

Written Evidence by Asylum Aid (ASU0045)

Introduction

1. Asylum Aid, part of the Helen Bamber Foundation group, provides high quality legal representation to some of the most vulnerable people seeking asylum in the UK: children, survivors of trafficking, and stateless people. We have over 30 years of experience representing asylum seekers seeking protection in the UK. This evidence addresses questions 1, 3, 6 and 10 set out by the Joint Committee on Human Rights, but Asylum Aid also endorses the evidence submitted by the Refugee and Migrant Children's Consortium, the Legal Aid Crisis Group and the Helen Bamber Foundation.

“Safe and legal routes”

Is it compatible with the UK's human rights obligations to deny asylum to those who do not use what the Government calls “safe and legal routes”?

2. No. There are currently very few and very limited safe or legal routes for asylum seekers to arrive in the UK. Asylum seekers come to the UK for a wide variety of reasons and once here, our obligation under the 1951 Refugee Convention is to assess claims for asylum through a fair procedure and to grant refugee status to those who fall to be recognised as refugees under the terms of that Convention. Under the European Convention on Human Rights (ECHR) and other international human rights treaties (such as the UN Convention Against Torture and the Universal Declaration of Human rights), the UK is obliged not to return people to countries where there are substantial grounds for believing that their right not to be subjected to torture, inhuman or degrading treatment will be violated (among other obligations). The route by which a person arrived in the UK will not normally be relevant to whether they are a refugee as defined under the 1951 Convention, or whether their removal would breach our other human rights obligations.

Relocation of asylum seekers

Is the policy of relocating asylum seekers to third countries consistent with the UK's human rights obligations?

3. The question of whether relocating asylum seekers to a particular third country is consistent with the prohibition of *refoulement* under the Refugee Convention and more generally in international law, including under Article 3 ECHR, will depend on the conditions in the third country, its capacity and ability to fairly process asylum claims, and the risks of both ill-treatment in that country and of onward or chain *refoulement* from the third country to a place where a person's life or liberty would be put at risk. In the context of the previous Dublin Regulation arrangements for sending asylum seekers to third countries within the EU, for example, the European Court of Human rights held in *MSS v Belgium & Greece*¹ that Belgium had violated the applicant's Article 3 rights by sending him to Greece because it knew or ought to have known that the conditions for reception and detention of asylum seekers in Greece exposed him to a risk of inhuman

¹ *MSS v Belgium and Greece*, Application No. 30696/09

and degrading treatment. It also held that there was a real risk that MSS would be sent from Greece to the country from which he had sought asylum without adequate consideration of his asylum claim, in breach of Article 3.

4. The Government's plans to remove people seeking asylum whose claims have been deemed 'inadmissible' to Rwanda are based on assurances set out in a Memorandum of Understanding (MoU).² This has been criticised by the House of Lords International Agreements Committee which stated that it is "unacceptable that the Government can avoid parliamentary scrutiny of important agreements with significant human rights implications by concluding such agreements as MoU".³ The Rwanda removals process relies on the premise that Rwanda is a 'safe third country' to which people seeking asylum can be removed and which can process their claims and settle or remove (as appropriate) individuals after their claim is decided⁴ but Rwanda's record on human rights, refugee status determination and commitment to the rule of law has been the subject of consistent international criticism.⁵
5. In addition to the concerns above, Asylum Aid considers that the policy of relocating asylum seekers to third countries with which they have no prior connection (such as Rwanda), in order to deter other asylum seekers from arriving in the UK, is inconsistent with the principles of burden and responsibility sharing and incompatible with the humanity and dignity of the people concerned. In some cases, a policy of sending an asylum seeker thousands of miles away to a country with which they have no prior connection as a means of deterring other asylum seekers may itself amount to degrading treatment contrary to the UK's Article 3 obligations.
6. For the purposes of the prohibition of torture, inhuman and degrading treatment under Article 3 ECHR, the Grand Chamber of the European Court of Human Rights has held that treatment is degrading if it "humiliates or debases an individual, showing a lack of respect for, or diminishing, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance".⁶ Evidence from Medical Justice about the impact of the threat of removal to Rwanda on some detainees⁷ as well as what Asylum Aid's own clients have told us, shows that the policy of sending asylum seekers to Rwanda causes feelings of fear and anguish. In addition, a policy of seeking to deter other people from using unsafe routes by sending

² [Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement - GOV.UK \(www.gov.uk\)](#)

³ [Lords Committee expresses significant concerns about UK-Rwanda asylum arrangement - Committees - UK Parliament](#)

⁴ [Memorandum of Understanding between the government of the United Kingdom of Great Britain and Northern Ireland and the government of the Republic of Rwanda for the provision of an asylum partnership arrangement](#)

⁵ For a detailed analysis of those concerns, see Helen Bamber Foundation and Asylum Aid, [Evidence to the House of Lords International Agreements Committee on the UK-Rwanda Memorandum of Understanding](#)

⁶ *MSS v Belgium & Greece (GC)* 30696/09, 21.1.2011, para 220

⁷ Medical Justice, [Who's Paying The Price? - Report Released - Medical Justice](#)

asylum seekers to a country with which they have no prior connection is humiliating and shows a lack of respect for their human dignity.

