

October 18, 2001



## No Safe Refuge

### The Impact of the September 11 Attacks on Refugees, Asylum Seekers and Migrants in the Afghanistan Region and Worldwide

PRE-SEPTEMBER 11 OVERVIEW .....	2
Afghanistan and Bordering States .....	2
A chronic refugee and humanitarian situation.....	2
Worldwide .....	3
Increasing numbers of Afghan refugees .....	3
POST SEPTEMBER 11 OVERVIEW .....	3
Afghanistan and Bordering States .....	3
The humanitarian situation worsens.....	3
Doors close to Afghan Refugees.....	4
Worldwide .....	5
Backlash against migrants and refugees .....	5
Backlash against foreign workers .....	5
COUNTRY PROFILES .....	6
Afghanistan and Bordering States .....	6
Afghanistan.....	6
Pakistan .....	6
Iran .....	8
Tajikistan.....	8
China, Turkmenistan, and Uzbekistan.....	9
INDUSTRIALIZED STATES .....	9
United Kingdom.....	9
Other European States .....	10
Australia .....	11
The United States .....	11
OBLIGATIONS UNDER INTERNATIONAL REFUGEE AND HUMAN RIGHTS LAW AND STANDARDS ...	12
The principle of <i>nonrefoulement</i> .....	12
First country asylum versus in-country protection.....	13
Maintaining the civilian nature of asylum and refugee camps.....	14
Exclusion from refugee protection.....	14
Separation of armed elements in situations of mass influx.....	15
Access to asylum-determination procedures .....	15
Preventing prolonged, arbitrary and unlawful detention.....	16
The protection of women and children .....	16
The principle of international cooperation and responsibility sharing.....	17
CONCLUSIONS AND RECOMMENDATIONS .....	17
To the Taliban authorities .....	18
To neighboring countries.....	18
To governments in industrialized countries .....	18
To donor governments .....	19

## **PRE-SEPTEMBER 11 OVERVIEW**

### **Afghanistan and Bordering States**

#### ***A chronic refugee and humanitarian situation***

Twenty years of foreign invasion and civil war, political turmoil, continuing human rights abuses and recent drought had already displaced more than five million of Afghanistan's 27 million people before the September 11 attacks on the United States. Some four million refugees had been displaced to neighboring countries and across the world, while a further one million people had been internally displaced within Afghanistan. Severe drought had brought the country to the verge of famine and existing Taliban restrictions on relief agencies were severely hampering the delivery of assistance and civilian access to basic services.

The vast majority of refugees over the past two decades have fled to Afghanistan's nearest neighbors – over two million of them to Pakistan, and more than one and a half million to Iran. Weary after years of hosting huge refugee populations with minimal international interest or support for their plight and seeing little prospect of a solution, both countries tightened their refugee policies in recent years. Both Pakistan and Iran have officially closed their borders with Afghanistan and push-backs and deportations of Afghan asylum seekers have been frequent.

Pakistan officially closed its border with Afghanistan in November 2000, citing an inability to absorb the 30,000 refugees who had arrived in the previous two months and the thousands more then expected to arrive. In January 2001, the Governor of Pakistan's North West Frontier Province (NWFP), and thereafter the Federal Government, issued a public order empowering the police to detain and deport newly arrived Afghans in the NWFP and all Afghans who were already residing in Pakistan without official documentation. Between October 2000 and May 2001, the government reported that it had forcibly returned some 7633 Afghans, the great majority of them men and boys. Those new arrivals that were not detained or deported, were placed in Jalozai refugee camp, notorious for its deplorable living conditions. The Pakistan authorities refused to allow the United Nations High Commission for Refugees (UNHCR) to register new arrivals in Jalozai camp in order to determine whether they were in need of refugee protection.

In August 2001, the government of Pakistan and UNHCR reached an agreement to screen all the refugees at Jalozai camp as well as others at the longer established Nasirbagh camp, to determine who was in need of international refugee protection. Refugees in need of protection were to be relocated to New Shamshatoo camp and other undetermined sites. Those found not to be deserving of refugee protection would be returned to Afghanistan, or if considered to be particularly "vulnerable", such as women heads of households, the elderly, unaccompanied children, and others, would be given temporary protection in Pakistan. The screening started in mid August but was suspended following the September 11 attacks.

## **Worldwide**

### ***Increasing numbers of Afghan refugees***

In recent years, increasing numbers of Afghan refugees have fled to countries outside the immediate region. In 2000, according to UNHCR, Afghan refugees arrived in countries as distant and geographically dispersed as Australia, Cambodia, Cuba, and Iceland. In the last two years, the number of Afghans seeking asylum in Europe has nearly doubled, with Germany, the Netherlands and the United Kingdom receiving the largest numbers of applications. In all three countries, large numbers of Afghans have increasingly been recognized as having valid fears of persecution and have been granted protection. In the U.K., for example, 15 Afghans were granted refugee status in 1999 compared to 473 in 2000. In the European Union as a whole the number of Afghans granted refugee status went from 1290 in 1999 to 2777 in 2000.

The increase in the number of Afghan asylum seekers has received a harsh response from some countries. Australia, for example, has been particularly unreceptive. In August, it turned back 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. Most of the 438 asylum seekers were eventually sent to the Pacific island state of Nauru, others were sent to New Zealand. Following the September 11 attacks, the Australian Defense Minister Peter Reith justified his government’s refusal to allow the asylum seekers entry, arguing that it should reserve the right to refuse entry to “unauthorized arrivals” on security grounds. Ironically, Australia granted refugee status to 93% of the 1,431 Afghans whose cases were decided in 2000.

