

Liberty's report stage briefing on the Immigration Bill: those in need of international protection

Report Stage consideration of the Immigration Bill will continue on **Tuesday 15th** and **Monday 21st March**. The Bill includes a package of proposals which would facilitate discrimination, increase exploitation and destitution, and make rights protections practically inaccessible to many. As drafted, the Bill further fails to take any steps to alleviate the suffering of thousands of people forced to flee their homes due to conflict and persecution.

Refugee family reunion

Liberty supports amendment 120 in the name of Lord Hylton and the Lord Bishop of Southwark. Subclause 1(b) of the amendment provides for refugee family reunion to be granted to a wider range of family members, including siblings, parents, grandchildren, grandparents and adult children. Currently, the refugee family reunion rules only apply to a pre-flight spouse, partner or minor child.

The importance of refugee family reunion as an aspect of the international protection regime was recognised by the Final Conference of Plenipotentiaries at the 1951 Refugee Convention. The Conference stressed that family unity is “an essential right of the refugee” and called upon Governments to ensure that refugee family unity is maintained, with particular regard for the protection of refugee children.¹ It is disturbing that there is currently no provision under the Immigration Rules for minor children granted refugee status or humanitarian protection in the UK to be joined by their parents. Whilst applications can be made outside of the Immigration Rules in “exceptional compassionate circumstances”, the statistics show that the system is not working. Government figures reveal that the number of applications granted outside the rules has fallen sharply from 77 in 2011 to 12 by the end of

¹ Recommendation B, available at: <http://www.unhcr.org/3b66c2aa10.html>.

2014.² Liberty believes that in every case where an unaccompanied child is granted protection in this country and wishes to be joined by a parent, compassionate circumstances make family reunion imperative.

The Government's key argument against an extension of the rules to allow refugee children in the UK to be reunited with parents is the prospect of parents sending children ahead to secure the family's passage to the UK. This argument fails to acknowledge the status of the children concerned. As this amendment is restricted to those recognised to be at risk on return, there will be no cases where a cynical bid to secure residency in the UK will be facilitated by this extension to the rules. In each case it will not be possible for the child to be reunited in his or her home country with a parent.

The UNHCR Guidelines on family reunion make clear that:

An unaccompanied minor child should be reunited as promptly as possible with his or her parents or guardians as well as with siblings. If the minor has arrived first in a country of asylum, the principle of family unity requires that the minor's next-of-kin be allowed to join the minor in that country unless it is reasonable under the circumstances for the minor to join them in another country. Because of the special needs of children for a stable family environment, the reunification of unaccompanied minors with their families, whenever this is possible, should be treated as a matter of urgency.³

The UK is seriously failing children, needlessly adding to their trauma by facilitating protracted separation from caregivers. This must change.

Partners, civil partners and spouses who became members of the refugee's immediate family after his or her flight from persecution are required to apply under the normal family visa rules. In practice, this route is inaccessible to most, thanks to onerous application fees set to raise to £1,195 in April 2016, the immigration health surcharge set at £500, an £18,600 annual earning threshold, and the requirement that a partner meet English language requirements. These onerous requirements are likely to cause particular injustice in cases where refugees have formed a family whilst displaced in a third country, including those who spend protracted periods in refugee camps across the globe waiting to be resettled.

² House of Lords Written Question 3957, 2 December 2015.

³ UNHCR GUIDELINES ON REUNIFICATION OF REFUGEE FAMILIES (July 1983).

In addition to the costs involved, applications for extended family members to join refugees in the UK involve significant and frequently insurmountable obstacles. For adult dependant relatives, this now includes the requirement to demonstrate that an applicant requires a level of long-term personal care which they are unable to get in their home country, either due to cost or availability.⁴

Clause 2 of the amendment would ensure that legal aid is available in all family reunion matters covered in clause 1 within six months of the passing of the Act. The Government has consistently maintained that family reunion matters are uncomplicated and legal assistance is unnecessary.⁵ The evidence tells a different story. According to detailed research conducted by the British Red Cross, 74% of applicants for family reunion included in the study had submitted applications which were missing documentary evidence.⁶ In situations where documents have been lost during flight, British Red Cross found that “*legal advisers frequently play an essential role in identifying alternative evidence that can support an application*”. The same report found that 23% of cases involve reunion with a step-child or an adopted child, creating extra complexity and requiring additional help in terms of assessing eligibility, evidence gathering, and reference to policy and precedent.⁷ 33% of sponsors relied on witness statements and statutory declarations produced by legal advisers.⁸ The requirements of evidence provision to demonstrate that a relationship is subsisting are complex and difficult to fulfil for anyone, never mind those with language barriers (62% of refugees identified by the BRC need English language assistance).⁹

