



## **UNHCR BO Dublin's Comments on the Irish Immigration Bill 2002**

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### **Introduction**

1. In December 2002, the Irish Government drafted a Bill on immigration-related issues with sections regarding carrier's liability and amendment of the Refugee Act 1996.

2. Section 2 of the Bill (Liability of Carriers) proposes to penalise transporters bringing in aliens without proper travel documentation and/or entry permits. The Bill does not foresee any asylum related defences to liability.

3. Section 5 (Amendment of Refugee Act 1996) introduces, *inter alia*, the following measures:

- A determination of "withdrawal" in relation to applicants who have failed to comply with procedural requirements and applicants who have voluntarily withdrawn their applications;
- A determination of refusal to grant refugee status in respect of claims deemed to be "withdrawn";
- Allocation of powers of prioritisation of caseloads to the Commissioner and the Chairman of the Refugee Appeals Tribunal in order to speed up the processing of asylum claims on the basis of certain grounds;
- Provision for an agreement between the Department of Justice, in consultation with the Department of Foreign Affairs, and UNHCR for the resettlement of Mandate refugees.

### **Comments**

4. The following observations focus on those aspects of the Bill that UNHCR believes require clarification or amendment in order to ensure full conformity with international standards. The observations follow the actual structure of the Bill.

### **Section 2 - Liability of Carriers**

5. UNHCR's position is that while carriers sanctions may be a legitimate immigration tool, such measures may also interfere with the ability of persons at risk of persecution to gain access to safety. If States have recourse to carrier sanctions, they should be implemented in a manner which is consistent with international human rights and refugee protection principles, notably Article 14 of the Universal

Declaration according to which each person has the right to seek asylum and Articles 31 (Refugees unlawfully in the country of refuge) and 33 (Prohibition of expulsion or return "refoulement") of the 1951 Convention. Therefore liability of carriers should not apply in respect of asylum seekers/refugees. Carriers legislation without this exemption will only drive asylum seekers/refugees into the hands of smugglers and traffickers, as has happened in other States.

## **Section 5 - Amendment of the Refugee Act 1996**

### ***Withdrawn applications receive a negative decision***

6. Various provisions of the Bill introduce procedures to deal with applications which are withdrawn and applications which are deemed to be withdrawn because of failure by the applicant to meet procedural requirements (see Addendum for a description of circumstances under which an application may be deemed to be withdrawn, as set out in the Bill). In both cases, whether at first or second instance, a recommendation is made that the applicant concerned should not be declared to be a refugee.

7. UNHCR appreciates the need to tackle the problem of applicants who fail to comply with required procedures. Indeed where UNHCR undertakes status determination on behalf of a Government, the Office applies special procedures with regard to applicants who fail to attend their scheduled interview and fail to contact UNHCR. Such applicants are deemed to have abandoned their claim and the file is closed.

8. However, such applicants are not deemed to be rejected, as the Bill envisages. UNHCR's position is that a person can be found to be or not to be a refugee **only** after a substantive interview has been conducted, in light of the refugee definition. Therefore, rejecting an applicant who has not been interviewed is not in keeping with the object and purpose of the 1951 Convention and the 1967 Protocol. UNHCR recommends that such applications be considered **abandoned** and **closed**. This is a technical matter and will have no impact on the initiative to remove withdrawn cases from the procedure.

### ***Re-entry of withdrawn applications into the asylum procedure***

9. Due process requires that an application that has been abandoned or closed after being withdrawn or deemed to be withdrawn should have the possibility of applying to re-enter the asylum procedure.

10. Section 17(7) of the Refugee Act 1996 (as amended) already provides that a person to whom the Minister has refused to give a declaration of refugee status may seek the Minister's consent to make a further application for a declaration. This section could usefully be amended to also cover situations where an application has been abandoned or closed, in which case the applicant would seek the Minister's consent to re-enter the asylum procedure.

### ***Resettled refugees***

11. The Bill provides that the minister may, after consultation with the Minister for Foreign Affairs, enter into agreements with the High Commissioner for the reception and resettlement in the State of refugees.

12. As resettlement is a key durable solution for refugees, UNHCR very much welcomes this provision.

### ***Prioritisation of certain caseloads***

13. The bill envisages that the Commissioner and Chairman of the Tribunal may in the interests of the fair and efficient discharge of business, prioritise certain case-loads on the following grounds:

- (a) the grounds of the applications under section 8,
- (b) the country of origin of the applicants,
- (c) any family relationship between applicants,
- (d) the ages of the applicants and, in particular, of persons under the age of 18 years in respect of whom applications are made,
- (e) the date on which applications were made/the provision of the Act pursuant to which the appeals are made

14. UNHCR welcomes the commitment to prioritise particular caseloads for processing, as such a measure is likely to enhance the managerial capacity of the Commissioner and the Chairman of the Refugee Appeals Tribunal. While UNHCR appreciates the need to make distinctions between different case-loads in the procedure, it cautions against the discriminatory use of such distinctions at interview or appeal. Therefore, it should be made clear that prioritisation is a purely procedural tool and has no implications for the merits of the claim.

### **Conclusion**

15. As is evident from the foregoing comments, UNHCR understands the Government's desire to amend the Refugee Act with a view to improving case-processing. The Bill has several positive features such as the possibility for providing protection to refugees through resettlement and the concept of prioritisation of caseloads.

16. UNHCR considers, however, that there are some aspects of the Bill which need to be revised in order to ensure the desired full conformity with international protection principles, as well the realisation of legitimate aims of the Bill.

17. It is in the spirit of its on-going, close co-operation with the Irish Government that UNHCR BO Dublin has offered the foregoing observations and suggestions. UNHCR trusts that they will be duly taken into consideration and will be appropriately reflected in the final text of the Bill.

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