

**A Look at the Legal Status of Afghan
Asylum-seekers, Refugees and Migrants
in Iran No. 5**



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ORGANIZATION FOR DEFENDING VICTIMS OF VIOLENCE

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Foreword

The Organization for Defending Victims of Violence (ODVV) is a non-governmental, non-political, and non-profit organization in special consultative status to the Economic and Social Council of the United Nations (ECOSOC) and was established in 1988 in Tehran. Due to its membership in a few international coalitions and networks and in line with its main mission, this organization has always strived to include all groups of society in its working agenda, without discrimination and away from political environments. Therefore, it has offered support to all such groups, including Afghan asylum seekers, refugees, and immigrants. To achieve this goal, the organization has conducted various projects over the past years, both independently and within the framework of numerous bilateral and trilateral agreements, to support such groups.

For this end, and to shed lighter about these groups, the ODVV is planning an expert study of conditions that govern Afghan asylum seekers, refugees, and immigrants in Iran. The main goal is to come up with a complete analysis of their situation to provide such groups with better and more effective support.

In the first issue of this analytical booklet, the general conditions of Afghan refugees and migrants in Iran and their living conditions are discussed and reviewed; in the second to forth issues of this bulletin, the education, health and livelihood situations of these groups were reviewed

and, in this edition the legal status of Afghan asylum seekers, refugees, and immigrants in Iran was reviewed.

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Introduction

The presence of Afghans in Iran has had a long history and this presence has also had numerous challenges with it. Aside from the reasons for Afghans' influx to Iran, which will be reviewed in the next issue of this bulletin, the presence of these people legally as refugees and also illegally, especially following the reappearance of the Taliban in Afghanistan, has brought along with-it various issues, particularly legal issues for them and also subsequently for the host community.

According to the latest official figures until December 2022, it is estimated there are 3.6 million Afghans living in Iran, 780,000 of which are registered Afghan refugees holding Amayesh Cards and at least 2,600,000 Afghans that have census papers. This is while it is estimated that a notable number of Afghans in Iran have not participated in any census or head accountings. The Afghan refugee population mostly live in urban or semi-urban regions in various provinces of the country and only 4 percent of them live in refugee settlements. The presence of this number of Afghans in Iran has had various repercussions for them and also the host community, particularly in legal matters. Therefore, in this research attempts to discuss and review the legal and protection aspects of Afghans in Iran.



1- Legal issues of Afghan nationals residing in Iran

Refugee status is one of the rare instances of human rights which in view of Iran always being involved with for years, has been defined in both within international documents and within the country's domestic laws and regulations, and deals with its various aspects. Thus, understanding and recognition of these laws is the fundamentally the work with refugees. Therefore, for the legal issues related to foreign nationals (asylum-seekers, refugees, and migrants) and also their rights and responsibilities to be reviewed more accurately, is the starting point of the definition of these nationals from the accepted international conventions. The first definition of refugee is, as has been mentioned in the definitions section of this research, is with regards to the Convention

Relating to the Status of Refugees (1951), which can without a doubt this convention can be deemed as the main source of the rights of refugees within international law. The Convention Relating to the Status of Refugees (28 July 1951) consists of a preamble and 46 articles and one attachment, one addendum and one protocol (31 January 1967) which consists of one preamble and 11 articles conditional to the below instances was adopted on 15 June 1976 by the Iranian National Assembly headed by speaker Abollah Riazi.

1 – All cases which according to Refugee Convention includes the best routine treatment of the nationals of a foreign government, the Iranian government reserves the right to not allow the enjoyment of the nationals of states with which it has signed regional agreements, residency and customs, economic and political agreements with.

2 – The Iranian Government solely deems the regulations of articles 17, 23, 24 and 26 of the Convention as recommendations only.

