



Submission to the Joint Committee on Human Rights

The Government response to COVID-19: human rights implications

April 2020

Amnesty International UK is a national section of a global movement of over seven million people who campaign for every person to enjoy all rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We represent more than 670,000 supporters in the United Kingdom. We are independent of any government, political ideology, economic interest or religion.

Migrant Voice is a national, migrant-led organisation working with migrants regardless of their status and country of origin, including refugees and asylum seekers. We develop their skills and confidence, empowering them to speak for themselves about their own lives and issues that affect their communities. Whether speaking out in the media or on public or political platforms, the aim is to create positive change for migrants – countering xenophobia, discrimination and unjust policies, strengthening communities, and bringing social justice – change which benefits the whole of UK society.

1. This submission addresses, under discrete subheadings, the three questions from the Committee's terms of reference with particular focus upon Home Office immigration and asylum functions.

Overview

2. We are not public health experts. We accept the premise that the COVID-19 pandemic constitutes a serious threat requiring emergency measures to ensure social distancing and self-isolation as means to contain the virus and generally protect life and health.
3. It is in the nature of the current public health emergency that all areas of Government should be reflecting on two questions:
 - a What of current policy and practice constitutes an unnecessary or disproportionate risk to life and health and must accordingly be suspended, revised or mitigated to remove or adequately reduce that risk?
 - b What current powers and resources can and should be exercised or redirected to reduce the risk to life and health caused directly and indirectly by the pandemic?
4. These questions fall squarely within Government's human rights obligations because they concern, among others, the right to life, the right to health, the right not to be subjected to degrading treatment (which may be infringed by causing pain, indignity and deprivation) and the right to respect for private and family life (which may be infringed by deprivation of social and familial relationships).

What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?

5. The Home Office, like all other parts of Government, must reflect on the questions identified above. It must also reflect on the implication for its policies and practices of general measures introduced to address the pandemic.
6. The key instructions from Government are for everyone to practice social distancing, to practice self-isolation where someone is at or may put others at particularly heightened risk and to avoid, insofar as possible, leaving home and travelling to work or for other reasons. The Home Office must consider systematically all it does and requires or prohibits that makes following these instructions impracticable or impossible; and then consider what it should or needs to do to ensure it is both possible for everyone to adhere and they are best enabled and encouraged to do so. This is in the interests of containing, managing and eradicating the pandemic and so safeguarding the life and health of everyone.
7. Our primary concern is the Home Office has not taken this approach. It has taken certain discrete and beneficial steps.¹ However, these have been piecemeal and fall very far

¹ Steps taken by the Home Office include suspending reporting conditions that require people who do not have permission to be in the UK, including people seeking asylum, to attend regularly at an immigration centre; announcing that some people who may become or have become stranded in the UK can extend their leave to remain; and announcing some guarantees to people in asylum accommodation.

short of a comprehensive approach.² Our initial assessment is these tend to reflect a limited focus on specific operational matters and fail, in particular, to reassess the proportionality, feasibility or consequences of wider policy.³

8. It is now more than five weeks since the Government published guidance on social distancing for everyone in the UK on 16 March 2020;⁴ and nearly twelve weeks since the World Health Organization declared a global health emergency on 30 January 2020⁵ (around the same time as the first two confirmed cases of coronavirus of patients in the UK). In all this time, the Home Office focus has not essentially shifted from its prior focus on enforcing immigration policy and either overlooks or resists any systemic readjustment of its priorities. In doing so, it once again exposes its underlying cultural inability or unwillingness to give serious consideration to the circumstances of the people directly affected and subjected to its powers and policies in much the same way as was exposed by the Windrush scandal.⁶
9. Three aspects of wider policy are of especial concern.

Immigration detention and reporting

- a Immigration detention is used routinely and on a large scale. This is excessive, unnecessary and does significant human rights harm quite apart from the current

² The position adopted on extending visas, for example, appears to be strictly limited to people who are either in self-isolation or cannot travel due to travel restrictions. We are concerned that many people may be unable to satisfy the Home Office of either of these two conditions even though, for example, current circumstances may now prevent their making the visa extension they had anticipated and make travel a serious risk to them and others.

