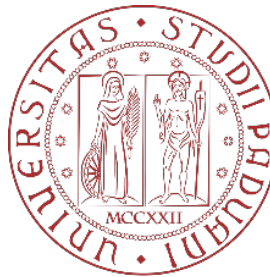


UNIVERSITÀ DEGLI STUDI DI PADOVA

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AND INTERNATIONAL STUDIES

**Master's degree in
Human Rights and Multi-level Governance**



**THE UK ASYLUM SYSTEM AND THE CHALLENGES OF
THE RECENT ALBANIAN MIGRATION**

**THE FAILURE OF THE BRITISH GOVERNMENT TO PROVIDE SAFE
AND LEGAL ROUTES TO THE UK**

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Abstract

This dissertation delves into the occurrence of illegal migration of Albanians to the UK in recent years and explores the UK government's response to this influx. The main objective is to understand the reasons behind the significant number of Albanians arriving clandestinely in the UK via small boats across the British Channel, as well as their motivation for seeking asylum. Furthermore, the thesis examines the UK asylum system and analyses how the British government and society have reacted to this phenomenon, including the introduction of bills aimed at curbing illegal immigration and prohibiting individuals from seeking asylum if they arrive in the UK illegally.

The thesis also seeks to assess the adequacy of proposed legislation in the UK to address this situation and whether it is in line with human rights standards. Its aim is to examine the driving forces behind Albanian migration, shed light on the experiences of Albanian migrants and assess the impact of legislation on their lives. Through an examination of the socio-economic, political and cultural factors influencing migration, the research aims to provide a comprehensive understanding of the Albanian migration trend and its interaction with UK immigration policies.

Keywords: *Asylum seekers, Illegal Migration, Human Rights, Modern Slavery, Trafficking and Smuggling, Refugee Protection, Albania, United Kingdom*

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LIST OF ACRONYMS

ACU: Asylum Casework Unit

AHR: Advocates for Human Rights

CEDOCA: Center for Studies, Documentation and Annual Conferences

CIPN: Country and Policy information Notes

CSR: Refugee Convention

DAC: Detained Casework Unit

DMs: Decision Makers

DOW: Doctors of the World

ECAT: Council of Europe Convention Against Trafficking in Human Beings

ECHR: European Convention on Human Rights

ECRE: European Council on Refugees and Exiles

EU: European Union

GP: General Practitioner

HO: Home Office

HRA: Human Rights Act 1998

HRW: Human Rights Watch

ICESCR: International Covenant on Economic, Social and Cultural Rights

ID: Identification

ILGA: International Lesbian, Gay, Bisexual, Trans, Intersex Association

ILPA: Immigration Law Practitioners' Association

IMF: International Monetary Fund

IMISCOE: International Migration Research Network

IRCs: Immigration Removal Centers

JCWI: Joint Council for the Welfare of Immigrants

KLA: Kosovo Liberation Army

LOHST: Lives On Hold, our Story Told

MiCLU: Migrant and Refugee Children's Legal Unit

NATO: North Atlantic Treaty Organization

NCA: National Crime Agency

NGO: Non-Governmental Organization
NRM: National Referral Mechanism
PDA: Pre-Departure Accommodation Facility
PTSD: Post-Traumatic Stress Disorder
RSTHFs: Residential Short-Term Holding Facilities
RTR: Right to Remain
STC: Safe Third Country
STHFs: Short-Term Holding Rooms at Ports of Entry
TCU: Third Country Unit
TEU: Treaty on European Union
UASC: Unaccompanied Asylum-Seeking Children
UCL: University College of London
UÇK: Ushtria Çlirimtare e Kosoves
UDHR: Universal Declaration of Human Rights
UK: United Kingdom
UKBA: United Kingdom Border Agency
UN: United Nations
UNICEF: United Nations International Children's Emergency Fund
UNHCR: United Nations High Commissioner for Refugees
UNODC: United Nation Office on Drug and Crime
UPR: Universal Periodic Review
USDS: United States Department of State
VOTs: Victims of Trafficking
WFW: Women for Refugee Women
VOSs: Victims of Modern Slavery

INTRODUCTION

The idea of writing a thesis on illegal Albanian migration in the UK and the responses of the British government to this flow stems from a number of reasons. The first of all is obviously a personal emotional reason, as the writer of these lines is the daughter of a former Albanian asylum seeker in Italy in the 90s.

Another reason is due to my internship experience in the UK, where I worked at *Shpresa Programme*^{1 2}, a user-led charity that provides legal assistance to asylum seekers and Albanian refugees in the United Kingdom as part of the 'Breaking the Chains' initiative, working in partnership with MiCLU. My role was that of a youth support worker for young Albanian refugees and asylum seekers.

Having worked closely with Albanian refugees and asylum seekers during the period November 2022 until April 2023, I have also experienced first-hand the hostile atmosphere that prevailed in the United Kingdom towards the Albanian Community. Being in close contact with the Albanian community, I was able to listen to their stories, understand the reasons for their migration, but above all to understand the legal framework of the asylum system in the UK, and the political ideology behind the new policies aimed at combating illegal migration, noticing how these targeted Albanians. In fact, since September 2022 the British media and newspapers have done nothing but dedicate their headlines and front pages to the Albanians, pointing them to any term, from criminals, to invaders, to poor victims. The reason behind all this has been a sudden mass flow of Albanian migrants who have been crossing the Channel illegally since summer 2022 in small boats. And this is how the Albanians have become the “latest scapegoats for Britain’s failing ideological project” (Ypi, 2022).

¹ *Shpresa* in Albanian means “Hope”.

² Shpresa Programme (Shpresa) is a charity founded in 2002 that promotes the participation and contribution of Albanian refugees and migrants in the UK. The organization offers various projects and services aimed at helping the Albanian community in the UK with an important focus on young and unaccompanied refugees’ victims of trafficking, blood feuds, and organized crime in Albania. <https://shpresaprogramme.org/>.

While I was in the UK, this entire scenario brought to my mind the experiences of Albanians in Italy during the 1990s, including my father's narrative. It was as if the same story was repeating itself but in a different historical context and in a different country.

Nevertheless, considering the subsequent numerous political and social transformations in Albania, we find ourselves wondering why there's still a trend of unlawful Albanian migration today, at the end of day, Albania is not a country at war, but it looks like one.

What drives young Albanians to take life-threatening risks, journeying long distances, sneaking across borders within lorries, or using fragile small boats?

Addressing all of this requires an understanding of both the current social, economic and political situation in Albania and its historical context, as the current societal circumstances are a result of the flawed transition from a communist regime to a democratic nation, years where the Albanian organized crime was formed.

The history of the illegal migration of Albanians begins in the 90s, after the fall of the communist regime of Enver Hoxha, since then it is estimated that more than 40% of the Albanian population has left the country and this demographic trend is expected to continue (UN, 2022). However, since 2020 there has been a new wave of migration from Albania to other European countries, especially to the UK (Hoxhaj, 2022).

Between 2011 and 2021, approximately 214,000 individuals departed from the country, as indicated by INSTAT's net immigration methodology. However, in 2022, this phenomenon has become more aggressive. (B. Hoxha, 2022).

According to data from The Migration Observatory³ 16,000 Albanians applied for asylum in 2022, making up 16% of the total applicants. Of these 12% of Albanians arriving via small boats were referred to the UK's modern slavery system, this means that 80% of people coming by small boats are Albanians claiming to be victims of modern slavery (Home Office, 2023).

³ The Migration Observatory, (2023), *Albanian asylum seekers in the UK and EU: a look at recent data* <https://migrationobservatory.ox.ac.uk/resources/commentaries/albanian-asylum-seekers-in-the-uk-and-eu-a-look-at-recent-data/> .

According to Eurostat, Albania has the highest proportion of asylum applicants worldwide. Among these applicants are young Albanians, often minors, women with babies, and even elderly individuals, who are risking their lives to leave the country. Recently, they've been making a gruelling 7-9-hour journey by primitive means, traveling from France to Britain, reminiscent of the period before the fall of communism.

In the year ending March 2023, a staggering 12,451 Albanians arrived in the UK by small boats. Alarmingly, over half, or 53%, of all small boat referrals to the National Referral Mechanism (NRM) during this period consisted of Albanians, making them the most common nationality among small boat arrivals.

The response from the British government has been far from positive, with concerns about how they handle this situation. According to Lea Ypi, Albanians have become the latest victims of an ideological project that employs racism, xenophobia, and negative stereotypes toward minorities as a smokescreen to conceal its own political shortcomings.

On the 7th March 2023 the British Government introduced in the House of Commons the Illegal Migration Bill in order to “prevent and deter unlawful migration”. By altering the legislation, the Illegal Migration Bill would prevent anyone who enter the UK unlawfully from staying there. Instead, they will be detained and then immediately deported, either to their home country or a safe third nation (Home Office 2023). This Bill was approved by the Chamber of Lords in July and received Royal Assent on 20 July 2023 and it’s now Act.

This Act breaches International Human Rights Law and UK’s obligations under the European Convention on Human Rights, but also targets Albanians as they are in the top three most referred nationality in the NRM since records began in 2014 and in recent years, they have reached the highest number and proportion of asylum seekers claims (Home Office, 2023).

Hence, in this dissertation, drawing from my first-hand experience as a youth support worker at the Shpresa Programme, I aim to delve deeper into the phenomenon of Albanian migration to the UK in the years following the COVID-19 pandemic. I will also undertake a comprehensive examination of the legality of

the Illegal Migration Act, exploring its ramifications and shedding light on how it impacts the Albanian community residing in the United Kingdom.

CHAPTER 1. BACKGROUND OF THE ALBANIAN MIGRATION

This chapter aims to provide an overall picture of illegal Albanian migration, which has its roots in the period of the fall of communism in 1991.

It is essential to know the historical context of the origins of Albanian migration to understand contemporary migration in the UK, since, as we will see, contemporary Albanian migration has its origins in the 90s, the dynamics of which then consequently led to the mass flow that occurred in the last two years in the UK.

1.1 Reasons for migration

“Migration is the movement of people from one place to another, to settle in a new location. Migration can be voluntary or involuntary and can occur for a variety of different reasons, including economic, environmental and social issues” (EU Parliament, 2023)

Migration is an enduring phenomenon that has characterized human history throughout time. Indeed, the movement of people has been a constant presence and its effects have reverberated throughout societies around the world. The mobility of individuals has proven to be a significant driver of both economic and social progress, contributing to the development of nations and cultures (McNeill, 1984). The world is in a perpetual state of evolution, marked by dynamic changes in the social, economic and political landscape. These ongoing changes often serve as catalysts, motivating individuals to move, whether from village to village, city to city, state to state, or even continent to continent. According to the IOM World Migration Report 2022⁴, in 2020 there were around 281 million international migrants. Although it is an important number, however, it represents only 3.6% of

⁴IOM, (2022), *World Migration Report 2022* file:///Users/alexiamalaj/Downloads/WMR-2022_0.pdf.

the world's population, this means that staying in one's country of origin remains the norm (IOM, 2022).

Some individuals undertake journeys to escape conflict, persecution, oppression, terrorism or other serious human rights violations. Environmental disasters caused by climate change can also force migration. Economic motivations are another driving factor, with individuals seeking job opportunities and better living conditions in new locations. Additionally, some people migrate for educational purposes, to immerse themselves in different cultures, or to reunite with family members (UN, 2023). The choice to migrate often reflects a complex mixture of personal aspirations and strategic decisions aimed at ensuring the survival and well-being of one's family. Migrants often send remittances to their family members, whether they remain in their home country or have emigrated and now reside in the diaspora (Bloch, 2011).

Indeed, understanding the complexities of migration requires a multifaceted approach that considers a variety of motivations. These motivations can be broadly classified as structural, institutional and social factors. To gain a holistic understanding, it is essential to examine migration through sociological and anthropological lenses, recognizing it as a multifaceted process with political, social, economic, educational and cultural dimensions. Family ties, friendships, language and culture all play a fundamental role in triggering and shaping the dynamics of migration (Bloch, 2013).

The history of Albanian migration indeed possesses distinctive characteristics. Scholars like Russell King and Kosta Barjaba⁵, in their work titled "Introducing and Theorizing Albanian Migration" (2005), have asserted that Albanian migration is inherently clandestine and irregular. To elucidate this unique phenomenon, they

⁵ Barjaba, K., Russel, K., (2005), *Introducing and theorizing Albanian migration*, https://www.researchgate.net/publication/262259021_Introducing_and_theorising_Albanian_migration.

have proposed the Model of Albanian Emigration, which aims to provide a framework for understanding the specific patterns and motivations underlying Albanian migration.

Albania is a relatively small nation located in the south-eastern part of the Balkan Peninsula and it is home to approximately 2.8 million inhabitants. However, it is interesting to note that a significant part of the Albanian population resides outside of Albania itself. Indeed, it is truly remarkable to find that there are very few families in Albania who have not been affected by immigration in some way, whether through emigration or with family members living abroad (King, 2005).

Albanians have historically shown a strong propensity to emigrate, driven by a number of factors. It is worth noting that the period of communist dictatorship temporarily curbed this trend. However, since the 1990s, emigration has once again become an important feature of Albanian society (Tacchella, 2007). The collapse of the Soviet Union began a period of transformation characterized by new opportunities for migration. At the same time, significant changes have occurred in global politics and economics, leading to a new world order and an era of intensified globalization. This global realignment has had a profound impact, particularly on Albania, which had previously been quite isolated from the rest of the world. Albania emerged as an important destination for emigration during this period, reflecting the changing global landscape and the end of its isolation.

In the next paragraphs we will explore more in depth the historical background of the Albanian migration in order to understand the causes that lead Albanians to migrate en-masse. Among the main causes of Albanian emigration are extreme poverty, a high rate of unemployment and a high rate of corruption (Vathi and King 2013). On the other hand, also social environment and particular contacts at the country of destination can represent important pull factors (Tabor, 2015).

1.2 From the 1990s to the 2000s: the three main Albanian exoduses

Contemporary Albanian emigration began after the fall of communism in 1990. In that year, approximately 4,800 Albanians, regardless of their social status, converged on the main embassies in Tirana, seeking an escape from the isolation, poverty and political unrest of the 'Albania.

After a crisis lasting several days during which embassies initially refused to facilitate their departure, pressure from the international community forced the communist regime to grant permission for their exit. Around 3,200 of these people chose to move to Germany, over 800 to Italy, around 600 to France, with a smaller number opting for destinations such as Turkey, Poland, Czechoslovakia and others. Over the next twenty-five years, more than 1.3 million Albanians followed suit by emigrating, and it is very likely that hundreds of thousands more will join them in the decades to come.

The year 1991 holds immense significance for Albanians, marking the opening of their country's borders after over four decades of dictatorship. Before that Albania was simply a small isolated state in the southern Balkans, ruled by a Stalinist dictator who had outlawed emigration. The opening of the borders in February 1991 opened a new chapter in Albanian history, as hundreds of thousands of Albanians fled Albania on small boats to reach the Italian coast. And it is from this moment on that the Albanians become "boat people".

However, the fall of communism in 1991 was not the only important contemporary exodus, but two more occurred in the 1990s. In 1997, with the failure of the pyramid schemes, Albania became the protagonist of a second exodus in the history of contemporary emigration, which also saw here tens of thousands of Albanians cross the waters of the Mediterranean and the Strait of Otranto to find refuge in Italy or Greece.

Finally, between 1998 and 1999, with the outbreak of the war in Kosovo, there would have been a third exodus which saw Albanians fleeing a war, but also Albanians mixing with Kosovars to ask for asylum and international protection.

Both these events contributed to internal instability within Albania.

While Italy and Greece remained primary destinations for these migrants, a growing number of asylum requests were lodged in countries such as Germany, Switzerland, the UK, and Belgium.

When examining the distinct phases of migratory trends from the 1990s onwards, Barjaba and King (2005) were the pioneers in proposing a model for Albanian emigration. Comprehending these scenarios will also provide insight into the intricacies of contemporary Albanian migration to the UK, given the existence of analogous patterns both in the methods employed and in the strategies adopted by host nations to deter migrant influx. Let us now analyse these three exoduses in more detail.

1.2.1 The big exodus after the fall of Communism (1991)

The fall of communism in Albania marked a significant period of political and social transformation in the country. Albania, under the leadership of Enver Hoxha⁶, was one of the most isolated and repressive communist regimes in Eastern Europe. During those years, Albania adopted an extreme form of Stalinist communism, isolating itself from the rest of the world, depriving citizens of all freedom and adopting policies of self-reliance and anti-revisionism. The government implemented collectivization of agriculture, nationalization of industries, and suppression of political dissent.

For forty long years, the nation has existed in isolation, cut off from the global community and trapped in an ideological bubble with no opportunities for

⁶ Enver Hoxha (16 October 1908, Gjirokastra - 11 April 1985, Tirana) was an Albanian politician. He led Albania from the end of World War II until his death in 1985 as first secretary of the Party of Labor of Albania.

interaction with broader cultural, social or political developments. After this long period, the country not only found itself in a stalemate, but also had to deal with the lasting consequences of prolonged stagnation that affected all aspects of life. Added to this heavy burden are the negative consequences, especially at an individual level, deriving from the lack of freedom and the gradual erosion of civic commitment and responsibility (Muscardini, 2010).

For decades the country was like a prison, the borders were impassable, and the bunkers built to defend itself from the outside were used to prevent expatriation. Anyone who tried to cross the border was shot and their body was left unburied, as a warning to anyone who wanted to try (Dondi, 2021).

“There was total closure, they made you believe you were leading a good life, happy, because there is a piece of bread or a job for everyone, then little by little you realize that it is slavery” (Eva, La Stampa, 2021).

With the collapse of the Berlin wall and the rise to power of Hoxha's right-hand man, Ramiz Alia⁷, the Albanian communist regime could no longer ignore the radical changes that had occurred in many communist countries.

During the last years of the communist regime in Albania (1985-1990), the country faced disastrous economic circumstances. Albania was characterized by extreme poverty, based predominantly on an agricultural economy and a fully planned approach to industrial development. This period was marked by a severe economic crisis that resulted in widespread hunger, largely due to the absence of effective reforms. Efforts made by Ramiz Alia, to address the economic crisis have not produced the expected results. Factors that contributed to this included low levels of industrial production, poor product quality, poor export management and, above all, a cautious approach to opening up to the outside world that was not accompanied by internal reforms. The authorities were cautious in implementing internal changes as they were seen as potentially dangerous, potentially leading to a resurgence of capitalism.

