

Submission to the Home Affairs Select Committee on the Draft (partial) Immigration and Citizenship Bill 2008

September 2008

1. Introduction

1.1 The Refugee Council is the largest charity in the UK working with asylum seekers and refugees. We not only give direct help and support, but also work with asylum seekers and refugees to ensure their needs and concerns are addressed.

1.2 The draft (partial) Immigration and Citizenship Bill will overhaul the entire legislative framework of the UK asylum system that has been developed in eight Bills in the past fifteen years. We are concerned that this radical review of asylum law will have profound implications for the thousands of refugees who flee to the UK every year. The Bill provides an opportunity to ensure that the protection needs of refugees are adequately safeguarded for the next decade. Yet this opportunity has been missed, and the Refugee Council is concerned by the following issues that will make life more difficult for refugees and will result in refugees being denied the protection to which they are entitled:

1.2.1 Borders without doors for refugees: The increased interception measures, such as the authority to carry schemes in Part 8 of the Bill, mean that increasing numbers of refugees will be prevented from reaching the UK. There are no safeguards in place to ensure that increased extra-territorial border controls do not result in refugees being forced back to persecution. This goes against the spirit of our international obligations.

1.2.2 Criminalisation of refugees: The wide range of offences listed in Part 7 of the Bill, in conjunction with the lack of legal entry routes into the UK for refugees seeking asylum, means that refugees will be subject to increasing dangers of criminalisation and the threat of imprisonment or detention. Refugees should not be criminalised for seeking asylum and they should not be detained whilst their asylum claims are processed. They should be allowed adequate time to present their asylum claim, have access to legal advice and representation throughout the process, and have a right of appeal from within the UK. They should be allowed to work during this time.

1.2.3 Putting refugees on 'probationary citizenship': The proposed introduction of 'probationary citizenship' is simply an additional period of temporary leave. Individuals with protection needs who are granted leave will be faced with additional lengthy delays before gaining a permanent right of residence. The Refugee Council believes that refugees should immediately be given permanent rights of settlement once their need for protection is identified by the UKBA. This would enable them to rebuild their lives and recover from the experiences

which forced them to flee their homes. The granting of settlement should be on the basis of need, and not be dependent upon the fulfilment of other obligations such as engaging in voluntary work.

1.2.4 Keeping refugees out of the UK regardless of their safety: The combining of previous deportation orders and administrative removal into the single concept of expulsion means that people who leave the UK because they had not been recognised as refugees will be faced with lengthy bans on re-entry. As a result, people who apply for asylum and are refused will not be able to return the UK if they need refugee protection in the future. People should only be removed from the UK to countries that are safe and to which returns are sustainable. In order to ensure that all returns from the UK are safe and sustainable, returns should be monitored.

2. Refugee Council commentary on areas highlighted by the Committee

2.1 We have listed our detailed comments on the Bill according to the Committee's list of concerns. More detailed commentary on the draft Bill, along with the Refugee Council's full recommendations, are available in our public briefing on the Bill.¹

"Strong borders" (including modernising border powers and carriers' liability and powers to cancel visas abroad)

Powers to examine etc. - Part 2 of the draft Bill.

2.2 The Refugee Council is concerned that the proposed new powers are extremely broad and far-reaching, allowing immigration officials to make enquiries about anybody, anywhere in the world. Protection safeguards are urgently needed to ensure that people who need to flee persecution are not prevented from doing so by UK extra-territorial border and immigration controls. We are concerned by the lack of transparency and accountability for what happens 'out of sight' in border posts abroad.

2.3 The Bill proposes to introduce the power to examine those who seek to enter the UK. This power can be exercised by the UK's immigration officials acting outside of the UK's territory. It is proposed that this power be combined with immigration officials being able to grant or cancel permission to enter or transit the UK.

