

**PRESENTATION: SCOTTISH REFUGEE COUNCIL
SIMPLIFICATION, SANCTUARY AND SCOTLAND**

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Introduction:

Greetings..., Third speech this week – so if you have been doing the rounds, forgive me if I repeat myself on certain issues but sometimes, certain things have to be said twice just in case it was not heard the first time!!

Thank you for the opportunity to share our thoughts on the forthcoming Immigration and Citizenship Bill. The focus of my discussion today will relate not so much to the detail of the law but the fundamental principles relating to the proposed changes and their potential implication for the treatment of and protection for refugees and asylum, from the Scottish Human Rights perspective.

The SHRC

But before I do that, I would like to take a few minutes to introduce our recently established commission. I feel this will provide you with a much clearer view of our interest in this Bill.

Immigration (as the Minister, indicated) is a reserved issue under the constitutional arrangements laid out in the Scotland Act 1998. I am certain this observation will be made several time during this conference, however, I want to add my bit to the debate to make it clear why despite the constitutional arrangements, Immigration, refugee and asylum will always be a concern of the SHRC.

Put simply, as a national human rights institution within a state that is signed up to the UNHCR - we will want to make sure that we give MSPs, GB Bill drafters, and Policy-Makers the right kind of advice and information so that they can ensure that UK laws and policies on migration, albeit reserved, is in line with the principles reflected by the UNHCR and the Scotland Act.

The Scottish Human Rights Commission was established by the Scottish Commission for Human Rights Act, 2006, as a requirement of the Scotland Act 1998.

We have been established in line with the UN Paris Principles¹. We hope to shortly obtain UN Recognition and intend to participate fully as a National Human Rights Institution within the UN system. This means we will be able to present reports to the UN on the progress of Human Rights in Scotland.

We were established by The Scottish Parliament but unlike regular NDPBs, we are totally independent of the Scottish Government or UK Government. We are not sponsored by any specific government department, so we effectively have total independence to challenge without prejudice or interference from governments, the powers of institutions, public, private, or voluntary on human rights violation.

The SHRC adopts a rights based approach, not an anti-discrimination one as in the case traditional equality bodies. Our definition of Human Rights is enshrined in the

¹ A framework of principles relating to the status and functions of national institutions for the protection and promotion of human rights , as agreed by the UN in Paris in 1991

European Convention for Human Rights and our position is no different from that of the UNHCR.

Our primary focus is, without any reservation, to cover the protection of all human beings against abuse. We will do this by promoting the creation of a human rights culture by using a rights based framework. This is based on the principle of proportionality and balancing the rights of all concerned; collective, individual, staff, customers, patients, government department and the public.

So contrary to common misconception, fear and negative views surrounding the notion of Human Rights in many quarters, if understood and used properly, a rights based approach will balance rights in a way where mutually acceptable solutions could be reached in areas of disputes, conflict or rights abuse.

Role

Our role is clearly laid out in The Scotland Commission for Human Rights Act, 2006. Without going into much detail, I want to clarify that our role includes promoting a strong human rights culture and best practice within public institutions. Moreover, we will advise government and

MSPs on key policy areas, monitor law, policy and practice, conduct public inquiries, give oral evidence, intervene in civil proceedings and most important, to today's discussion - the power of entry, inspection and interview in places of detention.

The Proposed Bill

Turning more specifically to the proposed Bill. Given our role, we will invariably keep a close watch on how the law impacts, especially on the treatment of refugees and asylum seekers. We intend to work closely with the Refugee Council, the relevant MSPs, especially, the Scottish Minister for Justice and other stakeholders, including our sister organisations, the EHRC and NI Commission for Human Rights, to ensure that the Bill does not have any adverse Human Rights implication for the protection and treatment of immigrants, refugees and asylum seekers in Scotland.

First, I would like to say that the SHRC welcomes the recent efforts made by the Borders and Immigration Agency to work towards the simplification of the Immigration and Nationality Act. A number of us who work

in the field lobbied for this since the early 90's, given the vast and complex set of legislations in this area.

Although I had no reason to use the legislation directly, as I am not a lawyer, but teaching it to 4th year students is a nightmare!

In particular, the SHRC are pleased to note that the Bill not only proposes to consolidate and simplify the legislation, but also seeks to ensure transparency, clarity, efficiency and predictability (as mentioned by Lin Homer).

While the SHRC, fully accepts that nation states across the globe, including, the UK have the right to manage the flow of people in and out of the country, we would very much like the UK, which is signed up to the UN convention, to ensure that the sentiments of the Law (and I know that at this stage the focus is more legal than on policy and practices) translates into transparent and fair policies and practices. The latter in our view can be best achieved by focussing on the rights and responsibilities of all concerned.

The proposed Bill is a step in the right direction and in Scotland, where the future of our economy depends very

much on the skills we can attract from across the globe, we are keen to ensure that those who come to work, study and seek salvation here are treated with respect and dignity and are allowed to enjoy the full protection of our domestic and international human rights legislations.

Nonetheless, we feel that it will be a lost opportunity, if at this stage the only objectives of the Bill are to simplify legal process and strengthen the borders, fast-track asylum, ensure legal compliance and boost our economy.

While the interests of UK as a nation state is protected, and despite a reference to 'integrating those who need protection' there is little mention of the treatment of asylum seekers or their rights while awaiting a decision on their status.

This Bill presents us with an opportunity address the traditional one-sided approach to immigration and asylum (ie: protecting the interests of the settled citizens) by balancing the rights of those coming in as well as those settled.