⁷ General secretary of the party in 1986 and head of state in 1987, successor to Enver Hoxha.

February 20, 1990 represents a symbolic date in Albanian history. That day, tens of thousands of protesters gathered in Skanderbeg Square in Tirana and toppled the imposing statue of Enver Hoxha. This bust had become the symbol of four decades of oppressive rule in Albania. The event is widely regarded as the day that marked the fall of the last communist regime in Europe, marking the end of an era of authoritarian rule and paving the way for significant political and social changes in the country.

Albania remained the last stronghold of communism while other Eastern European countries had witnessed the overthrow of similar regimes. The events of February 20, 1990 were not only significant on a national scale but also attracted international attention. They definitively marked the end of the communist regimes in Europe and were widely reported by the international press.

However, due to Albania's extreme isolation during that period and strict visa restrictions that made it difficult for residents to travel abroad, foreign embassies in Tirana could not operate as openly as in most other parts of the world. It was only in April and May 1990 that the government began to allow people to obtain passports, causing long queues at embassy counters as Albanians sought to secure their newfound ability to travel beyond their borders. The Foreign Ministry requested the diplomatic corps to plan *pritje populli*⁸ in order to reduce the risk of attacks on embassy buildings. This, however, was insufficient to stop individuals seeking political asylum from storming embassies on July 2, 1990.

The transition from communism to democracy in Albania was in fact a multifaceted and arduous journey, marked by considerable difficulties and considerable pain for the Albanian population. This political change triggered the start of the first mass emigration from Albania, which began in March 1991, ultimately making the Albanian migration one of the most remarkable migration episodes in recent history.

⁸ Work carried out until then by the Ministry of the Interior which consisted in listening to the reasons why citizens requested a visa.

At the beginning of 1991, Albanians began seeking escape routes by sea. They officially entered the national and international stage on March 7, 1991, with what has come to be known as "the biblical exodus" (Mehillaj, 2010). This extraordinary event marked a significant moment in both Albanian and global history, drawing widespread attention to the ongoing mass migration. A total of 25,708 Albanians arrived on what would later be called "sea carts" at the three ports of Brindisi, Bari, and Otranto (Barjaba, 1996).

At the time, Italy was unprepared to handle this flow of people arriving across the Adriatic. The Martelli law⁹ had just entered into force, a law that regulated certain aspects of migration to Italy and that allowed citizens to enter Italy only if they were under political persecution. This procedure was immediately put to the test. The Italian state authorities showed a fluctuating attitude towards Albanian citizens. In fact, Albanians were not considered by the Italian government as politically persecuted, but only as desperate men and women fleeing an economic crisis (Camera dei Deputati, 1991).

While awaiting the government's decision, some ships in March 1991 were stranded in the water, among them the ship "Tirana" with 3,500 people on board and the "Lirija" with 3,000 people. Italy therefore decided to resort to an ad hoc law for the Albanians, granting an extraordinary work permit valid for one year. Then, given the sudden increase in landings, they decided to close the borders and consequently also prevent the so-called "boat people"¹⁰ from entering the territory.

However, all these decisions changed a few months later, with one of the largest landings in the history of immigration, namely that of the Vlora¹¹, which took place on August 8, 1991, with more than 20,000 of migrants on board. This event epitomizes the profound desperation experienced by Albanians during those years. They were willing to take life-threatening risks, cramming onto overloaded boats

⁹ The law was approved on 28 February 1990.

¹⁰ Boat people are refugees who flee their countries for political or economic reasons aboard boats.

¹¹ The Vlora was a ship carrying sugar, it had just returned from Cuba when it was embarked by tens of thousands of Albanians in the port of Durres on August 6, 1991.

in a desperate attempt to flee the country. This stark choice brought them perilously close to the brink of death.

This incident also led to a shift in the stance of the Italian government, which adopted different strategies compared to its previous approaches. Even before the ship docked in Bari, the government made the decision to maintain strict control over the passengers to prevent dispersal and arranged for their repatriation. Local authorities and communities had little authority to intervene. This decision contradicted any humanitarian assessment of the Albanians' situation upon arrival and became even more complex when it resulted in their concentration at the Stadio Vittoria. Italy deceived the refugees by creating an illusion of potential political asylum through efforts to maintain calm, only to ultimately forcibly expel all of the Albanian arrivals. Around 17,000 Albanians were subjected to repatriation.

“In the past, you were arrested for even thinking about leaving. Now that nobody was trying to stop us at home, they no longer wanted us on the other side. Nothing had changed, only the uniforms of the guards. We risked being arrested not in the name of our government but that of others, the same ones who had previously urged us to cut ties with the past. The West had been criticizing the East for its closed borders for decades, financing campaigns to demand freedom of movement, condemning as immoral the states that limited the right to leave the country. Our exiles were welcomed as heroes. Now they treated them like criminals.” (Lea Ypi, 2021)

In the migration patterns of Albanians in 1991, Italy and Greece emerged as primary destination countries for immigration. During that year the UK had not yet become a major destination for Albanian migrants. According to 1991 census data, there were only 338 Albanians living in the UK at that time. This indicates that the UK had not yet attracted significant numbers of Albanian immigrants during the early stages of the post-communist transition.

1.2.2 The fall of Pyramidal schemes in 1997

Following the collapse of communism, elections took place in 1992, resulting in victory for the Democratic Party led by Sali Berisha¹². Subsequently, Albania transitioned to a free market economy, replacing the Stalinist-style economic structure imposed during the Hoxha regime. Nevertheless, the Albanian financial landscape became saturated with *Ponzi schemes*¹³, with government officials endorsing and permitting a sequence of pyramid schemes¹⁴.

Between 1992 and 1996, Albania sustained itself primarily through international aid and remittances sent by its emigrant population. This approach helped maintain a degree of stability in the country's economic system. However, beyond the agricultural and construction sectors, the post-communist Albanian economy relied heavily on importing goods from foreign countries rather than domestic production. While significant amounts of money flowed into Albania, this influx did not lead to widespread prosperity. Instead, a substantial portion of these funds was sent back abroad through exports.

During this period, families were less focused on creating employment opportunities within Albania and more inclined to facilitate the departure of young individuals to foreign countries. Paradoxically, it was this very emigration that gave rise to new forms of labour activity. The circumstances fostered the growth of

¹² Albanian politician, representative of *Partia Demokratike*, Democratic Party. He was Prime Minister of Albania from 2005 to 2013, and President of the Republic from 1992 to 1997.

¹³ The Ponzi scheme is a fraudulent economic framework in which the instigator of the investment portrays the illusion of substantial, quick profits devoid of risk. This hinges on the condition that the initial investor recruits subsequent investors. This structure gives rise to a typical pyramid fraud arrangement.

¹⁴ A pyramid scheme is a type of business structure that entices participants with the assurance of rewards or services for enlisting additional members into the scheme, rather than involving genuine investments or the sale of tangible products. As the recruitment process expands, it rapidly becomes unfeasible to sustain, leading to the inability of the majority of participants to generate profits. Due to this inherent unsustainability, pyramid schemes frequently violate legal regulations and are considered illicit.

various activities, including the forging of visas, engagement in usurious lending, smuggling, and the proliferation of illicit financial transactions within the black market. These activities emerged as a means for individuals and families to cope with the challenges of the transitional period.

This transformation towards a market-oriented economy coincided with inflows of foreign capital and promoted the growth of financial endeavours over industrial and entrepreneurial pursuits. A substantial portion, possibly the majority, of these funds originated from illicit pursuits such as arms trafficking, drug trade, human trafficking, and similar unlawful activities.

The first pyramid scheme in Albania was launched in 1991 by Hajdin Sejdia¹⁵. Initially, Sejdia had started a construction project for a hotel, but he eventually left for Switzerland with several million dollars of investors' money. Subsequently, the site was converted into a park, but it later deteriorated into a centre for prostitution. While some investors were able to recover a portion of their investments, many others were left without compensation. A significant number of these individuals had placed their investments in foreign banks, further complicating the situation.

Notwithstanding these circumstances, pyramid schemes rapidly proliferated in Albania, emerging one after another. Their zenith occurred in 1996, with approximately 25 such entities, drawing investments totalling around 1.5 billion dollars from two-thirds of the Albanian population. These firms offered monthly interest rates ranging from 10% to 25%, a stark contrast to the average monthly salary of roughly \$80 in Albania (Jarvis, 2000). Numerous individuals went to the extent of selling their homes to partake in pyramid investments, and even thousands of immigrants residing in Greece and Italy, who had saved some money, became entangled in the same risky game. (Dervishi, 2020).

¹⁵ In 1991, Sejdia was appointed economic and commercial advisor to the then Albanian Prime Minister, Fatos Nano. He was the Prime Minister of the Transitional Government which aimed to organize the first democratic elections in Albania.

The deflation of the pyramid schemes commenced at the start of 1997. The government imposed freezes on the activities of firms like "*Xhaferr*" and "*Populli*". Another company, *Gjallica*, faced severe financial strain, whereas only *Vefa*, which had invested in Albanian hotels, maintained regular operations. Numerous officials from the Berisha government were accused of involvement in pyramid schemes and reaping substantial profits from them. In 1994, a banking law was enacted with the support of the International Monetary Fund (IMF). Unfortunately, it proved ineffective as it lacked provisions establishing the National Bank of Albania as a supervisory authority over commercial banks. The IMF advocated for intervention two years later, as the repercussions of the pyramid schemes began to surface. Nonetheless, the government persisted in permitting rentier companies to deceive Albanian citizens once more.

In this atmosphere, on January 18, 1997, Sali Berisha announced his intention to dismantle the fraudulent savings system. However, the population viewed this move as a betrayal, leading them to take to the streets in protest, demanding the restitution of their money. Seizing the opportunity, left-wing parties joined the demonstrations alongside the citizens, urging them to persist in their protests until compelling the government to step down. These parties also called for citizens to arm themselves to achieve their demands. The protests were eventually manipulated into full-blown riots, dividing the nation into opposing factions from the north and south. Nevertheless, it's important to note that the 1997 riots were not solely a result of the alleged north-south conflict, as some may assert. The protests quickly escalated into violence, and law enforcement struggled to maintain control. As the crisis intensified, the conditions worsened and descended into chaos in numerous regions of Albania. The country was officially in a state of anarchy. The deteriorating situation prompted the international community, including the United Nations and neighbouring countries, to intervene and provide humanitarian assistance. NATO forces were deployed to help restore order and stabilize the situation. And it is precisely in this context that another exodus occurred between March and April 1997.

Around 9,000 Albanians attempted to reach Italy on several boats during this period. However, Italy's response was far from welcoming, and the Albanians were viewed as a potential threat to Italian well-being. This led to the rapid emergence of xenophobia and racism against the Albanian people, accompanied by accusations of invasion.

Xenophobia and racism towards the Albanian people were not long in coming, as were the accusations of invasion. Quickly an anti- Albanian campaign emerged, they were portrayed as criminals and uncivilized people by media. Let's just think of "*Striscia la Berisha*"¹⁶, a show seen by millions of Italians in which Albanian men were portrayed as dirty and bigots, while women as prostitutes; or the statements of Irene Pivetti, a former member of the Chamber of Deputies of the Italian Republic, who expressed herself thus in the *Corriere della Sera* at the time: "*Albanian refugees should be thrown back to the sea. And when they shoot at our police forces, their ships would be sunk*"¹⁷. And indeed, it was not long in coming the scenario of the shipwreck of *Kater i Rades*¹⁸. The patrol boat was carrying 120 people, mostly women and children, and was intentionally struck and sunk by an Italian Navy corvette, as a deliberate measure to prevent its landing on the shores of Italy. 108 people died.

1.2.3 The Kosovo war migration wave (1998-1999)

The war in Kosovo (1998-1999) was one of the other factors that fuelled a third wave of Albanian migration, and this time most Albanians choose the UK as their destination.

Until 1989 Kosovo had been an autonomous province of Yugoslavia inhabited by an Albanian majority representing about 90% of the population. With the rise to

¹⁶ It takes its name from the television program *Striscia la Notizia*

¹⁷ "*Corriere della sera*" del 28 marzo 1997, La Pivetti: Ributtiamoli a mare.

¹⁸ a patrol boat stolen from the port of Saranda, a city in southern Albania, by criminal groups who were involved in the trafficking of illegal immigrants.

power of Slobodan Milosevic¹⁹, the autonomy of the region which had been guaranteed by Tito was revoked and along with it the Albanians of the region were deprived of many rights, starting from that of using their mother tongue.

The instruction of Albanian language and history was eradicated from educational institutions, and the official language reverted to Serbo-Croatian. On February 25, 1989, the Yugoslav authorities declared the escalation of police and security personnel in Kosovo and subsequently issued orders for "special measures" on February 27. Subsequently, a deployment of 15,000 troops along with an array of police forces, tanks, and aircraft were dispatched to the province. On March 1, a state of emergency was officially declared in Kosovo.

Albanians were systematically removed from all state and administrative positions, while Serbian and Montenegrin families were incentivized with administrative concessions to settle in Kosovo. The police and judiciary, empowered with unrestricted authority, engaged in a relentless cycle of inspections, arrests, torture, and large-scale trials against the Albanian majority. Confronted with these oppressive measures, many Albanians opted for emigration, while others initiated political resistance movements. One notable movement was the Democratic League of Kosovo, led by Ibrahim Rugova, which adopted a strategy of non-violent resistance. In 1996, the Kosovo Liberation Army (KLA), *Ushtria Çlirimtare e Kosovës* (UÇK) emerged, initially established in 1992 under the leadership of commander Adem Jashari. With the UÇK initiating guerrilla actions against Serbian security forces, the response from Serbian authorities in Kosovo intensified, manifesting in even more severe and indiscriminate repression.

The situation degenerated in the months of February-March 1998 when 83 civilians were killed in the Drenica triangle, following which the police and the army attacked numerous villages in the central areas, raping women, killing children, burning houses and people. A mere two months following these events, the Serbian

¹⁹ He held the position of president of Serbia from 1989 to 1997 and later served as president of the Federal Republic of Yugoslavia from 1997 to 2000. He led the Socialist Party of Serbia and played a prominent role in the political landscape during the conflicts in the former Yugoslavia.

army forcibly expelled 13,000 vulnerable individuals – including elderly, women, and children – from Kosovo, as they sought refuge in northern Albania. This marked the commencement of a harrowing journey for thousands of Kosovars, both within and beyond Kosovo's borders. This odyssey ultimately reached its zenith with the commencement of NATO airstrikes on March 24, 1999.

A lot of Albanians from Kosovo escaped from their towns and emigrate to northern Albania where they were put in refugee camps or hosted by Albanian families, most of them after sometimes left Albania and asked for asylum abroad.

While Greece and Italy remained the primary destinations, there was a notable trend of onward migration to other European Union nations like France, Germany, and Belgium during these years. These countries witnessed the growth of scattered Albanian communities, initially established by the "embassy refugees," that were reinforced by fresh arrivals. This evolving diasporic network then extended to the United Kingdom, particularly after the influx of Kosovar refugees into that nation. In more distant regions, a fresh Albanian community was emerging alongside the longstanding diaspora settled in the United States (Vullnetari, 2011).

In 1996, a ruling by the High Court acknowledged the persecution faced by Kosovo Albanians in the former Yugoslavia. Among the most important cases that have marked this process we remember *R v. Secretary of State for the Home Department, Ex parte Shquipe Gecaj and Ors* and *Gashi and Nikshiqi v Secretary of State for the Home Department*.

As a result, it was established that all Kosovar Albanians should be granted the right to stay in Britain. Following this verdict, Britain encountered an abrupt and substantial surge of both Kosovo Albanians and Albanian individuals originating from Albania, Macedonia, Montenegro, and Serbia.

The circumstance of Albanians from Kosovo seeking temporary refuge in Albania created an opportunity for other Albanians to blend in with Kosovar asylum seekers, securing refugee status in Europe. This was facilitated by the prevailing

poverty and unemployment, which persisted due to the political instability that deterred foreign investments in Albania (Doward, 2016).

1.3 Changing migration routes: Albanian migration from 2010 to nowadays

As observed, Albanian migrations throughout the 90s have been prompted by a range of political and economic forces, including the collapse of communism in 1991, the collapse of the pyramid scheme leading to the 1997 civil conflict, and the Kosovo war in 1998. Nonetheless, these migratory patterns persisted beyond these significant events, with Albanians consistently seeking asylum in the nations they migrated to. The question arises: Why does this phenomenon persist even in the absence of ongoing conflicts and social disorders? The persistence of illegal Albanian migration after the 90s can be attributed to a combination of factors.

Albania remains among the least prosperous European nations and holds the highest per capita migration rate. According to the World Bank's data for 2022, Albania's GDP per capita stands at \$7,069.2, a mere one-seventh of the United Kingdom's figure (\$45,850.4). In the year 2020, over 50% of the Albanian population faced the risk of poverty and social exclusion, while the estimated youth unemployment rate (ages 18-34) hovered around 60%²⁰. The Albanian economy's underperformance has been significantly influenced by the impact of the Great Recession, particularly due to the indirect consequences of reduced remittances from migrants in Italy and Greece. The Great Recession can be interpreted as a historical occurrence that diminished earnings and led to unemployment and unstable working conditions in industries where Albanian migrants had found employment in Greece and Italy. Among these sectors, the construction field suffered the most. Given these circumstances, numerous Albanian migrants pursued various modes of migratory movement (Vullnetari, 2011).

²⁰ World Bank (2023), *Albania* <https://www.worldbank.org/en/country/albania/overview>.

Those who had acquired EU citizenship, or long-term EU residence permits, were able to transition to countries like Germany, Austria, Belgium, and the UK (prior to the enforcement of Article 50 TEU), aided by social connections with those who were already established in those nations (Dimitriadis, 2023). It is precisely in this period that we see a shift in the routes of the Albanians, who begin to emigrate more and more to the United Kingdom.

