

IRAN:

AN AFGHAN FREE ZONE?!



Justice For Iran
عدالت برای ایران

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1. Introduction

In March 2012, during Norooz, the most widely celebrated New Year festival in Central Asia, **Ahmad Reza Shafi'i**, the director of the Committee to Enforce Ease of Travel in Isfahan announced that for Sizdeh Beh Dar (a traditional celebration 13 days after Norooz during which individuals are supposed to spend the entire day in a picnic outside of their homes), a ban would be issued for the entry of Afghan nationals into Saffeh Mountain Park “for the welfare of the Iranian citizens” and “to preserve security of the families.”¹ National and international outrage followed this decision. However, instead of retreating, Iranian officials continued to pursue their campaign of discrimination against Afghan nationals residing in Iran. In April 2012, the director of the Bureau of Alien and Foreign Immigrant Affairs (BAFIA)’s² office in Mazandaran Province, **Seyyed Taghi Shafi'i** announced that the province was off limits to Afghan refugees. Calling it a “cleansing,” Shafi'i considered the presence of Afghan refugees to be a threat to the Province and stated that “since Mazandaran is a tourist attraction, it cannot withstand the presence of these [foreign] nationals.”³

These bans are only the latest steps in the Islamic Republic of Iran’s continuous discrimination against Afghan refugees residing inside Iran. Since 2006, the Iranian government has been pursuing a policy of “voluntary return” by which Afghan refugees are relocated to their home country. In the last few years, the rate of relocation has dropped sharply due to unfavorable conditions in Afghanistan. Notable reasons for the Afghan refugees’ refusal to relocate are “difficult life conditions in Afghanistan and problems with security and job search.”⁴

The Iranian government’s latest efforts to effectively push Afghan’s out, in spite of the deplorable conditions in their home country and their entitlement to UNHCR protection, is a new installment in their campaign of violating the rights of Afghan refugees in Iran. On May 28, **Mohammad Tahavori**, director of BAFIA announced that as the moratorium issued on determining the residency status of Afghan refugees in Iran is ending, single Afghan men residing in the provinces of Tehran, Isfahan and Razavi Khorasan must leave the country by June 20, 2012.⁵ Tahavori stated that after that date only those in possession of “valid residence cards and passport” are allowed to reside in designated areas of the provinces.⁶

The Iranian government, seemingly supported by the UNHCR, insists on pursuing the forced expelling of what they call “illegal Afghan migrants” under the pretext that Afghanistan is now safe and fit for refugees to return. However, within the last two weeks alone, eight Afghan civilians, including one woman and 6 children, were killed as a result of NATO aerial

¹ Afghans Banned from Entering a Park in Isfahan, RFI, April 2, 2012, available at <http://www.persian.rfi.fr/افغانان-ممنوع-يتم-اركان-در-پارک-سيف-سافه-مازندران-20120402/>.

² Mohammad Tahavori, Deputy Interior Minister for Foreign National Affairs, is the director of BAFIA. Prior to him, Mohammad Taghi Ghaemi and Ahmad Hosseini held that post. See BAFIA’s portal on Ministry of Interiors website at <http://bafia.moi.ir/Portal/Home/>.

³ Mazandaran is the Only Province in the Country Banning the Presence of Afghans, BAFIA, April 12, 2012, available at <http://bafia.moi.ir/Portal/Home/ShowPage.aspx?Object=News&CategoryID=a25b3683-80cc-48ec-810c-29ca2ea14479&WebPartID=2cf28dbc-3f15-4428-9e4a-31c5d129acf6&ID=8b0e4d94-bb24-4c0c-af83-2fd8be7bff3c>.

⁴ United Nation’s New Strategy for Improving the Situation of Afghans, BBC Persian, October 10, 2011, available at http://www.bbc.co.uk/persian/afghanistan/2011/11/111110_k01_unhcr_afg_refugees.shtml.

⁵ Expelling Single Afghan Men from Iran Continues, Gooya News, May 29, 2012, available at <http://news.gooya.com/politics/archives/2012/05/141257.php>.

⁶ Ibid.

strikes against what they thought to be Taliban targets in Afghanistan.⁷ Furthermore, over a third of eligible girls in Afghanistan are deprived from receiving an education.⁸

2. Background

In 1979-1980, the then Soviet Union occupied Afghanistan and started a bloody war that lasted nearly two decades, causing Afghan civilians to flee to the country's borders with Iran and Pakistan in hopes of escaping the violence. Ayatollah Khomeini, Iran's leader at the time and an ardent anti-Soviet, openly called for ease of entry for Afghan migrants, stating that "We are Muslim as they are Muslim; we must host them." Based on his order, the Iranian government at the time opened the border to Afghan refugees without requiring individuals to acquire a visa or even produce a passport. Two to three million Afghans were estimated to have arrived inside Iran, settling in different cities and mingling with Iranians.

