



RESEARCH ARTICLE / ARTICLE DE RECHERCHE

## Vulnerability of Asylum Seekers and Undocumented Migrants in Toronto

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### Abstract

This article examines the underlying structural elements contributing to the vulnerability experienced by asylum seekers and undocumented migrants across two critical domains: refugee eligibility examination and accessibility of essential social services, particularly healthcare. By drawing insights from fieldwork conducted in Toronto between 2020 and 2022, this article investigates how migrants navigate and perceive vulnerability encountered both at the front-end of the refugee status determination and while trying to access social services. It discusses the perspectives of key stakeholders, including lawyers, representatives of immigrant-focused non-profit organizations, and municipal officials, shedding light on their experiences and insights regarding the challenges faced by migrants. Furthermore, this article critically evaluates Canada's adherence to the principles articulated in the 2018 United Nations Global Compacts on Migration and Refugees concerning the mitigation of vulnerability among migrant populations.

**Keywords:** UN Global Compacts on Migration and Refugees; Vulnerability; Toronto; Refugee eligibility; Healthcare; Undocumented migrants

### Résumé

Cet article offre un examen des éléments structurels qui contribuent à la vulnérabilité vécue par les demandeurs d'asile et les migrants sans papiers dans deux domaines critiques, soit l'évaluation de l'admissibilité au statut de réfugié et l'accessibilité aux services sociaux essentiels notamment en matière de soins de santé. En s'appuyant sur un travail de terrain mené à Toronto entre 2020 et 2022, cet article étudie la façon dont les migrants perçoivent et vivent la vulnérabilité rencontrée, et ce, que ce soit lors de la détermination du statut de réfugié ou encore lorsqu'ils tentent de bénéficier de services sociaux. De plus, cet article discute des points de vue des principaux acteurs impliqués,

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notamment des avocats, des représentants d'organisations à but non lucratif axées sur les immigrants et des fonctionnaires municipaux, afin de faire la lumière sur leurs expériences et leurs observations concernant les défis auxquels sont confrontés les migrants. Plus largement, cet article offre un regard critique sur l'adhésion du Canada aux principes énoncés dans les Pactes mondiaux des Nations unies sur les réfugiés et les migrations (2018) relativement à l'atténuation de la vulnérabilité des populations migrantes.

**Mots clés:** Pactes mondiaux des Nations unies sur les réfugiés et les migrations; vulnérabilité; Toronto; admissibilité au statut de réfugié; soins de santé; migrants sans papiers

## Introduction

The concept of vulnerability is increasingly employed in both domestic and international strategies aimed at tackling the challenges faced by migrants. The 2018 United Nations (UN) Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR) expressed the member states' commitment to the protection of refugees and migrants in vulnerable situations. States were called upon to take appropriate measures to address specific needs of migrants facing situations of vulnerability (GCM 2018, Objective 7; GCR 2018, para 59). Canada has been a strong supporter of the Global Compacts (GCs). The federal government has been committed to the achievement of the GC objectives through its input and leadership in the international and regional follow-up and review processes. Canada's role as a global leader in migration matters was recognized when it received an invitation from the International Organization for Migration (IOM) to serve as a "champion country" for the GCM in 2020. In this capacity, Canada undertook to work for the GCM implementation and to advocate for a more coordinated and coherent global migration architecture built on and amplifying the capacities of migrants themselves, in particular women and girls (Government of Canada 2021, 4).

The GCs do not provide a definition of vulnerability. Instead, they identify groups with specific needs, including women, children, persons belonging to minorities, victims of violence, older adults, and individuals with disabilities (GCR 2018, para 59). According to a working definition provided by the UN Office of the High Commissioner for Human Rights: "Vulnerable migrants are migrants who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care" (OHCHR/Global Migration Group 2017). A migrant's vulnerability can stem from a permanent or temporary characteristic of that person, such as gender identity, age, or disability. Often, though, vulnerability arises from structural factors external to the individual. Vulnerability is a socially constructed process created by means of law, policy, and practice (Cattacin and Naegeli 2014). Structural factors include colonization and conflict, political systems, migration policies and governance, respect for human rights, and the rule of law (IOM 2019, 7).

This article examines the structural factors that give rise to and exacerbate the vulnerability of asylum seekers and undocumented migrants,<sup>1</sup> who are among the most marginalized populations in Canada and whose vulnerability arising from their lack of or precarious status is emphasized by the GCM (2018, Objective 15). It draws upon the findings of a fieldwork conducted in the City of Toronto—a primary destination for the majority of asylum seekers in the country. Although there are no official statistics, most of Canada's undocumented migrants are believed to reside in Canada's most populous cities, notably Toronto (Smith and Kim 2022). Our primary goal is to delve into the conceptualization and firsthand experience of vulnerability among migrants and relevant stakeholders.

Our contribution to the existing literature involves an exploration of how the vulnerability of asylum seekers and undocumented migrants is shaped by structural factors in two distinct domains: the refugee eligibility examination and the accessibility of essential social services, particularly health care and other rights associated with social determinants of health. We analyze systemic barriers migrants encounter both at the front end of the refugee status determination and while trying to access social services in Canada. A related goal of this article is to critically assess Canada's alignment with the principles outlined in the UN GCs in relation to migrants' vulnerability. We add to the existing body of knowledge by centring the perspectives of migrants by investigating how they personally perceive and encounter vulnerability during their interactions with immigration officials and other actors in relation to the available services and protection mechanisms in Toronto.

We start with an overview of the research methodology, followed by a discussion about the interpretation of the concept of vulnerability within Canada's immigration and refugee protection system. We then delve into the topic of refugee eligibility determination and explore the challenges associated with assessing vulnerability within this process. In the second part, we elaborate on the obstacles and system deficiencies faced by asylum seekers and undocumented migrants in their attempts to access health care and other essential services with significant implications for their health.