Considering the evolving trajectories and pathways that define Albanian migration, a more comprehensive examination is warranted. This should include not only the economic circumstances but also the social obstacles prevailing in present-day Albania. Such an in-depth analysis can provide valuable insights into the phenomenon of Albanian asylum seekers in the post-Brexit UK.

Migrants embark on journeys away from their home countries for a variety of reasons, which can sometimes intersect. Furthermore, circumstances may change after departure, leading to different factors contributing to their decision not to return home.

As we've already seen, Albania is characterized by a notable poverty rate, and economic factors significantly drive migration to the UK. Given these circumstances, seeking asylum in the UK (and other European nations) can be interpreted as a means to secure employment and amass financial resources. However, there are other reasons that lead Albanians to seek asylum which have to do with social issues.

While Albania isn't currently engaged in warfare or internal armed conflict, the nation confronts considerable and longstanding challenges. These encompass corruption, trafficking, enduring blood feuds, discrimination and violence targeting the LGBTQAI+ community²¹, prejudices against the ethnic Roma and Egyptian groups, gang-related violence, and instances of sexual and domestic violence.

²¹ Equaldex, *LGBT Rights in Albania* <https://www.equaldex.com/region/albania>.

Regrettably, the Albanian government appears to struggle in addressing these issues effectively.

Given this context, individuals are often unable to seek resolution within Albania. In cases where the mentioned challenges imperil an individual's life or basic well-being, their only recourse might be to escape and seek refuge abroad. And this is how their journey in small boats begins to cross the channel and reach the UK, which reached its peak in 2022.

According to the Migration Observatory at the University of Oxford, in 2022 around 16,000 Albanians sought asylum and 12% of them were referred to the Modern Slavery System²², an unprecedented number when compared to Albanian asylum seekers in 2021 which numbered 5,147.

According to the Home Office, from January to December 2022 around 12,301 Albanians arrived by small boats to the UK, representing the top small boat nationality, followed by Afghanistan (8,633) and Iran (5,642).

Asylum seekers also have the ability to establish social networks that are viewed as potential enablers for future work-related journeys or even further migration. In this context, it's important to recognize the notable impact of a well-established and expanding Albanian immigrant community in the UK. This community, which has grown due to the arrival of Albanian migrants who have obtained naturalized EU status from Greece and Italy, plays a significant role in sustaining the migration phenomenon. With almost 140,000 Albanians in the UK, their presence contributes to the continuity of migration patterns (IMISCOE Research Series, 2020).

Simultaneously, characterizing Albania as a "safe country" presents complexities. The trafficking of individuals for sexual exploitation, forced labor, and criminal activities is a severe concern within modern Albania. This scourge involves

²² Migration Observatory, (2022), *Albanian asylum seekers in the UK and EU: a look at recent data* <https://migrationobservatory.ox.ac.uk/resources/commentaries/albanian-asylum-seekers-in-the-uk-and-eu-a-look-at-recent-data/>.

exploiting, mistreating, and coercing vulnerable individuals, including women, men, and children from impoverished rural regions who may also be trafficked across Europe. Notably, UK-based organized crime networks of Albanian origin hold robust connections with criminal groups in Albania.

Additionally, *Gjakmarrje* (blood feuds) continue to pose problems in Albanian society, albeit to a lesser extent than before. This phenomenon involves risks for men and boys when their family members commit crimes against others. The victim's family may seek to retaliate against the perpetrator's family to restore honour, potentially placing individuals in danger.

Further complicating matters, although Albanian law secures rights for LGBTQ+ individuals and ethnic minorities such as the Roma, the effective implementation and societal acceptance of these diversities in the socio-economic sphere are not always assured.

The issues of trafficking, blood feuds, and discrimination contribute to people's profound need for protection. This includes unaccompanied children, as recent research has shown (LOHST, 2022).

The growing numbers of Albanian asylum seekers might also be influenced by Brexit-related impacts on asylum policies, interstate relations, and the economy. With the UK no longer bound by the Dublin Regulations²³, asylum seekers can't be transferred to the first country they entered. This means that once asylum seekers set foot on British soil, their applications must be evaluated by British authorities. The extended waiting times for receiving an initial response (often spanning at least

²³ Under the Dublin Regulation, the criteria for determining the responsible member state include factors such as the first EU country an asylum seeker entered or was fingerprinted in, family ties, and humanitarian considerations. This regulation is designed to streamline the asylum process and prevent "asylum shopping," where individuals apply for asylum in multiple countries to increase their chances of being granted protection. However, the UK's departure from the EU and its subsequent decision to no longer be a part of the Dublin Regulation has altered how asylum cases are handled in the country.

two years for a significant portion of applicants) can be interpreted as a strategy to accumulate resources. During this waiting period, individuals might seize the opportunity to gather income, forge connections with fellow migrants and potential employers, among other actions.

The existence of Albanian migrants and refugees in the UK can be understood as an outcome shaped by diverse influences and intricate mechanisms spanning various crisis periods and multiple regions. Factors such as the Kosovo conflict in the late 1990s, the acquisition of EU citizenship by Albanians, economic downturn in Southern European nations following the Great Recession, ongoing socio-economic challenges in Albania, along with the impacts of Brexit and the COVID-19 pandemic, have collectively played a role in establishing a well-rooted Albanian immigrant community in the UK and contributing to the rising influx of asylum seekers in recent times.

CHAPTER 2. THE ASYLUM SYSTEM IN THE UK BEFORE THE ILLEGAL MIGRATION ACT 2023

In this chapter, we delve into the functioning of the asylum system in the UK. We examine the criteria for seeking asylum, the eligible individuals for applying, and the difficulties encountered by Albanian nationals in the preceding two years, until the application of the new Illegal Migration Act 2023.

But before proceeding with analysing the asylum system in the UK, it's important to know the definitions of *refugee*, asylum, *asylum seeker* and *migrant* and the international and domestic legislation of the UK in the field of Asylum.

The 1951 Refugee Convention, supplemented by its 1967 Protocol, is the main international treaty that explains these concepts. It was ratified by 146 countries and signed by 19, including the United Kingdom of Great Britain and Northern Ireland²⁴. The Convention defines who a refugee is, outlines their rights, and sets out the legal obligations of the countries that are party to the Convention in terms of protecting and assisting refugees when granting asylum.

According to the Convention a *Refugee* is:

“someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion” (Refugee Convention, 1951).

So, as it comes for *asylum*, it refers to the protection granted by a country to foreign individuals who have fled their own country due to fear of persecution based on factors such as their race, religion, nationality, political opinion, or membership in a particular social group. It is a form of international protection intended to safeguard individuals whose safety and well-being are at risk in their home country. People who seek asylum are often referred to as *asylum seekers*. They apply for asylum in a different country, and if their application is approved, they are granted

²⁴ The UK signed it on 28th June 1951.

the legal right to stay in that country and are protected from being returned to their home country where they might face persecution. The asylum process typically involves a thorough examination of the individual's claims and evidence to determine whether they meet the criteria for asylum protection. In the case the asylum claim is accepted by the county the asylum is sought, you become a refugee and receive international protection.

It is important to note that one of the core principles of the Convention is the principle of non-refoulement. This principle is fundamental in asylum. It means that a country cannot return a refugee to a country where their life or freedom would be at risk due to persecution. It also prevents countries from forcing refugees to return to situations where they could face harm.

As regard the concept of *migrant*, there is not an international definition, but it refers to a person who moves from one place to another, typically across borders or within a country, with the intention of changing their place of residence. Migration can be driven by a variety of factors, including economic opportunities, family reunification, education, and other personal or societal reasons. It is important to be noted that they are not asylum seekers nor refugees (Amnesty International).

International law safeguards the rights of migrants, refugees, and asylum seekers, regardless of their method or purpose of entry into a country. They possess equivalent rights to those of all individuals.

Furthermore, seeking asylum is a fundamental human right enshrined in art 14 of the Universal Declaration of Human Rights (UDHR), which states that:

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.

This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations” (Art.14, UDHR)

In the UK domestic law, we find various acts which regulate asylum. Among these we have the Immigration and Asylum Act 1999²⁵, the Nationality and Immigration Act 2002²⁶, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004²⁷, the Borders Citizenship and Immigration Act 2009²⁸, the Immigration Act 2014²⁹, the Immigration Act 2016³⁰, the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020³¹, the Nationality and Border Act 2022³² and from July 2023 The Illegal Migration Act 2023³³.

In the United Kingdom, the Home Office (HO)³⁴ plays a central role in managing the country's asylum system. The Home Office is responsible for various aspects of the asylum process, including assessing asylum claims, making decisions on asylum applications, and providing support to individuals seeking asylum.

However, the Home Office is also responsible for detaining asylum seekers if there are concerns about their immigration status and is also responsible for removing asylum seekers if they are not granted asylum. And this is where the Home Office becomes the nightmare of any asylum seeker, as the decision-making process on asylum application is very strict and the applicant has to demonstrate that they have

²⁵ Immigration and Asylum Act 1999 <https://www.legislation.gov.uk/ukpga/1999/33/contents>.

²⁶ Nationality, Immigration and Asylum Act 2002
<https://www.legislation.gov.uk/ukpga/2002/41/contents>.

²⁷ Asylum and Immigration (Treatment of Claimants, etc.) Act 2004
<https://www.legislation.gov.uk/ukpga/2004/19/contents>.

²⁸ Borders Citizenship and Immigration Act 2009,
<https://www.legislation.gov.uk/ukpga/2009/11/contents>.

²⁹ Immigration Act 2014, <https://www.legislation.gov.uk/ukpga/2014/22>.

³⁰ Immigration Act 2016 <https://www.legislation.gov.uk/ukpga/2016/19/contents>.

³¹ Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020
<https://www.legislation.gov.uk/ukpga/2020/20/section/3/enacted>.

³² Nationality and Borders Act 2022
<https://www.legislation.gov.uk/ukpga/2022/36/contents/enacted>.

³³ Illegal Migration Act 2023 <https://www.legislation.gov.uk/ukpga/2023/37/contents>.

³⁴ The Home Office is the primary government agency responsible for matters related to immigration, passports, law enforcement, drug regulation, counterterrorism and police force, and it's precisely here where the asylum process happens.

a well-founded fear of persecution in their home country. This often involves providing evidence, such as personal testimonies, documentation, and other forms of supporting information, to substantiate their claim. However, it must be taken into consideration that an asylum seeker comes from a traumatized background, so often during interviews they may have memory lapses which result in inconsistencies during the narration. From this point of view this system can result to be very hostile.

In my role as a social worker at the *Shpresa Programme*, I had the chance to work as an interpreter between the *Migrant and Refugee Children's Legal Unit* (MiCLU)³⁵ solicitors and Albanian asylum seekers. Through this, I encountered numerous accounts from asylum seekers about their encounters during Home Office interviews. A significant portion of these accounts emphasized the emotional strain they endured, and the absence of compassion and ignorance displayed by the interviewers. These testimonies show that an unfair treatment by the Home Office toward Albanian asylum seekers exists and this issue has been raised by various individuals and organizations³⁶.

These allegations suggest that there might be biases or inconsistencies in how the Home Office handles asylum claims from Albanian nationals. Numerous reports and testimonies have indicated instances where Albanian asylum seekers have faced challenges in having their claims fairly evaluated. These challenges can include scepticism about the credibility of their claims, a lack of understanding of the specific conditions in Albania that might warrant asylum, and difficulties in effectively communicating their situations due to language barriers or other factors. In this chapter I will analyse more in depth how the asylum system works in the UK and explain the experiences of Albanian asylum seekers in dealing with the Home Office.

³⁵ MiCLU is a specialist legal and policy hub based in London at the Islington Law Center. They deal with unaccompanied minors who seek asylum in the UK.

³⁶ Including MiCLU and Shpresa Programme.

2.1 How to seek asylum in the UK: the process of application

The process of seeking asylum in the UK is kind of complicated and unfortunately, it is characterized by many delays. The process typically begins when an individual arrives in the UK and wishes to seek asylum, this could be at a port of entry (airport or seaport), or after already being in the UK on another type of visa.

Upon arrival, the individual is usually screened by immigration officials to determine if they wish to seek asylum. If they express the intention to seek asylum, they are registered and given a unique reference number, which is crucial for the application process. The individual is then required to submit a formal asylum application. This can be done through an in-person appointment with the Home Office or through online application. After the application is submitted, the interview phase begins. There is a first interview, the screening interview (or short interview), which aims to collect basic information about the applicant's identity, background, and reasons for seeking asylum. After that there is substantial Interview (or big interview), which is more in-depth and will be conducted by a trained caseworker. Following the substantial interview, the Home Office will make a decision on the asylum application. The decision can be to grant asylum - positive decision - or to refuse asylum - negative decision- (Figure 1).

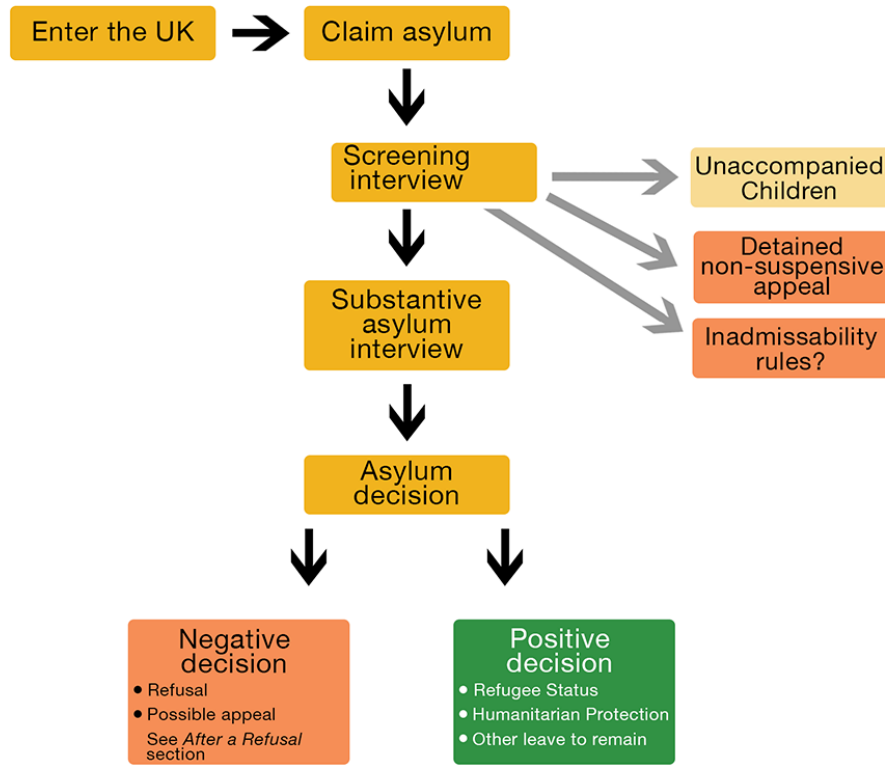


Figure 1- Picture taken from Right to Remain Org (righttoremain.org.uk)

Now, let's take a closer look at how the interviews function on a more detailed level.

2.1.1 Screening interview

The *screening* interview, also known as the short interview, is a process where the asylum claim is registered. To have more probability of getting a positive response, it is important to claim asylum as soon as possible when entering the UK. If you have applied for asylum upon entering the UK at the port, your interview is typically conducted there by an immigration officer. However, if you submit your asylum claim after being in the UK for a while, you will generally be interviewed at the Screening Unit located in Croydon, South London (RTR, 2023).

The purpose of the screening interview is to gather the claimant's personal information, acquire biometric data, briefly document the individual's grounds for seeking asylum, gather details about how the person entered the UK, and recognize any vulnerabilities to facilitate suitable referrals for necessary assistance (Bolt, 2017). The claim is managed by the Third Country Unit (TCU), the Detained Asylum Casework Unit (DAC), Asylum Casework Units (ACU).

Indeed, during the screening the claimant will be photographed, their fingerprints will be taken and then a short interview will take place. This interview usually is quite short, it takes from 30 minutes to 2 hours, but in some cases it can be longer, depending on the complexity of the claimant's case.

During the interview, you will respond to basic inquiries regarding your personal history, family, and background. While these questions might appear simple, this interview constitutes a crucial step in the legal procedure. The interview will cover topics such as the claimant's journey to the UK and provide a brief overview of the reasons underlying their asylum claim.

During the screening interview, the asylum seeker has the opportunity to inform the Home Office if they require housing and financial aid. This support system is referred to as *Asylum Support*³⁷. Indeed, the HO is responsible for providing financial and housing support to the claimant.

After the short interview all the claimant has to do is wait for the Home Office's decision. The waiting times cannot be specified, previously, individuals would apply for asylum and promptly undergo their screening interview. Regrettably, this is no longer the situation. Currently, most individuals experience extended waiting periods, often spanning several months or even more than a year, before their screening interview occurs (RTR, 2023).

³⁷ The Asylum Support is provided under section 98, section 95 and section 4 of the Immigration and Asylum Act 1999.

If the claim is going to be taken into consideration, the asylum seeker will go through the asylum interview with a caseworker, this is also known as the big interview.

2.1.2 Substantive Asylum Interview

The Substantive Asylum Interview – also known as the Big Interview- usually takes place after the screening interview and it is considered to raise valid concerns about the applicant's need for protection. This interview can be very long and usually a lot of questions are asked. The claimant needs to be very clear while answering the questions and give as many details as possible. Caseworkers, or Decision Makers (DMs), are responsible for arranging and conducting this interview, which is considered to be the main opportunity for the asylum seeker to provide evidence on why they need international protection, and they also make the final decision (UKBA, 2023).

The interview takes place at the Home Office in Croydon (South London). It takes place in a room where the asylum seeker is alone and where an interpreter is provided, if necessary. Any information that is shared is confidential and is not shared with anyone, not even the authorities in your home country.

During this interview, the asylum seeker will have to explain the reasons why they are persecuted in their country of origin and why they are afraid to return to their country. All shared information will be documented by the caseworker in a document called an "interview record", a copy of which is given to the asylum seeker at the end of the interview (UKBA, 2023).

Claimants are required to present their birth certificate, passport and national identity card during the interview. All these documents must be presented in their original version.

