f1-12cd-3e78-ba82-d37a020110f9/EN.pdf>.

Protocol. Consequently, the Convention's framework for the basic rights of refugees does not apply domestically. Pakistan is, however, a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT). In later sections, this report will demonstrate how the government's mass deportation drive violates numerous provisions of the ICCPR, as well as CAT's principle of non-refoulement, which prohibits the forcible return of people to countries where they face a clear risk of torture or other persecution.

Although a National Refugee Bill, 2023 was introduced in the National Assembly in July of that year,² there is currently no domestic statutory framework to regularize the status of refugees. In the absence of a refugee law, two other laws govern the Afghan population residing in the country: the Foreigner's Act, 1946 and the Pakistan Citizenship Act, 1951. Section 14 of the Foreigner's Act criminalizes the illegal entry of foreigners into Pakistan but also "generally accepts UNHCR decisions to grant refugee status and allows asylum-seekers (who are still undergoing the procedure) as well as recognized refugees to remain in Pakistan pending identification of a durable solution."³ Simply put, individuals granted refugee status by the UNHCR—and individuals whose status is pending—are meant to be treated as an exception to section 14 of the Foreigner's Act and can legally remain in the country.

Section 4 of Pakistan Citizenship Act of 1951 states that every person born in Pakistan after the commencement of the Act shall be a citizen of Pakistan by birth in the territory except those whose fathers have diplomatic immunity or are enemy aliens. The plain text of section 4 does not limit birthright citizenship to the children of Pakistani citizens, however, Pakistani courts are split on whether to grant citizenship to the children of Afghan refugees.

A judgment from the Peshawar High Court in 1999 found that only a person born to a Pakistani national would be entitled to the citizenship of Pakistan, and thus rejected an Afghan refugee's Pakistan-born child's claim to citizenship, despite the plain textual meaning of Section 4.⁴ In contrast, the Islamabad High Court found in 2018 that a child born to Somali parents was entitled to citizenship under Section 4, which applies to anyone born in Pakistan despite the fact that the parents of the individual are not Pakistani citizens.⁵ A currently

² National Assembly Secretariat, Bulletin No. 4 of the Assembly, 51st Session, available at: https://na.gov.pk/uploads/documents/64364922e289c_191.pdf. Copy of the bill is on file with JAC-R.

³ Rahil Azizi v. The State and Others, Writ Petition No. 1666 of 2023 *quoting* Aamir Aman vs. Federation of Pakistan (PLD 2020 Sindh 533), available at: https://mis.ihc.gov.pk/attachments/judgements/161521/1/W.P. No. 1666 of 2023 Rahil Azizi Vs. The State_638282052901135229.pdf

⁴ Ghulam Sanai v. Assistant Director, National Registration Office, (PLD 1999 Pesh 18).

⁵ Saeed Abdi Mehmud v. NADRA, (CLC 2018 IHC 1588).

pending Supreme Court petition challenging the mass deportation of Afghan refugees also argues that refugees born in this country, regardless of their current documentation, have “a solid claim to birthright citizenship” under Section 4, and that the only reason they remained without documents “is because the government is simply not willing to issue them documents, despite the law and despite court judgments in their favor.”⁶ It is important to note that an official survey of the Afghan population in 2011 found that **74% of all Afghans living in Pakistan are born in Pakistan.**⁷ Over a decade later, it is safe to assume this percentage has only increased, which means hundreds of thousands of Pakistan-born Afghans are on strong legal ground to claim citizenship.

The right to citizenship through marriage also exists, although it discriminates based on gender. The Citizenship Act grants Pakistani citizenship to foreign women married to Pakistani men, and this applies to women Afghan refugees, as well. The same is not true for Afghan men married to Pakistani women. But the Peshawar High Court has also held that Afghan refugee men married to Pakistani women are entitled to a Pakistan Origin Card (POC),⁸ which is short of citizenship but allows card holders the right to remain in Pakistan indefinitely, and the possibility of visa-free entry into Pakistan, among other rights.⁹

D. The Legal Status of Afghans in Pakistan

The above section provides possible avenues for how Afghan refugees can obtain lawful status in accordance with Pakistani law. This section explains UNHCR documentation processes for Afghan refugees, and lists out the most common legal status of Afghans present in Pakistan.

Proof of Registration (PoR) card-holders: These cards are issued pursuant to a policy adopted by the Pakistan government with the UNHCR. PoR cards give limited legal status, as well as protection from deportation under the Foreigners Act 1946.¹⁰ In 2021-22, the government and UNHCR, through a documentation renewal program called DRIVE, verified and updated the data of 1.43 million

⁶ Senator Farhatullah Babar & Others v. Federation of Pakistan, CP No. 40/2023. Petition on file with JAC-R.

