

Written Evidence by Amnesty International UK (ASU0001)

Introduction

1. Amnesty International UK welcomes this inquiry, particularly given the acute crisis in the asylum system which is directly linked to Government policy and its discussion and presentation by ministers and others. In this submission we provide, under distinct subheading, succinct answer to each of the Committee's specified questions. A short conclusion ties these answers to our wider concern regarding that crisis, its causes and impact.¹

“Safe and legal routes”

2. Denial of asylum to people for not coming to the UK by any pre-authorised route is incompatible with human rights obligations.
 - 2.1. Article 14 of the Universal Declaration does not limit the right to seek and enjoy asylum from persecution in any such way.²
 - 2.2. The Refugee Convention envisages limited circumstances in which penalising a refugee's entry or presence that is contrary to a State's immigration laws may be permitted.³ However, there are no circumstances in which that penalty may constitute or include exclusion from any of the Convention's enumerated rights, still less from the Convention more widely. The Convention explicitly states when someone is or may be excluded from it or any of the enumerated rights.⁴ Method of entry or arrival is not among those circumstances.
 - 2.3. Accordingly, denial of asylum because of how someone arrived or entered is contrary to Refugee Convention obligations. It is also contrary to European Convention/Human Rights Act 1998 obligations if such denial causes, or significantly contributes to, someone suffering torture, inhuman or degrading treatment, unlawful detention or interference with private life (e.g. social exclusion or deprivation) that is unlawful.⁵ Detention or private life interference is unlawful if caused or motivated by any denial of asylum and/or other Refugee Convention rights that is itself illegitimate.⁶

¹ The submission is restricted to 1,500 words as requested (excluding title and footnotes).

² Article 14.2, 1948 Universal Declaration of Human Rights provides the only limitation, which is to prohibit the right being invoked in the case of prosecution for non-political criminality or acts contrary to the purposes and principles of the UN.

³ Article 31, 1951 UN Convention relating to the Status of Refugees (“Refugee Convention”)

⁴ See e.g. Articles 1F and 33(2), Refugee Convention

⁵ Articles 3, 5 and 8, 1950 European Convention on Human Rights/Human Rights Act 1998

⁶ Articles 5 and 8 each found legitimacy upon lawfulness of the cause or motivation of the act or omission in question. The former permits use of detention for the purpose of preventing someone's unauthorised entry or deporting someone, but those purposes are not lawful if e.g. incompatible with Refugee Convention obligations. The latter permits interference with private life that is in accordance with law and necessary in a democratic society to pursue specified aims. Whereas the aims can encompass exercise of immigration controls, where the aim in any particular instance is e.g. incompatible with Refugee Convention obligations it cannot be either necessary or lawful.

3. Immigration rules make no provision for anyone to come to the UK for the purpose of seeking asylum.⁷

3.1. Ukrainian, Afghan and extremely limited other schemes⁸ exist solely for providing asylum to people already acknowledged to be refugees.⁹ Provision is made for refugee family reunion for people to join partners and parents who have sought and received asylum.¹⁰ However, the overwhelming majority of refugees who receive asylum in the UK are dependent on their ability (generally assisted by smugglers) to reach the UK and make a successful asylum claim (as indeed is refugee family reunion that may then be permitted).¹¹

3.2. Routes should be created to permit people to seek asylum in the UK – particularly people with family and other strong connection here. This would help reduce opportunity for smugglers, reduce human suffering and risk to life, and make some more managed and visible contribution to sharing asylum responsibility. Nonetheless, whether this is done or not, the UK’s obligation remains to faithfully apply the Refugee Convention in respect of any person who arrives and seeks asylum, however they arrive.

Relocation of people seeking asylum

4. The policy of relocating people seeking asylum is inconsistent with human rights obligations.¹²

4.1. The Refugee Convention requires all States to share responsibility for providing asylum. No policy of one State to merely pass responsibility to another is compatible with this. The incompatibility is exacerbated where a relatively wealthy State exercises its political or financial advantage to secure agreement to take its responsibilities by a significantly less advantaged State. This is not merely contrary to the Convention. It is dangerously undermining of the Convention for it provides example or encouragement for other more advantaged States to refuse or avoid their responsibilities while increasing demands upon States significantly less able to meet their existing responsibilities.

⁷ The general position remains as explained in this Amnesty UK briefing: https://www.amnesty.org.uk/files/2021-01/Amnesty%20International%20UK%20-%20Safe%20and%20Legal%20Routes%20Briefing_0.pdf

⁸ Home Office data (immigration statistics quarterly release) shows that, over the last 24 months for which data is available (2020 Q3 to 2022 Q2), there were only 2,211 non-Afghan nationals resettled to the UK; and of these resettled people only 634 were of a nationality other than Syrian.

