



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

**Response of the Northern Ireland Human Rights Commission
to the New Legislative Proposals on Asylum Reform**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. We have a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,¹ advising on legislative and other measures which ought to be taken to protect human rights,² advising on whether a Bill is compatible with human rights³ and promoting understanding and awareness of the importance of human rights in Northern Ireland.⁴ In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission would welcome feedback from Government on this response. Where it is decided not to take account of some of the comments made, the Commission would be grateful for an indication of the reasons for not doing so. Deleted: the
3. The Northern Ireland Human Rights Commission has a number of very serious concerns regarding Government’s proposals on the asylum procedure. The range of proposals has serious implications for Government’s obligations under the 1951 Convention relating to the Status of Refugee.
4. They also seek to make the asylum procedure even more daunting than currently, whereby persons seeking asylum risk being accused of deliberately destroying documents, will be told they have limited rights to appeal and then may possibly face imprisonment, deportation or complete withdrawal of Deleted: feedback on the

¹ Northern Ireland Act 1998, s.69(1).

² *Ibid*, s.69(3).

³ *Ibid*, s.69(4).

⁴ *Ibid*, s.69(6).

already insufficient financial support. Our concerns are outlined in more detail below.

5. First, the Commission received the consultation paper on 30 October 2003 with a deadline of 17 November to respond. This is not a sufficient period of time given the extent of the proposals and the number of possible adverse outcomes on persons seeking asylum in the UK. The Commission's own resources are limited, there are numerous demands on staff time and it has been difficult for us to meet the deadline. We would suggest that if the Government were genuinely interested in seeking and taking on board the views of a wide range of individuals and organisations it would give more thought to the limited resources and time restraints on those groups and allocate considerably more time to the consultation process at all stages.
6. Second, the Commission notes with great concern the language and tone employed throughout the consultation paper and in particular in the covering statement by Ministers Beverley Hughes and David Lammy. The paper begins by reporting on the progress of the UK's nationality, immigration and asylum systems and goes on to state:

'For asylum this has meant that the number of claimants has halved, removals are at record levels and the number of claims awaiting an initial decision is at the lowest for a decade'.

7. It is regrettable that while there is no indication that the many circumstances which force people to flee their home countries (such as civil wars, occupation by foreign states, undemocratic governments) have declined, that this government appears to be applauding its own 'success' in keeping out individuals who may need to exercise their right to seek and enjoy asylum. This is particularly unfortunate given that the vast majority of asylum applications in the UK are from nationals of countries which have been strongly criticised by the United Nations for their human rights records and/or are undergoing periods of conflict.⁵
8. There are a number of other unfortunate phrases used in the statement. For example, the Government will 'bear down on those who would seek to enter the UK illegally'. Yet Article 31 of the 1951 Convention relating to the Status of Refugees explicitly states

'The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence'.

⁵In 2002 the main countries of origin of asylum applicants were Iraq, Zimbabwe, Afghanistan, Somalia and China

9. In the light of this stated goal Government should have explained what the practical, *legal* procedures might be for persons seeking to enter the UK in order to apply for asylum. That is, persons fleeing an oppressive regime, who are being persecuted and possibly even searched for by that Government's security force. Indeed it is persons who are most in need of asylum because of the persecution they are being subjected to by their Government that are also in turn least likely to be able to obtain genuine travel documents from the recognised authorities.
10. The statement then goes on to address the problem of 'groundless' appeals but fails to explain how Government can decide which appeals are 'groundless' at an administrative level without recourse to the courts. The dangers of this will be discussed below.
11. The most fundamental point which appears to have been overlooked in the consultation paper is that under Article 14 (1) of the 1948 Universal Declaration of Human Rights (UDHR) all individuals have a right 'to seek and to enjoy in other countries asylum from persecution'. Indeed, Secretary of State, Jack Straw in his paper 'The United Kingdom in the United Nations' presented to Parliament in September 2003, acknowledges the United Nations as 'the single most important body for promoting human rights worldwide' and accepts the UDHR as providing 'the first globally accepted list of inalienable rights.' The Commission trusts that this Government does indeed therefore accept Article 14 (1) as an absolute and indisputable right. That being so the Commission would assert that the UK has a corresponding duty to respect this right and to remove any obstacles that may arise in the event of persons needing to claim it.