⁷ “Population Profiling, Verification and Response Survey of Afghans in Pakistan,” SAFRON, UNHCR, CCAR, p.12, 2011. Available at: <https://www.unhcr.org/pk/wp-content/uploads/sites/103/2018/05/Population-Profiling-Verification-and-Response-Survey-of-Afghans-in-Pakistan.pdf>

⁸ Mst. Amna and another v. Federation of Pakistan, Peshawar High Court, WP No. 1536-P/2023, available at: <https://www.peshawarhighcourt.gov.pk/PHCCMS/judgments/wp-1536-p2023.pdf>

⁹ NADRA website, Pakistan Origin Card, available at: <https://www.nadra.gov.pk/pakistan-origin-card-poc/>

¹⁰ UNHCR website, Proof of Registration Card, available at: <https://help.unhcr.org/pakistan/proof-of-registration-card-por/>

Afghans refugees who were PoR cardholders and issued new PoR cards to all eligible refugees.¹¹ As explained in the previous section, PoR cardholders are permitted to remain in the country by law and policy.

Afghan Citizen Card-holders (ACC): These cards were issued in collaboration with the Government of Afghanistan and UNHCR, after an exercise was carried out to identify undocumented Afghans.¹² The issuance of ACCs, an exercise fully funded by the Government of Pakistan,¹³ was carried out to regularize the stay of undocumented Afghans in Pakistan. As of 2022, some 840,000 Afghans had been issued ACCs.¹⁴ Afghans with ACCs are also permitted to remain in the country by law and policy.

Afghans whose status is pending before UNHCR: In line with UNHCR's registration activities, the first step is a pre-screening of the applicants to ascertain their eligibility for registration. Once established, registration takes place in order of individuals' specific legal needs and documentation is only issued after this process is complete.¹⁵ After the fall of the Taliban in 2021, UNHCR stopped issuing POR cards and ACCs. Instead, Afghans who fled Afghanistan were issued tokens¹⁶ or pre-screening applications¹⁷ that certify an individual's application has been received and confirm that "she/he will soon be called for an interview by UNHCR Pakistan."¹⁸ While such documentation does not have the firm legal standing of POR cards and ACCs, an individual who follows the country's established procedure, presents themselves to the UNHCR for processing, and awaits their turn to be interviewed should not be considered an illegal alien subject to forcible deportation.¹⁹ To do so traps all Afghans between a rock and a hard place: they are considered illegal whether or not they file an application with the UNHCR.

¹¹ Drive Pakistan: Verification Exercise Update (Dec 2021), Reliefweb, available at:

<https://reliefweb.int/report/pakistan/drive-pakistan-verification-exercise-update-december-2021>

¹² "Afghans dream of stepping out of the shadows with Pakistan ID Scheme," UNHCR, Samad Khan, July 21, 2017, available at:

<https://www.unhcr.org/news/stories/afghans-dream-stepping-out-shadows-pakistan-id-scheme>

¹³ "How Pakistan Helps Afghans Get Back On Their Feet," Global Compact on Refugees, available at:

<https://globalcompactrefugees.org/good-practices/how-pakistan-helps-afghans-get-back-their-feet>

¹⁴ Afghanistan Situation Regional Refugee Response Plan 2022, UNHCR Report, 12 January 2022, p. 27, available at <https://reliefweb.int/attachments/c467e2f1-12cd-3e78-ba82-d37a020110f9/EN.pdf>.

¹⁵ See e.g., UNHCR Pakistan: Afghan Pre-Screening Overview Update, Sep 3, 2021, available at:

<https://data.unhcr.org/en/documents/details/88509>

¹⁶ "What to Know About Pakistan's Deportation Deadline for Afghan Refugees," Time Magazine, Oct 21, 2023, available at: <https://time.com/6330122/pakistan-afghanistan-refugees/>

¹⁷ UNHCR website, Extension of UNHCR Verification Exercise, available at:

<https://help.unhcr.org/pakistan/verification-exercise/>

¹⁸ JAC-R has many such pre-screening applications on file.

¹⁹ This argument is also being pursued in a pending constitutional petition before the Supreme Court of Pakistan. See Senator Farhatullah Babar & Others v. Federation of Pakistan, CP No. 40/2023. Petition on file with JAC-R.

Afghan passport holders with Pakistani visas: many Afghans who fled Afghanistan fearing for their safety after the 2021 Taliban takeover entered with valid visas that have since expired. They have been prevented from renewing them as the renewal process requires re-entering Afghanistan—a dangerous and untenable option for many Afghans in Pakistan.²⁰

Undocumented Afghans: These are Afghans who have no documentation for their status whatsoever and Pakistan considered them illegal aliens.²¹ As of 2022, there are an estimated 775,000 undocumented Afghans in the country.²²

III. Rights Violations of Migrants, Refugees, And Asylum Seekers In Pakistan Under the ICCPR

A. On October 3, 2023, the Government of Pakistan Issued A Mass Deportation Order Despite The UNHCR's Issuance of a Non-Return Advisory for Afghanistan in February 2023.

