



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Legislative Scrutiny: Illegal Migration Bill, [HC 1241](#)

Wednesday 22 March 2023

3.05 pm

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Members present: Joanna Cherry (Chair); Lord Alton of Liverpool; Lord Dholakia; Lord Henley; Dr Caroline Johnson; Baroness Kennedy of The Shaws; Baroness Lawrence of Clarendon; Baroness Meyer

Questions 1 - 11

Witnesses

[I](#): Jon Featonby, Chief Policy Analyst, Refugee Council; Colin Yeo, Barrister, Garden Court Chambers; Dr Jean-Pierre Gauci, Senior Research Fellow in Public International Law, British Institute of International and Comparative Law; Christina Marriott, Executive Director of Strategy and Communications, British Red Cross.

Examination of witnesses

Jon Featonby, Colin Yeo, Dr Jean-Pierre Gauci and Christina Marriott.

Q1 Chair: Good afternoon and welcome to today's meeting of the Joint Committee on Human Rights. We are a cross-party committee and a Joint Committee, which means we have members from the House of Commons and the House of Lords. My name is Joanna Cherry and I am the chair of the committee. Today we have our first oral evidence session as part of our legislative scrutiny of the Illegal Migration Bill, and we will hear from a lawyer, an academic and two policy experts, who I am about to introduce in no particular order.

First, we have Jon Featonby, chief policy analyst at the Refugee Council. Jon has been in post since the end of 2022 and he was previously the policy and advocacy manager in respect of refugees and asylum at the British Red Cross for five years. Secondly, we have Dr Jean-Pierre Gauci, senior research fellow at the British Institute of International and Comparative Law. He is also the director of the People for Change Foundation, a human rights think tank based in Malta. Thirdly, we have Colin Yeo, a barrister at Garden Court Chambers, who is an experienced and specialist immigration barrister working in all areas of immigration law. Fourthly, we have Christina Marriott, executive director of strategy and communications with the British Red Cross, which is a crisis charity working on a range of issues in the United Kingdom, ranging from the cost of living crisis to asylum support.

We have quite a few questions to ask you all this afternoon and because we have four of you it could be quite time-consuming. What I will suggest—and I will kick off in a minute—to colleagues is that we perhaps try to direct our question at one witness and then ask the others if they want to follow up or have anything additional to add.

I will start with my first question and I will direct it to Jon, but I am very interested to hear what the others have to say as well. The Government have said that the Illegal Migration Bill will deter illegal entry into the United Kingdom and that it will “break the business model of people smugglers and save lives”. Jon, do you think the Bill will achieve those aims?

Jon Featonby: First, thank you on behalf of the Refugee Council for inviting us to give evidence today on what is a very worrying piece of legislation for us. It comes at a time when the asylum system is facing a number of different challenges, with a backlog of over 160,000 people waiting for an initial decision on their asylum claim, nearly 50,000 people accommodated in hotels for long periods of time and last year more than 45,000 people crossing the channel.

We do not think that this Bill will do anything to alleviate any of those pressures, and in particular we do not think it will deter people from crossing the channel. There are all sorts of reasons why a small minority of the people who face displacement in the world end up in the UK, whether they seek to do so because they have family, culture or other

links to the UK or whether they had very little choice about where they ended up because they were subject to trafficking or other acts that forced them to come here. This Bill does absolutely nothing to remove the reasons why somebody might wish to, or may be forced to, come to the UK and instead it focuses purely on deterrence. Research from academics, from the experience of organisations like our own and others around the world and published research by the Home Office show that deterrence does not put people off taking those journeys. That is why we think those provisions in the Bill will not do anything. We are also very worried about the workability of the Bill and the impact it will have on human beings who are subject to it.

Chair: You anticipated my supplementary question there, which is that the Refugee Council has said that the Bill would be unworkable. Can you explain to us why you have said that?

Jon Featonby: Certainly. The Bill sets out to do two key things, we think. It all starts from Clauses 2 and 4. Clause 2 creates a new duty on the Home Secretary to remove anybody from the UK—or at least seek to remove anybody from the UK—who meets the four conditions: they arrived after 7 March, when the Bill was introduced; they arrived outside of the normal Immigration Rules; they required leave to remain and they did not have it; and they did not travel directly to the UK. First, that covers an awful lot of people and the vast majority of people who will ever seek asylum in the UK.

Secondly, any human rights or asylum claim made by anybody who meets those four categories would be deemed inadmissible. The idea behind the Bill is that those people who fall into those categories would then be removed from the UK, potentially after having been detained for an unspecified period.

The Home Office so far has not published any impact assessment about how many people it thinks this Bill would cover, but the Home Office is predicting that around 65,000 people will arrive in the UK this year on small boats, plus people who arrive in the UK to claim asylum. It is also worth noting that, last year, although 45,000 people cross the channel in small boats, they made up less than half of those people who claimed asylum in the UK. So a very big number of people will be impacted by this legislation. We just do not think that the Home Office has the ability or the wherewithal to be able to remove the many people who will be subject to it.

Even if something like the Rwanda scheme gets up and running, we know from the current inadmissibility process in the UK that since 2021, when those rules first came into place, only 83 inadmissibility decisions have been made. To make that decision there has to be a removal agreement in place for that individual and only 21 removals had taken place. It just does not seem realistic to us that the Home Office will be able to increase the number of those people to be able to do what it is claiming this Bill will do, which will allow it to detain and remove that many people.

Bringing it back then to those human beings, we do not think that this will act as a deterrent at all for those people trying to get to the UK. Either they will try to do that coming through that same route of small boats or what we see from around the world is that when one route becomes harder or will lead them to come into contact with the authorities and that will be to people's detriment, it may well shift people to taking ever more dangerous journeys.

Chair: Christina, does the Red Cross think that the Bill will achieve its aims?

Christina Marriott: For similar reasons as the Refugee Council, we do not. We think that the UK already has quite a strongly deterrent system. For example, our laws on family reunion are less permissive for children to ask for their parents to join them, for example, than EU states.

As Jon has mentioned, the inadmissibility rules came in quite recently and they led to no deterrent; so far, we do not think that Rwanda has led to a deterrent. We also already have a very large detention estate in the UK. We already have quite a tough system. What we hear time and time again—we work with 30,000 people who are seeking asylum or who are refugees every year, except last year when we also worked with 80,000 Ukrainians—is that they did not know about the system before they arrived, so it cannot be a deterrent because to be deterred by a system you have to have knowledge of that system. As Jon mentioned, the Home Office's own research shows that people have very limited or no knowledge of the system before they arrive in the UK, so we cannot see how this will be a deterrent. As much as it punishes those who arrive rather than the people smugglers, it will not be a deterrent for the people smugglers either.

Chair: What about the workability of the scheme? Do you agree with what the Refugee Council has said about that?

Christina Marriott: We have significant concerns about the workability. We cannot see how people will be removed in the numbers that will be needed. There is only one returns agreement in place, which is to Albania. The Rwanda scheme will not provide the numbers that will be needed under this Bill. It is hard to see how those can be made. We would agree with the Refugee Council.

Chair: Thank you. Perhaps I could turn to our legal experts, starting first of all with you, Colin. Do you have anything to add to what the other witnesses have said on whether you think the Bill will achieve the Government's stated aims?

Colin Yeo: To add something to what has already been said, to clarify deterrent effect, I also would doubt whether it would deter people from coming to the UK, but it might have the effect of deterring them from claiming asylum and it might well force them on to other routes, as Jon Featonby has already said. To try to think about that outside the abstract, and what those other routes might be, people might try to enter

in small boats clandestinely, which they do not at the moment; they are doing so openly, sometimes calling for rescue. Trying to get to a British beach and then up the beach without being detected and without being rescued is a much more dangerous proposition, clearly, so we might see more deaths on that route. People might go back to using lorries. It is not that lorries ever fell out of use; it is just that they have been overtaken, shall we say, by the use of small boats. We have seen tragedies with entry by lorry. In fact, I think we have seen more deaths over the years on that route than by small boats, particularly the use of containers, where people are aiming to get into the UK and then get out in a layby or to offload out of a container at some point in the future once they have crossed the border.

It may well look like success, if we can imagine what the future looks like to the Government, because fewer people might be detected crossing the channel and fewer people might claim asylum once they are here. It does not mean necessarily that fewer people will be coming in; it is just that they would be disappearing into the community and adding to the unauthorised population that we know is already here.

Chair: That is very interesting, thank you. Jean-Pierre, would you like to add anything?