Asylum and Immigration Appeals System

12. The Commission cannot accept that a single tier of appeal would lead to greater fairness as suggested in the consultation paper. There is evidence to show that asylum claims currently going to the existing second tier of appeal, the Immigration Appeal Tribunal, are at that stage accepted and that the current appeals process are not only being used as suggested in the consultation paper by those 'making unfounded claims' and wishing to 'frustrate final resolution of their case'. Under the existing procedures a significant proportion of applications (1 in 4) are accepted at the Immigration Appeal Tribunal. Yet by introducing a single tier of appeal, Government appears to be denying access to a key component of the legal process to one particularly vulnerable group within society. The Commission is concerned that Government seems prepared to risk seeing significant numbers of genuine claims to asylum rejected. The number of initial Home Office decisions that are then overturned at the appeal stage suggests that the problem with the current system is not the existing limited right to appeal, but with the quality of initial Home Office decisions. We would therefore strongly urge Government to reconsider this proposal and to instead concentrate its resources on improving upon the quality of initial Home Office decisions, while also safeguarding the right to appeal under existing procedures.

13. Moreover, the current proposals need to be considered with those announced by the Department for Constitutional Affairs earlier this year, to restrict the legal advice available to asylum applicants. Together, these appear to this Commission, to compromise the right to a fair trial as enshrined in Article 6 of the European Convention on Human Rights (ECHR). It has to be noted that the ECHR applies to all within the jurisdiction of the state, including non-nationals. It is apparent to this Commission that capping the hours of legal aid available to asylum applicants along with restricting their right to appeal can only damage the fairness of the asylum process.

Undocumented passengers

14. As already stated this proposal has serious implications in relation to the UK's obligations under Article 31 of the 1951 Convention relating to the Status of Refugees. Moreover, the Commission has serious concerns about the ambiguity in this section, and indeed throughout the paper. The paper refers to those asylum applicants who fail to provide documents without a 'good' or 'reasonable' explanation but does not provide any information on what exactly may constitute a 'good' or 'reasonable' explanation. The Commission is also concerned as to *how* Government will ascertain which asylum applicants have 'deliberately destroyed or disposed of their documents' and which have lost them, been threatened by traffickers to destroy them or simply arrived in the country with no documentation. The Commission is concerned that the existing asylum procedure will be made even more intimidating and daunting for those applicants arriving without documentation. We would wish to be assured that the interview will be conducted with full respect for the applicant's human rights.
15. The Commission's concerns are that when written into legislation the list of 'good' explanations will either be too narrow or that too much discretion will be given to the Home Secretary and Immigration Officers in deciding what is 'good' or 'reasonable'. Given that the perception of 'unreasonableness' may ultimately determine the fate of the asylum applicant it is crucial that consultees are given a clear picture of precisely who might be adversely affected by the proposals and this consultation paper fails to provide that. For example will those who have been victims of trafficking and advised by traffickers to destroy documents be considered as having a 'reasonable' explanation? As Government is aware some individuals seeking asylum may have fallen into the hands of traffickers in their desperation to flee their home countries. Those asylum applicants may have also been advised by traffickers to destroy documents and that this will strengthen their case for asylum. At international level there is increasing acknowledgement that those who are forced to use traffickers are to be seen as victims rather than criminals themselves. Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe stated in his address to the 1st meeting of the ad hoc committee on action against trafficking in human beings,

'The Council of Europe is an international organisation whose primary concern is to safeguard and to protect human rights. Therefore, trafficking in human beings directly undermines the values

on which the Council of Europe is based... You are here to design a precious tool to protect human beings and their dignity. You are here to prevent crimes which must be qualified as slavery or torture... As I mentioned before, the first and most important added value of the convention that you are beginning to draft is recognising trafficking as an affront to human dignity and therefore a violation of human rights. I call on you to keep in mind the victims of trafficking during your work.'

