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## Safe and Legal Routes to the UK

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This briefing is provided in response to the invitation from David Simmonds MP, Neil Coyle MP, Tim Farron MP and Lord Bishop Paul Butler to share our reflections and proposals in relation to safe and legal routes to the UK. We welcome this initiative and are grateful for the opportunity to make this contribution. We have, as requested, confined our briefing to two pages. We do not therefore seek to fully address all we consider to be of importance to these matters. Some limited further information and sourcing is provided by way of endnotes.

### What are safe and legal routes?

By 'safe and legal' route, we mean the formal sanction by the UK of journeys to the UK – e.g. where a visa is granted or available for the journey or the person is permitted to travel to the UK without a visa. A journey under any other circumstances is not by a safe and legal route. However, this does not mean the journey is either unlawful or unsafe, though its being made in circumstances that are not formally sanctioned gives rise to significant risks of exploitation, abuse and other harm. As regards lawfulness of journeys that are not by safe and legal routes, we note there is no requirement in international law that a claim for asylum be made in any particular country and a refugee may legitimately cross multiple borders in order to reach the place where she, he or they seek asylum.<sup>i</sup>

References are sometimes made, including by Ministers and officials, to what are termed 'first safe countries'. There is no rule or principle of international law that requires someone to make his, her or their asylum claim in such a country. A person may have good reason, including family or other connection, to wish to seek asylum in a different country. Moreover, the designation of a country as 'safe' is often in contrast to the harassment, deprivation, exclusion and violence a person seeking asylum has experienced in that country. That a country is safe for one person or even very many people, does not mean it is safe for any particular person. Indeed, where a country is providing safety to many people, that may itself be instrumental in it being unsafe for someone – e.g. because the will or capacity to provide refugee protection is inhibited by the number of people being provided with protection, particularly where other countries effectively fail or refuse to share in the responsibility to provide that protection.<sup>ii</sup>

### Are safe and legal routes available now?

It is necessary to distinguish the following:

- people seeking asylum
- people already recognised as refugees
- family members of people recognised as refugees in the UK

As explained further below, safe and legal routes are not available in connection with each of these. Safe and legal routes are available to some people already recognised as refugees and to some family members of people recognised as refugees in the UK. The adequacy of these routes is a matter of concern, including the extent to which certain people are excluded from them. However, there are no such routes available to people seeking asylum.

### Resettlement: safe and legal routes for people already recognised as refugees

Resettlement, including through community sponsorship, is a safe and legal route available to people already recognised as refugees. The UK has a relatively established history of resettlement,<sup>iii</sup> though the scale of the UK's programmes had been fairly modest prior to the expansion of its specifically Syrian programme in September 2015.<sup>iv</sup> Amnesty has long encouraged resettlement and was, with the Refugee Council, particularly engaged in a campaign

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that led directly to the original introduction of the Syrian programme in early 2014.<sup>v</sup> We support resettlement. It provides a vital route to safety and a sustainable future for women, men and child refugees who otherwise would remain in conditions that are plainly inadequate to meet their basic needs and dignity.<sup>vi</sup> Nonetheless, resettlement constitutes a very modest contribution to provision of refugee protection globally;<sup>vii</sup> and resettled refugees constitute a minority of people provided refugee protection in the UK.<sup>viii</sup>

### **Refugee family reunion: safe and legal routes for family members of people recognised as refugees in the UK**

Refugee family reunion is a safe and legal route available for family members to join people who have already been recognised as refugees in the UK. Amnesty is a member of the Families Together coalition, which has provided a submission. We do not repeat what is said there but note our concern that immigration rules providing for refugee family reunion are too restrictive. For example, the rules make no provision for child refugees in the UK – that is children who have been recognised as refugees for whom the UK is responsible – to be joined by any family member.

Ministers and officials, in answer to concerns that the rules are too restrictive, make reference to the possibility of applying for refugee family reunion visas outside the rules and for these to be granted on an ‘exceptional’ or ‘compellingly compassionate’ basis.<sup>ix</sup> This is very far from adequate. Importantly, the absence of any express criteria by which it can be confidently assessed that an application for such a visa will (or is even likely to) be granted is a deterrent to one being made. A person may be unwilling or unable to apply (including paying legal fees) for something they can have no confidence they will receive. The evidence that may be required (or be thought to be required) to establish any possibility of success may be prohibitive. A person may well be advised against applying. Some advisers may not even raise the possibility of making such an application. Moreover, in the absence of clearly accessible and comprehensible criteria under which such an application will be granted, decision-makers are likely to be discouraged from doing so. Insofar as some decision-makers may do so, the absence of any clear, consistent or knowable basis on which that will happen will itself deter both applications and grants.

### **People seeking asylum**

There are no safe and legal routes for people seeking asylum.<sup>x</sup> The immigration rules make no provision for any person to come (or apply to come) to the UK for the purpose of making an asylum claim. On the other hand, the rules generally provide that applications made for purposes not covered by the rules (such as entering the UK to seek asylum) may be refused<sup>xi</sup> and provide for applications to be refused on grounds of deception (which might include seeking permission to enter for a purpose other than the one disclosed by the application).<sup>xii</sup>

While there is no provision in the rules for permitting a person to come to the UK for the purpose of seeking asylum, Home Office policy is explicit that no claim for asylum in the UK will be considered unless made by a person who is already in the UK.<sup>xiii</sup> The Home Office *Afghan Locally Engaged Staff* policy<sup>xiv</sup> in conjunction with the immigration rules concerning ‘relevant Afghan citizens’<sup>xv</sup> constitutes something of an exception to this insofar as it permits relocation to the UK of Afghan nationals currently or formerly employed in Afghanistan by the UK “*where there is a significant and imminent threat to safety*” which cannot be ‘mitigated’ by other means. The way by which the majority of people provided refugee protection in the UK are able to secure that protection is, nonetheless, by making an asylum claim in the UK.<sup>xvi</sup> Notwithstanding the position of refugees *sur place*,<sup>xvii</sup> most of the relatively modest contribution the UK makes to refugee protection<sup>xviii</sup> is dependent on routes that are not ‘safe and legal’. Rhetoric and policy that denigrates or penalises women, men and children from seeking asylum by routes that are not ‘safe and legal’ is generally irresponsible and illegitimate. This is even more especially so in circumstances, such as those in the UK, where no such routes exist.

