

ACCESS DENIED:

Calling for the Revocation of Canada's
Refugee Status Document Requirement
for Private Sponsorship

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Access Denied: Calling for the Revocation of Canada's Refugee Status Document Requirement in the Private Sponsorship of Refugees Program

OVERVIEW

This paper argues that Canada should no longer require Private Sponsorship of Refugees Program ("PSRP") applicants to hold a refugee status document. Since 2012, Canada has required refugees applying under the PSRP to possess a refugee status document from either the United Nations High Commissioner for Refugees ("UNHCR") or a foreign state. This requirement has been widely criticized for its exclusionary effects on those who are most in need of international refugee protection and re-settlement. While the UNHCR/status requirement was intended to improve the efficiency of the refugee determination process, refugees encounter significant difficulties in obtaining refugee status documents. The UNHCR/status requirement ultimately increases the risk of *refoulement*¹ without improving the efficiency of the PSRP. The ongoing Afghan refugee crisis has exposed the UNHCR/status requirement's flaws. Specifically, the requirement has frustrated the timely re-settlement of Afghans who clearly meet the Convention refugee definition and need immediate protection. The UNHCR/status requirement can and should be immediately lifted in response to the Afghan crisis. The requirement is not essential to PSRP determinations, as it has been lifted by the Canadian government numerous times. Further, removing the UNHCR/status requirement will help achieve the PSRP's goals of expanding Canada's refugee protection capacity and engaging civil society in resettlement.

IMMEDIATE REQUEST FOR SUSPENSION/REVOCAION OF STATUS REQUIREMENT

Canada must immediately revoke the UNHCR/status requirement. As this paper demonstrates, viewed against the current Afghan refugee crisis, this requirement increases the risk of *refoulement* without conferring any demonstrable benefits in processing PSRP applications. As such, retaining the UNCHR/status requirement derogates from Canada's international obligations and moral responsibility to resettle refugees. In late 2021, Canada explicitly pledged to accept Afghan refugees,² yet Canada continues to impose this significant barrier on them without justification.

Indeed, during the Syrian crisis, the UNCHR/status requirement was lifted. This is a clear indication that the UNHCR/status requirement need not gatekeep refugee resettlement in Canada. Section 25.2(1) of the *Immigration and Refugee Protection Act* clearly empowers the government to grant an exemption from the UNHCR/status requirement. According to this section:

¹ "Convention and Protocol Relating to the Status of Refugees", UNHCR (December 2010), online: <https://www.unhcr.org/3b66c2aa10>.

² Raffy Boudjikianian, "Canada's effort to bring in Afghan refugees expected to take up to two years," *CBC News* (8 December 2021), online: <https://www.cbc.ca/news/canada-afghanistan-afghan-refugees-1.6277246>.

25.2 (1) *The Minister may, in examining the circumstances concerning a foreign national who is inadmissible or who does not meet the requirements of this Act, grant that person permanent resident status or an exemption from any applicable criteria or obligations of this Act if the foreign national complies with any conditions imposed by the Minister and the Minister is of the opinion that it is justified by public policy considerations.*³

This section was invoked in 2015 by Chris Alexander, former Minister of Citizenship and Immigration, in issuing the Public Policy to Facilitate the Sponsorship of Syrian and Iraqi Refugees by Groups of Five (“G5”) and Community Sponsors,⁴ which removed the UNHCR/status requirement.

This policy was preceded by months of public pressure. However, the catalyst for the change in the government’s position was the body of three-year-old Alan Kurdi washing ashore. Only then did the Minister declare that there were “sufficient public policy considerations” warranting an exemption from the rule “for Iraqi and Syrian nationals who have fled their country of nationality or habitual residence as a result of the current conflicts in Syria and Iraq, to facilitate the sponsorship of these persons by groups of five and community sponsors.”⁵ More recently, in response to the Ukrainian refugee crisis, the Canadian government implemented a number of measures to help Ukrainians resettle in Canada, including waiving the UNHCR/status requirement.⁶

Canada ought not to wait for more Afghan deaths or for a child to wash ashore before acting. The best way to ensure effective resettlement of Afghan refugees in Canada is to revoke this onerous requirement immediately. At the very least, the Minister should issue an immediate public policy exception for *all* Afghan refugees who otherwise meet the qualifying criteria for refugee re-settlement from the UNHCR or an equivalent designation.

BACKGROUND

Relevant Legislative Scheme

In 2012, Immigration, Refugees and Citizenship Canada (“IRCC”) [formerly known as Citizenship and Immigration Canada] amended the *Immigration and Refugee Protection Regulations* (“IRPR”) to address the issues of “low approval rates, large inventories and long processing

³ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27, Section 25: <https://laws-lois.justice.gc.ca/eng/acts/I-2.5/>.

⁴ “ARCHIVED – Temporary public policy to facilitate the sponsorship of Syrian and Iraqi refugees by Groups of Five and Community Sponsors,” *Immigration, Refugees and Citizenship Canada* (19 December 2016), online: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/sponsorship-syrian-iraqi-refugees-groups-five-community-sponsors-2017.html>.

⁵ “Tories twice rejected proposal to make it easier for Canadians to sponsor refugees, documents reveal,” *National Post* (28 August 2016), online: <https://nationalpost.com/news/politics/tories-twice-rejected-proposal-to-make-it-easier-for-canadians-to-sponsor-refugees-documents-reveal>.

⁶ “Immigration measures for people affected by the Russian invasion of Ukraine,” *Immigration, Refugees and Citizenship Canada* (12 May 2022), online: <https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/ukraine-measures.html>.

times” in the PSRP. The IRPR contain the relevant procedures and administrative processes pertaining to Canada’s immigration and refugee program. The modified relevant section now reads:

Sponsorship requirements

153 (1) *In order to sponsor a foreign national and their family members who are members of a class prescribed by Division 1, a sponsor [...]*

*(b) must make a sponsorship application that includes a settlement plan, an undertaking and, if the sponsor has not entered into a sponsorship agreement with the Minister, a document issued by the United Nations High Commissioner for Refugees or a foreign state certifying the status of the foreign national as a refugee under the rules applicable to the United Nations High Commissioner for Refugees or the applicable laws of the foreign state, as the case may be; and [...]*⁷

Section 153(1)(b) of the IRPR was amended to require applicants under two specific streams of the PSRP, G5 sponsorships and Community Sponsors, to possess UNHCR or foreign refugee recognition to qualify for the programs.