On October 3, 2023, the Interior Ministry of Pakistan introduced the “Illegal Foreigners Repatriation Plan”, ordering all “illegal” foreign nationals to leave the country. The plan, hereinafter referred to as the Deportation Order or the Deportation Plan, promulgated the following:²³

1. All foreign nationals residing in Pakistan illegally are hereby cautioned to depart from the country by October 31, 2023.
2. Starting from November 1, 2023, federal and provincial law enforcement agencies will take all necessary measures to effectuate the apprehension and forceful deportation of all unlawfully residing foreigners.
3. Effective from October 10, 2023, travel across the Pakistan-Afghanistan border will require a computerized identity card (E-Tazkira), and from November

²⁰ “Pakistan: Open Letter to Prime Minister on Repatriation of Refugees from Pakistan,” Amnesty International, Index Number: ASA 33/7362/2023, Oct 27, 2023, available at: <https://www.amnesty.org/en/documents/asa33/7362/2023/en/>

²¹ “On the Margins: Afghans in Pakistan,” Afghan Displacement Solution Platform (ADSP), December 2018, available at: <https://www.acbar.org/upload/1562673003902.pdf>

²² UNHCR, ‘Afghanistan Situation Regional Refugee Response Plan 2022,’ 12 January 2022), available at <https://reliefweb.int/attachments/c467e2f1-12cd-3e78-ba82-d37a020110f9/EN.pdf>, p. 27

²³ Pakistan Ministry of Interior notice dated 03 Oct 2023; See also <https://twitter.com/IntelPk/status/1709170444065198578>

1, 2023, only passport and visa holders will be allowed passage. All other forms of documentation will be deemed invalid for cross-border travel.²⁴

4. Commencing November 1, 2023, businesses and properties owned by illegal foreigners will be confiscated, and legal action will be taken against both these unlawful business operators and their accomplices.

5. Stringent legal measures will be taken against any Pakistani citizen or company found providing shelter or support to illegal foreigners in Pakistan after November 1, 2023.

6. A task force, under the Ministry of Home Affairs, comprising members from law enforcement and intelligence agencies, will work towards identifying individuals with counterfeit identity cards and properties acquired through fraudulent documentation.

7. NADRA has been instructed to promptly invalidate all counterfeit identity cards, and in cases of identity doubt, DNA tests will be conducted for confirmation.

8. Information regarding the illegal residence or business activities of foreigners in Pakistan can be reported through the web portal and UAN helpline. Confidentiality will be maintained for those who cooperate with the city government.

This plan was announced despite UNHCR issuing a non-return advisory for Afghanistan in 2021, which was renewed in February 2023.²⁵

As will be demonstrated below, the language of the Plan as well as the Government of Pakistan's efforts to implement the plan, raised grave due process and human rights concerns.

i. Despite Officially Targeting Individuals "Illegally" Present, The Government Provides No Mechanism for Review, and Evidence Suggests That In Practice, Legally Present Individuals Have Also Been Subject to Removal, In Violation of ICCPR Article 13

ICCPR Article 13 protects aliens from arbitrary expulsion, specifying that "an alien lawfully in the territory of a State Party [...] may be expelled therefrom

²⁴ "All other forms of documentation" would include the aforementioned PoR and ACC card holders. (Author's Note)

²⁵ Voluntary Repatriation (UNHCR-Facilitated Return)—Afghan Returnees, UNHCR Website, available at: <https://help.unhcr.org/iran/en/voluntary-repatriation1/voluntary-repatriation-unhcr-facilitated-return/>

only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

The due process requirements under Article 13 require that any expulsion decision must follow a legal process that allows individuals the right to present arguments against their removal and have their case reviewed by a competent authority. However, the Deportation Order provides no such mechanism for review, nor are we aware of any informal discussion, announcement, or instruction to police, law enforcement, or judicial officials as to how individuals could challenge their removal. In fact, numerous observed examples suggest that existing mechanisms for review under law were ignored, let alone a new mechanism being instituted for review of deportations. As a result of the Deportation Order being devoid of such a mechanism, its stated purpose of only targeting those “illegally” present resulted in a practice of targeting documented Afghan refugees and not distinguishing effectively between those who are exempt from deportation and those who are not legally authorized to stay.

Interviews with Afghan refugees in Sohrab Goth revealed an alarming increase in the arrest and detention of legally present individuals between September and November 2023, even before the mass deportation plan was formally introduced. One interviewee (a father) described how his son, 21 years of age, despite being a POR cardholder, was arrested by police. Another interviewee and father’s ordeal began when his son aged 26 was detained on his way to work; later, when he and his younger son, aged 21, went to the police station with food and documentation, the younger son was also arrested. In a separate case, police were seen destroying PoR Cards and arresting people from the camp, filing First Information Reports (FIRs) against them. Yet another interviewee was apprehended by the police while simply attempting to purchase medicine for his brother at a local pharmacy. In each of these cases, the possibility of deportation was a looming concern.

In all of these instances, interviewees reported no formal, uniform process to allow for them to present evidence to challenge their detention and removal. Instead, interviewees reported securing release by paying money to officials or else being detained for several months without access to legal counsel. Additional examples of lawfully present Afghans with PORs and ACCs who have been detained, arrested, and in some cases deported are reported further below under Section C.

