



HUMAN
RIGHTS
WATCH

PAKISTAN COERCION, UN COMPLICITY

The Mass Forced Return of Afghan Refugees



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■ **Border provinces where the majority of Afghan refugees and returnees live**



Summary

“No matter who you are, your heart will turn black with so much abuse.”

-Afghan refugee, 25, returning to Afghanistan, November 2016

For most of the past 40 years, Pakistan has hosted well over a million Afghans, among the largest refugee populations in the world. But over the past two years, Pakistan has turned on the Afghan community. In response to several deadly security incidents and deteriorating political relations between Pakistan and Afghanistan, Pakistani authorities have mounted a concerted campaign to drive Afghans out of the country. In the second half of 2016, a toxic combination of deportation threats and police abuses pushed out nearly 365,000 of the country’s 1.5 million registered Afghan refugees, as well as just over 200,000 of the country’s estimated 1 million undocumented Afghans. The exodus amounts to the world’s largest unlawful mass forced return of refugees in recent times. Pakistani authorities have made clear in public statements they want to see similar numbers return to Afghanistan in 2017.

Driven from relatively stable security and economic conditions in Pakistan, the Afghans pushed out are returning to expanding armed conflict in Afghanistan. They also face widespread destitution and a near-total absence of social services, a situation the United Nations High Commissioner for Refugees (UNHCR), the UN refugee agency, has described as a “humanitarian emergency” that aid agencies are “severely constrained in addressing ... due to increasing insecurity and ... dwindling resources.” Unable to return to insecure and poverty-stricken home areas, hundreds of thousands risk joining the 1.5 million Afghans estimated at the end of 2016 to be “internally displaced” within their own country, including almost 625,000 displaced in 2016 alone. This figure excludes the hundreds of thousands of returnees from Pakistan who were unable to return home in 2016. In December 2016, UNHCR warned that the massive number of returns from Pakistan could “develop into a major humanitarian crisis.”

This report—based on 115 interviews with refugee returnees in Afghanistan and Afghan refugees and undocumented Afghans in Pakistan, and further corroborated by UN reports

that present the reasons thousands of Afghans gave for coming home—documents how Pakistan’s pressure on Afghan refugees left many of them with no choice but to leave Pakistan in 2016.

Afghans described to Human Rights Watch various coercive factors that began in June 2016 after relations between Afghanistan and Pakistan deteriorated, including: increasingly insecure legal status; government announcements that all Afghans should leave, and the resulting ever-present threat of deportation; daily police extortion that intimidated and stripped them of their limited income and ability to make ends meet in Pakistan; arbitrary detention; police raids on their homes; exclusion of their children from Pakistani schools and shutting down Afghan refugee schools; and, to a lesser extent, police theft and unlawful use of force. Pakistani police abuses decreased in October 2016, although reports of ongoing abuses continued well into December.

Key among these factors was Afghan refugees’ insecure legal status and the related threat of deportation. Until mid-September 2016, Pakistan said the refugee status of Afghan refugees would expire on December 31, after which Afghan refugees were told they would be required to leave or be deported, and in September the authorities extended that date until March 31, 2017. On November 23, the Pakistani federal cabinet reportedly approved an extension of Afghan refugees’ status until the end of 2017. However, as of late January, any such decision had not been made public, leaving Afghans in fear of deportation in early April.

Before 2016, Pakistan renewed Afghans’ refugee status for between 18 months and three years at a time. By extending refugee status for only 12 months or less after that time, and by refusing to re-issue refugees’ expired cards after December 2015, Pakistani authorities increased the pressure to return.

Returning refugees also spoke about other factors that influenced their decision to leave. For many, the June 2016 decision of UNHCR—under significant pressure from Pakistan seeking increased repatriation rates—to double its cash grant to returnees from US\$200 to US\$400 per person was a critical factor in persuading them to escape Pakistan’s abuses. Many described other factors adding to the misery of official abuses, including a sudden

emergence of anti-Afghan hostility by local Pakistani communities, Pakistani landlords suddenly charging significantly increased rent for apartments and business premises, and the departure of most or all of their relatives and neighbors, which left them feeling exposed and vulnerable to local police abuses.

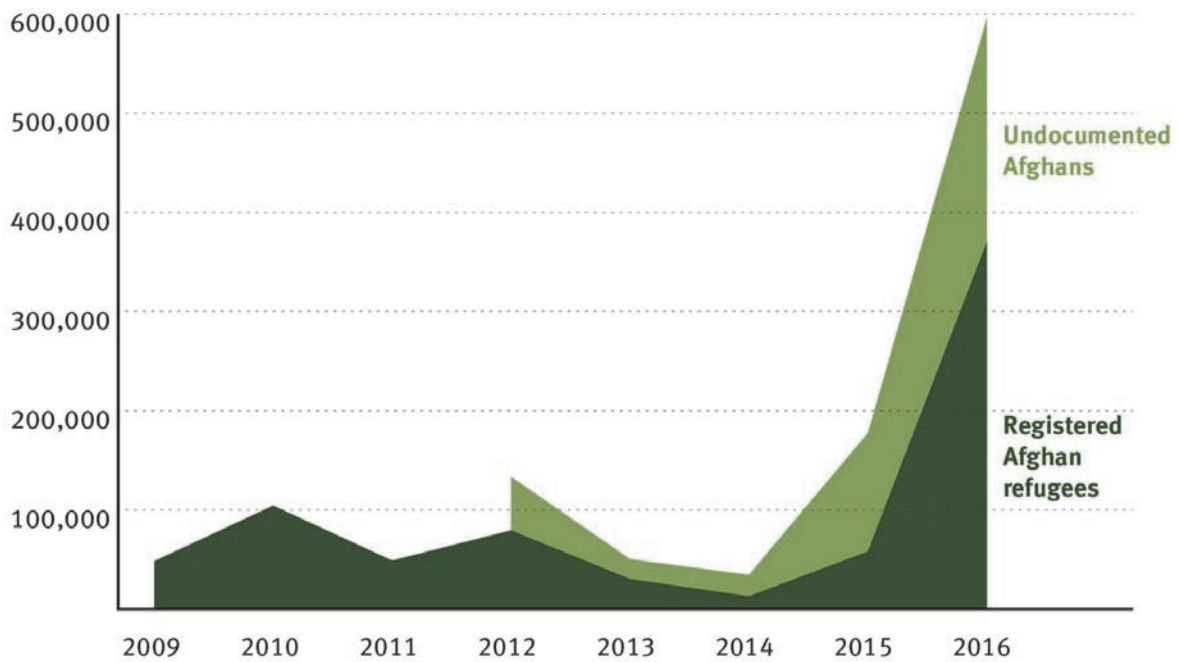
Pakistan is bound by the universally binding customary law rule of refoulement to not return anyone to a place where they would face a real risk of persecution, torture or other ill-treatment, or a threat to life. This includes an obligation not to pressure individuals, including registered refugees, into returning to places where they face a serious risk of such harm.

Pakistan's coercion of hundreds of thousands of registered Afghan refugees into returning to Afghanistan violates the international legal prohibition against refoulement.

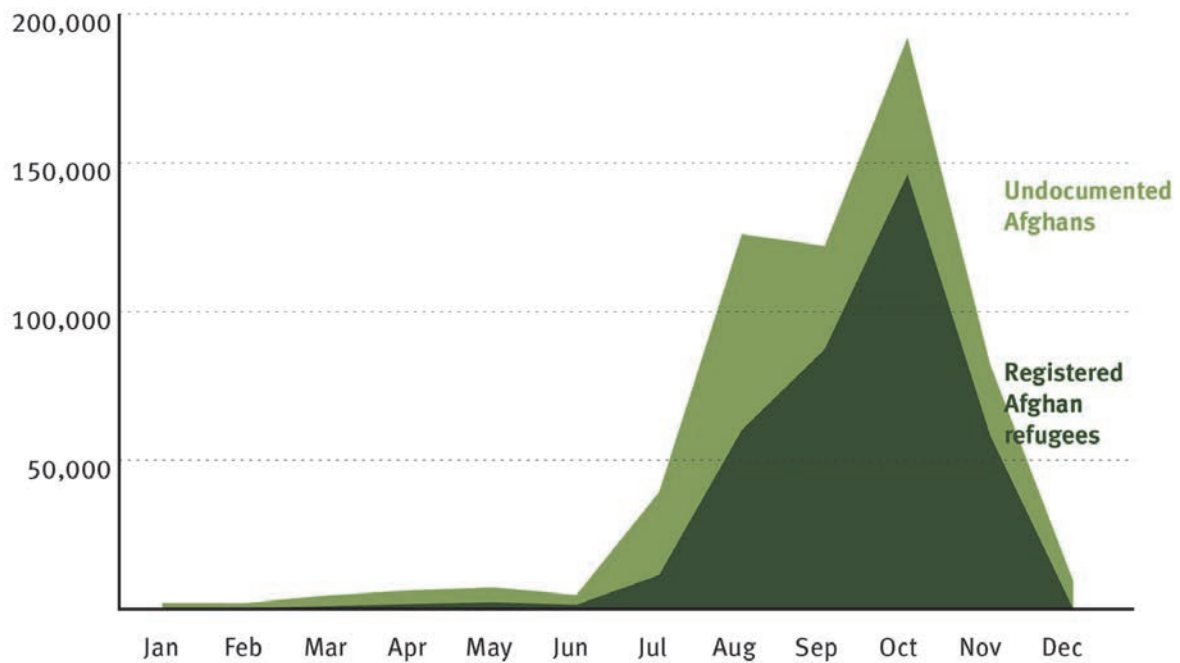
Since early 2007, Pakistan has not registered any new Afghan refugees, despite the lack of meaningful improvement in human rights conditions in Afghanistan since then. As UNHCR in Pakistan does not have the capacity to register and process the claims of tens or hundreds of thousands of asylum seekers, only a limited number of Afghans have been able to seek protection with UNHCR, leaving the rest without secure legal status.

Unknown numbers of undocumented Afghans who left Afghanistan for the same sorts of reasons as those who were registered as refugees before 2007, and who have wanted—but not been allowed—to file asylum claims with the Pakistani authorities should therefore also have a protected status in Pakistan, but have been denied it. Many of the 205,000 undocumented Afghans coerced out by Pakistan's abuses since July 2016 may therefore also be victims of refoulement.

Afghans Returned from Pakistan, 2009 – 2016



Afghans Returned from Pakistan, 2016



Human Rights Watch calls on Pakistan to avoid recreating in 2017 the conditions that coerced Afghan refugees to leave in 2016. This means Pakistan should act to end all police abuses and revert to its previous policy of extending Proof of Registration (PoR) cards by at least two years. To avoid creating anxiety about possible deportation in the middle of winter, it should extend cards until at least March 31, 2019 and commit to announcing by latest October 31, 2018 whether the authorities plan to extend the cards by a further two years beyond that date. The authorities should also allow undocumented Afghans seeking protection to request and obtain it in Pakistan.

In the second half of 2016—when hundreds of thousands of Afghan refugees and undocumented Afghans were unlawfully coerced out of Pakistan—UNHCR remained publicly silent about Pakistan’s large-scale refoulement of Afghans, not once stating that many of those returning were primarily fleeing police abuses and fear of deportation and that Pakistan’s actions were unlawful.

Instead, the agency referred in low-visibility updates for international aid donors to a range of factors that were contributing towards Afghan refugees’ decision to leave Pakistan and repeatedly referred to “facilitating voluntary repatriation.” UNHCR said it raised concerns with the Pakistani authorities behind-the-scenes on individual abuse cases or localized abuses, but this approach was a woefully inadequate response to the widespread abuses that were affecting hundreds of thousands of Afghans and that continued unabated for at least three months.

Under its mandate, UNHCR may “facilitate” voluntary refugee repatriation, even where UNHCR does not consider that it is safe for most refugees to return or that their return amounts to a “durable solution.” UNHCR may only “promote” large-scale refugee repatriation when, among other things, UNHCR has formally concluded there is an overall general improvement in the refugees’ country of origin so that they can return in “safety and dignity” and rebuild their lives there in a “durable” manner. Absent reintegration into the local community, voluntary repatriation is not a durable solution. In both cases—facilitation or promotion—UNHCR must be convinced that refugees are in fact returning voluntarily before it supports their repatriation.

By doubling its cash support to each returning refugee to \$400 in June 2016 and maintaining this support until mid-December 2016 while referring publicly to its “voluntary repatriation” work, UNHCR effectively promoted the repatriation of Afghan refugees.

But as this report shows, conditions in Afghanistan have not significantly improved, so vast numbers of returnees have been unable to return to their home areas due to insecurity and extreme poverty. UNHCR failed to ensure that refugees were fully informed of the conditions to which they were returning before deciding to leave. And regardless of conditions in Afghanistan, huge numbers of refugees leaving Pakistan in the second half of 2016 did not return voluntarily. UNHCR therefore fundamentally abrogated its refugee protection mandate by effectively supporting Pakistan’s mass refoulement, thereby making UNHCR complicit in these violations.

On January 27, UNHCR wrote to Human Rights Watch, saying “UNHCR shares your concerns regarding the reported push factors affecting the repatriation from Pakistan,” that “UNHCR strongly refutes the claim that increasing the cash grant constituted promotion of return,” and that the agency “provide[d] support to refugees who make the decision to [return] based on a well-informed consideration of best options” which helped them “meet their most immediate humanitarian needs.” UNHCR added that it had nonetheless decided to “reassess whether the cash grant had become a pull factor.”

Coinciding with the onset of winter weather, in early November, UNHCR announced it would suspend cash support to returnees in December, saying it had run out of money. As of late January 2017, UNHCR was planning to resume cash support to returnees in early March if donors commit sufficient funds. If UNHCR does so, but remains publicly silent on any further coerced return resulting from Pakistan’s threat to deport Afghan refugees at the beginning of April 2017 and possibly from continued police abuses, the agency will continue to be complicit in refoulement.

As long as Pakistan’s campaign of coerced repatriation continues, UNHCR should publicly state Pakistan is in breach of its commitments under the Tripartite Agreement with Afghanistan and UNHCR on the repatriation of Afghans in order to ensure they are returning voluntarily. By failing to publicly state Pakistan has breached its commitments, UNHCR

also failed to perform its own supervisory role under the agreement, which requires it to ensure that Afghan refugees' repatriation is voluntary.

UNHCR should also suspend its participation in the Tripartite Agreement. Although the agreement commits the parties to ensuring the voluntariness of refugee return, Pakistan flouted those standards in 2016. Continuing to participate in the agreement implies that UNHCR views the current forced returns from Pakistan as voluntary. UNHCR should only resume its participation in the agreement when Pakistan ends its coercion of Afghan refugees and provide them a real choice about whether to stay or leave.

UNHCR should also publicly speak out against any renewed refoulement and make clear that any support it might give to returning Afghan refugees in 2017, whether cash or other forms of support, is driven by the humanitarian aim to minimize suffering resulting from sudden forced return and is not to be viewed as support for the Pakistani position that they returned "voluntarily."

Faced with almost 350,000 Afghan asylum seekers between January 2015 and September 2016, European Union member states have increasingly rejected Afghan asylum claims. In October 2016, the EU used development aid to pressure Afghanistan into accepting increased deportations of rejected Afghan asylum seekers to a country the EU said in late 2016 was facing "an increasingly acute humanitarian crisis."

European Member States should exercise discretion to defer deporting rejected Afghan asylum seekers until it becomes clear how Kabul—where the UN estimates roughly 25 percent of refugee returnees from Pakistan in 2016 have settled—will cope with the massive influx. Otherwise the EU will risk fueling the very instability the EU says it wants stopped.

Human Rights watch calls on international donors to help the Pakistani authorities properly assist and protect Afghan refugees until it is safe for them to return home. It calls on UNHCR to speak out as necessary and challenge any repeat in 2017 of the appalling and unlawful pressure Pakistan placed on Afghans in 2016 that coerced many to return to danger and destitution in Afghanistan in such massive numbers. And it calls on the Humanitarian Country Teams in Pakistan and Afghanistan to speak out if UNHCR fails to do so.

Key Recommendations

To the Pakistani Government

- Publicly assure all registered Afghan refugees that they will be allowed to stay in dignity in Pakistan until it is genuinely safe for them to return to Afghanistan.
- To end mass refoulement of Afghan refugees, stop setting short-term deadlines for the expiration of refugees' Proof of Registration cards and stop making related deportation threats; instead revert to the previous two-year extension policy and extend cards until at least March 31, 2019, while committing to extend them at the latest by the end of October 2018; continue to extend cards' validity until Afghanistan has reached a point of stability to enable safe and dignified return in line with international standards.
- To avoid refoulement of refugees among undocumented Afghans in Pakistan, re-open registration for Proof of Registration cards so that Afghans who arrived after mid-February 2007 can obtain such status, or provide a comparable blanket protection against forced return.
- Issue a written directive instructing all relevant government officials and state security forces to end their abuses against registered and undocumented Afghans, including extortion, arbitrary detention, house raids without warrants, unlawful use of force, and theft; investigate and appropriately prosecute police and other officials responsible for serious abuses against Afghans.

To the United Nations High Commissioner for Refugees (UNHCR)

- Reverse UNHCR's 2016 practice of remaining silent in the face of mass refoulement by Pakistan, and monitor and publicly condemn any renewed coercion against Afghan refugees resulting in refoulement.
- Publicly state that Pakistan is in breach of the 2003 Tripartite Agreement on the Voluntary Repatriation of Afghans unless it ends the coerced return of Afghan refugees and suspend UNHCR participation in the agreement until such coercion ends.

- Press Pakistan to extend Proof of Registration cards until at least March 31, 2019, end police abuses against Afghans, and otherwise protect those needing continued protection from forced return.
- If UNHCR resumes cash support to returning Afghan refugees in 2017 without Pakistan meeting those requirements, publicly state—to avoid further complicity in mass refoulement—that such support does not amount to an endorsement of Pakistan’s claims that forced returns are in fact voluntary.

To the Humanitarian Country Teams in Afghanistan and Pakistan

- If UNHCR maintains its public silence over any renewed mass refoulement of Afghan refugees from Pakistan, publicly call on the Pakistani authorities to stop coercing Afghan refugees back to Afghanistan.

To Donor Governments, including European Union Member States, Providing Support to Pakistan

- Press the Pakistani authorities to extend Afghan refugees’ Proof of Registration cards until the end of March 2019 and to re-open registration for the cards or other protected status so that Afghans who arrived after February 2007 can seek and obtain protected status in Pakistan; also press them to end police abuses against all Afghans.
- Press UNHCR to publicly state Pakistan is in breach of the Tripartite Agreement until Pakistan ends police abuses against Afghan refugees and stops otherwise coercing their return and press UNHCR to suspend its participation in the agreement until such coercion ends.
- Press UNHCR to speak out publicly against any renewed refoulement of Afghans.

To European Union Member States

- Exercise discretion to defer deporting rejected Afghan asylum seekers, until it is clear how Kabul and other parts of the country cope with Pakistan’s mass forced return of Afghan refugees.

Methodology

Between October 26 and November 1, 2016, Human Rights Watch interviewed 92 Afghan refugees who had returned to Kabul about why they had left Pakistan. Between November 8 and 11, 2016, Human Rights Watch also interviewed 23 Afghan refugees and undocumented Afghans in Peshawar, Pakistan, about problems they faced in Pakistan. All but three of the interviewees were men.

In Kabul, two Human Rights Watch researchers, including a fluent Dari and Pashtu speaker, and an Afghan interpreter conducted the interviews at UNHCR's encashment center in Kabul. In Peshawar, a Human Rights Watch researcher fluent in Urdu and an interpreter fluent in Pashtu spoke with Afghans living there. All interviews were conducted individually in private. Researchers explained the purpose of the interviews and gave assurances of anonymity. We also received interviewees' consent to describe their experiences. No interview subject was paid or promised or provided a service or personal benefit in return for their interviews.

Human Rights Watch also met with the Afghan Minister of Refugees and Repatriations, Sayed Hussain Alemi Balkhi, and with seven international non-governmental organizations and five UN agencies in Kabul about the fate of returning refugees in Afghanistan. Human Rights Watch met on a number of occasions with UNHCR in Geneva and in Kabul and spoke by telephone with UNHCR staff based in Islamabad. Human Rights Watch sent a draft copy of this report to UNHCR on December 23, 2016 and received written feedback on January 27.

On January 12, 2017, Human Rights Watch wrote to Pakistan's Minister of States and Frontier Regions outlining our findings and requesting comment. At the time of writing, Human Rights Watch had not received a response.

I. Background

Pakistan's Refugee-Hosting History

Pakistan has been one of the world's longest-serving refugee-hosting countries in recent decades. Since 1978—when large numbers of Afghans first started fleeing violence in their country following the communist coup and subsequent Soviet invasion—Pakistan has never sheltered fewer than one million Afghans and, between 1986 and 1991, it hosted about three million.¹ Waves of conflict and periodic widespread droughts and economic collapses amidst some relatively more stable periods have seen large numbers of Afghans continue to flee, return home, and then flee once again.² Between 2002 and late 2015, the United Nations High Commissioner for Refugees (UNHCR) helped 3.9 million Afghans return home.³ Of those, almost 2 million returned by the end of 2008 when the rate of return significantly decreased.⁴ In response, in 2012, the Afghan, Pakistani, and Iranian governments and UNHCR sought to kick-start the returns process through a “Solutions Strategy,” with very little success.⁵

By the end of 2015, there were 1,560,592 registered Afghan refugees in Pakistan, together with another one million unregistered Afghans the Pakistani authorities estimated were also in the country.⁶ The mass exodus of just under 600,000 Afghans from Pakistan in 2016, including 370,000 registered refugees and 230,000 undocumented Afghans, means that the total figure of about 2.5 million Afghans had dropped to about 1.9 million by the end the year.⁷ As of late 2015, 62 percent of registered Afghans lived in Khyber

¹ United Nations Data, “Table on Data with Refugees,” December 2016, <http://data.un.org/Data.aspx?d=UNHCR&f=indID%3AType-Ref> (accessed December 20, 2016).

