Examining Germany's admission programme for Afghans at risk, legal basic and its challenges

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I. Introduction

After the Taliban takeover in Afghanistan in August 2021, international forces began to withdraw from Afghanistan, along with their Afghan allies who were at risk because of their foreign affiliation. A large number of Afghans hoped to be evacuated and arrived at Kabul airport despite the high security threat. Around 170 Afghan civilians, including 13 US service members, were killed in a suicide bombing attack at the Abbey Gate of Hamid Karzai International Airport.¹

For nearly 20 years, NATO Allies and partner nations have deployed forces in Afghanistan under a United Nations (UN) Security Council mandate. NATO Allies entered Afghanistan after the September 11, 2001, terrorist attacks on the United States to ensure that the country would not again become a safe haven for international terrorists to attack NATO member countries. In February 2020, the United States and the Taliban signed an agreement to withdraw international forces from Afghanistan by May 2021. In April 2021, NATO foreign and defence ministers decided to withdraw all Allied troops from Afghanistan within a few months.²

In the chaotic western countries withdrawal that coincided with the Taliban's resurgence, more than 120,000 Afghans who had worked with NATO forces during the country's 20-year war, as well as members of Afghan civil society, were evacuated, but tens of thousands of others were left behind.³

The atmosphere created by the arrival of the Taliban and the desperate efforts of people to get into Kabul airport raised the question of taking responsibility for the work and military failure of NATO members, who withdrew after two decades of military operations and left the Afghan people behind as the Taliban returned to power.

^{1.} Reference link: <u>Kabul Airport Attack Review Reaffirms Initial Findings</u>, <u>Identifies Attacker > U.S. Department of</u> <u>Defense > Defense Department News</u>

^{2.} Reference link: NATO - Topic: NATO and Afghanistan

^{3.} Reference link: <u>The New Humanitarian | Thousands of at-risk Afghans left stranded by suspension of German</u> evacuations

Germany was one of the major countries that had the largest military involvement in Afghanistan, and after the Taliban took over, the German government, after much discussion, started to evacuate its local staff and other particularly vulnerable Afghans who were at risk because of their work background in Afghanistan after the military evacuation through the Federal Admission Programme. Therefore, the question raised and discussed in this paper is: what is the legal basis of the Federal Admission Programme and what challenges have been faced in the course of this programme and the evacuation process?

Germany's potential obligations to protect particularly vulnerable Afghans are ultimately based on the binding fundamental rights of its own Basic Law and international law, including human rights treaties such as the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). After analysing the German government's protection obligations under the Basic Law and international legal obligations, as well as the legal basis for the Admission Programme for Afghans who are particularly at risk and its challenges, we conclude that the Federal Republic of Germany has not fully implemented the Admission Programme as designed. According to our findings, the main challenges to the implementation of the programme are: the slowness and complexity of the reception process, the suspension of the programme and the insufficient budget.

II. Accountability and Responsibility

Germany's obligation under the Basic Law to protect particularly vulnerable Afghans is ultimately based on the exercise of German sovereignty. Basic rights can therefore apply to people affected in Afghanistan who worked for Germany. Germany is bound not only by the fundamental rights of its own Basic Law, but also by the international laws to which it is subject, including human rights treaties such as the ECHR and the ICCPR. The rights codified in these treaties also apply to the exercise of state authority outside its own territory. These protection obligations are laid down in Article 1 Paragraph 1 and Article 2 Paragraph 2, sentence 114 of the Basic Law, Articles 2 and 3 of the European Convention on Human Rights and Articles 6 and 7 of the International Covenant on Civil and Political Rights.¹

Germany's accountability under national law and its programmes

Paragraph 1 of Article 1 [Human dignity – Human rights – Legally binding force of basic rights] of the Basic Law of the Federal Republic of Germany states that "Human dignity shall be inviolable

and to respect and protect it shall be the duty of all state authority." In addition, Article 2 [Personal Freedoms] states in paragraph 2: "Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law."² Germany is therefore obliged to protect people who are at risk of losing their freedom and integrity as a result of their association with the German mission in Afghanistan, in accordance with the protection obligations laid down in the Basic Law.