2.4 The Refugee Council is concerned that in circumstances where immigration officials acting extraterritorially (including in refugee's countries and regions of origin) refuse or cancel permission to enter or transit the UK, this may lead to blocking refugees from leaving their own country. It may also lead to direct or indirect *refoulement* of refugees transiting through a country on their way to seek protection elsewhere. We are particularly concerned that refugees who are in a transit country and are refused permission to travel to the UK may be at risk of being returned to their own country, or to another country through which they transited that will send them back to their country of origin. These life-threatening processes are known as direct and indirect *refoulement* and are prohibited by the 1951 Convention and by international human rights law. The UK's obligation not to *refoule* refugees, whether directly or indirectly, arises not only on UK territory, but also applies to settings where its officials are abroad.

¹ Refugee Council (September 2008) *A briefing on the Draft (partial) Immigration and Citizenship Bill 2008*. Available at <http://www.refugeecouncil.org.uk/policy/briefings/2008/immigrationandcitizenship.htm> Page 2 of 6

2.5 The Refugee Council believes that the Bill should be used as an opportunity to introduce protection safeguards in order to ensure that the UK fulfils its obligations under international refugee and human rights law. In particular, we call for the Bill to require the Secretary of State to regularly review, through independent monitoring, whether extra-territorial border control is compliant with refugee protection and with the UK's international legal obligations, in particular the prohibition on *refoulement*.

Carriers Liability – Part 8 of the draft Bill

2.6 The Refugee Council believes that the UK's use of carriers, such as airlines, to check that an individual has the required immigration documentation to enter the UK, is not accompanied by adequate safeguards for refugees fleeing persecution. The Bill's proposed 'Authority to Carry' scheme further extends the delegation of immigration control functions to private carriers. This new system will allow carriers to check the details of a passenger against Home Office databases and receive instant confirmation that they pose no known security or immigration threat. The Refugee Council reiterates that where border control activities are carried out extra-territorially, the UK remains subject to obligations not to return refugees to persecution. This applies equally to circumstances where border control activities are contracted out to private carriers.

2.7 The Refugee Council recommends that the protection capacity of carriers be built by, for example, providing access to a protection helpline for carriers to raise concerns about individuals with protection needs, as well as by providing carriers with training on the UK's international refugee and human rights legal obligations, by which they are bound.

“Selective migration” (including the introduction of ‘permission’ for migrants, replacing notions of leave to enter, leave to remain and entry clearance, and a single power of expulsion)

Expulsion orders & removal etc. from the UK – Part 4 of the draft Bill

2.8 The Refugee Council is concerned that the draft Bill combines the previous powers of administrative removal and deportation into a single power of expulsion and imposes re-entry bans on all. Refugees and refused asylum seekers who are removed from the UK should not face the same penalty as that imposed on people who are being removed because of previous criminal behaviour, including those who may present a danger to the community.

2.9 We are additionally concerned that the current draft Bill contains no safeguards against the current UK practise of removing people, or expecting them to depart, to countries that are unsafe or experiencing rapidly deteriorating conditions. The UK regularly removes individuals to countries against the advice of the United Nations High Commissioner for Refugees (UNHCR) to refrain from such forcible removals because they are unsafe or unsustainable. We believe that there is a need to introduce an obligation on the Secretary of State to monitor the post-return outcomes of asylum seekers who are returned where returns are contrary to UNHCR advice or are to countries experiencing significant or widespread human rights violations. We therefore recommend that the Bill be used to introduce powers for an independent monitor to oversee and provide an independent assessment of returns and their outcomes. We additionally recommend that the Bill be used to introduce powers to fund the monitoring of post return outcomes to ensure that returns are safe and sustainable.

“Earning the right to stay” (including new requirements for citizenship and an automatic ban on returns with new powers to exclude criminals and immigration

offenders)

2.10 The Refugee Council believes that individuals who are removed from the UK after having their claim for asylum refused, as well as those who are removed after their period living in the UK as a recognised refugee has ended, should not be prevented from applying for re-entry straight away. It is impossible to guarantee that those to whom re-entry bans apply will not be at risk of persecution in the future, with an urgent need to flee their country of origin.

