

Written Evidence by Ayesha Riaz (ASU0007)

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I. Introduction

1. This written evidence only addresses the issue concerning ‘safe and legal routes’ and their compatibility with the UK’s human rights obligations. In doing so, it addresses questions one and two of the ‘call for evidence’.
2. It is imperative for the Government to reconsider its existing policies that relate to border control and border enforcement as there is an urgent need to create safe and legal routes of entry to the UK to ensure that further senseless loss of life does not occur on/around its shores.¹
3. The Home Office expects individuals that are fleeing persecution to be physically present in the UK before they can lodge an application for asylum. The rationale behind the introduction of ‘safe and legal routes’ is to ensure that asylum seekers that are fleeing persecution can travel to the UK without holding a visa.

II. Current Safe and Legal Routes

4. The few ‘safe and legal routes’ that are currently in existence are highly restrictive. These include:
5. The UK Resettlement Scheme- this scheme has been operating since 2020 and it consolidates the Vulnerable Persons’ Resettlement Scheme, the Vulnerable Children’s Resettlement Scheme and the Gateway Protection Program.² We will explore each of these schemes in turn.
 - a) The Vulnerable Persons Resettlement Scheme was launched in January 2013,³ and it is aimed at refugees that originate from the Middle East and North Africa region,⁴ and those that are fleeing Syria due to the conflict that began in March 2011.⁵ It is notable that over 20,000 people have resettled in the UK under this scheme.⁶

¹ JCWI, ‘Safe and Legal Routes of Entry to the UK’ (24 October 2019), available at <chrome-extension://efaidnbmninnibpcapjpcglefindmkaj/https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=d3f59e02-3ffa-4cb7-a33e-d1153c4fd517> (Last Accessed: 11/12/2022); also see, Ruchaira Sharma, ‘Migrant Crisis: More than 150 People Died Crossing the Channel in the Last 5 Years and that Total Could be Far Higher’ (INews: 26 November 2021), available at <<https://inews.co.uk/news/migrant-crisis-deaths-crossing-channel-figures-total-higher-warning-1318804>> (Last Accessed 11/12/2022).

² Migration Watch UK, ‘360,000 Have Come Here Via Direct Resettlement Routes Since 2005’ (2 February 2022), available at: <<https://www.migrationwatchuk.org/news/2022/02/02/how-many-people-have-come-to-the-uk-via-safe-and-legal-routes>>. (Last Accessed 11/12/2022).

³ UKVI, ‘Vulnerable Persons and Vulnerable Children’s Resettlement Schemes Factsheet’, (March 2021), available at: <<https://www.gov.uk/government/publications/uk-resettlement-schemes-factsheet-march-2021/vulnerable-persons-and-vulnerable-childrens-resettlement-schemes-factsheet-march-2021>> (Last Accessed 11/12/2022).

⁴ Such as Egypt, Iraq, Jordan, Lebanon and Turkey.

⁵ UKVI, ‘Vulnerable Persons and Vulnerable Children’s Resettlement Schemes Factsheet’ (n 3).

⁶ *ibid.*

b) The Vulnerable Children’s Resettlement Scheme (VCRS) was launched in 2016 and it seeks to resettle up to 3000 ‘at-risk’ refugee children from the Middle East and North Africa region including their family.⁷ The Government worked in collaboration with the United Nations Commissioner for Refugees (UNHCR) when it established this scheme and it extended it to vulnerable children that are at risk; including those threatened with child labour, child marriage and those suffering from other forms of abuse or exploitation, at-risk groups and nationalities as well as unaccompanied children.⁸

c) The Gateway Protection Program was launched in 2004 by the United Kingdom Visas and Immigration (UKVI) in collaboration with the UNHCR.⁹ Up to 750 refugees settle in the UK every year through this scheme. Applicants lodge an application for resettlement to the UNHCR which refers them to other organisations.¹⁰ Applications can also be made directly to the UK Government, to British diplomatic posts abroad or through other international organisations and each application is assessed on its own merits.¹¹ The guidance is yet to be updated however.¹²

6. Another safe and legal route that has been created by the Government is the Refugee Family Reunion Visas route. Through this route, refugees can be reunited with family members who face similar persecution in their home country.¹³ This route is very restrictive as it only allows individuals who also face persecution to join the family member that has been granted ‘refugee status’.