16. The current proposals may ultimately penalise and imprison individuals that have been victims of human rights abuses, including victims of trafficking, rather than offering them the support, assistance and refuge to which they are entitled.
17. The proposals then assert that the decision-maker and appellate bodies will have to take account of situations in which the asylum applicant has failed to provide documents without a 'good' explanation. Is the suggestion here that those asylum applicants without a sufficiently good explanation for their lack of documents will be automatically presumed as having an unfounded asylum claim and will the decision-maker and appellate bodies be briefed accordingly? This is not a satisfactory situation given that the 1951 Convention explicitly requires states not to impose penalties on those entering the State illegally. Currently, many individuals who arrive in the UK without documentation are later given refugee status. The reforms therefore, may well result in many asylum applicants who ought to be accorded refugee status being refused and perhaps even imprisoned.
18. To then make a criminal offence of being undocumented 'without reasonable explanation to satisfy immigration control' further complicates the asylum process rather than making it 'fairer and faster.' When would Government bring legal proceedings against the asylum applicant? Before or after the individual has been given an opportunity to go through the asylum application process including to the level of appeal? If it is to be before, then this clearly runs contrary to the requirements of the 1951 Convention relating to the Status of Refugees. The Home Office has of course only recently been ordered by the courts to pay over £100,000 in compensation to two asylum applicants who were jailed for travelling on forged passports on account of the prosecution and imprisonment breaching Article 31 of the 1951 Convention. Given the obvious contradiction between these proposals and the letter and spirit of the 1951 Convention the Commission seeks an assurance that Government is not intending to withdraw from this Convention and that it is committed to upholding its obligations.
19. Even if the legal proceedings are to take place after the new single tier of appeal this Commission has concerns about the ability of that single tier to arrive at sufficiently accurate decisions and this in turn has implications for the fairness of the criminalisation process. The same concern holds regarding the plans to create a criminal offence of refusing to co-operate with the re-documentation process.

Safe Third Country

20. Again it is unfortunate that Government is planning to restrict rights that up till now have proven essential in ensuring the well-being of asylum applicants. The proposals are to deny a person the right to challenge a decision of the State to remove him/her to a country which Government deems to be 'safe'. Government is presumably aware of decisions of the Court of Appeal that have overturned the Home Secretary's orders for removal of certain applicants. In the cases of Razgar and Nadarajah vs the Secretary of State for the Home Department, the Court of Appeal quashed the decision to remove the applicants to Germany. In the former case the Court held that where an individual's mental condition would deteriorate following removal by reason of his inability to enjoy treatment and support in the UK, even though the substantial part of the deterioration in his/her mental condition would occur because of conditions abroad, the UK's responsibility under Article 8 was nevertheless engaged. It is of serious concern that Government appears to have so much faith in the ability of decision-makers in the immigration system to reach correct decisions in such cases despite their experiences with the courts to the contrary that it is prepared to risk the well-being of persons seeking asylum in the process.

Restricting family support

21. This Commission is concerned that the proposals will force some families into poverty and destitution with no access to health care or other vital services. This cannot be of benefit to UK society as a whole. The more visible presence of asylum applicants living in destitution (albeit in this case failed asylum applicants) certainly will do nothing to alleviate the hostility towards them expressed by racist and xenophobic political groups and unfortunately channelled through some elements of the mainstream media that asylum applicants are a potentially criminal underclass. There is an apparent contradiction between Government claims to be so concerned with saving taxpayers' money and the near certainty that it will face a series of costly court actions being taken against it for subjecting families to violations of Article 3 of the ECHR as has been the case with the withdrawal of support under Section 55 of the Nationality, Immigration and Asylum Act 2002. Furthermore the UK has a duty to all those in its jurisdiction under Article 1 of the ECHR and therefore the deprivation of support for entire families, whether they do or do not have the right of abode in the UK, is likely to seriously compromise the UK's obligations under Article 8 of the ECHR. How will Government respond when only one member of a family is failing to comply with the re-documentation process? Is it envisaged that the remaining family members will face the choice of leaving the country without this one member or face homelessness and poverty in the UK? Has Government given any thought to the case of the children of undocumented entrants and how any adverse affects on their best interests will be addressed in the context of the UK's obligations under the UN Convention on the Rights of the Child?