The 1951 Convention which had been adopted by the conference of representatives according to UN General Assembly Resolution 729. (Website of the Islamic Parliament Research Center)

The principles and commitments of the Refugees' Convention are as follows:

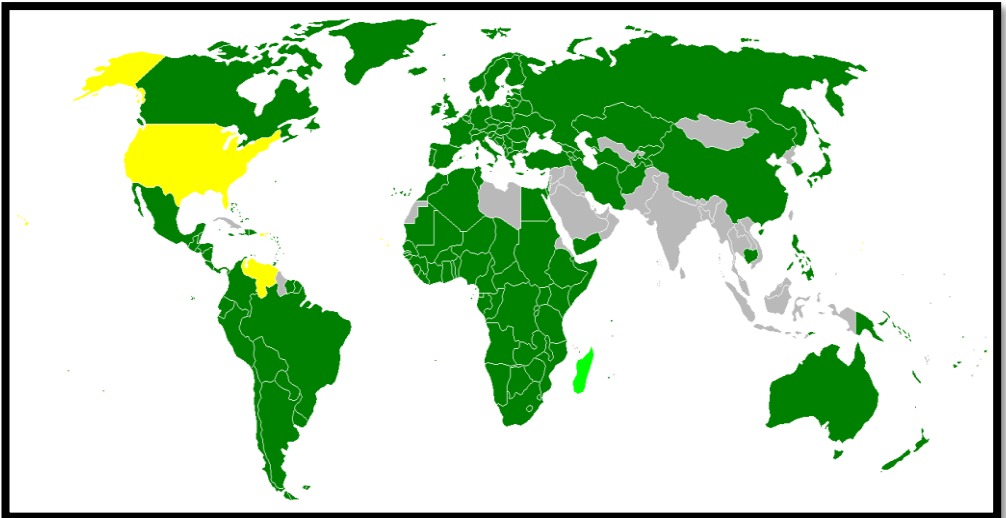
- Equality between individuals and without discrimination;

- Freedom of religion and belief;
- Employment with wages;
- Rations and shares;
- Freedom of movement; and
- Education.

In view of the extension of the migrant and refugee problem, since the 1951 Convention from the timeline aspects was limited to events that had taken place in Europe prior to 1 January 1951, countries started looking for solutions to this problem. Thus, on 16 December 1966, the UN General Assembly adopted the Additional Protocol in 14 articles. (Semnan Province BAFIA website)





With the joining of States to the 1951 Convention and its 1967 Additional Protocol, they agree that UNHCR will assist in carrying out their duties and with the supervision of the UNHCR they will cooperate in the implementation of the contents of refugees' related conventions, apply the contents of the Convention regarding refugees and asylum-seekers and individuals included in the Convention and its Additional Protocol.

Diagram of Refugees' Convention and its Additional



Protocol Member States

Source: Wikipedia, Convention Relating to the Status of Refugees

-  Member States of the 1951 Convention
-  Member States of the 1967 Protocol
-  Member States of the Both 1951 Convention and its 1967 Protocol
-  Non-member States

In Iran also in view of the country always being involved with foreign migrants, for the first time in 1963 regulations regarding refugees with the definition of refugee being an individual who due to political, religious, or racial, and or membership in a particular social group, is in fear of persecution or his or her life and or family members under his or her support, and seeks asylum in Iran, was ratified. As stated above, in 1976 Iran also joined the Convention Relating to the Status of Refugees (1951). Before the Islamic revolution also the Convention Relating to the Status of Refugees (1951) and its Additional Protocol (1967) following the ratification of the Senate's single article on 7 January 1976 the National Assembly adopted and joined the Convention. The Islamic Republic of Iran's Constitution in article 155 states that: "The government of the Islamic Republic of Iran may grant political asylum to those who seek it unless they are regarded as traitors and saboteurs according to the laws of Iran." Furthermore, on 15 January 1964 the Cabinet adopted on the recommendation of the then Interior Minister, in which while accepting administrative regulations for refugees, some personal, employment and services rights for them have been considered. Also, until 2001, when the regulations regarding article 180 of the Third Economic, Social and Cultural Development Programme was approved by the government, the 1964 regulations and the 1951 Convention were deemed as the main collective of laws relating to refugees in the country. The 2001 legislation, defines and explains various groups of foreign nationals in the country. In fact, over time and

