



# HOUSES OF PARLIAMENT

## Joint Committee on Human Rights

Oral evidence: [Legislative Scrutiny: Nationality and Borders Bill](#), HC 588

Wednesday 20 October 2021

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Members present: Harriet Harman MP (Chair); Lord Brabazon of Tara; Joanna Cherry MP ; Lord Dubs; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Angela Richardson MP; David Simmonds MP; Lord Singh of Wimbledon.

Questions 10 – 17

### Witnesses

[II](#): Rossella Pagliuchi-Lor, UK Representative at United Nations High Commissioner for Refugees; Elizabeth Ruddick, Senior Legal Adviser at United Nations High Commissioner for Refugees.

## Examination of witnesses

Rossella Pagliuchi-Lor and Elizabeth Ruddick.

**Chair:** We are very pleased to welcome Rossella Pagliuchi-Lor, who is the UNHCR's representative to the UK and who has had 30 years of experience in refugee and humanitarian work, and Elizabeth Ruddick, who is senior legal associate at UNHCR UK and was responsible for drafting the UNHCR's response to the Government's new plan for the immigration and Nationality and Borders Bill. Thank you very much. I would like to start with the first question to be put by Joanna Cherry.

Q10 **Joanna Cherry:** Good afternoon. Thank you for coming to give evidence this afternoon. We really appreciate it.

The UNHCR has said that this Bill is fundamentally at odds with the UK Government's avowed commitment to upholding the United Kingdom's international obligations under the refugee convention and with the country's longstanding role as a global champion for the refugee cause. Can you tell us why you take this view?

**Rossella Pagliuchi-Lor:** We have already published fairly comprehensive comments in this area. Yes, we do believe that this Bill is fundamentally at odds with the convention and with the UK's obligations under it.

There are many different aspects, but I shall focus on just the main ones. First, it is based on a non-existent principle that refugees should seek asylum in the first safe country they encounter. Such a principle does not exist in international law and, indeed, it could not exist in international law because it would undermine the very principle of co-operation on which the system is premised. I do not think any country close to the main countries of origin of refugees would have ever considered signing a convention if that meant that they would assume total and entire responsibility for all the refugees. As a matter of fact, of course, about two-thirds of the refugees of the world do remain in countries neighbouring their own, but that is a matter not of law but of geography. It is certainly not a principle of law.

Secondly, this Bill creates a lesser class of refugees, refugees who would not have access to the full menu of rights that the 1951 convention foresees. I am afraid that there is not a "pick and choose" menu that one can decide on. There is in the convention only one refugee definition, which does not touch on the issue of how a person arrived or in which country if that person were to seek asylum, and one set of rights that accrue to a person who has been recognised as a refugee in a given country. There are no other options, and any attempts at curtailing rights is unavoidably in breach of the convention. This is to mention just two of the most evident and glaring problems with this law; there are others.

There is also another question based more on practical grounds. A panellist from the previous panel mentioned the fact that there is a real risk of a race to the bottom. If countries that so far have distinguished themselves for upholding very high standards of law and of treatment are now in some ways reneging on that, what message does it send to the others? There is a real risk of a progressive erosion of the refugee system.

At the practical level within the UK, quite frankly, we believe that if the provisions of the Bill were to be implemented as they are described, rather than improving on some of the issues, addressing some of the issues that are purported to be the objective of this Bill, it would make things a lot worse. I am talking about the fact that the UK is already struggling with major backlogs, which incidentally are not due to an increase in the number of refugees. Let me say this very clearly because I think back to the narrative that this is an emergency created by an increased number of refugees or of applicants. The reality is that the UK has had a very stable number of claimants over the years, unlike other countries. Indeed, the only thing that has changed now is that these people are coming by boat and, therefore, through a channel that is much more visible, rather than on the back of lorries or in cars or in vehicles or in other ways. They are practically the same people and this is an important element.

Establishing a system that essentially declares inadmissible everybody who comes this way, without any possibility for a person to be admitted somewhere else—because, of course, since Brexit and with the type of Brexit that has been entered into, the UK is essentially outside any other comparative mechanism on asylum with Europe—will in reality create a massive queue of people who are inadmissible but cannot go anywhere else and eventually will be admitted under the procedure but only after having stayed for months and months in limbo. This will increase the costs, make the management of this asylum system all the more complicated and, of course, impact the individuals in question.