The rules governing the granting, renewal and types of residence permits are set out in the Residence Act, also known as the Aufenthaltsgesetz. This law is a comprehensive document that details the conditions under which foreigners may enter, reside in and leave Germany. The Residence Act is the main legal document that sets out the rules for foreigners living in Germany. It outlines various aspects such as eligibility criteria, types of permits, the application process and sanctions for violations.³

Section 22 of the Residence Act states that: "A foreigner may be granted a temporary residence permit for the purpose of admission from abroad for reasons of international law or on urgent humanitarian grounds. A temporary residence permit is to be granted if the Federal Ministry of the Interior, Building and Community or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany that the foreigner is to be admitted."⁴

Section 23 (2) of the Residence Act states that "in order to safeguard special political interests of the Federal Republic of Germany, the Federal Ministry if the Interior, Building and Community may, in consultation with the supreme Land authorities, order the Federal Office for Migration anf Refugees to grant foreigners from specific states or certain categories of foreigners defined by other means approval for admission".⁵

Following the Taliban takeover, former German military personnel and their families, as well as some vulnerable Afghans, were granted temporary residence permits under Section 22 and Section 23(2) of the Residence Act on the basis of their need for protection under international law or for urgent humanitarian reasons.

Germany's responsibility under human rights treaties

European Convention on Human Rights (ECHR): According to the German Constitution (Basic Law, Article 59 sec.2), the ECHR has the status of an ordinary federal law like any other international treaty. However, the Federal Constitutional Court has given the ECHR a special significance compared to other international treaties. This constitutional significance of an international agreement aimed at the regional protection of human rights is an expression of the Basic Law's commitment to international law.⁶

The ECHR is the Council of Europe's first convention and the cornerstone of all its activities. It was adopted in 1950 and entered into force in 1953. Its ratification is a prerequisite for accession to the Organisation.⁷

The ECHR signify the obligation to respect human rights, the right to life, the prohibition of torture, slavery and forced labour, the right to liberty and security, no punishment without law, freedom of thought, conscience and religion and other fundamental rights as described in the treaty.⁸

Therefore, the ECHR plays an important role in addressing human rights violations, especially in crisis situations, and provides a legal framework for the protection of rights and freedoms, and Germany, as a member of the European Union, has an obligation to implement it with respect to the conditions of vulnerable individuals in Afghanistan.

The International Covenant on Civil and Political Rights (ICCPR): The ICCPR, along with the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, is considered the International Bill of Human Rights. The ICCPR obligates countries that have ratified the treaty to protect and preserve basic human rights such as: the right to life and human dignity; equality before the law; freedom of speech, assembly and association; freedom of religion and of privacy; freedom from torture, ill-treatment and arbitrary detention; gender equality; the right to a fair trial; the right to family life and to family unity; and the rights of minorities. The Covenant requires governments to take administrative, judicial and legislative measures to protect the rights set out in the treaty and to provide an effective remedy.⁹

Germany, as a party to the ICCPR, incorporates the principles of the ICCPR through various mechanisms such as judicial interpretation, legislation, constitutional provisions, etc.

III. Germany's promises to evacuate vulnerable Afghans from Afghanistan

Evacuation of Afghans during the fall of Afghanistan (in case of emergency)

Since the fall of the Afghan government on 15 August, several EU Member States and non-state actors have supported EU initiatives to support Afghan citizens at risk. In addition to making the necessary arrangements to evacuate European citizens from Afghan territory on military flights, joint efforts have been made to evacuate a number of Afghan nationals and their families. Thousands of Afghans who had worked with Western countries forces in various ways during the period between 2001 and 2021 wanted to flee abroad, fearing for their safety. In a joint statement published by the US Department of State on 15 August 2021, more than 100 countries pledged to accept Afghans fleeing Afghanistan after the US military withdrawal from the country. The statement called on all parties to respect and facilitate the safe and orderly departure of foreign nationals and Afghans who wish to leave the country. In several cases, evacuees have been transferred to temporary transit centres, either in the US or at joint military bases in Germany, Spain, Italy, Kuwait and Qatar, to facilitate processing.¹⁰