IRCC’s Regulatory Impact Analysis

Prior to amending the legislation, the Canadian government conducted a regulatory impact analysis on the proposed changes.⁸ The results of this analysis determined that the lack of a formal status requirement “reduced the efficiency of the [PSRP] program and detracted from its original objectives of expanding Canada’s refugee protection capacity and engaging civil society in resettlement”.⁹ The analysis also determined that increased demand for the program based on family reunification, coupled with ineffective control of application intake, contributed to the program’s inefficiencies. Regarding the UNHCR/status requirement, the stated intention was “to resettle refugees who are most in need of Canada’s protection while increasing approval rates and better managing the PSR inventory.”¹⁰ The UNHCR/status requirement was also meant to complement another amendment which imposed an administrative cap on the number of applications that could be submitted by Sponsorship Agreement Holders (“SAH”), another PSRP stream that does not require proof of UNHCR or equivalent status.¹¹

⁷ *Immigration and Refugee Protection Regulations*, SOR/2002-227, Section 153(1)(b): <https://laws-lois.justice.gc.ca/eng/regulations/sor-2002-227/section-153.html>.

⁸ Department of Citizenship and Immigration, “Regulations Amending the Immigration and Refugee Protection Regulations,” *Canada Gazette*, Part I, Volume 146, Number 23 (9 June 2012), online: <https://gazette.gc.ca/rp-pr/p1/2012/2012-06-09/html/reg1-eng.html>. For the current version, see “Regulations Amending the Immigration and Refugee Protection Regulations”, *Canada Gazette*, Part II, Volume 146, Number 23 (7 November 2012), online: <https://gazette.gc.ca/rp-pr/p2/2012/2012-11-07/html/sor-dors225-eng.html>; Earlier version of proposed regulations (dated June 9, 2012): <https://gazette.gc.ca/rp-pr/p1/2012/2012-06-09/html/reg1-eng.html>.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

The regulatory impact analysis stated that the intended outcome of implementing the UNHCR/status requirement was to reduce the number of G5 and Community Sponsor applications received, particularly those which would be least likely to be approved.¹² This was anticipated to improve approval rates, while necessitating fewer visa officer resources for the same number of refugees resettled to Canada.¹³ Overall, the UNHCR/status requirement was intended to improve operational efficiency and reduce backlog in applications, which was expected to then translate into reduced wait times.¹⁴

The analysis also provided a further discretionary rationale for reliance on the UNHCR:

*The UNHCR is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. As part of this role, the UNHCR registers asylum-seekers and conducts refugee status determination procedures where host countries are unable or unwilling to do so. Requiring UNHCR or State recognition will help ensure that the applicants whom G5s and CSs seek to sponsor are, in fact, refugees.*¹⁵

INITIAL AND CONTINUING CRITICISMS OF THE REQUIREMENT

This requirement has been concerning for those in the refugee advocate community, both before its inception and following its implementation. In 2012, when the inclusion of this requirement was first being considered, community stakeholders expressed staunch criticism, which continues to persist today.

The Requirement Excludes Refugees

The Canadian Council for Refugees (“CCR”) provided substantive feedback regarding the UNHCR/status requirement, namely noting that it would largely exclude refugees who were unable to secure recognition, many of whom are among the most vulnerable. This is due to the difficulties associated with obtaining official documentation and the varying status documents issued by the UNHCR over time:

The CCR is concerned that requiring proof of “recognized refugee status” will exclude from sponsorship some refugees in need of protection and/or a durable solution. Often the refugees who are not able to obtain proof of “recognized refugee status” are among the most vulnerable refugees, who should be among the priority for resettlement. Having proof of refugee status will in many cases offer a refugee a minimal level of protection and access to benefits in the country of asylum – refugees who can’t obtain such documentation are therefore often in a more precarious situation than those who can. Also the factors leading to some refugees being denied access to status documents,

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

such as political or discriminatory factors, may contribute to the insecurity of these refugees in the country of asylum.

[...]

In some cases it takes years to have status determined by the UNHCR or the State; in other cases, for example, in camps hosting large populations, resources are not available for individual determination; in other cases again, determination is not attempted for political or other reasons. Many refugees who do not have proof of individual determination may have been registered by the UNHCR and/or be identified in some way as in need of protection pending determination, or granted prima facie refugee status. If the intention is to require proof of individual refugee determination, the proposal would exclude vast numbers of refugees from sponsorship by Groups of Five, including many of the most vulnerable refugees in situations where the need for resettlement is the greatest. It would also force some refugees to wait years for individual determination before they can be sponsored, delaying the moment at which they can be given a durable solution. This would undermine Canada's longstanding and honourable efforts to resolve protracted refugee situations, and to prevent them from arising. It would also be inefficient and wasteful of resources to require the individual determination from the State or UNHCR, if a durable solution might otherwise be available much sooner in Canada.¹⁶

Similar to the CCR's feedback, the UNHCR itself also voiced concern that the requirement would impose pressure on their agency and exhaust their already limited resources.¹⁷

In response to the feedback from the CCR and the UNHCR, IRCC merely redirected individuals without refugee status documentation towards SAH sponsorships:¹⁸

While the new requirement may restrict individuals without documented proof of refugee status or those eligible for resettlement through the Country of Asylum Class from being sponsored by a G5, they are still eligible to be sponsored by a SAH.

UNHCR also highlighted their concern that this policy would encourage individuals to apply for UNHCR refugee status determination solely for G5 or Community Sponsor sponsorship. However, IRCC suggested that these concerns were lessened because the policy gives state recognition

¹⁶ Canadian Council for Refugees, "Comments on notice of intent - changes to the Private Sponsorship of Refugees Program" (January 2012), online: https://ccrweb.ca/sites/ccrweb.ca/files/g5_comments_jan2012.pdf ["CCR"].

¹⁷ "Regulations Amending the Immigration and Refugee Protection Regulations," *Canada Gazette, Part II, Volume 146, Number 23* (7 November 2012), online: <https://gazette.gc.ca/rp-pr/p2/2012/2012-11-07/html/sor-dors225-eng.html>; see UNHCR, "UNHCR Position on Returns to Afghanistan", UNHCR (16 August 2021), online: <https://www.refworld.org/pdfid/611a4c5c4.pdf>, para 4.

