

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 “**establish and strengthen safe routes to asylum.**” As is discussed in this extract, there is simply nothing in the Bill to achieve this and, on the other hand, much Bill to achieve its opposite.

1. Regrettably, there is nothing in this Bill to achieve this objective (of establishing and strengthening safe routes to asylum).¹ There are, however, provisions in this Bill to achieve the opposite; and these far outweigh the very little the Government has done or has proposed to meet the objective of establishing, still less strengthening safe routes to asylum.
2. It is, firstly, necessary to emphasise the following three facts, none of which are to be changed by this Bill:
 - a. Home Office policy remains that it will not consider any claim for asylum in the UK unless it is made by a person who is already in the UK.² Indeed, Clause 12 states that “an asylum claim **must** be made in person at a designated place” (emphasis added) and in defining what is a “designated place” confirms that this is confined to specified places in the UK.
 - b. Immigration rules make no provision for anyone to come to the UK for the purpose of claiming asylum.³
 - c. Immigration rules provide for any application to be refused if it is to come to the UK for a purpose for which the rules do not make provision; and provide for cancellation of any visa obtained if the purpose for coming to the UK is for a reason other than that for which the visa was granted.⁴
3. The Government’s claim to be establishing and strengthening safe routes to asylum is founded on the following assertions:
 - a. Ministers point to the rules they have introduced to enable British Nationals (Overseas), with sufficient means, to settle in the UK.⁵ With respect, the Government’s claim that this constitutes a safe route to asylum is an extraordinary one. This is not to object to the provision in the rules for these British nationals to settle in this country. It is merely

¹ Contrary to what was expressly stated by the Home Secretary at Second Reading (Col 708)

² The following policy statement has remained live since September 2011: “As a signatory to the 1951 Refugee Convention, the UK fully considers all asylum applications lodged in the UK. However, the UK’s international obligations under the Convention do not extend to the consideration of asylum applications lodged abroad and there is no provision in our Immigration Rules for someone abroad to be given permission to travel to the UK to seek asylum. The policy guidance on the discretionary referral to the UK Border Agency of applications for asylum by individuals in a third country who have not been recognised as refugees by another country or by the UNHCR under its mandate, has been withdrawn. No applications will be considered by a UK visa-issuing post or by the UK Border Agency pending a review of the policy and guidance.” That policy position is here: <https://www.gov.uk/government/publications/applications-from-abroad-policy>

³ As is confirmed by the policy statement, *ibid*

⁴ Immigration Rules, Part 9, paragraphs 9.13.1, 9.14.1 and 9.20.2 respectively allow or require refusal or cancellation of entry clearance, leave to enter or leave to remain where the person seeks these for a purpose other than that provided to that person under the rules. Paragraphs 24 and 30C similarly emphasise the requirement that a person must have a visa for the purpose for which the person’s seeks to enter the country.

⁵ See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

to highlight that the relevant rules are plainly neither designed nor intended to provide for a route to asylum from persecution. These rules do not permit a visa to be granted for that purpose. Whether there is any or no risk of persecution to an applicant for such a visa is entirely irrelevant to the basis upon which the visa is available. The availability of the visa rests on two conditions – firstly, the person must be a British National (Overseas); and secondly, the person must have sufficient wealth to satisfy the financial requirements.⁶ If the person is at risk of persecution but cannot satisfy one or other of these conditions, a visa is to be refused. If the person is not at risk of persecution but satisfies these conditions, the visa is to be granted. Whatever else there is to be said for this visa, it is not a safe route to asylum; and Ministers ought to stop suggesting otherwise.

- b. Ministers draw attention to the rules they have introduced for Afghans employed or formerly employed in Afghanistan by the Government.⁷ They are right to do this. The rules introduced by the Government to permit its current or former Afghan employees to secure a visa to come to the UK include where their lives are at “*imminent risk*”.⁸ This constitutes the sole example of a route to the UK that is specifically for the purpose of seeking or securing asylum here. The route is available to a narrow and relatively small group of people. It is not designed in such a way as to reflect 1951 Refugee Convention obligations. The relevant immigration rules continue to stipulate that it is only available to those current or former employees who are in Afghanistan.⁹ Prior to and following the two-week emergency evacuation in August, the ‘*imminent risk*’ criteria was and will be in itself a significant barrier to anyone to whom it applies. The requirements that the person must be in Afghanistan to be eligible under the rules but that there is an imminent risk to a person’s life – by its nature something that may require someone to leave immediately rather than waiting for the time it may take to put together, submit and receive a decision on an application for a visa – were and remain inconsistent. So, while the provision made for this particular group of Afghan nationals is welcome, it is, on its face, inadequate for its intended purpose. The policy position has now been stated as not requiring a person to remain in the country.¹⁰ This is welcome but will have been too late for some people; and it remains the case that the rules, on their face, still require a person to be in Afghanistan to be eligible. All of this emphasises the general absence of any safe route for people – including people with family and other connections to this country – to seek asylum here. The very limited number of Afghans who were able to relocate prior to the emergency evacuations of mid to late August¹¹ serves to highlight these concerns and their impact – including ultimately on the overall capacity of that emergency evacuation to provide for people, including people not within ARAP’s scope, acknowledged by the Government to be at especial risk.¹²

