

AFGHANISTAN, IRAN, AND PAKISTAN

CLOSED DOOR POLICY: Afghan Refugees in Pakistan and Iran

“The bombing was so strong and we were so afraid to leave our homes. We were just like little birds in a cage, with all this noise and destruction going on all around us.”

Testimony to Human Rights Watch

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I. MAP OF REFUGEE AND IDP CAMPS DISCUSSED IN THE REPORT

II. SUMMARY

At least three and a half million Afghans are currently refugees in Pakistan and Iran,¹ having been displaced from their homes by more than twenty-two years of civil strife, devastation, and political repression. Recently, thousands more Afghans have entered Pakistan and sought entry to Iran to escape generalized conditions of insecurity, factional conflict, and the U.S.-led bombing campaign that began in October 2001. Despite the overthrow of the oppressive Taliban regime, many Afghan refugees today fear to return home, recalling the fractious times that characterized the pre-Taliban era in Afghanistan. Some have specific fears linked to their membership in one of Afghanistan's ethnic groups, or their past experience of living under the control of one of Afghanistan's many local commanders. Others are traumatized by recent experience and cannot imagine re-starting life or work in a place where travel down a highway can result in extortion or injury either at the hands of bandits, or of security forces ostensibly under the control of the local commander. While these fears make return to Afghanistan a daunting prospect, Afghan refugees are also experiencing increasingly hostile treatment in Iran and Pakistan and pressure to leave.² Mistreatment at the hands of Pakistani or Iranian law enforcement authorities and violence in refugee camps are just some of the problems Afghan refugees face on a daily basis.

This report documents some of the key problems that Afghan refugees now confront. These relate both to the causes of their flight from Afghanistan and their treatment in exile in Pakistan and Iran.

III. INTRODUCTION

The demise of the Taliban in Afghanistan has not ended one of the world's largest and most prolonged refugee emergencies. While tens of thousands of Afghans chose to return to their home country during each of the first three weeks of January 2002³ several thousand others continued to flee, or attempt to flee Afghanistan to escape continuing aerial bombing and conflict.⁴ And, although the beginning of 2002 saw a higher number of returning refugees than new arrivals, there remain two million Afghans inside Pakistan and one and a half million in Iran⁵ who have serious fears for their lives and security should they go home.

These fears stem from the generalized conditions of insecurity caused by tensions and actual conflict between Northern Alliance commanders in the north of Afghanistan, and between rival tribal or political leaders in the south. Refugees also fear the general lawlessness that exists due to the limited influence certain current leaders have over the regions they ostensibly control. In addition, many refugees from ethnic groups associated with anti-Taliban forces (Tajik, Uzbek and Hazara) fear a return of the ethnic reprisals and factional fighting between different ethnic groups that were hallmarks of the pre-Taliban era.⁶ Ethnic Pashtun refugees, for their part, fear reprisals at the hands of other ethnic groups based on the presumed association between ethnic Pashtuns and the Taliban regime and its abusive practices.

¹ UNHCR, *Afghanistan Facts and Figures*, at <http://www.unhcr.ch>.

² For example, the Sindh government in Pakistan issued an official handout explaining that the government would meet with refugee elders to persuade refugees to agree to repatriation and to "inform them of the fact that the situation in Afghanistan has changed, now there is an interim government with foreign aid flowing in for the reconstruction of Afghanistan and opportunities in Afghanistan have opened." See "Pakistan Starts Work on Repatriation of Afghan Refugees," *Deutsche Presse Agentur*, January 30, 2002.

³ Haroon Rashid, "Pakistan Offers Refugees Mixed Prospects," Associated Press, January 21, 2002 (noting that "some 35,000 refugees went back [to Afghanistan] in the first half of January.").

⁴ *Ibid.*, (estimating that about 13,000 new refugees have fled from the north of Afghanistan in fear of ethnic reprisals against the Pashtun ethnic group).

⁵ UNHCR, *Afghanistan Facts and Figures*, at <http://www.unhcr.ch>.

⁶ See e.g. "Foreign-Sponsored Human Rights Disaster Ignored by the World," *Amnesty International Press Release*, November 29, 1995.

The threat of continuing human rights abuse prevents many Afghans from returning to Afghanistan. Unfortunately, their concerns are unlikely to be quickly or easily addressed by the nascent interim government, while it seeks to establish its authority and yet depends for much of its support on a patchwork of warlords who now control Kabul and most of the rest of the country. In addition, the small multinational protection force based in Kabul has neither the mandate nor the countrywide presence necessary to halt violence in areas outside the capital.

While all Afghan refugees (including those who fled more than twenty years ago) now fear the insecurity described above, Afghans became refugees for a variety of reasons, because of pre-Taliban era abuses, human rights violations by the Taliban, or to escape the U.S.-led bombing campaign and related conflict involving Taliban and Northern Alliance forces. The latter precipitated the most recent of several major waves of refugee displacement. The first large exodus of refugees resulted from the December 1979 Soviet invasion of Afghanistan; which was followed by almost ten years of fighting between Soviet forces and the anti-Soviet *mujahideen* (Islamist guerrilla fighters) and further refugee outflows. The factional fighting and widespread destruction that ensued after the 1992 *mujahideen* victory over the Soviet forces led many thousands more Afghans to flee the country; and a further exodus occurred in response to the fighting that accompanied the Taliban's rise to power and its oppressive rule. Throughout each of these conflicts, Afghans often first sought greater safety inside Afghanistan. As fighting drew nearer, these same internally displaced Afghans were forced to move again, often trying to cross international borders in search of protection as refugees in neighboring countries.

Once they reached Pakistan or Iran, Afghan refugees faced new and serious problems as a result of governmental policies in these countries of exile. The most recent wave of Afghan refugees joined over three and a half million refugees already living in Pakistan and Iran. Both countries have grown increasingly disenchanted over the years about hosting such large refugee populations in the face of minimal international interest, financial support, or burden sharing. Beginning in November 2000, the governments of both countries made clear their unwillingness to accept new flows of refugees by officially closing their borders with Afghanistan. This was an extreme step and one that Human Rights Watch has consistently and sharply criticized; such border closure policies are directly contrary to international standards, most fundamentally because they interfere with the right to seek asylum.⁷

Iran has been an egregious offender. Since the start of the U.S.-led bombing campaign on October 7, 2001, many Afghans attempting to seek asylum in Iran have been prevented from doing so. As a result, some ten thousand Afghans have had to remain at the Mile Forty-Six and Makaki camps for the internally displaced, which are located in Afghanistan's Nimroz province, close to the border with Iran.⁸ By sealing its borders, conducting systematic and large scale push-backs,⁹ and by insisting on the establishment of camps for displaced persons inside Afghanistan, the government of Iran has violated its obligations under the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees (the Refugee Convention).

Despite the official closure of its border with Afghanistan, Pakistan has received about 160,000 new Afghan refugees since October 7.¹⁰ However, the Pakistani authorities have also engaged in border push-backs of Afghans seeking to enter their country, and have forcibly returned some Afghans from inside

⁷ See e.g. "Refugee Crisis in Afghanistan: Pakistan, Tajikistan Must Reopen Borders to Fleeing Afghans," *Human Rights Watch Press Release*, at <http://www.hrw.org/press/2000/11/afghanistan.htm>.

⁸ BBC Monitoring International Reports via News Edge Corporation, December 5, 2001.

⁹ Throughout this report the term "push-back" will be used to describe a governmental policy of intercepting refugees at, or just inside the border and sending them back to Afghanistan.

¹⁰ "UNHCR Urges Refugees Not To Rush Home Despite Taliban Collapse," *UNHCR News Release*, December 7, 2001.

Pakistan to serious conditions of insecurity and abuse, in violation of the customary law norm of *nonrefoulement*.¹¹ Even so, the Pakistan government has allowed most Afghan refugees who have been able to enter its territory unofficially to remain inside Pakistan and, at the Chaman official border crossing point, the authorities have screened refugees and granted entry to those considered most vulnerable.

Notwithstanding these more generous policies, however, there are still serious problems facing Afghan refugees inside Pakistan. First, the increasingly hostile policy position of the Pakistani government has created a climate in which law enforcement personnel harass, extort, and detain Afghan refugees because of their undocumented status --- often without cause or access to judicial review. Second, government leaders have been overtly hostile to Afghan refugees, particularly in the North West Frontier Province (NWFP),¹² and have shirked their responsibility to identify safe and healthy places for refugee camps. Third, the basic right of refugees to protection and assistance has been ignored and thwarted by the “invisible” status of newly arriving refugees in urban environments and by the unwarranted use of force by security personnel in camp settings. United Nations (U.N.) agencies and nongovernmental organizations (NGOs) are often faced with the difficult choice of either continuing to work within these hostile conditions or protesting them and jeopardizing their access to the refugee population, since the government of Pakistan ultimately grants that access.

This report is based on a mission to Pakistan that Human Rights Watch took from November 10 to December 2, 2001, and subsequent research. In Pakistan, interviews were conducted with refugees in Shamshatoo camp, new Jalozai camp, Kotkai camp, and in numerous urban settings in and around the city of Peshawar. Refugees were also interviewed in the town of Quetta and at the border crossing near the town of Chaman.¹³ International NGO and U.N. agency staff and the staff of local Pakistani and Afghan NGOs were also interviewed, as were Pakistani authorities. The names of all refugees, NGO, and U.N. agency staff have been changed or withheld to protect their privacy, security, or positions.

IV. CONCLUSIONS AND RECOMMENDATIONS

To the Government of Iran:

- Immediately re-open Iran’s borders to refugees and provide them with adequate protection.
- Register all Afghans in Iran and ensure that they have access to proper status determination procedures.

¹¹ The international customary law norm of *nonrefoulement* protects refugees from being returned to a place where their lives or freedom are under threat. International customary law is defined as the general and consistent practice of states followed by them out of a sense of legal obligation. That *nonrefoulement* is a norm of international customary law is well-established. See, e.g. ExCom Conclusion No. 17, Problems of Extradition Affecting Refugees, 1980; No. 25, General Conclusion on International Protection, 1982; *Encyclopedia of Public International Law*, Vol. 8, p. 456. UNHCR’s ExCom stated that *nonrefoulement* was acquiring the character of a peremptory norm of international law, that is, a legal standard from which states are not permitted to derogate and which can only be modified by a subsequent norm of general international law having the same character. See ExCom Conclusion No. 25, General Conclusion on International Protection, 1982. The Executive Committee (“ExCom”) is UNHCR’s governing body. Since 1975, ExCom has passed a series of Conclusions at its annual meetings. The Conclusions are intended to guide states in their treatment of refugees and asylum seekers and in their interpretation of existing international refugee law. While the Conclusions are not legally binding, they do constitute a body of soft international refugee law and ExCom member states are obliged to abide by them. Both Iran and Pakistan are ExCom member states; as such they are obligated to respect the international standards stipulated in the Conclusions

¹² The NWFP is an elongated territory that stretches from the mid-point of the Afghanistan-Pakistan border up to Pakistan’s northern border with Afghanistan, directly below Tajikistan.

¹³ In general, refugees in the Peshawar area were fleeing from Jalalabad, Kabul and some northern provinces. Those in Quetta were fleeing Herat, Mazar-i Sharif, Kandahar, Oruzgan and Helmand provinces.

- Cease immediately the push-backs and forcible return of Afghan refugees, and suspend all government-led repatriation schemes until conditions in Afghanistan are such that Afghans can return voluntarily, in safety and dignity, and with full respect for their human rights.
- If and when conditions are appropriate to commence a voluntary repatriation scheme in accordance with international standards, ensure that a screening process is in place to identify those refugees who are unwilling or unable to return and who continue to be in need of international protection.
- In order to meet basic international standards and safeguard refugees from abuse of their human rights, the voluntary repatriation program should include full and objective information about conditions inside Afghanistan, the opportunity for refugees to make advance visits before deciding about return, respect for family unity, the absence of negative push factors, and absolute protection against forced or coerced return to unsafe conditions inside Afghanistan. Protection against coerced return will also require continued assistance programs in Iran, so that decisions to return are not in response to dire humanitarian needs. Women refugees should have an equal voice in all decision-making about return.
- Accord those recognized as refugees their full range of rights under international refugee and human rights law, particularly with relation to freedom of movement and the right to work.
- Cease public statements about Afghan refugees that will encourage discriminatory practices and unlawful acts. Prosecute perpetrators of racial violence and ensure that refugee communities are protected. Recognize the positive input that refugees can make in Iran, and implement the Program of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which outlines necessary steps to be taken to combat racism and xenophobia against refugees, and in which Iran actively participated.
- Take steps to ensure that Iran provides international refugee protection to all Afghans entitled to it, without favoring any one of the several recognized grounds for refugee status and without discriminating against uneducated or lower-income Afghans.

To the Government of Pakistan:

- Re-open borders to refugees from Afghanistan and provide them with adequate protection.
- Re-institute the screening program of August 2000, or a similar program designed to identify and provide protection to all Afghans in need of international protection, in accordance with international standards.
- Cease immediately the push-backs and forcible return of Afghan refugees.
- Cease all harassment, bribery, and imprisonment by Pakistani and tribal police of undocumented non-criminal Afghan refugees.
- Once conditions are appropriate for repatriation under conditions of safety and dignity, and with full respect for refugees' human rights, institute a voluntary repatriation program in accordance with international standards.
- In order to meet basic international standards and safeguard refugees from abuse of their human rights, the voluntary repatriation program should include full and objective information about conditions inside Afghanistan, the opportunity for refugees to make advance visits before deciding about return, respect for family unity, the absence of negative push factors, and absolute protection against forced or coerced return to unsafe conditions inside Afghanistan. Protection against coerced return will also require continued assistance programs in Iran, so that decisions to return are not in response to dire humanitarian needs. Women refugees should have an equal voice in all decision-making about return.
- If and when conditions are appropriate to commence a voluntary repatriation scheme in accordance with international standards, ensure that a screening process is in place to identify those refugees who are unwilling or unable to return and who continue to be in need of international protection.

- Arrange for the presence of female security personnel in camps to provide greater security to female refugees, particularly during assistance distributions.
- Take all necessary steps to stop the misuse of force by police at assistance distributions; provide training to Pakistani Frontier Corps and police personnel on providing security in refugee settings.
- Identify safe locations for refugee camps away from the border with Afghanistan, and consider moving camps that are insecure and currently located in the Federally Administered Tribal Areas of Pakistan.
- Cooperate fully with the United Nations High Commissioner for Refugees (UNHCR) in providing protection to refugees.
- Ensure that all refugees receive adequate information about relocation programs, and that the terms of all agreements (on relocation and in general) with UNHCR are strictly adhered to by the government.

To UNHCR :

- Continue to call on the Iranian and Pakistani governments to re-open their borders and fully comply with their obligations under refugee and human rights law, in particular the right to seek asylum and protection against refoulement.
- Ensure that all refugees receive adequate information about relocation programs, and that the terms of all agreements (on relocation and in general) with the government of Pakistan and Iran are strictly adhered to by those governments and by UNHCR.
- Continue to seek protection solutions for refugees in Iran and Pakistan through promotion of registration exercises, individual refugee determinations or screening programs, and the provision of identity documents and legal status to all refugees.
- Work with the government of Pakistan to provide appropriate training to security personnel located in camps.
- Urge the government of Pakistan to cease harassment, extortion, imprisonment, and forced returns of Afghan refugees because of their undocumented status.
- Organize and plan programs and the layout of camps with particular attention to Chapters 7-9 of UNHCR's Guidelines on the Protection and Care of Refugee Children, and Chapters III-V of UNHCR's Guidelines on the Protection of Refugee Women.
- Plan and implement voluntary repatriation programs in accordance with international standards. Continue to pressure the governments of Iran and Pakistan to adhere to these standards, and to provide ongoing protection to those Afghan refugees who continue to face threats to their lives or freedom.

To the International Community:

- As a matter of urgency, states should uphold their legal and humanitarian obligations to share responsibility for Afghan refugees, particularly through the provision of financial and other assistance to the large populations hosted by Iran and Pakistan.
- Even as a new political authority is put in place in Afghanistan, states should make clear to the Iranian and Pakistani governments that they have an obligation to afford protection to Afghan refugees, and should (i) open their borders to new arrivals, (ii) cease from prematurely returning Afghan refugees, and (iii) ensure that those who do elect to return, do so voluntarily, in safety and dignity, and with full respect for their human rights.

- Ensure that a voluntary repatriation program is planned and funded so that it meets all international standards, particularly those stipulated in UNHCR's 1996 *Handbook, Voluntary Repatriation: International Protection* ("Handbook") and in ExCom Conclusions.¹⁴ Such a voluntary repatriation program should also be coordinated with other reconstruction efforts inside Afghanistan such as human rights monitoring, rural development programs, and demining and demobilization schemes.
- In order to meet basic international standards, the voluntary repatriation program should include full and objective information about conditions inside Afghanistan, the opportunity for refugees to make advance visits before deciding about return, respect for family unity, the absence of negative push factors, and absolute protection against forced or coerced return to unsafe conditions inside Afghanistan. Protection against coerced return will also require continued assistance programs in countries of asylum, so that decisions to return are not in response to dire humanitarian needs.
- Where possible, states that have not yet established resettlement programs for Afghans (in which refugees are identified and welcomed in a new country, often located in the industrialized world) in conjunction with UNHCR should do so in accordance with their commitment to the principle of responsibility sharing.

¹⁴ See ExCom Conclusion No. 18, Voluntary Repatriation, 1980; No. 22, Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981; No. 74, General Conclusion on International Protection, 1994. See description of ExCom, note 11, *supra*.