² US Congressional Research Service, “Afghan Refugees: Current Status and Future Prospects,” January 26, 2007, <https://www.fas.org/sgp/crs/row/RL33851.pdf> (accessed December 20, 2016), pp. 5 – 6.

³ UN High Commissioner for Refugees (UNHCR), “2015-2017 Protection Strategy Pakistan: External,” October 2015, <http://unhcrpk.org/wp-content/uploads/2013/12/2015-2017-Protection-Strategy-External.docx> (accessed January 6, 2017), p. 1.

⁴ See chapter 4 of this report.

⁵ Ibid.

⁶ UNHCR, “Population Statistics,” http://popstats.unhcr.org/en/persons_of_concern (accessed December 15, 2016); Nassim Majidi, Vivianne van der Vorst, and Christopher Fulkes, “Seeking Safety, Jobs, and More: Afghanistan’s Mixed Flows Test Migration Policies,” *Migration Information Source* (2016), accessed December 20, 2016, <http://www.migrationpolicy.org/article/seeking-safety-jobs-and-more-afghanistans-mixed-flows-test-migration-policies>.

⁷ About 95 percent of the returns took place in the second half of 2016. See chapters 3 and 4 of this report.

Pakhtunkhwa province while a further 20 percent lived in Balochistan province, both bordering Afghanistan.⁸

By the end of 2016, Iran was also hosting almost 1 million registered Afghan refugees.⁹ As of May 2016, the authorities estimated up to 2 million undocumented Afghans were in the country.¹⁰ As of September 2016, Turkey hosted about 120,000 registered Afghan asylum seekers.¹¹ The European Union hosted the majority of the rest of the world's Afghan registered refugees and asylum seekers, with about 350,000 lodging claims between January 2015 and September 2016.¹² At the end of 2015, registered Afghan refugees and asylum seekers made up 12.5 percent of the global refugee population.¹³

Pakistani Police Abuses in 2015

Prior to late 2014, Afghan nationals in Pakistan—whether registered as refugees or undocumented—lived in relative peace, despite a period of concerted abuse of Afghans

⁸ UNHCR, “Solutions Strategy for Afghan Refugees: Update 2015–2016,” October 10, 2015, <http://reliefweb.int/sites/reliefweb.int/files/resources/542522922.pdf> (accessed December 20, 2016), p.5.

⁹ In May 2016, UNHCR reported that Iran's May 2015 statistics said there were 979,410 registered Afghan refugees in Iran. UNHCR, “Iran, Fact Sheet, May 2016” <http://reporting.unhcr.org/sites/default/files/UNHCR%20Iran%20Factsheet%20-%20MAY16.pdf> (accessed January 18, 2017), p.1. Since that time, almost no registered refugees have returned to Afghanistan. UNHCR, “Afghanistan, Voluntary Repatriation and Monthly Border Monitoring Monthly Update, January – December 2015,” http://www.unhcr.af/UploadDocs/DocumentLibrary/December__2015_VolRep_Report_635918204945770000.pdf (accessed January 11, 2017), p.1; UNHCR, “Afghanistan, Repatriation and Border Monitoring Monthly Update, 1 January – 31 October 2016,” http://www.unhcr.af/UploadDocs/DocumentLibrary/October_2016_Return_Update_636148046968760000.pdf (accessed January 11, 2017), p.1.

¹⁰ In May 2016, the government estimated that there were between 1.5 and 2 million undocumented Afghans in Iran. UNHCR, “Iran, Fact Sheet, May 2016,” p. 2. Over the past five years, an average of 500,000 undocumented Afghans have been deported or spontaneously returned to Afghanistan each year. As the Iranian government's estimate of the number of undocumented Afghans remains relatively stable each year, the same number of Afghans are believed to enter the country each year as leave. See chapter 6 of this report. In 2013, Human Rights Watch found that Iran deported undocumented Afghans “without allowing them to appeal against their deportation on the grounds that they were unable to request asylum [due to restrictive asylum procedures] or some other form of protection breaches Iran's nonrefoulement obligations.” Human Rights Watch, *Unwelcome Guests*, November 20, 2013, <https://www.hrw.org/report/2013/11/20/unwelcome-guests/irans-violation-afghan-refugee-and-migrant-rights>.

¹¹ UNHCR, “UNHCR Turkey: Afghan Refugees and Asylum Seekers registered with UNHCR (September 2016),” *Reliefweb*, October 7, 2016, <http://reliefweb.int/report/turkey/unhcr-turkey-afghan-refugees-and-asylum-seekers-registered-unhcr-september-2016> (accessed December 23, 2016).

¹² Eurostat, “Record number of over 1.2 million first time asylum seekers registered in 2015,” March 4, 2016, <http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6> (accessed December 20, 2016).

¹³ UNHCR, “Facts and Figures about Refugees,” undated, <http://www.unhcr.ie/about-unhcr/facts-and-figures-about-refugees> (accessed December 20, 2016).

by the Pakistani authorities between 2000 and 2002.¹⁴ The authorities allowed them to work in the informal sector, although Afghan children lucky enough to access schools have depended on the United Nations.¹⁵ Many Afghans established close connections with local communities.¹⁶

However, a month after the December 2014 attack by the so-called Pakistani Taliban, Tehreek-i-Taliban Pakistan, on Peshawar's Army Public School, which killed 145 people, including 132 children, the Pakistani authorities adopted a National Action Plan on Counter-Terrorism. This included a new policy to register and repatriate Afghans from Pakistan, despite the fact that the Pakistani government's own investigations did not find any "significant Afghan involvement in acts of terrorism," while the Minister for States and Frontier Regions (SAFRON) stated there was no evidence that registered Afghan refugees had ever been involved in "terrorism-related" activities in Pakistan.¹⁷

UNHCR concluded that the counter-terrorism plan had "multiple implications for the treatment and protection of ... Afghan refugees whose presence in Pakistan is often associated with the prevailing security situation."¹⁸ Human Rights Watch documented the consequences of the plan, which included a wave of Pakistani police abuses against Afghans, such as unlawful use of force, arbitrary arrest and detention, extortion and house demolitions.¹⁹

These abuses decreased after July 2015, but UNHCR confirmed that police harassment and intimidation, and Afghans' fear of arrest and deportation, continued to drive Afghans out

¹⁴ Human Rights Watch, *Closed Door Policy: Afghan Refugees in Pakistan and Iran*, Vol. 14, no. 2(G), February 2002, <https://www.hrw.org/reports/2002/pakistan/pakistano202.pdf>.

¹⁵ Frédéric Grare and William Maley, "The Afghan Refugees in Pakistan," Middle East Institute and Fondation pour la Recherche Stratégique, June 30, 2011, http://www.refugeecooperation.org/publications/afghanistan/pdf/o9_grare.pdf (accessed January 13, 2017), p. 4; Peer Muhammad, "Afghan refugees: Children deprived of education," *The Express Tribune*, March 30, 2012, <http://tribune.com.pk/story/357243/afghan-refugees-children-deprived-of-education/> (accessed January 13, 2017).

¹⁶ Afghanistan Research and Evaluation Unit, "Afghans in Peshawar," January 2006, <http://www.unhcr.org/43e754da2.pdf> (accessed December 20, 2016), pp. 9 – 10.

¹⁷ Human Rights Watch, *What Are You Doing Here: Pakistan Police Abuses Against Afghans*, November 18, 2015, <https://www.hrw.org/report/2015/11/18/what-are-you-doing-here/police-abuses-against-afghans-pakistan>, pp. 12–13.

¹⁸ UNHCR, "2015-2017 Protection Strategy Pakistan: External," p. 2.

¹⁹ Human Rights Watch, *What Are You Doing Here*.

of Pakistan as late as September 2015.²⁰ Most Afghans Human Rights Watch interviewed for this report said that police abuses significantly decreased during the last few months of 2015. By the end of the year, 58,211 registered Afghan refugees had returned to Afghanistan, up from 12,991 in 2014.²¹

²⁰ Human Rights Watch, *What Are You Doing Here*; UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 8.

²¹ UNHCR, “Pakistan: Year-End Report 2015,” undated, <http://reporting.unhcr.org/node/2546?y=2015#year> (accessed December 20, 2016); UNHCR, “Voluntary Return: 2014 (Year End),” undated, <http://reporting.unhcr.org/objectives-group/3024%2B3051> (accessed December 20, 2016).

II. Pakistan's Mass Refoulement of Afghan Refugees

In the last six months of 2016, a campaign of police abuses and government announcements that it was time for all Afghans to leave Pakistan, combined with their insecure legal status, drove just under 365,00 registered Afghan refugees and just over 200,000 undocumented Afghans out of Pakistan, including unknown numbers among them seeking protection.²² This coerced exodus amounts to the largest unlawful mass forced return of refugees and asylum seekers in the world in recent times.²³

International Law Prohibiting Forced Return to Harm

Pakistan is bound by customary international law's prohibition on refoulement not to forcibly return anyone to a place where they would face a real risk of persecution, torture or other ill-treatment, or a threat to life.²⁴ Pakistan is also bound by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment not to return anyone to states where they would be in danger of such treatment.²⁵

²² For the detailed statistics, see chapters 3 and 4 of this report.

²³ Other recent mass forced refugee returns include Jordan and Turkey pushing back tens of thousands of Syrian asylum seekers at the border, and Kenya's coerced return of Somali refugees. "Jordan: New Satellite Images of Syrians Stranded at Border," Human Rights Watch news release, September 7, 2016, <https://www.hrw.org/news/2016/09/07/jordan-new-satellite-images-syrians-stranded-border>; "UN: Press Turkey to Open Border," Human Rights Watch news release, May 20, 2016, <https://www.hrw.org/news/2016/05/20/un-press-turkey-open-border>; "Kenya: Involuntary Refugee Returns to Somalia," Human Rights Watch news release, September 14, 2016, <https://www.hrw.org/news/2016/09/14/kenya-involuntary-refugee-returns-somalia>.

²⁴ "1. No person shall be rejected, returned or expelled in any manner whatever where this would compel them to remain in or return to a territory where substantial grounds can be shown for believing that they would face a real risk of being subjected to torture, cruel, inhuman or degrading treatment or punishment. This principle allows of no limitation or exception. 2. In circumstances which do not come within the scope of paragraph 1, no person seeking asylum may be rejected, returned or expelled in any manner whatever where this would compel them to remain in or to return to a territory where they may face a threat of persecution or to life, physical integrity or liberty." Elihu Lauterpacht and Daniel Bethlehem, "The scope and content of the principle of non-refoulement: Opinion," UNHCR, June 20, 2001, <http://www.unhcr.org/protection/globalconsult/3b33574d1/scope-content-principle-non-refoulement-opinion.html> (accessed December 20, 2016), para. 253.

²⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Pakistan on June 23, 2010.

The principle of nonrefoulement prohibits forcing a person back to face these dangers in “any manner whatsoever.”²⁶ This includes situations in which governments put so much direct or indirect pressure on individuals that they have little or no option but to return to a country where they face serious risk of harm.²⁷ For example, UNHCR contends that denying asylum seekers income support or other income-related benefits may force asylum seekers “into unlawful exploitative conditions to support themselves ...[that] could bring them into conflict with the law” and that when “confronted with these choices even genuine but desperate refugees might be compelled to return to face persecution in the country of origin, rather than remain in an impossible position” in the country of asylum “which could amount to ‘constructive refoulement’ [that] may place the [country of asylum] in violation of its obligations under the Refugee Convention.”²⁸

UNHCR’s Handbook on Voluntary Repatriation also says that if refugees’ “rights are not recognized, if they are subjected to pressures and restrictions ... they may choose to return, but this is not an act of free will.”²⁹

Coercive Factors Driving Out Afghan Refugees

Afghans interviewed for this report said the reduction in police abuses in late 2015 continued during the first half of 2016. However, three key developments then appeared to trigger a renewed and intensified round of abuses, coupled with government statements that all Afghans should leave Pakistan.

²⁶ Article 33.1, 1951 UN Convention relating to the Status of Refugees (1951 Refugee Convention), 189 U.N.T.S. 150, entered into force April 22, 1954, and its 1967 Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, <http://www.unhcr.org/en-us/3b66c2aa10>, (accessed December 20, 2016).

²⁷ The International Law Commission has recognized that “the compulsory departure of an alien may also be achieved by a State by means of coercive acts or threats that are attributable to the State, rather than a formal decision or order...These coercive measures which deprive an alien of any real choice other than to leave the country are sometimes referred to as ‘constructive expulsion’ ... [which] is by its terms unlawful to the extent that it does not comply with the substantive or procedural requirements for lawful expulsion and violates internationally recognised human rights.” International Law Commission, “Expulsion of Aliens” Memorandum by the Secretariat, UN doc. A/CN.4/565 (2006), http://legal.un.org/ilc/documentation/english/a_cn4_565.pdf (accessed January 13, 2017), para. 68 and 73; International Law Commission, “Draft articles on the expulsion of aliens, with commentaries,” A/69/10 (2014), http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf (accessed January 13, 2017), pp. 15 – 17.

²⁸ *Regina v. Secretary of State for Social Security ex parte B and Joint Council for the Welfare of Immigrants*, Court of Appeal – Civil Division, June 21, 1996, <http://www.refworld.org/docid/3ae6b72ao.html>, (accessed January 13, 2017), p. 21.

²⁹ UNHCR, “Handbook on Voluntary Repatriation,” 1996, <http://www.unhcr.org/publ/PUBL/3bfe68d32.pdf> (accessed December 22, 2016), p. 10.

In May 2016, Afghanistan, India and Iran signed trade deals which will use Afghanistan as a transit route for Indian goods destined for Central Asia and Russia, thereby bypassing Pakistan entirely.³⁰ Given its long-standing enmity towards India, Pakistan viewed the deal as further evidence of India's growing influence in Afghanistan and the broader region.³¹ Returning refugees told Human Rights Watch and UNHCR that Pakistani communities who had peacefully hosted them for decades suddenly started calling them "sons of Hindus," apparently referring to Afghanistan's closer ties to India and the perceived resulting threat to Pakistan.³²

On June 3, Afghan President Ashraf Ghani and Indian Prime Minister Narendra Modi inaugurated the Salma Dam, a hydro-electric power station in Afghanistan's Herat Province and a powerful symbol of the two countries' bilateral ties.³³

Then, on June 12, Afghan and Pakistani forces clashed at the Torkham border crossing, killing an Afghan soldier and a Pakistani major and sparking anti-Afghan protests in Pakistan.³⁴

Returning Afghan refugees and Afghans in Peshawar described to Human Rights Watch in October and November how police abuses began again in earnest in late June 2016, and were accompanied by constant government threats in the media to deport all Afghans by the end of the year. Interviewees said this combination drove them out of Pakistan or, in the case of those still living in Peshawar, put them under so much pressure that they were planning to return to Afghanistan.

³⁰ "India, Iran and Afghanistan sign Chabahar port agreement," *Hindustan Times*, May 26, 2016, <http://www.hindustantimes.com/india/india-iran-afghanistan-sign-chabahar-port-agreement/story2EytbKZeo6zeClpR8WSuAO.html> (accessed January 27, 2017).

³¹ Suhasini Haidar, "It's Pakistan's turn to open the door," *The Hindu*, last modified December 5, 2016, <http://www.thehindu.com/news/national/%E2%80%9CIt%E2%80%99s-Pakistan%E2%80%99s-turn-to-open-the-door%E2%80%9D/article16760097.ece> (accessed December 20, 2016).

³² Human Rights Watch interview with UNHCR, Kabul, November 1, 2016.

³³ Jelena Bjelica, "Caught Up in Regional Tensions? The mass return of Afghan refugees from Pakistan," *Afghanistan Analysts Network*, December 22, 2016, <https://www.afghanistan-analysts.org/caught-up-in-regional-tensions-the-mass-return-of-afghan-refugees-from-pakistan/> (accessed January 3, 2017).

³⁴ "Afghanistan-Pakistan border clashes kill two soldiers," *Al Jazeera*, June 14, 2016, <http://www.aljazeera.com/news/2016/06/afghan-soldier-killed-border-clash-pakistan-160613075159320.html> (accessed December 20, 2016); Haroon Janjua, "Border clashes stir Pak-Afghan public emotions," *The Nation*, June 20, 2016, <http://nation.com.pk/national/20-Jun-2016/border-clashes-stir-pak-afghan-public-emotions> (accessed December 20, 2016).

Returning Afghan refugees said the abuses and threats that drove them out included: widespread police extortion, arbitrary detention, deportation threats from Pakistani government officials, police raids on refugee shelters and apartments, exclusion of Afghan children from state schools and closure of Afghan refugee schools, and police unlawful use of force and theft.

Police Extortion, Arbitrary Detention and Destruction of Refugee Cards

Almost every Afghan interviewed for this report described how beginning in July 2016, Pakistani police repeatedly stopped and extorted from them between 100 and 3,000 rupees [US\$1 - US\$30] each time. In many cases the police used the fact that refugees' Proof of Registration (PoR) cards had expired at the end of December 2015 as an excuse to demand money and threatened to confiscate their cards or deport them if they didn't pay.³⁵

A 22-year-old Afghan man living in Mansehra district, Khyber Pakhtunkhwa province, said:

They stopped me about 15 times in August and September and each time they took away my refugee card and said I had to pay to get it back. Sometimes they said, "We need to get all your money before you leave the country."³⁶

Many refugees said the police took all their earnings so that it made no sense to go to work. A 28-year-old man living in Board Tajabad town near Peshawar said:

The situation with the police got so bad about three weeks ago [early October 2016] that we could not leave the house. The police were stopping us all the time, asking for money. They took everything we had so we stopped working and just stayed at home. We realized we had to leave [Pakistan].³⁷

³⁵ In January and again in June 2016, the Pakistani authorities extend the validity of Afghans "Proof of Registration" cards without issuing new cards. See chapter 2 of this report.

³⁶ Human Rights Watch interview, Kabul, October 27, 2016.

³⁷ Human Rights Watch interview, Kabul, October 27, 2016.

Dozens of Afghans described how police arbitrarily detained them or relatives, including sick, elderly people, in police stations for between a few days and two months, and extorted up to 50,000 rupees (\$US500) per person in exchange for their release. Several interviewees said that the police first gave them a choice to pay in the street and said if they didn't, they would take them to police stations where they would demand far greater sums of money.

A 52-year-old man living in the Hayatabad neighborhood of Peshawar city said:

Police were constantly taking us to police stations because our refugee cards had expired. Many times they took me there and said that if I did not pay them, they would tear up my card. The last time was about two months ago [late August] and I had to pay 10,000 rupees [\$US100] to get out. Each time I asked, "Why are you doing this?" and they replied, "Because you are a refugee."³⁸

Many returnees at UNHCR's encashment center in Kabul said that in the past local residents would help Afghans get released from police custody by paying the police, but that after June that support stopped.³⁹

Five returning refugees told Human Rights Watch that police officers in the streets and police stations tore up their refugee cards, which left them feeling even more insecure than before.⁴⁰

Increasingly Insecure Legal Status and Deportation Threats

Almost all returning Afghan refugees said a key factor in their decision to return was their increasingly insecure legal status in Pakistan, which led to a constant fear of deportation.

³⁸ Human Rights Watch interview, Kabul, October 28, 2016.

³⁹ Human Rights Watch interview with UNHCR, Kabul, October 31, 2016.

⁴⁰ Human Rights Watch interviews, Kabul, October 28, 29 and 31. See next section of this Chapter relating to refugee cards.

Based on Pakistan's first and only country-wide census of Afghans in 2005, Pakistan in early 2007 gave 2.15 million individuals official legal status as an "Afghan citizen temporarily residing in Pakistan."⁴¹ Each person was given a "Proof of Registration" card, valid until the end of 2009.⁴² UNHCR considered this registration to be equivalent to refugee status and the Pakistani authorities refer to card-holders as "refugees."⁴³

The cards were extended for a further three years until the end of 2012.⁴⁴ After a six-month period of uncertainty during which time the police were instructed to treat the expired 2012 cards as valid, in July 2013 the cards were extended until the end of 2015.⁴⁵ The authorities then extended them twice for six months, until the end of 2016.⁴⁶ However, the authorities didn't issue new cards in 2016. Afghan refugees told Human Rights Watch that when they attempted to obtain new cards, local officials told them to show police their expired 2015 card.⁴⁷ Some also showed Human Rights Watch "tokens"—laminated cards with text apparently from local newspapers which referred to the June and December 2016 extensions—which they had bought in shops.⁴⁸

Ten days before the UN General Assembly met in New York on September 19, 2016 to discuss the global refugee crisis, Pakistan extended the cards' validity by a further three

⁴¹ UNHCR, "Registration of Afghans in Pakistan: 2007," undated, <http://www.unhcr.org/464dca012.pdf> (accessed December 19, 2016), p. 2. In the 1980s, Pakistan required Afghans, who mostly lived in camps, to register with mujahidin parties based in Pakistan who were fighting Afghan government and Soviet forces. This entitled them to assistance, but not official legal status. Human Rights Watch, *What Are You Doing Here*, p. 8.