22. Equally surprising to this Commission is the consistent concern in the consultation paper with the cost to the taxpayer of the asylum process along with Government's consistent refusal to allow asylum applicants to work and to therefore make a direct contribution to the UK's economy.

The Office of the Immigration Services Commissioner

23. The Commission broadly welcomes the proposals to increase the powers of the Office of the Immigration Services Commissioner. Indeed it is important that asylum applicants receive sound legal advice from suitably qualified persons and that an independent body be suitably resourced in terms of finances and statutory powers to protect the interests of asylum applicants. However, it is regrettable that this proposal is being considered while the Department of Constitutional Affairs is simultaneously seeking to impose restrictions on access to legal advice as stated above.

Race Equality Impact

24. Recent events, such as the disturbances in the North of England and the subsequent election of far-right candidates indicate that race relations in the UK need to be greatly improved. There is growing and consistent recognition at international level that there exists a strong link between treatment of and attitudes towards asylum applicants and general good race relations. The United Nations Committee on the Elimination of Racial Discrimination has repeatedly asked the UK Government to take the lead in sending out positive messages about asylum applicants. In its Concluding Observations of 2003 the Committee expressed concern at the reports of attacks on asylum applicants. The Committee noted that antagonism towards asylum applicants has helped to sustain support for extremist political opinions and recommended that the UK 'adopt further measures and intensify its efforts to counter racial tensions generated through asylum issues, *inter alia* by developing public education programmes and promoting positive images of ethnic minorities, asylum applicants and immigrants, as well as measures making the asylum procedures more equitable, efficient and unbiased'. The current range of proposals appears to meet none of the criteria of equity, efficiency and objectivity.
25. Government clearly needs to take the lead in sending out positive messages about asylum and immigration in general. It is therefore extremely disappointing that this consultation paper seeks to criminalise some asylum applicants and to force some into destitution. It is equally disappointing that certain members of Government have made some very damaging comments about asylum applicants. In particular, references to 'swamping' of the UK and suggestions that the UK is 'overwhelmed' by asylum applicants are extremely damaging to race relations and do nothing to help create a more tolerant society. The Commission would urge Government to strive to avoid terminology that could be construed as racist when referring to asylum applicants and to reaffirm its commitment to the universality of human rights. Government could, for example, take more opportunities to explain that in relation to its population the UK takes in a relatively small number of asylum

applicants compared to even other EU countries and that in fact over 75 per cent of the world's refugees are located in some of the world's poorest countries in Africa at considerable burden to their economies.

26. When the 4th richest country in the world, as it does in this document, appears to be determined to keep out and deport persons seeking asylum it sends out a very negative message to not only the host population here in the UK but also to those much poorer countries that do in fact house the vast majority of the world's refugees.

Conclusion

27. The Commission would strongly urge Government to reconsider the current proposals in light of its international human rights and humanitarian obligations. At the core of our concerns is the proposal to restrict the right of appeal. Under the current range of proposals Government could be responsible for a situation whereby a person fleeing persecution is accused of deliberately destroying his/her documents, is refused asylum by the Home Office and the new single appeal body and is then imprisoned. The current range of proposals may result in wrongfully criminalising or penalising not only individual asylum applicants but entire families. The Commission is alarmed that Government has brought forward proposals that have so serious a potential for adverse outcome in human rights terms and that run directly counter to its international obligations. The real need is not for greater firmness with asylum applicants but for a more humane approach that recognises the inalienable rights of all human beings including those seeking asylum. Such an approach would provide for, for example, greater levels of income support, greater access to legal advice and to health care and greater opportunities for integration. It is regrettable that Government is not concentrating resources on addressing these needs in a more positive way but is instead seeking to be 'firmer' with a group of individuals in an extremely vulnerable situation.

Northern Ireland Human Rights Commission
Temple Court, 39 North Street
Belfast BT1 1NA
Tel: 028 9024 3987. Fax: 028 9024 7844
Email: info@nihrc.org

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