¹⁸ "Regulations Amending the Immigration and Refugee Protection Regulations," *Canada Gazette, Part II, Volume 146, Number 23* (7 November 2012), online: <https://gazette.gc.ca/rp-pr/p2/2012/2012-11-07/html/sor-dors225-eng.html> ["IRCC Impact Analysis"].

the same footing as UNHCR recognition, presumably lessening the demand and need for obtaining recognition through UNHCR.¹⁹ However, this failed to acknowledge that, as pointed out by the CCR, state recognition may not be available to many refugees for political, logistical and security reasons.²⁰

Despite IRCC's response and the eventual implementation of the UNHCR/status requirement, other sources continued to detail its problematic nature. In the context of the Syrian refugee crisis, Dr. Shauna Labman, Associate Professor at the University of Winnipeg, whose research focuses on refugee law, resettlement and private refugee sponsorship, wrote:

*Restrictions on Group of Five sponsorships to recognized refugees prevents these sponsorships during mass refugee flows such as Syrian refugees where UNHCR cannot conduct individual status determinations.*²¹

Ian Van Haren, PhD student in sociology and population dynamics at McGill University as well as Student Coordinator with the McGill Refugee Research Group, similarly discussed the effects of the requirement, with reference to the experiences of sponsors and organizations involved in the overseas refugee resettlement process:

Canadian sponsors and the organizations that assist them have attested that the availability of RSD documents varies depending on where refugees reside, creating a patchwork approach. For example, one man who regularly sponsored Eritrean refugees through the Group of Five program explained to the author in 2019 that he could not sponsor Eritreans residing in Israel because they could not obtain proof of refugee status from the Israeli government or UNHCR. However, Eritrean refugees in Sudan were able to obtain RSD documents, which made it easy for them to be sponsored. Another regular sponsor said his mosque used the Community Sponsor program to assist refugees with RSD documents in Kenya and Sudan, however it had to work with established SAHs to sponsor Syrians living in Jordan and Lebanon because they could not obtain proof of refugee status.

The Canadian Council for Refugees, an umbrella nongovernmental organization, has urged the government to remove the RSD requirement for Groups of Five and Community Sponsors. In order to meet its target of resettling 25,000 Syrian refugees and facilitate sponsorship among ad hoc groups wanting to support individuals who could not obtain RSD documents, the government temporarily waived the requirement for Syrians and Iraqis from 2015 to 2017. However, most Syrians and Iraqis – among many others – continue to be unable to obtain documentation asserting their refugee status in their countries of first asylum. The government has resisted the call to end

¹⁹ *Ibid.*

²⁰ CCR, *supra* note 16.

²¹ Shauna Labman, "Private sponsorship: complementary or conflicting interests?", *Refuge*, Vol. 32, Issue 2, Centre for Refugee Studies, York University (Winter 2016), online: link.gale.com/apps/doc/A470160049/AONE?u=anon~9c219188&sid=googleScholar&xid=35c273f1.

*the RSD requirement permanently, claiming it is necessary to ensure the system properly assists refugees whom it intends to target.*²²

The Requirement May Encourage Human Smuggling

The National Immigration Law Section of the Canadian Bar Association (“CBA”) pointed out that reliance on the UNHCR/status requirement is problematic because it may encourage human smuggling to circumvent the protracted recognition process:

The proposed regulation works at cross purposes with Bill C-31: it cuts off a legal means available to those without UNHCR or foreign state recognition, named group of five or community private sponsorship. It will accordingly increase the likelihood of smuggling. We accept the value of UNHCR and foreign state determination, although even those are not problem free. In many countries, UNHCR compounds are guarded by local police who exact heavy bribes from foreign nationals to allow access. Many do not go through the UNHCR registration and determination process because they cannot afford to pay the bribes. This problem is even more acute with foreign state determinations in corrupt states. The Government of Canada is concerned with its own processing delays. However, in many countries with massive refugee influxes, UNHCR or foreign state processing delays are far worse.

[...]

*The proposed regulation assumes that either UNHCR or foreign state refugee determinations are available. However, in some states, neither is possible. For instance, Sri Lankan Tamil or Tibetan asylum seekers in India can not be determined to be refugees either by the UNHCR or by the Government of India. Relaxing requirements increases the potential number of applicants, possibly beyond processing capacity. However, for refugees, better to wait than to lose hope. It may be that with increased numbers there will be delays. Refugees may well be prepared to wait out the delays. But if even waiting is not a possibility resort to smugglers becomes much more likely. We accordingly oppose the change proposed in s. 9 of the draft regulations and recommend that it not be enacted.*²³

IRCC’s response to the CBA’s feedback merely reiterated the intended goal of targeting administrative issues through the amendments and once again redirected individuals to SAH sponsorship:

²² Ian Van Haren, “Canada’s Private Sponsorship Model Represents a Complementary Pathway for Refugee Resettlement,” *Migration Policy Institute* (9 July 2021), online: <https://www.migrationpolicy.org/article/canada-private-sponsorship-model-refugee-resettlement>.

²³ The Canadian Bar Association, “Immigration and Refugee Protection Regulations: Private Sponsorship of Refugees Program” (9 July 2012), online (pdf): <https://www.cba.org/CMSPages/Get-File.aspx?guid=5c089e5d-bada-4f2c-83a0-cdef12097f4d>.

The main objectives of the PSRP are to expand Canada's refugee protection capacity and engage civil society in resettlement. Long processing delays reduce both program efficiency and civil society engagement. The regulatory amendment is in line with broader departmental efforts to increase efficiency.

[...]

In the event that they are not able to obtain recognition by a state or the UNHCR, sponsorship by a SAH remains another avenue for resettlement, or, in exceptional cases, consideration under the Minister's public policy authority. There is no evidence to suggest that this amendment would incite an increase in human smuggling.²⁴

CALLS FOR REVOCATION

Based on the criticism directed towards this requirement, many organizations have called for its revocation. In a 2017 policy brief submitted to the Federal government, the Refugee Research Network and the Centre for Refugee Studies recommended that Canadian officials apply a *prima facie* refugee recognition method, as used during the Syrian refugee crisis, to other refugee nationalities and eliminate the UNHCR/status requirement.²⁵ Earlier, in November 2013, the CCR's Overseas Protection and Resettlement working group called on the government to remove the requirement entirely.²⁶ According to Janet Dench, the Executive Director of the CCR, one potential hurdle to private sponsorship of Afghan refugees is the heavy bureaucratic burden placed on sponsors to ensure that refugees have acquired UNHCR designation.²⁷ This burden was seen to deter commitment to private sponsorship due to fears of being "overwhelmed by government demand[s]...[about] paperwork and justifications."²⁸ This sentiment is echoed by private sponsors such as Zahir Alizai, who has been attempting and failing to privately sponsor family members who fled Afghanistan.²⁹

As recently as November 2021, the World Refugee and Migration Council issued an open letter to the Federal government regarding an urgent call to action in response to the Afghan crisis. The

²⁴ IRCC *Impact Analysis*, *supra* note 18.

²⁵ Jennifer Hyndman, William Payne, York University & Shauna Jimenez, East Kootenay Friends of Burma, "The State of Private Refugee Sponsorship in Canada: Trends, Issues, and Impacts," *York University, Centre for Refugee Studies* (2 December 2016), online: https://refugeereseach.net/wp-content/uploads/2017/02/hyndman_feb%e2%80%9917.pdf.

²⁶ "Limitations on G-5 sponsorship", *Canadian Council for Refugees*, (November 2013), online: <https://ccrweb.ca/en/res/limitations-g-5-sponsorship>.