## Methodology

This research is based on documentary analysis and interviews with a variety of stakeholders in Toronto. In 2020–21, fifteen semi-structured interviews were conducted with key actors who possessed firsthand knowledge of the operation of immigration or refugee policies in Toronto. They included lawyers, representatives from nonprofit organizations serving immigrants, City of Toronto staff, municipal government officials, and representatives from the Immigration and Refugee Board of Canada (IRB), the administrative tribunal responsible for making decisions on immigration and refugee matters. Two federal ministries—Immigration, Refugees, Citizenship Canada (IRCC) and Global Affairs Canada

<sup>1</sup> The term “undocumented migrant” is not defined in Canadian law. Non-citizens without immigration status are considered to be undocumented migrants.

(GAC)—opted to provide a joint written response to the interview questions.<sup>2</sup> The interviews were tailored to explore stakeholders' comprehension regarding vulnerability and specific needs of migrants in vulnerable situations.

The second phase of the field work took place in 2022 and involved sixteen semi-structured interviews with migrants in Toronto. All the participants were racialized women aged between thirty and fifty-nine. At the time of the interviews, migrant participants held different legal statuses, enabling insightful comparisons regarding the nature of vulnerability they experienced: six participants held refugee status, one was a refugee claimant, five participants were either permanent residents or Canadian citizens and had their status regularized on Humanitarian & Compassionate grounds, and four participants were undocumented migrants. The questions were focused on participants' perceptions of their vulnerability and special needs. They covered migrants' lived experiences and the nature of the challenges they had confronted during their immigration and settlement process in Toronto, including their interactions with Canadian authorities, as well as service providers and non-governmental organizations. Ethics Approval from the Research Ethics Board of Toronto Metropolitan University was granted for the collection and analysis of field study data (REB file # 2020–258). Pseudonyms are used to protect migrant participants' identities. Preliminary research findings focusing on Canada's implementation of the UN GCs were published in 2023 (Atak et al. 2023).

### Vulnerability in Canada's Immigration and Refugee Protection System

A significant portion of the literature on vulnerability among migrants in Canada concentrates on matters related to the circumstances faced by temporary foreign workers (Nakache 2018; McLaughlin and Hennebry 2013). Lately, there has been an increased focus on the understanding and application of the concept within Canada's immigration and refugee protection system (Kaga et al. 2021; Anderson and Soennecken 2022). The literature points out that "vulnerability" is utilized in instances such as the refugee eligibility assessment, procedures at the Immigration and Refugee Board of Canada (IRB), and immigration detention. For instance, the IRB representatives we interviewed underlined that the IRB's understanding of vulnerability has evolved in the past decade. They emphasized that the *Chairperson's Guideline on Sexual Orientation and Gender Identity and Expression (SOGIE)* (IRB 2017 (revised in 2021)) is

groundbreaking in the sense that for the first time they were providing very specific definitions, for example the impact of shame and stigma on a person's ability to even understand their own sexual identity .... So previously we applied the credibility model ... the truth of the story lies in how consistent is the claimant in their testimony. And the Sexual Orientation, Gender Identity, and Gender Expression (SOGIE) guidelines really brought

<sup>2</sup> The IRCC and GAC are responsible for overseeing the implementation in Canada of the UN Global Compacts.

us to understanding how it is very hard for people to have necessarily a consistent narrative ... we have a much more broad and deeper understanding of the challenges facing individuals who come before the Board. (24 February 2022)

Despite positive developments and although authorities increasingly acknowledge that certain migrants may experience heightened vulnerability during their interactions with the Canadian government, the way vulnerability is understood and implemented remains inconsistent (Nakache et al. 2022, 16; Kaga et al. 2021). According to Nakache et al. (2022), civil servants in Canada predominantly perceive vulnerability as an inherent trait of migrants rather than as a consequence of the asylum process itself. They found that, instead of highlighting the impact of administrative procedures in generating vulnerability, civil servants prioritize the incorporation of risk-mitigation mechanisms—for example, in asylum cases, by refraining from soliciting information from authorities in the country of origin (Nakache et al. 2022, 37). Anderson and Soennecken (2022, 3) also observe that, in the context of the inland asylum procedure, vulnerability is commonly perceived by officials as a factor stemming from inherent, personal attributes at the individual level.

The literature underscores the highly problematic nature of defining a migrant's vulnerability along predetermined categories based on the intrinsic or situational characteristics of individuals. Gilodi, Albert, and Nienaber (2022) argue that relating vulnerability to a set of personal or situational characteristics may run the risk of ignoring the social, institutional, legal, and economic conditions that create exploitation and discrimination in society, and thus vulnerability. Leboeuf (2021, 5) highlights the risks of excessive reliance on standardised “vulnerability” checks, which fail to account for the actual position of protection seekers and the complex ways in which their life challenges intersect. Lawyers, civil society organization representatives, and service providers who participated in our study confirmed these findings. They cautioned against automatically assigning vulnerability to migrants as part of who they are and pointed out that often the circumstances that migrants find themselves in and the systemic issues they encounter lead to vulnerability. A refugee lawyer noted that:

one thing that is often missing from research and the Global Compact language is that people who manage to survive and flee persecution and trauma and war and find a new home, and lose trust in humanity and build it up again and build a new home in a new land and learn new languages, new cultures, ... open their minds to new opportunities and new ways of life, that's nothing but resilience. That's resilience. That's not vulnerable, right? It's our systems that render people vulnerable when they're in fact resilient. (11 December 2020)

A nonprofit organization representative emphasized that vulnerability emanates from “a continuum of hardship and barriers migrants face pre-departure, during their journey, and post-arrival in Canada” (28 June 2021), including the lack of adequate support and services. A refugee lawyer concurred that

“migrants experience violence, poverty and homelessness and a lot of spaces are not designed for their needs” (7 May 2021). Vulnerability can also be defined as lack of options “that can culminate lack of financial options, lack of safety options, lack of food, lack of housing, lack of mental health support options and so, when I see someone, I think to myself that is a vulnerable person it’s because they often just don’t have any other choices” (Nonprofit organization representative, 18 November 2020).

