

## SUBMISSION FROM REDRESS TO THE JOINT COMMITTEE ON HUMAN RIGHTS

### Legislative Scrutiny: Illegal Migration Bill– Response to Questions 16, 17 and 19

*Summary: The Illegal Migration Bill will lead to the UK violating its obligations under the UN Convention against Torture*

#### The Bill will disproportionately impact survivors of torture

1. The majority of individuals who seek asylum in the UK are fleeing persecution. In 2021, the [share of asylum applicants](#) receiving a grant of protection at their initial decision rose to 72%. That same year, [49% of appeals](#) were resolved in favour of the asylum-seeker, indicating that protection was granted for around 85% of asylum applicants overall.
2. A significant proportion of asylum-seekers in the UK are also likely to be survivors of torture. [Research suggests](#) that at least 27% of refugees and asylum-seekers in high-income countries are likely to have experienced torture. In the UK, this proportion is likely to be higher, as the primary countries of origin of asylum-seekers are overwhelmingly places where torture is particularly prevalent. For example, in 2021, the [top 5 countries of origin](#) of people who applied for asylum in the UK were Iran, Iraq, Eritrea, Albania, and Syria. That same year, [Iran, Iraq, and Eritrea](#) were amongst the top 10 countries of origin for people receiving torture rehabilitation services from Freedom from Torture in the UK.
3. The [UNHCR has stated](#) that the Bill (if passed) would violate the UK's obligations under the 1951 Refugee Convention. This briefing will focus on how the Bill also violates the UK's obligations under both the UN Convention Against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR).

#### The Bill violates the principle of *non-refoulement* to torture

4. UNCAT Art. 3(1) states as follows: “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture” (see also [CCPR General Comment No. 20, §9](#)). The Committee against Torture (CAT) defines this *non-refoulement* obligation as prohibiting ‘deportation’ to any State where the individual would be exposed to torture (including, but not limited to, a torture survivor’s country of origin) (see [General Comment No. 4, §§11, 28](#)).
5. Under this Bill, individuals fleeing torture will not be allowed to claim asylum if they traveled through another country on their way to the UK (Clause 4). They, like all other asylum-seekers, will be subject to removal “as soon as is reasonably practicable” after their arrival in the UK (Clause 5(1)). The only way they can challenge the place to where they will be removed is through a ‘suspensive claim’ that they must file within seven days of receiving their removal notice (Clauses 37, 40, and 41). Any appeals are expressly prohibited (Clause 39), and although judicial review proceedings are not

prohibited in the same way, the Bill provides that such proceedings should not prevent someone being removed from the UK.

6. The scheme provided for in the Bill, and the speed of its intended operation, is not likely to allow a survivor of torture to demonstrate that they have suffered torture, or that they are vulnerable as a result, nor does it enable the UK adequately to assess their risk of torture in a new country:
  - During the seven days asylum-seekers would have to challenge their removal decision (Clauses 40 and 41), they would likely be detained (Clause 12) and the vast majority would likely find it difficult or impossible either to access a lawyer or to obtain a medico-legal report to confirm their status as a survivor of torture.
  - Asylum-seekers from outside the EU and EU-adjacent countries (listed in section 80AA of the Nationality, Immigration and Asylum Act 2002) would be at a particular disadvantage during this short time period, as they could be assigned to a country that they know nothing about (Clause 5(9)).
  - In seven days, they would have to determine whether they would be at risk of harm in their assigned country, an onerous burden for individuals who would already likely lack legal advice or access to relevant information (see the UNHCR [analysis](#) of the UK-Rwanda transfer agreement).
  - In addition, the Bill would only require the government to consider assurances given by the country specified in the removal notice, skewing its analysis of the country's safety with 'diplomatic assurances,' a practice which the CAT has previously cautioned against (see [General Comment No. 4](#), §20).
7. International human rights law related to the ban on torture makes it clear that:
  - a) The absolute prohibition of *refoulement* to torture is even stronger than that provided for in the Refugee Convention, as it means that individuals cannot be returned or expelled to torture even when they might not otherwise qualify for refugee status under the 1951 Convention (see [report of the UN Special Rapporteur on torture](#), A/HRC/37/50, §12).
  - b) The *non-refoulement* obligation exists whenever there are 'substantial grounds' for believing the person concerned would be in danger of being subjected to torture in a State to which they are facing deportation, either as an individual or as a member of a group, and this obligation is absolute (see [CAT General Comment No. 4, §9](#)).
  - c) This obligation also means that the person at risk should never be deported to another State from which the person may subsequently face deportation to a third State where there are substantial grounds for believing that the person would be in danger of being subject to torture (i.e. indirect *refoulement*) (see [CAT General Comment No. 4, §12](#); CAT [General Comment No. 1](#), §2; CCPR [General Comment No. 31, §12](#)). UK judges have previously recognised that the duty of *non-refoulement* applies to both direct and indirect *refoulement* (*Husain Ibrahim and Mohamed Abasi v. The Secretary of State for the Home Department* [2016] EWHC 2049, §16).
  - d) This obligation also means that State parties should not adopt policies, such as refusing to process claims for asylum, that would compel persons in need of

protection under UNCAT to ‘voluntarily’ return to their country of origin at the risk of being subject to torture (see [CAT General Comment No. 4](#), §14).

