Written Evidence by Saphia Fleury (ASU0015)

About the author

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Introduction

The UK is failing to meet numerous obligations under international human rights law vis-à-vis its duty towards those seeking asylum. This submission argues that the 1951 Refugee Convention should be interpreted in line with the UK's other international and regional human rights obligations. All of the international and regional treaties cited in this submission have been ratified by, and are legally binding on, the Government of the United Kingdom.

The UK has a long history of welcoming refugees and other migrants. However, the UK government has a tendency to treat each new migration flow as unique and fails to learn lessons from previous refugee scenarios (Fleury, 2023). An overarching recommendation would be the establishment of a body to provide insights into what worked well or badly in previous refugee responses to ensure that mistakes are not repeated, particularly with regards to the protection of migrants' human rights.

Climate and other environmental change are combining with "traditional" push-factors for migration – including political persecution and violence – to create greater complexity in causal chains for migration. Thus, people who may not appear to have grounds for asylum under the Refugee Convention's "persecution test" may nevertheless be victims of *refoulement* if returned to places where their human rights are at risk of being violated, whether due to economic, environmental or political causes (Fleury, 2023). The UK government should therefore consider all its human rights obligations before deciding whether to grant asylum to an individual.

Safe and legal routes

There are only limited circumstances in which refugees have safe and legal routes to resettlement, with the support of UNHCR and IOM. Those are usually people who have been supported to move to the UK from refugee camps. Only a few hundred to a few thousand people are admitted this way each year. Most people who wish to claim asylum in the UK have no safe and legal route to arrive here, forcing most to use the services of smugglers and put their lives in grave danger. The 1951 Refugee Convention nevertheless obliges the UK to allow people to make an asylum application *regardless of their mode of arrival*.

Providing would-be refugees with the option of applying for asylum while still on mainland Europe, or in other third countries, would immediately make smugglers superfluous, remove the need for dangerous cross-channel journeys, and prevent unplanned, irregular arrivals putting a strain on services in coastal areas.

Many people who come to the UK do so in the hope of joining family. This includes significant numbers of unaccompanied children. Making family reunification easier by

providing more options to apply from outside the UK would again prevent dangerous and prolonged journeys, which have been shown to increase the risk of human rights violations (Fleury, 2023).

Relocation of asylum seekers in third countries

Removing asylum seekers to third countries while processing their applications is a breach of the 1951 Refugee Convention and other human rights obligations. These include the right to free movement guaranteed under Article 12 the International Covenant on Civil and Political Rights (ICCPR) and the duty to prevent torture or other ill-treatment provided by Article 7 of the ICCPR and Article 3 of the European Convention on Human Rights (ECHR). Freedom from torture or other ill-treatment is also a *jus cogens* rule of international law.

On the question of Rwanda specifically, Amnesty International (2022) found that Rwanda continues to conduct "[v]iolations of the rights to a fair trial, freedom of expression and privacy... alongside enforced disappearances, allegations of torture and excessive use of force." It cannot therefore be considered a safe third country for detainees. In any case, there is no justification for detaining asylum seekers or sending them "off-shore" pending determination of their protection needs. The UK has an obligation under the 1951 Refugee Convention to provide protection here, without resorting to detention, pending the outcome of a decision.

Detention

The Refugee Council (2022) reported that there were 1,383 asylum seekers in immigration detention in September 2022, a 47% increase on the previous year. In the year to September 2022, 139 children entered immigration detention. This total does not include people accommodated in "holding centres" or transit areas, often near to ports, where asylum seekers including children are sometimes held in conditions that amount to administrative or arbitrary detention and ill-treatment. UNHCR (2007) has stated that the detention of asylum seekers is "inherently undesirable" due to the traumatic nature of their flight and the difficulties they may have in entering the country in a regular fashion.

International law contains a strong presumption against detention (Amnesty International, 2007). Article 9 of the ICCPR and Article 5 of the ECHR provide that no one should be arbitrarily deprived of his or her liberty. In the case of asylum seekers specifically, Article 31(2) of the Refugee Convention requires that states apply only those restrictions to freedom of movement as are strictly necessary. Immigration detention should therefore only be used when necessary and proportionate. Asylum seekers who are legitimately detained (but not under criminal charge) should never be held in penal institutions (Rule 11 of The United Nations Standard Minimum Rules for the Treatment of Prisoners).

Children should never be subject to immigration detention (Amnesty International, 2016), particularly unaccompanied children (Working Group on Arbitrary Detention, 1998: §37).

In the UK context, UNHCR recently reiterated that: "The indefinite detention of those seeking asylum, based solely on their mode of arrival, would punish people in need of help and protection and constitute a clear breach of the United Kingdom's obligations under the

1951 Refugee Convention." (UNHCR, 2022). Alternatives to immigration detention are proposed in Amnesty International (2009) and include reporting requirements, release on bail, and release to NGO supervision.

Right to work and study

Providing asylum seekers with the right to work and study pending the outcome of refugee determination procedures is a win-win situation. Many asylum seekers hold professional qualifications, much sought-after in the UK, and could immediately contribute to filling gaps in professions such as health care and become net contributors to the economy. This would remove the reliance on the pitiful allowance which leaves many dependent on charity and/or living in destitution. Allowing asylum seekers to work or study when they are able to do so would also promote the right to an adequate standard of living, provided by Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

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