Providing safe and legal routes to the UK

It is one thing to acknowledge that accidents of geography mean that the less developed world is likely to continue to be the first port of call for the majority of the world’s refugees. But it is another thing entirely actively to exacerbate that maldistribution of responsibility. The duty to protect refugees – if in fact a general international legal obligation as states have said it is – should be implemented in good faith by all. In our view, it is high time to embark on a more honest discussion

⁴ Appendix FM to the Immigration Rules; E-ECDR.2.4-2.5.

⁵ See e.g Ministry of Justice, *Reform of Legal Aid in England and Wales: the Government Response*, June 2011

⁶ British Red Cross, *Not So Straightforward: the need for qualified legal support in refugee family reunion*, 2015. Pg 8.

⁷ *Ibid.*, pg 8.

⁸ *Ibid.*, pg 8.

⁹ *Ibid.*, pg 8.

about the importance of refugee protection as a shared responsibility, equitably implemented.¹⁰

Liberty strongly agrees with this statement by leading authority on international refugee law, Professor James Hathaway. 86% of the world's refugees remain in developing countries, an increase from 70% some 10 years ago. This represents the vast majority of the 51.2 million people who have fled their homes worldwide. Almost half of these individuals seek protection under the Refugee Convention, whilst the remainder fall under other human rights provisions.¹¹ Only 695,435 people made applications for asylum between 2014 and 2015 in the EU. Of this, the UK processed a mere 4%.¹²

Across the globe, people who have endured persecution and indiscriminate violence face the fresh horror of treacherous journeys to Europe's shores. Of those who survive, many suffer inhuman and degrading conditions in squalid refugee camps and the emotional torment of separation from family members. This Bill offers the opportunity to ensure the UK does more to safeguard the basic human rights of those in desperate need by providing safe and legal routes to this country.

Refugees with family members in the UK

Subclause 1(a) of amendment 120 provides for safe and legal routes to the UK to be granted to individuals already identified as having international protection needs by the UNHCR or by other authorities responsible for international protection in a third country. This amendment would remove the necessity for frequently fatal journeys to Europe, reducing the power of people smugglers, avoiding the tragedy of deaths at sea and ending the protracted separation of family members. Amendment 120 additionally provides that those refugees brought to the UK would be subject to the requirement that they have no recourse to public funds. Liberty does not believe that such a requirement should be imposed. Those travelling to the UK have international protection needs and therefore should be treated in the same way as other individuals seeking protection in this country. This notwithstanding, the amendment, as drafted, would not involve any charge on the public purse.

¹⁰ James C. Hathaway and Thomas Gammeltoft-Hansen, *Non-Refoulement in a World of Cooperative Deterrence*, University of Michigan Law School Scholarship Repository. P.8.

¹¹ See UNHCR, 'Facts and figures about refugees', accessible here: <http://www.unhcr.org.uk/about-us/key-facts-and-figures.html>.

¹² *BBC News*, 'Number displaced worldwide hits record high – UN report', 18 June 2015, accessible here: <http://www.bbc.co.uk/news/world-33178035>.

The need to create safe and legal routes to the UK has never been more pressing. Around a million people undertook treacherous journeys across the Mediterranean to EU countries in 2015 – 84% of them from the top 10 refugee producing countries. According to UNHCR, of the 130,000 who have made the crossing since 1st January 2016, 90% have travelled from the world's top 3 refugee producing countries.¹³ This year alone, 400 people have died or been reported missing in the Mediterranean.¹⁴ This is not an issue of economic migration; it is a refugee crisis demanding urgent attention. A move to allow refugees to settle with family members already in the UK would represent a small gesture on the part of this country to take greater responsibility for those forced to flee their homes.