V. CAUSES OF FLIGHT OF AFGHAN REFUGEES DURING THE U.S.-LED BOMBING CAMPAIGN

Recent refugees from Afghanistan have left their homes and fled the country because of dire security and humanitarian conditions. Security conditions included the armed conflict between Taliban and Northern Alliance forces and the U.S.-led bombing campaign, rampant lawlessness fostered by shifting alliances inside the country, and infighting among various anti-Taliban factions. The ongoing humanitarian crisis within Afghanistan, exacerbated by war and drought, also caused displacement, as people desperately tried to reach locations where they could access food and other assistance. Summing up the multiple hardships faced by much of the Afghan population, one refugee told Human Rights Watch that he left Kart-e-Char in Kabul because of "hunger, bombs, and cold."¹⁵

Generalized Insecurity in the Countryside and on Roads

Conditions of insecurity have continued to plague the countryside and the roads and highways between major towns, even after areas have been taken over by anti-Taliban forces. Refugees complained that multiple checkpoints were set up by anti-Taliban commanders and their forces, or by bandits not aligned with a particular commander, along the roads between the cities of Herat and Kandahar, Kandahar and Chaman, Peshawar and Jalalabad, and inside Ghazni province.

The violence at these random checkpoints is illustrated by the case of Faiz, a thirty-five-year old refugee, who was interviewed by Human Rights Watch in Quetta Civil Hospital, where he was being treated for gunshot wounds. A truck driver by occupation, Faiz normally traveled between the cities of Herat and Kandahar. On about November 20, 2001, he was driving to Kandahar from Herat,¹⁶ but had heard from other drivers that bandits and rival warlords had set up four checkpoints on the road. He was just outside the Herat airport at approximately 8:00 p.m. when he encountered one of these and heard some men yell "Stop!" Fearing that they would take his money, steal his truck, or kill him, and seeing no men in uniforms, Faiz attempted to speed past. He was afraid, he told Human Rights Watch, because "they killed a lot of people who were drivers in Herat." He therefore pressed on the accelerator and tried to get past, but the men shot and wounded him.¹⁷

In addition, fighting has erupted between various factions of the loosely associated Northern Alliance.¹⁸ Many refugees fear a return to the ethnically-based reprisals that previously occurred under Northern Alliance rule from 1992-1996. One Hazara refugee who had already reached safety inside Pakistan told Human Rights Watch that she had heard reports of such ethnic reprisals from fellow villagers who had arrived several days after her. She said, "I am afraid to go back. . . . We heard that on November 7, 2001, more Uzbeks and Hazaras were killed in our area [Nahrin village, Baghlan province]. There were twelve executed in one day. We know it happened because one man escaped and came here to tell what happened. Also, some of the men who were killed, their families escaped and came here."¹⁹ Another thirty-year-old Pashtun refugee who had been internally displaced to Murghab village in Badghis

¹⁵ Human Rights Watch interview, Kotkai camp, November 24, 2001.

¹⁶ Herat was officially under the control of former city governor Ismail Khan since November 13, 2000. See BBC online, *Key Maps*, at http://news.bbc.co.uk/hi/english/static/in_depth/world/2001/war_on_terror/key_maps.

¹⁷ Human Rights Watch interview, Quetta Civil Hospital, November 29, 2001. In addition, Hussain, a twenty-one-year old refugee, said "On November 1 at about 8:00 in the morning, me and my family were in a car on the way from Herat to Kandahar. We were closer to Herat. There was fighting across the road between Northern Alliance and the Taliban. The Northern Alliance was under control of Ismail Khan. I do not know who was in charge of the Taliban. Our car was close to another car. Our car was shot by guns and three other people were injured in our car. The other car was hit by a rocket, which burned when it hit. Two people were killed in that car." Human Rights Watch interview, Quetta Civil Hospital, November 29, 2001.

¹⁸ Carlotta Gall, "Anti-Taliban Factions Clash in North," *The New York Times*, December 13, 2001.

¹⁹ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

province before fleeing to Pakistan said that after a U.S. bomb fell in his village he was afraid that the commanders gaining control in his home province would be unable or unwilling to protect Pashtuns from ethnic reprisal killings by Uzbeks.²⁰

Another refugee who came from the town of Pul-e-Khumri in Baghlan province reported that local people were being killed both for ethnic reasons and for their weapons, and that those living in the area feared an outbreak of factional fighting.²¹ Indeed, three weeks after Human Rights Watch conducted this interview, factional fighting between Northern Alliance commanders broke out in Pul-e-Khumri on December 12, 2001.²²

Cities such as Herat, Mazar-i Sharif, and Kandahar have suffered from lawlessness and looting,²³ and looting has also occurred in the countryside. Many refugees who fled from the Panjshir valley in the first weeks of November 2001 reported that Northern Alliance forces had come to their houses and looted them.²⁴ United Nations (U.N.) and NGO relief agency sources also reported looting by Taliban forces, mostly of offices, cars, and electronic equipment, and by anti-Taliban forces as they began to take control of the country.²⁵

Fighting Between Anti-Taliban and Taliban Forces

Refugees arriving in Pakistan between October and December 2001 fled ground warfare between anti-Taliban and Taliban forces. Abdul, a young Pashtun refugee from the town of Tagab in the Panjshir valley explained that he fled with his mother and five brothers and sisters when the Northern Alliance was fighting in their area during the first week of November.²⁶ Sedana, a nomadic Kuchi woman in her late twenties had to flee with her family from a small village in Kunar province on November 11, 2001, when fierce fighting broke out between the Northern Alliance and the Taliban.²⁷ She said, “we had no time to pack our belongings. We just took our camels and moved towards Pakistan.”²⁸ Another refugee, Noor from Laghman province told Human Rights Watch, “We left home because we were told the Northern Alliance would attack us and we fled for our lives.”²⁹

Flight from U.S.-Led Bombing Campaign

The U.S.-led bombing campaign affected Afghans in a variety of ways.³⁰ Human Rights Watch spoke to dozens of refugees who fled to Pakistan because they or their family members were injured, and they sought medical attention and relief from the bombing. Refugees who were not physically injured also

²⁰ Human Rights Watch interview, Killi Faizo camp, December 5-6, 2001.

²¹ Human Rights Watch interview, Peshawar, November 22, 2001.

²² “Infighting Leads to Insecurity in Baghlan,” *IRIN News Release*, December 13, 2001.

²³ Agence France Press, “Children Pay The Price Of US Bombing Campaign,” December 12, 2001; Mark Baker, “Looting, Chaos Fills Taliban Vacuum,” *The Age*, December 10, 2001.

²⁴ Human Rights Watch interview, new Jalozai camp, November 20, 2001.

²⁵ Human Rights Watch interview with staff members of two European relief NGOs, and three U.N. agencies, Peshawar, November 13, 2001; November 22, 2001. See also “Attacks on Aid Increasing,” *Human Rights Watch Press Release*, October 18, 2001 at <http://www.hrw.org/press/2001/10/aid1018.htm>.

²⁶ Human Rights Watch interview, new Jalozai camp, November 20, 2001.

²⁷ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

²⁸ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

²⁹ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

³⁰ The fighting in Afghanistan since the beginning of the U.S.-led bombing campaign on October 7, 2001 is categorized as an international armed conflict under international humanitarian law. The international legal standards most relevant to the U.S.-led bombing campaign are the Geneva Conventions of 1949 and, in particular, their First Additional Protocol of 1977 (Protocol I). An underlying principle of Protocol I is that civilians and military targets be distinguished, that civilians be protected from harm during war, and that “all feasible precautions” be taken to avoid or minimize harm to civilians. Although the U.S. is not a party to Protocol I (the U.K. became a party in 1988), it has indicated that it accepts standards relevant to the protection of civilians.

fled because they feared or experienced the bombing of military targets near their homes, including ammunition depots or safe houses established by the Taliban prior to or during the bombing campaign. Finally, some of the Afghans interviewed by Human Rights Watch were unaware of the existence of military targets in the areas in which they lived, but felt increasingly insecure when locations near them were bombed.³¹

In cases reported to Human Rights Watch, the U.S.-led bombing campaign most commonly spurred people to leave their homes because the bombs were frightening to their children,³² and the noise and destruction were psychologically disturbing and disruptive to their daily lives.³³ For example, Rahim and his family fled from Kart-e-Parwan in Kabul on November 12, 2001. He said, "Each night the electricity went off and then the bombs came and our children would scream and cry. We spent one million afghanis [about sixteen U.S. dollars] on new windows in our house just a few months ago. After the last night of bombing, these windows shattered and we just could not stay there anymore with this hell every night. We had to leave that place."³⁴

Human Rights Watch also interviewed Permia, a twenty-two-year old woman from a small village in Helmand province, at Quetta Civil Hospital, where she was being treated for severe burns. She said that she had walked to her uncle's house at about 8:00 p.m. on November 4, 2001, to visit him, and was sitting there when a bomb struck the house, causing a wall to collapse on her and a fire. As a result, she had suffered extensive third-degree burns to her back, right leg, and ankle. She told Human Rights Watch that she could think of nothing in her village that could constitute a military target. Her family sought refuge in Pakistan so that she could receive medical treatment.³⁵

In other cases, refugees had had members of their family or neighbors killed by bombs, and were traumatized by the manner in which their relatives died. Dawlat fled his village in Laghman province on November 3, 2001. He told Human Rights Watch that he fled because of bombs that fell in his village on October 24, 2001:

The bombs hit three villages and killed twenty-nine people. In our village, the bomb hit at 11:00 or 11:30 at night. We did not hear the sounds of the plane at all, but when the bombs hit the villages we heard the loud noises. In that bombing I lost my uncle Torab,

³¹ Protocol I of the Geneva Conventions (see note 30, *supra*) prohibits indiscriminate attacks on military targets. When targeting a military object, it is incumbent upon the attacking force to choose specific targets, ensure that they are proper military targets, select appropriate weapons to mitigate any unintended consequences of the attack, and weigh any possible negative impacts upon civilians against a concrete and direct military advantage. If the harm to civilians in excessive on balance, the attack is considered to be indiscriminate (Protocol I, art. 51(2)). Furthermore, in the conduct of military operations in the air, an attacking force shall "take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects" (Protocol I, art. 57(4)). Assessing the legality under the Geneva Conventions of the incidents described by Afghan refugees would require detailed information about military targets, and is beyond the scope of this report.

³² Human Rights Watch interviewed one teacher in a small Afghan-run school who said she had three students from the same family, ages six, seven, and sixteen, who were presenting as deaf and mute. Follow-up work done by the school with the mother and a medical examination indicated that the children were severely traumatized because of multiple bombing campaigns in their neighborhood in Jalalabad. Human Rights Watch interview, Peshawar, November 21, 2001.

³³ Another refugee, Sajadu, a Pashtun woman in her thirties from the Kart-e-Parwan neighborhood of Kabul fled on about October 10, 2001 because of the bombing. She told Human Rights Watch, "I fled because of those bombs and fighting. They did not come near my house, but you cannot afford to live in a place like that. I do not have the strength of heart to be in a place like that and listen to those bombs." Human Rights Watch interview, new Jalozai camp, November 20, 2001.

³⁴ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001.

³⁵ Human Rights Watch interview, Quetta Civil Hospital, November 29, 2001.

his wife Shabubu, my uncle Samat, and my uncle Abdul and his son were all killed. . . . They were all sleeping in the house when the bombs came. We took out the bodies from that place, but we could not recognize the bodies. Whole faces were burned and the bodies were in pieces. The Taliban were far away when the bomb hit --- it just hit civilian houses. The military place is about two hours away.³⁶

Many Afghan refugees fled when Taliban military installations and positions located inside or near to civilian areas were bombed.³⁷ Often, the refugees were well aware of these military targets and could identify them in detail. However, they felt they had no choice but to remain in their homes. Zia, a Tajik woman from Charikar, had moved to Kabul when the American bombing began because of worsening fighting in Charikar, but in Kabul she was living near the airport. She told Human Rights Watch:

We knew we were near this military target, but where could we go? We just stayed there and each night our children cried for their food and all we could do was to put the blankets over them to hide them from the bombs. The bombs came at 9 o'clock every night. On about October 19, 2001, a bomb fell and spread shrapnel through our neighborhood. Two of our neighbors were killed because of the shrapnel.³⁸

Zia's father went through the neighborhood and picked up the pieces of the dead that were strewn about. He told Human Rights Watch, "They were parts of bodies, not even whole bodies. It was our duty to bury even these pieces, even when there was not a whole body there."³⁹

Mariam, a Tajik woman in her thirties, had been living with her husband and children in Khaikhana, a civilian neighborhood in Kabul: several other refugees interviewed by Human Rights Watch had fled this neighborhood due to bombing raids. Mariam told Human Rights Watch, "the bombing was so strong and we were so afraid to leave our homes. We were just like little birds in a cage, with all this noise and destruction going on all around us."⁴⁰

Jamal Zai, a twenty-six-year old farmer from Hazaras village in Helmand province, went to work in his wheat fields on about November 14, 2001, together with two of his young cousins, aged eight and ten. In mid-morning, two bombs were dropped and exploded in between Zai's field and his uncle's adjacent land,

³⁶ Human Rights Watch interview, new Jalozai camp, November 20, 2001.

³⁷ Although beyond the scope of this report, the Taliban's deployment in populated areas raises international humanitarian law concerns. Although Afghanistan is not a party to Protocol I, many of its provisions are considered reflective of customary international law. Article 57 of Protocol I states that "In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects." Article 58 elaborates on this principle, calling on armed forces, "to the maximum extent feasible," to endeavor to remove the civilian population under their control from the vicinity of military objectives; to avoid locating military objectives within or near densely populated areas; and to take other necessary precautions to protect civilians under their control against the dangers resulting from military operations. Article 53 prohibits making use of places of worship in support of the military effort.

³⁸ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001.

³⁹ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001. Anwar, who is a Tajik man in his forties, lived in the Baraki neighborhood of Kabul. He explained to Human Rights Watch what happened near his home during the third week of November, "There was a petrol pump near our house, where regular trucks and Taliban trucks got their petrol. At about 2:00 p.m. I heard a helicopter overhead, I knew it was a helicopter because of the sounds they make. . . . I did not tell my family to take cover because I thought helicopters could not fire major weapons. . . . But, this helicopter fired something at the petrol pump and when it exploded it felt like an earthquake was in the ground. . . . There was a man killed in the blast, his body was blasted into pieces and scattered in the street. . . . In the place where the pump was, a big fire was burning." Human Rights Watch interview, Peshawar, November 23, 2001.

⁴⁰ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

killing the two children and fracturing Zai's arm and causing him other shrapnel injuries. He said he had not heard a plane before the bombs were dropped. He said that his field was about ten minutes' walk from a house in which Arab families were living; he had seen women and children, but did not know whether soldiers also used the house. He was not aware of any other possible military target nearby.⁴¹

Refugees explained that the Taliban created military sites inside civilian areas. One told Human Rights Watch, "many houses and mosques were made into military places. The Taliban would force people to leave their homes and then take over."⁴² Fatima, a thirty-eight-year old Pashtun woman from Charasyab, a town south of Kabul, said that about one week before the U.S.-led bombing campaign began, she had witnessed the Taliban forces loading guns and ammunition into a building just behind her house. One day, she had counted forty-one Toyota trucks with mounted weapons pass through the alleyway to unload these materials. Then, on Monday, October 15, she heard planes overhead and a bomb hit very near her home at about 1:00 p.m. She told Human Rights Watch that she, her eighteen-year old daughter, her two sons, and her husband spent the rest of the afternoon in fear that the bombs would hit their home and the entire night "sitting in darkness." The next day, they fled to their relatives' in Mikrorayon and then went on to Jalalabad the following day.⁴³

VI. INTRODUCTION TO REFUGEE PROTECTION IN IRAN AND PAKISTAN

Throughout the world, there are many situations in which refugees have fled conditions of generalized insecurity and conflict similar to those in Afghanistan.⁴⁴ When refugees flee in large numbers to neighboring countries, particularly in less developed regions of the world, it is not usually possible to ascertain whether every person involved in the influx actually meets the criteria for refugee status. Low-income countries frequently do not have the logistical, administrative, or financial capacity to undertake individual status determinations. Instead, there is a general assumption that when conditions are objectively dangerous in a country of origin, refugees are recognized on a *prima facie* basis, without the need for further proof, and are afforded protection accordingly.⁴⁵ Conflict, such as that between Taliban and Northern Alliance forces, the destruction caused by the U.S.-led bombing campaign, and the generally high level of insecurity, are precisely the kind of conditions that have given rise to *prima facie* refugee status in the past.

Unfortunately, both Iran and Pakistan have been inconsistent, even negligent, in their recognition of the legal status of Afghan refugees. Amid increasing hostility to the presence of the refugees, which worsened in the aftermath of September 11, both governments have passed domestic laws and adopted policies that by their terms or in practice are abusive of refugees' rights.

By keeping their borders closed, both governments have interfered with the right to seek asylum. In addition, by pushing newly arriving refugees back into Afghanistan, or summarily returning them without legal process or judicial review, the governments have violated *nonrefoulement* obligations --- the most fundamental norm of refugee law that protects individuals from being sent back to a place where their lives or freedom are under threat. The conditions that existed during the U.S. bombing campaign are examples of such threats. Moreover, the fears that refugees have about other kinds of insecurity and

⁴¹ Human Rights Watch interview, Quetta Civil Hospital, November 29, 2001.

⁴² Human Rights Watch interview with male Pashtun refugee, November 23, 2001.

⁴³ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

⁴⁴ UNHCR, *State of the World's Refugees*, 1997, Chapter 2, p. 52.