Accordingly, as regards people seeking asylum, Amnesty International UK calls upon the Government to both:

- make safe and legal routes available (to reduce exploitation, abuse, loss of life and other harms; and to reduce opportunity for smugglers and traffickers); and
- respect and protect the rights of all women, men and children seeking asylum to do so (including in the UK and including by such other routes as they may need to take).

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<sup>i</sup> Article 14 of the 1948 Universal Declaration of Human Rights generally provides for the right to seek and receive asylum from persecution “*in other countries* [than the person’s own country]”; and Article 31 of the 1951 UN Convention relating to the Status of Refugees prohibits the imposition of any penalty upon a refugee merely by reason of her, his or their having entered or being present without permission. These are matters discussed in the judgment of Lord Bingham of Cornhill in *R v Asfaw* [2008] UKHL 31 with whom Lord Carswell agreed and Lord Hope of Craighead gave a concurring judgment.

<sup>ii</sup> The points raised in this paragraph are more fully considered, and sourced, in our submission to the Home Affairs Committee’s current inquiry into *Channel crossings*, which is available here:

<https://committees.parliament.uk/writtenevidence/11978/pdf/>

<sup>iii</sup> Information about the UK’s resettlement programmes is available from the policy statement available here: <https://www.gov.uk/government/publications/resettlement-policy-statement> and data concerning resettlement under these programmes is available from the immigration statistics (table Asy DO2).

<sup>iv</sup> *Hansard* HC, 7 September 2015 : Col 24 *per* Rt Hon David Cameron MP, Prime Minister

<sup>v</sup> At its inception, the Government anticipated that the number of Syrians resettled over the lifetime of the programme would be measured in the hundreds, see *Hansard* HC, 29 January 2014 : Col 866 *per* Rt Hon Theresa May MP, Home Secretary

<sup>vi</sup> Basic information concerning resettlement is provided by UNHCR here:

<https://www.unhcr.org/uk/resettlement.html>

<sup>vii</sup> According to UNHCR, “*less than one percent of refugees are resettled each year*”, *ibid*.

<sup>viii</sup> See Immigration Statistics, last updated 27 November 2020

<sup>ix</sup> See e.g. *Hansard* HC, Public Bill Committee, 5 March 2019 : Col 390 *per* Rt Hon Caroline Nokes MP, Minister for Immigration; *Hansard* HL, 16 September 2020 : Col 1307 & 22 September 2020 : Col 501GC *per* Baroness Williams of Trafford, Minister of State

<sup>x</sup> When formally departing, at 11pm on 31 December 2020, from participation in the Dublin Regulations (EU 604/2013), the UK ended the then sole such route in operation for any person seeking asylum, which was by acceptance by the UK of responsibility for an asylum claim made in a participating EU or associated State in response to a transfer request made by that State under the terms of the regulations. This had been of especial importance for unaccompanied children with family members in the UK.

<sup>xi</sup> See e.g. Immigration Rules, Chapter 9, paragraph 9.13.1. Note also that where a person is granted a visa to enter the UK for one purpose but is seeking to enter for another purpose, that visa may be cancelled and entry refused: see Immigration Rules, Chapter 1, paragraph 30C.

<sup>xii</sup> See e.g. Immigration Rules, Chapter 9, paragraphs 9.7.1 to 9.7.4

<sup>xiii</sup> See Home Office policy statement *Applications from abroad: policy*, which is available here:

<https://www.gov.uk/government/publications/applications-from-abroad-policy>

<sup>xiv</sup> See in particular the ‘intimidation policy’ included in the guidance, which is available here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/898093/Afghan-LES-guidance-v1.0ext.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/898093/Afghan-LES-guidance-v1.0ext.pdf)

<sup>xv</sup> Immigration Rules, Chapter 7, paragraphs 276BA1 to 276BS1; and also note the intention revealed in the policy announcement of 29 December 2020, published here:

<https://www.gov.uk/government/news/government-reforms-intimidation-scheme-to-relocate-more-afghan-staff-under-threat>

<sup>xvi</sup> See Immigration Statistics, last updated 27 November 2020

<sup>xvii</sup> That is refugees who are outside their country of origin at the time they become at risk of persecution (and hence become refugees).

<sup>xviii</sup> According to UNHCR’s *Global Trends 2019* report, at end 2019, Germany, France, Sweden and Italy each hosted refugee and asylum-seeking populations far in excess of the UK whereas Spain and Greece hosted similarly sized populations. Only Germany appeared among the top ten countries by size of refugee and asylum-seeking population hosted; and that top ten excluded the millions of Palestinian refugees, who did not fall within UNHCR’s remit, around half of whom hosted by Jordan and Lebanon (according to the UN Relief and Works Agency, which has particular responsibility for these refugees).

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