⁴² United States Committee for Refugees and Immigrants, "World Refugee Survey 2008 – Pakistan," June 19, 2008, <http://www.refworld.org/docid/485f50c9c.html> (accessed December 19, 2016).

⁴³ UNHCR, "Global Trends: Forced Displacement in 2015," undated, <http://www.unhcr.org/576408cd7.pdf> (accessed January 18, 2017), p. 16; "Pakistan: Renewed Threats to Afghan Refugees," Human Rights Watch news release, July 1, 2016, <https://www.hrw.org/news/2016/07/01/pakistan-renewed-threats-afghan-refugees>.

⁴⁴ UNHCR, "UNHCR and Pakistan sign new agreement on stay of Afghan refugees," March 13, 2009, <http://www.unhcr.org/news/latest/2009/3/49ba5db92/unhcr-pakistan-sign-new-agreement-stay-afghan-refugees.html> (accessed December 19, 2016).

⁴⁵ "UNHCR urges Afghan refugees to renew their PoR cards to retain refugee status," UNHCR press release, October 1, 2014, <http://unhcrpk.org/unhcr-urges-afghan-refugees-in-pakistan-to-renew-their-proof-of-registration-cards-before-31-december-2014-to-retain-refugee-status/> (accessed December 20, 2016); Human Rights Watch email exchange with UNHCR, January 27, 2016.

⁴⁶ "Pakistan: Extend Afghan Refugee Status Through 2017," Human Rights Watch news release, January 16, 2016 <https://www.hrw.org/news/2016/01/16/pakistan-extend-afghan-refugee-status-through-2017>; Tahir Khan and Iftikhar Firdous, "Pakistan extends Afghan refugees stay until end of 2016," *The Express Tribune*, June 29, 2016, <http://tribune.com.pk/story/1132923/pakistan-extends-afghan-refugees-stay-says-ambassador/> (accessed December 20, 2016).

⁴⁷ Human Rights Watch interviews, Kabul, October 27 – November 1, 2016.

⁴⁸ *Ibid.*

months until the end of March 2017, but again did not issue new cards.⁴⁹ A senior UN official told Human Rights Watch the extension was made to avoid criticism at the UN from other governments concerned about Pakistan’s increasingly aggressive stance towards Afghan refugees.⁵⁰ According to UNHCR, on November 23, 2016—by which time almost 650,000 Afghans had returned home—the Pakistani federal cabinet approved the extension of the Proof of Registration card until December 31, 2017, but as of late January, has made no public announcement to that effect.⁵¹ In early January, UNHCR said Afghan refugees had left Pakistan due, in part, to the “lack of clarity regarding the extension of proof of registration ... cards beyond March 2017.”⁵²

Afghans told Human Rights Watch that the steady reduction in the security of their legal status—resulting from the shorter refugee card extension periods since late 2015—and police frequently saying their expired 2015 cards were invalid, despite government announcements extending their validity, had left them feeling exposed to the risk of deportation. Most said that the fact that police repeatedly accused them of illegal presence in Pakistan proved the authorities were determined to drive out all Afghans.

UNHCR has acknowledged that “the temporary validity of PoR [Proof of Registration] cards ... has been repeatedly interpreted as a deadline for the stay of Afghan refugees ... and, coupled with extension delays, has created pressures for Afghans to return.”⁵³ UNHCR has also said that the “short-term extensions of the validity of PoR cards” has resulted “in heightened anxiety and lack of predictability.”⁵⁴ And on leaving her position in Kabul in January 2017, UNHCR’s representative in Afghanistan said that “time frames such as validity of Proof of Registration cards for refugees in Pakistan, which have become

⁴⁹ Tahir Khan, “Government extends Afghan refugees’ stay until early 2017,” September 9, 2016, *The Express Tribune*, <http://tribune.com.pk/story/1179198/government-extends-afghan-refugees-stay-early-2017/> (accessed December 20, 2016).

⁵⁰ Confidential Human Rights Watch interview, October 2016.

⁵¹ Human Rights Watch interview with UNHCR, December 14, 2016.

⁵² UNHCR, “Afghanistan: Update on refugee return trends, 31 December 2016,” unpublished document on file with Human Rights Watch.

⁵³ UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 3.

⁵⁴ UNHCR, “Voluntary Repatriation Update,” October 2016, http://unhcrpk.org/wp-content/uploads/2013/12/VolRep_Summary_20161001_v11.pdf (accessed December 19, 2016), p. 1.

increasingly shorter since the end of 2015, cannot be regarded as “deadlines” for return – these are incompatible with voluntariness of repatriation.”⁵⁵

Many Afghans described how starting in June 2016, the Pakistani authorities began to use the media and other forums to tell Afghans they should leave the country.

A 32-year-old man living in the Afghan Kaluni neighborhood of Peshawar city said:

When the cards expired at the end of 2015 the authorities said that they were ok for another six months and then they said until the end of the year. But about one month after Torkham [the border clashes in June 2016] they said many times on television we should leave straight away. Then they drove around in cars with loudspeakers in my neighborhood with the same message, two or three times a day. Then we saw the message in newspapers and the local mosques said the same.⁵⁶

Others described how they feared imminent arrest and deportation and didn’t trust government announcements saying their expired Proof of Registration cards from 2015 were still valid until the end of the year or the end of March 2017. As one man said, “We didn’t know whether we would be allowed to stay, but knew they would come for us quickly when our time was up.”⁵⁷

Others said they feared they would be deported overnight, without time to sell their possessions, so they preferred to leave as a precaution before they lost everything.⁵⁸

Several returning refugees said they were afraid that they would be deported overnight and split from their families and therefore decided to leave to avoid the worst.⁵⁹ As a man living

⁵⁵ UN Inter-Agency Update, “Population Movement Bulletin, Issue 8,” January 26, 2016, http://unama.unmissions.org/sites/default/files/un_afghanistan_-_population_movement_bulletin_-_issue_8_-_jan_2017_standard_size.pdf (accessed January 26, 2017), p. 2.

⁵⁶ Human Rights Watch interview, Kabul, October 28, 2016.

⁵⁷ Human Rights Watch interview, Kabul, October 27, 2016.

⁵⁸ Human Rights Watch interviews, Kabul, October 27 – 31, 2016.

⁵⁹ Human Rights Watch interviews, Kabul, October 27 – 31, 2016.

in the Jalala camp in Mardan district in Khyber Pakhtunkhwa (KP) province said, “I was afraid that the police might just take me and leave my wife and children behind and that I wouldn’t be able to help them get out of Pakistan.”⁶⁰

Finally, many returnees said that the threat of deportation during the winter was too great a risk to take and that they preferred to leave between August and October to do whatever they could to find shelter for themselves and their families before the weather turned cold.⁶¹

Police Raids

Dozens of interviewees said that, mostly in July and August, various security forces raided the settlements or neighborhoods where they lived and entered Afghans’ homes by day or night without asking permission, including when all the men were at local mosques and women were alone at home. Many said women and girls felt particularly threatened by these raids and that it violated their families’ honor and dignity. Most said that soldiers or police officers conducting the raids told them that all Afghans were on the brink of being deported, and took some relatives to police stations to extort money. Some said officers in their homes accused them of being terrorists.⁶²

UNHCR confirmed that many returnees in Kabul spoke of a new trend of nocturnal police raids in Pakistan that left them fearing for the safety of female relatives and violated their privacy and dignity.⁶³

A 27-year-old man living in “Camp Number 4” in the Jani Khor tribal area in the Badaber district of KP Province said:

In early August, when it was very hot, the police came to our house very early in the morning, about 4:30 a.m. They entered our house without asking, pushed all the women to one side and took all of the men, including me, to the police station. The women were all very afraid. There were about

⁶⁰ Human Rights Watch interview, Kabul, October 27, 2016.

⁶¹ Human Rights Watch interviews, Kabul, October 27 – 31, 2016.

⁶² Human Rights Watch interviews, Kabul, October 27 – 31, and November 1, 2016.

⁶³ Human Rights Watch interview, Kabul, October 31, 2016.

200 other Afghans at the station when we arrived. They held us there all day and did not give us water or let us go to the toilet. Our relatives came and paid to get us out. In early October, I saw in a newspaper that the police would do more search operations and that they were going to put Afghans in prison. So we knew we had to leave.⁶⁴

Closure of Afghan Refugee Schools and Exclusion of Afghan Refugee Children from Pakistani Schools

About half of the Afghans Human Rights Watch interviewed said that beginning in May 2016, their children had been excluded from Pakistani state schools or that the authorities had shut down Afghan refugee schools. Many cited this as one of the key reasons they left Pakistan. A UN report also found that “returnee women were concerned about their children’s increasing difficulties going to school, stat[ing] they were prevented from attending school or [that] ... schools in refugee communities were shut.”⁶⁵

Human Rights Watch spoke with the headmaster of the Amina Fedawi High School for Afghan children in the Abdara neighborhood in Peshawar city. He told Human Rights Watch:

At the end of May, the police came and broke all our security cameras, took down our signs and told us to shut down the school, which we did. They said it was a federal government order and that all refugees had to leave Pakistan.

The police also shut down all but one of the other eight Afghan schools in our area. There were also eight in the Hayatabad neighborhood and only two stayed open. There were seven in the Afghan Kaluni neighborhood and five were closed. And the authorities also closed all three in the Takal neighborhood.

⁶⁴ Human Rights Watch interview, Kabul, October 28, 2016.

⁶⁵ UNOCHA, "Afghanistan Humanitarian Bulletin Issue 56 | 01-30 September 2016," September 30, 2016, <http://reliefweb.int/report/afghanistan/afghanistan-humanitarian-bulletin-issue-56-01-30-september-2016> (accessed December 20, 2016).

After the summer break, in early September, we tried to re-open the schools but the police came again and told us not to. They said we would face big problems if we opened them. We went to see the Afghan Consulate in Peshawar to complain but he said he couldn't do anything.⁶⁶

Police Theft and Unlawful Use of Force

Several returning refugees in Kabul and Afghans in Peshawar told Human Rights Watch that Pakistani police had slapped or beaten them when extorting money or stealing their possessions. Five others said that for the first time ever, police had stolen goods and trading tools worth thousands of rupees, effectively leaving them destitute, ending their ability to work, and convincing them it was time to leave Pakistan.⁶⁷

A 30-year-old man living in the Board neighborhood in Tajabad, Peshawar city, said:

I was a cobbler and about six weeks ago [mid-September] the police took all my things and took me to the police station and then took all my money. Then they let me go. I didn't have enough money to buy more tools to continue working. They confiscated the goods and tools of lots of street sellers in my area. Everyone had to stop working.⁶⁸

Other Factors Driving Out Afghans

Returnees also described to Human Rights Watch other factors that contributed to their decision to leave Pakistan. Many feared that if they stayed, they would be forced back with nothing and without warning. Fearing destitution in Afghanistan, the doubling of the UNHCR cash grant to returnees was a critical factor their decision to leave. Additional factors included: anti-Afghan hostility by local Pakistani communities; Pakistani landlords suddenly charging significantly increased rent for apartments and business premises; the Afghan authorities' promises to give returnees land; new border crossing restrictions preventing them from returning home for funerals or working in Afghan border areas; and

⁶⁶ Human Rights Watch interview, Kabul, October 29, 2016.

⁶⁷ Human Rights Watch interviews in Kabul, October 28 and 30, 2016 and Peshawar, November 8 and 11, 2016.

⁶⁸ Human Rights Watch interview, Kabul, October 30, 2016.

the wish to follow relatives or even entire communities who had already returned and without whom they did not want to stay in Pakistan.

Cash Grant

In June 2016, UNHCR doubled its cash grant from \$200 to \$400 to each Afghan refugee returning from Pakistan, an average of \$2,800 per family.⁶⁹ Numerous returning Afghan refugees told Human Rights Watch they would have been too poor to leave without UNHCR's money. A 33-year-old man with seven children living in the Jalala camp in Khyber Pakhtunkhwa province's Mardan district said he was afraid that Pakistan would arrest and deport him without warning and thereby split him from his family. He said that he finally decided to leave because he was afraid that if he didn't, he risked deportation alone and with nothing, instead of leaving with his family and almost \$3,000.⁷⁰ Others fearing destitution in Afghanistan said that UNHCR money was their only hope of surviving after leaving Pakistan; and that without the money they would have remained in Pakistan and hoped the government would treat them better in 2017.⁷¹

Hostility from Pakistani Communities

Many returnees described how they had been welcomed for decades by local Pakistanis, but that after the killing of a Pakistani army major near the Afghan border in June 2016 they turned on them, telling them to go home and calling them "sons of Hindus," referring to India's increased ties with Afghanistan.⁷² Large numbers of Afghans also described to the UN this shift in local Pakistanis attitude towards Afghans.⁷³

Government Announcements Directing Pakistanis Not to Rent to Afghans and Increased Rent

Numerous Afghans said landlords evicted them from, or refused to rent, apartments or business premises after the Pakistani authorities announced in newspapers and on

⁶⁹ See chapter 4 of this report, including on the relative value of US\$2,800 to Afghans.

⁷⁰ Human Rights Watch interview, Kabul, October 27, 2016.

⁷¹ Human Rights Watch interviews, Kabul, October 27, 28 and November 1, 2016.

⁷² Human Rights Watch interviews, Kabul, October 28 – November 1, 2016. For the Torkham border clashes, see p. 17.

⁷³ UNOCHA, "Afghanistan Humanitarian Bulletin Issue 56 | 01-30 September 2016," p. 5; Human Rights Watch interviews with UNHCR in Geneva, September 27, 2016 and UNHCR in Kabul, October 31, 2016.

television that it was illegal to rent to Afghans.⁷⁴ Others said that beginning in July, landlords started doubling or tripling their rent, thereby forcing them out of their homes and businesses and leaving them destitute.⁷⁵

Afghan Officials Promising Land for Returnees

On July 17, 2016, Afghanistan's Ministry of Tribal Affairs and Afghan diplomats in Peshawar launched a special media campaign entitled "One's Own Homeland," which encouraged Afghans in Pakistan to return to Afghanistan.⁷⁶ Three weeks later, President Ghani's Special Envoy and Ambassador to Pakistan said in an interview that the new campaign had produced "positive results" and that Afghans in Pakistan have "now ... realized they should live in dignity in their own country." He added that it was important that Afghanistan acted to prevent Pakistan from using refugees as "pressure buttons."⁷⁷

With funding support from UNHCR, on August 31, 2016, Afghanistan's President Ghani met in Kabul with 120 Pakistan-based Afghan elders and other representatives.⁷⁸ The UN in Afghanistan reported that "the President pledged to ensure returning Afghans could obtain land and housing, invest in small businesses, send children to school, have access to basic services and settle in any part of the country."⁷⁹ The president added he understood land was a key issue for returnees and "pledged to help returning families to legally obtain land and announced that five sites, with a combined settlement capacity of 50,000 families, had been identified to assist landless returnees or those not able or willing to return to areas of origin."⁸⁰ During the meeting, Elham Omar Hotaki, whom the president has appointed to develop housing projects for refugees in Nangrahar and Kabul provinces, also said that "according to the President's orders, returning families will be provided

⁷⁴ Human Right Watch interviews, Kabul and Peshawar, October 28 – 31, 2016 and November 8 and 11, 2016.

⁷⁵ Human Rights Watch interviews, Kabul and Peshawar, October 28 – 31, 2016 and November 8 and 11, 2016.

⁷⁶ Jelena Bjelica, "Caught Up in Regional Tensions? The mass return of Afghan refugees from Pakistan."

⁷⁷ Jelena Bjelica, "Caught Up in Regional Tensions? The mass return of Afghan refugees from Pakistan."

⁷⁸ UN Inter-Agency Update, "Population Movement Bulletin, Issue 5," September 7, 2016, https://unama.unmissions.org/sites/default/files/un_afghanistan_-_population_movement_bulletin_-_issue_5_-_sep_2016_o.pdf (accessed January 19, 2017).

⁷⁹ Ibid.

⁸⁰ Ibid.

residential lands, drinking water, educational opportunities, health services and other facilities. We are fully prepared in this regard.”⁸¹

In reality, no landless Afghan returning from Pakistan in 2016 received—or had the slightest prospect of receiving—any land in 2017.⁸² UNHCR told Human Rights Watch that it “was ... concerned about the Afghan government’s active promotion of return of Afghans from Pakistan, through the involvement of the President’s Special Envoy and Ambassador, community elders, and the holding of Jirgas [a traditional assembly of leaders]. We repeatedly advised the afghan government [to] refrain from making unrealistic pledges such as land allocation upon return.”⁸³

Several returning Afghan refugees said that reports of the president’s promise had convinced them they would not face destitution on return to Afghanistan.⁸⁴ One man said:

Our [refugee] camp representatives told us we’d get land if we went back to Afghanistan. They showed us an interview on Facebook with Ashraf Ghani who said refugees coming home would get land. I believed him so we decided to leave.⁸⁵

New Regulations Governing Afghans’ Cross-Border Movements

For decades, Pakistan has allowed Afghans to move back and forth across the border with Pakistan without any identity documents.⁸⁶ But on June 1, 2016, the authorities cited security concerns as grounds for introducing new measures requiring Afghans to hold

⁸¹ “President Ghani Meets Pakistan-Based Afghans’ Elders, Representatives,” *Bakhtar News*, September 3, 2016, <http://bakhtarnews.com.af/eng/politics/item/24698-president-ghani-meets-pakistan-based-afghans%E2%80%99-elders-representatives.html> (accessed December 20, 2016); Jelena Bjelica, “Caught Up in Regional Tensions? The mass return of Afghan refugees from Pakistan.”

⁸² See chapter 5 of this report.

⁸³ Letter from UNHCR to Human Rights Watch, January 27, 2016.

⁸⁴ Human Rights Watch interviews, Kabul, October 27 - 29, 2016.

⁸⁵ Human Rights Watch interview, Kabul, October 27, 2016.

⁸⁶ The disputed 2,430-kilometer border between Afghanistan and Pakistan is largely porous and cuts through Pashtun and Baloch tribal communities whose members cross it at will, as do Kuchi nomads. Owen Bennett-Jones, “Across the Durand Line,” *London Review of Books*, 36:18, September 25, 2014, <http://www.lrb.co.uk/v36/n18/owen-bennett-jones/across-the-durand-line> (accessed December 20, 2016); Ibrahim Shinwari, “Hundreds of Afghans refused entry at Torkham,” *Dawn*, January 3, 2013, <http://www.dawn.com/news/775915> (accessed December 20, 2016).

passports, which cost about US\$90, and visas to enter Pakistan.⁸⁷ A number of Afghans told Human Rights Watch that for years they had returned for brief periods to Afghanistan to attend funerals and other family events and that the new measures meant they would be split from relatives in Afghanistan.⁸⁸

Relatives Leaving

Some returning Afghans said that the mass return of friends and relatives since July 2016 had left them feeling isolated in communities rife with anti-Afghan sentiment and police abuses and was instrumental in their decision to leave Pakistan.⁸⁹ UNHCR has also pointed out that “as undocumented Afghans are typically part of family units with PoR (Proof of Registration) cardholders, their registration would help to reduce pressures on PoR cardholders” to leave Pakistan if their undocumented relatives are deported.⁹⁰

⁸⁷ M. Ilyas Khan, “Torkham border crossing: Pakistan curbs Afghan entry,” *BBC News*, June 2, 2016, <http://www.bbc.com/news/world-asia-36438575> (accessed December 20, 2016); “Repatriation of Afghan Refugees from Pakistan: Supplementary Appeal,” September 19, 2016, <http://reporting.unhcr.org/node/15511> (accessed December 20, 2016).

⁸⁸ Human Rights Watch interviews, Kabul, October 27 - November 1, 2016.

⁸⁹ Human Rights Watch interviews, Kabul, October 27 and 29, and November 1, 2016.

⁹⁰ UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 1.

III. Forced Return of Refugees among Undocumented Afghans in Pakistan

Many Afghans crossing back and forth between Pakistan and Afghanistan are unlikely to be refugees and have no interest in lodging asylum claims in Pakistan. However, Pakistan's refusal to register Afghan refugees after February 2007, and UNHCR's inability to process large numbers of asylum seekers in Pakistan, means that many Afghans needing formal protection in Pakistan over the past 10 years have had no chance of obtaining it. This means Pakistan almost certainly, unlawfully coerced out significant numbers of people who may actually be refugees—de facto refugees—among the 205,000 undocumented Afghans who left Pakistan after June 2016 and who experienced the same Pakistani police abuses and deportation threats as registered refugees.

Undocumented Afghans in Pakistan

Since at least 2012, Pakistani authorities have estimated that there were about one million undocumented Afghans in the country, although they have given no basis for their estimate.⁹¹ In the second half of 2016, just over 200,000 returned to Afghanistan.⁹²

Pakistan's only census of Afghans, in early 2005, identified 3,049,268 Afghans living in the country.⁹³ Of those, about one-fifth—582,535—returned to Afghanistan with UNHCR's help before Pakistan began to register Afghans applying for Proof of Registration cards in October 2006. This left 2,466,733 eligible for cards. However, by the time registration closed in February 2007, only 2,153,088 Afghans had registered, leaving more than 313,000 unaccounted for.⁹⁴

⁹¹ Zia Khan, "Three million Afghans to be expelled by December," *The Tribune*, July 18, 2012, <http://tribune.com.pk/story/409809/three-million-afghans-to-be-expelled-by-december/> (accessed December 19, 2016); Human Rights Watch interview with UNHCR, September 19, 2016.