## **POST SEPTEMBER 11 OVERVIEW**

### **Afghanistan and Bordering States**

#### ***The humanitarian situation worsens***

If the humanitarian situation was bad for Afghan civilians, displaced persons, and refugees before the September 11 attacks on the U.S., it only worsened in the four weeks afterwards. The commencement of U.S. and British air strikes against Afghanistan on October 7 has heightened the humanitarian crisis.

By early October 2001, conditions inside Afghanistan had deteriorated dramatically and aid agencies were warning of an impending humanitarian disaster. The withdrawal of all international relief agency staff after the September 11 attacks, when the Taliban declared that it could no longer guarantee their security, exacerbated an already dire situation. At the same time, the UN has reported that the Taliban have confiscated food supplies from the United Nations and relief agencies and shut down U.N. and NGO communication networks. As a result, many relief agencies report that they have been unable to contact their local staff in Afghanistan and obtain accurate information about conditions for the civilian population.

Shortly after September 11, the World Food Program (WFP) warned that food supplies inside the country would be exhausted in two or three weeks. After briefly resuming food deliveries into northern and western Afghanistan at the end of September, U.N. food convoys were again suspended on October 8, after the commencement of U.S. and British air strikes, albeit temporarily. On the 10<sup>th</sup> October the WFP confirmed that it had successfully delivered food aid to Herat, Kabul and Faryab, a province severely affected by drought. In addition, thirty commercial trucks that left Turkmenistan were expected to reach Andkoi in Northern Afghanistan on October 15. The WFP have indicated the scale of their task, stating that they needed to 55,000 tons of food per month until spring 2002 to feed those facing famine.

Following the commencement of U.S. and U.K. military attacks there have been reports of attacks by the Taliban on U.N. workers, or agencies funded by the U.N., in several locations throughout Afghanistan. On October 8 the Taliban occupied the U.N. Office for the Coordination of Humanitarian Affairs in Mazar-i-Sharif in the north of Afghanistan and looted communications equipment. Several demining agencies and humanitarian organizations in Mazar-i-Sharif and Kandahar reported that the Taliban confiscated their vehicles and ambulances, looted their offices, and confiscated equipment between September 26 and October 15. Staff who resisted the confiscations were reportedly beaten.

### ***Doors close to Afghan Refugees***

Since September 11 fears of U.S. retaliatory military action, forced conscription and politically motivated attacks by the Taliban against particular ethnic groups considered sympathetic to its opponents; as well as the wider humanitarian crisis in Afghanistan have caused between 20,000 to 30,000 refugees to cross into Pakistan according to British and U.S. government estimates. There has not been a significant increase in the number of Afghans fleeing to neighboring countries since the commencement of military strikes.

All six countries neighboring Afghanistan, including Pakistan, Iran, Tajikistan, Turkmenistan, Uzbekistan, and China, are officially closed to refugees both on security grounds and citing an inability to absorb more refugees. Pakistan's actions were reportedly in direct response to a request from the U.S. to strengthen security in an effort to apprehend those responsible for the U.S. attacks. Although the borders of Pakistan, Iran, and Tajikistan have officially been closed for the past year, many refugees have been able to cross into Iran and Pakistan over the past months. The announcement of border closures after the September 11 attacks was thus a further tightening of existing border control policies.

Afghanistan's neighbors face legitimate security concerns that need to be taken into account. Measures must however be found to address those concerns without denying refuge to those fleeing armed conflict, civil unrest, human rights abuses, and the looming humanitarian crisis inside Afghanistan. Host and donor governments, in collaboration with the United Nations, should urgently develop a coordinated strategy to effectively identify and separate militants and armed elements from civilian refugees, in order to ensure that borders remain open to civilian refugees as required under international refugee law.

## **Worldwide**

### ***Backlash against migrants and refugees***

Throughout the world, countries have responded to the events in the U.S. with tightened immigration and asylum policies, and rushed through emergency legislation. Some governments, such as Spain, have publicly equated the war against terrorism with the fight against illegal immigration. The British Home Secretary David Blunkett has vowed to stop Afghan refugees from “spreading across the world” and has equated asylum seekers with terrorists. Some countries, such as the U.S. and the U.K., have proposed increased use of prolonged detention with limited judicial review and have suggested that international human rights standards and due process protections will become secondary to security concerns.

The European Union (E.U.) has proposed a package of new measures in the aftermath of the September 11 attacks with a definition of terrorism so broadly drawn that it threatens to undermine legitimate protest and speech based on long-established rights to free expression, assembly, and association. Since September 11, the E.U. has also sped up moves to harmonize immigration and asylum policies across the region, with heightened security interests threatening to further undermine refugee protection and the human rights of migrants.

Australia has taken extraordinary measures to exclude certain of its territories from key aspects of its migration laws in order to abrogate responsibility for Afghan and other asylum seekers who arrive by boat.

Human Rights Watch strongly supports governmental efforts to bring to justice those responsible for the September 11 attacks – which constituted a crime against humanity – and to prevent further such atrocities. Measures taken should not, however, discriminate against asylum seekers, refugees and migrants, infringe on the civil liberties and human rights of these groups, or undermine governments’ existing obligations under international refugee and human rights law.

The backlash against migrants, asylum seekers and refugees worldwide is a serious side effect of the September 11 attacks. There is grave concern that in light of refugee and immigration restrictions the world over, the rights of all these groups will be eroded and Afghan refugees in particular will find it harder to find the safety and refuge many of them so desperately need.

### ***Backlash against foreign workers***

Not only have refugees and migrants in industrialized countries been affected by the post-September 11 backlash, but Westerners working in the Middle East also appear to have been targeted. On October 11 the U.S. embassy informed its citizens of the shooting and death of a Canadian citizen working in Fahaheel, south of Kuwait City. Also on October 11, the German embassy reported that an explosive device was thrown at diplomatic staff in Riyadh, Saudi Arabia, and in Khobar, Saudi Arabia, one American was killed and an American, a Briton and two Filipinos were injured in a bomb attack on October 6.