As discussed below, the concept of vulnerability still lacks a well-developed framework in immigration and refugee protection that captures the multifaceted nature and complexity of the challenges faced by migrants. Adjudicators and policy implementers often rely on essentialized and category-based approaches when addressing vulnerability (Purkey 2022, 4).

### Refugee Eligibility and Asylum Seekers’ Vulnerability

Recognizing and addressing the vulnerability of asylum seekers during the initial stages of refugee determination is of paramount importance for access to international protection. Eligibility determination is a critical phase in Canada’s refugee system. Individuals have the option to submit a claim for refugee protection either at a port of entry upon arrival in Canada or at an inland office. At the port of entry, the eligibility of the claim is determined by a Canada Border Services Agency (CBSA) officer. At an inland office, the eligibility decision is made by an IRCC officer. Only eligible claims are referred to the Refugee Protection Division of the IRB (IRPA 2021, ss 99–100). Ineligibility grounds outlined in section 101(1) of the *Immigration and Refugee Protection Act* (IRPA) include cases in which: a prior claim for refugee protection has been rejected by the IRB, or was determined to be ineligible to be referred to the IRB, or to have been withdrawn or abandoned; the claimant has been recognized as a Convention refugee by a country other than Canada and can be sent or returned to that country; and the claimant has been determined to be inadmissible on grounds of security, violating human or international rights, serious criminality, or organized criminality. Additionally, under the 2004 *Canada–US Safe Third Country Agreement* (STCA), a refugee claim is not eligible for referral to the IRB if the asylum seeker came to Canada from the United States. Such asylum seekers are returned to the United States, with the exception of those who have family members in Canada; are unaccompanied minors; have valid documents (visa or work permit); or qualify for public interest exceptions (STCA 2004, art 4.2; IRPA, s 101(1)(e)). In recent years, Canada has broadened the ineligibility criteria to tackle the increase in secondary refugee movements across the Canada–United States border (Boyd and Ly 2021). In 2019, Parliament adopted an additional ground, making ineligible those asylum seekers with a previous refugee claim in a country that Canada shares an information-sharing agreement with (i.e., the United States, Australia, New Zealand, and the United Kingdom) (IRPA, s 101(1)(c 1)). Moreover, in March 2023, Canada and the United States concluded an *Additional Protocol*, which expanded the STCA implementation across their entire land border. As a result, asylum seekers who cross the border irregularly outside

of official ports of entry are no longer permitted to file an asylum claim in Canada. From 2004 to 2021, 16,428 persons were deemed ineligible for refugee determination at the IRB. The majority of these determinations (10,910) were made based on the STCA grounds.<sup>3</sup>

In this section, we focus on eligibility examinations by the CBSA at Canada's ports of entry. The IRPA does not prescribe a formal procedure for eligibility determination. As Waldman (2021, 1007) suggests, the drafters of the legislation envisioned an administrative procedure whereby the officer, after collecting the necessary information, would make a decision. The officer is responsible for determining whether there are any grounds to potentially prevent the claimant from proceeding to a refugee determination hearing (Desloges and Sawicki 2021, 549). The burden of proving eligibility rests on the claimant. Information collected includes the asylum seeker's travel history, previous claims, residency, and admissibility.

During the eligibility examination, procedures are in place for the identification of a vulnerable person, defined as an individual "who has significant difficulties coping with the refugee eligibility examination, due to a specific condition or circumstance" (IRCC 2023b). Unaccompanied children, individuals with physical disabilities or injuries, pregnant women, or the elderly may be identified as vulnerable. Official documents acknowledge that migrants with "less obvious symptoms of a vulnerability," such as victims of abuse or gender-based violence,

may become distressed during the eligibility examination, may have difficulty coping with the interview because it is conducted by a person in uniform or because they are confined in a closed room with the interviewer; may fear persons in authority and may be intimidated by the questions that are being asked by officials. (IRCC 2023b)

If an asylum seeker is found vulnerable, authorities are required to provide, whenever possible, suitable accommodation. Such accommodation may encompass conducting interviews promptly to minimize stress, ensuring the physical comfort of the vulnerable individual, and demonstrating sensitivity towards religious, cultural, and gender-related considerations (IRCC 2023b). According to Kaga et al. (2021, 26), although the above-mentioned definition duly emphasizes that not all vulnerabilities are visible, it also implies an internal hierarchy that locates vulnerability within specific categories, such as gender or age.

To the best of our knowledge, no empirical study has been conducted and no recent policy document is publicly available on the eligibility determination carried out by the CBSA. It is unknown how well the identification of vulnerability and the provision of accommodation are carried out for asylum seekers. In our study, key actors in Toronto said that the way in which the CBSA conducts assessments remains unclear to them:

<sup>3</sup> These figures were obtained through an Access to Information request, File # A-2022-31680/TJANO, with the authors.



