



## **Forced dependency and systemic harm: The intolerable life of asylum seekers in the UK and the prohibition of inhuman or degrading treatment**

**Submission by the SOAS Centre for Human Rights Law to the Joint Committee on Human Rights, Inquiry on Human Rights of Asylum Seekers in the UK (Questions 4, 6 and 7)<sup>1</sup>**

**December 2022**

### **I. Introduction**

1. The then UN Special Rapporteur on extreme poverty and human rights, Professor Philip Alston, summed up the dismal living conditions of asylum-seekers in the UK:

Destitution appears to be a design characteristic of the asylum system. Asylum seekers are banned from working and limited to a derisory level of support that guarantees they will live in poverty. The Government promotes work as the singular solution to poverty, yet refuses to allow this particular group to work. While asylum seekers receive some basic supports such as housing, they are left to make do with an inadequate, poverty-level income of around £5 a day. They also face major barriers to health care.<sup>2</sup>

2. In parallel to material destitution, asylum-seekers have experienced difficulties in accessing information and legal assistance, as well as seemingly arbitrary and sudden administrative measures. These measures form a regime of policies and practices to restrict supposed economic incentives and to deter asylum seekers through the creation of policy-induced suffering. The combined and cumulative effect of these practices has resulted in hunger, homelessness, and illness, as well as stress, anxiety, depression, and re-traumatisation. The accumulation of less visible harmful practices over time has been called a ‘slow violence’,<sup>3</sup> ‘distributed violence’<sup>4</sup> and ‘everyday cruelties’.<sup>5</sup> This submission sets out evidence of the

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<sup>1</sup> The submission was written by Dr Susanne Jaspars, SOAS Research Associate and volunteer with Waging Peace and Care4Calais, and Professor Lutz Oette, Co-director, SOAS Centre for Human Rights Law, and also draws on the work of Waging Peace.

<sup>2</sup> ‘Visit to the United Kingdom of Great Britain and Northern Ireland - Report of the Special Rapporteur on extreme poverty and human rights’ UN Doc A/HRC/41/39/Add.1 (23 April 2019) para 83 (footnotes omitted).

<sup>3</sup> L Mayblin, M Wake, and M Kazemi, ‘Necropolitics and the Slow Violence of the Everyday: Asylum Seeker Welfare in the Postcolonial Present’ (2020) 54(1) *Sociology* 107.

<sup>4</sup> J Darling, *Systems of Suffering. Dispersal and the Denial of Asylum* (Pluto Press, 2022).

<sup>5</sup> S Jaspars, ‘Intensifying Everyday Cruelties in the UK Asylum System: An Analysis Based on Sudanese People’s Experience’ in M Welander, and S Jaspars (eds.), *Resisting anti-refugee regimes: Everyday Violence and Resistance in Europe’s ‘Migration Management’ During the Covid-19 Pandemic* (International

harmful impact of the material provision and treatment of asylum-seekers, drawing particularly on the experiences of Sudanese asylum-seekers, and demonstrates that policies and practices are incompatible with the UK's international human rights obligations pertaining to inhuman or degrading treatment.

## **II. Material and psychological harm resulting from asylum policy and practice**

**3. Inadequate support for subsistence, accommodation, and accessing legal assistance.** Since the 2018 visit of the UN Special rapporteur, financial assistance to asylum-seekers to cover food, clothing and toiletries has only increased minimally; from £39.60/week in 2020, to £40.85 by 2022. Essentials such as transport, phone credit, and internet access are not covered. New arrivals are given cooked food in temporary hotel accommodation and £8/week, often for well over a year. Even this limited amount of money can take many months to come through as even in clear cases of destitution, claimants may not get a section 95 of the Immigration and Asylum Act 1999 (S95) proof of support letter immediately. Changes in the debit payment card (Aspen), used for all financial assistance, can also cut asylum-seekers off for months.<sup>6</sup> Furthermore, while waiting for months or years for asylum claims to be processed, asylum-seekers do not have the right to work. In such circumstances, deprivation of objects indispensable to survival and consequent poverty, hunger and illness is inevitable, as is dependency on charities and food banks.<sup>7</sup> In hotels, hunger is exacerbated by the widely reported inadequate food provision.<sup>8</sup> It is poor in quality, hygiene, and often culturally inappropriate. For teenagers and young men, as many asylum-seekers are, the quantity is insufficient.