Despite a tripartite repatriation effort between Iran, UNHCR, and the Afghan government in 1992, Afghans lived in Iran until 2002 with limited rights but no fear of deportation. In January 2002, with the American occupation of Afghanistan, ousting of the Taliban, and the formation of an interim Afghan government, the UNHCR and Afghanistan's Repatriation Ministry announced plans to aid the return of internally displaced and migrant Afghans from Iran and Pakistan.⁹ According to **Bernard Doyle**, UNHCR Representative in Iran, after taking on this mission, the UNHCR concentrated its efforts and funding on facilitating the return of the Afghan refugees. However, according to Doyle, the UNHCR continues to provide medical care for refugees who choose to remain behind.¹⁰

2.1. UNHCR's Policies

2.1.1. The law

The 1951 Convention Relating to the Status of the Refugee (CRSR) as well as the 1967 Protocol Relating to the Status of the Refugee are the major bodies of law comprising international refugee law.¹¹ In aggregate, they define refugee to be "[a] person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it..." In 1969, Organization of Africa Unity expanded the definition to include flight due to

⁷ NATO Airstrike Kills Family of 8, Sky News, May 28, 2012, available at <http://www.skynews.com.au/world/article.aspx?id=754665&vId=>.

⁸ One Third of Eligible Afghan Girls Are Deprived of Pursuing Education, IRNA, May 27, 2012, <http://www.irna.ir/NewsShow.aspx?NID=80155055> where Sara Sorkhabi explains the deplorable educational conditions for IRNA reporter stating that "although schools are built for girls, they are soon burnt and girls are forced to attend school in hot tents and under the shades of trees."

⁹ UNHCR and Afghanistan's Repatriation Minister Reach Accord on Return of Refugees, UNHCR, January 24, 2002, available at <http://www.unhcr.org/3c503b0d2.html>.

¹⁰ UNHCR Representative to Etemad Newspaper, "We are Glad that Afghans Sought Refuge in Iran," Etemad (as published in MagIran) July 20, 2011, available at <http://www.magiran.com/npview.asp?ID=2319867>.

¹¹ For a full text of both laws, see Convention and Protocol Related to the Status of Refugee, UNHCR, available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

“external aggression, occupation, foreign domination or events seriously disturbing public order”,¹² more accurately reflecting the realities of the developing world. When flight from the homeland happens in such mass scale that renders individual screening impossible a groups status can be declared for all such individuals. Based on this, each individual belonging to that group is, in the absence of evidence to the contrary, considered a refugee. There are three common solution to the refugee problem: 1) voluntary repatriation, when conditions in home country is safe, 2) local integration, when host country allows integration of refugee in the country of asylum and 3) resettlement in third country, when repatriation is unsafe and host country refuses local integration.¹³ However, the principle of non refoulement of the international refugee law prohibits forced return of refugees by way of returning or expelling the refugee “to the frontiers of territories where his life or freedom would be threatened.”¹⁴ The same law prohibits countries from penalizing refugees fleeing from danger and crossing into a country’s territory without permission.¹⁵ The law also prescribes that upon receiving recognition as a refugee, the individual is entitled to certain rights, some of which are: access to elementary education, public relief and assistance and protection by social security as well as the right to engage in wage-earning employment and choose the place of residence as afforded to other individuals of foreign national in the host country.¹⁶ UNHCR’s responsibilities are providing protection for the refugee and promoting a lasting solution to the problem as well as providing material assistance for refugees and returnees.¹⁷ Furthermore, states signatory to the convention agree to cooperate with UNHCR in acting upon its mandate and help it supervise the implementation of the Convention.¹⁸ Presently, Afghanistan has the largest number of refugees in the world, 34% of whom reside in Iran.¹⁹

2.1.2. UNHCR Policies

UNHCR supports Iran in its efforts to repatriate Afghan nationals. Since 2002, it has been pursuing a plan to gradually repatriate and reintegrate Afghan nationals in Afghanistan. It has also negotiated with the Afghan government amnesty for the refugees as well as amenities and land for their relocation. In 2011, Bernard Doyle, UNHCR Representative in Iran stated that refugees who volunteer to return would be provided with \$150 upon entry into Afghanistan as seed money to help start a new life.²⁰

However, In May 2012, Doyle stated that the only foreign nationals that the UNHCR recognizes and protects as refugee are those who fled their country of citizenship due to fear of persecution. Therefore, he stated that those Afghans who migrated to Iran to find better job

¹² See Refugee and Displaced Person, Human Rights Education Agency, available at http://www.hrea.org/index.php?doc_id=418.

¹³ See Refugee and Displaced Person, Human Rights Education Agency, available at http://www.hrea.org/index.php?doc_id=418.

¹⁴ Article 33 of the Convention Relating to the Status of the Refugees.

¹⁵ Article 31 of the Convention Relating to the Status of the Refugees.

¹⁶ See See Refugee and Displaced Person, Human Rights Education Agency, available at http://www.hrea.org/index.php?doc_id=418.

¹⁷ See Refugee and Displaced Person, Human Rights Education Agency, available at http://www.hrea.org/index.php?doc_id=418.