⁹ See paragraphs 24-27 of our joint submission with Migrant Voice to the Public Bill Committee that considered what is now the Nationality and Borders Act 2022, which provides analysis of ministers’ claims concerning ‘safe and legal’ routes (to which must now be added consideration of Ukrainian visas schemes): <https://bills.parliament.uk/publications/42865/documents/708>

¹⁰ Paragraphs 352A ff of the immigration rules

¹¹ Home Office data (immigration statistics quarterly release) establishes the overwhelming importance of the asylum system (i.e. the process for determining asylum claims of people who have reached the UK to seek asylum) to the UK’s relatively modest contribution (by comparison to many other countries) to providing asylum to refugees.

¹² See further our submission to the International Agreements Committee’s inquiry on the UK-Rwanda Memorandum of Understanding: <https://committees.parliament.uk/writtenevidence/109753/pdf/>

- 4.2. The policy is also an unlawful penalty upon people for having exercised their right to seek asylum. For all ministers and officials' protestations to the contrary, it is plainly intended to be a penalty. It is expressly presented as a deterrence – i.e. that its implementation against one person will deter another person from the act of seeking asylum without prior authorisation. That can only be on the basis that the policy is both seriously unwelcome to people seeking asylum without prior authorisation and directly imposed for their having done so – i.e. a penalty. The Convention permits no such penalty.

Detention and electronic tagging

5. There is excessive use of detention and other significant restriction on freedom of movement within the asylum system.¹³ It is inconsistent with human rights obligations.

5.1. This is currently compounded by policies and aims, for which detention and other restriction on freedom of movement are used, which are themselves inconsistent with human rights obligations. This includes policy to relocate people seeking asylum to other countries (see above) and policies to refuse or delay proper or any processing of people's asylum claims (see below).

5.2. Additionally, extended and indefinite use of powers to detain or restrict freedom of movement are profoundly debilitating to human dignity and wellbeing. That is compounded where the person so restricted is especially vulnerable to that debilitation because of past experience of abuses in, or enabled by, their incarceration or other restriction of movement, traumas on journeys to the UK and/or fears of future abuse.

Legal aid, accommodation and subsistence

6. There is widespread evidence of a humanitarian crisis in the asylum system caused by that system's collapse.¹⁴ The overriding reason for that collapse is a reckless policy to refuse or delay processing asylum claims, most forcefully pursued by the 'inadmissibility' policy first established by immigration rules on 31 December 2020¹⁵ and now under section 16 of the Nationality and Borders Act 2022.
7. This collapse is having profound impacts on accessibility and adequacy of legal assistance, accommodation and subsistence. Even beforehand, the adequacy of these provisions to meet human rights obligations was questionable.¹⁶

¹³ Our concerns regarding routine use of immigration detention expressed in our December 2017 report remain; and are exacerbated by current asylum policy: <https://www.amnesty.org.uk/resources/matter-routine-use-immigration-detention-uk-0>

¹⁴ Over recent weeks and months, there have been multiple reports to bear out such a conclusion including findings on significantly increased numbers of people who have died in the asylum system, several babies who have died in this system, unaccompanied children going missing, an outbreak of diphtheria at Manston, hugely overcrowded and unsanitary conditions at the same facility hosting thousands of people far beyond its capacity (in terms of numbers of people and length of their being held), prolonged accommodation of people (including families) in manifestly unsuitable hotel accommodation, and people being left abandoned on the streets of London (at Victoria).

¹⁵ On which we wrote to ministers in December 2020: <https://www.amnesty.org.uk/resources/amnesty-uk-letter-immigration-minister-ministers-reply-regarding-immigration-rules>

Right to work

8. The rules are constructed to effectively exclude people seeking asylum from work even after waiting for 12 months or longer for decisions on their asylum claims.¹⁷ The type of work for which permission may ever be sought is generally likely to be unavailable even for someone who has the requisite skills, qualification or experience to do it.¹⁸ This is because of the nature of the limited work that may ever be permitted, the impact on someone of having already been out of work for an extended period, and their having no guarantee about future permission to work.
9. This is generally debilitating of human dignity and wellbeing. It compounds the impact of past traumas and present alienation. Its prolongation can have lasting adverse psychological, emotional and practical impacts, including long after someone is recognised as a refugee and permitted to stay.

