

1. Freedom from Torture makes this submission in connection with the fourth cycle Universal Periodic Review (UPR) of the United Kingdom (UK).
2. Freedom from Torture notes a marked decline in the human rights environment in the UK with a raft of proposed legislation and policies introduced by the UK government since the last cycle that undermine the UK's obligations under international law.

The situation for torture survivors in the asylum system

3. The vast majority of Freedom from Torture's clients are asylum seekers or refugees who have sought protection in the UK after torture in other countries. We receive approximately 1,000 referrals each year for clinical services including forensic documentation of physical and psychological evidence of torture, a wide range of therapies and practical support. In our experience, difficulties associated with the asylum system are a major impediment to rehabilitation. These difficulties range in nature and scope but encompass a politics of hostility, populist policy-making and operational failings.
4. The proposals in the Nationality and Borders Bill – currently going through parliament - constitute the greatest threat to the UK's asylum system in a generation. They will limit access to protection in the UK, criminalise people seeking safety, increase the risk of return to persecution, hold asylum seekers in a prolonged limbo, curtail the rights of recognised refugees, isolate refugees in harmful reception centres in the UK and send them offshore to remote detention centres for processing.
5. Many of the proposals in the Bill are based on the premise that "people should claim asylum in the first safe country they arrive in."ⁱ This principle is not found in the Refugee Convention and there is no such requirement under international law.ⁱⁱ On the contrary, in international law, the primary responsibility for identifying refugees and affording international protection rests with the State in which an asylum-seeker arrives and seeks that protection.ⁱⁱⁱ Requiring refugees to claim asylum in the first safe country they reach would undermine the global, humanitarian, and cooperative principles on which the refugee system is founded.
6. In seeking to penalise those who have arrived irregularly, 'stopped' in another country before arriving in the UK, or delayed their claim for asylum (under the proposed 'differentiation' policy) this Bill represents the biggest legal assault on international refugee law ever seen in the UK. It is a betrayal of the letter and spirit of the 1951 Refugee Convention to ensure that the impossibility of pre-authorised travel would be no barrier to accessing protection from persecution.
7. The Government insists that this Bill is compliant with the UK's international obligations but this has been refuted by, among others, legal experts^{iv}, the Office of the UN High Commissioner for Refugees,^v and the Office of the UN High Commissioner for Human Rights.^{vi} The Government then argued that it is for Parliament to interpret the Refugee Convention,^{vii} however the UK Parliament does not have the unilateral power to rewrite

international law in the way proposed. The House of Lords voted key provisions down, and one former Supreme Court judge described this as a “grotesque piece of legislation”, but those concerns were ignored.

8. Freedom from Torture has issued legal proceedings against the UK government for implementation of its policy of turning around small boats and diverting them from United Kingdom territorial waters into French territorial waters (commonly referred to as the “pushback” policy).
9. Pushbacks are known to endanger lives at sea. The operation of such a policy is particularly dangerous where it is used in respect of individuals in small boats in the English Channel – the world’s busiest shipping lane - where individuals are on small, unseaworthy vessels, in a busy shipping lane, often with rough waters, without appropriate life-saving equipment.
10. Operating a pushback policy breaches the 1951 Refugee Convention and articles 3 and 4 of the European Convention on Human Rights because it allows asylum seekers to be sent to a third country without any individual assessment of their potential entitlement to refugee status and/or their risk of being subjected to indirect *refoulement* and/or the risk of re-trafficking.
11. There is currently no legal basis in domestic law for this policy. However, the Nationality and Borders Bill seeks to give a statutory power to the Secretary of State to divert small boats out of United Kingdom territorial waters.
12. Since 2012, it has been an explicit aim of UK government immigration policy to create a ‘hostile environment’ for anybody unable to demonstrate their immigration status. The Windrush scandal emerged in 2017. Hundreds of Caribbean citizens, many of whom were from the ‘Windrush’ generation,^{viii} were wrongly detained, deported and denied legal rights. As the Caribbean was, at the time, part of the British Commonwealth, those who arrived were automatically British subjects and free to permanently live and work in the UK.
13. As an organisation working with people within the immigration and asylum system, we know that many of the problems highlighted by the Windrush scandal are systemic and impact on other cohorts of Home Office ‘service users’. Our 2019 report, *Lessons Not Learned*, found evidence of institutional failures in the Home Office asylum system dating back 15 years.^{ix} Our 2020 report, *Beyond Belief*, showed that the asylum interview continues to deny torture survivors the opportunity to give a full account and to enable the decision maker to make the right decision first time.^x There are individuals within the Home Office who want to build a ‘fairer, more compassionate Home Office’ but their efforts appear to be stymied by a persistent politics of hostility and dishonesty on the question of asylum.
14. The Government is pushing ahead – through the Nationality and Borders Bill - with an expansion of the hostile environment approach into the asylum system. This is despite recommendations by the Windrush Lessons Learned Review^{xi} and an assessment by the

