

**FORCED REPATRIATION AND INTERNATIONAL HUMAN RIGHTS LAW: A
CRITICAL LEGAL ANALYSIS OF THE RECENT (2023 - 2025) DEPORTATION
OF AFGHAN REFUGEES FROM PAKISTAN**

A dissertation submitted in partial fulfilment of the requirements for the degree of LL.M
in Human Rights Law, Department of Law, Faculty of Shari'ah & Law, International
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IN THE NAME OF ALLAH,
THE MOST MERCIFUL, THE MOST COMPASSIONATE.

DEDICATION

To the Afghan refugees who have endured forced repatriation with dignity and resilience. Their experiences stand as a profound reminder of the human consequences that lie beyond legal doctrines and state policies, and reaffirm the enduring significance of international human rights law in safeguarding fundamental rights and human dignity. To my parents, whose inspiration, wisdom, prayers, and unwavering support and encouragement have shaped my journey and brought me to where I stand today. I remain deeply grateful for your constant guidance and steadfast presence. To my maternal aunt, Amina Khatibi, whose kindness, encouragement, and unwavering support have been a constant source of strength throughout this journey. This work is a small testament to your faith in me.

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APPROVAL SHEET

This is to certify that we evaluated the thesis entitled, "FORCED REPATRIATION AND INTERNATIONAL HUMAN RIGHTS LAW: A CRITICAL LEGAL ANALYSIS OF THE RECENT (2023 - 2025) DEPORTATION OF AFGHAN REFUGEES FROM PAKISTAN" submitted by Mr. Abdullah Omar, Reg. No. 00173/LLMHRL/F24 in partial fulfilment for the award of the degree of LL.M. The Thesis fulfills the requirements in its core and quality for the award of the degree.

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DECLARATION

I, Abdullah Omar, hereby, declare that this dissertation is original and has not been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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Abstract

This thesis critically examines the forced repatriation of Afghan refugees from Pakistan between 2023 and 2025 through the lens of international human rights law. It argues that Pakistan's non-accession to the 1951 Refugee Convention and its 1967 Protocol does not free it from binding obligations under other legal frameworks, particularly the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT), and relevant constitutional principles. The study focuses on whether Pakistan's deportation policies violate the principle of non-refoulement, the prohibition of torture and inhuman treatment, and the right to due process.

Using a doctrinal legal research methodology, the thesis analyses treaties, customary international law, UN treaty body jurisprudence, UNHCR guidance, domestic legal provisions, and comparative practices in selected non-signatory states, including India, Bangladesh, and Lebanon. It finds that Pakistan's current reliance on the Foreigners Act 1946 and ad hoc executive measures creates a structurally weak protection regime in which refugees and asylum seekers are frequently treated as undocumented migrants rather than rights-bearing persons entitled to individualized assessment and legal safeguards.

The thesis concludes that the recent deportation campaign is difficult to reconcile with Pakistan's human rights obligations because removals were pursued in a coercive environment lacking sufficient procedural guarantees. It recommends four key reforms: enactment of a comprehensive domestic asylum law, creation of an independent refugee status determination mechanism, strengthening of judicial review and remedies, and development of rights-based regional and international cooperation frameworks.

List of Abbreviations

Abbreviation	Full Form
ACC	Afghan Citizen Card
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Commission of Jurists
ILC	International Law Commission
LL.M	Master of Laws
NCHR	National Commission for Human Rights
OIC	Organisation of Islamic Cooperation
OHCHR	Office of the United Nations High Commissioner for Human Rights
PoR / POR	Proof of Registration
RSD	Refugee Status Determination
SAARC	South Asian Association for Regional Cooperation
SSRN	Social Science Research Network
UDHR	Universal Declaration of Human Rights

Abbreviation	Full Form
UN	United Nations
UN Doc.	United Nations Document
UNHCR	United Nations High Commissioner for Refugees
UNTS / U.N.T.S.	United Nations Treaty Series

List of Cases

No.	Cases
1	<i>Aamir Aman v Federation of Pakistan</i> , PLD 2020 Sindh 533.
2	<i>Agiza v Sweden</i> , Communication No. 233/2003, UN Committee against Torture, Decision of 20 May 2005.
3	<i>Al-Jehad Trust v Federation of Pakistan</i> , 1999 SCMR 1379.
4	<i>Canada (Public Safety and Emergency Preparedness) v Chhina</i> , 2019 SCC 29.
5	<i>Chahal v United Kingdom</i> , Application No. 22414/93, 23 EHRR 413, European Court of Human Rights, Judgment of 15 November 1996.
6	<i>Federation of Pakistan v Shaukat Ali Mian</i> , PLD 1999 SC 1026.
7	<i>Hirsi Jamaa and Others v Italy</i> [GC], Application No. 27765/09, European Court of Human Rights, Judgment of 23 February 2012.
8	<i>Human Rights Case No. 29388-K of 2013</i> , PLD 2014 SC 305.
9	<i>M.S.S. v Belgium and Greece</i> [GC], Application No. 30696/09, European Court of Human Rights, Judgment of 21 January 2011.
10	<i>Mr C v Australia</i> , Communication No. 900/1999, UN Human Rights Committee, Views adopted on 28 November 2002.
11	<i>Mubilanzila Mayeka and Kaniki Mitunga v Belgium</i> , Application No. 13178/03, European Court of Human Rights, Judgment of 12 October 2006.
12	<i>Muhammad Akbar Cheema v Superintendent Jail, Kot Lakhpat</i> , (1994) PCrLJ 2362 (Lahore High Court).

No.	Cases
13	<i>Rahil Azizi v The State</i> , Writ Petition No. 1666 of 2023, PLD 2024 Islamabad 231 (Islamabad High Court, decided 19 June 2023).
14	<i>Saadi v Italy</i> [GC], Application No. 37201/06, European Court of Human Rights, Judgment of 28 February 2008.
15	<i>Soering v United Kingdom</i> , Application No. 14038/88, 11 EHRR 439, European Court of Human Rights, Judgment of 7 July 1989.
16	<i>Teitiota v New Zealand</i> , Communication No. 2728/2016, UN Human Rights Committee, Views adopted on 24 October 2019.

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Chapter 1: Context, Research Problem, and Analytical Framework

1. Context and Rationale: Pakistan's Post-2023 Afghan Returns

The 1951 refugee convention defines a refugee as an individual who due to a well-founded fear of persecution because of race, religion, or nationality, or membership to a specific social group, or political opinion, is out of his or her country of nationality and cannot or will not otherwise seek the protection of her or his country.¹ In Pakistani situation, many Afghan citizens who could be described by international standards as refugees are usually not recognized as refugees, in large part because of the absence of national legislation concerning the issue of asylum and due to internal policy. Because of this, these people are often defined as “undocumented migrants” or irregular entrants, which, again, significantly impacts their rights to international legal protection. Pakistan is one of the significant countries in the world hosting refugee waves since it turned out to be the home of successive Afghan refugees ever since Soviet invasion of Afghanistan in 1979.² The latest crisis arose in August 2021 when the Taliban returned to power in Afghanistan, and the influx of refugees out of political instability, violence, and persecution increased.³ As part of a response to increasing domestic pressures, such as economic pressure, domestic security issues, and an increasing sense of hostility among their people, Pakistan embarked on a massive deportation effort in 2023 and 2025 directed at

¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, Article 1(A)(2), <https://www.unhcr.org/1951-refugee-convention.html> (Last accessed July 8, 2025).

² United Nations High Commissioner for Refugees (UNHCR), *Afghan Refugees in Pakistan: Four Decades of Hospitality*, <https://www.unhcr.org/pk/15065-pakistan-hosting-afghan-refugees-four-decades.html> (Last accessed June 15, 2025);

UNHCR, *Global Trends: Forced Displacement in 2022*, <https://www.unhcr.org/publications/brochures/649c302f4/global-trends-report-2022.html> (Last accessed June 15, 2025).

³ UNHCR, *Pakistan: Afghan Refugee Situation* (UNHCR, 2021) <https://www.unhcr.org/pk/> accessed 20 May 2025.

the Afghan nationals.⁴ These were those who were registered by the United Nations High Commissioner for Refugees (UNHCR), those Afghans whose status in Pakistan was officially recognized and was registered as Proof of Registration (POR) cards or Afghan Citizen Cards (ACC), and others awaiting decision on asylum.

International human rights organizations such as Amnesty International, Human Rights Watch, and the UNHCR have seriously criticized such deportations.⁵ It has been reported that the process has been accompanied by mass arrests, arbitrary detentions, destruction of informal refugee settlements, deprivation to access legal remedies and forced separation of family.⁶ These kinds of actions are very worrying according to the international human right law especially with regard to the rights of the refugees and the asylum seekers. Even though Pakistan is neither a signatory nor a party to the 1951 Convention Relating to the Status of Refugees nor the 1967 Protocol, it is a state party to other important international instruments which create binding obligations that would be applicable when dealing with the protection of refugees. These include the International Covenant on the Civil and Political rights (ICCPR) that provides the right to life (Article 6), the right to liberty and security of person (Article 9), and the right not to be subjected to unjustified expulsion (Article 13).⁷ Moreover, Pakistan is a signatory to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) that strictly forbids the delivery or extradition of any

⁴ Human Rights Watch, *Pakistan: Mass Deportations of Afghans* (31 October 2023) <https://www.hrw.org/news/2023/10/31/pakistan-mass-deportations-afghans> accessed 20 May 2025.

⁵ Amnesty International, *Pakistan: Stop Arbitrary Detention and Deportation of Afghan Refugees* (November 2023) <https://www.amnesty.org> accessed 20 May 2025.

⁶ Ibid.

⁷ United Nations Committee Against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22*, UN Doc. CAT/C/GC/4, September 4, 2018, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-4-2017-implementation-article-3> (Last accessed June 15, 2025);

individual to a state where there are significant reasons to suspect that he/she would face danger of being tortured (Article 3).⁸

One of the main legal norms that are involved in the deportation policy of Pakistan is the principle of non refoulement that prohibits sending people to the country where they might risk grave dangers to their life or liberty, such as persecution or tortures. Although non-refoulement is a concept that was explicitly spelt out in Article 33 of the 1951 Refugee Convention, it has also been recognized as a form of customary international law, that is, obligatory to all states regardless of whether they ratified the treaty or not. It is also incorporated in Article 7 of the ICCPR (protection against torture and cruel treatment) and Article 3 of the CAT.⁹

The deportation of Afghanistan refugees in Pakistan in large numbers without the evaluation of each person according to his or her risk seems to violate these legal requirements.¹⁰ The lack of a national law system to determine the status of refugees and asylum processes also adds to the problem. In Pakistan, refugees are usually identified under the immigration laws as undocumented or illegal aliens, and therefore they have no right to access the protection of the law otherwise that is provided under the international human rights law.¹¹

The research have critically analyzed the arguments presented as to whether the actions of Pakistan in the recent times are violations of the binding international law norms, namely: non-refoulement, due process, and non-torture and inhumane treatment. The paper also

⁸ Ibid.

⁹ Ibid.

¹⁰ UNHCR, 'UNHCR Calls on Pakistan to Halt Forced Returns of Afghan Nationals' (31 October 2023) <https://www.unhcr.org/news> accessed 20 May 2025.

¹¹ United Nations High Commissioner for Refugees (UNHCR), *Legal Considerations Regarding the Return of Afghan Nationals from Pakistan*, November 2023, <https://www.unhcr.org/news/press/2023/11/6540f4d24.html> (Last accessed June 15, 2025);

examined the legal loophole created by the non-membership of Pakistan in treaties that are specific to refugees, and assessed the possibility of successful exploitation of current human rights requirements to address this gap. It recommends that a formal domestic asylum framework, independent and transparent refugee status determination body and strong mechanisms for legal and judicial oversight be instituted. Also, it suggests the institutionalization of collaborative agreements with local and global partners to foster a legally binding and rights-based framework of protection of refugees under the leadership of UNHCR.

2. Thesis Statement

Pakistan's recent forced repatriation of Afghan refugees represents a breach of core international human rights norms, including the prohibition of torture, the right to due process, and the principle of non-refoulement, which necessitates a research which may critically examines the legal implications of Pakistan's actions.

3. Literature Review

The classical literature on refugee law incorporates *The Refugee in International Law* by Guy S. Goodwin-Gill and Jane McAdam that constitutes a detailed legal and historical exposition of the principle of protecting refugees and addresses the concept of non-refoulement as a norm of international law even when applied to non-signatory states.¹²

This is supplemented by James C. Hathaway's *The Rights of refugees under international law* which provides an extensive discussion of the rights of refugees based on the human rights treaties and argues that non refoulement has become a customary international norm.¹³ In a similar article, Hathaway contends that the asylum norms can be used to exploit more human rights obligations as protection even beyond the Convention.¹⁴

¹² Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd edn, OUP 2007).

¹³ James C Hathaway, *The Rights of Refugees under International Law* (CUP 2005).

¹⁴ James C Hathaway, 'Leveraging Asylum' (2010) 45(3) *Texas International Law Journal* 503.

In her article, “Protection Beyond the Convention”, Michelle Foster introduces the idea of the general human rights law, such as the ICCPR and CAT, as an addition to the refugee protection. She is critical in analyzing how these tools would provide legal protection without the consideration of treaties that are specific to the refugees.¹⁵

The Advisory Opinion of the UNHCR on the Extraterritorial Application of the Non-Refoulement Obligations offers an authoritative interpretation that widens the protection scope and confirms that states have a responsibility of ensuring that refugees are not injured even beyond their sovereign area.¹⁶ This plays a central role in perceiving the extraterritorial responsibilities of Pakistan. Empirical accounts by Amnesty International and Human Rights Watch give reported cases of abuse, family disintegration and lack of due process in the recent deportation drive by Pakistan. The reports of the International Commission of Jurists are legally reviewed on this and criticize the actions of Pakistan in the context of the international human rights law.¹⁷

There are three other books that offer comparative observations. Findings in Refugees and Forced Displacement: International Security, Human Vulnerability, and the State by Edward Newman and Joanne van Selm draw attention to the security human rights nexus of state reactions to refugees.¹⁸ The book The International Human Rights of Migrants by Paul de Guchteneire, Antoine Pecoud and Ryszard Cholewinski is dedicated to the relevance of the

¹⁵ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention and its 1967 Protocol* (26 January 2007) <https://www.refworld.org/docid/45f17a1a4.html> accessed 20 May 2025.

¹⁶ Amnesty International, *Pakistan: Stop Arbitrary Detention and Deportation of Afghan Refugees* (November 2023) <https://www.amnesty.org>; Human Rights Watch, *Pakistan: Mass Deportations of Afghans* (31 October 2023) <https://www.hrw.org> accessed 20 May 2025.

¹⁷ International Commission of Jurists, *Pakistan: Deportation of Afghan Nationals and Violations of International Law* (ICJ Briefing Paper, 2024) <https://www.icj.org> accessed 20 May 2025.

¹⁸ Edward Newman and Joanne van Selm (eds), *Refugees and Forced Displacement: International Security, Human Vulnerability, and the State* (UNU Press 2003).

human rights law to the migrants and refugees.¹⁹ Lastly, *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick*, edited by Anne F. Bayefsky examines both legal and ethical aspects of the protection of refugees.²⁰

Recent journal literature on Afghan displacement in Pakistan shows a clear movement away from descriptive “hosting” accounts toward rights-relevant governance questions, especially the interaction between (i) shifting documentation categories, (ii) enforcement-led mobility control, and (iii) protection risks associated with return. In Pakistan-focused empirical work, the dominant argument is that legal/administrative status does not reliably translate into everyday protection when policy signalling and policing practices generate fear, insecurity, and constrained access to services. In this vein, Tareen and Tareen’s study on Afghan refugees in Quetta frames Pakistan’s repatriation posture as producing psychosocial harms linked to uncertainty, insecurity, and anticipatory fear of removal, arguing that such harms persist even where refugees attempt to regularize their presence.²¹ This finding is reinforced by qualitative work on profiling and camp governance, where Hajizada argues that prolonged temporariness and routine identity scrutiny function as everyday controls that shape refugees’ sense of “deportability” and exclusion.²² Together, these local studies suggest that the governance of

¹⁹ Paul de Guchteneire, Antoine Pécoud and Ryszard Cholewinski (eds), *The International Human Rights of Migrants* (UNESCO and Cambridge University Press 2009).

²⁰ Anne F Bayefsky (ed), *Human Rights and Refugees, Internally Displaced Persons and Migrant Workers: Essays in Memory of Joan Fitzpatrick* (Martinus Nijhoff 2006).

²¹ Sarina Tareen and Abdal Khan Tareen, “The Psycho-Social Implication of Pakistan’s Repatriation Policy on Afghan Refugees in Quetta,” *International Journal of Refugee, Minority and Gender Studies* 1, no. 2 (2024), accessed February 18, 2026, <https://journal.icrms.org.pk/index.php/IJRMGS/article/view/18>

²² Ajmal Hajizada, “Profiling of Afghan Refugees in Pakistan: A Qualitative Study Conducted in Refugee Camps in Pakistan,” *Journal of Politics and International Studies* 10, no. 1 (January–June 2024): 79–90, accessed February 18, 2026, <https://jpis.pu.edu.pk/45/article/download/1360/1345/2695>

Afghan displacement is experienced less as stable “status” and more as a condition of contingent permission, responsive to political shifts and enforcement campaigns.²³

A related strand of Pakistan-based scholarship shifts the lens to social rights outcomes especially education and child well-being by tracing how marginality translates into measurable deprivation. Arif, Ismail, and Yao show that dropout among Afghan refugee students in Balochistan is explained by interacting pressures (poverty, discrimination, weak institutional support, and gender constraints), which collectively narrow futures and increase dependence on informal survival strategies.²⁴ Khurshid and Noreen similarly identify determinants of malnourishment among Afghan refugee children in Quetta that reflect structural insecurity and constrained access to consistent support systems.²⁵ These studies are valuable to a legal dissertation because they provide peer-reviewed, local evidence of predictable harm pathways that arise where residence is precarious and services are discontinuous conditions that are often intensified in return or deportation environments.²⁶

Local literature also highlights the political economy created by long-term displacement under weak regularisation mechanisms. Afnan and Sultan argue that policy oscillation between tolerance and enforcement interacts with Pakistan’s informal economy, shaping refugee livelihoods through informal labour, irregular markets, and constrained legal work opportunities.²⁷ The significance for the thesis is that “return” policies are not only about

²³ See note 21 above.

²⁴ Muhammad Arif, Aneta Ismail, and Jia li Yao, “Exploring Educational Dropout Among Afghan Refugee Students in Balochistan: A Qualitative Analysis Through Bronfenbrenner’s Ecological Systems Theory,” *International Journal of Refugee, Minority and Gender Studies* 1, no. 2 (2024), accessed February 18, 2026, <https://journal.icrms.org.pk/index.php/IJRMGS/article/view/12>

²⁵ Ayisha Khurshid and Zobia Noreen, “Determinants of Malnourishment Among Afghan Refugee Children Residing in Quetta: An Analysis,” *International Journal of Refugee, Minority and Gender Studies* 1, no. 2 (2024), accessed February 18, 2026, <https://journal.icrms.org.pk/index.php/IJRMGS/issue/view/2>

²⁶ Ibid

²⁷ Formolly, Aimal. "Optimal Density Thresholds for Spatial Justice: Balancing Affordability and Sustainability in Kabul's Fragile Urban Landscape."

territorial control: they also reconfigure labour and welfare realities, potentially creating conditions in which departures are not meaningfully voluntary.²⁸ Adding a doctrinal-legal dimension, Shah's article argues that Pakistan's reliance on the Foreigners Act 1946 and ad hoc measures does not provide an adequate protection framework and therefore leaves refugees vulnerable to enforcement-dominant governance.²⁹ These local contributions collectively establish that, in Pakistan, the central "gap" is the absence of stable, rights-protective legal architecture capable of constraining removals and ensuring safeguards.

Alongside Pakistan-specific scholarship, recent international journal work provides the doctrinal tools to analyse removal campaigns through non-refoulement, due process, and mass-expulsion logics. Guo's 2025 article on (mass) expulsion shows how international law concerns are triggered when removals occur at scale under compressed procedures, because such contexts predictably weaken individualised assessment and elevate the risk of wrongful return.³⁰ This connects to scholarship analysing the prohibition of collective expulsion and the procedural conditions under which it can be meaningfully applied. March's case-study of *N.D. and N.T. v Spain* explains how high-velocity enforcement practices can undermine the practical ability to access procedures, framing procedural access as central to whether expulsions become effectively "collective" in outcome.³¹ Recent scholarship also draws attention to how modern migration governance increasingly adopts enforcement architectures that normalise

²⁸ Emmanouilidis, Kyriakos, and Sotirios Bellos. "Refugee flows and the economic-security nexus in Europe: evidence from military spending, growth, and political stability." *Journal of Contemporary European Studies* 34, no. 1 (2026): 219-251.

²⁹ Shah, Syed Murad Ali, Syed Muhammad Farrukh Bukhari, and Khawaja Noor Ul Ain. "Harmonizing Humanity: Unveiling the Nexus of International and Constitutional Dynamics in Pakistan's Potential Adoption of the Refugees Convention." *Journal of Development and Social Sciences* 6, no. 1 (2025): 52-60.

³⁰ S. Guo, "A Critical Review of Chinese Law on (Mass) Expulsion of Aliens through a Lens of International Law," *Australian Journal of Human Rights* (2025), accessed February 18, 2026.

³¹ C. B. March, "*N.D. and N.T. v Spain* as a Case-Study," *European Convention on Human Rights Law Review* 6, no. 4 (2025): 486–[end page], accessed February 18, 2026, https://brill.com/view/journals/eclr/6/4/article-p486_004.pdf

rights dilution. Macklin’s analysis of “exit rights” and the “new carceral state” shows how states fuse exit/entry control through cooperation and administrative techniques that restrain movement while appearing procedurally orderly.³² Peers’ critique of the EU’s new asylum laws similarly demonstrates that rights outcomes often hinge on procedural design (deadlines, remedies, suspensive effect, and access) rather than abstract commitments; this supports using “procedural sufficiency” as a central evaluative lens when analysing any accelerated return or deportation programme.³³ Finally, recent peer-reviewed health scholarship has framed mass deportations of Afghans as producing acute vulnerability and instability, supplying an additional empirical bridge between “return governance” and foreseeable harm.³⁴

The proposed research added to the academic discussion, as it helped to place the forced repatriation of the Afghan refugees in Pakistan in the context of international human rights and customary international law. The paper also presented a critical legal insight into the principles upon which protection of refugees is governed with a keen interest on the principle of non-refoulement and how the principle is binding on the international law. Ultimately, this research have offered feasible legal guidelines to harmonize the domestic legal system in Pakistan with the international standards, in which accountability and protection of human rights will be promoted to refugees.

³² Audrey Macklin, “Exit Rights, Seamless Borders and the New Carceral State,” *International and Comparative Law Quarterly* (2024), accessed February 18, 2026, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/exit-rights-seamless-borders-and-the-new-carceral-state/3D6C258C0D46251A2FD2FFF96FD97765>

³³ Steve Peers, “The New EU Asylum Laws: Taking Rights Half-Seriously,” *Yearbook of European Law* (2024), accessed February 18, 2026, <https://academic.oup.com/yel/article-abstract/doi/10.1093/yel/yeae003/7733120>.

³⁴ M. Rfat, “Coordinated Action Needed amid Mass Deportations of Afghans,” *The Lancet Global Health* (2025), accessed February 18, 2026, <https://www.thelancet.com/journals/langlo/article/PIIS2214-109X%2825%2900307-9/fulltext>

4. Research Objectives

1. To critically examine the international legal framework governing the expulsion of refugees, with particular emphasis on the principle of non-refoulement as articulated in treaty law (including the International Covenant on Civil and Political Rights and the Convention against Torture) and its recognition as a binding norm of customary international law.
2. To assess whether Pakistan's recent deportation of Afghan refugees complies with its obligations under international human rights law, including prohibitions against arbitrary expulsion, torture, and inhumane treatment, as well as the right to due process.
3. To evaluate the implications of Pakistan's non-accession to the 1951 Refugee Convention and its 1967 Protocol, and to analyse how general human rights instruments may be utilized to fill the resulting legal protection gap.
4. To propose concrete legal and institutional reforms, including the establishment of a domestic asylum and refugee status determination mechanism, judicial review procedures, and regional cooperation arrangements to ensure compliance with international norms and the protection of refugee rights in Pakistan.

5. Importance of Study

This study focused on a critical and dynamic human rights tragedy in South Asia that has had extensive legal, humanitarian and geopolitical impact.³⁵ The case study of the mass deportation of the Afghan refugees by Pakistan offers a critical case study in examining how

³⁵ Jawed Aziz Masudi, "Mass Deportation of Afghan Refugees from Pakistan: Refugee Law at Stake or Solution for Halting Terrorism?," *Pakistan Journal of International Affairs* 6, no. 3 (2023): 315–326.

the obligation of the states that are not part to the 1951 Refugee Convention interpret and apply their part under international law.³⁶

Pakistan has a strategic position in the region along with historical consideration of hosting the displaced people and therefore its policies have consequences not only on the domestic governance of the country but also on the international standards of the protection of refugees. The relevance of the study is in the fact that it addresses the cross-section of customary international law, general human rights treaties, and state practice by non-signatory jurisdictions.³⁷

Though, Pakistan is not party to the Refugee Convention, it is subject to the binding international human rights documents, including the ICCPR and the CAT.³⁸ These mechanisms encompass non-refoulement, banning of torture, against arbitrary arrests and expulsion, and guarantee of access to justice, which Pakistan might not be meeting.³⁹

The study will have the benefit of providing a critical assessment of whether these international norms are being adhered to or not and also provide practical and rights-driven policy recommendations to the study. These are the establishment of a domestic asylum law, establishment of an independent body on refugee status determination (RSD) with procedural protection and the institutionalization of regional cooperation under the supervision of

³⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137; Cathryn Costello and Michelle Foster, “Non-Refoulement as Custom and the Proceduralisation of Protection,” *Netherlands Yearbook of International Law* 46 (2015): 3–48.

³⁷ Costello and Foster, “Non-Refoulement as Custom,” 3–48; Thomas Gammeltoft-Hansen and James C. Hathaway, “Non-Refoulement in a World of Cooperative Deterrence,” *Columbia Journal of Transnational Law* 53, no. 2 (2015): 235–284.

³⁸ International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85.

