

# Human Rights V. State Sovereignty - Conflict: Lessons from the Case Study of Afghan Refugees in Iran

Maryam Jami\*

DOI: 10.21827/GroJIL.9.2.307-324

## Keywords:

AFGHAN REFUGEES; IRAN; STATE SOVEREIGNTY; HUMAN RIGHTS

## Abstract

Refugee-hosting countries have long feared that abiding by international law principles that trench the human rights of refugees might impair their state sovereignty. Iran is one example of such countries: so far, it has refused to effectively protect the legal rights of its Afghan population and has also violated these rights on various occasions. This paper, however, argues that unheeding and violating the human rights of refugees by the host states trigger international backlash and humanitarian interference against them, thereby undermining their sovereignty. The paper illustrates how Iran's anti-foreigner migration standards regarding Afghans have so far infringed its state sovereignty: they have led to the furious international condemnation of Iranian politics towards Afghan refugees and have left out a possibility of prospective humanitarian interventions. In doing so, the paper (1) charts how ignoring and violating the refugees' rights can indirectly but more robustly damage a host state's sovereignty, and (2) offers a new perspective into the orthodox understanding of the human rights and state sovereignty 'pull-and-tug': It refutes the longstanding conviction that the *protection* of refugees' rights strikes at the host state's sovereignty.

## I. Introduction

There has been an ongoing debate in international law on whether, to preserve their sovereignty, states need to create their own norms for dealing with human rights issues rather than subscribing to an international system of laws protecting the human rights of both their nationals and the refugee population.<sup>1</sup> Against this backdrop, refugee-hosting states voice concerns that acceding to an international framework of human rights protection will put their sovereignty at stake.<sup>2</sup> Such a conviction has led to hurdles in the international implementation of human rights, especially in cases where the abuse of human rights is carried out directly by the host states.<sup>3</sup>

---

\* Researcher at the Institute of War and Peace Studies (IWPS). The paper is presented at the 10<sup>th</sup> Annual Cambridge International Law Conference.

<sup>1</sup> Richard A Falk, *Human Rights and State Sovereignty* (Holmes & Meier 1981). See also Jost Delbruck, 'International Protection of Human Rights and State Sovereignty' (1982) IN. L J.; Michaelene Cox and Noha Shawki, *Negotiating Sovereignty and Human Rights: Actors and Issues in Contemporary Human Rights Politics* (Routledge 2009); Jack Donnelly, 'State Sovereignty and Human Rights' (2004) HUM. RIGH. & HUM. WEL.

<sup>2</sup> Philip Alston and Euan Macdonald, *Human Rights, Intervention, and the Use of Force* (OUP 2008).

<sup>3</sup> In fact, Brooke generally refers to all those states which refuse to surrender to the international system of protecting the human rights of either their nationals or refugee population and create their own style of implementing human rights standards which might also lead to violation of human rights by their own governments and politics. See Holly Brooke, 'State Sovereignty and Human Rights—Irreconcilable Tensions'

Debates over the mutual interaction between human rights values and the principle of state sovereignty have been continuing with the same force and pace. Anthony Hallal argues that, in many cases, state sovereignty functions as ‘a force against human rights’.<sup>4</sup> Reciprocally, Cole highlights the effects of implementing international human rights on state sovereignty by noting that when human rights values are placed above a state’s domestic will, state sovereignty goes under an inviolable international check.<sup>5</sup> As opposed to Cole’s argument, Jarczewska contends that the restrictive impact of enforcing international human rights on state sovereignty is mostly ‘conceptual’ and does not exceed limited cases.<sup>6</sup>

What is well captured throughout these debates is that the contending scholars have concretised their inquiry merely into the impact of ‘implementing international human rights’ on ‘state sovereignty’ and *vice versa*. Nevertheless, recent developments pertaining to international migration and the approaches of host countries thereto encourages us to also unpack the implications of ignoring and violating human rights values on state sovereignty. This paper aims to commence this unpacking by arguing that, to unheed the refugees’ legal rights means to instigate international backlash against the host governments and prompt humanitarian interventions by foreign players.<sup>7</sup> To substantiate its argument, the paper presents, and offers lessons from, the popular, but particularly understudied, case study of Afghan refugees in Iran. Accordingly, the paper argues that Iran’s violation of the human rights of Afghan refugees has sparked international outrage over its migration policies toward Afghans, left free space for international interventions, and thus has blemished Iran’s state sovereignty.

The remainder of this Article proceeds in the following manner: Section II probes into the chronicle of Afghans in Iran, and elucidates how the Iranian government has evolved from a *hospitable* migration strategy toward Afghans, to a more self-centered and anti-foreigner method of refugee reception. Section III presents a general picture of the current social status of Afghans residing in Iran and those who attempt to enter Iran, particularly charting how they have been deprived of their right to non-discrimination. This part then turns to explore three recent cases of violation of the Afghan refugees’ right to non-discrimination by the Iranian government – cases that have aroused unprecedented international backlash.

Section IV enumerates the implications of such politics of Iran on its national sovereignty and provides general lessons of such kind for the respective scholarship. It suggests that Iran’s policies with regards to its Afghan population have largely been geared towards

---

(*Medium*, 2017) <<https://rileybrooke.medium.com/state-sovereignty-and-human-rights-irreconcilable-tensions-462d356ae063>> accessed 2 September 2020.

<sup>4</sup> Anthony Hallal, ‘How Useful Are International Human Rights in a Sovereign and Democratic State?’ (*Right Now*, 2014) <<http://rightnow.org.au/opinion-3/how-useful-are-international-human-rights-in-a-sovereign-and-democratic-state/>> accessed 5 September 2020.

<sup>5</sup> See Wade Cole, ‘Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants’ (2005) 70(3) AMERICAN SOC. REV. 472. **Error! Hyperlink reference not valid.**

<sup>6</sup> Daria Jarczewska, ‘Do Human Rights Challenge State Sovereignty?’ (*E-International Relations*, 15 March 2013) <<https://www.e-ir.info/2013/03/15/do-human-rights-challenge-state-sovereignty/>> accessed 4 September 2020.

<sup>7</sup> Johan D Van Der Vyer, ‘Part III Structural Principles, Chapter 16 Sovereignty’ in Dinah Shelton (eds), *The Oxford Handbook of International Human Rights Law* (OUP 2013). See also Rajamanickam Srinivasan, ‘State Sovereignty and International Human Rights Law: Complement or Compromise?’ (2014) INT’L SCIEN. CON.

<[https://www.researchgate.net/publication/264197316\\_State\\_Sovereignty\\_and\\_International\\_Human\\_Rights\\_Law\\_Complement\\_or\\_Compromise](https://www.researchgate.net/publication/264197316_State_Sovereignty_and_International_Human_Rights_Law_Complement_or_Compromise)> accessed 29 April 2021.

shielding its state sovereignty against non-nationals and the international legal sphere and thus have proved ineffective in regard to the protection of Afghan refugees' rights under international law. This has allowed the international community to criticise Iranian officials publicly and has left space for further humanitarian intervention. This situation poses a more robust deal of limiting and sabotaging effect to Iran's state sovereignty than the time when a host country protects the human rights of its refugee population. Section V presents the conclusion.

Throughout the article, especially in the first parts, which are theory based, the author has mostly used journals, books, and book chapters. However, the last parts of the article are related to the recent developments, and there is no academic work such as books and journals on it. The incidents have taken place in mid-2020. Thus, there are almost no academic sources directly on or at least touching on the topic. Therefore, for the last sections, the author has mostly benefited from newspapers, news magazines, and social media platforms such as Twitter.

