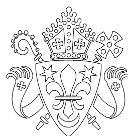


Catholic Bishops' Conference of England and Wales

Office for Refugee Policy

7th December 2003

THE ASYLUM AND IMMIGRATION BILL 2003 (TREATMENT OF CLAIMANTS, ETC)

This Bill will be the fifth asylum Bill in eleven years and Labour's third since 1997. It was published soon after the Queen's speech and introduced in the House of Commons on 27 November. The second reading is scheduled for 17 December. Unlike previous Bills, this one is much shorter, with 26 clauses and 2 schedules.[1]

In summary, the Bill

- creates further criminal offences for asylum seekers arriving without proper travel documents or those who refuse to co-operate with re-documentation for their removal.
- withdraws welfare support from failed asylum seeker families, which may result in their children being taken into care.
- allows electronic tagging of asylum seekers subject to residence restriction.
- removes asylum seekers to 'safe third countries' without substantive consideration of their claims.
- gives immigration officers more powers of search, seizure and arrest.
- introduces finality in a single-tier appeal system, including abrogation of judicial scrutiny of asylum decisions by the High Courts, the Court of Appeal and the House of Lords.

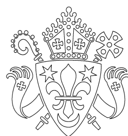
Major campaigns and debates on the Bill have already begun. Many Civil Society Organisations (CSO's) believe that proposals in the Bill will further reduce the legal, social and welfare rights of asylum seekers and will undermine **the real purpose of an asylum system which is to provide protection to vulnerable and violated people**. The legal community, whilst sharing these views, argue that the Bill by excluding the 'intervention' of the High Courts will transform the legal and constitutional landscape of Britain *vis-à-vis* asylum/immigration.

There are two Clauses in the Bill that ORP welcomes:

Clause 4 makes it a criminal offence for trafficking people for exploitation into, or out of the UK. ORP appreciates the general approach that is given to the prevention and combating of the scourge of trafficking in human beings. The government should however go further in considering appropriate support measures in order to protect and assist the victims of trafficking, especially women and children.[2]

[1] The government has not made a good case as to why fresh legislation is needed when many aspects of the Nationality and Immigration Act 2002, remains unimplemented!

[2] Specialised NGO's on this issue believe that the government should as a first step opt-in to the EU Directive (COM [2002]0071) on illegal immigration and trafficking in human beings. This will mean as a minimum: a period of reflection



Clause 16 which gives increased powers to the Immigration Services Commissioner, after obtaining a warrant, to enter and search the premises of unqualified immigration advisors or immigration service providers. The government refuses to recognise that the main means to protecting asylum seekers from unscrupulous advisors is to ensure access to competent advisors. The curbing of legal aid time for asylum cases, as proposed by the Lord Chancellor, will have the opposite effect. As the new Chairman of the Bar Council, Stephen Irwin QC warned, limiting legal aid for asylum cases will have *"two clear effects…it will drive good practitioners out because they cannot do the job properly in that time; and it will be a huge incentive for those practitioners who are not legitimate"*.

The following aspects of the Bill remain of major concern to ORP:

WITHDRAWAL OF SUPPORT (CLAUSE 7)

This is the provision which has attracted the most public and media attention because it proposes to remove welfare support from failed asylum-seeker families, to 'perforce' their removal. This rule already applies to single asylum seekers. As asylum-seeker families will be destitute, it is likely that their children may be taken into care. Andrew Cozens, the president of the Association of Directors of Social Services was quoted as saying that this rule runs contrary to the objectives of the *1989 Children's Act.*[3] The inhumanity of 'forcing' parents to give up their children has also been emphasised by several senior labour backbenches, one of whom Michael Connarty MP, described the measure as"*an outrages proposal. If they are orphans then surely we should take them in. We have a fundamental duty to be compassionate"*.