Unaccompanied asylum seeking children

Liberty further supports amendment 115 in the name of Lord Dubs, Lord Alton of Liverpool, Lord Roberts of Llandudno, and Baroness Sheehan. This amendment would require the UK to immediately accept 3,000 unaccompanied asylum seeking children who have already made it to Europe's shores. In September last year the UK Government pledged to accept 20,000 vulnerable Syrian refugees living in refugee camps in the region. In January, Immigration Minister James Brokenshire, announced the UK Government would work with UNHCR to resettle an unspecified number of unaccompanied children from conflict regions, specifying that those resettled under the new scheme will be "exceptional cases".¹⁵

Whilst asylum applications across Europe have risen by 89%, there has only been a 12% increase in the UK. The UK also chose not to opt in to a modest quota system drawn up by the European Council last September designed to help share responsibility for refugees arriving in the EU by relocating 160,000 people from Greece and Italy over 2 years. More provision is desperately needed for those thousands of refugees languishing in Europe's refugee camps or in European countries where asylum systems have collapsed under the weight of desperate need. Greece received almost 850,000 entrants in 2015 and Italy over 150,000. The situation has deteriorated to the extent that the European Court of Human Rights has held that refugees cannot be returned to Greece in light of the conditions there,¹⁶ finding that refugees endured extreme poverty, were rendered unable to properly provide for their basic needs, were vulnerable to exploitation, abuse, and crime, and lived in the

¹³ Human Rights Watch: <https://www.hrw.org/news/2016/03/03/eu/turkey-dont-negotiate-away-refugee-rights>.

¹⁴ Human Rights Watch: <https://www.hrw.org/news/2016/03/03/eu/turkey-dont-negotiate-away-refugee-rights>.

¹⁵ Resettlement of unaccompanied refugee children: Written statement - HLWS487.

¹⁶ : C-411/10 and C-493/10, *NS v Secretary of State for the Home Department*, and *MSS v Belgium and Greece* (Application no. 30696/09), respectively.

uncertainty and desperation caused by the lack of any prospect of their status being decided or their situation improving. The Court of Human Rights has more recently held that returns to Italy, in light of the conditions there and the lack of protections against the splitting up of families, may violate the ECHR as well.¹⁷ Member States have further suspended removals under the Dublin system in respect of many other countries, such as Hungary, Poland, and Malta, and on 2 January 2014 the UNHCR called for a suspension of all transfers to Bulgaria.¹⁸

Meanwhile, in the Calais Jungle – on the doorstep of this country – charities estimate that there are more than 300 children who have been separated from their families and are living in insecurity and squalor.¹⁹ The Upper Tribunal recently required the UK to process the asylum claims of 3 children and a vulnerable adult stranded in the camp, allowing them to join family members waiting to care for them in the UK.²⁰ The Tribunal described the camp as a “*living hell*”, stressing that “*the conditions prevailing in this desolate part of the earth are about as deplorable as any citizen of the developed nations could imagine.*”²¹ The Tribunal identified the dangers encountered in the camp as including “*trafficking, violence, exploitation of unaccompanied children and the abuse, including rape, of women. Other sources of danger to human health include toxic white asbestos giving rise to the risk of carcinogenic disease.*”²² This follows on from the findings of a French court that conditions in the camp gave rise to a real risk of inhuman and degrading treatment.²³ The children of the Calais camp now face the prospect of forced evictions from their makeshift homes, in a terrifying process involving teargas, water cannon and riot police. Across Europe, children are facing a similarly desperate plight. Our Government cannot continue to rely on geographical accident to avoid its responsibility for those in desperate need.

The debate on amendment 115 will inevitably and appropriately invoke memories of the Kindertransport and the role this country played in ensuring the safe passage to the UK of around 10,000 predominantly Jewish children from Germany, Austria, Czechoslovakia and

¹⁷ *Tarakhel v Switzerland* (Application no. 29217/12).

¹⁸ ILPA Information Sheet, ‘Dublin III Regulation’, January 2014.

¹⁹ Widely reported census carried out by L’Auberge des Migrants and Help Refugees. See e.g.: <http://www.theguardian.com/world/2016/feb/23/decision-on-demolition-of-jungle-refugee-camp-postponed-calais>.

²⁰ *ZAT, IAJ, KAM, AAM, MAT, MAJ and LAM vs Secretary of State*, JR/15401/2015, JR/15405/2015, 21st January 2016.

²¹ *Ibid.*, paragraph 5.

²² *Ibid.*, paragraph 16.

²³ Order dated 02 November 2015 made by the Tribunal Administratif de Lille, referenced at paragraph 15 of *ZAT vs SoS*.

Poland. They were children in need and the UK Government ultimately responded. Today the UK must rise to this challenge again.

Liberty urges Peers to vote for amendments 115 and 120.