JAC-R documented multiple cases of lawfully present Afghans with PoRs and ACCs who have been detained, arrested, and in some cases deported. The following harrowing accounts were shared, which are a small example of undoubtedly hundreds more cases of forced and unlawful family separation:

- a. A father of an adolescent male aged 17-year-olds said his son was picked up in a raid in Sohrab Goth, Karachi. Both father and son were born in Pakistan and had valid Proof of Registration (PoR) cards. The father went to the Keamari detention center and the police station at Sohrab Goth, but was unable to locate his son. He was subject to degrading treatment and not assisted or accorded the right to be informed of his minor son's whereabouts in violation of section 5(a) of the Juvenile Justice System Act 2018. JAC-R asked the data center and they checked their lists and said he was deported illegally the previous day (possibly to Chaman border) and his whereabouts were unknown. The teenage boy, born and raised in Pakistan, has no knowledge of Afghanistan and is now lost somewhere across the border with no family, money, or contacts. The swiftness with which people are being deported, without even credible fear screenings for asylum and UN CAT relief, is an egregious violation of human rights. [From JAC archive]
- b. A child was wrongfully arrested and detained inside the Sultanabad detention facility. His family and he all had Afghan Citizen Cards (ACCs), but his card was missing and the family had filed a police complaint with receipt of the missing card. He was nonetheless held at the detention facility while his frantic mother waited outside. Initially, the authorities denied his presence inside the detention facility, but when JAC-R volunteers stopped the Deputy Commissioner outside the detention camp and showed him a police complaint receipt of a missing card, the child was released after six hours of separation from his family. Without the help of volunteer lawyers outside the detention center who fought for the child to be returned to his family, he would likely have been deported. [From JAC archive]
- c. A father's two children aged 15 and 17 years old were caught from their homes and arrested by the police. They were both born in Pakistan and had valid PoR cards that allowed them to remain in Pakistan. The father was desperately looking for his sons, who were located with the help of volunteer lawyers. Had the lawyers not mobilized to locate the missing children, they would have been wrongly deported to Afghanistan. This story also made it to mainstream Pakistani news.²⁶ [From JAC archive]

²⁶ "Rights activists save three Afghan children with legal documents from deportation," The News, Nov 5, 2023, available at: <https://e.thenews.com.pk/detail?id=252474>

- d. A man's 23-year-old wife, who had an ACC, was picked up at 3am on November 4th and went missing for over 20 hours. She was nursing a newborn infant, and they were both arrested in a night raid in Sohrab Goth. Her husband was not at home and was working the night shift at a factory. He and his family were distraught and tried to locate her at the Sohrab Goth Thana and the Keamari detention center but were not able to. Volunteers spoke to District Keamari officials who were not able to give any information about her.²⁷
- e. A man's brother-in-law was illegally detained and almost deported. The brother-in-law, is 31 years old and has mental health issues and other physical disabilities. He has valid PoR status and was also wrongfully arrested and confined for two days. The data center located him and said he was at Keamari Detention center and due to be deported in one hour as he 'voluntarily agreed' to return to Afghanistan. JAC-R told the municipal officers that he is legally entitled to stay in Pakistan and that he has the right to talk to lawyers. They agreed and said that if you meet him you must not pressure him to stay. After hours of negotiations, they agreed to offload and eventually release him but still did not allow right to counsel. [From JAC archive.]

On November 2 2023, the Home Department of the Federal Government issued a notification stating that registration cards of refugees will be extended until December 31, 2023 and that "no Afghan National in possession of PoR (irrespective of validity) should be held in transit points or registered under the [Illegal Foreigners Repatriation Plan]." Then, on July 10, 2024, the Government once again extended the validity of PoRs for one year, until 30 June 2025.²⁸ No decision has been made regarding ACC holders, those whose status is still pending, or undocumented persons. All individuals, regardless of their status, must be afforded due process. As of today, there is no way to verify independently whether any Afghan, including those with PoR cards, are not subject to arbitrary arrest, detention or harassment as there is no opportunity for hearing, legal representation, review or appeal provided to the refugees. On this point it is important to note that the Government of Pakistan did not address the Committee's request for disaggregated data about the use of detention, further evidencing the lack of due process employed during the course of the Order's implementation.

²⁷ "Urgent Appeal to Halt Deportation of People of Afghan Descent," Sindh Bachao Tehreek ("SBT") Letter to U.N. Special Procedures, Nov 5, 2023. Letter on file with JAC-R.

