Joint written evidence submitted by Migrant Voice and Amnesty International UK (NBB13)

to Public Bill Committee

Nationality and Borders Bill

Parts 2 to 5: Asylum and Immigration

Introduction

1. This joint submission of Amnesty International UK and Migrant Voice is not concerned with Part 1 of the Bill. Amnesty International UK and the Project for the Registration of Children as British Citizens (PRCBC) have made a separate joint submission on that Part (Nationality).

2. This submission provides an analysis of provisions of the Bill against the Government's stated objectives. In short, that analysis reveals that the provisions, as these relate to immigration and asylum (also modern slavery), are themselves antithetical to those objectives. Given recent and present circumstances, it includes analysis of the Afghanistan crisis as this relates to the Bill and the underlying policy to which the Bill relates. The remaining content of this submission is set out under the following headings:

Afghanistan crisis: a context

3. Both Ministers and Parliament should reflect on what has been exposed of the Government's immigration and asylum policy by the crisis in Afghanistan. To do so, it is necessary to recall that notwithstanding the emergency situation that erupted in mid-August, the underlying crisis is very far from new. There are two important ways in which that is so:

    a. Ever since the Soviet invasion in 1979 sparked a huge increase in the number of Afghans fleeing the country, Afghans in Pakistan and Iran have constituted one of the world's largest and most protracted refugee populations, currently officially at around 3 million people.[1] Official figures, however, greatly underestimate the number in these two countries for it is well documented that each is host to similarly large numbers of

[1] As at end 2020, UNHCR's official figure for Afghan refugees was 2.6 million.

undocumented Afghans.[2] Afghanistan has been riven by conflict and oppression for decades – under the control or influence of corrupt governments, various warlords, the Taliban, military interventions and other external actors – and the number of people internally displaced was already over 2.5 million at the end of 2019.[3] Persecution and civilian deaths, while fluctuating, have remained high for years.

b. The intensification of Taliban influence, violence against civilians and targeting of human rights defenders in the wake of the US-Taliban peace agreement and the US decision to withdraw is also well documented.[4] The implications of this for women and girls, journalists, civil society activists, religious and ethnic minorities, LGBTQI+ people and locally employed staff, amongst others, were manifest long before the calamity that necessitated emergency evacuations in August.

4. Against this background, successive Home Secretaries have pursued immigration and asylum policies, which this Bill, as explained further in this submission, does not set out to fundamentally alter. Rather, it will extend these policies, even dramatically so, with the same overall purpose of largely avoiding asylum responsibilities and more successfully restricting immigration to the UK to people who are categorised as "*the brightest and the best*". That categorisation, it transpires, whether by intention or otherwise, largely favours white, English-speaking, relatively wealthy, highly educated, professional or particularly skilled and relatively high-earning people. It certainly does not constitute a policy of either favouring need over privilege, reducing inequality or, in any respect, sharing responsibility.

5. In relation to Afghanistan, some of the most significant impacts have been:[5]

a. From 2017, 3,777 Afghans have been given permission to remain in the UK for protection-related reasons. This includes 284 unaccompanied children refused asylum but permitted to stay during their childhood. Only 283 of these 3,777 Afghans have received protection here by resettlement. Everyone else has had to reach the UK to enter its asylum system and been dependent on that system for their protection. Most, almost certainly the great majority, of those 3,494 men, women and children will have had to rely on smugglers, making dangerous and traumatising journeys to reach safety here because no alternative route was available to them. 105 of the unaccompanied children – who may have been granted or refused asylum – were transferred to the UK under section 67 of the Immigration Act 2016 (now defunct), which previously provided a safe and managed route to the UK from Europe.

b. In addition to the 3,777 Afghans provided some form of protective status in the UK from 2017, 941 Afghans (905 of whom, women and children) were granted permission to come to the UK under a refugee family reunion visa. That safe route alone provided protection to far more Afghans than resettlement and it was entirely dependent on a refugee family member (adult parent or partner) having first reached the UK and

[2] UNHCR's official figures for Afghans in Iran are that there are around 760,000 Afghan refugees, a further near 600,000 Afghans on various extended visas and around 2.25 million undocumented Afghans in the country. UNHCR identifies there to be more than 1.4 million Afghan refugees in Pakistan. More information is provided in Amnesty UK's October 2020 submission to the International Relations and Defence Committee: https://committees.parliament.uk/writtenevidence/13034/pdf/

[3] See submission to International Relations and Defence Committee *op cit*

[4] In its summary of the situation in Afghanistan, for example, the International Relations and Defence Committee the destabilising impact of US discussions with the Taliban and decisions to withdraw troops: *The UK and Afghanistan*, 2nd Report of Session 2020-21, January 2021, HL Paper 208.

[5] Data here and elsewhere in this submission is from the official immigration statistics quarterly release, last published 26 August 2021, giving data up to end June 2021 (unless stated otherwise).

successfully traversed the asylum system. Refugee family reunion rules only permit adult refugees to sponsor partners and minor children. Restrictive immigration rules on other family migration, which have been tightened further in recent years, have and continue to prevent many British Afghans and other Afghans settled in the UK sponsoring family members to join them.[6] Child refugees in the UK are generally not permitted to be reunited here with even their parents and siblings meaning many will be looking on now in increased fear that they may never again see their closest family.[7]

c. From 2017, 3,479 Afghans in the UK have been refused asylum by the Home Office. Some will have appealed successfully. A few will have successfully made fresh claims. Over the same period, 2,388 Afghans have been taken into immigration detention in the UK. During that time, 421 people have been returned to Afghanistan (the figure for all years from 2010 is 5,710). Given the depth and longevity of the humanitarian crisis and conflict in Afghanistan, many of those people will not have returned to their home, many will have remained or been displaced again, including across borders. Some of these people may now be casualties of the war or persecution by various parties to the conflict. For Afghans living in the UK without permission, the stress brought on by current events will likely be more pressing but not new.

d. As at end June 2021, there were 3,213 Afghans awaiting an asylum decision (a few on appeal). The great majority of these people (2,354) have been waiting more than 6 months for an initial decision on their asylum claim. This figure has risen quarter-on-quarter since end March 2017, when it was 1,045. Not only is the ongoing uncertainty for these people – as for all people long in limbo in the UK asylum system, generally excluded from work and much ordinary social activity – distressing and debilitating, it both saps people's capacity to integrate if and when their claim may be successful and adds to the system's delays and costs.

e. Since Ministers persist in referencing the points-based system in discussion of safe routes – a system that has no relation to protection from persecution – it may be necessary to reflect on data concerning that system. In none of the years from 2010 have total sponsored applications of Afghans to come to the UK and to work under this scheme and to stay in the UK to work under this scheme ever exceed 30. In none of these years since 2015 have total sponsored applications of Afghans to apply to come and of Afghans applying to continue their stay to study under this scheme ever exceeded 150.

f. The only scheme the UK has operated over all this time that has included some protection focus has been what is now known as the Afghan Relocation and Assistance Policy (ARAP). From 2010, the forerunner to this scheme included what was referred to as the 'intimidation policy' by which, on its face, Afghans employed by the UK Government since 2001, who could satisfy the Home Office that they were at real risk because of that employment, could secure a visa to relocate in safety to the UK. ARAP replaced this. It was announced by the Home Secretary in September 2020 but only introduced in April 2021.[8] As late as 3 August 2021, the Home Secretary and Defence Secretary wrote to General The Lord Dannatt, former head of the British Army,

[6] Family migration rules were significantly restricted in 2012, including to introduce income and savings requirements above the previous condition that a person could support and accommodate their partner and children for whom a visa was sought; and largely removing the opportunity for people to sponsor other elderly and dependent relatives.

[7] More on this and other refugee family reunion is available here: https://familiestogether.uk/

[8] The announcement in September is here: https://www.gov.uk/government/news/more-afghan-interpreters-who-risked-their-lives-supporting-british-troops-to-begin-new-lives-in-the-uk

acknowledging certain inadequacies with ARAP and committing to correct these in the rules in the Autumn.[9] That same letter confirmed that around 2,500 Afghans and families were expected to be relocated under the scheme in the coming weeks. Prior to that, 1,400 had been relocated under ARAP in previous weeks. Before that, under all schemes, only 1,400 people had been relocated to the UK from 2014. It is now readily and tragically apparent how restrictive has been the intention and operation of these schemes before now. The scale of the relocation effort was greatly scaled up but only once it became all too certain that the window for its operation direct from Kabul (and nowhere else in or outside the country) was short and insufficient for many. That meant that many locally employed staff and their family did not escape. It also meant any capacity to evacuate other Afghans at especially heightened risk at that time was hugely diminished.

6. The UK is, of course, far from alone in Europe (or indeed among other relatively rich countries) in pursuing immigration and asylum policies that have largely sought to exclude Afghans (and other refugees). Policy across the EU is largely to the same effect. That has and will cost many lives. The UK has and continues to show little or no willingness to share responsibility with other nations – particularly Pakistan and Iran – on whom the fate of millions of Afghans largely rests. Nonetheless, if Ministers are to make comparisons with EU neighbours, they must start by acknowledging the large and increasing disparity between the very small number of Afghans (or indeed other refugees) hosted by this country and the larger numbers in the asylum systems of, and given protection in, comparable EU countries. For example, if all the 20,000 Afghans to be resettled to the UK in the years ahead[10] were to arrive today, the UK would only then roughly match France and still far trail Germany in the number of Afghans provided protection in the country.[11]

Origins of the Bill: public consultation

7. As regards Parts 2 to 5 of the Bill, their contents largely adopt proposals set out in the Government's policy paper: *New Plan for Immigration*.[12] Those proposals were put out for public consultation. Thousands responded and overwhelmingly rejected the proposals. In its response to that,[13] the Government cautioned:

> "*Responses cannot be viewed as being representative of all stakeholders and the public population as a whole. Instead, the consultation and its findings represent the opinions of those who have chosen to respond.*"

8. In explaining its decision to proceed with its proposals despite their rejection, the Government stated:

> "*…the responses sent into the Government consultation also show that around three quarters of those who responded said they opposed many of the policies set out in the New Plan for Immigration. A similar view was taken by those with direct experience of the asylum system. Having considered the findings from the consultation, the*

[9] https://www.gov.uk/government/speeches/afghan-relocation-and-assistance-policy
[10] https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme
[11] UNHCR data as at end 2020: https://www.unhcr.org/refugee-statistics/download/?url=qm819l
[12] The policy paper is here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972472/CCS207_CCS0820091708-001_Sovereign_Borders_FULL_v13__1_.pdf
[13] The Government response is here: https://www.gov.uk/government/consultations/new-plan-for-immigration

Government recognises that building a system that is fair but firm will require tough decisions, some of which may be unpopular with certain individuals and/or groups. While the consultation has shown that there is some support for proceeding with the high-level vison that has been set, the Government has also listened to the concerns raised. However, the pressures of the current system cannot be ignored, requiring urgency and decisive action."