Dr Jean-Pierre Gauci: I have one addition to what Colin and Christina were saying. I think that trying to close the routes or trying to stop people from coming in will result only in people going further underground, which will also put them further into the hands of the smugglers and the traffickers whom the Bill is purportedly trying to address and put out of business, in effect. When demand is high there will be supply issues, the price will go up and people will end up in situations of further exploitation, with situations of smuggling changing into situations of trafficking and exploitation.

The other part of that same equation is if people do not apply for asylum and they end up in the informal economy, if they end up in the country without the required documentation, they are much more likely to end up being destitute, which is again likely to put them in situations where they are increasingly vulnerable to exploitation, trafficking and modern slavery.

Chair: Thank you very much. Looking more specifically at the legalities of the situation, I will stick with our legal witnesses for this next question. The Home Secretary, Suella Braverman, has said that if the Bill is enacted, people who enter Britain illegally will be detained.

Committee suspended for a Division in the House.

Q2 **Chair:** Welcome back to the Joint Committee on Human Rights. We had to suspend there for a vote in the House of Commons, but we will continue now taking evidence on the Illegal Migration Bill.

I was just about to ask our legal experts a question based on what the Home Secretary, Suella Braverman, has said about the Bill. She said that

if this Bill is enacted, people who enter Britain illegally will be detained and swiftly removed. She is talking there about people who enter illegally. Can you tell us, perhaps starting with Colin, how an asylum seeker can come to the United Kingdom legally at present?

Colin Yeo: If we are talking about somebody who has not already been approved on one of the safe and legal routes that we do have—for example, the Ukraine scheme or something like that—if we are talking about who is seeking asylum, there are very narrow routes to come here lawfully. In fact, it is virtually impossible, because to do so you would have to enter on a visa, because a visa is required for travel from pretty much every country that produces refugees.

Once you were in the UK, you would then need to claim asylum here, but without having deceived the authorities to obtain the visa in the first place. Coming in as a visitor, for example, you would have to say that you are coming in as a genuine visitor, that you had an intention to leave, and therefore you cannot just lie, get the visa, come here, arrive and say, “Actually, I want to claim asylum” because that would be deception. That behaviour would be caught by this Bill and you would be subject to a third country removal.

A situation that does arise, where somebody does claim lawfully, is where they enter as a visitor or as a student and something then happens back in their home country that generates an asylum claim; it is what lawyers sometimes call a sur place refugee, and that can happen. It does happen to a small number of people, but we are talking about very small numbers, so it is impossible to quantify. The Home Office does not have the statistics, but we are not talking about very many people at all, basically.

Chair: Other than that, they would have to come via one of the existing resettlement schemes?

Colin Yeo: Yes.

Chair: Is that right or are there any other ways they could come?

Colin Yeo: No. There is no such thing as a general humanitarian visa that you can apply for. There are resettlement schemes. For example, if you are from Ukraine, there is a very generous uncapped visa scheme and the UK has now given asylum to—I lose track, the numbers are changing week by week—something like 120,000 or 130,000 Ukrainians. There is a visa scheme for people relocating from Hong Kong. I do not think they would class themselves as being refugees, but it is a refugee-like scheme in a way, and substantial numbers have entered under that.

There is also a resettlement scheme where you do not apply to come to the UK; you get selected. This is a reference that perhaps dates the author of the piece I read and me as well, because I understood it. It has been likened to the Claw from “Toy Story”, which descends and grabs little green aliens. You do not have any agency. You cannot apply for that visa; you just have to be in a UNHCR camp and hope that you get

selected by UNHCR for resettlement and then hope that you might get sent to the UK. It is not something that you can actively seek, as such. That closed down essentially during the pandemic, but I think it has opened up again. It is about 5,000 a year or something like that.

Chair: Jean-Pierre, is there anything you would like to add to that?

Dr Jean-Pierre Gauci: Just to confirm that my understanding is that there is close to no way of coming into the country unless you arrive unlawfully. To arrive legally you have to be coming in for a different reason—if you are a student and something happens and you become a refugee sur place—but other than that, it needs to be one of the existing resettlement schemes, whether that is the specialised ones for Ukraine and Hong Kong or the UNHCR settlement scheme, for which the numbers are very limited and the supply of places for people to be resettled is far below what UNHCR estimates to be the need of people to be resettled.

Q3 **Chair:** Jon, in the Refugee Council's assessment of the Bill, you talk about safe legal routes being extremely limited. In addition to those mentioned so far, you also mention family reunion, but I note that you also make the point that fewer people are currently accessing those safe legal routes than before the Covid pandemic. Can you expand a bit on that for us?

Jon Featonby: Yes, certainly. One of the things that we think is definitely missing from this legislation or the approach to people arriving irregularly in the UK is that rather than expanding safe routes—with the exception, as Colin has talked about, of the Ukrainian scheme, which is very generous and very successful in terms of numbers of people arriving—there is a decreasing number of safe routes for people to reach the UK.

For family reunion, which allows people who have refugee family members already in the UK to be able to travel safely, 90% of people who usually benefit from that route are women and children. That is currently 40% of the number of visa grants that were happening in 2019. On family reunion as well, there is a service standard that the Home Office has where it should be making decisions on family reunion applications within 12 weeks. At the moment the vast majority of cases are taking longer than six months and that is as a direct result of the caseworkers who make those decisions having been moved on to the Ukraine scheme when that was set up, but there is now no real plan in place to get back on top of that family reunion backlog.

Resettlement is currently running at about 40% of the level that it was before Covid as well. Obviously, there are many reasons why the number of people arriving through safe routes in the UK would have decreased during the pandemic, but they have not yet reached that level. Even when we look at the numbers of something like the Afghan resettlement scheme and in particular pathway 2 of that scheme, which is the one that looks far more like a traditional UNHCR scheme, the latest Home Office statistics that we have on that, which take us up to the end of last year,

showed that only 22 people had arrived through this scheme. Of those who are crossing the channel—and nearly half of the people who did so last year came from five countries, Afghanistan, Syria, Eritrea, Sudan and Iran—the vast majority have no access to a safe way to get to the UK.

To pick up on a point that Colin made, one of the routes where people can access the UK in order to claim asylum is if they come from a country where they do not need a visa to enter the UK. Hong Kong is probably the most obvious example at the moment in terms of people who might be seeking to access protection, but what the Home Office also generally does is that for some nationalities, if people are using that route to come in and claim asylum, it imposes visas on that country. El Salvador is the most obvious and recent example of this, where for many years nationals of El Salvador did not need a visa to enter the country, but then over a couple of years the number of people claiming asylum went up to the low hundreds.

In June last year, relatively quietly, because it was the same time that the Nationality and Borders Act 2022 was coming into force, a new visa regime was imposed on El Salvadorian nationals. Therefore, anybody who wanted to come after that from El Salvador without that visa permission would then, in the words of the Home Office, be arriving illegally, whereas that is only because of that policy decision that was taken within the Home Office.

Chair: Christina, would you like to add anything before I move on to the next question?

Christina Marriott: I have a couple of points, maybe to put some numbers to some of what my colleagues have been talking about. We need to think about these numbers in light of the principle of protection. This is about people fleeing persecution and war and about the UK offering them safety and protection. It is also about the UK being a global player in an international system of offering that protection.

Of the schemes that have been mentioned, the UNHCR resettlement scheme last year settled 887 people in the country. Of all the schemes that are safe routes, just 5,792 were settled, of whom 81% were from Afghanistan. If you are not from Ukraine, Afghanistan or Hong Kong, you would have to be one of 1,100 people to have had a safe route into the UK. I think we really need to consider whether that is us as a country doing our part in the global system of offering protection to people who need it.

Q4 Lord Alton of Liverpool: Thank you to the witnesses for coming today and giving some of your insights from your extraordinary expertise. If I can take you to Clause 2 of the Bill and what I think are pretty inadequate Explanatory Notes in the documents that accompany the Bill, perhaps you could help the committee by expanding our knowledge; for instance, about the duty that is placed on the Home Secretary in Clause 2 to make arrangements for the removal of people who arrive irregularly from a safe third state. Can you explain to us who that duty would affect?

Perhaps Christina would take that.

Christina Marriott: It affects everybody who entered in breach of the normal immigration laws, entered/arrived on or after 7 March, so it is retrospective, travelled through a safe country and requires leave to enter or remain but does not have it. In effect, it is everybody bar those 5,792 I have just spoken about, because it is impossible for nearly any refugee to come here without going through a safe country. What happens first is people leave the country they are being persecuted in or the country they are fleeing and they go to a neighbouring country, and nearly always they will go to a safe country first. We also have to recognise that 69% of people will stay in that neighbouring country. Most people do not travel on. It is nearly everybody who has not come via a safe route. We agree with the UNHCR that the real danger of this Bill is it effectively ends the asylum system in the UK, bar for those very few people who can find a safe route.