²⁷ Ian Austen, "As Canada Awaits a New Group of Refugees, Questions Loom" (10 August 2021), *New York Times*, online: <https://www.nytimes.com/2021/08/20/world/canada/canada-afghanistan-refugees.html>.

²⁸ *Ibid.*

²⁹ Maan Alhmidi, "Canadians helping Afghan refugees frustrated by private sponsorship programs," *Global News Canada*, (23 December 2021), online: <https://globalnews.ca/news/8470277/canadians-afghan-refugees-private-programs/>.

signatories comprise several organizations which are all united in requesting the removal of the UNHCR/status requirement and the recognition of the crisis as a *prima facie* refugee situation. These included:³⁰

Afghan Women's Organization Refugee and Immigrant Services;
Amnesty International Canada;
Association québécoise des avocats et avocates en droit de l'immigration ;
Canadian Association for Refugee Lawyers;
Canadian Hazara Humanitarian Services;
Human Rights Watch;
Lifeline Afghanistan;
Journalists for Human Rights;
Landings LLP;
PEN Canada; and
Rainbow Railroad.

In December 2021, the CBA made submissions to the Minister of IRCC, calling for changes to Canada's response to the Afghan crisis. This included recommendations to remove the UNHCR/status requirement, based on the significant obstacles to obtaining status in neighbouring countries. The CBA stated:

In Pakistan, the process to register with UNHCR is plagued by multi-year wait times to have a case processed. Afghans who contact our pro bono lawyers lament the destitution and precarious, dangerous conditions they endure as asylum-seekers in Pakistan: exorbitant and unaffordable housing prices; no access to elemental healthcare if they are ill; raids and evictions meted out by the Pakistani police.

Moreover, Afghan asylum-seekers report being bounced between the Canadian Embassy and UNHCR:

According to the IRCC, we have to apply for Canadian asylum through the UNHCR, while the UNHCR in Pakistan does not register us as asylum seekers. All we are told is that we should talk directly to the Canadian Embassy in Pakistan.

The UNHCR chapter in Pakistan formally and prominently states on their website that:

UNHCR does NOT make referrals to the programmes recently announced by governments to relocate or evacuate Afghan nationals. If you have been provided this information, it is

³⁰ "Urgent Call to Action in Response to the Crisis in Afghanistan," *World Refugee & Migration Council* (1 November 2021), online: <https://wrmcouncil.org/news/letter-news/urgent-call-to-action-in-response-to-the-crisis-in-afghanistan/>.

incorrect. All information for and applications to them must be done through their relevant contact details and procedures.

Afghans who have fled to Pakistan and are seeking resettlement to Canada find themselves in a vicious catch-22 predicament where obtaining the refugee recognition by UNHCR is not possible.

Getting into Pakistan in the first place is a prohibitive and dangerous pursuit. The Afghanistan/Pakistan border is formally closed to everyone except those with valid travel documents or work authorizations. Desperate Afghans who attempt to enter the country and line up at the border are subjected to bribe extortions and violence by smugglers and Pakistani border guards, and face risk of death or serious illness due to dehydration and heatstroke.

In Iran, refugee registration and determination are carried out not by the UNHCR but by the government of Iran. According to IRCC's Canadian Refugee Support Training Program, few Afghans are recognized as refugees by the Iranian authorities. It has been reported that Iran is deporting many Afghan refugees while also confining them to crowded, filthy detention camps and subjecting them to physical brutality and other mistreatment. Receiving formal refugee recognition in Iran is unattainable for most Afghan asylum-seekers.

While SAHs are not subject to the sponsorship requirement of formal refugee recognition for displaced individuals, they are limited in their capacity to support refugees in Canada for at least 12 months. IRCC also imposes caps on the number of new sponsorship applications SAHs can submit each year.

The obstacles now faced by displaced Afghans in obtaining a formal refugee status preclude resettlement through private sponsorships by Community Sponsors and Groups of Five. While there are just over 130 SAHs in Canada (outside of Quebec), more Groups of Five and Community Sponsors can be formed quickly and easily to act as sponsors. The requirement for official refugee recognition poses serious impediments that are inconsistent with Canadians' eagerness to help.³¹

The foregoing clearly indicates widespread opposition to the UNHCR/status requirement among refugee advocates and community stakeholders. The government's ongoing reliance on unsubstantiated "inefficiencies" is insufficient to justify its retention. Indeed, there does not appear to be any publicly available information confirming the efficacy of the UNHCR/status requirement.

THE UNHCR/STATUS REQUIREMENT AND THE AFGHAN REFUGEE CRISIS

The human suffering of the Afghan refugee crisis underscores the immediate need for revocation of the UNHCR/status requirement. Though outright conflict has subsided since the Taliban took over Afghanistan in August 2021, Afghans continue to flee the country due to continuing violence, fear, and deprivation, as well as a collapsing healthcare, educational, and a political system

³¹ "Facilitative Measures for Afghan Nationals", *Canadian Bar Association*, (13 December 2021), online (pdf): <https://www.cba.org/CMSPages/GetFile.aspx?guid=04a835f1-b36d-42a9-ab58-faa25f5da270>.

that threatens the fundamental rights of all citizens, particularly those of women and religious/ethnic minorities. The current Taliban government has severely restricted the mobility of Afghans while simultaneously enforcing sustained campaigns of repression throughout the country. The Taliban has engaged in reprisals including summary executions, use of excessive force to break up protests, and raids on the homes of journalists, activists, and human rights leaders. Women have been systemically fired from leadership positions in the Afghan civil service. Girls have been banned from attending co-educational programs and school after grade six, effectively excluding many girls and women from Afghanistan's educational system.³² The Taliban continues to repress, torture, and kill high-profile women and perceived anti-regime activists, with the United Nations ("UN") noting the disappearance of at least six prominent activists in recent weeks, as well as an unknown number of ethnically and religiously based detentions and killings.³³

Nearly six million Afghans have been forced to flee their country due to the devastating impacts of Taliban rule.³⁴ The UNHCR estimates that by early 2022, nearly 5.7 million Afghan refugees had fled to five neighboring countries and that 3.4 million Afghans had been internally displaced.³⁵ From January 1, 2021, to November 23, 2021, a total of 710,039 Afghans, 59% being children under the age of 18, were forced to flee their homes.³⁶

The heartbreaking images of Afghans desperately clinging to US military planes leaving the Kabul International Airport and seemingly falling to their deaths last August illustrates the life-threatening nature of the ongoing humanitarian crisis in Afghanistan.³⁷ But compared to the efforts of Afghanistan's neighboring countries, Canadian policies on welcoming Afghan refugees have been lacking. Pakistan and Iran host more than 1.4 million and 780,000 Afghan refugees respectively, with Germany, Turkey, and Austria rounding out the top five countries with the

³² Human Rights Watch, "Human Rights Watch, Afghanistan," *Human Rights Watch* (10 February 2022), online: <https://www.hrw.org/asia/afghanistan>.