³ For example, the Home Office announced on 22 April 2020 that it will permit asylum claims to be made at specified offices in Glasgow, Belfast, Liverpool, Leeds, Solihull and Cardiff in addition to Croydon. This is said to be in response to the pandemic. However, it maintains the policy that asylum claims must be made in person and hence continues to require people to make substantial journeys to do so in contradiction to the general exhortation by Government that people should, wherever possible, stay home to safeguard themselves and others, including people who must travel or who provide public transport. Another example is given by the Home Office response to calls to remove or suspend all No Recourse to Public Funds (NRPF) conditions. Rather than doing this and thereby ensure that nobody in the UK with leave to enter or remain is excluded from the means to support and accommodate themselves at this extraordinary time, the Home Office has announced that people with leave to remain on the basis of private or family life may apply to have the condition removed. However, this is in essence no more than a reiteration of pre-existing policy; and with seriously detrimental and costly consequences for people on a 5 years route to settlement because the Home Office maintains that it will move them onto a 10 years route to settlement.

⁴ This was updated on 30 March 2020: <https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people/guidance-on-social-distancing-for-everyone-in-the-uk-and-protecting-older-people-and-vulnerable-adults>

⁵ See: [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov))

⁶ So much has been conceded by the last three Home Secretaries. Rt Hon Amber Rudd did so in response to an urgent question by David Lammy when she conceded the Home Office had lost sight of the individual in its pursuit of policy and strategy (*Hansard* HC, 16 April 2018 : Col 28); Rt Hon Sajid Javid did so in his oral evidence before the Home Affairs Committee for its *Windrush Children* inquiry (HC 990), specifically in accepting the diagnosis of his predecessor put to him by the Committee Chair (see Q222); and Rt Hon Priti Patel did so in her statement on the publication of the Windrush Lessons Learned Review report when she committed the Home Office to putting people before policy (*Hansard* HC, 19 March 2020 : Col 1156). More information about the Windrush scandal is available from Amnesty's submission to the Windrush Lessons Learned Review, available here:

<https://www.amnesty.org.uk/files/Resources/AIUK%20to%20Home%20Office%20Windrush%20Lessons%20Learned%20Review.pdf>

pandemic.⁷ At this time, however, when it is likely neither practicable nor safe to return people from the UK, its use for that purpose is neither necessary nor lawful. It may also constitute a significant risk to both people detained and people working in detention; and there may be other purposeful uses in support of the wider pandemic response to which the detention estate may be put.

- b The Home Office has released some people from detention in response to the pandemic, though this appears to have been precipitated by a judicial review challenge or following decisions on individual bail applications or judicial reviews.⁸ Nonetheless, people continue to be held in detention for the purposes of removal. By contrast, the Home Office has suspended reporting requirements,⁹ which is in the interests of individual and public health and safety given the need for people to stay at home, maintain social distancing and avoid unnecessary use of public transport. Yet, it has continued to require people to attend in person to claim asylum.¹⁰
- c Immigration detention for removal should be suspended and the Home Office should ensure, including through use of its powers to provide support and accommodation,¹¹ that everyone released from detention has somewhere safe to go. It has not done this.¹² It should not be requiring attendance in person to make applications. Reports of use of solitary confinement in detention as a response to people's specific vulnerability to COVID-19 emphasise the failure at the Home Office to reassess the situation and its preparedness to put aside people's wellbeing and rights in its continued pursuit of pre-existing policy and practice.¹³

Exclusion from basic social, health and welfare provision, housing and employment

- d Exclusion from basic social, health and welfare provision and lawful means of accommodation and maintenance is said to be aimed at securing compliance

⁷ Amnesty has, for example, drawn attention to the excessive scale and duration of immigration detention in its report *A Matter of Routine: the use of immigration detention in the UK*, December 2017, available here: <https://www.amnesty.org.uk/files/2017-12/A%20Matter%20Of%20Routine%20ADVANCE%20COPY.PDF?ya06n1Z2uH6J0bP8HmO7R2Pn7nabDymO>

⁸ Our impression is, for example, consistent with the oral evidence of Detention Action to the Home Affairs Committee *Short inquiry into the Home Office preparations for and response to COVID-19* inquiry on 21 April 2020 (Q288 etc); and the report in *The Guardian* on 21 March 2020, 'Home Office releases 300 from detention centres amid COVID-19 panic': <https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>

⁹ The following notice was posted on 24 March 2020 on gov.uk concerning a 'temporary pause' of reporting requirements: <https://www.gov.uk/immigration-reporting-centres>

¹⁰ On 22 April 2020, the Home Office distributed a note by email confirming that asylum claims are required to be made in person, albeit permitting claims to be made at six other locations across the UK other than Croydon. As at 08.55 on 27 April 2020, the information posted on the relevant Home Office pages on gov.uk had not been updated.

¹¹ Paragraph 9 of Schedule 10 to the Immigration Act 2016 may be of particular importance at this time.

