



The Refugee Council's submission to the review by Lord Carlile of Berriew QC of the definition of terrorism in UK law

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About the Refugee Council

The Refugee Council is the largest refugee supporting agency in the UK. In 2005, we worked directly with more than 60,000 asylum seekers, refugees and unsuccessful asylum applicants. We not only give help and support to asylum seekers and refugees, but also work with them to ensure their needs and concerns are addressed by decision-makers. Our members range from small refugee-run community organisations to international NGOs, such as Christian Aid, Save the Children and Oxfam.

Introduction

The Refugee Council welcomes this opportunity to input into the review of the definition of terrorism that is being undertaken by Lord Carlile of Berriew QC. Our submission will focus on the implications of the UK definition of terrorism for refugees and asylum seekers in the UK, as well as the broader international refugee protection system.

The Refugee Council believes that the current statutory definition of terrorism, as outlined in the Terrorism Act 2000 and Terrorism Act 2006 has significant and far-reaching implications for refugees and for refugee protection. Our concern is that thousands of refugees and asylum seekers who have historically been considered deserving of, and legally entitled to, protection in the UK could now be prosecuted for terrorism offences and denied protection from persecution. This includes individuals who fulfil the 1951 Refugee Convention definition of a refugee and would be recognised as refugees by the United Nations High Commissioner for Refugees, or be granted protection from persecution were they to seek asylum in another country. There is a real risk that the UK definition of terrorism, in conjunction with areas of UK immigration and asylum law that now rely on that definition, will drive a coach and horses through the UK refugee protection system and leave large numbers of refugees vulnerable to persecution.

A The UK statutory definition of terrorism

The Refugee Council regrets that the UK definition of terrorism applies to acts done or statements made anywhere in the world, regardless of the context in which they were carried out. We are concerned that the definition covers acts that are not normally identified as 'terrorist' and may disproportionately affect those fulfilling the 1951 Convention definition of a refugee. Crucially, the definition does not allow for acts that involve the use of force, or expressions of support for use of force, against entirely undemocratic or authoritarian governments, even where the intention is to establish or restore democracy or fundamental rights and neither cause nor threaten harm to civilians or non-combatants.

The Refugee Council's overriding concern is that the UK legal framework should be sufficiently flexible to provide protection to asylum seekers and refugees who have taken part in legitimate opposition movements against brutal regimes and oppressive governments, such as those in North Korea, Burma or Zimbabwe. As explained in detail in section C of this submission, Section 55 of the Immigration, Nationality and Asylum Act 2006 requires the Asylum and Immigration Tribunal (AIT) or the Special

Immigration Appeals Commission (SIAC) to deny protection to those whose actions fall within the UK definition of terrorism, without any consideration of the context of those actions.

The Home Secretary has asserted that he can not 'think of a state of affairs in the world today where violence would be justified as a means of bringing about change.'¹ Given the ongoing existence of repressive governments that systematically deny citizens their fundamental human rights, persecute their nationals, or refuse to protect them from persecution, we cannot support such a statement. For example, we do not believe it is appropriate that all members of the current Afghan government who engaged in acts of violence against the former Taliban regime should be criminalised under UK law.

We strongly believe that in order to be compatible with international refugee law and the international refugee protection system, the UK definition of terrorism must not, in applying to asylum cases, criminalise refugees who have engaged in acts that are aimed at establishing or restoring democracy or respect for fundamental human rights. The context of an individual's actions is of utmost importance, and we believe that courts should have discretion to examine and take into account the context in which any act has been undertaken.

B Terrorism and exclusion from protection under the 1951 Refugee Convention

The 1951 Convention Relating to the Status of Refugees ('the 1951 Refugee Convention') defines the term 'refugee' as any person who

"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."²

Some people, despite fitting this description, are not considered deserving of refugee protection and are prevented from being recognised as refugees under the 1951 Convention. Article 1F of the Refugee Convention (the 'exclusion clauses') specifically excludes from refugee protection "any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

¹ Evidence of Rt Hon Charles Clarke MP, Secretary of State for the Home Department, to the House of Commons Home Affairs Committee inquiry on the Draft Terrorism Bill (11 October 2005).

² Article 1A(2) of the 1951 Convention and Protocol Relating to the Status of Refugees.

