

## Governance of Migration by Decree: Legal Life of Afghan Migrants in Iran

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### Abstract

This working paper provides an overview of governance of Afghan migration in Iran. It argues that governance of Afghan migration is conducted mainly through rule by decree. Such decrees are not preceded by a consultative process and are declared ad hoc. As a result, there is a lack of legal certainty and migrants cannot really anticipate which protection they will get and until when. To make this argument, sources of laws regulating Afghans' legal and formal life in Iran, including their rights and entitlements based on their documentation status, and impact of these laws in terms of certainty and predictability are studied. This working paper is based on desk research as well as qualitative interviews, the latter being the main source for untangling the governance regime due to scarcity of written sources of law.

**Keywords** *Afghan migrants; Governance of migration; Iran; Rule of law; Rule by decree.*

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## 1. Introduction

Long-lasting conflicts, shrinking agricultural opportunities resulting from climate change, and deep-rooted corruption in the bureaucratic system are some of the drivers that have been pushing Afghans to opt for mobility as a survival mechanism in the past decades. Neighbouring Iran is the country of destination -or transit- for large parts of Afghans on the move. Despite various waves and patterns of migration, the overall number of Afghans in Iran has remained almost the same, with some fluctuations following economic and political changes, such as the resurgence of the Taliban in 2021.<sup>1</sup> Based on the latest data, around 1.7 million documented Afghans live in Iran.<sup>2</sup> Regarding the number of undocumented Afghans, there is less certainty. While UNHCR has recorded 2.2 million undocumented Afghans,<sup>3</sup> the government of Iran has claimed the number to be more than 3 million.<sup>4</sup> Geographical proximity and the Shia nature of the governing regime has turned Iran into an attractive destination, particularly for the Hazara. Some scholars also refer to the historic mobility of Hazara Afghans to Iran as an added reason.<sup>5</sup> Whatever the reason, Afghans' presence in Iran and their routine mobility between the two countries is an unneglectable reality.

This article seeks to unravel governance of Afghan migration in Iran. It will contribute to the developing literature on governance of migration in countries with weak adherence to the rule of law in the matter of migration<sup>6</sup> and significant population movements.<sup>7</sup> It is critical to study governance of migration in a political regime with weak adherence to the rule of law<sup>8</sup> such as Iran, particularly based on the living experiences of those dealing with it on a daily basis. This importance partly stems from scarcity of written sources of law on the subject, as well as limited scholarly research that capture all aspects of governance of migration in Iran, in a detailed manner. In Iran, migrants experience widespread informality and unpredictability. Their experiences with legal adaptation and "illegality" are different from those of migrants living in countries with a stable and strong rule of law. In the less stable context of Iran, those who are affected by the law, i.e., Afghan migrants and their Iranian family members, and those who have a level of exposure to it, such as lawyers, NGO, and aid workers, are crucial sources for well-rounded understanding of the governance of migration.

To date, many studies have explored governance of migration in western migrant/refugee receiving countries or other host countries<sup>9</sup> which theoretically adhere to – either completely or partially – the international migration governance regime.<sup>10</sup> As mentioned by Urinboyev, 'we cannot assume that immigrant integration and adaptation frameworks constructed in Western contexts apply within the context of hybrid

1 Jussi S. Jauhiainen and others, 'Afghans in Iran: Migration Patterns and Aspirations' (2020), University of Turku, available at: <[https://research.utu.fi/converis/portal/detail/Publication/44156674?auxfun=&lang=en\\_GB](https://research.utu.fi/converis/portal/detail/Publication/44156674?auxfun=&lang=en_GB)>, accessed 25 April 2023;

Mohammad Jalal Abbasi-Shavazi and others, 'Marriage and family formation of the second-generation Afghans in Iran: Insights from a qualitative study' (2012), 46 *International Migration Review* 826, 830-831.

2 UNHCR, 'Operational Data Portal: Islamic Republic of Iran' (2022), <<https://data.unhcr.org/en/country/irn>>, accessed 25 April 2023.

3 Ibid.

4 IRIB, 'Latest Data on Afghans' Census: Interview with the Iranian Minister of Interior's Deputy for Security and Law Enforcement Affairs, Majid Mirahmadi' (2022), <<https://www.iribnews.ir/fa/news/3487380/>>, accessed 25 April 2023.

5 Mohammad Jalal Abbasi-Shavazi and others, 'RETURN TO AFGHANISTAN? A Study of Afghans Living in Tehran' (2005), Afghanistan Research and Evaluation Unit, available at: <<https://reliefweb.int/report/afghanistan/return-afghanistan-study-afghans-living-tehran>>, accessed 23 May 2023.

6 It should be noted that the argument in this paper only applies to the governance of migration in Iran and does not cover other aspects of rule of law in this country.

7 E.g., Rustamjon Urinboyev, *Migration and Hybrid Political Regimes: Navigating the Legal Landscape in Russia* (2020), University of California Press;

Sherzod Eraliev, "The Extraordinary Lives of Uzbeks in Russia: Understanding Migrant Legal Adaptation" (2021), *Central Asian Affairs*, 8, 297-311;

Firat Genç and others, "The Multilayered Migration Regime in Turkey: Contested Regionalization, Deceleration and Legal Precarization" (2019), *Journal of Borderlands Studies*, 34:4, 498-508;

Agnieszka Kubal, "Spiral effect of the law: migrants' experiences of the state law in Russia – a comparative perspective" (2016), *International Journal of Law in Context*, 12:4, 453-468.

8 The meaning of rule of law for the purpose of this paper will be elaborated.

9 E.g., Blanca Garcés-Masareñas, Rinus Penninx, *Integration Processes and Policies in Europe: Contexts, Levels and Actors* (2016), Springer Open.

Gordon H. Hanson, "The Governance of Migration Policy" (2010), *Journal of Human Development and Capabilities*, 11:2, 185-207.

Tiziana Caponio and others, *The Routledge Handbook of the Governance of Migration and Diversity in Cities* (2019), Routledge.

S. McMahon, N. Sigona, "Death and Migration: Migrant Journeys and the Governance of Migration During Europe's Migration Crisis" (2021), *The International Migration Review*, 55:2, 605-628.

Thomas Lacroix, Sarah Spencer, "City Networks and the Multi-level Governance of Migration" (2022), *Global Networks (Oxford)*, 22:3, 349-362.

10 It should be noted that even in these countries, in practice, governance of migration might not be fully in line with the international migration and refugee law regime.

political regimes, where migrants do not experience the “rule-of-law” and functional institutions but must navigate around the corrupt legal system and produce new forms of informal governance and legal orders.<sup>11</sup> This paper will show that there is a clear absence of written and predictable law in several domains related to Afghans’ life in Iran. Instead, governance of migration is mostly based on decrees or on rules without an identifiable source, which ultimately defies impartiality and opens the door for particularistic and arbitrary exercise of power.<sup>12</sup> In the case of Afghan migrants in Iran, this study is even more important, since Afghans’ presence in Iran has been ongoing through decades, despite the governance regime which complicates their life. In addition, the recent resurgence of the Taliban has led to new waves of migration from Afghanistan to Iran.

