



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Human rights of asylum seekers in the UK, [HC 821](#)

Wednesday 25 January 2023

[Watch the meeting](#)

3.05 pm

Members present: Joanna Cherry (Chair); Lord Henley; Baroness Ludford; David Simmonds; Lord Singh of Wimbledon.

Questions 65 - 69

Witnesses

[II](#): Vicky Tennant, UNHCR Representative to the UK at UNHCR; Elizabeth Ruddick,
Senior Legal Protection Associate at UNHCR

Examination of witnesses

Examination of witnesses

Vicky Tennant and Elizabeth Ruddick.

Chair: I welcome our second panel of witnesses and will introduce them. Our first witness is Vicky Tennant, the United Nations High Commissioner for Refugees representative to the United Kingdom. She has served with the UN High Commissioner for Refugees since 2000. We are delighted to have you with us here this afternoon. Secondly, we have Elizabeth Ruddick, a senior protection associate with UNHCR UK, who has practised immigration and asylum law in the United Kingdom since 2007. Thank you both very much for joining us today.

As I said, I am afraid we are under a bit of a time constraint, but we will try to ask you as many of the questions that we were hoping to ask you in the half an hour that we have, and then we might follow up in writing with a few extra questions.

Q65 **Baroness Ludford:** I am Sarah Ludford, a Lib Dem Peer. Do you think that the Nationality and Borders Act 2022 is compliant with the UK's human rights obligations? If not, which legal obligations are relevant here? What provisions of the Act should be amended or repealed adequately to protect the human rights of asylum seekers and refugees?

Vicky Tennant: We believe that the approach set out in the Act undermines refugee law and practice. We were very clear about that in our submissions as the Bill was going through Parliament and in public statements that we have made since.

We are particularly concerned about the direction of travel towards externalisation—essentially, transferring responsibilities for refugees and asylum seekers to other countries and pushing them beyond the UK borders. We feel that it has an overall effect of reducing access to the UK asylum system, and that for refugees granted some form of protection in the UK it erodes their rights. Certainly, our position is that that runs counter to the refugee convention and very much diminishes access to protection for refugees.

We have three main areas of concern, and, in fact, you touched in the previous session on precisely those areas. The first is that the creation of the two tiers of refugee status, we say, is certainly not what the convention had in mind. It had a unitary definition of a refugee. There was never any sense that there would be different categories of refugees.

The second is the inadmissibility system and the various implications of that. Obviously, it was already in place but was very much reinforced through the Act.

The third is the issue of criminalisation, which you also touched on and that Mark Symes set out in detail.

Those are the three main issues on which we have concerns. Elizabeth, do you want to come in and speak briefly to some of them?

Elizabeth Ruddick: I will set out a little which parts of the refugee convention are implicated.

Mark Symes has explained who a group 1 refugee is and who a group 2 refugee is. There is no refugee asylum seeker visa to allow people to come here regularly to seek asylum and because arriving has now been criminalised, so the expectation is that the vast majority of refugees will fall into group 2, and, as a result, will be denied some of their rights under the convention.

As Vicky said, it is inconsistent with the convention to have two tiers of refugees. The convention defines refugees according to their need for protection, and that is it. It does not define refugees or say that they should be treated differently because of their mode of travel or the delay in their claim. In particular, the Act is being implemented such that refugees will be kept in a precarious status for two and a half years, having repeatedly to reapply with no clear route to settlement, and they will have serious obstacles to family reunion. That is inconsistent with Article 34 of the convention, which requires states to facilitate integration. Instead, both those measures impair integration, inconsistent with the goal of the convention to foster refugees' widest possible exercise of their fundamental rights and freedoms. Family reunion has been recognised as a fundamental right.

Our real concern about inadmissibility is that the Bill has broken the link between denying someone access to asylum in one country and their having access to adequate protection and respect for all their rights in another. There are inadmissibility systems all over the world, but they rely on the fact that someone can be sent somewhere else, where they will have full access to their rights.

What we have seen happening is that the vast majority of people are referred for consideration for inadmissibility. Not that many of them may end up with a formal consideration decision. They are referred on for someone to look at it. Then they go into the inadmissibility process, but there is no realistic prospect of them being sent anywhere elsewhere where their rights will be respected, so they are caught in limbo for an additional six months at the beginning of every claim.

That puts greater demands on the asylum support system and on asylum case workers, and it is damaging to the refugees themselves, who are prevented from beginning their journey towards integration. It also means that those who do not need international protection are spending longer in the UK, receiving support and drawing on the limited resources of the asylum system, when, in fact, a quick decision could be made that those people do not need international protection.