## **COUNTRY PROFILES**

### **Afghanistan and Bordering States**

#### ***Afghanistan***

Prior to the September 11 events, Afghanistan already had up to one million internally displaced people due to civil war and drought. Since September 11, U.N. agencies and the majority of international NGOs have pulled out of the country due to security concerns, leaving local staff to distribute dwindling supplies to the Afghan people, millions of whom have no means of support. For instance, there are 40,000 widows in Kabul alone that are completely dependent on such food aid. In some areas there are only sufficient supplies for three weeks, in other areas supplies will only last until the end of the year. The onset of winter will only worsen conditions. In According to news reports on September 27, the Taliban confiscated 1,400 tons of U.N. food aid from stockpiles in Kandahar.

The “humanitarian airdrops” of food parcels as part of the U.K. and U.S. combined military and humanitarian strategy has been criticized by some humanitarian relief agencies, including the International Committee of the Red Cross (ICRC), Médecins Sans Frontières and Oxfam International, as well as the U.N. special rapporteur on the right to food, Jean Ziegler. The agencies claimed that the airdrops would not alleviate humanitarian suffering in an effective or sustainable way and by confusing military and humanitarian operations, risked undermining the neutrality and independence of humanitarian organizations. The Bush Administration acknowledged that the humanitarian airdrops were also political in nature and would meet only a miniscule fraction of the actual need. Regardless of the motivation for and possible ill effects of the airdrops, it is clear that they are grossly inadequate to forestall the imminent humanitarian disaster facing Afghanistan. News reports also suggest that civilians have had difficulty getting the food that has been dropped in to the country. Food meant as aid has also been re-appropriated and sold in markets.

Despite the difficulties in distributing food within Afghanistan, there has been a generous response by governments to the emergency funding appeals. According to the U.K. Department for International Development (DFID) on October 12, approximately \$740 million had been pledged by donors to assist the Afghan people. Out of this, \$303 million was earmarked for the UN inter-agency donor alert (which requested \$585 million).

Afghanistan is considered to be one of the most heavily mined countries in the world. As Human Rights Watch has reported in a backgrounder on landmine use in Afghanistan, Afghanistan’s border regions are mine-infested, posing an additional risk to the lives of the thousands of refugees forced to flee through these areas (see <http://www.hrw.org/backgrounder/arms/landmines-bck1011.htm>).

#### ***Pakistan***

Pakistan is currently host to more than two million Afghan refugees. Despite having officially closed its borders with Afghanistan, which are 1,560 miles long and difficult to control, relief agencies operating in Pakistan have reported that tens of thousands of Afghan refugees have

entered Pakistan since September 11. Before the October 7 military strikes, approximately 15,000 refugees had reached the Chanam border crossing near Quetta in Balochistan province; attempts to prevent thousands more Afghans from crossing led to clashes between border guards and refugees. Amid growing concern over the deteriorating humanitarian and security conditions of the refugees trapped at the Chanam border crossing, UNHCR sought to persuade the Pakistan authorities to allow the refugees to enter. The refugee agency reported on October 1, however, that thousands of the refugees had left the border area, apparently retreating back into Afghanistan in search of other routes into Pakistan. The Taliban are reported to have established checkpoints along routes to Pakistan to prevent those without passports and visas from leaving the country.

Thousands of refugees have entered via alternative routes and have told relief officials that they have traveled by foot for days, paid smugglers for rides, and bribed border security guards to enter Pakistan. Before the U.S. military strikes, an estimated 800 refugees per day were entering Pakistan through the North West Frontier Province (NWFP). The numbers of new arrivals did not increase significantly after the commencement of military strikes on Afghanistan, in part because of the increased cost of transport and smuggler fees reported by many refugees.

Refugees who attempt to enter Pakistan through unofficial routes in response to the continuing border closures, are also at greater risk of serious injury from landmines and unexploded ordinance in the heavily mined border area.

In the event of a mass influx into Pakistan, UNHCR and the Pakistan government have identified dozens of potential refugee camp sites in the NWFP that could accommodate up to one million refugees. The sites are located in what are known as Pakistan's Federally Administered Tribal Areas close to the Afghanistan border. UNHCR and NGOs are currently preparing twenty sites with a total capacity of 200,000.

Locating camps in these areas could place Afghan refugees and humanitarian aid workers at serious risk. The camps are located within eighteen kilometers of the border, contrary to international standards which stipulate that refugee camps should be located at a "safe distance" from international borders to avoid cross border attacks or military incursions. The areas in which they are located are unstable and insecure, they are difficult to reach and lack an adequate water supply and infrastructure. Operating under such conditions is already proving dangerous and extremely difficult for relief agencies. Furthermore, the Pakistan authorities have indicated that the camps will be closed and securely guarded by the Pakistan military. Refugees will not be able to freely move in and out of camps and access for humanitarian agencies could also be restricted.

While Human Rights Watch welcomes steps by the government of Pakistan to prepare for a potential refugee influx, we are very concerned about plans to establish refugee camps in unsafe areas and under conditions that are contrary to international refugee protection standards. We urge UNHCR and the government of Pakistan to reconsider the placement of refugee camps in these insecure locations and to identify alternative sites where the protection of the refugees and humanitarian workers can be guaranteed.