The paper begins with a general overview of rule of law as the larger theoretical framework, narrowing down the discussion of rule by decree. The aim is to position governance of migration in Iran in the overarching rule of law literature. It will continue with an overview of Afghans’ legal life in Iran in practice and provides an interpretation of the governance of Afghan migration in Iran, anchoring “rule by decree” as a defining factor.

The paper is based on desk research, and 10 months of field research including 24 (13 male and 11 female) expert, biographical and semi-structured interviews with 16 Afghans and 8 Iranians in multiple cities of Iran and EU countries. Among the Afghan interviewees, 13 were documented and 3 did not have valid documentation. The interviews were conducted in-person and online. All personal data has been pseudonymized. The paper adheres to the EU General Data Protection Regulation (GDPR) of 2018 and all data are managed based on FAIR principles.

In addition, it should be noted that the following information was partly gathered during my work as a professional in the humanitarian field. While some parts have clear references, some lack an accessible/citable source. Changes in the migration governance regime of Iran are announced by government officials in an erratic manner. Those concerned with migration and migrant populations record the changes and transfer it among each other as common knowledge. This further testifies to the fact that governance of migration in Iran is by decree rather than law.

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11 Rustomjon Urinboev, *Migration and Hybrid Political Regimes: Navigating the Legal Landscape in Russia* (2020), University of California Press, 6.

12 Duncan Ivison, “Decolonizing the rule of law: Mabos’ case and postcolonial constitutionalism” (1997), *Oxford Journal of Legal Studies*, 17:2, 262.

## 2. Rule of Law: The Theoretical Framework

While it appears to be straightforward, the vast literature on the rule of law is evidence that the 'rule of law is an exceedingly elusive notion'.<sup>13</sup> A challenge in defining this notion has been that rule of law as a concept is seldom used by politicians, bureaucrats, and scholars alike. One might even say that a "street" definition of rule of law has been developed in parallel with scholarly definitions; while the modern discourse of rule of law was shaped along with liberal democracies,<sup>14</sup> it is a common reference for illiberal democracies as well.<sup>15</sup> Brooker goes even further and claims that the rule of law is 'perhaps the most distinctive governance implication of dictatorship's twenty-first-century format'.<sup>16</sup> The scholarly definitions of the rule of law cannot turn a blind eye to these political definitions. As Waldron mentions, '[while] common usage of [...] "Rule of Law" does not necessarily reflect careful philosophical analysis [...], there must be some connection [between the two]'.<sup>17</sup> Therefore, the way in which the rule of law is defined has a close affinity with the political and legal context of the society, both temporal and geographical. This characteristic leads to a spectrum of definitions and requires a form of categorization.

Perhaps one of the most common categorizations of the rule of law is formal versus substantive or thin versus thick definitions.<sup>18</sup> Formal approaches focus on the proper sources and form of legality, while substantive theories also include requirements about the content of the law (usually that it must comport with justice or moral principle).<sup>19</sup> In this categorization, formal rule of law does not pass judgement on the content of the law; a definition often used in illiberal democracies where electoral authoritarianism is applied.<sup>20</sup> Substantive categories, on the other hand, go beyond necessary legal formalities, focusing on the content of law which should be in line with individual rights.<sup>21</sup>

Having this background in mind, and regardless of what the rule of law means in different societies, there still is a need to, at least, be able to evaluate any given rule of law system 'to instantiate a society in which government officials and citizens are bound by and abide by the law'.<sup>22</sup> Bedner provides such an evaluation system by offering a conceptual framework in which multiple indicators have been considered for defining and evaluating the rule of law in any given context. He mentions that the rule of law ultimately has two functions: to protect individuals against the power of the state, and to protect citizens' property and lives from infringements by fellow citizens.<sup>23</sup> He proceeds with enumerating procedural and substantive elements – derived from thin and thick definitions of rule of law – as well as control mechanisms which are necessary for ensuring the mentioned functions. Among them, the most basic element and the one most related to the purpose of this paper is "rule by law" which is concerned with the mode of governance. The procedural element of rule by law is not a sufficient control mechanism to ensure the mentioned functions: protecting citizens against abuses of state power and protecting their property and lives from infringements by others. However, it offers more predictability and protection than rule by decree, which is argued here to be the main mode of governance of migration in Iran.

13 Brian Tamanaha, "On the Rule of Law: History, Politics, Theories" (2004), Cambridge University Press, 3.

14 Randall Peerenboom, "Asian Discourses of Rule of Law: Theories and implementation of rule of law in twelve Asian countries, France and the U.S." (2004), Routledge, 4.

15 See: András Sajó, *Ruling by Cheating* (2007), Cambridge University Press.

16 Paul Brooker, "Non-Democratic Regimes" (2014), 3rd ed., Palgrave Macmillan, 246.

17 Jeremy Waldron, "Is the Rule of Law an Essentially Contested Concept (In Florida)?" (2002), *Law and Philosophy*, 21:2, 138.

18 Peerenboom, (n 12), 2.

19 Tamanaha, (n 11), 92.

20 See: András Sajó, "The Rule of Law as Legal Despotism: Concerned Remarks on the Use of "Rule of Law" in Illiberal Democracies" (2019), *Hague Journal on the Rule of Law*, 11: 2-3, 371-376.

21 Ibid, 102.

22 Brian Tamanaha, "The History and Elements of Rule of Law" (2012), *Singapore Journal of Legal Studies*, December 2012, 247.

23 Adrian Bedner, "An Elementary Approach to the Rule of Law" (2010), *Hague Journal on the Rule of Law*, 2:1, 51-52.

### 3. Governance of Migration in Iran: Ruling by Decree

This paper argues that, in most aspects, migration in Iran is governed by decree rather than by law.<sup>24</sup> This statement does not mean that formal and written laws do not exist on the matter of migration, but that they are rarely implemented. In this framework, a decree, which is an arbitrary mode of governing that does not stem from Parliamentary authority, has, in practice, a higher power in the governance regime. Such decrees include those of the Supreme leader,<sup>25</sup> as well as administrative decisions taken by high-level bureaucrats such as ministers. Decrees are further complemented by certain rules which seem to have stemmed from nowhere but are implemented by low-level bureaucrats and private service providers.

Therefore, governance of migration in Iran includes three sets of rules: formal written laws, decrees, and what appears to be “rules from nowhere”. For ease of reference and considering their similar essence which will be discussed, the last two categories will be referred to as “ruling by decree” in this paper. The following sections provide an overview of the different formal laws, decrees, and ‘laws from nowhere’ which apply to different groups of Afghan migrants in Iran, with formal laws providing most and ‘rules from nowhere’ providing least legal certainty.