³⁹ ICCPR, arts. 2, 6, 7, 9, 13, and 14; CAT, art. 3; Human Rights Committee, General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004); Committee against Torture, General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22, U.N. Doc. CAT/C/GC/4 (September 4, 2018).

international institutions like the UNHCR. Moreover, the research contributes to the current debate in the field of international law concerning the legal obligations of non-signatory states, the broadening of the protections of refugees outside of the traditional treaties, and application of customary international laws in the local context. It will be used to help policymakers, legal practitioners, scholars, and human rights activists develop a more rational, legal, and humane stance regarding the protection of refugees in Pakistan and similar jurisdictions.⁴⁰

6. Research Questions

1. To what extent is Pakistan legally bound under international human rights law to protect refugees and asylum seekers, despite not being a party to the 1951 Refugee Convention and its 1967 Protocol?
2. Do Pakistan's recent deportation policies toward Afghan refugees constitute violations of its binding obligations under international legal instruments such as the International Covenant on Civil and Political Rights and the Convention against Torture?
3. How does the principle of non-refoulement recognized as a norm of customary international law apply to Pakistan's treatment and expulsion of Afghan refugees, and has this principle been upheld or violated in practice and what legal remedies exist for affectees.
4. What legal and institutional reforms are necessary within Pakistan's domestic legal framework to ensure compliance with international standards for refugee protection and to establish effective mechanisms for due process and non-refoulement?

⁴⁰ Sahibzada Ali Rajper, "Refugee Rights and the Repatriation of Afghan Nationals," *Pakistan Journal of Law, Analysis and Wisdom* 3, no. 9 (2024): 45–61; Arjumand Bano Kazmi, "Pakistan's Judicial Engagement with International Refugee Law," *International Journal of Refugee Law* 36, no. 4 (December 2024): 397–418.

7. Research Methodology

The study will be based on a doctrinal research which will involve critical analysis of primary and secondary sources related to the international human rights and refugee law.⁴¹ The study will involve the methodical analysis of international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), especially the clauses associated with the ban on torture (Article 7 of ICCPR and Article 3 of CAT), unjustifiable expulsion (Article 13 of ICCPR), and the overall requirement to safeguard persons against refoulement.⁴²

The customary international law, especially the formulation and juridically of the principle of non-refoulement, through jurisprudence of the international tribunals (Human Rights Committee and Committee Against Torture), *opinio juris* and uniform state practice to evaluate its applicability to Pakistan. Soft law tools and interpretative documents, such as General Comments by UN treaty bodies and advisory opinions of the United Nations High Commissioner of Refugees (UNHCR), which provide authoritative advice on the extraterritoriality of non-refoulement, procedural rights of asylum seekers.⁴³

Comparison of law regimes and refugee protection practices in the jurisdiction of remaining similarly situated non-signatory states (e.g., India, Bangladesh, and Lebanon), to study possible legal frameworks to provide a refugee protection in the non-convention setting. Empirical evidence of reputable human rights organizations (e.g., Amnesty International,

⁴¹ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119.

⁴² International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171, arts. 7 and 13; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, art. 3.

⁴³ International Law Commission, *Draft Conclusions on Identification of Customary International Law*, with commentaries, U.N. Doc. A/73/10 (2018), Conclusions 2–3 and 8.

Human Rights Watch, International Commission of Jurists), which also involved documented events in the context of Pakistan 2023-2025 deportation campaign. These documents will be used as factual foundations to check the lawfulness. By combining law doctrine with practical experiences and comparison of experiences, it will be possible to make a holistic and critical analysis of the Pakistan refugee policy. This measure will also be used in developing practical recommendations that can be used to align the national practices with the international commitments.

The comparative and jurisprudential components of the study are applied in a functional and issue-specific manner. The additional comparison examines Iran, Türkiye and Germany to identify how regional and developed legal systems regulate executive removal, while Germany and Canada are used as model legislative systems for notice, reasons, risk assessment, review and appeal. The jurisdictions are not treated as interchangeable: Iran is considered because it is a neighboring host of Afghan refugees; Türkiye because it combines large-scale migration management with a codified removal procedure; and Germany and Canada because their legislation establishes developed procedural and appellate safeguards. The case-law analysis examines the facts, legal issue, holding, ratio, remedy and limits of each decision, including *Soering v. United Kingdom*, *Chahal v. United Kingdom*, Pakistani Supreme Court authorities and the decisions in *Aamir Aman v. Federation of Pakistan* and *Rahil Azizi v. State*. This remains doctrinal legal research: foreign rules are evaluated for their legal function and practical transferability to Pakistan rather than being copied without regard to Pakistan's constitutional and administrative structure.⁴⁴

⁴⁴ Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83–119.

Structure of the Study

The study is structured into four main chapters, which pass through the background and definition of the problem, legal framework-construction, doctrinal and comparative analysis, and lastly an evaluation of the practices in Pakistan and the reforms needed in order to bring it to the international standards. Chapter One presents the historical and political context of the issue of Afghan displacement to Pakistan, outlines the legal issue that the 2023-2025 deportation campaign presents, and identifies the research questions, objectives, and methodology that will inform the thesis. Chapter Two builds up on international legal frameworks on forced return with a background on non-refoulement, UDHR, and treaty-based requirements under ICCPR and CAT, interpretative rules by UN institutions and the legal consequences of the definition of refugees. Chapter Three further elaborates by looking at non-refoulement as an ordinary international law and its legal basis, jurisprudential backing, and the place of *opinio juris* with also comparative lessons on non-signatory states, including India, Bangladesh and Lebanon. Chapter Four before imposing these international standards on the domestic law of Pakistan and examining whether the deportation policy is being implemented legally and the existence of procedural safeguards and remedies. Chapter Five then puts the findings into practical recommendations, which include domestic asylum legislation, independent refugee status determination process, better judicial review, and regional/international cooperation paradigms. The four chapters brings about the research findings in synthesis and gives final recommendations.

CHAPTER 02: INTERNATIONAL LEGAL FRAMEWORK

2. Regarding non-Refoulment

In this chapter, the author sets the international legal system of protection of refugees and other individuals against forced returns, with a purpose of paying specific attention to binding norms and legal content of the norms instead of descriptive policy stories already presented in other chapters. It will answer Research Question 1 the extent to which Pakistan is lawfully bound under the law of the international human rights law despite its non-accession to the 1951 Refugee Convention and lay the doctrinal groundwork to Research Question 3 the application of non-refoulement as customary international law to removals, and what legal minimum protection is necessary to prevent unlawful return.

The chapter is further divided into four sections. First, it examines non-refoulement principle in treaty form, and in claimed principle of customary international law, including the disputed doctrinal landscape between scope, exceptions, and evidence.⁴⁵

Second, it examines human rights instruments especially the ICCPR and CAT that generate non-refoulement-like constraints through prohibitions on torture and arbitrary deprivation of life, and through procedural guarantees regulating expulsion.⁴⁶ Third, it critically evaluates the interpretative authority of UN treaty bodies and UNHCR guidance, including their contribution to the “proceduralisation” of non-refoulement.⁴⁷ Finally, it clarifies the definition of “refugee” and the legal implications of misclassification, especially where domestic systems collapse refugees into the category of “undocumented migrants,” thereby

⁴⁵ See International Law Commission, *Draft Conclusions on Identification of Customary International Law*, with commentaries, U.N. Doc. A/73/10 (2018)

⁴⁶ International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, 999 U.N.T.S. 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 85.

⁴⁷ UN Human Rights Committee (HRC), General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004).

attempting (often unsuccessfully in law) to evade international constraints and also the contemporary debates, and finally the conclusion of the chapter.⁴⁸

2.1 The Principle of Non-Refoulement in International Law

2.1.1 Origins in the 1951 Refugee Convention

Article 33(1) of the 1951 Convention Relating to the Status of Refugees, the most famous example of this, has been interpreted to mean that expulsion or return should not occur in any manner whatsoever to a destination where the life or freedom of the person at risk would be endangered on Convention grounds.⁴⁹ In its legal form, Article 33(1) is not a right to be granted asylum in any sense: it is a negative duty that prohibits expulsion or repatriation.⁵⁰ The legal form of the matter is that formal Nevertheless, the Convention formulation is not unrestricted.⁵¹ Article 33(2) establishes a security exception of refugees who would be a threat to the security of the host state or the community based on conviction of a duly serious offense.⁵² This is the home restriction at the center of lawful discussions of balancing and absoluteness. Article 33(2) has frequently been used in the doctrine of refugee law as an indication that refugee-law non-refoulement is not absolute in every situation; although this is not the determination of whether human-rights law forbids removal despite circumstances in which Article 33(2) may come into force.⁵³

Another problem is the subject of the scope of persons under protection. The text of the Convention refers to the term of refugee and this raises a threshold question; when does an

⁴⁸ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status* (Geneva: UNHCR, 2019).

⁴⁹ Convention Relating to the Status of Refugees art. 33(1), July 28, 1951, 189 U.N.T.S. 137.

⁵⁰ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007).

⁵¹ James Crawford, *Brownlie's Principles of Public International Law*, 9th ed. (Oxford: Oxford University Press, 2019), 362–65.

⁵² Refugee Convention art. 33(2).

⁵³ European Court of Human Rights (ECtHR), *Chahal v. United Kingdom*, 23 EHRR 413 (1996).

individual qualify as a refugee? The legal implications of such a position by UNHCR, which is also reflected in the status-determination doctrine, are that refugee status is declaratory, not constitutive: a person is a refugee immediately a criteria is met, even prior to state recognition.⁵⁴ This matters legally because it undercuts state arguments that non-refoulement duties arise only *after* a bureaucratic grant.⁵⁵

Yet courts and states have sometimes operationalised this declaratory logic unevenly, especially where states deploy “inadmissibility,” “safe third country,” or “transit” mechanisms to prevent claims from being heard on the merits.⁵⁶ Interpretation is also influenced by the object and purpose of the Convention. In the context of the Vienna Convention interpretative method, interpretation should have the effect of giving force to the object and purpose of the treaty, while the ICJ has not issued a general interpretative ruling on Article 33, the Vienna Convention’s interpretative method remains the relevant baseline.⁵⁷

Reading Article 33 narrowly to permit collective removal without individual risk inquiry would be difficult to reconcile with the Convention’s protective design particularly given the text’s breadth (“in any manner whatsoever”).⁵⁸

Most importantly, though, the Refugee Convention is not the entire universe of the law. Non-refoulement obligations can also consequently be enforced under customary international law, and by human rights treaties which impose upon the state *per se*. These paths are not

⁵⁴ UNHCR, *Handbook and Guidelines* (2019), paras. 28–29.

⁵⁵ Atle Grahl-Madsen, *The Status of Refugees in International Law*, vol. 1 (Leiden: A.W. Sijthoff, 1966), 156–60

⁵⁶ Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford: Oxford University Press, 2016), 208–40

⁵⁷ Vienna Convention on the Law of Treaties arts. 31–33, May 23, 1969, 1155 U.N.T.S. 331

⁵⁸ Refugee Convention art. 33(1).

necessarily the same doctrinally: they vary in safeguarded interests (persecution vs. torture vs. death), exceptions and the requirements of proof.⁵⁹

2.1.2 Expansion through Customary International Law

The argument on non-refoulement which suggests that it is a customary international law, is repeatedly advanced as the conclusive solution to non-signatory states, yet the case needs to be disciplined in law. The customary international law has the following requirements: (i) general practice and (ii) *opinio juris*- a sense that such practice is legally necessary but contrary practice is (legal) countered and/or concessionally admitted as illegal.⁶⁰ It is therefore insufficient to cite widespread humanitarian rhetoric; the legal question is whether state behaviour and justificatory practice demonstrate a sense of legal obligation, and whether contrary practice is legally defended as lawful or conceded as breach.⁶¹

An influential statement of the scope and content of the principle, which is frequently cited as example of customary crystallisation, is the expert Opinion of Lauterpacht and Bethlehem, which explains non-refoulement as generally wide-applicable, even at the border and in indirect forms of transfer.⁶² While widely cited, its legal status is not itself a source of law; it is persuasive authority whose utility depends on how well it reflects broader state practice and institutional interpretation.⁶³ UNHCR has similarly taken the position that non-refoulement is the cornerstone of international protection and has treated it as binding beyond the Convention framework, including via customary law.⁶⁴

⁵⁹ Elihu Lauterpacht and Daniel Bethlehem, “The Scope and Content of the Principle of Non-Refoulement: Opinion,” in *Refugee Protection in International Law*, ed. Erika Feller, Volker Türk, and Frances Nicholson (Cambridge: Cambridge University Press, 2003).

⁶⁰ ILC, *Draft Conclusions on Identification of Customary International Law* (2018), Conclusions 2–3

⁶¹ Anthea Roberts, *Is International Law International?* (Oxford: Oxford University Press, 2017), 59–74.

⁶² Lauterpacht and Bethlehem, “Scope and Content,” 87–177.

⁶³ Merkouris, Panos, Jörg Kammerhofer, Noora Arajärvi, and Nina Mileva, eds. *The theory, practice and interpretation of customary international law*. Vol. 1. Cambridge University Press, 2022.

⁶⁴ UNHCR, *Note on the Principle of Non-Refoulement*, U.N. Doc. EC/SCP/2 (Aug. 23, 1977); see also UNHCR, “UNHCR Note on the Principle of Non-Refoulement” (1997).

But there are at least three ways in which the customary claim is challenged. First, the substance of customary non-refoulement is controversial. Does it follow the persecution grounds of the Refugee Convention, or does it follow much better the torture / inhuman treatment ban of the human rights law? The state practice indicates a greater tolerance to non-return where tortures are likely and to non-return where persecution is claimed on the basis of Convention grounds, which implies that potential differentiated content of custom might exist instead of a unitary rule.⁶⁵

Second, pushbacks, interdictions, and accelerated removals are a common strategy in the states.⁶⁶ Here the jurisprudence of the European Court of Human Rights on interdiction and extraterritorial control, particularly *Hirsi Jamaa v Italy*, is important: it denies the use of measures to evade jurisdiction (and so to create legal black holes), and deems effective control to be triggering the creation of obligations (in a way that limits the ability of states to establish legal black holes).⁶⁷

Third, the hierarchical status of non-refoulement (custom vs. jus cogens) is disputed. Some scholarship argues for a peremptory (jus cogens) status at least for removal exposing a person to torture, while others caution that state practice is too inconsistent to support such elevation across the full domain of persecution-based claims.⁶⁸ The more defensible proposition supported by treaty law and jurisprudence is that the torture non-refoulement rule (CAT Article 3 / ECHR Article 3 logic) is functionally absolute, while Convention non-

⁶⁵ Kälén and Künzli, *The Law of International Human Rights Protection*, 2nd ed. (Oxford: Oxford University Press, 2019), 400–12.

⁶⁶ Itamar Mann, “Maritime Legal Black Holes: Migration and Rightlessness in International Law,” *European Journal of International Law* 29, no. 2 (2018): 347–72.

⁶⁷ ECtHR, *Hirsi Jamaa and Others v. Italy* (GC), App. No. 27765/09, Judgment (Feb. 23, 2012).

⁶⁸ See, e.g., Jean Allain, “The Jus Cogens Nature of Non-Refoulement,” in *The Refugee Convention at Fifty*, ed. Joanne van Selm et al. (Lanham, MD: Lexington Books, 2003), 533–58.

refoulement contains textual exceptions.⁶⁹ That doctrinal distinction matters for non-signatory states: even if customary law is contested at the margins, human rights treaty law may independently establish binding non-return obligations with fewer exceptions. In line with this, most legal rigorous treatment would be to consider customary non-refoulement as a stacking of liabilities: at least, an intense customary core that forbids returning to torture or other inhuman treatment, and a broader refugee-law protection based on the quality of the evidence on general practice and *opinio juris* in any given situation.⁷⁰

2.2 Universal Declaration of Human Rights and Treaty-Based Obligations

2.2.1 Universal Declaration of Human Rights (UDHR)

UDHR is not a treaty but formally a declaration of the General Assembly. However, this has legal relevance in at least two senses; (i) in being an interpretative guide to subsequent treaties, and (ii) as reflecting in part the norms of custom that relates to any given right.⁷¹ For forced return, Article 14(1) states that everyone has the right to seek and enjoy asylum from persecution.⁷²

The critical point is that Article 14 is not a binding guarantee that asylum must be granted; it is a recognition that seeking asylum is legitimate and that persecution engages international concern.⁷³ The status of the asylum principle in Article 14 associated with the evolution of non-refoulement as a cornerstone norm has been connected by UNHCR to Article 14 *per se*,⁷⁴ rather than the broader interpretative direction: expulsion is not a domestic

⁶⁹ CAT art. 3; ECtHR, *Saadi v. Italy* (GC), App. No. 37201/06, Judgment (Feb. 28, 2008).

⁷⁰ Vincent Chetail, “The Transnational Movement of Persons under General International Law,” in *Research Handbook on International Law and Migration*, ed. Vincent Chetail and Céline Bauloz (Cheltenham: Edward Elgar, 2014), 1–72.

⁷¹ Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 *Ga. J. Int’l & Comp. L.* 287 (1996).

⁷² Universal Declaration of Human Rights art. 14(1), G.A. Res. 217A (III) (Dec. 10, 1948)

⁷³ James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), 301–10.

⁷⁴ UNHCR, “UNHCR Note on the Principle of Non-Refoulement” (1997)

administrative measure, but may involve international responsibility where it predisposes a human being to severe peril.⁷⁵

2.2.2 International Covenant on Civil and Political Rights (ICCPR)

States Parties are bound by the ICCPR as a treaty law and the ICCPR plays a leading role as part of the human rights route to non-refoulement. There are three groups of provisions which are important: (i) the prohibition of torture and cruel, inhuman, or degrading treatment (Article 7), (ii) the right to life (Article 6), (iii) procedural limitations on expulsion (Article 13), and complemented by overall requirements (Article 2) and other due process requirements.⁷⁶ Although Article 7 does not use the word “refoulement,” the Human Rights Committee (HRC) has repeatedly treated the Covenant as prohibiting removal where there are substantial grounds for believing a person would face a real risk of Article 7.⁷⁷

In *Mr. C. v Australia*, the Human Rights Committee (HRC) was repeatedly obliged to treat the Covenant as barring removal where there were substantial reasons to believe that the person would otherwise face an Article 7 treatment, and explained that removal could still involve taking responsibility in a situation where this was a necessary and foreseeable outcome.⁷⁸ Such logic is based on a larger principle of treaty responsibility: obligations extend to persons on its territory, or subject to its jurisdiction, even to those persons outside its territory, provided the removal was carried out by the individual, and the extraterritorial harm was foreseeable.⁷⁹ The HRC in its General Comment No. 31 puts this jurisdictional reasoning as follows: obligations apply to persons on the territory of a state or under its jurisdiction, even

⁷⁵ Kälén and Künzli, *International Human Rights Protection*, 388–406

⁷⁶ ICCPR arts. 2, 6, 7, 13

⁷⁷ HRC, General Comment No. 20, *Article 7 (Prohibition of Torture)* (Mar. 10, 1992).

⁷⁸ HRC, *Mr. C. v. Australia*, Communication No. 900/1999, Views (Nov. 28, 2002).

⁷⁹ Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford: Oxford University Press, 2011), 121–40.

persons not on its territory, who was removed by the individual, and whose extraterritorial harm was foreseeable.⁸⁰

The right to life (Article 6) gives a parallel non-return restriction in which deprivation deprives an individual to a genuine threat of random loss of life. The HRC characterizes Article 6 in its General Comment No. 36 as the supreme right and provides an example of such a right in its climate-displacement case of *Teitiota v New Zealand*, which cautiously addresses the risk of harm in future years;⁸¹ the practical effect of that case is that the Article 6 right is taken to override the removal right, when the risk posed is sufficient, as well as to establish that the Committee is unwilling to conflate hardship with the test of irreparable harm.⁸²

Article 13 stipulates that an alien in the territory may only be expelled in accordance with the law, and they must be permitted to provide reasons against expulsion and to have their case considered unless there are imperative reasons of national security to the contrary.⁸³ Although Article 13 is restricted by the term lawfully in the territory, Covenant protection of aliens, whether they are lawful residents or not, is ensured by Article 13 as expressly in Articles 6, 7, and 9.⁸⁴ General Comment No. 15 makes clear that Covenant protections are not contingent on nationality, and that aliens enjoy the right to liberty and security and protection from torture and arbitrary deprivation of life.⁸⁵

It is important to note that procedural protections should not be considered as the administrative niceties, but they are the system in which the state can prevent the substantive

⁸⁰ HRC, General Comment No. 31 (2004), para. 10.

⁸¹ HRC, General Comment No. 36, *Article 6 (Right to Life)*, U.N. Doc. CCPR/C/GC/36 (Sept. 3, 2019).

⁸² HRC, *Teitiota v. New Zealand*, Communication No. 2728/2016, Views (Oct. 24, 2019).

⁸³ ICCPR art. 13.

⁸⁴ HRC, General Comment No. 15, *The Position of Aliens Under the Covenant* (Apr. 11, 1986).

⁸⁵ *Ibid.*, para. 7.

violation.⁸⁶ In cases where removals are made without information about appeal, legal representation or any meaningful opportunity to offer risk, the state risks escalating the likelihood of a wrongful return- making, that is, procedure, a structural source of substantive transgression.⁸⁷ It is here that a strongly legalistic reproach should be offered, which is that states have used deportation as one of the atavistic privileges untouched by international law, whereas modern human rights law repackages deportation as a juristically limited exercise which needs to be considered separately and where irreparable harm is reasonably claimed.⁸⁸

2.2.3 Convention against Torture (CAT)

Should ICCPR-based non-refoulement be occasionally adjudicated using interpretative logic, CAT offers a straightforward non-return regulation. Article 3(1) CAT also does not admit of an explicit balancing clause: the prohibition is not considered to be a derogable clause that can be overwhelmed by the national interests of national security.⁸⁹ Article 3 has been elaborated by the Committee against Torture in such a manner that it has taken both the substantive and procedural aspects.

The Committee ruled in *Agiza v Sweden* that in a rapid removal, where diplomatic assurances were one of the grounds, Sweden had breached the rule, and this is significant to the law due to the risks involved in cutting short procedures and the lack of reliability of more formal assurances whose risk of torture is structural.⁹⁰ First, it confirms that standard is not certainty, but substantial grounds, and foreseeable, real and personal risk.⁹¹ Second, it

⁸⁶ Wajid Kumar, “Human Rights and Non-Refoulement: Safeguarding Refugees Under International Law” (working paper, University of Lahore, Lahore, Pakistan, December 1, 2023; posted October 20, 2025), 23

⁸⁷ Thomas Spijkerboer, “The Human Costs of Border Control,” *European Journal of Migration and Law* 9, no. 1 (2007): 127–39

⁸⁸ CAT art. 3(1)

⁸⁹ Committee against Torture, General Comment No. 4 (2017), U.N. Doc. CAT/C/GC/4 (Sept. 4, 2018).

⁹⁰ Committee against Torture, *Agiza v. Sweden*, Communication No. 233/2003, Decision (May 20, 2005).

⁹¹ CAT, General Comment No. 4 (2017), para. 11

considers procedure to form part of the Article 3 requirement: states must measure risk rigorously and in good faith, by relying on credible country information and personal analysis.⁹²

This jurisprudence is compiled and formalized in general comment no. 4 (2017). It stresses that the risk assessment of torture should be personal, prospective, and sensitive to the tendencies of gross violations, and shuns formalistic recourse to diplomatic assurance in the areas where there is no independent monitoring, or poor monitoring.⁹³

The limitation of CAT, which CAT is limited to doctrinally, is also significant: Article 3 is restricted to "torture" that is narrower than persecution and might not address every case of protection of refugees. However, states cannot use this exception to escape cases where persecution threatens with death or inhuman treatment that would amount to a violation of either ICCPR Article 6/7 or any other instrument.⁹⁴ CAT provides an absolute bar to torture threat; ICCPR provides more comprehensive protection against torture/inhuman treatment and arbitrary death; the refugee law serves as a shield against the threats of persecution on the basis of refugee status; and the refugee status rights.

2.2.4 Treaty-Based Obligations under Human Rights Law

The most important legal issue to consider by a non-signatory state is that the obligations of the human rights treaties are not neutralized by the non-accession to the refugee instruments. ICCPR and CAT govern the authority of states over individuals under the jurisdiction, including non-citizens and those who are in irregular status.⁹⁵ Further, general

⁹² Ibid., paras. 12–21.

⁹³ Dr. Manish Kumar Yadav and Suraj Yadav, "Refugee and Migrant Rights—Challenges to International Law: With Special Reference to Afghanistan Refugee Crisis" (working paper, University of Asmara and O. P. Jindal University, 19 pp., posted July 24, 2025),

⁹⁴ ICCPR arts. 6–7; HRC, General Comment No. 36 (2019).

⁹⁵ HRC, General Comment No. 15 (1986).

international law of state responsibility supplies the secondary rules: where a state's removal breaches a binding obligation (ICCPR, CAT), the act is internationally wrongful, triggering duties of cessation and reparation.⁹⁶ The International Law Commission's Articles on State Responsibility reflect this baseline framework, even though they do not enumerate non-refoulement specifically.⁹⁷ The implication of this is legally critical: a state may not contract out of non-return restrictions by refusing to become a signatory to treaties on refugee conventions when they are obliged by human rights treaties which prohibit the removal of parties to torture or death and minimum procedural guarantees against wrongful harm.⁹⁸

One of the points that should be approached with even greater emphasis is that human-rights-based non-refoulement cannot exist without the ban on collective expulsion since as soon as removals are orchestrated by nationality-based deadlines, area sweeps, or any other group-based methods, the legality of the practice hinges on whether every individual continues to be given the opportunity to file a protection claim and has it fairly evaluated.⁹⁹ To Pakistan, this has a direct impact: a system in which Afghans are treated primarily by the categories of the documentation, as opposed to addressing the risk on a case-by-case basis, is not only administratively crude, but doctrinally flawed in that it puts the decision-making not on a case-by-case basis with regard to its legality, but on a collective-case basis with regard to its classification.¹⁰⁰

⁹⁶ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), art. 1.

⁹⁷ Ibid.

⁹⁸ Sayed Qudrat Hashimy, "Goodbye to Afghans: What Is the Promise of Human Rights to Human Rightslessness Afghan Migrants in Pakistan?" (October 3, 2024), *SSRN*, accessed February 18, 2026, <https://ssrn.com/abstract=4975349>

⁹⁹ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, art. 13; European Convention on Human Rights, Protocol No. 4, art. 4; Mariana Gkliati, "Blocking Asylum: The Status of Access to International Protection in Greece" (2011), SSRN abstract 2587047.