⁹² See p. 30 below on the number of undocumented Afghans leaving Pakistan in 2016.

⁹³ UNHCR, "Registration of Afghans in Pakistan: 2007."

⁹⁴ UNHCR, "Registration of Afghans in Pakistan: 2007."

Afghans previously undocumented in Pakistan, who Human Rights Watch interviewed in Afghanistan in 2015, included many who had arrived in Pakistan in the 1980s or 1990s who said that they had not registered in 2006 and 2007 for various reasons, including: they thought doing so would make them more likely to be deported; they failed to understand the importance of obtaining documentation confirming their status in Pakistan; they were unable to respond to officials' extortion demands; or they could not reach registration centers due to work and other obligations.⁹⁵

Some portion of undocumented Afghans in Pakistan, including some of those who returned to Afghanistan in the second half of 2016, are likely economic migrants.⁹⁶ Some of those who did not register in 2007 have since returned to Afghanistan while others remained undocumented in Pakistan, together with Afghans who entered the country after February 2007.

Although technically in the country unlawfully, Pakistan mostly closed its eyes to undocumented Afghans' presence until 2015.⁹⁷ Deportation numbers increased in 2012 to about 7,500, dipped again to less than 300 in 2013 and went back up to about 10,000 in 2014.⁹⁸ In 2015, the number doubled to just under 20,000.⁹⁹ In 2016, it was 22,559.¹⁰⁰

⁹⁵ Human Rights Watch, *What Are You Doing Here*.

⁹⁶ Altai Consulting and UNHCR, "Study on Cross Border Population Movements Between Afghanistan and Pakistan," June 2009, <http://www.unhcr.org/4ad448670.pdf> (accessed January 3, 2017).

⁹⁷ The authorities may arrest and detain foreign nationals present without legal status. Pakistan: Foreigners Order, *National Legislative Bodies / National Authorities*, 1951, <http://www.refworld.org/docid/3ae6b4f717.html> (accessed November 30, 2016), art. 5.

⁹⁸ International Organization for Migration (IOM), "Transition, Crisis and Mobility in Afghanistan: Rhetoric and Reality," January 2014, <https://www.iom.int/files/live/sites/iom/files/Country/docs/Transition-Crisis-and-Mobility-in-Afghanistan-2014.pdf> (accessed December 19, 2016), p. 11; UNHCR, "Voluntary Repatriation and Border Monitoring Monthly Update: 1 January – 2 August 2015," http://www.unhcr.af/UploadDocs/DocumentLibrary/August_2015_VolRep_635779878686530000.pdf (accessed December 19, 2016), p. 6.

⁹⁹ IOM, "Undocumented Afghan Returns from Iran & Pakistan, January – December 2015," http://afghanistan.iom.int/sites/default/files/Reports/returns_of_undocumented_afghans_from_iran_and_pakistan_annual_report_2015_o.pdf (accessed December 19, 2016), p. 2.

¹⁰⁰ IOM, "Return of Undocumented Afghans: Weekly Situation Report, 25 – 31 December 2016," <http://reliefweb.int/sites/reliefweb.int/files/resources/IOM%20Return%20of%20Undocumented%20Afghans%20Weekly%20Situation%20Report%2C%2025-31%20December%202016.pdf> (accessed January 3, 2017), p. 2.

The January 2015 National Action Plan, adopted after the Peshawar school attack, included a pledge to register all undocumented Afghans in the country in July and August 2015, although no such registration has taken place.¹⁰¹

In September 2016, the authorities announced that undocumented Afghans had until November 15, 2016 to voluntarily return to Afghanistan or face deportation.¹⁰² The deadline passed with no action taken. In October 2015, UNHCR said that Afghanistan and Pakistan had agreed to jointly register undocumented Afghans in Pakistan and to issue them Afghan passports and Pakistani visas.¹⁰³ As of late January 2017, no such registration had taken place.¹⁰⁴

Undocumented Afghans Returning to Afghanistan after June 2016

In recent years, relatively few undocumented Afghans left Pakistan. In 2013 and 2014, about 20,000 left each year, or about 1,800 a month.¹⁰⁵ In contrast, during the first half of 2015 alone, almost 82,000 returned, many fleeing widespread police abuses.¹⁰⁶ The numbers dropped significantly in the second half of the year and returned to the 2014 monthly rates by the last three months of the year. By the end of the 2015, just under 120,000 had returned.¹⁰⁷

The low 2014 return rates continued for most of the first six months of 2016.¹⁰⁸ But in the third week of July 2016, the number of returns dramatically increased when over 6,000

¹⁰¹ Zulfiqar Ali, "Government yet to start registration of Afghans as outlined in NAP," *Dawn*, August 28, 2015, <http://www.dawn.com/news/1203396> (accessed December 19, 2016).

¹⁰² Nicholas Bishop, "Between a Rock and A Hard Place – the Mass Return to Afghanistan," *IOM*, September 27, 2016, <https://weblog.iom.int/between-rock-and-hard-place-%E2%80%93-mass-return-afghanistan> (accessed January 20, 2017).

¹⁰³ UNHCR, "2015-2017 Protection Strategy Pakistan: External," p. 1.

¹⁰⁴ Human Rights Watch email exchange with aid agency in Kabul, January 6, 2017.

¹⁰⁵ IOM, "Transition, Crisis and Mobility in Afghanistan: Rhetoric and Reality," p. 11; IOM, "Return of Undocumented Afghans from Pakistan: IOM-OIM Update as of 6 April 2015," April 6, 2015, http://afghanistan.iom.int/sites/default/files/migrated_files/2015/02/Return-of-Undocumented-Afghans-from-Pakistan-Update-as-of-6-April-2015.pdf (accessed December 2, 2016).

¹⁰⁶ Human Rights Watch, *What Are You Doing Here*.

¹⁰⁷ IOM, "Undocumented Afghan Returns from Iran & Pakistan January to December 2015", undated, http://afghanistan.iom.int/sites/default/files/Reports/returns_of_undocumented_afghans_from_iran_and_pakistan_annual_report_2015_0.pdf (accessed December 22, 2016), p. 2.

¹⁰⁸ IOM, "Undocumented Afghan Returns from Iran & Pakistan: January to December 2015;" IOM, "Return of Undocumented Afghans from Pakistan: Updates as of 31 July 2016," undated,

returned.¹⁰⁹ By December 31, a total of 225,630 had returned since the start of the year, 91 percent of whom returned since the July increase.¹¹⁰ Repeating language used throughout the second half of 2016, in early January 2017, the International Organization for Migration (IOM) summarized the cause of the 2016 increase as “diverse push factors, including deteriorating protection space in Pakistan.”¹¹¹

Likely Refugees among Undocumented Afghans Unable to Obtain Protection

UNHCR considers those Afghans the government of Pakistan registered and issued with Proof of Registration cards in late 2006 and early 2007 to be refugees simply because of their nationality—that is, they were and continue to be recognized as refugees on a prima facie basis.¹¹² Senior Pakistani officials also refer to them as refugees.¹¹³

Afghans in Pakistan who did not register in 2006 and 2007, or who arrived after registration ended in February 2007, share the same general profile as the Afghans who registered before the cut-off date. They either fled Afghanistan between 1978 and 2007, or left Afghanistan after 2007 for a range of reasons comparable to those who left the country after the fall of the Taliban government in late 2001. This group likely includes both economic migrants and refugees. However, Pakistan does not have an asylum system to adjudicate individual claims. This means the Pakistani government changed its policy overnight in February 2007 from essentially recognizing all Afghans without differentiation as refugees to not recognizing any more as refugees.¹¹⁴

http://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_from_pakistan_updates_31_july_2016_english_ver.pdf (accessed December 22, 2016).

¹⁰⁹ IOM, “Return of Undocumented Afghans from Pakistan: Updates as of 31 July 2016.”

¹¹⁰ IOM, “Return of Undocumented Afghans: Weekly Situation Report, 25 – 31 December 2016;” IOM, “Return of Undocumented Afghans from Pakistan: Updates as of 31 July 2016.”

¹¹¹ IOM, “Return of Undocumented Afghans: Weekly Situation Report, 1 – 7 January 2017,” January 8, 2017, https://afghanistan.iom.int/sites/default/files/Reports/iom_return_of_undocumented_afghans_weekly_situation_report_1-7_january_2017.pdf (accessed January 9, 2017), p. 1; IOM, “Return of Undocumented Afghans: Weekly Situation Report, 13 - 19 November 2016,” November 19, 2016, <http://reliefweb.int/report/afghanistan/return-undocumented-afghans-weekly-situation-report-13-19-november-2016> (accessed December 22, 2016), p. 1.

¹¹² UNHCR, “Global Trends: Forced Displacement in 2015,” p. 40.

¹¹³ “Pakistan remains committed to voluntary return of Afghans refugees: Baloch”, Associated Press of Pakistan, October 3, 2016, <https://www.app.com.pk/pakistan-remains-committed-to-voluntary-return-of-afghans-refugees-baloch/> (accessed January 17, 2017).

¹¹⁴ After 2007, Pakistan only registered unregistered relatives of registered refugees, between 2010 and 2011, and the children of registered refugees. Human Rights Watch email exchange with UNHCR, January 2017.

In many other countries without asylum procedures, UNHCR reviews asylum applications through Refugee Status Determination (RSD) procedures. The main purpose of RSD operations in Pakistan is for UNHCR to identify especially vulnerable Afghans among the undocumented population who cannot remain in Pakistan and who need to be recognized officially as refugees in order to be resettled in other countries.¹¹⁵

UNHCR also reviews asylum claims by Afghans who do not require resettlement, but who approach UNHCR for protection and who may qualify as refugees under the 1951 Refugee Convention.¹¹⁶ However, unlike in many other parts of the world where asylum seekers file claims with UNHCR in the tens of thousands, UNHCR in Pakistan has only very limited capacity to process such claims. In order to reduce pressure on UNHCR's limited resources, nongovernmental organizations working with UNHCR screen Afghans who approach UNHCR for protection and identify "manifestly unfounded" claims that can be quickly rejected.¹¹⁷ These limitations mean Afghans in Pakistan approach UNHCR in relatively small numbers.¹¹⁸

The combination of Pakistan's refusal to register Afghans seeking protection after 2007 and UNHCR's inability to take over that role means unknown numbers of de facto Afghan refugees are currently excluded from obtaining protection in Pakistan.

Pakistan is obliged under international law not to return anyone in any manner to threats of persecution, torture, and other serious harm, and deporting undocumented Afghans without any recourse to protection procedures therefore also risks refoulement.¹¹⁹ Because Pakistani police abuses documented in this report have driven out large numbers of

¹¹⁵ Human Rights Watch, *What Are You Doing Here*, p. 11; UNHCR, "2015-2017 Protection Strategy Pakistan: External," p. 4, 8, 11 and 15.

¹¹⁶ Human Rights Watch, *What Are You Doing Here*, p. 11.

¹¹⁷ UNHCR, "2015-2017 Protection Strategy Pakistan: External," p. 9.

¹¹⁸ Human Rights Watch, *What Are You Doing Here*, p. 11.

¹¹⁹ The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status says that recognition of refugee status is declaratory: "He does not become a refugee because of recognition, but is recognized because he is a refugee." In other words, a person who meets the "well-founded fear of being persecuted" definition is a refugee independent of being formally recognized as such. UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees," January 1992, <http://www.unhcr.org/4d93528a9.pdf> (accessed December 16, 2016), para 28. UNHCR's Executive Committee has said that the principle of nonrefoulement prohibits the expulsion and return of refugees "whether or not they have formally been granted refugee status." UNHCR, "General Conclusion on International Protection No. 79 (XLVII) – 1996," October 11, 1996, <http://www.unhcr.org/excom/exconc/3ae68c430/general-conclusion-international-protection.html> (accessed December 16, 2016).

undocumented Afghans as well as registered refugees, Pakistan has likely committed mass refoulement of de facto refugees among the population of undocumented Afghans.

To address this problem, Pakistan could do one of two things. Either it could swiftly open registration for asylum seekers among undocumented Afghans in Pakistan who are seeking protection, regardless of whether that leads to refugee status on a prima facie basis (i.e. based simply on nationality) or a comparable blanket form of temporary protection. Or it could mount a sustained public information campaign informing undocumented Afghans, including those in detention and faced with imminent deportation, that they are entitled to register refugee claims with UNHCR and how to do so.

Absent such policies and procedures, any further deportation deadlines and police abuses driving out undocumented Afghans will result in further refoulement of unregistered refugees among them and of their registered, dependent relatives who will feel they have no option but to leave with them.¹²⁰

¹²⁰ In October 2015, UNHCR said, “as undocumented Afghans are typically part of family units with PoR cardholders, their registration would help to reduce pressures on PoR cardholders and avoid unmerited asylum applications triggered by security operations against undocumented Afghans.” UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 1.

IV. UNHCR's Response to Pakistan's Mass Refoulement

UNHCR has been facilitating the voluntary repatriation of Afghan refugees from Pakistan since 2002. Before the hike in Pakistani police abuses against Afghans in early 2015, Afghan refugees' decisions to return home were, for the most part, voluntary.

Under pressure from the Pakistani authorities, which wanted to see increased repatriation rates, UNHCR doubled its cash support in June 2016 to returning Afghan refugees. For many, already faced with deportation deadlines and police abuses, this was the tipping point to return to Afghanistan. By the end of December 2016, almost 365,000 registered refugees had returned during the world's largest recent case of mass refoulement.

Throughout the returns, UNHCR referred to its "voluntary repatriation" operations and failed to call for an end to Pakistan's coerced refugee return. UNHCR's involvement in not only facilitating but also promoting involuntary refugee repatriation through significant cash support to returnees without calling the situation refoulement contradicted its basic refugee protection mandate and made it complicit in Pakistan's mass refoulement of Afghan refugees.

In early November 2016, citing donor shortfalls, UNHCR said it would suspend cash support to returnees as of mid-December, but said it would resume support on March 1, 2017. If the Pakistani authorities do not end their threats to deport Afghan refugees after Proof of Registration cards expire on March 31, 2017 and continue to tolerate widespread police abuses against Afghans, large numbers of Afghans will likely continue to be coerced into leaving. If UNHCR continues its cash support to returnees without making clear that many of them are being driven out of Pakistan unlawfully, UNHCR will remain complicit in the refoulement of Afghan refugees in 2017.

Supporting the Voluntary Repatriation of Afghan Refugees from Pakistan

Four months after the defeat of the Taliban government in November 2001, UNHCR began helping Afghans return home on an ad hoc basis. By the end of 2002, the agency had facilitated the return of about 1.5 million Afghans from Pakistan and publicly called on the

authorities to end incidents of forced return.¹²¹ In March 2003, UNHCR signed the Tripartite Agreement Governing the Repatriation of Afghan Citizens Living in Pakistan (the “Tripartite Agreement”) with Afghanistan and Pakistan to provide a legal and operational framework for voluntary refugee returns.¹²² Between 2003 and 2008, UNHCR helped 1,930,068 Afghans return home, an average of about 320,000 a year.¹²³ Reflecting the deteriorating security situation in Afghanistan, a yearly average of only about 70,000 returned over the ensuing four years.¹²⁴ The Pakistani authorities will have been aware that the estimated 60,000 children born to Afghan refugees in Pakistan each year meant the decreased return numbers were in effect resulting in a stable number of Afghan refugees living in Pakistan.¹²⁵

UNHCR’s Response to Decreasing Refugee Returns

In response to the plummeting numbers of refugees returning, Afghanistan, Iran, Pakistan, UNHCR, and delegates from about 40 countries endorsed a Solutions Strategy for Afghan Refugees in May 2012.¹²⁶ The strategy aims to “assist host countries” and “support voluntary repatriation and sustainable reintegration” of Afghan refugees back home in the medium term by going beyond basic humanitarian assistance and helping them “access

¹²¹ CRS Report for US Congress, “Afghan Refugees: Current Status and Future Prospects,” p. 4; UNHCR, “Pakistan address complaints from harassed Afghan refugees,” May 24, 2002, <http://www.unhcr.org/news/latest/2002/5/3cee63fd4/unhcr-pakistan-address-complaints-harassed-afghan-refugees.html> (accessed December 22, 2016); US Committee for Refugees, “World Refugee Survey – Pakistan,” 2003, <http://www.refworld.org/publisher,USCRI,,PAK,3eddc4948,o.html> (accessed December 23, 2016).

¹²² UNHCR, “Tripartite Repatriation Agreement between UNHCR and the Governments of Pakistan and Afghanistan,” March 17, 2003, <http://www.refworld.org/docid/55e6a5324.html> (accessed December 12, 2016).

¹²³ These included 206,125 unregistered Afghans who were given a six-week “grace period” during which they were entitled to receive UNHCR’s voluntary repatriation assistance, despite not having registered for Proof of Registration cards just months earlier. UNHCR, “Voluntary Repatriation,” February 2009, <http://www.unhcr.org/49ba2f5e2.pdf> (accessed December 14, 2016), p. 2.

¹²⁴ UNHCR, “Volrep and Border Monitoring Monthly Update,” March 2014, <http://www.unhcr.org/50ab463b6.pdf> (accessed January 19, 2017), p. 1. For a review of deteriorating security in Afghanistan between 2009 and 2012, see the annual reports of the United Nations Assistance Mission in Afghanistan, <http://unama.unmissions.org/protection-of-civilians-reports> (accessed December 20, 2016).

¹²⁵ UNHCR estimates that “every year, approximately 60,000 children are born to Afghan refugees in Pakistan.” UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 9.

¹²⁶ UNHCR, “International Conference on the Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries,” May 3, 2012, <http://www.unhcr.org/afghanistan/solutions-strategy.pdf> (accessed December 22, 2016). Iran also hosts large numbers of Afghan refugees. In the six years leading up to the 2012 Solutions Strategy, Iran deported several hundred thousand undocumented Afghans back home, but only 49,340 Afghans voluntarily returned with UNHCR help. Isabel Mehlmann, “Migration in Afghanistan: A Country Profile 2011,” Maastricht Graduate School of Governance, undated, <http://digitalarchive.maastrichtuniversity.nl/fedora/get/guid:85a6d61b-cf54-4d07-881e-c6b1b92444c3/ASSET1> (accessed December 22, 2016), p. 63; UNHCR, “UNHCR Afghanistan Update on Volrep and Border Monitoring,” October 2012, <http://www.refworld.org/pdfid/50aa19b52.pdf> (accessed January 19, 2017), p. 1.

shelter ... essential social services [and] improved and diversified livelihood opportunities and enhanced food security.”¹²⁷

Over the next two years, increased insecurity and “the complex political situation” in Afghanistan resulted in the strategy making little progress.¹²⁸ In the meantime, the rate at which Afghan refugees returned from Pakistan continued to drop in 2013 to about 30,000 and hit a low of about 12,300 in 2014.¹²⁹

Despite the deteriorating security conditions in Afghanistan as well as Pakistani police abuses against Afghans at the time, UNHCR, at a Tripartite Agreement meeting with Afghanistan and Pakistan in March 2015, committed to helping the two countries raise money to implement a new “enhanced voluntary return and reintegration package.”¹³⁰

UNHCR proposed to “incentivize return” and “mitigate the negative consequences of unprepared return” by complementing the \$200 UNHCR cash grant for returning refugees with a \$3,000 grant for each family, irrespective of size. UNHCR said the initiative was based on the “historical[ly] low” return numbers in 2013 and 2014, the need to address Pakistan’s “legitimate expectations to see increased voluntary return trends in the near future [and] a sense of asylum fatigue [and] dwindling donor support,” and on a claim that “the majority of Afghan refugees have cited economic concerns, lack of livelihoods, land, shelter and limited access to basic services in Afghanistan as the main obstacles to return.” The document also said that “the positive developments in Afghanistan” in 2014 meant the country was now entering “a landmark year” and “a new chapter in its history,”

¹²⁷ Leo Dobbs and Babar Baloch, “Afghan Conference: Delegates endorse solutions strategy for refugees,” May 3, 2012, <http://www.unhcr.org/news/makingdifference/2012/5/4fa28abb9/afghan-conference-delegates-endorse-solutions-strategy-refugees.html> (accessed December 22, 2016); UNHCR, “Solutions Strategy for Afghan Refugees: Update 2015 – 2016,” p. 8.

¹²⁸ “Solutions Strategy for Afghan Refugees: Update 2015 – 2016,” p. 21; SIGAR, “Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy,” August 2015, <https://www.sigar.mil/pdf/audits/sigar-15-83-ar.pdf> (accessed January 19, 2017). For a review of deteriorating security in Afghanistan in 2013 and 2014, see the annual reports of the United Nations Assistance Mission in Afghanistan: <http://unama.unmissions.org/protection-of-civilians-reports> (accessed December 20, 2016).

¹²⁹ UNHCR, “Volrep and Border Monitoring Monthly Update,” March 2014,” p. 1.; UNHCR, “Voluntary Repatriation and Borer Monitoring Monthly Update: 1 January – 31 December 2015, undated, <http://www.refworld.org/pdfid/56ccoed2a.pdf> (accessed December 22, 2016), p. 1.

¹³⁰ UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 4.

which provided “an unprecedented impetus to ... support the fulfilment of the aspirations of Afghans outside their country to exercise their legitimate ‘right to return.’”¹³¹

UNHCR’s proposal fell on deaf donor ears and was never implemented, yet despite the deteriorating security situation in Afghanistan, the language reflects UNHCR’s intention to use enhanced return support to encourage more Afghan refugees to repatriate from Pakistan.