#### 3.1 Formal laws

There are several formal laws that are concerned with migration, the most notable example being nationality laws which impact children born from mixed marriages between Iranians and Afghans. On paper, Iranian nationality can be obtained through birth, marriage, and naturalization. Art. 976(2) of Iran’s Civil Code states that the primary system of nationality in Iran is *Jus Sanguinis*, applicable only to children born from Iranian fathers. The Civil Code has not recognized the same right for children born from Iranian mothers. The Iranian legislature later tried to amend this discriminatory regulation in separate legislations. In 2019, the Parliament ratified a bill named ‘Modification of the Nationality Law related to Children Born from Iranian Mothers and Foreign Fathers’. It provides that:

Children, who are born from marriages between Iranian women and foreign men, either before or after ratification of this law, can obtain Iranian nationality before reaching the age of 18, based on the mother’s request. In case the mother does not make such request before the age of 18, these children can make the request after they reach the age of 18. They will obtain the Iranian nationality providing that they pass a security background check (performed by the Ministry of Intelligence and Islamic Revolution’s Guardian Army).

Despite these positive changes, children born from mixed marriages with an Iranian mother still do not obtain Iranian nationality automatically.

One can also obtain Iranian nationality through marriage and naturalization. According to Art. 976(6) of Civil Code, foreign women who marry Iranian men receive Iranian nationality automatically. The same rule does not apply for foreign men who marry Iranian women. However, they can apply for Iranian nationality should they meet the following conditions, mentioned in Art. 979 of the Civil Code:

- Reaching the age of 18.
- Residing in Iran for five years.
- Performing obligatory military service or exemption from it.
- Lack of criminal record in any country.

Art. 980 of the Civil Code provides naturalization opportunity for those ‘who have rendered services or notable assistance to public interests in Iran, [...] or who have attained high intellectual distinctions or who have specialized in affairs of public interest’. It should be noted that these candidates should also meet the requirements of Art. 979.

<sup>24</sup> It should be noted that this argument only applies to governance of migration in Iran and does not cover other aspects of rule of law in this country.

<sup>25</sup> The Supreme Leader possesses the highest level of authority in Iran’s political regime. Although the Supreme Leader has not been explicitly determined as a source of law making in Iran, in practice, his decrees have been implemented as formal laws. These decrees are not written but announced publicly. For more information regarding the role of the Supreme Leader see: Mahjoob Zweiri, Aljohara AlObaidan, “The Second Succession in the Islamic Republic of Iran: Change or Continuity?” (2021), *Journal of Balkan and Near Eastern Studies*, 23:3, 473–489.

According to the above-mentioned rules, many Afghans can apply for Iranian nationality, including almost all Afghan migrants who have been legally living in Iran for more than three decades. In practice, however, after the Islamic Revolution, only one successful case of naturalization based on Art. 980 has been recorded in 1984.

Another case which recently attracted the public's attention was Najib Mayel Heravi.<sup>26</sup> In 2018, the government of Iran announced that a special 10-year residential visa will be issued for Mr. Heravi as a recognition of his invaluable contributions to Farsi language and Iran's literature. After obtaining the visa, Mr. Heravi realized that it will not allow him to freely travel abroad. Protesting his father's residence status, Mr. Heravi's son self-immolated in front of the Iranian Foreign Ministry office in Mashhad.<sup>27</sup> The Iranian government responded to this protest, declaring that Mr. Heravi will receive Iranian nationality and the process of his naturalization has already started.<sup>28</sup> However, his son has said that Mr. Heravi will not accept this naturalization as his full rights as a citizen will not be granted to him given the legal position in Iran<sup>29</sup> - details of which are not available. Since the law does not specify a difference between Iranians by birth and those who have been naturalized, the ground on which the government of Iran has offered nationality to Mr. Heravi remains unclear. The only certain point is that none of the provisions of the Civil Code can be the ground for this naturalization. Therefore, the case of 1984 remains the only case of naturalization after the revolution.

Therefore, from a legal point of view, Arts. 979 and 980 of the Civil Code are unsolved questions. They have not been abrogated, explicitly or implicitly. Nonetheless, the government does not show any willingness to apply these Articles to the Afghan population.

In addition to laws on nationality, two specific bodies of written law regulating the legal status of migrants in Iran are the Law on Entrance and Residence of Foreign Nationals in Iran (1931), and Executive Regulation about Refugees (1963), both of which were ratified before the Islamic Revolution of 1979. In addition, Iran has ratified the Convention Relating to the Status of Refugees (1951). While these laws have not been abrogated officially, they are practically null, meaning that the Government has not applied them to Afghans who entered Iran after 1979. It is important to note that the decision to not implement the mentioned laws has not been announced in an informal way by any government official either. The Bureau of Aliens and Foreign Immigrants Affairs (BAFIA), which is the main governmental body in charge of migrants' affairs, even mentions these laws in its official information sharing channels.<sup>30</sup> However, as depicted in the upcoming sections, these laws are not being implemented in practice.

### 3.2 Decrees

Decrees play an important role in governance of migration in Iran. For the purpose of this paper, this category includes decrees of the Supreme Leader and high-level ministry regulations and executive orders. Even though the latter is usually categorized as written law, the reason for considering it as a type of decree in this case lies in its everchanging and unpredictable nature. Regulations on Education Support Cards can show both types of decrees in practice and further clarify this categorization.

The Educational Support Card (ESC) was an initiative taken by the Iranian government<sup>31</sup> following a decree made by the Supreme Leader in 2015 declaring that no student shall remain out of school in Iran. Following this decree – which was in the form of a public announcement – the Ministry of Education issued a regulation allowing registration of undocumented Afghan students at public schools through ESCs. The Ministry of Education continues to issue these regulations on an annual basis. Therefore, each regulation is only valid for one year. What brings these regulations even closer to decrees is that their contents have been changing over the years. While originally all undocumented Afghans could apply for an ESC, the scope of

26 Mr. Heravi is a prominent Afghan linguist. Born in Herat, he has resided in Iran since 1971. He has been praised for his contributions to the Farsi language and Iran's culture and literature.

27 Iran Wire, 'Iran born Afghan migrant set himself on fire to protest against discrimination' (19 June 2020), <<https://iranwire.com/en/features/7191>>, accessed 23 May 2023.

28 Tehran Times, 'Afghan scholar Najib Mayel Heravi granted Iranian nationality' (19 June 2020), <<https://www.tehrantimes.com/news/448961/>>, accessed 23 May 2023.

29 Reporterly, 'Son unwilling to accept Iranian citizenship for Afghan scholar Najib Mayel Heravi' (2020), <[Son Unwilling to Accept Iranian Citizenship for Afghan Scholar Najib Mayel-Heravi - Reporterly](https://www.reporterly.com/son-unwilling-to-accept-iranian-citizenship-for-afghan-scholar-najib-mayel-heravi/)>, accessed 23 May 2023.