¹⁸ See Article 37 of the Convention Relating to the Status of the Refugees and Article II of the Protocol Relating to the Status of the Refugee.

¹⁹ Afghanistan is reported to have 3,054,709 refugees worldwide under UNHCR protection, about a third of the worldwide population of refugees. See UNHCR 2011 Refugee Statistics, The Guardian, 20 June 2011, available at <http://www.guardian.co.uk/news/datablog/2011/jun/20/refugee-statistics-unhcr-data>.

²⁰ UNHCR Representative to Etemad Newspaper, “We are Glad that Afghans Sought Refuge in Iran,” Etemad (as published in MagIran) July 20, 2011, available at <http://www.magiran.com/npview.asp?ID=2319867>.

opportunities were not considered refugees by the UNHCR and not entitled to protection by that agency. However, oddly, the number of refugees UNHCR declares to be protecting and receiving budget for is very close to the population of Afghans in Iran as estimated by the Iranian authorities-including registered and illegal immigrants.²¹

2.2. Iran's Policies

2.2.1. Plan for Registering and Organizing Afghan Citizens in Iran

Since 2010, the Iranian government has been implementing the Plan for Registering and Organizing Afghan Citizens in Iran, passed by the National Security Council, which intends to facilitate the border crossing by legally registered refugees while identifying and increasing punishment for illegal immigrants and those who hire them.²² As the first step to the plan, a proper count of the number of illegal immigrants was conducted through a census at the end of which illegal immigrants were given an eleven digit code and told to register at the BAFIA website when they were given a date for appearing at one of the BAFIA offices across the country to receive a temporary pass, at the termination of which they would have to leave the country. All illegal immigrants can then, if they so choose, enter Iran through the proper channels of the Iranian embassies in their country of citizenship.²³ All illegal immigrants who participated in the Plan are expected to be registered by June 2012. At that point, all individuals who continue to remain inside Iran without a passport or a refugee card will be dealt with by Iranian law enforcement. The closeness of the statistics published by UNHCR and the Iranian government indicates that majority of the Afghans who remain inside Iran are refugees afforded the status by the UNHCR either through individual screening or as a group escaping general aggression. The Iranian government's bold unwillingness to provide these individuals "the most favorable treatment accorded to the nationals of a foreign country"²⁴ for finding jobs or providing any form of social or relief protection is in violation of the responsibilities of state parties to the convention.

2.2.2. Voluntary Repatriation

In 2003, the government of Iran signed a Tripartite Agreement with the government of Afghanistan and UNHCR to aid and facilitate the voluntary return of Afghan refugees by March 2005.²⁵ Although the refugees' return to Afghanistan was on a voluntary basis, Iranian legislation aimed to accelerate the process. In 2004, the Iranian government introduced further measures aimed at inducing a more significant level of repatriation of Afghans in 2004, involving raising the cost of living for Afghans in Iran. The measures included mandatory school fees for Afghan children at all levels, and re-registration of all Afghans previously registered under the 2001 BAFIA exercise (re-registration required a payment of a \$6–8 fee). This is in direct violation of article 22 of the CRSR stating that the host country

²¹ While the Iranian authorities estimate that around 1,050,000 Afghan refugees living in Iran, UNHCR maintains that it provides assistance to between 1,019,000 to 1,040,000 Afghan refugees inside Iran. See Supra note 23.

²² New Wave of Organizing Afghan Nationals with Amayesh 7 Plan, May 30, 2011, available at <http://www.asriran.com/fa/news/167504/> «هفت-آمايش» طرح جديد افغانان- باع- ساماندهي- جديد- ددور.

²³ New Wave of Organizing Afghan Nationals with Amayesh 7 Plan, May 30, 2011, available at <http://www.asriran.com/fa/news/167504/> «هفت-آمايش» طرح جديد افغانان- عات- با- ساماندهي- جديد- ددور.

²⁴ See Article 17 of Convention Relating to the Status of Refugees.

²⁵ Return to Afghanistan, A study of Afghans Living in Tehran, UNHCR, June 2005, <http://www.unhcr.org/refworld/pdfid/47c3f3ca0.pdf>.

must provide the same educational treatment “as is accorder to nationals.”²⁶ Furthermore, the speedy return of mass numbers of Afghans caused alarm regarding their sustainable reintegration into Afghan society.²⁷

In 2006, Iran announced its intention to start closing the books on Afghan refugees by having them return to Afghanistan. It maintained that the Afghan nationals who were legally registered and residing in Iran were not classified as refugees by the country and therefore not subject to the new plans.²⁸ Meanwhile, from 2002 onward, many Afghan refugees had, with the encouragement of UNHCR, Afghanistan and the Iranian government, returned to Afghanistan in order to start their lives anew. Those returning refugees reported to having found the conditions in Afghanistan to be worse than they had imagined. One family says, “We returned to Afghanistan in 2005 as the Taliban was no longer [in power] and a central government had formed. However, we had no security or even a place to live. The image presented by the Iranian government, Afghan embassy and the UNHCR was very different than what we saw.” Unable to make a living, the family was able to acquire passports and return to Iran on a temporary visa at the termination of which they became illegal immigrants.²⁹ Many suffered a similar faith.