Anti-U.S. demonstrations in Pakistan since the commencement of the U.S. and U.K. military strikes on October 7 have also affected the operations of relief agencies. Several international and local relief agencies were reportedly attacked in the towns of Hangu, Landi Kotal, and Bajuar around Peshawar in NWFP on October 8 and 9 following the air strikes. In Hangu, protesters burned the field offices of an international relief agency as well as setting fire to the Hangu police station. In Quetta, the United Nations Children's Fund (UNICEF) office was burned and destroyed in a demonstration on October 8 during which UNHCR's office was also slightly damaged.

### ***Iran***

Since the September 11 attacks and the threat of U.S. and allied military action in Afghanistan, Iran has resolutely maintained that its 560 mile border with Afghanistan will remain closed to any influx of refugees. The government has indicated that it is willing to provide humanitarian assistance only inside Afghanistan with the consent of the Taliban. To this end, Iran has proposed establishing refugee camps inside Afghanistan immediately across the border from Iran. These camps will be designed to hold a maximum of 200,000 refugees between them. Iranian newspapers have reported that the Iranian interior ministry called upon national relief organizations to provide emergency aid, although prior to the October 7 military strikes, relief workers reported that few Afghan refugees had reached the Iranian border. According to UNHCR, the Iranian Red Crescent moved tons of relief items to the border in preparation for possible new arrivals. So far, Iran has not responded to calls from UNHCR or international NGOs to officially reopen its borders, although reportedly small numbers of refugees are managing to cross.

Since the air strikes began on October 7, there has not been a significant movement of refugees towards the Iranian border. UNHCR refuted reports by the Iranian government that some 20,000 refugees had fled across the border into Iran since the start of the U.S.-led strikes. There were also press reports that the Iranian government had positioned additional troops along its border after the commencement of the military strikes and had started to deport hundreds of refugees back to Afghanistan. On October 11 an official of Iran's Red Crescent Society told reporters that the Taliban had rebuffed efforts to set up camps in Qaen and Taybad in Khorassan province in northeastern Afghanistan.

### ***Tajikistan***

Recovering from its own 1992–1997 civil war, which caused massive internal displacement Tajikistan remains unstable For two years devastating drought and crop failure has compounded the country's problems. Tajikistan's frontier with Afghanistan has been closed since September 2000. The Tajikistan government, unable to adequately defend the border itself has been relying on thousands of Russian Federal border guards to patrol the frontier.

There are currently over 10,000 internally displaced Afghans on small islands in the Pyanj River, which divides the two countries, waiting for an opportunity to cross into Tajikistan. Some of these receive assistance from aid agencies. UNHCR has estimated that as many as 50,000 Afghans in neighboring provinces close to the border may also leave their homes should the current crisis escalate. Other estimates put this figure as high as 120,000. On September 20, Tajikistan President Emomali Rakhmonov stated that the country would not be prepared to let a

single refugee into the country, citing fears of infiltration by Islamic militants and serious economic problems. (See Human Rights Watch backgrounder <http://www.hrw.org/backgrounder/eca/tajikbkg1005.htm> for further details.)

### ***China, Turkmenistan, and Uzbekistan***

All three countries have closed their borders with Afghanistan. China's relatively narrow border with Afghanistan is the least accessible route out of Afghanistan. Uzbekistan's government reinforced its frontier, citing concerns about Islamic militancy. Turkmenistan's foreign minister has said he is willing to cooperate with UNHCR, but it is not clear whether Turkmenistan would reopen its border if faced with an influx of refugees.

## **INDUSTRIALIZED STATES**

Prior to the September 11 attacks, many industrialized states had already implemented measures restricting the internationally protected rights of asylum seekers, refugees and migrants (see <http://www.hrw.org/campaigns/refugees/index.htm>). These measures have been tightened in light of the September 11 attacks and many governments have proposed further restrictive legislation deemed necessary to strengthen security in the face of threats of further violence. While Human Rights Watch recognizes the need for heightened attention to security in order to prevent a recurrence of future terrorist attacks and bring those responsible for the September 11 attacks to justice, we are deeply concerned that many of the measures currently being implemented or considered in industrialized states will further restrict the rights of migrants, refugees and asylum seekers; may violate governments' commitments under international refugee and human rights law; and will undermine the fundamental right to seek and enjoy asylum.

### ***United Kingdom***

Since the September 11 attacks, the British Home Secretary David Blunkett has put in place a series of measures that will further restrict entry into the country. The Home Secretary indicated that in order to prevent terrorism it might be necessary to curb the appeal rights of those refused entry into the United Kingdom. This could prevent asylum seekers from having their claims for refugee status assessed fully and fairly. Most individuals currently recognized as refugees in the UK only received that recognition after appealing an initial negative decision.

Blunkett also suggested that Afghans fleeing their country are not entitled to seek refuge elsewhere. "There is already a major problem on the Afghan border" he said on September 27. "The main aim is to stop people coming from that region and spreading across the world. That is also necessary for reasons of terrorism."

The Home Office has announced that proposals for new security measures would soon be introduced. These would include enhanced arrest powers for police to interrogate anyone suspected of having knowledge of terrorist activities, indefinite detention for those suspected of or associated with terrorist activity, and the restriction of judicial appeal for migrants turned away at airports.

Racist attacks against Afghans and other Muslims living in the U.K. have increased dramatically since September 11. Such attacks have included damage to property and bomb threats against mosques, physical and verbal abuse of Muslim women wearing headscarves, and gang assaults targeting Arab and South Asian men. In one attack an Afghan taxi driver was beaten so severely he was paralyzed from the neck down. Prime Minister Tony Blair met with leaders of the Muslim community in Britain on September 27. During the meeting he strongly condemned the attacks on members of the Muslim, Arab, and South Asian communities in the U.K., which he described as “despicable” and referred to the “minority who are only too happy to use recent events as a convenient cover for racism.” The British Home Secretary David Blunkett also announced immediate legislation to extend the law on incitement to racial hatred to cover religious hatred, and the creation of a new group of offences, such as violent assault aggravated by religious hatred, that will carry a higher penalty in the courts.