2.11 We remain concerned that under the proposed legislation, as at present, some refugees will be excluded from protection under the 1951 Refugee Convention and face expulsion to a country where their lives are at risk. For example, previous legislation has incorporated the UK's very broad definition of terrorism, including acts which encourage criminal damage, into the UK's interpretation of the Refugee Convention. As a result, political refugees who have opposed repressive regimes in their home countries can fall within this broad definition and be excluded from refugee protection, with severe consequences for their safety.²

Citizenship – Part 3 of the Bill

2.12 The Refugee Council believes that all those recognised as refugees by the UK should receive permanent residence and not endure the uncertainty of an initial period of temporary leave.

2.13 We continue to have strong reservations about the implications for refugees of the routes to citizenship proposals.³ We believe that the language of 'earning the right to stay' in the UK and 'probationary periods' does not reflect the fact that refugees have international legal rights to protection and that long-term, secure protection should not be something that has to be earned. We further do not believe that the requirement to engage in voluntary work should apply to refugees who have fled persecution and are rebuilding their lives in safety in the UK. Once somebody has been recognised as a refugee they should be allowed to permanently settle, as temporary leave can only hinder successful integration. The Refugee Council is aware that a significant proportion of refugees already volunteer and participate actively in society and will continue to do so. We are concerned that making volunteering such a core component of the naturalisation process may be discriminatory, as people with illnesses and disabilities, women with children and single parents may find it difficult to find suitable volunteering opportunities.

“Playing by the rules” (including the introduction of ‘bail bonds’ for those awaiting detention or expulsion, ‘immigration bail’ as an alternative to detention, revised sanctions for breaches of immigration law, and a simplified appeals system)

Powers to detain and immigration bail – Part 5 of the Bill

2.14 The Refugee Council believes that the term 'immigration bail' is used in a misleading way in the Bill and we oppose its use for people who have not been detained or released from detention. An alternative term should be adopted to describe the status of asylum seekers who are here lawfully awaiting a decision on their claim.

² See for example *The Refugee Council's submission to the review by Lord Carlisle of Berriew QC of the definition of terrorism in UK law 2006*. <http://www.refugeecouncil.org.uk/policy/responses/2006/terrorism.htm>

³ Our concerns were set out in our May 2008 position *The Refugee Council response to Paths to citizenship*, available at <http://www.refugeecouncil.org.uk/policy/responses/2008/citizenship.htm> Page 4 of 6

2.15 We oppose the proposed requirement for the Secretary of State to consent to an independent Tribunal decision to grant bail in the case of individuals facing 'imminent removal'. We believe that this is an inappropriate extension of the Secretary of State's powers. It is commonplace for people to be held in detention for months, and in some cases for years, and deemed to be facing 'imminent removal' when in fact removal is currently impossible due to significant practical difficulties. Currently, the courts may step in and grant bail to individuals falling within this category, but under the new proposals the Secretary of State could prevent this from happening. The Refugee Council believes the independence of the Courts should be maintained and that the Secretary of States should not have the power to overrule or vary Tribunal decisions on bail. Further, in order to avoid lengthy detention of asylum seekers and refugees, some of whom are in detention but unaware of their entitlement to bail, detainees should have a statutory right to a bail hearing after seven days.

2.16 Part five of the draft Bill contains a list of matters that must be considered when deciding whether to grant immigration bail and whether to make bail conditional. The Refugee Council believes that as currently drafted the list is imbalanced and may mean that some individuals are less likely to receive bail than if additional factors were also considered. We believe that additional factors be considered, including the length of time already spent in detention, an individual's state of health and the impact that detention would have on the individual and their family.