In December 2008, the government of Afghanistan reached an agreement with Iranian officials for the latter not to return Afghan migrants in the winter months. Iran also agreed to issue 300,000 annual work visas and employment permits (renewable up to three years) for Afghan workers and their families.³⁰

In 2010, BAFIA and UNHCR jointly decided to place the Afghan refugees inside refugee camps. To that end, Iran received aid to prepare the abandoned refugee camps, which were previously used to house Iraqi refugees, for the residence of Afghan refugees. **Carlos Zaccagnini**, UNHCR Representative to Iran at the time, visited one of the rehabilitated refugee camps, Banni Najjar, in the Province of Khuzistan. In an interview, Zaccagnini stated that the Afghan refugees inside Iran were given the option of “voluntary repatriation to their country of citizenship” or “relocation to a place designated by the Iranian government” one of which is the Bani Najjar refugee camp.³¹ There was no mention of UNHCR efforts to provide Afghan refugees with the option of settlement in a third country. What Zaccagnini and other UNHCR officials have so far failed to address is how uprooting refugees who have just begun to grow roots in their new environment, Iran, and forcibly resettling them inside refugee camps, decades after their initial migration, is in line with the UNHCR mandate to “lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide.” In the specific case of Afghan refugees in Iran, how is the UNHCR ensuring “that everyone can exercise the right to seek asylum and find safe refuge in another State,

²⁶ Convention and Protocol Related to the Status of Refugee, UNHCR, available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

²⁷ Return to Afghanistan, A study of Afghans Living in Tehran, UNHCR, June 2005, <http://www.unhcr.org/refworld/pdfid/47c3f3ca0.pdf>.

²⁸ Ministry of Interior Spoke of the Closure of the Case of Afghan Refugees Within the Next Two Years, Hamshahri Online, January 2, 2007, available at <http://www.hamshahrionline.ir/news-12350.aspx>.

²⁹ A Look at the Situation of Afghan Children in Iran, October 20, 2008, available at <http://www.tabnak.ir/pages/?cid=22191>.

³⁰ Iran: We Do not Have a Plan to Expel Migrants, Afghanistan News Agency, January 8, 2009, available at <http://www.afghanirca.com/news/?id=3405>.

³¹ Bani Najjar Refugee Camp Opens to House Afghan Refugees, IRNA, February 28, 2011, available at <http://www4.irna.ir/News/30269959/> -می-اف ت-تاح-اف غازی-پ-ناهندگ-ان-اسکان-ب-رای-ذ-جاری-نی-مهمان-شهر- /اج-تماعی/شود

with the option to return home voluntarily, integrate locally or to resettle in a third country”? How is it ensuring Iran is prohibited from forcibly expelling Afghans as prescribed in the non refoulement principle?

Since January 1, 2011, over 1,050,000 Afghan refugees live in Iran.³² Only three percent of these refugees reside inside refugee camps and the rest live amongst the Iranians in various cities.³³

1.1. Iranian Law

Under Iranian Refugee Proceedings, an individual is recognized as a refugee under condition of 1) crossing the border into Iranian soil, 2) submitting a request by a foreign national to receive refugee status from IRAN and enter Iranian soil, 3) submitting of a request by foreign nationals residing inside Iran for receiving refugee status. In order to the request to be processed by the refugee committee, the requesting party must have the following qualifications: a) be subject to one of the reasons prescribed in Article 1 of the CRSR and a clean background, b) the requesting party has not committed war crimes, or crimes against humanity or severe violation of public rights, c) the requesting party having gone through the proper process of becoming a refugee, d) the requesting party giving a guarantee to abide by internal Iranian laws for the duration of his residency in Iran. Upon issuance of the refugee status by the refugee committee, the individual requesting the status will also be issued a refugee card and prescribed a place of residence.³⁴

Iranian law prevents Afghan nationals who do not hold a valid passport, visa and work permit from holding governmental jobs, buying or selling land, enjoying socialized governmental healthcare, opening a bank account, registering a cell phone, or any other activity that requires official registration (where a National ID card or birth certificate is required).³⁵ Naturally this causes a plethora of problems for the Afghan refugees who, due to their unique circumstance, often do not enjoy basic refugee rights or are not even recognized as immigrant or migrant workers. The majority of them are engaged in agricultural and construction jobs that require little to no paperwork. As they do not have Iranian citizenship, even Afghans who fled to Iran 30 years ago, including children born to Afghan families inside of Iran, are still considered foreign nationals and do not enjoy any citizenship rights. This is while a large number of the work force is comprised of Afghan migrants who, due to their low wages and

³² Exit Papers Was Issued for 700 People, Ministry of Interior Website, October 2, 2011, available at <http://moi.ir/Portal/Home/ShowPage.aspx?Object=News&ID=a5965468-2e4d-4fa6-893c-5d3426d414e5&LayoutID=47942904-35b9-4ecc-bfc4-4d6d3bee26d8&CategoryID=cc1955c9-7610-428d-b15c-fafc947cc884>. The number reported is of those who participated in the Plan for Registering and Organizing Afghan Citizens in Iran discussed below. The UNHCR estimates the number of official Afghan refugees inside Iran to be between 1,019,000 and 1,040,000 individuals all of whom reportedly receive assistance from UNHCR. 2012 UNHCR Country Operations Profile - Islamic Republic of Iran, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486f96>. As UNHCR claims to not support individuals who crossed the border legally or illegally only to find better job opportunities as refugee, there is no clear statistics available of the exact number of all Afghan immigrants inside Iran.

