



THE ILLEGAL MIGRATION BILL

Undermining the UK's responsibilities to prevent torture and protect survivors of torture

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REDRESS

Ending torture, seeking justice for survivors

Introduction

The Illegal Migration Bill would not only violate international refugee law, but it would undermine the foundations of the global anti-torture regime. Under the UN Convention Against Torture (UNCAT), which the UK ratified in 1988, States Parties must not send individuals to places where they would be in danger of experiencing torture, and they must provide redress to

torture survivors. In its current form, despite the Government's proposed amendments introduced in April 2023, the Illegal Migration Bill threatens to cause the UK to violate both of these UNCAT provisions. In doing so, the UK would weaken one of the key planks of international law focused specifically on protecting survivors of torture.

What is the Illegal Migration Bill?

The Illegal Migration Bill is intended to 'prevent and deter unlawful migration' (Clause 1(1)). The Bill requires that the Secretary of State remove any adults from the UK who arrived without legal documentation after 7 March 2023, and prevents anyone in this category from claiming asylum if they did not come 'directly' to the UK (i.e. if they passed through a safe third country) (Clause 2).

Individuals targeted for removal by this Bill are either deported to their country of origin, their country of embarkation for the UK, or a country where they will be admitted (e.g. a country with which the UK has a transfer agreement) (Clause 5). Prior to deportation, individuals can be detained for any period of time deemed 'reasonably necessary' by the Secretary of State (Clause 12).

How will the Bill impact the human rights of survivors of torture?

The majority of individuals who seek asylum in the UK are fleeing persecution. For example, 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.

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, [either in their countries of origin or in the course of their dangerous journeys to safety](#). 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 top countries of origin for people receiving torture rehabilitation services from Freedom from Torture in the UK.

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 would also violate the UK's obligations under both the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR).

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

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](#)).

Under this Bill, individuals fleeing persecution by torture will not be allowed to claim asylum as long as 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)). No protection or human rights claim will be deemed admissible, and there will be no right of appeal for it to be heard, no matter how strong it might be (Clause 4(4)). As a result, the only way individuals can avoid being removed from the UK is through a ‘serious harm suspensive claim’ or a ‘factual suspensive claim’ that they must file within seven days of receiving their removal notice (Clauses 37, 40, and 41).

A ‘serious harm suspensive claim’ is made on the basis that the individual will be subject to serious harm if they are removed to the country specified in their third country removal notice, while a ‘factual suspensive claim’ is made on the basis that the Secretary of State made a mistake of fact in determining that the person met the removal conditions (Clause 37). Although the Government has proposed a definition of ‘serious harm’ that includes torture and inhuman or degrading treatment or punishment (Amendment NC17), the procedures for determining what ‘serious harm’ the migrant might face upon removal are wholly inadequate.

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:

- a. 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 therefore likely find it difficult or impossible to access a lawyer or to obtain an Istanbul Protocol-compliant

medico-legal report to confirm their status as a survivor of torture (Clause 12).¹

- b. Asylum-seekers will be assigned to third countries based solely on the presence of transfer agreements between other States and the UK, meaning that they could easily be assigned to States that they know nothing about (Clause 5). This arbitrary selection of transfer destinations will make it very difficult for asylum-seekers to gather sufficient evidence on how their particular vulnerabilities might put them at risk of torture in the transfer destination, undermining their ability to use the ‘suspensive claim’ procedure.
- c. 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 statement](#) on the UK-Rwanda transfer agreement).
- d. 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 Committee has previously cautioned against (see [General Comment No. 4](#), §20).

International human rights law 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 (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 Ibrahimi 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, like 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 Art. 14 and [CAT General Comment No. 4](#), §22).

¹ Although the Government’s proposed amendment NC20 now provides for civil legal aid to be available to individuals challenging their removal orders under the Illegal Migration Bill, the amendment provides no information about how, in practice, detained individuals will be able to access legal advice (and civil legal aid) when they face removal seven days after notification of removal.

In order to ensure that the principle of *non-refoulement* is followed, States should ensure that cases are examined individually, provide the person concerned 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).

In breach of these requirements under the international law against torture, the Bill would inevitably:

- a. **result in some survivors of torture being either returned directly or indirectly to their country of origin, or sent to another unsafe country, regardless of their risk of being subjected to torture there; and**
- b. **fail to provide survivors of torture with the procedural guarantees which would enable their experience of torture to be taken into account.**

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).

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. Rwanda has a dubious history regarding their provision for asylum-seekers deported from other countries, for example, when Sudanese and Eritrean refugees from Israel were re-located there between 2013 and 2018, but then [rapidly deported](#) from Rwanda. 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 violates the principle of *non-refoulement* to torture

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).

The Bill would make detention of survivors of torture inevitable and lengthy detention very likely.

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.](#)

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.

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 commonly takes 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)).

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 CAT (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](#).

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.

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