## II. From 'Guests' to 'Gate Crashers': A Brief History of Afghans in Iran

On 28 July 1976, the government of Iran adopted the Convention Relating to the Status of Refugees (Refugee Convention) and its Protocol which have defined the legal rights of refugees and have obliged signing countries to respect and protect them.<sup>8</sup> After signing the Convention, in 1979, Iran officially began accepting refugees mainly from Afghanistan and Iraq.<sup>9</sup> Particularly, Afghan migrations to Iran picked up pace since 1979 due to the Soviet War, inferior economic conditions and drought in Afghanistan,<sup>10</sup> and have been growing pervasive to date. This paper analyzes the history of Afghan migrations to Iran under upcoming rubrics:

### A. First Wave of Migrations (From 1979 to 1989)

The Soviet war left in its wake approximately 5000000 homeless, and more than half of this population entered Iran seeking work, food, and suitable security conditions.<sup>11</sup> They were accepted in Iran as refugees and were given the required rights and facilities for living.<sup>12</sup> During this period, sheltering Afghans had mostly a religious aspect. In fact, Iranian religious leader Khomeini emphasized Iran's role in undertaking a mission to protect Afghan refugees who

<sup>8</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 1; Optional Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (New York Protocol); UNHCR, 'Refugees in Iran' <<https://www.unhcr.org/ir/>> (UNHCR) accessed 9 January 2021.

<sup>9</sup> Shirin Ebadi, 'Refugee Rights in Iran' (Meeting Report, Chatham House June 2008) <[https://reliefweb.int/sites/reliefweb.int/files/resources/D37E47829333FC88852574660071D063-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/D37E47829333FC88852574660071D063-Full_Report.pdf)> accessed 21 September 2020.

<sup>10</sup> Joseph J Collins, *Understanding War in Afghanistan* (National Defense University Press 2011). **Error! Hyperlink reference not valid.**

<sup>11</sup> Gregory Feifer, *The Great Gamble: The Soviet War in Afghanistan* (2010) New York Times Book Review.

<sup>12</sup> Katrin Marchand and others, 'Afghanistan Migration Profile' (2014) INT'L ORG. MIG. <[https://afghanistan.iom.int/sites/default/files/Reports/afghanistan\\_migration\\_profile.pdf](https://afghanistan.iom.int/sites/default/files/Reports/afghanistan_migration_profile.pdf)> accessed 4 October 2020.

had fled the Soviet war, and thus contribute to the *jihad* (holy defence) of Afghans against the Soviet led government of Afghanistan.

This trend coincided with Iran's revolution of 1979 against the US backed regime of Reza Shah Pahlavi. Revolutionary Iran, led by Khomeini and his followers, supported the Afghan *Shiite* refugees who sided with the revolutionary forces. Moreover, it maintained within the Islamic Republic's Constitution that the government would protect those seeking political asylum.<sup>13</sup> The opportunity to request such an asylum was ostensibly given to those migrants who were fleeing their countries occupied by non-Muslim forces.

In the 1980s, the government of Iran prevented United Nations High Commissioner for Refugees (UNHCR) from getting involved in the management of issues related to Afghan refugees. This clearly charts the religious standpoint of Iran towards this issue. Iran deemed protecting refugees as an Islamic humanitarian act which every Muslim country would willingly perform, and that no external forces and authorities should and could intervene in such a holy - and *ipso facto* exclusionary - mission. However, it is notable in the present case that UNHCR has always preserved its right to intervene in cases related to Afghans in Iran whenever its involvement seemed required.<sup>14</sup> This is particularly pertinent as Iran especially strives not to allow any foreign or international interference with its domestic issues, including matters involving migrants and foreign nationals.

During this era, Afghans were granted three types of cards to maintain their need for protection: (1) the Refugee Booklet was the only document using the term 'refugee', and it needed to be renewed every three months; (2) the Permanent Card was a document introducing the holder as the one who is in the move for religious purposes;<sup>15</sup> and (3) the Temporary Card was given to undocumented Afghan refugees and was no longer valid as of 1996.<sup>16</sup>

It is interesting to note that despite professing its distaste for any external intervention, within this era, Iran's refugee protecting measures were in clear consonance with human rights provisions mandated under international law. As illustrated, under this framework, the undocumented refugees were also protected -a feature which does not exist in present Iranian migration policies. Such a sophisticated migration policy engineering comported with the provisions of the Refugee Convention, which has entrenched the *non-refoulement*<sup>17</sup> rule. This rule dictates that refugees, including undocumented ones, shall not be forcefully deported to the place where they were exposed to poor living qualities, insecurity, and persecution.<sup>18</sup> Thereby, the Convention realises, and alludes to, the need for the protection of undocumented refugees as well.

This period of Iran's refugee reception is characterised by relative success in hammering out a peaceful symbiosis between state sovereignty and the protection of refugees'

---

<sup>13</sup> Political asylum is a kind of identity in a foreign country which is requested by migrants who fear of insecurity, terror and abuse in their homeland and look for a safe shelter elsewhere.

<sup>14</sup> Afsaneh Ashrafi and Haideh Moghissi, 'Afghans in Iran: Asylum Fatigue Overshadows Islamic Brotherhood' (2002) GLOB. DIA. <<https://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/6314/CRS0004.pdf?sequence=1&isAllowed=y> > accessed 8 February 2022.

<sup>15</sup> This card had two colors. The blue ones were granted to Afghans and the Green ones were given to Iraqi refugees.

<sup>16</sup> Ashrafi and Moghissi (n 14).

<sup>17</sup> Refugee Convention (n 8) 31.

<sup>18</sup> Refugee Convention (n 8) 31.

rights. The government simultaneously furnished its refugee population with required standards of living and protected its state sovereignty by (justifiably) fighting off any international intervention.

The following subsections will elaborate upon how the Iranian regime strategically departed from this traditional trend of refugee reception, and how this departure has impinged upon Iran's national sovereignty and interactions with the international community.

## B. The Second Wave (From 1989 to 1995)

Nearly 2500000 Afghans left their homeland and poured into Iran as a result of the civil war of Afghanistan beginning in 1989, most of who were educated and from middle class families.<sup>19</sup> After Kabul was taken by *Mujahidin*<sup>20</sup> in 1992, 1500000 Afghans returned to their home on their own will.<sup>21</sup> *Mujahidin*'s takeover of Afghanistan after the Soviet war led to Iran's ideological evolution on the practice of refugee reception. During this reign, Iran started to gradually depart from its divine - and *ipso facto* obligatory - task of accepting refugees.

Such a diversion then opened the doors for the international community to find a justification for getting involved in the refugee-protecting industry in Iran anytime such involvement was seemingly needed.<sup>22</sup>

By the 1990s, the Afghan religious war against the Soviet powers had ended, and thus Iran did away with its traditional religious viewpoint towards the reception of Afghan refugees. Since then, Iran's refugee protection enterprise took a perfunctory form and was relegated to the backburner.<sup>23</sup> By contrast, Iranian authorities put on more efforts to bolster their national sovereignty in the face of increasing waves of migrations.