¹⁰⁰ Angélica Cházaro, "Due Process Deportations" (2022), SSRN.

There also exists a child aspect to the treaty framework, which ought to be resurfaced, as children in the context of deportation cannot legally be treated merely as derivatives of the immigration status of adults; their best interests, safety, and family cohesiveness and vulnerability need to be explored separately.¹⁰¹ In the context of Afghanistan, it implies extended stay in Pakistan, education, disability, trauma, dependency, and the dangers posed by the separation with caregivers are the fact of the law, and the removal process which does not inquire about those issues cannot claim that it has thrived to meet the international human rights law.¹⁰²

2.2.5 International Judicial Development of Non-Refoulement

The judicial development of non-refoulement under human rights law is most clearly illustrated by *Soering v. United Kingdom*. The proposed extradition concerned a person who faced the “death row phenomenon” in the receiving state. The European Court of Human Rights held that responsibility may arise where the sending state takes a deliberate removal decision despite substantial grounds for believing that the person faces a real risk of treatment contrary to Article 3. The case therefore established the foreseeable-consequences principle: the prohibited treatment would occur outside the sending state, but the legal responsibility is engaged by the state act that exposes the individual to that risk.¹⁰³

The significance of *Soering* for deportation is not that every difficult condition in a receiving country prevents removal. It requires a prospective and evidence-based assessment of the particular risk, using the individual’s circumstances and reliable information about the

¹⁰¹ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, arts. 3, 22, 37; Jason M. Pobjoy, "A Child Rights Framework for Assessing the Status of Refugee Children" (2013), SSRN abstract 2304601.

¹⁰² Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, App. No. 13178/03, Judgment of Oct. 12, 2006; Jennifer J. Lee and Elisa Ortega-Velazquez, "The Detention of Migrant Children: A Comparative Study of the United States and Mexico" (2020), SSRN abstract 3719424.

¹⁰³ *Soering v. United Kingdom*, App. No. 14038/88, 11 E.H.R.R. 439, paras. 88–91 (Eur. Ct. H.R. July 7, 1989).

destination. Applied to Afghan removals, the judgment supports the proposition that a state cannot treat deportation as legally complete at the border. Where the foreseeable consequence of removal is prohibited treatment, the legality of Pakistan's executive act must be assessed before departure, because the subsequent injury may be irreversible.¹⁰⁴

The national-security dimension was addressed directly in *Chahal v. United Kingdom*. The United Kingdom sought to deport the applicant on security grounds, but the Court held that Article 3 protection is absolute and does not permit the risk of torture or inhuman treatment to be balanced against the person's alleged danger to the host state. National security remains a legitimate governmental concern, but it cannot convert an otherwise prohibited return into a lawful one. This distinction is central to the present thesis: Pakistan may investigate, prosecute, monitor or lawfully detain an individual security suspect, yet it may not remove that person to a real risk of torture merely because the security allegation is serious.¹⁰⁵

The procedural reasoning in *Chahal* is equally important. Where the executive relies upon confidential security material, review must still be sufficiently independent and effective to test both the alleged threat and the claimed risk on return. A procedure that merely repeats the executive's conclusion does not supply meaningful protection. The case therefore supports a differentiated model: security-sensitive evidence may justify tailored procedures, but not the disappearance of reasons, representation and judicial control.¹⁰⁶

¹⁰⁴ *Soering*, paras. 90–91.

¹⁰⁵ *Chahal v. United Kingdom*, App. No. 22414/93, 23 E.H.R.R. 413, paras. 79–82 (Eur. Ct. H.R. Nov. 15, 1996).

¹⁰⁶ *Chahal*, paras. 96–107, 150–51.

2.3 Interpretative Guidance from UN Bodies

2.3.1 Human Rights Committee and Committee against Torture: General Comments and Practice

UN treaty bodies are not judicial and their General Comments and Views are usually treated as having authoritative interpretative significance of treaty provisions and as guidance of the kind necessary to ensure that wrongful return is prevented.¹⁰⁷ General Comment No. 31 stands out: states that the obligations of ICCPR are applicable to practices that subject a person to a state of power or effective control even without remaining on the territory¹⁰⁸

This is in line with the more general jurisprudence of regional systems (in particular the ECtHR) declining to evade obligations by asserting that the person is outside the state's territory, or by inappropriately resorting to certain practices in interception.¹⁰⁹ The general comment no. 35 on ICCPR article 9 makes it clear that immigration detention should not be arbitrary and it must be reasonable and justifiable in many specific cases.¹¹⁰ Although Article 9 is not a non-refoulement rule, it is structurally related: mass detention preceding removal can undermine access to counsel and review, increasing risk of wrongful expulsion.¹¹¹ The legal critique here is institutional: detention and expulsion systems often operate as a pipeline that produces “administrative disappearance” from legal protection, contrary to the Covenant’s requirement of effective remedies.¹¹²

The absolute nature of the proscriptions of torture and cruel treatment in ICCPR, and the ex post facto precautions outlined by Article 7 in its General Comment No. 20 is

¹⁰⁷ Somos, Mark, Matthew Cleary, Pablo Dufour, Edward Jones Corredera, and Emanuele Salerno. *The Unseen History of International Law*. Oxford University Press, 2025.

¹⁰⁸ See note 79 above.

¹⁰⁹ ECtHR, *Hirsi Jamaa* (2012).

¹¹⁰ Milanovic, *Extraterritorial Application*, 207–30

¹¹¹ HRC, General Comment No. 35, *Article 9 (Liberty and Security of Person)*, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014)

¹¹² *Ibid.*, paras. 18–20

reaffirmed.¹¹³ Article 3 in practice, demands, credible country information, individualized assessment, and skepticism of assurances in the presence of systemic risk of torture, as well as cruel treatment, are stated in CAT General Comment No. 4.¹¹⁴ The new doctrinal image is that the non-refoulement policy is not just the substantive rule but more of a procedural regime. In the absence of the procedures that can be used to detect the risk, the substantive rule is a sham. The legal importance of this proceduralisation is that it renders it more difficult to balance treaty commitments with mass or collective removals, which are not individually assessed.¹¹⁵

2.3.2 UNHCR Advisory Opinions and Guidelines

UNHCR is not a lawmaker, but it has a supervisory mandate within the Refugee Convention system and is quite an influential interpreter of the norms of non-refugee protection, which (i) extends to borders and extraterritoriality and (ii) the definition of the concept of refugee status and the test of risk.¹¹⁶ According to the UNHCR Advisory Opinion on the Extraterritorial Application of Non-Refoulement, the obligation of non-refoulement should be applied whenever the state exerts its jurisdiction, even beyond its extensive borders and the states cannot evade their responsibilities by means of interception or transfer arrangements.¹¹⁷ The 1997 Note on Non-Refoulement by UNHCR also presents the principle as a foundation, and connects it to other human rights safeguards whereby refoulement can be achieved via an indirect transfer, or chain refoulement where an individual is handed over to a country that is likely to send them on to commit harm (i.e. chain refoulement).¹¹⁸

¹¹³ UN Working Group on Arbitrary Detention, *Revised Deliberation No. 5 on Deprivation of Liberty of Migrants* (2018)

¹¹⁴ HRC, General Comment No. 20 (1992).

¹¹⁵ CAT, General Comment No. 4 (2017)

¹¹⁶ Cathryn Costello and Michelle Foster, "Non-Refoulement as Custom and the Proceduralisation of Protection," *Netherlands Yearbook of International Law* 46 (2015): 3–48

¹¹⁷ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations* (Jan. 26, 2007).

¹¹⁸ See note 73 above.

The Handbook and Guidelines (2019 compilation) of UNHCR play a central role in the doctrine of refugee status, especially the declaratory nature of status and the requirement to assess well-founded fear individually.¹¹⁹ The Handbook is not binding, but it has been relied upon by domestic and regional adjudicators as a practical articulation of Convention criteria and evidentiary assessment.¹²⁰ The methodological critical legal aspect is that UNHCR guidance aids the specification of the risk assessment, yet the binding force of non-signatory state does not rest exclusively on UNHCR. Instead, the work of UNHCR interrelates with customary law assertions, the practice of states, and the imperative of the human rights treaties to provide interpretative consistency and enhance the case that individualized evaluation is a legal necessity where serious harm is claimed.¹²¹

Another dogmatism is that individualized assessment is not drained by the abstract form of, each case must be heard; it also involves minimum conditions of decisionality that can give rise to reliable fact-finding, such as the provision of adequate notice, the provision of an opportunity to present evidence, and where credibility is central, the provision of access to interpretation and legal advice adequate to ensure that unnecessary misunderstanding is avoided.¹²² In the absence of such guarantees the risk inquiry is subject to administrative compression, and the state cannot convincingly tell us that a decision to reject or to return was legally individualized simply because a file was present.¹²³

This guidance to UNHCR is also crucial regarding its implications of proof, as the process of making decisions regarding refugees is subject to evidentiary asymmetry: claimants

¹¹⁹ UNHCR, *Handbook and Guidelines* (2019).

¹²⁰ James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge: Cambridge University Press, 2014), 66–92.

¹²¹ Lauterpacht and Bethlehem, "Scope and Content," 113–20.

¹²² McDonald-Norman, "Credibility Assessment" (SSRN).

¹²³ *M.S.S. v. Belgium and Greece*, App. No. 30696/09, Judgment of Jan. 21, 2011; Mariana Gkliati, "Blocking Asylum: The Status of Access to International Protection in Greece" (2011), SSRN abstract 2587047.

tend to come with incomplete histories and lack of documentation, whereas the state conditions access to time and detention, translation, and access to legal representation.¹²⁴ That asymmetry in the law is an occasion to be judged with care, in good faith, not with animosity, and methodologies of judging credibility that overlook trauma, linguistic boundaries, and disturbed flight records risk turning procedure itself into a tool of unjustifiable reversion.¹²⁵

2.4 Definition of Refugees and Its Legal Implications

The core of the protection of refugees is in the definition of Article 1A(2) of the 1951 Refugee Convention: an individual who is not a national of his or her country, and who is a member of a particular social group, or a political opinion, and is unwilling or unable to seek protection.¹²⁶ There are two legal implications of this definition despite those states that defy the commitments of the refugee-treaty. To begin with, the definition can never be separated conceptually with risk assessment. First, the definition is conceptually inseparable from risk assessment.

The “well-founded fear” standard requires evaluation of both subjective fear and objective risk, typically through credible country information and individualized evidence.¹²⁷ Where states deny refugee status determination procedures entirely, they do not eliminate refugeehood as a matter of fact; they merely increase the probability of misclassification, and thus of wrongful removal contrary to human rights obligations.¹²⁸

Second, misclassification carries other implications than those of refugee law. Although one may be termed as undocumented, they are still safeguarded by basic human

¹²⁴ Douglas McDonald-Norman, "Credibility Assessment in Refugee Status Determination" (2003), SSRN.

¹²⁵ Cházaro, "Due Process Deportations" (SSRN).

¹²⁶ Refugee Convention art. 1A(2).

¹²⁷ UNHCR, *Handbook and Guidelines* (2019), paras. 37–50.

¹²⁸ Thomas Gammeltoft-Hansen and James C. Hathaway, “Non-Refoulement in a World of Cooperative Deterrence,” *Columbia Journal of Transnational Law* 53, no. 2 (2015): 235–84.

rights standards.¹²⁹ The rights of the ICCPR extend to all persons, and the HRC has made it clear that aliens have a right to remain aliens despite their status, as should the removal of aliens expose them to irreparable harm (torture, cruel treatment, arbitrary death) or is the removal to be effected without the minimum safeguards guaranteed by law.¹³⁰

This is where a critical legal analysis should counter a widespread state technique: to reduce refugees to categories of immigration so as to make protection discretionary. The international law is not okay with such replacement. The Refugee Convention establishes a special regime, while human rights treaties establish minimum limits on coercion of persons by the states. Therefore, a lack of domestic asylum law does not leave a legal vacuum; it poses a compliance threat because the state administrative apparatus does not have the instruments necessary to fulfill its legal duties under the human rights law.¹³¹

The modern breadth of refugee claims is as well obscured by misclassification, since in the contemporary world the persecution is often perpetrated by families, militias, clans, and other non-state actors, whereas the current law on refugees accepts family membership and similar harms to social groups as a primary basis of protection, not as an exception.¹³² A host state which translates Afghani cases into the language of illegality thus conceals just those sorts of individualized family-based and social-group claims that the modern law of asylum has come to appreciate, and in the process undermines the lawfulness of a subsequent claim that return decisions were lawfully individualized.¹³³ There is a border-access aspect of the

¹²⁹ See note 94 above.

¹³⁰ HRC, *Mr. C. v Australia* (2002).

¹³¹ See generally UNHCR, *Handbook and Guidelines* (2019).

¹³² Christine Natoli, "Families Fleeing: Family Membership as a Basis for Asylum" (2019), SSRN abstract 3445184; Andrew I. Schoenholtz, "The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century" (2015), SSRN abstract 2617336.

¹³³ Maria O'Sullivan, "Acting the Part: Can Non-State Entities Provide Protection Under International Refugee Law?" (2012), SSRN abstract 2296627.

same issue, as a state that relies on emergency-style exclusions, push-backs or legal fictions of non-entry may claim never to have reached the merits of a refugee claim whilst in effect doing so in the same way a merits determination would otherwise entail.¹³⁴ The more profound message of the lesson is that legality is not fulfilled by the transfer of coercion to the frontiers of procedure, and by the refusal to admit that the issue of protection actually raised itself in the first instance.¹³⁵

It is also critical to make a difference between Convention refugee status and the wider framework of complementary protection, since in a case where a claimant is not covered by the definition of refugee *strictu sensu*, it is still possible that the return would be illegal due to the expected harm involving the right to life, the prohibition against torture or inhuman treatment, or other non-derogable rights.¹³⁶ To a non-signatory like Pakistan that difference is significant since a treaty non-accession can reduce one of the doctrinal paths, but not the universe of non-return duties that are legally relevant to zero.¹³⁷

2.5 Contemporary Debates on Forced Return, Non-Signatory Obligations, and Pakistan's Afghan Returns

A central contemporary debate is whether mass return policies in non-signatory states should be assessed primarily through sovereignty and domestic security lenses or through the legalisation of removal under international human rights law. In Pakistan's case, the forced return of Afghans is frequently framed as a restoration of migration control linked to internal security and public order, yet the legal framework developed in this chapter shows that removal

¹³⁴ Daniel Ghezelbash and Nikolas Feith Tan, "The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection" (2020), SSRN abstract 3689093.

¹³⁵ Patrick Emerton, "Rethinking Asylum-Seeker Detention at Sea: The Power to Detain Asylum-Seekers at Sea under the Maritime Powers Act 2013" (2015), SSRN abstract 2612289.

¹³⁶ Marina Sharpe and Salima Namusobya, "Refugee Status Determination and the Rights of Recognized Refugees Under Uganda's Refugees Act 2006" (2012), SSRN abstract 2855921.

¹³⁷ Eve Lester, "National Constitutions and Refugee Protection" (2021), SSRN abstract 3976744.

powers are not “free space”: they operate within substantive and procedural constraints that are now widely characterised as part of modern non-refoulement.¹³⁸ This produces a doctrinal tension between executive narratives of exceptionalism and rights-based legal standards that require individualised risk assessment and meaningful opportunities to challenge removal.

A related debate concerns how far national security claims can operate as a justificatory “override” for collective deportation strategies. Pakistan’s security discourse often assumes that undocumented status correlates with criminality or threat, but the international legal position is more restrictive: even where states claim legitimate security concerns, the *form* and *process* of expulsion still matter, and the state must distinguish between regulation and punishment, as well as between ordinary immigration enforcement and returns that foreseeably expose individuals to serious harm.¹³⁹ In the Pakistan literature, the legality of the IFRP framework is contested precisely on this point: critics argue that the plan collapses complex protection needs into a single enforcement category, while defenders claim that security imperatives justify accelerated compliance mechanisms.¹⁴⁰

The third debate is economic: whether Afghan displacement is a net fiscal burden that legitimises rapid removal, or whether the economic story is more complex -requiring calibrated regulation rather than mass return. Recent macro-economic analysis emphasises that Afghan outflows and displacement interact with labour markets, public services, and cross-border economic adjustment in ways that cannot be reduced to short-term costs; economic pressures

¹³⁸ Khadija Haider, “ILLEGAL FOREIGNERS REPATRIATION PLAN & PAKISTAN’S NATIONAL SECURITY: A LEGAL THRESHOLD OF INTERNATIONAL LAW” (May 19, 2024), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4833404>

¹³⁹ Dr. Manish Kumar Yadav and Suraj Yadav, “Refugee and Migrant Rights—Challenges to International Law: With Special Reference to Afghanistan Refugee Crisis” (March 3, 2024), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=5345235>

¹⁴⁰ Haider, “ILLEGAL FOREIGNERS REPATRIATION PLAN,” accessed February 18, 2026, <https://ssrn.com/abstract=4833404>

are real, but they do not themselves settle legality.¹⁴¹ A closely connected Pakistani debate concerns the “grey economy” and informal markets: some scholarship argues that irregular documentation produces shadow transactions and administrative rents, strengthening a political incentive to treat Afghan presence as a governance problem rather than a rights-regulated protection context.¹⁴² The legal implication is that economic rationales may explain state conduct, but they cannot displace the treaty-based prohibition on removal into torture/ill-treatment risk or the procedural guarantees that prevent wrongful return.

A fourth debate is sociological and governance-focused: whether Afghan refugees in Pakistan are a cohesive community capable of collective advocacy and adaptation, or a fragmented population rendered legally invisible by documentation hierarchies. Research on cohesion highlights how differences in documentation (PoR, ACC, undocumented), geography, class, and length of stay produce uneven vulnerability and uneven access to remedies.¹⁴³ This matters legally because the proceduralisation of non-refoulement assumes that individuals can meaningfully articulate risk; where a population is structurally unable to access lawyers, interpretation, or review mechanisms, the legal system becomes blind to risk and more likely to generate prohibited outcomes through “administrative speed.”¹⁴⁴

A fifth debate concerns regional geopolitics and bilateral relations: whether Pakistan’s return policy is best understood as a domestic governance response, or as an instrument in Pakistan-Afghanistan relations. The bilateral dimension matters because forced return often intensifies during periods of political tension, security incidents, or diplomatic bargaining,

¹⁴¹ Rhea Gupta et al., “Afghan Exodus,” IMF Working Paper No. 2025/176 (2025), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=5497402>

¹⁴² See note 28 above.

¹⁴³ Muhammad Ayaz, “How Cohesive are Afghan refugees in Pakistan? An analysis of challenges and opportunities” (November 4, 2023), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4623105>

¹⁴⁴ D. A. Kronenfeld, “Afghan Refugees in Pakistan: Not All Refugees, Not Always in Pakistan, Not Necessarily Afghan?,” *Journal of Refugee Studies* 21, no. 1 (2008): 43–63.

raising concerns that removal policy may function as leverage rather than as a neutral administrative response.¹⁴⁵ From the legal perspective developed in this chapter, this is problematic: when expulsion is embedded in geopolitical signalling, individual protection assessment becomes harder to sustain, and the risk of collective measures increases -precisely the conditions under which human rights-based non-refoulement constraints are most likely to be triggered.

A sixth debate turns on how to treat Pakistan's historical hosting experience: is it evidence of long-standing humanitarian practice that should earn deference, or does it demonstrate chronic reliance on ad hoc governance that increases protection gaps? Earlier work on Afghan refugees in Pakistan shows that Afghan presence has never been a single, stable legal category; it has shifted across periods and policies, sometimes involving mobility across borders and changing forms of recognition.¹⁴⁶ This history complicates the state's claim that current removal is simply the enforcement of ordinary immigration rules, because the governance record shows repeated "temporary" arrangements turning protracted making status instability an institutional feature rather than an individual choice.

Finally, there is a debate about domestic impacts: whether Afghan presence principally destabilises local society and security, or whether those impacts are contingent on policy design and legal status. Pakistani scholarship presents competing accounts -some focusing on security externalities and local social pressures, others warning against securitised generalisations and emphasising the importance of lawful status pathways and regulated

¹⁴⁵ Fatima Idrees, "Pakistan-Afghanistan Relations" (April 25, 2024), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4807211>

¹⁴⁶ F. Grare and W. Maley, "The Afghan Refugees in Pakistan," *Middle East Institute* (2011): 43–63.

integration.¹⁴⁷ The relevance for this thesis is not to resolve the empirical dispute in the abstract, but to emphasise a doctrinal point: even where social and security impacts exist, legal constraints on refoulement and on arbitrary expulsion remain operative, and the more coercive and collective the enforcement design becomes, the greater the risk that Pakistan's practices will collide with the international legal standards mapped in this chapter.

2.6 Conclusion

This chapter has shown that the international legal mechanism applicable to removal operates by three sources of overlap which are (i) the law of the refugee treaty (not necessarily binding on non-parties, but doctrinally strong), (ii) law of customary international law (contentious about range, but strong at its center), and (iii) law of binding human rights treaty obligations (notwithstanding the lack of accession to the Refugee Convention), which place non-return restrictions and procedural obligations upon non-parties. On Research Question 1, the most significant conclusion is that non-refoulement is not only a substantive norm, but that it is also increasingly becoming a procedural norm, and that it must be assessed on an individual basis, provided access to review, and be rendered effective to prevent wrongful return. The following chapters can thus develop such a framework to analyze compliance in action, and also assess the interplay between domestic legal loopholes and the binding international commitments, without reiterating here the legal architecture.

¹⁴⁷ S. Anwar, M. Hassan, and A. Kakar, "Afghan Refugees Implications on Pakistan," *Pakistan Journal of International Affairs* 4, no. 3 (2021): 116–129; J. U. Mulk, B. Ali, and A. Ullah, "Impacts of Afghan Refugees on Security Situation of Pakistan," *Pakistan Journal of Society, Education and Language (PJSEL)* 6, no. 1 (2020): 37–46; A. Khan, I. Khan, and N. U. Khan, "War, Refugees and Regional Implications: The Impact of Afghan Refugees on Local Society of Khyber Pakhtunkhwa, Pakistan," *Journal of Humanities, Social and Management Sciences (JHSMS)* 2, no. 1 (2021): 121–132.

CHAPTER 03: CUSTOMARY INTERNATIONAL LAW AND COMPARATIVE PERSPECTIVES

3. Non-refoulement as a Rule of Customary International law

This chapter concerns the third research question of this thesis: How does the principle of non-refoulement, understood as a rule of customary international law or a derivative from binding human rights treaties, apply to Pakistan's policies of deporting Afghan refugees between the years 2023 and 2025?; Was it observed in practice and what remedies (domestic and international) are realistically available to the affected persons.¹⁴⁸ It also develops the doctrinal basis for the subsequent analysis of Pakistan in providing clarity as to what "customary non-refoulement" does and does not require and why mass return programmes are structurally at high risk of unlawfulness when they operate without individualized assessment and effective review.¹⁴⁹

The chapter continues in three sections. First, it describes how customary rules are found, and why non-refoulement is generally considered to be of customary significance, even for non-parties to the 1951 Refugee Convention.¹⁵⁰ Second, it maps the content of the obligation in its contemporary form: the substantive prohibition on transfer into serious harm, and the procedural duties that need to make that prohibition meaningful in practice (individual assessment, access to counsel, and suspensive remedies).¹⁵¹ Third, it builds a comparative view based on three similar situated non-signatory states-India, Bangladesh, Lebanon-to exemplify

¹⁴⁸ International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries*, in *Report of the International Law Commission on the Work of Its Seventieth Session*, UN Doc. A/73/10 (2018), Conclusions 2–3.

¹⁴⁹ UNHCR, *Legal Considerations on Asylum and Non-Refoulement in the Context of Access to Territory* (May 2024), 6–12, last accessed February 15, 2026.

¹⁵⁰ Bonavero Institute of Human Rights, *The Principle of Non-Refoulement under International Law* (Oxford: University of Oxford, 2025), 9–18, last accessed February 15, 2026.

¹⁵¹ International Organization for Migration, *International Migration Law Information Note: Principle of Non-Refoulement* (Geneva: IOM, 2023), 3–8, last accessed February 15, 2026.

how states are trying to manage the presence of refugees without the accession of the Refugee Convention, and how courts and institutions limit or facilitate the danger of refoulement.¹⁵²

A critical point that underlies the analysis is that the practical contest today is not so much about whether "non-refoulement exists" or not, as it is about how states define populations (migrant/refugee), where they find jurisdiction (territorial/extraterritorial) and what procedures they allow (individualized/sweeping) so that removals can happen with little legal friction.¹⁵³ That contest is at the heart of assessing Pakistan's deportation campaign: Where the removals are carried out at scale, either the legal system entrenched procedures that detect risk-or else substituted legality for administrative speed.¹⁵⁴

3.1 Identifying customary international law and locating non-refoulement within it

3.1.1 The methodology: state practice and *opinio juris*

The recognized way of identifying customary international law requires (i) general practice, and, (ii) acceptance of the general practice as law (*opinio juris*).¹⁵⁵ This "two-element approach" is important as it avoids the automatic elevation of repeated behaviour into law, and requires evidence that states consider the rule to be required by law, rather than environmentally desirable.¹⁵⁶ The Draft Conclusions of the International Law Commission (ILC) state that practice can consist of the executive conduct, legislation, diplomatic acts, and domestic judgments, while *opinio juris* can be demonstrated by official statements, pleadings, engagement of treaty bodies, and consistent invocation of legal obligation.¹⁵⁷

¹⁵² Dhote, Snehal. "Non-Refoulement in International Human Rights Law-India's Legal Obligation to Protect Refugees." *De Lege Ferenda* 3 (2021): 57.

¹⁵³ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 12–18.

¹⁵⁴ Kazmi, Arjumand Bano. "Pakistan's Judicial Engagement with International Refugee Law." *International Journal of Refugee Law* 36, no. 4 (2024): 397-418.

¹⁵⁵ International Law Commission, *Draft Conclusions on Identification of Customary International Law*, Conclusion 2.

¹⁵⁶ *Ibid.*, Conclusion 3 and commentary.

¹⁵⁷ *Ibid.*, Conclusions 4–6.

