

Nationality and Borders Bill:

The following is an extract from the joint submission of Migrant Voice and Amnesty International UK to the Public Bill Committee on this Bill. It considers one of the primary objectives Ministers claim to be pursuing by this Bill. That objective is to “**reduce delays and backlogs.**”¹ The Bill, however, does nothing to achieve this and various of its provisions will lead directly to longer delays and larger backlogs.

1. A significant element of the Government’s case for this Bill rests on Ministers’ assertions that the asylum system – including tribunal appeals – is under excessive pressure. It is very hard to credit these assertions given:
 - a. The UK has not in recent years experienced any significant increase in asylum claims.² While the pandemic will have added to challenges faced by the Home Office, asylum claims in the UK have remained at relatively modest levels. If the system is experiencing undue pressure, that raises questions about its stewardship and the wider policy that Ministers pursue.
 - b. Far from setting out measures to reduce delays and ease backlogs, the Bill contains provisions that will – in some cases are intended – to increase delays, Home Office workload and the backlogs that ensue. Whatever is to be made about Ministers’ assertions of pressure – and it is correct that backlogs in the asylum system have grown³ – it is, at best, reckless to introduce measures that will increase that.
 - c. Ministers’ repeated assertions that other countries should be dealing with the asylum claims the Government wishes to avoid cannot be squared with their claims about excessive pressure on the UK’s asylum system. If the UK, which has been receiving very few people into its system, cannot cope, how do Ministers expect countries – such as those listed by the Home Secretary at Second Reading: “*France, Germany, Belgium, the Netherlands, Italy and Greece*”⁴ – should do so? In absolute terms, these countries other than Belgium and the Netherlands, have for some years received far more people seeking asylum than has the UK.⁵ In relative terms, whether accounting for GDP or population size, the UK lags behind each of them.
2. In one and the same breath, Ministers are making incompatible claims. Their first claim is that the UK cannot cope with the modest demand made on its asylum system. Their second is that countries managing much greater demands should cope with more.⁶ Clause 14 is predicated on

¹ An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 706, 707 & 709 *per* the Home Secretary

² Asylum applications in the UK over 12 months to end June 2021 were 31,115; the figure for the previous 12 months was 32,488 and for the 12 months before that, 32,757.

³ The number of asylum claims awaiting an initial decision after more than 6 months has continued to increase for several years: at end June 2017, the number was 14,399; at end June 2019, 22,187; and at end June 2021, 54,040. The data indicates a faster growth in the backlog relating to claims outstanding for greater rather than less periods.

⁴ *Hansard* HC, 19 July 2021 : Col 710

⁵ See Eurostat data on Asylum (which previously included UK figures but must now be compared with UK statistics)

⁶ It is striking that the Government’s Equalities Impact Assessment (EIA), published on 16 September, describes the UK’s asylum system as “*broken*” [paragraph 8] and describes the asylum systems of these other countries as “*manifestly safe [...] well-functioning*” [paragraph 21(a)]. For both these statements to be true – given the far greater work being done by the systems of these other countries (in absolute and/or proportionate terms) – requires profound questions to be asked and answered about policy and practice in the UK, including competence of those responsible for these matters. Ministers, however, neither ask nor answer such

the presumption that the Government can persuade these countries to accept people into their systems from the UK. Ministers appear to believe that their powers of persuasion (or perhaps the depth of the British taxpayer's purse) are so fantastical that others – taking far greater asylum responsibility than does the UK – will agree to relieve this country of some substantial part of even the very modest responsibility it currently takes. If that continues to be no more than fantasy, there will simply be more people, whose claims are delayed, and backlogs will grow.