²⁸ "Pakistan extends registration cards for 1.5m Afghan refugees," The Express Tribune, July 10, 2024, available at: <https://tribune.com.pk/story/2478571/pakistan-extends-registration-cards-for-15m-afghan-refugees-for-a-year>

- ii. **Lack of Clarity in the Deportation Order on Categories of “Illegal” Foreigners Required to Leave Is A Violation of The Human Rights Committee’s General Comment 15, ICCPR Article 24, and Pakistan’s Own Islamabad High Court Ruling in the *Rahil Azizi* Case**
 1. **Lack of Clarity on Which Foreigners Are Subject to the Deportation Order Raises Concerns About Compliance With Procedural Safeguards Under HRC General Comment 15, Article 13 of the ICCPR, and Consistency with the Islamabad High Court’s Judgment and Constitutional Reading in the *Rahil Azizi* Case**

The lack of clarity in the Deportation Order regarding which categories of foreigners deemed “illegal” are required to leave the country raises concerns and creates uncertainty about whether deportation decisions have been or are currently being based on individual assessments or broad, collective measures that overlook specific circumstances, such as fear for life or other humanitarian considerations.

The Human Rights Committee has stated in General Comment No. 15 (1986) that “Article 13 entitles each alien to a decision in his own case and, hence, article 13 would not be satisfied with laws or decisions providing for collective or mass expulsions.”²⁹ This means that decisions about expulsion should not be made for large groups of people as a whole. It arguably implies that each person’s individual case deserves proper consideration, especially when the legality of their stay is in question. While General Comment No. 15 does not explicitly require individualized decisions, the rejection of mass expulsions suggests that each person’s situation must be reviewed individually.

Furthermore, while General Comment 15 does not explicitly extend Article 13’s procedural protections to foreigners “illegally” present in a country, it clarifies that when the legality of an alien’s entry or stay is in dispute, any decision that could lead to expulsion or deportation must adhere to Article 13’s safeguards: “If the legality of an alien’s entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13. It is for the competent authorities of the State party, in good faith and in the exercise of their powers, to apply and interpret the domestic law, observing, however, such requirements under the Covenant as equality before the law (art. 26).”³⁰

²⁹ UN Human Rights Committee (HRC), CCPR General Comment No. 15: The Position of Aliens Under the Covenant, 11 April 1986, <https://www.refworld.org/legal/general/hrc/1986/en/38724> [accessed 05 September 2024].

³⁰ Ibid.

Beyond those Afghans in possession of a PoR or ACC card, there are a number of other categories of individuals that have been deemed “illegal” under the Plan whose status is not clear and therefore unclear whether they should be subject to the Order. This includes those Afghan refugees who have fallen out of status or have been unable to regularize for reasons outside of their control. For example, many Afghan refugees have attempted to regularize their situation but faced delays due to government processing and were instead issued case number slips.

In one instance, a 32-year-old refugee interviewee, explained that on entering Pakistan, he was registered through the UNHCR and SHARP offices in Karachi. He completed this process three times, each time undergoing biometric verification, which was logged into both systems. Although he was approved for the PoR Card, he was eventually informed that due to government delays, the card could not be issued. Instead, he was given a case number and told to wait for a phone call in 2021. However, like many other refugees registered with the UN system, this individual was never provided a PoR or ACC card. He was later contacted for additional information regarding a ‘resettlement’ form, but now fears deportation to Afghanistan. Under the threat of arrest due to their lack of documentation, he and his family remain confined to their homes to avoid arrest by authorities.

Moreover, the unclear categorization of “illegal” foreigners in the Deportation Order fails to account for the informal yet recognized status of those individuals seeking safety in Pakistan while awaiting a placement abroad. This interpretation of Pakistani law, including the Constitution and its universal protection to anyone present in the country, was made clear by the Islamabad High Court’s ruling in the *Rahil Azizi Case* (2023).

Paragraph 27 of the *Rahil Azizi* case, interprets Section 14(2) of Pakistan’s Foreigners Act with a particular focus on how it applies to individuals who enter Pakistan without a visa due to a fear of their life and liberty. A key question before the Court was whether entering Pakistan without permission, under such circumstances, should be treated as a strict liability offense. Among its findings, the Court ruled that the manner of entry is not determinative when someone enters Pakistan fearing for their life; such circumstances must be considered, and strict punishment should not be applied automatically in such cases. As such, at the very least, those asylum seekers who entered Pakistan seeking safety and awaiting placement in another country, despite not having a legal status, are not to be viewed as contravening the law. The ruling makes clear that the Foreigners’ Act’s purpose is regulatory, aimed at managing the entry and

exit of foreigners, rather than punishing those individuals seeking refuge.³¹

The ambiguous categorization of “illegal” foreigners in the Deportation Order creates an atmosphere in which individuals already determined not to be in contravention of the law are penalized and subject to rights violations, including but not limited to rights articulated by Article 13 of the ICCPR.

2. Second, the Plan Says Nothing of Second and Third Generation Afghan Children Born in Pakistan Who Know No Other Home, and Have a Strong Claim to Birthright Citizenship.

Under ICCPR Article 24 (3), “every child has the right to acquire a nationality.” This article imposes a legal obligation on State parties to recognize the citizenship claims of a child. Second- and third-generation children born in Pakistan, who have no other home and potential claim to birthright citizenship, have been consistently excluded from citizenship. While this is already a violation of Article 24, the Deportation Order exacerbates this rights encroachment as it puts children at risk of further statelessness. It should be noted that the Government of Pakistan did not sufficiently reply to the Committee’s request for information on actions taken to combat statelessness.