A critical caveat is that customary law analysis can be distorted by selective citation: scholars and institutions can treat rhetorical support for protection as evidence of opinion of law while ignoring countervailing enforcement practice.¹⁵⁸ The right way to think about this therefore is mixed-evidence: where state behaviour is inconsistent, the question is whether the legal position claimed by states converge towards a rule although sometimes it is implemented in violation thereof--because violations do not negate a norm, they may confirm it, because they trigger justification and denial instead of an open rejection.¹⁵⁹

3.1.2 Why non-refoulement is widely treated as customary

Non-refoulement is stated in the law on refugees (Article 33 of the 1951 convention), but its customary claim is rooted more substantially on a wider basis: its deep tie to non-derogable human rights or absolute human rights, namely, to protections against torture and cruel, inhuman or degrading treatment (CIDT), and arbitrary deprivation of life.¹⁶⁰ In current practice, even states which reject Refugee Convention obligations often accept at least in principle - that they not return a person to a real risk of torture or similar irreparable harm.¹⁶¹

Recent institutional guidance reflects the mainstream understanding: Non-refoulement is binding on all states as a matter of law for at least in its form of torture/CIDT and to operationalize non-refoulement credible country information, individual assessment, and access to procedures capable of preventing wrongful return are required.¹⁶² Crucially, the customary claim is strongest where the threshold of harm is torture or inhuman treatment

¹⁵⁸ Bonavero Institute of Human Rights, *The Principle of Non-Refoulement under International Law*, 19–26.

¹⁵⁹ International Law Commission, *Draft Conclusions on Identification of Customary International Law*, Conclusion 8 and commentary.

¹⁶⁰ Emmanuel Arthur-Ewusie, “Has the Non-Refoulement Principle Acquired Customary Status in International Law?” (May 10, 2024), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4824240> and UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 4–6.

¹⁶¹ IOM, *International Migration Law Information Note: Principle of Non-Refoulement*, 2–4.

¹⁶² UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 10–14.

because the prohibitions underlying the customary claim are themselves couched in terms of absolutes and there is not much scope, doctrinally speaking, for "balancing" away the risk.¹⁶³

A careful critique must still make distinctions between the core and the contested edges. The core customary minimum is generally accepted as follows: no transfer where there are substantial grounds to believe there is a real risk of torture/CIDT (and, on a number of readings, other irreparable harm such as arbitrary killing.¹⁶⁴ The contested edges involve whether refugee law-based non-refoulement (on the basis of persecution) is fully customary in the same way, the degree of extraterritorial application and the legal level of "constructive" refoulement created by coercive pressures short of formal deportation.¹⁶⁵

From the perspective of the thesis, this distinction is relevant because Pakistan is a State Party to human rights treaties which have separate prohibitions against returns into torture/CIDT risk, and because the 2023-2025 deportations are concerning precisely because of the risk of systemic risk and procedural failure the combination of which is most likely to trigger the prohibition at the heart of non-refoulement.¹⁶⁶

One possible counterargument is persistent-objector thesis, although that argument, as originally stated, is not as strong as it seems since the supposed customary-minimum collides with the existence of separate human-rights treaties and with long-standing state practice opposing a revert to persecution, torture, and similar gross harm.¹⁶⁷ As such, although an

¹⁶³ Committee against Torture, *General Comment No. 4 (2017) on the Implementation of Article 3 of the Convention in the Context of Article 22*, UN Doc. CAT/C/GC/4 (2018), paras. 9–13.

¹⁶⁴ Bonavero Institute of Human Rights, *The Principle of Non-Refoulement under International Law*, 27–38.

¹⁶⁵ IOM, *International Migration Law Information Note: Principle of Non-Refoulement*, 9–14.

¹⁶⁶ Kumar, Wajid, Human Rights and Non-Refoulement: Safeguarding Refugees Under International Law (December 01, 2023). Available at

SSRN: <https://ssrn.com/abstract=5524238> or <http://dx.doi.org/10.2139/ssrn.5524238> and OHCHR, "Pakistan: UN experts urge stop of deportation of Afghan refugees and migrants," (press statement, 2023/2024), last accessed February 15, 2026.

¹⁶⁷ Oliver Jones, "Customary Non-Refoulement of Refugees and Automatic Incorporation into the Common Law: A Hong Kong Perspective" (2009), SSRN abstract 1688157.

objection to the more extreme limits of customary refugee law can be made, the suggestion that Pakistan can merely avoid the very essence of the prohibition by non-accession or mere silence is hard to justify as a doctrine.¹⁶⁸

3.2 The legal content of non-refoulement as a contemporary rule

3.2.1 Substantive scope: the harm threshold and “real risk”

In the context of human rights law, non-refoulement is not simply a human rights preference; it is a product of treaty obligations which outlaw certain consequences of non-refoulement. Under the Convention against Torture (CAT) Article 3 prohibits the expulsion, return or extradition where there are substantial grounds for believing that the person would be in danger of torture.¹⁶⁹ Under the ICCPR, the provisions of Articles 6 and 7 are interpreted so as to prohibit deprivation of life or torture/CIDT in the face of a foreseeable risk of arbitrary deprivation of life or torture/CIDT, and respect and ensure the rights means protective obligations where state action would result in a person being subjected to prohibited harm.¹⁷⁰ Across systems, the threshold is not certainty but real risk with credible evidence and objective country information.¹⁷¹ The legal architecture is therefore predictive and precautionary: Since the harm is irreparable, the legal architecture is that of ex ante prevention, rather than ex post compensation.¹⁷² Where states approach risk assessment as a bureaucratic afterthought, non-refoulement is reduced to a matter of form, and legality risks are reduced to a matter of discretion¹⁷³

¹⁶⁸ William Thomas Worster, "Contracting Out of Non-Refoulement Protections" (2017), SSRN abstract 2898232.

¹⁶⁹ IOM, *International Migration Law Information Note: Principle of Non-Refoulement*, 4–6.

¹⁷⁰ Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), paras. 10–12

¹⁷¹ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 14–18.

¹⁷² Bonavero Institute of Human Rights, *The Principle of Non-Refoulement under International Law*, 39–44.

¹⁷³ G. Santomauro, "European Court of Human Rights Jurisprudence and National Migration Policies: Exploring the Hermeneutic Tools of 'Proceduralisation' and Margin of Appreciation," in *Judicial Review, Fundamental Rights and Rule of Law* (London: Routledge, 2025), 183–199.

3.2.2 Proceduralisation: why procedures are part of the obligation

A decisive modern development is "proceduralisation": the acknowledgment that non-refoulement cannot be respected without procedures which will be able to detect risk.¹⁷⁴ This is not some add-on, it is structurally implied. When individuals are removed by a state without allowing them to make claims, seek counsel, or seek a review with suspensive effect, then the legal system has no effective way to prevent wrongful return.¹⁷⁵

Recent guidance summarises this in simple terms of minimums, including: (i) access to an asylum or protection procedure, (ii) assessment individualisation, (iii) interpretation where necessary, (iv) reasoned decisions and (v) the availability of an effective remedy with a suspension of removal pending review.¹⁷⁶ The insistence on suspensive remedies is of particular importance in cases of mass returns: once a person is returned, the violation can not be undone in any meaningful way.¹⁷⁷

3.2.3 Exceptions, security arguments, and the absolute/qualified divide

A common state argument is that removal is in the interest of sovereignty, migration control or security. There is an exception in refugee law (Article 33(2)) to the principle of not expelling a refugee, as refugees may be expelled if they are a danger to security or convicted of a particularly serious crime.¹⁷⁸ But that exception cannot be used to bypass absolute prohibitions in human rights law: CAT Article 3 does not provide for a security exception, and the prohibition of torture/CIDT is considered non-derogable.¹⁷⁹

¹⁷⁴ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 18–24.

¹⁷⁵ *Ibid.*, 24–27.

¹⁷⁶ *Ibid.*, 27–32.

¹⁷⁷ E. Muir and C. Molinari, "Micro-Harmonisation of the Fundamental Right to an Effective Judicial Remedy in the Proposed Return Directive and Beyond: A Dangerous Path?" (Brussels: Centre for European Policy Studies, 2020).

¹⁷⁸ Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, 4th ed. (Oxford: Oxford University Press, 2021), 245–258.

¹⁷⁹ Committee against Torture, *General Comment No. 4*, paras. 1–8.

The legal implication is very critical for policy design. Even where a state claims it has security rationales, it must still engage in individualized risk assessment and not engage in removal where torture/CIDT risk is established.¹⁸⁰ Security arguments thus change the lawful options of the state towards prosecution, monitoring, internal restrictions consistent with rights or third-country solutions that actually eliminate the risk - not "fast removals" into danger.¹⁸¹

A balanced analysis must begin by recognising that international refugee and human rights law does not extinguish state sovereignty over admission and residence. A state may define lawful entry, maintain registration systems, prevent document fraud, control its borders and remove a foreign national who has no continuing legal or protection basis to remain. Article 13 of the ICCPR itself assumes the existence of an expulsion power, but subjects the exercise of that power to legality and an opportunity to submit reasons against expulsion for persons lawfully present, subject to the narrow national-security qualification stated in that provision.¹⁸²

Irregular migration is also a legitimate administrative concern because an undocumented population may create problems of identification, security screening, labour regulation, access to public services and reliable population records. The legal error lies not in addressing those problems, but in treating irregular status as conclusive proof that no protection claim exists. A person may have entered or remained without authorisation and still face a legally protected risk on return. The required distinction is therefore between removability and

¹⁸⁰ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 32–36.

¹⁸¹ Anuscheh Farahat and Ingrid Leijten, "Human Rights Overreach?," *Netherlands Quarterly of Human Rights* 40, no. 2 (2022): 83–97.

¹⁸² International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171, art. 13.

returnability: immigration law may establish that a person lacks permission to remain, while non-refoulement law may nevertheless prohibit removal to a particular destination.¹⁸³

National security must similarly be assessed through individual evidence rather than nationality, documentation category or association. The state is entitled to respond decisively to terrorism, espionage, organised crime and serious violence; however, security language cannot substitute for proof that a particular person presents the asserted threat. The legally balanced position is that security concerns may affect admission, surveillance, prosecution, detention and the speed of review, while the absolute protection against return to torture remains intact. This approach protects Pakistan's sovereign functions without converting a general security concern into collective liability for Afghan nationals.¹⁸⁴

3.2.4 Chain refoulement and “safe third country” practices

A further complexity is indirect or chain refoulement, or removal to a third state where it will in turn remove the person to a place of persecution or torture.¹⁸⁵ Modern practice has established that states do sometimes use third-country transfers to deflect responsibility but the legal test remains whether or not the initial state knew or should have known of the foreseeable onward risk.¹⁸⁶

This is central to programmes of mass deportations as they often include simplified categorisations (document status, nationality, date of entry) instead of a legal enquiry into the safety of return in the individual case.¹⁸⁷ If procedures do not provide the person with the ability

¹⁸³ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, art. 33.

¹⁸⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, art. 3.

¹⁸⁵ IOM, *International Migration Law Information Note: Principle of Non-Refoulement*, 12–14.

¹⁸⁶ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 36–40

¹⁸⁷ Başak Çalı, “The Present and the Future of Infringement Proceedings: Lessons Learned from *Kavala v. Türkiye*” (April 20, 2023), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4424579>.

to draw up individualized grounds for protection, the system is structurally blind to chain-refoulement risk.¹⁸⁸

The concept of safe-third-country logic too must be approached more severely than formal diplomatic assertion, since a transferring state cannot escape responsibility by indicating another territory, it must inquire whether the latter provides effective protection, actual access to procedures, and a real obstacle to further removal.¹⁸⁹ The lesson is very applicable to the Afghan return practices since the legal vice is not only in the ultimate act of return but also in the previous externalisation of risk by strained onward transfer, readmission agreement, or other practices which place the issue of protection in the hands of others.¹⁹⁰

The same is strengthened by externalisation practices since the analysis of modern responsibility is focused on control rather than on geography alone: where a state organizes interdiction, remote control or cooperative containment in such a way that it determines the fate of a person, it is the question of law that it exercised sufficient control to be held responsible in respect of the predictable protection outcomes.¹⁹¹ The rationale is relevant in a relative sense in that it discredits the implication that states can maintain formal sovereignty over admission but practically arrange exclusion at a distance.¹⁹²

3.3 Pakistan's obligations despite Refugee Convention non-accession

The thesis does not make it obligatory for Pakistan to treat refugees in accordance with the Refugee Convention. The legal analysis here is that Pakistan is bound by (a) treaties it has

¹⁸⁸ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 40–43.

¹⁸⁹ Isaac Binkovitz, "State Practice with Respect to the Safe Third Country Concept: Criteria for Determining that a State Offers Effective Protection for Asylum Seekers and Refugees" (2017), SSRN abstract 3074668.

¹⁹⁰ Maria-Louiza Deftou, Dimitra Papageorgiou, and Efthymios Papastavridis, "Interdiction in the Mediterranean Sea: From Unilateral to Multilateral Cooperation" (2022), SSRN abstract 3793821.

¹⁹¹ Leanne Weber, "Visible and Virtual Borders: Saving Lives by 'Seeing' Sovereignty" (2013), SSRN abstract 2549660.

¹⁹² Deftou, Papageorgiou, and Papastavridis, "Interdiction in the Mediterranean Sea" (SSRN).

ratified, including ICCPR and CAT, and (b) customary international law (at least in its core of non-refoulement form).¹⁹³ The upshot of this is that Pakistan's powers over non-citizens are not legally "free space": powers of expulsion must be exercised within limits imposed by prohibitions against torture/CIDT, and within procedural guarantees controlling expulsion and detention.¹⁹⁴

Recent work on Pakistan focuses on the legal friction produced by lack of domestic legislation on asylum: where refugees are regulated under the framework of general immigration law, executive discretion is likely to expand, and other structured protections (individual assessment, legal aid, review) are underdeveloped.¹⁹⁵ That structural condition is important, because the reasons that refoulement becomes unlawful in practice are often the result not of explicit legal rejection of non-refoulement, but of governance decisions that deny access to the procedures by which protection claims could be articulated.¹⁹⁶

The Islamabad High Court decision on *Rahil Azizi v The State* is significant in this respect because it reflects judicial willingness to connect the removals to the limitations of fundamental rights and subject the deportation power to judicial review where removal runs the risk of illegality.¹⁹⁷ The decision is not a solution to the systemic problem courts cannot replace an asylum system but it indicates the internalization of non-refoulement type of

¹⁹³ OHCHR, "Status of Ratification: Pakistan (ICCPR; CAT)," treaty database page, last accessed February 15, 2026.

¹⁹⁴ S. Q. Zada, "The Crisis of Refugee Protection under the International Refugee Convention: Exploring a Complementary Way of Improving Refugee Protection through International Human Rights Law, International Humanitarian Law, and International Criminal Law" (PhD diss., Macquarie University, 2023)..

¹⁹⁵ *Ibid.*, 226–230

¹⁹⁶ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 24–32.

¹⁹⁷ *Rahil Azizi v The State*, PLD 2024 Islamabad 231 (Islamabad High Court, decided 2023; reported 2024).

limitations through domestic constitutional reasoning even without Refugee Convention accession.¹⁹⁸

At a minimum, therefore, if operations of deportation are undertaken as collective operations arrest, detention, swift removal without individualized assessment and effective remedy, they predictably clash with the proceduralised understanding of non-refoulement.¹⁹⁹ This criticism is not rhetorically based, however, but doctrinal: the system that eliminates the conditions in which to assess risk is a system that makes compliance impossible.²⁰⁰

3.4 Comparative practices in non-signatory states

Comparative analysis is valuable here because it demonstrates the fact that Refugee Convention non-accession does not result in a one model. States may: (i) build-in protection through constitutional rights and judicial review; (ii) leave status finding by UNHCR through memorandum of understanding; (iii) control the presence of refugees through temporary protection and administrative regularization; or (iv) rely on enforcement-first approaches that increase the risk of refoulement.²⁰¹ The three cases below are chosen because each of them hosts large refugee populations, each is outside the context of the Refugee Convention, and each illustrates a different relationship between executive discretion and legal constraint.²⁰²

¹⁹⁸ Amelia Bondegård, "The Reach of the Principle of Non-Refoulement in Extraterritorial Asylum Processes: An International Law and Human Rights Perspective on the Proposal to Locate Asylum Processes Outside the EU" (master's thesis, Åbo Akademi University, 2024), accessed February 18, 2026, <https://www.doria.fi/handle/10024/190575>.

¹⁹⁹ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 18–32

²⁰⁰ Bonavero Institute of Human Rights, *The Principle of Non-Refoulement under International Law*, 45–52.

²⁰¹ Nassar, Jessy, and Nora Stel. "Lebanon's response to the Syrian refugee crisis—Institutional ambiguity as a governance strategy." *Political Geography* 70 (2019): 44–54.

²⁰² Ibid.

3.4.1 India: constitutional rights without a refugee statute

India is neither party to the 1951 Convention nor the 1967 Protocol, and does not have an extensive national law on refugees.²⁰³ Governance therefore takes place via general immigration laws and executive policy with protection arising unevenly through constitutional adjudication and targeted, piecemeal executive policy.²⁰⁴

A fundamental legal argument that has been put forward in recent scholarship is that India's non-refoulement duties can be based on (i) constitutional protections of life and liberty, and (ii) customary international law and human rights principles as elements of interpretation.²⁰⁵ Courts have at times acknowledged that non-citizens have constitutional rights against arbitrary state action available to them, which can be used to support restrictions on deportation where return would put individuals at a substantial risk of serious harm.²⁰⁶ The leading constitutional structure with regard to Article 21's protection of life and personal freedom, for example has been construed broadly enough to potentially include claims to protection as well, even if there is no explicit system for asylum.²⁰⁷

However, the critical evaluation is that constitutional rights are not a substitute of an asylum system. Judicial protection is episodic and case-dependent; access to courts is patchy; and national security narratives can contract protection space in politically sensitive cases.²⁰⁸

²⁰³ Monika Verma, "The Nexus of Hindu Nationalism, Democratic Governance, and Refugee Rights: A Case Study of Rohingya Refugees in India" (July 9, 2024), *SSRN*, accessed February 18, 2026, <https://ssrn.com/abstract=5316112>.

²⁰⁴ Dipa Bhowmik, "Need for Refugee Law in India Considering the Situation of Afghan Refugees" (September 27, 2021), *SSRN*, accessed February 18, 2026, <https://ssrn.com/abstract=5071702>.

²⁰⁵ *Ibid.*, 60–66.

²⁰⁶ Marconi Debbarma, "Refugees Experience and the Host Communities: Critical Analyses on Absence of Refugee Law in India," *Journal of Asian and African Studies* 60, no. 5 (2025): 3204–3218.

²⁰⁷ *Ibid.*, 57–59.

²⁰⁸ Amanda Alexander and Nisha Singh, "India and Refugee Law: Gauging India's Position on Afghan Refugees," *Laws* 11, no. 2 (2022): 31

The result is a "protection by litigation" model which can prevent some removals but cannot systematically create individualized risk assessment of large populations.²⁰⁹

For Pakistan, India's experience is a lesson in both directions. It shows that courts can significantly limit the discretion of removal even in the absence of Refugee Convention accession, but also shows that depending primarily on courts-as opposed to administrative procedures-to provide protection results in a reactive, as opposed to a preventive, form of protection.²¹⁰

The case of India also demonstrates the precariousness of protection based on constitutional implication alone in that life-and-liberty guarantees will only delay the unlawful deportation, but still make the presence of meaningful protection to remain, nonetheless, dependent on the litigation ability, judicial temperament, and political circumstances.²¹¹ To Pakistan, the relative lesson is instructive: constitutional wording can hold in check unlawfulness, but it can not substitute a sustainable institutional framework of registration, hearing, appeal and controlled enforcement.²¹²

The lesson that should be emphasised more comparatively is that the domestic constitutionalisation of non-refoulement is more stable when courts go beyond episodic stays and provide review criteria that must be met by administrative actors *ex ante*, including reasoning, a focus on evidence of country of origin, and the obligation not only to respond to individualised risk but also to individualised risk in the first place.²¹³ The practical significance of this to Pakistan is that a court-reliant protection design will be weak unless judicial review

²⁰⁹ Ibid., 69–71.

²¹⁰ Birla, "The Obligation to Protect," 68–71.

²¹¹ Aman Kumar, "Situating the Principle of Non Refoulement in the Indian Legal Scenario" (2018), SSRN abstract 3316317.

²¹² Lester, "National Constitutions and Refugee Protection" (SSRN).

²¹³ Jones, "Customary Non-Refoulement" (SSRN).

produces administrable rules to the executive since otherwise every round of removals simply takes the same form of legality crisis in the form of an emergency.²¹⁴

3.4.2 Bangladesh: emergency hosting and containment policies

Bangladesh is also not a party to the Refugee Convention framework and has been the host to very large refugee populations in particular Rohingya displaced from Burma.²¹⁵ Recent empirical and legal scholarship indicates that the protection has been granted in the form of humanitarian admission and cooperation with international agencies with severe restrictions on movement, work, and long-term integration.²¹⁶

The most relevant legal issue for this thesis is the way that a non-signatory state deals with the tension between containment and non-refoulement. Studies which have focused on Rohingya governance highlight the importance of traditional approaches to governance and their potential to be coercive, mainly when policies presented as "temporary management" restrict livelihood and mobility and thus increase pressure towards "voluntary" return under conditions which may not be truly voluntary.²¹⁷ The legal criticism is that consent to return is not meaningful when produced by policies that make continued stay unsustainable; "voluntary return" can become a governance label that masks refoulement risk.²¹⁸

At the same time, a key point uncovered by Bangladesh's experience that is too frequently overlooked in purely doctrinal analysis is the fact that, in the case of large refugee situations, one of the main legal battles can be fought over procedure and proof - who is in and

²¹⁴ Mariana Ferolla, "Failing Asylum-Seekers: Limited Judicial Review of Refugee Status Determination Decisions in Brazil" (2025), SSRN abstract 5097361.

²¹⁵ Mallick, Abdullah Hossain. "Rohingya refugee repatriation from Bangladesh: A far cry from reality." *Journal of Asian Security and International Affairs* 7, no. 2 (2020): 202-226.

²¹⁶ Islam, Md Didarul, and Ayesha Siddika. "Implications of the rohingya relocation from cox's bazar to bhasan char, Bangladesh." *International Migration Review* 56, no. 4 (2022): 1195-1205.

²¹⁷ Fakhoury, Tamirace. "Refugee return and fragmented governance in the host state: Displaced Syrians in the face of Lebanon's divided politics." *Third World Quarterly* 42, no. 1 (2021): 162-180.

²¹⁸ Ibid.

who is out; who has access to individualized decision-making; and whether returns are monitored and conditional.²¹⁹ The more categorical (status, camp location, nationality) rather than individualised assessment the state engages in, the greater the risk of refoulement under the proceduralised understanding of non-refoulement.²²⁰

For Pakistan, Bangladesh offers a cautionary comparison: Large scale management through containment and administrative categories may be politically workable in the short term, but is legally brittle where it prevents individuals from raising individualized claims for protection and accessing effective remedies.²²¹

3.4.3 Lebanon: UNHCR-centered governance and pressure-driven returns

Lebanon is not party to the Refugee Convention but has been a major host state in particular for Syrians since 2011.²²² Refugee governance has been profoundly influenced by political resistance to "settlement", and by a structure where UNHCR is at centre stage in registration and assistance in a host state framework.²²³

Recent peer-reviewed work draws attention to the tension between Lebanon's insistence on the temporariness and the realities of protracted displacement.²²⁴ A recurring theme is the insecurity of legal status (obstacles to residency, fear of arrest, and administrative constraints) that may set the conditions where return is by definition only "voluntary" in name, as individuals are under increasing coercive pressure to leave.²²⁵ This analysis is important in the context of non-refoulement because it sheds some light on a pathway through which states

²¹⁹ Islam and Siddika, "Bhasan Char and the Rohingya," 1205–1212.

²²⁰ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 18–27.

²²¹ Hossain, "Refugee Governance and the Politics of Return," (2024).

²²² Secen, Sefa. "Explaining the politics of security: Syrian refugees in Turkey and Lebanon." *Journal of Global Security Studies* 6, no. 3 (2021): ogaa039.

²²³ Fakhoury and Stel, "Governance through Ambivalence," (2023).

²²⁴ Içduygu, Ahmet, and Maissam Nimer. "The politics of return: exploring the future of Syrian refugees in Jordan, Lebanon and Turkey." *Third World Quarterly* 41, no. 3 (2020): 415-433.

²²⁵ Ibid.

can approach refoulement indirectly: instead of issuing explicit deportation orders, they create a governance environment that compels exit.²²⁶

Another relevant insight is the role of institutional hybridity: in situations where UNHCR is charged with core functions but the state maintains coercive power (detention, deportation, border control), protection is dependent on the degree to which UNHCR's assessments and documentation are honored by domestic authorities.²²⁷ Whereas political priorities focus on quick returns, UNHCR centred governance can be fragile unless hard constraints (i.e. courts or domestic legal rules) are in place.²²⁸

For Pakistan where UNHCR documentation (e.g. through the use of POR cards) and domestic documentation (e.g. through the use of ACC) have been key the Lebanese experience highlights the importance of documentation and cooperation mechanisms being protective only when they are accompanied by legally enforceable guarantees against removal without individualised assessment and review.²²⁹

The following additional comparators extend the analysis beyond the non-signatory states discussed above. Iran and Türkiye are included because of their regional relevance and experience of large refugee populations, while Germany is included as a developed statutory system in which ordinary deportation powers and exceptional security powers are both regulated by express procedural safeguards.

3.4.4 Iran: formal refugee regulation and regional limitations

Iran is a particularly relevant regional comparator because it shares a border-region context with Afghanistan and has long received Afghan displacement. Its Regulations of 1963

²²⁶ Fakhoury, “Refugee Politics in Lebanon,” (2022).

²²⁷ Elspeth Guild and others (eds.), *Refugee Governance and UNHCR in Host States* (Cambridge: Cambridge University Press, 2022), relevant chapters on UNHCR-host state hybridity.

²²⁸ Stel, “The Politics of Return in Lebanon,” (2025).

²²⁹ See note 215 above.

