

September 10, 2021

The Honourable Marco Mendicino, P.C., M.P.
Minister of Immigration, Refugees, and Citizenship

Dear Minister Mendicino,

RE: Call for further action in response to the crisis in Afghanistan

The Canadian Association of Refugee Lawyers (“CARL”) has been following the unfolding crisis in Afghanistan with grave concern. We support Canada’s evacuation of 3,700 individuals from Kabul, the establishment of programs for Afghans who assisted the Canadian government and for particularly vulnerable Afghans, the increased commitment to resettle 40,000 Afghan nationals through FY2023, and the prioritization of family reunification applications.

However, while necessarily part of a comprehensive response to the crisis, these measures do little to assist Afghans who remain trapped inside Afghanistan. Over 10,000 people have already applied to Canada’s programs for those who assisted Canada or belong to vulnerable groups, many of whom have not been able to flee the country. Simple measures can greatly increase access to existing programs, ensuring those who are eligible can reach safety as soon as possible.

CARL is calling on the federal government, and leaders of all political parties, to make further commitments to ensure Canada’s response to the Afghan crisis is robust, meaningful, and accessible to the most vulnerable:

1. Commit to the development of a program focused on resettlement of Afghan nationals who are still inside Afghanistan.

Despite extraordinary evacuation efforts, thousands of Afghans, including those who would otherwise qualify for Canada’s program to assist the most vulnerable, remain trapped inside Afghanistan. Canada’s resettlement program for vulnerable Afghans is, by definition, limited to individuals who are outside of the country. CARL encourages Canada to use innovative tools to also assist those who cannot exit Afghanistan. This includes many who have already been identified as priorities for resettlement by Canada, such as woman leaders, human rights advocates, journalists, persecuted religious minorities, and LGBTI individuals. CARL calls on the government to develop a program focused on resettlement of Afghan nationals still inside their country, as Canada has done in the past.

Until 2011, for example, Canada maintained a “Source Country Class of Humanitarian-protected Persons Abroad” program, targeted at specific countries where individuals still

inside their country of nationality faced extreme dangers.¹ Canada has a history of recognizing the need to provide protection to vulnerable internally displaced persons, either through the Source Country Class program or through the use of public policies. The public policy authority set out in IRPA section 25.2 can allow for the resettlement of internally displaced persons in a similar way to that of the Source Country Class program.² The situation in Afghanistan warrants the same response here.

2. Issue Temporary Residence Permits (TRPs) to family members of Afghan nationals already in Canada.

CARL applauds IRCC's commitment to expedite processing of all pending family sponsorship applications for Afghan nationals already in Canada. While this measure is important, given the dangerous and volatile situation facing these family members on the ground, more needs to be done to help them reach Canada safely. CARL calls on the government to issue TRPs to Afghan family members with family reunification applications in process.³ Commercial flights from Afghanistan International Airport have resumed as of September 9, 2021, and flights from neighbouring countries to Canada continue. Issuing TRPs will allow these family members to travel to Canada immediately, when the security situation permits, and complete their processing here in safety.

3. Use all available tools to maximize the number of Afghan refugees that can be resettled to Canada, while respecting our existing global resettlement commitment.

CARL welcomes Canada's initial commitment to resettle 20,000 vulnerable Afghan nationals and the doubling of this number to 40,000 by extending the commitment to span both 2021-2022 and 2022-23 fiscal years. Given the breadth and depth of the crisis in Afghanistan, these 40,000 places should be primarily filled by Government Assisted Refugees (GARs) in line with the 2015 election promise on the resettlement of Syrian refugees through the GAR program. Moreover, it is critical that Afghan resettlement efforts not detract from Canada's existing global commitment to refugee resettlement. Afghan refugees should be separate from that number, such that vulnerable refugees from other parts of the world are not negatively impacted as a result.

¹ See *Operational Bulletin 347 - October 7, 2011*, "Source Country Class of Humanitarian-protected Persons Abroad," <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/bulletins-2011/347-october-7-2011.html>.