### *Other European States*

A number of other European governments have announced new policies in the aftermath of September 11 that inherently link illegal immigration with terrorism and pay little attention to the rights of asylum seekers, refugees, and migrants. For example, Greece has sought closer cooperation with Turkey on the matter of illegal immigration, expressing fear that the current crisis is likely to bring Afghans to both states. Spain’s Foreign Minister has voiced concerns that international terrorists could be smuggled into Spain and said that “[t]he strengthening of the fight against illegal immigration is also a strengthening of the anti-terrorist fight.”

In Hungary, all Afghan asylum seekers were transferred from open reception centers to facilities with heightened security measures. In Brussels, Belgian police detained thirty Filipino immigrants, including women and children, searched their homes and personal belongings, and interrogated them for connections with Muslim rebels in Mindanao with alleged connections to Osama bin Laden.

In a speech on September 26 in Germany, Italian Prime Minister Silvio Berlusconi stated that western countries’ respect for human rights characterized a civilization “superior” to that of Islamic countries. Human rights groups charged Berlusconi with contributing to an increasingly hostile climate for Muslim migrants and refugees in Italy. In subsequent meetings with ambassadors from Muslim states in Rome, Berlusconi denied that he had ever made such statements. Other European leaders however took pains to distance themselves from these views. Leaflets that read “Illegal immigrants = Islamic terrorists” were distributed at a right-wing coalition meeting in Italy.

In Germany, advocacy groups report that efforts to include adequate human rights safeguards for refugees in proposed asylum legislation have suffered a serious setback in the aftermath of the September 11 attacks. Prior to September 11 there had been vociferous political opposition to the legislation, including new and restrictive measures for asylum seekers whose refugee claims have been rejected but cannot be returned to their countries of origin and are living in a state of limbo; and the removal of independent adjudicators from asylum hearings and their replacement with adjudicators from the interior ministry. In the aftermath of the September 11 events, opposition these measures decreased with many viewing the new legislation as a necessary measure to strengthen national security.

### ***Australia***

In light of the current crisis, Australia donated U.S. \$14.3 million of humanitarian assistance for Afghan refugees in southwest Asia. However, at the same time the government has enacted policies that severely restrict the rights of refugees.

The events surrounding the interception of the *Tampa* in August 2001 and the September 11 attacks on the U.S. paved the way for legislation adopted in an expedited manner on September 26. The new legislation “excises” various islands and sea installations from Australia’s “migration zone,” which is an attempt by Australia to avoid its obligation under international law to fully and fairly consider applications for asylum on its territory and not to return refugees to places where their lives or freedom are at risk. As a result, the new laws will have a very serious impact on Afghan and other asylum seekers arriving by boat.

In addition, the legislation tightens definitions and prevents asylum-seekers and refugees from receiving the procedural safeguards - and ultimately the protection - to which they are entitled to under international refugee and human rights law. For example, appeals for rejected asylum claims are eliminated, putting genuine refugees at risk. Moreover, arbitrary and potentially indefinite detention of asylum seekers outside the “migration zone” is allowed without judicial review. This violates the fundamental norm against prolonged, arbitrary, and unlawful detention and is contrary to UNHCR’s guidelines on the detention of asylum seekers.

Under the new legislation applications from asylum seekers who have spent a period of seven days or less in transit in a “safe country” are prohibited and “adverse inferences” could be made against people arriving without documentation, (in violation of Article 31 of the Refugee Convention that prohibits the penalization of refugees who enter a country illegally). Finally, the legislation leaves access to asylum determination proceedings up to Ministerial discretion and creates different categories of refugees depending on which part of Australia they arrive in. In all cases, this potentially arbitrary and discriminatory treatment is contrary to international refugee and human rights law.

### ***The United States***

Against the backdrop of the recent attacks, lawmakers in the U.S. are debating anti-terrorism legislation that would constrain the rights of non-citizens. The severe impact the proposed legislation would have on personal liberty has engendered widespread criticism and spurred members of Congress to consider compromise proposals.

Current legislation on anti-terrorism, under consideration in Congress since October 4, 2001, will give unprecedented powers to the Attorney General to detain non-citizens for prolonged periods with limited judicial review. The proposals would authorize the Attorney General to certify and then to detain any non-citizen, including an asylum-seeker, legal permanent resident, or a refugee, who he “has reasonable grounds to believe” is engaged in terrorist activities or other activities that endanger national security as broadly described in the pending legislation and in existing law. It is not clear whether or in which venue the Attorney General would be required to articulate those reasonable grounds or the exact standards used in certifying individuals.

After certification, the Attorney General would have seven days to place a non-citizen in removal proceedings or to charge him or her with a criminal offense. However, the period of detention could continue indefinitely based on the ways in which the proposed legislation interacts with removal procedures. In some cases, countries may be unwilling to take back citizens who have been certified by the Attorney General as having been engaged in terrorist activities, thus increasing the likelihood of indefinite detention.

The legislative proposals use broad and vague criteria for subjecting a non-citizen to detention. For example, the Attorney General could certify and detain any non-citizen in the U.S. who has had any connection, however tenuous or distant in time, with any group (or sub-group) that has ever unlawfully used a weapon to endanger any person. Given the focus of the current law enforcement efforts aimed at investigating and identifying alleged terrorists, such language creates the risk of arbitrary application and may disproportionately impact asylum-seekers and refugees from Afghanistan or other countries in southwest and central Asia, the Middle East, and North Africa. In addition, the proposed legislation is unclear about the degree to which the evidentiary basis for detention will be reviewed. Detention of non-citizens under these conditions is contrary to UNHCR's own principles on the protection of asylum seekers and refugees, and contravenes the prohibition against prolonged, arbitrary, or unlawful detention in international human rights law.