In both group 1 and group 2, they have massively complicated decision-making. Where we used to have one decision—whether the person is a refugee or not a refugee—we now have three: first, whether they are admissible; secondly, whether they are a refugee; and, thirdly, whether they are group 1 or group 2. At a time of very serious backlogs and very serious demands on the system, we have three decisions instead of one. That is the last thing that refugees, the people who are not in need of protection and should be helped to go home, or the system itself need.

With regard to Article 31, the UK has some defences available to refugees for a small number of offences related to unlawful entry or presence, but the refugee convention requires that all refugees have access to a defence based on unlawful entry or presence. Now, there are even more offences than there were before NABA to which that defence is not available. We say that criminal law needs to be brought into compliance with the convention and that the Article 31 defence should be available to all refugees for all offences of illegal entry or presence.

Q66 Lord Henley: I am Oliver Henley, a Conservative Member of the House of Lords. May I move on to relocation of asylum seekers? What are your views about the relocation to safe third countries and the human rights concerns thereafter? Is that approach compliant with the refugee convention and the United Kingdom's human rights obligations?

Vicky Tennant: Our position is that asylum seekers and refugees should normally be processed in the territory of the state where they arrive, and that is standard practice. It does not rule out the possibility of transfer to a third country and arrangements for such transfers. The Dublin regulation that was referenced earlier by Mark Symes is an example of that, where you have a legally binding arrangement. It is about states co-operating together to share responsibility and allocate responsibility for determining refugee claims.

Those kinds of arrangements are permissible, but they need to meet key standards. The Rwanda example is one that we say clearly does not meet the key standards that need to be met.

We have set out our position and guidance on this and we have UNHCR guidelines. Essentially, we say that these kinds of arrangements need to be consistent with the purpose of the convention. They should be about advancing international co-operation and the sharing of responsibility for refugees. They need to be consistent with enabling refugees to exercise their fundamental rights and freedoms in the widest possible way. They should not be about burden shifting or transferring responsibility or a state divesting itself of its responsibilities and simply offloading them on to another state. They should be governed by a formal, legally binding agreement that clearly sets out the responsibilities of the states concerned and the rights and duties of the asylum seekers.

There is an obligation on the state that is making the transfer to assure itself that the rights of the asylum seeker who will be transferred will be respected in terms of both the right to non-refoulement—not being sent

back to a situation of danger—and the other rights that are provided for in the convention. It requires an individualised consideration of the individual circumstances of the person concerned.

We would certainly say that you should look at things like family ties and any other compelling considerations that would point in favour of not transferring someone to a third state.

Lord Henley: It will be a question of facts in any decision made by the Government as to whether, first, the country is suitable, and whether it is suitable in terms of this country's behaviour and co-operation with other countries.

Vicky Tennant: Certainly. That legally binding arrangement is important; there is a basis there for the transfer and then, indeed, what the overall purpose is. Is it really about maximising the rights available under the convention, or is it about diminishing them and offloading responsibilities?

Q67 **Lord Henley:** May I move on to safe and legal routes? Peter Walsh said quite clearly that it was not clear what the Government meant by that and that perhaps we should ask the Government in due course. The Prime Minister has announced that he will introduce new legislation to make it clear that the only way to come to the UK for asylum will be through safe and legal routes. To what extent does the Nationality and Borders Act 2022 already do that? Are safe and legal routes an adequate avenue for asylum seekers coming to the UK?

Vicky Tennant: Thank you. Let me just speak quickly to the first point about what the Act did and did not do. Certainly, there was a stated intention to constrain access to asylum for people who were not coming through so-called safe, legal routes, but it did not close off access to asylum entirely, for the reasons that Elizabeth has explained. The inadmissibility provisions, in practice, are operating to delay people entering the asylum process, but that access to asylum is not, at this time, closed off completely. Certainly, measures that would seek to do that would be of the greatest concern to us.

Peter Walsh laid out very clearly what the safe, legal routes are. The first point I would make is that, of course, there is nothing illegal about seeking asylum irregularly, and that, indeed, is the reason we have the Article 31 defence in the convention. It reflects the reality that asylum seekers find themselves in: they are leaving their countries in often very chaotic and very dangerous circumstances, they often do not have documentation, and for the vast majority the safe and regular channels to asylum simply are not there.

The safe, regular routes, as Peter has described, are extremely constrained. He set out very clearly the three categories. Essentially, we have the bespoke routes for Ukrainians and, to a lesser extent, for Afghans and for Hong Kong British Nationals (Overseas), who, strictly speaking, are not refugees, but, certainly, the intention is to provide a

pathway to the UK for people for whom the UK feels it has a degree of responsibility. That is the large chunk of safe, regular routes that are available.

There is resettlement, which Peter talked about in some detail as well. There are a lot of misconceptions about resettlement. It is a very limited pathway. Globally, significantly fewer than 1% of refugees each year are able to benefit from resettlement, and it depends very much on states making places available to UNHCR for resettlement.