**Joanna Cherry:** If this Bill is passed by the British Parliament, do you think it will still be fair to describe the United Kingdom as a global champion for the refugee cause?

**Rossella Pagliuchi-Lor:** You are asking me a difficult question. I think that I will leave the answer to you. The UK so far has been a very valuable champion for refugees and asylum. It is always easy to criticise, but you have had a pretty decent system overall to deal with asylum. Of course, the UK internationally has been a champion when it comes to advocating for asylum in other countries. I am afraid one wonders what strength the UK's advocacy abroad would have if it is seen as not willing to do at home what it would be asking other countries to do, often with way more refugees and far fewer resources.

**Joanna Cherry:** What about the scheme announced by the British Government for Afghan refugees? They announced a new safe and legal resettlement scheme which will accept 5,000 refugees in its first year. Do

you think that scheme is sufficiently ambitious to ensure that the UK fulfils its role as a global champion for the refugee cause?

**Rossella Pagliuchi-Lor:** The ACRS, which is what I believe you are referring to—the Afghan citizens resettlement scheme—is an aggregate scheme that is supposed to have a component that is the classic UNHCR managed resettlement scheme, so resettlement from countries of asylum. In addition, I would assume it would be something like a humanitarian visa scheme that would be managed directly by the Government in other countries.

Obviously, if you are looking at the needs, almost no realistic number will ever be enough, but if you consider the fact that the UK has major problems particularly with housing accommodation—I think we are seeing it also with those who have benefited from the ARAP evacuation scheme—yes, it could be more, but at the practical level I do not know how easy it would be for the Government to accommodate much larger numbers.

Now, because of what has happened in Afghanistan and because of the linkages between Afghanistan and this country over the years, there is a bit of a risk that we are forgetting about the other refugees. We were on the cusp of restarting a new global refugee scheme and that is lagging a bit behind because, of course, the Home Office has been overtaken by the need to find accommodation and services for all those who have already arrived. There is a real risk that in the interest of the Afghans now we forget about the others. There are many other refugees who are in very vulnerable situations who have been waiting for a long time to come to this country.

Q11 **Angela Richardson:** I am the Conservative Member of Parliament for Guildford. I might in the interests of time group the two questions together that I will ask.

Is granting a lesser status for protection and support for refugees who enter the UK outside legally recognised routes compatible with refugee law and human rights law? Alongside that, on a practical level, the UNHCR has said, “attempts to relieve pressure on the UK asylum system by narrowing access to it for those arriving irregularly are neither effective nor sustainable ways to address the system’s current weaknesses”. It would be helpful for us to hear why you take that view.

**Elizabeth Ruddick:** I think that is a very good question. First of all, as Rossella has already said, there is only one single refugee definition in the refugee convention, and people who meet that definition are entitled to all the rights set out in the convention. It is important to recognise that these rights were very carefully negotiated by states parties 70 years ago to ensure that refugees would be able to rebuild their lives, integrate and contribute to their host communities. It is not simply a humanitarian gesture, it is also a realistic and practical one for the host community. If you are welcoming refugees into your country and you are promising not to return them to persecution but you are denying them

access to the support they need in order to integrate and contribute to that community, you are not only harming them but you are harming the host community as well. It is not only that it is inconsistent with the refugee convention; it is also a very bad idea on a practical level.

Quite specifically, the refugee convention says that recognised refugees shall have access to public relief on the same terms as nationals. The Bill, combined with the Explanatory Notes, would explicitly violate that principle. It would allow the Secretary of State to come up with rules that would deny refugees access to family reunion, that would keep them in a precarious status without access to settlements. The precarious status and the lack of access to settlement is a clear violation of Article 34, which requires states parties to facilitate the integration and naturalisation of refugees. Again, that is in the interests of the host country as much as it is in the interests of the refugee. Study after study shows that in situations where refugees are denied access to employment and are kept in a precarious status they integrate less, become more marginalised, and do not recover from whatever mental health problems they may have been suffering because of the trauma they have endured. You create a problem for their host community. They will need support for longer, and they will need more support.