⁴⁵ See e.g. ExCom Conclusion No. 22, Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981 (noting that persons who "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of, or the whole of their country of origin or nationality are compelled to seek refuge outside that country" are asylum-seekers who must be "fully protected," and "the fundamental principle of non-refoulement including non-rejection at the frontier—must be scrupulously observed.").

ethnically based reprisals are likely to continue in the future and will also constitute significant threats requiring protection from *refoulement*.

Iran and Pakistan have long stated that they have insufficient resources to deal with the over three and a half million Afghans within their territories, and both have charged the international community with failing to provide aid and financial assistance, thereby failing to share the responsibility for Afghan refugees. For example, Hassan Ali Ebrahimi, Iran's interior minister for Afghan affairs, said on November 12, 2001, "All expenses are on the shoulders of Iran. There is a lot of talk but no action."⁴⁶ Although there are some discrepancies in the claims made by both governments about shortfalls in international assistance,⁴⁷ before September 11, international support for Afghan refugees was considerably lacking.⁴⁸ After the inception of the U.S.-led bombing campaign on October 7, aid for Afghan refugees and those internally displaced increased, together with the level of international focus on the region, yet this was not enough to convince Iran and Pakistan to open their borders or to provide legal protection to greater numbers of refugees. The previous failure of the international community to provide sufficient support to Pakistan and Iran in meeting the needs of Afghan refugees may well have contributed to these two countries' increasingly hardline policies.⁴⁹

VII. REFUGEE PROTECTION AND ASSISTANCE IN IRAN

Background: Governmental Focus on Sending Afghan Refugees Home

The year 2000 marked a legal turning point for Afghan refugees when Iran passed a law known as "Article 48" as part of the government's five-year development plan. The law established the parameters for the repatriation of Afghan refugees, through a process administered by the Iranian Bureau of Aliens and Foreign Immigrants Affairs (BAFIA). All Afghans without work permits were required to leave, unless they could demonstrate that they would face physical threats on return.⁵⁰

In order to prevent forced repatriation and safeguard against *refoulement*, UNHCR negotiated a repatriation plan in conjunction with BAFIA, which began on April 8, 2000. By the end of 2000, 130,000 Afghans had repatriated, and 80,000 had been recognized as refugees by UNHCR and allowed to remain in Iran. However, those who had been found to be in need of protection were only "permitted to remain temporarily in provinces determined by the Iranian government until such a time as the situation is conducive for their return."⁵¹ The permits issued in pursuit of this policy restricted the movements of refugees to one province.

⁴⁶ Soraya Sarhaddi Nelson, "Iran Sees Need for Refugee Aid Waning Like Taliban Migrants," *Los Angeles Times*, November 14, 2001.

⁴⁷ Iran's interior minister stated that the entire global contribution to refugees in Iran was U.S. \$12.4 million, donated during 2001 through UNHCR, WFP and NGOs, but estimated that Iran's total costs amounted to U.S. \$ 2.9 billion. See "Interview with Iranian Interior Minister," *IRIN News Release*, November 13, 2001, at www.reliefweb.int. This does not correspond with UNHCR's mid year budget of U.S. \$ 16.3 million. See UNHCR, *Mid-Year Progress Report, Iran*, 2001.

⁴⁸ U.S. Committee for Refugees, *Afghan Refugees Shunned and Scorned*, 2001, p. 5 (noting that "since the mid-1990s, donors have substantially reduced assistance to Afghan refugees, leaving Pakistan to shoulder much of the economic burden of their presence.").

⁴⁹ 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" to the refugee problem "cannot. . . 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. See, e.g. ExCom Conclusion No. 52, International Solidarity and Refugee Protection, 1988.

⁵⁰ See UNHCR, *Iran Mid-Year Report*, 2001.

⁵¹ "Focus on Returnees from Iran," *IRIN News Release*, October 2, 2000.

This repatriation scheme raised a series of concerns. UNHCR asked Iran to apply the Refugee Convention definition of who was in need of refugee protection. Instead, certain groups, in particular the educated and politically active were singled out for protection, excluding many uneducated farmers subject to persecution in Afghanistan on religious or ethnic grounds.⁵² NGO observers charged that Afghans who repatriated outside the UNHCR program were coerced into leaving, although the government insisted these were “spontaneous returns.”⁵³ UNHCR statistics indicated that 82,000 Afghan men and 8,300 families were forcibly returned to Afghanistan between January and July 2001,⁵⁴ and push-backs of Afghan refugees at the border were frequent, although there were no exact figures. During the same time that these returns were occurring, the effects of prolonged drought in Afghanistan were becoming increasingly severe, causing many Afghans to leave for Iran in the first months of 2001.

Despite attempts by the government of Iran to seal the border, UNHCR estimated that 700-1,000 Afghans were entering Iran each day during the first half of 2001.⁵⁵ In July and August, Afghans in Iran organized protests against the continuing deportations and denial of the right to work; Iranians who believed that Afghans were responsible for unemployment and economic problems met the protests with a xenophobic and violent backlash.⁵⁶ In August, further demonstrations by Afghans called upon the government and UNHCR to delay repatriation. Following September 11 all formal repatriation programs were suspended, but deportations and push-backs continued.

Border Closures and Establishment of Camps inside Afghanistan

In March 2001, Iran announced that it had spent more than 18 million dollars in a year to seal its border with Afghanistan to prevent drug smuggling and further influxes of refugees.⁵⁷ Afghans compelled to flee during this period therefore had to enter Iran illegally.

Instead of allowing refugees to enter its territory, Iran (and later Pakistan) supported the establishment of camps on the Afghan side of the border. Iran indicated that it would provide humanitarian assistance to refugees, but only inside Afghanistan. Despite initial statements indicating that a series of camps would be established inside Afghanistan, by December 2001 only two camps had been set up with the assistance of the Iranian Red Crescent. These camps posed serious risks for the security of the refugees. Mile Forty-Six camp was established in an area under the control of Northern Alliance forces, while Makaki camp was, until Northern Alliance advances in mid-November, in a Taliban controlled area. UNHCR raised concerns about the safety of displaced people and aid workers, particularly in Makaki camp. It was feared that the presence of Taliban fighters and heavy artillery inside and around the camps could result in civilians being caught in the middle of fighting between warring Taliban and Northern Alliance forces. There were also fears that the refugees would be used as human shields or that the Taliban would forcibly recruit men and boys.

November brought increasing numbers of arrivals to the border areas with Iran, and in the first week of that month, local Red Crescent officials stated that Makaki was unable to take in any more refugees.⁵⁸ Despite this, Iran’s interior minister, Abdolvahed Musavi-Lari, asserted that it was “. . . practically impossible to accept new refugees. It is better and more efficient to provide the refugees with assistance inside their home country for humanitarian reasons.”⁵⁹ Deteriorating conditions inside Makaki camp and

⁵² U.S. Committee for Refugees, *Iran Country Report*, 2001

⁵³ “Focus on Returnees from Iran,” *IRIN News Release*, October 2, 2000.

⁵⁴ UNHCR, *Mid-Year Progress Report, Iran*, 2001.

⁵⁵ *Ibid.*

⁵⁶ Agence France Presse, “UNHCR Reports anti-Afghan Violence in Iran,” July 24, 2001.

⁵⁷ Agence France Presse, “Iran Spends Eighteen Million Dollars to Tighten Afghan Border,” March 8, 2001.

⁵⁸ Agence France Presse, “Afghan Refugees Protest Lack of Tents, Food at Camp Near Iran Border,” November 2, 2001.

⁵⁹ “Interview with Iranian Interior Minister,” *IRIN News Release*, November 13, 2001.

elsewhere inside Afghanistan, however, suggested that the provision of assistance inside Afghanistan was neither better nor efficient.

The lack of security in the camps made it extremely difficult for aid agencies to operate with the required degree of safety. Only a few, including the Iranian Red Crescent and Médecins Sans Frontières, were able or willing to work in the camps. By mid-November, several thousand Afghans were camped in the open around Makaki camp, which was already filled beyond capacity with seven thousand displaced persons.⁶⁰ As winter approached, aid agencies expressed concern about the health of the displaced people. Respiratory infections, dysentery and malnutrition were widespread. Although the Iranian Red Crescent had offered to relocate those outside Makaki camp to Mile Forty-Six, many declined, as they were ethnic Pashtuns who feared being relocated to Northern Alliance-held territory. Border closures made it difficult for aid agencies to efficiently deliver aid stockpiled inside Iran, while the camp itself was between two warring armies.⁶¹ On November 5, a twelve-year-old boy was caught in the crossfire and later died in the then Taliban-controlled Makaki camp.⁶²

On November 12, 2001, UNHCR reported that Makaki camp was caught between Taliban troops, who still controlled the camp, and advancing Northern Alliance troops pushing to take control of the area. The imminent conflict put those inside the camp at risk and caused aid workers reluctantly to withdraw. Makaki camp was also infiltrated by armed Taliban fighters and stockpiled with military hardware. On November 14, 2001, there were clashes in and around Makaki camp, after which the area fell under the control of the Northern Alliance.⁶³ This situation at Makaki camp demonstrated the problems associated with attempting to provide in-country protection to refugees in a situation of armed conflict that could have been avoided if camps had been established inside Iran.

Conditions at Mile Forty-Six camp were also desperate by December 5, 2001, especially because the initial population of one thousand had swelled to over five thousand.⁶⁴ Particularly affected were children and families trapped outside the camp because of overcrowding. UNHCR reported that six children died of cold at the beginning of December.⁶⁵ Thousands of displaced Afghans were initially unable to gain access to the overcrowded camp, although eventually, after pressure from relief agencies, the Iranian Red Crescent agreed to allow the displaced Afghans stranded outside Mile Forty-Six to register, which gave them access to humanitarian assistance.⁶⁶

Lack of Registration and Forced Returns from Iran to Afghanistan

Contrary to UNHCR ExCom Conclusion No. 91 on the registration of refugees,⁶⁷ Iran refuses to register any new arrivals from Afghanistan, referring to them as “economic refugees.” As such they are not considered eligible for any economic assistance from the government and are left to subsist only with the

⁶⁰ Dow Jones International News, “Afghan Refugees Gather Near Iranian Border,” November 12, 2001.

⁶¹ UNHCR, Briefing Notes, November 13, 2001

⁶² UNHCR, Humanitarian Update No.41, at www.unhcr.ch. As of the time of writing, this incident appeared to be an isolated occurrence.

⁶³ It was reported that the humanitarian situation had improved in the camp by mid-January. However, Médecins Sans Frontières emphasized that “the fact that more men had joined their families had raised some tension in the camps.” BBC News, “Conditions Improve at Afghan Refugee Camps Run By Iran,” January 10, 2002.

⁶⁴ BBC News, “Iran’s Refugee Camps in Afghanistan Reportedly Filled to Capacity,” December 5, 2001.

⁶⁵ Agence France Presse, “Children Die of Cold in Afghan Refugee Camp,” December 10, 2001.

⁶⁶ U.N.O.C.H.A., “Afghanistan: Iranian Red Crescent Accepts Unregistered Refugees,” December 11, 2001.

⁶⁷ ExCom Conclusion No. 91, Registration of Refugees and Asylum-seekers, 2001 specifically requests States “to take all necessary measures to register and document refugees and asylum seekers on their territory as quickly as possible.” This request is made after ExCom “acknowledges the importance of registration as a tool of protection, including protection against refoulement.”

help of aid organizations. Since they are neither registered nor afforded any other legal status in Iran, Afghan refugees are vulnerable to summary return by the government.

Despite official statements to the contrary from Tehran, Iran returned Afghans who had managed to cross the border during the last months of 2001. These returns also undermined previous assurances that Iran had given to UNHCR that refugees who were in need of protection would be allowed to remain temporarily in Iran.⁶⁸ On November 9, 2001, UNHCR reported that the Iranian authorities had deported at least 350 refugees in a matter of days.⁶⁹ U.N. officials also reported that in one day in late January, 2002, sixty-four Afghans were forced back. UNHCR also reported a rise in spontaneous returns, particularly of Afghans who were ethnic Uzbeks, Tajiks and Hazaras who had fled conscription and abuses by the Taliban, to areas captured by the Northern Alliance.

Representatives of the International Organization for Migration (IOM) and UNHCR visited Iran in mid-November to discuss the voluntary repatriation of two million refugees to Afghanistan.⁷⁰ UNHCR suggested that a large-scale program could begin in the spring of 2002, but strongly advised against any returns before that time.⁷¹ On November 20, 2001, UNHCR announced that it had reached an agreement with Iran to carry out an organized voluntary repatriation program in early 2002.⁷² Even if such a program is put in place, however, protection must be available to individuals who are refugees and who are unable or unwilling to return voluntarily, in accordance with international standards and Iran's obligations under the Refugee Convention.⁷³

Governmental Attitude towards Refugees

Iran's interior minister stated on November 13, 2001, that Afghan refugees were provided with "educational, health and medical requirements [and] enjoy subsidized services and commodities such as telecommunications, public transportation and food, as well as legal procedures and law enforcement."⁷⁴ However, many of these benefits were suspended in the mid-1990s.⁷⁵ First, contrary to international standards and Iran's obligations, most undocumented Afghan refugee children living in urban areas inside Iran are denied access to education.⁷⁶

Second, in the last two years, government statements have repeatedly associated unemployment, crime and drug problems in Iran with Afghan refugees in the country. Most Afghans do not have work permits and often feel obliged to work illegally in order to subsist. In March 2001, an Iranian labor ministry official was quoted as saying that the repatriation of Afghans would solve "a major part of the existing

⁶⁸ IRIN, "Focus on Returnees From Iran," October 2, 2000; Radio Free Europe, "Iran: Laws Threaten Afghan Refugees," January 15, 2001.

⁶⁹ UNHCR, Afghanistan Update No. 31.

⁷⁰ Iran became a full member of the IOM on November 27, 2001.

⁷¹ Agence France Presse, "Iran, UNHCR Agree on Return Plan for Afghan Refugees," November 20, 2001.

⁷² Ibid.

⁷³ See section of this report entitled "Fear of Return to Afghanistan," infra page 40. The discussion in this section is based on interviews with refugees in Pakistan. However, the fears of return may be quite similar for refugees in Iran.

⁷⁴ "Interview with Iranian Interior Minister," *IRIN News Release*, November 13, 2001, at www.reliefweb.int.

⁷⁵ U.S. Committee for Refugees, *Iran Country Report*, 2001.

⁷⁶ Ibid. UNHCR recognizes the importance of working with NGOs and host governments to provide, at a minimum, basic primary education in literacy and numeracy to refugee children. See UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p. 111. Iran, as a member of ExCom, in its Conclusion No. 47, Refugee Children, 1987, called for the intensification of "efforts. . .to ensure that all refugee children benefit from primary education of a satisfactory quality." Finally, Article 22 of the 1989 Convention on the Rights of the Child, to which Iran is a Party requires that refugee children should receive appropriate protection and humanitarian assistance in the enjoyment of the rights enumerated in the Convention. Articles 28 and 29 set forth the rights to education that Iran should ensure. Article 28 states that parties shall "make primary education compulsory and available free to all."

unemployment problem for unskilled workers” in Iran.⁷⁷ Even those accepted as refugees in Iran have been denied the right to work, and Iran has entered a formal reservation against Article 17 of the 1951 Refugee Convention, which sets out this right. Iran’s interior minister said that “the Afghans have taken away some 900,000 job opportunities, while Iran is confronted with an unemployment rate of 14 percent.”⁷⁸ Given the difficult living conditions for Afghans in Iran, as well as discrimination and public and government hostility, “spontaneous” returns to Afghanistan are more connected to push-factors inside Iran than to any genuine assessment that safe return to Afghanistan is possible.

Iran’s International Obligations to Refugees

Iran’s obligations to refugees stem primarily from the Refugee Convention, to which Iran became a state party in 1976. Particularly important is Article 33, the prohibition against *refoulement*, which is the cornerstone of refugee protection. Under this provision Iran has agreed not to return a refugee in any manner whatsoever to a territory where his or her life or freedom is threatened. This encompasses border push-backs, as well as return of those who are in need of international protection, and applies to *prima facie* refugees before their status has been formally determined.⁷⁹ The Refugee Convention also provides recognized refugees with significant rights, such as public relief, the right to work, freedom of movement, and access to the courts.

Iran has a seat on UNHCR’s Executive Committee (ExCom)⁸⁰ and in this capacity has supported an array of conclusions designed to strengthen refugee protection.⁸¹ Iran is also party to the two international human rights covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Both covenants provide a significant range of rights to refugees within Iran’s jurisdiction.

VIII. REFUGEE PROTECTION AND ASSISTANCE IN PAKISTAN

Pakistan’s Domestic Laws and Policies

Pakistan has hosted Afghan refugees since the 1970s. Since that time, the government has engaged in sporadic efforts to register refugees and to provide some legal protection. In the early 1980s refugee families were issued passbooks.⁸² The passbooks entitled refugees to receive assistance, and they were also used as identity documents. On a sporadic basis for a few years thereafter, the government of Pakistan issued passbooks to newly arriving refugees for assistance purposes only. The passbooks did not provide identification for the refugees, and as such, provided no legal protection.⁸³ Outside of these isolated cases, throughout the past decade, and contrary to international standards including ExCom Conclusion No. 91, the majority of Afghan refugees in Pakistan have not been registered, granted legal status, or issued identity documents. In addition, starting from late 1999 the government refused to consider newly arriving Afghans as *prima facie* refugees.⁸⁴

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

⁷⁷ Agence France Presse, “Iran Hopes Refugees’ Repatriation Will Create 1.8 Million Jobs,” March 9, 2001.