3. Third, the Deportation Order Disregards the Principle of Non-Refoulement and Overlooks Customary International Law Obligations

The Deportation Order, as written (see discussion of how the Order’s implementation led to these violations in section E below), does not take into account the fact that the customary law of non-refoulement prohibits Pakistan from deporting persons to a country where they would face a real risk of persecution, torture, ill treatment, or death. No procedure or mechanism was provided in the Deportation Order to ensure how such persons would be identified and protected from deportation.

³¹ *Rahil Azizi v. The State & Others*, Islamabad High Court, Writ Petition No. 1666 of 2023, p.15. Accessible: <https://mis.ihc.gov.pk/attachments/judgements/161521/1/W.P.No.1666of2023RahilAziziVs.TheState638282052901135229.pdf>: “a purposive interpretation of the Foreigners Act presents it as a statute meant to regulate entry and exit of foreigners and not to punish anyone who manages to escape from their own country to Pakistan to save their lives.”

B. In the Aftermath of the Government's October 2023 Deportation Order, Tens of Thousands of Afghans Were Arbitrarily Harassed, Questioned, Abused, and Detained, and Their Homes and Businesses Vandalized.

i. ICCPR ARTICLES 2(1), 16, 17, and 26

The ICCPR requires equality before the law and equal protection of the law absent discrimination per Articles 2(1), 16, and 26. These rights extend to all persons residing in Pakistan, regardless of legal status.

ICCPR Article 2(1) requires State Parties to ensure that all individuals within their territory are granted the rights outlined in the Covenant, without any discrimination based on race, gender, language, religion, or other status. Article 16 guarantees that everyone has "the right to recognition everywhere as a person before the law," while Article 26, affirms that all persons are equal before the law and are entitled to equal protection without discrimination.

These rights are also mirrored in Article 4 of Pakistan's own Constitution, which affords the protection of law and the right to be treated in accordance with law to every person in Pakistan, and Article 10-A, which guarantees the right of every person, while present in Pakistan, to a fair trial and due process. But the manner in which the Government announced and carried out its plan to expel Afghans from the country violates both the ICCPR and the Constitution of Pakistan.

Widespread reports in mainstream media and from state officials, lawyers, and human rights organizations and activists indicate that the Deportation Order gave rise to an environment in which all of these legal protections were not respected. Instead, reports paint a picture of punitive crackdowns in Afghan neighborhoods where law enforcement officials made life unlivable for Afghan families as a means of coercing them to leave the country. The police showed up at all hours of day and night to harass residents, enter their homes with force, and to interrogate them.³² In addition to the aforementioned articles, such behavior is also a violation of Article 17, which prohibits "arbitrary or unlawful interference with privacy, family, [and] home..."

It was widely reported that police also demanded bribes and confiscated jewelry, livestock, and other property, and bulldozed homes, and Afghan women were

³² "UNHCR raises alarm over Afghans' exit order," Dawn, Nov 22, 2023, available at: <https://www.dawn.com/news/1791398>; "Probe into harassment claims during Afghan repatriation," Dawn, Dec 29, 2023, available at: <https://www.dawn.com/news/1801528>; "Amnesty urges Pakistan to halt 'deportation, detention, harassment' of Afghan refugees," Dawn, Nov 10, 2023, available at: <https://www.dawn.com/news/1788194>

sexually harassed.³³ In Islamabad, at least two settlements were destroyed by the Capital Development Authority (CDA), and there were instances of businesses owned by Afghans being demolished by the local administration in Peshawar.³⁴ These kinds of actions by law enforcement authorities and others are not subject to any oversight or review, thereby allowing the rampant abuse of unchecked power. In addition, Afghan families who have built businesses and invested in livestock for decades have been forced to close up shop, sell their inventory for virtually nothing, and abandon their life's work.³⁵

The police have also arrested small children from the streets without the presence of their parents, and these children typically have no knowledge of their home addresses. Women faced loss of employment, evictions and severe harassment by local police. One interviewee, a journalist from Afghanistan, had been warned by the Taliban government that she would be arrested under Afghanistan's morality law for her work. Once she fled to Islamabad, she was evicted by her landlord and later attacked by three men in a local park which resulted in multiple head injuries and gashes on her arms. Despite this, she is currently facing deportation by the Government of Pakistan and continues to appeal for asylum. Many police officials made use of the deportation announcement to harass Afghan families for bribery. One female interviewee was harassed by the police and threatened with arrest until she paid a bribe demanded by the officers. Yet another woman interviewed, and her three children, were assaulted by police with documented pictures of head trauma and told to leave the apartment they were renting by their landlord.