³³ 6000 Afghan Migrants Living in Illegal Zones Were Sent to Bani Najjar Refugee Camp, Khabar Online, February 26, 2011, available at <http://www.khabaronline.ir/detail/133009/>.

³⁴ Conditions for Receiving Refugee Status in the Islamic Republic of Iran, National Website for Legal Articles, available at <http://hoghooghonly.blogfa.com/post/826>.

³⁵ Procedural Code to Facilitate the Return of Afghan Nationals, Research Center of the Islamic Majlis, December 17, 2003, <http://rc.majlis.ir/fa/law/show/125429>; Procedural Code Regarding the Ownership of Immoveable Property by non-Iranian Nationals, Research Center of the Islamic Majlis, December 10, 1995, available at <http://rc.majlis.ir/fa/law/show/115763a>.

inability to follow up on their legal rights are heavily pursued and simultaneously abused by the Iranian construction managers.

3. Restrictions

3.1. Residence: Creation of Afghan Free Zones

As early as 2002, the Iranian government announced residential restrictions imposed on Afghan nationals living in Iran. More and more provinces were announced to be off limits to Afghan nationals.³⁶ Banning residence in a province for Afghan nationals meant that those who were living in that province, some of who have been there for years, had to relocate to another approved location and try to start a new life. Most recently, in a circular issued by the Provincial office of Mazandaran, announced that the province was off limits to Afghans.³⁷ The Fourteen Provinces of Lorestan, Mazandaran, Chaharmahal va Bakhtiari, Kuhgiluyeh and Buyer Ahmad, East Azerbaijan, Hamedan, Gilan and Khuzitan, North Khorasan, Sistan and Baluchistan³⁸, Western Azerbaijan, Kermanshah, Ilam and Kurdistan are off limits for the residence of Afghans as well as the islands of Kish, Gheshm and Abumusa.³⁹ Most of the rest of the provinces pose restrictions on cities approved for Afghan residency, for example, in Yazd Province, the cities of Khatam and Bafgh, in Kerman Province cities of Shahr-e Babak, Manujan, Baft, and Anbarabad; in Fars Province, the cities of Firouzabad, Farashband, Darab, Arsanjan, Fasa, Mehr and Khanaj; and in Isfahan Province, the cities of Fereydoun, Fereydoun Shahr, Samirom, Chadegan, Khonsar, the central parts of the province, Dehaghan and Golpayegan are off limits for Afghan residency.⁴⁰ As Iran's major border with Afghanistan lies in the Province of Sistan and Baluchistan, the Province being off limit to Afghans means that upon crossing the border on foot, the individual can be arrested for trespassing. Furthermore, many of the restrictions, such as in Yazd, Fars and Isfahan Province, will cause employment problems for Afghans, as well as their employers, as these provinces are agricultural, the field in which the refugees are often employed.⁴¹

According to **Hadi Ebrahimi**, the political and security deputy to the Governor of Mazandaran, in this province alone, 3,040 Afghan refugees were arrested and deported to

³⁶ New Passing Regarding Addition of New Zones, July 25, 2002, available at <http://rc.majlis.ir/fa/law/show/121961>.

³⁷ Afghan Refugees Must Leave Mazandaran by July, BBC Persian, April 23, 2012, available at http://www.bbc.co.uk/persian/afghanistan/2012/04/120423_125_afghan_refugees.shtml.

³⁸ In October 2006, a plan for "collection and banishment" of the illegal Afghan nationals was set into action in the province of Sistan and Baluchistan. The plan was to be put to a "test run" in cities of Zabol and Zahak before expanding it to the rest of the province. the plan was to be carried out over 80 days at the rate of 900 individuals removed each day. See <http://www.sbportal.ir/newsdetail-351-fa.html>.

³⁹ Procedural Code detailing the Zones Banned for Residence or Cross Through by Foreign Nationals, Iranian Laws and Regulations Website, available at <http://www.dastour.ir/brows/?lid=%20%20%20%20204197>; New Passing Regarding Foreign Nationals, Research Center of the Islamic Majlis, available at <http://rc.majlis.ir/fa/law/show/121961>; Amending Section a of Article 1 of the Procedural Code detailing the Zones Banned for Residence or Cross Through by Foreign Nationals, Research Center of the Islamic Majlis, available at <http://rc.majlis.ir/fa/law/show/123765>.