⁷⁸ “Interview with Iranian Interior Minister,” *IRIN News Release*, November 13, 2001, at www.reliefweb.int.

⁷⁹ See discussion of *prima facie* refugee status in the text accompanying notes 44-46.

⁸⁰ See description of ExCom, note 11, *supra*.

⁸¹ See text accompanying notes 170 and 171, *infra*, which describes some of the most relevant ExCom Conclusions.

⁸² These passbooks are also known as “Shanakhti” (identity) passes.

⁸³ It should also be noted that many refugees surrendered these passbooks in order to qualify for repatriation assistance in the early 1990s, but were ultimately unable to return. In addition, UN officials commented that legal protection was less practically necessary during this time because the government was not as overtly hostile to the refugees’ presence.

⁸⁴ See discussion of *prima facie* refugee status in the text accompanying notes 44-46.

arrive. In January 2001, the governor of Pakistan's North West Frontier Province (NWFP), and thereafter the federal government, issued public orders empowering the police to detain and deport newly arrived Afghans in the NWFP and all undocumented Afghans already in Pakistan. Those new arrivals who were not detained or deported were placed in new Jalozai camp, where living conditions were already deplorable. The Pakistani authorities refused to allow UNHCR to register new arrivals in new Jalozai camp in order to determine whether they were in need of refugee protection.⁸⁵ Without registration, assistance programs were also stymied, since the registration of refugees establishes accurate numbers and a system of documentation for the distribution of food and non-food items.

There are more than one hundred and fifty refugee camps inside Pakistan, the majority of which are located around Peshawar and north along the Afghanistan border in the NWFP; others are clustered around Quetta in Baluchistan province. Refugees arriving during the U.S.-led bombing campaign and earlier in 2001 mostly went to new Jalozai camp in NWFP, some thirty-five kilometers east of Peshawar. Jalozai has long been a destination for Afghan refugees, and the large number (approximately 80,000 refugees) that were already there made it difficult to accommodate the new arrivals.⁸⁶ Other camps to which newly arrived refugees have gone include Shamshatoo and Nasirbagh, on the outskirts of Peshawar. They already housed tens of thousands of refugees. In Baluchistan, refugees are located nearer to the border crossing point at Chaman in a small staging camp at Killi Faizo, and in Roghani and Tor Tangi camps run by UNHCR, as well as at another smaller camp run by authorities of the United Arab Emirates. There are also several pockets of Afghan "urban refugees" living outside of these official camps in settlements in urban centers such as Peshawar, Quetta, Islamabad, and Karachi.

The government authorities responsible for promulgating laws and policies affecting refugees in these camps and in urban areas often employ contradictory policies, exacerbating the already hostile environment for refugees. For example, the governor of the NWFP, Iftikhar Hussain Shah, has been openly hostile to the presence of the refugees, while the governor of Baluchistan has been somewhat more tolerant and cooperative with the federal government's policies. Both of these local authorities are expected to coordinate their policies with the Ministry of States and Frontier Regions (SAFRON), and other federal government departments, though the coordination between the federal government and the provincial governments is often lacking. These layers of government are further complicated by the fact that the Federally Administered Tribal Areas (FATA) are located within the NWFP, but have a semi-autonomous legal status with the federal government. Therefore, there are separate tribal leaders and security personnel located in FATA who are not legally obliged to coordinate their policies with one-another, much less with the governor of NWFP or with Pakistan's federal government.

Pakistan's federal domestic laws make no specific provision for refugees. In fact, the laws actually undermine the concept of legal protection. The Foreigners Order of October 1951, promulgated pursuant to the Foreigners Act of 1946, gives the power to grant or refuse permission to enter Pakistan to civil authorities at Pakistan's border. Under the Foreigners Order, foreigners not in possession of a passport or visa valid for Pakistan, or those who have not been exempted from the possession of a passport or visa, can be refused leave to enter. There are no specific provisions providing for the granting of entry to asylum-seekers or refugees. The refusal of entry to asylum seekers by the Pakistani authorities undermines the right to seek asylum, which is enshrined in the Universal Declaration of Human Rights

⁸⁵ In 2000 Pakistan passed the Foreigners (Amendment) Ordinance, which establishes a National Aliens Registration Authority (NARA). On January 4, 2001 this authority was established by the government to register foreigners living in Pakistan without permission to remain and to issue work permits to those seeking employment. Despite the fact that the Ordinance embraces the concept of undocumented aliens, and would by its terms allow for the registration of recently arrived Afghan refugees, the government never indicated that Afghans would be included in the registration. In addition, NARA has not begun its work of registering aliens in Pakistan.

⁸⁶ M. Ilyas Khan, "The Last Refuge," *The Herald*, June 2001, p. 83.

and customary international law as well as numerous Conclusions of UNHCR's ExCom.⁸⁷ The Foreigners Order also allows civil authorities to restrict the movements and place of residence of foreigners inside Pakistan, as long as these are made in writing.⁸⁸ Other provisions allow for the arrest and detention of undocumented foreigners.⁸⁹

In August 2001, there were signs of improvement. The government of Pakistan was motivated to change its policy toward Afghan refugees because of its desire to move them out of the camps in which they were then living. In particular, the government focused on moving refugees from new Jalozai camp, because of land disputes and negative press accounts describing the squalor there; and to close Nasirbagh camp completely because of a real estate development project planned for its location.

The government therefore entered negotiations with UNHCR. The resulting agreement contained both the relocation component and a legal protection component; this latter aspect was to be achieved through screening interviews. Under the agreement, thirty UNHCR and government teams were to interview an estimated 180,000 Afghans in the NWFP, focusing mostly on new Jalozai, Nasirbagh and Shamshatoo camps, to determine which one of three categories the Afghans fell into.

The first category encompassed all who would be afforded continued international refugee protection in Pakistan. Under the definitions selected for this first category, refugee protection was to be afforded to:

any person who is outside his/her country of origin and who is unwilling or unable to return there or to avail him/herself of its protection because of (i) a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or (ii) a threat to life or security as a result of armed conflict and other forms of widespread violence which seriously disturb the public order.⁹⁰

These criteria generally adhered to international standards, and in fact represented a potentially marked improvement for the legal protection of Afghan refugees in Pakistan. The criteria mirror the Refugee Convention's definition of a refugee,⁹¹ and they also reflect elaboration of the refugee definition in regional instruments such as the Organization of African Unity's 1969 Refugee Convention, which states that the term refugee shall apply to people compelled to seek refuge in another country, "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of [the] country of origin."⁹²

The second category included those who did not meet the criteria set out above, but who were considered to be particularly "vulnerable," such as women heads of household, the elderly, unaccompanied children,

⁸⁷ See, e.g. ExCom Conclusions No. 52, International Solidarity and Refugee Protection, 1988, No. 71, General Conclusion on International Protection, 1993; No. 75, Internally Displaced Persons, 1994; No. 77, General Conclusion on International Protection, 1995; and No. 85, General Conclusion on International Protection, 1998. Excom Conclusion No. 77 states that the ExCom "reaffirms that respect for fundamental humanitarian principles, including safeguarding the right to seek and enjoy in other countries asylum from persecution, and full regard for the principle of non refoulement is incumbent on all members of the international community; and urges the continued commitment of States to receive and host refugees and ensure their protection in accordance with accepted legal principles."

⁸⁸ Foreigners Order, October 1951, § 11.

⁸⁹ See discussion of protection problems for urban refugees, *infra* p. 27-29.

⁹⁰ Agreed Understandings for the Screening Process Between Government of Pakistan and UNHCR, August 2, 2001.

⁹¹ 1951 Convention Relating to the Status of Refugees, Article 1(A) defines a refugee as a person who, "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, or membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."

⁹² 1969 OAU Convention Governing the Specific Aspects of Refugee Protection in Africa, Article I.

and others. This second category would be given temporary protection in Pakistan. The third category included all Afghans found not to be in need of refugee protection. This third group would be returned to Afghanistan.

Under the relocation aspect of the program, refugees in need of international protection (category one) and some of those found to be particularly vulnerable (category two) were to be relocated to new Shamshatoo camp, and to other camps located elsewhere in the NWFP. It was not finally decided what would happen with those vulnerable refugees who would be put further at risk if they were moved to a new camp. The third category would be deported from Pakistan to Afghanistan. This would achieve the government's goals of reducing overcrowding in new Jalozai, avoiding ongoing disputes with the landowner, and clearing Nasirbagh for the planned real estate development.

Although not perfect, the agreement provided for improvements in protection for Afghan refugees; however, these were soon lost. UNHCR and the government of Pakistan began screening in mid-August but stopped on August 28, when Pakistan forcibly returned about one hundred and fifty Afghan refugees who had not yet been assessed under the screening program. Yusuf Hasan, UNHCR's spokesman in Islamabad told the Associated Press that the returns were "a clear breach of the August 2 Agreement."⁹³ Reports indicated that the returned Afghans included refugees from Jalozai camp and some unaccompanied children.⁹⁴ During the ensuing dispute between the government and UNHCR, screening was halted. It started up again on September 3 and lasted for eight more days until the September 11 attacks on the United States.

With the post-September 11 arrival of large numbers of Afghans to Pakistan, the full screening program was not re-instated. Instead, the government of Pakistan maintained its interest in relocating the refugees—a policy goal that re-surfaced in a new initiative in November, 2001.⁹⁵

Crossing the Border into Pakistan

Pakistan first closed its borders to prevent Afghans from entering in November 2000,⁹⁶ at a time when the local authorities of the NWFP were publicly expressing their displeasure with the presence of the Afghan refugees. Since then the government has repeatedly stated that it closed its borders to fleeing Afghans because of security concerns.⁹⁷ In light of the fears that members of the al-Qaeda organization or members of the Taliban armed forces might try to cross from Afghanistan into Pakistan,⁹⁸ Pakistan's security concerns are legitimate. However, 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 must be applied in a fair, non-discriminatory manner with full procedural guarantees and international monitoring.

Pakistan's desire to cooperate with the international coalition against terrorism was also a factor influencing the border closure policy. In the lead-up to the U.S.-led air strikes in Afghanistan, the United

⁹³ Associated Press, "U.N. Protests Pakistan's Deportation of 150 Afghan Refugees," August 30, 2001.

⁹⁴ Dow Jones International, "Pakistan Says Didn't Violate U.N. Afghan Refugees Agreement," August 31, 2001.

⁹⁵ See section of this report entitled "Refugee Relocation," *infra* p. 34.

⁹⁶ U.S. Committee for Refugees, *Afghan Refugees Shunned and Scorned*, 2001, p. 24-26.

⁹⁷ See, e.g. Agence France Presse, "Security Tightened at Pakistan-Afghan Border as Taliban Flaunt Weapons," November 13, 2001; The Globe and Mail, "War News," November 16, 2001.

⁹⁸ See notes 179-198, *infra* and accompanying text, discussing some of these security concerns.

States requested Pakistan to keep its borders closed,⁹⁹ despite the anticipated need for fleeing Afghans to seek safety in neighboring countries and the legal standards allowing for separation of armed individuals or those engaged in military activities from civilian refugees. The border closures undermined the right to seek asylum, enshrined in the Universal Declaration of Human Rights and customary international law. Also as a result of the policy, the Pakistani Frontier Corps personnel and authorities in FATA were officially empowered to impose fines on people who were stopped while crossing. These fines are usually beyond the means of Afghans, who often flee with no money at all.

Inside Afghanistan, Taliban forces or bandits at checkpoints have also imposed fines on people leaving Afghanistan. For example, Khetab fled with her family from Kabul. She is Tajik, and nineteen years old. On approximately October 17, 2001, she and her family were stopped by a group of Taliban just before Jalalabad, at a checkpoint inside Afghanistan. Men with arms forced them to pay 1000 rupees for each family; otherwise, they could not cross into Pakistan through the mountains.¹⁰⁰ For those Afghans who could not afford to pay, such incidents of extortion hampered their ability to reach greater safety in Pakistan.

As a result of Pakistan's increasingly strict border closure policy, and the fines and extortion inside Afghanistan, it became even more dangerous and costly for Afghan refugees to enter Pakistan after September 11, 2001.

Refugees Seeking to Cross Pakistan's Northwest Border

When refugees arrived at official border crossing points in the NWFP, they were prevented from entering by Pakistani Frontier Corps. This occurred most often at the Torkham crossing point. The border push-backs were simply the continuation of an earlier policy of push-backs at Pakistan's border crossings.¹⁰¹ However, the incidents became more prevalent with the increased numbers of refugees seeking to enter Pakistan after the October 7, 2001, U.S.-led bombing campaign began.

Seventeen-year-old Abdul arrived in Pakistan with his mother and five brothers and sisters. His father remained in Afghanistan. He told Human Rights Watch, "When we fled [in November], we first came to the border of Pakistan at Torkham and that was a very difficult place for us. The border guards would not let us cross there. They took some sticks and hit us to push us away. We were left to sleep in the dust."¹⁰² Eventually, however, he and his relatives were able to enter Pakistan through an unofficial route.

Most often, Afghan refugees were stopped at checkpoints located somewhere in the NWFP's FATA on the Pakistani side of the border. These checkpoints were often set up by local tribal authorities, or by local people in FATA with the complicity or acquiescence of the tribal authorities. Latifa, a woman in her thirties, fled with her brother, mother, and son from Kabul on October 15, 2001. They faced problems

⁹⁹ See e.g. The Associated Press, "Bush Anti-Terror Aid Request Doubled," September 13, 2001; Barry Schweid, "Powell Reaches Out to Arab Nations," *The Associated Press*, September 14, 2001 (noting that "Pakistan is ready to agree to the United States' request that it close its border with Afghanistan"); Barbara Slavin and Bill Nichols, "U.S. Pressures Pakistan To Assist In Bringing In Bin Laden," *USA Today*, September 14, 2001 ("According to administration and Congressional sources, Pakistan is being pressured to . . . close the border with Afghanistan"). As the conflict in Afghanistan continued, the White House expressed its appreciation to Pakistan for "doing everything it can to be helpful to arrest any movement back and forth across the border." Press Briefing by Ari Fleischer, Office of the Press Secretary, November 19, 2001, available at www.whitehouse.gov/news/releases.

¹⁰⁰ Human Rights Watch interview, Shamshatoo, November 17, 2001.

¹⁰¹ See, e.g. "Taliban Shut Border for Three Hours," *the Dawn*, June 10, 2001.

¹⁰² Human Rights Watch interview, new Jalozai camp, November 20, 2001.

at the border when tribal people at a high mountain pass stopped them. The people would not let them pass unless they paid money.¹⁰³

Occasionally, families tried to negotiate with the armed men at these checkpoints. Ghulam, a sixty-year old man, fled first from Kholm and then from Jalalabad to Pakistan on November 3, 2001. He told Human Rights Watch what happened at the border, "We came through the mountains. At one place some tribal people stopped us. They asked us to give 400 rupees for each person. We argued about this and after a while we were able to pay 2,500 for each family."¹⁰⁴

Some refugees were unable to negotiate a price they could afford. In such cases, the refugees might be prevented from entering Pakistan or tribal authorities might take matters into their own hands. Raidigul is Tajik from Bagram, just outside of Kabul. She and her family were stopped in the mountains by some tribal authorities. She told Human Rights Watch:

We did not even have a coin to give them [the tribal authorities], so they beat my husband. They beat him with a machinegun and broke his hand. They said they wanted to take him with them, but they grew tired of us when more people came who could pay, and they just let us pass with them. . . Here is better than war, but my husband's hand is still disabled after that beating and he cannot work.¹⁰⁵

Finally, the conditions in the treacherous mountain crossings were life threatening, especially for children. Noor is from Laghman province. He explained what happened on November 3, 2001, when his family undertook the journey to Pakistan: "When we were crossing the border, my twelve-day-old daughter froze to death because of the cold weather. That was sixteen days ago. We had to bury her in the mountains."¹⁰⁶

Refugees Seeking to Cross Pakistan's Southwest Border

Refugees in the Quetta area have also resorted to unofficial crossing points. These refugees find their way into urban refugee settlements in and around Quetta, just like refugees in the NWFP. However, unlike the strict border closure policy in the NWFP at Torkham, the official border crossing in Baluchistan at Chaman was eventually opened to vulnerable refugees.¹⁰⁷

Beginning in the first week of November 2001, vulnerable refugees, identified as such by Pakistani Frontier Corps working at the Chaman border crossing point, were allowed to enter Pakistan. The refugees were first brought to the Killi Faizo staging camp, where UNHCR registered them, and NGOs distributed medical aid, food, and non-food assistance items. While this policy was more generous, U.N. officials commented that these "vulnerability" decisions were influenced by bribery and extortion. In addition, one protection problem presented in the first weeks of the vulnerability screening was that women, children, and the elderly were allowed to enter, whereas sometimes men were not. This policy was due to the security concerns of the government of Pakistan, but it was applied to civilian as well as

¹⁰³ Human Rights Watch interview, Mohammed Gulgari, Peshawar, November 15, 2001.

¹⁰⁴ Human Rights Watch interview, new Jalozi camp, November 20, 2001.

¹⁰⁵ Human Rights Watch interview Shamshatoo camp, November 17, 2001.

¹⁰⁶ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001.

¹⁰⁷ The divergent policies towards refugees in Baluchistan and NWFP were attributed to the differing attitudes of the two local governors. Human Rights Watch interview with protection staff of relief NGO, Peshawar, Pakistan, November 13, 2001.

armed men.¹⁰⁸ As a result, in the initial stages, some families accompanied by civilian men were separated at Chaman border crossing.¹⁰⁹

However, this problem was rectified by mid-November, 2001, and the principle of family unity was thereafter respected by the Frontier Corps personnel.¹¹⁰ As the Killi Faizo camp became more crowded, Roghani and Tor Tanghi camps were developed together with a camp run by the United Arab Emirates, about sixteen kilometers away from Killi Faizo. These were set up as permanent camps, with the capacity to house approximately 50,000 refugees, in contrast to the temporary nature and limited capacity of Killi Faizo.