¹² We are aware of reports confirming what was reported by *Al Jazeera* on 17 April 2020: <https://www.aljazeera.com/news/2020/04/uk-frees-hundreds-immigration-detainees-200416205200648.html>

¹³ See report in *The Guardian* of 2 April 2020: <https://www.theguardian.com/world/2020/apr/02/revealed-at-risk-immigration-detainees-to-be-put-in-solitary-confinement>

with immigration controls.¹⁴ This exclusion means very large numbers of people living in the UK are highly unlikely to be able to adhere to instructions on social distancing and self-isolation because to do so would deprive them of means of supporting themselves and family; or are simply being left destitute and malnourished, and consequently more vulnerable to the virus. It also compels many people into situations of exploitation and abuse because means to support themselves and family are so restricted; and those situations may in themselves exacerbate risks associated with COVID-19 due to e.g. overcrowded and/or unsanitary housing or working conditions.¹⁵

- e Most affected by these concerns are likely to be people, who either do not have (but need) permission to be in the UK and people who cannot prove they have (or do not need) such permission. These people are subjected by law and/or practice to the widest range of exclusion.¹⁶ Among this group are people who have entered the UK without leave,¹⁷ people who have overstayed or had their leave curtailed¹⁸ and people born in the country, entitled to its citizenship, but unaware or unable to exercise their rights to that. However, there are many other people, who have leave to enter or remain on conditions that restrict working or access to public funds;¹⁹ and people seeking asylum are required to sustain themselves on more restricted provision than mainstream social welfare provision and without the opportunity to work.²⁰
- f Many people will have been living in situations of homelessness, destitution and other insecurity long before the pandemic.²¹ These situations put them at greater

¹⁴ Relevant legislation includes section 115 of the Immigration and Asylum Act 1999, Schedule 3 of the Nationality, Immigration and Asylum Act 2002, Part 3 of the Immigration Act 2014 and Part 2 of the Immigration Act 2016.

¹⁵ These considerations are among those expressly recognised in guidance published by the Office of the High Commissioner for Human Rights, *COVID-19 and the Human Rights of Migrants: Guidance*, 7 April 2020, see: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf

¹⁶ See footnote 14.

¹⁷ This group includes people seeking asylum, people trafficked into the UK and many more people with limited control over their personal circumstances, such as people highly dependent on employers and others who may be exploiting them.

¹⁸ The circumstances in which someone may overstay or have their leave curtail vary greatly, and include many circumstances over which a person may have little or no control including the impact of sudden changes in rules or fees and unpredictable and unjust decisions by the Home Office. Migrant Voice's report *I want my future back: the international students found guilty until proven innocent*, addressing the circumstances of the so-called TOEIC scandal provides but one example affecting thousands of people. That report is available here: http://www.migrantvoice.org/img/upload/I_want_my_future_back.pdf

¹⁹ No recourse to public funds conditions are widely applied to grants of leave to enter or remain under section 3(1)(c)(ii) of the Immigration Act 1971 and require that someone may not have access to a wide range of social welfare provision as set out in paragraph 6 of the Immigration Rules.

²⁰ People seeking asylum report that they are struggling. On the one hand, they cannot attend the charities, community support organisations and faith communities where previously they may have received additional food and other supplies, access to free wifi by which they could keep in touch with family overseas and opportunity for social interaction. On the other, prices have risen and the limited support they receive does not cover what they would ordinarily need, still less new items such as masks or hand sanitiser. We have joined others in calling on the Government to match the uplift granted to Universal Credit in provision of asylum support, though we share in the caution concerning the sufficiency of even this. That call can be seen here: <https://www.freedomfromtorture.org/news/joint-letter-on-increasing-asylum-support-rates-in-response-to-the-covid-19-crisis>

²¹ This is primarily because of the raft of measures introduced over several years by successive governments to exclude many people from basic means of sustaining and supporting themselves. Many of the people affected by

risk from it. Many other people will be at risk of homelessness, destitution and other insecurity because of the pandemic because e.g. their employer has closed or suspended business. This is a significant threat to individual and public health and undermines the pandemic response.