in view of the needs of foreign nationals and observation of public order, laws were adopted in which although specifically the word refugee was not used, but the term alien persons was used, which through the first way includes refugees. For example, in Iran for the possession of immovable property there are special rules for which the guidelines for the acquisition of alien persons (1949) can be referenced. Although in these guidelines the term refugee has not been used but the term alien persons includes migrants, the displaced and all refugees living in Iran. Therefore, refugees' possession of immovable property like other aliens includes in this and other similar laws. On this basis according to article 5 of the Iranian Civil Code, alien nationals can enjoy laws regarding movable property ownership, unless instances where the government has not prohibited. But according to article 1 of the guidelines on the possession of immovable property, the ownership of this group of property belongs only to who have permanent residency permits in Iran. For alien nationals there are limits for possession, example: these individuals do not have the right to possess lands (landmines) and possession of residential property is only permitted under particular circumstances such as official permission by the Iranian government. These individuals cannot even own mobile phone SIM-cards in their name. According to this law because many of Afghan nationals in Iran have temporary residency permits (Amayesh card – residency passport), they do not have right of ownership of immovable property and only in special circumstances

and with the permission of the government they can otherwise.

In conclusion it can be said that alien persons in Iran such as Afghans for the ownership/possession of movable property (such as motor vehicles, home goods and appliances, and such) are not faced with any particular restrictions and can according to article 5 of the Civil Code enjoy rights related to movable property ownership. Although the taking out of these properties from Iran are under the jurisdiction of laws regarding taxes, excise, cultural heritage and sometimes laws and restrictions relating to national security, but the main issue of Afghans in Iran which has created a lot of legal problems is the situation of immovable property such as land, residential and business properties. In this regard the law has set restrictions for alien nationals. The reason for the ownership of immovable property is the for the preservation of the independence and territorial integrity of Iran. There is a law in Iran for the immovable properties of alien nationals according to which all alien nationals are denied ownership of agricultural lands and can only own residential properties, and that in itself in accordance with particular conditions and circumstances such as the official permission of the Iranian government. As stated above, this law dates back to 1949 and following numerous amendments of ultimately its executive guidelines in 1995 new guidelines were set. Article 1 clearly states the possession of unmovable property by nonresident alien nationals in Iran, that foreign nationals

that do not have permanent residency visas come to Iran in orderly seasonal trips for recreation and tourism on consecutive years, whenever they wish to purchase a property for personal residence, they must in a request letter which contains the details which will be stated later in this report, and relevant documents submit to one of the political or diplomatic representatives of Iran abroad and or the province center of the location of the property alongside related documents to the Ministry of Foreign Affairs. In this law and executive guidelines conditions have been set for possession of property by alien nationals which can result in the Ministry's approval or rejection and also the location of the property must not be where possession of property is forbidden for alien nationals.

The required documents for alien nationals for possession of property which must be submitted to the Foreign Ministry or governorship include copy of the ownership deeds, the address of the property and copy of the applicant's passport, all of which will be reviewed by the Foreign Ministry and following receiving the opinion of relevant authorities such as the Interior and Information Ministries the subject of the possession by alien national will be submitted to the Cabinet of Ministers for final decision. Overall, in view of the particular and complex conditions for possession of property by alien nationals who ultimately need the decision of the Cabinet of Ministers, it can be said that ownership of unmovable property by alien nationals is almost impossible and or very difficult (*Cheganeh* website 18 October 2018).