Relating to Refugees pre-date Iran's accession to the 1951 Convention and provide a formal domestic basis for seeking and recognising refugee status. The Regulations identify routes by which a claim may be presented and expressly recognise protection against return, demonstrating that a neighbouring state may create legal protection without waiting for a wholly new immigration code.²³⁰

The Iranian framework is nevertheless a limited model for the precise issue addressed in this thesis. It establishes substantive refugee recognition and access to Iranian courts, but it does not contain the modern, detailed sequence of written deportation notice, disclosed reasons, a fixed appeal period and automatic suspension of removal that is required to guard against an irreversible error. The lesson for Pakistan is therefore twofold: formal recognition of refugee status and non-refoulement is indispensable, but recognition alone is insufficient unless the removal procedure itself is codified and reviewable.²³¹

3.4.5 Türkiye: codified removal, appeal and non-refoulement

Türkiye's Law No. 6458 on Foreigners and International Protection provides a closer procedural comparison. It expressly regulates regular and irregular migration, international protection and the powers of the migration administration. Removal grounds include unlawful entry or stay and specified public-order or public-security circumstances, showing that a rights-based statute need not prevent the executive from enforcing immigration law or responding to genuine threats.²³²

Article 53 requires the removal decision, its reasons and information concerning legal remedies to be notified to the foreigner, legal representative or lawyer. It also permits an

²³⁰ Iran, Regulations of 1963 Relating to Refugees, December 16, 1963, arts. 1–3.

²³¹ Iran, Regulations of 1963 Relating to Refugees, arts. 4–5, 12.

²³² Republic of Türkiye, Law No. 6458 on Foreigners and International Protection, April 4, 2013, arts. 1–4, 54.

application to the administrative court within fifteen days. These elements are important for Pakistan because they convert removal from an informal enforcement event into an identifiable legal decision capable of challenge. The Turkish model also demonstrates that a short appeal period can coexist with rapid administration, provided that notification, representation and effective access to the court are real rather than nominal.²³³

Article 55 separately identifies persons in respect of whom a removal decision must not be taken, including where there are serious indications of exposure to the death penalty, torture or cruel or degrading treatment. The statutory separation between grounds for removal and barriers to removal is analytically useful: a person may fall within an immigration-enforcement category and nevertheless be legally non-returnable. Later amendments restricting suspensive protection for some security-related categories should not be transplanted into Pakistan where an arguable torture risk is raised, because the protection recognised under CAT Article 3 is not qualified by the nature of the allegation against the individual.²³⁴

3.4.6 Germany: ordinary and national-security deportation procedures

Germany's Residence Act is a developed legislative model because it expressly combines immigration management with humanitarian obligations. Its stated purpose includes managing the influx and residence of foreigners while fulfilling Germany's humanitarian responsibilities. This legislative formulation is relevant to Pakistan because it rejects the assumption that sovereignty and human rights are competing absolutes; both are treated as statutory objectives that must be administered together.²³⁵

²³³ Türkiye, Law No. 6458, art. 53.

²³⁴ Türkiye, Law No. 6458, art. 55.

²³⁵ Germany, Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act—AufenthG), § 1.

For ordinary cases, the Act regulates when deportation may be enforced and requires a written deportation warning. The warning generally specifies a period for voluntary departure and the intended destination, while the administration must consider circumstances such as child welfare, family ties and health. Statutory deportation bans prevent execution where the protected risk threshold is met. These provisions create a transparent sequence between the decision that residence must end and the separate decision that physical removal to a particular destination is legally permissible.²³⁶

Germany also provides a special national-security deportation order under section 58a. The existence of that power confirms the state's authority to act urgently against a particular danger, but the same provision preserves deportation bans, requires immediate access to legal advice, informs the person of available remedies and prevents enforcement during the statutory period for urgent judicial protection and while a timely application is pending. The model is therefore valuable not because it weakens security power, but because it gives that power a defined legal form and an accelerated judicial check.²³⁷

3.5 Legal implications and accountability mechanisms

3.5.1 State responsibility and the “wrongful act” frame

Where removal involves a breach of CAT article 3 or ICCPR articles 6/7 (as interpreted), it is internationally wrongful and entails the legal consequences of state responsibility: cessation, assurances of non-repetition and reparation in forms actually meaningful in an expulsion context (e.g. facilitation of return, guarantees of protection or compensation where return is impossible to reverse).²³⁸ The key limitation is a practical one,

²³⁶ Germany, Residence Act, §§ 58–60.

²³⁷ Germany, Residence Act, § 58a.

²³⁸ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Arts. 30–31.

that once someone is separated into harm, the mechanisms for obtaining legal accountability are slow and the access to them is commonly obstructed.²³⁹

This is the reason proceduralisation is important: the remedy structure in international law assumes that domestic systems avoid harm rather than "repair" them afterwards.²⁴⁰ A campaign of deportation focused on speed and volume rather than individualized assessment does not simply pose some legal risk but destroys the very conditions under which the protection function of the law can function.²⁴¹

Comparative practice also indicates that review needs to go further than the mere existence of statutory power, as any court that inquires of whether the executive had the power to remove and refuses to inquire whether risk was assessed lawfully provides a remedy that is formally available but substantively empty.²⁴² The least that the modern practice will point to is not any review, but review sufficiently deep, timely, and suspensive in its effect, to guard against being wrongfully removed prior to its occurrence.²⁴³

The analysis of state responsibility must not however be uncoupled to preventive remedies since with expulsion contexts the most significant types of remedy are suspension of removal, disclosure of reasons and access to habeas-like review before the individual vanishes across the border.²⁴⁴ Subsequent statements of breach or indemnity can be relevant, but do

²³⁹ Caroline Nalule, "Refugee Burden-and-Responsibility Sharing: Revisiting the Debate on the Right to Compensation to Refugee-Hosting States," *Michigan State International Law Review* 31 (2023): 441.

²⁴⁰ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 27–32.

²⁴¹ Bjarne Bachmann, "Shielding from Culpability: The Responsibility System in EU's Asylum and Migration Policy: Human Rights Violations and the Influence of the European Border Agency Frontex," *UC Law SF International Law Review* 48 (2025): 201

²⁴² *Ibid.*

²⁴³ Guy S. Goodwin-Gill, "Controlling the Discretion to Expel under Article 32 of the 1951 Convention Relating to the Status of Refugees" (2024), SSRN.

²⁴⁴ Mohd Imran, "Right to Reparation: Forced Migrants and the Country of Asylum" (2021), SSRN.

not reenact the lost procedural instance in which the law may have actually prevented refoulement.²⁴⁵

3.5.2 Treaty bodies, special procedures, and monitoring limits

Even where treaty bodies have no direct enforcement powers, the treaty bodies help shape legal expectations by articulating standards for risk assessment, remedies and due process.²⁴⁶ Their pressure is greatest where states interact with reporting processes, respond to communications, or use their findings in domestic litigation.²⁴⁷ But in regard to situations of mass deportation, it is the lack of institutional scope that is the limiting factor: the monitoring bodies operate after the fact, while the removals have taken place rapidly and often under limited access to counsel.²⁴⁸

The role of international monitoring and soft enforcement is therefore best seen in terms of norm-entrenchment, rather than immediate protection: statements and findings can be used to support domestic litigation, increase reputational costs and clarify the illegality of categorical return programmes.²⁴⁹ For the purpose of this thesis that is still legally important since it helps to prove an opinion of law and clarify the minimum procedural content required by present-day non-refoulement law.²⁵⁰

²⁴⁵ Canada (Public Safety and Emergency Preparedness) v. Chhina, 2019 SCC 29; Mannu Chowdhury, "Immigration Detention and Habeas Corpus: Positive Developments and Missed Opportunities in Chhina" (2020), SSRN.

²⁴⁶ Committee against Torture, *General Comment No. 4*, paras. 9–13.

²⁴⁷ Human Rights Committee, *General Comment No. 31*, paras. 15–18.

²⁴⁸ See note 192 above.

²⁴⁹ OHCHR, "Pakistan: UN experts urge stop of deportation of Afghan refugees and migrants," last accessed February 15, 2026.

²⁵⁰ A. Słowik, "Multiple Sources of Right to an Effective Remedy in EU Migration and Asylum Law: Towards Common Standards on Judicial Protection?," *Maastricht Journal of European and Comparative Law* 31, no. 1 (2024): 27–52 and UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 10–18

3.5.3 Domestic remedies: courts, habeas-type review, and suspensive effect

Given the practical limitations on international enforcement, domestic remedies are central. Where courts are available and inclined to review decisions to remove individuals, courts can: (i) require individualized assessment; (ii) require reasoned decisions; and (iii) provide interim remedies that prevent removal during the time period for review.²⁵¹ Islamabad High Court's approach taken in *Rahil Azizi* implies the prospect of judicial insistence on legality and rights limitations even where refugeehood is not acknowledged under a dedicated statute.²⁵²

Yet the critical constraint remains: litigation cannot protect people who are unable to access lawyers, unable to file petitions or unable to communicate when detained.²⁵³ Therefore, legal remedies need to be built into the deportation system itself: notification, time to challenge, access to counsel, interpreters and a review mechanism with suspensive effect.²⁵⁴

3.6 Conclusion

This chapter has argued that non-refoulement functions for non-signatory states through (i) the fact that it has a strong customary core, in particular in relation to torture/CIDT and certain other irreparable harm, and (ii) binding treaty obligations that forbid returns into prohibited harm and require effective remedies.²⁵⁵ It has also demonstrated the key contemporary legal challenge as a procedural one: Mass removal systems that deny individualized assessment and effective review are structurally prone to produce refoulement.²⁵⁶

²⁵¹ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 27–36.

²⁵² *Rahil Azizi v The State*, PLD 2024 Islamabad 231

²⁵³ Annick Pijnenburg and Conny Rijken, “Moving beyond Refugees and Migrants: Reconceptualising the Rights of People on the Move,” *Interventions* 23, no. 2 (2021): 273–293.

²⁵⁴ See note 188 above.

²⁵⁵ IOM, *International Migration Law Information Note: Principle of Non-Refoulement*, 3–8.

²⁵⁶ See note 192 above.

Comparative analysis proves that the Refugee Convention non-accession is not determinative. India demonstrates the possibilities and limits of constitutional adjudication in the absence of refugee legislation; Bangladesh, how modes of containment and "voluntary return" can create coercive dynamics of exit; and Lebanon, the fragility of UNHCR-centred governance in the face of changing political priorities in favour of return.²⁵⁷

The analytical consequence for the thesis is obvious: assessing the deportations of Pakistan during 2023-2025 cannot stop with the question of whether or not Pakistan is a party of the Refugee Convention. The question that arises is, were Pakistan's deportation practices based on law and did they incorporate procedural safeguards to prevent returns into torture/CIDT or other irreparable harm, and were effective remedies available to those facing deportation.²⁵⁸ The next chapter will therefore transcend from this doctrinal and comparative framework to a more focused analysis of the domestic law architecture and deportation practice in Pakistan against the standards set out here.²⁵⁹

²⁵⁷ Birla, "The Obligation to Protect," (2023); Hossain, "Refugee Governance and the Politics of Return," (2024); Fakhoury and Stel, "Governance through Ambivalence," (2023).

²⁵⁸ Kazmi, "Judicial Review as a Tool for Non-Refoulement in Pakistan," 214–235.

²⁵⁹ UNHCR, *Legal Considerations on Asylum and Non-Refoulement*, 18–36

CHAPTER 04: PAKISTAN'S LEGAL FRAMEWORK AND DEPORTATION POLICY

4.1 Overview of Pakistan's Constitutional, Statutory and Administrative framework

This chapter critically examines and address the Research Question two that the use of Pakistan's constitutional, statutory and administrative framework, which has been employed in defining who is considered to be an Afghan refugee and other non-citizen, as well as operationalising the 2023-2025 campaign for deporting the Afghan population. It argues that Pakistan's legal system contains real powers of removal but also binding constitutional constraints - legality, liberty, dignity and due process that are often treated in practice as flexible 'policy considerations' rather than enforceable limits.²⁶⁰ The chapter, further, argues that the absence of a refugee statute has not resulted in legal vacuum, in the sense of 'no law'; rather, it has resulted in a governance model of discretion-heavy executive documentation and policing that becomes a substitute for status determination and procedural fairness.²⁶¹

Pakistan's long-term hosting of Afghans has been based almost entirely on executive arrangements and not on a codified asylum regime.²⁶² The 2023 IFRP ("Illegal Foreigners Repatriation Plan") reframed this protracted situation in terms of reclaiming migration control and internal security, but the design and scale of this campaign heightened the legal risks of collective measures, arbitrary detention, and procedural erosion, especially against vulnerable groups.²⁶³ In this chapter, we address the research problem by testing whether Pakistan's domestic "foreigner-control" regime, as it applies in 2023-2025, can satisfy constitutional

²⁶⁰ European Union Agency for Asylum, *Pakistan: Situation of Afghan Refugees* (Country of Origin Information Report, May 2022).

²⁶¹ Arjumand Bano Kazmi, "Pakistan's Judicial Engagement with International Refugee Law," *International Journal of Refugee Law* 36, no. 4 (December 2024): 397–418.

²⁶² Jawed Aziz Masudi and Noman Mustafa, "The Legal Status of Afghan Refugees in Pakistan," *Pakistan Journal of International Affairs* 5, no. 2 (2022): 1273–1285, doi:10.52337/pjia.v5i2.509.

²⁶³ Government of Pakistan, Press Information Department, press release announcing the "Illegal Foreigners Repatriation Plan" (October 2023).

standards of legality and due process while also meeting the state's claimed imperatives of security and order.²⁶⁴

4.2 Legal Status of Refugees and Aliens under Pakistani Law

Pakistan is not a signatory of the 1951 Refugee Convention and the 1967 Protocol and has not yet passed a comprehensive refugee statute. The practical consequence is that "refugeehood" is not a domestic legal category which triggers a legislatively-defined rights bundle or asylum procedure-immigrants from Afghanistan are instead addressed under (i) constitutional rights that apply to "persons"; (ii) immigration/foreigner statutes framed largely for control and expulsion; and (iii) executive documentation arrangements (especially PoR and ACC) which are more like status markers.²⁶⁵ Scholarly accounts describe this as "administrativised" refugee governance status is produced by documentation and discretion rather than by a rule-based determination procedure, which increases legal uncertainty and policing exposure for those who are undocumented, under-documented, or documentation-lapsed.²⁶⁶

One of the important analytical points is that the domestic framework in Pakistan considers refugees as a subset of "foreigners" whereas the constitutional doctrine at the same time recognises that many fundamental rights attach to "persons" not only citizens. This makes for an underlying structural tension between the two regimes: a statutory regime focused on removal, and a constitutional regime focused on rights. The deportation campaign is thus a test

²⁶⁴ Office of the United Nations High Commissioner for Human Rights, "Türk alarmed by forced returns of Afghans from Pakistan" (Press release, November 15, 2023).

²⁶⁵ Masudi and Mustafa, "Legal Status of Afghan Refugees," 1273–1285.

²⁶⁶ Mohammad Toufeeq Shalizi, Rajesh Kumar, and Kusum L. Azad, "Fall of a Democratic State in Afghanistan: An Analysis of Forced Deportation of Afghan Migrants from Pakistan," *Review of Arts and Humanities* 12 (2024): 21–30.

case of whether executive power over foreigners is exercised in the form of constitutionally-bounded legal power or exceptional security discretion.²⁶⁷

4.2.1 Analysis of relevant constitutional and statutory provisions

4.2.1.1 Constitutional positioning of non-citizens: “persons” versus “citizens”

The Constitution of Pakistan 1973 makes a distinction between the rights of "citizens" and the rights of "persons." Several of the foundational safeguards - Article 4 (right of individuals to be dealt with in accordance with law), Article 9 (security of person), Article 10 (safeguards as to arrest and detention), Article 10A (fair trial and due process), and Article 14 (dignity and privacy) - are phrased in a way which is not inherently citizenship-limited. The constitutional logic is that state power over any person, including an alien, is limited by legality and minimum process even in states that have retained the power to regulate entry and stay.²⁶⁸

In contrast, some freedoms (significantly movement, assemblage, and association) are textually citizen-focused, permitting the executive to expect that non-citizens live in Pakistan "by permission" and can be obliged to leave. The important issue is not whether or not Pakistan may do anything to remove non-citizens, but rather if it does so, in a legally reviewable and procedurally conditioned manner. If the act of deportation is treated as a purely political act, then the safeguards of the Constitution become ornamental; if it is treated as an exercise of public power affecting the liberty and dignity of the individual, then constitutional review is mandatory.²⁶⁹

²⁶⁷ Noorulain Naseem and Shahzeb Usman, “Afghan Refugee Issue: Legal and Security Dimensions of Repatriation of Illegal Afghan Migrants” (Policy Brief No. 5, Islamabad Policy Research Institute, January 2024).

²⁶⁸ Usman W. Chohan, “On the Expulsion of Afghan Migrants” (October 12, 2023), *SSRN*, accessed February 18, 2026, <https://ssrn.com/abstract=4600707>.

²⁶⁹ Sahibzada Ali Rajper, “Refugee Rights and the Repatriation of Afghan Nationals,” *Pakistan Journal of Law, Analysis and Wisdom* 3, no. 9 (2024): 45–61.

4.2.1.2 Foreigners Act 1946 and the “control architecture”

Pakistan's main piece of statutory legislation on control of non-citizens is the Foreigners Act 1946, supplemented by executive orders and rules. Its structure is above all regulatory and coercive: it gives the federal government the power to regulate the access, stay, and mobility of migrants, their conditions of residence and/or the direction of their departure. Most importantly, the core enabling provision of the Act envisages the executive authority to make orders requiring the foreigners to leave Pakistan, restricting their movement, requiring reporting/ registrations, and imposing residence conditions. The statute thus provides the legal terms of the deportation campaign: "illegal foreigner", "departure", "detention for removal", and criminal sanctions for being unlawfully present.²⁷⁰

The Act, however, is procedurally thin: it gives power, but it does not define in detail a procedure of expulsion by notice, reasons, representation and appeal. In the absence of such statutory safeguards constitutional due process (Article 10A) should step in to fill the gap as a controlling principle, which requires fairness where state decisions have a profound impact on a person's liberty, family life and security.²⁷¹ This is where the legal debate gets sharp: one view considers expulsion as being administrative and security sensitive, which justifies the streamlined procedures; the rule of law counterview considers expulsion a rights impacting act which requires at least minimum procedural guarantees and meaningful judicial review.²⁷²

That is not a technical flaw of draftsmanship, but the fact that legality is exposed where the law fails to provide that written reasons are to be given, that the reasons relied upon will be disclosed, access to counsel and a remedy that is suspensive in character is to be obtained,

²⁷⁰ See note 35 above.

²⁷¹ Rajper, “Refugee Rights,” 45–61.

²⁷² See note 97 above.

before removal, the executive may turn an order that is formally legal into a de facto one.²⁷³

With such requirements, where a system has high returns on a large scale, they must be codified into the statute and not left to administrative forbearance, exactly because high volume enforcement is predictably more forgiving of speed than accuracy.²⁷⁴

Read carefully, the Foreigners Act 1946 is an act of control, and not a protection code, and that it is the practice of relying on it without a parallel fair-hearing system is not legal neutrality but a design choice by the legislature that systematically favors enforcement over adjudication.²⁷⁵ High-volume expulsion operations pose a risk to liberty, dignity, and access to court, which, in lieu of a more concrete grant of executive power, must be expected to be constitutional.²⁷⁶

4.2.1.3 Documentation regimes as “status by proxy”: PoR and ACC

PoR and ACC have been quasi legal status channels. PoR in particular was widely interpreted as a protectionary administrative recognition that decreases the risk of policing and suggests tolerating stay, whereas ACC was interpreted as a different status tier with less protection according to the evolving enforcement logic of the IFRP.²⁷⁷ The 2024 validity extension of PoR by the government demonstrates this quasi-status function: A decision on documentation determines effectively who was immediately deportable and who was temporarily protected, without a formal statutory asylum procedure or individualized assessment.²⁷⁸

²⁷³ Goodwin-Gill, "Controlling the Discretion to Expel" (SSRN).

²⁷⁴ Denise L. Gilman, "Making Protection Unexceptional: A Reconceptualization of the U.S. Asylum System" (2023), SSRN abstract 4376159.

²⁷⁵ Marjoleine Zieck, "Accession of Pakistan to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees: 'Signing on Could Make All the Difference'" (2010), SSRN abstract 1554620.

²⁷⁶ Constitution of the Islamic Republic of Pakistan, 1973, arts. 4, 9, 10A, 14.

²⁷⁷ European Union Agency for Asylum, *Pakistan: Situation of Afghan Refugees* (May 2022).

²⁷⁸ Reuters, "Pakistan extends Afghan refugee registration cards for one year" (July 10, 2024)

This documentation-centric model raises two legal issues. First, it turns legal status into an executive function of executive renewal and administrative capacity which can be withdrawn or narrowed quickly. Second, it makes "lack of documents" do the work that an asylum procedure would normally do distinguishing those requiring protection from those removable - thus increasing the chance that genuine claims for protection will never be heard, or only once coercive forms of enforcement begin.²⁷⁹

4.2.1.4 Citizenship law and the “boundary problem”

Pakistan's citizenship law and registration infrastructure (NADRA based identity systems) is important for the reason that it determines the demarcation between who belongs and who does not belong. In practice, mixed status families (e.g., where children have claims relating to birth or parentage, or where long resident Afghans have complex histories with documentation) may be thrown into enforcement pipelines if documentation is considered conclusive evidence of non-belonging. The legal critique here is not to deny the sovereign power of Pakistan to define citizenship, but to drive home the point that citizenship boundaries should be applied through lawful, reviewable and fair processes particularly where enforcement pressures can lead to documentary error, exclusion, or wrongful detention. The legal critique here is not to deny Pakistan's power to define citizenship as it sees fit, but to underscore that the boundaries of citizenship should be applied through lawful, reviewable and fair processes - especially where pressures of enforcement may cause documentary error, exclusion or wrongful detention.²⁸⁰

²⁷⁹ Usman Mahar, “Documents, Destiny and Returning to Pakistan: Making Sense of (Im)mobility” (working paper, EASA 2020 paper, July 10, 2020), accessed February 18, 2026, https://epub.ub.uni-muenchen.de/74552/1/LMU_OPEN_10.07.2020_P073_EASA2020.pdf.

²⁸⁰ National Commission for Human Rights, “Protecting the Rights of Foreign Nationals Imprisoned in Pakistan” (April 24, 2024).

4.2.2 Treatment of refugees as undocumented migrants

A key part of the 2023-2025 campaign is the conflation of the story and operating of refugees with "illegal migrants." Government messaging has often attributed "illegal foreigners" with being security threats and criminals. While security is a legitimate state interest, securitisation alters the manner in which law is applied: it promotes the use of collective enforcement (deadlines, raids, area sweeps) and de-individuation, which is exactly where rights violations are most likely to occur.²⁸¹

This conflation is also the predictable product of the absence of an asylum system in Pakistan. Without a statutory refugee status determination procedure, the issue of need for protection is not institutionally uncoupled from the issue of illegality of migration; the enforcement system thus takes the issue of documentation as the prime proxy for legality. Scholarly work argues that such frameworks result in what can be called a "procedural invisibility" problem: people at risk (including people fearing persecution) are not directed into a protection pathway, they are directed into detention and removal.²⁸²

The constitutional interests are high. When refugees are treated as undocumented migrants the detention is cast in terms of routine "administration", however the logic of the Constitution is that restrictions of liberty must be justified and procedurally supervised. Courts have long recognized that constitutional protections extend beyond citizens in critical situations, particularly when it comes to detention in violation of the law.²⁸³ This is a very important doctrinal notion to deportees: the state has the power to remove, but it does not have

²⁸¹ Amnesty International, "Pakistan: Opaque 'Illegal Foreigners Repatriation Plan' targeting Afghan refugees must be withdrawn" (Urgent Action, June 20, 2025).

²⁸² Khadija Haider, "Illegal Foreigners Repatriation Plan & Pakistan's National Security: A Legal Threshold of International Law" (SSRN, May 19, 2024), abstract no. 4833404

²⁸³ Desiree Barbosa, "Civil Rights and Immigration: A One-Way Ticket Back to the 1960s" (March 9, 2023), SSRN, accessed February 18, 2026, <https://ssrn.com/abstract=4383514>.

the power to use the power to remove as authorization to suspend legality, dignity and due process.²⁸⁴

The rhetoric of illegal foreigners also blurs the legal line between violation of immigration and irregularity caused by refugees, although international law on refugees has long opposed the identification of deficits of documents and culpable removability as one and the same due to the frequent movement across borders of persons seeking protection against harm, without regular authorization.²⁸⁵ By making refugeehood an illegal state matter, a host state makes police-style enforcement and asylum-seeking a matter of law a welcome relief, and the individual treatment that non-refoulement needs prior to any effort to make its return lawful.²⁸⁶

Another potential risk is that documentary absence becomes so simply assumed as definitive evidence of removability, despite the fact that in a refugee context the lack of valid documents might be the outcome of flight or fear, out-of-date executive plans or long-term precarity and not a legal determination that there is no protection available.²⁸⁷ The process of becoming undocumented to deportable, in Pakistan, is, then, not self-justifying; it is the time to initiate a protection inquiry.²⁸⁸

4.2.3 Sovereignty, irregular migration and national security

Pakistan possesses a sovereign and statutory authority to regulate the entry, presence and departure of non-citizens. The Foreigners Act 1946 authorises the Federal Government to

²⁸⁴ Muhammad Akbar Cheema v Superintendent Jail, Kot Lakhpat (1994) PCrLJ 2362 (Lahore High Court).

²⁸⁵ Denise L. Gilman, "Making Protection Unexceptional: A Reconceptualization of the U.S. Asylum System" (2023), SSRN abstract 4376159; Angélica Cházaro, "Due Process Deportations" (2022), SSRN abstract 4085100.

²⁸⁶ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137, art. 31; Denise L. Gilman, "Making Protection Unexceptional: A Reconceptualization of the U.S. Asylum System" (2023), SSRN abstract 4376159.

²⁸⁷ Douglas McDonald-Norman, "Credibility Assessment in Refugee Status Determination" (2015), SSRN abstract 2623777; Andrew I. Schoenholtz, "The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century" (2015), SSRN abstract 2617336.