This interview is essential because it is precisely through the information provided that the DMs will decide to grant asylum or not. During this interview, the asylum seeker will need to present evidence to support their story and their application.

Evidence serves to demonstrate that what the asylum seeker is saying is true. Indeed, the claimant must demonstrate that they cannot live anywhere else than in the UK, as they would be in danger (UKBA, 2023).

For the asylum process to be successful, applicants must show as much evidence as possible to support their narrative, which must be coherent and credible and demonstrate that they are being persecuted in their home country. This is not an easy task, in fact, it is important that before going to the interview, the applicant has a lawyer, to help them prepare for the big interview. The experiences of asylum seekers are often complex and come from a traumatized background, so it is often difficult to bring forward a coherent narrative of the facts.

Another reason that makes this phase even more difficult is the fact that many immigration officials who evaluate narratives tend to make many assumptions about what may be believable and what may appear to be deceptive (Bohmer & Shuman, 2018).

2.1.3 Decision

The final stage of the asylum application process is characterized by the final decision. The latter may take more or less time to arrive based on the complexity of the case. The document “Assessing credibility and refugee status”³⁸ from the 2015 API offers more guidance on the topic. It states that claims should be evaluated "in the round" and that the DM should not be "certain", "convinced" or even "satisfied" of the truth of the account, emphasizing that what matters is the credibility of the claim as a whole, not the claimant's credibility (Neal, 2022).

The decision is made considering the well-founded fear of persecution factor of the asylum seeker. The applicant must show that there is a real risk that this could happen in the future. Indeed, if the persecution took place in the past, it is not

³⁸ Home Office, (2022), *Assessing Credibility and Refugee Status*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1086451/Assessing_credibility_and_refugee_status_pre_28_June_2022.pdf.

necessary to receive refugee status, but it is essential to demonstrate that there is a future risk (RTR, 2023). However, it often happens that applications are rejected for small inconsistencies - such as dates, names of people and places - and lack of documented evidence (Bohmer & Shuman, 2018). This aspect has also been criticized by the UNHCR, which in its review "Home Office Understanding and approach of standard proof" (2020), they pointed out that there was a general lack of coherence and confused reasoning in explaining their decisions (Neal, 2022). The initial decision is communicated through a letter and there are various outcomes. The claimant can get a positive decision or a negative decision.

In case the decision is positive the asylum seeker can be granted Refugee status, this means that they are recognized as a Refugee, as defined in the 1951 Refugee Convention. However, the claimant can also grant humanitarian protection, which means that they do not qualify as refugees, but they cannot return to their home country. If the asylum seekers are granted Asylum or Humanitarian Protection, they have the right to stay in the UK for a minimum of 5 years. They will also gain the right to work and after 5 years they can apply to settle in the UK (UKBA, 2023). There are also cases where the asylum claim is refused but the claimant can receive another type of leave to remain (RTR, 2023).

In case of a negative decision, the asylum seeker gets their asylum claim refused. In this case, the claimant has the right to appeal to the First-tier Tribunal. This Tribunal is an independent judicial body, which is responsible for handling appeals against the decisions made by the Home Office that relate to Asylum (permission to stay in the UK, deportation from the UK, entry clearance to the UK).

During the appeal, the judge is in charge of listening to the arguments of the Home Office and of the asylum seeker and his lawyer. If the appeal is rejected, it is possible to bring a further appeal where the Upper Tribunal can make a new decision in case it considers that there has been a mistake on a rights issue, or it can refer the case back to the First -Tier Tribunal to be heard again (Clayton et al., 2017).

2.2 Albanian Asylum Claims

After explaining how to claim asylum in the United Kingdom, let's now go back to our case study.

The data provided by sources within the UK indicates that there is a substantial influx of Albanian individuals into the UK who are applying for asylum. As discussed in the first chapter, following the collapse of communism, a significant number of Albanians started migrating in large numbers and seeking asylum in various host nations. While initially, Italy and Greece were their primary destinations due to their proximity, we observed a shift towards Northern European countries, particularly the UK, since the onset of the Great Recession. Consequently, Albanians have consistently featured among the leading nationalities seeking asylum in the UK. Nonetheless, it's noteworthy that starting in 2022, a new influx of Albanian asylum seekers has emerged, marking a departure from previous trends.

According to the Home Office, there has been a rapid increase in the numbers of Albanians coming to the UK illegally and crossing the Channel by small boats, indeed, they were the top small boat nationality in the UK in 2022 (figure 2), making up 27% of small boat arrivals (Walsh & Oriishi, 2022).

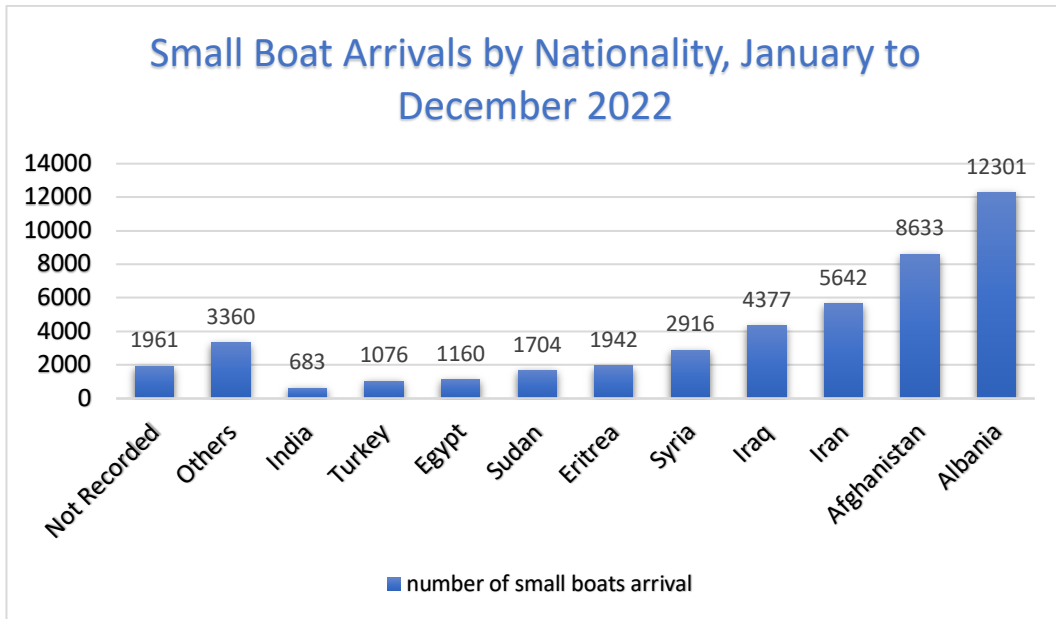


Figure 2- Small boat arrivals by nationality in the UK, source: Home Office

Most of the Albanians coming by small boats claim asylum after entering the UK, indeed 85% (10,699 people) applied for asylum (Walsh & Oriishi, 2022).

In brief, in prior years, there had never been such a substantial volume of asylum applications from Albanians in the UK. As we can observe in the graph shown in Figure 3, from 2010 to now there has been a significant increase in asylum applications by Albanians, but it is interesting to observe how drastic the gap is between the number of asylum seekers in 2021 (5147 applications) and that in 2022 (15925 applications).

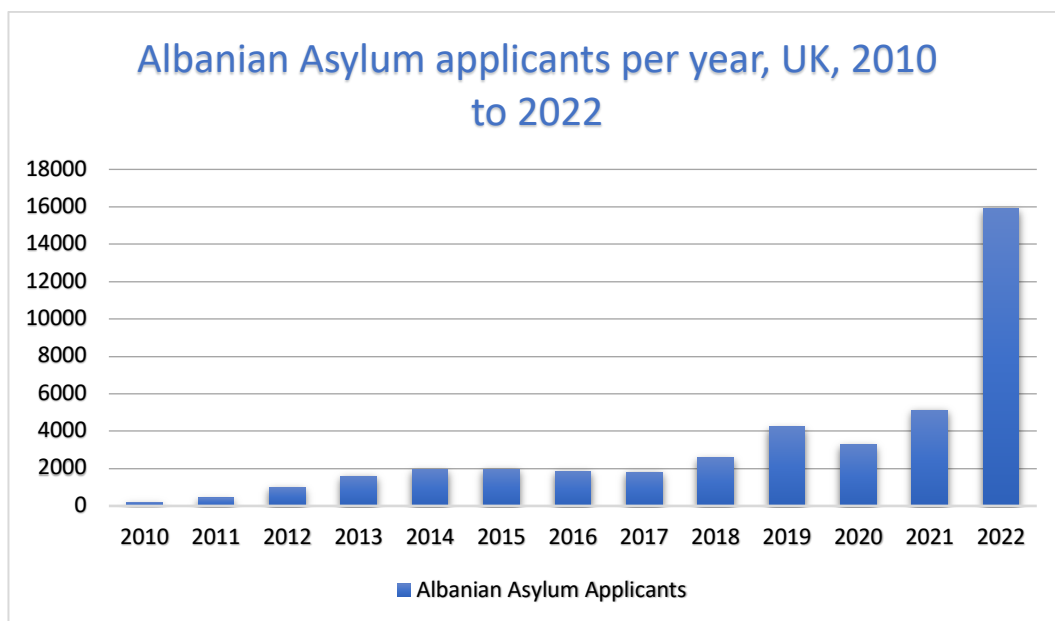


Figure 3 - Number of Albanian Applicants per Year in the UK, source: Home Office Immigration Statistics

According to Migration Observatory, around 16,000 Albanians claimed asylum in 2022, making up 16% of the total applicants. All this data has shaken public opinion and the Home Office, which in their report “Asylum and Immigration: Albania”³⁹(2023) described this phenomenon as an “emergence”.

But why do Albanians claim asylum? Albania is known for its high poverty rate, high unemployment rate, and high levels of corruption. However these purely economic reasons are not adequate requirements for applying for asylum. Albania is not even a country at war, so how can we explain all these asylum claims?

The Home Office regularly releases Country and Policy Information Notes (CPINs)⁴⁰ regarding specific countries and the particular reasons asylum seekers from those countries cite when making protection claims. CPINs include factually based research information on these grounds and provide policy guidance for Home

³⁹ Home of Affairs Committee

<https://committees.parliament.uk/publications/40291/documents/197027/default/>.

⁴⁰Albania: country policy and information notes (2023)

<https://www.gov.uk/government/publications/albania-country-policy-and-information-notes>.

Office caseworkers who handle these cases. It's essential to note that CPINs do not carry legal authority over judges but represent the Home Office's stance on the matter. Regarding Albania, the Home Office has issued four CPINs, covering various topics such as trafficking, blood feuds, sexual orientation, gender identity and expression, domestic violence against women (MiCLU, 2023).

2.2.1 Human Trafficking

Human Trafficking is a significant problem in Albania, and this issue is recognized both by the Home Office and the International Community.

United Nations Office on Drug and Crime (UNODC) defines Human trafficking as: “the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception, with the aim of exploiting them for profit. Men, women, and children of all ages and from all backgrounds can become victims of this crime, which occurs in every region of the world. The traffickers often use violence or fraudulent employment agencies and fake promises of education and job opportunities to trick and coerce their victims”.

According to the 2023 Trafficking in Person Report: Albania by the US Department of State⁴¹, Albania is a “source, destination and transit point for human trafficking” and the government of Albania “does not fully meet the minimum standards for the elimination of trafficking” (USDS, 2023). Annually, a significant number of individuals, including women, men, and children, experience trafficking, with a particular focus on coerced involvement in prostitution and labour against their will (forced begging is very common in Albania).

The collapse of communism in Albania marked a pivotal juncture in the nation's history and had profound implications for the issue of human trafficking. Indeed, from the early 1990s onward, the trafficking of young Albanian women became

⁴¹US Department of State, (2023), *2023 Trafficking in Persons Report: Albania*, <https://www.state.gov/reports/2023-trafficking-in-persons-report/albania/>.

increasingly prevalent in Western Europe, including Eastern Europe. The period of violent anarchy in Albania in 1997 further exacerbated the problem, leading to a significant surge in human trafficking cases. This period of instability saw a particularly alarming increase in the trafficking of women, who were often coerced into prostitution in countries like Italy and Greece. Shockingly, according to Save the Children, an estimated 30,000 Albanian women fell victim to sex trafficking abroad in 1997 (Renton, 2001). Unfortunately, this trend did not stop, on the contrary there appears to be many cases of trafficking, not only regarding women forced into prostitution but also young men who are forced into illegal labour, that in the majority of the cases have to do with criminal activities.

In 2022, a total of 1,719 Albanians, constituting 13% of those who arrived in small boats, were referred to the National Referral Mechanism (NRM)⁴² for cases related to modern slavery. According to the Home Office (2023)⁴³ Albanians comprised 27% of all potential victims referred to the NRM. This percentage represented a notable increase compared to the previous year when they accounted for 20% of cases. Moreover, this marked the highest annual volume of referrals for individuals of Albanian nationality since the inception of the NRM (UKBA, 2023).

2.2.2 Blood Feuds

The European Commission recognizes blood feuds as one of the most common “push factors” driving asylum flows from Albania.

⁴² The National Referral Mechanism (NRM) in the UK is a system designed to identify and support potential victims of human trafficking and modern slavery. It is a crucial part of the UK's response to combatting these forms of exploitation. The NRM operates across the United Kingdom, including England, Scotland, Wales, and Northern Ireland.

⁴³ Home Office, (2023), *Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary 2022*, <https://www.gov.uk/government/statistics/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022/modern-slavery-national-referral-mechanism-and-duty-to-notify-statistics-uk-end-of-year-summary-2022>.

The phenomenon of *Gjakmarrje* or *Hakmarrje*⁴⁴ is still present in many towns in Northern Albania. In Albania, the practice of blood feuds finds its historical roots in the *Kanun*⁴⁵, an ancient medieval code that was utilized in tribal societies. Dating back to the 14th century, the *Kanun* encompasses a vast array of regulations governing virtually every aspect of Albanian social life. At its core, the *Kanun* is built upon a symbolic framework characterized by key concepts such as honour (*nderi*), the word of honour (*besa*), hospitality (*mikpritja*), virility (*burrnija*), and blood (*gjaku*). Within Albanian culture, honour has held a central role as the fundamental element shaping the relationships between individuals and the communities to which they belong. The preservation of one's honour has been regarded as an absolute and unwavering personal and collective obligation because honour was the foundational principle dictating one's social standing. Safeguarding one's honour or that of their clan was seen as a moral duty, even if it meant risking one's own life in the process (Sadiku, 2014).

Blood feuds involve a cycle of revenge and retribution between families or clans and typically stem from a perceived insult, injury, or killing of a member of one family by a member of another family. Certain actions that can trigger blood feuds encompass killing a guest, trespassing on private property, failing to repay a debt, abducting someone, engaging in inappropriate conduct with a woman, or committing rape. Murder can also serve as a catalyst. Once one of these actions has transpired, the offended family seeks retribution by targeting a member of the opposing family. However, the cycle of vengeance seldom concludes there; it has the potential to persist across generations, leading to families in Northern Albania remaining entangled in long-standing blood feuds (Balkanista, 2010). According to the rules of the *Kunun*, *Gjakmarrja* is consumed only on men (i.e., males who had turned 15). Children under 15, women and religious figures were excluded from this practice. However there have been many cases where also children were killed,

⁴⁴ Albanian term of Blood Feud, literally “*gjak*” means “blood”, “*marrje*” means “to take”, “*hak*” means “revenge”.

⁴⁵ Also known as *Kanun i Lekë Dukagjinit* in Albanian. Lekë Dukagjini was the author of the *Kanun*. *Kanun* became a sort of customary law in Albania, especially in Northern Albania.

an example is given by the murder of 9-year-old Endri Llani, which took place on May 5, 2012, in Mamurras⁴⁶. According to the report realized by Operazione Colomba⁴⁷ regarding blood feuds in Albania, 704 families in Albania are involved in blood feuds, among these 113 have moved abroad.

The CPNI report on Albanian Blood Feuds realized by the Home Office on January 2023⁴⁸, states this phenomenon continues to occur in Albania, in particular in Shkodër, Lezha, Kukes and Dibër⁴⁹. However, the report seems to not depict it as an important issue, stating that the number of blood feuds is very low and also shockingly affirming that “in general a person fearing an active blood feud is not likely to be at risk of persecution or serious harm”. This makes us understand how much ignorance revolves around this issue outside Albania. That, the Migrant and Refugee’s Children Legal Unit (MiCLU) and Shpresa Programme in the review report⁵⁰ about the CPNI, highly criticize the Home Office Report. Indeed, it is important to say that the statistics provided by the State Police cannot be considered a comprehensive reflection of the blood feud phenomenon. It is widely recognized that families and communities frequently hide instances of blood feuds from the authorities, making it difficult to obtain a complete and accurate assessment of the situation (CEDOCA, 2017).

⁴⁶ Small town in Northern Albania.

⁴⁷ Operazione Colomba, (2017), *Descriptive document on the phenomenon of “hakmarrja” and “gjakmarrja”* https://www.operazionecolomba.it/docs/Report_ING-2017.pdf.

⁴⁸ Home Office, (2023), *Country Policy and Information Note Albania: Blood feuds* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1131963/ALB_CPIN_Blood_feuds.pdf.

⁴⁹ These are all Northern Albanian areas.

⁵⁰ MiCLU, (2023), *Albanian blood feuds: Yet another unconvincing CPIN* <https://miclu.org/assets/uploads/2023/02/Albania-blood-feud-CPIN-review-February-2023.pdf>.

2.2.3 Sexual Orientation and Gender Identity

Even though homosexuality was decriminalized in Albania in 1995, the situation for the LGBTQIA+⁵¹ community in Albania remains challenging. Discrimination, domestic violence, bullying, and social exclusion within educational institutions, as well as hate speech in the media, are among the deeply concerning issues that significantly impact the lives of LGBT individuals (Popaj, 2021).