The difficulty, as the Home Office recognises, is that there are many countries of origin which are simply not safe to return failed asylum seekers; countries like Zimbabwe, Sierra Leone, Iraq and Afghanistan, despite all the talk of the latter's normalcy, are still not safe countries for removed asylum seekers. Nationals of other countries simply find themselves in a limbo, unable to work or obtain support, yet never told to report for removal. Discussions with refugee community groups reveal that the denial of support will leave families destitute, if not, force them 'underground' to prevent children being taken into care. Inevitably, such a situation would lead to a growing underclass of people working as cheap labour, unable to obtain health care or get their children into schools on pain of discovery and separation.

ORP accepts that the removal of those people who have been found to have no claim to protection is a necessary part of a determination system and that asylum seekers, including families, who have failed should be assisted to return to their countries of origin. However, it cannot be right that the threat of removal of their children or denying them the "basic necessities" of life should be used to effect

for victims to decide whether or not to testify during which time they should have welfare support; temporary residence permits for those willing to testify against traffickers and the opportunity to apply for protection *et al.*

[3] Furthermore, the Home Office stressed that children taken into care could become liable for removal on reaching adulthood!

removal. People should be able to return in dignity and humanity, wherever possible voluntarily, after a reasonable period to settle their affairs. The government should consult refugee community groups and other expert agencies on how voluntary return programmes could be organised.

CRIMINALISING ASYLUM SEEKERS (CLAUSES 2 AND 14)

The Bill introduces measures to ensure that asylum seekers, who without reasonable explanation, arrive without travel documents or have travelled through a **safe third country** or who delay applying for asylum would have this fact taken into account when assessing their credibility.

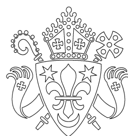
Clause 2 makes it a criminal offence for asylum seekers who arrive without a valid passport or travel document, unless they have a reasonable excuse. The benefit of the doubt will not be in favour of asylum seekers who claim that they were instructed by an agent to destroy or dispose of travel documents. This does not constitute "reasonable excuse". The penalty is up to two years imprisonment and unlimited fine (six months in the magistrates' court).

The reality is that very few asylum seekers have their own passport. In fact, the possession of a passport is normally interpreted by immigration officers to mean that they are not genuine asylum seekers, since governments are unlikely to give passports to people fleeing persecution. It is equally unlikely that British Embassies or High Commissions will give visas to people to travel to the UK, seeking asylum. *Article 31 of the 1951 UN Refugee Convention*, in recognition of the difficulties genuine refugees face in reaching a safe country, prohibits the prosecution of asylum seekers who enter the country illegally, provided they have good reasons for their illegal entry and claim asylum promptly. In 1999, the High Court criticised the Home Office for failure to implement *Article 31 of the UN Refugee Convention.*[4] Legal practitioners are concerned that criminalizing asylum seekers in the face of reduced options for safe and legal transit, circumvents, if not, contravenes *Article 31 of the UN Refugee Convention.*[5]

Clause 14 on the other hand, makes it a criminal offence with a maximum sentence of two years imprisonment for failure to cooperate with Home Office measures to obtain documentation for asylum seekers removal. These include provision of fingerprints or other biometric data, making an application to the embassy of the affected person, attending interviews and filling-in forms '*accurately and completely'*. It is difficult to imagine that in any other area of human endeavour, failure to provide fingerprints or fill forms '*accurately and completely'* would result in imprisonment.

[4] In 1999, the High Court (R v Uxbridge magistrate Court, *ex parte* Adimi and others) denounced the immigration, police and prosecuting authorities for jailing asylum seekers with false documents for up to six to nine months, in contravention of Article 31 of the 1951 UN Refugee Convention. In response, the government enacted legislation which provided a defence to the charge of possession of false documents.

[5] "Increased border controls, the extension of visa requirements to refugee producing countries, carrier liabilities have reduced options for a safe and legal transit to the EU for the purpose of asylum...refugees should not be penalised for lack of valid documentation." Refugee Council



Clause 12 considers some countries as 'safe' for Refugee Convention or European Convention on Human Rights (ECHR) purposes, and therefore allows the removal of asylum seekers to these countries without substantive consideration of their claims. Asylum seekers affected by removal under the safe third country ruling, will not have a right of appeal. ORP agrees with the Refugee Council that there is no such thing as 'safe country for all people for all time," often the definition of 'safe country' is driven by political, rather than human rights considerations. Under these circumstances it is essential that asylum seekers are allowed to challenge their removal to a 'safe third country'. There is a real risk of violating the *51 Refugee Convention,* if presumptions about safety cannot be challenged.[6] The United Nations High Commissioner's position states that the third country must be safe in practice, fully complying with the 1951 Refugee Convention and other international human rights instruments.