Iranian policies tightened to an extent which led the refugee protection system into leeway by forming baselines for, and indirectly encouraging discrimination against, Afghan refugees.<sup>24</sup> Identity cards were confiscated, and Afghan children were deprived of pursuing education in state schools. Undocumented refugees also faced the danger of mass deportation, harassment, and inhumane treatment.<sup>25</sup> This, in turn, created attenuated bottom lines for international intervention in the refugee-protecting projects in Iran. As such, in 1993, the UNHCR initiated the first formal repatriation programme to gradually send back Afghans to their homeland. It could repatriate around 300.000 refugees to Afghanistan.<sup>26</sup>

<sup>19</sup> See Ashrafi and Moghissi (n 14).

<sup>20</sup> Islamic Afghan warriors who had fought against the Soviet Forces in Afghanistan from 1979 to 1989.

<sup>21</sup> Barnett R Rubin, 'Afghanistan: The Forgotten Crisis' (*WRITENET*, 1 December 1996) <<https://www.refworld.org/docid/3ae6a6c0c.html>> accessed 11 January 2021.

<sup>22</sup> Abbasi Shavazi and others, 'Second-generation Afghans in Iran: Integration, Identity and Return' (*Afghanistan Research and Evaluation Unit*, April 2008) <<https://areu.org.af/publication/823/>> accessed 8 February 2022.

<sup>23</sup> *ibid.*

<sup>24</sup> Aryaman Bhatnagar, 'Iran: Understanding the Policy towards Afghan Refugees' (2012) Institute of Peace and Conflict Studies <<http://www.ipcs.org/focusthemesel.php?articleNo=3683>> accessed 29 April 2021.

<sup>25</sup> Islam Qala, 'Afghanistan: Forcible Returns from Iran Continue' (*The New Humanitarian*, 20 February 2002) <<http://www.irinnews.org/report.aspx?reportid=18129>> accessed 5 September 2020. **Error! Hyperlink reference not valid.**

<sup>26</sup> The involvement of UNHCR here marks a turning point in Iran's migration strategy: As Iran's doctrine of refugee reception took a more optional form, it got easier for international players to intervene. See Shavazi (n 22).

### **C. The Third Wave (From 2001 Onwards)**

The third wave of Afghan migrations towards Iran began in late 2001 as a result of the United States (US) military attack on Afghanistan, which was planned to oust the Taliban from power.<sup>27</sup> Iran-US relations have historically bred implications for Afghan refugees. Iran supported the former US led Afghan government, which was formed as a result of the American occupation of Afghanistan in 2001. The main factor behind this support was Iran's long term goal of curbing *Sunni* extremism in the region, which was spread by Al-Qaeda and the Taliban.<sup>28</sup>

Thus, in the beginning, the newly formed Afghan government seemed to have lowered the risk of violence against the Afghan *Shiite* community, who were strongly backed by the Iranian government. The new, apparently favorable conditions of Afghanistan for Afghan refugees, particularly for the *Shias*, in turn, caused Iranian repatriation plans to speed up. In 2002, the UNHCR in collaboration with the governments of Iran and Afghanistan, renewed the assistance programme for repatriation of the refugees who wanted to return to Afghanistan voluntarily.<sup>29</sup>

This programme ended in 2008, and by the time many repatriated Afghans found their way back to Iran for different reasons.<sup>30</sup> Against this backdrop, Iran marshaled more hastening efforts to insulate its state sovereignty and national resources against growing waves of Afghan migrations, increasing demands of refugees for their basic rights, and finally, against international interventions.<sup>31</sup> Nonetheless, such efforts have proved largely counterproductive.

The contemporary refugee management framework of Iran has long resulted in many cases of human rights violations against Afghan refugees. Although such cases encompass the violation of different basic rights, this paper intentionally studies the violation of these (different) rights under a general rubric: the violation of the right to non-discrimination. Such a focus is wise and important because: (1) the violation of the right to non-discrimination is the direct and most robust product of the historical bifurcation of the Iranian government from its 'religious strategy towards migrations that strike a balance between state sovereignty and the protection of refugees' rights' to 'a more sovereignty oriented refugee management apparatus'; and (2) the lack of protection from discrimination of the Afghan refugees in Iran has therefore resulted in the violation of their (different) basic rights under the Iranian regime.

Thus conceived, the gradually normalized sentiment of dislike for Afghans in Iran flows from the overwhelmingly sovereignty leaning Iranian stand against migrations, and this exclusionary approach has turned Afghans to be 'unwanted' in Iran, resulting in violations of their right to non-discrimination. The violation or restriction of other basic rights of the Afghan refugees has thus manifested as discrimination.

---

<sup>27</sup> See Council on Foreign Relations, 'The U.S. War in Afghanistan' <<https://www.cfr.org/timeline/us-war-afghanistan>> accessed 11 January 2021.

<sup>28</sup> See Emmanuel Sivan, 'Sunni Radicalism in the Middle East and the Iranian Revolution' (1989) 21(1) INT'L JM EST 1.

<sup>29</sup> The New Humanitarian, 'Afghan Refugees Given Repatriation Extension' (*The New Humanitarian*, 28 February 2007) <<https://www.thenewhumanitarian.org/report/70450/afghanistan-iran-afghan-refugees-given-repatriation-extension>> accessed 4 October 2020.

<sup>30</sup> The New Humanitarian, 'Interview with UNHCR Head to Mark the Return of One Million Afghan Refugees' (*The New Humanitarian*, 2 September 2004) <<https://www.thenewhumanitarian.org/news/2004/09/02/interview-unhcr-head-mark-return-one-million-afghans-refugees>> accessed 7 October 2020

<sup>31</sup> Shavazi (n 22).



The following section offers a general view of how the contemporary Iranian senses of xenophobia and discrimination against Afghan refugees have been crystallized among the public. It touches upon discriminative rules, governmental practices, and public treatment which have perpetuated such undercurrents of intolerance against Afghans. Then, it goes on to explain more recent and specific cases of such kind, which have not only spurred heated international backlash against the Iranian regime but have also invoked reactions from Afghan authorities and Iranian nationals.

### III. The ‘Unwanted’ Label of Afghans in Iran: Violations of the Basic Rights and the Resulting Condemnations

Article 3 of the Refugee Convention, the main international instrument safeguarding the rights of refugees to which Iran is a party, maintains that: ‘[T]he Contracting States shall apply the provisions of this Convention to refugees *without discrimination* as to race, religion or country of origin’.<sup>32</sup> It means that the contracting state (Iran, in this case) should not restrict the rights of any refugee based on his/her country of origin, religion, or race. As the Convention also states in Article 7 paragraph 1<sup>33</sup> that, save where the Convention contains more advantageous provisions, a contracting state must provide refugees the same treatment as aliens in general, ‘rights granted to aliens in general’ must be taken into account and shall be granted to refugees as well. In light of the Convention's history and the objective expressed in the Preamble, it is reasonable to conclude that contracting states should not discriminate between different kinds of refugees within the Convention's mandatory provisions.

Albeit with different and more general wordings, the same provision pertaining to the illegality of discrimination against human beings has been enshrined in other international covenants as well.<sup>34</sup> Article 7 of the Universal Declaration of Human Rights (UDHR) provides that: ‘All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’. Article 7's equality and non-discrimination principle contributes to the formation of the rule of law. These obligations are expanded upon in a variety of other international treaties aimed at combating discrimination against indigenous peoples, migrants, minorities, and disabled people. Discrimination based on race, religion, sexual orientation, or gender identity is likewise prohibited. A series of international human rights treaties have expanded on the rights enumerated in Article 7, and jurisprudence has added to the prohibition on discrimination over the years. It is now not enough for countries to refrain from discriminating against particular populations. They must also take proactive measures to address discrimination. Thus, Article 3 of the Refugee Convention is also an expansion to the general provisions of Article 7 of UDHR, as it obliges the contracting states to grant the rights and freedoms mentioned in the Convention to all refugees without discrimination.