- g These various exclusions and consequent deprivations undermine the response to the pandemic and increase the risk to individual and public health and safety. The Home Office should be taking action to end or suspend these exclusions. It is necessary that everyone can access safe and secure accommodation and the means to sustain and keep healthy themselves and family. This could be done by systematically removing or suspending exclusions, though in some circumstances this would require primary legislation; or by exercising powers to grant leave generally and without, for example, no recourse to public funds conditions.²² A general announcement of the latter step would have the advantage of sending a simple and uniform message that no person currently in the UK was subject to any immigration-related restriction on, amongst other things, renting accommodation or receiving social service or welfare support.
- h However, specific action to suspend NHS charging²³ is needed because even a general grant of leave (unless it is indefinite) will not in itself remove that barrier to accessing healthcare.²⁴ Charges, and the fear of these, are a barrier to healthcare access even where it is urgent or essential.²⁵ The financial implications of an NHS debt are exacerbated by immigration policies under which a person may be deprived of any lawful immigration status while a debt remains outstanding.²⁶ Thus, people are left more vulnerable to the virus, both in terms of their likelihood of infection and the likelihood of it proving seriously harmful or fatal to them; and this is harmful to individual and public health.

Data-sharing for immigration purposes

these measures are entitled or eligible to be in the UK but unable to demonstrate this; and their precarious personal circumstances and the toll this may take on them are among the many barriers to their exercise those rights or eligibilities. Amnesty touched on such concerns in its evidence to the Committee's *Enforcing Human Rights* inquiry (in particular in response to 'issue 5', paragraphs 58ff), see https://www.amnesty.org.uk/files/2019-03/AIUK%20Submission%20-%20Human%20Rights%20Committee%20-%20attitudes%20to%20enforcement%20inquiry_0.pdf?5rltSG_N2DJf7iFUyLaBuIXGyUnHkl_N=

²² The statutory exclusions to which footnote 14 refers would either require removal by primary legislation or necessitate putting individuals in the position envisaged by the relevant statute such as to not apply the relevant exclusion. At a minimum, that position would be possession of leave but this in itself may be insufficient depending on the particular exclusion.

²³ The relevant provisions are to be found in the National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238 (as amended for England), the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations SI 1989/364 (as amended), the National Health Service (Charges to Overseas Visitors) Regulations 1989, SI 1989/306 (as amended for Wales) and the Provision of Health Services to Persons Not Ordinarily Resident Regulations (Northern Ireland) 2015, SR 2015/27.

²⁴ Our organisations co-signed a letter to the Secretaries of State for the Home and Health Departments of 13 April 2020 from the British Medical Association, the UK Faculty of Public Health, various Royal Colleges, Lancet Migration, Doctors of the World UK and others calling for this, see: https://www.doctorsoftheworld.org/wp-content/uploads/2020/04/Letter-to-HS-and-SSHSC_13.04.2020.pdf

²⁵ This fear is expressly identified as leading to the death of a Filipino migrant, called Elvis, in a letter signed by 60 MPs to the Secretary of State for Health and Social Care calling for suspension of these NHS charges. The letter is available here: <https://apsanabegum.com/letter-to-matt-hancock-on-hostile-environment/>

²⁶ See paragraphs 320(22) and 322(12) of the Immigration Rules (HC 395) (as amended).

- i Data-sharing for immigration purposes is widespread.²⁷ This deters people from accessing services, even to which they are fully entitled or are necessary for their health and safety, for fear of immigration consequences such as detention and removal.²⁸ This too is harmful to the pandemic response and should be ended or suspended.

What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?

10. The answer to this question depends in significant part on whether effective steps are taken to address concerns identified in response to the previous question. If not, some or all of the following are likely to ensue:
- a More people may contract the virus and that infection may seriously harm or cost the lives of more people who do. How far this premise extends is not a matter we are able to predict, but given all that is authoritatively said on the need for social distancing and self-isolation the risks clearly stretch very much further even than those most immediately at risk in the ways we describe. While the virus persists, the risk of its greater spread remains; and if not everyone can adhere to measures intended to contain its spread and its impact on health systems, the risks to everyone will increase (and not merely from the virus directly).
 - b More people may be at new or increased risk of destitution, homelessness and other deprivation and other serious harms including domestic abuse, human trafficking or other exploitation. Some people will be out of work because their workplace has shut or reduced work in response to the pandemic. Some people will be unable to rely on sources of assistance by which they previously have been sustained, whether because a supporting organisation has had to close or become less accessible or because family or friends are no longer able or willing to provide support. Some people will simply be susceptible to their fears of the virus, or their reduced circumstances due to the virus, being exploited. Some people will simply be living in circumstances which become strained or more strained because of fears of the virus; the circumstances of more confined living; circumstances of increased deprivation or exploitation arising from the pandemic or measures in response; or a combination of these.
 - c More people may be at risk of becoming needlessly or wrongly subject to immigration powers, including detention, removal and exclusion from basic social provision and opportunities. We have highlighted in this submission the use of immigration powers in circumstances where their permitted purpose cannot safely, practically or lawfully be achieved. It is also likely to be the case that current circumstances will increase the prospect that people are unable to

²⁷ Data-sharing for immigration purposes extends across the public and private sphere with Home Office demanding, inviting and receiving data from government departments, local authorities, the health system, private landlords, employers and others.