Increased racist and xenophobic attacks, harassment and threats against Muslims, Sikhs and people of Middle Eastern and South Asian descent have been reported in the U.S. since the September 11 attacks. In Mesa, Arizona a Sikh man was killed in a shooting rampage, with additional shots fired at a Lebanese clerk and the home of an Afghan family. An Egyptian-American grocer was shot and killed near his store in San Gabriel, California and a storeowner from Pakistan was shot dead in Dallas, Texas. A gasoline bomb was thrown into the home of a Sikh family in California. SAALT (South Asian American Leaders of Tomorrow) reported that in the first week after the September 11 attacks the press reported 645 incidents of backlash attacks and harassment against persons of South Asian or Middle Eastern descent (see <http://www.saalt.org/>). President George Bush, Attorney General John Ashcroft, New York City Mayor Rudolph Giuliani and other U.S. officials have called on the public to reject national or religious stereotyping and have strongly condemned acts of racist violence and intolerance.

## **OBLIGATIONS UNDER INTERNATIONAL REFUGEE AND HUMAN RIGHTS LAW AND STANDARDS**

### **The principle of *nonrefoulement***

The right of refugees not to be returned to a country where their lives or freedom are threatened (the principle of nonrefoulement) is the cornerstone of international refugee protection. The principle of nonrefoulement is enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees (the "Refugee Convention") as well as being a well-established principle of international customary law. Article 33 (1) of the Refugee Convention states that:

“No Contracting State 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, religion, nationality, membership of a particular social group or political opinion”

By closing their 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 and thus violating their obligations of nonrefoulement. Iran, China, Tajikistan, and Turkmenistan are all parties to the Refugee Convention and its 1967 protocol. 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.

Australia is also a party to the Refugee Convention. Australia’s attempt to remove territories (where refugees are likely to land in the future) from its “migration zone” is an attempt to withdraw these areas from the scope of the obligation of nonrefoulement binding on Australia. The “excision” does not, however, shield the government from its obligation under the Refugee Convention and customary international law not to return - in any manner whatsoever - a refugee to a place where his or her life or freedom is threatened.

New restrictive immigration measures introduced in other countries in the wake of the September 11 attacks, threaten all persons seeking asylum and place them at risk of being returned to countries where their lives are threatened, in violation of nonrefoulement obligations.

### **First country asylum versus in-country protection**

Cross-border in-country assistance should not be a substitute for international refugee protection. Iran, while steadfastly refusing to allow refugees into its territory, has proposed assisting refugees in camps established just across the border inside Afghanistan. As a state party to the 1951 Refugee Convention, Iran has obligations under international refugee law to keep its borders open and to provide at least temporary protection to refugees fleeing persecution and human rights abuse.

At the same time, the international community has an obligation to assist countries like Iran to cope with mass influxes of refugees and to provide longer-term solutions to their plight. Not only should donor countries provide Iran with financial and logistical assistance, but they should also be prepared to provide protection themselves to Afghan refugees under emergency resettlement schemes.

Between 1979 and 2000, the Executive Committee of UNHCR (ExCom) passed fourteen Conclusions citing the need for international responsibility-sharing to assist host countries to cope with mass influxes of refugees. The Conclusions also stipulate the fundamental obligation of first countries of asylum to keep their borders open to refugees and to provide them with full refugee protection on at least a temporary basis (see [www.unhcr.ch](http://www.unhcr.ch)). While ExCom Conclusions are not legally binding, they do represent a consensus opinion of the fifty-seven member states of the ExCom and as such carry persuasive authority. They are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of international refugee law.

As in all refugee crises, the actions of host countries and the international community will set precedents for future refugee emergencies. If the international community sanctions the closure of borders and the establishment of in-country camps as an alternative to allowing refugees to cross an international border to seek protection, it will send a damaging message to countries elsewhere in the world that they too can close their borders in the face of large and destabilizing refugee influxes. Such practices could permanently erode the institution of asylum that is so fundamentally important to protect millions of people who flee persecution and human rights violations worldwide.

### **Maintaining the civilian nature of asylum and refugee camps**

Many governments, but particularly Pakistan, Tajikistan and Uzbekistan, have cited security concerns as the reason for closing their borders to fleeing Afghans and to refugees in general, or for introducing tougher immigration controls. In light of the September 11 attacks and fears that members of the al-Qaida organization or members of the Taliban armed forces may try to cross from Afghanistan into neighboring countries or take refuge in western states, as well as growing internal instability within several neighboring countries, these concerns are legitimate.

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. International refugee standards also provide for the separation of armed individuals and those who have not genuinely and permanently renounced their military activities from civilian refugees, in order to maintain the civilian and humanitarian nature of refugee camps and asylum. These provisions should be applied in a fair, non-discriminatory manner with full procedural guarantees and international monitoring. Persons should not be excluded from refugee protection solely on the grounds of their race, nationality, ethnic origin, political, or religious beliefs.

### ***Exclusion from refugee protection***

The Refugee Convention defines those categories of individuals who should be excluded from international refugee protection. Article 1 (f) of the Convention – the so-called “exclusion clauses” – ensure that perpetrators of gross human rights violations and serious non-political crimes are excluded from protection under the refugee regime. Individuals are excludable under the Refugee Convention if there are serious reasons for considering that they have:

committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes

committed a serious non-political crime outside the country of refuge prior to admission to that country as a refugee; been guilty of acts contrary to the purposes and principles of the United Nations [There are few precedents for the application of 1(F)C clause, however the UNHCR has recommended that it be applied with caution due to its general character. According to UNHCR it would only cover criminal acts, and would overlap with the crimes listed in 1(F) a]

These provisions should be sufficient to prevent organizers and perpetrators of terrorist acts from abusing the asylum system to enter a country.