(c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”

We believe that these exclusion clauses, in conjunction with UK criminal law, already provide the necessary statutory framework for ensuring that refugees are protected, that those who engage in acts of terrorism are denied refugee protection, and the imperatives of national security met. As UNHCR asserts: “Despite the lack of an internationally agreed definition of terrorism, acts commonly considered to be terrorist in nature are likely to fall within the exclusion clauses even though Article 1F is not to be equated with a simple anti-terrorism provision.”³

UNHCR guidelines make it clear that the exclusion clauses are to be interpreted in a restrictive manner.⁴ This need to interpret restrictively is considered particularly important when applying Article 1F(c), which UNHCR states “is only triggered in extreme circumstances by activity which attacks the very basis of the international community’s co-existence”.⁵ Section 54 of the Immigration Asylum and Nationality Act 2006, however, dramatically extends the scope of the 1951 Refugee Convention’s exclusion clauses by requiring that ‘acts contrary to the purposes and principles of the United Nations’ must now be taken to include ‘terrorism’ as defined in section 1 of the Terrorism Act 2000.

The Government’s statutory construction of Article 1F(c) is set out in Section 54 of the Immigration, Asylum and Nationality Bill 2006 as follows:

- (1) In the construction and application of Article 1F(c) of the 1951 Refugee Convention the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular-
 - (a) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and
 - (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).

UNHCR has specifically counselled against this construction. The Refugee Council shares UNHCR’s concern that “an automatic and non-restrictive use of Article 1F(c) to all acts designated as ‘terrorist’ may result in a disproportionate application of the exclusion clauses, in a manner contrary to the overriding humanitarian object and purpose of the 1951 Convention”.⁶ We fear that this statutory construction of Article 1F(c), taken in conjunction with the UK definition of terrorism, directly undermines one of the core purposes of the Refugee Convention: to provide protection for people seeking asylum on the grounds of persecution for political opinion. The breadth of the UK definition of terrorism when used as the basis for exclusion, potentially means that thousands of asylum seekers who have fled persecution and would previously have been recognised in the UK as refugees under the 1951 Refugee Convention will now be denied refugee status.

³ UNHCR (September 2003) *Guidelines on International Protection: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*.

⁴ *ibid*

⁵ *ibid*

⁶ UNHCR London (December 2005) *UNHCR comments on Clause 52 of the Immigration Asylum and Nationality Bill 2005*

The Refugee Council believes that there is a further very real risk that refugees seeking asylum in the UK may withhold information that is central to their asylum claim, for fear that disclosure will result in them being labelled as terrorists and prosecuted or excluded from refugee protection. Not only will this mean that people will not present their asylum claim fully within the asylum determination system, it may also exacerbate an existing problem within the determination system, whereby the withholding of information, or misrepresentation of fact by an asylum seeker, is taken as undermining the credibility of that individual's asylum claim as a whole.⁷

C Certification for exclusion from refugee status or termination of the right to remain in the UK as a refugee

Section 55 of the Immigration, Asylum and Nationality Act 2006 relates to asylum appeals where the Secretary of State issues a certificate that the asylum claimant, or recognised refugee, is not entitled to the protection from non-refoulement under Article 33(1)⁸ of the Refugee Convention because-

- (a) Article 1F of the 1951 Convention applies to him (whether or not he would otherwise be entitled to protection), or
- (b) Article 33(2)⁹ applies to him on grounds of national security (whether or not he would otherwise be entitled to protection).

This provision affects asylum seekers as well as refugees who have already been recognised by the UK as fulfilling the 1951 Refugee Convention definition. It means that if the Asylum and Immigration Tribunal (AIT), or the Special Immigration Appeals Commission (SIAC), agrees with the Home Secretary's certificate, they are required to dismiss the asylum appeal before ever hearing it, and are not able to consider the individual's actions in the context of the Government against which they were directed. The Refugee Council is concerned that this provision inappropriately fetters the discretion of the IAT and SIAC to look at actions in context and could apply to a large number of refugees and asylum seekers in the UK. We believe that the provision is incompatible with the UK's obligations as a party to the 1951 Refugee Convention because it denies individuals a substantive appeal against a refusal of their asylum application, regardless of the fact that the quality of initial decisions made on asylum applications in the UK is unacceptably poor.¹⁰

D Proscription

⁷ The issue of credibility is central to asylum determinations. For example, if a unaccompanied asylum seeking child is instructed to lie about his/her age by the person who smuggled him/her in to the UK, but later reveals the fact that they have lied affects the decision-maker's assessment of the credibility of every other element of that child's asylum claim.