It is estimated that around 150,000 people have been evacuated from Afghanistan by foreign rescue flights. According to the German Foreign Office, only about 5,000 people were flown out by the Bundeswehr. It has been argued that more people could not be rescued due to limited resources and multiple sources of threat, which in turn necessitated the protection of evacuation personnel. As a result, many Afghans working for German institutions and organisations, whose lives and physical integrity are at risk from revenge attacks by members of the Taliban, were left behind.¹

Federal admission programme for Afghans who are at particular risk

Since the Taliban came to power, many people in Afghanistan have been threatened and persecuted because of their commitment to democracy and human rights, their cooperation with Western states or international organisations, or because of their gender or sexual orientation. For this reason, the German government has offered more than 44,000 particularly vulnerable Afghans and their eligible family members the prospect of admission to Germany. The programme was launched on 17 October 2022 and is currently being implemented.¹²

^{1.} Reference link: https://verfassungsblog.de/os1-oblig-of-protection/

The programme was established under Section 23(2) of the Residence Act and focuses on those who are at risk under Taliban rules due to their commitment to human rights, particularly women and girls who face gender apartheid in Afghanistan.

The target group of the Federal Admission Programme are Afghans who have been exposed to particular risks as a result of their commitment to women's/ human rights or their work in the spheres of justice, politics, the media, education, culture, sport or academia, and who are therefore at risk. The programme also targets persons who are particularly vulnerable because of their gender, sexual orientation or gender identity, or religion. Particular attention will be paid to serious individual violations of women's rights and homophobic or transphobic human rights violations. The plan is to admit around 1,000 Afghans at particular risk along with their family members from Afghanistan each month.¹³

Civil society organisations are eligible to act as authorised agencies if they have worked with the Federal Foreign Office on the evacuations from Afghanistan in August 2021 or on the ongoing admissions from Afghanistan, or if they have received funding from the budget of the Federal Ministry for Economic Cooperation and Development for the implementation of civil society projects between 2013 and 2021. A coordination office of civil society organisations (funded by the Federal Ministry of the Interior) will coordinate and support this process.¹⁴

Women suffer particularly under the Taliban rules. German Foreign Minister Annalena Baerbock said on 23 June 2022, in a speech taking stock of the first six months of the Action Plan for Afghanistan: "Our particular focus is on supporting women and girls, for no one is suffering more than they are in the current situation. The Taliban have placed iron rules like bars around their lives-and women and girls now live in prison-like circumstances locked up in their own homes. It pains me deeply to have to witness how girls continue to be denied access to higher education and can hardly move around freely without being accompanied by male relatives. For this reason, the federal admission programme will focus particularly on women and girls".¹⁵

The German government has therefore informed around 45,000 Afghans particularly at risk and their eligible family members that they will be admitted to Germany. This includes more than 25,100 former Afghan local staff and their family members, as well as more than 19900 Afghans who have been identified by the German government with the help of civil society as being

particularly vulnerable and at high risk because of their commitment to a democratic Afghanistan (as of April 2024).¹

IV. Key challenges in the evacuation process and admission programme

In August 2021, the Taliban increased their attacks in Afghanistan's major cities, and after the fall of Herat and Mazar-e-Sharif, the Taliban entered Kabul on 15 August 2021. As the capital of Afghanistan, Kabul housed the embassies and representatives of many countries around the world, including Germany. The Taliban's arrival in the city was followed by the evacuation of the international forces and the Afghan allies who had been working with them for years.

The representation of the German government in Kabul moved from the embassy to Kabul airport to facilitate the evacuation of German citizens and their Afghan colleagues. The German government evacuated around 5100 people from the day Kabul fell until 31 August 2021, the deadline for evacuating people from Kabul airport.¹⁷

After the closure of Kabul airport, international forces tried to evacuate people in various other ways, and the German government began evacuating local colleagues and others at risk, mainly through Iran and Pakistan.

Despite the German government's efforts to evacuate local colleagues, human rights activists and other groups at risk in Afghanistan, a large number of these groups remain in Afghanistan, drawing criticism from human rights activists, civil society and refugee support organisations in Germany.