The government of Pakistan made public calls in late October to establish displaced persons camps near Spin Boldak just inside Afghanistan from the Chaman border crossing, in order to prevent the arrival of more refugees at Chaman.¹¹¹ Like the announcement to set up similar camps by the government of Iran, this initiative by the government of Pakistan infringed upon Afghans' right to seek asylum. Immediately following the announcement, it was also feared that not only would the government of Pakistan insist that Afghans should not seek asylum, but also those who had reached the relative safety of Pakistan would be forced to return to the Spin Boldak displaced persons camp. In fact, this was the policy for a few days, as announced by Shafi Kakar, a Pakistani official in Baluchistan, who said, "Both sides have agreed that those who have illegally crossed the border and are in Pakistan *will be sent back*. The Taliban. . . have agreed to set up two refugee camps inside Afghanistan."¹¹² Under this policy, the government of Pakistan sent one group of twenty-five families back to Afghanistan immediately after the October announcements.¹¹³

UNHCR and other organizations raised serious concerns about this policy; first that the policy interfered with the right to seek asylum, and second, because the refugees were being returned to a camp run by the Taliban, where there were fears that they would be subject to militarization and forced recruitment. Also, the conditions in the camp of some 60,000 people were dire.¹¹⁴ One report noted, "aside from the shelters, there was little else. Food was scarce. So was water. Toilets were nonexistent. Human excrement littered the sand."¹¹⁵ However, contrary to some of the original fears about the camp, it was later reported that people were not being forced to remain in Spin Boldak,¹¹⁶ and with the Baluchistan

¹⁰⁸ See discussion of the separation of civilian refugees from armed and militarized individuals in the text accompanying notes 97-99, *supra*.

¹⁰⁹ The preservation of family unity is a crucial aspect of refugee protection and is reflected in *UNHCR's Refugee Children: Guidelines on Protection and Care*, 1994, p. 43, and p. 124. See also ExCom Conclusion No. 22, Protection of Asylum Seekers in Situation of Large-Scale Influx, 1981 (stating that "family unity should be respected"); ExCom Conclusion No. 24, Family Reunification, 1981; Convention on the Rights of the Child, Article 7 (stating that every child has the right "to know and be cared for by his or her parents."); UNHCR, *Guidelines on the Protection of Refugee Women*, 1991, ¶ 32 (noting that "when women and girls are separated from male family members in the chaos of flight. . . they are especially susceptible to physical abuse and rape.").

¹¹⁰ Human Rights Watch interview with UNHCR protection staff, Quetta, November 30, 2001.

¹¹¹ One of the most widely reported calls for camps inside Afghanistan occurred on October 23, 2001 when President General Pervez Musharraf said on CNN's Larry King Live, "our point of view has always been that we must establish camps across the border in Afghanistan and all assistance to the refugees must be given there, so that people go back to Afghanistan instead of making them comfortable here in Pakistan." See also Haroon Rashid, "Pakistan: Some Afghan Refugees To Be Repatriated To Camps Inside Afghanistan," *The Associated Press*, October 23, 2001.

¹¹² Haroon Rashid, "Some Afghan Refugees to be Repatriated to Camps Inside Afghanistan," *The Associated Press*, October 23, 2001 (emphasis added).

¹¹³ Catherine Philip, "Pakistan Strikes Deal To Deport Thousands," *The Times of London*, October 24, 2001.

¹¹⁴ Press Briefing by the U.N. Offices for Pakistan and Afghanistan, *IRIN News Release*, November 26, 2001.

¹¹⁵ "Refugees Endure Lives of Squalor in Taliban Camp," *Washington Post*, November 20, 2001.

¹¹⁶ *Ibid*.

governor's agreement to allow vulnerable refugees to enter Pakistan at Chaman, the concerns --- and the forced returns from Pakistan --- subsided.

Occasionally, the relatively more generous policy in Baluchistan created a backlog of families waiting in a "no man's land" to be processed at Killi Faizo. Usually, there were only a few families waiting in this "no man's land," but on a few occasions, the numbers became quite large. Because these families were not yet allowed to enter the Killi Faizo staging camp where NGOs and UNHCR could deliver assistance, they were living in squalid and dire conditions, without shelter, food or water, and sleeping in freezing temperatures at night.¹¹⁷ For one critical span of days from December 4 to December 8, 2001, during the increase in fighting in Kandahar, approximately 2,000 refugees were trapped without protection or assistance waiting to be allowed to enter the Killi Faizo camp.¹¹⁸ The backlog was due to daily numerical limits imposed by the government of Pakistan that were not adjusted for the increase in arrivals. However, by December 9, 2001, the numerical limits had been temporarily lifted and most of the refugees had been registered and allowed to enter the Killi Faizo camp. However, one month later in January 2002, again as a result of increased fighting around Kandahar, a very large group of 13,000 refugees were waiting in the cold and squalor of the no man's land, in hopes of being allowed to enter the Killi Faizo camp.¹¹⁹

Problems Stemming from Lack of Legal Status in Pakistan

The central protection problem facing most Afghan refugees in Pakistan is that many who have resided in Pakistan for years, as well as all recent arrivals, are undocumented. This lack of documentation is particularly problematic since it is combined with an increasingly hostile governmental attitude toward the refugees. As noted above, starting from late 1999 the government stopped considering newly arriving Afghans as *prima facie* refugees.¹²⁰ Moreover, with the exception of the very basic registrations conducted at Killi Faizo and the relocation program from new Jalozai, few refugees have even been registered.

According to international standards, refugees who flee persecution and human rights abuse should be recognized and afforded permission to remain regardless of how they enter a country of asylum.¹²¹ However, the authorities constantly question the status of Afghan refugees who have entered Pakistan illegally. They lack identity papers or permission to remain, making them even more vulnerable to abuse. North West Frontier Province authorities, such as Iftikhar Hussain Shah, have repeatedly accused the Afghans of being economic migrants rather than genuine refugees.¹²² At one point, prior to the U.S.-led attacks on Afghanistan, he said "Our stand on the newcomers is inflexible and unequivocal" and that he hoped to return 70 percent of the Afghan refugees.¹²³ To do so, however, would be a violation of Pakistan's obligations under international law.

¹¹⁷ Human Rights Watch interviews, Chaman, December 7-8, 2001.

¹¹⁸ Human Rights Watch interviews, Chaman, December 7-8, 2001. See also BBC News, "Refugees Trapped in No Man's Land," December 4, 2001, at www.news.bbc.co.uk/hi/english/world/south_asia/.

¹¹⁹ "Number of Afghan Refugees in No-man's Land Rises to 7000," *UNHCR News Release*, January 11, 2002.

¹²⁰ See discussion of *prima facie* refugee status in the text accompanying notes 44-46.

¹²¹ See, e.g. Refugee Convention, Article 31 ("The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees."). See also *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status*, 1976 (reedited January, 1992) ¶ 196 (noting that "In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents.").

¹²² Meriel Beattie, "80,000 Refugees Are Trapped In Freezing Corner Of Pakistan," *The Independent*, February 10, 2001.

¹²³ Mohammed Riaz, "Pakistan Plans To Repatriate Afghans To Their Devastated Country," *AP Newswires*, May 20, 2001.

Harassment, Extortion, and Imprisonment of Afghan Refugees

The lack of legal status for Afghan refugees in Pakistan has left them without any protection from harassment, extortion, and imprisonment by the Pakistani police. Stories of police harassment and extortion are very common among the Afghan refugees.¹²⁴ For example, Nurina, a Kuchi woman in her thirties from a small village in Kunar province, told Human Rights Watch that the police in Peshawar picked up her husband on November 13, 2001, while he was walking on the street with a radio, listening to the news. The police asked for his papers and then took him into the police station and held him there. The family knew that the police were seeking to extort money from them but as they had none, Nurina's brother-in-law went to the station each day to plead for her husband's release. After a few days, the police allowed him to re-join his family.¹²⁵

One refugee man in his fifties built cages for birds and sold them in the bazaar. He explained what happened in early November on the street in Peshawar: "Here we have to hide ourselves from the police. . . . The policeman stopped me and said I had to have a license for selling. But I do not have this license, and I cannot get one. I knew that policeman wanted money from me, but I had nothing to give him. I had to give him two of my cages instead."¹²⁶

According to interviews with NGO staff working with the prison population, the percentages of Afghans in prison in NWFP and in Baluchistan are relatively large. For example, in the NWFP prisons during early 2000, 12 percent of juvenile detainees were Afghans.¹²⁷ Afghans in the NWFP are most often charged with vagrancy under the Vagrancy Act of 1924, violation of Pakistan Penal Code Section 170, or violation of the Pakistan Penal Code Section 188. Under Section 170 a person abets an act when he "engages with one or more other. . . persons in any conspiracy for the doing of an [illegal] thing." Whole groups of juveniles found on the street in the NWFP were often charged with abetment if one youth in the group was suspected of petty crime.¹²⁸ Section 188 of the Penal Code allows for the imposition of fines or one to six months of imprisonment for "disobedience to an order duly promulgated by [a] public servant." In conjunction with Section 188, Afghans were most often accused of violating the Foreigners Order. For all of these offenses, Section 54 of the Pakistan Criminal Procedure Code allows for the arrest without warrant of "any person who. . . a reasonable suspicion exists of his having been. . . concerned [in any cognizable offence]."

Afghans were also imprisoned under the Foreigners Order, which allows for the "arrest of any foreigner without warrant." Prison authorities at Quetta District Prison told Human Rights Watch that most of the Afghans in their facility were held for violating the Foreigners Act and Order.¹²⁹ Section 15 of the Foreigners Order requires that the reasons for the detention should be forwarded to the federal government. According to Afghan and Pakistani NGOs working with the prison population, this procedural requirement is rarely met. In addition, rarely do the Afghans in prison have access to legal counsel, although most are held in pre-trial detention with little hope of having their cases heard by the courts. However, access to counsel can produce dramatic results. In one instance in 2001, when the cases

¹²⁴ One refugee from Bamiyan province noted that police harassment can have a disparate impact on refugees who are Tajik or Uzbek. He said, "it is more difficult for them because they do not speak Urdu or Pashto." Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

¹²⁵ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

¹²⁶ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001.

¹²⁷ Dost Welfare Foundation, *Report on Juvenile Cases in NWFP Prisons*, December 1999.

¹²⁸ Human Rights Watch interview with Pakistani NGO working with prison population in NWFP, November 21, 2001.

¹²⁹ Human Rights Watch interview with Quetta District Prison Authority, December 1, 2001.

of non-criminal Afghan pre-trial detainees were taken up by a local NGO, one hundred and forty-five Afghan prisoners were released.¹³⁰

Refugees belonging to ethnic minorities, particularly Hazaras, live in crowded and squalid conditions on the outskirts of Quetta. Ethnic minority groups in Quetta consistently complained to Human Rights Watch of more frequent incidents of harassment and official discrimination. Regardless of their ethnic background, all refugees in Quetta suffer from police harassment. Gul Razik, a Pashtun refugee in his twenties, said, “if they stop you on the street and ask for your papers during the day, it usually costs five hundred rupees to be set free. If they catch you after midnight for not having an identity document you will have to pay one to four thousand rupees. Once you are in jail, they will add another fifteen hundred rupees for your family to pay. Sometimes, they beat you in jail.”¹³¹

Urban Sweeps and Forced Returns

In combination with these individual cases of police harassment and detention because of refugees’ undocumented status, some Afghans are subjected to forcible return. Three types of authorities can intercept Afghan refugees: Federal Frontier Corps personnel, tribal security personnel in FATA, and the Pakistani national police. As discussed above, police most often pick up undocumented refugees in urban areas. Frontier Corps or FATA authorities intercept refugees when they are nearer to the border. In all three cases, at times the Afghan refugees are placed in jail or prison before being forced back to Afghanistan. Occasionally, the refugees are able to bribe authorities in order to be released. Some refugees are forced back after allegedly committing crimes. Other refugees in prison are forcibly returned to Afghanistan, even when they have been neither charged nor prosecuted for crimes. This practice was particularly common when refugees were intercepted in FATA. Refugees spent a few nights in jail in the Peshawar area and were forced back to Afghanistan through the official border post at Torkham.¹³²

Forced returns to Afghanistan from Pakistan occur on a regular basis.¹³³ Between October 2000 and May 2001, the government forcibly returned some 7,633 Afghans, the majority of whom were men and boys.¹³⁴ On January 23, 2001, the government of NWFP, and later the Federal Government of Pakistan issued public orders stating that the border should be strictly monitored for illegal immigrants and authorizing the police to detain and deport newly arriving refugees. This order was subsequently re-issued in March 2001 as a NWFP Order to deport people lacking legal status and identification. Returns pursuant to these orders occurred without a hearing or judicial review.¹³⁵ In the space of a few days in early May 2001, eighty-one Afghan refugees were sent back to Afghanistan, simply because of their undocumented status.¹³⁶ At the same time, NWFP Governor Lieutenant General Syed Iftikher Hussain Shah announced that Afghan refugees were “economically displaced persons. They are not refugees. They are illegal immigrants and we insist they go back.”¹³⁷

Returns continued even after the U.S.-led bombing campaign began in October 2001, at the rate of close to 300 per month in both October and November from NWFP.¹³⁸ Amnesty International protested one

¹³⁰ Human Rights Watch interview with NGO staff member, Peshawar, November 16, 2001.

¹³¹ Human Rights Watch interview, Quetta, November 30, 2001.

¹³² Human Rights Watch interview with UNHCR protection staff member, November 16, 2001.

¹³³ For example, in 1999 over 150 Hazara male refugees were forced back from Quetta after being placed in detention in Quetta prisons under the Foreigners Act (1964). See *U.N. Study on Forced Returns of Afghans from Pakistan*, May 2001.

¹³⁴ *Ibid.*

¹³⁵ The March announcement was protested by the Human Rights Commission of Pakistan, for being a violation of due process of law. See “HRCP Flays Government Move to Deport Afghan Refugees,” *The Dawn*, March 8, 2001.

¹³⁶ “Eighty-one Afghan Immigrants Deported,” *The Dawn*, May 9, 2001.

¹³⁷ “New Afghan Immigrants Not Refugees,” *The Dawn*, May 13, 2001.

¹³⁸ Human Rights Watch interview with UNHCR protection staff member, November 16, 2001.

incident, in which eight Afghan Sikhs were deported without access to a court proceeding.¹³⁹ Under international standards, refoulement occurs when a refugee is sent back to a place where his or her life or freedom is under threat. During the months of October and November 2001 conditions in Afghanistan were such that all Afghans were being sent to a place where their lives and freedom were under threat. Therefore, these forced returns violated Pakistan's obligations under customary international law.

Often the government of Pakistan calls such forced returns "deportations." Normally, however, deportation is the result of an application of a relevant provision of criminal, immigration, or nationality law to a particular individual. In order to comply with international legal norms, such laws must be uniformly applied during deportation proceedings, and the administrative or judicial process must be fair and impartial. However, the forced returns of Afghans have been imposed effectively because of the refugees' undocumented status without application of uniform standards or the use of any judicial or administrative process. As one UNHCR official noted, "We feel they have not explained the criteria they are using to deport people. . .there have been cases of parents being picked up in the street and deported, with their children left behind."¹⁴⁰

In addition to these various forms of forced return, there have been several cases of more systematic urban sweeps of Afghan refugees and shopkeepers, in which large numbers of refugees are rounded up and placed in detention for a few days. One such sweep occurred in Islamabad in the last week of November 2001.¹⁴¹ Often, these urban sweeps disproportionately impact ethnic minority groups within the general Afghan refugee population.¹⁴² Throughout the process of these sweeps, refugees who can afford to bribe police attempt to do so either to avoid the initial arrest, or to obtain their release from prison.

Refugees living in urban areas also face general security problems. Many of the newest arrivals seen by Human Rights Watch were living in makeshift shelters, sometimes constructed out of blankets with wood supports. In many cases, refugees described how they had to pay rent to Pakistani landlords in order to put up their tents in small vacant lots squeezed in between other buildings. In other cases, refugees who could not afford to pay rent put up their shelters in places where no-one else wanted to live, such as on top of garbage dumps. One refugee explained the security concerns he had at night when sleeping in a shelter constructed out of blankets and sticks. He said, "In this place, we do not feel safe. During the day it is fine. But during the night, we do not feel safe. I wake up ten to fifteen times every night. I think that I will kill any person who comes and does anything to our women."¹⁴³

Protection Problems in Camps

Since refugees arriving in Pakistan through unofficial channels are undocumented inside Pakistan, and because the government of Pakistan has refused UNHCR permission to conduct refugee registration for new arrivals since early 2001, assistance distributions (of food and non-food items such as blankets) in camps like new Jalozaï and Shamshatoo have been fraught with problems. Without official registration, newly arrived refugees do not have the necessary documentation, commonly called "passbooks" by the refugees, to obtain assistance. Refugees must rely on the generosity of their longer-established relatives in the camps to share their rations. In addition, without accurate numbers, the distributions often fall short

¹³⁹ "Refugees Must Not be Forced Back to an Unstable Afghanistan," *Amnesty International Press Release*, December 14, 2001.

¹⁴⁰ Meriel Beattie, "80,000 Refugees Are Trapped In Freezing Corner Of Pakistan," *The Independent*, February 10, 2001. When families are separated due to such standardless deportations, the principle of family unity is undermined. See note 109, supra.