However, contrary to the obligations on the part of signing countries with regards to refraining from discrimination, the miserable conditions of Afghans in Iran mirror a quite

<sup>32</sup> Refugee Convention (n 8) art 3 (emphasis added).

<sup>33</sup> Refugee Convention (n 8) art 7.

<sup>34</sup> Universal Declaration of Human Rights (1948) (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) art 7; International Covenant on Economic, Social and Cultural Rights (1966) (adopted 16 December 1966) UNTS 993 art 2.

different picture. Although a small community of Afghans enjoy basic rights and are accepted with public sympathy among Iranians, circumstances are different for most others as they face violence, abuse, and discrimination.<sup>35</sup>

Afghans are perceived to be triggers of anarchy and disorder in Iran.<sup>36</sup> Thus understood, they are mostly treated as lawbreakers and the ones who have to be punished, persecuted, and sidelined.<sup>37</sup> It is under such a pessimistic and discriminative perspective that the Afghan refugees forfeit their (different) basic rights. At the same time, this gradually cemented perspective towards Afghans in Iran violates article 3 of the Refugee Convention, as Afghan refugees are treated much differently than other aliens and refugees due to their country of origin.

Afghan workers usually receive a lower income than their Iranian counterparts.<sup>38</sup> Iranian patrons who work in dangerous industries tend to hire undocumented Afghan workers who would fare in the face of insecurity, heavy workload, and low salaries.<sup>39</sup> Moreover, Afghan workers do not enjoy any political or social rights and are prevented from requesting insurance or any other document which safeguards their social security.<sup>40</sup> Such discriminative bans also amount to a general breach of the International Covenant on Economic, Social, and Cultural Rights which confers basic social rights to all human beings without discrimination.<sup>41</sup>

Iran's government has, in some cases, issued discriminative rules against foreigners inside the country, including Afghans.<sup>42</sup> What is more, Iranian state channels tend to publicize these sorts of rules as propaganda,<sup>43</sup> injecting into the Iranian culture an anti-foreigner sentiment against Afghans. One of the legal restrictions Iran has imposed on Afghan refugees pertains to the right to nationality. Regarding Article 15 of the UDHR: '(1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality'.<sup>44</sup> The language of the Article is general. It has granted to every human being the right to nationality, regardless of the fact that he/she lives or is born in his/her own country or not. The Article thus encompasses the refugees as well. Therefore, according to the provisions of this Article, no one should remain stateless. Similarly, Article 7 of the Convention on the Rights of the Child imposes an obligation on states to confer the right to nationality to a child who is born inside their territory and 'ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless'.<sup>45</sup> Accordingly, the states which are party to this

---

<sup>35</sup> Fariba Nawa, 'The Precarious Lives of Afghan Children in Iran' (*Refugees Deeply*, 7 June 2018) <<https://www.newsdeeply.com/refugees/articles/2018/06/07/the-precarious-lives-of-afghan-children-in-iran>> accessed 2 September 2020.

<sup>36</sup> Janne Bjerre Christensen, *Guests or Trash: Iran's Precarious Policies towards the Afghan Refugees in the Wake of Sanctions and Regional Wars* (Report Number 11, Danish Institute for International Studies 2016).

<sup>37</sup> *ibid.*

<sup>38</sup> Shavazi (n 22).

<sup>39</sup> Zahra Karimi Moughari, 'The Effects of Afghan Immigrants on the Iranian Labour Market' (2007) 13 (20) *IR ECON REV* 57.

<sup>40</sup> *ibid* 59-65.

<sup>41</sup> International Covenant on Economic, Social, and Cultural Rights (n 34).

<sup>42</sup> Bhatnagar (n 24).

<sup>43</sup> Shabnam Moinipour, 'Refugees against Refugees the Iranian Migrants' Perception of the Human Rights of Afghans in Iran' (2017) 21(7) *INT'L J HR* 823.

<sup>44</sup> UDHR (n 34) art 15.

<sup>45</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 art 7.



Convention must refrain from depriving the child of a refugee of their nationality on any basis, including his/her country of origin.

That said, according to Article 976 of the Iranian Civil Code, Afghan women who marry Iranian men can obtain Iranian citizenship and their children will be as well entitled to the conditions of an Iranian citizen. However, if Iranian women marry Afghan men, the man is not considered an Iranian citizen, and he may apply for citizenship separately.<sup>46</sup> This is the primary impediment to second generation Afghan refugee children obtaining Iranian citizenship<sup>47</sup> as the Iranian Civil Code does not confer Iranian citizenship on the child based on that of its mother. Therefore, in case an Iranian woman who is married to an Afghan man gives birth to a child, the Iranian Civil Code denies the child's right to Iranian nationality and makes the child's nationality subject to conflict. Therefore, Afghan refugee children born in Iran are at high risk of statelessness.<sup>48</sup> That is because thousands of children born to Iranian mothers and non-Iranian fathers are denied citizenship in Iran. Hence, they do not have access to government funded education and health care there. The uncertain futures of these children have also highlighted Iranian women's unequal status as mothers and has fueled calls for changes to the country's citizenship regulations.<sup>49</sup>

Afghan refugees also struggle with restrictions set for owning properties. Article 13 of the Refugee Convention expressly stipulates:

The Contracting States shall accord to a refugee treatment *as favorable as possible* and, in any event, *not less favorable than* that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.<sup>50</sup>

In this Article, as well as Articles 18 (self-employment), 19 (liberal professions), 21 (housing), and 22 paragraph 2, the norm of treatment is 'treatment as favorable as practicable and, in any event, not less favorable than that granted to aliens generally in the same circumstances'. Therefore, it is not only a binding requirement to accord aliens in similar circumstances the same treatment as other aliens, but also a recommendation for more favorable treatment.<sup>51</sup> It must be noted here that in some countries, including Iran, foreigners (including refugees) are not covered by national legislation for the protection of tenants, unless by virtue of such treaties and conventions. If contrary to the provisions of this Convention, refugees, who are frequently penniless, are denied the treatment afforded to foreigners under treaties, they will be denied the benefits of such laws, which will be disastrous for them.<sup>52</sup>

Not only this, but some national laws of certain countries restrict the acquisition of properties by refugees. As such, Article 1 of the Iranian Civil Procedure Code holds that only

<sup>46</sup> Civil Code of the Islamic Republic of Iran (1928) art 976.

<sup>47</sup> Institute on Statelessness and Inclusion, 'Statelessness in Iran' (*Stateless Journeys*, 2019) <<https://statelessjourneys.org/wp-content/uploads/StatelessJourneys-Iran-final.pdf>> accessed 13 December 2021. See also Jason Tucker, 'Exploring Statelessness and Nationality in Iran' (*Tilburg University*, 2014) <[https://www.academia.edu/7156718/Exploring\\_Statelessness\\_and\\_Nationality\\_in\\_Iran](https://www.academia.edu/7156718/Exploring_Statelessness_and_Nationality_in_Iran)> accessed 13 December 2021.

<sup>48</sup> *ibid.*

<sup>49</sup> Ashraf Zahedi, 'Transnational Marriages, Gender Citizenship, and the Dilemma of Iranian Women Married to Afghan Men' (*Iranian Studies*, 2007) <<https://www.jstor.org/stable/4311891>> accessed 24 December 2021.

<sup>50</sup> Refugee Convention (n 8) art 13.

