



HOUSES OF PARLIAMENT

Joint Committee on Human Rights

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

Wednesday 29 March 2023

3.30 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 Meyer; Bell Ribeiro-Addy

Questions 22-25

Witnesses

[II](#): Vicky Tennant, Representative to the United Kingdom, UN Refugee Agency (UNHCR); Elizabeth Ruddick, Senior Legal Protection Adviser, UN Refugee Agency (UNHCR).

Examination of Witnesses

Vicky Tennant and Elizabeth Ruddick.

Q22 Chair: Good evening and welcome back to the Joint Committee on Human Rights. We are taking evidence on the Illegal Migration Bill. With us now we have Vicky Tennant, who is the United Nations High Commissioner for Refugees representative to the United Kingdom and has served with UNHCR since 2000. We also have Elizabeth Ruddick, who is the senior legal protection adviser at UNHCR in the United Kingdom.

I will kick off the questions, if you do not mind. Thank you very much indeed to both of you for sitting through our previous evidence session. We very much look forward to having your views on the Bill. Vicky, in general terms, can you briefly explain the role of UNHCR, particularly in relation to the refugee convention?

Vicky Tennant: UNHCR's mandate is international protection and pursuing solutions for refugees. We also have some responsibilities for stateless and internally displaced people, but the protection and solutions mandate for refugees is really at the core. That is contained in a General Assembly resolution dating back to 1950, so it is a well-established responsibility. In relation to the refugee convention, states have a specific responsibility under Article 35 to co-operate with UNHCR in the application of the convention. We have what we call the supervisory responsibility in relation to the convention.

I want to open by saying that our role in delivering on our protection mandate is carried out by working with Governments. We recognise the challenges Governments face. Our job is to work with Governments to help them find ways of overcoming those challenges. When one looks at the situation of the irregular arrivals across the channel, we very much see our job through that lens of working with government to help find solutions.

We share the concerns around the nature of those irregular movements. Refugees are often forced into a situation where that is their only way of arriving and seeking asylum. Very specifically, we work closely with the Home Office on the asylum system. In 2021, we provided a series of very detailed recommendations on how the asylum system could be improved to make it fairer, more efficient and faster. We are quite encouraged to see that there has been progress. We continue to work with the Government in that respect. We believe that is key to addressing the current challenges, as indeed is co-operating with Europe and that regional co-operation aspect.

Our concern is that the Bill moves us in the opposite direction. It could undermine some of that very practical work that is going on.

Chair: UNHCR has said, in a very strong statement that was referred to by our previous panel of witnesses, that if the Illegal Migration Bill were

to be passed it 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”. Can I just ask you to set out for us how the Bill would amount to an asylum ban?

Vicky Tennant: One needs to recall the profile of the people who are coming across the channel. This largely reflects the profile of the crises and the conflicts that are generating displacement globally. If one looks at the profile of nationalities over the last couple of years, we are looking at people from Syria, Afghanistan, Eritrea, Iran, Iraq and Albania. Those are the top nationalities. Several of those countries are indeed affected by the kind of crisis that generates displacement.

Even if a country does not fall into that category and is generally safe, it is acknowledged that there may be certain groups or certain individuals who have valid asylum claims. The profile of the people coming across the channel is largely a refugee profile. That is reflected in what you were hearing in the earlier session in terms of the grant rates, for example, for people coming in this manner. As you have said, Madam Chair, the Bill would essentially extinguish their right to apply for asylum and apply a range of other measures, such as detention and mandatory removal, that really shut off that possibility.

It was also mentioned in the earlier session that the scope of this legislation applies not only to people coming across the channel or even those coming through dangerous routes, in the backs of lorries and so on. It would cover anyone who arrives in the UK in an unauthorised manner, including at an airport, provided they have passed through another country, even in transit, where they did not face persecution.

That certainly goes, as I have said, beyond small boat arrivals. It would indeed affect someone who arrives without proper entry clearance, for example. It would also potentially apply to someone who, for example, has secured a visit visa already knowing that they plan to arrive and apply for asylum. If they arrive and they apply for asylum straightaway, the presumption would be that they have used deception in order to secure that visa. Certainly our interpretation is that those people would also be caught within the scope of the Bill. As one of the participants in the previous session was saying, that leaves a very small number of people who are not caught by this prohibition on presenting an asylum claim in this country.

