

**United Nations High Commissioner for Refugees**  
**BORDERS, CITIZENSHIP AND IMMIGRATION BILL**

Parliamentary Briefing  
House of Commons Second Reading

**I. Introduction**

1. 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.<sup>1</sup> 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."<sup>2</sup> 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")<sup>3</sup> 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 II of the 1967 Protocol relating to the Status of Refugees ("the 1967 Protocol").<sup>4</sup>

2. In addition to refugees, the UN General Assembly has entrusted UNHCR with a global mandate to provide protection to stateless persons worldwide and for preventing and reducing statelessness.<sup>5</sup> It has specifically requested UNHCR "to provide technical and advisory services pertaining to the preparation and implementation of nationality legislation to interested States".<sup>6</sup> The General Assembly has also entrusted UNHCR with the specific role foreseen in article 11 of the 1961 Convention on the Reduction of Statelessness.<sup>7</sup> Furthermore, UNHCR's Executive Committee has requested UNHCR to provide technical advice with respect to nationality legislation and other relevant legislation with a view to ensuring adoption and implementation of safeguards, consistent

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<sup>1</sup> 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 <http://www.unhcr.org/refworld/docid/3ae6b3628.html> ("Statute").

<sup>2</sup> *Ibid* para. 8(a).

<sup>3</sup> UNTS No. 2545, Vol. 189, p. 137.

<sup>4</sup> UNTS No. 8791, Vol. 606, p. 267.

<sup>5</sup> UN General Assembly Resolution A/RES/50/152, 9 February 1996, available at <http://www.unhcr.org/refworld/docid/3b00f31d24.html>.

<sup>6</sup> UN General Assembly Resolution A/RES/50/152, see above footnote **Error! Bookmark not defined.**, para. 15.

<sup>7</sup> Article 11 of the 1961 Convention provides for the creation of a "body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority."

with fundamental principles of international law, to prevent the occurrence of statelessness which results from arbitrary denial or deprivation of nationality.<sup>8</sup> UNHCR thus has a direct interest in national legislation of countries impacting on the prevention or reduction of statelessness, including implementation of safeguards contained in international human rights treaties, as well as those set out in the 1961 Convention on the Reduction of Statelessness.

3. UNHCR has previously commented on aspects of the Draft (Partial) Immigration and Citizenship Bill to the Home Affairs Select Committee<sup>9</sup> and Joint Committee on Human Rights.<sup>10</sup> UNHCR would like to take the opportunity of the second reading of the Border, Citizenship and Immigration Bill ('the Bill') in the House of Commons to comment on specific aspects of the provisions therein. UNHCR has particular concerns in respect of the provisions of the Bill relating to acquisition of British citizenship by naturalisation (Part 2, Clauses 39 to 42).

4. UNHCR has observed that securing legal residence is of the utmost importance to the successful integration of refugees and other persons with international protection needs.<sup>11</sup> In this regard, UNHCR has noted that consideration should be given to facilitating the naturalisation of refugees and those with humanitarian protection.<sup>12</sup> UNHCR observes that Article 34 of the 1951 Refugee Convention requires that States 'expedite naturalization proceedings' and 'reduce as far as possible the costs and charges of such proceedings'. There is a real risk that the complexity of the process and the fees involved will make the integration process longer and more expensive for refugees, contrary to Article 34 of the 1951 Refugee Convention. UNHCR is concerned that the acquisition of British citizenship proposed by Clauses 39-42 complicates the naturalisation process; in particular, that the naturalisation requirements may prove too difficult for refugees to meet and may in fact impair the integration process and access to a durable solution.

5. Further, there is no direct reference to the primacy of the 1951 Refugee Convention in the Bill as is currently contained in section 2 of the Asylum and Immigration Appeals Act 1993. Instead, protection and reference to the 1951 Refugee Convention are confined to the draft Immigration Rules, which carries a number of risks, not least that they are not actively debated in same manner as primary legislation, further, they are subject to the negative resolution procedure and there is scant legislative oversight of instruments passed in this way. UNHCR is of the opinion that the duties and rights in the 1951 Refugee Convention should be fully reflected in primary legislation. Failing that, there should be an equivalent section 2 reference in the Bill.

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<sup>8</sup> ExCom Conclusion 106, paras. (i) and (j) .