30 See: BAFIA Alborz, *Laws and Regulations*, at: <https://atba.alborz.ir/RContent/>

31 Modification of the Rules of Procedure regarding Foreign Nationals' Education, 2016.

undocumented Afghans who could receive this document became narrower each year. In 2019, it was announced that only those who meet the following criteria are eligible for an ESC:

- Undocumented Afghans who can prove that they have been residing in Iran for 2 years or more (by birth certificates, official affidavits, invalid documentations, etc.).
- Undocumented Afghans who obtained the card in the previous year, if they submit their child's end of the year report card (which is a proof of actual registration and attendance).
- Census-holders.<sup>32</sup>

It appears that the purpose was to prevent ESCs from becoming an incentive for migration from Afghanistan, although this rationale was never formally announced. These restrictions were lifted in 2021. According to the latest regulation issued by BAFIA, all irregular Afghan children can obtain ESC and register at school. The government has not announced the reason behind this change of policy either; some believe it to be the result of civil society's efforts.<sup>33</sup> This example shows that, even though this category of regulations stems from official authorities, i.e., the Supreme Leader or ministries, in practice, they do not possess certainty and predictability of formal written laws.

### 3.3 Rules from Nowhere

It is notable that much of the governance of migration in Iran is done through rules that cannot be traced back to any source: rule by bureaucracy as defined by Arendt; 'an anonymous entity that 'needs no justification'.<sup>34</sup> This characteristic opens the space for endless interpretations, to the extent that even private service providers may engage in governance, referring to an unknown decree from an overall unclear ruling power. For example, all Afghans with legal residence in Iran can own a SIM card. A few years ago, some mobile service providers refrained from selling SIM cards to Afghans.<sup>35</sup> In addition, many SIM cards owned by Afghans were blocked without the possibility of unblocking.<sup>36</sup> Service providers referred to a new governmental regulation communicated to them which prohibited them from selling SIM cards to or unblocking them for Afghans. The government refrained from making an official statement in this regard until an Afghan celebrity announced on her social media that her mother's SIM card was blocked and she was not able to unblock it. Her message had a wide reach; within a few days, the Minister of Communication announced that the problem had been solved. He mentioned that any service provider who refrains from selling to and activating SIM cards for Afghans is breaching the law.<sup>37</sup> He did not mention which law. It was never cleared whether such decree existed in the first place, or if the Minister would have personally engaged without the celebrity's involvement. Therefore, there is no guarantee that a similar situation will not happen in the future.

This arbitrary decision making is not limited to the private sector. In certain cases, even governmental entities which should follow formal decrees – the second category of rules – make arbitrary decisions. For example, despite the mentioned change in ESC regulations in 2021, posts on social media show that schools were not completely adhering to the law. Several requests for ESCs have been turned down by BAFIA.<sup>38</sup> However, the BAFIA Director General denied these reports and claimed that the process was on-

32 AfghanIRCA, 'Issuance of Educational Support Letter for Undocumented Afghans' (2019), <<http://www.afghanirca.com/newsln.php?id=72826>>, accessed 23 May 2023.

33 Tasnim, 'BAFIA returns to the Supreme Leader's original decree about irregular migrant's access to education' (2021), <https://www.tasnimnews.com/fa/news/1397/08/26/1877675>, accessed 23 May 2023.

34 Hannah Arendt, "The Origins of Totalitarianism" (2017), UK: Penguin Random House, 1st ed., 318.

35 Tasnim, 'Afghans Cannot Buy SIM Cards' (2019), <<https://www.tasnimnews.com/fa/news/1397/08/26/1877675>>, accessed 23 May 2023.

36 Kaveh Bayat, 'New Problem for Afghans in Iran: Blocked SIM Cards' (2019), <<https://iranwire.com/fa/features/30242>>, accessed 23 May 2023.

37 SHAFAGHNA, 'Minister of Communication on Limitations of Afghans in Using SIM Cards' (2020), <<https://fa.shafaqna.com/news/1044916/>>, accessed 23 May 2023.

38 This news was trended in July 2021 in Twitter, with the hashtag "Neighbouring Classmate" (#دیسامہ\_سالکمدہ). Some of the top Tweets are:

<<https://twitter.com/nafsemorde/status/1413926755396734976?s=21>>

<<https://twitter.com/abedinielham/status/1413319522082189313?s=21>>

<<https://twitter.com/vahabian1/status/1413431282143354881?s=21>>

<<https://twitter.com/mabbaszadegan/status/1413876611649310722?s=21>>



track based on the regulation.<sup>39</sup> Therefore, written formal rules play only a trivial role in the governance of migration. Indeed, data collected from Afghan migrants, aid workers and informants during this research also indicate Afghan migration is mostly governed by decrees and rules issued from nowhere.

### 3.4 The Rationale for Rule by Decree and Rules from Nowhere

There are various reasons why a state may prefer rule by decree. In the context of governance of migration in Iran, scholars, aid workers, Afghans, and Iranians each interpret decrees based on their own perspective. Some scholars believe that the government of Iran benefits from this unpredictable structure, as it allows the establishment of a central administration that is able to modify governance based on changes in context. For instance, keeping Afghans in a limbo provides Iran with political leverage vis-à-vis the EU, to be used in international negotiations.<sup>40</sup> Iran is the main transit route for Afghans towards the EU. By increasing push factors and opening borders, Iran can encourage more Afghans to move onward, which is undesirable for the EU. Although it is important to note that with the recent measures taken by gate countries to the EU, in terms of border control, this leverage is weakening.<sup>41</sup>

Allowing cheap labour of irregular Afghan workers, while ensuring space for deportation is another benefit that can be guaranteed through an unpredictable governance regime.<sup>42</sup> Cheap Afghan workers can be desirable for employers' lobbies in the government, as long as their work is not regulated by the government.

Some Iranian citizens attribute any arbitrary decision-making regarding Afghans to the over-stretched economy which cannot cope with the large number of irregular migrants and must have room for adaptation.<sup>43</sup> Some aid workers, on the other hand, believe that rule by decree is the result of discrimination and lack of accountability from the government.<sup>44</sup>

Unpredictable governance of migration in Iran can also be attributed to weak rule of law adherence, where 'formal institutions are dysfunctional, informal governance and corruption are prevalent, and independent civil society institutions are heavily controlled or banned altogether'.<sup>45</sup> In such a context, arbitrary decision-making by multiple authorities is inevitable. Hence, there is room for unpredictability and everchanging procedures, either intentional and unintentional. This only expands the room for arbitrary interpretation of rules by multiple levels of the government and the society.

As Arendt states: 'since the people [the decree] dominates never really know why something is happening and a rational interpretation of laws does not exist, there remains only one thing that counts, the brutal naked event itself. What happens to one then becomes subject to an interpretation whose possibilities are endless, unlimited by reason and unhampered by knowledge'.<sup>46</sup>

Within this framework, the following sections provide an overview of the impact of governance of migration in Iran on the lives of Afghan migrants.