Provisions also exist under the Refugee Convention to expel a refugee on grounds of national security. Article 32 of the Refugee Convention allows a refugee to be expelled to any country

other than one where their life or freedom could be threatened, on grounds of national security or public order after a decision is reached in accordance with due process of law. Nonrefoulement protections apply to all refugees unless there are “reasonable grounds for regarding [him] as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country” (Article 33 (2) of the Refugee Convention).

### ***Separation of armed elements in situations of mass influx***

Ensuring the civilian nature of refugee camps in situations of mass influx can be more complex. The 1951 Refugee Convention, regional refugee instruments (including the 1969 OAU Refugee Convention), UNHCR policies and guidelines, and ExCom Conclusions have all provided guidance on the humanitarian and civilian nature of asylum and refugee camps. (See [www.unhcr.ch](http://www.unhcr.ch))

In situations, such as the current Afghan refugee crisis, where armed individuals and those who have not genuinely and permanently renounced their military activities may be mixed with civilian refugee populations, refugees should be screened on arrival in the country of asylum to identify and disarm armed and militant elements and to separate them from the rest of the refugees. Screening should take place according to clearly defined criteria and with international monitoring to guarantee that international protection is provided to those in need.

The separation and disarming of militant or armed elements is important in order to ensure the civilian and humanitarian nature of refugee camps and settlements. UNCHR stipulates that once separated and disarmed, fighters should be interned at a safe location from the border, or otherwise prevented from continuing their armed activities or endangering the refugee population. The basic needs of those confined should be met and they should be protected from forcible return to their own country under international humanitarian law.

The separation and confinement of armed elements can be a logistically difficult task. UNHCR has on numerous occasions pointed out the need for international assistance from states and the United Nations to assist host countries in securing the civilian nature of refugee camps.

It should be noted that the separation of armed elements is a practical measure to ensure the civilian and humanitarian nature of refugee camps and is not the same as exclusion from international protection under the Refugee Convention.

Additional measures to ensure the civilian character of refugee camps include the location of camps at a safe distance from the border of the country of origin in order to prevent military incursions and the use of the camps as a base for military activities. Adequate policing of refugee camps and settlements must be provided to prevent infiltration and abusive attacks by armed elements.

### **Access to asylum-determination procedures**

The Universal Declaration of Human Rights provides in Article 14 that “everyone has the right to seek and enjoy in other countries asylum from persecution.” This principle of international

human rights is at risk when governments impose visa requirements, security checks, and other barriers to entry that effectively prevent persons from applying for asylum. The right to seek asylum is also violated, often together with the principle of *nonrefoulement*, when individuals cannot access fair and impartial asylum determination procedures. The excision of certain Australian territories from its migration zone, proposals for the withdrawal of judicial appeals in the U.K. and Australia, sweeping generalizations about the relationship between terrorists and illegal migrants in many countries, and the possible widespread use of administrative detention in the U.S. and in Europe, will make accessing fair procedures much more difficult for refugees.

### **Preventing prolonged, arbitrary and unlawful detention**

The right to liberty and security of person is guaranteed under the 1966 International Covenant on Civil and Political Rights (ICCPR), to which the U.S., the U.K., Australia, Afghanistan, Iran, Tajikistan, Uzbekistan are all parties and China is a signatory. Article 9 of the ICCPR provides that everyone “has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.” To ensure freedom from arbitrary detention, Article 9 further requires that detention must be examined for its lawfulness by an impartial adjudicator. The U.N. Human Rights Committee has expressly stated that the guarantees of Article 9 apply to aliens. Recent moves by the U.S., the U.K. and Australia to place non-citizens, including asylum-seekers, into detention with severely limited access to review by an impartial adjudicator violates this fundamental right in international law.

UNHCR guidelines on the detention of asylum seekers also stipulate that as a general rule asylum seekers should not be detained and minimal procedural safeguards must be guaranteed. These include the right to an automatic independent judicial review of all decisions to detain followed by periodic reviews of the necessity to continue to detain, and the right of all asylum seekers to be informed of their right to legal counsel and to be provided free legal assistance where possible. Proposed legislation by the U.S., U.K., and Australia – all of which are member states of ExCom– to increase the use of immigration detention do not comply with UNHCR’s guidelines on the detention of asylum seekers.

### **The protection of women and children**

The vast majority of Afghan refugees in neighboring countries and amongst those trapped at the border are women and children. They also will be adversely affected by any military action inside Afghanistan and the ongoing humanitarian crisis. Host and donor countries, U.N. and humanitarian agencies must pay particular attention to the protection needs of refugee women and children. These include protection against physical, sexual, and domestic violence and abuse; full and unimpeded access to appropriate assistance, including access to food, shelter, water, health care, and education for children; and full participation in decision-making and the planning and implementation of protection and assistance programs. All measures pertaining to refugee women and children should be fully in accordance with the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child. Governments and U.N. agencies should also comply with the 1991 UNHCR Guidelines on the Protection of Refugee Women, the 1995 UNHCR guidelines on prevention and response to sexual violence against refugees, and the 1994 UNHCR guidelines on protection

and care of refugee children. Numerous ExCom Conclusions also provide guidance to states on the protection of refugee women and children and on women. (See [www.unhcr.ch](http://www.unhcr.ch))

### **The principle of international cooperation and responsibility sharing**

As well as security concerns, Afghanistan's neighbors have also cited lack of resources as a major reason for their reluctance to take in a new influx of refugees. Both Iran and Pakistan already host one of the largest and longest standing refugee populations of the world, and are frustrated by the lack of international assistance they have received over recent years. UNHCR has seen a general funding shortfall in its programs for Afghan refugees over recent years. In July 2001 UNHCR had only received 63 percent of its projected budget for Afghan refugees in South West Asia (Pakistan and Iran), and zero funds for its appeal for internally displaced persons within Afghanistan. In light of the current crisis and UNHCR projections that as many as one million refugees may be heading towards Pakistan, 400,000 to Iran, and 50,000 to Tajikistan, there is an urgent need for humanitarian assistance to these countries.