¹⁴¹ Human Rights Watch interview with UNHCR protection staff member, Islamabad, November 26, 2001.

¹⁴² Human Rights Watch interview with international NGO staff member, November 22, 2001.

¹⁴³ Human Rights Watch interview in Tajarabat, Peshawar, November 18, 2001.

of the need. Assistance distributions in camps are administered by Pakistani police and camp block leaders at the centralized location of the camp commandarie.

Refugees without passbooks have often presented themselves during assistance distributions at the camp commandarie. The distributions can take one of several forms: sometimes refugees with passbooks were simply asked to present themselves at the commandarie; at other times the NGO doing the distribution would give chits to refugees as a means to ensure the most needy received rations; still another form involved using the Pakistani police or block leaders to distribute chits to refugees. This last method was especially open to abuse and corruption, and often left women-headed households without assistance.

In some cases, the numbers of refugees present at the distribution gave rise to crowd control problems. However, in other instances the numbers concerned and their behavior did not warrant the brutality suffered. For example, at the Killi Faizo camp near Chaman on December 5 and 6, Human Rights Watch witnessed afternoon beatings by the Frontier Corps personnel that were disproportionate to any need for crowd control. Refugees living in new Jalozai camp also reported incidences of police brutality and corruption. Nadia, a Tajik refugee from the town of Bagram, told Human Rights Watch:

If my husband feels well enough to go to the commandarie, he goes to get the food. But the police treat us very badly. . . . Police beat us when we push to get food. This happened the day before yesterday [November 15, 2001]. The police beat one woman and her head was hurt very badly. Sometimes the guards just throw the chits in the air, and people get injured when they push to try to get them. At those times my husband is too weak to fight for a chit. Some people in the camp have up to ten passbooks, but me, I have only one passbook. When they bring help, people who have only one passbook like us only get very little.¹⁴⁴

Muhammad Hussain, a forty-five-year old refugee from Kapisa province said:

Sometimes they beat people at the distributions. People have to pay to convince the police to give them food. Sometimes they pay five hundred rupees, or one hundred or fifty. I have seen them get paid with my own eyes. I saw this [bribery] three days ago [November 19, 2001]. . . . Also, yesterday they were giving mattresses and blankets. There were many people there, at around 11:00 in the morning. They only let people who had chits into the compound. I went there and I told them it is my turn to get these things. A policeman beat me back and told me to wait at another place. He pushed us and beat us with sticks. I know the face of the man who beat me, but I do not know his name. There were many beaten in this way. . . . Sometimes they take the Afghans to the rooms in the commandarie and hold them there. The people who have been arguing about the assistance they just keep for a few days. They release them once they get some money from them. They beat them in those rooms to get money from them. They never beat people on the face. They beat on the legs or back or arms. They do not beat them in a place where people can see.¹⁴⁵

A sixteen-year-old refugee girl spoke about what happens when people are kept in the “jail” at the commandarie in Shamshatoo: “The commander takes men and puts them in the jail in the commanderie. He tells them they can pay money to be set free, so they have to pay a 40,000 rupee fine.”¹⁴⁶

¹⁴⁴ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

¹⁴⁵ Human Rights Watch interview, new Jalozai camp, November 22, 2001.

¹⁴⁶ Human rights Watch interview, Shamshatoo camp, November 17, 2001.

Particular Problems Facing Refugee Women

Women-headed households suffered acutely during these distributions, regardless of the process. A primary problem in all of the refugee camps visited by Human Rights Watch was that there were no female police on site to ensure the security of female refugees, and from whom such female refugees could seek protection without putting themselves at risk of abuse or abridging cultural norms.¹⁴⁷ This absence of female staff is contrary to Pakistan's obligations under ExCom Conclusion No. 64, which urges states to "increase the representation of appropriately trained female staff across all levels of organizations and entities which work in refugee programmes and ensure direct access of refugee women to such staff."¹⁴⁸ The need for female staff was also clear during the relocation program (discussed infra, under "Refugee Relocation"), in which some refugee women described having less information and fewer alternatives than men when deciding whether or not to relocate.

The frequent incidences of violence during distributions made Afghan refugee women, already unaccustomed to appearing in public places, deeply afraid to go to the distributions in order to collect food. The Pakistani police were known to beat women and children as well as men during distributions.¹⁴⁹ In other cases, the women did not have access to the patronage networks that allowed male refugees to obtain chits for their families.¹⁵⁰ These problems only exacerbated the already destitute status of these female refugees. One Hazara woman explained, "We do have problems with thieves in the camp. It is also a problem for me to go to the commandarie to get assistance. . . . Me as a woman alone, I cannot go. They bring the assistance to one man, a commander, and it does not reach everyone in the camp. Only a few get that assistance. It goes to Pashtuns and Tajiks."¹⁵¹ UNHCR has long pointed to the problems presented by such male-dominated distribution networks, "decisions about food and other items of distribution are generally made by international organizations and host countries in consultation with the male leaders of the camp. Yet, these male leaders may have little understanding of the needs and circumstances of . . . women."¹⁵²

In addition to police brutality in the camps, refugee women reported generally about their security concerns.¹⁵³ One woman said, "In this camp, there are many strange men and many different people -- I have to wear the *burqa* to feel safe."¹⁵⁴ A refugee woman living in new Jalozaï camp said, "we have no security in this camp, what we have is not a house, it is covered with plastic but it is not even good to

¹⁴⁷ One Afghan women's NGO interviewed by Human Rights Watch also particularly pointed to the lack of female security staff during assistance distributions. Human Rights Watch interview with Afghan Women's NGO staff member, November 22, 2001.

¹⁴⁸ ExCom Conclusion No. 64, Refugee Women and International Protection, 1990, ¶ (a)(ii).

¹⁴⁹ Pamela Constable, "Barred from Pakistan, Refugees Left to Elements," *Washington Post*, January 16, 2002.

¹⁵⁰ The predominance of such patronage networks is contrary to UNHCR's guideline that "refugee women [should] have access to whatever process is used to determine eligibility for assistance." See *UNHCR Guidelines on the Protection of Refugee Women*, 1991, ¶ 45. It is also contrary to Pakistan's obligations under ExCom Conclusion No. 64, Refugee Women and International Protection, 1990, which urges states to "provide all refugee women and girls with effective and equitable access to basic services, including food, water and relief supplies."

¹⁵¹ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

¹⁵² See *UNHCR Guidelines on the Protection of Refugee Women*, 1991, ¶ 83.

¹⁵³ The need to address these problems is recognized in the *UNHCR Guidelines on the Protection of Refugee Women*, 1991, ¶ 79 (noting that "[t]he physical circumstances in which refugees are housed affect their safety. Too often refugee women face dangers stemming from poor design of camps: for example, . . . location of basic services and facilities such as latrines.") and ¶ 80 (stating that "in many refugee situations, strangers are thrown together in new settings. . . women headed households may be intermixed with single men under circumstances that undermine efforts to provide protection."). See also ExCom Conclusion No. 64, Refugee Women and International Protection, 1990.

¹⁵⁴ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

keep out the rain. We have no door to lock.”¹⁵⁵ Another refugee woman said, “I am afraid of going to [Kotkai camp] because we have heard that there are a lot of restrictions and people cannot go to the toilet easily, because there are a lot of police there and we will not be safe. I am afraid of fighting and war. They will take the men from us to do fighting. Then who will protect us from all this violence?”¹⁵⁶ Even once they were in Kotkai camp, refugee women continued to fear for their safety.¹⁵⁷

Refugees also reported abductions of teenage girls from new Jalozai and Shamshatoo camps. One incident, reported independently by two refugee women, allegedly occurred in late October, 2001 in Shamshatoo camp. A man who had entered the camp as a taxi driver took a teenage girl from the camp.¹⁵⁸

Other refugees in urban settings, particularly in Peshawar, reported anecdotally about destitute women and girls resorting to prostitution.¹⁵⁹ Finally, Human Rights Watch received anecdotal accounts of domestic violence from refugee women. One woman explained how the frustrations of life in a refugee camp had impacted her domestic life: “now, my husband does not smoke cigarettes. He takes *naswar*¹⁶⁰ now because it is cheaper than tobacco, but this makes him angry with me. He also lost his job in the carpet factory here and now he is just frustrated. He becomes angry very easily.”¹⁶¹

Particular Problems Facing Refugee Children

Most of the refugee families interviewed by Human Rights Watch had small children; and few were in school. Those that did have children in school were located in Shamshatoo camp. In new Jalozai camp, some male refugee children had been sent by their families to the local *madrassas* (Islamic seminary). Only a few refugee girls were in school.

UNHCR recognizes the importance of working with NGOs and host governments to provide, at a minimum, basic primary education in literacy and numeracy to refugee children.¹⁶² Pakistan, as a member of ExCom, in Conclusion No. 47, called for the intensification of “efforts. . .to ensure that all refugee children benefit from primary education of a satisfactory quality.”¹⁶³

Some refugee parents explained that not only were their children not at school in Pakistan, but they had either never been to school or had their schooling seriously interrupted in Afghanistan.¹⁶⁴ For example, one refugee living in a makeshift shelter in urban Peshawar said, “We have spent our whole life in

¹⁵⁵ Human Rights Watch interview at new Jalozai camp, November 20, 2001.

¹⁵⁶ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

¹⁵⁷ See discussion in text accompanying note 198, *infra*.

¹⁵⁸ Human Rights Watch interview, Shamshatoo camp, November 17, 2001. ExCom Conclusion No. 84, Refugee Children and Adolescents, 1997, urges states and concerned parties to protect child and adolescent refugees by “safeguarding the physical security of refugee children and adolescents” by “safeguarding the physical security of refugee children and adolescents, securing the location of camps and settlements at a reasonable distance from the frontiers of countries of origin, and taking steps to preserve the civilian character and humanitarian nature of refugee camps and settlements”; and by “preventing sexual violence, exploitation, trafficking and abuse.”

¹⁵⁹ See also BBC on line, “Inside a Peshawar Brothel,” December 19, 2001, at <http://news.bbc.co.uk/>. UNHCR has recognized the fact that poverty can force refugee women into prostitution, “the failure to address adequately the assistance needs of refugee women has had serious repercussions in the form of sexual exploitation. . . some refugee women have been forced into prostitution for lack of assistance.” See UNHCR, *Guidelines on the Protection of Refugee Women*, 1991, ¶ 40.

¹⁶⁰ A green herb, known as a stimulant, and usually ingested by chewing.

¹⁶¹ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

¹⁶² UNHCR, *Refugee Children: Guidelines on Protection and Care*, 1994, p. 111.

¹⁶³ ExCom Conclusion No. 47, Refugee Children, 1987.

¹⁶⁴ UNICEF estimates that only thirty-six percent of Afghan boys inside Afghanistan are in school. See Larry Kaplow, “The Businessman: Hamidullah, 9,” *The Atlanta Journal – Constitution*, January 6, 2002.

fighting. Our sons have not been to school.”¹⁶⁵ Another mother explained how the bombing had interrupted her sons’ education, “When we fled, my two sons were just about to take exams before the bombing came. They were unable to take the exams and will have to repeat their schoolwork if they are able to go home.”¹⁶⁶ Abdul, who was living in new Jalozai and was seventeen years old, was eager for educational opportunities. He said, “Here we face many problems and they do not send us to school.”¹⁶⁷

One of the few international human rights treaties that Pakistan is party to is the 1989 Convention on the Rights of the Child. Article 22 requires that refugee children should receive appropriate protection and humanitarian assistance in the enjoyment of the rights enumerated in the Convention. Articles 28 and 29 set forth the rights to education that Pakistan should ensure. One pertinent requirement, contained in article 28 is that states parties shall “make primary education compulsory and available free to all.” Given that many refugee children located in new Jalozai camp were not given access to primary schooling, Pakistan is falling short of its international obligations.

However, refugee families also often chose not to send their children to school, especially when the only schooling options required paying fees. Families explained how they had to send their male children to work as opposed to school in order to supplement the family’s income. Girl refugee children were usually kept at home with their mothers. In Peshawar, some refugee children living in the Tajarabat area worked as garbage pickers for a few rupees a day. Many refugee children in Peshawar were also working in brick factories, in carpet factories, and with shoe repair shops.¹⁶⁸ Hamida, a mother of two, explained to Human Rights Watch that “my fifteen-year old son is sick and my other son polishes shoes, I cannot pay for them to go to school.” In Quetta, children most commonly worked in the carpet factories. However, many families reported that their children had lost their jobs since the carpet industry was in a slump during October and November, 2001.¹⁶⁹

Other refugee children faced other serious problems when they were moved from the camps they were living in and withdrawn from a supplementary feeding program being run in new Jalozai camp.¹⁷⁰ Also problematic were the reported incidences of abductions and prostitution occurring among girl refugees, described in the previous section.

Pakistan’s International Obligations to Refugees

The principle of nonrefoulement enshrined in article 33 of the Refugee Convention is also a well-established principle of customary international law and is thus binding on Pakistan despite Pakistan not being a party to the Refugee Convention. By closing its borders to Afghan refugees, denying them entry, and returning some refugees to Afghanistan, the government of Pakistan is placing refugees at risk of being returned to a country where their lives are seriously at risk and thus is violating its obligation of nonrefoulement.

¹⁶⁵ Human Rights Watch interview in Tajarabat, Peshawar, November 18, 2001.

¹⁶⁶ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

¹⁶⁷ Human Rights Watch interview, new Jalozai, November 20, 2001.

¹⁶⁸ While Human Rights Watch did not visit the places where children were working, staff from international organizations and local NGOs described the conditions of work as unhealthy for children. This is contrary to the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182), to which Pakistan became a party in October, 2001. The Convention states that the worst forms of child labour include “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.” States parties to the Convention are to prohibit and eliminate the worst forms of child labour “as a matter of urgency.” In addition, the need to protect refugee children from employment that is dangerous to their health or to interfere with their education and development is recognized in the Convention on the Rights of the Child, Article 32, and in UNHCR’s *Refugee Children: Guidelines on Protection and Care*, 1994, p. 84.

¹⁶⁹ Human Rights Watch interview, Quetta, November 30, 2001.

¹⁷⁰ See section of this report entitled “Assistance Improved,” *infra* p. 35.

Pakistan has been a member of UNHCR's Executive Committee since 1958, and as such has participated in drafting and approving many of the ExCom Conclusions on Refugee Protection. Additional ExCom Conclusions that establish norms relevant to Afghan refugees include: No. 22, which addresses the need to fully protect refugees who arrive in a host country as a part of a large-scale influx; No. 85, which addresses the problem of mass influx of refugees and the right to seek and enjoy asylum; No. 81, which reiterates the importance of UNHCR's protection mandate and the primary responsibility of states in protecting refugees within their territories; and No. 9, which emphasizes the importance of refugee registration.

Pakistan also publicly acknowledged its international legal obligations to refugees when it agreed with UNHCR in August 2000 to screen Afghan refugees according to standards generally based on international refugee law.¹⁷¹

IX. REFUGEE RELOCATION

Since many Afghan refugees and all of the newest arrivals to Pakistan are undocumented, seeking to ensure that assistance and protection are provided to all refugees has been an enormous challenge for UNHCR and NGOs. In addition, given that the most recent refugees are not authorized to be in Pakistan, the government has been recalcitrant in allocating land for refugee camps. Therefore, refugees arriving in the past two years, including during the U.S.-led bombing campaign, inserted themselves into already-existing refugee communities in urban Peshawar or Quetta, often residing with relatives. Other refugees lived with relatives or put up makeshift shelters in already-existing refugee camps. Refugees have to reside in very difficult sanitary and humanitarian conditions. One refugee camp visited by Human Rights Watch in Peshawar, called Tajarabat, is perched on top of a garbage dump, with open sewage flowing by refugee shelters in the camp. New Jalozai camp, with its high death rates, and insufficient shelters or space, is notorious for its hazardous living conditions.

Against the backdrop of overcrowded camps and squalor in urban environments, UNHCR and the government of Pakistan agreed on November 7, 2001, that the newest arrivals among the refugee population in both new Jalozai and in urban areas would be relocated to camps located in Pakistan's FATA.¹⁷² The first camp, called Kotkai camp was located in Bajaur Agency.¹⁷³ Government officials and UNHCR soon decided that the camp in Bajaur would only be safe for Pashtun refugees because of security concerns for the other ethnic groups. Therefore, in early December camps were prepared for refugees from the Tajik, Uzbek, and Hazara ethnic groups in Kurram Agency.

The relocation of refugees from new Jalozai camp to Kotkai camp in Bajaur Agency was monitored by Human Rights Watch in the first week of the program. Human Rights Watch spent three days interviewing refugees immediately after they registered for relocation in new Jalozai and two days interviewing refugees after they arrived in Kotkai camp.¹⁷⁴

¹⁷¹ See notes 90-95, *supra* and accompanying text, discussing the screening program.

¹⁷² "UNHCR, Pakistan Reach Broad Agreement on Refugees," *UNHCR News Release*, November 8, 2001.

¹⁷³ At the end of 2001, sites for six relocation camps had been identified in both Bajaur and Kurram Agencies of FATA.

¹⁷⁴ In new Jalozai camp, each day HRW conducted approximately twenty interviews in a private room, immediately after refugees met with UNHCR personnel about the relocation, and after they signed up to relocate. The refugees were asked short, non-leading questions about what information they had about the new camp before arriving in the registration area on that particular day. They were also asked what information they had just learned at the registration tables from UNHCR staff prior to signing up. In Kotkai camp refugees were asked what information they had before leaving, and what they thought about the new camp now that they had arrived. In some cases, refugees that had been interviewed immediately after registration were re-identified in Kotkai and re-interviewed.