³³ Lynne O'Donnell, "Afghans who fled to Pakistan now find their lives blocked at every turn," *The New Statesman* (7 February 2022), online: <https://www.newstatesman.com/world/2022/02/afghans-who-fled-to-pakistan-now-find-their-lives-blocked-at-every-turn>.

³⁴ USA for UNHCR, "Afghanistan Refugee Crisis Explained," *UNHCR* (2022), online: <https://www.un-refugees.org/news/afghanistan-refugee-crisis-explained/>.

³⁵ UNHCR, "Afghanistan Emergency," *UNHCR* (10 February 2022), online: <https://www.unhcr.org/afghanistan-emergency.html>.

³⁶ Humanitarian Response Information, "Internal Displacement Due to Conflict in Afghanistan," *OCHA* (13 February 2022), online: <https://www.humanitarianresponse.info/en/operations/afghanistan/idps>.

³⁷ Luke Harding and Ben Doherty, "Kabul Airport: footage appears to show Afghans falling from plane after takeoff," *The Guardian*, (15 August 2021), online: <https://www.theguardian.com/world/2021/aug/16/kabul-airport-chaos-and-panic-as-afghans-and-foreigners-attempt-to-flee-the-capital>.

most Afghan refugees and asylum seekers at 181,100, 129,300, and 46,600 respectively.³⁸ In contrast, Canada accepted a mere 23,000 Afghan refugees between 2001 and June 2021.³⁹

Turning to the recent crisis in Afghanistan prompted by the August 2021 Taliban takeover, as of March 2022, only an estimated 8,500 Afghan refugees have arrived in Canada.⁴⁰ According to the IRCC's website, only 2,900 Afghan refugees who applied through the humanitarian program have arrived.⁴¹ The remaining Afghan refugee applications are presumably still pending. In response to ongoing criticism of the government's response to the Afghan humanitarian crisis, Sean Fraser, the Minister of IRCC, noted that the current government's December 2021 promise to resettle 40,000 Afghan refugees may take up to two years to be realized.⁴²

Difficulties Faced by Afghan Refugees as a Result of their Limbo Status

While they wait for their refugee status to be approved, Afghan refugees abroad face significant and overlapping barriers in their host countries including accessing meaningful work, affordable housing, rights, and government services.⁴³ Without long-term legal status, such as a UNHCR refugee designation or permanent resident status in their host countries, many Afghan refugees are at risk of *refoulement*, or forcible return to Afghanistan, in contravention the *Refugee Convention's* prohibition against *refoulement*, a Convention to which Canada is a signatory country.

Additionally, Afghan refugees experience immense difficulties in accessing local governmental services and face marginalization in their host countries. Many Afghan refugees also face financial issues because they cannot access their bank accounts due to Western sanctions on financial dealings with the Taliban.⁴⁴ Without funds and/or the ability to work legally, refugees find themselves facing insomnia, stress, and illness due to their uncertain immigration status.⁴⁵

³⁸ The Visual Journalism Team, "Afghanistan: how many refugees are there and where will they go?," *BBC News* (31 August 2021), online: <https://www.bbc.com/news/world-asia-58283177>.

³⁹ Kareem Ell-Assal and Shelby Thevenot, "Afghan Refugee Crisis: will it impact Canada's Election?" *CIC News* (16 August 2021), online: <https://www.cicnews.com/2021/08/afghan-refugees-will-it-impact-canadas-election-0818898.html>.

⁴⁰ Laura Marchand, "Canada promised to bring in 40,000 Afghan refugees. Only 8,500 have arrived", *CBC News* (13 March 2022), online: <https://www.cbc.ca/news/canada/montreal/ukraine-afghan-refugees-1.6381826>.

⁴¹ Chelsea Nash, "Public policies in place for Afghan refugees are being kept private," *The Hill Times* (7 February 2022), online: <https://www.hilltimes.com/2022/02/07/public-policies-in-place-for-afghan-refugees-are-being-kept-private/342209>.

⁴² Aaron D'Andrea, "Afghanistan committee must zero-in on Canada's refugee efforts, veterans say," *Global News Canada* (9 December 2021), online: <https://globalnews.ca/news/8437380/afghanistan-committee-canada-refugee-efforts-veteran-reaction/>.

⁴³ *Supra* note 33.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

Take, for example, the case of Farzana Adell, who was Chief of Staff of the Senior Advisory Office on UN Affairs to Afghan President Ashraf Ghani prior to the Taliban takeover.⁴⁶ Ms. Adell is vulnerable to deportation to Afghanistan, where the Taliban is likely to persecute or kill her based on her gender, her work as a women's rights activist and as the co-founder of the Gender Equality Research Organization of Afghanistan.⁴⁷ She faces further risks in Afghanistan due to her ethnicity as a Hazara, a minority group historically targeted by the Taliban.

Ms. Adell was in Turkey when the Taliban took over Afghanistan and subsequently remained there, initially illegally on an expired visitor visa, and then legally on a nine-month temporary resident visa.⁴⁸ She is unable to work due to her temporary status, which has caused her significant difficulties in supporting herself and her family.⁴⁹ Without employment income, Ms. Adell struggles to find affordable housing and currently shares a room with several members of her extended family.⁵⁰ She has few rights as a temporary resident in Turkey and is ineligible to access government programs, such as social assistance.⁵¹

Ms. Adell's case highlights many of the existing issues with Canada's UNHCR/status requirement, as *per* Matthew Behrens, a Canadian journalist and co-coordinator of Rural Refugee Rights Network.⁵² Though Ms. Adell clearly qualifies for IRCC's special humanitarian program to resettle vulnerable Afghan nationals, Canada's government does not accept applications under this program directly. Instead, applicants such as Ms. Adell must register with the UNHCR or state authorities in their host country first, then apply to Canada.⁵³

For Ms. Adell and other Afghan refugees living abroad, the process of registering with the UNHCR or with state authorities in their host country is rife with bureaucratic confusion and administrative delays. When Ms. Adell attempted to register for refugee status with the UNHCR, she was directed to register with the Turkish government instead. However, the Turkish government advised Ms. Adell that it takes them up to one year to issue refugee designations – this despite Ms. Adell requiring refugee protection prior to the expiry of her nine-month visa, if she is to avoid *refoulement* to Afghanistan. Without a valid Turkish government or official UNHCR refugee designation, Ms. Adell continues to face ongoing challenges in her day-to-day life, as well as the ever-present threat of *refoulement* to potential torture and death in Afghanistan.