Doubling the Cash Grant to Returning Refugees

Pakistani police abuses in the first half of 2015 fueled the return of large numbers of Afghan refugees, but the numbers decreased again in the second half of the year and returned to a trickle in the first half of 2016 with only 6,875 returning.¹³²

At the end of June 2016, Filippo Grandi visited Islamabad, his first destination as the refugee agency’s new high commissioner.¹³³ According to a senior UN official, Pakistani officials frustrated about the low return numbers told him that if UNHCR wanted Pakistan to extend Afghan refugees’ Proof of Registration cards for a further six months, the international community needed to help Pakistan deal with its Afghan refugee burden. They cited by way of example the European Union’s €3 billion deal with Turkey to host Syrian refugees and prevent them from boarding boats to Greece.¹³⁴

On June 29, UNHCR announced it was doubling its cash support to returning Afghan refugees to \$400, including average transportation costs.¹³⁵ The rate of increase was significant

¹³¹ UNHCR, “Enhanced Voluntary Return and Reintegration Package for Afghan Refugees (EVRRP): Funding Proposal,” March 2015, <http://www.unhcr.org/562defe26.pdf> (accessed January 19, 2017), p. 4.

¹³² UNHCR, “Afghanistan: Voluntary Repatriation and Border Monitoring Monthly Update, January – June 2016,” undated, https://www.humanitarianresponse.info/system/files/documents/files/june_2016_volrep_update.pdf (accessed January 19, 2017), p. 1.

¹³³ Ayaz Gul, “UNHCR to Pakistan: Not All Afghan Refugees Are Terrorists,” *Voice of America*, June 23, 2016, <http://www.voanews.com/a/unhcr-pakistan-afghan-refugees-terrorists/3389461.html> (accessed December 22, 2016).

¹³⁴ Human Rights Watch interview, late 2016; Human Rights Watch, *EU Policies Put Refugees at Risk*, November 23, 2016, <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>.

¹³⁵ UNHCR, “UNHCR doubles grant for registered Afghan refugees opting to return to Afghanistan,” June 29, 2016, <http://unhcrpk.org/unhcr-doubles-grant-for-registered-afghan-refugees-opting-to-return-to-afghanistan/> (accessed December 22, 2016). UNHCR gives returning Afghan refugees cash to “help [them] during the critical period of initial integration/re-integration” by covering “immediate needs including transport costs, initial expenses on return and to facilitate initial stages of integration.” UNHCR, “Repatriation of Afghan Refugees from Pakistan: Revised Supplementary

compared to previous increases.¹³⁶ It also meant that the average family, with seven members, would receive \$2,800, a significant amount of money for impoverished Afghans.¹³⁷

A senior UN official told Human Rights Watch that UNHCR took the decision to double the grant in exchange for a promise by the Pakistani authorities to extend Afghan refugees' status in Pakistan until the end of 2016, saying UNHCR was "literally buying protection space."¹³⁸ The same day—a day before Pakistan's deadline for deporting Afghan refugees was due to kick in—the authorities extended Afghans refugees' status for a further six months, until December 31.¹³⁹

Many returning Afghan refugees told Human Rights Watch that UNHCR's cash handout was an important factor in their decision to return after Pakistani police abuses started.¹⁴⁰

This cash "pull factor" effect should not have been surprising to UNHCR, which knew from a 2009 study it commissioned into the impact of UNHCR's cash grant to Afghan refugees returning home from Iran and Pakistan what level of support would incentivize greater numbers of Afghan refugees to leave Pakistan.¹⁴¹

Appeal, September – December 2016," October 28, 2016, <http://www.unhcr.org/partners/donors/5817147f7/unhcr-repatriation-afghan-refugees-pakistan-revised-supplementary-appeal.html> (accessed December 22, 2016), p. 7; Human Rights Watch email exchange with UNHCR, December 22, 2016.

¹³⁶ Starting in 2003, UNHCR gave returning refugees between \$4 and \$37, which it increased to \$60 in January 2007. IRIN, "Pakistan: Registration open to more Afghan refugees," January 4, 2007, <http://reliefweb.int/report/pakistan/pakistan-registration-open-more-afghan-refugees> (accessed December 22, 2016). Three months later this rose to \$100. IRIN, "UNHCR increases cash grant for repatriation," March 20, 2007, <https://www.irinnews.org/fr/node/236030> (accessed December 22, 2016). In 2011, the grant went up to \$150. Isabel Mehlmann, "Migration in Afghanistan: A Country Profile 2011," p. 58. In 2014, it increased to \$200. UNHCR, "Solutions Strategy for Afghan Refugees: Progress Report 2014," <http://www.unhcr.org/en-us/562a44639.pdf> (accessed January 19, 2017), p. 5.

¹³⁷ For an average-sized Afghan family of seven, \$2,800 is a considerable amount of money. Aid agencies in Kabul say that the average state-paid senior teacher, who earns double the amount of junior teachers, earns a maximum of \$225 per month and that an average displaced Afghan family requires \$1,200 per year for food, about \$1000 in shelter support and about \$200 for essential non-food items such as cooking utensils and jerry cans. Human Rights Watch email exchange with humanitarian agency, Kabul, January 2017.

¹³⁸ Human Rights Watch interview, late 2016.

¹³⁹ Tahir Khan and Iftikhar Firdous, "Pakistan extends Afghan refugees stay until end of 2016," June 29, 2016, *The Express Tribune*, <http://tribune.com.pk/story/1132923/pakistan-extends-afghan-refugees-stay-says-ambassador/> (accessed December 22, 2016).

¹⁴⁰ See chapter 2 of this report.

¹⁴¹ Altai Consulting, "UNHCR's Voluntary Repatriation Program: Evaluation of the Impact of the Cash Grant," March 2009, <http://www.unhcr.org/research/evalreports/4fcf23349/unhcrs-voluntary-repatriation-program-evaluation-impact-cash-grant-altai.html> (accessed December 22, 2016).

The study found that “returnees from Iran were rather less dependent on the grant than returnees from Pakistan, supporting the widely held belief that refugees living in Pakistan are more vulnerable than the refugees living in Iran;” that “nearly half the returnees relied heavily on the cash grant to return;” that “80% of the families who did not return were prevented [from doing] so because of [a] lack of social and physical assets in Afghanistan” and that those families “suggested a grant between \$300 and \$400 would be more effective at enticing them to return;” that non-cash support was not likely to “be either as efficient as the cash grant system, or encourage the same levels of return;” that “the cash grant is in many cases enabling refugees, who do not have existing social or physical assets in Afghanistan, to make the move to return home” but that they “regard the \$100 on average per person offered as insufficient to counter the high risk of returning, especially in situations where returning families do not have family, houses or land in Afghanistan;” and, in conclusion, that “UNHCR should consider the impact of raising the cash grant up to higher levels, which may prove to be enticing enough to encourage the remaining refugee families, often who do not have social or physical assets in Afghanistan, to return.”¹⁴²

In 2014, UNHCR concluded that “more than 30% of Afghan returnees in 2014 cited UNHCR assistance packages as a pull factor to return.”¹⁴³

Although Pakistan’s police had not yet unleashed their latest round of abuses against Afghans, UNHCR had good reason to be skeptical of the conditions in Afghanistan to which Afghan refugees responding to its increased June 2016 cash grant incentive would return.

According to a July 2016 UNHCR report, which was drafted before increased numbers of Afghans started fleeing police abuses in mid-July, “rapidly deteriorating security in most parts of Afghanistan” had killed more civilians than at any time since 2009 and triggered “unprecedented” internal displacement which meant the country had “reverted back to a humanitarian emergency” and “dire socio-economic conditions” that the “humanitarian

¹⁴² Altai Consulting, “UNHCR’s Voluntary Repatriation Program: Evaluation of the Impact of the Cash Grant,” pp. 3 – 6.

¹⁴³ UNHCR, “Enhanced Voluntary Return and Reintegration Package for Afghan Refugees (EVRRP): Funding Proposal,” p. 2.

community is severely constrained in addressing ... due to increasing insecurity and ... dwindling resources.”¹⁴⁴

UNHCR’s Complicity in Mass Forced Refugee Return in the Second Half of 2016

UNHCR Rules on Voluntary Return

Since signing the 2003 Tripartite Agreement with Afghanistan and Pakistan, UNHCR has facilitated the return of millions of Afghan refugees, which its “*Handbook on Voluntary Repatriation*” (“the Handbook”) says the agency may only do if repatriation is voluntary in nature.¹⁴⁵

The Handbook sets out two clear conditions for repatriation to be considered voluntary.

First, whether a return is voluntary “must be viewed in relation to ... conditions in the country of origin (calling for an informed decision).” UNHCR should not promote or facilitate refugee return based on presumptions about how well-informed refugees are about conditions in the home country. It has a responsibility to ensure that refugees are making an informed choice based on up-to-date, objective, and accurate information about security conditions and availability of assistance to reintegrate in their home country. The Handbook spells out that:

information campaigns are UNHCR's core responsibility and principal mechanism to promote voluntary repatriation and to ensure that refugees' decisions are taken in full knowledge of the facts. Where UNHCR is only facilitating (spontaneous) repatriation, information campaigns with a view to promoting voluntary repatriation are not normally appropriate. However, the provision of accurate and objective information on the situation in the country of origin by UNHCR will be an important activity.¹⁴⁶

¹⁴⁴ UNHCR, “UNHCR Regional Plan – Building Resilience and Solutions for Afghan Refugees in South-West Asia,” July 2016, <http://reporting.unhcr.org/sites/default/files/UNHCR%20Regional%20Plan%20-%20Building%20resilience%20%26%20solutions%20Afghan%20refugees%20in%20SWA%201JUL16-31DEC17.pdf> (accessed January 19, 2017), p. 2.

¹⁴⁵ UNHCR, “Handbook on Voluntary Repatriation,” pp. 5 – 6.

¹⁴⁶ *Ibid.*, p. 32.

It goes on to list various methods UNHCR may use when facilitating refugee return to ensure refugees are informed about what they face back home.

Second, whether a return is voluntary “must be viewed in relation to ... the situation in the country of asylum (permitting a free choice).”¹⁴⁷

[Refugees] need to know about what will happen in the event they decide not to volunteer for repatriation” and that “repatriation is not voluntary when host country authorities deprive refugees of any real freedom of choice through outright coercion or measures such as, for example, reducing essential services [and] encouraging anti-refugee sentiment on the part of the local population.”¹⁴⁸

In addition,

one of the most important elements in [UNHCR’s] verification of voluntariness is the legal status of the refugees in the country of asylum. If refugees are legally recognized as such, their rights are protected and if they are allowed to settle, their choice to repatriate is likely to be truly free and voluntary. If, however, their rights are not recognized, if they are subjected to pressures and restrictions ...they may choose to return, but this is not an act of free will.¹⁴⁹

The Handbook says that before concluding refugees are returning voluntarily, UNHCR must “be convinced that the positive pull-factors in the country of origin [i.e. security and assistance] are an overriding element in the refugees’ decision to return rather than possible push-factors in the host country [i.e. pressure to leave].”¹⁵⁰

¹⁴⁷ Ibid., p. 10.

¹⁴⁸ Ibid., pp. 30, 34.

¹⁴⁹ Ibid., p. 10.

¹⁵⁰ Ibid., p. 10.

The Handbook adds that where UNHCR is not convinced returns are voluntary, “it is essential to declare clearly to the authorities concerned that UNHCR is opposed to the action and to seek corrective measures. This should be done both in the field and at Headquarters and, if necessary, at the highest level through the intervention of the High Commissioner.”¹⁵¹

The Handbook also says UNHCR may “facilitate” or “promote” voluntary repatriation. It says UNHCR may facilitate return “when refugees indicate a strong desire to return voluntarily and/or have begun to do so on their own initiative, even where UNHCR does not consider that, objectively, it is safe for most refugees to return,” but that “this term should be used only when UNHCR is satisfied that refugees' wish to return is indeed voluntary and not driven by coercion.”¹⁵² It adds that if UNHCR does facilitate voluntary repatriation, it should only “provide those returning with limited material assistance for their return,” to avoid creating too much of a pull factor that overly encourages refugees to return to unsafe conditions and plays into the hands of authorities coercing out refugees.¹⁵³

The Handbook says UNHCR may go one step further than facilitation and actively “promote” voluntary repatriation by “actively undertaking broad and wide-ranging measures to advocate refugees' return,” but that it may only do so “when a careful assessment of the situation shows that the conditions of [return in] “safety and dignity” can be met: in other words, when it appears that objectively, it is safe for most refugees to return and that such returns have good prospects of being durable.”¹⁵⁴

It warns that “voluntary repatriation is not a durable solution in the absence of the returnees' reintegration into the local community,” which it defines as “a gradual process often paralleled, over years, by national reconciliation and improvements in the economic, social and human rights fields.”¹⁵⁵ It also clarifies that UNHCR “has competence” for refugees after they have repatriated with UNHCR’s help because of the agency’s “general mandate to seek voluntary repatriation as a durable solution for refugees” and “recommends ... UNHCR formulate a country- and area-specific Reintegration Programme

¹⁵¹ Ibid., p. 31.

¹⁵² Ibid., p. 15.

¹⁵³ Ibid., p. 15.

¹⁵⁴ Ibid., p. 14.

¹⁵⁵ Ibid., p. 42.

Strategy which specifies the criteria and programme priorities in the area of reintegration.”¹⁵⁶ The Handbook further states that even if return leads to durable reintegration into local communities, “essential preconditions to be met for UNHCR to promote voluntary repatriation movements” include that “all parties must be committed to fully respect its voluntary character.”¹⁵⁷

The Tripartite Agreement commits Afghanistan, Pakistan and UNHCR to “cooperate to facilitate and assist the voluntary repatriation ... of Afghan[s]” and commits UNHCR to playing a “supervisory role in promoting, facilitating, coordinating and monitoring the voluntary repatriation of Afghan citizens in order to ensure that repatriation is voluntary and carried out in conditions of safety and dignity.”¹⁵⁸

UNHCR’s Failure to Criticize Pakistan’s Coerced Refugee Return

Until early 2015, the voluntary nature of most Afghan returns from Pakistan was not called into question. Pakistan’s police abuses in the first half of 2015 triggered a new spike of 58,000 refugee returns, up from 12,300 the year before. These abuses may have pushed many of the returnees to leave Pakistan and this would have amounted to coerced return and therefore refoulement.

But beginning in late June 2016, it became clear that the level of abuses, insecure legal status and related government deportation threats stripped countless Afghan refugees of any real choice, but to leave Pakistan. From July through December, 363,227 registered Afghan refugees returned to Afghanistan from Pakistan, with 145,955 returning during the month of October alone and only 135 returning in December.¹⁵⁹

During this time, UNHCR failed to call for an end to coercive government practices, not once publicly stating that many returning refugees were primarily fleeing police abuses and fear of deportation and were therefore victims of large-scale refoulement. Instead, UNHCR merely reiterated its October 2015 plan to “continue to facilitate returns in safety

¹⁵⁶ Ibid., p. 53.

¹⁵⁷ Ibid., p. 14.

¹⁵⁸ UNHCR, “Tripartite Repatriation Agreement between UNHCR and the Governments of Pakistan and Afghanistan.”

¹⁵⁹ The total for the year was 370,102. UNHCR, “Afghanistan: Update on refugee return trends, 31 December 2016.”

and dignity, monitor their voluntary nature ... and raise concerns as necessary with the relevant [Pakistani] counterparts.”¹⁶⁰

UNHCR told Human Rights Watch in late October 2016 that returning Afghan refugees told its staff in Kabul about Pakistan police abuses and other factors that drove them out of Pakistan. UNHCR said that its office in Islamabad “raises their concerns with the Pakistani authorities.”¹⁶¹

UNHCR’s protection mandate requires it to raise protection concerns with governments abusing refugee rights, including, as in the case of Pakistan in 2016, police violence, extortion, arbitrary detention, harassment and denial of access to education.¹⁶²

However, UNHCR’s decision not to criticize Pakistan’s coercion of refugees meant its discrete behind-the-scenes interventions on individual abuse cases or localized abuses were woefully inadequate to end the widespread abuses affecting hundreds of thousands of Afghans and which continued unabated for at least three months.

In contrast to its claim to Human Rights Watch that the agency conducted closed-door advocacy with the government of Pakistan during the second half of 2016, UNHCR consistently referred publicly to its “facilitation” of “voluntary repatriation” of Afghan refugees.¹⁶³ In early September, seven weeks after the abusive returns began, UNHCR announced it was opening a new voluntary repatriation center in Peshawar to help cope with the massive numbers of returnees.¹⁶⁴

UNHCR also used convoluted language in statistical updates and other documents with low public circulation to avoid labeling Pakistan’s coercion of refugees’ return as “refoulement.”

¹⁶⁰ UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 14.

¹⁶¹ Human Rights Watch interview with UNHCR, Kabul, October 31, 2016.

¹⁶² Information received from UNHCR Pakistan by email, December 2016, on file with Human Rights Watch; UNHCR, “Summary of Legal Assistance and Aid Programme: January to September 2016,” undated, http://unhcrpk.org/wp-content/uploads/2013/12/Arrest_Detention-Summary-Jan-Sep-2016-ver1.pdf (accessed January 19, 2017), p. 1 – 2.

¹⁶³ For one of many examples of UNHCR’s continued reference throughout late 2016 to “voluntary repatriation” of Afghan refugees from Pakistan, see UNHCR, “Voluntary Repatriation Update, October 2016.”

¹⁶⁴ Tahir Khan, “Government extends Afghan refugees’ stay until early 2017.”

On June 23, 2016, UNHCR made its most critical statement of Pakistan to date, saying “there is now a concerted push from the Pakistan government to repatriate a large number of ... almost one million refugees.”¹⁶⁵ In early September, UNHCR signed onto a donor appeal that said there had been a “dramatic rise in push factors ... influencing return decision-making” and that the “sudden increase in return was not anticipated by humanitarian agencies and has coincided with the drastic deterioration in the protection and political environment for Afghans within Pakistan, both Proof of Residency [sic] (PoR) card-holders and the undocumented.”¹⁶⁶

And writing in a personal capacity in a UN inter-agency document, in September, UNHCR’s representative in Afghanistan said that the massive increase in returning Afghans, including refugees, was due to “a dramatic increase in push factors, in the form of increased extortion, harassment and intimidation by local officials, contraction of freedom of movement and a subsequent limitation on income generation activities, ... a wave of anti-Afghan sentiment within Pakistan ... and a dramatic worsening of longstanding protective relations within host communities.”¹⁶⁷

In a further donor appeal in late October, UNHCR listed a number of non-coercive factors explaining why refugees might be returning, adding that other factors included the fact that “refugees remain anxious about what may happen” when their Proof of Registration cards expire at the end of March 2017 and that “a number of returning refugees continue to cite incidents of harassment and detention.” UNHCR added that “these dynamics underscore the critical differences of the current population flows with return patterns in previous years.”¹⁶⁸

On November 6, UNHCR noted that “push factors” and “the protection situation” meant there had been a “changing dynamic” and an “unexpected exponential return of Afghans

¹⁶⁵ UNHCR, “After decades in Pakistan, more Afghan refugees set to return,” June 23, 2016, <http://www.unhcr.org/news/latest/2016/6/576bdoa84/decades-pakistan-afghan-refugees-set-return.html> (accessed December 22, 2016).

¹⁶⁶ UNOCHA, “Afghanistan Flash Appeal: One Million People on the Move, Covering Sep – Dec 2016,” September 7, 2016, https://www.humanitarianresponse.info/system/files/documents/files/afg_2016_flash_appeal_o.pdf (accessed December 22, 2016), p. 12.

¹⁶⁷ UN Inter-Agency Update, “Population Movement Bulletin, Issue 5,” p. 1.

¹⁶⁸ UNHCR, “Repatriation of Afghan Refugees from Pakistan: Revised Supplementary Appeal, September – December 2016,” p. 5.

in difficult circumstances since July,” which returnees described as “a lack of labour opportunities and ... self-imposed restriction of movement ... due to police harassment and changing attitude of locals, hosting communities and local authorities, [the] possible suspension of UNHCR’s assistance, [fear] of arrest or intimidation ... and the uncertainty of the renewal of [Proof of Registration] cards beyond March 2017.” The document added that “reports of harassments tend to be minimal and the decision for return is reportedly preventive, i.e. to avoid the effects of a possible deterioration of the situation.”¹⁶⁹

On November 10, UNHCR responded to media inquiries about whether the agency agreed that Pakistan was illegally forcing out Afghan refugees by saying that “the return of registered Afghan refugees from Pakistan is a repatriation in less than ideal circumstances and is the result of a number of factors.”¹⁷⁰ The agency didn’t elaborate on those factors or whether it regarded “less than ideal circumstances” as a violation of Pakistan’s obligations.

In late November, UNHCR’s Afghanistan representative said that there was “a crisis of protection in Pakistan, in the sense of the level of harassment, intimidation and lack of support from host communities,” but went no further.¹⁷¹

UNHCR also did not state that Pakistan’s abuses and the resulting coerced return of Afghan refugees violated Pakistan’s obligations under the Tripartite Agreement to ensure that Afghans return voluntarily to their country. UNHCR thereby was acting in violation of its own supervisory obligation under the Tripartite Agreement to ensure that repatriation was voluntary in nature.