Lord Alton of Liverpool: Thank you very much indeed. Perhaps I can turn to Jon for my next question, which is about the refugee convention, which prohibits the penalisation of refugees on account of their illegal entry into or for their presence in a country. How does the scheme set out in the Bill constitute a penalty?

Jon Featonby: To a certain degree, it penalises people by preventing them from ever getting the protection that they need under the refugee convention. The refugee convention very clearly sets out a state's obligations to a refugee who is in its territory. What this Bill prevents the Home Secretary from doing—it is connected to Clause 2, but it is actually the inadmissibility power that is in Clause 4—is ever looking at the protection needs of anybody who falls under that duty. As Christina said, the vast majority of those people will claim asylum. If that claim was processed, then the overall grant rate for asylum claims at the moment is 75% at initial decision, the highest it has been for 30 years. Looking at the grant rates for those people who crossed the channel last year, overall you would expect two-thirds of them to go on and get refugee status if the Home Office processed their claims.

It means that the vast majority of people who are arriving irregularly or illegally under the Home Office's terminology, which we would probably slightly disagree with, are refugees. What this Bill does is penalise those people by never giving them those rights and entitlements and that ability to rebuild their life in the UK.

Lord Alton of Liverpool: Let me press you further, if I may, about two contrasting views about the refugee convention. UNHCR says the Bill, "would amount to an asylum ban—extinguishing the right to seek refugee protection in the United Kingdom for those who arrive irregularly, no matter how compelling their claim may be" and with no consideration of their individual circumstances. It says in terms this would be a clear breach of the refugee convention. The Home Secretary, when asked in Parliament specifically regarding Articles 31 and 33 of the refugee convention, stated that, "The Bill introduces measures that we consider

to be compliant with all our international obligations—in fact, we are certain”. Now, who is right?

Jon Featonby: UNHCR is obviously in a way the guardian of the convention and I think that it would be very difficult to disagree with its reading of it. Certainly, from a practical measure, it seems very difficult. We talked earlier in the committee about those ways in which anybody will be able to claim asylum if this Bill becomes law. It seems very difficult and highly unlikely that anybody, whether refugee or not, will be able to access their right to seek asylum under this legislation. It would certainly seem that there is much more strength to that argument from the UNHCR as well.

The convention sets out certain duties on states, but it is also part of what is supposed to be a way of setting out a global response to people who have been displaced and a way of different states stepping up to fulfil their obligations. If the UK does this, it is the UK taking a step backwards from those obligations that we signed up to as co-authors of the 1951 convention. If France and Germany did the same thing, it would become very difficult for those people who are facing displacement around the world to ever access protection anywhere.

Lord Alton of Liverpool: Turning to Colin, if we can probe a bit further into the refugee convention, under the Bill an individual who has not come directly to the UK must be subject, it says, to the removal arrangements. The Bill stipulates that a person will not have come directly to the UK if, and I quote, “they passed through or stopped in another country outside the United Kingdom where their life and liberty were not so threatened”. Is that compatible with the UK’s obligations under the refugee convention?

Colin Yeo: No. I am fairly confident in that answer because the courts have interpreted this previously and decided that “come directly” should not be used literally. It does not mean literally “do not pass go” style travel. If we look at the negotiations around the refugee convention—I have been rereading the Travaux Préparatoires as preparation for today’s session—we see that the drafters of the convention and the UK representative himself, who was there and talking about the amendments that were laid that then entered into the final text, were clearly contemplating that a penalty was a criminal penalty, but they did not limit it to that.

It is not a penalty, for example, to put somebody back in the position that they were in before they travelled to the UK. If somebody was put back into France, where they set off from, it is hard to say that that is a penalty as such, perhaps, but sending them to a third country on a different continent to the one that they come from deliberately in order to deter others from coming looks and sounds a lot like a penalty. In fact, that is really the purpose of the legislation: to penalise some refugees in order to prevent others from coming. They clearly contemplated that people should not claim asylum in one country and then just decide to move on to another country. That is what Article 31 was designed to

avoid. It was not intended to force people to claim asylum in the first country that they reach.

As I said, I am confident in my interpretation there because the courts have looked at this repeatedly. The High Court looked at this in the case of *Ex parte Adimi* back in 1999, a case that is globally regarded as one of the true meanings of the refugee convention, and then the House of Lords itself looked at this in a case called *R v Asfaw* in 2006 or 2007, I think it was, and again confirmed that interpretation. I am confident in saying that a penalty would include removing somebody to another country they have no connection to in order to deter others and that "come directly" should not be interpreted literally.

Lord Alton of Liverpool: Thank you. That is a very straightforward reply. This is my last question in this section before colleagues ask their questions. Christina, I will ask you about some of the people you mentioned who would be escaping from odious regimes. If they falsify their stories in order to ensure safe passage, what will happen to them under the terms of this Bill if they have given false information, even though it was given with justification and good cause?

Christina Marriott: I can speak to the experience that might cause somebody to do that on very long trails, but I might have to defer to legal colleagues as to what would happen in the Bill for it, if that is okay.

Colin Yeo: It would be caught by deception. If you look at the conditions in Clause 2, that would clearly be deception. There is no "good cause" get-out clause as there is with the refugee convention itself. No matter what good reason you might have had for doing that, you would be caught by it, as long as you have travelled through a third country and you met the other conditions as well.

Lord Alton of Liverpool: That would include telling untruths in order to protect people back in the country from which you fled in the first place. There could be any number of reasons, could there not, why someone might not have been able to tell an accurate story or a truthful one?

Colin Yeo: Yes.

Dr Jean-Pierre Gauci: I can add one small point to that. The wording of the provision talks about deception both by the person or by any person. If we are thinking about traffickers, for example, who may have lied in order to get a visa for one of their victims to come into the UK, that victim would also be caught under this provision because the provision does not require your own deception; it requires the deception by any person. The protections that would follow from things like the non-punishment provisions in the Modern Slavery Act and so on would seem to be excluded by the fact that you are not allowed to claim that you are a victim of trafficking.

Lord Alton of Liverpool: That is helpful. Thank you.

Q5 **Baroness Meyer:** That is all incredibly interesting, particularly what you

were talking about, which I did not know about; that is, the duty of stopping in the first country.

Christina, Colin and Jon answered the first question I was going to ask but I will ask Jean-Pierre in case he has a different view on it. It was to find out what you think is the percentage of asylum seekers who would be covered by this new duty.

Dr Jean-Pierre Gauci: I completely agree with what Christina and Jon said.

Baroness Meyer: Seventy-five per cent?

Dr Jean-Pierre Gauci: Yes, even lower because there are very few people who can arrive legally because of specific schemes and otherwise and are caught by the system.

Christina Marriott: I will give an example of that. We know that people from Eritrea have a 98% grant rate of asylum. If they apply for asylum, 98% of them are awarded it on good reason. We know the arrivals last year between January and September, by small boat, 1,509; those who reached the UK by safe route, 14. It is that disparity for some of the countries we know people are fleeing for very good reasons.

To speak back to the point about the safe country, of course you cannot get a flight from Eritrea; you cannot get a passport in Eritrea. There are reasons you would not arrive directly, because it is impossible and you will not arrive with documents because they are also impossible, which are both pertinent to this Bill.

Baroness Meyer: What about the roles of our embassies and consulates in those countries? Can they play a role?

Christina Marriott: What we know is that in areas of conflict embassies often close or get overwhelmed. In 2015, when Syrian refugees were trying to leave Syria, the Turkish embassy was overwhelmed and closed. Even if you were trying to get a visa to enter Turkey lawfully, you could not. You just could not get the visa. One thing that Red Cross thinks that the Government could consider is humanitarian visas, so how we might think about people being able to apply at least for an in principle decision out of country.

Baroness Meyer: Who would they apply to?

Christina Marriott: It would be to the UK, but to get a reasonable grounds decision on whether you could apply for asylum. We think that might prevent some of the very dangerous journeys that people are making. We are not saying we should do it this week. We are not saying that the Government should do it this week. We think that there are comparisons in places like Switzerland that can be looked at. We think that it is an idea worth trialling and piloting.

Baroness Meyer: I see that Jon is nodding.

Jon Featonby: We definitely agree with that idea. The principle at the moment is that somebody has to be physically present in the UK before they can put that application in for asylum. It seems to us that one of the ways that you reduce people making dangerous journeys in order to access that right is by giving somebody a safer way to do that.