⁴⁶ Chelsea Nash, "Confusion and chaos define Canada's effort to resettle Afghan refugees," *The Hill Times* (31 January 2022), online: <https://www.hilltimes.com/2022/01/31/confusion-and-chaos-define-canadas-effort-to-resettle-afghan-refugees/340671>.

⁴⁷ *Ibid.*

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ *Ibid.*

The situation in Turkey is not unique and the Afghan diaspora faces similar issues in other host countries, such as Pakistan, Iran, Tajikistan, Uzbekistan, and Turkmenistan.

Afghan Refugees in Host Countries, the Risk of Refoulement and Second-Class Lives

Life is rife with extreme difficulties for Afghan refugees living in host countries such as Pakistan, Iran, Turkey, Tajikistan, Uzbekistan, and Turkmenistan.⁵⁴

Pakistan

Consider the administrative and logistical difficulties of awaiting UNHCR refugee designation for Afghan refugees to Pakistan. An estimated 117,547 individuals, or 22,617 households of Afghan refugees have arrived in Pakistan since January 2021.⁵⁵ Approximately 11,662 Afghan refugee applicants, or 56% of the IRCC's current refugee processing inventory, are presently residing in Pakistan and India.⁵⁶ While Canada continues to administratively process Afghan refugees' applications, some of the estimated 300,000 to 400,000 Afghan refugees in Pakistan have already violated the terms of their temporary one-year visas because they are unable to meet the requirement that they leave Pakistan every two months. As one Afghan refugee describes, refugees cannot maintain their valid status in Pakistan because there is "nowhere else to go."⁵⁷

The Pakistani government has engaged in efforts to close Pakistan's borders and to forcibly return refugees to Afghanistan. Foreign Minister Shah Mahmood Qureshi has repeatedly stated that Pakistan does not have the capacity for and "cannot afford to welcome more refugees," with Pakistani officials closing two main border crossings from Afghanistan in June 2022.⁵⁸ The Pakistani military has further attempted to prevent Afghans from entering the country by fencing off approximately 90% of Pakistan's land border with Afghanistan.⁵⁹ Officials have also begun establishing temporary camps for Afghan refugees near the Pakistani border to keep Afghan refugees "from enter[ing] the cities," placing Afghan refugees' health at risk as a result of the ongoing Covid-19 pandemic and facilitating the voluntary or involuntary return of these refugees back to

⁵⁴ UNHCR, "UNHCR Position on Returns to Afghanistan," *UNHCR* (16 August 2021), online: <https://www.refworld.org/pdfile/611a4c5c4.pdf>.

⁵⁵ UNHCR, "Pakistan: New Arrivals from Afghanistan Update," *UNHCR* (7 February 2022), online: <https://data2.unhcr.org/fr/documents/details/90873>.

⁵⁶ Chelsea Nash, "Public policies in place for Afghan refugees are being kept private," *The Hill Times* (7 February 2022), online: <https://www.hilltimes.com/2022/02/07/public-policies-in-place-for-afghan-refugees-are-being-kept-private/342209>.

⁵⁷ *Supra* note 34.

⁵⁸ Asim Tanveer, "Pakistan says peace in Afghanistan is in country's interest," *Associated Press* (27 June 2021), online: <https://abcnews.go.com/International/wireStory/pakistan-shut-border-taliban-afghanistan-78520555>; Umar Farooq, "Afghan neighbours wary of new refugee crisis as violence surges," *Reuters* (15 July 2021), online: <https://www.reuters.com/world/asia-pacific/afghan-neighbours-wary-new-refugee-crisis-violence-surges-2021-07-15/>; Human Rights Watch, "Pakistan Coercion and UN Complicity," *Human Rights Watch* (13 February 2017), online: <https://www.hrw.org/report/2017/02/13/pakistan-coercion-un-complicity/mass-forced-return-afghan-refugees>.

⁵⁹ Sabrina Toppa and Zia Ur Rehman, "Afghans who fled the first Taliban Regime found precarious sanctuary in Pakistan, new refugees may get an even colder welcome," *Time Magazine* (18 August 2021) online: <https://time.com/6091056/afghanistan-refugees-pakistan/>.

Afghanistan.⁶⁰ Indeed, Pakistan had returned 437 Afghans to Afghanistan as of early 2022.⁶¹ These numbers appear to be vast underestimates of the actual number of refugees *refouled* to Afghanistan.⁶²

While the Pakistani government continues to deport those without valid visas, Afghan refugees live with precarious status and experience significant economic, physiological, and mental distress.⁶³ An estimated 500,000 undocumented Afghan refugees have no government-issued identification, leaving them with few legal protections and vulnerable to *refoulement*.⁶⁴ However, even documented Afghan refugees face numerous bureaucratic hurdles in applying for and renewing valid legal status under the UNHCR's Proof of Registration ("PoR") card program.⁶⁵ The Pakistani government has not issued any new PoR cards to adults since 2014, and the 1.25 million PoR cards renewed under the recent documentation renewal and information verification exercise (DRIVE) program will expire on June 30, 2023.⁶⁶ The Pakistani government's policy for continuing to issue or renew PoR cards after their expiration date is currently unclear, which leaves Afghan refugees in a state of administrative limbo.⁶⁷

More importantly, possessing a PoR card does not guarantee Convention Refugee Status from the UNHCR. Individual Afghan refugees must continue to wait for official UNHCR status determination even as their PoR cards near expiration. The number of Afghan refugees living in Pakistan without an official UNHCR refugee designation remains very high. As of December 2021,

⁶⁰ *Ibid*; Australian Government Department of Foreign Affairs, "DFAT Country Information Report – Pakistan," *Australian Government Department of Foreign Affairs* (5 January 2022) online: <https://www.dfat.gov.au/sites/default/files/country-information-report-pakistan.pdf>. US Department of State, "2020 Country Reports on Human Rights Practices: Pakistan," *US Department of State* (March 30, 2021), online: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/>.

⁶¹ UNHCR, "Operational Data Portal: Refugee Situations: Afghanistan," *UNHCR* (accessed 10 February 2022), online: <https://data2.unhcr.org/en/situations/afghanistan#:~:text=Operational%20Data%20Portal,-Refugee%20Situations&text=The%20humanitarian%20situation%20inside%20Afghanistan,is%20responding%20to%20this%20emergency>.

⁶² *Ibid*.

⁶³ *Ibid*.

⁶⁴ European Asylum Support Office, "Pakistan situation of Afghan refugees: Country of origin information report," *European Asylum Support Office* (6 May 2020), online: https://coi.euaa.europa.eu/administration/easo/PLib/2022_05_EUAA_COI_Report_Pakistan_Situation_of_Afghan_refugees.pdf.