In this regard, an explicit mention of, for example, the rights of...

a) Migrants (International Convention on the protection of the rights of all migrant workers and members of their family, 1990) and

b) Convention on the Rights to Statelessness person, especially in relation to asylum seekers who are not fully covered by the convention Relating to the Status of Refugee.

...might have better addressed inconsistencies that are currently apparent in regard to the welfare aspects of asylum seekers, in England, Wales and Scotland.

In this regard, our main concern relates to the treatment of asylum seekers while awaiting assessment, accompanied and unaccompanied children, access to education, freedom of movement, labour and social security, housing and the practices relating to detention.

Similarly, in relation to those who already have Refugee Status, we are understandably concerned with procedures involved in the return of refugees to countries that are still unsafe.

Moreover, we intend to keep a close watch on the impact of the introduction of 'probationary citizenship' which might result in some cases, to individuals and families, waiting for up to 10 years to gain naturalisation. This in effect could interfere with their rights in terms of article 15, 17, 21, 25 and 29 of the European Convention.

Devolved - Reserved

This leads me on to a more pressing area of concern for us in Scotland – that is, the Devolved - Reserved conundrum. We believe that the simplification project ought to take this opportunity to address this issue in light of the progressive developments in Scotland with regard to the treatment of asylum seekers.

The very successful Fresh Talents Initiative and more generally, the changes in asylum procedures, particularly in relation to asylum dispersal and re-settlement, have created confusion not only at service delivery, support and administrative level but at individual level. Those in the front-line of service delivery and those accessing services are increasingly confused about their rights, obligations and entitlement.

In this regard, the SHRC fully supports the recommendations made by the Scottish Refugee Council to the Commission on Scottish Devolution (in August 2008) and their Contribution to the National Conversation.

In particular, their recommendation that an assessment should be made of all areas where asylum seekers interact with devolved competencies, is a timely one. Likewise their recommendation to assess the wide interpretation of reserved immigration policy in devolved contexts is essential, given the difficulties experienced in practice.

The concern in regard to the restricted involvement and authority of Scottish ministers within the UK framework is shared by the SHRC. We believe that the involvement of the Scottish Government and Parliament will ensure that policies and procedures emerging from the UK can be influenced at the formative stages to ensure relevance in Scotland.

We agree with the Scottish Refugee Council that a more formal role in terms of policy development between the UK and Scottish Governments ought to be more seriously

considered, especially in light of the significant number of asylum seekers in Scotland that are currently settled here through the dispersal process. A legal requirement to consult with the Scottish Government and Parliament and dare I suggest the SHRC, would ensure a proper analysis of local conditions and an enhancement of reserved legislation. This will also give some assurance to residents in Scotland that local good practice, for example, initiatives like Fresh Talents and the success of the Scottish Refugee Integration Forum (2002) is not regressed.

The latter in particular, has ensured a high quality of life for Asylum seekers by ensuring their integration from the point of arrival (this is a departure from UK whom wait until status is granted).

From a human rights perspective, the benefits of this approach is obvious - asylum seekers are treated with dignity and respect from day one of dispersal and provided with accessible and good quality service. But this is not a one way process. In return, Scotland benefits from asylum seekers who very quickly become part of the local community with a willingness to participate fully in local activities. Not being able to seek formal employment,

asylum seekers who are often highly skilled and professionally trained, tend in Scotland to contribute greatly in the voluntary and community sector. The latter has had a dual purpose in that it has served to enhance relationships between local residents and asylum seekers and a deeper understanding of the plight of asylum seekers:

I can provide hundreds, if not thousands of examples to substantiate this, but will provide one, which relates to an environmental organisation (BTCV), which I am closely associated with as an ambassador.

In an evaluation study that I carried out for BTCV, early this year, there was ample evidence to demonstrate the benefits of enabling early integration, especially given the sometimes lengthy time taken to assess applications for asylum

Individual M arrived from Burundi in 2002 and almost immediately undertook voluntary work in a local church where she became aware of BTCV. She soon joined their project. Her main reason for becoming involved was to broaden her interests and to meet people. When asked what she got out of the volunteering, she indicated that not

having worked with people with disabilities before, she knew little about them. A personal outcome for her was that she can now work happily alongside them with a deeper understanding of the difficulties they face.

Likewise, the locals working alongside her indicated that after initial suspicions, they got to know and like the person beyond the label 'asylum seeker –

Four years on she still waits for the day when she can work more formally. But despite this, long wait she does not feel alienated, isolated or marginalised any more - she is currently involved in a North Glasgow allotment project and is taking a brush-cutting and strimming course and looking forward to gaining her qualifications shortly.

This success story would not have been possible had it not been for the approach taken by the Scottish Government to positively support early integration and co-ordinated service provision.

In Conclusion

Although the bill is concerned mainly with simplifying Immigration and Citizenship legislation, we hope that it will

go beyond this to give some consideration to the welfare and treatment of asylum seekers while awaiting assessment. The SHRC would like to see more robust arrangements in place to enhance the positive progress in Scotland, especially given our changing demography and the Scottish government's desire to attract fresh talents in Scotland.

Clear and progressive legislation will therefore be crucial to ensure a balance between managing the flow of people on the one hand and encouraging the positive momentum with regard to the treatment of economic migrants, refugees and asylum seekers in Scotland.

The SHRC would like to see all who come to work, study and stay in Scotland to be treated with respect and dignity, from day one. Whilst we accept that some of these individuals might have to eventually leave, we nevertheless feel strongly that there is a responsibility on the part of governments to ensure that the principles reflected in the Scotland Act 1998 and the Scottish Commission for Human Rights Act (2006) is reflected in the treatment and protection of all who live in Scotland no matter how brief.

I thank you for listening