<sup>51</sup> *ibid.*

<sup>52</sup> Refugee Convention (n 8) 81.

those foreign nationals who have *permanent residence* in Iran can own movable property.<sup>53</sup> Since many Afghans are undocumented refugees having temporary residence, they are not entitled to possess movable assets but only in some rare cases with the permission of the government. Many Afghans complain about not having a house, a car, insurance, or even a SIM card. In the long run, this situation has increased their susceptibility to insecurity, robbery, and sacking.<sup>54</sup>

Through a closer inspection of some criminal cases, Iran's discriminative perspective against Afghan refugees can be clearly captured. In a fairly recent case, on 21 July 2019, a video went viral on social media showing a young Afghan boy being beaten and intimidated by an Iranian guard after the boy attempted to unlock a donation box inside a shrine in the Bushehr province of Iran.<sup>55</sup> Normally, an individual who attempts to commit theft must be formally arrested by the police and be taken to the police station. There is no specific comment in the Refugee Convention on how to deal with the criminal charges of refugees. However, it does indicate that refugees shall be granted the right to access to the courts and formal trajectories channeling the criminal cases,<sup>56</sup> and that this right should be preserved for refugees just as it is conferred to national residents. In this way, the Iranian police is obligated to apply an *erga omnes* understanding of the criminal rules to both nationals and refugees *without discrimination*. However, in the present case, subjecting the boy to violence highlights a double standard between Afghan refugees and Iranian nationals regarding criminal responsibility. Although the guard then apologized to the boy's family, the video provoked reactions on social media,<sup>57</sup> raising concerns about the dominant discriminatory approach of the Iranian regime towards Afghan refugees.

Being unwanted in Iran has also brought illegal Afghan refugees face to face with the danger of mass deportation. Article 31 of the Refugee Convention maintains that '[T]he Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened'.<sup>58</sup> Such 'penalties' can encompass deportation or non-admittance, meaning that the host state would either deport a refugee who has already entered the country, or that it would refuse to admit refugees at the frontier. The sovereign power to expel or keep foreigners deemed undesirable from its territory is unassailable. Nonetheless, deportation or refusal to admit at the border are harsh measures in any situation; they are especially serious in the case of a refugee who cannot be sent back to his own country, and who cannot be forced to be accepted by another country.<sup>59</sup> Additionally, returning a refugee to the border of the country where his life or liberty is threatened because of his race, religion, nationality, or political beliefs, if those

---

<sup>53</sup> Civil Procedure Code of Iran (2000) 1.

<sup>54</sup> Joshua Evangelista, 'Afghans in Iran: No SIM Card, No House, No Rights' (*Middle East Eye*, 29 December 2017) <<https://www.middleeasteye.net/features/afghans-iran-no-sim-card-no-house-no-rights>> accessed 29 April 2021.

<sup>55</sup> Frud Bezhan, 'Afghan Migrant Boy's Rough Treatment in Iran Sparks Outrage' (*Radio Free Europe*, 26 July 2019) <<https://www.rferl.org/a/afghan-migrant-boy-s-rough-treatment-in-iran-sparks-anger/30077657.html>> accessed 12 September 2020.

<sup>56</sup> Refugee Convention (n 8) art 16.

<sup>57</sup> Frud Bezhan, 'Video Appears to Show Iranian Police Officer Assaulting Afghan Migrants' (*RadioFreeEurope*, 2018) <<https://www.rferl.org/a/iranian-police-officer-video-assaulting-afghan-migrants/29665755.html>> accessed 10 September 2021.

<sup>58</sup> Refugee Convention (n 8) art 31.

<sup>59</sup> Refugee Convention (n 8) 202.

beliefs are not in violation with human rights values, would be equal to handing him over to his persecutors.<sup>60</sup> This fact is very common in the case of Afghan refugees in Iran, as many of them flee their homeland due to violence, persecution, and discrimination against their ethnic or religious identity.<sup>61</sup> They cannot also choose another country as their destination since they face linguistic problems. These being said, Iran has, in many cases, deported undocumented Afghan children back to their home without their parents. The children narrate that they were also exploited by Iranian employers and then sent back home alone, amid miserable conditions.<sup>62</sup>

In sharp contrast to the first phase of Afghan migrations to Iran, wherein illegal refugees were afforded identity cards which preserved their right to reside in Iran,<sup>63</sup> in current conditions, illegal refugees are being treated as unwelcome by the Iranian government. This attitude is well captured and more substantially pinpointed through cases discussed in the below subsections.

Although there are several cases of violence and discrimination in Iran against Afghans<sup>64</sup> that are worth mentioning, the intention of this paper is to accentuate the cases which have recently urged serious international repercussions. The ensuing subsections will offer a more pointed account of how Iran's departure from its classical refugee protection trend, and the practice of its current politics towards Afghan refugees have sparked outrage among international players, thereby working to the disadvantage of Iran's national sovereignty.

### **A. The Case of Iranian Officer Slapping and Insulting Nine Afghan Men**

In preceding cases, it was portrayed how the Afghan refugees who reside in Iran are being treated with discrimination, unfairness, and aversion. The recent cases will additionally depict how the 'unwanted' label of Afghans in Iran has also caused Iranian border guards to overreact over the entrance of new Afghan refugees to Iran.

On 18 December 2018, a video spread on Twitter showing an Iranian police officer slapping nine men who wore traditional Afghan clothes and asking them why they came to Iran.

<sup>60</sup> Refugee Convention (n 8) art 31(3), para 3, 203.

<sup>61</sup> Roshan Noorzai, 'Thousands of Afghans Flee to Iran as Uncertainty Grows under Taliban' (*VOA News*, 2021) <<https://www.voanews.com/a/thousands-of-afghans-flee-to-iran-as-uncertainty-grows-under-taliban/6244617.html>> accessed 14 December 2021. See also Reuters Staff, 'Who Are the Hazaras and What Are They Escaping?' (*Reuters*, 2016) <<https://www.reuters.com/article/us-europe-migrants-hazaras-idUSKCN11S0WG>> accessed 14 December 2021.

<sup>62</sup> Christensen (n 36).

<sup>63</sup> See Part II A.

<sup>64</sup> Ahmad Shoja, 'Iran Bans Afghan and Iraqi Refugees from Moving to Regions for Employment' (*UN DISPATCH*, 6 June 2012) <<https://www.undispatch.com/facing-financial-pressure-iran-bans-afghan-and-iraqi-from-moving-to-cities-for-employment/>> accessed 4 September 2020; Afghanistan News, 'In a First, Tehran Honors Beleaguered Afghan Community' (*Afghanistan News*, 22 March 2019) <<https://www.afghanistannews.net/news/260057998/in-a-first-tehran-honors-beleaguered-afghan-community>> accessed 6 September 2020; Tolo News, 'Afghan Embassy Approaches Iran Government about Torture Incident' (*Tolo News*, 3 October 2019) <<https://tolonews.com/afghanistan/afghan-embassy-approaches-iran-government-about-torture-incident>> accessed 5 October 2020; BBC News, 'Afghan Refugees in Iran Face Abuse, Says HRW' (*BBC News*, 20 November 2013) <<https://www.bbc.com/news/world-middle-east-25007379>> accessed 8 October 2020.

The video sparked anger among both Afghans and Iranians.<sup>65</sup> Many Iranian nationals and celebrities shared their sympathies with Afghans and stated that they were sorry for what their security forces had done. They mentioned that Afghans seek refuge in Iran, fleeing the degrading security and economic conditions.