The international community is obliged to assist host countries to meet the humanitarian needs of large refugee influxes. The Preamble of the Refugee Convention underlines the "unduly heavy burdens" that sheltering refugees may place on certain countries, and states "that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation." Numerous ExCom Conclusions also reiterate the need for international responsibility sharing to assist host countries in coping with large refugee influxes. In addition, Article 2 of the International Covenant on Economic, Social and Cultural Rights calls for international cooperation amongst states in order to achieve full realization of the rights recognized in the Covenant, including rights to food, shelter, health care, and education.

## **CONCLUSIONS AND RECOMMENDATIONS**

There is an urgent need for international cooperation to address the humanitarian crisis inside Afghanistan, to assist countries in the region to cope with large-scale refugee flows, and for industrialized and other states to take their share of Afghan refugees. Countries should not use legitimate security concerns in the face of the September 11 attacks as an opportunity to close their borders or introduce legislation that further and indiscriminately restricts the rights of all refugees, asylum seekers, migrants, or other non-citizens.

Afghanistan's neighbors should work quickly to establish procedures, in conjunction with UNHCR and donor governments, to separate armed elements from refugees. In this way they can keep their borders open and comply with their obligations under international refugee law, as well as their humanitarian obligations, while maintaining national security. Urgent steps should be taken to help these countries to cope with the potential mass influx of refugees.

Human Rights Watch makes the following recommendations.

### **To the Taliban authorities**

- As a matter of urgency allow international relief and U.N. agencies full, free, and unimpeded humanitarian access to all civilians inside Afghanistan, including the internally displaced, with full security guarantees.
- Cease immediately the confiscation of humanitarian supplies, equipment and vehicles from relief and U.N. agencies and restore full communication networks for U.N. and relief agencies

### **To neighboring countries**

- Re-open borders to refugees from Afghanistan and provide them with adequate protection
- Cease immediately the deportation of Afghan refugees
- As a matter of urgency and in collaboration with donor governments and United Nations agencies, develop a coordinated strategy to effectively identify and separate militants and armed elements from civilian refugees. Separation should take place inside host countries at the border and involve an international monitoring presence
- Refugee camps should be established in safe, accessible areas in neighboring countries and located at a safe distance from international borders in accordance with international refugee protection standards. Camps should be set up in areas with adequate infrastructure and water supply and humanitarian agencies should have full, free and unimpeded access to the camps. Refugees should not be held in camps under detention-like conditions. The security of refugees and humanitarian workers should be guaranteed.
- The establishment of cross-border camps, safe havens, or humanitarian zones within Afghanistan should *not* be considered as an alternative to providing refuge in neighboring countries

### **To governments in industrialized countries**

- Allow asylum seekers access to fair and efficient asylum determination procedures. Tougher immigration controls, including anti-terrorist and anti-smuggling measures, should not infringe on the rights of all asylum seekers to access fair and efficient asylum determination procedures, and should in no way undermine government's international obligations prohibiting arbitrary and indefinite detention and the return of refugees and asylum seekers to territories where their lives or freedom may be threatened
- Urgently take measures to counteract and prevent growing attacks against nationals, immigrants, asylum seekers, and refugees on the basis of their ethnic origin, nationality, religious and political beliefs and backgrounds. Increased protection should be provided to these groups, and government leaders should, in their public statements and actions, take the lead in countering xenophobic and racist acts
- Ensure that immigration control measures include procedural safeguards in conformity with international standards for migrants, refugees, and asylum seekers who are arrested,

detained, or in the process of deportation. At a minimum, those safeguards must include the rights to judicial review; an explanation of rights and the reasons for their detention in their own language or a language that they understand; immediate and regular access to family, legal counsel, and a medical officer; communication with representatives of international humanitarian agencies; an effective legal remedy to challenge the lawfulness of detention and obtain release if the detention is arbitrary or unlawful; access to a judicial authority to complain about possible mistreatment; and the right to seek and obtain compensation for arbitrary detention or other abuse.

### **To donor governments**

- International responsibility sharing measures should be urgently put in place to respond to the humanitarian crisis inside Afghanistan and potential refugee flows.
- Immediate humanitarian assistance must be provided to civilians inside Afghanistan to prevent further humanitarian disaster and options for ensuring that assistance reaches those most in need, especially the internally displaced, without endangering them must be urgently explored. Efforts must be taken to ensure that U.N. and humanitarian agencies have full, safe, and unimpeded humanitarian access to civilians inside Afghanistan.
- Urgently provide international assistance to neighboring countries and countries in the region to cope with the potential outflow of refugees from Afghanistan
- In collaboration with host governments in the region and United Nations agencies, develop a coordinated strategy to effectively identify and separate militants and armed elements from civilian refugees. Separation should take place inside host countries at the border and involve an international monitoring presence
- Governments outside the region, particularly industrialized states, should explore emergency resettlement possibilities for Afghan refugees.