⁴⁰ Forbidden Zones in the Country for Trespassing of Afghan and Iraqi Nationals with Ministry of Interior Permits, Law Regarding Residence, Citizenship, Marriage, available at <http://heavenman.blogfa.com/8712.aspx>.

⁴¹ Ibid.

Afghanistan over the last Iranian calendar year.⁴² Upon the enforcement of this law, it is unclear what became of the Iranian women married to Afghan nationals.

In a recent propaganda movie produced by UNHCR about the resettlement of the Afghan refugees to Bani Najjar refugee camp, the story of a young widowed mother, Azita, is told who used to live in Khuzistan Province until it was declared “no go” for Afghans. Azita, who appreciates the security, provided to her by the Bani Najjar camp, a cement block camp structure reminiscent of soviet military barracks, tells the reporter that one reason why her family can’t go back to Afghanistan is that she is the only breadwinner as her parents cannot work and she has young siblings. However, when she was forced to leave Khuzistan, Azita lost the job she had at a computer shop. Having lived all her life in Behbahan, Azita speaks of the hurdles of finding a job and being able to sustain a livelihood.⁴³

3.2. Education and Healthcare

The government of Iran maintains that foreign nationals without legal permit in Iran cannot attend free public schools or use the socialized healthcare system. As many Afghan families do not have valid refugee cards, their children cannot attend public schools alongside Iranian children. Also, in recent years, the Iranian government has begun charging school fees for the children of registered Afghan refugees.⁴⁴ Eventually, in order to remedy the situation, Afghans created self-governed schools to teach their own children. As money was needed (as much as \$5/month for each child⁴⁵) to provide facilities for the schooling, education was no longer free and many Afghan families could not afford to send their children to such schools. In an impoverished Afghan family, if the family has to choose which child to send to school, the girls are often the ones who end up staying home so that they boys can continue their schooling. Those who did were forced to study in illegal self-governed schools that could be shut down by the Iranian government at any time. In the last couple of years, the Iranian government has started cracking down on the self-governed schools seemingly in an effort to indirectly force the refugees to return to Afghanistan. The few refugee camps around the country, including those recently reopened to house the Afghan refugees, are reportedly equipped with health and educational facilities. However, the camps can, at best, house 3% of Afghan refugees inside Iran.

Access to healthcare is subject to similar restrictions. Afghan refugees cannot benefit from medical care in Iran. Although, in recent years, medical facilities to treat Afghans have been established, funds are still required to use such facilities. In their limited efforts to remedy the medical problems of the refugees inside Iran, UNHCR reported to have co-sponsored a health insurance plan in 2011 that would reimburse 70% of the medical costs of Afghan refugees.

⁴² How Foreign Men Can Marry Iranian Ladies, Website of Mazandaran Provincial Government, available at http://www.ostan-mz.ir/index.php?option=com_content&view=article&id=2143:1-r&catid=179:Line-2-6&Itemid=423. Although in their announcements about the issue, the Iranian government insists on referring to the matter of residential bans as pertaining to “foreign nationals” as a whole, a quick look at the lists of banned locations shows that Afghan nationals are the subject of majority of the bans. See, for example, the provincial “foreign national” ban list (stating which provinces foreign nationals cannot attend university in as a result of a residential ban) in Banned Disciplines for Foreign Nationals in Master’s and PhD Iranian Concours Was Announced, Mehr News, June 1, 2012, <http://www.mehrnews.com/FA/newsdetail.aspx?NewsID=1617300>.

⁴³ Video: Iran: A New Life, UNHCR, available at <http://unhcr.org/v-4e3ba1bc6>.

⁴⁴ UNHCR. 2012 UNHCR Country Operations Profile - Islamic Republic of Iran, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486f96>.

⁴⁵ A Look at the Situation of Afghan Children in Iran, October 20, 2008, available at <http://www.tabnak.ir/pages/?cid=22191>.

As a refugee would have to pay 60% of the insurance premium as well as 100% of the cost up front to be partly reimbursed later,⁴⁶ medical care continues to be an expensive venture far beyond the means of many refugees who struggle to make a living.