²⁸⁸ Constitution of Pakistan 1973, arts. 4, 9, 10A, 14.

make orders concerning the entry, continued presence and departure of foreigners. The existence of that authority should not be understated: Pakistan is not legally required to accept every non-citizen indefinitely, and it may enforce visa, registration and residence requirements against persons who have no valid basis to remain.²⁸⁹

The policy concerns underlying immigration enforcement are also legitimate. Irregular migration may impede reliable identification, complicate policing and border management, create informal labour and housing arrangements, and place pressure on institutions that already operate under significant resource constraints. National security adds a distinct concern where there is credible evidence connecting a particular individual to terrorism, serious violence or organised criminality. A legally balanced thesis must therefore evaluate the deportation campaign not on the premise that Pakistan lacks a regulatory interest, but by asking whether that interest was pursued through lawful, individualised and reviewable decisions.²⁹⁰

Sovereignty, however, is exercised through the Constitution and statutes rather than outside them. A documentation category may establish an immigration violation, but it does not answer whether the person is a refugee, an asylum seeker, a child, a long-term resident, a person awaiting third-country resettlement or an individual exposed to torture. Likewise, a general claim that some cross-border violence involves Afghan nationals cannot establish that every Afghan person presents a security threat. The decision-making structure must therefore separate four questions: identity and status; existence of an immigration breach; existence of an individual security ground; and existence of a legal barrier to return.²⁹¹

²⁸⁹ Foreigners Act, 1946, ss. 3 and 14.

²⁹⁰ Khadija Haider, “Illegal Foreigners Repatriation Plan & Pakistan’s National Security: A Legal Threshold of International Law,” SSRN, May 19, 2024, <https://ssrn.com/abstract=4833400>.

²⁹¹ Constitution of the Islamic Republic of Pakistan, arts. 4, 9, 10A and 14.

The appropriate standard is not a choice between sovereignty and protection. The state may pursue the legitimate aims of migration control and national security, but the means selected must have a clear legal basis, be rationally connected to the identified risk, avoid unnecessary collective measures, permit the affected person to answer the case, and remain subject to non-refoulement. On this basis, the principal weakness of the 2023–2025 campaign is not that removals occurred as such; it is that broad policy categories and accelerated enforcement could displace the individual legal inquiry needed to determine who was lawfully removable and to which destination.²⁹²

4.3 Assessment of the 2023–2025 Deportation Campaign

The IFRP must be determined both on the law and on the fact. The legal question is whether the campaign was operationalised by lawful orders and constitutionally-compliant procedures; and the factual question is whether the practices of the campaign - the detention, transport, actions on property and tactics of enforcement - were consistent with those standards. The campaign developed in phases: initial targeting of undocumented Afghans in late 2023; management of documentation through PoR extensions in 2024; and stepped-up deadlines and enforcement in 2025, with measures impacting ACC holders and reports of actions impacting registered populations as extensions expired.²⁹³

Significance of the scale of the campaign is important for legal analysis as scale does increase the probability of error and collective measures. UN and media reporting suggests very large numbers of returns/removals across 2023-2025, including UNHCR reporting that one million Afghans returned from Pakistan in 2025 alone. Scale does not automatically mean

²⁹² *Chahal v. United Kingdom*, 23 E.H.R.R. 413, paras. 79–82 (1996).

²⁹³ Government of Pakistan, PID press release on IFRP (October 2023); Reuters, “Pakistan extends Afghan refugee registration cards for one year” (July 10, 2024).

that it is illegal, but it does heighten the need for procedural safeguards, access to the judiciary and transparency in the decision-making process.²⁹⁴

4.3.1 Legal and factual analysis of deportations, detentions, and settlement demolitions

4.3.1.1 Legal basis and the “form problem”: deadlines versus orders

The Foreigners Act gives wide power to demand the departure of foreigners, but rule of law legality requires more than abstract enabling power. This entails the legal cognisable forms of decision: identifiable authorities, written orders where appropriate, reasons (at least minimally) and the possibility of challenge. A recurring criticism of the IFRP is that public communication too often focused on "deadlines" and "phases" and not on the legal form and procedural content of individual expulsion decisions.²⁹⁵ When expulsion is being operationalised in terms of a mass deadline backed by policing, legality runs the risk of being performative rather than procedural.²⁹⁶

4.3.1.2 Voluntariness and coercive context

The state has repeatedly defined returns as voluntary or orderly compliance with law. But voluntariness is not determined by the existence of a formal deadline. It is a matter of context specifically, whether it is practical for people to remain or not, while pursuing remedies, registration, or resettlement pathways or legal challenges. Reports by international bodies and rights organisations characterised the campaign as involving forced returns and coercive pressures, complicating claims of voluntariness even where some individuals left without formal orders for removal.²⁹⁷

²⁹⁴ United Nations High Commissioner for Refugees, “One million Afghans returned from Pakistan in 2025: UNHCR” (November 27, 2025)

²⁹⁵ M. Fahad, S. Aslam, and A. Aziz, “Building Bridges, Not Barriers: The Evolving Landscape of Immigration Laws in Pakistan, from Refugees to Reforms,” *International Journal of Social Sciences Bulletin* 3, no. 4 (2025): 526–540.

²⁹⁶ Amnesty International, “Opaque ‘Illegal Foreigners Repatriation Plan’” (June 20, 2025)

²⁹⁷ OHCHR, “Türk alarmed by forced returns” (November 15, 2023); Amnesty International, “Opaque ‘Illegal Foreigners Repatriation Plan’” (June 20, 2025).

Voluntariness must also be viewed as a legal issue as opposed to a descriptive slogan in that when detention, eviction, loss of papers, family separation, or when there is none whatsoever of review, then departure becomes the only option left to the individual and is truly voluntary.²⁹⁸ There, the bureaucratic dependence on consent forms, publicly declared time limits, or even the language of an orderly obedience, would be unable to remedy the coercive arrangement which created exit.²⁹⁹

The demolition and eviction of settlements should also be conjoined with deportation instead of as a distinct municipal problem as the demolition of homes, informal markets, or community spaces can radically reorganize the conditions of residence in such a way that the departure is actually engineered as opposed to being a choice.³⁰⁰ That is why, the insecurity of property in the host state may be included into the legal research of coerced return in which both of the measures are targeted on the same protected population in the same enforcement campaign.³⁰¹

A critical legal analysis should then be able to take on the phenomenon of constructive refoulement, in other words, the departures created by the pressure of detention, threats of imminent arrest, destruction of informal settlements, seizure of documents, or the systematic exclusion of work and housing cannot be addressed as really voluntary merely because the state did not put a person on a deportation vehicle.³⁰² When the coercive background conditions are recognized by the law, the stress on the state is not met by demonstrating the

²⁹⁸ Ahmad Khalid Hatam, "Repatriation of Afghan Refugees from Pakistan: A Legal Analysis" (2018), SSRN abstract 3972073.

²⁹⁹ Waseem Ahmad, "The Fate of Durable Solutions in Protracted Refugee Situations: The Odyssey of Afghan Refugees in Pakistan" (2017), SSRN abstract 3043810.

³⁰⁰ Weber, "Visible and Virtual Borders" (SSRN).

³⁰¹ Mark Rook, "Persecuted and Removed: Migrants' Potential Challenges to Expulsion under the U.S. Public Health Code" (2022), SSRN abstract 4214731.

³⁰² Shana Tabak, "Refugee Detention As Constructive Refoulement" (2023), SSRN abstract 4558072.

physical exit, but is also a demonstration that the decision to exit is not created through actions that are not compatible to dignity, liberty, or access to protection processes.³⁰³

4.3.1.3 Detention as an enforcement tool and constitutional constraints

Detention is legally the most sensitive enforcement mechanism for it directly deals with Article 9 (liberty) and Article 10 (safeguards of detention) and it evokes the logic of due process of Article 10A. Pakistani law does have provisions for detention in immigration situations but the legality of detention is laid down in the constitution and deprivation of liberty must be justified, limited in time and subject to review.³⁰⁴ Where detention emerges as a routine - used to handle large populations in a short time its character as law changes from facilitator of enforcement to coercive control, with the risk of arbitrary detention and procedural denial increasing.³⁰⁵

Institutional evidence on detention conditions as well as access to the law reinforces this concern. The National Commission for Human Rights has reported systemic problems involving foreign nationals in detention (barriers to legal representation, delays and weaknesses in oversight, among them). Although not specific to Afghan refugees, these findings are appropriate because they describe the institutional context in which a mass deportation campaign is carried out.³⁰⁶

Incarceration in such places cannot be merely understood as detention awaiting deportation, but as one of the places where due process can be killed, as the lack of communication, poor access to counsel, language obstacles, and lack of knowledge about the

³⁰³ Emily Ryo, "Understanding Immigration Detention: Causes, Conditions, and Consequences" (2019), SSRN abstract 3472509.

³⁰⁴ S. R. H. Bukhari, N. A. Chandio, and R. Ullah, "Pakistan's Afghan Refugee Dilemma: A Legacy of Broken Promises," *Journal of Political Stability Archive* 3, no. 1 (2025): 584–601

³⁰⁵ See note 264 above.

³⁰⁶ Ibid.

duration can coerce individuals to forgo claims to protection or accept repatriation without significant objection.³⁰⁷ Legally, detention which foreseeably compromises the ability to seek asylum or challenge return is not an incidental part of non-refoulement analysis: it can be part of the violation.³⁰⁸

There is also a rule-of-law aspect to wrongful immigration detention, not dependent upon whether or not the detention is ultimately removed, since non-disclosure, unreliable evidence, misconduct of officers and poor defence counsel, can render the detention per se a miscarriage of justice, not an administrative holding measure.³⁰⁹ The wave of the comparative lesson is that the quality of evidence and procedural fairness of detention review should be examined, not simply the presence of executive custody, as in the case of Pakistan.³¹⁰

4.3.1.4 Settlement demolitions and property insecurity

A different but related group of allegations relates to the demolition of informal settlements and property insecurity for the Afghan communities during the enforcement time period. Demolition is not part of the deportation but requires independent legal regimes (usually under municipal/land regimes) as well as adhere to principles of notice and hearing to be constitutional in terms of legality and dignity. Where demolitions are accompanied by deportation drives, this can act as indirect coercion as the destruction of housing reduces the capacity to stay and resist removal; it can cause "departure by homelessness." Rights organisations called some aspects of the plan opaque and harmful, including pressures associated with housing and community security.³¹¹

³⁰⁷ Ibid.

³⁰⁸ Mary Holper, "Discretionary Immigration Detention" (2023), SSRN abstract 4551856.

³⁰⁹ Louis Century and Kent Roach, "Miscarriages of Justice in Immigration Detention" (2024), SSRN abstract 4787957.

³¹⁰ Holper, "Discretionary Immigration Detention" (SSRN).

³¹¹ See note 276 above.

The legal critique is hence twofold: (i) demolition actions must be independently lawful and proportionate, as well as procedurally fair; and (ii) even if a demolition is couched in the language of "anti-encroachment," its mix into a deportation drive can convert it into a tool of coercive removal without due process protections.³¹²

4.3.2 Examination of compliance with procedural safeguards

4.3.2.1 Statutory thinness and constitutional “gap-filling”

The Foreigners Act has a removal power but does not have an expulsion procedure equivalent to what would have been found in a modern administrative law system (notice, reasons, representation, appeal). This statutory thinness does not dispense with procedural duties; it transfers them to the Constitution and to the principles of judicial review. Article 10A plays an important role here: it constitutionalises principles of due process and fair hearing and should limit those administrative removals that impact upon liberty and dignity.³¹³

In actual implementation, safeguards seem spotty. Reporting throughout 2024-2025, house checks, detention, and rapid removals were described, which implies a low level of time and capacity for individualized challenge especially to those lacking lawyers, access to language, or resources. The legal issue is not just one of "harshness," but instead of the risk of the expulsion becoming collective and unreviewable in a way that this strikes at the heart of legality itself.³¹⁴

4.3.2.2 Vulnerability screening and individualized assessment

A legally defensible framework for deportation must make a distinction between categories: some of long-term residence; some whose resettlement processes are pending;

³¹² Ibid.

³¹³ S. M. A. Shah, S. M. F. Bukhari, and K. N. U. Ain, “Harmonizing Humanity: Unveiling the Nexus of International and Constitutional Dynamics in Pakistan’s Potential Adoption of the Refugees Convention,” *Journal of Development and Social Sciences* 6, no. 1 (2025): 52–60.

³¹⁴ Reuters, “Pakistan asks illegal foreigners, Afghan Citizen Card holders to leave by March 31” (March 7, 2025).

some with credible fear or enhanced vulnerability; and some genuinely removable without serious risks of harm. The argument against documentation-centric enforcement is that these differences are reduced to a one-dimensional binary (documented/undocumented) which is administratively convenient but legally dangerous. Rights bodies raised concerns about the forced return of returnees taking place in spite of well-known risks in Afghanistan for certain groups.³¹⁵

Screening of vulnerability, in addition, cannot be done simply by seeking to determine whether an individual has a PoR or an ACC card, since an adequate legal inquiry must seek to determine whether the individual is a child, a victim of torture, a woman at risk, a person with a disability, a member of a persecuted family or group, or a long-term resident on whose removal to Pakistan would severely disrupt family life.³¹⁶ In the absence of these criteria, individualized assessment would be nominal since the system will never pose the questions which the international protection law considers decisive.³¹⁷

4.3.2.3 Illustrative judicial pause: Afghan performers case

The reported intervention of the court in early 2024 suspension of deportation of Afghan singers and musicians highlights the fact that procedural safeguards are not imaginary and can be activated through litigation proceedings so as to open up space, if even temporarily, for claims of registration / protection.³¹⁸ Yet it also indicates inequality in access: groups with legal assistance and visibility can gain time, whereas less visible families can be removed

³¹⁵ OHCHR, "Türk alarmed by forced returns" (November 15, 2023)

³¹⁶ Stephanie J. Silverman, "Detaining Immigrants and Asylum Seekers: A Normative Introduction" (2014), SSRN abstract 2464239.

³¹⁷ Pobjoy, "Child Rights Framework" (SSRN).

³¹⁸ A. U. Mustafa and M. S. Gul, "Universal Periodic Review and Protection of Refugees: A Case Study of Pakistan," *Policy Journal of Social Science Review* 3, no. 5 (2025): 37–44.

before they can access courts.³¹⁹ This is a structural procedural deficit: that rights are there formally, but enforcement timelines can outrun remedial pathways.³²⁰

4.3.2.4 Detention review, oversight, and accountability gaps

The NCHR's findings on foreign nationals in detention point to systemic barriers to procedural safeguards in the context of deportation: the absence of effective legal representation, extended detention, and weak oversight. In a mass enforcement context, these kinds of systemic barriers are heightened because the number of situations affected becomes overwhelming with respect to normal judicial and administrative review capacity.³²¹ The legal implication of this is that even if safeguards are included in the law in Pakistan, the state may still fail to pass the constitutional test because the state's institutional practice makes safeguards effectively unavailable.³²²

4.4 Role of the Judiciary and State Institutions to ensure legal remedies

Pakistan's constitutional design has provided it with strong remedial tools writ jurisdiction under article 199 and in exceptional circumstances Supreme Court public importance jurisdiction. The critical question is whether or not these tools work as actual constraints during high-intensity enforcement. The 2023-2025 campaign exposes both of these possibilities: there are situations in which the courts can intervene, but in many cases, structural conditions make effective access to justice impossible for large populations.³²³

³¹⁹ Associated Press, “A Pakistani court suspends the deportation of Afghan singers and musicians” (January 2024).

³²⁰ Kazmi, “Pakistan’s Judicial Engagement,” 397–418

³²¹ National Commission for Human Rights, “Prison Data Report: Pakistan’s Prison Landscape—Trends, Data, and Developments in 2024” (published January 2025).

³²² See note 264 above.

³²³ M. Syarifuddin, “Legal Heuristic Approach in Judicial Practice,” *Lex Publica* 8, no. 2 (2021): 62–91

4.4.1 Review of judicial pronouncements, administrative discretion, and enforcement agencies

4.4.1.1 Judicial role: from detention review to legality review

Pakistani courts have historically addressed cases of unlawful detention even in cases where the detained is a foreigner, which supports the constitutional principle that executive power must not be allowed to operate outside the law. This is integral to the governance of deportation because detention is often the mechanism through which deportation is made to work. An effective detention review means that enforcement agencies must be held accountable by requiring them to provide reasons for arrest and detention; a lack of detention review creates detention as an administrative shortcut.³²⁴

There have also been recent examples of the courts offering targeted relief in deportation cases (including the episode of the Afghan performers). Such interventions confirm the doctrinal possibility of judicial constraint. Yet doctrinal possibility is not the same as systemic protection: case-by-case litigation seldom reforms enforcement architectures, and relief often hinges on visibility, representation, and timing.³²⁵

4.4.1.2 Deference, security framing, and the narrowing of review

A recurring limitation is judicial deference in which deportation is couched in terms of national security. Security framing can lessen the severity of review, especially in places where courts accept the claims of the executive without requiring transparent reasons for them or even individual evidence.³²⁶ The important point is that security concerns are not erasing the legality of constitutions, and may justify some restrictions, but are required to be legally

³²⁴ Muhammad Akbar Cheema v Superintendent Jail, Kot Lakhpat (1994) PCrLJ 2362

³²⁵ Associated Press, “Court suspends deportation of Afghan singers and musicians” (January 2024).

³²⁶ S. Javed, “Obstacles Faces by Emigrants with Migration Requirements; a Comparative Analysis of Legal and Illegal Emigration from Pakistan,” *Journal of Educational Research and Social Sciences Review (JERSSR)* 4, no. 1 (2024): 31–38.

bounded, rational, and procedurally supervised.³²⁷ Scholarly examination of Pakistan's engagement with refugee law shows both instances of progressive judicial reasoning and instances of restraint, indicating a broader tension between rights adjudication and security governance.³²⁸

4.4.1.3 Administrative discretion and enforcement agencies

Beyond the judiciary, the outcomes of enforcement are determined by institutions: the Ministry of Interior determines policy direction; provincial police conduct raids and checks; district administration manages detentions/transport; documentation authorities (including NADRA-linked systems) determines whether someone is treated as "regular" or "illegal." This multi-actor structure leads to accountability diffusion: if the illegal arrest does take place, the blame is diffused to different agencies; if the family is separated, remedies are procedurally complex.³²⁹

Oversight bodies such as the NCHR can document patterns and propose reforms, but they cannot replace statutory safeguards and enforceable administrative procedures. Their reports, however, have important legal significance because they make an evidentiary record that there are systemic barriers to justice and due process affecting foreign nationals that can make deportation campaigns constitutionally suspect when undertaken on a mass scale.³³⁰

4.4.1.4 The legislative failure behind remedial fragility

The severest criticism is legislative. Courts can interpret and administer the rights of constitutional rights, but they cannot legislate a complete refugee regime. In the absence of a refugee statute at all, executive discretion is broadened: documentation turns into status;

³²⁷ Matthew J. Nelson, "Constitutional Migration and the Meaning of Religious Freedom: From Ireland and India to the Islamic Republic of Pakistan," *The Journal of Asian Studies* 79, no. 1 (2020): 129–154.

³²⁸ Noorulain Naseem and Shahzeb Usman, IPRI Policy Brief (January 2024)

³²⁹ M. S. Ullah, "Irregular Migrants in Pakistan: Challenges for the Migrants and the State with a Global Perspective of Migration," *International Journal of Social Science Archives (IJSSA)* 7, no. 3 (2024).

³³⁰ See note 261 above.

deadlines turn into decisions; detention turns into process; and the pace of enforcement turns into the practical limit on remedies. Local scholarship has repeatedly pointed out that Pakistan's "refugee governance by executive arrangement" is structurally susceptible to sudden policy fluctuations and mass enforcement precisely because rights are not enshrined in a stable legal framework.³³¹

The corrective frailty of the current structure is institutional, as much as doctrinal: the courts can intervene *ex post*, and the oversight agencies can record abuse, but neither can replace a statutory rule that the removal orders be justified, can be appealed, and are automatically stayed when claims to protection are made.³³² The existing structure of Pakistan is therefore not only lacking in generosity, but the institutional design whereby legality can be habitually challenged in order to prevent irreparable damage.³³³

The law also ought to mandate the release of anonymized guidelines on conditions in the country, credibility evaluation, and vulnerability indicators since an unpublished executive practice permits risk standards to change under the radar and makes it more difficult to the courts, lawyers, and victims of such cases to examine whether similarly situated cases are being handled in a comparable manner.³³⁴ An administrative publication obligation would not render refugee protection inflexible; instead, it would not enforce the discretion of the administration, but compel it to elaborate why the risk posed by Afghanistan matters are being handled in a specific manner and at a specific time.³³⁵

³³¹ See note 264 above.

³³² Niamh Kinchin, "The Intersectionality of Domestic and Global Accountability: UNHCR and Australian Refugee Status Determination" (2018), SSRN abstract 3308679.

³³³ Chowdhury, "Immigration Detention and Habeas Corpus" (SSRN).

³³⁴ Andrew I. Schoenholtz, "The New Refugees and the Old Treaty: Persecutors and Persecuted in a Globalized Society" (2015), SSRN abstract 2617336.

³³⁵ See note 117 above.

4.4.1.5 Pakistani Supreme Court jurisprudence

Although the Supreme Court has not produced a comprehensive refugee-code jurisprudence, its constitutional decisions supply important interpretative principles. In *Federation of Pakistan v. Shaukat Ali Mian*, the Supreme Court accepted that international law may reinforce the interpretation of domestic law where no inconsistency exists. The principle does not automatically incorporate every treaty rule into municipal law; rather, it permits courts to read open-textured statutory and constitutional provisions consistently with international obligations when the legislature has not directed otherwise. This approach is directly relevant where the Foreigners Act is silent on asylum screening and non-refoulement procedure.³³⁶

In *Al-Jehad Trust v. Federation of Pakistan*, the Supreme Court distinguished rights reserved to citizens from constitutional protections conferred upon “persons.” This supports the application of Articles 4, 9, 10A and 14 to non-citizens within Pakistan’s jurisdiction. The proposition is limited but significant: it does not confer citizenship or an unrestricted right to remain, yet it prevents immigration status from excluding a person from legality, life, liberty, dignity and fair-process guarantees while executive action is taken against him or her.³³⁷

The Supreme Court’s approach in *Human Rights Case No. 29388-K of 2013* further supports cautious reliance on international human-rights principles as interpretative guidance. Read together, these authorities provide a domestic doctrinal bridge: international non-refoulement norms cannot displace an express Pakistani statute, but they may inform the meaning of executive legality, due process, liberty and dignity where the statutory scheme contains a protection gap.³³⁸

³³⁶ *Federation of Pakistan v. Shaukat Ali Mian*, PLD 1999 SC 1026.

³³⁷ *Al-Jehad Trust v. Federation of Pakistan*, 1999 SCMR 1379.

³³⁸ *Human Rights Case No. 29388-K of 2013*, PLD 2014 SC 305.

4.4.1.6 Pakistani High Court jurisprudence: Aamir Aman and Rahil Azizi

The Sindh High Court's decision in *Aamir Aman v. Federation of Pakistan* provides an early procedural response to the absence of a domestic asylum statute. The Court allowed UNHCR processing to take place and restrained removal while the protection claim remained pending. It further contemplated a period of fifteen days after an adverse UNHCR decision so that the affected person could seek an available legal remedy. The case is important not because it created a complete asylum regime, but because it recognised that an expulsion should not be executed before a protection process and a practical opportunity for challenge have run their course.³³⁹

The Islamabad High Court developed the analysis further in *Rahil Azizi v. State*. The petitioner, an Afghan national who had served in the Afghan police, fled after the Taliban takeover, entered Pakistan without a visa, approached the authorities and was prosecuted under section 14(2) of the Foreigners Act. During the proceedings she obtained UNHCR recognition and third-country resettlement. The factual sequence was legally important because it required the Court to distinguish entry for an unlawful purpose from irregular entry undertaken to seek protection.³⁴⁰

The Court held that section 14(2) was not to be applied as a form of strict liability divorced from purpose and mens rea. It reasoned that the Foreigners Act regulates entry and exit and deters entry for an illegal purpose, while a person who enters to seek asylum cannot automatically be equated with an ordinary criminal entrant. The judgment used Articles 4, 9, 10A and 14, Pakistani Supreme Court authority and international refugee and human-rights

³³⁹ *Aamir Aman v. Federation of Pakistan*, PLD 2020 Sindh 533.

³⁴⁰ *Rahil Azizi v. State*, W.P. No. 1666 of 2023, PLD 2024 Islamabad 231, paras. 2–5 (Islamabad High Court June 19, 2023).

principles to interpret the statutory provision consistently with protection from arbitrary criminalisation.³⁴¹

The remedies were also institutionally significant. The High Court set aside the impugned orders, quashed the criminal proceedings and directed the Federal Government to establish a mechanism and standard operating procedures for asylum seekers, including reporting, temporary accommodation outside ordinary prisons, processing with UNHCR and withdrawal of inappropriate prosecutions following recognition. These directions reveal the court's understanding that individual relief alone could not cure the recurring administrative gap.³⁴²

The limits of *Rahil Azizi* should nevertheless be stated. It arose from a criminal prosecution and an individual who ultimately received UNHCR recognition and resettlement; it did not enact a generally applicable statutory appeal against every deportation order. Its strongest contribution is therefore interpretative and institutional: it confirms that the Foreigners Act must not be applied without regard to purpose, constitutional personhood and protection claims, while simultaneously demonstrating why Parliament must replace case-dependent relief with a clear administrative and appellate procedure.³⁴³

4.5 Concluding observations

Pakistan's legal system has both power and limitation. Authority passes from the statutes of the control of foreigners and executive power to regulate entry and residence. Constraint is derived from constitutional guarantees that apply to persons and the remedial jurisdiction of the judiciary. The deportation campaign of 2023 to 2025 illustrates the ways in

³⁴¹ *Rahil Azizi*, paras. 18–19, 27–32.

³⁴² *Rahil Azizi*, paras. 35–38.

³⁴³ *Rahil Azizi*, paras. 27–38.

which, without a codified asylum system and procedure for expelling asylum seekers, executive governance can supersede constitutional constraint - most notably, through collective deadlines, detention-led processing and enforcement measures designed to outpace access to remedies.³⁴⁴

The basic legal implication for the thesis is that the deportation policy in Pakistan cannot be assessed merely by reference to the sovereign power to remove. It has to be assessed as to how that power is exercised: whether decisions are legally formed, whether detention is justified and is subject to review, whether procedural safeguards are meaningful in practice, and whether vulnerable groups are subject to individual assessment. In the following analytical steps of the thesis, the results obtained in the domestic sphere relate directly to the international human rights framework and the reform question: what legal and institutional measures are necessary to make the governance of deportation compatible with legality and due process and compatible with human dignity?³⁴⁵

³⁴⁴ Masudi, “Mass Deportation of Afghan Refugees,” 315–326; Rajper, “Refugee Rights,” 45–61

³⁴⁵ See note 274 above.