⁸ **Article 33 - Prohibition of expulsion or return ("refoulement")**

(1) No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

(2) The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

⁹ *ibid*

¹⁰ For detailed information about the quality of initial asylum decision-making in the UK see the reports from UNHCR's Quality Initiative Project, available at http://www.ind.homeoffice.gov.uk/ind/en/home/0/reports/united_nations__high.html

Section 21 of the Terrorism Act 2006 extends the grounds on which an organisation can be deemed a proscribed group under UK law. Under Section 3 of the Terrorism Act 2000, an organisation can be proscribed if the Secretary of State believes they are concerned in terrorism, meaning that the organisation:

- (a) commits or participates in acts of terrorism,
- (b) prepares for terrorism,
- (c) promotes or encourages terrorism, or
- (d) is otherwise concerned in terrorism.

Under the 2000 Act, an individual commits an offence if he/she is a member of a proscribed organisation (Section 11), supports the organisation (Section 12), or wears a uniform or symbol associated with that organisation (Section 13). Section 21 of the Terrorism Act 2006 extends the grounds for proscription to include organisations that 'glorify' terrorism. Individuals who support an organisation which 'glorifies' terrorism are now liable to be prosecuted for doing so and denied refugee protection.

The Refugee Council is concerned that proscription offences are drawn so widely that many refugees and asylum seekers in the UK will be criminalised as a result. For many asylum seekers and refugees in the UK, successful integration and recovery is directly aided through having contact with community organisations linked to the country of origin. There is a real risk that refugees and asylum seekers may associate with proscribed groups without knowing. Further, the behaviour required to be caught by the proscription offences could be passive and minimal, for example the wearing of a proscribed group's t-shirt or symbol. As a result, the UK definition of terrorism creates a real possibility that thousands of refugees and asylum seekers could inadvertently and unknowingly commit offences through association with a group that is proscribed, and risk prosecution or exclusion from protection in the UK as a result.

E Conclusion

The Refugee Council recognises the need to combat terrorism and ensure national security. However, we believe that the UK definition of terrorism undermines the 1951 Convention and the International Protection regime by dramatically extending the grounds on which refugees can be prosecuted for terrorist offences and denied protection in the UK. We do not believe that the Government has demonstrated that the additional measures to exclude refugees from protection are necessary. Indeed, we believe that the Refugee Convention's exclusion clauses provide sufficient grounds for excluding terrorists from protection as refugees. We are further concerned that the UK definition of terrorism has the potential to criminalise thousands of refugees and asylum seekers who have engaged in political opposition or uprisings against repressive regimes in their country of origin.

The international refugee protection system is an essential safety net that has protected millions of refugees. We are concerned that this expansion of the definition of terrorism and its link with exclusion from protection may, in addition to its immediate adverse impact, have a wider negative influence. Firstly, the erosion of fundamental human rights standards is being pursued by some governments as a component of their response to the threat of terrorism. For example, the UK is intervening with several other governments in the case of *Ramzy v the Netherlands* in an attempt to dilute the absolute nature of Article 3 of the European Convention on

Human Rights. We are concerned that further erosions of the human rights framework may follow. Secondly, there is a real risk that other countries may follow the UK's example and introduce similar, or even more far-reaching, terrorism and exclusion legislation, seriously threatening the international refugee protection system.¹¹

In order to ensure that the UK upholds its obligations under the 1951 Convention and provides protection to refugees the Refugee Council believes that:

- Sections 54 and 55 of the 2006 Immigration, Asylum and Nationality Act should be repealed;¹² and
- The definition of terrorism be drawn far more tightly, to ensure that refugees and asylum seekers are not inappropriately criminalised or excluded for political acts against repressive governments.

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¹¹ There are many examples of signatories to the 1951 Convention justifying their lowering of standards of refugee protection by referring to other signatories' practices. Kenya's ambassador to the UN has warned that countries hosting the majority of the world's refugees are quick to follow where Europe lowers its standards: "Any standard that is good for Europe is good for the rest of the world" HE Mrs Amina Chawahir Mohamed, Ambassador of Kenya to the United Nations's address to ECRE's Biannual General Meeting, Geneva, 27 September 2003.

¹² We note that the Joint Committee on Human Rights recommended that Section 54 be decoupled from the broad definition of terrorism, as well as the list of unacceptable behaviours, upon which it relies. Joint Committee on Human Rights (5 December 2005) Third Report. *Counter-Terrorism Policy and Human Rights: Terrorism Bill and related matters*