One way of doing that would be to introduce a way for somebody to put in almost an initial application for asylum. There are ways that you could pilot this idea, focusing maybe on those countries and those nationalities who are highly likely to be making those journeys into the UK and have a high grant rate. Eritrea would be a very good example of that. Syrians, Afghans and Iranians would be others as well. Otherwise, all those people who are making those dangerous journeys will be captured by this Bill and never access that protection.

Baroness Meyer: Then they would have to apply from the country where they are; they would have to do an online application or—

Jon Featonby: If you were going to do it, you would probably have to do it from outside of their country in order to access it. There are ways of doing it online, and refugee family reunion is quite a good example of how the application process could work in theory. Refugee family reunion applications are submitted online. It then does require somebody to travel to a visa application centre, usually outside the country they live in, to submit their biometrics. You could submit that in principle asylum application online. It would be granted, in theory, by the UK, then that person would be able to travel to another country where they were able to take that journey forward.

It is quite similar to how some of the pathways under the Afghan resettlement scheme work at the moment. Pathway 3, in particular, has been an application online. Most of the people applying for that have still been in Afghanistan. Obviously, they cannot travel directly from Afghanistan but what happens is that the Home Office or the Ministry of Defence accepts that application. That person then knows that they can travel to Pakistan because they will then be able to travel on safely.

There are some principles that have already been implemented by the UK Government. The Ukraine scheme also offers a bit of a blueprint for this that could be expanded out to more nationalities, particularly those who are likely to be making those dangerous journeys.

Baroness Meyer: Colin, would you agree to this as well from a legal point of view?

Colin Yeo: Yes. Coming back to the original question about what percentage of asylum seekers are covered, it is basically all. Last year that was about 89,000 people. If this does not deter people from coming, that is a lot of people who the Home Secretary is pledging to detain and remove to Rwanda.

Jon Featonby: If I can come in on that quickly; I should have mentioned this as well. The Home Office has not yet published an impact assessment for this Bill as to how many people it believes will be impacted by it and how many people will have their claim deemed inadmissible and be detained, and the cost of that.

We have tried to fill that gap as best as we can from the information that is in there from Home Office statistics and has been published elsewhere, and by making some assumptions around that. What we think will happen is that even by the time this duty to remove and inadmissibility powers come into force, which will probably be some time later this year, if channel crossing numbers look like they did last year there will probably already be 40,000 to 50,000 who on day 1 are impacted by this Bill because it is retrospective to 7 March. Looking over the first three years of this legislation, we think that probably somewhere between 225,000 and 257,000 people will have their claims deemed inadmissible.

Even being relatively generous in terms of the Government being able to remove people, including to Rwanda, we think that there could be nearly 200,000 at the end of that three years who have had their claim deemed inadmissible, so their asylum application is not being processed, but who also have not been removed from the UK—and probably there is very little prospect of them being removed—and who are just left in this limbo. Absolutely nothing will happen to them here. They cannot get on, they cannot work, they cannot rebuild their lives, and they will just be at a massive risk of destitution and exploitation.

Dr Jean-Pierre Gauci: Humanitarian visas are considered in the European Visa Code. There are models out there that can be looked at in terms of implementing that sort of scheme, even if the numbers of those humanitarian visas for all countries are limited in how they are granted, and the level of discretion is very high on whether to grant them. There are systems out there that could be looked at.

Going back to your question of what embassies can do, they cannot do very much until such visa schemes are actually put into place. The current visa regime would not particularly allow any embassy, even if it can remain operational in specific circumstances, to actually change very much.

Chair: Before our next question I will bring in Lord Dholakia, although I think to an extent it might have been answered already. I will leave it with you if you want to explore this issue.

Lord Dholakia: I will pursue the question that Lord Alton asked you. There is a duty placed on the Secretary of State to remove people who enter the country illegally. What would happen to their asylum claims when they are in other countries? Are there any structures you establish in those countries to assist these people and what arrangements are available in other parts of the world where people can be assisted?

Jon Featonby: To clarify, is that before people have reached the UK or under this Bill if they have then been removed?

Lord Dholakia: Once they have been removed.

Jon Featonby: Once they have been removed. It is a very good question and it is very unclear. The starting point for us is that under this Bill it is very difficult to see where these people will be removed to. As I was just saying, they will be left in limbo within the UK. The country that has had the most focus and where there is at least an agreement in place is Rwanda. UNHCR, among others, has raised serious concerns about the capacity of the Rwandan asylum system to deal with claims in any high numbers. That would be a serious concern.

The starting point for us, before that even happens, is that people should be able to access protection within the UK system. A functional asylum system should be one that makes decisions in a timely manner if it is going to grant people protection, allow them to get on with their lives, help them to do that and help them to reunite their family members. If somebody is not found to be in need of protection, there should be a way then to engage with that person around what the next steps are. For some people that will be returning to their country of nationality.

What this Bill does is that it prevents the Home Secretary from ever looking at those claims. They are deemed permanently inadmissible, whether there is a removal agreement or not and whether that person's asylum claim is strong or not. One of the slightly perverse things about this Bill is that if somebody comes to the UK and claims asylum, if their claim was processed it would be refused. Under this Bill that person, unless they happen to be from an EU country or Albania, cannot be returned to their country of nationality and instead will either be one of those maybe few people who is removed to somewhere like Rwanda or, probably more likely, will just be left in this permanent limbo within the UK.

Colin Yeo: I agree. I do not have anything to add. An asylum claim cannot be considered here in the UK. If you are removed to, for example, Rwanda, you can apply for asylum there if you want to or the Rwandan authorities will remove you back to your home country, in essence. The Bill is basically, "It is not our problem; you've got to go to somewhere else". That is the message it sends.

Lord Dholakia: How do you know which country they come from, when many of the people do not have any documentation to send them back to the country they came from?

Colin Yeo: It becomes an issue in Rwanda or the third country that they are removed to. The person arrives; for example, from Afghanistan. They claim asylum here in the UK, they are deemed inadmissible, and they are removed to a third country. At the moment, the only third country they can be removed to is Rwanda. In theory, Rwanda will then remove them back to Afghanistan unless they claim asylum. In reality, I imagine

there will not be that many flights from Rwanda to Afghanistan—I do not know—but if they do claim asylum in Rwanda, the claim will be assessed there. If they win, then they can stay in Rwanda. If they do not win, then in theory they are removed back to Afghanistan.

Lord Dholakia: Christina, what happens to children under 16 years who come to this country unaccompanied by any adults? What would happen to them if they are deported?

Christina Marriott: I will defer this one to Jon because I know that he is much more knowledgeable on unaccompanied children under this.

Jon Featonby: For unaccompanied children in particular, there is a slightly different set of things that would happen under the provisions in this Bill. There are two exemptions to that duty to remove within clause 2. One is an unaccompanied child; the other is a confirmed survivor of modern slavery who has leave to remain in the UK while they assist a criminal investigation and that assistance cannot be provided from another country.

Those unaccompanied children, the Home Secretary is not under a duty to remove. However, Clause 3 gives her a power to remove that child before they turn 18. As soon as they turn 18, the duty to remove also kicks in as well. We would have very serious concerns around what that means for that child. While they are sitting in the UK, their asylum claim would have been deemed inadmissible. They know that as soon as they turn 18 this power to remove will kick in and the Home Secretary will then be under a duty to try to remove them from the country. The safety and well-being of that child at that point are of huge concern to us as well. Once that child reaches 18, we are very concerned about what will happen to them if they are removed to a third country.

The Bill also gives the Home Secretary a power to remove that child before they turn 18. The Explanatory Notes to the Bill suggest that power would be used only if that person can be removed to their country of origin or for family reunion purposes. It is slightly difficult to exactly work out how family reunion would work under enforced removal and certainly how that would be in keeping with the Home Secretary's duty to also act in the best interests of the child.

The other element is where a child can be returned to their country of origin. Under the Bill, that would probably specifically apply to Albanian children, who are one of the nationalities who can be returned to their country of origin if their claim has been deemed inadmissible. Last year, nearly 90%, around 87%, of asylum claims by children from Albania in the UK were successful. There is a real chance that the UK will be returning children to a country where, if their claim had been processed through the asylum system in the UK, they would have been found in need of international protection so, therefore, it would not have been safe to return to their own country.

Lord Dholakia: We have paid a large sum of money to the Rwanda

authorities to secure this particular arrangement over there. What would be the position regarding the welfare of people who end up in Rwanda in terms of their pocket money, buying things for themselves and so on? Would they be entitled to the same resources as they get in this country?