Chapter 05: Legal Reforms and Policy Recommendations and Conclusion

The above chapters demonstrated that the legal flaw in the response of Pakistan to the displacement of Afghans was not just the fact of deportation, but the institutional form in which deportation has been naturalized.³⁴⁶ The idea that refugees, asylum-seekers, and the undocumented entrants should be treated as one undifferentiated model of foreigner-control cannot be trusted to meet the requirement of non-refoulement, as it does not offer the legal apparatus necessary to screen the protection claims until the time of removal.³⁴⁷ The issue is not then whether Pakistan can control the entry and stay, but how such power should be reshaped in such a way that constitutional guarantees, the non-return commitments of the treaties and the administrative legality can be put into practice.³⁴⁸

Four reforms are interrelated and the chapter makes an argument in support of them.³⁴⁹ Pakistan requires: a complete asylum statute; a separate refugee status establishment organization; a rights-based framework of regional and international collaboration; and more judicial evaluation by way of appeals, detention review and constitutional redress.³⁵⁰ These reforms do not provide charitable alternatives.³⁵¹ They are constitutional answers to the

³⁴⁶ Arjumand Bano Kazmi, “Pakistan’s Judicial Engagement with International Refugee Law,” *International Journal of Refugee Law* 36, no. 4 (2024): 397–418, 397–401

³⁴⁷ Abuzar Abbasi, Tansif Ur Rehman, and Ali Usman Ashraf, “Beyond Borders, Beneath Law: The Legal Vacuum for Refugees and Asylum Seekers in Pakistan,” *The Critical Review of Social Sciences Studies* 3, no. 2 (2025), DOI: 10.59075/ajkveq20

³⁴⁸ Kazmi, “Pakistan’s Judicial Engagement”, 401–4

³⁴⁹ S. M. A. Shah, “Harmonizing Humanity: Unveiling the Nexus of International and Constitutional Dynamics in Pakistan’s Potential Adoption of the Refugees Convention,” *Journal of Development and Social Sciences* 6, no. 1 (2025): 53–61, 53–57

³⁵⁰ UNHCR, *Legal Considerations Regarding the Return of Afghan Nationals from Pakistan* (November 2023).

³⁵¹ Kazmi, “Pakistan’s Judicial Engagement”, 414–18

constitutional order of Pakistan, its duty towards the ICCPR and CAT, and the proceduralized conception of non-refoulement that is emerging in modern refugee and human rights law.³⁵²

5.1 Need for a Comprehensive Domestic Asylum Framework

The current system in Pakistan is still structurally weak since the foreigner act 1946 and the other registration acts were not made to provide refugee status but to control and eliminate them.³⁵³ Such laws control entry, residence, movement, and departure, however they do not establish the meaning of refugee, asylum-seeker or beneficiary of complementary protection and they do not establish any method through which an individual may assert a fear of persecution, torture, arbitrary killing or other irreparable harm prior to their expulsion.³⁵⁴ The lack of asylum law does not leave a vacuum of legal responsibility thus; it leaves a compliance gap since Pakistan has no local means by which it can fulfil its already accrued responsibilities under Articles 6, 7, and 13 of the ICCPR, Article 3 of CAT, and constitutional entitlements of lawfulness, freedom, fair trial, and dignity.³⁵⁵

An inclusive asylum law must start with the codified dual protection model.³⁵⁶ The former limb must assume a definition of refugee which is consistent with Article 1A(2) of the 1951 Refugee Convention to a significant degree not because Pakistan is subject to that instrument of international law, but because the Convention definition is the most sensitive legal criterion of persecution-based refugeehood.³⁵⁷ The latter limb must acknowledge complementary protection of individuals that do not meet the Convention requirements of refugee status yet

³⁵² Cathryn Costello and Michelle Foster, “Non-Refoulement as Custom and the Proceduralisation of Protection,” *Netherlands Yearbook of International Law* 46 (2015): 3–48, 3–8

³⁵³ *Foreigners Act, 1946*

³⁵⁴ Abbasi, Ur Rehman, and Ashraf, “Beyond Borders, Beneath Law”.

³⁵⁵ Sophie Capicchiano Young, *In Continuation of a ‘Unified Immigration Agenda’: The End of Asylum at the Southwest Border* (University of Galway, May 24, 2024), last revised January 28, 2026.

³⁵⁶ T. Wood, *The Role of ‘Complementary Pathways’ in Refugee Protection*, report commissioned by UNHCR (Kaldor Centre for International Refugee Law, UNSW Sydney, 2020).

³⁵⁷ *Convention Relating to the Status of Refugees*, July 28, 1951, 189 U.N.T.S. 137, art. 1A(2).

they cannot be returned lawfully as they face the real risk of torture, cruel or inhuman treatment, arbitrary deprivation of life or similar severe harm within the framework of the international human rights law.³⁵⁸ The fact that dual model is important in the Pakistan-Afghanistan scenario is due to the fact that many of the people at risk cannot comfortably fall into the grounds of Convention and yet within the non-return guarantees of CAT and the ICCPR.³⁵⁹

Non-refoulement should also be expressed in written domestic terms in the statute.³⁶⁰ The provision should not allow expulsion, deportation, extradition, rejection at the frontier, informal transfer, and indirect or chain transfer in the event that there are substantial reasons to suspect that the individual would suffer persecution, torture, inhuman treatment, arbitrary killing, enforced disappearance or removal to a country where he or she would suffer such harm.³⁶¹ It must mention that protection must be granted regardless of mode of entry, documentary status or pending determination stage since the protection of human rights is declaratory and not constitutive and irregular presence does not extinguish the protection.³⁶²

An asylum statute that is serious should also make protection enforceable procedure.³⁶³ At least, the law must assure of access to registration, written information in a language of understanding, interpretation, legal representation, confidentiality, an individual interview, a reasoned decision written form, and a chance to appeal rejection prior to removal.³⁶⁴ It ought

³⁵⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85, art. 3.

³⁵⁹ UNHCR, Legal Considerations Regarding the Return of Afghan Nationals from Pakistan

³⁶⁰ Ibid.

³⁶¹ CAT, art. 3

³⁶² United Nations High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection (Geneva: UNHCR, 2019), paras. 28–29

³⁶³ UNHCR, Procedural Standards for Refugee Status Determination under UNHCR's Mandate (2020).

³⁶⁴ UNHCR, Procedural Standards

to offer the interim recording until the determination is made such that asylum-seekers are not made arrestable simply as a consequence of seeking to invoke protection.³⁶⁵ The decision of the Islamabad High Court in *Rahil Azizi* is very practical in illustrating the significance of this point as the Court superseded where an Afghan applicant had been imprisoned despite the fact that the State had no national asylum system and at the end ordered referral to UNHCR to do so.³⁶⁶

The act must also be much more precise in the detention as it is practiced at present.³⁶⁷ Instead of being seen as a prelude to deportation, immigration detention ought to be seen as an extraordinary administrative remedy of last resort, which is both lawful, necessary, proportional, under review, and under periodic review.³⁶⁸ The increased protection of children, victims of torture, and other vulnerable applicants and, in theory, community-based alternatives to detention should be provided.³⁶⁹ A system wherein detention can be a replacement of screening is a violation both of the Article 9 of the ICCPR and fairness of the protection procedure, as the persons which are detained are the least capable of collecting evidence, receiving counsel, and making assertions prior to being permanently removed.³⁷⁰

5.1.1 Proposal for legislation recognizing refugee status and procedural rights

A Pakistani Asylum and International Protection Act ought to have eight fundamental sections in terms of drafting.³⁷¹ Part I would give definitions of refugee, asylum-seeker, beneficiary of complementary protection, dependent family member, and grounds of

³⁶⁵ *Rahil Azizi v. The State*, PLD 2024 Islamabad 231

³⁶⁶ *Rahil Azizi v. The State*

³⁶⁷ International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171, art. 9

³⁶⁸ ICCPR, art. 9

³⁶⁹ See note 336 above.

³⁷⁰ See note 340 above.

³⁷¹ Hassan Khalid Ranjha, *Refugee Status Determination, Credibility, and Trauma-Informed Practice* (Academic and Researcher, October 15, 2025), posted December 1, 2025.

exclusion.³⁷² Part II must enshrine the right to asylum and the inadmissibility of refoulement, and it includes a provision to the effect that no removal order can be carried out until all protection screening and available appeals have been depleted.³⁷³ Part III needs to control lodging, registration and admissibility, but it should be explicitly stated that an irregular entry is not a sufficient reason to exclude the asylum system.³⁷⁴ The fourth part must regulate the determination of refugee status, evidence, interviewing, standard and burden of proof and country-of-origin information.³⁷⁵ Part V ought to define status-related rights and obligations, such as temporary documents, the right against arbitrary arrest, access to the basic education, access to primary healthcare, and the right to family solidarity.³⁷⁶ Parts VI through to part 8 must develop appeals, manage the collaboration with the UNHCR, and offer transitional measures to the current Afghan groups in Pakistan.³⁷⁷

Such legislation should have its evidentiary rules in a doctrinally realistic way.³⁷⁸ Claims of refugees are usually characterized by incomplete paperwork, testimony traumatized by trauma, electronic evidence of unequal reliability, and country situations that change fast.³⁷⁹ The law must not then impose on a criminal-law burden of proving the element of well-founded fear or real risk, but must instead be appraised of whether a well-founded fear or real risk has been proved on the totality of the evidence, including credible testimony, country information, and corroborative digital evidence where available.³⁸⁰ The current research on the subject of

³⁷² Refugee Convention, art. 1A(2).

³⁷³ See note 336 above.

³⁷⁴ Refugee Convention, art. 31.

³⁷⁵ See note 336 above.

³⁷⁶ See note 331 above.

³⁷⁷ Kazmi, “Pakistan’s Judicial Engagement”, 409–14

³⁷⁸ Jane Herlihy, Hilary Evans Cameron, and Stuart Turner, “Psychological Research Evidence in Refugee Status Determination,” *Journal of Refugee Studies* 37, no. 4 (2024): 938–953, 938–45

³⁷⁹ Herlihy, Evans Cameron, and Turner, “Psychological Research Evidence”, 945–53

³⁸⁰ William Hamilton Byrne and Thomas Gammeltoft-Hansen, “Digital Evidence in Refugee Status Determination,” *AJIL Unbound* 118 (2024): 62–66, 62–64

digital evidence and credibility in refugee adjudication has justified this strategy by demonstrating both the evidentiary utility and the human-rights danger of excessive reliance on formal digital evidence to inform asylum adjudication.³⁸¹

It must also be provided in the legislation that a *prima facie* or group-based recognition system of mass influx cases should be maintained and the individual examination of exclusions and rejections is maintained.³⁸² With ongoing trends of insecurity, regime retaliation, gender persecution and targeted violence as might be seen in a context like Afghanistan, *prima facie* recognition can decrease the backlog and inhibit protection collapse.³⁸³ Nevertheless, the law ought to clearly state that simplified or expedited processes can be resorted to only to identify the claims that can be plainly well-founded, and any rejection should be personalized, argumentative, and agreeable.³⁸⁴ Efficiency is only legal where it increases protection but not as a means of squeezing scrutiny and externalizing risk.³⁸⁵

An explicit non-penalisation provision of irregular entry and stay should also be included in a new asylum statute, as well as a confidentiality and data-firewall provision, such that individuals seeking protection are not handed over to enforcement agencies by just stating the facts on which their fear is based.³⁸⁶ Such a mix is important in Pakistan as much of the present enforcement rationale presupposes that document deficiency terminates the investigation into the illegality, whereas the refugee law presupposes that irregular movement is compatible with

³⁸¹ Byrne and Gammeltoft-Hansen, "Digital Evidence", 64–66

³⁸² UNHCR, *Effective Processing of Asylum Applications: Practical Considerations and Practices* (2022).

³⁸³ See note 331 above.

³⁸⁴ UNHCR, *Effective Processing of Asylum Applications*

³⁸⁵ Costello and Foster, "Non-Refoulement as Custom", 30–35.

³⁸⁶ Rook, "Persecuted and Removed" (SSRN).

protection seeking on a bona fide basis and that there must be an area of the law where one can express fear without incriminating him or herself.³⁸⁷

A Pakistani law must also include a temporary-protection clause of mass influx cases, which will allow prima facie status, renewable documents and easily available work, health, and education but not eliminating the potential of a full individual status determination of those with enhanced claims.³⁸⁸ This model would enable Pakistan to strike a balance between administration and a legal minimum of non-refoulement and procedural fairness to scale.³⁸⁹

5.2 Establishing an Independent Refugee Status Determination Body

A well-drafted asylum law will not work as long as the determination of refugee status is entrenched in the regular enforcement agencies.³⁹⁰ The adjudication protection and removal enforcement are based on other legal logics.³⁹¹ The former, the question whether the State is under a duty not to expel, because the individual has suffered serious harm; the latter, there is an assumption that it is lawful to remove the individual unless some impediment can be established.³⁹² In the fused nature of those functions that a single administrative chain has, structural risk is that the priorities of expulsion will prevail in assessment, and procedural fairness will be seen as delay, not legality.³⁹³

Pakistan thus needs to institute the independent commission of determining Refugee status through statute.³⁹⁴ It ought to be independent by having fixed terms of office of the decision-

³⁸⁷ Gilman, "Making Protection Unexceptional" (SSRN).

³⁸⁸ Sharpe and Namusobya, "Refugee Status Determination" (SSRN).

³⁸⁹ Zieck, "Accession of Pakistan" (SSRN).

³⁹⁰ Gayathri Umapathy, *The Role of International Law and The UN in Curbing Exploitation Against Asylum Seekers in the 21st Century and Its Inevitable Drawback* (Vel Tech Rangarajan Dr Sagunthala R&D Institute of Science and Technology, December 31, 2024), posted July 24, 2025, SSRN,.

³⁹¹ Umapathy, *The Role of International Law and The UN in Curbing Exploitation Against Asylum Seekers*.

³⁹² See note 333 above.

³⁹³ Mariana Ferolla Vallandro do Valle, "Failing Asylum-Seekers: Limited Judicial Review of Refugee Status Determination Decisions in Brazil," *Refugee Survey Quarterly* 44, no. 2 (2025).

³⁹⁴ Kazmi, "Pakistan's Judicial Engagement", 412–18

makers, appointment by a transparent process, insulated against indiscriminate dismissal and having a ring-fenced budget.³⁹⁵ The Chair must preferably be a retired senior court judge or other jurist who has a specialized knowledge in the field of constitutional, international, and administrative law.³⁹⁶ Other commissioners ought to have the experience regarding refugee law, human rights law, country research, child protection, and gender-based persecution.³⁹⁷

The institution of the Commission must be different regarding the Ministry of Interior, the police and the Federal Investigation Agency, although they may be required to coordinate with them.³⁹⁸ Another case-management secretariat to be registered will record the claims, keep files, issue temporary documents and schedule interviews.³⁹⁹ Objective country materials should be prepared by a country-information and legal-research unit and kept updated on a regular basis, and the methodology should be published to enable transparency.⁴⁰⁰ The regional offices are expected to be opened in regions where the population of Afghans is concentrated so that one does not have to travel to Islamabad to receive the procedure.⁴⁰¹

The independence of institutions cannot be merely a new name on an old department since a status-determination institution must be empowered to force files to be produced, have a professional country-information unit, issue anonymised advice, and to prepare disciplined criteria of burden and proof.⁴⁰² In the absence of such safeguards, Pakistan would simply be

³⁹⁵ Ferolla Vallandro do Valle, "Failing Asylum-Seekers".

³⁹⁶ Kazmi, "Pakistan's Judicial Engagement", 404–7

³⁹⁷ See note 336 above.

³⁹⁸ See note 368 above.

³⁹⁹ See note 336 above.

⁴⁰⁰ Ibid.

⁴⁰¹ See note 326 above.

⁴⁰² Azadeh Dastyari and Maria O'Sullivan, "Not for Export: The Failure of Australia's Extraterritorial Processing Regime in Papua New Guinea and the Decision of the PNG Supreme Court in Namah" (2016), SSRN abstract 3028025.

recreating the current issue under a different name under the guise of discretionary control as adjudication.⁴⁰³

Transparency can go further than annual reports to a rigorous routine of anonymised precedent since published guidelines on the credibility, vulnerability, late disclosure, country information and internal-relocation analysis would make arbitrariness less so and provide the courts with a significant point of reference upon which to judge the agency by its standards.⁴⁰⁴ Institutionally, transparency is not thus cosmetic openness but a device of legality which in a field otherwise subject to ad hoc executive preference, stabilises decision-making.⁴⁰⁵

5.2.1 Structure, procedural fairness, and transparency

Initially, protection officers in charge of claims by the Commission should be trained.⁴⁰⁶ All the applicants are supposed to get a personal interview unless the claim is being accepted on the papers.⁴⁰⁷ The interviews are supposed to be carried out in a language the applicant comprehends, they are supposed to be recorded properly and, where possible, they are supposed to be tape-recorded to ensure accountability.⁴⁰⁸ The applicants have the right to counsel or accredited representatives and there should be child-sensitive, gender-sensitive, and trauma-informed interviewing practices.⁴⁰⁹ Confidentiality should also be assured to ensure that the information that occurs during the asylum process should not be disclosed to the country of origin, or utilized in any other application which is not specified by law under highly restricted circumstances.⁴¹⁰

⁴⁰³ See note 117 above.

⁴⁰⁴ Kinchin, "Intersectionality of Domestic and Global Accountability" (SSRN).

⁴⁰⁵ See note 117 above.

⁴⁰⁶ See note 336 above.

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ Herlihy, Evans Cameron, and Turner, "Psychological Research Evidence", 938–53

⁴¹⁰ See note 336 above.

Decisions should be rationale, personalized and understandable.⁴¹¹ An authoritative rejection must concern the account of the claimant, the legal tests available, the nation information upon which the reliance has been made, and the rationale of admitting or refusing important evidence.⁴¹² Illegal foreigner and security issues are bare formulas which should not be allowed to replace a legal reasoning.⁴¹³ Recent research on judicial review of the determination of refugee status ensures that the administrative refusals that are weakly reasoned impede the appeal, and undermine the right to asylum or complementary protection.⁴¹⁴

The institution should have transparency incorporated in its design.⁴¹⁵ The Commission is supposed to post annual reports of anonymized information on applications, recognition rates, the primary countries of origin, average processing times, referral to detention, and the outcomes of the appeal.⁴¹⁶ It must also post anonymized sample determinations and procedure instructions in order that attorneys, judicial officers, claimants, and civil society participants may judge consistency throughout time.⁴¹⁷ The external control can be enhanced by the review of the periodical review by the parliamentary committee or the National Commission of Human Rights, especially in the areas of detention, vulnerable applicants, and adherence to non-refoulement guidelines.⁴¹⁸

⁴¹¹ Madalina Moraru, *Judicial Interactions Upholding the Right to be Heard of Asylum Seekers, Returnees and Immigrants: the Symbiotic Protection of the EU Charter and General Principles of EU Law* (Independent Research, July 26, 2021), posted December 17, 2024, SSRN

⁴¹² Moraru, *Judicial Interactions Upholding the Right to be Heard*.

⁴¹³ See note 367 above.

⁴¹⁴ Ibid.

⁴¹⁵ See note 336 above.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ See note 323 above.

To maintain experience and responsibility, Pakistan must have a two level system of administration.⁴¹⁹ The decision made at the first instance must be appealable to an independent Refugee Appeals Tribunal which has the authority of re-examining the fact and law, accepting new evidence and replacing the decision made by the first instance body.⁴²⁰ A mere model of supervisory appeal would not suffice, since applicants who are at risk of being removed usually require the entire reassessment of risk and not just a procedure fixation.⁴²¹

It should also have an effective appellate regime where there is a distinction between first-instance fact-finding and law and error of assessment which is to be corrected on appellate appeal and it has published reasoning which has the effect of stabilising the decision-making process and rendering judicial review coherent.⁴²² The lack of the ability of an appeal body to consider findings of credibility and vulnerability, as well as country information, will not offer a viable solution in the remedy in refoulement cases, as it is specifically on such issues, which the wrongful return is most likely to turn.⁴²³

The appellate system must also be explicitly empowered to deliver systemic direction where systematic errors are evident because most modern asylum failures are not the result of one bad decision by an adjudicator but rather because of a series of bad decisions made on most files by most adjudicators.⁴²⁴ To make sure that such errors do not become part of the daily administrative practice, it would be beneficial to endow the appellate body with a precedent-setting role.⁴²⁵

⁴¹⁹ See note 367 above.

⁴²⁰ Ibid.

⁴²¹ Ibid.

⁴²² Ghezelbash and Tan, "End of the Right to Seek Asylum?" (SSRN).

⁴²³ Ferolla, "Failing Asylum-Seekers" (SSRN).

⁴²⁴ Michael John-Hopkins, "The Emperor's New Safe Country Concepts: A UK Perspective on Sacrificing Fairness on the Altar of Efficiency" (2009), SSRN abstract 1411527.

⁴²⁵ See note 257 above.

The appeal court should also have the power to give binding interpretations on common protection cases, since otherwise a first-instance system will fail to create a precedent effect, since different officers in different districts will experience different levels of political pressure and disparate evidentiary practices.⁴²⁶ It is in institutional form, this transformation of review, to governance, which is necessary in a refugee regime where the great legal danger is low-visibility errors, not in high-profile abuses.⁴²⁷

5.3 Enhancing Regional and International Cooperation

Self-sufficiency is not to be confused with domestic legal reform.⁴²⁸ The problem of refugees in Pakistan has long been regional in nature and is practically transnational and any long-term resolution of the issue should thus be the unification of internal and external legality.⁴²⁹ However, cooperation can be legally helpful only when it strengthens rights and accountability; when it only eases the reappearance but does not in any way screen or monitor it is a danger of becoming an organized refoulement.⁴³⁰ The former priority is formal collaboration with UNHCR.⁴³¹ Pakistan has always been in practice dependent on UNHCR in terms of registration, documentation and ad hoc referral to protection, but this has been too much dependent on the executive benevolence and not on legal right.⁴³² Reformed framework must provide a statutory referral to UNHCR under specific conditions, such as complex exclusion cases, resettlement referrals and emergency screening when an immediate risk is

⁴²⁶ Michael John-Hopkins, "The Emperor's New Safe Country Concepts: A U.S.-Canada Comparison" (2009), SSRN abstract 1411527.

⁴²⁷ See note 257 above.

⁴²⁸ Umar Niaz Khan, Tahreema Afraz, and Uzma Zahra Khan, "Asylum in International Refugee Law: A Comparative Analysis of the Responses of Pakistan and Türkiye Asylum Influxes," *Journal of Social Sciences Research & Policy* 3, no. 3 (2025): 376–387, 376–80.

⁴²⁹ Khan, Afraz, and Khan, "Asylum in International Refugee Law", 380–87.

⁴³⁰ Costello and Foster, "Non-Refoulement as Custom", 20–35.

⁴³¹ See note 331 above.

⁴³² Kazmi, "Pakistan's Judicial Engagement", 407–10.

posed by mass arrest or sudden deportation operations.⁴³³ It must also approve memoranda on training, country-of-origin research, interview standards, and protection monitoring and ensure it is clear that the UNHCR cooperation is supplementary to, and not a substitute to, domestic legal responsibility.⁴³⁴

5.3.1 Engagement with UNHCR, SAARC, and OIC frameworks

It should be based on, and go beyond, previous tripartite agreements on the repatriation of Afghans to its homeland.⁴³⁵ The Pakistan-Afghanistan-UNHCR Tripartite Agreement and subsequent renewals are normative due to their reaffirmation of voluntarism, gradualism, returning safely and dignified, the UNHCR as supervisor, family cohesion and special protection of vulnerable populations.⁴³⁶ They ought to be reflected in domestic legal principles and operating procedures in such a way that the concept of voluntary repatriation cannot be re-packaged by policy when the very fundamental requirements of the law are not being observed in reality.⁴³⁷

SAARC does not have any detailed regional refugee treaty but it cannot be neglected as useless.⁴³⁸ The SAARC Charter permits regional cooperation among institutions by the Standing Committee, the Council of Ministers and technical bodies.⁴³⁹ The SAARC Social Charter and the cross-border migration and health regional planning tools also indicate that policy coordination that borders on welfare, mobility, documentation, health security has already been accepted by member states.⁴⁴⁰ Pakistan ought to hence promote a SAARC

⁴³³ See note 331 above.

⁴³⁴ Ibid.

⁴³⁵ Tripartite Repatriation Agreement between UNHCR and the Governments of Pakistan and Afghanistan, March 17, 2003

⁴³⁶ Tripartite Repatriation Agreement, arts. 6, 8, 11, 16, 17

⁴³⁷ Tripartite Repatriation Agreement, arts. 6 and 8

⁴³⁸ Charter of the South Asian Association for Regional Cooperation (SAARC), December 8, 1985

⁴³⁹ SAARC Charter, arts. V–VI

⁴⁴⁰ SAARC Social Charter, January 4, 2004

technical protocol on displacement management which is centered on reception norms, family tracing, coordination on the border-health, civil documentation portability and child protection.⁴⁴¹ This kind of protocol would not establish a complete refugee regime, but would result in common administrative floors and less unilateralism, which is the force behind current coercive return strategies.⁴⁴²

Another normative forum that is used little is the OIC.⁴⁴³ The OIC Charter binds the member states to the advancement of human rights and introduces the institutional machinery, such as the Independent Permanent Human Rights Commission, with the help of which the standards connected with refugees can be deliberated on the regional level.⁴⁴⁴ According to the OIC Cairo Declaration on Human Rights (2021), refugees and migrants have a right to the same universally recognized human rights and fundamental freedoms and recommends the eradication of discrimination by enacting relevant legislation.⁴⁴⁵ These instruments are not intended to replace the universal refugee law but rather to supplement the domestic asylum laws in Pakistan, which is a political climate where the international protection is too frequently imposed as a foreign idea.⁴⁴⁶

5.3.2 Bilateral refugee protection agreements

Pakistan also needs to make bilateral deals with Afghanistan, and that too on protection-centered design.⁴⁴⁷ The classic readmission contracts revolve around recognition, paperwork,

⁴⁴¹ SAARC Regional Strategic Plan on Cross Border, Migration & Health 2018–2023 (SAARC Tuberculosis and HIV/AIDS Centre, 2019).