There are documents in place now where certain vulnerabilities are supposed to be recognized a bit more readily. So, for example, we have a policy on children and to avoid child detention and family separation. But it's not clear how that policy is actually being implemented because we are not sure how [CBSA] officers are making vulnerability assessments. (Refugee lawyer, 25 June 2021)

Another interviewee noted that the CBSA and IRCC do not necessarily distinguish unaccompanied children from accompanied children when they process the eligibility of a refugee claim (Civil society organization representative, 6 November 2020). They explained that an Unaccompanied and Separated Children Network was launched by refugee advocates in Canada in 2017, in order to make a case for a better mechanism for identifying unaccompanied children and connecting them to support and services, such as proper legal counsel and the Children's Aid Society of Toronto.

The limited comprehension of vulnerability may hinder asylum seekers' access to appropriate support during the eligibility determination and, ultimately, access to international protection. The risk is compounded by factors such as power relations embedded in the processes whereby vulnerability is defined. Jacobsen, Karlsen, and Vearey (2022, 5) highlight the "tensions between a securitarian approach to migration, which tends to criminalize immigrants, and a humanitarian approach which is based on notions of suffering and innocence" in the understanding of vulnerability. In our study, concerns were expressed by lawyers and participants from civil society organizations about the significant discretion wielded by decision-makers and the existing power differentials. An immigration lawyer said: "You really don't want your clients dealing with CBSA. And if you do, you want to be there as much as possible, if only to try to protect the clients with the tools you have in front of you" (3 June 2021).

Migrant participants who made refugee claims and who were all racialized women complained about the absence of any vulnerability assessment when their eligibility was determined by the CBSA. They indicated that the immigration officers who processed their application lacked the cultural sensitivity or awareness necessary to comprehend their experiences and the challenges they faced. One participant described refugee eligibility as "the most inhumane experience I have ever had. It is like talking to a robot. It is hard to communicate and it is hard to make them understand or sympathize with your situation" (Souzane, 27 January 2022).

Likewise, a practitioner referred to the shortcomings of the system in assessing vulnerabilities when an asylum seeker is not able to clearly articulate what happened to them or when omissions or contradictions in the story are identified by the decision maker:

Sometimes mental health issues are not clear. Sometimes the vulnerability of the person is not clear, and it doesn't necessarily manifest itself very easily .... If there's no kind of clear kind of stereotypical signs of trauma, how do you identify these things? So I think there's where the bigger challenge lies, really. (Refugee lawyer, 7 May 2021)



A representative from a refugee house in Toronto criticized the role of the CBSA officers in ports of entry, claiming that they create or ignore vulnerability during the eligibility determination. This participant shared their concern about the lack of mandatory vulnerability training for the CBSA agents and the absence of independent oversight and accountability mechanisms (Refugee house representative, 2 November 2020).

According to the CBSA training standards, relevant training for border services officers that encompasses the complex topics of admissibility and eligibility determination for refugee claimants merely consists of a three-module refugee examination course. It is stated that, through the eight and a half hours of training, the CBSA officers will be able “to appreciate the important role that [they] play in front-end processing that directly impacts security, intelligence and law enforcement communities as well as supports Canada’s international obligations” (CBSA 2016, 17–18). Only one module—a one-hour online section—is designed to provide officers “with the necessary skills for identifying people who may be victims of sexual or gender-based violence” (CBSA 2016, 18). This exemplifies the narrow understanding of vulnerability among the CBSA. The inadequacy of the length of training is also alarming, given the wide discretion held by border officers and the life-altering consequences of their decisions.

Anderson and Soenneken (2022, 2) suggest that one way in which state laws, policies, and administrative logics may produce and perpetuate vulnerability is through the opaque exercise of administrative discretion. Discretion, which refers to “an express legal power to choose a course of action from a range of permissible options,” is central to the day-to-day management of immigration and refugee policies (Heckman et al. 2022, 722). However, the context in which discretion is employed is crucial, since decision-making within an organization is susceptible to internal influences that shape the process, including “the beliefs and interests of individuals in the organization, their surrounding culture and managerial structure, and the ideology and sense of purpose instilled by the organizational leadership” (Heckman et al. 2022, 760). In her examination of decision-making at the Canadian border, Pratt (2010) posits that border policy has historically been intertwined with the concepts of risk. Discretion exercised by border officers can be regarded as a manifestation of the state of exception, as decisions are subject to lower evidentiary requirements for justifying suspicion and subsequent actions, distinguishing border officers’ discretionary powers from those of other law enforcement personnel (Pratt 2010, 463). According to Pratt and Thompson (2008, 625), extensive discretion exercised at the border is facilitated by protectionist narratives that portray frontline border officers as benevolent protectors of public safety. The authors emphasize that discretionary decision-making of frontline officers is influenced by risk assessments that are racially biased, targeting asylum seekers and undocumented migrants who are perceived as security threats (Pratt and Thompson 2008, 631). Research shows that a security-oriented approach is prevalent in Canada’s asylum system, particularly the CBSA’s treatment of asylum seekers (Boyd and Ly 2021). Canadian authorities regard unauthorized arrivals of asylum seekers as a challenge to state sovereignty, a security threat, and an economic burden (GAC 2016). The refugee determination process has often been revised to deter asylum seekers by

limiting their access to international protection and basic services (Trebilcock 2019, 835).