⁶⁵ Afghan Displacement Solutions Platform, "On the margins: Afghans in Pakistan," *Afghan Displacement Solutions Platform* (December 2018), online: https://adsp.ngo/wp-content/uploads/2019/06/ADSP_Report_AfghansinPakistan-1.pdf; International Organization for Migration, "Pakistan: Migration Snapshot," *International Organization for Migration* (August 2019), online: <https://dtm.iom.int/reports/pakistan-%E2%80%93-migration-snapshot-august-2019>.

⁶⁶ *Ibid*.

⁶⁷ UNHCR, "Pakistan concludes 'drive' to issue smartcards to registered Afghan refugees," *UNHCR* (4 January 2022), online: <https://www.unhcr.org/news/briefing/2022/1/61d419634/pakistan-concludes-drive-issue-smartcards-registered-afghan-refugees.html>.

Pakistan hosted only 4,731 officially registered UNHCR refugees and only 13,272 officially registered Afghan asylum-seekers. However, an estimated 500,000 unregistered refugees live in Pakistan.⁶⁸

Moreover, while they wait for more permanent status, Afghan refugees in Pakistan live a second-class existence with limited legal rights and protections. Refugees in Pakistan routinely face police abuse, arbitrary arrest, detention, and harassment from government authorities.⁶⁹ Further, refugees cannot open their own bank accounts, purchase property, or regularly attend school.⁷⁰ Without access to their bank accounts, often due to the Western freezing of funds within Afghanistan, many Afghan refugees in Pakistan suffer from dwindling financial resources.⁷¹ Soaring inflation and increasing housing prices exacerbate these financial challenges.⁷² Additionally, Afghan refugees living in Pakistan face other, non-financial challenges. As refugees are not able to lease land or housing in Pakistan, in March 2020, as many as 31% of PoR holders lived in urban settlements or Afghan Refugee Villages (“ARV”) camps with limited basic facilities.⁷³ Refugees cannot obtain driver’s licenses, own cars, or qualify for social insurance and old age benefits.⁷⁴ Afghan refugees consequently find themselves being “taken advantage of” and exploited in their desperate search for jobs, which is made more difficult by stiff competition from locals and their inability to speak Urdu, the local language.⁷⁵

Iran

According to official Iranian government reports from October 1, 2020, an estimated 3.63 million Afghans resided in Iran.⁷⁶ This total is comprised of approximately 780,000 refugees and approximately 586,000 Afghan passport holders, including student and family visa holders, with the

⁶⁸ IOM, *supra* note 65; UNHCR, “Pakistan Overview of Refugee and Asylum-Seekers Population as of December 31, 2021,” *UNHCR* (31 December 2021), online: <https://data2.unhcr.org/en/documents/details/90452>.

⁶⁹ Australian Government Department of Foreign Affairs, “DFAT Country Information Report – Pakistan,” *Australian Government Department of Foreign Affairs* (5 January 2022) online: <https://www.dfat.gov.au/sites/default/files/country-information-report-pakistan.pdf>. US Department of State, “2020 Country Reports on Human Rights Practices: Pakistan,” *US Department of State* (March 30, 2021), online: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/>.

⁷⁰ Hardin Lang, Sarah Miller, Daphne Panayotatos, Yael Schachner, and Eric Schwartz, “After the Airlift: Protection for Afghan Refugees,” *Refugees International* (8 September, 2021), online: <https://www.refugees-international.org/reports/2021/9/7/after-the-airlift-protection-for-afghan-refugees-and-those-who-remain-at-risk-in-afghanistan>.

⁷¹ *Supra* note 33.

⁷² *Ibid*.

⁷³ *Ibid*; EASO, *supra* note 64; ADSP, *supra* note 65.

⁷⁴ EASO, *supra* note 64; UNHCR, *supra* note 68.

⁷⁵ *Supra* note 32.

⁷⁶ UNHCR, “Refugees in Iran” *UNHCR* (accessed 10 May 2022), online: <https://www.unhcr.org/ir/refugees-in-iran/>.

remaining 2.25 million people being undocumented Afghans.⁷⁷ The Iranian government estimated that a further 500,000 Afghans arrived in the country in 2021.⁷⁸

Due to its increasingly hostile policies against Afghan refugee resettlement, the Iranian government provided the UNHCR with a grand total of merely 120 refugees for its resettlement quota in 2020, with Iran's official deputy representative to the UN declaring in October 2021 that Iran is no longer accepting refugees.⁷⁹ Iran's borders currently remain closed to asylum-seekers; the government has taken active steps to *refoule* as many as 65% of all arriving Afghan refugees, leaving only an estimated 274,000 new arrivals to remain in Iran for 2021 and 2022.⁸⁰ According to the International Migration Organization ("IOM"), in 2021, the Iranian government forcibly repatriated an estimated 1,031,757 Afghans, including a record high of 3,200 unaccompanied children.⁸¹ An estimated 2,500 to 4,000 Afghans were deported each *day* in December 2021.⁸²

Afghan refugees living in Iran are treated as second-class citizens, facing significant difficulties in accessing social, legal, and economic services.⁸³ They routinely experience systemic discrimination resulting in police brutality, arbitrary detention, deportation, torture, and even death.⁸⁴ Additionally, their finances and employability are constrained by government policies that criminalize hiring and/or accommodating undocumented immigrants. Only documented immigrants can legally work in Iran using temporary work permits, valid in only three of Iran's twenty-one provinces.⁸⁵ Refugees are legally permitted to work and reside in three designated provinces:

⁷⁷ *Ibid.*

⁷⁸ UNHCR, "Operational Data Portal: Iran (Islamic Republic of)," *UNHCR* (accessed 16 February 2022), online: <https://data2.unhcr.org/en/country/irn>; UNHCR, "Afghanistan situation: Emergency preparedness and response in Iran," *UNHCR* (8 February 2022), online: <https://data2.unhcr.org/en/documents/details/90903>.

⁷⁹ *Ibid.* UNHCR, "Refugees in Iran," *UNHCR* (accessed 16 February 2022), online: <https://www.unhcr.org/ir/refugees-in-iran/>.

⁸⁰ *Ibid.*

⁸¹ Al Jazeera, "Iran deporting thousands of Afghan refugees," *Al Jazeera* (11 November 2021), online: <https://www.aljazeera.com/news/2021/11/11/afghan-refugees-deported-from-iran-as-humanitarian-crisis-deepens>.

⁸² Sune Engel Rasmussen and Aresu Eqbali, "Iran Steps Up Deportations of Afghans Trying to Flee Taliban and Poverty," *Wall Street Journal* (12 December 2021), online: <https://www.wsj.com/articles/iran-steps-up-deportations-of-afghans-trying-to-flee-taliban-and-poverty-11639324804>.

⁸³ Rachel Westerby and Sophie Ngo-Diep, "Welcome to Europe! A comprehensive guide to resettlement," *International Catholic Migration Commission Europe* (July 2013), online: <https://www.icmc.net/resource/welcome-to-europe-a-comprehensive-guide-to-resettlement/>.