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A campaign under the same name was also started in Instagram, inviting Iranians to advocate for the right of all Afghan children to education: <<https://www.instagram.com/hamkelas.hamsaye/>>

39 ISNA, 'Denying Limitations in Registering Foreign National Students' (2021), <<https://www.isna.ir/news/1400033023062/>>, accessed 23 May 2023.

40 Janne Bjerre Christensen, "GUESTS OR TRASH: Iran's precarious policies towards the Afghan refugees in the wake of sanctions and regional wars" (2016), Danish Institute for International Studies, 42.

41 See: Daily Sabah, '20-km Turkish wall on Iran border to prevent migrant wave built' (2021), <<https://www.dailysabah.com/politics/diplomacy/20-km-turkish-wall-on-iran-border-to-prevent-migrant-wave-built>>, accessed 23 May 2023.

BBC, 'Greece finishes fence at Turkey border amid warnings of Afghan migrant surge' (21 August 2021), <<https://www.bbc.com/news/world-europe-58289893>>, accessed 23 May 2023.

42 Arash Nasr Isfahani, "In Brother's House: Afghan Refugees in Iran" (2018), Research Center for Culture, Art, and Communications, 74; Christensen, (n 38), 22.

43 For example, discussions in Twitter about private hospitals charging Afghans more without providing explanation, or Iran being a bad host for Afghans under the following links:

[https://twitter.com/mohsen\\_asg\\_ir/status/1391738710291632128?s=21](https://twitter.com/mohsen_asg_ir/status/1391738710291632128?s=21)  
[https://twitter.com/loren\\_m93/status/1392898653434613763?s=21](https://twitter.com/loren_m93/status/1392898653434613763?s=21).

44 Online semi-structured interview with Hooman, an Iranian humanitarian worker, (Zoom, 5 February 2021).

45 Urinboev, (n 6), 6.

46 Arendt, (n 32), 320.

## 4. Governance of Migration in Iran: The Practice

Different patterns and drivers of migration from Afghanistan to Iran have existed during the past four decades, including fleeing from conflict and persecution, seeking seasonal jobs, and sending remittance, tourism and pilgrimage, medical purposes, study, marriage, and onward migration towards EU<sup>4748</sup>. Having in mind the multiple patterns of Afghans' mobility, the Afghan population in Iran comprises of: (i) registered Afghans holding so-called Amayesh cards; (ii) Afghan nationals holding valid time-bound residence visa; (iii) Afghans with passports and/or no valid permissions or documents, therefore considered undocumented; (iv) Afghan-Iranians born of Iranian mothers.

Each group has different benefits and limitations. As previously mentioned, the legal basis of Afghans' rights in Iran is not well-structured.

### 4.1 Amayesh

*Taher, whose Amayesh card was for a city in which he was not residing, had to commute between the two cities – i.e., 30 kilometres – everyday to attend high school: 'I had to leave the house 1.5 hours before other students and would get back home 1.5 hours after everyone.'*

*- Taher explaining his problems as an Amayesh holder.<sup>49</sup>*

Amayesh holders are Afghans who possess a household-based residence permit<sup>50</sup> named Amayesh cards. This documentation was introduced in a regulation of the Ministry of Interior in 2001 which was implemented until 2005. Therefore, it has a traceable source with a certain level of authority for law-making. Although this regulation was not changed over years, it had a one-time implementation; meaning that only Afghans who were residing in Iran at time of issuing this regulation received an Amayesh card. This status did not turn into an accessible documentation which would be granted based on eligibility criteria, rather it was a one-time opportunity to obtain documentation. Therefore, the legal basis of Amayesh cards is closer in nature to decree than law.

Of the nearly 780,000 Amayesh holders, only three percent live in officially designated settlements – usually in remote areas.<sup>51</sup> The rest live in urban, peri-urban and rural areas.<sup>52</sup> Amayesh cards should be renewed annually; the fee depends on the size of the household, household's city of residence, and number of potential workers in the household – i.e., all men between the ages of 18 to 60 who do not have a disability.

Amayesh-holders' movement is restricted. Legally, they can only reside in their city of registration, i.e., where the original Amayesh card was issued. This often leads to problems in access to education. Leila, a second-generation Afghan Amayesh holder who was interviewed in an episode of Radio Marz<sup>53</sup> mentioned that she missed two years of education because her card was for Varamin, while her family was living in Shahre Rey.<sup>54</sup> This issue was also mentioned in one of the interviews conducted by the researcher.<sup>55</sup>

For Amayesh holders, travel to other provinces requires authorization from BAFIA. Such authorizations, namely laissez passer (LP), are issued for specific reasons – e.g., medical or pilgrimage visits – and only for

47 Diana Glazebrook, Mohammad Jalal Abbasi-Shavazi, "Being Neighbours to Imam Reza: Pilgrimage Practices and Return Intentions of Hazara Afghans Living in Mashhad, Iran" (2007), *Iranian Studies*, 40:2, 191.

48 Iran's Migration Observatory (IMOBS), 'Iran Migration Outlook' (2020), 203, available at: <<https://imobs.ir/en/outlook/detail/2>>, accessed 23 May 2023.

49 Online semi-structured interview with Taher, an Afghan man living in Iran, 12 June 2021, Zoom.

50 For this purpose, household includes a group of people who live together and have one head. In its narrowest definition, household only includes family members, i.e., a married couple with their children (before their marriage). However, during Amayesh registration, some Afghans registered their elderly parents or nieces and nephews in their households as well. Proof of households was not difficult and was mainly through Afghans' own statements.

51 In Iran, Afghan settlements are officially called Guest Cities. Although Guest Cities are managed by the government of Iran, they do not have camp-like characteristics.

52 IMOBS, (n 46), 225.

53 A Farsi Podcast by Marzie Rasooli, which focuses on issues that divide the Iranian society.

54 Varamin and Share Rey are cities in Tehran province with considerable number of Afghan residents.

55 See ft. 49.

a short period of time. LPs contain information of travel including city of origin, city of destination, period of authorization and the route/means of travel. During the time of visit, BAFIA will keep the requestor's Amayesh card and will return it only when the requestor returns the LP which has been signed by the BAFIA office in the destination. Violating any of these terms can lead to arrest and even deportation as an irregular migrant. These consequences are only aimed at the individual who has violated the terms of the LP. However, considering that Amayesh is a household-based documentation, if the deportee is the head of household, other members of the household must apply to have the details of their Amayesh card updated and provide the name of a new head of household.