The Federal Reception Programme, which was launched in October 2022, was supposed to bring up to 1,000 Afghans to Germany every month. But it has been plagued by problems. In the immediate aftermath of the withdrawal, Germany took in many former local employees and other Afghans who were particularly at risk immediately after the withdrawal. But as of May, not a single Afghan had arrived under the new programme, and thousands of human rights activists, journalists and other vulnerable people remain stuck in Afghanistan or neighbouring countries, or have been inexplicably refused admission.²

^{1 .} Reference link: <u>Bundesaufnahmeprogramm für Afghanistan - Federal Foreign Office</u> (bundesaufnahmeprogrammafghanistan.de)

^{2.} Reference link: https://www.hrw.org/news/2023/08/02/germanys-broken-promises

Meanwhile, German government faced and is still struggling with many challenges in evacuation and relocation process of Afghan people who are at risk due to their assistance with foreign and work backgrounds, there are some of the key challenges which can be described as follows.

Lack of proper coordination in the evacuation plan

Almost from the beginning, the evacuation programme appeared to be unplanned and chaotic, with the result that the German government was unable to evacuate a large number of its local staff from Afghanistan between 15 August and 31 August 2022. At this stage, the German government spent months ignoring the situation in Afghanistan and all the warnings from its embassy, and even during the evacuation phase, the Berlin ministries could not decide which of their local colleagues to transfer and which to leave behind.¹⁸

The World Human Rights Watch has also criticised the German government in this case. The organisation said in its annual report that Germany had largely ignored the need for human rights activists, journalists and local staff to leave the country before the departure of international forces. The Human Rights Watch report said that different parts of the German government left the evacuation of people from Afghanistan to eachother, misjudged the situation and put many Afghans at risk.¹⁹

In the post-evacuation phase, there is still this lack of planning, which became clear with the interviews conducted by the writers. For example, several people who were evacuated through Iran in June 2022, who suffered from many problems in Iran. As they spent a month in Iran waiting for visas and plane tickets, they had to pay for all their expenses such as food and hotel rent during this time, and GIZ reserved a hotel for them for the last week of their stay, after which this problem was solved. In 2023, the German government covered all food and accommodation costs for those transferred via Iran.

The slowness of the admission programme

In October 2022, the German government announced a new programme for the transfer of Afghans, under which around 1,000 Afghans at particular risk and their family members will be transferred from Afghanistan each month.²⁰

With the promise of this programme by the German government, human rights organisations and the people of Afghanistan welcomed this programme and hoped that more Afghans under threat would be transferred, but contrary to expectations, this programme was postponed in March 2023 due to abuse and security threats led to the suspension of the process by the Foreign Ministry, which resulted in hundreds of people who were eligible for the programme, as well as others who were accepted in Germany before the programme was created, being stranded in Afghanistan and neighbouring countries. Even those who had been granted visas and were awaiting transfer were not allowed to enter Germany. The suspension of this process was strongly criticised by human rights organisations, including ProAsyl, which stated that 'preventing the entry of people with visas is illegal. However, once a visa has been issued, all the necessary checks have already been carried out and entry should not simply be prevented without any legal basis".²¹

Ahmad¹, 32 years old, was a judge in one of Afghanistan's provinces during the republic, and was included in the German government's admission programme after the fall of the republic. He is one of the Afghans affected by the suspension of the process. He says that after being accepted, he came to Iran with his wife and two little girls to be transferred to Germany, but unfortunately the process was suspended and they waited in Iran for eight months until the process started again and they were transferred from Iran to Pakistan. They have now been in Pakistan for seven months waiting for a visa. He says that during this time he has gone through difficult conditions and all the family members are not in a good mental situation.

Statistics show that since the beginning of the federal admission program for Afghans, only a small number of people have entered Germany through this programme. According to the German newspaper Der Spiegel in October 2023, only 13 people were able to enter Germany through the federal government's admission programme for Afghans.²

^{1.} For security reasons, all names have been changed in this paper.

