

WRITTEN EVIDENCE FROM NATIONAL AIDS TRUST (RWA0021)

Introduction

1. National AIDS Trust (NAT) is the UK's HIV rights charity. We work to stop HIV from standing in the way of health, dignity and equality, and to end new HIV transmissions.
2. Migrant communities are a key population who are disproportionately diagnosed with HIV in the UK. In 2022, people born abroad accounted for 56% of new HIV diagnosis.¹ In previous consultations, NAT has highlighted that hostile environment legislation creates barriers to asylum seekers accessing the life-saving healthcare needed to prevent and manage HIV. The recent UK Government HIV Action Plan monitoring and evaluation framework report highlights the importance of tackling inequalities.² The report notes that 'supporting populations for whom health inequalities exist' is 'central to ensuring further progress is made in meeting the ambitions to end HIV transmission, AIDS diagnoses, and HIV related and preventable deaths.'³ The Safety of Rwanda Bill ('the Bill') risks contributing further to the fear migrants have of the hostile environment, negatively impacting their mental and physical health, and in turn, the UK Government's HIV response.
3. Therefore, we welcome the opportunity to comment on the Bill, given its consequences for health-related and broader rights of communities that are disproportionately impacted by HIV.

Question 1: Does the requirement to conclusively treat Rwanda as a safe country comply with the UK's human rights obligations, including in particular the prohibition of refoulement and the prohibition of inhuman or degrading treatment under Article 3 ECHR?

1. By treating Rwanda as a safe country in most circumstances, the Bill does not give weight to the impact of removal on LGBTQIA+ asylum seekers. In Rwanda, trans women risk facing degrading treatment in breach of their Article 3 rights.⁴ Gay and bisexual men in Rwanda have also seen similar targeted attacks based on the sexual orientation.⁵
2. Furthermore, there is limited legislative protections available to LGBTQIA+ people in Rwanda which adds to the vulnerability of LGBTQIA+ migrants faced with removal.⁶ By placing LGBTQIA+ migrants in a country where they risk violence and ostracisation, the Government would be failing its human rights

¹ HIV: annual data tables, UK Health Security Agency: <https://www.gov.uk/government/statistics/hiv-annual-data-tables>

² HIV Action Plan monitoring and evaluation framework 2023 report, UK Health Security Agency: <https://www.gov.uk/government/publications/hiv-monitoring-and-evaluation-framework/hiv-action-plan-monitoring-and-evaluation-framework-2023-report>

³ Ibid.

⁴ Equality Impact Assessment - Migration and Economic Development Partnership with Rwanda, Home Office (2022):

https://assets.publishing.service.gov.uk/media/62e0012ce90e0766b39e3b0b/Equalities_Impact_Assessment_MEDP_Rwanda_July_2022.pdf

⁵ 'Rwanda: Round Ups-Linked to Commonwealth Meeting' - Human Rights Watch, September 2021:

<https://www.hrw.org/news/2021/09/27/rwanda-round-ups-linked-commonwealth-meeting>

⁶ LGBT Rights in Rwanda - Equaldex: <https://www.equaldex.com/region/rwanda>

obligations to protect them against discrimination based on their identity and status under Art 14 European Convention of Human Rights (ECHR).

3. The plan to consider the impact on asylum seekers under protected characteristics only on a case-by-case basis is concerning. This approach does not engrain automatic protection for LGBTQIA+ asylum seekers who have been shown to be susceptible to harm in Rwanda.

Instead the Bill places the burden on asylum seekers to prove they are at risk of ‘serious and irreversible harm’ even though there is evidence of harm experienced by their community.

4. Fear of homophobia and transphobia result in marginalised groups being less likely to engage with healthcare providers. Without consistent access to healthcare, asylum seekers living with HIV risk increased rates of morbidity and mortality. As gay and bisexual men and transgender people are key populations impacted by HIV, removal to Rwanda is very likely to make them hesitant to engage with HIV testing and support services. This will increase their risk of HIV transmission and worsen their health outcomes. Therefore, it is also contrary to the UK’s public health commitments to deem Rwanda a safe country for LGBTQIA+ asylum seekers as their health will be negatively impacted by removal.
5. HIV is protected as a disability under the Equality Act 2010 and is a long term condition that requires regular engagement with healthcare providers in to manage it. However, the Illegal Migration Act 2023 clause 39(5)(c) states that harm resulting from not accessing the same standard of care in the third party country was not grounds for a suspensive claim. This contradicts the precedent that the UK Supreme Court set: that a person’s removal can be prevented where it meant they could not access appropriate HIV medication as this would breach Article 3 ECHR as it warrants "inhuman or degrading treatment".⁷ In cases where people may not be able to access their specific antiretroviral medication in Rwanda, being off medication for a even short time period could have a negative impact on their physical health. Additionally, dispersal away from the area where they currently receive treatment could severely disrupt adherence to treatment especially where there is no treatment plan established for their next location.⁸ The increase in mental health problems experienced by asylum seekers when given notices of removal to Rwanda⁹ also causes great concern as poor mental health can make treatment adherence and health management difficult. The significant barriers to accessing mental health care in Rwanda¹⁰ may prevent people living with HIV from accessing necessary holistic support.
1. By not establishing a system that gives weight to the needs of those with long term health conditions, migrants living with HIV might be deemed fit for removal with limited opportunities to contest these decisions. The Government risks breaching migrants’ Article 12 right ‘to the enjoyment of the highest attainable standard of