7. There are also a number of nationality-specific bespoke immigration routes that are available to some Afghans, Ukrainians and citizens of Hong Kong.

a) The Afghan Relocation and Assistance Policy is available for any current or former staff that is employed directly by the Afghani Government and faces a serious risk of threat to their life.¹⁴ There is no limit to the number of refugees that can be accommodated through this scheme.¹⁵ The main applicant can bring their close family members (such as spouse or children under the age of 18) to the UK upon which they are granted Indefinite Leave to Remain here.¹⁶ However, other family members can gain entry to the UK in exceptional circumstances.¹⁷

⁷ *ibid.*

⁸ *ibid.*

⁹ UKVI, ‘Guidance: Gateway Protection Program’ (11 January 2020), available at: <<https://www.gov.uk/government/publications/gateway-protection-programme-information-for-organisations/gateway-protection-programme>>. (Last Accessed 11/12/2020)

¹⁰ *ibid*

¹¹ *ibid*

¹² *ibid*

¹³ IAS, ‘Refugee Family Reunion Visa’ (2022), available at: <<https://iasservices.org.uk/claiming-asylum/refugee-family-reunion-visa/#:~:text=Refugee%20Family%20Reunion%20Visa.%20A%20Refugee%20Family%20Reunion,accepted%2C%20you%20will%20be%20granted%20official%20refugee%20status.>>>. (Last Accessed 11/12/2022)

¹⁴ Ministry of Defence, ‘Guidance Afghan Relocations and Assistance Policy: Further Information on Eligibility Criteria, Offer Details and How to Apply’ (5 December 2022), available at: <<https://www.gov.uk/government/publications/afghan-relocations-and-assistance-policy/afghan-relocations-and-assistance-policy-information-and-guidance>>. (Last Accessed 11/12/2022)

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

b) The Afghan Citizens Resettlement Scheme began operating in January 2022 and it aims to resettle Afghans; in particular those that have assisted the UK's efforts in Afghanistan and stood up for core values that underpin any society, such as democracy, women's rights, freedom of speech as well as the rule of law and accommodates vulnerable individuals such as women and girls at risk, and members of minority groups that are at risk.¹⁸ The government aimed to resettle 500 people in the first year and up to 20,000 over the coming years.¹⁹ However, this scheme has been a failure. With the rigid restrictions regulating refugees, since the Taliban takeover in August 2021, only 9,000 Afghans have been relocated to the UK under this scheme.²⁰ Although, the Government has not confirmed the number of Afghans that have travelled to the UK since the takeover by the Taliban, it is estimated that approximately 75,000 to 150,000 people applied for evacuation in/around August 2021.²¹ Only 5 per cent of these individuals received assistance according to Raphael Marshall, who previously worked at the Foreign Office's Afghanistan section.²²

8. There are a number of generous schemes in place for the Ukrainians:

a) The Ukraine Family Scheme allows British citizens and others living in the UK to sponsor Ukrainian relatives who would not normally qualify for a family visa, and this includes immediate and extended family members.²³ Applications are free, with no language requirements and there is no Immigration Health Surcharge.²⁴ They are allowed to work, study and claim benefits.²⁵ Applications last for three years.²⁶ More than 60,000 such visas have been granted.²⁷

b) The Ukraine Sponsorship Scheme enables Ukrainians to gain entry to the UK if they have a sponsor who is willing to sponsor them for six months at least.²⁸ These individuals can gain entry to the UK for three years and also have the right to work, claim benefits and study.²⁹ More than 144,000 such visas have been granted.³⁰

c) The Ukraine Extension Scheme allows Ukrainian nationals and their immediate family members to apply for permission to stay in the UK as long as they held/hold permission to be in the UK on or between 18 March 2022 and 16 May 2023 (they need not cover the whole

¹⁸ Ministry of Justice, 'Afghan Citizens Resettlement Scheme' (18 August 2021), available at < <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>>. (Last Accessed 11/12/2022).