Jon Featonby: There are various things within the memorandum of understanding. Obviously, nobody has yet been sent to Rwanda so it is very difficult for anybody necessarily to comment on what someone's experience will be like there.

It strikes us that first payment of £120 million—and there will be additional payments almost per person who is sent—would be far better used on addressing the failings within the UK asylum system, whether that is getting on top of that backlog of 160,000 cases, which has knock-on costs as well if people then have to be accommodated in hotel accommodation, or facilitating far better safe routes so that the UK can step up to its own obligations and its own duties to provide people with protection, rather than trying to outsource these to another country, whether that is Rwanda or anywhere else.

Dr Jean-Pierre Gauci: I very much agree with what Jon has been saying.

Q6 Dr Caroline Johnson: Thank you to the panel for your answers so far. The Government seem to have an issue with the volume of applications at the moment for asylum, and indeed everybody on all sides of the political spectrum are very concerned about the number of people coming across the channel. I was concerned to hear you say, Jon, at the beginning that you thought that this will not put off people going across the channel and that if you close another route they will try a different one. We have seen that in the past with people not being able to get across via the Channel Tunnel and now coming across the channel itself. What do you think would stop people crossing the channel? What would deter people from crossing the channel? Given there is only air, sea and land to get here, what are the other routes that you think they could take?

Jon Featonby: That is a very good question and something that we wish this legislation tried to address, because ultimately none of us want to see that many people putting their lives at risk to try to reach the UK. As I mentioned earlier, there are a number of different reasons why people try to do that, why someone is willing to put their life at risk by getting into that small boat. This Bill does nothing either to remove those reasons or, more importantly, give people another option.

We certainly think that expanding safe routes would be a vital part of that and we have touched on a number of those different mechanisms that could be in place, whether that is expanding refugee family reunions so that more people can access family reunion or, specifically on family reunion, allowing children outside the UK to join a wider range of family members in the UK—whether that is siblings or uncles—similar to what used to happen under the Dublin scheme when we were a member of

that. Something could also be done in respect of refugee children who have been recognised as refugees in the UK. At the moment, they are unable to sponsor any family members to come and join them. There are some quite clear ways refugee family reunion could be expanded.

Similarly, the resettlement schemes could be much bigger and allow more people to access them. This idea of a refugee visa or humanitarian visa could do that, so definitely expand on that.

There is also something around international co-operation on this, too. The UK, whether it is by the provisions in this Bill or even by wide and safe routes, will not solve what is a global issue of people travelling dangerously. Everything that we see happening in the channel we see happening in the Mediterranean as well, with people putting their lives at risk. We see it at other borders.

In terms of numbers, there are far more people crossing other borders around the world than those trying to get to the UK. There is definitely a degree of co-operation on those safe routes. It is not just the UK trying to expand it themselves but being a bit of a global leader and trying to get other countries to do likewise.

There is also a connected issue. When one country makes it harder for somebody to claim asylum there is almost an incentive on some other countries to do the same. We are seeing more and more agreements between the UK and the French Government. There has been almost one a year since 2015 and there were several more in the decade or so before that as well. There was a time when those agreements at least included the transfer of people from France to the UK where there was a good reason to do that. That included unaccompanied children and children who had family members in the UK. More recently we have not seen that.

What none of these agreements do is look at some of the reasons why somebody who maybe has less of a reason or a connection to claim asylum may not feel it is safe to claim asylum in France. What we know, and it is very well documented, is that those people who are in northern France often face violence from the police. They will have their possessions taken away and be unable to settle. It removes the idea that somebody would feel safe to try to avail themselves of the French authorities in order to claim protection there and is likely to incentivise somebody to travel on to the UK to do it.

So there is something the UK can do in its own rules and in its own legal system but also working internationally to uphold that idea that people should be able to access protection no matter where they are.

Dr Caroline Johnson: That is very helpful and very comprehensive. I will ask you to keep your answers a little bit shorter. I imagine the Chair will be wanting to keep us to our time.

Often, what people say is, "Let us expand the number of safe and legal

routes". The Home Secretary said that the UK has provided refuge to 500,000 people since 2015. She has also suggested that there are vast numbers of people who may wish to come to the UK but are put off by the long-distance journey and the dangers of that journey. If you expanded the safe and legal routes, it would be unlikely to be the same demographic as those who are crossing the channel, which we know are predominantly young male adults. We would be looking at more families in the way you described as "Toy Story" but there would be an element of family applications. Would you not end up just taking more people through safe and legal routes but still having this problem with the small boats because you could never expand the system widely enough? You could never provide enough safe and legal routes for all the people who may wish to come.

Jon Featonby: It is definitely fair to say that you will never capture everybody through safe routes. That is why we always say that you need a functioning asylum system that allows people to enter the UK and claim asylum as well as an expansion of the safe routes. One of the ways you reduce the number of people taking those dangerous journeys and incentivise them not to do so is by expanding the safe routes.

That is probably the case at the moment with the safe route that gives people refugee status. Some of the other routes that are talked about as safe routes do not do that. The Ukraine scheme, for example, does not give people international protection. The Hong Kong scheme does not give people refugee protection and probably most of those people would not see themselves as being refugees either. Resettlement, as run by the UNHCR, has focused on the most vulnerable. That probably is a different group from those people who might try to cross the channel.

That is where something like a refugee visa comes in because that is more likely to capture those people who do make that dangerous journey. As I said earlier, half of those people who crossed the channel last year were from countries with very high grant rates, whether that is Eritrea, Sudan, Afghanistan, Iran, and I forget the fifth one of those. They are people who will likely go on and get refugee status. Just because they are young and male does not mean that they are not also a refugee and in need of that protection. At the moment, that group in particular does not have access to a safe route.

Dr Caroline Johnson: If the Government were to introduce such a scheme, how many safe and legal route visas of that type do you think the Government would want to grant? The Government have a balance to strike between the quality of support and care they can offer the people they resettle, and the greater the volume of people the harder that becomes. How many do you think would be a sensible number for the Government to start at?

Jon Featonby: Something like a refugee visa you could start piloting with relatively low numbers. Other organisations have made recommendations starting at around 40,000. There is also a bit of a danger, I think, about putting a number of it. It is just over a year ago

since the Ukraine scheme and the Ukraine war escalated as well. If, as advocates, we had come to parliamentarians at that point saying, "Please set up a scheme that will allow over 200,000 visas to be issued to Ukrainians", I think most of that would not have been heard. Usually when we have been talking about numbers for resettlement schemes, we have been talking about maybe 10,000. The Syrian scheme was 20,000 over five years. The Ukraine scheme does show what is possible when government, communities, faith groups and charities as well come together and try to support people.

There are ways in which these schemes could be piloted. You could put caps on those. There would need to be a conversation between government, community organisations and local government about what that could look like, but at the moment those conversations, other than outside those very specific schemes, just do not happen.

Dr Caroline Johnson: The Ukraine scheme obviously had people moving into others' homes. Very generous people in my constituency and others offered their homes, their spare rooms, to Ukrainian families fleeing war. We know that many of the hotels of the country, in virtually every corner of the UK, have been used for asylum seekers and we also know that the Government are looking at recently former military bases to accommodate more people. Do you think that there is a limit on the number that the country can support, or do you think that it is reasonable to say we could have a safe and legal route, which starts at 40,000—we might go up from there as you are suggesting—and then people will still keep coming across through other routes as well because we recognise that not everyone will be covered by it? Do you think that is sustainable?

Jon Featonby: It is how, basically, the global system around refugee protection has to work in a way. If one country starts saying, "Okay, look, when we get to this number we will stop" all that does is have a domino effect. It comes back to a point Christina made earlier on. The Home Secretary has talked about 100 million people who have been displaced who want to come to the UK. Three-quarters of those people are in their own country; 75% of that remaining 26 million or so are in those countries who neighbour them. The vast majority of refugees do not want to come to Europe, they do not want to come to the UK, they want to remain as close to home as they can because, ultimately, they want to be able to return home and that is where they feel they have their community.

Compared to other European countries, the UK is 17th in the list of European countries for asylum applications per head of population. Compared to countries like Lebanon and Turkey, we are way down the list in the number of people we currently take.

Dr Caroline Johnson: You said that most asylum seekers want to be as close to home as possible. On that basis and the discussion we had earlier about international co-operation, would you, therefore, support the Government's Rwanda scheme because that is a form of international

co-operation? Rwanda has a growing economy. It is keen for people to come and help it to support that growing economy, to resettle people and provide them with accommodation, healthcare and opportunity. It is also nearer some of the countries that you mention than the United Kingdom, so it gives them the best of all those worlds. Do you support it?