2.17 The Refugee Council is extremely concerned about the impact of the possible requirement for a deposit of a sum of money in order to be granted bail. Refugees and asylum seekers are less likely than many other people in society to have access to the sums of money required, nor to know people who are willing and able to pay these sums on their behalf. They are therefore likely to be adversely affected if required to deposit money, and as a result of this provision of the Bill there is a real risk that they will be kept in immigration detention inappropriately.

Offences – Part 7 of the Bill

2.18 The Refugee Council is concerned that the cumulative effect of existing and proposed immigration offences is that refugees and asylum seekers are increasingly likely to find themselves criminalised and face serious repercussions as a result. The lack of legal routes to the UK for refugees seeking asylum means that offences relating to facilitating illegal entry are likely to disproportionately affect refugees and others with international protection needs who assist family members to flee persecution and seek sanctuary in the UK. Documentation offences are particularly worrying and run contrary to the spirit of the Refugee Convention, whose drafters recognised that many refugees are not able to obtain the required official travel documents to enable them to flee from persecution. Of equal concern are offences contained within the draft Bill including breach of reporting conditions, or failure to submit to a medical examination, which will be punishable by up to 51 weeks imprisonment.

2.19 Under the Bill, it will continue to be an offence to fail to produce a valid travel document at the time of an asylum claim. It is of grave concern that there are refugees in British prisons who have been placed there solely for using false documentation in order to flee persecution. In the absence of legal entry routes into the UK for asylum seekers, many will have placed themselves in the hands of agents and may have little actual control over their documentation. Refugees should be fully protected by Article 31 of the Refugee Convention, which says they should not be penalised for using false documents. Currently, refugees facing documentation offences are commonly unable to obtain appropriate immigration advice and representation as they are represented by solicitors who are not specialists in immigration law.

2.20 We note that the additional proposed offence of obstructing, resisting or assaulting officials is extremely wide ranging and ill defined. The Bill does not contain a definition of the term 'obstructing' and we are concerned that it is capable of being open to broad interpretation. The range of people who may be 'obstructed' or 'resisted' is also very wide and includes all contracted staff

involved in the processes of detention and removal. Given that there is recent evidence of staff engaging in inappropriate behaviour towards those whose detention or removal they are involved in, the new offence is a matter of extreme concern.⁴

“Managing any local impacts” (including simplification of legislation on access to benefits and services)

2.21 The Refugee Council regrets that the current draft Immigration and Citizenship Bill is incomplete and does not contain the provisions for the support of asylum seekers, nor for those relating to access to health care. These are issues of considerable significance and we fear that there will be insufficient opportunity to consider and discuss with the Government the likely impact of these provisions. Under current legislation, thousands of asylum seekers have been left destitute in the UK, including many who are unable to return to their country of origin. The Refugee Council is a member of the Still Human Still Here campaign to end the destitution of refused asylum seekers, and we draw the Committee’s attention to the campaign’s submission.

2.22 The Refugee Council is additionally concerned about the minimal level of support provided to asylum seekers at the end of the asylum process who are eligible for support under the Section 4 ‘hard case’ voucher support system. We will shortly publish findings from our recently research examining the impact of the Section 4 support system on asylum seekers at the end of the process and on those organisations that work with them. We believe that vouchers are an inappropriate means of support for asylum seekers, and hope that the Government will use the opportunity of the draft Bill to reintroduce cash support for all asylum seekers.

2.23 Although we have not seen the detail of the Government’s intention in relation to asylum seekers’ access to healthcare, we are concerned that the Bill will be used to restrict access. The Refugee Council works with many asylum seekers who are inappropriately denied, or charged for, essential medical treatment. We would welcome the opportunity to provide additional evidence to the Committee about the devastating impact that the denial of healthcare has on individuals and families.

⁴ Examples of such inappropriate behaviour are documented in Birnberg Peirce & Partners, Medical Justice and the National Coalition of Anti-Deportation Campaigns (July 2008) *Outsourcing abuse*
<http://www.medicaljustice.org.uk/images/stories/reports/outsourcing%20abuse.pdf>