**4. Access to health care and legal aid is constrained.** Many asylum-seekers do not have smartphones when they arrive (or they were confiscated by border police – now judged illegal<sup>9</sup>) and financial support is insufficient to cover phones, phone credit, or internet access. In dispersal accommodation, Home Office (HO) contracted private companies are not required to provide Wi-Fi or other internet access. This places barriers on access to health and legal services because they have been remote since the pandemic. Asylum-seekers need to use WhatsApp and google translate to communicate, phone credit to access solicitors and GP landlines, and internet for web-based forms. Legal support is further restricted because of reductions in legal aid, and because solicitors also need the S95 proof of support letter.<sup>10</sup> Advisors in the HO-contracted information service, Migrant Help (that also addresses

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Humanitarian Studies Association, 2022); see also online at <https://blogs.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2022/03/intensifying>.

<sup>6</sup> D Taylor, 'Million undocumented migrants could go hungry, say charities' (2020) at <https://www.theguardian.com/world/2020/mar/23/million-undocumented-migrants-could-go-hungry-say-charities/>

<sup>7</sup> Asylum Matters and Sustain, *COVID -19 Briefing: Asylum Seekers and the Right to Food* (6 September 2021).

<sup>8</sup> E.g. M Bulman, "Dehumanising": Asylum seekers in hotels left without shoes and given 'inadequate' food, report finds' (2021) at <https://www.independent.co.uk/news/uk/home-news/asylum-seekers-hotels-refugee-council-home-office/>; Refugee Council, "*I Sat Watching Life Go By My Window For So Long". The experiences of people seeking asylum living in hotel accommodation* (2021).

<sup>9</sup> L Dearden, 'Home Office admits unlawful secret policy to seize all Channel migrants' phones' (2022), available at <https://www.independent.co.uk/news/uk/home-news/migrant-phones-channel-home-office->

<sup>10</sup> J Wilding, 'No Access to Justice: How Legal Advice Deserts Fail Refugees, Migrants and Our Communities' (Refugee Action, 2022).

complaints), take 1 hour or more to answer calls.<sup>11</sup> For Sudanese asylum-seekers, past experience of surveillance makes them afraid to call or answer calls from people they do not know.

**5. A policy of dispersal leads to social isolation.** After an initial period of temporary accommodation, asylum seekers are relocated to towns and cities across the UK. Dispersal accommodation is often in remote parts of England and of poor quality.<sup>12</sup> When asylum seekers are ‘dispersed’, sometimes after years in temporary accommodation, they lose the social support networks they developed. No internet exacerbates the feeling of isolation, as does frequent relocation (in some instances three times within 6 months). For victims of trafficking and modern slavery such social isolation – combined with fear and anxiety – can lead to re-traumatisation. Most Sudanese are victims of trafficking as no safe and legal routes exist for them to claim asylum in the UK. The companies managing hotels or dispersal accommodation (or any other form of detention) are not equipped to deal with such trauma.

**6. Arbitrary decision-making in the treatment of asylum seekers, and the associated uncertainty, leads to stress, anxiety, depression, and despair.** Any relocation, whether following age assessments, or to Immigration Removal Centres, Napier barracks or Manston processing centre, as well as to hotels and dispersal accommodation, occurs with little or no notice. Often no information is provided on destination and the contact numbers provided require the use of phone credit. Notice may be given by text message without information about sender. This causes extreme stress, anxiety, and fear. Refusal to move can result in eviction and potential **homelessness** and termination of support because of a policy of no choice in accommodation provision.<sup>13</sup> Letters of intent about removal to European countries or to Rwanda creates further despair. Sudanese are again particularly vulnerable because they largely arrive by small boat (and would thus be considered ‘illegal’ under the Nationality and Borders Act 2022). Decision-making on the timing of the substantive asylum interview also appears random; for many it has taken more than two years. Long waiting times increase the cumulative effect of practices that deny agency and create physical and mental suffering.

**7. Physical and mental illness** results from the material deprivation and treatment of asylum-seekers. Physical illness includes digestive and gastro-intestinal issues ranging from indigestion, to constipation, to stomach ulcers, most likely due to a combination of poor diet and stress, but causes have not been systematically investigated. Similarly, cases of psychosis from a combination of past trauma and conditions of detention, isolation, and deprivation, occur. In some cases, frustration or fear is expressed as violence as in the case of the knife attacks in Glasgow hotel,<sup>14</sup> the Napier fires,<sup>15</sup> or in dispersal accommodation. Suicide attempts, or suspicious deaths involving clear safeguarding failings, in hotels and detention centres are

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<sup>11</sup> S Das, ‘It just rings and rings’: Home Office helpline for asylum seekers rated inadequate’ (2022) at <https://www.theguardian.com/uk-news/2022/nov/06/it-just-rings-and-rings-home-office-helpline-for-asylum-seekers-rated-inadequate>.