UNHCR’s decision not to criticize the Pakistani authorities’ coercion of Afghan refugees into leaving the country has frustrated some of its more junior staff in the region. In early November, the head of UNHCR’s sub-office in the Afghan border town of Jalalabad told the media, “I personally don’t see this as a voluntary repatriation ... When you are harassed,

¹⁶⁹ UNHCR, “Afghanistan: Update on Refugee Return Trends,” November 6, 2016, unpublished document on file with Human Rights Watch.

¹⁷⁰ Jared Ferrie and Aamir Saeed, “Will the UN become complicit in Pakistan’s illegal return of Afghan refugees?” *IRIN*, November 10, 2016, <http://www.irinnews.org/fr/node/259148> (accessed December 22, 2016).

¹⁷¹ Homa Dorothy Parvaz, “A hard winter: Afghan refugees return from Pakistan,” *Al Jazeera*, November 24, 2016, <http://www.aljazeera.com/indepth/features/2016/11/hard-winter-afghan-refugees-return-pakistan-161123070304234.html> (accessed December 22, 2016).

intimidated, rounded up by police, taken to court, forced to pay bribes, you are being forced to leave.”¹⁷² At the end of November, one of UNHCR’s repatriation assistants in Kabul said: “We call these people ‘voluntary returnees,’ but they really don’t have a choice - this is not voluntary.”¹⁷³

UNHCR’s Promotion of Involuntary Refugee Return

Many Afghan refugees interviewed by Human Rights Watch said that UNHCR’s cash grant was key to taking the decision to return to Afghanistan. UNHCR told Human Rights Watch that many of the returnees it interviewed in Kabul and Jalalabad said the same.¹⁷⁴ When faced with leaving under pressure with \$400 per person compared to staying and risking deportation in the middle of winter with nothing, many decided it was time to go.

By doubling its cash support to each returning refugee to \$400 in late June 2016 and maintaining this support until mid-December 2016 while remaining publicly silent about Pakistan’s forced refugee return and instead referring publicly to UNHCR’s “voluntary repatriation” work, UNHCR was effectively promoting the repatriation of Afghan refugees.

Yet UNHCR did not fulfill the two conditions required under its mandate, as set out in its Handbook on Voluntary Repatriation and above, to promote refugee repatriation.

First, UNHCR had to be sure that the return was voluntary in nature, which meant both ensuring that refugees weren’t leaving due to coercion and that they were making an informed choice about conditions back home before they decided to return with UNHCR help.

But as this report makes clear, and as UNHCR itself has acknowledged in public documents, a range of factors drove Afghan refugees out of Pakistan against their will. UNHCR was also aware that widespread insecurity and economic collapse in Afghanistan meant that returning refugees were, for the most part, unable to integrate into their home

¹⁷² Rod Nordland, “Afghanistan Itself Is Now Taking in the Most Afghan Migrants,” *The New York Times*, November 4, 2016, http://www.nytimes.com/2016/11/05/world/asia/afghanistan-migrants.html?_r=0 (accessed December 22, 2016).

¹⁷³ Homa Dorothy Parvaz, “A hard winter: Afghan refugees return from Pakistan.”

¹⁷⁴ Human Rights Watch interview with UNHCR, Kabul, October 31, 2016.

areas and other local communities and that vast numbers were becoming internally displaced persons.¹⁷⁵ However, UNHCR did nothing to proactively communicate this information to Afghan refugees contemplating return, so they could make an informed choice on whether to stay or go. UNHCR in Pakistan provide limited information to some Afghan refugees after they had packed up their belongings, loaded them onto trucks and went to UNHCR's Pakistan offices to sign voluntary repatriation forms which guaranteed them access to cash support at UNHCR's encashment centers in Afghanistan.¹⁷⁶ But by then it was too late. Instead, when the sustained nature of Pakistan's abuses and the resulting returnee numbers became clear, by late July or at the least early August, UNHCR should have proactively reached out to Afghan refugee communities in Pakistan to provide objective information about conditions in Afghanistan. Refugees would then have been in a position to make an informed choice on whether or not to prepare to leave Pakistan.

In January, returning Afghan refugees told an aid agency that when they signed repatriation forms at UNHCR's offices in Pakistan, UNHCR staff gave them no information about their home areas. They also said they were not well-informed through other sources, such as the media or relatives, about the security and humanitarian conditions in their home areas.¹⁷⁷

Second, UNHCR had to be sure that return was durable. Yet according to UNHCR's own interviews with returnees in Kabul, UNHCR was aware that the vast majority of returnees were unable to return to their home areas due to insecurity, and a lack of work and public services there.¹⁷⁸ UNHCR's knowledge of poor conditions for returnees in Afghanistan should have deepened in December 2016, when over a dozen countries in the region issued a declaration expressing "concern [about] ... the challenges that this sudden influx [into Afghanistan] presents for returnee re-integration programmes."¹⁷⁹

Even if UNHCR's cash support, failure to inform prospective returnees about conditions in Afghanistan, and public silence on the unlawful nature of Pakistan's coerced return of

¹⁷⁵ SIGAR, "Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy," p. 3. See also chapter 5 of this report.

¹⁷⁶ Human Rights Watch email exchanges with aid agencies in Afghanistan and Pakistan, December 2016 and January 2017.

¹⁷⁷ Human Rights Watch email exchange with aid agency, Kabul, January 26, 2017.

¹⁷⁸ See chapter 5 of this report.

¹⁷⁹ "Heart of Asia: Full Text of Declaration at Sixth Annual Conference in Amritsar," *The Indian Express*, December 4, 2016, <http://indianexpress.com/article/india/heart-of-asia-declaration-full-text/> (accessed December 22, 2016).

Afghans did not amount to “promotion” of refugee return, at best the agency facilitated Afghan’s repatriation from Pakistan, despite the involuntary nature of many of returns, and thereby acted in violation of its own mandate.

Failure of Humanitarian Country Teams and Other UN Agencies to Criticize Pakistan

The Humanitarian Country Teams (HCT) in Afghanistan and Pakistan have remained publicly silent about the specific factors driving out hundreds of thousands of Afghan refugees and whether Pakistan has violated its international legal obligations.¹⁸⁰

As of late January 2017, Pakistan’s HCT had made no comment of any kind on the return movement. In September 2016, Afghanistan’s HCT said that “since mid-July 2016 the rates of Afghans returning, both registered refugees and undocumented, suddenly skyrocketed [and that] this sudden increase has coincided with the drastic deterioration in the protection and political environment for Afghans within Pakistan.”¹⁸¹ In late December it said that there had been “a recent intensified repatriation effort by the Pakistan government who have warned they will forcefully expel thousands of refugee families if they don’t leave of their own initiative.”¹⁸² And in January it said that “for the majority” of Afghans returning from Pakistan in 2016, “return [was] reluctant” because they had been “pushed to return” as a result of “the deteriorating protection environment ... and growing push factors.”¹⁸³

Individual UN agencies have followed UNHCR’s lead, issuing statements in humanitarian documents not covered by the mainstream media that describe some of the pressures on Afghans in Pakistan, but stopping short of commenting on whether Pakistan has unlawfully forced refugees out against their will.

¹⁸⁰ A “Humanitarian Country Team” is an “operational decision-making ... forum established and led by the [UN’s] Humanitarian Coordinator ... responsible for agreeing on common strategic issues related to humanitarian action...” Its members include “representatives from the UN, IOM, international NGOs and the Red Cross/Red Crescent Movement.” UNOCHA, “Who does what?” undated, <https://www.humanitarianresponse.info/en/about-clusters/who-does-what> (accessed January 4, 2017).

¹⁸¹ UNOCHA, “Afghanistan Flash Appeal: One Million People on the Move, Covering Sep – Dec 2016,” p. 12.

¹⁸² UNOCHA, “Afghanistan: Humanitarian Needs Overview, 2017,” December 31, 2016, http://reliefweb.int/sites/reliefweb.int/files/resources/afg_2017_hno_english.pdf (accessed January 19, 2017), p. 11.

¹⁸³ OCHA, “Humanitarian Response Plan, 2017,” January 21, 2017, https://www.humanitarianresponse.info/system/files/documents/files/afg_2017_hrp_english.pdf (accessed January 25, 2017), p. 7, 31.

In September, IOM, which provides limited support to undocumented Afghans returning to their country, said “unprecedented numbers” of Afghans were “fleeing increased incidents of violence, arbitrary arrest, detention, other forms of harassment” and “nighttime raids.”¹⁸⁴ In early January 2017, IOM referred to Afghans in Pakistan facing “diverse push factors, including deteriorating protection space.”¹⁸⁵ The agency did not refer to the likelihood that many who might have wanted to seek protection in Pakistan but were not allowed to, might have been victims of refoulement.

In early October, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) in Kabul referred to “a recent surge of tens of thousands of Afghan families returning from Pakistan, spurred by increasing incidents of detention, forced evictions, police raids and harassment.”¹⁸⁶ In January 2017, it added that Afghans were returning in record numbers from Pakistan “following continued pressure by Pakistani authorities through new visa requirements, shorter extension of proof of registration cards ... [and] restricted access to livelihoods, healthcare and education.”¹⁸⁷

Finally, in late January 2017, a UN interagency report said that “economic hardship in Pakistan with access to economic opportunities and job markets often affected by the prevailing protection situation for Afghans, as well as harassment and intimidation, arbitrary arrest, night raids on homes, extortion and bribery were reported as the primary push factors influencing refugees’ decision to return, with marked differences between the first and second halves of 2016.”¹⁸⁸

¹⁸⁴ IOM, “Crisis Looms Amid Skyrocketing Numbers of Afghan Returnees from Pakistan: IOM,” September 9, 2016, <http://www.iom.int/news/crisis-looms-amid-skyrocketing-numbers-afghan-returnees-pakistan-iom> (accessed December 22, 2016); Nicholas Bishop, “Between a Rock and A Hard Place – the Mass Return to Afghanistan.”

¹⁸⁵ IOM, “Return of Undocumented Afghans: Weekly Situation Report, 25 – 31 December 2016,” p. 1.

¹⁸⁶ UNOCHA, “Afghanistan Humanitarian Bulletin, September 2016,” p. 1.

¹⁸⁷ UNOCHA, “Afghanistan: Returnee Crisis, Situation Report No. 5,” January 12, 2017, https://www.humanitarianresponse.info/system/files/documents/files/afghanistan_returnee_crisis_situation_report_no_5_12jan2017.pdf (accessed January 19, 2017), p. 7.

¹⁸⁸ UN Inter-Agency Update, “Population Movement Bulletin, Issue 8,” January 26, 2016, p. 5.

Risk of Further UNHCR Complicity in Refoulement in 2017

On November 1, 2016, UNHCR announced it would suspend its cash support to returning Afghan refugees as of December 15, citing a depleted budget.¹⁸⁹ It also said it would re-open its repatriation centers on March 1, 2017 and that it would raise money to “sustain the amount” of money given to returnees in 2016 “to keep the repatriation process going.”¹⁹⁰ In late January 2017, UNHCR appealed for \$95.7 million to help resume its cash support to Afghan refugees returning from Pakistan.¹⁹¹

The Pakistani authorities have said publically that Afghan refugees’ Proof of Registration cards will expire on March 31, 2017. After that point they will be in the country illegally and subject to arrest and deportation. The Pakistani authorities have also made clear they want to see similar numbers return in 2017 as did in 2016.¹⁹² A UNHCR decision to resume its cash grant on March 1, just 31 days before deportations of registered Afghan refugees are due to begin, will be a key factor for many weighing up the pros and cons of staying or leaving and will amount to further promotion of involuntary refugee repatriation.

To avoid recreating in 2017 the conditions that coerced Afghan refugees to leave in 2016, and reflecting the deteriorating security and humanitarian conditions in Afghanistan that are not conducive to mass returns, the Pakistani government will need to revert to its previous policy of extending Proof of Registration cards by at least two years. Based on its March 31, 2017 deadline, which at least had the benefit of avoiding the threat of deportation in the middle of winter, the authorities should extend Proof of Registration cards until at least March 31, 2019. To avoid triggering further anxiety and coerced return, they should also commit to announcing by October 31, 2018 at the latest, whether or not they plan to extend the cards by a further two years beyond that date.

¹⁸⁹ See chapter 2 of this report.

¹⁹⁰ UNHCR, “Winter Suspension of Facilitated Voluntary Repatriation from Pakistan,” undated, <http://unhcrpk.org/wp-content/uploads/2016/11/Winter-suspension-of-facilitated-voluntary-repatriation-from-Pakistan-English.pdf> (accessed December 22, 2016); Jared Ferrie and Aamir Saeed, “Will the UN become complicit in Pakistan’s illegal return of Afghan refugees?”

¹⁹¹ OCHA, “Humanitarian Response Plan, 2017,” p. 31.

¹⁹² Riazul Haq, “Afghan refugees may be allowed to stay on till 2018,” *The Express Tribune*, December 4, 2016, <http://tribune.com.pk/story/1252781/afghan-refugees-may-allowed-stay-till-2018/> (accessed January 13, 2017).

In contrast, if Pakistan maintains the March 31, 2017 deadline and does not publicly reassure Afghans that there will be no more police abuses against them, significant numbers of Afghan refugees will once again feel compelled to leave Pakistan.

UNHCR told Human Rights Watch that the agency feared that Pakistan's pressure on Afghan refugees to leave would continue regardless of the agency's support to returnees and that withdrawing cash from them would expose them to increased suffering after they return to Afghanistan.¹⁹³

However, UNHCR is aware that in 2016 Pakistan's deportation deadlines and police abuses, combined with UNHCR's cash support, did, in fact, drive vast numbers of Afghan refugees out of Pakistan against their will and back home to destitution.

Should UNHCR determine it is obliged for humanitarian reasons to provide returnees with cash support, it should publicly state Pakistan is in breach of the Tripartite Agreement, suspend UNHCR's participation in the Agreement until the coercion ends, and make clear that UNHCR is providing returning Afghans with support on a purely humanitarian basis and not on the false pretense of facilitating voluntary returns. Failing to state Pakistan is in breach of the Tripartite Agreement and continuing to participate in the Agreement would send a signal globally that UNCHR considers Pakistan's forced returns to in fact be voluntary returns.

UNHCR should only confirm Pakistan is respecting the terms of the Tripartite Agreement if Pakistan extends Proof of Registration cards until at least March 31, 2019 and ends police abuses against Afghan refugees and unregistered Afghans. In the meantime, the agency should clearly and publicly condemn any renewed refoulement of Afghan refugees.

¹⁹³ Human Rights Watch interview, UNHCR Kabul, October 31, 2016.

V. The Situation Returnees Face in Afghanistan

Pakistan's mass forced return of Afghan refugees comes at a very difficult time for Afghanistan. Fighting in the country is at its highest levels since 2002 and has triggered a five-fold increase since 2011 in the number of civilians driven from their homes. The economy is in dire straits. In September 2016, the European Commission said that "the situation can no longer be considered a 'stabilisation phase', but has ... reverted to an increasingly acute humanitarian crisis."¹⁹⁴ In December, the UN said Afghanistan is "one of the most dangerous and most violent crisis ridden countries in the world."¹⁹⁵

Afghanistan's armed conflict—including suicide attacks, airstrikes and the use of improvised explosive devices and landmines—killed and injured almost the same amount of people in 2016 as in 2015, about 11,000, which is more than in any other year since systematic records began in 2009.¹⁹⁶ This brings the total number of recorded civilian deaths and injuries since 2009 to almost 75,000.¹⁹⁷ By the end of 2016, the conflict affected all 34 provinces.¹⁹⁸ US military forces in Afghanistan say that in August 2016, the Afghan government controlled only 64 percent of the country's districts, down from 72 percent in November 2015.¹⁹⁹

¹⁹⁴ European Commission, "Afghanistan Fact Sheet," September 2016, http://ec.europa.eu/echo/files/aid/countries/factsheets/afghanistan_en.pdf (accessed January 19, 2017), p. 2. The Global Peace Index for 2016 ranked Afghanistan the fourth most insecure country in the world after Syria, South Sudan and Iraq. Institute for Economics and Peace, "Global Peace Index, 2016," http://economicsandpeace.org/wp-content/uploads/2016/06/GPI-2016-Report_2.pdf (accessed January 25, 2017), p. 11.

¹⁹⁵ UNOCHA, "Afghanistan: Humanitarian Needs Overview, 2017," p. 5.

¹⁹⁶ EASO, "Country of Origin Information Report on Afghanistan: Security Situation," November 2016, http://www.ecoi.net/file_upload/90_1479191564_2016-11-09-easo-afghanistan-security-situation.pdf (accessed December 22, 2016), p. 30; Human Rights Watch email exchange with UNAMA, January 13, 2017. The United Nations Mission in Afghanistan started keeping records of civilian casualties in 2009. UNAMA, "Afghanistan: Record Level of Civilian Casualties Sustained in First Half of 2016: UN report," July 25, 2016, <http://unama.unmissions.org/afghanistan-record-level-civilian-casualties-sustained-first-half-2016-un-report> (accessed December 22, 2016).

¹⁹⁷ The 11,000 casualties in 2016, were preceded by 65,000 casualties between 2009 and 2015. EASO, "Country of Origin Information Report on Afghanistan: Security Situation," p. 30.

¹⁹⁸ UN Inter-Agency Update, "Population Movement Bulletin, Issue 5," p. 2.

¹⁹⁹ Special Inspector General for Afghanistan Reconstruction, "High-Risk List," January 2017, <http://snagfilms-a.akamaihd.net/21/97/67b9doe24bfb9f01608553c9eceb/high-risk-list.pdf> (accessed January 19, 2017), p. 2.

After decades of war, Afghanistan remains one of the world's poorest countries.²⁰⁰ Foreign investment and aid decreased significantly in 2014 after the withdrawal of most foreign troops and an increase in insecurity, triggering an economic downturn with gross domestic product plummeting from an average of 9.8 percent growth between 2003 and 2012, to 0.8 in 2015.²⁰¹ Most of the population lives in poverty, struggling to obtain work, housing, clean water, electricity and medical care.²⁰² As of January 2017, the UN estimated that a third of the country's estimated population of 27 million people required humanitarian assistance.²⁰³

Almost ten percent of children die before their fifth birthday and only half of all children in Afghanistan are enrolled in schools.²⁰⁴ An aid agency assessment in November 2016 found that significant numbers of Afghans returning from Pakistan were sending their children to work and considering marrying off daughters who are children to help families survive.²⁰⁵

In December 2016, UNHCR warned that the massive number of returns from Pakistan was heavily affecting "local markets, housing options, pressure on land availability, and access to livelihoods," that "the [resulting] pressure on the [Afghan] government and international humanitarian and development actors was enormous," and that the situation could "develop into a major humanitarian crisis if not sufficiently addressed."²⁰⁶

²⁰⁰ Valentina Pasquali, "The Poorest Countries in the World, 2015," *Global Finance*, undated, <https://www.gfmag.com/global-data/economic-data/the-poorest-countries-in-the-world?page=12> (accessed December 22, 2016).

²⁰¹ EASO, "Country of Origin Information Report on Afghanistan: Security Situation," p. 30; UNHCR and World Bank, "Fragility and Population Movement in Afghanistan," October 3, 2016, <http://documents.worldbank.org/curated/en/315481475557449283/pdf/108733-REVISED-PUBLIC-WB-UNHCR-policy-brief-FINAL.pdf> (accessed January 19, 2017), p. 4.

²⁰² UNHCR and World Bank, "Fragility and Population Movement in Afghanistan," p. 4; European Commission, "Afghanistan Fact Sheet," p. 2.

²⁰³ UNOCHA, "Afghanistan: Humanitarian Needs Overview, 2017," p. 5.

²⁰⁴ UNHCR, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan," April 19, 2016, HCR/EG/AFG/16/02, <http://www.refworld.org/docid/570f96564.html> (accessed January 4, 2017), p. 27; EASO, "Country of Origin Information Report on Afghanistan: Security Situation," p. 34.

²⁰⁵ Save the Children, "Thousands of children face early marriage and child labour as education crisis takes hold among Afghan children repatriated from Pakistan," December 14, 2016, <https://www.savethechildren.net/article/thousands-children-face-early-marriage-and-child-labour-education-crisis-takes-hold-among> (accessed December 22, 2016).

²⁰⁶ UNHCR, "Observations on the Situation in Afghanistan, in Response to the German Ministry of the Interior," December 2016, <https://thruttig.files.wordpress.com/2017/01/20170111-unhcr-zu-silage-afg-reaktion-de-maziere.pdf> (accessed January 12, 2017), pp. 1 – 4.

Returning Refugees Becoming Internally Displaced Persons

In addition to many returnees having to cope with poverty and destitution, a significant proportion of Afghans returning from Pakistan risk joining Afghanistan's mushrooming population of internally displaced persons (IDPs), not least because humanitarian agencies have found that Afghans returning involuntarily to their country are less likely to reintegrate in their communities.²⁰⁷

The number of Afghans driven from their homes by conflict has rapidly increased from about 350,000 in early 2011 to 1.17 million by the end of 2015, with the rate of displacement increasing steadily each year.²⁰⁸ Some managed to return to their homes but in 2016, an additional 623,345 were displaced, more than in any year since reliable records on internal displacement began in 2012.²⁰⁹ Every province was affected.²¹⁰ The UN has said that "a cumulative estimate of the number of people displaced since 2009 and still unable to return home is anticipated to reach 1.5 million by the end of 2016," excluding the hundreds of thousands of returnees from Pakistan unable to return home.²¹¹ UNHCR says that displacement statistics are likely to under-represent the actual scale of

²⁰⁷ Norwegian Refugee Council and Samuel, Hall, "From Returns to Building Resilience: A Tool for NRC to measure change," unpublished document on file with Human Rights Watch. See also Belquis Ahmadi and Sadaf Lakhani, "The Forced Return of Afghan Refugees and Implications for Stability," *USIP Peace Brief*, no. 199, January 13, 2016, <http://www.usip.org/publications/2016/01/13/the-forced-return-of-afghan-refugees-and-implications-stability> (accessed January 19, 2017).

