

## Call for evidence by Human Rights (Joint Committee): Legislative Scrutiny: Illegal Migration Bill Response by Just Fair

**March 2023**

### Introduction

Just Fair<sup>1</sup> is a UK charity that is working to realise a fairer and more just society by monitoring and advocating for economic, social, and cultural rights (ESCR) in the UK.

We welcome this opportunity to respond to the call for evidence by the Human Rights (Joint Committee) on Bill 262 (Illegal Migration Bill).

We support submissions to this call for evidence from organisations including Liberty and René Cassin, which deal authoritatively with many of the questions the Committee has posed, notably the human rights obligations which are currently incorporated into our domestic legal order in the United Kingdom.

This submission therefore will deal with other human rights obligations pertaining to the UK, which while legally binding due to ratification by the UK, are not yet incorporated into our domestic laws.

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<sup>1</sup> <https://justfair.org.uk/>

Are there any other human rights considerations arising from this Bill that you want to bring to the attention of the Committee?

In addition to the European Convention on Human Rights, the Government of the United Kingdom has signed, ratified, and so agreed to be legally bound by a number of international human rights treaties, including seven of the nine human rights treaties of the United Nations.<sup>2</sup> By ratifying these pieces of international human rights law, the UK Government has created legally binding obligations to respect, protect and fulfil the rights in the Covenants and Conventions, and to do so on the basis of non-discrimination. The UK Government also ratified the [1951 Convention relating to the Status of Refugees](#) (The Refugee Convention) in 1954.

### **The Universal Periodic Review**

The record of the UK in relation to its human rights obligations and commitments was recently reviewed by other members and observer states of the UN Human Rights Council through the Universal Periodic Review on 10 November 2022. Examining the issues raised in this review give us a crucial insight into how the actions of the UK Government in relation to human rights are viewed by other nations across the world.

[During the review](#), over 20 specific recommendations were made in relation to the treatment of refugees and those seeking asylum by the United Kingdom.<sup>3</sup> The recommendations included issues

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<sup>2</sup> [International Convention on the Elimination of All Forms of Racial Discrimination](#) (Ratification 1969)  
[International Covenant on Economic, Social and Cultural Rights](#) (Ratification 1976)  
[International Covenant on Civil and Political Rights](#) (Ratification 1976)  
[Convention on the Elimination of All Forms of Discrimination against Women](#) (Ratification 1986)  
[Convention against Torture and Other Cruel, Inhuman or Degrading Treatment](#) (Ratification 1988)  
[Convention on the Rights of the Child](#) (Ratification 1991)  
[International Convention on the Rights of Persons with Disabilities](#) (Ratification 2009)

<sup>3</sup> 43.50 Ensure that the current level of human rights protection provided by the Human Rights Act 1998, including the rights of asylum-seekers, is maintained under any legislative reform (Canada);  
43.226 Establish a reasonable statutory time limit to the detention of asylum-seekers, which should be used as a measure of last resort, and make express provision for family reunification for any unaccompanied asylum-seeking children (Portugal);  
43.273 Revoke the parts of the Migration and Economic Development Partnership which do not comply with the 1951 Convention relating to the Status of Refugees, in particular the principle of non-refoulement (Netherlands);  
43.278 Uphold and strengthen the legal protection of the rights of asylum-seekers and all migrant workers in accordance with international law, including the 1951 Convention relating to the Status of Refugees (Uganda);  
43.280 Pursue the review of immigration legislation to include provisions facilitating family reunification for unaccompanied refugee children, with the best interests of the child as a primary consideration (Uruguay);  
43.281 Amend the immigration regulations to expressly provide for the family reunification of all unaccompanied asylum-seeking boys and girls (Argentina);  
43.282 Put an end to the violation of the rights of migrants and refugees (China);  
43.284 Expand the opportunities for migrants and asylum-seekers to obtain adequate legal advice before deciding on their applications (Iraq);  
43.286 Introduce a general statutory time limit on detention pending deportation (Germany);  
43.289 Improve humanitarian conditions in places of detention for asylum-seekers, in line with international human rights standards (Iraq);  
43.290 Halt its plans to transfer asylum-seekers to other territories (Islamic Republic of Iran);