The relocation program was beneficial to the refugee population because it provided them with necessary assistance, but it also raised serious protection concerns. In addition, the way in which the relocation was implemented in its first week was contrary to the standard of voluntariness (see discussion of term, under section entitled “Relocation Compelled by Lack of Information, Official Pressure and Destitution,” *infra*) that had been agreed to by both the government of Pakistan and UNHCR.¹⁷⁵ Both the lack of accurate information about the new camp and any sense of alternative options called into question the voluntary nature of the relocation.

Assistance Improved

The primary benefit of the relocation was that refugees were able to receive tents and food assistance in Kotkai camp. In their interviews with Human Rights Watch before moving, refugees consistently cited the lack of assistance as their main motivation for relocating. Given this reality, the relocation program reduced the overcrowding, cold, hunger and squalor facing Afghan refugees.¹⁷⁶ Upon their arrival at Kotkai camp in Bajaur Agency, many refugees were genuinely pleased with the living conditions and level of humanitarian assistance. Nazeef, a refugee from Kabul who is thirty-two years old, said, “I am happy here because I had one-half of this space in Jalozai camp and I did not have a tent. I used plastic for that small place and it was very uncomfortable. Compared with that situation, we have become kings. But we did not know anything before coming here. We did not even know the name of this place.”¹⁷⁷

One factor that did not improve, and was in fact worsened during the first week of the relocation was the provision of supplementary feeding programs for small children. A supplementary feeding program was in place in new Jalozai camp for the most needy children, whose own mothers could not otherwise sufficiently feed them. During the first week in Kotkai camp, there was no supplementary feeding program. One refugee mother with four small infants, two of whom were twins, told Human Rights Watch, “last night my own milk was completely gone for these babies. In Peshawar I could get extra milk for them, but here I do not have that extra milk. Here [in Kotkai], they gave me biscuits for them, and I can give them those during the day. But at night they cry for milk, and I have nothing to give them.”¹⁷⁸

Insecurity in the Tribal Areas

Despite the improvements in assistance, the decision by the Pakistani government to locate the new camps in FATA raises serious protection concerns.¹⁷⁹ Even before September 11, the region was notorious for its tribal rivalries and generalized violence and lawlessness.¹⁸⁰ In the first days of planning for the relocation, all refugees from camps and urban areas were to be relocated to Bajaur Agency. However, a re-assessment of the mixed ethnic makeup of the refugee population by the FATA authorities and UNHCR resulted in a new plan to move only Pashtun refugees. This was a welcome and appropriate change, since the local population in Bajaur is hostile to non-Pashtun refugees and to foreigners. Both Pakistani authorities and the U.S. State Department have regularly issued warnings to foreigners not to

¹⁷⁵ It should also be noted that the standard of voluntariness is in conformity with other general principles of international human rights law, such as the Universal Declaration on Human Rights, Article 13, which provides for the right of freedom of movement and residence within the borders of each state. However, at the same time Section 11 of the Foreigners Order allows the government of Pakistan to restrict the place of residence of foreigners, as long as an order is made in writing to this effect. See Foreigners Order, § 11.

¹⁷⁶ The Commissionerate for Afghan Refugees (CAR) estimated that at least thirty-one people died in Jalozai camp between March and June, 2001. See M. Ilyas Khan, *The Last Refuge*, *The Herald*, June 2001, p. 83.

¹⁷⁷ Human Rights Watch interview, Kotkai camp, November 25, 2001.

¹⁷⁸ Human Rights Watch interview, Kotkai camp, November 25, 2001.

¹⁷⁹ UNHCR’s own evaluation also noted the seriousness of these security concerns. See UNHCR, *Real-time Evaluation Of UNHCR’s Response To The Afghanistan Emergency*, December 5, 2001.

¹⁸⁰ See, e.g. “Six more die in Kurram Agency Tribal Clash,” *The News*, May 16, 2001. See also “Four Jawans Injured In Pak-Taliban Border Clash,” *The News*, October 11, 2001; Agence France Presse, “Call To ‘Jihad’ Grows In Pakistan’s Land Without Laws,” October 29, 2001.

enter these regions of Pakistan.¹⁸¹ As one refugee put it, “they told us that the people who live there will keep [the Pashtuns] safe. But, those people cannot guarantee the safety of Tajiks or Hazaras, so only Pashtuns can go.”¹⁸²

As a result of the decision to relocate only ethnic Pashtuns to Bajaur, it was decided to relocate ethnic Tajik, Uzbek and Hazara refugees to camps located in the Kurram Agency (also in FATA) because the tribal authorities there had offered better safety guarantees.¹⁸³ As with the decision to relocate only ethnic Pashtuns to Bajaur, this plan illustrates the ethnic sensitivities in FATA as well as the cautionary manner in which Pakistani authorities and UNHCR are approaching the security problems presented by the relocation exercise. Despite this caution, several international relief NGOs as of mid-November, 2001 were unwilling to work in the new camp in Bajaur Agency.¹⁸⁴ And, on January 10, 2001, in Old Bagzai camp in Kurram Agency, Muallim Khan, an Afghan staff member of UNHCR was killed in crossfire between two tribes in a dispute over land. Two other aid workers were injured.

The situation in FATA has become increasingly tense since Northern Alliance forces, traditionally associated with the Tajik and Uzbek ethnic groups, took control throughout Afghanistan. Refugees interviewed by Human Rights Watch often cited concerns that locating the camps in FATA would make them vulnerable to revenge killings or hostage-swaps by Pashtun tribal leaders in Pakistan in exchange for Pashto-speaking Pakistani prisoners of war in Afghanistan.¹⁸⁵ Unconfirmed reports of such pressure tactics in the Pakistani press add some credence to these fears.¹⁸⁶

Quite apart from fears of swaps for prisoners of war or revenge killings, the generalized sentiment in FATA against all non-Pashtun refugees worsened in late 2001 and early 2002. For example, the *News*, an Islamabad paper, reported on November 29, 2001, that the general secretary of the pro-Taliban Jamiat Ulema-I-Islam’s All Tribal Shariat Movement had announced: “We warn the Northern Alliance to put an end to the inhuman attitude adopted by the anti-Taliban forces against the Pakistanis, Arabs and other foreign nationals. Otherwise, the local population in the tribal belt is already upset and will take revenge from the pro-Northern Alliance Afghans in Pakistan.”¹⁸⁷ Similar threats to non-Pashtun Afghans were issued throughout FATA, including in both Bajaur and Kurram Agencies.¹⁸⁸ These latter announcements raise particularly serious concerns for the relocation of non-Pashtun refugees to Kurram Agency, and run counter to the previous security assurances given by tribal authorities.

While FATA is dangerous for Afghan refugees, the region is perhaps even more dangerous for expatriate U.N. and NGO staff. There have been numerous examples of anti-foreigner sentiment and violent

¹⁸¹ Michael Lev, “Where War Is Way Of Life; A Region That Bristles With Weapons Is Home To The Fierce Pashtun, A Potential U.S. Foe,” *The Chicago Tribune*, September 26, 2001.

¹⁸² Human Rights Watch interview, new Jalozai camp, November 22, 2001.

¹⁸³ Human Rights Watch interview with UNHCR protection staff member, November 12, 2001.

¹⁸⁴ Human Rights Watch interview with three international relief NGOs, November 14, 2001.

¹⁸⁵ Human Rights Watch interview, Kotkai camp, November 24, 2001.

¹⁸⁶ See, e.g. “Government to Help Detained Pakistanis to Return,” *Pakistan Press International*, December 13, 2001. (stating that “10 days ago the Pashtun speaking prisoners [located in a prison near Jalalabad] were released. It is said that the Pashtun speaking Pakistani prisoners were released because Pakistani tribesmen had threatened that if they were not released *they would kill the Persian speaking Afghan refugees living in Pakistani tribal areas.*”) (emphasis added)

¹⁸⁷ “Non-Pashtun Refugees Under Threat,” *The News*, November 29, 2001.

¹⁸⁸ Ibid. See also “Afghan Refugees Thrashed In Dir,” *the Frontier Post*, December 6, 2001 (reporting on “a band of about 250 locals [who] visited the bazaar and beat and abused any Afghan seen engaged in commercial activity.”); “Afghans Ethnic Strife Reaches Pakistan,” *The Frontier Post*, December 7, 2001 (noting that “reports that rogue Uzbek and Tajik fighters from the North are targeting Pashtuns including internally displaced Pashtuns in Afghanistan have flared up tempers of Pashtuns living in refugee camps in Pakistan, *a development that has serious implications for Uzbek and Tajik refugees living in Pakistan.*”) (emphasis added).

hostility in the region. The dangers for Westerners have increased since the Northern Alliance took control in Afghanistan. Following one attack in December 2001 on a crew of German journalists, the government of Pakistan urged foreign journalists to avoid the tribal areas for their own safety.¹⁸⁹ On November 25, 2001, a car transporting a Human Rights Watch staff member that was part of a U.N. convoy was pushed off of the road by a local truck. In early December, UNHCR staff returning to Peshawar after escorting a convoy of Afghan refugees to Kotkai camp were shot at by unknown gunmen who tried to stop their well-marked U.N. vehicles.¹⁹⁰ The region was also a major staging ground for anti-U.S. demonstrations during the bombing campaign, as well as a recruiting and fundraising site for the Taliban forces.

Despite U.N. and governmental assurances that Pashtuns would be safe in Kotkai camp in Bajaur, refugees remained doubtful. Pashtun refugees expressed trepidation about being caught in fighting in the new location.¹⁹¹ Lalbibibi, a Pashtun refugee woman, said, “people are afraid that fighting may come over the mountain and we will all be killed there.”¹⁹² These concerns were given added weight by reports that members of Osama bin Laden’s al-Qaeda group had escaped to the tribal areas of Pakistan.¹⁹³ In fact, there were nearly 200 alleged al-Qaeda members in FATA and other Pakistani prisons as of January 17, 2002.¹⁹⁴ One particularly violent incident occurred in December 2001, when seven such prisoners accused of being followers of Osama bin Laden and eight Pakistani troops were killed during a shootout in Kurram Agency.¹⁹⁵

The proximity to the border, and the marginal control the federal government of Pakistan has over tribal authorities in these areas, were other specific concerns cited by refugees. Mohammed Akhtar, a Pashtun refugee told Human Rights Watch:

Our safety depends on the people in the new place and we do not know what they are like. We have not seen that new place, they have told us it is safe for us there. But we are worried. Those tribal people, they do not accept the words of the [federal] government [of Pakistan]. We are afraid of them because they do not listen. . . . We also know [the new camp] is eight kilometers from the border and maybe it is unsafe for us there.¹⁹⁶

Once they were in Kotkai camp, some refugees continued to harbor fears, including about the safety of refugee women. One refugee woman told Human Rights Watch, “We do not feel safe because different people are all around, and we do not have a door to lock, so we are afraid. [UNHCR] does not put the tents of the same family together, and if we could put them together we would feel safer.”¹⁹⁷ A twenty-one-year old refugee man called Ibrahim said, “Everybody knows that it is not safe here for women. It does not even look safe. I will try to build a wall to make it safer.”¹⁹⁸

¹⁸⁹ “Pakistan – Journalists Attacked,” *The Canadian Press*, December 15, 2001.

¹⁹⁰ UNHCR, Humanitarian Update No. 43, December 5, 2001.

¹⁹¹ Human Rights Watch interviews, new Jalozai camp, November 20-21, 2001.

¹⁹² Human Rights Watch interviews, new Jalozai camp, November 22, 2001.

¹⁹³ “Green Beret is First to Die From Enemy Fire,” *Chicago Sun-Times*, January 6, 2002 (citing the Indian newspaper, *The Tribune* of Chandigarh, as saying that “Bin Laden was hiding out in Bajaur [Agency].”).

¹⁹⁴ National Public Radio, “Pakistan Patrols Afghan Border,” January 17, 2002.

¹⁹⁵ Agence France Press, “Pakistan Forces, Arab Al-Qaeda Prisoners Clash, 15 People Dead,” December 19, 2001.

¹⁹⁶ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

¹⁹⁷ Human Rights Watch interview, Kotkai camp, November 24, 2001.

¹⁹⁸ Human Rights Watch interview, Kotkai camp, November 25, 2001.

Relocation Compelled by Lack of Information, Official Pressure and Destitution

Lack of Unbiased, Politically Neutral Information

According to the terms of an oral agreement between the government of Pakistan and UNHCR, the refugee relocation was to be conducted on a voluntary basis. The term “voluntary” can be interpreted in several ways. Human Rights Watch considers a voluntary decision to require that refugees have access to adequate and impartial information about the conditions in the new camps.

Human Rights Watch’s monitoring of the first week of registration revealed that many refugees did not have adequate or impartial information about conditions in Bajaur Agency. This was despite the fact that UNHCR ran an information campaign in the camp prior to registration and included information in radio broadcasts in local languages. It may be that information was not reaching refugees because the in-person information campaign had ended a week before the registration.¹⁹⁹ In addition, some refugees, particularly women without male relatives located in new Jalozai, did not have access to radios in order to hear the broadcasts. Whatever the reason, the lack of information caused the relocation program to lack a genuinely voluntary character. For example, Khorma, a refugee woman, told Human Rights Watch, “We do not know anything about that new place. Only God knows what it is. The workers [UNHCR] just told us it is a good place where we can get food. But I know nothing about it. I do not know if it is a river or a mountain. They could just take us there and dump us into that river and that would be the end.”²⁰⁰ Halagul told Human Rights Watch, “I have to go to the new camp, because I have no choice. I do not know much about the new place. I do not know how near or far it is from the border. If they would help us here, that would be better.”²⁰¹

Even once they were in Kotkai camp, the reaction of some refugees revealed that they were ill-informed about the location of the camp and its five hour road travel distance from Peshawar. One elderly refugee woman who was a widow said, “They have brought us so far away. I am very sad. If I knew that this place was so far away, I would not have come. There is no one to care for me here. They did not tell us anything.”²⁰²

Refugees also reported receiving misleading information about whether new Jalozai camp would remain open. Relief NGOs present in new Jalozai camp²⁰³ and refugees there said they knew that the government of Pakistan wanted to clear the camp of all refugees because of a dispute between the government and the landowner. Refugees also described receiving information from UNHCR staff members that lacked impartiality. Wazirbibi, a Pashtun refugee woman, said:

A woman with the UNHCR cap²⁰⁴ came to the camp and we made a place for her to sit. She kneeled before us and said, “why are you not going to the new camp? It is a good

¹⁹⁹ One relief NGO present in new Jalozai during the information campaign told Human Rights Watch that while the benefits to the relocation were described (access to assistance) to the refugees, the security situation was poorly addressed or not addressed at all. Human Rights Watch interview with relief NGO staff member, Peshawar, November 12, 2001.

²⁰⁰ Human Rights Watch interview, new Jalozai camp, November 22, 2001.

²⁰¹ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

²⁰² Human Rights Watch interview, Kotkai camp, November 24, 2001.

²⁰³ Human Rights Watch interview with relief NGO present in new Jalozai camp during the information campaign, November 12, 2001. In another interview with a relief NGO on November 14, 2001, a staff member told Human Rights Watch that the refugees believed “the camp will be closed. The government of Pakistan will bring bulldozers to clear the land if it needs to.” Another interview with a relief NGO conducted on November 22, 2001 revealed that the Pakistani government’s Commission for Afghan Refugees had indicated that Jalozai camp would be closed.

²⁰⁴ UNHCR staff members wore distinctive blue caps when working with the refugee population.

place for you and you will be very happy there and you will get all the assistance you need.” My son has decided that we will go. Also we know it is the decision of the Pakistan government that we must go, and we have to obey.²⁰⁵

Another refugee said, “They told us they would take us to a place where the Pashtuns are living. If they help us here, we are happy and we would like to stay here. But they say that the Pakistani government does not want us here [in new Jalozai].”²⁰⁶ A nineteen-year old Tajik girl said, “We know that Jalozai is a closed door place. The Pakistanis do not want any more refugees there, or anywhere. Where should we go? From the time I opened my eyes in this world I have known only war.”²⁰⁷

Problematic Push-factors

In violation of the standard that a truly voluntary decision should not be influenced by push-factors such as lack of assistance, destitution in new Jalozai pushed refugees to relocate. One elderly widow told Human Rights Watch, “I have decided to go because I have nothing to eat here. But I am afraid of any violence against us in that new place. I am an old woman and I need help.”²⁰⁸ Another refugee said, “We have a very difficult life here, we are sleeping on the dust. I do not care what the situation will be like in the new camp, our condition of life is so bad here it has to be better there.”²⁰⁹

Given the violent and competitive “survival of the fittest” tactics employed during assistance distributions in camps like new Jalozai, women-headed households in particular were unequivocal about their need to live in a place where they could access food assistance and receive tents without violence or patronage. One widow with four children said, “We will go to the new camp because [in new Jalozai] we cannot go out as women to ask for help when we need it. We need a man to do these things for us here.”²¹⁰ Another refugee widow with five children told Human Rights Watch, “I am going to the new camp because my children are very hungry and they have nothing to eat. I can’t work, I have no choice, I must go. They told me that if I go there I will get a tent. The place I am living now is very cold, I have to go.”²¹¹

Such conditions of hunger and destitution in new Jalozai were exacerbated by long delays imposed by Pakistani authorities when issuing the necessary permission to NGOs before assistance items could be delivered in the camps in the Peshawar area.²¹² In fact, in one case, relief NGOs were instructed that they could not distribute assistance in old camps and that all relief had to be distributed in the tribal areas. A few days later this instruction was retracted by the local authorities.²¹³

It should be noted that the push-factors refugees experienced in new Jalozai camp were the direct result of policies by the government of Pakistan not to register new refugees, to limit assistance distributions, and to refuse to identify safe and healthy locations for new refugee camps nearer to Peshawar. In some cases, the government itself was cited as the source for seemingly biased information given to the refugees about new Jalozai camp being closed.