²⁰⁸ Amnesty International, "My Children Will Die this Winter: Afghanistan's Broken Promise to the Displaced," May 31, 2016, [file:///C:/Users/User/Downloads/ASA1140172016ENGLISH%20\(3\).PDF](file:///C:/Users/User/Downloads/ASA1140172016ENGLISH%20(3).PDF) (accessed December 22, 2016), p. 11; Internal Displacement Monitoring Centre, "Afghanistan: Country Information 2015," <http://www.internal-displacement.org/database/country/?iso3=AFG> (accessed January 4, 2017).

²⁰⁹ Bilal Sarwary, "Afghanistan now a 'continual emergency', as war drives record numbers from their homes," January 10, 2017, <https://www.irinnews.org/news/2017/01/10/afghanistan-now-%E2%80%99continual-emergency%E2%80%99-war-drives-record-numbers-their-homes> (accessed January 17, 2017).

²¹⁰ Jelena Bjelica, "Over Half a Million Afghans Flee Conflict in 2016: A look at the IDP statistics," *Afghanistan Analysts Network*, December 28, 2016, <https://www.afghanistan-analysts.org/over-half-a-million-afghans-flee-conflict-in-2016-a-look-at-the-idp-statistics/> (accessed January 4, 2017).

²¹¹ UNOCHA, "Afghanistan: Humanitarian Needs Overview, 2017," p. 14.

displacement in Afghanistan.²¹² The UN concedes the true number may involve “hundreds of thousands of unassessed and unassisted [IDPs].”²¹³

Although many Afghans live in grinding poverty, displaced persons live in some of the country’s worst conditions, surviving in makeshift shelters or in overcrowded structures with little protection from the cold and with scarce access to food and water.²¹⁴ Many live in urban slums but many also live in areas humanitarian agencies cannot reach for logistical or security reasons.²¹⁵

In line with the UN’s Guiding Principles on Internal Displacement, Afghanistan’s own policy defines IDPs as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters.”²¹⁶

The policy also says that IDPs include, among other groups: “returnees (returning refugees and migrants deported back to Afghanistan) who are unable to settle in their homes and/or places of origin because of insecurity resulting from armed conflict, generalized violence or violations of human rights, landmine or ERW [explosive remnants of war]

²¹² Statistics since 2012 are also likely to be incomplete as they do not include all IDPs living in urban areas who are often hard to identify, IDPs in inaccessible regions, or some refugees unable to return home who should be classified as IDPs. UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,” p. 28. See also Jelena Bjelica, “Over Half a Million Afghans Flee Conflict in 2016;” Anne-Kathrin Glatz, “Afghanistan: New and long-term IDPs risk becoming neglected as conflict intensifies,” *Internal Displacement Monitoring Centre*, July 16, 2015, <http://www.internal-displacement.org/south-and-south-east-asia/afghanistan/2015/afghanistan-new-and-long-term-idps-risk-becoming-neglected-as-conflict-intensifies> (accessed January 4, 2017).

²¹³ UNOCHA, “Afghanistan: Humanitarian Needs Overview, 2017,” p. 15.

²¹⁴ Samuel Hall Consulting, “Policy Brief: National Policy on IDPs,” April 2015, <http://samuelhall.org/REPORTS/Afghanistan%20National%20IDP%20Policy%20Brief.pdf> (accessed January 19, 2017), p. 7; Amnesty International, “My Children Will Die this Winter,” pp. 28 – 43; UNHCR and World Bank, “Research Study on IDPs in urban settings – Afghanistan,” May 2011, http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1265299949041/6766328-1265299960363/WB-UNHCR-IDP_Full-Report.pdf (accessed January 19, 2017), pp. 31 – 36.

²¹⁵ UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,” pp. 29, 32.

²¹⁶ Ministry of Refugees and Repatriation, “The National Policy of the Islamic Republic of Afghanistan on Internal Displacement,” November 25, 2013, www.refworld.org/docid/52f0b5964.html (accessed December 22, 2016), section 3.1; UN Guiding Principles on Internal Displacement, November 1998, <http://www.internal-displacement.org/publications/1998/ocha/> (accessed December 22, 2016), Introduction, paragraph 2.

contamination on their land, land disputes or tribal disputes.”²¹⁷ It states that displacement ends when a displaced person finds “a place to live with security of tenure, access to basic services and livelihood on a par with others who were not displaced.”²¹⁸

Almost every returning Afghan whom Human Rights Watch interviewed said they were unable to return to their homes due to a lack of land, property or security. According to UNHCR and IOM interviews with thousands of returnees from Pakistan about their intentions on return, significant numbers have no homes or land and are living in tents in urban informal settlements or far-flung towns and villages, or temporarily renting rooms, apartments or houses.²¹⁹

In October 2016, a survey coordinated by the UN OCHA and the Norwegian Refugee Council found that hundreds of returnee families were living under open skies and had either no food at all, or only enough for a few days, and that many were sending their children to work to help families survive.²²⁰ In November, a joint aid agency assessment found that undocumented Afghans returning from Pakistan were unable to return to their home areas due to a lack of security, work opportunities and basic social services, and that significant numbers were unable to find enough food or access clean water.²²¹

In late October, UNHCR and the United Nations deputy special representative for Afghanistan told Human Rights Watch that returnees from Pakistan will likely settle permanently in large numbers in informal urban squatter settlements, which risk turning into de facto camps with slum-like conditions.²²²

²¹⁷ Ministry of Refugees and Repatriation, “The National Policy of the Islamic Republic of Afghanistan on Internal Displacement,” section 3.1.

²¹⁸ Dacaar and Samuel Hall Consulting, “Agency and Choice Among the Displaced,” July 30, 2015, <http://www.baag.org.uk/sites/www.baag.org.uk/files/resources/attachments/SH%20-%20Agency%20choice%20displaced%20July%202015.pdf> (accessed December 22, 2016), p. 12.

²¹⁹ Human Rights Watch interview with UNHCR, Kabul, October 31, 2016; Human Rights Watch interview with IOM, Kabul, October 26, 2016; UNHCR, “Solutions Strategy for Afghan Refugees: Update 2015 – 2016,” p. 11.

²²⁰ UNOCHA, “Joint Assessment Summary – Eastern Region Returnee Crisis (27 September – 20 October),” https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/assessments/eastern_region_returnee_crisis_heat_assessment_report_nov2016_1.pdf (accessed December 22, 2016), pp. 7, 9.

²²¹ Joint aid agency assessment carried out in Kabul Province, November 2016, unpublished document on file with Human Rights Watch.

²²² Human Rights Watch interviews, October 31 and November 1, 2016.

In late December, the Afghan authorities said that 200,000 returnees from Pakistan had gone to Jalalabad, the provincial capital of Nangarhar, where at least half were renting property and many of whom expected to move on again once they had run out of money.²²³ In January 2017, the Humanitarian Country Team in Afghanistan said that returning Afghans in 2016 “add[ed] to the ranks of internally displaced, as conflict and lost community networks prevented them from returning to any ostensive place of origin” and that their “concentration ... in urban areas, ... the lack of absorption capacity, limited services and a lack of shelter poses serious humanitarian and secondary displacement risks.”²²⁴

This dire situation reflects a long-standing pattern for refugees returning from Iran and Pakistan. In early 2016, UNHCR said that as many as “40 per cent [of] Afghans who have returned in previous years experience severe difficulties in rebuilding their lives in Afghanistan” as a result of “on-going insecurity in their areas of origin, loss of livelihoods and assets, lack of access to health care and education, and difficulties in reclaiming land and property,” which means they have “been unable to reintegrate into their home communities, resulting in significant secondary displacement to mostly urban areas” where “access to basic services [there] remains a major concern.”²²⁵

In October 2016, a joint UNHCR and World Bank analysis of why Afghans returning from Iran and Pakistan could not return to their areas of origin, concluded that their home areas were saturated by large numbers of returnees, forcing them to move to other areas. The study concluded that “a high number of returns [in 2016] will likely result in an increase of internal displacement.” This view was shared by the UN Special Rapporteur on the human rights of internally displaced persons.²²⁶

Assistance to displaced persons in Afghanistan is minimal, at best. In late 2015 and early 2016, Amnesty International spoke with IDP communities it had visited in 2012 and

²²³ National Unity Government of Afghanistan, “Policy Framework for Returnees and IDPs,” December 27, 2016, unpublished document on file with Human Rights Watch.

²²⁴ OCHA, “Humanitarian Response Plan, 2017,” p. 7, 31.

²²⁵ UNHCR, “Eligibility Guidelines,” p. 31 – 32; UNHCR, “Solutions Strategy for Afghan Refugees: Update 2015 – 2016,” p. 11.

²²⁶ UNHCR and World Bank, “Fragility and Population Movement in Afghanistan,” p. 3; Sune Engle Rasmussen, “EU deportation of migrants ‘adds to Afghanistan’s instability’, says UN,” *The Guardian*, November 1, 2016, <https://www.theguardian.com/global-development/2016/nov/01/eu-deportation-of-migrants-adds-to-afghanistans-instability-says-un-united-nations> (accessed December 22, 2016).

found that if anything their conditions had worsened. Amnesty International found that displaced persons:

lived in squalid conditions, were often housed in makeshift shelters with no protection from the hot summers and cold winters, did not have enough food or water to get through the day, ... received minimal aid, if any at all, ... were routinely denied access to essential services like health care and education, and ... lived on the brink of survival.²²⁷

Amnesty International concluded in late 2016 that many displaced persons continue to “live on the brink of starvation with little access to basic services,” that “the dwindling resources of both the Afghan government and international actors is clear as most people reported receiving less aid than three years ago” and that Afghanistan’s 2013 National IDP Policy’s commitments to better assist and protect IDPs remained “nothing but a failed promise.”²²⁸

Humanitarian Response to Needs of Returnees

In 2015, the Afghan government adopted a “Comprehensive Voluntary Repatriation and Reintegration Strategy” to help returnees in a coordinated and comprehensive manner over a period of two years, though that was merged in mid-2016 with the implementation of the National IDP Policy into a “National Unified Action Plan.”²²⁹ In late 2016, the Afghan government announced a new framework for the authorities and UN agencies to respond to the mass influx of returnees from Pakistan and Iran.²³⁰ To-date, these processes have resulted in almost nothing tangible for Afghans returning from Pakistan and Iran.²³¹

²²⁷ Amnesty International, “My Children Will Die This Winter,” p. 7.

²²⁸ Amnesty International, “My Children Will Die This Winter: Afghanistan’s Broken Promise to The Displaced,” **Olof Blomqvist**, “The Millions Left Behind in Afghanistan,” June 1, 2016, <https://www.amnesty.org/en/latest/news/2016/06/afghanistan-the-millions-left-behind/> (accessed January 4, 2017). For further commentary on Afghanistan’s failure to implement its new IDP policy, see Anne-Kathrin Glatz, “Afghanistan: New and long-term IDPs risk becoming neglected as conflict intensifies,”

²²⁹ UNHCR, “Solutions Strategy for Afghan Refugees: Update 2015 – 2016,” p. 13; Human Rights Watch email exchanges with aid agency in Kabul, January 2017.

²³⁰ National Unity Government of Afghanistan, “Policy Framework for Returnees and IDPs.”

²³¹ Human Rights Watch email exchange with aid agencies in Kabul, December 2016 and January 2017.

The Afghan authorities have made little progress in allocating land to families among the vast number of returning Afghan refugees and Afghans displaced inside the country by conflict who are unable to return to their home areas.²³² Since 2006, only a few thousand families have been given any land, after years of struggling to navigate government bureaucracy.²³³ In late 2016, the Afghan authorities and UN agencies had adopted new coordination structures to improve identification and development of sites for this purpose.²³⁴ As a result of these long-standing failures, aid agencies say it is highly unlikely that any Afghans returning from Pakistan during the second half of 2016 who were unable to return home, were able to move onto new land under government land allocation initiatives.²³⁵

Even before the 2016 returnee crisis began to unfold, humanitarian agencies had limited access to IDPs and returnees. In April 2016, UNHCR reported that “the current operational environment in Afghanistan imposes severe limitations on ... efforts aimed at sustainable reintegration for returnees and IDPs in Afghanistan.”²³⁶ To make matters worse, the massive number of returnees from Pakistan in 2016 has taken the Afghan authorities and UN completely by surprise. For example, in October 2015, UNHCR was planning to assist up to 60,000 returnees for the whole of 2016.²³⁷

Although both UNHCR and IOM interview Afghans in Pakistan and in Afghanistan about where they plan to go in Afghanistan, UN agencies’ systems—designed for smaller return numbers—are unable to track where most returnees in fact end up.²³⁸ In late January, IOM said it would implement a new displacement tracking system in early February.²³⁹

²³² SIGAR, “Afghan Refugees and Returnees: Corruption and Lack of Afghan Ministerial Capacity Have Prevented Implementation of a Long-term Refugee Strategy,” p. 2.

²³³ *Ibid.*, pp. 6 – 7; Jelena Bjelica, “Afghanistan’s Returning Refugees: Why are so many still landless?,” Human Rights Watch interviews with Ministry of Refugees and Repatriations and UN agencies, Kabul, October 27 – 31, 2016.

²³⁴ Human Rights Watch email exchanges with UN Habitat and a non-governmental aid agency, December 2016.

²³⁵ Human Rights Watch interviews and email exchanges with aid agencies in Kabul, October 2016 – January 2017.

²³⁶ UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,” p. 32.

²³⁷ UNHCR, “2015-2017 Protection Strategy Pakistan: External,” p. 14.

²³⁸ Human Rights Watch interviews with IOM Kabul and UNHCR Kabul, October 26 and 31, 2016. In September, humanitarian agencies identified Kabul, Kunar, Larman, Logar and Nangahar as “the 5 provinces which are expecting the largest influx.” UNOCHA, “Afghanistan Flash Appeal: One Million People on the Move, Covering Sep – Dec 2016.”

²³⁹ “IOM Launches Displacement Tracking in Afghanistan as Humanitarian Crisis Looms,” IOM, January 27, 2017, <https://www.iom.int/news/iom-launches-displacement-tracking-afghanistan-humanitarian-crisis-looms> (accessed January 27, 2017).

UNHCR gives each returning refugee \$400 (an average of \$2,800 per family) and other assistance.²⁴⁰ IOM staff working at border crossing points use vulnerability criteria to identify undocumented returnees most in need of aid.²⁴¹ IOM says it assisted 29 percent of undocumented returnees who received different types of aid—about \$300 per family, food assistance, or non-food items—depending on their level of vulnerability.²⁴² UNOCHA put the figure at 21 percent, saying the lucky ones “typically” received only one month’s food and some basic household items.²⁴³

As a result, the average returning undocumented Afghan family of seven receives significantly less support than each returning registered Afghan refugee, despite the fact that both groups have the same needs upon return to Afghanistan. In addition, IOM surveys with returning undocumented Afghans in late 2016 suggest that the vast majority returning are daily wage laborers, who are the poorest of Afghans living in Pakistan.²⁴⁴

As of late January 2017, UN agencies and non-governmental organizations were discussing whether to change the basis on which returnees are assisted, to ensure help is given equitably to the most vulnerable of returnees and is not based on arbitrary factors such as the legal status they had in Pakistan.²⁴⁵

In mid-January, the UN published an overview of where agencies were able to reach and assist some of the returnees from Pakistan.²⁴⁶

The UN’s September 2016 donor appeal for US\$152 million to assist returning Afghans and Afghan IDPs was funded at just over 50 percent by the end of the year.²⁴⁷ On October 28, UNHCR appealed for an additional USD\$77 million which included a plan to “pursue a

²⁴⁰ See chapter 2 of this report.

²⁴¹ Human Rights Watch interview with IOM Kabul, October 26, 2016.

²⁴² IOM takes the lead on delivering aid to undocumented Afghan returnees, with WFP and UNICEF support. Human Rights Watch interview with IOM, Kabul, October 26, 2016; IOM, “Return of Undocumented Afghans: Weekly Situation Report, 1 – 7 January.”

²⁴³ UNOCHA, “Afghanistan: Humanitarian Needs Overview, 2017,” p. 12.

²⁴⁴ IOM Afghanistan, “Socio-Economic Survey of Undocumented Returnees,” December 14, 2016, https://afghanistan.iom.int/sites/default/files/Reports/iom_afghanistan_socio-economic_survey_of_undocumented_returnees_as_of_14_december_2016.pdf (accessed January 9, 2017).

²⁴⁵ Human Rights Watch email exchange with aid agency, Kabul, January 4, 2017.

²⁴⁶ UNOCHA, “Afghanistan: Returnee Crisis, Situation Report No. 5.”

²⁴⁷ UNOCHA, “Afghanistan: Returnee Crisis, Situation Report No. 5.”

vulnerability-based winterization programme for returnees, IDPs and vulnerable host community families,” including in “areas of extreme temperature ... hosting large numbers of returnees and IDPs.”²⁴⁸

On January 21, the UN launched a new appeal for US\$550 million, including US\$240 million for refugees and returnees of which USD\$95.7 million was for cash support to returnees.²⁴⁹ In early January 2017, eight nongovernmental organizations asked the UN’s Humanitarian Coordinator, the Humanitarian Country Team and donor states in Afghanistan to remove from the then draft appeal the request for money to provide cash support to returnees, arguing that the money was fueling involuntary refugee return from Pakistan and risked supporting further inequitable differences in assistance given to returning refugees and returning undocumented Afghans.²⁵⁰

²⁴⁸ UNHCR, “Repatriation of Afghan Refugees from Pakistan: Revised Supplementary Appeal, September – December 2016,” p. 8.

²⁴⁹ OCHA, “Humanitarian Response Plan, 2017,” p. 5, 31.

²⁵⁰ Letter dated January 2, 2017, unpublished document on file with Human Rights Watch.

VI. The European Union's Response to the Afghan Refugee Crisis

While Pakistan conducts mass forced return of hundreds of thousands of Afghans, the European Union has been preparing to add to Afghanistan's spiraling humanitarian crisis with plans to deport tens of thousands of rejected Afghan asylum seekers to Kabul. Afghanistan's capital has already been struggling to cope with the arrival of at least 70,000 refugees returning from Pakistan. The EU's efforts are part of a larger strategy to implement a vigorous returns policy, as well as limit the number of asylum seekers in Europe, in the wake of the political crisis over increased migration since 2015.

Increasing Rejection of Afghan Asylum Seekers

The deteriorating security and economic situation in Afghanistan and Afghans fleeing insecurity and destruction in other countries, including Iran, Pakistan and Turkey, has contributed to a six-fold increase in Afghan asylum applications in EU member states from about 30,000 in 2013 to almost 200,000 in 2015.²⁵¹ During the first nine months of 2016, 147,200 Afghans lodged asylum claims, an annual rate of 196,266.²⁵² Since 2015, Afghans are the second-largest national group seeking asylum in EU countries, after Syrians.²⁵³ About a quarter of Afghan asylum applications in 2015—45,000—were made by unaccompanied children.²⁵⁴

²⁵¹ Between 2011 and 2013, an annual average of about 30,000 asylum seekers lodged claims. This increased to 42,745 in 2014, and to 196,170 in 2015. European Asylum Support Office (EASO), "Annual Report on the Situation of Asylum in the European Union 2015," July 2015, https://www.easo.europa.eu/sites/default/files/public/EN_%20Annual%20Report%202015_1.pdf (accessed December 23, 2016).

²⁵² Eurostat, "Asylum and Managed Migration Data," <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/publications> (accessed January 5, 2017); Eurostat, "First Instance Decisions, 3rd Quarter 2016," http://ec.europa.eu/eurostat/statistics-explained/index.php/File:First_instance_decisions_by_outcome_and_recognition_rates,_30_main_citizenships_of_asylum_applicants_granted_decisions_in_the_EU-28,_3rd_quarter_2016.png (accessed January 5, 2017).

²⁵³ ECRE, "EU strong-arms Afghanistan to accept back people in exchange for aid," October 7, 2016, <http://www.ecre.org/eu-strong-arms-afghanistan-to-accept-back-people-in-exchange-for-aid/> (accessed January 13, 2017). Though in far lower numbers, Afghans were also the second largest group of asylum applicants in the EU between 2010 and 2012. EASO, "Annual Report on the Situation of Asylum in the European Union 2014," July 2015, http://www.bfa.gv.at/files/berichte/EASO_Annual_Report_2014.pdf (accessed January 5, 2017), p. 17.

²⁵⁴ Eurostat, "Asylum applicants considered to be unaccompanied minors," May 2, 2016, <http://ec.europa.eu/eurostat/documents/2995521/7244677/3-02052016-AP-EN.pdf> (accessed January 13, 2017).