<sup>9</sup> UNHCR, 'Draft (Partial) Immigration and Citizenship Bill: Submissions to the Home Affairs Select Committee in response to the Call for Written Evidence of 22 July 2008' (Oct, 2008) ('UNHCR Submissions to the HASC')

<sup>10</sup> UNHCR, 'Draft (Partial) Immigration and Citizenship Bill: Submission to the Joint Committee on Human Rights' (Nov, 2008) ('UNHCR Submissions to the JCHR')

<sup>11</sup> UNHCR Submissions to the HASC, *supra* n 9, para [20], UNHCR Submissions to the JCHR, *ibid*, para [12]

<sup>12</sup> *Ibid*

## **II. The qualifying period for naturalisation**

6. UNHCR considers that as a matter of best practice, the required period of residence for refugees in order to be eligible for naturalisation should not exceed five years. This is in order to restore an effective nationality to refugees and to enable their full integration into society. A cumulative period of five years should, where relevant, include periods spent in the country whilst asylum applications are under consideration.

7. UNHCR is therefore concerned with the new required qualifying immigration periods and related conditions of residence to be met by refugees in order to achieve naturalisation. Refugees and asylum seekers are often granted periods of temporary leave whilst their claims are determined and, under the provisions of the Bill, such periods of temporary leave would not count as a qualifying immigration status for the qualifying period for naturalisation. UNHCR maintains that delay in deciding applications for asylum should not slow down refugees' route to citizenship. Therefore time spent by refugees prior to determination of their application should count as part of the qualifying period for citizenship.

8. The Government has allowed for discretion to waive the requirement for a person to have qualifying immigration status throughout the qualifying period where there is an undue delay in determining a claim, and this delay is not attributable to the claimant.<sup>13</sup> The Government has stated that in the case of refugees, it could be expected that this discretion would usually be exercised.<sup>14</sup> UNHCR is of the opinion that the Government should set out on the face of the Bill that this discretion will apply to refugees, unless there are exceptional circumstances why it should not.

## **III. Probationary citizenship and the activity condition**

9. UNHCR is of the view that the proposed route to citizenship complicates, rather than simplifies, the immigration system by requiring migrants and refugees to pass through an additional stage of 'probationary citizenship'. The provisions introduced by the Bill would require all refugees to pass a qualifying period of five years and an additional 'probationary citizenship' period prior to qualification for naturalisation. Applicants could apply for naturalisation after three years of probationary citizenship, or after one year if they are able to demonstrate 'community involvement'.<sup>15</sup>

10. As stated above, UNHCR remains of the view that it would be inappropriate to require refugees to spend more than five years before being able to apply for naturalisation. The introduction of a probationary citizenship period would increase the total period of time before refugees become eligible for citizenship to six or eight years respectively depending on whether the 'community activity' requirement is met.

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<sup>13</sup> HL Deb, 25 March 2009, col 717

<sup>14</sup> *Ibid*

<sup>15</sup> BNA 1981, Sch 1, Para 4B(3)(a)&(4)(a) respectively [as inserted by Clause 42 of the Bill]

11. It should be born in mind that refugees may have faced specific forms of persecution in the past and the association with community activities may have an unintended impact on their emotional and physical well-being. It would not be fair to expect refugees to spend three years as probationary citizens (thereby increasing the period of time before they become eligible for citizenship to eight years) if they are unable to participate in community activities for reasons pertaining to their past experience of persecution, torture or other form of ill-treatment. .

12. UNHCR recommends that the ‘community activity’ requirement include a specific exception recognising that there may be refugees who are unable to participate, or are limited in the manner in which they are able to participate, in any required community activity for the reasons set out above. Whilst UNHCR welcomes the discretionary power of the Secretary of State to exempt individuals from the activity condition, UNHCR recommends that that refugees be specifically exempted bearing in mind the vulnerabilities outlined above. UNHCR shares the view of the Home Affairs Select Committee that:

*‘The Government should make public its intentions for the operation of the discretionary power, and in addition should make an explicit exemption for certain abused groups, including refugees.’<sup>16</sup>*

#### **IV. Gateway Refugees**

13. UNHCR wishes to draw attention to the case of those refugees who are resettled to the United Kingdom under the Gateway Protection Programme, the majority of whom have been recognised as refugees by UNHCR for at least five years. They have often spent decades residing in refugee camps and have been identified for resettlement because they are unable to integrate in their country of asylum, or return to their country of origin. The UK currently aims to resettle 750 refugees every year. UNHCR wishes to stress that the additional barriers to citizenship for Gateway refugees who have already been recognised as refugees for at least five years, would not be appropriate. The objective of resettlement is to provide these refugees with a durable and permanent solution to their situation.