9. Among the problems with that summary is that much of what is presented as the high-level vision does not appear consistent with the actual proposals. This mirrors one key problem with the Home Secretary's presentation of this Bill at Second Reading. This submission is largely directed at analysis of this critical dissonance between the stated vision and objectives, on the one hand, and what is proposed and included in this Bill, on the other.[14]

Government's case for the Bill: overview

10. The Government's case for this Bill rests on the following three assertions. Firstly, that its proposals constitute a new approach. Secondly, that current circumstances urgently require that new approach. Thirdly, the approach is properly directed to decisively improving those circumstances. As is addressed further in the main body of this submission, this case is fatally flawed:

    a. Taken together, the proposals are themselves far from new. They have largely been proposed before; and many have been legislated for or implemented before.[15] Many constitute nothing more than an extension of longstanding and current policy. Indeed, their totality is also nothing more than an extension of that policy – which is to invest heavily in making the UK's asylum system inaccessible and unwelcoming in the hope of preventing and deterring people from claiming asylum here. Much of that investment is directed to impeding people's journeys to the UK while refusing them any safe, still less authorised, routes to get here even though no asylum claim will be considered unless a person first reaches this country. The proposals do not change this approach.

[14] The objectives specifically addressed in this submission have here been identified from the Home Secretary's Second Reading speech. They may also be identified from the Government's Equality Impact Assessment on the Bill published on 16 September 2021, available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018188/Nationality_and_Borders_Bill_-_EIA.pdf

[15] Among the many proposals and measures that are not essentially new are: (i) building accommodation centres (see Nationality, Immigration and Asylum Act 2002, Part 2); (ii) accelerated appeals including in detention (e.g. see the previous Detained Fast Track Procedure Rules, ultimately ruled unsafe and unlawful); (iii) offshore processing (e.g. detailed proposals were put together by the UK Government in 2003); (iv) presumptions concerning the strength of a claim or credibility of a claimant (which have repeatedly been introduced in immigration acts, including those from 1999, 2002 and 2004); (v) proposals to refuse or deny family reunion to refugees who have entered the country by unauthorised routes (which were worked up in September 2016 and then abandoned); (vi) measures to require refugees to make renewal applications for permission to stay (which were introduced in August 2005 and have significantly expanded workload of the Home Office from August 2010 when the renewals will have begun); (vii) inadmissibility procedures were a feature of the UK's membership of the Dublin Regulations until the UK left the EU and unilateral rules were introduced to replicate this on 31 December 2020 but to no effect other than causing delays and adding to backlogs because no country is willing to receive people from the UK's asylum system into theirs; and (viii) so-called 'one-stop' procedures to require disclosure of all information and material at an early stage have been a feature of asylum procedures since the Immigration and Asylum Act 1999. These are just some examples. Others are manifest on the face of the Bill since certain of the relevant measures are no more than amendment of (attempts to harshen) existing legislation.

Rather, they significantly extend the approach and will greatly exacerbate the harms it causes.

b. There is a sense of especial emergency surrounding Channel crossings by boat.[16] This has been built up over the last two years and yet the number of people claiming asylum in the UK over that period has not increased.[17] Moreover, the proportion of people seeking asylum, whose claims are ultimately recognised as well-founded, has been increasing.[18] Recognition of the refugee status of people of the nationalities making these boat journeys has been proportionately even higher.[19] The journeys themselves, while undoubtedly dangerous for the people making them and disruptive for others, are far from secretive – the people making these journeys clearly evade the authorities in northern France but generally make no attempt to evade the UK authorities and its asylum system. While things may yet change – indeed, this Bill will change things and not for the better – the last two years have further demonstrated that the UK is not faced with any real crisis other than the individual crises of the relatively few people wishing to exercise their right to seek asylum in this country but whom the UK refuses to provide any safe route for doing so.

c. Since there is no fundamental change in the Government's approach – which is simply to invest even more heavily in making the UK asylum system inaccessible and unwelcoming – the impact will not achieve the objectives the Government has set for itself. The bulk of this submission provides analysis of the provisions of the Bill against eight, largely inter-related, objectives. Each objective was identified by the Home Secretary at Second Reading. The eighth objective addressed in this submission (concerning fulfilment of the UK's international obligations) is an exception to the foregoing. While the Home Secretary expressed concern that, as she put it, "*the very principle of seeking refuge has clearly been undermined*",[20] she did not make any commitment to fulfilling the UK's international obligations, whether under the Refugee Convention or any other international human rights law instrument. However, it is vital that Parliament should understand both how this Bill is antithetical to any such purpose and how that, in turn, will in its own way be destructive of the objectives the Home Secretary has stated she wishes to pursue.

Objective 1: Break the business model of people smugglers and human traffickers[21]

11. This objective is so central to the Government's case advanced for this Bill that the Home Secretary emphasised it several times during her Second Reading speech: *Hansard* HC, 19 July : Cols 706, 713 and 718. It is striking, however, that the Government's Equalities Impact

[16] The previous Home Secretary described boat crossings of the Channel in December 2018 as "a major incident". Ever since, Ministers have spoken of these crossings in terms of emergency and crisis for the UK.
[17] Asylum applications in the UK over 12 months to end June 2021 were 31,115; the figure for the previous 12 months was 32,488 and for the 12 months before that, 32,757.
[18] Over the past decade, Home Office analysis of final outcomes for asylum applicants in each year indicates that success rates had risen to 65% for applicants in 2019. Over a decade to end June 2021, appeal success rates had risen from around 30% to around 50%.
[19] Over more than 3 years, Iranians have been the largest population making these journeys according to the Government's Equalities Impact Assessment *op cit*. Iraqis, Sudanese, Syrians and Afghans have been the next largest groups together amounting to a slightly larger number of people than those from Iran. Only Iraqis have had a success rate below the average in the asylum system.
[20] *Hansard* HC, Second Reading, 19 July 2021 : Col 711
[21] An objective emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 705, 706, 713 & 718 *per* the Home Secretary

Assessment on the Bill, in relation to this objective and that of deterring unauthorised entry to the UK acknowledges that "*evidence supporting the effectiveness of this approach is limited*".[22]

12. Part 3 of the Bill contains measures to:

    a. increase criminal sentences (Clauses 37 & 38);
    b. increase or extend other penalties (Clause 39 & Schedule 4)
    c. increase border control powers, particularly at sea (Clauses 40-42 & Schedule 5); and
    d. extend the reach of criminal law and prosecution including to those, who for no gain assist someone to enter the UK without permission (Clauses 37 & 38).

13. These appear to be the measures most in Ministers' minds when they speak of breaking the business model of criminal gangs that engage in people (and other) smuggling and human trafficking. Regrettably, however, these measures are singularly ill-designed to achieve that objective. Coupled with other measures in this Bill, the outcome that will likely be achieved is the precise opposite – that human exploitation by organised crime will not only continue to thrive but be even further enabled.

14. There are three reasons that compel that miserable assessment:

    a. The people most at risk from measures in Part 3 are not organised criminals. Clause 38(2) enlarges the scope of the offence of assisting a person seeking asylum to enter the UK. Currently, the offence is only committed where the assistance is "*for gain*" of the person providing it.[23] The enlargement is to capture people who provide assistance for no gain. Such people are manifestly not organised criminals nor engaged in human exploitation. Moreover, as can be seen right across Europe, including in the UK, it is in practice increasingly the people being exploited by organised crime – not their abusers – who are the targets for prosecutions and punishment from the greater emphasis on criminal prosecution and punishment relating to crossing borders without permission such as in Clauses 37 and 38.[24] The extension of the maximum sentence for entering the UK without permission to up to 4 years by Clause 37 targets these same people. This is compounded by the Clause 34, which is intended to diminish the existing protection against prosecution of a refugee that is necessary in domestic law to comply with the UK's international law obligations.[25] None of this can or will break the business model of organise crime and exploitation. Indeed, it can only increase the reliance of people, already vulnerable to that exploitation, upon the gangs that remain the sole source of any prospect that people may ultimately escape their situations of insecurity, exploitation and deprivation by reaching a place of safety.

    b. Although we acknowledge that some of Part 3 is on its face directed at ruthless and organised crime and exploitation, it is not designed to achieve any reduction in this. For example, extending the potential prison sentence for assisting unauthorised entry from 14 years to life is not designed to do so.[26] There is no reason to think that organised criminals who are not deterred by a possible 14 years prison sentence will be any more

[22] See EIA, paragraph 21(a), *op cit*
[23] See section 25A(1)(a) of the Immigration Act 1971
[24] Sadly, the CPS was compelled by this practice to issue guidance on prosecutions but the Bill, if unamended, will merely increase the pressure on the CPS and others to increase numbers and visibility of prosecutions by targeting the victims of smugglers, who can be found, as opposed to their abuses, who often cannot. That guidance is available here: https://www.cps.gov.uk/cps/news/cps-publishes-updated-guidance-handling-illegal-entry-cases-small-boats
[25] This is addressed further in the section on fulfilment of the UK's international obligations.
[26] See clause 38(1)

deterred by a potential life sentence. Exploitation thrives upon the opportunity for unscrupulous people to make large profits from the vulnerability of other people by reason of their insecurity and deprivation. That exploitation is further enabled because the prospect is remote that those making these profits – especially those at the higher end of criminal gangs, networks and loose chains – will ever face prosecution or punishment. Raising maximum sentences still further addresses none of that.