Permanent relocation to other provinces is only possible in limited cases. It requires the government's permission which is granted on a case-by-case basis. A humanitarian expert who was interviewed by the researcher mentioned that relocation mainly happens in medical cases when the current residence cannot offer required medical services. Other cases are usually rejected; particularly if the request is on a financial ground. This might be because large cities, which are attractive to migrants, already struggle with balancing local and migrant workforces and are not willing to accept new migrants. On the contrary, smaller provinces such as Qazvin or Bushehr are open to accept new migrants; but migrants are not willing to relocate to these provinces due to limited job opportunities. The humanitarian expert interviewed mentioned that the Government even pushes for migrants' mobility to such cities and faces resistance from them.<sup>56</sup>

Should an Amayesh-holder change his/her place of residence without permission, he/she will become a de facto "illegal" migrant.<sup>57</sup> Such a person might lose his/her Amayesh card and even be deported if the government learns about the unauthorized relocation. Moreover, Amayesh-holders cannot exit the country. Should they do so for any reason, their Amayesh card will be voided.

Since 2005, the government has not issued Amayesh cards to newcomers. Therefore, only Afghans who received Amayesh cards in the first and only round of Amayesh registration can renew their cards. New Amayesh cards are only issued for children born from two Amayesh-holder parents. This status is not transferable through marriage. If an Amayesh holder marries a non-Amayesh holder, including those with valid visa or the undocumented, their children will get the legal status of the later.

The most recent development in renewing Amayesh cards was requiring proof of registration for electronic Tazkera or Afghan national identity cards. In 2020, the government of Afghanistan started to issue electronic Tazkera in Iran through a plan named 'Authentication of Afghan Identity'.<sup>58</sup> In this process, designated community leaders who have knowledge of Afghan tribes and families determine whether a person is Afghan. Authentication also requires a type of documentation which proves a relation with the government of Afghanistan. Therefore, those who lack any type of valid or expired documentation cannot prove their Afghan identity. After authentication, a person can obtain Afghan Tazkera and passport.

Since Tazkera is the pre-requisite of obtaining an Afghan passport, the final aim of this 2020 plan was to issue passports for Afghans who have long lived in Iran and could not return to Afghanistan for obtaining a passport. In 2021, the government of Iran obliged Amayesh holders to provide a proof of registration to renew their Amayesh card.<sup>59</sup> While the government claimed the reason for this requirement was to certify the Afghan origin of Amayesh holders, it could have implications for refugee-like status of Amayesh holders in the future, since, on paper, those with an Afghan passport have the protection of Afghanistan's government. The Iranian government did not make an official statement in this regard, and in any case, the resurgence of the Taliban halted the process of Tazkera and Passport issuance by the Afghanistan government.

Finally, while some refer to Amayesh holders as Afghan refugees,<sup>60</sup> application of this term to any group of Afghans in Iran is under doubt. Refugee Status Determination (RSD) in its precise meaning has never been performed in Iran, neither by the government nor by the UNHCR. Based on the data gathered through

56 Online Expert Interview with a humanitarian worker in Iran, (Zoom, 28 November 2020).

57 The exact term used for irregular migrant by the Iranian government.

58 AfghanIRCA, 'Issuing Electronic Tazkera in Iran' (2020), <<http://www.afghanirca.com/newsIn.php?id=80732>>, accessed 23 May 2023.

59 Online Expert Interview with an Afghan community leader in Tehran, (Zoom, 5 June 2021).

60 Nicole Hervé, "Inclusion of Afghan Refugees in the National Education Systems" (2018), Background paper prepared for the 2019 Global Education Monitoring Report, ED/GEMR/MRT/2018/P1/7., Available at <<https://reliefweb.int/report/pakistan/inclusion-afghan-refugees-national-education-systems-iran-and-pakistan>>, accessed 23 May 2023.

Ewen Macleod, "Afghan refugees in Iran and Pakistan" (2008), Protracted Refugee Situations: Political, Human Rights and Security Implications, United Nations University Press, 330-350.

an expert interview with an informant, the UNHCR is not aware of the criteria applied by the Iranian government during Amayesh registration and whether they verified the risk of persecution.<sup>61</sup> It appears that Amayesh registration was a blank registration, providing all Afghans who had entered Iran before 2005 with the chance to obtain a document. Nonetheless, the UNHCR recognizes Amayesh-holders as persons of concern,<sup>62</sup> which turns them into the closest group to refugees, and the only group of Afghans in Iran which is protected by the UNHCR. Additionally, Iran entered a reservation to Article 26 of the 1951 Convention Relating to the Status of Refugees (which speaks to freedom of movement).<sup>63</sup> Lack of freedom of movement for Ameyesh-holders – as previously mentioned – is another reason for this group to fall withing the status of “refugee” in Iran. However, considering that providing international protection for refugees lies primarily on governments, Afghan refugees in Iran do not benefit from the certainty of protection provided by the 1951 Convention.

The Iranian government selectively uses the term of refugee for Afghans, particularly when seeking international aid. For example, in an official meeting with the head of European Civil Protection and Humanitarian Aid Operations (ECHO), BAFIA’s Director General requested EU’s support for “new refugees, Amayesh holders and irregulars”; separating newly arrived irregular Afghans who have fled from Taliban, from irregulars who came to Iran in time of peace. Therefore, it seems that the government of Iran selectively uses the 1951 Convention as a framework for governance of migration.

It is also important to explore Afghans’ perception of the matter. Some Afghans who have knowledge of UNHCR’s categorization refer to Amayesh holders as refugees: ‘I decided to surrender my refugee status and obtain an Afghan passport only to have free mobility in Iran’ – Ebrahim discussing status change from Amayesh card, which currently separates refugees from migrants.<sup>64</sup> In addition, some Afghans with irregular immigration status in Iran use the term refugee in its literal meaning, i.e., to clarify that they are seeking refuge in Iran: ‘Afghanistan only had suffering for me. I had to take refuge in Iran’ – Moosa, an irregular Afghan, explaining his flight to Iran after years of torture by Taliban<sup>65</sup>.

## 4.2 Passport and Visa

*‘I had to change my Amayesh card to an Afghan passport and obtain a student visa to be able to go to university, even though I was born in Iran and all my family members are Amayesh holders. I am always worried that one day the government of Iran might stop issuing visas for Afghans. What should I do then? I do not know Afghanistan. I have no one there. How can I return?’*

*- Samaneh discussing her concerns about mandatory status change from Amayesh to passport.<sup>66</sup>*

The second group of Afghans with legal residence in Iran consists of passport-holders with one of the valid types of visas. The main regulation regarding Iranian visas is the Law on Entrance and Residence of Foreign Nationals in Iran (1931). However, this law does not discuss different types of visas and target groups to which they apply. These details are determined by executive directions and regulations which are issued at lower bureaucratic levels compared to ministry regulations, such as the Passport Police or BAFIA. These regulations can easily change. Therefore, this type of documentation also falls under rule by decree.

61 Online Expert Interview with a humanitarian worker in Iran, (Zoom, 28 November 2020).

62 A person whose protection and assistance needs are of interest to UNHCR, including refugees, asylum-seekers, stateless people, internally displaced people, and returnees.