3.3. Citizenship: Differences between Men and Women

Iranian citizenship as a blood right and can only be passed through the paternal lineage; all children born to Iranian men, no matter the location, can obtain Iranian citizenship with all the rights and privileges therein. The same cannot be said about children born to Iranian mothers and non-Iranian fathers. Furthermore, although a woman of non-Iranian nationality, upon legally marrying an Iranian man, can file and receive Iranian citizenship, the same right-to grant her husband Iranian citizenship-is not extended to Iranian women. Rectifying these gross injustices has been the demand of Iranian women's rights activists for many years. As a result, the woman's right to transfer citizenship to her child has been discussed on and off by the Iranian Parliament (Majlis) for a number of years. The marriage of Iranian women with Afghan men has been at the center of this discourse for many years. By law, in order to marry a man of foreign nationality, assuming no religious barrier exists, the couple must obtain a permit from the Iranian authorities.⁴⁷ The permit is conditional on the man producing many documents, such as a clean background check from his country of origin and means to support his new wife and family.⁴⁸ Naturally, while Afghanistan was struggling with war and political turmoil, refugees who left all their worldly possessions behind could provide neither of those documents. As a result, many of the marriages that took place between Iranian women and Afghan men were not formally registered and were only conducted in the Islamic tradition.⁴⁹ Even in cases where the man is able to furnish all required documents, registration is an unnecessarily difficult and lengthy process. Furthermore, the Iranian government also considers a woman married to a foreign national to be subject to his country's laws. Although incorrect, the Iranian government considers the Afghan laws to enforce the nationality of an Afghan man upon his wife.⁵⁰ Another unfavorable circumstance is, because men inherit property from their wives, in order to prevent a foreign national from owning property inside Iran, upon marrying a non-Iranian, women relinquish the majority of their property. The Islamic Republic is of the opinion that Afghan nationals desire to marry Iranian women in order to obtain Iranian residency and to be able to enjoy citizenship benefits. For this reason, it has used the tactics mentioned above to scare Iranian women from entering into marriage with Afghan men, violating their basic right of choosing their own spouse. Many speculate that the legislative body's resistance to grant this right is due to their concern regarding the ramifications vis-à-vis Iranian-Afghan marriages. In fact, since 2006, the Islamic Republic has refused to accept marriages between Iranian women and Afghan men.⁵¹

⁴⁶ UNHCR. 2012 UNHCR Country Operations Profile - Islamic Republic of Iran, available at <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486f96>.

⁴⁷ Article 1060 of the Civil code of the Islamic Republic of Iran.

⁴⁸ Marriage of Iranian Woman with a Foreign man, Website of Ali Shah Sahebi, Attorney at Law, September 15, 2008, available at <http://irvakil.org/مدني-قوک/24>; see also <http://rc.majlis.ir/fa/law/show/131308>.

⁴⁹ A religious ceremony alone is enough for a traditional Islamic marriage; it is not necessary to register a marriage for it to be legal under Islamic Shari'a law.

⁵⁰ In fact, the Afghan law provides the woman with the choice of retaining her former citizenship or obtaining an Afghan one. Story of Marriage of Iranian Woman with Afghan Man, BBC Persian, May 30, 2011, available at http://www.bbc.co.uk/persian/iran/2011/05/110525_121_married_iranian_women_afghan_men.shtml.

⁵¹ Story of Marriage of Iranian Woman with Afghan Man, BBC Persian, May 30, 2011, available at http://www.bbc.co.uk/persian/iran/2011/05/110525_121_married_iranian_women_afghan_men.shtml. Also, in a circular published in 2010, Mazandaran's Provincial government announced that as religious marriage ceremony between a "foreign man (Afghan, Iraqi, Pakistani, and Bangal) with Iranian ladies" is illegal, those violating it will be pursued by law. See How Foreign Men Can Marry Iranian Ladies, Website of Mazandaran

اطلاعیه

« چگونگی ازدواج مردان خارجی با بانوان ایرانی »

● ازدواج مردان خارجی با بانوان ایرانی طبق ماده ۱۰۶۰ قانون مدنی در مواردیکه مانع قانونی ندارد با اجازه مخصوص دولت (مجوز وزارت کشور) انجام می شود. در غیر اینصورت زوج و زوجه متخلف و مجازات خواهند شد.

● عاقدین محلی که نسبت به جاری نمودن صیغه شرعی مردان خارجی اشاره شده در بند ذیل (داخل کادر) با بانوان ایرانی اقدام نمایند متخلف و به دستگاه قضایی معرفی می شوند.

● ازدواج شرعی مردان خارجی (افغانی، عراقی، پاکستانی، بنگلادشی) با بانوان ایرانی ممنوع و غیرقانونی بوده و در صورت وقوع ازدواج زوج و زوجه متخلف و مجازات خواهند شد.

در صورت عدم رعایت پندهای فوق الذکر و وقوع ازدواج مردان خارجی با بانوان ایرانی، در آینده تبعات منفی و زیانباری به دنبال خواهد داشت که به چند نمونه آن اشاره می گردد.

- ۱- در اختیار نداشتن مدرک رسمی و قانونی زوجین جهت اثبات زوجیت خود.
- ۲- بانگلیبی و سردرگمی (بی هویتی) فرزندان ناشی از این ازدواجها و عدم ارائه خدمات از قبیل آموزشی، بهداشتی، رفاهی و... به این افراد.
- ۳- افغانه ای که بصورت غیرقانونی با بانوان ایرانی ازدواج نموده و به هر دلیلی از کشور ایران اخراج شوند پیگیری از طریق مراجع قانونی (سفارت و کنسولگری) برای بازگشت آنان به کشور ایران ممکن نخواهد بود.
- ۴- مشخص نبودن وضعیت حضانت و قیمومت فرزندان در صورت فوت یا مفقودالذکر شدن زوج و یا فوت زوج و زوجه.
- ۵- در صورت وقوع اینگونه ازدواجها، زوج و زوجه از حمایت دولت متبوعه خود برخوردارنمیگردند و بانوان ایرانی نمی توانند امور حقوقی و مالی ناشی از زوجیت خود را از طریق مراجع قضایی پیگیری نمایند.