c. The remainder of the Bill is largely directed to increasing the vulnerability of the people on whom organised crime and exploitation prey. That is particularly but not solely the case with Part 2. Making the UK's asylum system even more inaccessible and increasing the exclusion of, and hostility towards, people seeking asylum is a boon for organised crime and exploitation – for other abusers too. This will be calamitous to the objective of breaking the business model of people smugglers and human traffickers in three ways. First, making journeys to the UK harder – such as by Clauses 39 to 41 – while providing no alternative for the people driven to make them, simply passes ever more power to those who exploit this. Second, increasing exclusion and hostility in the UK merely provides new opportunities to exploit people made vulnerable to that even after reaching the UK. Third, the harsher the response to the victims of exploitation, the less likely those victims will or can assist any investigation or prosecution of their abusers.[27]

15. We would support real and effective measures to reduce and end exploitation of people by smugglers and traffickers. The relevant measures in this Bill either miss or are not directed at that target. Of especial concern among the provisions of Part 3 are:

a. Clauses 37 and 38, particularly as these: (1) extend the scope of existing offences; and (2) signal an intent to criminalise people for exercising their right to seek asylum, for entering the UK in circumstances for which they cannot properly be considered culpable (including but not limited to people lured or compelled to enter for the purpose of their exploitation) or for providing assistance to such people for purely humanitarian reasons (even in circumstances necessary to avoid imminent loss of life or serious harm). Not only do provisions such as these promise to make people even more vulnerable to exploitation. They directly undermine the spirit and letter of the international law obligations upon the UK.[28]

b. Clause 41 and Schedule 5, particularly to the extent that these provisions signal any intent to intercept and push back boats into another country's territorial waters. This directly undermines the spirit or letter of those same international law obligations.[29] Moreover, pushing people back without resolving their circumstances merely places them back in the position of dependence on smugglers and others who may exploit them again.

[27] This was, in significant part, expressly put to the Home Secretary at Second Reading in an intervention which she described as "*absolutely right*": see *Hansard* HC, Second Reading, 19 July 2021 : Col 716, exchange between Sir Ian Duncan Smith and the Home Secretary.

[28] UNHCR's assessment of the Government's plans is available here: https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html

[29] *ibid*

Objective 2: Save lives[30]

16. At Second Reading, the Home Secretary identified saving lives as an important aspect of what she described as breaking the business model of people smugglers.

17. Many of the journeys that are facilitated by smugglers are undoubtedly dangerous. There is much attention to the minority of people who enter the UK's asylum system via a boat crossing of the Channel.[31] However, that is far from the only dangerous journey that is made to enter the UK. The Home Secretary emphasised this when referring to the tragedy by which 39 Vietnamese people lost their lives in a container found by Essex police in 2019.[32] Again, as the Home Secretary identified in her speech, dangers are not limited to the journeys but are also a feature of the violent and exploitative treatment of people by smugglers, traffickers and other abusers.[33] Moreover, many of the people who make dangerous journeys to reach the UK from the continent will already have made dangerous land and sea journeys, including across the Mediterranean.

18. The fallacy in the Government's position arises for essentially the same reasons that contradict and undermine its objective of breaking the business model of smugglers. By failing to provide any safe or safer alternatives for people, who will remain compelled to make journeys, the Government is not merely perpetuating the very conditions that put people at risk, including fatal risks. It is making this much worse and making the likelihood that people die or suffer other serious harms much greater.

19. It appears that Ministers and those advising them do not appreciate the compulsion to make these journeys. This is strange because it is clearly acknowledged that the journeys are very dangerous, are sometimes fatal, are often highly traumatic (physically and mentally) and generally involve at some point extremely violent and cruelly exploitative people. To give but one example, Amnesty has long documented, among women and girls seeking to reach safety in Europe by crossing the Mediterranean from Libya, the practice of taking contraceptive medication prior to reaching Libya because the women and girls anticipate that they will be raped in that country on this journey.[34] This is not to say that people are knowledgeable, still less fully aware, of all the risks they may face, still less about what conditions may await them in the countries to which they flee. But it does emphasise that people are far from unaware that they face very serious harms on these journeys; and this is not a deterrent for the simple reason that the need, or perceived need, of people to make these journeys is sufficiently overwhelming to defy even some of the harshest of ways by which countries may make their asylum systems difficult to access or traverse.

20. If people truly had reason to believe they were or would be safe where they are, they would not make these journeys. Simply making the journey more dangerous or, even the asylum system that awaits more unwelcoming, will not change this. A salutary lesson ought to be taken from the example in 2014 when pressure from across the EU, then including the UK, led to Italy's decision to abandon its organised search and rescue operations in the Mediterranean. The immediate impact over a period of several months before Governments relented was a huge

[30] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 705, 706, 712 & 713 *per* the Home Secretary

[31] While this group remain a minority of the people claiming asylum, it has become a significantly larger proportion of that overall number.

[32] *Hansard* HC, Second Reading, 19 July 2021 : Cols 712-713

[33] *Hansard* HC, Second Reading, 19 July 2021 : Col 713

[34] See e.g. https://www.amnesty.org/en/latest/press-release/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/

increase in the number of people dead.[35] The need for the journeys had not changed so the journeys continued. The dangers of the journeys were greatly increased so hundreds more people lost their lives.

21. There is, of course, nothing in the Bill that provides directly for saving lives. On the other hand, Clause 38 opens up the prospect that a person may be criminalised and prosecuted for saving someone's life if this enables the person to enter the UK. That is manifestly the opposite of a life-saving provision. Any claim that the remainder of the Bill will contribute to saving lives rests on two assumptions. First, that the Government will successfully deter people from coming to the UK by dangerous journeys by creating the prospect that people who claim asylum will not receive it even though they may be entitled to it and that anyone seeking asylum will be punished and mistreated for doing so. Secondly, that increased sentences for smugglers and traffickers, and promises of greater and more successful prosecutions, will deter organised criminals engaged in this activating. For reasons explained in this and the previous subsection, these presumptions are fanciful.

22. Indeed, what is being done is likely to create far more danger and cause more loss of life. If the risk of being intercepted or identified as having entered the UK via a particular route or from a particular country is increased, people who need to move will choose other routes. The prospect is that there will be more journeys by routes that are more hidden and dangerous.

23. Meanwhile, there is no useful purpose to the protestations of Ministers and others that France, for example, is safe.[36] If the people who make these dangerous journeys were or felt safe there, they would not make these journeys. Few do. France has not only long received many more people seeking asylum into its system than the UK. The disparity has grown significantly.[37] Overall, France provides asylum to very many more people than the UK. That disparity has also risen significantly.[38] For the few people who set out to seek asylum in the UK because they have family or other connections to this country and for the few people who seek asylum here because they have not been able to get safely into the asylum system in France (or elsewhere), these protestations by Ministers aid nothing.

Objective 3: Establish and strengthen safe routes to asylum[39]

24. Regrettably, there is nothing in this Bill to achieve this.[40] There are, however, provisions in this Bill to achieve the opposite; and these far outweigh the very little the Government has done or has proposed to meet the objective of establishing, still less strengthening safe routes to asylum.

25. It is, firstly, necessary to emphasise the following three facts, none of which are to be changed by this Bill:

[35] For the first few months of 2015 following that decision, 1 in 16 people attempting this sea crossing lost their lives. More is available here: https://www.amnesty.org/en/documents/eur03/2059/2015/en/

[36] As the Home Secretary repeated at Second Reading: *Hansard* HC, 19 July 2021 : Col 710 (in a speech in which she described a mother and father being forced into a boat at gunpoint in northern France)

[37] Asylum applications in France have risen to levels that see the country regularly receive significantly more claims in a month than does the UK in a quarter.

[38] UNHCR data shows both the scale of the disparity and its growth in recent years: https://www.unhcr.org/refugee-statistics/download/?url=joL65X

[39] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 708 *per* the Home Secretary

[40] Contrary to what was expressly stated by the Home Secretary at Second Reading (Col 708)

a. Home Office policy remains that it will not consider any claim for asylum in the UK unless it is made by a person who is already in the UK.[41] Indeed, Clause 12 states that "*an asylum claim **must** be made in person at a designated place*" (emphasis added) and in defining what is a "*designated place*" confirms that this is confined to specified places in the UK.

b. Immigration rules make no provision for anyone to come to the UK for the purpose of claiming asylum.[42]

c. Immigration rules provide for any application to be refused if it is to come to the UK for a purpose for which the rules do not make provision; and provide for cancellation of any visa obtained if the purpose for coming to the UK is for a reason other than that for which the visa was granted.[43]

26. The Government's claim to be establishing and strengthening safe routes to asylum is founded on the following assertions:

a. Ministers point to the rules they have introduced to enable British Nationals (Overseas), with sufficient means, to settle in the UK.[44] With respect, the Government's claim that this constitutes a safe route to asylum is an extraordinary one. This is not to object to the provision in the rules for these British nationals to settle in this country. It is merely to highlight that the relevant rules are plainly neither designed nor intended to provide for a route to asylum from persecution. These rules do not permit a visa to be granted for that purpose. Whether there is any or no risk of persecution to an applicant for such a visa is entirely irrelevant to the basis upon which the visa is available. The availability of the visa rests on two conditions – firstly, the person must be a British National (Overseas); and secondly, the person must have sufficient wealth to satisfy the financial requirements.[45] If the person is at risk of persecution but cannot satisfy one or other of these conditions, a visa is to be refused. If the person is not at risk of persecution but satisfies these conditions, the visa is to be granted. Whatever else there is to be said for this visa, it is not a safe route to asylum; and Ministers ought to stop suggesting otherwise.

b. Ministers draw attention to the rules they have introduced for Afghans employed or formerly employed in Afghanistan by the Government.[46] They are right to do this. The rules introduced by the Government to permit its current or former Afghan employees

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[41] The following policy statement has remained live since September 2011: "*As a signatory to the 1951 Refugee Convention, the UK fully considers all asylum applications lodged in the UK. However, the UK's international obligations under the Convention do not extend to the consideration of asylum applications lodged abroad and there is no provision in our Immigration Rules for someone abroad to be given permission to travel to the UK to seek asylum. The policy guidance on the discretionary referral to the UK Border Agency of applications for asylum by individuals in a third country who have not been recognised as refugees by another country or by the UNHCR under its mandate, has been withdrawn. No applications will be considered by a UK visa-issuing post or by the UK Border Agency pending a review of the policy and guidance.*" That policy position is here: https://www.gov.uk/government/publications/applications-from-abroad-policy

[42] As is confirmed by the policy statement, *ibid*

[43] Immigration Rules, Part 9, paragraphs 9.13.1, 9.14.1 and 9.20.2 respectively allow or require refusal or cancellation of entry clearance, leave to enter or leave to remain where the person seeks these for a purpose other than that provided to that person under the rules. Paragraphs 24 and 30C similarly emphasis the requirement that a person must have a visa for the purpose for which the person's seeks to enter the country.