The third discussion is from Chapter 5 of the Labour Act of Iran (1980) which deals with the employment of alien nationals and allows refugees to except for government jobs examples of which are mentioned in article 982 of the Civil Code and a number of other jobs which according to specific laws are not allowed, and the only prerequisite for alien nationals employment is acquiring work permits from the Employment and Social Affairs Ministry (Fariborzi, 2918: 1)

1-1 Mixed marriages

Currently one of the challenges that exist for alien nationals in Iran is mixed marriages or transnational marriages, marriage of Iranians to alien nationals. In other words, transnational marriage is a marriage where the couple have different nationalities. In view of this issue, article 1060 of the Civil Code states that in the event of no obstacles in the marriage, meaning observation of all conditions of the truth of the marriage, the marriage of an Iranian woman to an alien national is conditional to the permission of the government. The legislator's reason for creating restrictions on marrying alien nationals must be searched in the political repercussions of these types of marriages. This intention of the government is also evident in article 1061 of the Civil Code, which states, "The Government can make the marriage of certain Government servants and officials and students supported by the Government with a female foreign national

dependent upon special permission”. The reason for this is to immunize the political and security apparatus from infiltration and control of foreigners. Currently one of the problems in the marriage of alien nationals with Iranian women is the situation of their children, which will be discussed below. With a study of laws in this particular case it can be understood that children’s status was unclear at least till the age of eighteen. Regarding the facilitation of Iranian citizenship for children born to Iranian women married to alien men, article 976 of the Civil Code, ignores the right of Iranian women for granting their Iranian citizenship to their children. This resulted in legislators to think of amending the law. Although the subject has had its ups and downs over the past decades, which can be seen in the process of granting birth certificates over the last four decades, that these processes at the start of the 1980s were very simple and gradually over time in the 2000s these processes became more complex and impossible. In 2019 to resolve this problem the single Act called the “Amendment of Determination of Citizenship of Children born to Iranian Women Married to Alien Nationals” was adopted by the Islamic Parliament and in October the same year was approved by the Guardian Council and became enforceable. But at the same time according to latest figures published by director general of BAFIA¹ until the end of October 2021, out of 90thousand applicants only

¹ Bureau for Aliens and Foreign Immigrants Affairs

5000 succeeded in getting birth certificates (Islamic Parliament Research Centre website).

According to the 2016 census approximately 70 percent of migrants who live in Iran were born in the country. According to the Welfare Ministry's census the main nationalities are Afghans and Iraqis. 60 percent Afghans, 12 percent Iraqi and 28 percent other countries. Figures show that Iranian women marry non-Iranian men because of poverty is a wrong view. 17 percent of women have one child, 23 percent have two children, 20 percent have 3 children, 14 percent have 4 children and 24 percent have more than four children. Due to not having birth certificates most of these children cannot attend school. 54 percent of children have hospital birth documents, 46 percent were either born at home or do not have birth documents, which indicates some kind of harm and problem.

According to Mohammad Meydari, the Employment, Cooperative and Social Welfare Ministry's Social Welfare Deputy, if the rights of these people is not realized, then their legal poverty will turn into financial poverty and can increase the number of impoverished people of the country. According to Rasoul Sadeghi Tehran University associate professor there is the concern that the children of Iranian mothers and Afghan fathers are more drawn towards their fathers and are not loyal to Iranian culture. But researches show that 70 percent of them see themselves as Iranians, 23 percent see themselves both as Iranians and Afghans and 7 percent do

not see themselves as Iranians nor Afghans (*Tabnak* website 25 October 2018).

1-2 The legal situation of the movement of Afghan nationals in Iran

On 7 January 1976 the Assembly Parliament of Iran ratified the Convention Relating to the Status of Refugees (28 January 1951) with its preamble and 46 articles and one attachment as well as the Additional Protocol (31 January 1967) with its preamble and 11 articles conditional to the following:

1 – All instances where according to the Convention include the best common treatment of the citizens of a foreign government, the Iranian government reserves its right to not allow refugees the most common treatment that it gives to citizens of countries with which the government has regional, residency, excise, economic and political agreements with.

2 – The Iranian government deems the regulations of articles 17, 23, 24 and 26 solely as recommendations (Islamic Parliament Research Center website).

Article 26 which the Iranian government has reservations is regarding refugees' freedom of movement, which states:

“Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence

and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.”