To give an example, we could look at someone who has participated in political protests in her own country. Her associates are rounded up; she realises she is in danger; and therefore she goes into hiding. Perhaps she somehow manages to find her way across a border into a neighbouring country. Let us imagine that country is Turkey. There, she manages somehow to obtain a visit visa, get on a plane, come to the UK and apply for asylum at the airport here.

Under the approach that is set out in this Bill, she would be told, “You’ve obtained your visa by deception. You’ll be detained. We’re going to

remove you to another country, potentially Rwanda". That is what this Bill would do.

Chair: Will the Bill be effective in discouraging people from coming to the UK in small boats and breaking the business model of people smugglers?

Vicky Tennant: In our view, there is no evidence that it would act as a deterrent. Again, going back to the profile of the people who are coming through this route, if one looks at the reality of how refugee movements happen, they are fleeing war; they are fleeing persecution. The first movement is generally to a neighbouring country. It generally happens in quite a chaotic way, often in the context of an emergency. Often they will not have documentation with them. That is the first immediate movement.

They find themselves in the country next door faced with a series of impossible choices. Do they stay there? Do they wait and see whether the situation in their own country is going to improve? Maybe they will be able to go back home. Do they remain where they are, often in quite precarious or risky circumstances? Do they take the decision to move onwards to a place of greater stability, maybe to join family or community members or for a whole range of reasons, and, if so, where?

Those are the circumstances in which people are moving. These are impossible choices for many. Indeed, most will remain where they are. That is what the statistics show us: 69% of refugees remain in countries neighbouring their own. Many will find themselves in the hands of smugglers or traffickers, or in other exploitative situations, because they have no other option. It is not an orderly journey or a journey characterised by a series of rational choices, informed by a full understanding of the situation in different countries.

Again, this came up in the previous session. If you ask how the legislation in the UK or the approach taken in this Bill will impact those choices, it is very difficult to say it is really going to act as a deterrent.

There are people without valid refugee claims who come across the channel to pursue that route. If their claims were looked at, they would not be given permission to stay. Our position is that the best way to deal with that situation is to look into their claims quickly. For profiles where the claims are manifestly unfounded, you could have streamlined processing mechanisms that allow you to look at those more quickly, reach a decision and return that person to their country of origin, if they are indeed not in need of protection.

This Bill effectively ties the Government's hands. They are not able to do that. You will end up with people in limbo. The focus of the attention should be on getting claims looked at quickly and pursuing agreements with the Governments of those countries of origin where the unfounded claims are coming from, so people can be returned. We heard about the relatively small percentage of rejected asylum cases that are returned at the moment. Make that the focus of the attention rather than looking for

solutions in third countries. That would be a real deterrent, we think, if it were to operate properly.

Chair: You think the way to break the model of the people smugglers is to process claims quickly and focus on agreements with third countries from which we know people are coming with unfounded claims. Focus on returns for the unfounded.

Vicky Tennant: Yes.

Chair: We heard earlier that a very significant percentage of people who come in small boats—it was 87% in 2022—had their asylum claim granted. If I were to play devil's advocate for the Government, they would say, "Your solution isn't going to break the model, if the majority of them are having their asylum claims granted". If the Government say they want to discourage people from coming to the UK in small boats and break the business model of people smugglers, how would they do that if not by this Bill?

Vicky Tennant: To be clear, sorting out the asylum system is not going to be the magic solution. In relation to what you have described, clearly it is important that Governments are working together to manage refugee flows. Simply having irregular movement with no effort to manage it does not make sense either. The solution is really in regional co-operation: working with France and other EU countries, including Ireland, and trying to manage that challenge together.

We are concerned that, if you pursue, in the way this Bill does, a series of unilateral measures that are about pushing refugees away and pushing responsibility on to other countries, it will undermine the trust and regional co-operation needed to manage these movements.

Q23 **Baroness Kennedy of The Shaws:** Belarus did it. They just threw people they did not want in Belarus over the border and put them into Poland. Do you remember all of that?