It is quite a complex process. There is no application process as such. It is our UNHCR colleagues, through various mechanisms, identifying people who are still not safe or who have particular protection needs in countries of asylum and for whom resettlement is needed. That is essentially the way it is done. It is not available to people who are still in the country of origin and who may be at risk.

The UK has very much stepped up on resettlement, particularly since the big expansion of resettlement that we saw with the Syrian arrivals in 2015, but it is still relatively small. We are talking about maybe 30,000 people who have been resettled over the years. As Peter mentioned, last year there were just a little under 1,200 arrivals, so it is not a significant route.

A decision was made a couple of years ago to expand resettlement beyond the rather limited range of nationalities—essentially, Syrians—who had been benefiting from it. It has been expanded. The new UK resettlement scheme was introduced.

In practice, for the time being, we have been asked, other than in very exceptional circumstances, to confine our submissions to Afghans for now, and that is part of the Afghan citizens resettlement scheme, which Peter or Mark referred to.

There is also a very small scheme for refugees with family members in the UK. If they are in very exceptional circumstances, they can also apply through that, but that is only a handful.

It is really important to recognise that, for the vast majority of refugees, safe, regular routes are simply not accessible. Even if they were accessible and even if they were available to a wider range of people, they would not replace the UK's obligation to offer and provide asylum to people who are arriving directly in the UK.

Q68 David Simmonds MP: What further work can be done by local leaders and government to support resettlement at a community level, in particular protecting the rights of asylum seekers to dignity and family life in the UK and potentially increasing the capacity of communities to accept increased numbers of asylum seekers in the future?

Vicky Tennant: Thank you very much. What we see in the UK is reflective of what we see globally, which is that when refugees arrive it is at the local level that the real work is done, and that role of local leaders

and of local communities is essential. We see that everywhere. There are very good examples across Europe and in the UK. As the UNHCR, we have tried to capture some of those examples and share them.

We would really stress the need for inclusive leadership: leaders at the local level engaging with refugees—really involving them in the process of understanding their needs, their capacities, what they are able to bring and what they can contribute—and local communities and really encouraging involvement so that you have that two-way process of integration, that relationship between refugees and the communities being fostered.

It is really important to take a mid to long-term approach from day one so that the design of the programmes and the services is such that it focuses on including refugees in the community and ensuring access to economic opportunities and employment, and removing barriers to that.

We would also say that adopting a whole-of-society approach, bringing together the different sectors, is important. That is best done at the local level, bringing together local businesses, local service providers, schools and the communities receiving the refugees. Giving people in the local community an opportunity to volunteer and be involved in the refugee response is really important.

It is important that that work at the local level is supported and enabled by national-level policies. At the moment, there is no national strategy for refugee integration, and, to some extent, that leaves local authorities or devolved Governments in Scotland and Wales having to work that through themselves.

Another challenge is that because we have all these different categories of refugees—resettled refugees, the Ukrainians who have come through one scheme and Afghans who have come through another, and refugees who have come through the asylum system—you have different funding streams and different forms of support and entitlements for those different categories. We think it would be enormously helpful if we could bring those together in a more comprehensive and coherent way.

Q69 Chair: May I ask this question of both of you, perhaps starting with Elizabeth? Does the refugee convention, which was signed in 1951, still reflect the needs of asylum seekers and refugees as well as global asylum trends?

Elizabeth Ruddick: Yes, it does. With respect, I would like to hand that over to Vicky to speak on it.

Chair: Okay, thanks.

Vicky Tennant: We say that it does indeed. The refugee convention is at the core of the international refugee protection framework. It is also complemented and reinforced by regional instruments. We see that in Africa and Latin America as well as in Europe in the common European asylum system. The right to non-refoulement—the right to protection

from return to a situation of danger—is really the cornerstone of international law. It is also part of international customary law. I want to underline that being able to access protection in this way is, for many people, literally a matter of life and death.

We have seen that the convention has been proven to be quite adaptable. It has shown itself to be adaptable to new displacement crises and new forms of persecution that were not contemplated at the time the convention was developed such as gender-related persecution.

Chair: Does it adapt to take into account migration as a result of the climate crisis?

Vicky Tennant: We say it does because the effects of the climate crisis are often linked to inequality and poor governance. It often generates tensions among communities. It can lead to violence. There is often a link between climate as a root cause of conflict, violence and displacement. Certainly, we would say that it is relevant there as well.

Chair: I am really sorry, but because of external time constraints I am going to have to wind up our session. It is very frustrating, because it is fascinating hearing what you have to say. There are a few areas that we have not covered today, and I wonder whether you would bear with us while we write to you about them and ask you to write back. I thank you so much and express my regret that we have not been able to hear more from you.