#### **V. Penalisation for entry to the UK**

14. UNHCR has repeatedly expressed the view that asylum seekers should not be penalised for illegal entry to the country of asylum.<sup>17</sup> UNHCR observes that Article 31 of

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<sup>16</sup> Home Affairs Committee, Borders, Citizenship and Immigration Bill [HL] Fifth Report of Session 2008-9; p.17

<sup>17</sup> UNHCR, ‘Comments on Home Office Asylum Policy Instruction (API) on Section 31 of the Asylum and Immigration Act 1999 and Article 31 of the 1951 Convention Relating to the Status of Refugees and

the 1951 Refugee Convention prohibits States from imposing penalties on refugees ‘on account of their illegal entry or presence’. In this respect, the criminalisation of asylum seekers by the UK authorities for illegal entry has been the subject of UNHCR comments on a number of occasions in the recent past.<sup>18</sup> UNHCR is concerned that penalisation for illegal entry may operate to prolong the period in which refugees will be able to apply for naturalisation, as the Bill makes it a requirement of naturalisation that an applicant must not at any time in the qualifying period be in breach of the immigration rules.

15. In light of this requirement, UNHCR seeks to highlight again the special case of refugees as distinct from regular migrants. Refugees are often forced to flee their own country in fear of their lives and in such desperate circumstances, individuals may need to resort to desperate measures merely to survive. It is well-established that the need to escape persecution frequently compels refugees to resort to irregular means of entry into host countries - including reliance on facilitators and/or the use of false documentation. Article 31 of the Refugee Convention is specifically aimed at protecting persons in this situation from prosecution for the measures that they were forced to use to reach safety.

16. UNHCR recommends that such convictions should not impede refugees’ path to citizenship. Furthermore, UNHCR would urge that the Bill be amended to ensure that penalisation for illegal entry does not operate to affect the qualifying immigration status period for naturalisation.

## VI. Stateless children of British Nationals

17. A British citizen born outside the UK and outside the British overseas territories will be a British citizen ‘by descent’: this means he or she will not be able to automatically transmit his citizenship to his or her children. In addition, a British overseas territories citizen born outside the overseas territories will be a British overseas territories citizen ‘by descent’: that is he or she will not be able to automatically transmit citizenship to his or her children. For the children of British citizens and British overseas territories citizens, it is not always possible to satisfy existing provisions for registration to obtain those citizenships for want of compliance with residence requirements in the UK or a British overseas territory. Moreover, in certain circumstances, where the State of residence prohibits the acquisition of its nationality – often on racially discriminatory grounds - this leaves the children of such persons stateless.

18. The UK is a signatory to the 1961 Convention on the Reduction of Statelessness. Article 4 of the 1961 Convention requires a State to “grant its nationality to a person, **not**

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UNHCR third party intervention in the case of *R v Asfaw* [2008] UKHL 31 [2008] 2 WLR 1178’, available at: <http://www.unhcr.org/refworld/docid/483d12222.html>

<sup>18</sup> See, UNHCR, 'Asylum and Immigration (Treatment of Claimants, etc.) Bill, Lords 2nd Reading: UNHCR Briefing' (Dec, 2003), and UNHCR, 'Comments on the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, Clause 2 Draft Guidance of June 2004' (July, 2004), available at: <http://www.unhcr.org.uk/legal/position.html>

**born** in the territory of a Contracting State, who would otherwise be stateless if the nationality of one of his parents at the time of the person's birth was that of that State".

19. The UK could register stateless children as British citizens under section 3(1) of the British Nationality Act 1981. Under section 3(1) the Secretary of State has the discretion to register any child, regardless of nationality and regardless of whether or not the parents are British citizens by descent. It is a broad power and confers a very wide discretion on the Secretary of State as to how it is to be exercised.

20. UNHCR would therefore recommend that the Bill be amended to provide a statutory right to acquire British citizenship to the stateless children born outside the UK and British overseas territories to British nationals, in accordance with Article 4 of the 1961 Convention on the Reduction of Statelessness.

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