Indeed, the situation is such for many Afghans. They enter Iran to find a job and escape from the poverty and degrading security conditions in Afghanistan.<sup>66</sup> Article 31 of the Refugee Convention explicitly provides that ‘the Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees ...’.<sup>67</sup> Seemingly, the penalties covered by Article 31 only enclose formal punishment that, according to the Convention, may be imposed on refugees by the government on solid grounds. These penalties refer to administrative or court convictions for unauthorized entry or presence.<sup>68</sup> Formal punishment resulting from convictions can be in the form of deportation or fine on a legally solid basis. Even if the illegal migrants request to enter the contracting state, judicial proceedings for illegal entry or presence should be halted until their request is thoroughly investigated.<sup>69</sup> Also, according to the Legal Information Institute, a penalty is the punishment meted out to someone who breaks the law, whether it's a contract, a rule, or a regulation. Fines can be imposed in response to civil or criminal infractions, with civil penalties typically being less severe. Some fines merely involve the payment of a certain sum of money, which is defined by statute or by a judge depending on the extent of the other party's harm. Other sanctions entail the losing party's property being surrendered. More serious crimes can result in heavier penalties, such as imprisonment or even death, albeit the death penalty is only applied to capital offences and is not a penalty that can be imposed in every jurisdiction.<sup>70</sup> Therefore, the act of ‘slapping’ and ‘unpleasant words’ thus outrun the limits of ‘formal punishment’ or ‘penalties’ mentioned in this article, thereby making the treatment of the officer extreme, extralegal, and inhumane.

The sense of irritability against the Afghan men, in this case, can be directly linked to the general prejudicial stand of Iran against Afghan refugees, mostly against *illegal* ones. Furthermore, the lack of any legal action from Iranian officials against their security forces who exceed the scope of their duty while dealing with Afghan refugees has encouraged and gradually normalized, if not directly prescribed, the culture of persecuting and humiliating Afghan refugees under the (alleged) justification of their ‘unwanted’ status in Iran.

## **B. The Case of Iranian Border Guards Drowning Afghan Refugees into the Harirud River**

On 1 May 2020 a group of nearly 70 Afghan refugees who tried to cross into Iran seeking work were tortured and then forced back to the border by Iranian police forces. After being beaten,

---

<sup>65</sup> Bezhan (n 55).

<sup>66</sup> UNHCR, ‘Refugees in Iran’ (*UNHCR*) <<https://www.unhcr.org/ir/refugees-in-iran/>> accessed 14 December 2021. See also Christensen (n 36).

<sup>67</sup> Refugee Convention (n 8) art 31.

<sup>68</sup> *ibid* 219.

<sup>69</sup> *ibid*.

<sup>70</sup> Legal Information Institute, ‘Penalty’ (*LII*, 2020) <<https://www.law.cornell.edu/wex/penalty>> accessed 14 December 2021.

the refugees were asked to jump into the Harirud River and go back to Afghanistan.<sup>71</sup> Afghan officials claim that at least 17 dead bodies of refugees have been found from the river while others are missing.<sup>72</sup> Afghanistan's Ministry of Foreign Affairs shared a statement on 2 May informing that an inquiry was initiated and preliminary evaluations had revealed that approximately 70 Afghan refugees were forced into the Harirud River.<sup>73</sup>

Moreover, Afghanistan's Independent Human Rights Commission stated that they have had interviews with the survivors, finding out that they have been severely persecuted and humiliated by the Iranian guards before being pushed into the river.<sup>74</sup>

Article 31 of the Refugee Convention applies to this case as well. The penalties which, as per the Convention, may be imposed on refugees by the government on solid (mostly political) grounds cannot be applied to cases where refugees seek refuge from unfavorable conditions in their homeland or anywhere else. The primary act of drowning, resulting in the death of Afghan refugees, not only encroaches upon Article 31 of the Refugee Convention but also infringes upon the refugees' right to life. It is seemingly such multifaceted violating effect of this incident accruing from the anti-foreigner sense of Iranian guards against Afghan refugees that has provoked unprecedented repercussions. The incident caused sharp tensions in Iran and Afghanistan's diplomatic relations.

However, Iranian officials denied the accusations asserting that the event had taken place within the Afghan soil.<sup>75</sup> Iranian spokesman of Foreign Ministry also assured that they had already launched a probe into the case. Sharing a tweet on 3 May, former Governor of Herat province, Sayed Wahid Qattali blamed the Iranian police forces, rebuking that the ones they had drowned were not just some ordinary names and Afghanistan would one day settle accounts.<sup>76</sup> In addition, this case proves instructive in painting how violating human rights can keep the principle of state sovereignty under international scrutiny. It shows how international players, unprecedentedly, denounced Iran's policies towards Afghan refugees.

As such, on 4 May, Human Rights Watch (HRW) called for a comprehensive inquiry into the occurrence and stated that the incident was shocking. It added that in case the allegations are proven, it would be documented as 'a very serious human rights violation'.<sup>77</sup> Patricia Gossman, Associate Director for the Asia Division at HRW added: 'I haven't heard of a case like this in recent memory, although we have previously documented abuses by

<sup>71</sup> A river at the border between Iran and Afghanistan.

<sup>72</sup> ABC News, 'Iranian Border Guards Accused of Forcing Afghan Migrants into Harirud River, Causing Some to Drown' (*ABC News*, 3 May 2020) <<https://www.abc.net.au/news/2020-05-04/iranian-guards-force-afghan-migrants-into-river-many-drowned/12210514>> accessed 4 September 2020.

<sup>73</sup> Al Arabiya, 'Kabul in Bid to Retrieve Bodies of Afghan Migrants Forced into River by Iran Guards' (*Al Arabiya*, 3 March 2010) <<https://english.alarabiya.net/en/News/world/2020/05/03/Kabul-in-bid-to-retrieve-bodies-of-Afghan-migrants-forced-into-river-by-Iran-guards>> accessed 3 October 2020.

<sup>74</sup> Shapoor Saber, 'They Were Laughing': Iranian Border Guards Accused of Torturing, Drowning Afghan Migrants', (*Radio Free Europe*, 6 May 2020) <<https://www.rferl.org/a/iranian-border-guards-accused-of-torturing-drowning-afghan-migrants/30595702.html>> accessed 2 September 2020.

<sup>75</sup> Abdul Qadir Sediqi and Storay Karimi, 'Exclusive: Afghan Lawmakers Say 45 Migrants Drowned after Iranian Guards Forced Them into the River' (*Reuters*, 7 May 2020) <<https://www.reuters.com/article/us-afghanistan-iran-migrants-exclusive/exclusive-afghan-lawmakers-say-45-migrants-drowned-after-iranian-guards-forced-them-into-river-idUSKBN22J26U>> accessed 5 September 2020.