<sup>12</sup> Asylum Matters and Sustain (n 7).

<sup>13</sup> UK Home Office, ‘Allocation of asylum accommodation policy’ (UK Government, 2022).

<sup>14</sup> BBC, ‘Asylum inquiry: Hotel knife attack was ‘avoidable tragedy’ (2022) at <https://www.bbc.co.uk/news/uk-scotland-63596402>.

<sup>15</sup> D Taylor, ‘Napier barracks staff feared asylum seekers might die from Covid’ (2021) at <https://www.theguardian.com/uk-news/2021/jul/11/napier-barracks-staff-asylum-seekers-die-covid-health?>

common, and statistics on such are not routinely gathered nor communicated.<sup>16</sup> Other causes of death have also not been investigated.<sup>17</sup>

### **III. Compatibility of asylum policy and practice with the UK's human rights obligations under article 3 of the European Convention on Human Rights**

8. Article 3 of the European Convention on Human Rights, incorporated into domestic law by the UK's Human Rights Act, prohibits torture and other inhuman or degrading treatment or punishment. The European Court of Human Rights deems treatment degrading '[e]ven if there is no evidence of actual bodily injury or intense physical or mental suffering, where treatment humiliates or debases an individual, showing a lack of respect for or diminishing his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance'.<sup>18</sup> The treatment of asylum-seekers who are denied virtually any form of agency, are the subject of hostile policies and arbitrary decision-making and are forced to live in poverty, creates a profound sense of anguish and insecurity. HO treatment violates the dignity of asylum-seekers by ignoring individual rights and needs, and by instrumentalising their suffering to pursue policies of deterrence. It constitutes inhuman or degrading treatment by leaving asylum-seekers profoundly powerless 'through experiences leading to symbolic exclusion from the human community',<sup>19</sup> in what constitute 'expressions of indifference within relationships of power asymmetry and practical dependency'.<sup>20</sup>

9. According to the Court's jurisprudence, a State is, under article 3 of the Convention, responsible for socio-economic conditions where a person is 'wholly dependent on State support, [and] found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity'.<sup>21</sup> Asylum-seekers are wholly dependent on the State, also due to their inability to work; they are particularly underprivileged and vulnerable, and the state must provide special protection.<sup>22</sup> Yet, UK practices towards asylum-seekers are characterised by deliberate choices (restrictive entitlements, inability to work) and systemic failures (to accommodation, adequate food, stable social environment, access to health care, etc.) that have, either by design or foreseeably, resulted in serious deprivation.<sup>23</sup> The scope of S95 of the Immigration and Asylum Act 1999 Act which governs eligibility for financial support for asylum-seekers who are destitute or likely to become so within 14 days is too narrow and ineffective to counteract the cumulative impact of prevailing practices resulting in poverty and degradation.

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<sup>16</sup> See Liberty Investigates, 'Dozens of At-Risk Asylum Seekers Died During Pandemic Amid Alleged Safeguarding Failings' (2022) at <https://libertyinvestigates.org.uk/articles/dozens-of-at-risk-asylum-seekers-died-during-pandemic-amid-alleged-safeguarding-failings>.

<sup>17</sup> J Purkiss et al, 'Asylum accommodation deaths 'twice as high' as Home Office admitted' (2021) at [theguardian.com/uk-news/2021/oct/24/asylum-hotel-deaths-twice-as-high-as-home-office-admitted](https://www.theguardian.com/uk-news/2021/oct/24/asylum-hotel-deaths-twice-as-high-as-home-office-admitted).

<sup>18</sup> *Khlaifia and others v Italy* [GC] App No 16483/12 (ECtHR, 15 December 2016) para 169.

<sup>19</sup> E Webster, *Dignity, Degrading Treatment and Torture in Human Rights Law: The Ends of Article 3 of the European Convention on Human Rights* (Routledge, 2018) 143.

<sup>20</sup> Ibid.

<sup>21</sup> *M.S.S. v Belgium and Greece* [GC], App No 30696/09 (ECtHR, 21 January 2011) para 253.

<sup>22</sup> Ibid para 251.

<sup>23</sup> See further on deprivation and article 3, *R (on the application of Limbuela) v Secretary of State for the Home Department* (2005) UKHL 66 (2006) 1 AC 396.