[44] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

[45] See Immigration Rules Appendix Hong Kong British Nationals (Overseas)

[46] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

to secure a visa to come to the UK include where their lives are at "*imminent risk*".[47] This constitutes the sole example of a route to the UK that is specifically for the purpose of seeking or securing asylum here. The route is available to a narrow and relatively small group of people. It is not designed in such a way as to reflect 1951 Refugee Convention obligations. The relevant immigration rules continue to stipulate that it is only available to those current or former employees who are in Afghanistan.[48] Prior to and following the two-week emergency evacuation in August, the 'imminent risk' criteria was and will be in itself a significant barrier to anyone to whom it applies. The requirements that the person must be in Afghanistan to be eligible under the rules but that there is an imminent risk to a person's life – by its nature something that may require someone to leave immediately rather than waiting for the time it may take to put together, submit and receive a decision on an application for a visa – were and remain inconsistent. So, while the provision made for this particular group of Afghan nationals is welcome, it not only, on its face, is inadequate for its intended purpose. The policy position has now been stated as not requiring a person to remain in the country.[49] This is welcome but will have been too late for some people; and it remains the case that the rules, on their face, still require a person to be in Afghanistan to be eligible. All of this emphasises the general absence of any safe route for people – including people with family and other connections to this country – to seek asylum here. The very limited number of Afghans who were able to relocate prior to the emergency evacuations of mid to late August[50] serves to highlight these concerns and their impact – including ultimately on the overall capacity of that emergency evacuation to provide for people, including people not within ARAP's scope, acknowledged by the Government to be at especial risk.[51]

c. Ministers draw attention to the UK's resettlement programmes.[52] Having resisted opening any resettlement scheme in response to the Syrian conflict, the Government did so in 2014 – something Amnesty UK and the Refugee Council had jointly campaigned for. As originally constituted that scheme was tiny.[53] In October 2015, under much wider pressure concerning its refusal to share responsibility with European neighbours for the large displacement of refugees, particularly but not solely from the region of Syria, the Government significantly expanded that programme.[54] Between 2015 and 2020, the UK has undertaken resettlement of refugees on a much larger scale than previously (or since). That resettlement was almost solely of Syrians.[55] Even with this scale of resettlement, the UK asylum system and not resettlement has remained by far the most numerically significant factor in the relatively modest contribution made

[47] Immigration Rules, paragraphs 276BA1 to 276BS4

[48] Immigration Rules, paragraphs 276BB1. Ministers' commitment given to General The Lord Dannatt in early August 2021 to change the rules to remove this stipulation remains outstanding.

[49] See paragraph 17 here: https://www.gov.uk/government/publications/afghanistan-resettlement-and-immigration-policy-statement/afghanistan-resettlement-and-immigration-policy-statement-accessible-version

[50] Some further detail is available here: https://www.gov.uk/government/speeches/afghan-relocation-and-assistance-policy

[51] As time was running out for the emergency evacuations, Ministers were clear that there would be insufficient time and capacity to get everyone at risk out. Had the rules been open to more locally employed staff earlier, more of these staff could have got out earlier; and capacity to evacuate other people would have been greater.

[52] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 709 *per* the Home Secretary

[53] Further information is available here: https://www.amnesty.org.uk/uk-syria-refugee-resettlement-conflict

[54] A short summary of the scheme's history is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631369/170711_Syrian_Resettlement_Updated_Fact_Sheet_final.pdf

[55] For example, in the first half of 2021, 536 of 653 people resettled have been Syrian. In 2020, 662 of 823 people resettled were Syrian; and in 2019, 4,342 of 5,612 people resettled were Syrian.

by the UK to providing a place of safety to refugees.[56] Moreover, it is vital to recall that resettlement is not available to most refugees – whether as a matter of generality or in practice. Resettlement depends on a person fleeing conflict and persecution being able to find sufficient stability in another country so that they can be identified as a potential recipient of resettlement and engage with a process to determine their candidacy and, if selected, give effect to that. Quite apart from the fact that very few people are ever considered to be eligible, there is the more basic fact that most of the world's refugees are not in any position to be identified as a potential recipient of resettlement in the first place. The instability and insecurity that many people meet with on becoming a refugee is itself a factor that compels some people to move further in search of safety. Some people also have family and other connections in places they have every reason, and right, to conclude would be a better source of safety for them than a country closer to their original home. Resettlement, then, is clearly something to be welcomed.[57] It is disappointing that the Government has not made any clear commitment – other than the recently announced Afghan Citizens' Resettlement Scheme,[58] which is yet to be worked up still less initiated – while allowing the scale of resettlement to the UK to fall away during the pandemic.[59] But in any event, resettlement is not a replacement for a functioning and effective asylum system. Indeed, the Afghan scheme highlights this. Some people will have fled already and may seek safety in the UK. If they have had to make decisions in the absence of any scheme, which in any case they cannot know they will be eligible for, that is not their responsibility. Moreover, as with the Syrian scheme, some people for whom the scheme may notionally be made available, will not be able to live in sufficient stability and safety to engage in any process by which their eligibility may be assessed and any resettlement prepared and delivered.

d. Ministers continue to point to the number of people who have found safety by means of a refugee family reunion visa.[60] It is noteworthy that this number also significantly exceeds the number of people resettled – even over the period of larger scale resettlement by the UK.[61] The Bill is a grave threat to this safe route – indirectly and directly. The reason it is such a threat is because the availability of refugee family reunion visas depends upon there being refugees in the UK, recognised by the Home Office and permitted to sponsor their family to join them. If refugees cannot access the asylum system or that system is made so impenetrable even after being admitted to it that refugees cannot establish their refugee status, they cannot sponsor any family. That is the indirect threat of various of the provisions of Part 2 – not only those on inadmissibility (Clauses 13-15) but also provisions that obstruct refugees from establishing their status. That obstruction is achieved by such things as making it harder for refugees to effectively engage with the asylum system (such as by conditions in which refugees may be held or housed, see Clause 11; accelerating or otherwise impeding the appeals processes, see Clauses 24-25; and restricting what evidence a

[56] Looking at the last year for which resettlement numbers were particularly high due to the Syrian resettlement scheme (2019), 5,612 people were resettled to the UK whereas 13,796 people received protection status in the UK via the asylum system.

[57] We make no comment here as to what should be the total commitment for UK resettlement e.g. per annum or the eligibility criteria that should apply. Our primary purpose in raising the matter of resettlement is to address the objectives stated by Ministers as behind this legislation.

[58] See more here: https://www.gov.uk/government/topical-events/afghanistan-uk-government-response

[59] Figures for the last eight quarters up to end June 2021 show numbers of people resettled in each quarter as 1,400, 1,345, 815, 0, 0, 8, 345 and 308.

[60] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 709 *per* the Home Secretary

[61] The Government's *New Plan for Immigration*, provided a comparison between resettlement over the period 2015-2019 (when it was at its highest) and refugee family reunion. The former, accounted for nearly 25,000 people; the latter, 29,000 people.

decision-maker, including a tribunal judge, may consider or conclusions that decision-maker is permitted to draw, Clauses 16-22). Refugees, who may nonetheless overcome all of these impediments, are then faced with Clause 10. This includes a direct threat to refugee family reunion for it includes provision to delay or deny that right altogether.[62]

e. Ministers have referred to the points-based system – particularly that part related to 'skilled workers' – as possibly providing a safe route for people seeking asylum.[63] No part of that system offers anyone a visa to come to this country for seeking asylum. Since its inception in 2008, it never has. At Second Reading, the Home Secretary touched on her intention to support a maximum of 100 refugees in Jordan and Lebanon to secure sponsorship to come to the UK to work.[64] That is very welcome. However, it provides no answer whatsoever to the existing need for this country's asylum system. It provides nothing for people wishing and needing to seek asylum in this country. Moreover, it is such an extremely modest commitment that it can barely be said to represent any sharing of responsibility with Jordan and Lebanon – countries which not only are taking by far the disproportionate share for hosting the world's largest refugee population by national origin (Syrians) but for decades have disproportionately done so, and still do, in respect of the world's second largest refugee population by national origin (Palestinians).[65]

27. There are no provisions – contrary to the Home Secretary's statement at Second Reading[66] – in this Bill to create any safe and legal route to seek asylum in this country. Indeed, there is nothing anywhere else, whether in the rules or in the Government's published plans, to provide for such routes for that purpose. As for opportunities for people to receive asylum in this country, the Bill contains nothing to provide for this. In contrast, it contains provisions – particularly Clause 10 – that expressly set out to greatly reduce or close one safe route;[67] and the limited measures to which the Home Secretary refers that sit outside the Bill are tiny by comparison to the contribution this country currently makes to providing asylum by its asylum system and refugee family reunion visas to join people provided asylum via that system.[68] That contribution is – by comparison to European neighbours, more so by comparison to many poorer, less stable countries elsewhere – already very modest.[69] Yet, this Bill sets out to greatly reduce it even further.