C. Once in Detention, Afghans Were Not Afforded Any Due Process Protections.

i. ICCPR ARTICLE 9

Article 9 (1) prohibits arbitrary arrest or detention, and requires that no person is deprived of liberty except in accordance with lawful procedures. Article 9(2) requires that anyone who is arrested must be informed, at the time of arrest, of the reasons for the arrest and must be promptly informed of any charges against them. The conditions under which Afghan individuals have been arrested and

³³ "Pakistan: Widespread Abuses Force Afghans to Leave," Human Rights Watch, Nov 28, 2023, available at: <https://www.hrw.org/news/2023/11/28/pakistan-widespread-abuses-force-afghans-leave>

³⁴ "Pakistan: Open Letter to Prime Minister on Repatriation of Refugees from Pakistan," Amnesty International, Index Number: ASA 33/7362/2023, Oct 27, 2023, available at: <https://www.amnesty.org/en/documents/asa33/7362/2023/en/>

³⁵ "Afghan refugees are leaving — and Pakistanis are enjoying the spoils they leave behind," Dawn Prism, Nov 10, 2023, available at: <https://www.dawn.com/news/1787507>

then detained are inconsistent with the ICCPR's standards concerning the deprivation of liberty.

Detained Afghans were herded into 1 of 49 detention centers set up across the country—36 in all 36 districts of Punjab; 3 in Peshawar, Haripur and Landi Kotal districts of Khyber Pakhtunkhwa; 2 in Kemari and Malir districts of Sindh; 3 in Quetta, Chagai and Pishin districts of Balochistan; and 1 holding center each in Islamabad Federal Capital and Gilgit.³⁶

Amnesty International has determined that detention centers run parallel to the legal system and in at least seven detention centers, no legal rights were extended to detainees such as the right to a lawyer or communication with family members. Such centers are in clear violation of the right to liberty, due process, and a fair trial. Also, no information was made public, making it hard for families to trace loved ones who were picked up and sent to detention centers with no prior notice or warning.³⁷

These findings were independently verified by JAC-R and other volunteers who frequently appeared at the detention centers to monitor ongoing human rights violations. For instance, in November 2023, lawyers and activists present at a makeshift detention center at the Alim Boys Scout Compound in District Kemari recorded the following:

"Lawyers are not allowed to access people detained, and there are no lists of people made public to lawyers. We do not know the number of men, women, and children detained or the nature of their immigration or refugee status. The data center was a block away from the Keamari detention center and there were families held there as well under strict guard and surveillance of police and rangers. We were informed by officers that 'they are well taken care of' and are 'voluntarily leaving' but would not allow lawyers to confirm this fact through a meeting."³⁸

In Sindh, the District Administration and law enforcement made unilateral determinations of "illegality" and there was no procedure in place to challenge, review or appeal such determinations.

³⁶ "Pakistan sets up 49 holding centers for undocumented migrants ahead of deportation," Arab News, Nov 1, 2023, available at: <https://www.arabnews.com/node/2401096/pakistan>

³⁷ "Pakistan: Halt Mass Detentions and Deportations of Afghan Refugees," Amnesty International, Nov 10, 2023, available at: <https://www.amnesty.org/en/latest/news/2023/11/pakistan-halt-mass-detentions-and-deportations-of-afghan-refugees/>

³⁸ "Urgent Appeal to Halt Deportation of People of Afghan Descent," Sindh Bachao Tehreek ("SBT") Letter to U.N. Special Procedures, Nov 5, 2023. Letter on file with JAC-R.

The described conditions are not only a gross violation of the ICCPR but of the Constitution of Pakistan, which guarantees a fair trial and due process to every individual present in the country, regardless of nationality. Detained Afghans were not produced before a magistrate within 24 hours, as required by domestic law, and they were denied their right to a fair trial. The detention centers do not allow access to lawyers and no one is being produced before a judge. Taken together, these facts indicate that state authorities have denied substantive and procedural due process to persons held against their will in these detention centers.

D. The Order led to Pakistani Pashtun Citizens Also Being Detained and Deported to Afghanistan.

i. ICCPR Article 2

Article 2 requires that the rights recognized in the ICCPR be ensured to all individuals “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” There have been documented cases through numerous media reports and JAC-R contacts of Pakistani Pashtuns having been targeted during law enforcement raids implementing the Deportation Order. We posit that such incidents highlight widespread racial and ethnic profiling in contravention of Article 2 protections.

A Pakistani citizen reported that his 17-year-old minor son—also born in Pakistan and a citizen—was detained by the police and later transferred to the detention camp at Sultanabad area, Karachi. In trying to help find his child, we learned that the child had been deported to Afghanistan. [From JAC archive.]

A pending Constitutional Petition before the Sindh High Court that is challenging the Government’s deportation plan has also confirmed that citizens of Pakistan have been deported:

“...[C]hildren of Pakistani citizens born in Pakistan have been detained and deported only because they did not have valid documentation on them at the time they were approached by the police. One such case is of 17-year-old Muhammad Anas, born in Pakistan, who was admittedly detained in a holding centre in Sultanabad in Karachi and sent to the Chaman border and deported on November 5 2023. The absence of any due process for arrest, detention and deportation means that persons of Afghan descent and Pashtuns have become vulnerable to racial profiling

by law enforcement authorities.”³⁹

Here again it should be noted that the Government’s reply to the list of issues does not adequately address the Committee’s request for data in regards to detention.