With regard to family reunion, although that is not specifically mentioned in the text of the refugee convention, it has been recognised from the very beginning that the family is the fundamental unit of society, and refugees need access to family reunion, again, in order to rebuild their lives. It is a universal consensus that refugees should have access to family reunion faster and more efficiently than any other migrants. Anywhere you see there may be limits—such as you must have a certain minimum income threshold, you must pay a fee, or you must wait three years, for example, as you might in Europe, in order to be able to sponsor your family—refugees are exempt. There is a universal consensus that refugees must have access to family reunion, because it is absolutely necessary for them to reintegrate. Those are the reasons it violates the convention.

In terms of practical effect, I have mentioned the inability to reintegrate. Also, in terms of backlogs, if you look at someone who is making a refugee decision now, they are deciding whether this person is a refugee. If the Bill comes into effect, once they have made that decision there is another decision. The person is a refugee, but did they come to the UK directly? Did they claim asylum as soon as reasonably practicable? If they entered unlawfully, is there a good reason for their unlawful presence? You are adding three more decisions on top of the refugee decision in every case where it has been decided someone is a refugee. You are making every refugee decision twice as long, and there will be all sorts of knock-on effects, not only in terms of the time it takes to interview that person but to write the decision and to comply with public law principles of fairness and duties of inquiry with regard to all these new facts that will now need to be determined with regard to each refugee. You are making every refugee determination at least twice as long.

**David Simmonds:** On a point of clarification, the UK legislated, I think around 2004, to remove asylum seekers from the public relief rules that apply. Asylum seekers from that date were treated differently through the Home Office dispersal mechanism in the UK than they had been prior to that. In your view, is there any relevant distinction between people who are asylum seekers and those who have been granted refugee status? Are those things relevant considerations in the context of family reunion?

**Elizabeth Ruddick:** Absolutely. There are relevant distinctions drawn throughout the refugee convention and, again, carefully negotiated and agreed-to distinctions. There are certain rights that all refugees have, regardless of whether they have been recognised as a refugee or not. That includes protection against refoulement, to face persecution. There are other rights that are only for refugees who are lawfully staying in the country, rights for refugees who are lawfully residing in the country and rights for those who are habitually resident. It is a carefully calibrated list of rights. The Bill drives a coach and horses through that list and just randomly, because it might be conceived of as having a short-term deterrent effect, disregards those rights.

**Rossella Pagliuchi-Lor:** The essential difference between an asylum seeker and a refugee is that an asylum seeker is a potential refugee. Of course, refugee status is declaratory rather than constitutive. In other words, you are a refugee if you are outside of your country because of persecution, rather than because we say so. However, to all intents and purposes, a declaration is necessary for you to be able to access those rights. Certain rights as a potential refugee would be established from the very beginning, and others will be established with the recognition that the person is, if you wish, rooted in the country and on his or her way to integration.

Q12 **Lord Henley:** I am a Conservative Member of the House of Lords. You said quite clearly at the beginning of your evidence that there was no principle that a refugee should seek the first safe state. Conversely, the Home Secretary has said, and I quote, "If someone enters the UK illegally from a safe country such as France, where they should and could have claimed asylum, they are not seeking refuge from persecution, as is the intended purpose of the asylum system; instead, they are choosing the UK as their preferred destination and they are doing so at the expense of those with nowhere else to go." Are you saying that refugees should not have to claim asylum in the first safe country they reach, and if so, why not?

**Rossella Pagliuchi-Lor:** First of all, the law does not say that they have to. For reasons that I explained, it would profoundly undermine the system. We would not be having this conversation if we were sitting in one of the countries in the proximity of major refugee crises, quite frankly. I would not need to describe there why this principle does not conform with principles of co-operation. I find it interesting that this conversation seems to focus on France, as if France were directly bordering a country in crisis. It does not. If this is valid for the UK, it

would also be valid for France. It would be valid for France to send people back to the next country, to Germany. But it is also not Germany. Austria? But it is not Austria either. Hungary? Hmm. You keep going back until everybody is essentially back to their own borders.

What I am trying to say is that people will have a certain degree of urgency, and it is a fact that some people will find themselves in the UK, as we heard before, without having exercised a choice because somebody made the arrangement—this is particularly true for unaccompanied minors—or because they did not know better: the smuggler brought them here. Others will make that decision because, for example, they feel in this country they will have support from family and community. This is often a very powerful reason why people will choose one country over another.