The criminalization of migration, enhanced by negative political narratives against asylum seekers and undocumented migrants, has had a considerable impact on the enforcement of immigration laws. As Lalonde observes, the CBSA has shifted priorities from tax and duty collection to an agency that deals primarily in national security, criminal enforcement, and intelligence (2019, 594). These changes have reinforced the agency's powers to decide who may be excluded from the territory, and therefore from membership in the society. As an illustration, the manner in which the CBSA conducts eligibility determination has drawn criticism. The Standing Senate Committee on National Security and Defence (2015, 12) found that CBSA officers have utilized eligibility interviews as a means to gather evidence of inadmissibility. In certain instances, the CBSA has been known to exceed its authority by delving into the merits of a claim, challenging the credibility of the claimant, and seeking information pertaining to criminal and regulatory offences (Standing Senate Committee on National Security and Defence 2015, iv). Media reports have highlighted cases in which the CBSA confiscated asylum seekers' phones and contacted individuals listed in them, disregarding the privacy and safety of the claimant's family residing in the country of origin (Office of the Privacy Commissioner of Canada 2017). Moreover, despite the above-mentioned IRB Guidelines on gender-related vulnerability, some research participants pointed out that authorities continue to have a stereotypical conception of gender and fail to recognize certain vulnerabilities, especially when it comes to young men who can be associated with risk upon arrival in Canada: "certain men might express stress and depression through anger or resistance or ..., or even aggression. And that is taken, in a fundamentally different lens, right? That's understood as a dangerous person rather than a vulnerable person trying to survive through these incredibly stressful situations" (Refugee lawyer, 3 June 2021).

The convergence of insufficient comprehension of vulnerability, inadequate professional training, and wide-ranging discretion granted to CBSA officers within an institutional framework that treats most asylum seekers with suspicion can have adverse effects on vulnerable individuals seeking asylum. It significantly curtails their capacity to avail themselves of appropriate procedures. As a result, their fundamental right to liberty and security, protected under section 7 of the *Canadian Charter of Rights and Freedoms*, is compromised (Waldman 2021, 1006). An independent review of the refugee process found that the majority of people seeking asylum are unaware of the nature of an asylum proceeding, expectations of the process, and what test is to be met for protection in Canada (Yeates 2018). In addition, although many do not speak either English or French, they usually do not have access to a competent interpreter when there are concerns about their eligibility (Yeates 2018). The risk of *Charter* section 7 violation is even higher when considering that the CBSA's policy is to not permit counsel at a port-of-entry examination unless an arrest or detention has taken place (Waldman 2021, 1007). It is highly unlikely for an asylum seeker to be accompanied by legal counsel upon arrival at a port of entry to make a refugee claim in Canada. In *Dehghani* (1993), the Supreme Court of Canada ruled that the

principles of fundamental justice do not encompass the right to counsel for routine information-gathering purposes, such as those conducted during port-of-entry examination interviews. This determination was based on the premise that the immigration officer's role was informational rather than adjudicative. However, as argued by Waldman, with the legislative changes since the *Dehghani* decision, especially the entry into force of the IRPA in 2002, officers now exercise powers of adjudicative nature that effectively deny asylum seekers the right to a refugee hearing before the IRB, so the right to legal representation has become even more compelling (Waldman 2021, 1007).

Another structural factor that hampers asylum seekers' access to vulnerability assessments and international protection procedures, in general, is the inefficiencies and backlogs within the system (Nakache et al. 2022). In recent years, both the CBSA and the IRCC have been grappling with significant backlogs that worsened during the COVID-19 pandemic. Despite the sharp decline in the number of claims due to border closures, asylum seekers have encountered substantial delays in their eligibility determinations. A representative from a refugee shelter said that they had residents who had been in Canada for over a year without their eligibility being determined (6 November 2020). The delay forced families to live in limbo for extended periods of time with limited access to resources, since migrants caught in these backlogs are not referred to the IRB and, until recently, they were denied the opportunity to apply for work permits.

The issues discussed in this section highlight a misalignment between Canadian policies and the requirements of the GCs. The GCR stresses the need for support, during the front-end phases—namely reception, admission, registration, and documentation—of international protection claims. It calls upon states to identify international protection needs and to “contribute resources and expertise for the establishment of mechanisms for identification, screening and referral of those with specific needs to appropriate and accessible processes and procedures” (GCR 2018, para 60). Similarly, the GCM underscores the need for the identification of migrants' vulnerability and assistance at all stages of migration, regardless of their migration status (GCM 2018, para 23b)). Its paragraph 27c enjoins states to review and revise relevant national procedures for border screening, individual assessment, and interview processes to ensure due process at international borders.

Effective compliance with the GC principles would require the authorities to enhance the identification and accommodation of vulnerable asylum seekers through continuing and improved professional training of CBSA officers to promote a better understanding of the underlying structural factors for asylum seekers' vulnerability. Efforts should be made to enhance procedural fairness by ensuring the availability of qualified interpreters and facilitating access to legal representation during the eligibility examination process. Additionally, there is a need for an effective accountability mechanism, considering that the CBSA is the sole law enforcement authority in Canada without independent oversight.<sup>4</sup>

<sup>4</sup> Bill C-20 proposes to enact a new statute, the *Public Complaints and Review Commission Act*, which would serve as an enhanced independent review body for the CBSA (Public Safety Canada 2022).

More resources should be available to implement these measures and to tackle the system inefficiencies and backlogs.

Refugee eligibility determination illuminates how structural factors may hinder access to international protection and violate migrants' rights. As discussed below, they also exacerbate migrants' vulnerability by limiting effective enjoyment of rights and services in Canada.

### Access to Basic Services: The Case of Health Care

Access to basic services for migrants is a core GCM (2018) objective in which such access, regardless of migration status, is defined as a prerequisite for the exercise of human rights (Objective 7). States are urged to strengthen migrant-inclusive service delivery systems, including in health care, psychological, and other counselling services, through nondiscriminatory laws and effective oversight and complaints mechanisms (GCM 2018, para 31). Likewise, the GCR calls upon states and relevant stakeholders to contribute resources and expertise to enhance the quality and inclusiveness of basic services for refugees, including national health systems (2018, paras 72 and 80).