⁶ See Immigration Rules Appendix Hong Kong British Nationals (Overseas)

⁷ See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

⁸ Immigration Rules, paragraphs 276BA1 to 276BS4

⁹ Immigration Rules, paragraphs 276BB1. Ministers’ commitment given to General The Lord Dannatt in early August 2021 to change the rules to remove this stipulation remains outstanding.

¹⁰ See paragraph 17 here: <https://www.gov.uk/government/publications/afghanistan-resettlement-and-immigration-policy-statement/afghanistan-resettlement-and-immigration-policy-statement-accessible-version>

¹¹ Some further detail is available here: <https://www.gov.uk/government/speeches/afghan-relocation-and-assistance-policy>

¹² As time was running out for the emergency evacuations, Ministers were clear that there would be insufficient time and capacity to get everyone at risk out. Had the rules been open to more locally employed staff earlier, more of these staff could have got out earlier; and capacity to evacuate other people would have been greater.

- c. Ministers draw attention to the UK's resettlement programmes.¹³ Having resisted opening any resettlement scheme in response to the Syrian conflict, the Government did so in 2014 – something Amnesty UK and the Refugee Council had jointly campaigned for. As originally constituted that scheme was tiny.¹⁴ In October 2015, under much wider pressure concerning its refusal to share responsibility with European neighbours for the large displacement of refugees, particularly but not solely from the region of Syria, the Government significantly expanded that programme.¹⁵ Between 2015 and 2020, the UK has undertaken resettlement of refugees on a much larger scale than previously (or since). That resettlement was almost solely of Syrians.¹⁶ Even with this scale of resettlement, the UK asylum system and not resettlement has remained by far the most numerically significant factor in the relatively modest contribution made by the UK to providing a place of safety to refugees.¹⁷ Moreover, it is vital to recall that resettlement is not available to most refugees – whether as a matter of generality or in practice. Resettlement depends on a person fleeing conflict and persecution being able to find sufficient stability in another country so that they can be identified as a potential recipient of resettlement and engage with a process to determine their candidacy and, if selected, give effect to that. Quite apart from the fact that very few people are ever considered to be eligible, there is the more basic fact that most of the world's refugees are not in any position to be identified as a potential recipient of resettlement in the first place. The instability and insecurity that many people meet with on becoming a refugee is itself a factor that compels some people to move further in search of safety. Some people also have family and other connections in places they have every reason, and right, to conclude would be a better source of safety for them than a country closer to their original home. Resettlement, then, is clearly something to be welcomed.¹⁸ It is disappointing that the Government has not made any clear commitment – other than the recently announced Afghan Citizens' Resettlement Scheme,¹⁹ which is yet to be worked up still less initiated – while allowing the scale of resettlement to the UK to fall away during the pandemic.²⁰ But in any event, resettlement is not a replacement for a functioning and effective asylum system. Indeed, the Afghan scheme highlights this. Some people will have fled already and may seek safety in the UK. If they have had to make decisions in the absence of any scheme, which in any case they cannot know they will be eligible for, that is not their responsibility. Moreover, as with the Syrian scheme, some people for whom the scheme may notionally be made available, will not be able to live in sufficient stability and safety to engage in any process by which their eligibility may be assessed and any resettlement prepared and delivered.

¹³ See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 709 *per* the Home Secretary

¹⁴ Further information is available here: <https://www.amnesty.org.uk/uk-syria-refugee-resettlement-conflict>

¹⁵ A short summary of the scheme's history is available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/631369/170711_Syrian_Resettlement_Updated_Fact_Sheet_final.pdf

¹⁶ For example, in the first half of 2021, 536 of 653 people resettled have been Syrian. In 2020, 662 of 823 people resettled were Syrian; and in 2019, 4,342 of 5,612 people resettled were Syrian.

¹⁷ Looking at the last year for which resettlement numbers were particularly high due to the Syrian resettlement scheme (2019), 5,612 people were resettled to the UK whereas 13,796 people received protection status in the UK via the asylum system.