Modern slavery

10. We are unaware of any evidence to substantiate claims that modern slavery laws undermine legitimate aims of the UK's asylum system in any significant way. However, that system creates and widens opportunity for modern slavery.¹⁹
 - 10.1. Longstanding failure to make provision for 'safe and legal routes' by which refugees may seek asylum in the UK has effectively ceded control of journeys to seek asylum to criminal gangs, including those engaged or connected with modern slavery.²⁰
 - 10.2. Increased dysfunction and hostility of the asylum system – in terms of policy, practice and rhetoric – extends power and influence of those engaged or connected with modern slavery by deterring people seeking asylum from having or maintaining trust, confidence and contact with officials and that system.²¹

Nationality and Borders Act 2022

¹⁶ It may assist the Committee to recall and compare to its Tenth Report of Session 2006-07, *The Treatment of Asylum Seekers*, March 2007, HL Paper 81, HC 60:

<https://publications.parliament.uk/pa/jt200607/jtselect/jtrights/81/81i.pdf>

¹⁷ Paragraphs 360 of the immigration rules permits an application for permission to work only if the person seeking asylum has not received a decision within a year of making a claim (and the Secretary of State does not attribute any delay to any conduct of that person).

¹⁸ Paragraphs 360A and 360D of the immigration rules restrict any permission to work to categories of work on the shortage occupation list that is maintained by the Secretary of State.

¹⁹ There are similar concerns regarding the wider immigration system, which we do not address here in light of the focus of the Committee's inquiry.

²⁰ See paragraphs 11-15 of our joint submission with Migrant Voice to the Public Bill Committee that considered what is now the Nationality and Borders Act 2022:

<https://bills.parliament.uk/publications/42865/documents/708>

²¹ See e.g. paragraphs 41-43 of our joint submission with Migrant Voice to the Public Bill Committee that considered what is now the Nationality and Borders Act 2022:

<https://bills.parliament.uk/publications/42865/documents/708>

11. Provisions of the Act constitute a profound repudiation of the Refugee Convention. The impact remains largely latent because most of the relevant provisions only apply to asylum claims made on or after 28 June 2022.²²
12. We have previously addressed the Committee on the Act's repudiation of the Convention. The relevant provisions were passed unamended or with no effective mitigation of the concerns we identified to the Committee in our submission on the bill that is now this Act.²³ We invite the Committee to reconsider that submission.
13. In addition to repudiating the Convention, the Act can be expected to create additional Home Office workload while wrongly refusing or curtailing the right to asylum.²⁴ This will further undermine capacity to meet human rights obligations, increase people's vulnerability to exploitation and extend suffering and human rights violations experienced by people seeking asylum.

Conclusion

14. The foregoing concerns are all critically linked to an underlying policy of deterrence and avoidance of Refugee Convention responsibilities that is increasingly accompanied by active and vocal hostility towards people seeking asylum, those who support them, and human rights obligations intended to protect them.²⁵ That hostility tends to both drive policy and be driven by the inevitable failings of that policy – including the backlogs and administrative dysfunction, the human suffering and alienation, and the increased opportunity for exploitation it causes. For so long as policy is set merely or primarily to avoid responsibilities, which refugees are entitled and need to demand (and which the UK expects other States to meet, often disproportionately so), this baleful cycle will likely continue and worsen.²⁶ It can also be expected to further undermine wider international commitment with harmful consequences for refugees across the globe, reducing safe space and compelling increased migration.²⁷

16/11/2022

²² Schedule 2 to the Nationality and Borders Act 2022 (Commencement No. 1, Transitional and Saving Provisions) Regulations 2022, SI 2022/590

²³ See <https://committees.parliament.uk/writtenevidence/39352/pdf/>

²⁴ See e.g. paragraphs 28-32, 33-36 and 37-40 of our joint submission with Migrant Voice to the Public Bill Committee that considered what is now the Nationality and Borders Act 2022: <https://bills.parliament.uk/publications/42865/documents/708>

²⁵ This includes the Home Secretary describing people seeking asylum as “invaders” within days of a firebomb attack on a facility in which people seeking asylum are held.

²⁶ We have recently written to ministers concerning much of this:

<https://www.amnesty.org.uk/resources/amnesty-uk-letter-minister-concerning-impact-asylum-policy-asylum-system-0>

²⁷ Our most recent report concerning Afghan refugees emphasises this concern. The actions of the Iranian and Turkish governments in refoulement of refugees to Afghanistan are linked to the wider international failure to share responsibility for receiving and hosting Afghans at risk from the Taliban. That report, *They don't treat us like humans: unlawful returns of Afghans from Turkey and Iran*, August 2022 is available here: <https://www.amnesty.org/en/documents/asa11/5897/2022/en/>