²⁸ Such fears are among those matters expressly recognised in guidance published by the Office of the High Commissioner for Human Rights, *COVID-19 and the Human Rights of Migrants: Guidance*, 7 April 2020, see: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf

regularise or maintain their immigration status in the UK.²⁹ This may be because they are ill; have lost work and are unable to pay application fees, for legal assistance or meet financial requirements under the Immigration Rules; cannot make or maintain effective contact with an immigration lawyer, the Home Office or courts and tribunals systems; or are simply too afraid or distracted by either the pandemic, news about it or other information or rumour they may hear. That the Home Office has failed to undertake a systemic review of its immigration and asylum functions and provide clear and comprehensive information has only increased the likelihood that some people will lose the potential benefit of the limited measures taken that may apply to them; and others will be more susceptible to rumour and misinformation from a variety of sources.

11. A further risk arises from delays and disengagement with the immigration and asylum systems. Significant backlogs may develop in the Home Office and appeals systems. The Home Office must take steps to avoid or reduce this. Delays and backlogs will not only extend social exclusion and marginalisation (including exclusion from basic services and necessities) potentially long after the pandemic may pass. These will likely exacerbate the circumstances in which people lose faith or contact with these systems, prolonging the exclusion even of people eligible for leave to remain, entitled to asylum or entitled to British citizenship, with the risk that their rights in law or practice lost, they are pushed further into circumstances of deprivation and exploitation and their capacity to reengage with legal advisers or the immigration system is even more severely reduced.

Which groups will be disproportionately affected by measures taken by the Government to address the COVID-19 pandemic?

12. As highlighted in this submission, requirements for people to stay at home, avoid travel, socially distance and self-isolate most severely affect people who cannot do these things or cannot do so safely. Among such people are many people who have entered the UK without permission; have overstayed or had their leave curtailed;³⁰ are dependent (financially or for the immigration status etc) on an abusive partner, employer or trafficker; have permission but subject to restrictions on access to public funds or work; have outstanding asylum claims or have been refused asylum;³¹ were born in the UK and are without its citizenship albeit entitled to that; or are treated (rightly or wrongly)

²⁹ Migrant Voice members, for example, have reported receiving asylum refusal decisions that continue the practice of requiring any appeal to be lodged within 14 days or for the person to leave the UK. Neither of these are practicable, particularly for those who are either without legal representation or whose representative is inaccessible at this time (e.g. as in one case, because the solicitor is ill).

³⁰ As addressed previously, overstaying and curtailment may be caused by changes in circumstances outside the control of the individual affected, including changes in policy and fees (or accident, illness or loss of employment meaning these cannot be paid), or by error, including on the part of the Home Office. Complexity of the immigration system, removal of appeal rights (by the Immigrations Act 2014) and withdrawal of legal aid for most non-asylum immigration matters (by the Legal Aid, Sentencing and Punishment of Offenders Act 2012) has compounded these concerns.

³¹ Concerns are longstanding regarding refugees who are refused asylum by reason of inability to adequately present their claims (including due to factors such as inadequate provision of legal aid and legal representation; and consequences of mental ill-health, trauma, isolation and deprivation, whether caused by past persecution from which people have fled, experiences on journeys to safety or experience of the asylum system) and poor and inappropriate Home Office decision-making, country of origin policies and practices (which undermine confidence and trust and hence further exacerbate people's incapacity to engage effectively in the asylum system).

as without permission or citizenship. The disproportionate impact upon these people is, however, something that can be removed, reduced or mitigated – but only if the Home Office takes effective steps to revise or suspend relevant immigration policy and practice.

Conclusion:

13. The primary focus of our submission is on what is immediately necessary in response to the pandemic. However, the concerns we highlight do not solely arise from the pandemic albeit they are exacerbated by it. Beyond what is immediately required, there is an urgent need to reappraise immigration policy and practice. The circumstances of the current pandemic provide a particularly dreadful but nonetheless poignant opportunity to reflect on the utility and cost of that policy and practice, including its human rights compatibility and consequences beyond current circumstances. It is important that opportunity is taken. The recent publication of the Windrush Lessons Learned Review report confirms the urgency; and gives particularly stark reminder of the disproportionate impact of this policy and practice on black, Asian and other minority ethnic people.