- e) Finally, this obligation means that individuals should not be removed to a State where adequate medical services for their rehabilitation are not available or guaranteed (see UNCAT Art. 14; [CAT General Comment No. 4](#), §22).
8. In order to ensure that the principle of *non-refoulement* is upheld, States should ensure that asylum cases are examined individually, provide the asylum-seeker with access to a lawyer, ensure the asylum-seeker has access to an interpreter during their administrative or judicial procedures, refer the asylum-seeker alleging torture to an independent medical examination in accordance with the Istanbul Protocol, and provide for the right of appeal against a deportation order to an independent administrative or judicial body within a reasonable period of time from the notification of that order and with suspensive effect (see [CAT General Comment No. 4](#), §18).
9. **In breach of these requirements under international law against torture, the Bill would inevitably:**
- a) **result in survivors of torture being either returned directly or indirectly to their country of origin or sent to another country, regardless of their risk of being subject to torture there; and**
  - b) **fail to provide survivors of torture with these procedural guarantees which would enable their torture to be taken into account.**
10. Certain groups of torture survivors will be particularly vulnerable to *refoulement* to torture because of the Bill’s extensive Schedule of ‘safe countries’ where individuals with protection claims could be sent. To offer one of many possible examples, LGBTIQ+ torture survivors could be sent to the ‘safe country’ of Nigeria, a country from which asylum claims on the basis of persecution related to sexual orientation had a [70% grant rate](#) in the UK in 2021 (suggesting that the Home Office recognizes a legitimate risk of persecution of LGBTIQ+ individuals in Nigeria). The Bill’s Schedule of ‘safe countries’ lists Nigeria as a safe country for all men (mentioning no exception for gay or bisexual men).
11. In addition, all survivors of torture will be at risk of being sent to Rwanda, the only country on the ‘safe countries’ list with which a transfer agreement currently exists. Individuals transferred to Rwanda are at [significant risk](#) of being ill-treated if they protest their conditions in the country, or, if they are LGBTIQ+ persons, subject to abuses and violence which will [not receive an adequate response](#).

**The Bill subjects survivors of torture to detention, and prevents them from realising their right to redress**

12. The Bill provides that asylum-seekers may be detained until their removal, and that the Home Secretary (rather than the courts) shall determine whether the detention has been for a ‘reasonable period of time’ (Clauses 11-13). No exception is made for survivors of torture. However, according to the CAT, “detention should always be an exceptional measure based on an individual assessment and subject to regular review” (see [CAT General Comment No. 4](#), §12; CAT/C/GBR/CO/5, §20).
13. **The Bill would make detention inevitable and lengthy detention very likely for survivors of torture.**

14. It is well-established that detaining survivors of torture risks their re-traumatisation, and could itself amount to cruel, inhuman or degrading treatment (as was the case in [Australia's use of offshore detention facilities](#)). [Survivors of torture in detention often develop depression, anxiety, and PTSD](#).
15. The Home Office currently has a set of safeguards to ensure that survivors of torture are not detained (although these have been repeatedly [criticised](#) as "ineffective"). However, despite the fact that the use of immigration detention under the Bill would become routine, the Bill contains no reference to any safeguarding for survivors of torture.
16. In addition, there is a high probability that survivors of torture will be detained for lengthy periods, given that (a) Rwanda (the only State with an existing agreement with the UK) has agreed to take only 1,000 asylum-seekers over a five year period, and (b) the Home Office tends to take many months to make decisions on regular asylum claims. Indeed, there is no maximum length of detention provided for in the Bill, and any decision on detention "is final and is not liable to be questioned or set aside in any court", save where the decision is made in bad faith or so procedurally defective as to be a fundamental breach of justice (Clause 13(2) and (4)).
17. The CAT has raised the issue of indefinite immigration detention in the UK multiple times (most recently in this [List of Issues](#) at §15). In a [report](#) to the Committee (at pp27-28), CSOs (including REDRESS) called for the UK to impose a statutory time limit on immigration detention and to ensure that it was used only as a measure of last resort. The JCHR has previously made [similar recommendations](#).
18. UNCAT Art. 14 states that, "*Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.*" This obligation extends to all individuals within a State's territory, including asylum-seekers who are entitled to seek redress and receive rehabilitation for torture they experienced in their country of origin (see [CAT General Comment No. 3, §32](#)). In order to be able to enjoy their rights to redress, protection and rehabilitation, torture survivors should be identified as early as possible (see [OHCHR Torture Victims in the Context of Migration, pp16-17](#)). Under the Bill, there is no procedure for identifying survivors of torture before they are detained, and the right to redress and rehabilitation is fundamentally undermined by their inability to file a protection claim.

### About REDRESS

[REDRESS](#) is an international human rights NGO based in the UK with a mandate to deliver justice and reparation for survivors of torture, challenge impunity for perpetrators, and advocate for legal and policy reforms to combat torture.