

United Nations High Commissioner for Refugees

Crime and Courts Bill (HL Bill 4)

House of Lords Committee Stage

PROPOSED AMENDMENTS TO CLAUSE 25

'Restriction on right of appeal from within the United Kingdom'

UNHCR would urge the House of Lords to vote at the Committee Stages of the Crime and Courts Bill in favour of Amendment 2a and 2b to Clause 25, as proposed by the Immigration Law Practitioner's Association.

UNHCR's Interest

UNHCR offers these comments as the agency entrusted by the United Nations General Assembly with the responsibility for providing international protection to refugees and other persons within its mandate, and for assisting governments in seeking permanent solutions to the problem of refugees.¹ As set forth in its Statute, UNHCR fulfils its international protection mandate by, *inter alia*, "[p]romoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto."² UNHCR's supervisory responsibility under its Statute is reiterated in Article 35 of the 1951 Convention relating to the Status of Refugees ("the 1951 Convention")³ according to which State parties undertake to "co-operate with the Office of the United Nations High Commissioner for Refugees [...] in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of the Convention". The same commitment is included in Article 2 of the 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol").⁴

Purpose

The purpose of these comments on the Crime and Courts Bill is to ensure that persons who have been found to be in need of international protection, and who are located outside the United Kingdom (UK) when their leave to remain or enter the UK is either cancelled or curtailed, are afforded a right to

¹ See Statute of the Office of the United Nations High Commissioner for Refugees, UN General Assembly Resolution 428(V), Annex, UN Doc. A/1775, para. 1, available at www.unhcr.org/refworld/docid/3ae6b3628.html.

² *Ibid.*, para. 8(a).

³ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: www.unhcr.org/refworld/docid/3be01b964.html

⁴ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: www.unhcr.org/refworld/docid/3ae6b3ae4.html.

return to the UK to lodge their appeal against that decision and thereby exercise an in-country right of appeal.

Briefing

There are two issues which trigger UNHCR's concern with the current formulation of Clause 25.

Firstly, in the exercise of its global protection mandate, UNHCR has been requested to intervene in many instances where persons recognised as refugees by the UK, but having left the country temporarily for personal reasons, have found themselves unable to return to the UK. In this scenario, such persons can only turn to the UK for readmission, as it is the UK which has granted them international protection. If such persons are now to be deprived of the right to return to the UK to challenge a decision to cancel or curtail their leave to remain or enter the UK, this would, in UNHCR's view, increase their vulnerability even further and potentially leave them at risk of *refoulement*.

Under international refugee law and international human rights law, *refoulement* - which covers any form of forcible removal, including: deportation; expulsion; extradition; informal transfer or "rendition"; **non-admission at the border** - is prohibited. This prohibition applies not only in respect of return to the country of origin or, in the case of a stateless person, the country of former habitual residence, but also to any other place where a person has reason to fear threats to his or her life; a freedom related to one of the grounds set out in the 1951 Convention; or from where he or she risks being sent to face such a risk. Respect for the principle of *non-refoulement* requires Governments to adopt a course that does not result in the removal, directly or indirectly, to a place where the lives or freedom of such persons would be in danger on account of their race, religion, nationality, membership of a particular social group or political opinion⁵. Furthermore, *non-refoulement* obligations may arise extra-territorially. In determining whether a State's human rights obligations with respect to a particular person are engaged, the decisive criterion is not whether that person is on the State's national territory, or within a territory which is *de jure* under the sovereign control of the State, but rather whether or not he or she is subject to that State's effective authority and control⁶.

Secondly, with regard to the reference made by Clause 25 to "no longer conducive to public good", UNHCR notes that the 1951 Convention and its 1967 Protocol list exhaustively the means by which a refugee can be excluded from refugee status, have their refugee status ceased, or have their

⁵ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, available at: www.unhcr.org/refworld/docid/45f17a1a4.html.

⁶ *Ibid.*, at paragraph 35 and also UNHCR, *Submission by the Office of the United Nations High Commissioner for Refugees in the case of Hirsi and Others v. Italy*, March 2010, available at: www.unhcr.org/refworld/docid/4b97778d2.html.

protection from *non-refoulement* lifted. As such these provisions should be applied in a restrictive manner. These are:

- a) the provisions concerning exclusion from refugee status (Article 1F);⁷
- b) the provisions relating to the cessation of refugee status (Article 1 C);⁸ and,
- c) the provisions concerning refugees who have committed crimes, or for whom there are reasonable grounds for regarding them as a danger to the security of the country, or who having been convicted of a particularly serious crime, constitute a danger to the community (Article 33(2)). [This provision does not affect states' *non-refoulement* obligations under international human rights law, which permits no derogation from the principle].⁹

Although the 1951 Convention does not specifically address the cancellation of refugee status, it is possible to cancel the refugee status of an individual recognised as a refugee by a State under the 1951 Convention where that individual is subsequently found not to have been entitled to Convention refugee status at the time of the positive determination.¹⁰ The conditions under which cancellation is lawful and appropriate must be identified and delimited very clearly. Procedural fairness requires that persons whose refugee status may be cancelled be informed of the nature of the proceedings and of the evidence which supports the proposed cancellation.

Considering the seriousness of depriving a person of international protection, UNHCR is of the strong view that any such measures should be applied restrictively, and that the affected person should be able to challenge any such decision from within the country which granted them international protection, with procedural safeguards, including a hearing and an interview.¹¹

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⁷ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: www.unhcr.org/refworld/docid/4f33c8d92.html and UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, available at: <http://www.unhcr.org/refworld/docid/3f5857684.html> and UNHCR, *Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, available at: <http://www.unhcr.org/refworld/docid/3f5857d24.html>.

⁸ UNHCR *Handbook*, paragraphs 111-117, supra note 74 and UNHCR, *Background Note on Exclusion*, supra note 74; UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, available at: www.unhcr.org/refworld/docid/41a5dfd94.html.

⁹ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, paragraph 11.

¹⁰ UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugee* (reissued December 2011), at para.117. See also, UN High Commissioner for Refugees, *Cancellation of Refugee Status*, March 2003, PPLA/2003/02, available at: <http://www.unhcr.org/refworld/docid/3f4de8a74.html>

¹¹ UNHCR, *Note on the Cancellation of Refugee Status*, 22 November 2004, for acceptable minimum procedural safeguards.