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*



Iranian border officials against Afghans for some time'.<sup>78</sup> Similarly, the former US Embassy in Kabul tweeted on 5 May sharing its condolence with Afghans.<sup>79</sup> Alice Wells, the acting US Assistant Secretary for South Asia, also shared a tweet on the same day: 'Iran's cruel treatment and abuse of Afghan migrants alleged in these reports are horrifying. We support calls for a thorough investigation. Those found guilty of such abuse must be held accountable'.<sup>80</sup> Former US Secretary of State, Mike Pompeo also noted on the event: 'I was appalled to see reports last week of Iranian guards on the border of Afghanistan's Herat province abused, tortured, drowned Afghan migrants who dared to cross the border simply in search of food and work'.<sup>81</sup> Likewise, on 11 May, hundreds of Afghans gathered outside the Iranian Consulate in Herat province and protested the drowning of Afghans by Iranian soldiers. Nafisa Danish, an activist who was among protesters called on Iranian officials: 'Where are the Human Rights? This Iranian massacre should be condemned'.<sup>82</sup>

### **C. The Case of Iranian Police Firing at the Car of Afghan Refugees**

On 3 June 2020, two videos spread on social media showing Iranian security forces chasing after cars of human smugglers in the Yazd province of Iran. The forces shot at a car full of Afghan refugees. The car caught fire, killed three refugees, and injured eight others.<sup>83</sup> Injured survivors standing on the side of the road kept crying and begging for water. This incident not only marks a violation of Article 31 of the Refugee Convention but, similar to the previous case, the primary act of firing has resulted in the death of Afghan refugees, thereby encroaching upon general human rights provisions pertaining to the right to life enshrined in international law.

The event saddened and outraged Afghans and international players all over the world.<sup>84</sup> Many voiced their anger through social media using hashtags #StopkillingAfghans, #Iamburning, and spreading the message: 'Afghan Lives Matter'! Many others protested in Herat, Kabul, Helmand,<sup>85</sup> and Nangarhar provinces of Afghanistan. More serious

<sup>78</sup> Marion MacGregor, 'Iranian Border Guards Drowned 45 Afghan Migrants, Investigators Say' (*Info Migrants*, 5 August 2020) <<https://www.infomigrants.net/en/post/24615/iranian-border-guards-drowned-45-afghan-migrants-investigators-say>> accessed 5 October 2020.

<sup>79</sup> US Embassy in Kabul, 'Iranian Border Guards Accused of' (*Twitter*, 5 May 2020) Twitter <[https://twitter.com/USEmbassyKabul/status/1257557185959264262?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1257557185959264262&ref\\_url=https%3A%2F%2Fwww.rferl.org%2Fa%2Firanian-border-guards-accused-of-torturing-drowning-afghan-migrants%2F30595702.html](https://twitter.com/USEmbassyKabul/status/1257557185959264262?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1257557185959264262&ref_url=https%3A%2F%2Fwww.rferl.org%2Fa%2Firanian-border-guards-accused-of-torturing-drowning-afghan-migrants%2F30595702.html)> accessed 1 May 2021.

<sup>80</sup> State SCA, 'Iran's Cruel Treatment' (*Twitter*, 5 May 2020) <[https://twitter.com/State\\_SCA/status/1257412235598671876](https://twitter.com/State_SCA/status/1257412235598671876)> accessed 1 May 2021.

<sup>81</sup> Massoud Ansar, 'Pompeo Calls for Probe into Death of Afghan Migrants' (*Tolonews*, 2020) <<https://tolonews.com/afghanistan/pompeo-calls-probe-death-afghan-migrants>> accessed 8 February 2022.

<sup>82</sup> Ashraq Al-Awsat, 'Hundreds Protest Afghan Migrant Drowning at Iran Border' (*Ashraq Al-Awsat*, 11 May 2020) <<https://english.aawsat.com/home/article/2278921/hundreds-protest-afghan-migrant-drownings-iran-border>> accessed 3 September 2020.

<sup>83</sup> The Observers, 'Deaths of Afghan Migrants in Burning Car after Police Chase in Iran Sparks Fury' *The Observers* (11 April 2020) <<https://observers.france24.com/en/20200611-fury-after-afghan-migrants-die-burning-car-after-police-chase-iran>> accessed 4 September 2020.

<sup>84</sup> *ibid.*

<sup>85</sup> Omar, 'Horror, Outrage as Afghan Migrants Burned to Death by Iranian Forces' *Salaam Times* (9 April 2020) <[https://afghanistan.asia-news.com/en\\_GB/articles/cnmi\\_st/features/2020/06/09/feature-01](https://afghanistan.asia-news.com/en_GB/articles/cnmi_st/features/2020/06/09/feature-01)> accessed 3 September 2020.



demonstrations were planned in London and Washington DC. Afghans, in addition, launched an online petition for the diseased and injured refugees and collected more than 53.000 signatures.

Furthermore, some Afghan celebrities and politicians also raised their voices. Khaled Hosseini, author of *The Kite Runner*, an international bestseller book, said he had added his 'voice to the voice of ones who have condemned this incident'.<sup>86</sup> Some others even compared this event to the case of police violations against black people in the US<sup>87</sup> arguing that every day hundreds of Afghan George Floyds were being abused and humiliated in Iran. Afghans argue that the burning of refugees in Iran was particularly vexing following the support of Javad Zarif, Iranian Foreign Minister for Black Lives protests which were launched in the US as a result of police violation against George Floyd, a black American citizen.<sup>88</sup>

The case of the car blaze has also reminded many Afghan deportees of their dreadful memories while entering Iran.<sup>89</sup> According to Hassan, who was deported back to Afghanistan, Afghans are considered a reason for anarchy and disorder in Iran.<sup>90</sup> That is why the Iranian border guards, though not expressly, pledge themselves to resist the entry of new Afghan refugees to Iran and they mostly, as illustrated in the present cases, overreact over such entries. Such overreactions have, over time, attracted consequential condemnations, thereby tarnishing the image of Iranian regime both inside and on the international plane.

The overreactions have also devised dangerous ramifications for Iran's foreign policy, as they have created flashpoints for tension in Iran's diplomatic relations with Afghanistan and have angered human rights activists and protestors in different countries.

#### **IV. Lessons Learnt: Iran's Policy Shift with Regards to Afghan Refugees and the Prospective Implications for Its National Sovereignty**

In 1979, growing waves of Afghan refugees poured into Iran, mostly on the ground that the revolutionary Iran, led by Khomeini, had pledged itself to harbor Afghans who had fled the Soviet war in Afghanistan. Under this migration management apparatus, the Iranian regime consciously protected the basic rights of its Afghan population, dubbing it a divine duty.<sup>91</sup> Interestingly, by so doing, Iranian authorities could as well save their national sovereignty from being encroached upon by international interference. Nonetheless, from 1989 onwards,

<sup>86</sup> Stefanie Glinski, 'Afghan Car Blaze Deaths Prompt Fury over Mistreatment of Refugees in Iran' (*RAWA News*, 2020) <<http://www.rawa.org/temp/runews/2020/06/08/afghan-car-blaze-deaths-prompt-fury-over-mistreatment-of-refugees-in-iran.html>> accessed 10 September 2021.

<sup>87</sup> BBC News, 'George Floyd: Huge Protests against Racism Held across US' (*BBC News*, 7 June 2020) <[https://www.bbc.com/news/world-us-canada-52951093#sa-link\\_location=story-body&intlink\\_from\\_url=https%3A%2F%2Fwww.bbc.com%2Fnews%2Fworld-asia-52949429&intlink\\_ts=1592498815230-sa](https://www.bbc.com/news/world-us-canada-52951093#sa-link_location=story-body&intlink_from_url=https%3A%2F%2Fwww.bbc.com%2Fnews%2Fworld-asia-52949429&intlink_ts=1592498815230-sa)> accessed 4 September 2020.

<sup>88</sup> Ali F Khaliti, "I am Burning": Afghans Condemn Iranian Police after Refugees Die in Car Blaze' (*Middle East Eye*, 6 June 2020) <<https://www.middleeasteye.net/news/i-am-burning-afghans-condemn-iranian-police-after-refugees-die-car-blaze>> accessed 1 May 2020.