These findings indicate that during November, 2001, both UNHCR and the government of Pakistan failed to adhere to a standard of voluntariness that included adequate and impartial information and the absence

²⁰⁵ Human Rights Watch interview, new Jalozai camp, November 22, 2001.

²⁰⁶ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

²⁰⁷ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

²⁰⁸ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

²⁰⁹ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

²¹⁰ Human Rights Watch interview, new Jalozai camp, November 20, 2001.

²¹¹ Human Rights Watch interview, new Jalozai camp, November 19, 2001.

²¹² Human Rights Watch interview with two relief NGOs in Peshawar, November 20, 2001.

²¹³ Human Rights Watch interview with relief NGO, November 22, 2001.

of push factors. The failure of the relocation to be genuinely voluntary is of particular concern since a voluntary repatriation program is being planned, and is slated for implementation in March, 2002. In the context of voluntary repatriation, the standards on voluntariness are stipulated in UNHCR's 1996 *Handbook, Voluntary Repatriation: International Protection* ("Handbook") and in ExCom Conclusions, to which Pakistan is bound as a member state.²¹⁴ The Handbook explains that refugees must have access to "unbiased," "politically neutral" information about conditions in the country of origin. A second component of voluntariness during repatriation is that "as a general rule, UNHCR should be convinced that the positive pull-factors . . . are overriding elements in the refugees' decision. . . rather than possible push-factors."²¹⁵ In addition, the Handbook unequivocally states that "There must be no threat to phase down basic refugee assistance programmes in connection with registration [for repatriation]."²¹⁶

If the problems identified during the relocation exercise carry over into a voluntary repatriation program, Afghan refugees may suffer serious violations of their human rights.

X. FEAR OF RETURN TO AFGHANISTAN

With the creation of an interim government in Afghanistan on December 22, 2001, Afghans are hopeful about the future. One refugee, a doctor, told Human Rights Watch he thought that there could be peace if a Loya Jirga (national council) were to be held in Afghanistan. He said he was waiting for foreign troops to come to protect returning refugees, but for the protection to work: "the troops have to be under the control of the U.N."²¹⁷ At the same time, the governments of Pakistan²¹⁸ and Iran²¹⁹ have made public statements indicating that refugees may be forced to return home as soon as stability returns to Afghanistan. These statements only add to the fears refugees have of being forced back to unsafe and insecure conditions in Afghanistan.

According to UNHCR and Iranian and Pakistani government officials, repatriation may begin as soon as March 2002.²²⁰ However, for many Afghan refugees that may be too soon. International standards promulgated by UNHCR require that repatriation must be conducted voluntarily, in conditions of safety and dignity.²²¹ In addition, well over thirty U.N. resolutions and declarations call for repatriation on a voluntary basis.²²² To the extent that any of the three and a half million Afghan refugees in Pakistan and Iran remain fearful about returning, they should be provided access to a refugee determination process to

²¹⁴ See ExCom Conclusion No. 18, Voluntary Repatriation, 1980; No. 22, Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981; No. 74, General Conclusion on International Protection, 1994.

²¹⁵ UNHCR, *Handbook on Voluntary Repatriation*, 1996, p. 11.

²¹⁶ Ibid.

²¹⁷ Human Rights Watch interview, Muhammed Gulgari neighborhood, Peshawar, November 15, 2001.

²¹⁸ "Afghan Exiles Ponder Return: Years of Conflict Leave Unseen Scars," *Denver Post*, December 12, 2001; Deutsche Press Agentur, "Pakistan Starts Work on Repatriation of Afghan Refugees," January 30, 2002.

²¹⁹ BBC Monitoring via NewsEdge Corporation, "Afghan Refugee Ministry and UNHCR Cooperate," January 30, 2002 (citing an Iranian government official who said, "now that relative peace has been established in Afghanistan, refugees can gradually return.").

²²⁰ UNHCR, Humanitarian Update No. 49, January 16, 2002.

²²¹ UNHCR, *Handbook on Voluntary Repatriation*, 1996, §§2.2, 2.3. See also ExCom Conclusion No. 18, Voluntary Repatriation, 1980; No. 22, Protection of Asylum-Seekers in Situations of Large-Scale Influx, 1981; No. 74, General Conclusion on International Protection, 1994.

²²² See e.g. A/Res/53/165 (1999); S/Res/874 (1993); A/53/Pv. 72 (1998); A/Res/50/159 (1996); S/Res/810 (1993); A/Res/44/153 (1990); A/53/Pv.95 (1999); S/Res/1258 (1999); A/Res/53/163 (1999); S/Res/ /1272 (1999); S/Res/ /1264 (1999); A/Res/48/117 (1994); A/Res/49/174; S/Res/1255 (1999); S/Res/1097; A/Res/48/117 (1994); S/Res/1233 (1999); E/Res/1991/5 (1991); A/Res/50/149; S/Res/1014 (1995); S/Res/1100 (1997); A/Res/53/162 (1999); A/Res/48/117 (1994); A/Res/49/35 (1995); A/Res/51/114; A/Res/50/200; S/Res/1080 (1996); S/Res/1270 (1999); A/Res/43/206 (1989); A/Res/45/176 (1991); A/Res/46/79 (1992); A/Res/51/112 (1997); A/Res/54/182 (2000); A/Res/51/30 J (1997); A/Ac. 96/199 (1963); A/Res/41/195 (1987); S/Res/1239 (1999); A/S-21/Pv. 9 Ga.

ascertain whether they would be entitled to recognition as a refugee, and thus to protection from return to a country where their lives or freedom are under threat.

Both refugees fleeing in the aftermath of September 11, and those who have lived in exile for years, expressed several concerns regarding return to Afghanistan. Conditions of generalized insecurity and factional fighting were often cited as abuses refugees had recently experienced or experienced in the past, and as reasons why refugees feared going back to Afghanistan. One refugee put the problem of factionalization in metaphorical terms:

I do not want to go back to Afghanistan now. The situation is complicated. They do not let people leave Afghanistan to come here and they do not let us come back. Everyone should just stay in their place and we must wait to see if the situation is clear. Even if you have only one room in your house it is not good to divide it. But this is what the fighting is doing now with Afghanistan. We do not want it like that; we do not want to be divided. We want it all to be unified.²²³

For the most recent refugees, the causes of flight were sometimes not the same as the reasons refugees had for fearing return. Most of the refugees interviewed by Human Rights Watch mentioned the U.S.-bombing campaign as a major reason for their flight. However, many of these same refugees and many others who fled before bombing began, also experienced violence at checkpoints, or described recent²²⁴ or previous experiences of living amidst factional fighting when asked if they would be willing to go home. One refugee said, "We are afraid to go back to fighting because in fighting the Tajiks have suffered before. But if our country is free, we will go, we do not want to be here always."²²⁵ Hamidullah said,

We are afraid to go home to Afghanistan because the situation there is not clear. We came here with a lot of difficulties and we do not have enough money to go back. We have spent our whole life in fighting. Our sons have not been to school. We are afraid of the Northern Alliance like we are afraid of the Taliban. Whenever war comes to our country we cannot let our sons go outside. If they are caught, they will be taken to the fighting.²²⁶

Other refugees who fled after September 11, and those who had been living in exile in Pakistan for many years, mentioned new fears of reprisal attacks against their particular ethnic group, especially as anti-Taliban commanders took over most of Afghanistan. Often, ethnic Pashtun refugees described new fears of being attacked because of their ethnicity or because of the assumption that they are Taliban sympathizers. One Pashtun refugee man who is forty-one years old and is from Mazar-i Sharif said he was afraid of attacks by Hazaras and Uzbeks.²²⁷ Another Pashtun man in his mid-twenties from Shabarghan said he was afraid of reprisals by "Hazaras and Shi'as."²²⁸ Zmaiya, a refugee woman, told Human Rights Watch, "We liked the Taliban because they gave us security. Now, we are afraid because the Northern Alliance does not provide security. There will be looting and fighting. I am Pashtun and not

²²³ Human Rights Watch interview, new Jalozai camp, November 20, 2001.

²²⁴ See, e.g. Agence France Presse, "Fighting Erupts Between Afghan Warlords," January 30, 2002 (describing heavy factional fighting in the towns of Gardez and Kunduz between "men loyal to rival ethnic Pashtun warlords.").

²²⁵ Human Rights Watch interview, Shams hatoo camp, November 17, 2001.

²²⁶ Human Rights Watch interview, Tajarabat, Peshawar, November 18, 2001.

²²⁷ Human Rights Watch interview, Killi Faizo camp, December 5-6, 2001.

²²⁸ Human Rights Watch interview, Killi Faizo camp, December 5-6, 2001.

with the Taliban, but the people may think I am with them and they will punish me and become angry with me.”²²⁹

Ethnic Tajik, Uzbek and Hazara refugees and the nomadic segment of the Pashtun group known as Kuchi, also mentioned ethnically-based fears associated with reprisals that could break out as a part of a generalized deterioration in law and order. Tajik refugees who had fought with the Northern Alliance cited fears of a resurgence in past animosity with the Hazara ethnic group.²³⁰ Kuchi refugees explained they feared discrimination resulting from a popular rumor circulating in Afghanistan that U.S. Special Forces disguised themselves as Kuchis and traveled with groups of the nomads as a means of infiltrating new territory.²³¹

Other refugees were concerned about the fate of loved ones left behind due to the abusive practices of the Taliban. Despite press reports that individuals imprisoned by the Taliban were released when large cities changed hands, some refugees told Human Rights Watch that their relatives were still in jail, or that they had not been heard from since they were taken. The fate of family members, particularly when they were the main income earners for the family, and the condition of property, were two types of information refugees wished to receive before deciding whether or not to return to Afghanistan. For example, Jamila, a Tajik woman in her early thirties, originally from Bamiyan, who had been displaced to Kabul, told Human Rights Watch that soon after September 11, Taliban forces had come to her home in Kabul and asked for her husband. When he came to the door they began questioning him about his alleged support for General Dostum.²³² He denied supporting Dostum, but they grabbed him and threatened him with their guns and rifles, and took him to the prison in Kabul. Jamila had not heard from her husband since then.²³³

Families were often separated because of the conscription policies of the Taliban. Sometimes men and boys were forcibly recruited. At other times, families had to separate when they fled Afghanistan because they could not afford to pay for the freedom of their men. The fate of those left behind was not known as of late 2001. Shamim is a sixty-year-old Tajik refugee from Nahrin in Baghlan province. She told Human Rights Watch:

The Taliban beat my thirty-year old son because he refused to fight. We had to pay money to keep him free. My son has seven children. I did not want him to fight so I promised to pay. . .to keep him at home, but we could only afford half of the required amount. When we fled Afghanistan, my son had to stay behind because he had to find the rest of the money to pay the Taliban. They told us if he left without permission or paying the debt they would burn our home.²³⁴

²²⁹ Human Rights Watch interview, new Jalozai camp, November 20, 2001. Such fears were also confirmed by press reports of the targeting of ethnic Pashtuns, which caused them to flee Afghanistan. See, e.g., Haroon Rashid, “Pakistan Offers Refugees Mixed Prospects,” *The Star Ledger*, January 21, 2002 (quoting a Pashtun refugee who fled on about January 14, 2002, and who said, “Dostum’s men snatched our cattle, we were beaten up and some of our colleagues were killed after labeling us Taliban.”).

²³⁰ Human Rights Watch interview, Quetta, November 29, 2001.

²³¹ Human Rights Watch interview, Quetta, November 28, 2001.

²³² General Abdul Rashid Dostum was named Afghanistan’s deputy defense minister in late 2001, and he is in control of Mazar i-Sharif and the surrounding countryside. In early 1992, Dostum joined forces with the Hazara faction Hizb-i Wahdat and Tajik leader Ahmed Shah Massoud to form a coalition they called the Northern Alliance.

²³³ Human Rights Watch interview, Peshawar, November 15, 2001.

²³⁴ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

Finally, women refugees, particularly those who had lived in an area previously under Northern Alliance control, spoke of their fears for themselves and their daughters of sexual violence and abductions resulting from a general breakdown in law and order. One refugee woman explained,

We are afraid to go back because we fear hunger and fighting. If there is peace we will go back. We are afraid of violations against girls, and we are also afraid that people from other villages will come to our place and commit violence against us. They may try to rape me and be violent toward me.²³⁵

Some women refugees, especially those from Kabul, also explained that they feared return to the lawlessness that had existed from 1992-1996, during the nominal rule of President Burhanuddin Rabbani of the Northern Alliance. Another woman refugee put her ongoing traumatization in blunt terms, "I refuse to ever go back to Afghanistan because I hate that place. That country killed my husband. I won't ever go back."²³⁶

XI. A LOOK TOWARDS THE FUTURE

An interim government and a multinational security force are being established in Afghanistan.²³⁷ In addition, international donor conferences are being held to raise funds for the reconstruction and development of the country.²³⁸ These are all reasons to be hopeful about the future of Afghanistan. However, the fragile peace and nascent government will not take root with financial assistance alone. A basic prerequisite to a better future in Afghanistan is the recognition and protection of human rights. Therefore, initial conferences and agreements, and all future actions by the international community should be designed to protect and promote the human rights of all Afghans. Human rights protections will serve to prevent future flows of refugees and displaced persons. Any attempt at voluntary repatriation and reintegration will falter without such guarantees.

Simply put, protection of human rights is required to address the concerns expressed by ordinary Afghan refugees in this report and others like it. This report has documented some of the past and current abuses suffered by Afghan refugees, and has outlined what they are afraid of should they return home. These past experiences and future fears of Afghan refugees should be addressed as the interim government and refugees themselves plan for return --- otherwise the chronic cycle of forced displacement may continue.

Moving beyond the general need for human rights protections inside Afghanistan, there are other specific issues relevant to refugees requiring immediate attention. Inside Afghanistan, the interim government is establishing a department for refugees, displacement and repatriation. In order to ensure that any repatriation program is in conformity with human rights principles, the new refugee department should be adequately funded and staffed. The key to success in any repatriation is voluntariness. As this report has illustrated, voluntariness requires impartial information about conditions at home, and the absence of push factors. It is incumbent upon UNHCR and the governments of Pakistan and Iran to ensure that these standards are upheld. Other principles of human rights, such as non-discrimination and women's human

²³⁵ Human Rights Watch interview, Shamshatoo camp, November 17, 2001.

²³⁶ Human Rights Watch interview, Kotkai camp, November 25, 2001.

²³⁷ The parameters for the interim government were discussed and agreed to in Bonn, Germany in the last week of November, 2001. The multinational security force was authorized by the U.N. Security Council in a December 20, 2001 Resolution. See S/RES/1386 (2001).

²³⁸ A reconstruction conference on Afghanistan, which gathered senior representatives of the Afghanistan interim government, more than fifty countries, international financial institutions, the United Nations and nongovernmental organizations took place in Tokyo, from January 21-22, 2001.

rights, must be promoted through the involvement of refugees themselves in the repatriation process. All government, U.N. and NGO staff should also be adequately trained in these principles.

Displaced persons and refugees will have specific protection needs during voluntary repatriation or reintegration. The mistreatment and ongoing displacement feared by refugees interviewed for this report can be prevented through human rights monitoring, actual restoration of law and order in the countryside, and through family tracing and reunification programs. In addition, legal mechanisms should be set up to address property disputes that are likely to arise as a result of refugee returns. Throughout all of this, particular attention should be paid to the protection needs of displaced women and children. Refugee women can play a key role in the planning and implementation of successful return and reintegration programs. Funding and support for women's programs should be directly channeled to Afghanistan's women's ministry, and also to Afghan women's NGOs. Reintegration programs should also be crafted so that they reach disabled, internally displaced, illiterate, women, children, and rural returnees. Finally, demobilization and reintegration programs must be developed. These should include returning refugees and displaced persons, and be particularly sensitive to the needs of former child soldiers among them.

The conflict-related devastation of many rural areas will limit the ability of returnees to resume farming or access adequate shelter in their villages of origin. Many rural refugees are reluctant to try to rebuild their farms and villages in the lawless and insecure countryside. Landmines are a pervasive problem throughout the country. Tangible security, reconstruction, and mine-clearance programs should be in place to facilitate voluntary returns to such areas. This is particularly important because many of the refugees interviewed for this report were already displaced from the countryside to urban centers before fleeing to Pakistan. Refugees may choose to return only to urban centers (in a reversal of this pattern of displacement) if adequate reconstruction aid is not directed at rural areas. Without such aid, a new, extremely needy group of displaced persons will be scattered throughout already devastated urban areas.

Some of the refugees interviewed for this report described fears of return that are unlikely to disappear even if generalized security conditions improve inside Afghanistan. As a result, support for UNHCR and NGO protection and assistance work in Pakistan, Iran, and other host countries must run a parallel and well-funded course to repatriation. A key component of voluntary repatriation will be the institution of a screening program to identify those with continuing needs for international protection inside Pakistan and Iran. All Afghan refugees who continue to have legitimate fears for their lives or freedom should be identified through screening, and allowed to remain inside host countries until they are able to return voluntarily, under conditions of safety and dignity, and with full respect for their human rights.

XII. ACKNOWLEDGEMENTS

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XIII. MISSION STATEMENT

Human Rights Watch Refugee Policy Program

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

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Rachael Reilly is the refugee policy director; Alison Parker is the refugee policy 2002 Sandler Fellow; Maura Dundon is the refugee policy associate.

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