Equality and Human Rights Commission's^{xii} which found that the Home Office failed to comply with the Public Sector Equality Duty when developing, implementing and monitoring the 'hostile environment' policy, Measures in the bill will accelerate the handling of asylum claims, reduce the weight given to expert evidence and deny applicants the procedural safeguards that should protect them against poor decision making should applicants fail to meet arbitrary deadlines for the presentation of the claim or supporting evidence. These measures are proposed to act as a deterrent to others who are considering coming to the UK irregularly to seek asylum.

15. The latest immigration statistics show a backlog of people waiting for an initial decision that stands at a staggering **100,564**.^{xiii} Nearly 62,000 of these individuals have been waiting more than six months. Meanwhile, the quality of asylum decision making continues to deteriorate. The proportion of asylum appeals allowed in the year ending December 2021 was 49% and has been increasing over the last decade. This means that the asylum appeal is a vital safeguard as the Government often gets the decision wrong the first time. In a recent inspection,^{xiv} the Independent Chief Inspector of Borders and Immigration criticised a culture of targets and disbelief that has driven down the quality of casework.
16. At the most basic level, the Home Office fails to meet its own standards - as set out in the department's Windrush Comprehensive Improvement Plan^{xv} - for engaging with civil society in the development of policy. The public consultation on the New Plan for Immigration^{xvi} was brief, full of factual distortions, lacked detail and did not conform to standards of impartiality, accuracy and quality required for a public consultation. The Government now refuses to publish the final reports of this consultation despite a complaint to the Information Commissioner.

The UK's domestic human rights architecture and access to justice

17. During the third UPR cycle in 2017, a number of states made recommendations to the UK to ensure that any proposed new 'Bill of Rights' did not weaken the human rights protections provided by the Human Rights Act.^{xvii} Unfortunately those recommendations have not been heeded by the UK government.
18. In December 2021 the UK government published its proposals to replace the Human Rights Act (HRA).^{xviii} It presented insufficient or flawed evidence of the need for these reforms which will dramatically weaken people's ability to hold the government and public authorities to account and to defend ourselves when the state violates our rights.
19. The net effect of the UK government proposals is to restrict the rights of some people, essentially providing the government of the day with the power to decide who deserves rights and who does not. Many of the proposed restrictions of rights are open-ended or vague, starting with certain groups, with no indication of where this would stop.
20. The Human Rights Act plays a vital role in making sure that people with protected characteristics such as disability (including mental and physical health problems), age, ethnicity and sexual orientation have the same rights as everyone. The undermining of the protections in the HRA - which the proposals made by the government seek to do -

will affect everyone, but will have a disproportionate effect on people with protected characteristics who may already encounter difficulties accessing their rights and justice.