<sup>89</sup> Roshan Noorzai and Mehdi Jedinia, "Filled with Fear": An Afghan Account of Traveling to Iran' (*VOA News*, 18 June 2020) <<https://www.voanews.com/extremism-watch/filled-fear-afghan-account-traveling-iran>> accessed 24 March 2020.

<sup>90</sup> *ibid.*

<sup>91</sup> See Part II A.

the post-revolution Iran has taken a more sovereignty oriented tack towards Afghan migrations, tilting its attention towards the protection of its sovereignty from non-nationals and the international community, and thus pushing the protection of the refugees' rights into the background.<sup>92</sup> This policy shift has, over the long haul, devised a discriminative and marginalizing outlook on the Afghan refugees, resulting in the forfeit or limitation of their basic rights and their humiliation in some cases.<sup>93</sup>

As depicted in the previous section, Iran has continuously been criticised by the international community and its own nationals for its mistreatment, discrimination, and violation of human rights against Afghan refugees. The critiques gained momentum following the drowning of Afghan refugees by Iranian border forces and the burning of Afghan refugees' car. HRW has informed that Iran's policies towards Afghan refugees 'violate its legal obligations to protect this vulnerable group from abuse'.<sup>94</sup> HRW added that Iran has failed to take action to 'protect Afghan refugees from physical violence linked to rising anti-foreigner sentiment in Iran, or to hold those responsible accountable'.<sup>95</sup>

Thus, the Iranian government, despite its thrust to sustain Iranian national sovereignty, has in practice paved the way for international players, human rights groups, its own nationals, and the former Afghan government to point fingers at its migration policies towards Afghans. Iran's state sovereignty and international reputation will continue to be on shaky ground if the government does not consider reforming the criticised standards towards its Afghan population.

Furthermore, human rights activism, as a growing international movement, poses a strong challenge to the national sovereignty of those states which are alleged to have violated the human rights of their refugee population, as the states would go under vehement scrutiny of the international players and human rights groups. Additionally, the expansion of these human rights movements would also incur contentions in foreign relations of the violating states. This fact can be clearly portrayed by the recent protests of Afghans against the Iranian regime in Afghanistan, Washington, and London.

On 15 June 2020, a large wave of protestors gathered in London and Washington D.C., out-crying for justice for Afghan refugees who had been killed in the recent cases in Iran since May 2020. In London, protestors congregated outside the Iranian embassy and called the move of Iranian security forces against Afghan refugees a 'barbaric' action. They also requested international intervention in the case. Similar protests were also held outside the Iranian Embassy to Afghanistan in Kabul.<sup>96</sup>

---

<sup>92</sup> See Parts II. A, II. B.

<sup>93</sup> This paper has intentionally discussed the cases of the violation or limitation of different basic rights under a unifying general outlook: the violation of the right to non-discrimination. It is due to the fact that the discussed rights have been violated as a result of the 'discriminatory' approach and the humiliating actions of the Iranian regime against Afghan refugees.

<sup>94</sup> El-Gheressi, "I am Burning": The Deadly Treatment of Afghan Refugees in Iran', (*Majalla*, 19 June 2020) <[<sup>95</sup> \*ibid.\*](https://eng.majalla.com/node/92621/i-am-burning%E2%80%99-the-deadly-treatment-of-afghan-refugees-in-iran#:~:text=Iran%20has%20long%20faced%20criticism,this%20vulnerable%20group%20from%20abuse%E2%80%9D.> accessed 23 April 2020.</a></p></div><div data-bbox=)

<sup>96</sup> Reporterly, 'Afghans Hold Anti-Iran Protests in US, UK' (*Reporterly*, 15 June 2020) <<http://reporterly.net/live/newsfeed/monday-june-15-2020/afghans-hold-anti-iran-protests-in-us-uk/>> accessed 24 August 2020.

Following the increase and intensity of protesting campaigns against the Iranian government, on 16 June, Iranian officials summoned Abdul Ghafoor Lewal, former Afghan Ambassador to Iran in order to give him notice that some protesters have dishonored the Iranian regime, and this would take a drastic toll on long-lasting relations of Iran and Afghanistan. Lewal, in response, argued that it was the right of Afghans to protest. However, the former Afghan government had promised Iranian authorities that it would pacify the protestors and investigate any desecration against Iran's government.<sup>97</sup>

Abbas Mousavi, spokesman to Iran's Foreign Ministry, also added that Iran wanted peace and justice for Afghans. However, it did not mean that the Iranian government would ignore defamation and disrespect by Afghan protestors. Mousavi also added that they would cooperate with the Afghan officials to investigate the death of refugees in the burning car.<sup>98</sup>

More violations down the line would mean more protests and this in turn can do more harm to Afghanistan and Iran's relations, and could even lead to forced closure of the Iranian embassy and consulate in Afghanistan. The protests taking place in many other countries by Afghans would also tarnish Iran's relations with the respective countries. Therefore, such a possibility will go far behind harming the domestic sovereignty of Iran, as it will restrict its foreign policy as well.

Peeling back the cover of the Iranian regime's sidelining outlook on the Afghan refugees, its sovereignty-leaning approach to Afghan migrations in general, and the impact of such politics on Iran's state sovereignty, one can easily recommend that Iran shall go back to guaranteeing the identified human rights for Afghan refugees, as the first phase of refugee reception obviously shows that guaranteeing such rights successfully wards off any external intervention and safeguards the state sovereignty.

#### IV. Conclusion

Refugee-hosting countries have long presumed that acquiescing to an international system of refugee-rights protection would leave their state sovereignty at stake. Nevertheless, this Article has utilized the case study of Afghan refugees in Iran to put forth an opposite view. This Article has offered an outlook of historically divergent policies of Iran with regard to Afghan refugees. It argues that Iran's divergence from its religious 'mission' of protecting the Afghan refugees, and the development of its current anti-foreigner perspective towards Afghan migrations in general, have resulted in the Afghan refugees being treated with discrimination and xenophobia by the Iranian government. Under the shadow of discrimination, different basic rights of Afghan refugees have been violated in Iran. The Article has reviewed the violation of these rights under a general heading: the right to non-discrimination.

Furthermore, it has been depicted how Iran's violation of Afghan refugees' rights has bred negative implications for its national sovereignty. The violations have urged the international community and external players to denounce Iran's politics towards Afghan refugees and warn of possible humanitarian interventions. Building on Iran's experience, the

<sup>97</sup> The National Editorial, 'Iran Must Understand That Afghan Lives Matter' (*The National Editorial*) <<https://www.thenational.ae/opinion/editorial/iran-must-understand-that-afghan-lives-matter-1.1034977>> accessed 5 August 2020.

<sup>98</sup> Tolo News, 'Iran Warns Afghan Envoy Over "Intolerable" Protests in Kabul' (*Tolo News*, 6 June 2020) <<https://tolonews.com/afghanistan/iran-warns-afghan-envoy-over-intolerable-protests-kabul>> accessed 4 April 2020. **Error! Hyperlink reference not valid.**

Article has aspired to bring to debate challenging viewpoints against the dominant perspective that protecting the legal rights of refugees strikes at a host country's sovereignty. By narrating cases of human rights violation against Afghan refugees in Iran and the implications of these cases on Iran's sovereignty, the Article has tried to prove the opposite. In doing so, it aims to offer an alteration to the prevailing understanding of 'human rights-state sovereignty' dynamics by the refugee-hosting countries and the relevant scholarship.

\*

[www.grojiil.org](http://www.grojiil.org)