3. This is not the only way by which the Bill will increase delays, workload and backlogs. Key provisions include:
 - a. Clause 10 is to enable the Home Office to differentiate between people who have established their status as refugees and entitlement to remain in the UK. That differentiation is to include that some such people will have any opportunity to become settled in the UK delayed, obstructed or denied altogether. That differentiation is to also include that these same people will have to make further applications to renew recognition of their status and entitlement more times and more frequently.⁷ Quite apart from the obvious distress, uncertainty and insecurity that will thereby be improperly inflicted, this will create significantly more work for the department. It will have to continue to actively manage people's presence in the UK for far longer, more frequently and at increased cost. If there are refusals, more appeals can be expected. Far from easing backlogs at the Home Office, or on appeals, this miserable prescription will increase these.
 - b. Clauses 17, 20 and 23 are to direct or encourage decision-makers – including immigration judges on appeal – to exclude evidence or reject the credibility of a claimant. That exclusion or rejection is arbitrary. It is not on the basis of the decision-makers' assessment of the relevance or probity of the evidence or truthfulness of the claimant. It is not on the basis of any individual assessment of all the relevant material and circumstances. Unless Ministers wish to make the charge that decision-makers – whether Home Office staff or independent tribunal judges – are incapable of fulfilling their responsibilities, they must surely anticipate that this can only increase the likelihood that some people with good asylum claims are made unable to substantiate them. What then? It cannot be expected that people in real fear of persecution, for what will be good reasons, will be willing to accept return to torture, execution or some other serious harm. So, there will be greater obstruction to the Home Office because it will be charged with carrying out the return of someone who, quite justifiably, will not cooperate; and, similarly justifiably, will wish to take every opportunity – including by making a fresh claim and pursuing further litigation (appeal or judicial review) – to substantiate their good claim to be a refugee. Home Office and other limited public resources, including legal aid and court time, will be spent pursuing what should not be pursued and what may – indeed, it must be hoped will – turn out to be unattainable. That will not merely add directly to delays and backlogs. It will have a wider impact in diminishing confidence in the asylum and immigration system – particularly where the

questions. The EIA is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018188/Nationality_and_Borders_Bill_-_EIA.pdf

⁷ Clause 10(5)(a) & (b) and (6)(b) & (c) reflect the proposal in the *New Plan for Immigration* concerning a 'temporary protection status' for refugees where it was indicated that the status would be for 30 months only, requiring renewal at that time but where renewal would only be provided if and for so long as it continued to be impractical or unsafe to remove the refugee from the country. Potentially, refugees granted this much diminished protection would remain permanently in limbo, never knowing if and when they were free to rebuild their lives save in the knowledge that their futures truly lie in this, the country in which their entitlement to asylum has been recognised.

treatment and outcomes for people are manifestly unequal for no reason properly related to the strength of their claim.

- c. Accelerated appeals (Clause 24) and exclusions of appeal rights altogether (Clause 25) can be expected to have similar results. Rather than arbitrary presumptions about the merits of a claim and the complication and expense of differentiated systems, what is needed is commitment to a full and fair process for every claimant. Where it is possible to identify the strength of a claim early, that should be done and a person recognised as a refugee without the process or appeal having to continue. Where that is not so, the process should be completed in a fair and efficient manner – avoiding the need for wrangling over whether someone is improperly subjected to a manifestly less fair process or the need for fresh claims or litigation to try to repair the damage that has been done by that. It is especially disturbing that officials and Ministers appear to think that appeals from detention can be conducted at even faster pace than others – failing to understand that a person’s detention will itself be an impediment to effective engagement with an appeal process. Quite apart from the difficulty a person who is detained will have engaging with legal representatives, that person will be under a greatly increased level of distress by the fact of being detained. That cannot aid engagement with any formal process.
4. If Ministers are concerned at the degree of pressure upon the Home Office at present, it is extraordinary that they are choosing to significantly exacerbate the demands upon the department. The total impact of this is likely to be exponentially calamitous. There are a number of reasons for this:
 - a. Uncertainty and insecurity will inhibit people’s capacity to engage effectively with formal processes. People will lose confidence in the system. People’s mental health will deteriorate. They will be less able to find employment even if and when permitted to do so⁸ – including because employers may be less willing to take on staff whose future is so uncertain – which in turn undermines confidence, motivation and wellbeing. Accordingly, the delays imposed on people in turn create the conditions that lead people to cause more delay.
 - b. Additional bureaucracy and workload will also add to pressures faced by the system. It will undermine capacity and the motivation of those expected to meet unreasonable or impossible demands. Accordingly, delays imposed on a system create the conditions for that system to experience more delays.
 - c. Undermining confidence in the system will itself increase the barriers the system faces. The more people are given reason to believe that they cannot trust that the system will or has treated them fairly, or properly considered their claims, the less can they be expected to engage or cooperate with it.

⁸ Employers who cannot be assured that a prospective employee’s future is in the UK may be expected to be slow to offer employment, still less any necessary or useful training and support for skills and other development.