E. In Addition to the ICCPR Provisions Cited, Pakistan Is Violating Customary International Law by Forcibly Deporting Afghans to a Country Where They Would Be at Risk of Torture or Other Serious Human Rights Violations.

Despite not being a signatory to the 1951 Refugees Convention and 1967 Protocol, Pakistan is nevertheless bound by the universally binding customary law of non-refoulement, which prohibits deporting anyone (regardless of immigration status) to a place where they would face a real risk of persecution, torture, ill treatment, or a threat to their life. The Order ignores the reality that countless Afghans, including women and girls, journalists, human rights defenders, and former government officials would face imminent risk of persecution and repression by the Taliban if forced to return to Afghanistan.⁴⁰

With regard to gender, living in Pakistan is the only opportunity Afghan women and girls have to access their right to formal education, work, and freedom of movement.

1. One interviewee, a young woman aged 29 years old, fled from Kabul when the Taliban took over she had applied for her visa to Pakistan but when conditions worsened she and her family left for the border with no preparation she vehemently opposes going back to Afghanistan because she says it will be impossible for her to work or move around openly. She added that being sent back to Afghanistan forcefully would be a death sentence for her.
2. The case of another interviewee, a journalist who, upon fleeing Afghanistan, repeatedly informed authorities that she would be arrested for her work by the Taliban government if deported, underscores the alarming severity of Pakistan’s deportation drive and its focus on vulnerable groups specifically.

Members of religious and ethnic minorities also continue to face violence, marginalization, and oppression under the Taliban regime. The Hazara Shia population, in particular, face beatings, destruction of property, and forced

³⁹ Sheema Kirmani & others v. Province of Sindh & others, CP 5432/2023, ¶12. Petition on file with JAC-R.

⁴⁰ Amnesty International’s Afghanistan 2023 page, available at:

<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/afghanistan/report-afghanistan/>

evictions, but partners on the ground have documented cases of forcible deportations of members of the Hazara community, in blatant disregard of their personal safety:

- In the Zhob district of Balochistan, 21 Afghan refugees, including women and children, were detained. These individuals belong to the persecuted Hazara Shia community, and are especially vulnerable given their connection to the coal miners who tragically lost their lives in a terror attack by ISIS in Mach district of Balochistan in 2021. The majority were family members of the victims. JAC-R sent an urgent attention email to the UNHCR, despite urging the UNHCR and other relevant UN bodies to intervene, 18 out of 21 women & children were deported to Afghanistan.

Refoulement occurs “not only when a refugee is directly rejected or expelled, but also when indirect pressure is so intense that it leads people to believe they have no option but to return to a country where they face a serious risk of harm.”⁴¹ As previously demonstrated, Afghan neighborhoods across Pakistan are experiencing indiscriminate raids, violence, harassment, and arrests. This is deliberate state policy to create an environment of fear that leaves Afghans no choice but to flee to Afghanistan, despite the serious threat to their security and lives.

By forcing exodus and return of Afghans to a woefully unprepared and economically starved Afghanistan the Government of Pakistan breaches its obligation of nonrefoulement, a principle widely recognized as customary international law. In fact, such analysis relies in part on the Human Rights Committee’s own General Comment 31, which at paragraph 12 details the connection between Article 2 obligations on States combined with the protections afforded by Articles 6 and 7. The authors of this report believe that the Order, its official implementation and the climate it created, implicate explicit provisions of the ICCPR as well as customary international law norms prohibiting the return of individuals to a place where they may be seriously harmed.

IV. In Light of the Facts Highlighted Above, We Ask the Human Rights Committee to Make the Following Recommendations to the Government of Pakistan:

1. Reverse its decision to forcibly deport refugees in line with its international legal obligations including the principle of non-refoulement. Nullify, or at the very

⁴¹ “Pakistan: Widespread Abuses Force Afghans to Leave,” Human Rights Watch, Nov 28, 2023, available at: <https://www.hrw.org/news/2023/11/28/pakistan-widespread-abuses-force-afghans-leave>

least, substantially modify the terms of the Deportation Order and any of its subsequent manifestations or “phases.”

2. Refrain from forcefully returning ACCs who are family members of PoR card holders, in violation of the prohibition against family separation, which is a corollary of fundamental rights.
3. Immediately cease the harassment, intimidation, and blanket discrimination against Afghan persons. Take proactive measures to combat ill treatment by government officials and private citizens.
4. Ratify the 1951 Refugees Convention and its 1967 Protocol and pass national legislation in line with international human rights and refugee law that will distinguish and create a special status for foreigners with protection considerations.
5. Enforce birthright citizenship for children born to Afghan refugees, as promised by Section 4 of Citizenship Act, 1951.
6. Allow civil society, lawyers, and journalists to document the rights of those detained inside the government’s informal detention centers.