Objective 4: Better protect refugees and survivors of modern slavery[70]

28. Far from setting out to better protect people entitled to protection here, the Bill expressly sets out to do the opposite. There are certain parallels between the approach to asylum (Part 2) and that to modern slavery (Part 4). However, since Part 2 is thicker with obstacles to providing any, let alone better, protection and since some victims of modern slavery will also have good claims to asylum, this submission's focus is on that Part (Asylum).

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[62] Clause 10(5)(d) and (6)

[63] See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

[64] *Hansard* HC, Second Reading, 19 July 2021 : Col 712

[65] As at end 2020, UNHCR official figures give populations of Syrian refugees as 6.7 million and of Palestinian refugees (who are outside UNHCR's remit) as 5.7 million. With Turkey, Jordan and Lebanon host the great majority of the former; and by themselves host around half of the latter.

[66] *Hansard* HC, Second Reading, 19 July 2021 : Col 706

[67] See the discussion of refugee family reunion visas earlier in this section.

[68] Again, see the discussion of refugee family reunion visas earlier in this section.

[69] A comparison from UNHCR data with Bangladesh, France, Germany, Sudan, Sweden, Turkey and Uganda is available here: https://www.unhcr.org/refugee-statistics/download/?url=k2BW06

[70] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 706, 709 & 716 *per* the Home Secretary

a. It would make it harder for people to establish their refugee status and entitlement to asylum. This is done directly by various measures. It is also done indirectly by more widely undermining a refugee's capacity to engage with processes by which their status and entitlement will be determined.

b. In the case of many refugees, Clause 10 expressly sets out to diminish the quality of the protection that will be provided to someone who despite, the increased barriers to doing so, establishes their refugee status.

29. There are several direct ways by which the Bill, if implemented, will make it harder for a person in the UK to establish their refugee status and entitlement to asylum in the UK.

a. Clause 14 begins by refusing to admit a refugee into the UK's asylum system.[71]

b. If the refugee is nonetheless admitted to that system – either because it is decided not to exercise the powers in the clause to refuse admission or because the underlying intention to require some other country to take responsibility for the refugee's claim cannot in the event be fulfilled – Clauses 16 to 23 establish various impediments to refugees proving their status by directing decision-makers to either exclude evidence or make adverse presumptions about the probative value of the evidence (Clause 23) or the credibility of the refugee (Clauses 17 and 20).

c. Clauses 21 and 24 create procedural barriers by accelerating the appeals system and reducing the prospect that an appeal is successful in revealing any error in the assessment of the refugee's claim.

d. Clause 25 simply removes the right of appeal altogether.

e. Clause 26 provides for the potential to simply banish the refugee to some far flung place – where standards of welfare, protection and ability to engage meaningfully in any asylum process cannot be guaranteed – to be held indefinitely while some consideration may be given to the refugee's claim.[72]

f. Clauses 27 to 35 compound the foregoing by seeking to unilaterally confine the meaning and effect of an international status (that of being a refugee) by statutory definition.[73]

30. Much of these same and other provisions will also indirectly undermine refugees' capacity to establish their status. Given the frequent traumatic experiences of real danger and serious abuse on the journeys many refugees make, imposing greater emotional and psychological distress can only be anticipated to profoundly undermine a person's capacity to effectively engage with the asylum system on which their very life may depend. Exaggerating the inevitable dependence of refugees on legal representatives and others – such as interpreters, translators, country and medical experts – also undermines that capacity.

a. Clause 11, which permits categorisation of people seeking asylum for the purpose of differentiation in the type of accommodation provided, is amongst other things,

[71] This clause essentially places on the statute book the immigration rules introduced by the Home Secretary from 23.00 hours on 31 December 2020.

[72] More is addressed on this clause in the later section on fulfilment of international commitments.

[73] There is also more on this clause in the later section on fulfilment of international commitments.

intended to enable the use of accommodation centres. The prospect here is that people will be effectively held in relatively isolated conditions, closely akin to detention. Among the many objections is that doing this will be likely to significantly exacerbate any incapacity to effectively engage with the asylum system – whether as a direct result of the isolation or as a result of its emotional and psychological impact.

b. Clause 14 will impose a prolonged period of limbo and anxiety upon a refugee who is refused entry to the asylum system while officials attempt to find some other country willing to receive the person. Where the refugee has already suffered violence, deprivation and exclusion in that place, the distress of this will be exacerbated. It will also be exacerbated if the refugee's true connection is in the UK – particularly if there is family here.

c. Clause 16, for example, empowers the imposition of additional procedural requirements – to submit evidence by a specified date; and, if evidence is submitted after that date, to submit a statement setting out reasons for this. This new bureaucracy is artificial since it is already intrinsic to the decision-making process that evidence must be submitted in sufficient time for it to be considered and a decision will not ordinarily be delayed or reviewed if no reason is given for that to happen. Clause 16, therefore, either is unnecessary or will establish greater systematic insensitivity to the barriers a refugee faces to effective engagement with the asylum system. All refugees will need some or all of the following – legal advice and representation, interpreter and translator services, medical and other expert services. The availability and quality of none of this is within the refugee's control. Other matters outside the refugee's control will also impact the capacity to comply with any requirements made under this clause – such as access to and adequacy of accommodation and healthcare. A serious risk with measures such as this is the creation of tasks, demands and anxieties solely to serve whatever arbitrary demands the system, and those operating it, may set rather than serving what should be the purpose of the system in identifying people with refugee status and providing asylum to them. The worst of this is the risk that a traumatised or confused individual is presented with a piece of paper – the importance of which she, he or they are in no state to comprehend – setting a deadline that is then overlooked and creating a bureaucratic barrier to that person's claim being fully and fairly presented and considered.

d. It is not merely the accelerated procedures in Clause 24 that will impede effective preparation, presentation and, hence, consideration of an asylum claim. Detaining someone – who may well begin with vivid fears concerning authority and detention by reason of past experiences in the country the person has fled or countries the person has passed through – will itself exacerbate or create significant emotional and psychological barriers to that.

e. Clause 26 and Schedule 3 are to enable the creation of what is often referred to as offshore processing. That anodyne description means transporting people seeking asylum from the UK to another country to be held pending determination of their claim. It is the antithesis of providing better protection. Rather, it dramatically enlarges on the problems of other provisions that impose isolation and other deprivation upon refugees and thereby inhibit or prevent them from engaging effectively in any process for fully and fairly receiving and considering their claim to asylum.[74]

[74] Amnesty International responded in June 2003 to the same or very similar proposals put forward by the UK Government in that year for offshore processing with detailed analysis of the risks and harms these entailed in its *Unlawful and Unworkable – extra-territorial processing of asylum claims*; the report is available here: https://www.amnesty.org/en/documents/ior61/004/2003/en/

31. Clause 10 is directly opposed to improving protection for refugees. This clause is solely concerned with people who have established both their refugee status and entitlement to be in the UK. The sole purpose of this clause is that some refugees are to receive lesser protection than is the case now and less protection than other more favoured refugees. There is to be uncertainty about the duration and durability of the protection provided as well as diminished quality as to that protection. None of this is about improving protection. It is expressly about withholding or reducing that.

32. Parts 4 and 5 of the Bill include provisions that are also directly opposed to improving protection of victims of modern slavery and children respectively:

    a. Clause 46 operates in a similar way to Clause 16 and shares all the deficiencies of that clause. Clause 46 must be read with Clause 47 (just as Clause 16 is to be read with Clause 17). In short, victims of modern slavery will be made at the mercy of arbitrary demands of the system and those operating it, which ultimately threaten to exclude victims from the protection to which they are entitled and in need.

    b. Clause 58 is described as a placeholder clause.[75] The Summer has nearly passed and no substantive provision has as yet been published. Ministers suggest that among their motivations for the provision that is intended to come is a concern over safeguarding.[76] This is very far from new. The department has long suggested there to be especial child safeguarding concerns arising if an adult is wrongly treated as a child in the asylum system. It is yet to advance particular evidence for these concerns let alone to support any balanced consideration of the relevant safeguarding risks. Yet, there is reason to consider that a more sceptical approach to assessing age would endanger children. Children are vulnerable to abuse, neglect and exploitation by virtue of their age and, if unaccompanied, it is the state's duty to take steps to provide the support and supervision needed to, among other things, safeguard against these harms. Sources of harm can be British citizens or foreign nationals, adults or children, professionals, officials or other staff, people seeking asylum or members of the public. What is key – unless a specific source of harm can be identified – is that the environment provided for the child is one where there is support and supervision alongside awareness and monitoring of risks. Wrongly treating an adult as a child does not in itself put any child at risk unless that adult is a risk to children (just as would be the case if a particular child were a risk to other children). Wrongly treating a child as an adult, however, does put that child at risk because it deprives that child of all the support, supervision, awareness and monitoring that ought to be provided. Moreover, there are other harms done to the child, which may also exacerbate the child's vulnerability. These include the emphatic challenge to the child's sense of identity and capacity to trust constituted by denying the child's age,[77] the removal of other safeguards necessary for safely determining the child's asylum claim and the possibility that the child may be removed or returned to some other country without child safeguarding measures in place or even any intention or appreciation of the need for that.[78]

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[75] See the Bill's Explanatory Notes, paragraph 596

[76] These concerns were foregrounded, for example, in the *New Plan for Immigration*, page 22, *op cit*

[77] *When is a Child not a Child: Asylum, Age Disputes and the Process of Age Assessment*, Heaven Crawley, May 2007

[78] Immigration Rules, paragraph 352ZC(c) provide for a grant of limited leave to remain to an unaccompanied child refused asylum where "*there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted*".