 $[\]label{eq:link: https://www.spiegel.de/politik/deutschland/afghanistan-bundesaufnahmeprogramm-bietet-nur-13-bedrohten-afghanen-schutz-a-d635948d-26e0-4ddd-aa6e-81c4f0bf2d6}$

In response to the parliamentarians, the federal government has stated that the number of people who entered Germany through the federal programme between September 2023 and April 2024 is 399, which is shown monthly below the table.¹

	September	October	November	December	January	February	March	April
	2023	2023	2023	2023	2024	2024	2024	2024
entered	12	6	29	47	6	142	100	57

Table 1: Number of Afghans who entered Germany through this programme

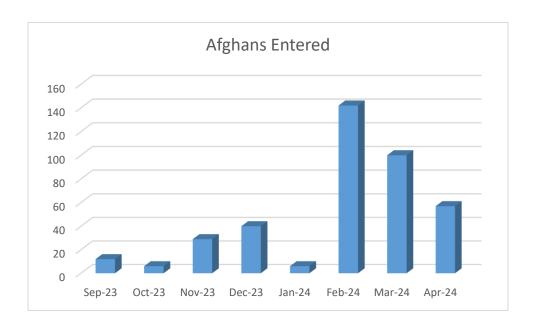


Chart 1: Number of Afghans who entered Germany through this programme

According to the federal government's statistics, very few people have been able to benefit from this programme, whereas the promise was that 1,000 people a month would be transferred through this programme.

Complexity of the selection process

^{1.} auf die Kleine Anfrage der Abgeordneten Clara Bünger, Gökay Akbulut, Susanne Hennig-Wellsow, weiterer Abgeordneter und der Gruppe Die Linke – Drucksache 20/10937

According to the Ministry of Foreign Affairs, the admission process is such that only people living in Afghanistan can be accepted for the programme. The names of individuals are submitted to the government by organisations designated by the German government. These organisations may include civil society organisations, which are involved in the process through a coordinating office (BAP) funded by the Federal Ministry of the Interior.²²

The problems with this process are that people who are in a third country cannot benefit from this programme, while hundreds of eligible people have gone to countries such as Iran, Pakistan, Uzbekistan, Azerbaijan and other Asian countries after the fall of the Taliban, but they cannot be included in this programme.

For example, Zahida, a civil activist whose husband was also a journalist, is currently in Azerbaijan. She says that after the fall of Ashraf Ghani's government, because of the dangers on behalf of the Taliban, they entered Azerbaijan illegally and applied for asylum and after three months from the date of their arrival their asylum case was rejected and an illegal entry case was organised against them and the court sentenced them to one and a half years in prison and then she had to leave this country and her husband is serving a one and a half year sentence in an Azerbaijani prison now.

In addition, there is no mechanism for submitting individual applications and people have to apply through designated organisations. It is difficult for religiously threatened groups who belong to a religious minority group to communicate with these organizations.

The organisation Pro Asyl wrote in its statement that those seeking protection cannot apply for the admission Programme themselves and enter their information independently. This can only be done by selected organisations in Germany that register as 'registered bodies' for the federal government's admission programme. The names of these organisations are not made public, as they decide for themselves whether or not to identify themselves as such. So far, only a few organisations have taken advantage of this opportunity to take on state tasks. Because they are afraid of being influenced by the declaration and questions of those affected. Many NGOs are unwilling and unable to take on government tasks.

As a result, access to the admission programme is highly opaque for those affected. Asylum seekers from Afghanistan do not know where to turn, and it is a matter of luck whether they have already been in contact with organisations that are considered 'eligible for registration'.²³

In general, however, the list of organisations approved by the German government has not been published, and many people are unable to contact these organisations.

Refusal of visas by Germany without justification

After the resumption of the German government's plans in June 2023, the number of applications that had previously received a reference number from the Immigration Department to enter Germany increased. On the basis of the common guidance given by email, those who were granted permission to enter Germany were supposed to go to one of the neighbouring countries, mainly Pakistan and Iran, to obtain a visa. A number of people weren't able to go to Pakistan in time because they lacked travel documents such as passports and visas. A passport can cost up to \$1,500 on the black market, and a Pakistani visa costs around \$1,000. A number of people have sold all their possessions to get to Pakistan, and when their interview was over, they received an unexpected rejection.