Jon Featonby: No, because the Rwanda scheme is not about trying to provide people with support when they want it or even where it will be best for them. It is about the people who come to the UK. Under the refugee convention, the UK should then provide protection to or at least assess whether that person has refugee status and then is in need of that international protection.

In this case, what the Government are doing is outsourcing that to what is a relatively small country, which already accommodates its own population of refugees from neighbouring countries as well. I do not think it is fair to say that an Afghan national is any closer to home or more likely to be closer to home, say, in Rwanda than they would be in the UK, where they might have other cultural—

Dr Caroline Johnson: An Eritrean would be. An Eritrean would be a lot closer to home, presumably.

Jon Featonby: For those Eritreans who sought to come to the UK, if they wanted to claim asylum in Rwanda you could have a system that allowed them to do that. You could set up an international system that did that. At the moment, what the Rwanda scheme does is it removes any kind of agency from individuals without ever really acknowledging the fact that the UK, compared to other countries, compared to our other European neighbours, still takes a relatively low number of people through our asylum system.

Dr Caroline Johnson: That is a very interesting point. When it talks about international protection, does it further define what international protection is? Does the Rwanda scheme meet the obligations under what would be defined as international protection?

Jon Featonby: I wonder if I could bring in one of my legal colleagues on this one.

Colin Yeo: I am not sure where the reference to international protection comes from, what reference that is, but there are questions that are going before the courts at the moment about the capacity of the Rwandan asylum system to decide cases fairly and promptly, and properly support people with their claims; for example, by providing interpreters and things like that.

One of the things that the refugee convention signatory states should not do is send people to another country that will then not look properly at their asylum claim and then forward them on back to their home country where they would be persecuted or killed. There is an open question that

the courts are looking at about whether the Rwandan system is up to the task.

Dr Caroline Johnson: It would be interesting to know whether it was any quicker or slower than the one we have here, given that ours is not perfect.

My final question is a legal question. Clause 4 provides that any claims for protection under the refugee convention, for humanitarian protection, or human rights claims made by people who meet the conditions in Clause 2 must be declared inadmissible. What types of human rights claims will be declared inadmissible and, subsequent to that, what are the implications of that inadmissibility?

Dr Jean-Pierre Gauci: I think that it would cover things like risk of torture and inhuman treatment, family reunion claims, if someone has a family member in the UK, and those sorts of human rights claims. The impact of rendering it inadmissible is that it puts the UK in a situation where it is violating its international obligations under the instruments where those rights are coming from, whether that is Article 3 and Article 8 of the European Convention on Human Rights, the International Covenant on Civil and Political Rights, the convention against torture and/or other related claims; and whether they are related to slavery if they are not done through the modern slavery framework, Article 4 in the European convention on action against human trafficking, the trafficking protocol and so on. Colin, I do not know whether there was anything else.

Colin Yeo: No, I have nothing to add. It is any kind of human rights claim. It is anything based on Article 3, the conventional asylum claim where you fear serious harm, you have a medical condition and you will not be able to get treatment for that—kidney failure, something like that—or a human rights claim based on having a family here in the UK, having children here in the UK, that will be declared inadmissible, and you would be sent off to a third country.

Lord Alton of Liverpool: In the interests of time, you have covered some of the ground that I wanted to ask you about so I have one sharp question that I would like to put to Colin. The core business of this committee is to look at our international obligations. Tell us about the safeguards in this Bill and how compatible they are with those obligations under the European Convention on Human Rights, under the refugee convention and under the UN Convention on the Rights of the Child?

Colin Yeo: That is a difficult question to answer concisely.

Lord Alton of Liverpool: If you cannot then perhaps in writing to the committee afterwards would be helpful.

Colin Yeo: Yes, I can do that. In outline, one of the main fears that practitioners have about potential breaches of international obligations broadly is that although the structure of the Bill stops people from facing harm in their home country—because this Bill literally also prevents them

from being removed to their home country—there could be an accidental effect where that encourages people to claim asylum in order to avoid being sent back to their home country.

Instead it is about the harm that they will face in the third country, such as Rwanda. There is a very abbreviated application and appeal process to assess whether somebody will face serious irreversible harm on their removal there. They will be detained during that process. There is nothing in the Bill to assure, for example, that people have access to a lawyer and will be able to put forward a case in the extremely tight timescales that we are talking about, which are the same, if not shorter than, the timescales that were declared to be systematically unfair when the courts in this country struck down the detained fast-track system back in 2015.

The fear is that you will then see breaches of human rights because there is not an adequate examination of people's cases during that very short timeframe.

Lord Alton of Liverpool: Are there any other treaty obligations that we have?

Colin Yeo: The key ones that would come up in day-to-day practice would be the European Convention on Human Rights, Article 3, Article 4 potentially with the trafficking and modern slavery, and Article 8, the right to family and private life. This also in theory protects people from refoulement under the refugee convention. It does not lift the requirement that the Secretary of State safeguard the best interests of children. That will still be there in place, so it is hard to see how this is compatible with that.

Q7 **Baroness Kennedy of The Shaws:** It is very nice to see you and I am sorry I joined late. I was dealing with other legal business in the House.

Clauses 11 and 12 of this Bill would amend current legislation and create new powers of detention. They would also remove time limits on the detention of children and pregnant women. Do Clauses 11 and 12 comply with the European Convention on Human Rights, including the right to liberty under Article 5?

Colin Yeo: It is a difficult question to answer in a straightforward way because the powers do not require the Secretary of State to detain people but they give a power to detain. It depends a bit on how those powers end up getting used. On the face of it, the scheme that the Act is supposed to introduce or to enable looks to a lot of us like it would breach Article 5 requirements because we have seen litigation on this previously.

My first job as a lawyer was working at the Oakington reception centre, where there was a presumption of detention; there was automatic detention for quite a short period of time. You had access to a lawyer and the purpose of detention was to get a decision on your asylum claim. That was challenged at Strasbourg and ultimately upheld by the court on

the grounds that people were being detained for quite a short period of time—around seven days—but they did have access to a lawyer, which is not guaranteed in this legislation, and it was partly for their own good because it was to decide their asylum claim.

This is not for anybody's good. This is for the purpose of basically bundling them out of the country to a third country. It is hard to see that it meets the safeguards that we saw in the Saadi case from 2005. It is hard to say that the Bill itself breaches Article 5, but certainly the scheme that the Bill would enable looks like it probably would.

Baroness Kennedy of The Shaws: Does anyone else have a different view? You would all follow that.

I will move on to another question, which is about entry and settlement and citizenship. Subject to limited exceptions, the Bill would permanently prohibit any person who has fulfilled the conditions in Clause 2 from being granted leave to enter or remain in the United Kingdom, entry clearance or an electronic travel authorisation. The prohibitions would also apply to their close family members. Do you think that this prohibition is compatible with the UK's human rights obligations, particularly under Article 8 of the European Convention on Human Rights?

Colin Yeo: I will quickly start with that. It looks axiomatically disproportionate because it is a blanket ban that allows for no individual consideration whatever, which is pretty much the definition of something that is a disproportionate interference. The idea that in no possible circumstances could you ever be granted status certainly does look like it would potentially breach Article 8. At the moment we are looking at this.

Baroness Kennedy of The Shaws: You might like to remind people about what Article 8 is.

Colin Yeo: Article 8 is the right to family and private life. We are looking at this Bill when it has not been introduced yet and it has not taken effect. However, if we imagine ourselves in five or 10 years' time when it has taken effect and the situation that will be in place then, there will be a lot of people who will have sneaked into the country by clandestine means. They will not have come to the attention of the Home Office because they will fear removal to Rwanda. There is no point in coming to the attention of the Home Office because it does them no good because they can never get asylum, they can never get status, so they will be here unlawfully. They may well have links in the community, they may well have children, they may have partners, they may have medical problems that have developed in the meantime. All sorts of things could have happened; we cannot really foresee the future. Then this Bill says that they should never be granted status. That looks very disproportionate.

Dr Jean-Pierre Gauci: I very much agree that the disproportionate nature of it renders it in violation of the UK's international obligations.

Baroness Kennedy of The Shaws: I have one matter that I wanted to raise with you about the capacity of Rwanda. I have had some dealings with Rwanda in relation to human rights violations with regard to due process, and you mentioned the capacity to consider and adjudicate on legal matters in a way that would be of a standard that we would find acceptable. We know that there has been a memorandum of understanding created with Rwanda.