Objective 5: Reduce delays and backlogs[79]

33. A significant element of the Government's case for this Bill rests on Ministers' assertions that the asylum system – including tribunal appeals – is under excessive pressure. It is very hard to credit these assertions given:

    a. The UK has not in recent years experienced any significant increase in asylum claims.[80] While the pandemic will have added to challenges faced by the Home Office, asylum claims in the UK have remained at relatively modest levels. If the system is experiencing undue pressure, that raises questions about its stewardship and the wider policy that Ministers pursue.

    b. Far from setting out measures to reduce delays and ease backlogs, the Bill contains provisions that will – in some cases are intended – to increase delays, Home Office workload and the backlogs that ensue. Whatever is to be made about Ministers' assertions of pressure – and it is correct that backlogs in the asylum system have grown[81] – it is, at best, reckless to introduce measures that will increase that.

    c. Ministers' repeated assertions that other countries should be dealing with the asylum claims the Government wishes to avoid cannot be squared with their claims about excessive pressure on the UK's asylum system. If the UK, which has been receiving very few people into its system, cannot cope, how do Ministers expect countries – such as those listed by the Home Secretary at Second Reading: "*France, Germany, Belgium, the Netherlands, Italy and Greece*"[82] – should do so? In absolute terms, these countries other than Belgium and the Netherlands, have for some years received far more people seeking asylum than has the UK.[83] In relative terms, whether accounting for GDP or population size, the UK lags behind each of them.

34. In one and the same breath, Ministers are making incompatible claims. Their first claim is that the UK cannot cope with the modest demand made on its asylum system. Their second is that countries managing much greater demands should cope with more.[84] Clause 14 is predicated on the presumption that the Government can persuade these countries to accept people into their systems from the UK. Ministers appear to believe that their powers of persuasion (or

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[79] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 706, 707 & 709 *per* the Home Secretary

[80] Asylum applications in the UK over 12 months to end June 2021 were 31,115; the figure for the previous 12 months was 32,488 and for the 12 months before that, 32,757.

[81] The number of asylum claims awaiting an initial decision after more than 6 months has continued to increase for several years: at end June 2017, the number was 14,399; at end June 2019, 22,187; and at end June 2021, 54,040. The data indicates a faster growth in the backlog relating to claims outstanding for greater rather than less periods.

[82] *Hansard* HC, 19 July 2021 : Col 710

[83] See Eurostat data on Asylum (which previously included UK figures but must now be compared with UK statistics)

[84] It is striking that the Government's Equalities Impact Assessment (EIA), published on 16 September, describes the UK's asylum system as "*broken*" [paragraph 8] and describes the asylum systems of these other countries as "*manifestly safe* […] *well-functioning*" [paragraph 21(a)]. For both these statements to be true – given the far greater work being done by the systems of these other countries (in absolute and/or proportionate terms) – requires profound questions to be asked and answered about policy and practice in the UK, including competence of those responsible for these matters. Ministers, however, neither ask nor answer such questions. The EIA is available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018188/Nationality_and_Borders_Bill_-_EIA.pdf

perhaps the depth of the British taxpayer's purse) are so fantastical that others – taking far greater asylum responsibility than does the UK – will agree to relieve this country of some substantial part of even the very modest responsibility it currently takes. If that continues to be no more than fantasy, there will simply be more people, whose claims are delayed, and backlogs will grow.

35. This is not the only way by which the Bill will increase delays, workload and backlogs. Key provisions include:

    a. Clause 10 is to enable the Home Office to differentiate between people who have established their status as refugees and entitlement to remain in the UK. That differentiation is to include that some such people will have any opportunity to become settled in the UK delayed, obstructed or denied altogether. That differentiation is to also include that these same people will have to make further applications to renew recognition of their status and entitlement more times and more frequently.[85] Quite apart from the obvious distress, uncertainty and insecurity that will thereby be improperly inflicted, this will create significantly more work for the department. It will have to continue to actively manage people's presence in the UK for far longer, more frequently and at increased cost. If there are refusals, more appeals can be expected. Far from easing backlogs at the Home Office, or on appeals, this miserable prescription will increase these.

    b. Clauses 17, 20 and 23 are to direct or encourage decision-makers – including immigration judges on appeal – to exclude evidence or reject the credibility of a claimant. That exclusion or rejection is arbitrary. It is not on the basis of the decision-makers' assessment of the relevance or probity of the evidence or truthfulness of the claimant. It is not on the basis of any individual assessment of all the relevant material and circumstances. Unless Ministers wish to make the charge that decision-makers – whether Home Office staff or independent tribunal judges – are incapable of fulfilling their responsibilities, they must surely anticipate that this can only increase the likelihood that some people with good asylum claims are made unable to substantiate them. What then? It cannot be expected that people in real fear of persecution, for what will be good reasons, will be willing to accept return to torture, execution or some other serious harm. So, there will be greater obstruction to the Home Office because it will be charged with carrying out the return of someone who, quite justifiably, will not cooperate; and, similarly justifiably, will wish to take every opportunity – including by making a fresh claim and pursuing further litigation (appeal or judicial review) – to substantiate their good claim to be a refugee. Home Office and other limited public resources, including legal aid and court time, will be spent pursuing what should not be pursued and what may – indeed, it must be hoped will – turn out to be unattainable. That will not merely add directly to delays and backlogs. It will have a wider impact in diminishing confidence in the asylum and immigration system – particularly where the treatment and outcomes for people are manifestly unequal for no reason properly related to the strength of their claim.

[85] Clause 10(5)(a) & (b) and (6)(b) & (c) reflect the proposal in the *New Plan for Immigration* concerning a 'temporary protection status' for refugees where it was indicated that the status would be for 30 months only, requiring renewal at that time but where renewal would only be provided if and for so long as it continued to be impractical or unsafe to remove the refugee from the country. Potentially, refugees granted this much diminished protection would remain permanently in limbo, never knowing if and when they were free to rebuild their lives save in the knowledge that their futures truly lie in this, the country in which their entitlement to asylum has been recognised.

c. Accelerated appeals (Clause 24) and exclusions of appeal rights altogether (Clause 25) can be expected to have similar results. Rather than arbitrary presumptions about the merits of a claim and the complication and expense of differentiated systems, what is needed is commitment to a full and fair process for every claimant. Where it is possible to identify the strength of a claim early, that should be done and a person recognised as a refugee without the process or appeal having to continue. Where that is not so, the process should be completed in a fair and efficient manner – avoiding the need for wrangling over whether someone is improperly subjected to a manifestly less fair process or the need for fresh claims or litigation to try to repair the damage that has been done by that. It is especially disturbing that officials and Ministers appear to think that appeals from detention can be conducted at even faster pace than others – failing to understand that a person's detention will itself be an impediment to effective engagement with an appeal process. Quite apart from the difficulty a person who is detained will have engaging with legal representatives, that person will be under a greatly increased level of distress by the fact of being detained. That cannot aid engagement with any formal process.

36. If Ministers are concerned at the degree of pressure upon the Home Office at present, it is extraordinary that they are choosing to significantly exacerbate the demands upon the department. The total impact of this is likely to be exponentially calamitous. There are a number of reasons for this:

    a. Uncertainty and insecurity will inhibit people's capacity to engage effectively with formal processes. People will lose confidence in the system. People's mental health will deteriorate. They will be less able to find employment even if and when permitted to do so[86] – including because employers may be less willing to take on staff whose future is so uncertain – which in turn undermines confidence, motivation and wellbeing. Accordingly, the delays imposed on people in turn create the conditions that lead people to cause more delay.

    b. Additional bureaucracy and workload will also add to pressures faced by the system. It will undermine capacity and the motivation of those expected to meet unreasonable or impossible demands. Accordingly, delays imposed on a system create the conditions for that system to experience more delays.

    c. Undermining confidence in the system will itself increase the barriers the system faces. The more people are given reason to believe that they cannot trust that the system will or has treated them fairly, or properly considered their claims, the less can they be expected to engage or cooperate with it.

Objective 6: Save public funds[87]

37. Delays, backlogs and dysfunction can be expected to increase not reduce public expenditure. Ironically, to achieve these calamitous ends, the Bill – and the plans it seeks to enable – has required Ministers to make express provision for other additional expenditure. For example:

[86] Employers who cannot be assured that a prospective employee's future is in the UK may be expected to be slow to offer employment, still less any necessary or useful training and support for skills and other development.

[87] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 705, 707 & 711 *per* the Home Secretary

a. Additional bureaucracy introduced by this Bill has required Clause 22 to provide for additional legal aid for legal advice and representation necessitated by that bureaucracy.

b. Clause 15 confirms the need for additional asylum support to cover the period in which a person's asylum claim is delayed by Clause 14.

c. Clause 11 raises the prospect of increased expenditure on building, maintaining and operating accommodation centres in the UK.

38. Of course, all the additional work, delays and backlogs described above will also have to be paid for. As will the costs of prosecutions and sentences of people for exercising their right to seek asylum in the UK by reaching or entering the country without permission if the Government chooses to pursue this (Clause 37).

39. There is also the increased expenditure that will be required if the Government is to secure cooperation of other countries necessary for certain of the Government's plans.

a. Clause 14 can only be operable if countries, many of whom already receiving far more people seeking asylum than the UK, agree to receive from the UK more people into their asylum systems. Ministers have given no explanation why they consider countries will be willing to do this. The UK has left the EU and so is no longer able to secure transfer of people seeking asylum under arrangements agreed between EU Member States.[88] While the UK is free to seek arrangements with the EU or individual countries, as has long been the case with the agreements it has reached with France for increased border security,[89] it can expect to pay for anything that others may be willing to offer. It cannot be expected that they will be willing to offer much if anything at all, but anything that is offered will surely come at a significant price.

b. Clause 26, by which Ministers propose to reach agreement with other countries to establish processing centres where people seeking asylum in the UK are to be sent, may well prove wholly impracticable. It would require countries to take responsibility for accommodating, potentially detaining, people seeking asylum with no guarantees as to if, when or how those responsibilities would be ended even in circumstances where there is no pre-existing connection between the country concerned and the people for whom it is to take responsibility. The model for what is proposed is said to be Australia. Quite apart from the terrible harm and cruelty that Australia's offshoring procedures have done to the relatively few people seeking asylum that it has subjected to this, the Australian experience highlights the enormous cost of what is proposed.[90]

40. In conclusion, this Bill is very far from designed to save costs. Many of its provisions would either be directly expensive, some very expensive, or cause additional work and delays that will have to be paid for.