21. It is well-known that people with protected characteristics already experience barriers to accessing justice, especially in the aftermath of legal aid reforms^{xix} and new barriers, in the form of these reforms, will only entrench these problems. These barriers will prevent people with protected characteristics – including children - from challenging decisions to split families. They will prevent those with a disability – including many of Freedom from Torture’s clients who have diagnosed Post-Traumatic Stress Disorder (PTSD), anxiety and depression – from challenging a failure by local health and social care services to provide appropriate care. Lack of effective access to justice undermines the rule of law and good administration and governance, and has a severe impact on people seeking to assert their rights.
22. Many of the proposals in the HRA reform are likely to cause significant harm to people seeking refugee protection. On top of this, we see no evidence of adequate safeguards or protections to prevent people with protected characteristics from being disproportionately affected. There are no draft Equality Impact Assessments to engage with and the Government has not provided any information regarding the consideration they have given to equality impact. We have little confidence that the Home Office has coherent and accessible data on different protected characteristics in the asylum system on which to base an assessment of the impact of the HRA reforms on those seeking protection in the UK.
23. Any attempt to water down the UK’s responsibility over people outside their territorial boundaries - as proposed by the UK government - must be seen alongside proposals in the Nationality and Borders Bill, currently going through Parliament, to provide for offshore processing of asylum claims. The proposal to limit the territorial reach of HRA would serve to remove judicial oversight of the acts of government officials abroad – including the implementation of offshore processing - and the ability of individuals to enforce their rights guaranteed under the European Convention on Human Rights. Should the standards above not be met, there would be no domestic remedy for those subject to the process.
24. Freedom from Torture finds the framing presented by the Government - that human rights claims “frustrate” deportations - extraordinary. The ability to claim one’s most fundamental rights - including the right not to be subject to torture, the right to liberty and security, the right to a fair trial, or one’s right to private and family life - is of paramount importance. The Government presents an unpersuasive argument for the need for the proposed reforms and little to no evidence to support the assertion that deportations of foreign national offenders held to be in the public interest, are frustrated by human rights claims. The proposals appear to target an issue that was addressed through the 2014 Immigration Act reforms. In reality, it is now incredibly difficult to successfully challenge deportations on human rights grounds outside of exceptional circumstances.
25. The framing of the European Convention on Human Rights and the Human Rights Act as

“impediments” in the context of migration is problematic. The ‘impediments’ referenced are, in fact, proper legal constraints on State action which exist in order to ensure respect for fundamental rights and compliance with the UK’s international obligations. A key right that the Government engages with when responding to migration across the English Channel is the right to life (Article 2). The right to life is our most basic right and cannot be dismissed as an ‘impediment’. Any attempt by the Government to change human-rights law so as to limit duties to protect the right to life towards refugees and migrants crossing the channel would endanger the protections of the right to life for us all.

26. Not only do the proposals on deportation and removal explicitly target people with protected characteristics, for example, people of colour; they will also have secondary effects, such as the further entrenchment of a hostile asylum environment. This will have knock-on effects, for example negative health impacts on families and wider communities.

Accountability for torture

27. In May 2021, the Overseas Operations (Service Personnel and Veterans) Act became law. This Act reduces opportunities for torture survivors to seek justice.
28. The Act imposes a six-year limit on bringing compensation claims for personal injury and/or death in relation to events outside the UK involving British troops. This means Ministers cannot be taken to civil court over unlawful policies and actions revealed after six years or more and denies relief to victims of torture, arbitrary detention and unlawful killing after that period.
29. Trauma resulting from torture does not have a time limit, and justice should not have a time limit. Torture causes severe trauma, shattering the personality of victims, and distorting their memory. Devastating and enduring impacts are felt by torture survivors, their families and societies. Working closely with torture survivors as we do, we know that even talking about experiences of torture requires physical safety and mental strength. Six years is nothing on the path to rehabilitation.
30. This law means the UK has chosen to silence victims after six years, leaving them, their families and societies living with trauma and pain.
31. The law remains discriminatory in practice —limiting the rights of foreign victims of British crimes to justice.
32. These restrictions have a disastrous impact on accountability for unlawful policies and actions revealed after six years or more - for example, the “corporate policy” of facilitating extraordinary rendition - and may perpetuate a culture of impunity within the British security services.
33. In July 2021, the government published a command paper on *Addressing the Legacy of Northern Ireland’s Past*.^{xx} This paper proposes a sweeping and unconditional amnesty, which would end all ‘judicial activity’ investigations for “Troubles-related offences” up to April 1998 and the Good Friday peace agreement (thus including current and future

legacy prosecutions, inquests and civil actions) as well as all police and Office of the Police Ombudsman cases. This would apply to both British troops and paramilitaries.

34. The paper does not define 'Troubles-related offences'. It also does not indicate that it plans to exclude serious human rights violations, including torture, disappearances, sexual violence, and killings from its scope. Indeed, in an accompanying oral statement, the Secretary of State for Northern Ireland indicated that it would 'apply equally to all Troubles-related incidents'.^{xxi}
35. Under international law, there can never be an amnesty or statute of limitations for torture. Furthermore, governments always have an obligation to investigate incidents of torture. These proposals will put the UK in breach of its international obligations (Convention Against Torture, European Convention on Human Rights, ICCPR and customary international law).