According to a report⁵² released by Streha⁵³ in 2021, being a part of the LGBT community is unfortunately associated with a heightened risk of experiencing various forms of abuse. Participants of their report in the community often report elevated levels of physical, verbal, and emotional abuse. According to the data, a striking 72% of individuals reported experiencing abuse related to their sexual orientation in school or at work, while 63% faced such abuse in public spaces like streets or neighbourhoods. Shockingly, 62% of respondents reported incidents of abuse within their own homes, indicating the pervasive nature of these challenges faced by LGBT individuals. Addressing these issues is crucial for fostering a more inclusive and safer environment for all members of the community. As regards the relationship in the family, it is estimated that 42.4% report a little tension in their families, and about 26% report a lot of tension (Streha, 2021). The survey conducted by Streha revealed that a staggering 80% of the 200 LGBT respondents in their report had contemplated leaving Albania. This statistic underscores the significant challenges and concerns that many LGBT individuals in Albania face, which can lead them to consider seeking safety and acceptance elsewhere.

⁵¹ From now on we will refer to LGBT.

⁵² Streha, (2021), *Raporti i vlerësimit të nevojave, Qendra "Streha"*,

<file:///Users/alexiamalaj/Downloads/need-assesment-report-from-streha-2021-albanian-english-1.pdf>.

⁵³ Streha is an NGO that deals with supporting the LGBTQIA+ community in Albania.

Another report released in 2021 by the ILGA⁵⁴, indicated that discrimination against the LGBT population in Albania had escalated since the onset of the COVID-19 pandemic. The study also found that one in two LGBT community members had endured psychological violence and bullying, one in five had experienced sexual harassment, and some had been victims of sexual assault, including rape. Alarmingly, only 7% of those who experienced these incidents chose to report them to the authorities⁵⁵.

According to the Home Office, from 2015 to 2022, 447 Albanians sought asylum because of their sexual orientation and gender identity.

2.2.4 Domestic Violence against women

As defined by the UN, domestic violence is “any pattern of behaviour that is used to gain or maintain power and control over an intimate partner. It encompasses all physical, sexual, emotional, economic and psychological actions or threats of actions that influence another person. This is one of the most common forms of violence experienced by women globally.” (UN Women). Domestic violence can include economic violence, psychological violence, emotional violence, physical violence and sexual violence.

According to the national INSTAT survey⁵⁶, during their lifetime, over 50% of Albanian women and girls between the ages of 15 and 74 have encountered at least one of the five distinct forms of violence, including intimate partner violence, dating violence, non-partner violence, sexual harassment, and/or stalking (INSTAT, 2018). The survey also states that:

⁵⁴ ILGA stands for International Lesbian, Gay, Bisexual, Trans and Intersex Association, it is a prominent organization advocating for LGBTQ+ rights and representing over 600 groups from 54 countries across Europe and Central Asia.

⁵⁵ ILGA, (2021), <https://ilga-europe.org/report/ilga-europes-submission-to-progress-reports-of-the-european-commission-2020/>.

⁵⁶ Instat, (2018), *Violence against women and girls in Albania* <https://www.instat.gov.al/en/statistical-literacy/violence-against-women-and-girls-in-albania/>.

- 65.8% of women have experienced dating violence during their lifetime
- 47% have encountered domestic violence from an intimate partner
- 1 in 5 women has experienced physical and/or sexual violence
- 18.2% of women have experienced non-partner violence
- 18.1% of women have been victims of sexual harassment during their lifetime
- 12.6% of women have experienced stalking

Additionally, the survey sheds light on attitudes towards violence against women:

- Half of the women surveyed believe that violence between a husband and wife is a private matter
- 46.5% of women think that a woman should endure some violence to maintain her family's unity
- 26.1% of women believe that a woman should feel ashamed or reluctant to speak to anyone if she has been raped

The deeply patriarchal Albanian society has normalized the violence against women so much that even the women themselves think that it is normal to be beaten by their husbands and that domestic violence is a private thing between husband and wife. Institutionally, we see that Albania is very weak in terms of protecting women's rights, especially when it comes to violence against women.

In 2016-17, the Human Rights in Democracy Center conducted a study⁵⁷ on applications for domestic violence protection orders filed in the Tirana District Court. The study revealed that a significant majority of these applications, specifically 76% (1404 out of 1893 cases), were either dismissed, refused, or rejected. Among the reasons for these dismissals, 588 cases were dismissed at the request of the petitioner, while 553 cases were dismissed because the offender did not appear in court. There were instances where courts inappropriately attempted to mediate or reconcile the parties involved, leading to the dismissal of proceedings,

⁵⁷ Human Rights Democracy Center, (2017), *Respect of the rights of victims/ survivors of domestic violence in judicial process* https://www.stopvaw.org/uploads/study_hrdc_2016_2017_1.pdf.

only for violence to recur in the future. It is noteworthy that, despite the legal authority to do so, the police did not request a protection order or an immediate protection order in any case during the monitored period of 2016-17. Additionally, in some cases, the effect of a protection order was suspended pending an appeal process.

The Advocates for Human Rights in a submission⁵⁸ to the Universal Periodic Review (UPR) summarize the poor situation for the victims to obtain protection orders stating that courts have accepted or partially accepted only 24% of petitions, while have refused, suspended or dismissed 76% of petitions for protection order. In their report, they also show that many final protection order applications do not succeed, and the court often works to reconcile the victim and the perpetrator (AHR, 2019).

In conclusion, we can state that protection orders are not effective at all and victims who seek protection orders encounter notable challenges when it comes to substantiating their cases. They might lack access to legal representation, and they could be subjected to coercion or pressure to reconcile with the offender. Furthermore, the data reveals that most protection orders are not ultimately granted during the final hearing. This highlights the difficulties victims face in obtaining legal protection and underscores the need for comprehensive support and legal reforms to address these issues effectively. Even in cases where a protection order is issued, its effectiveness may be severely compromised if the victim, often due to economic hardship and lack of social support, has no viable alternative but to continue living with their abuser. Additionally, the efficacy of protection orders can be further undermined by instances of judicial corruption. These factors highlight the complex and multifaceted nature of addressing domestic violence and the need for a comprehensive approach that includes not only legal measures but also social

⁵⁸The Advocates for Human Rights, (2019), *Stakeholder Report for the United Nations Universal Periodic Review* https://www.theadvocatesforhumanrights.org/uploads/albania_report.pdf.

and economic support for victims, as well as efforts to combat corruption within the judicial system.

Victims of domestic violence can remain vulnerable even if they relocate to another part of the country, as their abuser may be able to track them down through word-of-mouth information networks if sufficiently motivated to do so. It's essential to recognize that the risks faced by victims extend beyond those posed by their initial abuser. Specifically, individuals who are disadvantaged due to poverty, lack of education, absence of a social support network, or disability are at an increased risk of various forms of exploitation, including trafficking, even if they haven't experienced trafficking before. Addressing these vulnerabilities and ensuring the safety and well-being of such individuals require comprehensive support systems and interventions that consider the broader context of their lives (Neale, 2022).

2.3 Home Office Hostile Environment Policy

The majority of the Albanians arriving in the UK are young people, many of them are also minors and young women with small kids, who are victims of trafficking, organized crime, blood feuds, forced marriages, and honour-based violence in their homeland. The problems they faced in Albania that forced them to flee, the troubled and dangerous journey they had to face, and being in a new country with a new culture and a new language away from their family, have severely affected their mental health, and most of them are traumatized and suffer from depression. While I was in London I volunteered as an interpreter between young Albanian asylum seekers⁵⁹ and solicitors from MiCLU. This allowed me to see first-hand how the asylum system works in the UK, but above all to hear the experiences of asylum seekers in dealing with the Home Office.

The Home Office in the UK has always faced criticism and accusations of hostility towards asylum seekers and refugees over the years, but from 2022 it seems like the Albanians are their main target. It is important to remember that in 2012 the

⁵⁹ These Asylum Seekers were assisted by Shpresa Programme.

Home Office introduced an “hostile environment” policy. This policy was introduced as part of the government’s efforts to curb illegal immigration and reduce the number of people residing in the UK without legal status. The aim of the policy is to make it more difficult for illegal immigrants to live and work in the UK, as Theresa May⁶⁰ stated in 2012: “the aim is to create, here in Britain, a really hostile environment for illegal immigrants” (Hill, 2017). She certainly succeeded in her intent as this policy created a climate of fear and discrimination, making life difficult for both undocumented immigrants and legal immigrants who may face undue scrutiny.

From a study of Rebecca Chaffelson conducted in 2020, many issues emerged regarding Home Office Hostility that had to do with assuming that claimants were lying, with their unpreparedness and ignorance, and with their disinterest in Human Rights⁶¹. Those issues have been a subject of public debate especially when in January 2023 it was announced that approximately 200 children had gone missing from Home Office accommodations, with 176 of them being Albanians, accounting for a staggering 88% (ECRE, 2023).

The way the Home Office is treating asylum seekers and refugees is indeed dehumanizing and it’s having serious consequences on the mental health of asylum seekers. It is of paramount importance to recognize that many asylum seekers are indeed traumatized individuals. They often carry deep emotional and psychological wounds resulting from the experiences they endured in their countries of origin, including violence, persecution, conflict, or other forms of harm. Additionally, the arduous and perilous journey they undertake to reach a place of safety, such as the UK, can compound their trauma. In addition, it becomes even more traumatic when

⁶⁰ She was Prime Minister of the United Kingdom and Leader of the Conservative Party from 2016 to 2019.

⁶¹ Chaffelson, (2020), *The Challenges Faced when Seeking Asylum in the United Kingdom: An Interpretative Phenomenological Analysis*, https://discovery.ucl.ac.uk/id/eprint/10120695/1/Chaffelson_10120695_thesis_sigs_removed.pdf.

you arrive in a country with the hope of being protected and instead find yourself faced with the Home Office cruelty (Neale, 2023).

One of the most harmful narratives that has been going on in the UK is the notion that Albanian boys and males, as opposed to females, are not considered legitimate victims and do not require protective measures. This presumption is incorrect, as they are highly susceptible to harm. Many of them have been subjected to trafficking, either within Albania or from Albania to the UK or other European nations, where they have been forced into labour or criminal activities and subjected to severe abuse. A significant portion of these individuals hail from underprivileged backgrounds, and some have experienced childhood domestic violence. (Neale, 2023).

From a report released by MiCLU in collaboration with Shpresa Programme⁶² it emerges that the vast majority of them grapple with post-traumatic stress disorder and depression, and a few also contend with other disabilities (Beddoe, 2021).

2.3.1 Criminals, not Asylum Seekers

“Saying that Albanian asylum seekers are lying is just based on subjective opinions and not facts. Just because it is not at war like Afghanistan or Iraq does not mean that it is a safe place⁶³” (Albanian Asylum seeker testimony, 2023)

Credibility forms the foundation upon which numerous asylum applications are either approved or rejected and estimates suggest that a substantial portion of asylum claims, ranging from 48% to 90%, are denied due to concerns about their credibility (Bohmer & Shuman, 2018; Byrne, 2007).

⁶² Beddoe, (2021), *INTO THE ARMS OF TRAFFICKERS An examination of how delays in asylum and trafficking decision-making increase the risks of trafficking for young asylum-seekers* <https://miclu.org/assets/uploads/2021/10/Into-the-Arms-of-Traffickers-Main-Report.pdf>.

⁶³ MiCLU, (2023), *Home Affairs Committee Report on Asylum & Migration: Albania – Response*, <https://miclu.org/blog/home-affairs-committee-report-on-asylum-and-migration-albania-response>.

However, since 2021, there has been a significant increase in xenophobic propaganda against Albanians in the UK, with several media outlets, including the Daily Mail, portraying them as criminals, invaders, and fraudulent asylum seekers. Priti Patel, who held the position of Home Secretary in 2021, asserted that due to their not fleeing a war-torn region, the majority of Albanian asylum seekers were perceived as either economic migrants without genuine asylum claims or potential individuals with criminal intent. Patel also contended that Albanians were departing from a relatively "prosperous" country to exploit the UK's affluence and generosity (Taylor, 2022). Nigel Farage, the presenter on the right-wing television channel GB News, characterized Albanians arriving in small boats seeking asylum as an "invasion" by individuals "associating with criminal groups."⁶⁴ He also labelled them all as "aggressive."

During a session in Parliament, the current Home Secretary Suella Braverman, stated that "there is no reason for Albanians to seek asylum in the UK" as Albania is a prosperous and safe country. She also called Albanians "criminals"⁶⁵. These statements sparked the indignation of the Albanian community in the UK which rose in a large protest on 12 November 2022⁶⁶ against the discriminatory language used by politicians and the media against migrants and Albanians and also against the Home Office treatment towards Albanians. Because of all these statements the HO has become much more sensitive about the veracity of the asylum claims of the Albanians, who have started to be considered "criminals who abuse the asylum system" (Evans, 2022).

⁶⁴Nigel Farage says 'this is an invasion' as Albanian criminal gangs cross Channel in UK smuggling 'emergency' <https://www.gbnews.com/news/nigel-farage-says-this-is-an-invasion-as-albanian-criminal-gangs-cross-channel-in-uk-smuggling-emergency/357212>.

⁶⁵ The Independent, (2022), *Suella Braverman says 'there is no reason' for Albanians to seek asylum in UK*, <https://www.youtube.com/watch?v=V1sCYwSjeoY>.

⁶⁶Sky News, *'We're not criminals': Thousands of Albanians protest over Suella Braverman's refugee 'invasion' comments*, <https://news.sky.com/video/were-not-criminals-thousands-of-albanians-protest-over-suella-bravermans-refugee-invasion-comments-12745786>.

The UK Government asserts that UK modern slavery laws are being “abused” to postpone deportation, and proposed revisions to this legislation are presently under consideration in Parliament⁶⁷. The fact of not being believed has significant and far-reaching effects on the asylum seekers’ well-being. Asylum seekers often have a history of trauma from their experiences in their home countries. When their claims are not believed, it can re-traumatize them, as they may feel dismissed or disbelieved once again, so the uncertainty and stress of having their claims rejected or not believed can lead to heightened anxiety and depression. In addition, repeated denials can erode an asylum seeker hope for safety and protection, leading to feelings of hopelessness and despair.

MiCLU, in partnership with the Shpresa Programme, conducted research as part of the 'Breaking the Chains' project titled 'Into the Arms of Traffickers.' In this project, they gathered the perspectives of young Albanian refugees and asylum seekers residing in the UK, allowing them to share their experiences and emotions regarding their circumstances. The issue of not being taken seriously emerges as a significant concern, as illustrated by one of the claimant's statements:

“It’s like they think you have done something wrong, with my interview there was a lot of people there – especially back then I didn’t feel comfortable – the way they try to catch you on your words, it makes you think why can’t there be some reasonable doubt? Why can’t there be someone just believing in my case? No one has enjoyed their interview.”

2.3.2 Home Office Delays

Another issue concerns Home Office delays. According to the UK Government website, after the asylum claim is lodged, the claimant has to wait for 6 months to

⁶⁷HC Deb, 31 October 2022 <https://hansard.parliament.uk/commons/2022-10-31/debates/ca4c1c3a-4ad5-4b5e-bf9e-411e7f47cd79/CommonsChamber>.

get a decision⁶⁸. However, this is rarely the case. There are many delays during the asylum system procedure, and it can take even years to get a response from the Home Office. In MiCLU's report, sixteen young Albanians shared their experience with Home Office delays. They explained that when they claimed asylum in the UK, they were children⁶⁹ but as a result of significant delays in scheduling asylum interviews and making decisions, a number of these young individuals have now reached the age of 18, and some in their early twenties are still awaiting a conclusive resolution to their immigration claims. Although the delays in decision-making procedures have increased for all nationalities, the data show us that this delay is significant for Albanian children and adults.

The contrast is evident above all about Albanian children compared to those of other nationalities. A substantial portion of cases referred to the National Referral Mechanism, which have received positive Reasonable Grounds decisions, are still awaiting a Conclusive Grounds decision. This is true for both Albanian individuals and those of all nationalities. Out of the 10,340 Albanian individuals who received a positive Reasonable Grounds decision since 2014, 6,271 of them, equivalent to 61%, are still awaiting a Conclusive Grounds decision. Similarly, out of the 44,202 individuals from all other nationalities who received a positive Reasonable Grounds decision since 2014, 26,062 of them, accounting for 59%, are still awaiting a Conclusive Grounds decision.⁷⁰ According to MiCLU, from 2014 to 2022, the average time it takes to reach a Conclusive Grounds decision from the date of referral is 633 days for Albanian children. In contrast, for children of all other nationalities, the average time is significantly shorter, at 335 days.

⁶⁸ UKBA, (2023), *Information booklet about your asylum application*, <https://www.gov.uk/government/publications/information-leaflet-for-asylum-applications/information-booklet-about-your-asylum-application>.

⁶⁹ According to art. 1 of the Convention on the Rights of the Child, a child is “every human being below the age of eighteen years”.

⁷⁰ https://miclu.org/blog/fact-check-albanian-boat-arrivals#_ftnref13.

In the research conducted by Christine Beddoe (2021), it appears that Albanian children who are referred to NRM experience above average delays in a decision⁷¹.

2.3.3 Impacts of the delays: the voices of young asylum seekers

The Albanian population arriving in the UK is made up of a significant number of young people, including many minors and young women with children. Tragically, these individuals are often victims of a multitude of heart-breaking challenges in their homeland, including trafficking, organized crime, blood feuds, forced marriages, and honour-based violence, as we have discussed previously. Their experiences in Albania, along with the dangerous journey to a new country, with an unfamiliar culture and language, far from their families, have left deep scars on their mental health. Many of them are dealing with severe trauma and depression. Unfortunately, prolonged delays by the Home Office in dealing with their cases add to their immense stress and anxiety. This further exacerbates their mental health problems, sometimes pushing them to the brink of despair. These conditions contribute to an increased risk of accidents, including cases of suicide and self-harm among these vulnerable individuals.

In 2018, the Association of Directors of Children's Services (ADCS) conducted a thematic report focusing on Unaccompanied Asylum-Seeking Children (UASCs). In this report, they underscored the significant impact of immigration-related issues, particularly delays in the Home Office's decision-making process for the 15+ age group, on the emotional well-being and sense of settlement of young individuals⁷². In addition, a study focusing on unaccompanied asylum-seeking children in Belgium unveiled concerning findings. Approximately half of the children examined displayed signs of post-traumatic stress (PTSD), which worsened over

⁷¹ Beddoe, (2021), *An examination of how delays in asylum and trafficking decision-making increase the risks of trafficking for young asylum-seekers*, p. 16.