With the use of this reservation, the Iranian government has framed the movement of refugees, and according to that, the holders of Amayesh cards, in other words those that UNHCR and BAFIA deem as refugees, are housed in urban areas, and can also move freely within the province where they have been registered. If a refugee wishes to travel from a province where his card has defined/issued to other provinces, he/she must go to the BAFIA office in the province where he resides and receive travel papers/permit with a nominal fee. This paper is usually valid for ten days and when going to the destination province the refugee must before returning get the confirmation of the province's BAFIA. This issue has turned into one of the main challenges of refugees, particularly in view of their dispersion in various provinces due to marriage, relatives and families and or because of medical visits. Thus, at time refugees travel between provinces without getting the travel permits which puts them in risk of getting arrested. Usually, they get warnings for two unauthorized travels, but before that they might be in risk of deportation. Furthermore, this process creates a lot of restrictions for particularly those who have jobs in provinces adjoining the province they reside in.

1-3 The legal aspects of Afghan nationals residing in Iran

Since from the beginning of the arrival of groups of Afghans into Iran in various periods of time, including during the Taliban's increased pressure against the Shia of the country, no clear plan had been drawn up for housing them; therefore, these refugees settled across Iran, especially in religious cities such as Mashhad and Qom as well as bordering provinces such as Sistan and Baluchistan. But over time and various difficulties and problems, the Iranian authorities had to think of organizing their stay in the country. One of the main problems considered in the refugees' Amayesh plan has also been where the refugees stay, which does not follow any clear mechanism. In this Amayesh plan, in whichever province that the refugees have participated in the census, their residence has been registered in the same province, and their movement as stated a little earlier is in accordance with particular laws and regulations.

But as stated in several parts of this Bulletin, there are mainly two groups of Afghan nationals in Iran. This has resulted in specific laws and regulations be adopted for each group. For example, what was mentioned earlier is with regards to registered refugees, and the laws regarding Afghan migrants in Iran are different. Here a part of the differences will be highlighted. According to laws and regulations regarding alien nationals, refugees must annually or at times every two years take part in the Amayesh plan and renew their Amayesh cards. Also, they

must pay fees that usually in various years are different. Most of these fees include the cost of issuing of Amayesh card, work permit card (for men over 18 and under 60), and municipality tax.

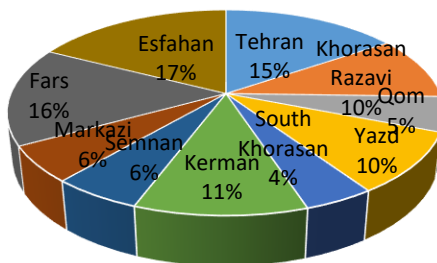
Although by identifying vulnerable groups the government has exempted the full or partial cost of the fees, but in view of rising prices compared to previous years, and also the economic problems of refugees, also each year some groups might due to financial problems not be able to receive their cards. This is while individuals who are passport holders do not have the abovementioned restrictions, but they still have to renew their visas. Also, another difference between Afghan refugees and migrants in Iran is driving permits. In general refugees cannot apply for driver's licenses (apart from special circumstances that have been approved), but migrants can drive in Iran if they have international driver's licenses like other alien nationals in Iran within a specific legal framework. For a period, this issue resulted in the change of refugee status of a notable number of refugees. To benefit from the right to drive, these Afghan refugees cancelled their Amayesh cards and with the facilitation that the government had provided for issuing visas for them, they got passports and visas and thus changed their status from being refugees. In fact, this was one of the programmes which was assumed could be used to encourage refugees to return to Afghanistan. But after a while many of the refugees who had changed their residency status regretted their decision, while there were no opportunities for them to

renew their visas in a satisfactory way. Therefore, more people joined the illegals group. Those that have lost their refugee status also were left out of the services provided by the UN Refugee Agency (UNHCR).