I wanted to ask you about the global impact of all of this, but, before I do so, I wanted to ask you about legality. One of the real problems is that one would want to look at the business of legal routes. You gave an example of how this law might affect somebody. I am sure you were thinking of Iran. I have this problem at this very moment. Advice was sought from me where someone was fleeing Iran and had got into Turkey. Her husband had been thrown in jail. She managed not to return to the flat where the arrest would be made and got to Turkey. Could she come to this country, since Turkey is likely to return her to Iran?

I asked the Minister—not publicly, but I am sure he would not mind my saying this—whether it would be possible for her to present herself to the British embassy in Turkey and say she wanted to come here to seek asylum. She knows people here and so on. I was told that that would not be possible, and certainly under this legislation it would not be possible. There is no safe route for anybody getting here from Iran. That is the reality, is it not?

Vicky Tennant: In general, the safe legal routes in place for the vast majority of refugees are really quite negligible. Again, this was covered in the last session. If one looks at the numbers, certain nationalities such as Ukrainians—

Baroness Kennedy of The Shaws: They have bespoke schemes.

Vicky Tennant: Yes. Other than that, you essentially have the UNHCR's resettlement scheme, which is a programme we deliver together with Governments. It is for refugees who have already fled their own countries. The places made available globally are very small in number. Every year, fewer than 1% of refugees are able to benefit from resettlement. They are identified through UNHCR's protection programmes in the countries of asylum. There is no application procedure as such for resettlement.

For the time being, as of today, the only resettlement pathway in the UK that is really operational is for Afghans, for whom we were given an initial 2,000 places in the first year. For other nationalities, that programme is virtually on hold. If you look at the profiles coming across the channel—again, this goes back to your point, Baroness—it is people from Iran or Iraq, Afghans, Syrians and so on. The pathways there are really very limited.

Baroness Kennedy of The Shaws: I want to ask you about the business of having a soft cap. Vested in the Secretary of State would be a duty to make regulations specifying the maximum number of asylum seekers who could enter the UK. Do soft caps operate in other places?

Vicky Tennant: Of course, we would like to see a commitment to a certain number of places. This is placing a ceiling on the number of refugees who would be able to come through these routes.

Typically, when countries develop resettlement programmes or special programmes that they operate bilaterally in certain situations, there will be a commitment to a certain number of slots or places. You can term it a cap, but in most cases they are making a commitment to a certain number. What is in this Bill is not a commitment or a quota; it is a ceiling.

Baroness Kennedy of The Shaws: Does that comply with our obligations under the UN convention?

Vicky Tennant: There is no obligation under the refugee convention to take refugees through resettlement. There is an obligation to co-operate with other states and to share responsibility for refugee situations. There is no specific requirement to accept refugees through resettlement programmes.

There is a requirement to deliver on your obligations towards refugees who do arrive at your borders or in your country. The key point is that, no matter how many safe legal routes you establish, that cannot extinguish the obligations you have towards refugees. We should not be

trading off the two things. As UNHCR, we want to see the expansion of safe regular routes, but that cannot be at the expense of the obligations under the convention to the people who do arrive.

Baroness Kennedy of The Shaws: If this legislation goes through, are you expecting it to be copied by other countries?

Vicky Tennant: It would set a really unfortunate precedent. When people think about the convention, they tend to think about it in terms of the rights it gives to refugees, but in fact the convention is the framework within which states agree to co-operate with each other and share responsibility for refugees.

Imagine what would happen if everyone followed the example of the UK. You would have a domino effect where responsibility was kicked further down the line. As we have said, 70% of refugees are in countries neighbouring their own. This would increase the disproportionate responsibility that is being held and exercised by those countries.

Turkey is hosting 3 million refugees; Bangladesh is hosting almost 1 million refugees; Uganda is hosting 1.5 million refugees. Those countries are all looking at the UK, which, historically, was one of the leaders, both in drafting the convention and in providing support in refugee situations over the years. If the UK is pulling back from its obligations, it is inevitable that that is being watched. There will be an impact and consequences from that, which is very worrying.

Q24 **Baroness Meyer:** Do you know how many asylum seekers globally seek asylum in a country after going through another country?