<https://miclu.org/assets/uploads/2021/10/Into-the-Arms-of-Traffickers-Main-Report.pdf>.

⁷² ADCS, (2018), *Safeguarding Pressure Phase 5: Unaccompanied Asylum Seeking and Refugee Children*.

https://adcs.org.uk/assets/documentation/ADCS_UASC_Report_Final_FOR_PUBLICATION.pdf.

time. Mental health specialists Hughes and Katona, drawing from these findings, concluded that the asylum process itself induces distress, exacerbated by prolonged periods of uncertainty⁷³.

UNHCR and UNICEF also spoke on this issue, underlining the critical nature of the "time factor" in decision-making. Their assessment highlights that extending the time for processing asylum applications may introduce additional stressors, exacerbating existing vulnerabilities and difficulties experienced by these vulnerable young people⁷⁴.

In 2021, Christine Beddoe, the director of ECPAT UK⁷⁵, conducted a research study focusing on young individuals associated with the Shpresa Programme. This research aimed to amplify the voices and narratives of these young people, shedding light on their experiences in coping with the delays within the Home Office. Beddoe interviewed sixteen young Albanians who had all been children when they first arrived in the UK and sought asylum. However, due to protracted delays in the asylum interview and decision-making process, they had turned 18 by the time of the research. Some of them were even in their early twenties, still awaiting a final decision on their asylum claims. Importantly, a significant number of these young individuals had already experienced trafficking and exploitation, or they were acquainted with young people who had suffered exploitation within the UK.

Here are some of the testimonies:

“I been here almost 5 years. The delays – you are put in a box, you can’t go forward, you just wait for a brown envelope to be positive or not. You can’t build anything, can’t build a career. Staying 4 years in ESOL because you can’t do anything. It puts you in a state of depression but even if you get a decision you have to recover after – you want to dream.”

⁷³ Hughes, P and Katona, C. *Refugees, Asylum and Mental Health in the UK* in Ikkos, G., & Bouras, N. (Eds.). (2021). *Mind, State and Society: Social History of Psychiatry and Mental Health in Britain 1960– 2010*. Cambridge: Cambridge University Press.

⁷⁴ UNHCR (2014) *Safe & Sound: What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated Children In Europe*, p. 39. <https://www.refworld.org/pdfid/5423da264.pdf>.

⁷⁵ End Child Prostitution, Child Pornography and Trafficking network.

“You see all the people around you are doing things. I’ve been diagnosed [with] anxiety and depression. Sometimes you’re so fed up you don’t want all this responsibly on our shoulders. When I came here, we were just kids and we just want to feel like every other kid. We don’t want to be judged by the way we look, emotionally, physically, psychologically. It’s affected how I look; I’ve changed a lot.”

“I am in the UK for 1 year and 5 months and still waiting for substantive interview. You are just waiting all the time, waiting for interview. I’m going to college and doing level 1. I am concerned about what happens next and whether I can do the course I want. Not having a decision distresses me – I think about it all the time. You ask yourself ‘What are you are going to do in 5 years?’ – I want to go to uni but life is on hold all the time.”

“We have other young people they have committed suicide because of the stress, some people have suffered more than we know, and they just give up.”

The data unequivocally illustrates that these delays also have a significant impact on their education. Many of these aspiring young individuals had dreams of pursuing higher education and attending university. However, due to their unresolved legal status and the protracted asylum process, they were barred from accessing the educational opportunities they desired. This situation, where their dreams are deferred and their potential remains untapped, has a deeply demoralizing effect. The frustration of being unable to pursue their educational goals can lead to a loss of motivation and a sense of hopelessness.

One of the testimonies tells us:

“At this stage we have dreams of going to uni, but [the waiting] makes you pessimistic. You go to college, work hard and do well, but don’t have opportunity to get to uni because of legal status. It stops you from going forward, stops your intelligence. Maybe we can be of help to society, but because of legal status we can’t do anything. They keep your life on hold for 5-6 years. Then you are all grown up and there is no time to go to uni, because we have to earn money to survive so we can only get a random job. Maybe you were intelligent once, but you only get a random job because you have no qualifications. At this stage we can’t even work, we can’t work to support our own mental health.”

Another pressing issue concerns the right to work for asylum seekers in the UK. Typically, individuals who are in the process of claiming asylum are not permitted to work during the consideration of their claim (UKBA, 2022). However, immigration rules do provide an option to request permission to work if an individual has been waiting for more than 12 months for a decision on their asylum claim "through no fault of their own" (RTR, 2023). Living on state benefits of £30 a week is undeniably insufficient, especially when you consider the relatively high cost of living in the country. This financial strain not only exacerbates the mental health problems faced by asylum seekers but also creates a precarious situation. In the absence of adequate financial support and the right to work, many young people may resort to illicit work simply to survive. Given the significant influence of Albanian organized crime in the UK, this decision to undertake illicit workplaces them in grave danger. The vulnerability of these young people makes them susceptible to exploitation by traffickers, who may force them into dangerous and criminal activities. This situation not only jeopardizes their well-being but also puts their lives at risk.

“The right to work would change our lives, we could finance ourselves. We don’t need to take money from the government, we would have motivation to get out of bed. We would have hope instead of feeling hopeless and not worthy. We don’t see the light at the end of the tunnel. All these delays and struggles impact on our mental health.”

“I strongly agree that right to work will bring [young people] to the right path [to avoid exploitation].

According to research conducted by LHOST, systematic delays of the Home Office have devastating effects on the mental health of the asylum seeker, resembling with the definition of torture and violence. The European Court of Human Rights has acknowledged that delays in dealing with children’s asylum process can constitute torture in breach of Article 3 of ECHR⁷⁶.

⁷⁶ LHOST, (2023), *The violent impacts of delays on unaccompanied asylum seekers - Covid-19 and Beyond*, <https://livesonhold.org/wp-content/uploads/2023/07/Briefing-3.pdf>.

CHAPTER 3. UNVEILING HUMAN RIGHTS VIOLATIONS IN THE UK ASYLUM SYSTEM

As the previous chapter has illuminated the intricacies of the UK asylum system and the experiences of asylum seekers within it, we now turn our attention to a deeply concerning aspect that has drawn international scrutiny and condemnation – human rights violations. In this chapter, we will meticulously dissect and analyse the myriad instances where the UK asylum system has come under scrutiny for the treatment of vulnerable individuals seeking refuge within its borders.

According to the annual report of Amnesty International⁷⁷ refugees’ and migrants’ rights in the UK are often put in danger. The report highlights the problematic nature of the Nationality and Borders Act 2022⁷⁸ - which partially rejects the Convention’s definition of a refugee⁷⁹ - as well as the bans on penalizing asylum seekers for irregular entry, discrimination, and refoulement. The Act was severely criticized by the UNHCR, which “regrets that the British government’s proposals for a new approach to asylum that undermines established international refugee protection law and practices has been approved”⁸⁰ (UNHCR, 2022).

Another problematic policy adopted by the UK Government is the Rwanda Plan, a strategy to deport asylum seekers from the UK to Rwanda. However, legal intervention prevented these deportations from taking place.

⁷⁷ Amnesty International Report 2022/2023, p. 385

<file:///Users/alexiamalaj/Downloads/WEBPOL1056702023ENGLISH-2.pdf>

⁷⁸ At the time it was still a bill.

⁷⁹ We are referring to the 1951 Refugee Convention.

⁸⁰ UNHCR statement <https://www.unhcr.org/news/news-releases/news-comment-unhcrs-grand-fears-uk-legislation-will-dramatically-weaken-refugee>.

Additional concerns stem from the government's prolonged delays in rendering decisions and its hostile stance towards individuals crossing the Channel in small boats in pursuit of asylum. These factors exacerbate the backlog within the asylum system and lead to detrimental outcomes. This include the outbreak of diphtheria that began in October within asylum accommodations and the troubling disappearance of 200 unaccompanied children from Home Office hotels.

From concerns raised by prominent international organizations to first-hand accounts of those affected, we embark on a sobering exploration of the human rights challenges plaguing this critical facet of the UK's immigration landscape.

3.1 Nationality and Border Act 2022

The Nationality and Border Bill was first introduced to the UK Parliament in July 2021 and was enacted on April 27, 2022. The Act seeks to address three primary objectives for the government: enhancing the fairness and effectiveness of the asylum system, discouraging unlawful entry, and facilitating the deportation of individuals who lack the right to stay in the UK. It intends to achieve these goals by implementing reforms within various aspects of the asylum process, including procedures for determining the ages of unaccompanied asylum-seeking children, removals, combating modern slavery, and addressing matters related to British nationality.

According to the government, this law would stop human trafficking, preserve human lives and protect people seeking asylum⁸¹. However, the reality is very different, and as we could see in the previous chapter the measures suggested by this law have produced contrary results. In fact, since the introduction of this law, landings on the British coast have increased significantly without any precedent in the summer of 2022, and the asylum system appears to be very meticulous and difficult, putting the mental health of asylum seekers and consequently also their

⁸¹ Statements of Home Secretary Piti Patel <https://www.ein.org.uk/news/nationality-and-borders-bill-heads-lords-after-passing-its-final-third-reading-commons>

lives at risk. Therefore, the Act represents an attack on asylum seekers and on international obligations under the 1951 Refugee Convention and has faced significant scrutiny and condemnation from the UNHCR prior to its approval in the House of Lords. According to the United Nations “the bill does not respect the UK’s obligations under international human rights and refugee law, but instead dismantles a core protection of democratic societies and pushes vulnerable people into dangerous situations”. UN Human Rights experts⁸² stated that imposes penalties on asylum-seekers and refugees, contravening the international legal principle of non-punishment and creating distinctions between different groups of asylum seekers, which goes against international legal norms.

3.1.1 Clause 32 Article 1(A)(2): well-founded fear

Of particular concern is how this legislation leads to a range of adverse outcomes for refugee women, girls, and trafficking victims, creating increased barriers for them to enter the UK's territory and seek refuge from conflict and violence. The Immigration Law Practitioners’ Association (ILPA) and Women for Refugee Women (WFW) in February 2022 asked for an amendment of clause 31⁸³, which became clause 32 when the bill was approved and became act.

The clause is about the “well-founded fear” and states that:

“(1)In deciding for the purposes of Article 1(A)(2) of the Refugee Convention whether an asylum seeker’s fear of persecution is well-founded, the following approach is to be taken.

(2)The decision-maker must first determine, on the balance of probabilities—

⁸² United Kingdom Nationality and Borders Bill undermines rights of victims of trafficking and modern slavery, UN experts say <https://www.ohchr.org/en/press-releases/2022/01/united-kingdom-nationality-and-borders-bill-undermines-rights-victims>.

⁸³ Briefing for the House of Lords Committee Stage for the Nationality and Borders Bill – Part 2: Asylum, Clause 31 Amendment <https://ilpa.org.uk/wp-content/uploads/2022/01/ILPA-and-WRW-Clause-31-amendment.pdf>.

(a) whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and

(b) whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic.

(3) Subsection (4) applies if the decision-maker finds that—

(a) the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and

(b) the asylum seeker fears persecution as mentioned in subsection (2)(b).

(4) The decision-maker must determine whether there is a reasonable likelihood that, if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—

(a) they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and

(b) they would not be protected as mentioned in section 34.

(5) The determination under subsection (4) must also include a consideration of the matter mentioned in section 35 (internal relocation).”

This Clause introduces a more rigorous two-part assessment for determining if an asylum claimant possesses a 'well-founded fear' of persecution and, consequently, qualifies for refugee protection in the UK.

The first component of this test necessitates that the claimant demonstrates, based on the “balance of probabilities”, two critical elements: firstly, that the grounds for their apprehension of persecution fall within the purview of the Refugee Convention, and secondly, that they genuinely fear persecution if they were to be repatriated. Only when these conditions are satisfied according to this new elevated standard can the decision maker proceed to the second part of the test, which

involves assessing whether there exists a “reasonable likelihood” that the individual would indeed face persecution if returned.

This requirement introduces an even greater challenge for asylum seekers to overcome, which could lead to incorrect denials of refugee protection in the UK. It must be remembered that many people already face great difficulty in having their claims properly recognized and investigated by the asylum system in the UK. Asylum seekers originate from diverse backgrounds, with many lacking proficiencies in the English language and unfamiliarity with the workings of English society. They often encounter challenges in navigating the asylum application process. Additionally, these individuals are frequently traumatized, and their experiences can be retraumatizing when they engage with Home Office offices.

As highlighted by the UNHCR legal professionals and former judges, it's evident that the proposed assessment outlined in Clause 32 has a disproportionately adverse impact on exceptionally vulnerable groups, such as survivors of gender-based violence, individuals who have escaped persecution due to their sexual orientation or gender identity, and those with disabilities. Vulnerable groups are required to establish, on the balance of probabilities, the presence of a characteristic under the Refugee Convention. For instance, they need to provide more compelling evidence regarding their sexual orientation or gender identity to meet this elevated standard. In the case of certain other groups, like "abused women" or "women who have been trafficked," they need to demonstrate that it is more probable than not that they have experienced abuse or trafficking.

Barrister Raza Hussain QC has contended that this change in the standard of proof will have a significant impact on vulnerable populations, including children and individuals with cognitive disabilities. These groups may face difficulties in articulating or even comprehending the nature of their fears, making it even more

challenging for them to meet the heightened evidentiary requirements⁸⁴. This is absurd and clearly reveals how little the mental health of vulnerable people who have suffered serious traumas and who will have to find themselves reliving their traumas trying to get back into that balance of probabilities is of concern.

The UNHCR has consistently advocated for the adoption of a “reasonable likelihood” standard of proof when evaluating an individual's refugee status. This stance reflects an acknowledgment of the considerable challenges’ asylum seekers may encounter in substantiating their claims, as well as the potential life-threatening consequences they may face if an incorrect decision is rendered. According to the UNHCR⁸⁵, there should be a shared burden of proof, granting applicants the benefit of the doubt when relevant, and supporting full disclosure by the applicant through various methods, including the utilization of trauma-sensitive interviewing techniques (UNHCR, 2022). Therefore, the “balance of probability” is not an appropriate test especially where “life or liberty may be threatened”⁸⁶.

This Clause leads to a scenario in which an individual, despite facing likelihood of persecution upon return, may be denied refugee protection simply because they were unable to establish their subjective fear to the “balance of possibilities” standard.

Women for Refugee Women and ILPA in their report highlight also how this Clause contributes to the increase of delays, that can be incredibly dangerous for people’s mental health and physical safety, as we’ve already seen in the previous chapter.

⁸⁴ Nationality and Border Bill, Joint Opinion

<https://www.freedomfromtorture.org/sites/default/files/2021-10/Joint%20Opinion%2C%20Nationality%20and%20Borders%20Bill%2C%20October%202021.pdf>.

⁸⁵ UNHCR Observations on the Nationality and Borders Bill, Bill 141, 2021-22, pp.49-52

<file:///Users/alexiamalaj/Downloads/615ff04d4.pdf>.

⁸⁶ HJ (Iran) v Secretary of State for the Home Department [2011] 1 AC 596 at [90].

In the Home Office immigration system statistics⁸⁷, we can read that by the end of June 2023 there were 134,046 cases relating to 175,457 people waiting for an initial decision, a number which is 44% higher than the 122,213 of June 2022⁸⁸. This data represents a record of backlog in the British asylum system, which was defined as a “complete chaos” by the Labour Party⁸⁹. Statistics also show that out of these 175,457 people, the majority are Albanians, followed by Afghans.

3.1.2 Consequences of the lack of credibility and risk of human rights violations

As demonstrated in the previous chapter, credibility holds a central position in the asylum application process, arguably serving as the cornerstone upon which decisions to grant or deny asylum applications are built (Bohmer & Shuman, 2018). Elevating the criteria by which an individual must establish a legitimate fear of persecution only serves to introduce complexity into the decision-making process. This complexity, in turn, gives rise to inaccurate determinations, subsequently contributing to a surge in appeals, added expenses, and further delays within an asylum system that is already overwhelmed.

Estimates suggest that a significant portion of asylum claims, ranging from 48 to 90 percent, are denied based on concerns about their credibility (Byrne, 2007). There also appears to be a discrepancy between the portrayal of asylum applications in government literature and the actual complexities involved. The government's materials might suggest that an applicant merely needs to recount their story and, if it aligns with the UK government's criteria, asylum will be granted. However,

⁸⁷ Immigration System Statistic, June 2023

<https://www.gov.uk/government/statistics/immigration-system-statistics-year-ending-june-2023>.

⁸⁸ Over 170.000 asylum seekers await decision <https://www.ein.org.uk/news/over-170000-asylum-seekers-await-decision-there-now-slowdown-rise-backlog>.

⁸⁹ The Guardian, (2023), *UK asylum backlog hits record high as over 175,000 await decision* <https://www.theguardian.com/uk-news/2023/aug/24/uk-asylum-backlog-record-high-await-decision>.

evidence from multiple fields suggests that this is frequently an oversimplified perspective. In reality, individuals seeking asylum encounter a dual challenge. First, they must attempt to articulate events that are often too painful or traumatic to put into words. Second, they must convey their personal narratives in a manner that effectively communicates the essential information needed by asylum officials. This underscores the intricacies and sensitivities inherent in the asylum application process (Bohmer & Shuman, 2018).

It is asserted that, from the perspective of asylum decision-makers, the elements that define a 'credible account' primarily revolve around the consistency of the narrative and the quality of the applicant's presentation. However, these criteria are frequently reliant on subjective judgments, individual perceptions, and personal predispositions. Moreover, they can display inconsistencies across different decision-makers and may lack a clearly articulated rationale (Campbell 2017). This subjectivity and potential lack of standardized assessment criteria can introduce variability and potential biases into the asylum determination process.

According to UNHCR, it is problematic to distinguish the evaluation of future risk from the examination of past and current facts, as the assessment of future risk is inherently reliant on the information and circumstances established in the past and present. In other words, the assessment of what might happen in the future is intrinsically linked to the foundation of past and present realities. As stated in the UNHCR's guidance on the "Burden and Standard Proof"⁹⁰, the evaluation of the risk of persecution is forward-looking and inherently involves a degree of speculation. However, this evaluation should be grounded in factual considerations that encompass both the personal circumstances of the applicant and the broader context of the country of origin. The personal circumstances of the applicant, which encompass their background, experiences, personality, and any other individual factors, play a crucial role in assessing the risk of persecution.