Participants in our study provided definitions of vulnerability that revolved around access to social and economic rights, as well as the availability of settlement services. In this section, we discuss some of the challenges experienced by asylum seekers and undocumented migrants in accessing basic services and effectively enjoying social and economic rights in Toronto. Due to space constraints, our discussion primarily centres on physical and mental health care as a critical area of vulnerability (Nakache et al. 2022, 30). We emphasize the impact of immigration status and other social determinants of health on migrants' vulnerability.

In Canada, the availability of services and resources differs significantly depending on the individual's immigration status, which in turn can be conducive to social exclusion (Hudson 2021). Additionally, immigration policies create avenues for various forms of precarious legal status (Goldring et al. 2009, 257). As a result, some groups of migrants experience limited or no access to entitlements, including public services, which contributes to their widespread vulnerability to rights' violations and exploitation. To illuminate this phenomenon, we examine the challenges faced by asylum seekers and undocumented migrants, whose vulnerability arising from their lack of or precarious legal status is emphasized by the GCM (2018, Objective 15).

We focus on the interaction between various levels of government in Canada and the specific role played by the City of Toronto in providing services to vulnerable migrants. Local governments are increasingly engaged in addressing the day-to-day challenges faced by migrants and have a profound influence on their overall well-being. The GCs advocate for a multilevel collaboration to reduce vulnerability in migration (GCM 2018, para 39b)). The GCM accords a special place to local authorities among other orders of government and invites states to involve local authorities "in the identification, referral and assistance of migrants in a situation of vulnerability" (2018,

para 23k)). However, within Canada's federal framework, local governments hold limited powers and resources in migration governance. As argued below, these limitations are among the structural factors that impede migrants' effective enjoyment of services. We therefore start by providing an overview of the jurisdictional context concerning service provision for migrants in the City of Toronto.

### *Jurisdictional Landscape*

In Canada, the federal and provincial governments work together to handle most aspects of migration, with provinces taking on increasingly significant roles in policy development and implementation (Hudson 2021). The federal government holds exclusive jurisdiction over naturalization and refugee status determination, and the power to set immigration selection criteria and enforce border control (*Constitution Act 1867*, s 91(25)). Provincial authorities have jurisdiction over social and economic issues, including education, labour laws, social assistance, and housing. Health matters also fall under provincial authority, with some exceptions. Local governments do not possess direct authority over health, education, and employment matters, as these powers are held and delegated by the provinces.

The Province of Ontario provides funding to the City of Toronto and to third parties to deliver settlement and integration services for migrants. Alongside numerous nonprofit and civil society organizations, a substantial array of settlement organizations in the City of Toronto offer support and services to migrants. The City of Toronto's Newcomer Office (TNO), established in 2013, coordinates policy implementation with the city's operational divisions that provide direct services to migrants. The TNO funds community partners to implement specific projects for migrants. Praznik and Shields (2018, 5) argue that the City of Toronto is a "proactive municipality" that works with community groups and city departments to identify and address needs before issues develop. In our research, the majority of the key stakeholders acknowledged that partnerships at the local level, to some degree, play a role in addressing the specific needs of migrants. Nevertheless, there remain significant gaps in services and support available to vulnerable migrants.

As explored below, asylum seekers receive temporary health-care benefits. They can access social assistance, emergency housing, and legal aid through provincial funding. However, federally funded settlement and orientation programmes, such as language courses, information provision, and referrals, have stringent eligibility criteria that exclude asylum seekers.

Undocumented migrants face an even more challenging situation. They are not entitled to any settlement services or social support, since they do not meet the eligibility criteria based on "legal residence." The lack of legal status exposes undocumented migrants to a heightened risk of marginalization and exploitation (Barnes 2016). A migrant participant noted that "[a]n undocumented, you don't have access to health care, no access to education, jobs, government support or housing. It makes you vulnerable to abuse and violence and

employer exploitation, taking advantage of your status and situation” (Sabrina, 9 February 2022).

In order to alleviate the hardship experienced by undocumented migrants, Toronto has implemented a policy known as “Access T.O.” since 2013. Access T.O., also known as the sanctuary city policy, directs city officials not to inquire into immigration status when providing select services (e.g., emergency shelter and housing support; employment help; library services; basic public health services) (City of Toronto 2012). Despite the efforts, access to basic services remains a challenge compounded by the City of Toronto’s limited authority over matters pertaining to the settlement of asylum seekers and undocumented migrants. Moreover, the city’s delegated powers in areas such as health care, housing and social assistance are often considerably restricted by limited resources and insufficient support from the provincial and federal governments. The limitations of health-care services offer a good illustration.

### Health-Care Services

In Ontario, the Ontario Health Insurance Plan (OHIP) provides coverage for a wide range of health services, such as assessment and treatment by doctors, in/outpatient care in hospitals, and diagnostic tests (City of Toronto 2012). Asylum seekers and undocumented migrants are not eligible for OHIP. The Interim Federal Health Program (IFHP) provides limited, temporary coverage of health-care benefits to asylum seekers through health-care providers who are registered with Medavie Blue Cross, the insurance company that manages IFHP claims (IRCC 2023a). The benefits covered by the IFHP have certain limits including maximum dollar amounts. Additionally, as outlined by Chen et al. (2018), there is a dearth of clear and accessible information about the IFHP (e.g., the eligibility criteria and the extent of services and treatments covered) for both patients and health-care providers. The registration, preapproval, and reimbursement processes are burdensome, contributing to some practitioners’ hesitance to participate in the programme (Chen et al. 2018). In addition to the roadblocks related to the availability of appropriate services, asylum seekers face structural barriers (i.e., fear of financial contribution) to accessing services (Thomson et al. 2015). Perceived negative attitudes and discrimination of health-care providers toward asylum seekers can have a direct impact on their willingness to utilize services (Rousseau et al. 2022, 1342).