At the end of the day, there is a fallacy behind this. The fallacy is that we think that all a refugee should legitimately want is to save their life, and if their life has been saved and they are not being shot at, they are okay. The reality is that this is a very important element in choosing asylum, but when you are a refugee, you are normally a refugee for decades. Simply surviving is not enough. You will want to find a place where you can re-establish your life. This is often not possible in many of the countries that are safe but do not offer, for example, the opportunity to send your kids to school. We have to understand why people sometimes take the risks, the very major risks, to move further afield, in order to re-establish lives for themselves and their families.

This is the elemental choice that the Home Office finds objectionable. I suggest that any of us would make the same choice if we found ourselves in that kind of situation. That does not make you any less of a refugee. You are a refugee or not relative to your own country and the risks you faced in that country, not relative to where you find yourself. That being said, I said that there is no obligation to seek asylum in the first country, but there is also no unfettered right to pick and choose where you want to be. But you have to be in a situation where you have access to the full panoply of rights that accrue to you: access to a fair and efficient procedure, access to decent reception facilities and, if you are recognised, access then to the rights that will allow you to rebuild your life.

These states may agree among themselves what the best way is. That is the sense of the Dublin convention, which, while not being in any way a panacea, at least aimed at distributing responsibility between states according to a number of criteria that we can agree or disagree with, but at least there was a system. The UK is now out of that system too. It is very difficult to see how an agreement, which, by the way, we would really like to see, between the UK and the EU—this is the original one where the UK remains, Brexit or no Brexit. But that agreement cannot be a unilateral agreement that says that everybody should go back to France, because obviously that agreement would not stand a chance of ever being accepted. It has to be an agreement that establishes reasonable criteria, where the preference of the asylum seeker

themselves should be an element, to see where it makes more sense for that person to receive asylum.

It cannot just be, “We will not give you asylum because you’re here”, or “Everybody should be in France”. By the way, France receives at least three times as many applications as the UK. It is a difficult argument to make with any appearance of fairness.

- Q13 **Lord Henley:** I accept what you are saying. You said there is no “unfettered right to pick and choose” in terms of where you go, but nor is there any duty to go to the first place, whether it is Greece, Turkey, or wherever. I have one further question. The Bill also contains an offence of illegal entry, which could apply to asylum seekers who enter the UK by irregular means. Is that compatible with the prohibition on penalisation in Article 31 of the refugee convention?

**Rossella Pagliuchi-Lor:** Absolutely not. There is an article that established no penalisation of refugees on account of irregular entry. Penalising them is an obvious breach of it.

- Q14 **Lord Brabazon of Tara:** I am a Conservative Member of the House of Lords. My questions concern vessels in United Kingdom territorial waters. There has been a sharp increase in the number of people arriving by small boats, from 1,800 in 2019 to 8,500 last year, and I do not know by how many more so far this year. Do you know why that is? Can you guess what the reason for that might be?

**Rossella Pagliuchi-Lor:** I can venture a hypothesis. As I said, the overall number has not changed. It is pretty stable. What has happened is simply that smuggling rings moved from moving people largely through trucks and other vehicles to using boats. One of the reasons is the securitisation of the border and the fact that there are far more controls on trucks and lorries than there were before. I think it has to do with Brexit. That has reduced the truck vehicular traffic. Covid has been fundamental, because for months there has been hardly any way. Of course, smuggling rings are nothing if not incredibly adaptable. They have moved their business from trucks and vehicular movement to boats, but this does not represent a change in either the nature of those who travel or the nature of the movement. It is simply from one to the other.

- Q15 **Lord Brabazon of Tara:** Thank you. I can understand that it is partly Covid and fewer trucks travelling. Do the new powers for UK Border Force to direct vessels out of UK territorial waters risk infringing the principle set out in Article 33 of the refugee convention 1951 and echoed in the application of Article 3 of the ECHR—prohibition on torture and inhuman or degrading treatment—that refugees should not be returned to territories where they risk persecution; that is, the principle of non-refoulement? I know what you have said about not making people go back, but surely France is not a country where they would risk prosecution.

**Rossella Pagliuchi-Lor:** There are a number of different things here. One is that we should remember that, at sea, the law of the sea applies.