I want to ask you about the mental health of people and the capacity of Rwanda to deal with people who arrive, as many asylum seekers do, having been ill-treated, having experienced persecution or torture. How capable are the medical resources in the area of mental health in Rwanda to deal with those problems? Has that ever been assessed?

Christina Marriott: I have not seen an assessment of it in detail. I can say that the mental health of refugees and asylum seekers we work with over here is impacted by the threat of Rwanda, so we are hearing increased levels of distress. As you say, this is a group that is already quite challenged in terms of mental health, as you would be if you have come from the lives that people come from. We are seeing impacts on people in the UK around their mental health because of the stress, and this Bill is heightening that again.

Baroness Kennedy of The Shaws: A little noted clause in the Rwanda agreement commits the United Kingdom to resettling an unspecified number of refugees from Rwanda here. Nobody seems to talk about that. We are saying you will take some of ours but by the back door we will take some of yours. The ones that we are offering to take are the ones who are the vulnerable refugees because Rwanda does not seem to have the capacity to deal with people who have serious mental health problems as a result of what they have suffered.

Christina Marriott: I think that you could ask questions about the assessment of vulnerability in our system, let alone in a system elsewhere. I lack assurance that that has been thought through.

Baroness Kennedy of The Shaws: Clause 16 of the deal with Rwanda, on resettlement of vulnerable refugees, states: "The Participants will make arrangements for the United Kingdom to resettle a portion of Rwanda's most vulnerable refugees in the United Kingdom, recognising both Participants' commitment towards providing better international protections for refugees." There are currently about 100,000 refugees in Rwanda, many of whom are Congolese according to the United Nations, and many of whom are very traumatised.

I welcome the compassion that is clearly being shown by our Home Secretary in providing for the welfare of Rwanda's refugees who they do not have the capacity or the ability to support in a proper way. However, does the British public know that this business of sending people to Rwanda involves a reciprocity of bringing Rwandan refugees here, people who have sought refuge in Rwanda but Rwanda does not have the ability to look after them properly?

Colin Yeo: I think that there is a lack of knowledge about what the Rwanda scheme is in general. If you look at it, a lot of people understood the Rwanda scheme was about people being removed to Rwanda to have their asylum claim processed there and, if they were granted refugee status, to come back to the UK, which obviously ultimately it is not. I would assume that knowledge about that particular element of it is very low. I think that when Government have been pressed on the numbers around that before they have been unable to come forward.

To build on Christina's point as well, we have seen the same impact on the people that we have supported but anybody who is removed to Rwanda is very unlikely to have done so easily. That process itself is likely to be very traumatising for those individuals. Any mental health needs or other needs there may be for that person having arrived in the UK, almost certainly having undergone a very traumatic journey anyway, will only be heightened by that process of being forcibly removed to a country where they do not know what the future will hold for them.

Christina Marriott: Can I raise one other place where we are very concerned about mental ill-health? Under the Bill, we can only see a limbo that people enter into so that they are not in an asylum system that can make a decision and it is very unclear what happens beyond the 28 days of detention. We know detention is very bad for the mental health of people who are seeking asylum. We know indefinite detention is particularly bad. All the evidence points to that, and we have had people say to us, "We should have committed a crime and gone to prison because at least then it would be a definite term; at least we would know when we are coming out." The level of mental health damage from indefinite detention is extreme.

One of the things we are concerned about is if you are not in the system that can make a decision about you and you cannot be removed and you are just in this permanent state of limbo, either in detention or not in detention, that will be exceptionally bad, not only for the country but for the individual's mental health. Our concerns are about the welfare of people, their inability to move on to be able to contribute to society, to be able to work, and to be able to get through a system. That permanent limbo will be bad for mental health.

We do not understand how people will not be in destitution at that protracted time. We work with people who have been turned down from the asylum system, they have had negative outcomes, but who cannot be returned and who, 20 years on, are still in the same limbo. This Bill looks to us like it will just create another cadre of people to be caught in that limbo.

Dr Jean-Pierre Gauci: The idea of indefinite detention and/or a duration of detention that is undeclared or unknown would render that detention in violation of Article 5 of the ECHR. We have seen a number of judgments on that line with regards to a number of countries.

The other thing I wanted to mention is, going back to your previous question, even if Rwanda was able to deal with the mental health—I am not saying that is the case; I completely agree that that is probably not the case—that does not remove the obligation of the UK to conduct an individual assessment of the risk of the particular individual being returned to the particular country, whether that is Rwanda or another country. That obligation to carry out an individual assessment remains, even if the country to which the person is being returned is safe and can deal with their requirements.

Q8 **Baroness Lawrence of Clarendon:** I wanted to follow on from what Christina was saying about the mental health of long-term detention and the impact it would have on individuals. What would be the impact on the country itself? We are the host country and for those asylum seekers who are in long-term detention and their mental health, what would be the impact on, say, the UK when you have people going through mental health? What would be the impact for us here?

Christina Marriott: What we know is that people who are detained, who are seeking asylum, show high levels of depression, anxiety and, as we would all expect, post-traumatic stress disorder, so high levels of need. Of course, if we are detaining people then we have an obligation to treat that mental health need. One of the impacts on the UK will be the cost of that health provision, and my learned friends here on either side can give the legal basis for that, but that cost sits with us.

The bigger cost is that we are not allowing people to get through a system in order to start a life here, to start contributing, to start working. Everybody I speak to who is seeking asylum, all they want to get to is what all the rest of us have, which is the ability to be safe, to settle, to get a job, to support their families, to get their kids into school. That is what they are looking for. What we lose is that. What we lose is people who are positively contributing to society and are settled and what we gain is a lot of expense in terms of detention and healthcare and a cadre of people who are suffering whom we are responsible for and whose health we are responsible for.

Baroness Lawrence of Clarendon: The long-term impact on us is the financing of all that because by keeping them in detention, there is a lot of finance there. The support that they need with their mental health is another finance on the Government. It seems as if, if we were thinking it through clearly, we would not have that or have refugee asylum seekers in detention centres that impact on their well-being, which impacts on the UK.

Christina Marriott: If we were thinking it through logically, where we would direct our money would be into removing the backlog of people who are waiting for a decision. Currently, we have 160,000 people waiting for a decision and the productivity of the Home Office has dropped. In 2014, nine in 10 people got their first assessment within six months. Last year it was less than one in 10 people got their first decision

in six months. That is why the UK is paying a lot of money for things like hotels.

Baroness Kennedy of The Shaws: Could you give us those statistics again and when they changed?

Christina Marriott: In 2014, nine in 10 got their first decision in the first six months. By last year it was down to one in 10. Basically, it went from 89% to 10% between 2014 and 2022. This is the root cause of the backlog and that is the root cause of the £6.8 million that is being spent every day on hotels. Everybody talks about the money spent on those hotels and I do not disagree; it is a very large amount of money that could be spent much better elsewhere. It is also very bad for the people in those hotels.

To reiterate, British Red Cross is supplying shoes to children in those hotels who only have flip-flops when it is snowing. We do delivery of coats. Those people are not having wonderful five-star lives. They feel essentially like they are detained. There is a hotel close to where I live in rural Leicestershire, and if you speak to anybody there, they say they are desperate to leave, to go out, to find something to do. They know that they are not allowed to work but they would love to. They would love to volunteer but they cannot. They are in the middle of the countryside with no access to anything.

If we were going to approach this sensibly, we would take that backlog down very quickly, and there are very obvious ways you can do it. We are glad that the Home Office has started looking at some of the countries with very high grant rates; Afghanistan, Syria and Eritrea are some of the countries we have talked about. We think its method of doing that is wrong, by sending out one questionnaire in English to people who may have been dispersed to a different place. You may not have the right address for them; they may not speak English; they may not have legal representation. There are a lot of problems with that accelerated process.

However, the idea of doing accelerated process we think is right. Let us get people through the backlog and out of the hotels and save that money and use it in resettlement. Likewise, detention is a very expensive form of making people worse and damaging the country. Personally, I also think there is a moral damage, in that we are not standing up for the principle of protection that has been associated with the UK.

Q9 **Lord Henley:** Can I get back to some legal questions? Clause 13 of the Bill would prevent the First-tier Tribunal granting immigration bail to a person subject to removal in the first 28 days of detention. Are these changes compliant with our obligations, particularly under Article 5?

Dr Jean-Pierre Gauci: I would argue no. The reason is that you are removing avenues for challenging that detention or providing remedies from that detention. This focus on detention and limiting detention has all the repercussions that have been talked about, but it also has very

serious legal repercussions, both in terms of direct regulations of Article 5 but also more generally of access to justice, rule of law and so on, which are principles that this country is proud to put forward, I think. Those are considerations that should be taken into account as well.