Recommendations

36. With regard to its obligations under international human rights standards and domestic legislation and in light of commitments made during previous cycles of the UPR, Freedom from Torture calls on the government of the United Kingdom to:
37. Repeal the Nationality and Borders Act (as it will be when the UK is reviewed under the UPR). At the very least, Section 11 of the Act should be withdrawn.
38. Immediately halt all pushback operations and withdraw relevant policies and any future plans to create a statutory basis for the policy.
39. Halt the expansion of the hostile environment into the asylum process. Prioritise and use evidence to understand the equality and human rights impacts of its policies and practices – particularly through proper engagement with affected groups.
40. Abandon its plans to reform the Human Rights Act.
41. Remove the six year time limit within which civil claims can be brought under the Overseas Operations Act
42. Ensure that any proposed legislation to address the issue of 'Troubles-related offences' in Northern Ireland does not include unconditional amnesty for serious human rights violations, including torture, in its scope.

ⁱ Secretary of State for the Home Department speech introducing the second reading of the Bill on 19 July 2021, available at: <https://www.gov.uk/government/speeches/home-secretary-opening-speech-for-nationality-borders-bill> ("People should be claiming asylum in the first safe country they reach, and not using the UK as a destination of choice.")

ⁱⁱ See UNHCR, *Summary Conclusions on the Concept of "Effective Protection" in the Context of Secondary Movements of Refugees and Asylum-Seekers* (Lisbon Expert Roundtable, 9 and 10 December 2002), February 2003, para. 11, available at: www.refworld.org/docid/3fe9981e4.html

ⁱⁱⁱ UNHCR, *Legal considerations regarding access to protection and a connection between the refugee*

and the third country in the context of return or transfer to safe third countries (Legal considerations regarding access to protection), April 2018, para. 2, available at:

<https://www.refworld.org/docid/5acb33ad4.html>

^{iv} <https://action.freedomfromtorture.org/joint-opinion-nationality-and-borders-bill-october-2021>

^v <https://www.unhcr.org/61e7f9b44>

^{vi} <https://www.ohchr.org/en/press-releases/2022/03/un-rights-chief-urges-revisions-uk-borders-bill>

^{vii} <https://hansard.parliament.uk/lords/2022-02-01/debates/27B38534-29F7-4BAB-A06F-3D76133377EE/NationalityAndBordersBill>

^{viii} The 'Windrush' generation are those who arrived in the UK from Caribbean countries between 1948 and 1973. The name 'Windrush' derives from the name of the ship which brought one of the first large groups of Caribbean people to the UK in 1948.

^{ix} <https://www.freedomfromtorture.org/news/lessons-not-learned-report-september-2019>

^x <https://beyondbelief.freedomfromtorture.org/report/>

^{xi} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

^{xii} <https://www.equalityhumanrights.com/sites/default/files/public-sector-equality-duty-assessment-of-hostile-environment-policies.pdf>

^{xiii} <https://www.gov.uk/government/statistics/immigration-statistics-year-ending-december-2021/how-many-people-do-we-grant-asylum-or-protection-to#data-tables>

^{xiv} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034012/An_inspection_of_asylum_casework_August_2020_to_May_2021.pdf

^{xv} https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922973/CCS001_CCS0820050750-001_Resp_to_Windrush_Lessons_CP_293_Accessible.pdf

^{xvi} <https://www.gov.uk/government/consultations/new-plan-for-immigration>

^{xvii} Human Rights Council, Report of the Working Group on the Universal Periodic Review – United Kingdom, 14 July 2017, A/HRC/36/9 [Online] Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/192/15/PDF/G1719215.pdf?OpenElement> Recommendations 134.68 (Kazakhstan); 134.69 (Kenya); 134.70 (Mexico); 134.71 Ensure that the (Namibia); 134.72 (Portugal); 134.73 (Switzerland); 134.74 (Thailand); 134.75 (Ukraine); 134.77 (Belarus);

^{xviii} <https://www.gov.uk/government/consultations/human-rights-act-reform-a-modern-bill-of-rights/human-rights-act-reform-a-modern-bill-of-rights-consultation>

^{xix} <https://www.equalityhumanrights.com/sites/default/files/the-impact-of-laspo-on-routes-to-justice-september-2018.pdf>

^{xx} <https://www.gov.uk/government/publications/addressing-the-legacy-of-northern-irelands-past>

^{xxi} <https://www.gov.uk/government/news/secretary-of-state-for-northern-ireland-brandon-lewis-mp-oral-statement-wednesday-14th-july-2021>