In 2014 and 2015, EU member states granted some form of protection to about 67 percent of Afghan asylum seekers whose applications were reviewed at first instance, while at the same time the rate of Afghans successfully appealing rejections of their asylum applications increased from about 42 percent to about 58 percent.²⁵⁵

In the first nine months of 2016, however, the protection rate decreased to about 52 percent at first instance.²⁵⁶ UNHCR has expressed surprise at the decreasing rate, noting for example that in Germany the protection rate at first instance dropped from 78 to 60 percent between 2015 and 2016.²⁵⁷ There are significant disparities in the protection rates for Afghans among EU member states.²⁵⁸

Thousands of rejected Afghan asylum seekers are now earmarked for deportation to Afghanistan, together with unknown numbers of undocumented Afghans who never applied for asylum. The European Commission has estimated that up to 80,000 Afghans may need to be deported, although the basis for this estimate is unclear.²⁵⁹

Given the deteriorating security situation in Afghanistan, it is unclear on what basis European asylum adjudicators rejected increasing numbers of Afghan asylum claims at first instance in 2016.

One explanation is that adjudicators may be increasingly concluding that asylum seekers could have fled to a different part of their country, including Kabul, to escape the harm

²⁵⁵ EASO, “Annual Report on the Situation of Asylum in the EU, 2014,” p. 26, 30; EASO, “Annual Report on the Situation of Asylum in the EU 2015,” pp. 22, 26.

²⁵⁶ In the first nine months of 2016, EU member states reviewed 47,555 Afghan asylum applications at first instance and granted protected status to 24,865 applicants. Eurostat, “Asylum and Managed Migration Data;” Eurostat, “First Instance Decisions, 3rd Quarter 2016,”

²⁵⁷ UNHCR, “Observations on the Situation in Afghanistan, in Response to the German Ministry of the Interior.”

²⁵⁸ For example, between January 2014 and June 2016, Afghans were protected at the following rates at first instance: 70% in Austria, 80% in France, 60% in Germany, 40% in Greece and the UK, 20% in Hungary, 90% in Italy, and 50% in the Netherlands and Sweden. According to Eurostat, “Asylum and Managed Migration Data.”

²⁵⁹ Council of the European Union, “Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Afghanistan,” March 3, 2016, <http://statewatch.org/news/2016/sep/eu-council-afghanistan-readmission-6738-16.pdf> (accessed January 13, 2017).

they say they face in their places of origin. This is known as the “internal flight alternative” (IFA) justification for rejecting refugee claims.²⁶⁰

Based on its interviews in Afghanistan, UNHCR estimates that at least 25 percent of the approximately 360,000 refugees returning from Pakistan since early July 2016 will try to settle in Kabul as they have no housing or land, or face too much insecurity, in the areas where they or their families originally lived.²⁶¹

Kabul is one of the world’s fastest growing cities, with the population increasing at an estimated annual rate of about 10 percent each year since 2005 to reach at least 3.5 million by mid-2015.²⁶² Vast numbers live in poverty and slums, including hundreds of thousands of displaced persons who live with returning refugees and other urban poor in “informal settlements.”²⁶³ The arrival of at least 70,000 new destitute citizens in the space of six months will put tremendous pressure on the city.²⁶⁴

According to UNHCR and European Asylum Support Office (EASO) guidelines, the test for whether a person had an internal flight alternative is not whether the returnee would be persecuted or face serious harm there, but whether they could “relevant[ly] or reasonably” (UNHCR) or “safely and reasonably” (EASO) be expected to live there.²⁶⁵ While UNHCR and EASO both recognize the gravity of the security situation and levels of destitution in Kabul,

²⁶⁰ UNHCR, “Guidelines on International Protection: ‘Internal Flight or Relocation Alternative’ Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,” July 23, 2003, <http://www.unhcr.org/3f28d5cd4.pdf> (accessed December 23, 2016). The EU’s Qualification Directive refers to this test as “Internal Protection Alternative.” Council of the EU, “Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,” April 29, 2004, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML> (accessed December 23, 2016), art. 8.

²⁶¹ Human Rights Watch interview with UNHCR, Kabul, October 31, 2016; UNHCR, “Observations on the Situation in Afghanistan, in Response to the German Ministry of the Interior.”

²⁶² UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,” p. 29.

²⁶³ *Ibid.*, pp. 29 – 30.

²⁶⁴ Nassim Majidi, Vivianne van der Vorst, and Christopher Foulkes, “Seeking Safety, Jobs, and More: Afghanistan’s Mixed Flows Test Migration Policies.”

²⁶⁵ UNHCR, “Guidelines on International Protection: Internal Flight or Relocation Alternative;” EASO, “Practical Guide: Evidence Assessment,” March 2015, https://www.easo.europa.eu/sites/default/files/public/EASO-Practical-Guide_Evidence-Assessment.pdf (accessed January 4, 2017), p. 5.

UNHCR does not exclude the possibility that Kabul may amount to an internal flight alternative for Afghans originating from other parts of the country.²⁶⁶

However, in December 2016 UNHCR cautioned against returning rejected Afghan asylum seekers to Kabul on an IFA basis. UNHCR said that:

Kabul faces serious pressures on housing and services, due to years of primary and secondary population displacements ... resulting in large-scale movements to the city, together with a natural (non-conflict-related) process of urbanization from rural areas. In 2016, the situation was made worse by the fact that more than 25 percent of Afghan returnees from Pakistan went to Kabul. This has immediate consequences for the assessment of Kabul as a proposed internal flight alternative, in particular with regards to the [criterion] of “reasonableness.” The considerations presented in the April 2016 [Eligibility] Guidelines remain relevant for assessments of Kabul as internal flight alternative. In the context of a dramatic increase in competition for access to scarce resources, the availability of an IFA will need to be considered on a case-by-case basis, taking into account the particular circumstances of the individual applicant.²⁶⁷

Another explanation for the increased rate of Afghan asylum claim rejections may be that adjudicators are mistakenly concluding that applicants do not fear persecution because they fled generalized violence and were not individually targeted. UNHCR’s exhaustive April 2016 guidance to asylum adjudicators reviewing Afghan claims, as well as its December 2016 guidelines, clarify that that to obtain refugee status, individuals fleeing war zones do not have to show that they would be personally targeted for persecution, but that belonging to a targeted race or group with actual or perceived political beliefs, associations, or identities would be enough.²⁶⁸ EU member states are also bound to give

²⁶⁶ UNHCR, “Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan,” pp. 81 – 86; EASO, “Country of Origin Information Report on Afghanistan: Security Situation,” pp. 39–43.

²⁶⁷ UNHCR, “Observations on the Situation in Afghanistan, in Response to the German Ministry of the Interior.”

²⁶⁸ UNHCR, “Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions,” December 2, 2016, http://www.unhcr.org/58359afe7?utm_source=Briefing+Notes+-

subsidiary protected status to Afghans who face a “serious and individual threat to [their] life ... by reason of indiscriminate violence.”²⁶⁹

Plans to Increase Deportations of Rejected Asylum Seekers

EU member states have largely refrained from deporting rejected Afghan asylum seekers and undocumented Afghans not seeking asylum in the EU, in large part because the Afghan authorities have refused to take them back.²⁷⁰ However, some Afghans have been deported from the EU in recent years. The IOM has said it helped EU member states return just under 1,000 Afghans in 2015.²⁷¹ Media reports say that throughout 2016, Sweden and Germany deported several hundred Afghans.²⁷²

In early October 2016, after months of tortuous negotiations, and just days ahead of a one-day international donors conference on Afghanistan, the EU signed a “declaration” with

++2+December+2016&utm_medium=email&utm_term=kristy@IRINnews.org&utm_content=http://www.unhcr.org/58359afe7&utm_campaign (accessed December 23, 2016).

²⁶⁹ Council of the EU, “Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, art. 15(c).

²⁷⁰ For example, as recently as February 2016, Afghan Minister of Refugees and Repatriations Sayed Hussain Alemi Balkhi said that Afghanistan would only take back its nationals if they were willing to return to their home country voluntarily. Arif Farahmand “Afghanistan’s Minister of Refugees: ‘No agreement on taking back deportees from Germany,’” February 2, 2016, *Deutsche Welle*, <http://www.dw.com/en/afghanistans-minister-of-refugees-no-agreement-on-taking-back-deportees-from-germany/a-19020715> (accessed December 23, 2016); Jelena Bjelica, “EU and Afghanistan Get Deal on Migrants: Disagreements, pressure and last minute politics,” *Afghanistan Analysts Network*, October 6, 2016, <https://www.afghanistan-analysts.org/eu-and-afghanistan-get-deal-on-migrants-disagreements-pressure-and-last-minute-politics/> (accessed December 23, 2016).

²⁷¹ Homa Dorothy Parvaz, “The plight of rejected Afghan asylum seekers,” *Al Jazeera*, March 16, 2016, <http://www.aljazeera.com/indepth/features/2016/03/plight-rejected-afghan-asylum-seekers-160302081156403.html> (accessed January 5, 2017). Norway also deported 438 Afghans in 2014. Sune Engle Rasmussen, “Vulnerable families bear the brunt of Norway’s crackdown on asylum seekers,” *The Guardian*, February 26, 2015, <https://www.theguardian.com/global-development/2015/feb/26/norway-crackdown-asylum-seekers-afghanistan-immigration> (accessed January 9, 2017).

²⁷² “Migrant crisis: Germany sends home rejected Afghans,” *BBC News*, February 24, 2016, <http://www.bbc.com/news/world-europe-35649576> (accessed January 5, 2017); Shakib Mahmud and Zakarya Hassani, “Sweden repatriated hundreds of Afghan migrants this year,” *News One*, December 12, 2016, <http://1tvnews.af/en/news/afghanistan/26604-sweden-repatriated-hundreds-of-afghan-migrants-this-year> (accessed January 5, 2017); “Rejected Afghan Asylum Seekers Deported From Germany,” *Radio Free Europe/Radio Liberty*, December 15, 2016, <http://www.rferl.org/a/germany-deports-first-group-50-rejected-afghan-asylum-seekers/28177235.html> (accessed January 5, 2017).

Afghanistan on migration cooperation that commits Afghanistan to facilitate the return of Afghans whose asylum applications have been rejected by EU countries.²⁷³

At the donor conference, the EU and its member states pledged roughly €5 billion in aid to Afghanistan by late 2020. Both the EU and Afghanistan denied that the aid was conditioned on migration cooperation.²⁷⁴ However, a leaked internal European Commission document argued that the “leverage of the conference should be used as a positive incentive” for increased cooperation by the Afghan government on migration control, including returns, and that:

the EU should stress that to reach the objective of the Brussels Conference to raise financial commitments ‘at or near current levels,’ it is critical that substantial progress has been made in the negotiations with the Afghan Government on migration by early summer, giving the Member States and other donors the confidence that Afghanistan is a reliable partner able to deliver.²⁷⁵

Risk of Increased Deportations Fueling Instability

Various UN agencies have warned against the toxic effect that increased expulsions and deportations from Pakistan and Iran to Afghanistan will have on the country’s social fabric and security.²⁷⁶

²⁷³ European External Action Service, “Joint Way Forward on migration issues between Afghanistan and the EU,” October 4, 2016, https://eeas.europa.eu/sites/eeas/files/eu_afghanistan_joint_way_forward_on_migration_issues.pdf (accessed December 23, 2016).

²⁷⁴ Human Rights Watch, *EU Policies Put Refugees at Risk*, November 23, 2016, <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>.

²⁷⁵ Council of the European Union, “Joint Commission-EEAS non-paper on enhancing cooperation on migration, mobility and readmission with Afghanistan.”

²⁷⁶ In 2016, Iran deported about 200,000 undocumented Afghans, while about 250,000 returned spontaneously. IOM, “Return of Undocumented Afghans: Weekly Situation Report, 25 – 31 December 2016.” The number is similar though slightly lower than the annual average of about 500,000 returns between 2012 and 2015. IOM, “Undocumented Afghan Returns from Iran & Pakistan, January – December 2015.” Significant numbers of single Afghan men are involved in cyclical labor migration between Afghanistan and Iran. IOM, “Afghanistan Migration Profile,” July 2014, <http://samuelhall.org/wp-content/uploads/2016/07/IOM-Afghanistan-Migration-Profile.pdf> (accessed January 3, 2017).

In October 2016, UNHCR and the World Bank warned that “the history of displacement and returns to Afghanistan indicates the potential destabilizing effects of increasing population pressure on limited local resources,” that “additional returns from Pakistan, Iran, or Europe are likely to result in further secondary displacement, unemployment, and instability,” that “further population shocks could undermine civilian and military aid efforts and further escalate conflict;” and advised that “peace and stability in Afghanistan are not only a pre-requisite for its development but also a global public good.”²⁷⁷

In November 2016, the head of IOM in Kabul said that “with all these returns from Pakistan and Iran as well, and looming returns from Europe, it’s a perfect recipe for a perfect storm because that puts a strain on the capacity of the government to respond.”²⁷⁸

In December 2016, UNHCR warned that:

Kabul has been significantly affected by the surge in returns from Pakistan, with almost a quarter of the 55,000 registered returnee families, and a similar percentage of the 240,000 undocumented returnee families, settling in Kabul’s overcrowded informal settlements. In light of the well-documented contraction of Kabul’s economy following the withdrawal of international forces in 2014, the city’s absorption capacity has been extremely limited due to the low availability of livelihoods ... appropriate shelter, and access to basic services, particularly health and education.²⁷⁹

And as far back as March 2015, UNHCR also warned that “unprepared returns ... can induce tensions and prompt resort to negative coping strategies, including radicalization of ... dispossessed people, particularly [of] youth.”²⁸⁰

The EU should be guided by a moral and strategic response to the current returnee crisis in Afghanistan. Under its October 2016 migration declaration, the EU committed €80

²⁷⁷ UNHCR and World Bank, “Fragility and Population Movement in Afghanistan.”

²⁷⁸ Rod Nordland, “Afghanistan Itself Is Now Taking in the Most Afghan Migrants.”

²⁷⁹ UNHCR, “Observations on the Situation in Afghanistan, in Response to the German Ministry of the Interior.”

²⁸⁰ UNHCR, “Enhanced Voluntary Return and Reintegration Package for Afghan Refugees (EVRRP): Funding Proposal.”

million to help returnees from Pakistan and Iran survive after they return to Afghanistan.²⁸¹ To that end, the EU should also generously fund the January 2017 Humanitarian Response Plan for Afghanistan.²⁸²

EU member states should also exercise their discretion to defer deporting rejected Afghan asylum seekers, until it is clear how Kabul and other parts of the country are able to cope with the mass forced return of Afghan refugees from Pakistan. Afghans with pending removal orders whose deportation is deferred should not be detained and should be granted the most favorable status under national law for persons in this situation. Should EU Member States end up deporting tens of thousands of Afghans, they will risk fueling the very instability the EU says it wants stopped.

²⁸¹ Human Rights Watch interview with advisor to Afghan Ministry of Refugees and Repatriation, Kabul, October 30, 2016.

²⁸² See chapter 5 of this report.

VII. Detailed Recommendations

To the Pakistani Government

- Publicly assure all registered Afghan refugees that they will be allowed to stay in dignity in Pakistan until it is genuinely safe for them to return to Afghanistan.
- To end mass refoulement of Afghan refugees, stop setting short-term deadlines for the expiration of refugees' Proof of Registration cards and stop making related deportation threats; instead revert to the previous two-year extension policy and extend cards until at least March 31, 2019, while committing to extend them at the latest by the end of October 2018; continue to extend cards' validity until Afghanistan has reached a point of stability to enable safe and dignified return in line with international standards.
- To avoid refoulement of refugees among undocumented Afghans in Pakistan, re-open registration for Proof of Registration cards so that Afghans who arrived after mid-February 2007 can obtain such status or provide a comparable blanket protection against forced return.
- Ensure any undocumented Afghans arrested for unlawful presence can appeal against a decision to deport them, and can seek protection in Pakistan, including with UNHCR, if they fear persecution or other serious harm in Afghanistan.
- Issue a written directive instructing all relevant government officials and state security forces to end their abuses against registered and undocumented Afghans, including extortion, arbitrary detention, house raids without warrants, unlawful use of force, and theft. Investigate and appropriately prosecute police and other officials responsible for serious abuses against Afghans.
- Instruct all state schools to allow Afghan children to enroll regardless of their legal status.
- Ratify the 1951 Refugee Convention and its 1967 Protocol, and adopt a national refugee law, as proposed in the 2013 National Policy on the Management and Repatriation of Afghan Refugees.

To the United Nations High Commissioner for Refugees (UNHCR)

- Reverse UNHCR’s 2016 practice of remaining silent in the face of mass refoulement by Pakistan, and monitor and publicly condemn any renewed coercion against Afghan refugees resulting in refoulement.
- Publicly state that Pakistan is in breach of the 2003 Tripartite Agreement on the Voluntary Repatriation of Afghans unless it ends the coerced return of Afghan refugees and suspend UNHCR participation in the agreement until such coercion ends.
- Press Pakistan to extend Proof of Registration cards until at least March 31, 2019, end police abuses against Afghans, and otherwise protect those needing continued protection from forced return.
- If UNHCR resumes cash support to returning Afghan refugees in 2017 without Pakistan meeting those requirements, publicly state—to avoid further complicity in mass refoulement—that such support does not amount to an endorsement of Pakistan’s claims that forced returns are in fact voluntary.
- Proactively reach out to Afghan refugee communities to inform them about conditions in Afghanistan so they are fully aware of any risks they face there if they decide to return home.
- To avoid over-reliance on cash support, work closely with other UN agencies and the Afghan government to track refugees voluntarily returning home from Pakistan and support them through existing aid and development programs in Afghanistan; support communities hosting returning refugees who have become internally displaced persons; and delink any assistance upon return from promotion or facilitation of repatriation.
- Work closely with the Pakistani authorities to re-open registration for Proof of Registration cards or other protected status for Afghans arriving in Afghanistan after February 2007.
- Closely monitor asylum decision-making by European Union member states to identify Afghan cases that are mistakenly rejected, including by mistaken application of “internal flight alternative” reasoning; publicly call on member states with significant numbers of incorrect decisions to ensure wrongly rejected claims are reheard.

To the Humanitarian Country Teams in Afghanistan and Pakistan

- If UNHCR maintains its public silence over any renewed mass refoulement of Afghan refugees from Pakistan, publicly call on the Pakistani authorities to stop coercing Afghan refugees back to Afghanistan.

To Donor Governments, including EU Member States, Providing Support to Pakistan

- Press the Pakistani authorities to extend Afghan refugees' Proof of Registration cards until the end of March 2019 and to re-open registration for the cards or other protected status so that Afghans who arrived after February 2007 can seek and obtain protected status in Pakistan; also press them to end police abuses against all Afghans.
- Press UNHCR to publicly state Pakistan is in breach of the Tripartite Agreement until Pakistan ends police abuses against Afghan refugees and stops otherwise coercing their return and press UNHCR to suspend its participation in the agreement until such coercion ends.
- Press UNHCR to speak out publicly against any renewed refoulement of Afghans from Pakistan and to publicly clarify that any support to coerced returnees is motivated by the aim of minimizing their suffering on return and should not be viewed as support for Pakistan's contention that such returns are voluntary.
- Support the Pakistani authorities and UNHCR in Pakistan to properly assist and protect Afghan refugees in Pakistan.
- Support UN agencies' and the Afghan authorities' humanitarian and development work with returned refugees, including support to communities hosting returning refugees who have become internally displaced persons.

To European Union Member States

- Exercise discretion to defer deporting rejected Afghan asylum seekers, until it is clear how Kabul and other parts of the country cope with Pakistan's mass forced return of Afghan refugees; Afghans with pending removal orders whose deportation

is deferred should not be detained and should be granted the most favorable status under national law for persons in this situation.

- Ensure asylum adjudicators are correctly examining Afghan asylum claims, with due reference to UNHCR's April 2016 *Eligibility Guidelines on the International Protection Needs of Asylum-Seekers from Afghanistan*, including in particular cases involving a proposed "internal flight alternative" (IFA) which should be decided consistently with UNHCR and European Asylum Support Office IFA Guidelines.
- Generously fund the 2017 Humanitarian Response Plan for Afghanistan.

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After 40 years of hosting one of the world’s largest refugee populations, Pakistan has turned against its Afghan community. In response to deteriorating political relations with Afghanistan, the Pakistani authorities drove out almost 600,000 Afghans in the second half of 2016, triggering the world’s largest unlawful mass forced return of refugees in recent years.

Based on 115 interviews with returning refugees in Afghanistan and Afghans in Pakistan, *“Pakistan Coercion, UN Complicity: The Mass Forced Return of Afghan Refugees,”* documents how Pakistan’s crackdown on Afghan refugees—including deportation threats, crippling police extortion, arbitrary detention, and nocturnal police raids—left many with no choice but to leave Pakistan. They are returning to an armed conflict in Afghanistan that in 2016 killed and injured more civilians than in any other year since 2009. Hundreds of thousands of returnees will likely join the 1.5 million Afghans already displaced in their own country.

The report also reveals how the UN refugee agency, UNHCR, became complicit in Pakistan’s mass forced refugee return by promoting the returns instead of publicly calling for an end to Pakistan’s coercive practices.

To avoid a repeat of the 2016 exodus, the report calls on Pakistan to end its crackdown on Afghans, and on UNHCR to publicly hold Pakistan to account should coerced returns resume. International donors should press for an end to the abuses and help Pakistan assist and protect Afghan refugees. And it calls on European Union member states to defer deporting rejected Afghan asylum seekers until it becomes clear how Afghanistan will cope with the massive influx from Pakistan.

(above) Trucks hired by Afghan refugees forced out of Pakistan and packed with their belongings line up at the UN refugee agency’s support center outside Kabul, October 2016.

(front cover) An Afghan refugee family forced out of Pakistan stands by a hired truck laden with their possessions after an overnight journey, October 2016.

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