such as ensuring unaccompanied asylum-seeking children have their family unification rights respected, the incompatibility of the Migration and Economic Development Partnership with Rwanda with the UK's obligations (including under the 1951 Refugee Convention), improving conditions of detention for those seeking asylum, and specifically respecting the principle of non-refoulement. These recommendations came from a diverse swathe of states across the globe including Canada, Philippines, Argentina, New Zealand, Egypt, Uganda, and Palestine.

## **The United Nations Committee on Economic, Social, and Cultural Rights (CESCR)**

In addition to being reviewed by states across the world through the Universal Periodic Review process, each of the seven UN human rights treaties mentioned above has a committee of experts which reviews the progress of each State party to the treaty in realising the rights therein. The United Kingdom is currently undergoing its seventh periodic review by CESCR, the Committee which oversees the [International Convention on Economic, Social, and Cultural Rights](#) (the Covenant).

In March 2023 this Committee published its first piece of work as part of this review, which is called the list of issues. The list of issues is a formal request by the Committee for more information on certain areas; either for clarification, or because there wasn't sufficient evidence in [the report](#) the UK Government sent to the Committee in 2022. It also highlights areas where the Committee is particularly concerned about the realisation of rights in a State party. The treatment of refugees and those seeking asylum was a key issue for the Committee as they considered how the UK Government is meeting its duty to ensure that rights are realised without discrimination (as per Article 2(2) of the Covenant).

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43.291 Ensure that the implementation of the Nationality and Borders Act is in line with international refugee and human rights conventions and that it does not undermine the protection of refugee and asylum rights (Sweden);

43.292 Stop plans to transfer asylum-seekers to other countries, in violation of international law (Egypt);

43.293 Amend asylum laws to explicitly provide for family reunification (Egypt);

43.294 Take adequate measures to ensure that the detention of asylum-seekers is used only as a measure of last resort and establish a maximum legal period for the detention of immigrants (Uruguay);

43.295 Uphold its obligations under 1951 Convention relating to the Status of Refugees and do not engage in any practice that has the effect of undermining the right to asylum in the United Kingdom (Türkiye);

43.296 Respect the principle of non-refoulement and prohibit collective expulsions (Tunisia);

43.297 Ensure that all refugees are not discriminated against on the grounds of their mode of arrival in the country (State of Palestine);

43.298 Establish an international refugee protection asylum-seeker system that is in conformity with international standards and conventions (Somalia);

43.299 Ensure that the Nationality and Borders Act is fully in line with the 1951 Convention relating to the Status of Refugee (Philippines);

43.300 Ensure that its treatment of asylum-seekers is consistent with its humanitarian responsibilities and commitments under international human rights law and international refugee law, in particular the 1951 Convention relating to the Status of Refugees, and with specific reference to the United Kingdom's offshore processing arrangement with Rwanda (New Zealand);

43.301 End the detention of asylum-seekers and ensure that no refugee is discriminated against on the basis of the manner in which they arrive in the country (Mexico);

43.302 Refrain from sending asylum-seekers to Rwanda and denounce the Asylum Partnership Agreement, which is in violation of international law and risks causing irreparable harm to those seeking international protection (Luxembourg).

They asked,

*“Please provide information on the applicability of the Convention relating to the Status of Refugees in all territories and jurisdictions of the State party. In this regard, please provide information on the measures taken to ensure that all persons applying for international protection are given access to fair and efficient asylum procedures, protection against refoulment and access to independent appeal mechanisms. Please provide up-to-date statistical information on the number of asylum requests filled and the number of asylum requests granted and rejected, including the grounds for rejection, for all jurisdictions of the State party over the last five years. Please also provide information on the average waiting time for the processing of asylum requests.”<sup>4</sup>*

This is significant intervention which illustrates that the current procedure for dealing with asylum claims is of particular interest to this committee of human rights experts. Current plans by the UK Government for reform through Bill 262, which, if enacted, will further weaken access to rights for those seeking asylum are likely to receive stark condemnation from CESCR.