The first panel discussed this far better than I could, but generally speaking, there is an obligation to both save lives at sea and not endanger life at sea, which would almost unavoidably happen if there were attempts at turning back what are so often dinghies that are overcrowded with people. That is the first thing: not putting people at risk. The second thing is that I agree with you that returning people to France is not the same as returning them to a war zone. However, in international law there would be a requirement to have at least an assessment, even a light assessment, to establish whether the person in question can return to any country, such as France or any other, and have access to procedures and standards of treatment, so on and so forth.

There would have to be at least a light assessment to ensure not only that asylum is generally available but that it would be available to that person in particular. This is done also because there is a risk when you have this unregulated mechanism of informal pushbacks that these people end up falling between two chairs, not being admitted to the procedure in one country because they have been sent back from the other, and not being admitted to the procedure of this country because they came from the other. There is a real risk of that. The right to seek asylum, per se, is eliminated by the fact that no country will take responsibility. That goes back to the point I was making earlier; it would be extremely beneficial for the UK to have a formal agreement with the EU in order to determine the best way to ensure that everybody has access to decent asylum somewhere, ideally where it makes the most sense.

**Q16 Lord Brabazon of Tara:** Do you think the new powers to direct vessels out of UK territorial waters will achieve the stated aim of breaking the business model of people smugglers and deterring illegal immigration? I am talking about the business model of the smugglers.

**Rossella Pagliuchi-Lor:** Frankly, I do not think so. We will have to see, but I really do not think this is going to have a significant impact because the manner in which this is working is as a diffused model that at this point is operating across a very long stretch of coast. Instead of focusing on this, there is something else the UK should focus on. It is not possible to ensure that nobody comes; that is unrealistic. Forced movement is a global challenge for everyone. The UK finds itself fairly secluded and sheltered simply by reason of where it is. What we need to focus on is fast and fair procedures that allow you very quickly and fairly to determine who is a refugee and who is not, with the idea that those who are refugees will be channelled through integration and very soon become contributing members of this community, while those who are not can as quickly as possible, if they need no other protection, be returned home.

That would be the best dissuasive with respect to those who might be tempted to try their luck. This is the best thing the UK could do. Any other sort of measure risks being in breach of human rights, causing great human misery, perhaps tarnishing the reputation of the UK—which

so far has been quite good when it comes to asylum—costing a massive amount of taxpayers’ money and not achieving its objectives either. Focus on agreements with the EU and others, agreements with countries on return of citizens who are not in need of protection and a very effective and fair procedure here.

**Q17 Lord Singh of Wimbledon:** Good afternoon. I am a Cross-Bench Member of the House of Lords. How could the UK deter unsafe migration while still protecting those that are persecuted and respecting the rights of refugees? Can you give any advice on this?

**Rossella Pagliuchi-Lor:** Lord Singh, this is, in many ways, the million-dollar question. I think it would be impossible entirely to deter irregular migration, unsafe migration, simply because of the dynamics at work at this moment in the world, such as climate change. There will always be people who will seek to migrate regardless. The question for us is: how do we make sure that the segment who are fleeing persecution are properly identified and protected? Of course, migrants themselves, regardless of whether they are migrating regularly or irregularly, ought to be treated with respect for human rights. The best way is to have a system that can quickly help the Government to identify who is who and then determine what the most appropriate solution is, which in some cases, as I said, could be a return home in dignity and in safety. That is the crux of the system and this is where I think all efforts should be focused.

**Lord Singh of Wimbledon:** That is very helpful. Is there any way that the Navy or the pushback boats could instead be used to facilitate the safety of refugees?

**Rossella Pagliuchi-Lor:** I am not sure I understand the question. Maybe you do, Elizabeth.

**Elizabeth Ruddick:** The Navy or the Border Force boats have obligations under the international laws of the sea at the moment—although I understand there is an amendment that would seek to exempt them from that—to provide search and rescue and have adequate search and rescue for the sea. They already have obligations to try to protect people who have set out at sea.

**The Chair:** Thank you very much indeed for bringing your experience to us to help us with this inquiry. That concludes the public session of this evidence session. Could the Committee Members stay with us briefly while we thank our witnesses, and we will then move into private session? Thank you.