Vicky Tennant: We do not have an answer to that. I would go back to what I said: we know that 69% are in countries next door to their own. One can assume, then, that 31% move on elsewhere.

At this point, it might be worth pointing to a little bit of research that we did. In order to present a claim here, a refugee needs to have come directly and not passed through another country. In reality, if you look at the big displacement crises today, and how many of those countries have direct air routes to the UK, it is only about 10%.

For the vast majority of countries in crisis that are producing refugees, there is simply no possibility for someone to get on a plane, even if they had a passport, could go through an airport safely and all the rest of it. There simply is no route that would allow them to do that.

Baroness Meyer: We asked this of our other participants, but I am asking you as well. Looking at other countries' current crackdowns on immigration, what would be the impact on the global system of refugee protections if all states required a person to claim asylum in the first country they reach?

Vicky Tennant: This refers back to what I was saying about the domino effect. You would have states pushing responsibility back on to each

other and then ultimately on to the countries on the peripheries of those in conflict. As we know, these are the countries that are already shouldering the majority of the burden.

This is not what was envisaged in the convention. The convention was very much about sharing responsibility. As I said, each state has obligations to the refugees who present at its borders. Why would those big refugee-hosting countries sign up, if it was the case they were meant to contain the refugees in the region of origin?

If other countries followed the UK's example, we believe we would be moving towards a collapse of this international system for refugee protection, which is not in anyone's interest.

Baroness Meyer: Is that not what is happening? If you look at other countries, Denmark wants to do a deal with Rwanda like we did. Sweden wants to have external transit centres. Is this something that is happening?

Vicky Tennant: It is certainly worrying. Other countries are looking at what the UK is doing. That is really why it is so important to have regional co-operation, as you had under the Dublin regulation, for example. The Dublin regulation allowed for a degree of co-operation. It did not work perfectly, but the UK was part of a system that allowed refugees to be transferred to other countries.

That sort of co-operation has to rest on a set of common standards. It is really undermined if states take unilateral action that diminishes the level of protection. It undermines the trust that is needed, but, very practically, it also makes that sort of co-operation very difficult.

I want to underscore that UNHCR does not say that every asylum seeker who arrives in the UK has to have their claim considered here. Transfers or removals to third countries are permissible under certain circumstances, but that has to be within an established legal framework that is in line with the convention and designed to further international co-operation and responsibility sharing. The Dublin arrangement is an example of such a framework.

This arrangement is essentially about the UK divesting itself of its responsibilities and transferring refugees to countries that may already be hosting very large refugee populations from neighbouring countries, with the pressure on infrastructure and resources that that brings, and an asylum system that has not yet been developed to the point where it has the capacity to look at individual asylum claims and ensure people are properly protected. That is not the sort of arrangement that would fall within the framework I have just described and therefore be permissible.

Baroness Meyer: If one could not find a way for all those nations to co-operate on trying to solve the problem, would one need to revise some of the European Convention on Human Rights?

Vicky Tennant: I do not see why that would be necessary. Regional co-operation is perfectly possible and, indeed, is enhanced if the states that are signed up share the same standards and the same framework, whether it is for the protection of human rights or the protection of refugees.

Those international conventions enhance the possibility of successful regional co-operation because you are working within the same set of standards. When it comes to transfers of asylum seekers to third countries, for example, you have a shared legal basis for that transfer to take place.

Q25 **Lord Henley:** Clause 5 provides for the destinations to which people subject to the duty to remove can be sent. Asylum seekers who come from countries outside the EEA, Albania or Iceland could be sent to a third country that is deemed safe, such as Rwanda, but the Bill would prohibit their removal to a country from which they have fled. Is this enough to ensure the Bill complies with our obligations under the refugee convention, including the prohibition on refoulement?

Vicky Tennant: As you have highlighted in the question, what is envisaged under this legislation is that the vast majority of asylum seekers would be removed to third countries.

Chair: I am sorry. I am going to have to suspend because we have a Division in the House of Commons. I am afraid we are not going to be able to come back because I know we have a Division in the House of Lords quite soon thereafter.

We have actually covered a huge amount of ground with you, apart from Lord Henley's question, which is rather an important question. We might write to you about that, Vicky.