از مردم شریف استان درخواست می گردد در صورت اطلاع از ازدواج های غیرقانونی، مراتب را به شوراعلای استانی، دهیاری، بخشداری و یا فرمانداری اعلام نمایند.

اداره کل امور اتباع و مهاجرین خارجی
استاندارای Mazandaran
تلفن تماس: ۰۱۵۱۳۳۱۰۳۹۲

Circular published in 2010 by Mazandaran's Provincial government announcing that as religious marriage ceremony between a foreign man and Iranian women is illegal. In addition to Afghan nationals, Iraqi, Pakistani, and Bangalis are also mentioned by the circular as nationalities "forbidden" for marriage by Iranian women.

On May 7, 2012, the Majlis closed the books on this bill. In lieu of citizenship, the new bill grants children born to Iranian mothers and non-Iranian fathers the right to reside inside Iran and enjoy social, health and educational benefits the same as other Iranians. However, the new law did not solve the problem. In order for the new rights to be realized, the marriage had to have passed through the proper legal channels-the parties had to have obtained the governmental permit for marriage-which most of these unions did not. Therefore, the children resulting from these marriages are not subject to the improved law and continue to be unregistered, without birth certificates, and receiving no benefits from the Iranian government. As mentioned above, the government of Iran maintains that women married to Afghan nationals gain their husband's nationality. In some cases, when the mothers of such children sought help, they were told that they, as well as their child, are indeed Afghans and should go to Afghanistan. There are reportedly anywhere between 32 thousand to one million such children currently living in Iran.⁵²

Provincial Government, available at http://www.ostan-mz.ir/index.php?option=com_content&view=article&id=2143:l-r&catid=179:Line-2-6&Itemid=423.

⁵² Story of Marriage of Iranian Woman with Afghan Man, BBC Persian, May 30, 2011, available at http://www.bbc.co.uk/persian/iran/2011/05/110525_l21_married_iranian_women_afghan_men.shtml; Plan to Amend the Law to Determine the Nationality of Children Born from a Union between Iranian Women and Foreign Men, Passed 2006, available at http://rc.majlis.ir/fa/legal_draft/state/802647?fk_legal_draft_oid.

4. Conclusion

In the course of JFI's research, it appears that the UNHCR is evading responsibilities with respect to Afghan migrants inside Iran. As declared, the UNHCR does not consider Afghans who traveled to Iran to try to find a better economic opportunities to be refugees and so does not offer them protection while the conditions in their home country is deplorable. This also means that the issue of forced expelling-primarily a matter of illegal immigrants concern--does not apply to the refugees under UNHCR protection, in other words, not their problem. However, Iranian government, intentionally or otherwise, uses confusion and interchangeable terminology to refer to individuals being expelled by calling them foreign nationals, illegal immigrant, and refugees while a simple comparison of statistics published by UNHCR and Iran demonstrates that at least 2/3 of the Afghans residing inside Iran are considered to be refugees by UNHCR. Meanwhile the refugees are undergoing voluntary repatriation when one of UNHCR's responsibilities is to aid the integration of refugees in their new society and not to force them back to their country of origin or into refugee camps. On the other hand, Iran is sending mixed signals about the matter as well. It announces that it has no problem with Afghans who reside legally inside Iran and that the new plans only apply to illegal migrants inside the country, but then announces that all foreign nationals are to leave bordering provinces (forced displacement). It also does not provide clear statistics or definition of who are the illegal migrants and how does the international refugee law fail to apply to them. JFI demands that both Iranian government and the UNHCR make their entire plans clear and abandon their inhumane policy towards Afghans and:

- Abide by the international refugee laws prescribed by the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees in acting and assisting in protecting and promoting a solution for the Afghan refugee problem--in particular since Afghans comprise a third of the world refugee population and as such, should be UNHCR's number one priority.
- Stop the Iranian government's campaign against Afghans.
- Process each individual Afghan's case file separately and in accordance with international standards, assigning a clear and proper status to them. They should be given the right to appeal and file a complaint against the decisions of the Iranian officials.
- The Iranian government has to accept the Afghans as either migrants or asylum seekers, based on the status afforded to them at the time of their initial entry into the country, with all the rights granted to them as such. Returning illegal immigrants to their country must also be done while recognizing their human dignity, ensuring their right to life, minimum standard of living, and under the supervision of international bodies. Families comprising of Iranian - Afghan couples (Iranian woman - Afghan man) and their children must be recognized as Iranian and not deported under any circumstances.
- All Iranian officials responsible for the mistreatment and the violation of the rights of Afghan migrants, including **Ahmad Reza Shafi'i**, **Seyyed Taghi Shafi'i**, **Mohammad Tahavori**, and **Hadi Ebrahimi** must be held accountable for their actions.