Lord Henley: The clause also seeks to oust judicial review in connection with detention in certain circumstances, though habeas corpus applications, I understand, could still be made. What are the differences between the habeas corpus applications and judicial review? Again, is this change compliant with our obligations under Article 5?

Colin Yeo: Unlawful detention is not one of my main areas of practice. Habeas corpus is principally a remedy about determining whether there is a power to detain at all, and this Bill would make it clear that there is such a power and that it is also contingent on the opinion of the Secretary of State or, more realistically, their officials.

It is hard to see, on the current state of the case law on habeas corpus, how anybody would be eligible for release. By ousting judicial review and the possibility of immigration bail for an immigration judge, the Home Office is saying, "We can detain anybody no matter what their circumstances, whether they are a victim of torture, whether they are pregnant, whether they are part of a family, no matter what their mental health needs" and it forgets why restrictions were introduced on immigration detention and why Theresa May as Home Secretary commissioned the Shaw review into the use of immigration detention following some very nasty, very unpleasant deaths and injuries in immigration detention; for example, the case of Alois Dvorzac, an 85 year-old Canadian with dementia who ended up dying in detention in handcuffs. There were some horrible cases, and the Home Office is saying basically, "We do not care. We will detain everybody, come what may, with a view to removing them to some safe third country."

Lord Henley: That is very helpful. I should declare, as a point of interest, that I served as a Minister under Theresa May in the Home Office, but I was not in that part of the department.

Chair: Lord Henley, would you like to come in with the questions about suspensive and non-suspensive?

Q10 **Lord Henley:** The Bill will categorise claims regarding removal as suspensive and non-suspensive. Which claims—again, this is obviously for the lawyers—would be suspensive and which would be non-suspensive? What would be the impact of a claim being categorised as suspensive or non-suspensive? Which of the two legal eagles would like to take that on?

Colin Yeo: First, we need to understand what is happening during either a suspensive or non-suspensive challenge. It is not that somebody is having their asylum or human rights claim in relation to their own country considered. That is not what is happening. Instead, what is happening is they are making a human rights claim about what would happen to them in the event they were removed to the safe third country. It is saying, "I

should not be removed to Rwanda because I am gay” or, “because I have mental health needs that will not be met there or physical health needs that will not be met there” or something like that.

This Bill does not prevent you putting forward a human rights claim to the Home Office. If you look at the Bill, you will not see that you can make a human rights claim but it does not stop you doing that. What it does say, though, is that if you do not succeed in that claim there is effectively a presumption that you will be removed anyway in the meantime while that human rights claim is being considered or while any judicial review of the human rights claim is going forward. That will seem curious to a lot of people.

If you are making a serious human rights claim that your rights will be violated, then the idea you should be removed there while that is under consideration by the Home Office or by the court seems very surprising, but it is potentially compatible with Strasbourg jurisprudence. There is this irreversible harm test about what will happen to you in the meantime because the idea is that if your human rights claim ultimately succeeds, you will be brought back to the UK.

One of the concerns, and this is a minor concern in the scheme of the Bill, is that there is no obligation on the Home Office to bring somebody back if their human rights claim ultimately succeeds. It is implicit that that is what will happen. I think that there is a commitment to do it in the Explanatory Notes, perhaps, but it is not in the Bill itself. There is no duty on the Home Office.

What will happen is you have this short, abbreviated procedure where you can put forward a claim to the Home Office saying that you will suffer serious irreversible harm if you are sent to Rwanda—that is currently the only country we are talking about—and therefore it should not happen to you. Your removal is suspended while that goes through this very short appeal process directly to the Upper Tribunal and if that fails then you get sent there. It does not terminate your human rights claim. You can potentially continue with that if you can somehow stay in touch with your lawyers and with the tribunals or the courts here in the UK, and then if you ultimately succeed in it, you will be brought back.

Lord Henley: You said it was potentially compatible with our obligations. Would that be even with the prohibition on refoulement in particular?

Colin Yeo: It is very fact-sensitive. If your claim is that you are on kidney dialysis and you will die if you get sent to Rwanda, most people would say that is serious irreversible harm. Most cases are not quite so clear-cut. If you are saying, “My family life here in the UK will be ruptured by that, and my spouse and children cannot come to Rwanda with me”, the Home Office will be saying, “We are not the ones who are breaking your family life. It is your spouse and the child’s decision not to go with you to Rwanda that is breaking your family life”. Again, that may seem surprising but that is how these cases work.

Say, for example, someone cannot leave the UK because they have a family network here, they have children here, they have medical needs or they are a refugee from Rwanda, here could be all sorts of circumstances that prevent them going there. The Home Office will be saying, "You should still go to Rwanda anyway because it is only a short time. It will only take us six months to decide your case, and then after that six months you can come back again. You can cope for six months. That is not serious irreversible harm". It is fact-sensitive. There is a spectrum of different cases.

Lord Henley: It is a question of fact and degree. I remember the expression.

Jon Featonby: Can I make one further point around the suspensive claim and, in particular, some of our concerns about the serious and irreversible harm one? Colin mentioned, and I think it is worth highlighting, that that applies only to a decision to remove somebody to a third country. For those nationals who are on that list of 32 countries, which is the EU+ and includes Albania, those people cannot rely on that suspensive claim to prevent their removal to that country.

Instead, in Clause 5 on removals there is for that group a power for the Home Secretary not to remove somebody if the Home Secretary considers that there are exceptional circumstances that would prevent that removal. The Bill sets out some of those, and those are largely for where a country has derogated from its human rights obligations. Bearing in mind that almost 90% of Albanian women and children were successful in their asylum claims in the UK last year, there does not seem to be an obvious way where somebody who feels that they would be at risk back in Albania, in particular, because of how they are dealt with in the Bill, is able to put forward those arguments because that suspensive claim, in particular, does not cover them.

Q11 **Baroness Lawrence of Clarendon:** Upon the introduction of the Bill, the Home Secretary made a statement under Section 19(1)(b) of the Human Rights Act that she is unable to certify that the provisions of the Bill are compatible with the convention right. In your evidence you have covered the potential human rights implication of the Bill. Do you think that the provisions of the Bill are compatible with the convention and, if not, what changes do you think would be needed to make the Bill compatible?

Dr Jean-Pierre Gauci: No, the Bill is not compatible with the UK's international obligations under the European convention but also under other instruments, including the trafficking frameworks and broader human rights frameworks, the convention against torture, and so on.

What can be done to the Bill to make it compatible? I think that this is not a Bill that can be tweaked around the edges to be made compatible with the human rights framework and the UK's international obligations. I think that it is a Bill that needs to be rethought top to bottom to be brought into line with the UK's international obligations.

I will say—and this is the international lawyer part of me—that international law makes it very clear that domestic law cannot be used as an excuse to violate countries' international obligations. Passing an Act in the UK that violates international obligations is no justification for the UK's violations of the international obligations that the UK has signed up to over time.

There are some things that can be done that would help a little bit, things such as increasing safeguards, allowing judicial review of these decisions. Again, the fundamental premise of the Bill, which is removing the individual assessment of people's asylum, trafficking, modern slavery claims and human rights claims, making those claims inadmissible, is in direct violation of the UK's international obligations. If you change that, the Bill no longer stands, at which point I do not think that the Bill can be tweaked into line.

Colin Yeo: I think that there is a high risk with the abbreviated assessment process for serious irreversible harm. There is a high risk of miscarriages of justice in individual cases under that process. It is so abbreviated that it is likely to have exactly the same kinds of problems we saw with the detained fast track, if not worse.

The Bill looks pretty obviously incompatible. Sometimes these things are arguable or they are fact-sensitive, but it looks obviously incompatible with the European convention against trafficking, ECAT, which requires states to grant a rest and recovery period to recognise victims. This Bill prevents that from happening and it says that people will be removed anyway, relying on a frankly suspect interpretation of a public interest get-out clause for the Government, which should not be used in a blanket way. If you are an international lawyer, it seems obvious that that requires an individual assessment, which will not be there in those cases.

Chair: Did you mean public order rather than public interests?

Colin Yeo: Yes, sorry, public order.

Chair: Thank you. I would love to explore that more with you but we have detained you for rather a long time and we have to have a private meeting now. I thank you all very much for your evidence this afternoon. It has been very thorough and very helpful. There was one area where we said, Colin, that we might ask you for something in writing, and we will follow up to confirm that.