Mahmood, who has been working with one of the human rights organisations for 20 years, received an email on 14 November 2022 that he was eligible for the German government's admission programme. After much effort, he was able to obtain a passport for himself and his family members and a Pakistani visa for himself and his family. After the interview, he received a rejection email on 27/6/2024 without any justification, reminding him to leave his residence by 4/7/2024. Mahmood says that in order to get a passport and a Pakistani visa, he sold all his belongings and mortgaged his house and got \$5,000 for it and spent all this money and now they are stuck in uncertainty.

Nazanin, who worked as a journalist and human rights defender in Afghanistan for several years before the Taliban took over, received an email entitled 'Visa denied'. She says: "We are mentally broken and don't know what to do now?" She and her family were granted entry to Germany after the Taliban took power in 2021. They left Kabul and waited in Iran for more than six months to be resettled in Germany, but they received an email saying that resettlement through Iran was no longer possible and that they would have to travel to Pakistan. Facing many challenges, they travelled to Pakistan and after six months of waiting in Islamabad, they did the interview, but unexpectedly their visas were refused.

Reduction of the budget for the Afghan visa programme in 2025

In its review of the German government's 2025 budget, the organisation Pro-Asyl wrote that the federal government's Admission Programme for Afghans is collapsing because its budget has been cut by thirteen per cent compared to 2024. Although this programme has not yet been implemented as promised, it may end with budget cuts. In the investigation of the Pro-Asyl organization has shown that the Federal Ministry of the Interior will receive a total of 403 million euros in 2025, of which 200 million euros will be allocated to immigration. This is because most of this money will be spent on technical equipment, surveillance and the federal police, and in the next step the integration tool is to be cut in half, and the biggest reduction will be in the federal government's admission and resettlement programme for Afghans.¹

At this time, a large number of Afghans are still waiting in Pakistan and Iran to be transferred to Germany, and they were not satisfied with the current situation there. A long period of waiting to determine their fate, the fear of rejection of their application and the poor living conditions are some of the issues raised during the time of interviews conducted by the authors of this article.

V. Conclusion

On the basis of our preliminary analysis, we have come to the conclusion that the Federal Admission Programme for Afghanistan (bundesaufnahmeprogrammafghanistan) under the German Residence Act (Aufenthaltsgesetz) is being implemented inadequately. After the Taliban takeover, the German authorities have an obligation under the Basic Law and international treaties to support Afghan people affected by the end of a military intervention.

Our research shows that the emergency evacuation of Afghan nationals who worked for German authorities was affected by many deficiencies and challenges such as legal uncertainty, delays, lack of communication and coordination. The evacuation was ended on 26 August, just after the suicide bombing. The admission programme was announced on 17 October 2022 to continue the relocation of local staff and vulnerable Afghans to Germany.

The Federal Republic of Germany has launched the Federal Admission Programme for Afghanistan in order to make it possible for especially vulnerable Afghans who have been threatened and persecuted because of their efforts to promote democracy and human rights, their cooperation with

^{1.} Reference link: https://www.proasyl.de/news/der-anti-integrationshaushalt-der-ampel-regierung/

Western states or international organisations, or because of their gender or sexual orientation, to continue to be admitted to Germany. However, the implementation of this programme faces many challenges and shortcomings. The slowness and complexity of the procedure, delays and unjustified refusals of visas and budget cuts are the main problems faced and complained about by those involved in the programme.

On the basis of its fundamental and human rights obligations towards the Afghan people, the German government should ensure that particularly vulnerable Afghans have the opportunity to leave the country and seek safety. The following proposals are therefore made:

1. Fulfilling the promises made regarding the German government's admission program for vulnerable Afghans.

2. Accelerating the process of the German government's admission program for Afghans at risk.

3. Requests from people in third countries should be processed.

4. Re-review of applications that have been approved by the Federal Government and whose visa applications have subsequently been rejected in the third countries.

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