Legal aid, accommodation, and subsistence

Is the support available to asylum seekers under the legal aid, accommodation, and subsistence rules compliant with the UK's human rights obligations?

Legal aid

7. We know that without access to good legal representation, many survivors will be unable to properly put their case for protection. However, the very low rates paid for asylum advice and representation and the failure to increase the rates over the past two decades, as well as the increasing burden of bureaucracy placed on legal aid providers, has resulted in the decimation of the legal aid sector. At Asylum Aid, we are acutely aware that we can only ever meet a fraction of the need for our expert legal representation because of the lack of capacity in the immigration legal aid sector, particularly for the more complex cases in which we specialise such as those involving survivors of torture and trafficking, unaccompanied children, and stateless people. Recent research has showed that half of asylum applicants are unable to access legal aid representation.⁸ This is reflected in our day to day experience of people contacting us desperately seeking legal representation, only a fraction of whom are we able to help. This has got tangibly worse in recent months. The crisis in legal aid leaves survivors without access to lawyers equipped to work on their cases, undermining their right to access to justice at common law and the procedural obligations under Articles 3, 4 and 8 of the ECHR.

Accommodation

8. Over the last 12 months Asylum Aid's welfare advice team have been assisting people seeking asylum accommodated by the Home Office in Westminster in so-called "hotels". These include families with young children as well as single adults. We have also encountered pregnant and nursing mothers, and people with significant medical needs, some of which may require a special diet. They are provided with full-board accommodation and just £8 per week to meet their other essential living needs. However, the food provided in the hotels is of very poor quality and with little variety. It is frequently not suitable for young children from different cultures who will find it difficult to adapt to a different diet. The families have no access to cooking facilities and with only £8 per week are unable to purchase alternative food. We refer them to local food banks where possible, but it is difficult for people to make use of this without access to cooking facilities. Local food banks and other charities are overwhelmed with responding to the cost of living crisis already and cannot shoulder this additional burden. The families are also unable to purchase suitable clothing for the climate or to replace clothing as children

⁸ Jo Wilding, [New Freedom of Information data indicates half of asylum applicants are unable to access legal aid representation - Refugee Law Initiative Blog](#), November 2022

are growing. There are very few charities in Westminster offering support with clothing. They are spending many months accommodated in this situation and are growing increasingly desperate. This situation is not compatible with asylum seekers' rights or their human dignity.

Nationality and Borders Act 2022

To what extent has the enactment of the Nationality and Borders Act 2022 had an impact on the human rights of asylum seekers?

9. The Nationality and Borders Act 2022 (NABA) has introduced into law two processes that will only serve to worsen existing backlog and delays in the asylum process, with a significant impact on the physical and mental health of people seeking asylum and their access to justice. Under NABA, the Home Office, if it decides a person has travelled through a 'safe country' on their way to the UK, may consider an asylum claim 'inadmissible' and try to send someone to a different country. This process is in part due to the UK's withdrawal from the 'Dublin III' scheme, which allowed the UK to send asylum seekers who had passed through a safe third EU state back to have their claim processed there. However, since the inadmissibility rules were introduced in January 2021, 9,772 individuals have been admitted into the UK asylum process having previously received a 'Notice of Intent' of removal because the Government is not actually able to send them anywhere. They have therefore simply had their claim unnecessarily delayed by an additional six months.⁹
10. Under the new 'differentiation' scheme, the Home Office must also now make *another* decision at the end of the process as to whether someone is a group 1 or group 2 refugee (following their recognising the individual as a refugee) depending on how they entered the country. This decision then opens the door to granting those identified as 'group 2' refugees a shorter period of 'temporary' refugee permission to stay, restricting their rights to family reunion, and potentially preventing recourse to public funds. Group 2 refugees are not on a route to settlement and will have to renew their leave every 30 months for at least 10 years. Given the very limited availability of safe and legal routes for refugees to arrive in the UK, this scheme risks leaving a large number of refugees with no stability and living with constant insecurity and fear of removal.
11. The backlog in cases awaiting an initial decision is already at a record high, with 143,377 people waiting for an outcome on their initial claim for asylum at the end of September 2022 – an increase of 21,164 people since the end of June 2022.¹⁰ This backlog has serious impacts for the human rights of asylum seekers, leaving them in limbo for months

⁹ Home Office [Immigration Statistics for year ending September 2022: How many people do we grant protection to](#)

¹⁰ Freedom of Information Response 71905: [Annex-A-Data-for-FOI-71905](#).

or years, surviving in poor quality accommodation with inadequate subsistence support and without the right to work or to family reunion. It also impacts on the capacity of legal aid provision since it limits providers' ability to take on additional cases. This is further exacerbated by the lack of any realistic timescale for decisions to be taken, leaving asylum seekers in a state of constant uncertainty, and meaning providers must be prepared to receive decisions on clients' cases at any time over a period of months or years, further impacting their ability to take on additional casework.

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