UNHCR, ‘Protection of persons of concern to UNHCR who fall outside the 1951 Convention: A discussion note’ (1992), EC/1992/SCP/CRP, available at: <<https://www.unhcr.org/africa/publications/protection-persons-concern-unhcr-who-fall-outside-1951-convention-discussion-note>>, accessed 23 May 2023.

63 The Government of Iran considers the stipulations contained in articles 17, 23, 24 and 26 as being recommendations only.

64 In-person biographical interview with Ebrahim, an Afghan man living in Iran, (Shahr-e Rey, Tehran, Iran, 19 December 2020).

Also see: Diaran, ‘Life Stories: Can an Afghan be an entrepreneur? – Story of Noor Mohammad Mohammadi’ (2018), <<https://diaran.ir/1084/>>, accessed 23 May 2023.

65 In-person biographical interview with Moosa, an Afghan man living in Iran, (a city in west of Tehran, Iran, 5 December 2020).

66 In person semi-structured interview with Samaneh, an Afghan woman living in Iran, (Pakdasht, Tehran, Iran, 1 June 2021).

The first type of visa for Afghans in Iran is a student visa for university students. This visa should be renewed annually until graduation. As the interview with Samaneh made clear, even Amayesh-holders who wish to continue their education at the university level should exchange their Amayesh cards for a passport and apply for a student visa. After graduation, they should apply for yearly residential visas and cannot return to their Amayesh status.<sup>67</sup> The common practice in this regard shows that their residential visa will be renewed as long as they reside in Iran. However, as this is an example of rule by decree, this practice can easily change in the future.

Another group of passport-holders are those with short-term tourist and medical visas in Iran. This group of Afghans enter Iran for pilgrimage, visiting relatives or seeking medical care. Some overstay their visa and turn into irregular migrants even though they entered the country regularly.

Some Afghan migrants reside in Iran with long-term residential visas, which should be renewed annually. They are mainly Amayesh-holders who have gone through a process called *Tabdil-e Vaziat* which literally translates into 'status change'. Through status change, an Amayesh-holder returns his/her Amayesh card, applies for an Afghan passport and receives a residential visa. Based on the data gathered from interviewees, status change happens for the following groups:

- Amayesh-holders who have a business in Iran and want to travel between Iran and Afghanistan.
- Amayesh-holders who marry passport holders with residential visas, should they want their children to have documentation. As mentioned earlier, Amayesh status cannot be transferred through marriage. If an Amayesh holder marries a person with residential visa, the latter cannot obtain Amayesh card. They can continue living with their own documentation. However, children born out of these marriages cannot get a documentation unless the Amayesh holder changes status to residential visa. This policy has been designed to restrict the number of Amayesh holders.
- University students who used to be Amayesh-holders only after their graduation and when they are no longer eligible for student visa.

In addition, any Afghan Amayesh holder can voluntarily change his/her status to passport and visa holder. It appears that the Iranian government prefers more Afghans to change their status to residential visa since this type of documentation is even farther from the concept of refugee than Amayesh cards. Decision-making for different types of visas to foreign nationals is more a matter of national policy, compared to granting displaced populations a "refugee-like" status. Mandatory status change for university admission and marriage with visa-based residents, as well as the recent change in pre-requisite of Amayesh renewal are indicators of this preference.

Residential visas provide freedom of movement for Afghans. Afghans with this type of visa can reside in any province which is not a no-go area for foreigners.<sup>68</sup> They can freely exit and re-enter Iran. However, they have no assurance from the government of Iran regarding visa renewal. Nevertheless, this group of Afghans are not covered by the UNHCR and are generally not considered as "vulnerable" by the Iranian government or international organizations.

The last group of Afghan migrants which have passport-based residence in Iran are those with a 'household passport'. They stand somewhere in between passport-holders and Amayesh-holders. In 2011, to regulate migration, the government of Afghanistan issued many passports for undocumented Afghans in Iran. The passports were then household-based, meaning that all family members who were present in Iran at time of registration were registered in one passport. Subsequently, the government of Iran provided them with a card allowing them to legally return to Afghanistan, so that they could obtain valid Iranian visas for their future entry to Iran. Holders of this document were prioritized for the receipt of such visas. The card was valid for almost a year and was not renewable. In addition, the government of Iran exceptionally issued visas inside the country for households who could not afford the journey, or were not able to make it, e.g., households with a member with a disability. Eventually, and with issuance of electronic Afghan passports

<sup>67</sup> It should be noted that this advantage is only for Afghan university students who had a legal residence permit in Iran before university admission. Those who apply for Iranian universities from Afghanistan should return after their graduation.

<sup>68</sup> 29 provinces of Iran have at least one city which is a no-go area for migrants. In several provinces, migrants can only legally reside in the capital city.

in 2013,<sup>69</sup> this type of passport turned into a stand-alone residence permit. Electronic Afghan passports were initially issued only in Afghanistan's territory, many Afghans who had a household passport in Iran could not afford to return and change their passports. In addition, the government of Iran stopped renewing their visa in 2016 without providing any written legal basis, claiming that the passports are no longer valid. Therefore, from 2016 to 2020 these households were not considered as documented per se. Nonetheless, their children had access to education.

As mentioned earlier, in 2020, the government of Afghanistan started to issue electronic Tazkera/passports through its embassy and consulates in Iran. Shortly afterwards, the government of Iran declared that residential visas of all household passport-holders had automatically been renewed for a year and for the last time.<sup>70</sup> However, due to the change in Afghanistan's government, these passports are still being renewed regularly, without any clear perspective regarding the Iranian government's plan.<sup>71</sup>

### 4.3 Irregular Afghans

*'I told them that the Iranian government tells me that I am Afghan, and you tell me that I am not; what am I then?'*

*- Karim, an undocumented Balouch, discussing his experience when applying for an Afghan Tazkera at the Afghanistan embassy in Iran.<sup>72</sup>*

Many Afghans residing in Iran are irregular. This group has the following categories: census-holders, those who have an Educational Support Card (ESC), those with invalid/expired documents, and those who are completely undocumented. A common characteristic of undocumented groups is the high level of uncertainty regarding their status.

As mentioned earlier, ESC was a government initiative providing access to education for all children living in Iran. However, this card soon obtained another role as an informal documentation, since a particular benefit of the card is prevention of deportation of the head of the household whose child is studying in Iran. For the majority of household members, this acts as a source of protection. The only exception can be young adult male members of the household; they are more visible as they must regularly go out for work and interact with Iranians. Generally speaking, young adult single men are more likely to get deported compared to women, children, and the elderly. It should be noted that this information does not have a written source either. Rather, it is the common practice known by communities and aid workers. Like other rules by decree, it can easily change or, based on individual discretion, might not be applied in all cases.