Campbell et al. (2014, 175) suggest that a person’s immigration status is the single most important indicator of whether they can access health care and their experiences seeking health care, including the ability to establish relationships with family doctors, access prescriptions and medications, and seek out emergency-room care. They contend that, in terms of health-care-seeking behaviour, undocumented migrants are at a greater disadvantage than asylum seekers (Campbell et al. 2014, 175). Undocumented migrants have the choice of obtaining private health insurance, which can be costly and often comes with strict eligibility criteria or exclusions for certain health conditions (City of Toronto 2013, 6). While undocumented migrants in need of urgent care are attended to at hospitals, they are later billed for these services. Those who seek



care at walk-in clinics will also be billed for the services received. Some community health-care centres and physicians in Toronto offer primary care services to this population. Nevertheless, the care provided is limited. As noted by the City of Toronto's Medical Officer of Health, "gaps remain in long-term, homecare, chronic care and most specialist and hospital care" (2013, 12).

These findings were confirmed by the participants in our study. A migrant woman who is a gender-based violence survivor complained about the lack of trauma-informed care:

No one has followed up with me, no communications, no proper follow up, ... the counselors were not trained to realize that I was in an abusive relationship and can miss appointments, deadlines, etc. My Humanitarian and Compassionate application has been in progress since 2017. I felt I was on my own and I had to connect all the pieces and I am in a new country trying to figure out all the resources. Other organizations are too tired, overloaded, crowded, have no resources and they don't offer proper Gender Based Violence (GBV) support or prevention programming for GBV survivors who are undocumented too. It feels like going around in circles. (Nova, 3 February 2022)

Evidence has shown the shortcomings of Toronto's above-mentioned Access T.O. policy: the municipal services accessible to undocumented migrants are not sufficiently adapted to their specific health needs (Hudson et al. 2017). For lack of political commitment, Toronto's sanctuary city policy has been chronically understaffed and underfunded. The TNO, which implements Access T.O., has no dedicated budget or staff for the policy implementation (Hudson 2021, 90). An independent audit revealed that there was an ongoing lack of information about Access T.O. that led to its inconsistent application by city staff and limited support for undocumented migrants (City of Toronto 2017). As a participant put it, systemic obstacles have negative health outcomes:

After being in Canada for six months only, I got sick with thyroid disorders and diabetes. I didn't have any money, so I [couldn't] afford medication. I had to pay for every exam. Many times, I didn't have enough money to buy medication. I couldn't afford to buy the whole month's supply ... so my health deteriorated. (Nicole, 18 March 2022)

Another interviewee explained her experience of seeking health care in Toronto:

As undocumented, I was unwell and I needed to see a doctor. I couldn't be treated in a regular hospital. I struggled to find a place where they accept undocumented and when I found one, I was not able to get an immediate medical help. I had to wait four months to see the doctor ... I was unwell for a long time. (Fahima, 18 March 2022)

Of note, amid the COVID-19 pandemic, the Ontario Ministry of Health issued a memorandum stating that the ministry would reimburse hospitals and



physicians for all medically necessary services provided to uninsured patients (HNUC 2023, 6). The Health Network for Uninsured Clients (HNUC), an advocacy group, observed that this decision resulted in notable enhancements in uninsured individuals' access to health care and their overall health outcomes. However, the HNUC expressed concerns regarding the temporary nature of the measure (2023, 7).

Vulnerability emanating from mental health is an issue mentioned by stakeholders working with asylum seekers and undocumented migrants in Toronto. This population is likely to suffer from high levels of anxiety, depression, and stress-related physical illnesses, and face many barriers in accessing mental health care in Toronto (Toronto Public Health and Access Alliance Multicultural Health and Community Services 2011, 116). Asylum seekers either have to pay out of pocket for regular therapy sessions or, if eligible, they are placed on a long waiting list to receive government-funded mental health care. Research participants who were asylum seekers at the time of the interviews talked about the mental health impact of the long waiting period for their refugee claim outcome:

Our mental health issues are being exacerbated because of the long waiting time from the minute you apply till you hear back. No one talks to you, you don't know what is waiting for you or what is next. You live in fear, anxiety, uncertainty and you can't plan for the future. You can't do anything. You sit there and wait. (Natalie, 10 February 2022)

Another migrant participant, who was seeking to regularize her legal status through a Humanitarian and Compassionate application, expressed similar sentiments about the implications of lengthy bureaucratic processes: "I was dealing with mental health issues as a result of ...waiting/living in limbo not knowing what will happen in the future. I experienced anxiety and stress and was crying on a daily basis" (Rosaline, 22 February 2022).

Both asylum seekers and undocumented migrants often express a lack of awareness about their rights (van der Boor and White 2020, 170). Such statements highlight the urgent need to improve awareness and comprehension of the services accessible—a key GCM requirement (Objectives 7c and 15).

Our study validates prior research findings that highlight the influence of social and economic factors on physical and mental health. Social determinants of health include broader variables such as access to safe environments, adequate food and housing, high-quality health care, and appropriate employment (Ahnquist et al. 2012) as well as interpersonal factors such as experiences of social exclusion and discrimination. The notion illuminates the conditions associated with the migration process, including extended insecure status and restrictions on the ability to find employment or housing, that can have a significant impact on health.