⁸⁴ Janne Bjerre Christensen, "Guests or Trash, Iran's precarious policies towards the Afghan refugees in the wake of sanctions and regional wars," *Danish Institute for International Studies* (2016), online: https://pure.diis.dk/ws/files/732765/DIIS_RP_2016_11_WEB.pdf; Human Rights Watch, "Unwelcome Guests, Iran's Violation of Afghan Refugee and Migrant Rights," *Human Rights Watch* (20 November 2013), online: https://www.hrw.org/sites/default/files/reports/iran1113_forUpload_0.pdf; Mujib Mashal and Asadullah Timory, "Afghanistan Investigating Claims Migrants Were Killed by Iranian Guards," *New York Times* (2 May 2020), online: <https://www.nytimes.com/2020/05/02/world/asia/afghanistan-iran-migrants-drown.html>.

⁸⁵ *Ibid.* HRW.

Tehran, Qom, and Alborz. All other provinces are designated “No-Go Zones”, where foreigners and refugees without valid immigration statuses risk deportation.⁸⁶ Moreover, refugees cannot legally hold drivers’ licenses or own property, including land, houses, cars, SIM cards, and bank accounts; all personal property is potentially subject to arbitrary destruction and confiscation by the Iranian authorities.⁸⁷ Refugees also face significant barriers to healthcare in Iran. Only 240,000 Afghans, or 6%, of all Afghans in Iran are registered for health coverage, forcing the majority of Afghans to pay out of pocket for medical care.⁸⁸ All of these barriers have an especially negative impact on child refugees, who are vulnerable to marginalization, exploitation, forced labor, and even human trafficking.⁸⁹

Afghan refugees face strict government regulations that present logistical difficulties to maintaining their status in Iran, as well as bureaucratic “encouragement” of voluntary repatriation to Afghanistan.⁹⁰ The Iranian government has not expanded upon their asylum and refugee claims application process in the past decade. As a result, refugees must wade through the broken bureaucracy of the *Amayesh* documentation system, which is marred with exorbitant renewal fees, frequent re-registration requirements, and administrative processing issues.⁹¹ Human Rights Watch reports that these bureaucratic barriers directly contribute to deportations due to loss of status, particularly for poor and/or illiterate applicants.⁹² Undocumented refugees are effectively prevented from ever acquiring legal status in Iran.⁹³

Turkey

Some 200,000 Afghans constitute the second-largest group of refugees in Turkey, after an estimated 3.6 million displaced Syrians, who currently possess special temporary protection status. Unfortunately, Afghan refugees in Turkey do not yet have this special temporary protection status and face administrative barriers such as long wait times in registering applications for protected status. Consequently, Afghan refugees face immense difficulties in accessing basic rights and services in Turkey such as healthcare, education, and employment opportunities, rendering

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Ibrahim Salmani, Hamed Seddighi, and Maryam Nikfard, “Access to Health Care Services for Afghan Refugees in Iran in the COVID-19 Pandemic,” *Disaster Medicine and Public Health Preparedness* (14 July 2020), online: <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/CD987F031EAFDC15014D0C2C31C8CC5E/S1935789320002402a.pdf/access-to-health-care-services-for-afghan-refugees-in-iran-in-the-covid-19-pandemic.pdf>.

⁸⁹ US Department of State, “2021 Trafficking in Persons Report – Iran,” *US Department of State* (1 July 2021), online: <https://www.state.gov/reports/2021-trafficking-in-persons-report/iran/>; *supra* note 83 HRW.

⁹⁰ *Christensen, supra* note 84.

⁹¹ *HRW, supra* note 84.

⁹² *Ibid.*

⁹³ *Supra* note 84 *Christensen* and *HRW*.

them vulnerable to exploitation, xenophobia, harassment, detention, and *refoulement*. Turkish officials continue to insist that hosting more refugees is “out of the question” and have already increased border security, erected a wall, and fortified existing barriers to keep refugees out.⁹⁴

Tajikistan, Uzbekistan and Turkmenistan

Afghanistan’s northern neighbors, Tajikistan, Uzbekistan, and Turkmenistan have already tightened border controls and engaged in *refoulement* to limit the numbers of Afghan refugees living within its borders.⁹⁵

Though Tajikistan currently hosts 6,526 Afghan refugees, protections for refugees are extremely limited.⁹⁶ Refugees experience restrictions on where they can live, work, and study, as well as on whether they can remain in the country.⁹⁷ Tajikistan’s government has yet to announce its updated plans for receiving “up to 100,000” refugees since the Taliban takeover.⁹⁸

Historically, Uzbekistan has not welcomed Afghan refugees and issued a statement in August 2021 stating that no refugees would be allowed to enter the country, with the government warning of “harsh suppress[ion]” for illegal entry.⁹⁹ Though approximately 1,500 refugees have entered the country in late August 2021, refugees have little to no rights in Uzbekistan and have trouble accessing social services and employment opportunities.¹⁰⁰ They are often accused of radicalism, exploited by landlords, and harassed by police.¹⁰¹

Turkmenistan is a historical destination for Afghan refugees, but the UNHCR reports that the country hosted a mere 21 refugees and asylum-seekers in April 2021.¹⁰² While there is little transparency regarding the government’s exact policies towards refugees and asylum-seekers, reports indicate Turkmenistan forcibly returns refugees and enforces strict controls over refugees in its territory.¹⁰³

CONCLUSION

Overall, it is incontrovertible that Canada must immediately revoke the UNHCR/status requirement. Canada’s UNHCR/status requirement impedes the resettlement of Afghan refugees by

⁹⁴ Caroline Vakil “ Turkey foreign minister says taking more refugees is ‘out of the question’”, *The Hill* (29 August 2021), online: <https://thehill.com/policy/international/569922-turkey-foreign-minister-says-taking-more-refugees-is-out-of-the-question/>.

⁹⁵ *Supra* note 70.

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

forcing refugees to wait prolonged periods of time to receive status designation, thereby increasing the prospect of *refoulement* in direct contravention of Canada's international obligations under the *Refugee Convention*. While waiting for status, Afghan refugees are prohibited from entering Canada, despite clearly meeting the *Convention Refugee* definition, and continue to face significant hardship in their day to day lives for shelter, employment, education, health, and government services. The requirement also leaves eager sponsors in Canada waiting, with no way to assist refugees who desperately need to resettle in Canada due to worsening conditions in Afghanistan and/or their host countries. The prolonged waiting times for status designation cause immense and unnecessary difficulty for Afghan refugee applicants and their sponsors. By revoking the UNHCR/status requirement, Canada can significantly alleviate the suffering Afghan refugee applicants continue to endure in Afghanistan and temporary host countries.