'Census-holders' are Afghans who participated in a headcount held in 2017, when the Iranian government conducted the first round of registration for irregular Afghans after closing the Amayesh scheme, or those who took part in a headcount in 2022 after the new wave of migration from post-Taliban Afghanistan. These registrations targeted all undocumented Afghans, including undocumented family members of Iranian women, those with expired documentation, and family members of undocumented children with ESCs.<sup>73</sup> Participants received a household information paper with a specific number. On paper, census-holders are protected against deportation and their children have access to school. However, they do not have the right to work.

Afghans with expired documentation have mostly been residing in Iran for a longer period. They have either entered Iran with valid visa of any type and overstayed or have participated in early registration plans and/or Amayesh registration but later lost their status either because they failed to renew their residence permit or violated the terms of their permit, for example, by unauthorized mobility.

69 Katrin Merchand and others, "Migration Profile: Afghanistan" (2014), International Organization for Migration (IOM), available at: <<https://publications.iom.int/books/migration-profile-afghanistan-2014>>, accessed 23 May 2023.

70 AfghaniRCA, 'Renewal of Households Passports in Iran for the Last Time' (2020), <<http://www.afghanirca.com/newsIn.php?id=80612>>, accessed 23 May 2023.

71 UNHCR, 'Notice of the extension of visas for those included in the Family Passport Plan' (2023), available at: <<https://help.unhcr.org/iran/en/2023/02/05/notice-of-the-extension-of-visas-for-those-included-in-the-family-passport-plan/>>, accessed 23 May 2023.

72 In person interview with Karim, an undocumented Balouch/Afghan man in Iran, (Tehran, Iran, 1 February 2021).

73 AVA Press, 'Registration of Undocumented Afghans for Headcount' (2017), <<https://avapress.com/fa/news/137516/>>, accessed 23 May 2023.

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It should be noted that groups of Afghans with irregular status might overlap. For instance, while some Afghans with expired visas have participated in headcounts, some have missed the deadline, or their visas have expired after the headcount was closed.

## 5. Conclusion

In this paper, I have shown that migration governance in Iran is characterized by rule by decree. I have expanded the scope of decree to include not only public announcements and decisions made by individual authorities, but also ever-changing, ministry-level regulations and executive orders which share the essence of a decree, i.e., an absence of predictability and certainty. In governance of migration in Iran, written laws and regulations are scarce and barely implemented. Primary decisions come from decrees made by higher authorities and ministries in a sporadic manner.

In the absence of a formal legal system and a monitoring body with authority over all stakeholders involved in governance of migration, the logic of rule by decree also cascades to lower-level bureaucrats and private service providers, allowing them to make arbitrary decisions by referring to unknown and, perhaps, imaginary decrees. Additionally, any change in authorities, political environment, context of migration from Afghanistan to Iran, and from Afghanistan to EU through Iran, can bring about changes in the governance of migration.

This characteristic of the migration governance regime in Iran is in conflict with a main function of the rule of law, i.e., 'curbing arbitrary and inequitable use of state power' and 'protecting citizens' property and lives from infringements or assaults by fellow citizens.'<sup>74</sup> The rule of law requires a clear and consistent exercise of power, 'in which individuals know where they stand and what they can count on.'<sup>75</sup>

In this context, Afghans' legal lives in Iran are unsustainable and unstable. They must be prepared for sudden changes that could impact their livelihood, rights, and residence in Iran. Despite this unpredictable situation, Afghans have been living in Iran for nearly four decades. Mobility from Afghanistan to Iran has continued during these years. Whatever the reason behind this mobility, Afghan migrants have navigated their life in the unstable and unpredictable legal environment for more than 40 years. Legal adaptation of Afghan migrants and their use of multiple legalities to navigate life in an uncertain setting requires further empirical research.

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<sup>74</sup> Bedner, (n 21), 50.

<sup>75</sup> Jeremy Waldron, "Why Law - Efficacy, Freedom, or Fidelity?" (1994), *Law and Philosophy*, 3:13, 266.



## 6. Afterword

This review was conducted prior to April 2023. In June 2023, the Government of Iran announced the launch of “Smart Governance Scheme for Foreign Nationals.”<sup>76</sup> Details of this scheme are not fully available. From the announcements made by the government, it appears that Amayesh holders in Qom Province are the pilot group who will receive this card.<sup>77</sup> According to BAFIA (Bureau for Foreign Immigrants and Aliens Affairs) Director General of QOM, Passport holders and Headcount slip holders will also receive this ID card in the future. Since the piloting of this scheme, annual Amayesh renewal has stopped and the validity of previous Amayesh cards have been extended for another year. While this scheme could be a step towards harmonization and predictability of Afghans’ documentation in Iran, it is noteworthy that it still is closer in nature to rule by decree, particularly due to lack of a clear legal basis.

In September 2022, a draft bill on “Establishment of National Organization for Migration” (NOM) was introduced in Parliament by the government. NOM aims for integrated governance of migration at the national level. Article 6 of the draft bill obliges NOM to “take measures for the issuance of ID cards with a 10-digit number for foreign nationals six months after the adoption of this legislation in collaboration with the National Organization for Civil Registration. The ID card of the migrants subject to this legislation is the only determining document for conducting all affairs including banking, judicial, law enforcement, administrative, and financial matters in the IRI. The number of the declared SIM-card at the time of obtaining the residence card serves as the source for all electronic affairs and national notices including judicial, administrative, financial, and law enforcement notices.”<sup>78</sup>

From the limited details available to the public regarding the smart ID cards, it appears to be the same measure mentioned under Article 6. However, it should be noted that the draft bill has not been ratified by the Parliament yet. Nonetheless, NOM has officially been established based on a Directive of High Council of Administrative Affairs<sup>79</sup> in 2018 which had established the NOM within the government’s structure. However, the Directive also mentions that the mandates, tasks, and authorities of this organization should be clarified in a law.<sup>80</sup>

The details of the new structure and draft bill have already been subject to scrutiny and discussion among scholars and other migration stakeholders in Iran and is beyond the scope of this paper. What is important for the purpose of this paper is that even efforts which seem to be directed towards integrated governance of migration are practically implemented in an unpredictable and haphazard manner which, once again, requires Afghans to adapt to an uncertain legal environment.

76 Diaran, ‘Everything about Smart ID Cards for Foreign Nationals and Immigrants’ (2023), [دیاران \(diaran.ir\)](http://diaran.ir), accessed 4 September 2023.

77 Ibid.

78 Aftab News, ‘Full Text of the Draft Bill on Establishment of National Organization for Migration’ (2023), [شرط لایحه نیتیم \(aftabnews.ir\)](http://aftabnews.ir), accessed 4 September 2023.

79 High Council of Administrative Affairs operates under the President’s Office and oversees any modification within the structure of the administrative body of the Executive Branch.

80 High Council of Administrative Affairs, “Directive 76229” (2018), [76229\\_20220312\\_132229.jpg \(750x1068\) \(aro.gov.ir\)](http://76229_20220312_132229.jpg), accessed 4 September 2023.