⁷ What does the AM (Zimbabwe) case mean for people living with HIV at risk of removal? (2021), National AIDS Trust: <https://www.nat.org.uk/sites/default/files/publications/Briefing%20paper%20AM%20Zimbabwe.pdf>

⁸⁸ ‘The dispersal process for asylum seekers living with HIV’ (2014), National AIDS Trust: https://www.nat.org.uk/sites/default/files/online-guides/Sept_2014_Dispersal_HIV.pdf

⁹ ‘Who’s Paying the Price?’ (2022), Medical Justice: https://medicaljustice.org.uk/wp-content/uploads/2022/08/2022_WhosPayingThePrice_Final.pdf

¹⁰ Muhorakeye O and Biracyaza E (2021) Exploring Barriers to Mental Health Services Utilization at Kabutare District Hospital of Rwanda: Perspectives From Patients. *Front. Psychol.* 12:638377. doi: 10.3389/fpsyg.2021.638377

physical and mental health' under International Covenant on Economic, Social, and Cultural Rights (ICESCR).

2. The Government should clarify how they will ensure safety for asylum seekers who fall under protected characteristics to fulfil their human rights obligations. Asylum seekers living with HIV have additional support needs and need further protection to ensure they do not experience disproportionate levels of harm and violence.

Question 4: Does the way in which the Bill deals with applications for interim remedies from domestic courts, including by allowing them only in narrow circumstances, comply with the UK's human rights obligations?

1. The Bill's provisions for applications for interim remedies from domestic courts are in our view too narrow, and not in keeping with the UK's human rights obligations. Sections 6 – 9 of the Human Rights Act 1998 (HRA) are disapplied by this legislation, which demonstrates that the Government intends to restrict means for applying a remedy in domestic courts to individuals who are to be removed to Rwanda to have their asylum claim assessed.
2. By actively disappling parts of the HRA, the Government is demonstrating they wish to put aside the UK's human rights obligations in domestic law in this Bill. In our view, the threshold in the Bill for "serious and irreversible harm" may apply differently to asylum seekers living with HIV compared to those not living with HIV, and those needs are more likely to need assessment by a court. For example, asylum seekers living with HIV are more likely than other asylum seekers to belong to groups who could be at risk in Rwanda, such as gay & bisexual men, or transgender people (see above). They are also more likely to be at risk of developing physical health problems if their HIV treatment is disrupted following removal to Rwanda, than asylum seekers not living with HIV.
3. By preventing many asylum seekers living with HIV from accessing remedies in domestic courts, this legislation could risk asylum seekers living with HIV disproportionately. For this reason, we believe this section of the Bill does not comply with the UK's human rights obligations, as if did so, it would not disapply sections of the HRA.

Question 5: Is expressly stating that it is for Ministers to decide whether to comply with interim measures issued by the European Court of Human Rights, and prohibiting courts or tribunals from having regard to them, consistent with the UK's obligations under the ECHR? Would deciding not to comply with interim measures put the UK in breach of the ECHR?

1. Only allowing Ministers to decide whether to comply with interim measures issued by the European Court of Human Rights (ECtHR), and not allowing courts and tribunals to do so, does not in our view allow the UK to meet its obligations under the ECHR. The UK has a long history and tradition of respecting the jurisdiction of the European Court, with a 96% compliance rate¹¹ with ECtHR judgements. To begin openly ignoring any interim measures would demonstrate a less robust approach to human rights and would be unfavourable.

¹¹ 'The UK's defiance of the European Court of Human Rights' – The Constitution Unit, June 2023: <https://constitution-unit.com/2023/06/01/the-uks-defiance-of-the-european-court-of-human-rights/>

2. There is clearly precedent in the UK that courts and tribunals should have regard to interim measures from the European Court of Human Rights (ECtHR). Choosing not to comply with interim measures will make us have a weaker standing on human rights internationally. People living with HIV in the UK deserve to have the confidence that the Government will respect the judgements and any interim measures of the ECtHR to protect their rights, as they have done in the past. If the Government believed this Bill complied with our international human rights obligations, they would not make provision to ignore interim measures from the ECtHR.

Question 7: Does the Bill give rise to any other significant human rights concerns?

1. National AIDS Trust considers the intended disapplication of several sections of the HRA very troubling concerning the rights of asylum seekers living with HIV.
2. Disapplication of Section 2 of the HRA could lead to discrimination against asylum seekers living with HIV based purely on their HIV status within the asylum decisions process. The ECtHR has made significant judgements to prevent discrimination against migrants living with HIV (e.g. Kiyutin vs. Russia (2011)¹²). Section 3(3) of this Bill would disapply similar future ECtHR judgements in the UK that rule on the safety of Rwanda for people living with HIV.
3. The HRA is a vital safeguard in domestic law, protecting individuals from potential human rights abuses by the state. Disapplying any part of the HRA, to any group, is troubling, as it rejects the principle that human rights are universal. We therefore have serious concerns about the content of the Safety of Rwanda Bill, which signals to not agree with this fundamental principle of human rights law.

¹² ECHR judgement: Kiyutin vs. Russia (2011). Accessed at:
<https://hudoc.echr.coe.int/Eng#%7B%22itemid%22:%5B%22001-103904%22%5D%7D>