⁹⁰ UNHCR, (1998), Note on Burden and Standard of Proof in Refugee Claims, <https://www.refworld.org/pdfid/3ae6b3338.pdf>.

Therefore, one of the important factors to consider is also the cultural background of the claimant. Indeed, cultural conventions play an important role in the narrative of the events, because when composing a narrative of events, the quantity of contextual information presented, including the timing and extent of descriptions, should be adjusted in accordance with cultural norms (Bohmer & Shuman, 2018). In essence, individuals from diverse cultural backgrounds may structure their narratives differently, and it is important to acknowledge and accommodate these cultural variations when assessing their accounts. Research has suggested that individuals from individualistic cultures, including the UK, tend to offer detailed, self-reliant, specific, self-centred, and emotionally expressive memories when recounting their experiences. When asylum seekers narrate their experiences, there is an expectation that their storytelling aligns with the cultural norms of the assessors, which, in the case of the UK, may favour narratives that are culturally familiar and congruent with these individualistic communication patterns for them to be regarded as credible (Herlihy, 2012).

However, some arguments suggest that individuals from collectivist cultures, which is often the background of many people seeking asylum in the UK, might articulate autobiographical memories in a distinct manner. In collectivist cultures, there may be a greater emphasis on shared experiences, communal perspectives, and interdependence, which could result in variations in the way narratives are constructed and conveyed (Herlihy, 2012). These cultural differences should be considered when evaluating the credibility of asylum seekers' accounts, acknowledging that diverse cultural backgrounds can influence storytelling approaches. Research conducted in the UK has revealed that when assessing the credibility of an asylum claim, judgments are often made based on assumptions about language use, the style of narration, what is considered an acceptable or appropriate display of emotion, and the expectations regarding "reasonable behaviour" during fleeing situations. These judgments are frequently rooted in the cultural norms and values of individuals residing in Britain, rather than considering the context of the country from which the refugee is escaping. Bohmer and Shuman (2018) characterize these practices as "failures of logic," as they reflect a disconnect

between the expectations of the host country and the realities faced by asylum seekers in their countries of origin.

According to the UNHCR, particular attention should also be given to whether the applicant has previously endured persecution or other forms of mistreatment. Additionally, the experiences of the applicant's relatives, friends, and others in a similar situation hold relevance and should be taken into account as significant factors in this assessment. Indeed, extensive evidence suggests that individuals who have undergone significant trauma often exhibit a natural inclination to avoid dwelling on their traumatic experiences and actively avoid any triggers or reminders associated with those experiences (Herlihy, 2012). Hence, it may be unrealistic to expect from a refugee, especially those who have endured sexual trauma, to provide an exhaustive and detailed account of all their experiences. Avoidance behaviours tend to be particularly pronounced in individuals who have faced sexual trauma. According to Herlihy, individuals who are grappling with post-traumatic stress disorder (PTSD) stemming from experiences of sexual violence are more inclined to prioritize, above all else, the avoidance of thoughts, emotions, and discussions related to their traumatic experiences.

This comprehensive approach aims to provide a more accurate and holistic understanding of the potential risk an individual may face. Giving a wrong decision puts the asylum seeker's life at high risk and this contributes to a violation of their human rights.

First of all, if asylum is denied to a genuine refugee, they may be sent back to their country where their life and safety are at risk, potentially putting them in harm's way, especially if they are victims of modern slavery and trafficking.

Wrong decisions can result in violations of the individual's legal and human rights, such as the right to seek asylum and protection from persecution. In many cases incorrect decisions can lead to family separation, where some family members are granted asylum another are not, causing a lot of emotional damage and distress.

Being denied asylum may stigmatize individuals and make it more difficult to integrate in the host country.

It is also important to note that individuals who are wrongly denied asylum may be subjected to immigration detention, which can have severe psychological and emotional effects, or they can be removed and deported to their home country or to a safe third country.

3.2 Detention

The United Kingdom maintains one of the largest immigration detention systems in Europe. This system has been the subject of scrutiny and debate, both domestically and internationally, due to concerns about the conditions of detention, the length of detention, and the impact on the mental and physical well-being of detainees.

Critics argue that the UK's extensive use of immigration detention can result in prolonged periods of uncertainty and vulnerability for individuals, many of whom are seeking asylum or are in the process of appealing deportation orders. Efforts to reform the detention system and improve oversight have been ongoing, with the goal of ensuring that detention is used sparingly⁹¹, as a last resort, and in accordance with human rights standards.

According to Migration Observatory:

“Immigration detention refers to the Home Office practice of detaining foreign nationals for the purposes of resolving their immigration statuses. Immigration detention is an administrative process, rather than a criminal justice procedure, meaning that the decision to detain is typically made by Home Office civil servants rather than courts, although it can result from a court decision regarding deportation” (Migration Observatory, 2021).

There are many reasons a migrant and asylum seekers can be detained.

⁹¹ Home Office, 2021, *Detention: General Instruction*, page 7.

First, they can be detained to facilitate their removal from the UK. This is often the primary objective when there is a pending deportation order.

Secondly, authorities may detain a person to verify their identity or to investigate the basis of their immigration or asylum claim. This is done to ensure that individuals have legitimate grounds for their stay. Thirdly, detention may be deemed necessary when there is a reasonable belief that an individual will abscond if released. Finally, detention can be justified on the grounds that an individual's release is not considered to be "conducive for the public good". This is a border policy reason that may encompass concerns related to public safety and national security (Migration Observatory, 2021).

It's important to note that in some cases, the reasons for a person's detention may change while they are held. Detention usually concludes in one of two ways:

- Removal from the UK: If the necessary legal and administrative requirements are met, the individual may be removed from the UK while in detention.
- Release on Immigration Bail: If detention is no longer deemed necessary or justified, an individual may be released, often on immigration bail, while their case is still being processed.

There are various types of facilities where individuals get detained by the Home Office. The choice of facility often depends on factors such as the individual's immigration status, the reasons for detention, and the availability of appropriate facilities at the time of detention.

The Immigration Removal Centers (IRCs), are dedicated to individuals who are awaiting removal or deportation from the UK. Some well-known IRCs are Yarl's Wood, Harmondsworth and Brook House.

Residential Short-Term Holding Facilities (RSTHFs) are typically smaller-scale detention centres that are used for short-term holding of individuals, often near ports of entry or in specific regions.

The Pre-Departure Accommodation Facility (PDA) is used for individuals who are awaiting deportation. It may provide accommodation and support services for those in the final stages of removal.

Short-Term Holding Rooms at Ports of Entry (STHFs) are short-term holding facilities located at ports of entry, such as airports and ferry terminals. They are used to hold individuals who have just arrived in the UK and are subject to further immigration checks.

Finally, in some cases, individuals may be detained in regular prisons, particularly when they have completed a criminal sentence but are subject to deportation or removal proceedings (Migration Observatory, 2021).

3.2.1 Indefinite Detention

Individuals held in immigration detention possess human rights that are protected under international law and domestic legislation, such as the Human Rights Act 1998 (HRA)⁹². This legislation incorporates the safeguards outlined in the European Convention on Human Rights (ECHR), a treaty that the UK actively contributed to shaping, into the UK's domestic legal framework. The act allows individuals to seek remedies for violations of their rights, such as the right to free expression or freedom from torture, through local courts within the UK, eliminating the need to approach the human rights court in Strasbourg.

Article 5 of the HRA states that “everyone has the right to liberty and security” and “no one shall be deprived of his liberty”. This principle implies that individuals should not be subjected to detention without a valid and justifiable reason. Nevertheless, the UK stands as the sole European country that does not impose a time limit on the duration of immigration detention (Hopkins, 2022).

⁹² The law was enacted by the UK Parliament, passed on in 1998 and came into force on 2nd October 2000; Human Rights Act 1998 <https://www.legislation.gov.uk/ukpga/1998/42/contents>.

The case of *A and others v. the United Kingdom*⁹³ has recognized that indefinite immigration detention has severe adverse health effects, primarily attributable to the anxiety, despair, and hopelessness it instils in detainees. These negative impacts tend to intensify with the duration of detention. Even relatively short periods of indeterminate detention can prompt harmful psychological responses because of the uncertainty and powerlessness experienced by individuals in such circumstances. In acknowledgment of the detrimental effects of indefinite immigration detention on individuals' well-being, the majority of states and the European Union have implemented time limits on immigration detention. These time limits are intended to establish a maximum duration for detention, ensuring that it remains proportionate and reasonable while also safeguarding the mental and physical health of those held in detention. Human rights bodies and various other countries have urged the United Kingdom to implement time limits. This recommendation aims to ensure that the UK fulfils its obligations under international human rights treaties, with a particular focus on compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. However, the UK stills detains asylum seekers for indefinite periods of time.

According to the latest Migration Observatory Report on Immigration Detention⁹⁴, in 2021, 13% of individuals in detention exceeded a period of 28 days, and there was a case of one individual being detained for nearly four years (Home Office, 2022d).

Civil liberty groups⁹⁵ contend that this practice breaches Article 5 of HRA because indefinite detention lacks authorization by a judge and offers very limited avenues for review. In 2019, the parliamentary Home Affairs Select Committee characterized immigration detention as a "deprivation" of liberty and that "the

⁹³ *A and others v. the United Kingdom*, Appl. No. 3455/05, 19 February 2009, para. 130

<file:///Users/alexiamalaj/Downloads/002-1647.pdf>.

⁹⁴ Briefing, Immigration Detention in the UK, 2 November 2022,

<https://migrationobservatory.ox.ac.uk/wp-content/uploads/2021/09/MigObs-Briefing-Immigration-Detention-in-the-UK.pdf>.

⁹⁵ Right to liberty, <https://www.libertyhumanrights.org.uk/right/right-to-liberty/>.

Government has a responsibility to use it sparingly, and for the shortest period possible. The power to detain can sometimes be necessary but should be used only if there are no other options, as a last resort prior to removal”⁹⁶.

This emphasizes the call for a more judicious use of immigration detention and greater safeguards to protect individuals' rights.

3.2.2 Detention of vulnerable persons and torture survivors

It is estimated that 90% of the people in detention centres are survivors of trafficking and torture⁹⁷.

The Equality and Human Rights Commission⁹⁸ has asserted that the absence of a time limit on immigration detention and the ongoing detention of torture survivors and other individuals at a heightened risk of harm while in detention may potentially constitute acts of torture or inhuman and degrading treatment. This would breach also article 3 of the HRA, which states that Indefinite Immigration detention also breaches article 3 of the HRA, which states that “no one shall be subjected to torture or to inhuman or degrading treatment or punishment”.

In 2021, The Guardian⁹⁹ reported that asylum seekers who were victims of torture and trafficking, were subjected to extended periods of solitary confinement, often exceeding 23 hours a day, for durations of up to a year. This harsh and isolating detention environment was found to have detrimental effects on the mental well-being of individuals, leading to mental breakdowns, incidents of self-harm, and

⁹⁶ House of Commons, Immigration Detention, p.3

<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>.

⁹⁷ Abuse by the System: Survivors of Trafficking in Immigration Detention, (2022), https://www.helenbamber.org/sites/default/files/2022-10/Abuse%20by%20the%20system_survivors%20of%20trafficking%20in%20immigration%20detention.pdf.

⁹⁸ Equality Human Rights, (2019), Government must improve record on stopping cruel and inhuman treatment, <https://www.equalityhumanrights.com/en/our-work/news/government-must-improve-record-stopping-cruel-and-inhuman-treatment>.

⁹⁹ The Guardian, (2021), Torture victims kept in solitary by Home Office for up to a year <https://www.theguardian.com/uk-news/2021/may/15/torture-victims-kept-in-solitary-by-home-office-for-up-to-a-year>.

even suicide attempts among those detained. Such conditions have raised significant concerns about the impact of immigration detention on the mental health and well-being of vulnerable individuals.

The charity Bail for Immigration Detainees (Bid) has found out that approximately 500 detainees faced prolonged solitary confinement. This fact seems to be in violation of the United Nations' minimum standards for the treatment of prisoners, which prohibits prolonged solitary confinement¹⁰⁰.

In addition to this, the UK borders watchdog has discovered that torture victims and individuals at risk of suicide in immigration detention centres are not receiving adequate support due to unfounded suspicions from government ministers and officials, who may suspect that they are trying to manipulate the system¹⁰¹.

The detention of pregnant women is another concerning issue, especially considering the Home Office policy that generally states women should not be detained, with the sole exception being when removal is "imminent." However, the actual data and reports paint a different picture. According to a report released in 2015 by Women for Refugee Women¹⁰², 90% of pregnant women held in detention at Yarl's Wood¹⁰³ are not deported from the UK; instead, they are released to continue their cases within the community. This suggests that these women are not being detained because their removal is genuinely imminent, raising questions about the adherence to the stated policy and the potential harm caused by the detention of pregnant women.

¹⁰⁰ UNHCR, (2020), United States: Prolonged solitary confinement amounts to psychological torture, says UN expert, <https://www.ohchr.org/en/press-releases/2020/02/united-states-prolonged-solitary-confinement-amounts-psychological-torture>.

¹⁰¹ The Guardian, (2023), Inadequate help for torture victims in UK immigration centres, watchdog finds, <https://www.theguardian.com/uk-news/2023/jan/12/torture-victims-uk-immigration-centres-watchdog>.

¹⁰² WRW, Pregnant Women Behing Bars <https://www.refugeewomen.co.uk/wp-content/uploads/2019/01/women-for-refugee-women-briefing-detention-of-pregnant-women.pdf>.

¹⁰³ Yarl's Wood is an immigration removal detention situated in Bedford, UK.

A system like the one in the United Kingdom can create and sustain a harmful environment for individuals who have experienced trauma. The conditions of immigration detention and the absence of time limits, especially for those who have endured traumatic experiences, can exacerbate their distress and have detrimental effects on their mental and emotional well-being. This underscores the importance of implementing policies and practices that are sensitive to the needs of traumatized individuals and prioritize their mental health and recovery.

Based on the facts that we've discussed so far, and the concerns raised regarding immigration detention practices in the United Kingdom, it can be argued that the British government may not be fully meeting its international obligations related to detention. Specifically, the practice of indefinite immigration detention raises concerns about potential violation of Article 5 (Right to Liberty) of the ECHR and Article 9 (Freedom from Arbitrary Detention) of the UDHR.

Report of poor detention conditions, including the use of solitary confinement and its impact on detainees' mental health, raise concerns about potential violations of Article 3 (Freedom from Torture, Inhuman or Degrading Treatment) of the ECHR and Article 5 (Freedom from Torture or Cruel and Inhuman Degrading Treatment) of the UDHR¹⁰⁴.

The detention of pregnant women and other vulnerable individuals, as highlighted, do not align with the Home Office policy and could raise concerns about compliance in International Human Rights standards.

3.3 Rwanda Plan

In 2022, a highly debated topic within the British asylum system was the well-known "Rwanda plan"¹⁰⁵. This program was officially launched on April 13, 2022,

¹⁰⁴ Written Evidence by Women for Refugee Women (ASU0090), <https://committees.parliament.uk/writtenevidence/114390/pdf/>.

¹⁰⁵ It must be noted that the Rwanda plan does not constitute a treaty but a Memorandum of Understanding (MoU), which the UK Government guidance describe as a formal document that records agreements or commitments between two or more parties, often used in various contexts,

with a duration spanning five years, jointly initiated by the then British Home Secretary, Priti Patel, and the Rwandan Foreign Minister, Vincent Biruta¹⁰⁶.

According to this plan, the United Kingdom had entered into a partnership with Rwanda encompassing migration and economic development.

Under this policy, individuals identified by the United Kingdom as unauthorized immigrants or asylum seekers will be transferred to Rwanda for the purpose of processing their asylum claims and potential resettlement. Those who successfully secure asylum will be allowed to remain in Rwanda but will not have the option to return to the United Kingdom.

The UK government stated that the policy would:

“Initially focus on deterring those who have already reached safe third countries from making dangerous journeys to the UK in order to claim protection, especially (but not exclusively) where travel is by small boat in the English Channel.”¹⁰⁷

Its stated objectives include reducing the frequency of migrant crossings in the English Channel, preventing human smuggling activities, and promoting

including international relations and diplomacy. This means, that unlike treaties, MoU are not-binding and allow parties to have flexibility in their agreements.

¹⁰⁶ Home Office, (2022), Memorandum of understanding between the UK and Rwanda <https://www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda/memorandum-of-understanding-between-the-government-of-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-government-of-the-republic-of-r>.

¹⁰⁷ UK Parliament, (2023), UK-Rwanda asylum agreement: Why is it a memorandum of understanding and not a treaty? <https://lordslibrary.parliament.uk/uk-rwanda-asylum-agreement-why-is-it-a-memorandum-of-understanding-and-not-a-treaty/#:~:text=On%2014%20April%202022%2C%20the,their%20asylum%20claims%20processed%20there>.

investment and development in Rwanda¹⁰⁸. According to Boris Johnson, former prime minister, the Rwanda plan would have saved “countless lives”¹⁰⁹.

Up to this point, the UK government has allocated £140 million to support the Rwandan government's implementation of the scheme. However, there hasn't been an official disclosure of the total cost of the program or a detailed breakdown of expenses. The lack of transparency regarding the overall financial commitment has also been a point of concern for critics and advocacy groups following the developments of this scheme¹¹⁰. Indeed, the Rwandan asylum scheme generated significant attention and criticism from various national and international organizations, including the United Nations High Commissioner for Refugees (UNHCR), the European Union, Amnesty International, and numerous non-governmental organizations (NGOs) focused on the protection and rights of asylum seekers and refugees. The Amnesty International annual report on the United Kingdom, highlighted the problematic of this policy¹¹¹.

As a signatory to the 1951 United Nations Convention Relating to the Status of Refugees, the United Kingdom has international obligations to protect refugees and ensure their rights are respected. Under the Refugee Convention and its 1967 Protocol, signatory countries commit to providing protection to individuals who meet the criteria for refugee status and not returning them to a country where their life or freedom would be threatened (the principle of non-refoulement). They also commit to facilitating the integration and well-being of refugees.