¹⁸ We make no comment here as to what should be the total commitment for UK resettlement e.g. per annum or the eligibility criteria that should apply. Our primary purpose in raising the matter of resettlement is to address the objectives stated by Ministers as behind this legislation.

¹⁹ See more here: <https://www.gov.uk/government/topical-events/afghanistan-uk-government-response>

²⁰ Figures for the last eight quarters up to end June 2021 show numbers of people resettled in each quarter as 1,400, 1,345, 815, 0, 0, 8, 345 and 308.

- d. Ministers continue to point to the number of people who have found safety by means of a refugee family reunion visa.²¹ It is noteworthy that this number also significantly exceeds the number of people resettled – even over the period of larger scale resettlement by the UK.²² The Bill is a grave threat to this safe route – indirectly and directly. The reason it is such a threat is because the availability of refugee family reunion visas depends upon there being refugees in the UK, recognised by the Home Office and permitted to sponsor their family to join them. If refugees cannot access the asylum system or that system is made so impenetrable even after being admitted to it that refugees cannot establish their refugee status, they cannot sponsor any family. That is the indirect threat of various of the provisions of Part 2 – not only those on inadmissibility (Clauses 13-15) but also provisions that obstruct refugees from establishing their status. That obstruction is achieved by such things as making it harder for refugees to effectively engage with the asylum system (such as by conditions in which refugees may be held or housed, see Clause 11; accelerating or otherwise impeding the appeals processes, see Clauses 24-25; and restricting what evidence a decision-maker, including a tribunal judge, may consider or conclusions that decision-maker is permitted to draw, Clauses 16-22). Refugees, who may nonetheless overcome all of these impediments, are then faced with Clause 10. This includes a direct threat to refugee family reunion for it includes provision to delay or deny that right altogether.²³
- e. Ministers have referred to the points-based system – particularly that part related to ‘skilled workers’ – as possibly providing a safe route for people seeking asylum.²⁴ No part of that system offers anyone a visa to come to this country for seeking asylum. Since its inception in 2008, it never has. At Second Reading, the Home Secretary touched on her intention to support a maximum of 100 refugees in Jordan and Lebanon to secure sponsorship to come to the UK to work.²⁵ That is very welcome. However, it provides no answer whatsoever to the existing need for this country’s asylum system. It provides nothing for people wishing and needing to seek asylum in this country. Moreover, it is such an extremely modest commitment that it can barely be said to represent any sharing of responsibility with Jordan and Lebanon – countries which not only are taking by far the disproportionate share for hosting the world’s largest refugee population by national origin (Syrians) but for decades have disproportionately done so, and still do, in respect of the world’s second largest refugee population by national origin (Palestinians).²⁶
4. There are no provisions – contrary to the Home Secretary’s statement at Second Reading²⁷ – in this Bill to create any safe and legal route to seek asylum in this country. Indeed, there is nothing anywhere else, whether in the rules or in the Government’s published plans, to provide for such routes for that purpose. As for opportunities for people to receive asylum in this country, the Bill contains nothing to provide for this. In contrast, it contains provisions – particularly Clause 10 – that expressly set out to greatly reduce or close one safe route;²⁸ and the limited measures to which the Home Secretary refers that sit outside the Bill are tiny by comparison to the

²¹ See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 709 *per* the Home Secretary

²² The Government’s *New Plan for Immigration*, provided a comparison between resettlement over the period 2015-2019 (when it was at its highest) and refugee family reunion. The former, accounted for nearly 25,000 people; the latter, 29,000 people.

²³ Clause 10(5)(d) and (6)

²⁴ See e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 712 *per* the Home Secretary

²⁵ *Hansard* HC, Second Reading, 19 July 2021 : Col 712

²⁶ As at end 2020, UNHCR official figures give populations of Syrian refugees as 6.7 million and of Palestinian refugees (who are outside UNHCR’s remit) as 5.7 million. With Turkey, Jordan and Lebanon host the great majority of the former; and by themselves host around half of the latter.

²⁷ *Hansard* HC, Second Reading, 19 July 2021 : Col 706

²⁸ See the discussion of refugee family reunion visas earlier in this section.

contribution this country currently makes to providing asylum by its asylum system and refugee family reunion visas to join people provided asylum via that system.²⁹ That contribution is – by comparison to European neighbours, more so by comparison to many poorer, less stable countries elsewhere – already very modest.³⁰ Yet, this Bill sets out to greatly reduce it even further.

²⁹ Again, see the discussion of refugee family reunion visas earlier in this section.

³⁰ A comparison from UNHCR data with Bangladesh, France, Germany, Sudan, Sweden, Turkey and Uganda is available here: <https://www.unhcr.org/refugee-statistics/download/?url=k2BW06>