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[88] Formerly, the UK was a party to the Dublin Regulations, which are available here: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en

[89] See, for example that most recently announced in July 2021: https://www.gov.uk/government/news/uk-france-agreement-strengthens-efforts-to-tackle-illegal-immigration

[90] Even in 2016, the financial costs per person cruelly subjected to this policy were astronomical: see Amnesty International's 2016 report drawing on information from the Australian National Audit Office: https://www.amnesty.org.uk/files/2017-05/island-of-despair.pdf?ixQRwFFZA.DsEUHOwgrxwxTXQ029jASw

Objective 7: Deter unauthorised entry to UK[91]

41. Since the Bill is inadequate for the objective of breaking the business model of people smugglers and human traffickers, it is especially unlikely that it will deter unauthorised entry.[92] Making the asylum system less accessible and welcoming will not have any impact on people whose entry is not for the purpose of seeking asylum. People trafficked into the UK are, in any event, controlled by abusers and so not free to be deterred.

42. As regards people seeing asylum, while measures may deter some people from making asylum claims this is not the same as deterring entry. People who have determined that the UK is the most appropriate place to seek safety – whether because they have family or other connections here or because they have not found other places to be safe – may nonetheless be inhibited from making claims. This will neither be good for them nor for anybody else save for those willing and able to exploit a person compelled to lead a significantly deprived and isolated existence. Worse, fear of the authorities will be used by abusers to control the person – just as is done by the perpetrators of domestic violence and domestic slavery. Ultimately, there may come a time when someone will be identified by the authorities or otherwise need to make an asylum claim. By then, it will be long after that person entered the country. Establishing the claim may be more difficult, as may be taking steps to document and return someone, if the person's claim is found not to be well founded, because the claim is made after a long period during which the person's capacity to engage with the system may be diminished by the impact of prolonged exploitation and deprivation.

43. There is, therefore, a risk, additional to those identified above, that the Bill will add to Home Office and other delays, backlogs and costs. Deterring entry to the asylum system of people, who would otherwise wish to make a claim, will merely cause there to be a larger number of undocumented people in the UK. The Home Office will be formally responsible for this group of people but the resources required to meet those responsibilities will be more complex – needing, firstly, to identify and find them; and, secondly, processing their claims and responding accordingly. Of course, none of this will achieve any wider confidence in the immigration and asylum systems.

Objective 8: Fulfil international obligations including under the 1951 Refugee Convention[93]

44. Whereas the Home Secretary has expressed concern at the idea that the principle of asylum may be undermined, there is nothing in this Bill that suggests any commitment to upholding it while much that does undermine it. The principle derives from Article 14 of the 1948 Universal Declaration of Human Rights, paragraph 1 of which states:

> "*Everyone has the right to seek and enjoy in other countries asylum from persecution.*"

45. The 1951 Refugee Convention gives effect to this right by both defining the status of refugee and the rights of refugees. It thereby identifies the nature and quality of asylum from persecution that every person is entitled to seek and enjoy. The responsibility to provide asylum falls upon the international community of nations and is a shared responsibility. As with all responsibilities that are shared, where some refuse or fail to fulfil their part others become

[91] An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 706 & 713 *per* the Home Secretary

[92] As indicated earlier, the Government's assessment in its Equalities Impact Assessment, *op cit*, is that the evidence to support the effectiveness of what is proposed is limited.

[93] An aim suggested at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 711 *per* the Home Secretary in claiming to champion the "*principle of seeking refuge*".

increasingly unable or unwilling either to take up the slack or even fulfil their own share of the common duty. It is especially damaging that many nations – on whom relatively fewer or few demands fall even while being better placed to meet these by reason of their relative wealth and stability – choose not to play their full or fair part. There are nations whose contribution to providing asylum is far poorer than the UK. Nonetheless, the UK's contribution is very modest. It lags significantly behind its nearest comparable neighbours in Europe. It is even further behind, in terms of the number of refugees hosted, many far poorer and far less stable countries closer to conflict and sites of oppression.[94] It is, at this time, especially poignant that Ministers have called upon the neighbours of Afghanistan to keep their borders open to refugees – most of whom cannot and will not arrive by any pre-authorised or managed process – and for other nations to do more to help refugees.[95] Yet, at the same time, this Bill seeks to more firmly close the UK's borders to even the very small number of people who seek refuge here.

46. Regrettably, there are several ways by which this Bill undermines obligations under the 1951 Refugee Convention. Key provisions discussed here include Clauses 10, 26, 27-35, 37, 38 and 41.

47. Clause 10 is intrinsically contrary to that Convention. It creates categories of refugees and apportions differing standards of protection accordingly. There is no foundation for any such discrimination among refugees whether in the Convention or elsewhere in international human rights law or in general principle. The attempted justification for this relies on Article 31 of the Convention, a provision which by implication allows, at its highest and only in closely restricted circumstances, an administrative penalty upon a refugee who crosses a border without permission.[96] None of Clause 10 is consistent with this nor compatible with the Convention more generally. Nor are the 'legitimate interest' arguments presented in the Government's Human Rights Memorandum of any validity. These are not in any event relevant to any question of fulfilment of the UK's 1951 Refugee Convention obligations. However, in their own terms, they are fatally flawed:

    a. Ministers assert a legitimate interest in discouraging people from seeking asylum in the UK rather than what they say is the first safe country in which the person has arrived.[97] The UK cannot have a legitimate interest in pursuing something contrary to what it is committed, under international human rights law, to uphold. The right to seek and enjoy asylum is not restricted to doing so in any particular country, whether a country into which a refugee first enters or any other. Any such restriction of the right would fundamentally undermine the shared responsibility at the heart of the Convention and the asylum duty it embodies.

    b. Ministers also assert a legitimate interest in encouraging people seeking asylum to present themselves as soon as is practicable.[98] Insofar as it goes, that is a reasonable

[94] A comparison from UNHCR data with Bangladesh, France, Germany, Sudan, Sweden, Turkey and Uganda is available here: https://www.unhcr.org/refugee-statistics/download/?url=k2BW06

[95] The Home Secretary has written in *The Daily Mail* that it is necessary for other countries to do more. While she is right that other countries must do so, her call for this in the absence of any recognition that so many of the countries she is calling upon already do so much more than the UK, even with the emergency evacuations of recent weeks and the resettlement programme that is planned, is not compelling. The piece in *The Daily Mail* is here: https://www.dailymail.co.uk/news/article-9936489/PRITI-PATEL-proud-history-helping-need-countries-more.html

[96] This is more fully explained by UNHCR here: https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html

[97] The Bill's European Convention on Human Rights Memorandum, paragraph 12(a)

[98] The Bill's European Convention on Human Rights Memorandum, paragraph 12(b)

assertion. However, again, the UK can have no legitimate interest in pursuing this in a way that goes beyond the boundaries of the international human rights law to which it is signatory. Article 31 does not permit Clause 10; and nor does anything else to which the UK is bound under or related to the Convention. Moreover, Ministers can hardly claim to be encouraging people seeking asylum to present themselves as soon as is practicable. By this Bill they have set about constructing an array of measures whereby claiming asylum may place a person at immediate risk of being pushed back to another country (Clause 14), being left in limbo (Clause 14), being detained (Clause 24), being banished to a third country from where it is said the person's claim may be considered (Clause 26), being prosecuted (Clause 37) or otherwise adversely treated.

c. Ministers' final assertion is of a legitimate interest in promoting lawful methods of entry.[99] That too insofar as it goes is reasonable. What the UK has no legitimate interest in doing is, contrary to its international human rights law obligations, penalising people for exercising their right to seek asylum by entering without permission. That is especially so given the general absence of any visa for coming to the UK to seek asylum and general policy that asylum can only be claimed in this country by someone who is physically present.

48. Clauses 14, 26 & 41 in their separate ways are directed to shifting responsibility by the UK to other countries for some or all of the following – a person's asylum claim; that person while their claim is considered; and that person after their claim is determined (whether they are found to be a refugee or not). This is all contrary to the sharing of responsibility that is fundamental to the Convention. The vice of this shifting of responsibility is made especially stark given the following:

    a. Clause 14, on its face, purports to shift responsibility on the basis of a person's 'connection' to another place. Curiously, the Bill is silent – as Ministers have been – about the many people with connection to this country. The Bill does not recognise any connection of people arriving in the UK to seek asylum (such as having family, friends or associates here; or by reason of language, past contact with the UK or any historical connection). Nor does the Bill recognise these connections to the UK of people in other places. It is striking how in this Bill and in Ministers' underlying policy, any concept of 'connection' is all one way – i.e. to somewhere, anywhere but the UK.

    b. The UK remains a relatively modest recipient of people seeking asylum and host to refugees. It has not experienced significant increases in asylum claims in recent years. It neither receives claims on the scale of its nearest comparable neighbours nor hosts the number of refugees that are hosted by those countries, still less the numbers hosted in countries such as Lebanon, Jordan, Pakistan, Uganda and others closer to conflict and political oppression. Even at times of operating relatively large resettlement schemes, the UK has long lagged far behind these various European and other countries.

49. Clause 26 and Schedule 3 are intended to enable a policy of shifting to countries – through which a person has never been, passed through or had any connection – the responsibility for the person during such time as that person's asylum claim may be considered and potentially thereafter. At the heart of this remains a fascination at the Home Office with the abysmal asylum policy pursued by Australia on Manus and Nauru islands. The cruelty and injustice of that policy is so manifest that mere contemplation of anything similar constitutes a strong repudiation of commitment to the Convention.