² In its response to the Sixth Report of the CIMM, the government acknowledged the need for protection of internally displaced persons, but noted that the Source Country Class program was too restrictive as it only applied to people in countries designated in the Regulations. See *Government Response to the Sixth Report of the CIMM (8512-421-95)*: <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/report-6/response-8512-421-95>.

³ Section 24(1) of IRPA allows the issuance of a discretionary temporary resident permit to both classes of individuals and to specific individuals where such persons do not otherwise meet the requirement of IRPA. The Minister is empowered to issue TRPs where it is "justified in the circumstances," and can specify the eligibility criteria for classes of TRPs. *Immigration and Refugee Protection Act (S.C. 2001, c. 27)*, section 24(1).

4. Waive the requirement of a UNHCR referral for Afghan nationals resettling via private sponsorship; recognize the Afghan crisis as a *prima facie* refugee situation.

It will be exceptionally challenging for Afghan nationals who have recently fled to obtain refugee status documentation given the security situation and the likely limited resources of both Canada and UNHCR to undertake refugee status determination in the region. Neither the UNHCR in Iran nor in Pakistan, where the majority of Afghan refugees are located, currently has an active resettlement program.⁴ Moreover, on August 16, 2021, the UNHCR issued a non-return advisory for Afghanistan, calling for a general “bar on forced returns of Afghan nationals.”⁵ The removal of the UNHCR referral requirement was critical to Canada’s successful response to the Syrian refugee crisis in 2015, when the Minister temporarily waived it for Syrian and Iraqi refugees through public policy provisions.⁶

Canada was also able to resettle a significant number of Syrian refugees rapidly by recognizing the Syrian crisis as a *prima facie* refugee situation. As before, CARL encourages IRCC to recognize the Afghan crisis as a *prima facie* refugee situation and direct officers to assume that (in absence of compelling contrary evidence) it is likely that all Afghan refugee applicants are eligible for resettlement.⁷

CARL looks forward to working with the government and other political leaders as the crisis in Afghanistan unfolds and requests an opportunity to discuss these proposals with you further.

Yours Sincerely,



Aviva Basman
President

⁴ UNHCR Iran, *Information for New Arrivals from Afghanistan*, <https://help.unhcr.org/iran/en/arrival/>; UNHCR Pakistan, *Information for new arrivals*, <https://help.unhcr.org/pakistan/new-arrivals/>.

⁵ UNHCR briefing (17 August 2021), “UNHCR issues a non-return advisory for Afghanistan,” <https://www.unhcr.org/news/briefing/2021/8/611b62584/unhcr-issues-non-return-advisory-afghanistan.html>. Full text of advisory available at: <https://www.refworld.org/pdfid/611a4c5c4.pdf>.

⁶ The Public Policy expired in 2017 and the refugee status determination requirement was reinstated for these populations. See: *CIMM – Resettled Refugees (March 2020)*: <https://www.canada.ca/en/immigration-refugees-citizenship/corporate/transparency/committees/march-12-2020/resettled-refugees.html>. Moreover, the *Immigration and Refugee Protection Regulations* do not require a referral from UNHCR or partner agencies, and specifically provide a mechanism for the Minister to exempt individuals from a particular geographic area from the referral requirement. See IRPR 140.3(3).

⁷ In the Sixth Report of the Standing Committee on Citizenship and Immigration (CIMM), “*Distress Call: How Canada’s Immigration Program Can Respond to Reach the Displaced and Most Vulnerable*” the committee recommended that IRCC “accept *prima facie* refugee status for certain at-risk populations to facilitate their resettlement and reduce the burden on the UNHCR.” (October 2016, 42nd Parliament, 1st Session, Recommendation 2: <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/report-6>). Canada accepted this recommendation and noted that “[t]he recognition of *prima facie* refugee status is one of several tools at the disposal of IRCC to address the resettlement needs of at-risk populations, enabling the Government of Canada to be responsive to international humanitarian situations.” *Government Response to the Sixth Report of the CIMM (8512-421-95)*: <https://www.ourcommons.ca/DocumentViewer/en/42-1/CIMM/report-6/response-8512-421-95>.