Asylum seekers and undocumented migrants face a high risk of hidden and episodic homelessness and destitution (Hynie 2018, 6). Toronto is among Canada's most expensive rental housing markets. The lack of safe and affordable housing has been a challenge in the midst of high rates of homelessness and shortages of social housing options (Kissoon 2010, 5). As mentioned by a research

participant, Toronto's housing crisis means the length of stay in shelters gets longer for refugee families. When families leave shelters, they usually move into deep levels of poverty (City of Toronto representative, 19 November 2020). Another interviewee estimated that the families they served "typically spend 70 to 75% of their monthly income just on rent, with not much left for food and other basic needs" (Refugee shelter representative, 6 November 2020). Almost all migrant participants we interviewed experienced housing instability, moving multiple times from one place to another. Out of sixteen participants in our study, thirteen of them lived in a shelter when they came to Canada. Securing a place at a shelter was not easy, since shelters were at overcapacity.

Migrant participants who lived in a shelter reported negative experiences, including abuse and racism. Leaving the shelter to rent a place was described as challenging due to factors such as income instability, lack of a credit score, and landlords' reluctance to rent to refugees:

Once [landlords] see that you're a refugee, nobody wants you to stay in their house, nobody because there is that assumption that you cannot manage to pay rent ... that was a big stumbling block. Everything is great until you say you're a refugee it's like a door just shuts. (Nicole, 18 March 2022)

Participants who were asylum seekers at the time of the interviews shared their experiences of encountering numerous obstacles in their pursuit of employment. They highlighted how their legal status affected their access to the labour market and influenced their employment outcomes:

My current legal status created a lot of problems. You are looking for a job, the minute you send your SIN number, most of the employers don't want to hire you because your SIN starts with a 9. Employers will interview you and sometimes offer you the job. Then when they see your SIN number, they withdraw the offer. (Manel, 26 January 2022)

Migrant interviewees mentioned experiences of working in precarious jobs with minimum wage, being paid less than minimum wage, working in unsafe environments, and facing discrimination:

I worked during COVID in a long-term care [facility] and everyone tested positive for COVID, and only myself and my friend were assigned COVID positive cases because we both were Black and refugees. They didn't assign these cases to others. They jeopardized our health and safety and exploited us with no proper safety equipment. They assigned these cases to us because they know we are desperate for work and because we are refugees. (Nova, 3 February 2022)

Migrants frequently encounter discriminatory treatment when trying to access essential services. Some research participants emphasized how intersectionality compounds migrants' vulnerability. They underlined that racialized refugee women, for instance, face extra hurdles when finding housing and accessing

social services. As a result, the call on settlement workers' time and the challenges they face in providing services become more complex given the vulnerability that their clients are facing. Participants also complained about the lack of resources for settlement workers and agencies to tackle these complex cases (Refugee shelter representative, 6 November 2020). Moreover, undocumented migrants often refrain from seeking assistance from labour organizations when they face workplace abuse, as they fear potential denunciation. They are reluctant to approach law enforcement and courts in cases of victimization or other legal issues due to the fear of being handed over to border enforcement officers for detention and subsequent removal from Canada (Hudson et al. 2017).

Significantly, the criminalizing discourse present in the immigration system, as discussed earlier, has been reproduced by employers, landlords, service providers, and other individuals operating at the grassroots level. Hudson et al. (2017, 15) found that the adoption of criminalizing language and policies aimed at migrants by both federal and provincial levels hinders the effective implementation of the Access T.O. policy. Undocumented migrants and asylum seekers are held accountable for their status and are consequently kept in precarious situations with the constant threat of deportation (Gagnon et al. 2022).

The experiences of migrants in Toronto point to the gaps in Canadian policies in relation to the GCM (2018) Objective 6, which enjoins states to provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections as are extended to all workers in the respective sector (para 22i). Canada also falls short of meeting the GCM (2018) Objective 7 by which states are committed to effectively addressing workplace-related vulnerability and abuses of migrant workers (para 23c and d) and strengthening migrant-inclusive service delivery systems through nondiscriminatory laws and effective oversight and complaints mechanisms (GCM 2018, para 31).

Our findings align with prior research on the social determinants of health, emphasizing the profound impact of the lack of safe and affordable housing, precarious employment, discrimination, and limited access to essential social services on both the mental and the physical health of migrants in Toronto.

## Conclusion

As a global leader in refugee protection and a GCM "champion," Canada has committed to addressing the vulnerability of migrants. However, there is still work to be done to fulfill the GC commitments. Our analysis of refugee eligibility determination and access to social services has highlighted how migrants' vulnerability is primarily shaped by Canada's immigration and refugee policies. Authorities often exhibit a limited understanding of vulnerability, failing to recognize and tackle institutional and other system-related factors that contribute to or intensify vulnerability.

At the front end of the refugee status determination process, the discretionary powers of the CBSA officers, combined with the prevalent security-oriented approach, have led to the implementation of exclusionary policies. System inefficiencies, inadequate training, and limited procedural fairness at the border further compound vulnerability, with severe consequences for asylum seekers.

The rich data collected from the interviews with migrants and other key actors confirmed many structural barriers faced by migrants to secure legal status and to access health care and other essential services, exposing them to an increased risk of rights' violations, destitution, and unsafe living and working conditions. The loss of agency and overall well-being is a common experience among migrant participants in our study.

Canada should take concrete steps to uphold its commitments under the GCs. There is an urgent need for the federal government to develop accessible and expedient procedures that facilitate regularizations, in line with the GCM (2018, para 23h). Further initiatives aimed at tackling policies and practices that contribute to migrants' vulnerability include the allocation of adequate resources to address system inefficiencies and improve the availability and accessibility of social services and support. Effective collaboration between federal, provincial, and local governments is crucial in addressing the specific needs of migrants, as evidenced by the limitations of Toronto's Access T.O. policy. Nondiscriminatory legislation, robust oversight mechanisms, and well-defined complaint procedures are imperative in safeguarding the human rights of migrants in vulnerable situations. Migrants' lived experiences deserve careful consideration and their voices should be integrated into decision-making processes that affect them.

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