[99] The Bill's European Convention on Human Rights Memorandum, paragraph 12(c)

50. By Clauses 27 to 35 it is intended to legislate domestically for interpretations of the specific provisions of the Convention – specifically concerning whom is to receive that Convention's protection. We note the repeal of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) that is provided for by Clause 27(4). That repeal is of regulations, which along with certain provisions in the immigration rules, were intended to give domestic effect to what is generally known as the Qualification Directive (Council Directive 2004/83/EC). Much of Clauses 27 to 35 adopt the same or very similar language to the Directive and the Regulations and rules by which it was to be given domestic effect. There is an important difference, however, between the Directive to which the UK was previously a signatory and the legislation proposed by the provisions in this Bill. The Directive was always expressly subject to underlying purposes intended to secure minimum standards across the EU that were in keeping with the Convention itself.[100] The Bill, as UK domestic law generally, contains nothing similar. Instead, it asserts a unilateral interpretation of an internationally agreed legal commitment.[101] It is, in principle, improper for the UK to do this and thereby encourage others to seek to set their own diminished interpretations of this Convention. However, the error in these clauses goes significantly further in relation to matters that are in any event not derived from the Directive:

    a. Clause 29 sets out to amend the UK's existing and settled legal standard by which it is assessed whether a person is a refugee. Currently, the required approach is one of holistic assessment of all relevant material to evaluate whether a person is a refugee – i.e. meets the definition in Article 1(A)(2) of the Convention. The standard of proof for that evaluation is one of real or serious risk (or reasonable likelihood).[102] Clause 29 seeks to compartmentalise aspects of the evaluation and apply different standards of proof to the separated parts. This is not merely adding complexity. It is intentionally raising the standard of proof as a means to exclude some people from the protection they seek, need and to which they are entitled. The injustice and absurdity of the result is perhaps most clearly highlighted by considering the impact of different standards of proof for the separated parts identified in Clause 29(2)(b) and Clause 29(4). The first of these requires a higher standard of proof to determine whether a person is indeed afraid that they will be persecuted. The latter of these applies to the current standard to determine whether the person will be persecuted. The result is that a person may establish that they will be persecuted but be unable to meet the new, higher standard to establish they are indeed afraid of this. If so, under this clause, their asylum claim would be refused.

    b. Clause 34 is an attempt to provide legislative authority for a fundamental and unilateral rebuttal of the basic principle of shared responsibility under the Convention and the right of all persons to seek and enjoy asylum "in other countries". This clause is presented as a domestication of Article 31 of the Convention. It is emphatically rejected by UNHCR,[103] the international body responsible for that Convention, and expressly sets out to renege on the current embodiment of that article in UK domestic law.[104] Article 31 does not permit prosecution of refugees for having crossed one or more borders without permission to do so. It does not establish any 'first safe country' requirement, which requirement does not appear in or derive from the Convention or any other aspect of international human rights law. Such a requirement is contrary to that law and contrary to principle, particularly that of sharing responsibility and of

[100] See the introductory text to the Directive, which makes this plain.

[101] UNHCR has expressed concerns about the underlying motivations in its response to the *New Plan for Immigration*, *op cit*; and in its response to the Bill, including in its short post-Second Reading statement, which highlighted the damaging proposal to amend the approach to the standard of proof by Clause 29.

[102] *R (Karanakaran)* [2000] EWCA Civ 11; *R (Sivakumaran)* [1988] 1 AC 958

[103] See UNHCR response to the *New Plan for Immigration*, *op cit*

[104] *R (Asfaw)* [2008] UKHL 31; *R (Adimi)* [2001] QB 667

recognition of the agency of refugees in exercising their right to seek and enjoy asylum. The motivations behind this clause and the surrounding rhetoric appear to be founded on a profoundly wrong belief that, in some way, excessive or unfair demands are placed on the UK's asylum system. The truth is that the UK receives relatively few people seeking asylum and setting out to criminalise most of the relatively few people who do seek asylum here is wholly incompatible with this country's international obligations and an entirely reckless signal to others concerning their own obligations.

c. Clause 35 seeks to enlarge on an existing error in UK law. It concerns Article 33(2) of the Convention, which in certain circumstances withholds from a refugee the protection against *refoulement* (i.e. being returned directly or indirectly to a place where the person is at risk of persecution). The basis for the article is a reasonable assessment that the refugee is a danger to the security of the country or, if having been convicted of a particularly serious crime, a danger to the community. The presumptions to be found in section 72 of the Nationality, Immigration and Asylum Act 2002 do not respect what are intended to be especially high standards for depriving a person of a right on which their very life may depend. Amending these presumptions to reduce the standards that are applied still further is manifestly disrespectful of the relevant international law and the lives of the people, whom it is intended to protect. The injustice and absurdity of what is being done (and what already exists) can be seen by a comparison of this clause and Clause 37. By the latter clause, a sentence of up to 4 years may be imposed upon a refugee for entering the UK without permission in order to seek asylum (notwithstanding that there is no visa available to any person for the purpose of coming to the UK to seek asylum). Clause 35, however, seeks to reduce the threshold for presuming a crime to be "*particularly serious*" from 2 years to 12 months. Thus, easily entrapping a refugee arbitrarily and wrongly prosecuted for doing no more than exercising her, his or their right to seek asylum in the UK by the only means available to do so.

51. Clauses 37 and 38 seek to punish people seeking asylum for doing so and to punish people for helping them. The justification for the former derives from the same misinterpretation of Article 31 that is found in Clause 34 and underpins Clause 10. The breadth of Clause 38 – which is to open to criminal prosecution any member of the public providing any assistance, including rescuing a person or boat in distress, that may enable someone to enter the UK to seek asylum – is not only anathema to the principles of the Convention. It is also plainly contrary to the laws of the sea, which would require the saving of life to be prioritised, and to basic humanity.[105]

52. Clause 41 and Schedule 5 is to open the possibility of push backs at sea to others' territorial waters or land territory. It includes powers to divert or take ships away from the UK and its territorial waters. This shifting of responsibility is, as discussed above, contrary to the principles of shared responsibility underpinning the Convention. It risks *refoulement*, which is contrary to the Convention, without consideration of that risk. Moreover, it is manifestly not in keeping with the urgency of the laws of the sea and of rescue at sea, which would ordinarily require any person rescued at sea to be brought to safety as quickly as possible rather than either pushed back into some other country's territorial waters or any haggling over responsibility between one country and another.[106]

[105] The 1982 UN Convention on the Laws of the Sea, the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue are each relevant. Their application in the context of irregular sea migration is elaborated upon by the UN High Commissioner for Human Rights in a May 2021 report, *Lethal Disregard*, which is available here: https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf

[106] Paragraph 10 of Schedule 5

Concluding observations

53. This submission is largely directed to the asylum provisions in this Bill and what are stated to be the key objectives in pursuing these. As set out above, those objectives are belied by the provisions themselves.

54. However, nothing here should be taken as indication that we are content with provisions that are not addressed here. The urgency of the Government's disastrous plan for the UK's asylum system demands the particular focus of this submission. Nonetheless, there are other provisions of this Bill that in themselves will or are likely to prove harmful. There is much else concerning immigration and asylum policy that is not addressed in the Bill but is in need of being corrected.

55. We will content ourselves, firstly, with final observations upon three discrete provisions in the Bill, which are not addressed in the remainder of this submission:

    a. Clause 59 is one of the placeholders, for which the Government is still to provide any substantive text. However, the underlying proposal to refuse a person a visa, to which they would be otherwise eligible or entitled, on grounds that have no bearing on merits of that person's application is on its face objectionable. That will be especially so if the exclusion extends to visas that are for the purpose of reuniting families or maintaining family unity. Moreover, there are already concerns that such an approach is operated by the Home Office in making decisions on visa applications – particularly where the applicant is of a nationality in respect of which there are significant numbers of asylum claims.[107] Not only is this unjust, it emphasises how people needing to flee persecution are not only faced with there being no visa for that purpose but also face being refused a visa even if they could otherwise qualify for one for a different purpose, such as to work or study here.

    b. Clause 64 is, on its face, an example of reckless posturing. The immigration rules already include provision for considering such matters as breaches of immigration laws, acts of deception, false representations and failures to disclose relevant matters.[108] The clause provides some further discretion for a decision-maker to "*take into account*", without indication how, a question that is not defined and in itself significantly vague: "*whether the person whose immigration status is at issue has acted in good faith*". It is a charter for injustice and administrative oppression.

    c. Clause 65 is a cause for concern. The need for consolidation of the complexity of immigration legislation, to which this Bill will add, has long been recognised but ultimately to little effect. Giving effect to any future consolidation by regulations made under such vague terms as are to be found in Clause 65(1) raises profound concerns as to Parliament's capacity to scrutinise what is being done even allowing for the limitation on the making and taking effect of the regulations that is provided by Clause 65(4) and (5), which require the regulations to accompany a separate consolidating Act.

56. Finally, we note, without further elaboration, three matters of especial concern that require urgent attention but receive none of that in this Bill. First, respect for family life and family unity has been greatly undermined over several years by changes to immigration policy, rules and legislation. Second, the UK's deportation system has over an even longer period acquired

[107] This appears to have been what befell the Afghan Chevening scholars, which required the Prime Minister's intervention: https://www.thetimes.co.uk/article/joy-and-relief-for-kabul-students-allowed-into-british-universities-w2ln5x2b9

[108] Immigration Rules, Part 9, e.g. paragraphs 9.7.1 to 9.7.4

powers and developed practices that are arbitrary, excessive and, in several cases, constitute a system of exile akin to the transportation practices of the 18th and 19th centuries.[109] Third, the UK's immigration system has been made to embody profound uncertainty and hazard that makes people vulnerable to deprivation, exclusion and exploitation while undermining both the credibility of the system and its efficiency. Each of these three matters are among those needing urgent correction in immigration law, policy and rules.

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[109] That system, at least since the introduction of the 'automatic deportation' regime under sections 32-29 of the UK Borders Act 2007, has operated in a way that is draconian to the extent of pursuing deportation against people born in this country with rights to British citizenship, who have lived nowhere else, to places they neither know nor know them. This is but an extreme of the way by which this system has developed as a system of arbitrary punishment of some offenders, who in addition to serving the sentence imposed on them in the same way as any offender, are additionally exiled from country, home and family.