Clause 15 allows the electronic tagging of asylum seekers who are subject to residence restriction. The majority of asylum seekers are already subject to such restriction as a result of the method of their entry or because the Home Office suspects they are likely to abscond.

RESTRICTING LEGAL REMEDIES (CLAUSE 10)

In an earlier Consultation Paper the government had indicated that the current two-tier appeal system (Adjudicator and Tribunal) was to be replaced by a single-tier appeal (Asylum and Immigration Tribunal).[7] But what it had not indicated before the Bill's publication is that rights of appeal and review from the Tribunal to the High Court, the Court of Appeal and the House of Lords were also to be abolished. This '*ouster clause*' means that '***no court may entertain proceedings for questioning'*** the Tribunal's decisions. Its decisions will be final. The Home Office is unlikely to compromise on this '*one appeal and you are out'* system. Many legal practitioners believe that this Clause (2) is in breach of *Article 13 of the European Convention on Human Rights*, which obliges Member States to provide effective remedies against potential breaches of Convention rights. Several senior judges have recently spoken about the crucial constitutional importance of access to the courts as a basic legal safeguard against arbitrary decisions, especially for asylum cases, where the consequences of getting it wrong can be fatal. Going by past records, the Home Office and the Immigration Appeal Tribunal have frequently got it wrong. Currently, about 20% of appeals before an Adjudicator and 21% before the Tribunal are successful - an indication that access to a two-tier appeal system is an important check on asylum decisions.[8]

This Clause must also be seen in the context of the proposals to restrict legal aid to asylum seekers.[9] Taken together, what these proposed changes mean is that asylum seekers will have minimal legal

[6] The rule of *refoulement* - Article 33(1) of the 1951 Refugee Convention states that "no contracting state shall expel or return a refugee where his life or freedom would be threatened…"

[7] This refers to the Consultation Paper on the Appeals System issued jointly by the Department for Constitutional Affairs and the Home Office on the 27 October 2003.

[8] Home Office Statistics: 2002

[9] This refers to the July 2003 Consultation Paper issued by the Department for Constitutional Affairs to limit legal aid for immigration cases. The new head of the Bar Council, Stephen Irwin QC warns that plans to limit legal aid to five hours advice in all but the most complex cases would have "two clear effects…it would drive good practitioners out because they cannot do the job properly in that time; and it will be a huge incentive for those practitioners who are not legitimate."

assistance and just one chance to persuade the Tribunal about the merits of their case; if one considers the social reality of most asylum seekers, the true impact of these measures becomes clearer:

- the fact that they speak little or no English.
- that most are dispersed to the regions, where immigration law expertise is sparse and where they face hostility and often live in isolation.
- that most are unfamiliar with asylum procedures and the law.
- that many may be suffering from physical and psychological illness, etc.

This clause seems to enshrine into law the concept that non-citizens are only entitled to a curtailed form of a justice system, thus undermining the universality of human rights law encapsulated in the *1945 Universal Declaration of Human Rights* and the *1951 UN Refugee Convention.*

The government claims to support the right to asylum and to welcome genuine asylum seekers, but in practice initiates legislation and regulations which throw-up huge barriers for people who flee to Britain for asylum. Once here life is made intolerable for them so as to "persuade" them to leave. This Bill attempts the same.

John Joseet
OFFICE FOR REFUGEE POLICY

7th December 2003

> **Pastors and faithful alike must act if newcomers feel unwelcome because they are of a different culture or if they face racism or xenophobia; it is our Christian duty to welcome whoever comes knocking out of need.**
>
> **Pope John Paul II – World Migration Day Message, December 2003**