Towards controlling the residency situation of refugees and reduction in their dispersion, in 2010 the Interior Ministry launched a plan according to which some towns and cities were deemed forbidden for Afghans (no-go-areas to live in or travel in (ISNA, 2010). According to then deputy Interior Minister “restricting or opening for the presence of Afghans in provinces is a decision according to which parameters such as livelihood, employment, inflation and unemployment etc. are adopted by provincial directors”. This plan caused a lot of problems for refugees some of whom had been residing in forbidden provinces for more than two decades. For example, with the forbidding of Mazandaran province in August 2014, more than 30thousand Afghans were evicted from the province. Mr. Shafiee, then director general of Mazandaran BAFIA in this regard said: “in this plan all Afghan nationals who got married legally will be transferred to Sistan and Baluchistan, Southern Khorasan and Semnan provinces, otherwise they will be returned to their country.” This created protests and also the protests of those who were against Afghans being relocated to their provinces. For example, according to a *Shargh* Newspaper report following the decision of Mazandaran provincial officials to evict Afghan migrants stated that a number of Iranian filmmakers and actors that included

Dariush Mehrjooee, Mani Haghighi, Leila Hatami, Niki Karimi and other artists in a support action and for sympathy with Afghan migrants, travelled to Mazandaran province. According to this newspaper the aim of these artists was to be among Afghan migrants living in

Diagram of Refugee Population Distribution from Sistan and Baluchistan Province to other Provinces



Source: BAFIA, 2009

Afghanistan and screening of movies in the province's towns and protest against the decision of Mazandaran authorities.

Furthermore, these movements created livelihood and employment, education and other problems for Afghan refugees, because they were forced to make a new start in new towns to find jobs and also create conditions for housing and also find schools to register their children in. Following the announcement of the prohibition on the

residency of Afghan nationals in some provinces and towns, these people moved to other provinces. In this regard, the most Afghan nationals (refugees) who moved were related to Sistan and Baluchistan province, which is explained demographically below.

2- Conclusion

Afghanistan is a country that for years has been grappling with conflict due to ethnic problems and or foreign interferences, and continues to suffer from security and livelihood problems and does not have the potential to draw millions of Afghan refugees from other countries such as Iran and Pakistan. Furthermore, the from the beginning of the arrival of Afghan nationals into the country, the Iranian government looks at this phenomenon as something temporary. Therefore, Iran insists on their return to their country more than others. This has resulted in existing laws not to be properly implemented and newly set laws are more from a stance and temporary. Therefore, the situation has prolonged not only for Afghan nationals but also has created problems for the host country particularly in the law environment and has brought along negative repercussions too. Thus, there is a need for careful review of rights and legal issues, so that the laws are adopted in a way that they are both applicable and also reduce the problems of this group of people and reduce the dodging of the law mentality.

One of these laws must be for organizing the presence of all alien nationals in the country, ease the benefit of refugees and asylum-seekers eligible for asylum to enjoy refugee rights and swift determination of the status of individuals included in the country's census.

Furthermore, de-securitization, particularly with regards to Afghan refugees and asylum-seekers in Iran is very important. Due to a lot of issues tied to security in this regard, the information cycle moves at a slow pace, donor countries and international organizations do not have access to detailed information or databases on refugees therefore do not show much inclination to invest in the field. If Iran takes the migrant and refugee issues out of security matter and into a social matter and ultimately human matter, ultimately the submission of raw data and needs in the migrants and refugees' areas to international organizations will take place more speedily and as a result more funds can be acquired.

3- Resources and References

- Fariborzi, Mohsen (2018), **Right to being a Refugee**, Tehran University.
- Mohammadi, Yadollah (2021), **Migration of Afghans to Iran and its Impact on National Security (1978-2021)** Bartarandishan Publishing.
- BAFIA website.
- UN Refugee Agency (UNHCR) website in Iran.
- Islamic Parliament Research Center (IPRC) website.
- Tabnak website, 25 October 2018.
- Iranian Students' News Agency (ISNA) website, 2010.
- Cheganeh website, 18 October 2018.