⁴⁴² SAARC Regional Strategic Plan on Cross Border, Migration & Health

⁴⁴³ Charter of the Organisation of Islamic Cooperation, March 14, 2008

⁴⁴⁴ OIC Charter, arts. 1 and 15

⁴⁴⁵ Cairo Declaration on Human Rights in the OIC, adopted by the Council of Foreign Ministers of the Organisation of Islamic Cooperation, 2021, art. 12

⁴⁴⁶ OIC Charter

⁴⁴⁷ Khan, Afraz, and Khan, “Asylum in International Refugee Law”, 382–87

logistics of the transfer and acceptance of the returning people.⁴⁴⁸ The model is inadequate in the context of refugees since it may institutionalize the concept of return without initially institutionalizing the process of screening.⁴⁴⁹ All Pakistan-Afghanistan agreements relating to Afghan nationals ought therefore include at least seven basic provisions: a prior individual screening of both refugee and complementary protection claims; a specific reaffirmation of non-refoulement; a confirmation of voluntariness of any such voluntary return; family cohesiveness; a confirmatory statement relating to civil status and education history; post-return independent monitoring; and an established dispute-resolution and review mechanism with the UNHCR participation.⁴⁵⁰

The contract must also draw the line between the groups of individuals.⁴⁵¹ The legal profile of recognized refugees, asylum-seekers whose applications have been rejected, children, separated families, women at risk, former public officials, journalists, minorities and those with medical needs does not follow the same legal profile.⁴⁵² A uniform transfer scheme cannot thus be in conformity with the personalized logic of the protection law.⁴⁵³ Of particular importance is return monitoring.⁴⁵⁴ The Tripartite framework had already acknowledged the role of UNHCR to supervise and access to the returnees without restriction even concerning arrest, detention, and post-return legal procedures.⁴⁵⁵ Any subsequent bilateral or tripartite tool ought

⁴⁴⁸ Ibid.

⁴⁴⁹ See note 331 above.

⁴⁵⁰ Tripartite Repatriation Agreement, arts. 8, 11, 12, 16, 17

⁴⁵¹ See note 331 above.

⁴⁵² Ibid.

⁴⁵³ UNHCR, Handbook and Guidelines, paras. 37–50

⁴⁵⁴ Tripartite Repatriation Agreement, arts. 11–12

⁴⁵⁵ Ibid.

to reaffirm and enhance those warranties, such as information-exchange regarding post-return detention, vanishing, retaliation, or new displacement.⁴⁵⁶

Bilateral or tripartite or bilateral and trilateral arrangements with Afghanistan ought to be formulated as protection instruments and not readmission tools at least by outlawing transfer of persons with pending claims, joint vulnerability screening, preserving family unity, and monitoring before, during and after returning.⁴⁵⁷ Without these safeguards, the readmission clauses would be turned into a means of indirect refoulement and would only serve to transfer the current issue of legality into the epithets of regional cooperation.⁴⁵⁸

The approach to children and family units is even more differentiated, as the legality of the return may not be considered in the terms of adult-centered immigration control since the best-interests obligations, the consideration of the family cohesion, and the danger of the developmental harm may cause the removal to be considered illegal or procedurally flawed.⁴⁵⁹ This would mean that in the future any bilateral or tripartite framework must insist on separate screening of children, separated minors and mixed-status families, instead of assuming that a single household-level decision is lawfully making all individual claims in it.⁴⁶⁰

5.4 Ensuring Judicial Oversight and Due Process Guarantees

The last reform pillar is that of judicial oversight.⁴⁶¹ Administrative benevolence is not sufficient to protect refugees, since the stakes involved in the matter, liberty, family cohesiveness, bodily integrity, and non-persecution or non-torture, are too great to be reviewed

⁴⁵⁶ Ibid.

⁴⁵⁷ See note 280 above.

⁴⁵⁸ See note 184 above.

⁴⁵⁹ Convention on the Rights of the Child, arts. 3, 9, 22; Jennifer J. Lee and Elisa Ortega-Velazquez, "The Detention of Migrant Children: A Comparative Study of the United States and Mexico" (2020), SSRN abstract 3719424.

⁴⁶⁰ Jason M. Pobjoy, "A Child Rights Framework for Assessing the Status of Refugee Children" (2013), SSRN abstract 2304601.

⁴⁶¹ Constitution of the Islamic Republic of Pakistan [as amended up to 21 November 2025].

without external examination.⁴⁶² Pakistan already has a good doctrinal foundation to such review through its Constitution.⁴⁶³ Article 4, 9, 10A and 14 safeguard legality, security of person, fair trial, and dignity not limited to the citizens only.⁴⁶⁴ Article 199 gives the High Courts constitutional authority to give directions, orders and writ-type remedies to the undertakings of the public authorities where they do not act within the law or are acting in derogation of fundamental rights.⁴⁶⁵ Taken collectively, these provisions allow concluding that deportation, deportation detention, and refusal to hear protection claims are all constitutionally reviewable public power exercises.⁴⁶⁶

5.4.1 Legal remedies, appeals, and constitutional protections

The suggested law must create a three-tier redress system.⁴⁶⁷ To start with, all negative decisions on refugees or complementary protection must be appealable to the Refugee Appeals Tribunal by right within a sensible statutory period.⁴⁶⁸ Second, all removal orders must be automatically stayed pending appeal, as an appeal in refoulement case that is non-suspensive is not usually remedial at all.⁴⁶⁹ Third, Article 199 should leave the High Courts to constitutional judicial review in the face of unlawful detention, unfairness in the procedures, error in jurisdiction, bad faith, irrationality, or violation of fundamental rights.⁴⁷⁰

Much attention should be paid to the need of suspensive effect.⁴⁷¹ The international protection law has become more aware that such remedy in expulsion cases needs the practice

⁴⁶² Constitution of Pakistan, arts. 4, 9, 10A, 14

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Constitution of Pakistan, art. 199

⁴⁶⁶ Jason A. Cade, *Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses* (University of Georgia School of Law, March 20, 2026), forthcoming Yale Law Journal Forum, posted April 2, 2026, last revised April 4, 2026, SSRN,

⁴⁶⁷ See note 336 above.

⁴⁶⁸ Ibid.

⁴⁶⁹ See note 331 above.

⁴⁷⁰ See note 437 above.

⁴⁷¹ See note 331 above.

capacity to ensure that the decision in dispute is not implemented before expulsion.⁴⁷² After the applicant has been moved to harm, it is not possible to reverse the damage afterwards but can only be recognized.⁴⁷³ To this end, this statute must expressly say that the filing of an appeal or constitutional petition in a protection case deferrals deportation pending a final determination, except where the applicant voluntarily gives up the right in an informed and written manner.⁴⁷⁴

The review of detention should also be strong.⁴⁷⁵ Any immigrant arrested to be deported or any other reason should be immediately taken before a court of law, told the cause of arrest in a language that one can understand, be allowed access to an attorney and family members, and given a prompt means of questioning the legality and the need to remain in custody.⁴⁷⁶ The timing of the review should be regular and not related to the applicant as the most at risk detainees are the ones who are least able to litigate.⁴⁷⁷ These guarantees are important not only as the norms of due process, but because the conditions of detention directly influence the impartiality of procedures of asylum and complementary protection.⁴⁷⁸

The courts of Pakistan have already demonstrated that even without a refugee statute, constitutional reasoning can offer some protection.⁴⁷⁹ Rahil Azizi shows that the judicial intervention can be used to avoid the mechanical implementation of the Foreigners Act in a case where the asylum claims and the UNHCR processing are at stake.⁴⁸⁰ Previous Sindh High

⁴⁷² Ibid.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

⁴⁷⁵ See note 340 above.

⁴⁷⁶ Constitution of Pakistan, arts. 4, 9, 10A

⁴⁷⁷ See note 340 above.

⁴⁷⁸ Bhashkar Mehta, *The Process of Asylum: A Comparative Study of Indian & UK* (School of Law, Galgotias University, January 2, 2024), posted January 26, 2024, SSRN

⁴⁷⁹ Mehta, *The Process of Asylum: A Comparative Study of Indian & UK*

⁴⁸⁰ See note 338 above.

Court jurisdiction also indicated that executive authorities are supposed to honor cooperative agreement with UNHCR other than circumventing it by prematurely removing it.⁴⁸¹ However, the case-by-case litigation is still an unsatisfactory alternative to systemic legality.⁴⁸² The courts can work best on a structured system where there is a defined set of responsibilities, records and appeal channels as opposed to having to make up their own protection where the legislature is silent.⁴⁸³

However, constitutional protection will just be a formality when the detainees and suspected deportees will not be able to practically access the courts, and that is why a rights-based system will add state-funded access to legal assistance, immediate informing the relatives, and automatic sending to lawyers or accredited protection representatives.⁴⁸⁴ That design may be important, since we do not have access to review based on the abstract presence of jurisdiction as outlined in Article 199, but on whether an individual in custody can invoke the jurisdiction to prevent having the remedy considered empty by a removal.⁴⁸⁵

Access to judicial oversight should also be structured by making it structurally available by legal aid, interpreter, giving notice in a language understood and simple emergency procedures of obtaining the stay since procedure is not secondary to substance but the remedy which substance lives through.⁴⁸⁶ That structure should be accompanied by a compensation and record-correction system against illegal detention or removal, not because money can undo

⁴⁸¹ Aamir Aman v. Federation of Pakistan, PLD 2020 Sindh 533

⁴⁸² See note 323 above.

⁴⁸³ See note 326 above.

⁴⁸⁴ See note 290 above.

⁴⁸⁵ Mannu Chowdhury, "Immigration Detention and Habeas Corpus: Positive Developments and Missed Opportunities in Chhina" (2020), SSRN abstract 3573858.

⁴⁸⁶ See note 120 above.

refoulement, but simply because the error, which is costly in law, is more easily avoided than the error, which is costly in politics.⁴⁸⁷

The remedies must lastly involve record-correction, reconstruction of documentation and practical return-facilitation where an individual has been illegally detained, improperly classified, or deprived without any legal procedure since effective accountability in the area cannot be achieved by mere symbolic condemnation.⁴⁸⁸ A remedial model that is capable of correcting files, reinstating status evidence and reuniting families where legally feasible would be more in line with the international logic of cessation and reparation with domestic law.⁴⁸⁹

5.4.2 German model legislation on deportation procedure and urgent review

The first developed-country model is Germany's Residence Act. It is suitable because it regulates both ordinary removals and exceptional national-security deportation orders within the same legislative architecture. For ordinary deportation, the Act requires an enforceable obligation to leave, a written warning, identification of the destination and, as a general rule, a period for voluntary departure. It also requires consideration of child welfare, family ties and health and preserves statutory deportation bans. This sequence ensures that the executive power to remove is real, but its legal basis, destination and humanitarian limits are recorded before enforcement.⁴⁹⁰

The national-security procedure under section 58a is particularly responsive to the supervisor's concern. A supreme Land authority or the federal level may issue an order based on an evidence-supported prognosis necessary to avert a special danger to national security or a terrorist threat. At the same time, the person must be given immediate access to legal advice,

⁴⁸⁷ Imran, "Right to Reparation" (SSRN).

⁴⁸⁸ Ibid.

⁴⁸⁹ See note 358 above.

⁴⁹⁰ Germany, Residence Act, §§ 58–60.

informed of remedies and allowed to seek temporary judicial protection within seven days; enforcement is delayed while a timely application remains undecided. The provision demonstrates that an accelerated security procedure can preserve both executive effectiveness and an independent judicial safeguard.⁴⁹¹

5.4.3 Canadian model legislation on appeals, stays and pre-removal risk

The second developed-country model is Canada's Immigration and Refugee Protection Act. Canadian law separates the making of a removal order from the point at which it becomes enforceable. Section 49 generally links enforceability to the expiry or completion of the applicable appeal process, while the Act recognises statutory and judicial stays. This structure is useful for Pakistan because it prevents the physical act of removal from overtaking the legal process that is intended to test the order.⁴⁹²

The Canadian system also distributes review across specialised and judicial institutions. Eligible removal appeals may be heard by the Immigration Appeal Division, which may allow an appeal or stay a removal order; refugee determinations may be reviewed by the Refugee Appeal Division; and Federal Court judicial review remains available. The model is not copied in every detail because Canadian appeal eligibility contains statutory exclusions, but it demonstrates the institutional value of separating the original executive decision from an independent merits or legality review.⁴⁹³

Canada's pre-removal risk assessment and statutory non-refoulement provisions supply a further safeguard where circumstances have changed or no earlier protection determination has

⁴⁹¹ Germany, Residence Act, § 58a.

⁴⁹² Canada, Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 49–50, <https://laws-lois.justice.gc.ca/eng/acts/I-2.5/>.

⁴⁹³ Canada, Immigration and Refugee Protection Act, ss. 63, 68, 72 and 110.

fully examined the risk. Their relevance to Pakistan lies in timing: risk must be examined before an enforceable removal, and the assessment must be capable of producing a legal stay. Pakistan should adopt this protective function while avoiding procedural duplication by placing the initial risk assessment within the deportation decision and reserving a renewed assessment for materially changed circumstances.⁴⁹⁴

5.4.4 Adaptation of the German and Canadian models to Pakistan

The adapted Pakistani framework should be enacted as part of the proposed domestic asylum legislation rather than left to administrative circulars. Before a final deportation order, the competent authority should issue a written Notice of Intended Deportation stating the statutory ground, material facts, proposed destination and the evidence that can lawfully be disclosed. The notice should be translated or interpreted where necessary and should expressly inform the person of the right to legal assistance, to present reasons against removal and to raise a protection claim. A minimum period of fifteen days, drawn from the workable regional procedure in Türkiye, should normally be allowed for representations, subject to a shorter period only where a court confirms genuine urgency.⁴⁹⁵

The decision-maker should then determine four issues separately: identity and immigration status; the statutory ground for removal; any individual national-security or serious-criminality ground; and any prohibition on removal to the proposed destination. The final order should contain findings on each issue and address family unity, children, health, pending resettlement and credible risks of persecution, torture or inhuman treatment.

⁴⁹⁴ Canada, Immigration and Refugee Protection Act, ss. 112–115.

⁴⁹⁵ Türkiye, Law No. 6458, art. 53.

Separating these findings prevents the administratively convenient conclusion that unlawful residence automatically proves that removal to Afghanistan is lawful.⁴⁹⁶

An appeal should lie within fifteen days to the independent Refugee and Immigration Appeals Tribunal proposed earlier in this chapter. The Tribunal should have power to review facts and law, receive updated country information, set aside or vary an order and direct a fresh assessment. A timely appeal must automatically suspend removal until a reasoned determination is delivered. Constitutional jurisdiction under Article 199 should remain available for jurisdictional error, denial of fair hearing, bad faith, irrationality, unlawful detention and breach of fundamental rights. This design combines the Canadian separation of original decision and appeal with the German insistence on urgent judicial protection.⁴⁹⁷

A distinct accelerated procedure may be created for an individually demonstrated terrorist or exceptional national-security threat. Such an order should require approval by the Federal Government or a designated senior authority, a recorded evidential basis, immediate access to counsel and urgent review by the Islamabad High Court or the competent provincial High Court. Where disclosure would damage a specific security interest, the person should receive the fullest possible summary of the case and the court should be permitted to examine confidential material. The application for temporary relief should be filed within seven days, and removal should not occur before the court decides it. No security designation should authorise removal to a real risk of torture or inhuman treatment.⁴⁹⁸

⁴⁹⁶ Germany, Residence Act, §§ 59–60.

⁴⁹⁷ Canada, Immigration and Refugee Protection Act, ss. 49, 63, 68 and 72.

⁴⁹⁸ Germany, Residence Act, § 58a.

Detention should be regulated separately from the merits of deportation. It should be used only where necessary to prevent absconding, protect evidence or address a specific security risk, and less restrictive alternatives should be considered. Every detained person should be brought promptly before a judicial authority, receive written reasons and obtain periodic review. These safeguards would allow Pakistan to enforce lawful orders efficiently while preventing detention from defeating the ability to seek asylum or appeal.⁴⁹⁹

CONCLUSION

The thesis has discussed whether the deportation and return policies of Pakistan against Afghan refugees and asylum-seekers between 2023 and 2025 can be aligned with the international human rights law in spite of the fact that Pakistan is not a party to the 1951 Refugee Convention and the 1967 Protocol.⁵⁰⁰ The main conclusion is that even though Pakistan is not a party to the regime of the Refugee Convention, it is not free of any legal restrictions.⁵⁰¹ Pakistan is still under the ICCPR, CAT, and constitutional provisions holding back forceful state authority over any and every individual, including non-citizens.⁵⁰² The fundamental provisions of those obligations are the prohibition of removal to persecution, torture, cruel or inhuman treatment, arbitrary deprivation of life, and other types of irreparable harm, along with the procedural obligations required to avert such wrongful return.⁵⁰³

The initial significant finding is that, non-refoulement in the modern law is no longer sufficiently perceived as a pure substantive norm.⁵⁰⁴ It has now become proceduralized.⁵⁰⁵ A

⁴⁹⁹ International Covenant on Civil and Political Rights, arts. 9 and 13.

⁵⁰⁰ Kazmi, “Pakistan’s Judicial Engagement”, 397–401

⁵⁰¹ See note 320 above.

⁵⁰² See note 434 above.

⁵⁰³ See note 331 above.

⁵⁰⁴ Costello and Foster, “Non-Refoulement as Custom”, 3–8

⁵⁰⁵ See note 402 above.

State does not comply by merely claiming that it has no intention of putting persons in harm; it only complies when it has procedures that can determine those who are at risk before they are removed.⁵⁰⁶ This is the reason behind the special legal concern of the mass deportation campaigns.⁵⁰⁷ The system becomes structurally predisposed to refoulement when the size, pace, and structure of removal procedures diminish access to counsel, shorten deadlines, augment detention, and hold categories of individuals as presumptively removable without individual evaluation.⁵⁰⁸

The second key finding is that the legal system of Pakistan is not well-equipped to fulfill these commitments, as it currently stands.⁵⁰⁹ The Foreigners Act 1946 and the associated laws on registration provide the executive with measures of control and eradication, yet it does not establish a legal framework of recognition of refugees, related protection and protection-sensitive due procedure.⁵¹⁰ This is the main domestic contradiction that is recognized in the entire thesis.⁵¹¹ The Constitution of Pakistan safeguards legality, liberty, fair trial, and dignity on a broad-based standard to cover persons, and not citizens per se, but the administration of Afghanistan displacement has been orchestrated in a control-based administrative framework, which views the documentation categories as an alternative to the determination of lawful status.⁵¹² This does not mean that there is no law, it means that we have the rule of wrong law: a rule of foreigner-rule in place where a rule of protection-rule is needed.⁵¹³

⁵⁰⁶ See note 331 above.

⁵⁰⁷ OHCHR, “Pakistan: UN experts urge stop of deportation of Afghan refugees and migrants,” press release, December 6, 2023

⁵⁰⁸ OHCHR, “UN experts urge stop of deportation”.

⁵⁰⁹ See note 325 above.

⁵¹⁰ Shah, “Harmonizing Humanity”, 56–57

⁵¹¹ See note 326 above.

⁵¹² See note 434 above.

⁵¹³ Kazmi, “Pakistan’s Judicial Engagement”, 404–10

The third important conclusion is related to the legal importance of the 2023-2025 deportation campaign in Pakistan.⁵¹⁴ The analysis of the evidence presented in this thesis like UN reporting, human rights documentation, Pakistani legal scholarship, and judicial interventions all tend to indicate that there are significant incompatibilities between the functioning of the return policy and the minimum requirements of non-refoulement and due process.⁵¹⁵ UN professionals were in constant criticism of the lack of personal risk evaluation and the forceful nature of the deportation processes in Pakistan, and UNHCR provided a non-return warning to Afghan citizens due to the fact that the situation in Afghanistan did not warrant forced deportation.⁵¹⁶ Such developments are of legal importance as they suggest that the risk environment was still serious enough to have to have a closer examination on a case-by-case basis.⁵¹⁷

The fourth significant finding is that the experience is comparative in confirming that legal outcome is not dependent on non-signatory status.⁵¹⁸ The process of developing refugee governance out of the Refugee Convention may move towards more rights-protective governance or more precarity, depending on the domestic law and court, administrative, and international institution interaction.⁵¹⁹ The determining factor is the presence of institutions that can work to turn general legal principles into working norms by the host State.⁵²⁰ In the case where the consideration of the refugee issues is left to the executive discretion only,

⁵¹⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Türk alarmed by forced returns of Afghans from Pakistan,” press release, November 15, 2023

⁵¹⁵ OHCHR, “Türk alarmed by forced returns of Afghans from Pakistan”.

⁵¹⁶ UNHCR and International Organization for Migration (IOM), “UNHCR and IOM urge Pakistan to continue protection for Afghans in need of safety,” joint statement, February 5, 2025

⁵¹⁷ UNHCR and IOM, “continue protection for Afghans in need of safety”.

⁵¹⁸ Khan, Afraz, and Khan, “Asylum in International Refugee Law”, 376–80

⁵¹⁹ See note 401 above.

⁵²⁰ Khan, Afraz, and Khan, “Asylum in International Refugee Law”, 376–87

instability and coercion intensify.⁵²¹ At least some minimum legality is available where procedural assurances, review structures and cooperation arrangements are institutionalized.⁵²²

The fifth important conclusion is on the judiciary.⁵²³ Even in the absence of a special statute, Pakistani courts have been somewhat open to dealing with refugee and asylum claims, particularly in *Rahil Azizi* and the case law around that case which has identified the practical importance of UNHCR status processing.⁵²⁴ However the judicial intervention, although necessary, cannot be the sole replacement of the legislative reform.⁵²⁵ Individual cases can be avoided by courts, but these cannot build an entire asylum system, develop documentation schemes, develop screening organizations, or maintain a coherent decision-making on a large scale.⁵²⁶ The dependency on episodic litigation thus results in protection that is reactive and unequal in addition to being susceptible to the pragmatic obstacles of detention, poverty, language and lack of legal representation.⁵²⁷

It is on that backdrop that this thesis concludes with the normative assertion, namely, that protection of refugees in Pakistan needs to be re-structured as a problem of institutional design of public law.⁵²⁸ It is time that Pakistan should pass an all-encompassing Asylum and International Protection Act that formalizes the status of refugees, complementary protection, non-refoulement, detention restrictions, procedural protection, and the right of appeal.⁵²⁹ It ought to create a separate Refugee Status Determination Commission and have a separate body

⁵²¹ Ibid.

⁵²² Ibid.

⁵²³ See note 323 above.

⁵²⁴ See note 338 above.

⁵²⁵ Kazmi, "Pakistan's Judicial Engagement", 409–18

⁵²⁶ Ibid.

⁵²⁷ See note 326 above.

⁵²⁸ Shah, "Harmonizing Humanity", 57–60

⁵²⁹ Ibid.

of appeal whereby the issues of protection should be determined by expert and unbiased organs instead of by arrest and removal agencies.⁵³⁰ It must incorporate UNHCR cooperation, tripartite supervision and meticulously devised regional and bilateral arrangements as part of rights-based response as opposed to ad hoc executive tolerance.⁵³¹ And it must also ensure suspensive remedies, detention review and access to the High Courts by the constitution to ensure that a legal protection is availed prior to the execution of deportation.⁵³²

The bigger implication of the thesis is not only in the case of Pakistan.⁵³³ Most of the states that face prolonged displacement are increasingly trying to control populations of refugees using documentation rankings, temporary authorizations, and law enforcing by police as well as faster return courses instead of asylum laws.⁵³⁴ The recent experience of Pakistan presents the threat of such a tendency in graphic shape.⁵³⁵ The boundary between the enforcement of immigration and the violation of rights is perilously narrow when the executive discretion is enlarged, and there are no any procedures established in this area by the legislature.⁵³⁶ The legal issue in this kind of environment is not simply the fact that some people were returned wrongly, but that the form of government itself was structured in a manner that predetermined wrongful return.⁵³⁷

To sum up, the deportation of Afghan refugees and asylum-seekers between 2023 and 2025 by Pakistan cannot be justified by mere reference to the sovereignty and control over

⁵³⁰ See note 475 above.

⁵³¹ See note 331 above.

⁵³² See note 437 above.

⁵³³ See note 323 above.

⁵³⁴ See note 434 above.

⁵³⁵ See note 331 above.

⁵³⁶ See note 326 above.

⁵³⁷ Ibid.

foreigners, or non-membership of the Refugee Convention.⁵³⁸ In the contemporary legal system, sovereignty is not beyond but within the confines of the law.⁵³⁹ The State which has the competence to take away, has the responsibility to make the distinction between those who can justifiably be returned and those who are safeguarded by the law against being returned.⁵⁴⁰ Such distinction can be made only by legislation, independent institutions, meaningful procedures and effective review.⁵⁴¹ The management of Afghan displacement will be prone to arbitrariness and consistent violation of the international human rights law until Pakistan entrenches those checks into its legal order.⁵⁴² The thesis has thus demonstrated that the way to go is neither open ended tolerance nor enforcement first expulsion, but a domestically rooted, constitutionally overseen and internationally informed asylum system that is able to balance state control with human dignity and the rule of law.⁵⁴³

The additional comparative and case-law analysis confirms that the legally sustainable position is neither an unrestricted executive power nor an absolute prohibition on immigration enforcement. Pakistan retains sovereign authority to control irregular migration, protect national security and remove persons who have no lawful or protection basis to remain. That authority becomes legally vulnerable where nationality or documentation status replaces individual proof, where the proposed destination is not assessed for prohibited risk, or where removal precedes an effective opportunity to challenge the order.⁵⁴⁴

⁵³⁸ See note 402 above.

⁵³⁹ Constitution of Pakistan, arts. 4 and 9

⁵⁴⁰ See note 466 above.

⁵⁴¹ See note 437 above.

⁵⁴² OHCHR, “Pakistan: UN experts urge halt to mass internal relocations, deportations and other rights violations against Afghans,” press release, April 4, 2025.

⁵⁴³ Shah, “Harmonizing Humanity”, 60–61

⁵⁴⁴ *Chahal v. United Kingdom*, 23 E.H.R.R. 413, paras. 79–82, 96–107 (1996).

Germany and Canada provide the most suitable developed-country legislative models for the required reform because they place executive removal within a sequence of written decision, enforceability rules, risk assessment, appeal, stay and judicial review. Adapted to Pakistan, those elements would preserve the operational authority of the Federal Government under the Foreigners Act while giving practical effect to Articles 4, 9, 10A and 14 of the Constitution and to Pakistan's non-refoulement obligations. The proposed reform is therefore a model of controlled and reviewable deportation, not the abandonment of state sovereignty.⁵⁴⁵

⁵⁴⁵ Germany, Residence Act, §§ 58–60.

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