¹⁹ *ibid.*

²⁰ Moghda Qadery, 'The British Government is Failing Afghan Refugees' (27 July 2022, Free Movement) available at < <https://freemovement.org.uk/the-british-government-is-failing-afghan-refugees/>> (Last Accessed 28/07/2022).

²¹ *ibid.*

²² *ibid.*

²³ Ministry of Justice, 'Apply for a Ukraine Family Visa' (4 March 2022), available at < <https://www.gov.uk/guidance/apply-for-a-ukraine-family-scheme-visa>>. (Last Accessed 11/12/2022).

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ Ministry of Justice, 'Ukraine Family Scheme, Ukraine Sponsorship Scheme (Homes for Ukraine) and Ukraine Extension Scheme' (8 December 2022), available at: < <https://www.gov.uk/government/publications/ukraine-family-scheme-application-data/ukraine-family-scheme-and-ukraine-sponsorship-scheme-homes-for-ukraine-visa-data--2>> (Last Accessed 11/12/2022).

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ *ibid.*

period) and their previously held permission expired on or after 1 January 2022.³¹ Again they have access to study, work and claim benefits for three years at least.³²

9. Finally, the Hong Kong Pathway to Citizenship commenced operating on 31 January 2021 and marked a beginning of a new route for Hong Kong British National (Overseas) citizens and their close family members.³³

II. Should new Routes be Introduced?

10. Up until March 2022, just 15,451 people were able to reach the UK via the resettlement routes described above.³⁴ However, the UK clearly needs to expand its safe and legal routes.

11. The UK could firstly introduce humanitarian visas so that those applying for asylum from overseas are allowed a safe and legal route of entry to the UK. The UK could secondly also introduce multiple accessible safe routes for those that are fleeing persecution. Thirdly, there should also be a separate route for unaccompanied minors (like the Dubs Scheme that used to be in operation). Fourthly, given the dire situation that some asylum seekers face in France, those with that linguistic/family ties to the UK and those that experienced hardship in France due to their vulnerabilities should be granted travel documents to gain entry to the UK.³⁵ Finally, the Ukrainian Schemes seem to be quite generous and should apply to all citizens that are fleeing wars/persecution in their home countries.

III. Denying Asylum to those that do not use the ‘Safe and Legal Routes’ under Human Rights Law

12. With regards to whether the UK is infringing its human rights obligations when denying asylum to those who do not use the ‘safe and legal routes’, it is noteworthy that according to Article 31(1) of Refugee Convention of 1951,³⁶ which has been rubberstamped in section 77 of the Nationality and Borders Act 2022, the UK is under an obligation to determine the refugee status of someone claiming asylum, regardless of how such a person arrived in the UK. The UK cannot thus impose penalties on account of their illegal entry or presence.

13. Furthermore, Article 33 of the Refugee Convention 1951, prevents refoulement to a territory where a person’s life or freedom may be threatened.³⁷

14. Therefore a breach of these provisions could potentially lead to a contravention of Article 2 (right to life) and Article 3 (prohibition of torture or inhuman, degrading treatment) of the European Convention on Human Rights, which the UK is a signatory to. In *M.S.S. v Belgium*,³⁸ and *T.I v UK*,³⁹ it was held that States that are seeking to expel asylum seekers to

³¹ *ibid.*

³² *ibid.*

³³ Migration Watch (n 2).

³⁴ Ministry of Justice, ‘National Statistics: How Many People do we Grant Asylum or Protection to?’ (26, May 2022), available at: < <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-march-2022/how-many-people-do-we-grant-asylum-or-protection-to>> (Date Accessed 11/12/2022).

³⁵ JCWI, ‘A Safe Route to Asylum in the UK via Travel Document from Northern France’ (June 2022), available at < <https://www.jcwi.org.uk/a-safe-route-to-asylum-in-the-uk-via-travel-document-from-northern-france>>. (Last Accessed 11/12/2022).

³⁶ UNHCR, ‘Convention and Protocol Relating to the Status of Refugees’, 29, available at: <<https://www.unhcr.org/3b66c2aa10>> (Last Accessed 11/12/2022).

³⁷ *ibid* 30.

³⁸ [2011] INLR 533.

third countries without examining their asylum cases are under a duty not to remove them, if there are substantial grounds for believing that such an action would expose them to human right breaches.

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