### **UNHCR legal observation on Bill 262**

Another United Nations body that has been strong in its condemnation of UK actions with relation to refugees and those seeking asylum, this time with specific reference to Bill 262, is the United Nations High Commissioner for Refugees (UNHCR).

On 22 March 2023, the United Nations High Commissioner for Refugees (UNHCR) Representation for the United Kingdom provided its legal observations on the Bill in a thirty-five page document,<sup>5</sup> noting in particular:

- the Bill, if enacted, would breach the UK’s obligations under the Refugee Convention, the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention for the Reduction of Statelessness and international human rights law and would significantly undermine the international refugee protection system.
- the Bill is inconsistent with the UK’s obligations under the Refugee Convention as it effectively extinguishes the right of refugees to be recognised and protected in the UK, for all but a few. The reality is that for most asylum-seekers there are no safe and legal routes to enter the UK. Nothing in the Bill proposes the creation of any such ‘safe and legal’ routes.
- by seeking to close its borders to people fleeing persecution, and to require them to seek protection elsewhere, the UK would be retreating from the principles of international cooperation on which the global refugee system is based and acting inconsistently with the object and purpose of the Refugee Convention.
- those who meet the conditions for the asylum ban, including children and families, will be liable to detention in the UK for as long as the Secretary of State considers reasonable. Judicial oversight will be significantly curtailed, and statutory limits on the detention of children and pregnant people disapplied.
- those subject to removal can be sent to any country listed in the Bill as safe “in general” if they travelled from there or if there is “reason to believe” that they will be admitted there. The Secretary of State will not be required to assess whether removal would be safe or reasonable for a particular individual or whether they will be able to claim asylum there. The

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<sup>4</sup> Paragraph 10, List of issues in relation to the seventh periodic report of United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/Q/7, 16 March 2023, [available to download here](#).

<sup>5</sup> [UNHCR - UNHCR LEGAL OBSERVATIONS ON THE ILLEGAL MIGRATION BILL](#) 22 March 2023

duty placed on the SSHD to make arrangements to remove those subject to the asylum ban thus creates real and foreseeable risks of refoulement.

- the Bill would create a second list of safe countries whose citizens can be returned home without any consideration of their asylum or human rights claim, regardless of whether they are subject to the asylum ban.
- those whom the government cannot remove will be left in indefinite limbo in the UK.

We agree with the expert analysis of the UNHCR and note the concern about the impact Bill 262 would have on individuals impacted by its cruel policies, but also the impact the Bill would have on the wider international refugee protection system.

## Conclusion

You will have received submissions from many expert organisations which illustrate the ways in which Bill 262 breaches the UK's domestic human rights obligations. Just Fair is supportive of these submissions.

In addition, in this submission we have outlined some of the key ways in which Bill 262 represents a violation of the international human rights legal obligations which the UK voluntarily agreed to bind itself to. First and foremost, this Bill will violate the human rights of individual people. Often these people will be fleeing to the UK hoping for safety, but this Bill means they are likely only to be met with cruelty. The UNHCR also outlines how the Bill puts the international refugee protection system at risk. Through human rights review mechanisms, states across the world, and human rights experts have been highly critical of our treatment of refugees and those seeking asylum. Proceeding with this Bill will further harm the UK's international reputation as a leader in human rights.

## Further information and contact

Just Fair: [www.justfair.org.uk](http://www.justfair.org.uk)

Charity number: 1141484; Company number: 07394478

Helen Flynn, Head of Policy, Research and Campaigns

[helen.flynn@JustFair.org.uk](mailto:helen.flynn@JustFair.org.uk)