¹⁰⁸ Sky News, (2022), Why are migrants being sent to Rwanda and how will it work?

<https://news.sky.com/story/where-is-rwanda-why-are-migrants-being-sent-there-and-how-will-it-work-12589831>.

¹⁰⁹ BBC, (2022), Rwanda asylum seekers: UK government criticized over “cruel” plan

<https://www.bbc.com/news/uk-politics-61110237>.

¹¹⁰ BBC (2022), What is the UK’s plan to send asylum seekers to Rwanda?

<https://www.bbc.com/news/explainers-61782866>.

¹¹¹ Amnesty International Report 2022/2023, the state of the world’s human rights

[file:///Users/alexiamalaj/Downloads/WEBPOL1056702023ENGLISH-2%20\(1\).pdf](file:///Users/alexiamalaj/Downloads/WEBPOL1056702023ENGLISH-2%20(1).pdf).

When countries implement agreements that involve transferring asylum seekers or refugees to third countries, concerns can arise about whether these arrangements comply with international refugee law and uphold the principle of non-refoulement. Critics often argue that such deals may shift responsibilities or circumvent obligations, potentially putting the rights and protection of refugees at risk.

3.3.1 Principle of non-refoulement

The principle of non-refoulement is a fundamental concept in international refugee and human rights law. It refers to the prohibition of forcibly returning or "refouling" refugees, asylum seekers, or individuals in need of international protection to a country where they would face persecution, torture, cruel, inhuman, or degrading treatment, or threats to their life or freedom.

This principle is enshrined in several international treaties and customary international law, with the most prominent and widely recognized legal instrument being the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol. Article 33 of the Refugee Convention specifically articulates the principle of non-refoulement and states that:

“1. No Contracting State shall expel or return (" refouler ") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”¹¹²

¹¹² Convention Relating to the Status of Refugees, art. 33 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-relating-status-refugees>.

The scope of the principle of non-refoulement is to ensure protection and well-being of individuals who are in need of international protection, particularly refugees and asylum seekers¹¹³.

However, immediately after the UK-Rwanda agreement lots of concerns were raised by the UNHCR about Rwanda's capacity to adequate protection for asylum seekers and refugees, as well as the challenging human rights situation in Rwanda¹¹⁴. In addition, over 160 charities and advocacy organizations have jointly issued an open letter urging the government to abandon the plans. In their letter, they strongly criticized the scheme, characterizing it as "shamefully cruel".

Anyway, up to now, it appears that no asylum seeker who entered the UK illegally had been sent to Rwanda under the Rwanda plan. The cancellation of a flight scheduled for June 14, 2022, to send fifty migrants is indeed noteworthy and suggests that legal challenges and concerns about the scheme's compatibility with human rights standards led to interim measures from the European Court of Human Rights (ECHR) to cancel the flight¹¹⁵.

3.3.2 Court of Appeal Judgement

The decision of the case of *AAA and others v. The Secretary of State for the Home Department*¹¹⁶ represents a significant milestone in the efforts to challenge and address concerns relate to the Rwanda Plan policy. On June 29, 2023 the Court of Appeal ruled that the Rwanda policy was unlawful. It is indeed important that a

¹¹³ OHCHR, The principle of non-refoulement under international human rights law, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

¹¹⁴ UNHCR firmly opposing UK-Rwanda offshore migration deal <https://news.un.org/en/story/2022/04/1116342>.

¹¹⁵ BBC, (2022), Rwanda Asylum flight cancelled after legal action, <https://www.bbc.com/news/uk-61806383>.

¹¹⁶ *AAA and others v. The Secretary of State for the Home Department* <https://www.judiciary.uk/wp-content/uploads/2023/06/AAA-v-SSHD-judgment-290623.pdf>.

significant number of appellants, including ten individual asylum-seekers and the charity Asylum Aid, were successful in their legal challenges. They contested the legality of the decisions that had certified their human rights claims on individual grounds. These appellants hailed from various countries, including Albania, Syria, Iraq, Vietnam, and Sudan. Their mode of entry into the UK was by crossing the English Channel from France in small boats, which is a significant context for understanding their cases and the legal challenges they pursued.

The appellants pursued a comprehensive legal challenge, aiming to contest both the overall legality of the Rwanda policy and the specific decisions made in each individual case. This approach involved addressing the policy's legality on a broad scale while also examining the circumstances and merits of each appellant's case individually. In a notable development, the UNHCR became involved in the case due to its supervisory responsibility regarding the 1951 Refugee Convention.

The majority decision of the Court of Appeal highlights a critical finding: the deficiencies in the Rwandan asylum system are deemed to be so substantial that there exists a genuine risk that refugees deported to Rwanda would not receive the recognition and protection they are entitled to under international law. This conclusion underscores that removing individuals to such circumstances would constitute a breach of the United Kingdom's obligations under Article 3 of the European Convention on Human Rights (ECHR), which prohibits torture, inhuman, and degrading treatment¹¹⁷.

Under the evidence provided by UNHCR, the examination encompassed several critical aspects of the Rwanda's asylum process, including instances where asylum seekers were denied access to the Rwandan asylum process; refusals to register claims based on sexual orientation or gender identity; significant issues identified

¹¹⁷ Judiciary, *AAA and others v. The Secretary of State for the Home Department*, Judgement Summary <https://www.judiciary.uk/wp-content/uploads/2023/06/AAA-v-SSHD-summary-290623.pdf>.

within the asylum interview and decision-making procedures; impartiality of the judicial process; insufficiencies in legal knowledge and training related to asylum. This extensive review formed the backdrop against which the Court made its decision. Notably, the Court referenced evidence provided by the UNHCR, indicating that the overall rejection rate by Rwanda's Refugee Status Determination Committee was a staggering 77%. The Court further highlighted that individuals fleeing conflict-affected countries such as Syria, Yemen, and Afghanistan had a 100% rejection rate for their claims¹¹⁸. These findings underscored the serious concerns about the effectiveness and fairness of Rwanda's asylum determination process and contributed to the Court's conclusion.

3.4 Accommodations and living conditions of the asylum seekers

Asylum Seekers are entitled to asylum support, including accommodation¹¹⁹. This type of support is temporary and serves to ensure that a person's essential life needs are met while the Home Office assesses their situation¹²⁰. If, upon assessment, the Home Office determines that an individual lacks adequate accommodation or the means to meet their essential living needs, the Home Office typically extends ongoing support. This support often includes longer-term accommodation arrangements while their asylum claim is being processed. Additionally, support for individuals considered vulnerable, such as children and individuals who are

¹¹⁸ Free Movement, (2023), Court of Appeal finds Rwanda plan unlawful as Rwanda is not a safe third country <https://freemovement.org.uk/court-of-appeal-finds-rwanda-plan-unlawful-as-rwanda-is-not-a-safe-third-country/#:~:text=Rwanda%20p%20...-.Court%20of%20Appeal%20finds%20Rwanda%20plan%20unlawful%20as%20Rwanda%20is,not%20a%20sufficiently%20safe%20country.>

¹¹⁹ Immigration and Asylum Act 1999, s 95(3).

¹²⁰ Asylum Support Appeals Project, "Section 98 Support," November 2018, https://www.asaproject.org/uploads/Factsheet_17_-_s98_Support_March_2019.pdf.

pregnant, elderly, or disabled, should be tailored to address their specific and unique needs¹²¹.

However, in recent years, the asylum system in the UK has faced significant shortcomings that infringe upon individuals' human rights, including their rights to housing, food, education, health, and social security. Rather than addressing these concerns, the UK government is proceeding with plans that reinforce failed hostile environment policies. These plans involve expanding existing, problematic ad hoc arrangements for "contingency" asylum accommodation, which are likely to exacerbate suffering and lead to further violations of rights across the country (HRW, 2023).

According to many reports carried out by various organizations, such as the British Red Cross, Doctors of The World and Human Rights Watch, there are severe concerns regarding the poor, unsanitary and unsafe quality of the accommodations hosting asylum seekers. In 2017, a Home Office report¹²² uncovered numerous hygiene issues in asylum accommodation, affecting asylum seekers, including many children. These issues included individuals residing in accommodations that were infested with vermins, rats, and red bugs. From October 2022 there was an outbreak of diphtheria¹²³ at the Manston site in Kent¹²⁴, this issue was highlighted

¹²¹ UK Visas and Immigration, Asylum Support: Policy Bulletins instructions, version 10
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1168820/Asylum_support_policy_bulletins_instructions.pdf.

¹²² Reuters, (2017), UK Asylum seeker housing a vermin-infested "disgrace", lawmakers says
<https://www.reuters.com/article/britain-asylum-housing-idINL5N1FK5IP>.

¹²³ Diphtheria is a potentially serious bacterial infection caused by the bacterium *Corynebacterium diphtheriae*. It primarily affects the mucous membranes of the throat and nose but can also infect the skin. Diphtheria can lead to difficulty breathing, heart problems, and even death if left untreated.

¹²⁴ The Guardian (2022), Diphtheria outbreak confirmed at asylum seeker centre in Kent,
<https://www.theguardian.com/science/2022/oct/20/diphtheria-outbreak-confirmed-at-asylum-seeker-centre-in-kent>.

in the annual report of Amnesty International¹²⁵. Accounts from asylum seekers in Greater Manchester and Merseyside highlight distressing living conditions. One woman in Greater Manchester was compelled to remain in the same house even when her new-born baby suffered bites from bed bugs. Another asylum seeker in Greater Manchester recounted an incident where a sink pedestal fell through the ceiling into the area where she and her three children were living. In Merseyside, another individual shared images of her bedroom after the ceiling had collapsed for the second time in six months¹²⁶. The British Red Cross also raised concerns on survivors of torture and human trafficking who are forced to share their bedroom with strangers, making them relive their traumas¹²⁷. These stories underscore the substandard and unsafe conditions that some asylum seekers have experienced in their accommodations.

3.4.1 Doctors of the World Report 2022: Mental Health

In April 2022, Doctors of the World¹²⁸ (DOW) published a report¹²⁹ indicating that the living conditions of asylum seekers in government-provided accommodations

¹²⁵ Amnesty International, United Kingdom 2022, <https://www.amnesty.org/en/location/europe-and-central-asia/united-kingdom/report-united-kingdom/>.

¹²⁶The Guardian, (2017), UK asylum seekers living in 'squalid, unsafe slum conditions', <https://www.theguardian.com/uk-news/2017/oct/27/uk-asylum-seekers-living-in-squalid-unsafe-slum-conditions>.

¹²⁷ Red Cross, (2021), Why asylum support accommodation need reform <https://www.redcross.org.uk/about-us/what-we-do/we-speak-up-for-change/far-from-a-home-why-asylum-accommodation-needs-reform#:~:text=Our%20report%2C%20Far%20from%20a,reform%20of%20the%20asylum%20system>.

¹²⁸ Doctors of the World is a humanitarian organization dedicated to delivering both immediate and ongoing medical assistance, with a focus on human rights.

¹²⁹ Doctors of the World, (2022), "They just left me" Asylum seekers, health, and access to healthcare in initial and contingency accommodation, <https://www.doctorsoftheworld.org.uk/wp-content/uploads/2022/04/DOTW-Access-to-healthcare-in-initial-and-contingency-accommodation-report-April-2022.pdf>.

are deemed "unsafe" and fail to meet the minimum standards of decent and adequate living, which the government is responsible for ensuring.

Evidence shows that the inability to uphold fundamental human standards in asylum accommodations has worsened mental health issues among asylum seekers, this includes heightened levels of depression, anxiety and post-traumatic stress disorder (PTSD).

Although people are not officially detained in initial or contingency accommodations, there exist resemblances to detention facilities. A mounting body of evidence underscores the adverse effects of compulsory detention on the mental well-being of refugees and asylum seekers (DOW, 2022). Medical professionals and healthcare organizations conducting visits to barracks in the UK have documented the observable decline in the mental and physical health of asylum seekers during their residence. The Chief Inspector of Borders and Immigration discovered that the majority of residents at Napier Barracks¹³⁰ had suffered from depression, and a third had experienced thoughts of suicide. Those at risk of self-harm were isolated in deteriorating confinement facilities (DOW, 2022). One of the asylum seekers interviewed in the report described his experience of waking up in a state of cold sweat every night, sometimes also finding himself curled up tightly and trembling, gripped by the fear that he has been returned to a prison cell¹³¹. For individuals who have escaped torture and incarceration, these conditions resemble detention, resulting in reliving their past trauma. Many of them report that their mental health is deteriorating further as a consequence.

Researchers in Scotland¹³² discovered that individuals, especially women, experienced feelings of insecurity in initial or contingency accommodations, which

¹³⁰ Napier Barracks is a former military barracks located in Folkestone, Kent, which is presently being utilized as accommodation for individuals seeking asylum.

¹³¹ The Guardian, (2022), 'Unsafe' UK accommodation threatens asylum seekers' health – report, <https://www.theguardian.com/global-development/2022/apr/27/unsafe-uk-accommodation-threatens-asylum-seeker-health-doctors-of-the-world-report>.

¹³² Action Foundation.

led to increased levels of anxiety. The absence of communal areas, recurrent lockdowns within individual hotels, and the absence of opportunities to engage in meaningful activities left many individuals in such accommodations with a sense of hopelessness.

Another issue that has surfaced is access to healthcare. Both Doctors of the World UK and the British Red Cross have reported the difficulties faced by asylum seekers in accessing healthcare in initial or emergency accommodation. In the Penally Barracks, according to the British Red Cross, asylum seekers were not subjected to health checks either before or after their arrival. Residents reported experiencing significant delays in accessing medical care, including individuals who described suffering for prolonged periods without receiving timely care. For example, an asylum seeker shared that he had to endure a wait of over a month for medical attention, even though he had reported severe tooth pain that prevented him from eating. Consultations conducted with residents of the barracks revealed that their well-being was adversely affected by their stay in the barracks. Among those interviewed, 43% reported a loss of appetite and weight because they couldn't consume the food provided, which was described as inadequately cooked and not fresh. In addition to this finding indicated that asylum seekers residing in hotels had to approach reception staff to request access to a General Practitioner (GP) and were required to disclose the reasons for their medical needs, which raised concerns about compromising their privacy and confidentiality.

Between January 2020 and February 2021, British Red Cross team¹³³ documented references to suicidal thoughts or suicide attempts in their case notes for more than 400 individuals residing in asylum accommodations. This averages out to nearly one person per day. This shows the urgency of a reform in the asylum accommodation.

¹³³ British Red Cross, (2021), Far From a Home , why asylum accommodation need reform <file:///Users/alexiamalaj/Downloads/Far%20from%20a%20home.pdf>.

3.4.2 Human Rights Watch Report 2023: Inadequate Accommodations

On 14 September 2023, the Human Rights Watch (HRW) in collaboration with Just Fair¹³⁴ released a report where they analyse the conditions in which families who are seeking asylum in the UK live. They found out that these families are confronted with substandard living conditions in temporary housing provided by the government, impacting their mental and physical well-being, as well as children's ability to access education¹³⁵.

The research consisted in visits to hotels in various locations, including Bournemouth, Ilford, Maidenhead, Reading, and Wokingham. During these visits, they observed serious habitability issues in the hotel accommodations where people were placed. These problems included inadequate space, dampness, mould, missing or damaged furniture and other items, as well as pest infestations. Such conditions were found to be in violation of individuals' right to adequate housing, violating article 25 of the UDHR.

What emerged from this research is that the accommodation was plagued by issues such as dampness, infestations of pests, and numerous other problems affecting its habitability. Additionally, the rooms were often inadequate in size for the number of occupants, leading to overcrowding. Despite the availability of a service for asylum seekers to report their accommodation problems to the Migrant Help service, many have encountered challenges. Some have reported calling the hotline but receiving no response, or they were turned away without assistance.

¹³⁴ Just Fair is a Charity based in UK, which is committed in ensuring that Economic, Social and Cultural rights are respected in the everyday life, <https://justfair.org.uk/>.

¹³⁵ HRW, (2023), "I Felt So Stuck" Inadequate Housing and Social Support for Families Seeking Asylum in the United Kingdom <https://www.hrw.org/report/2023/09/14/i-felt-so-stuck/inadequate-housing-and-social-support-families-seeking-asylum>.

Interviews with asylum seeker families residing in Home Office accommodation revealed that these families often live-in overcrowded conditions, characterized by a lack of adequate space. These cramped living conditions can make life extremely challenging for families, especially those with children, leading to adverse consequences for their mental health and family relationships. Asylum seekers have also reported the lack of ventilations in hotels which creates an unliveable situation especially if the rooms are overcrowded.

Such conditions, characterized by overcrowding and inadequate living spaces, can promote the growth of toxic mould, mycotoxins, fungi, and bacteria¹³⁶. Some of these contaminants can, in turn, lead to serious health conditions, posing additional risks to the well-being of residents.

Research has indeed identified connections between exposure to indoor mould and adverse respiratory health outcomes, particularly in children. Mould exposure can exacerbate conditions such as asthma and allergies, leading to respiratory problems and other health issues in children and individuals with compromised immune systems¹³⁷.

The report highlights that the Asylum Accommodation system appears to be insufficient for individuals with health conditions. For instance, it includes the testimony of Maria, a mother of a 5-year-old autistic child who requires a special bed due to his tendency to move around vigorously during sleep. However, he has been forced to sleep on the floor for months. Additionally, various factors such as noise in hotel accommodations can agitate and distress him.

Furthermore, the testimonies of asylum seekers indicate that there are numerous missing or broken items in hotel accommodations, including beds and mattresses.

¹³⁶ World Health Organization, “WHO Guidelines for Indoor Air Quality: Dampness and Mould,” 2009, <https://apps.who.int/iris/handle/10665/164348>.

¹³⁷ Temenuga Antova et al., “Exposure to Indoor Mould and Children's Respiratory Health in the PATY Study,” *Journal of Epidemiology and Community Health*, vol. 62 (2008), pp. 708-714, doi: 10.1136/jech.2007.065896.

Additionally, many rooms experience leaks during rainfall, which subsequently wets the beds and worsens the living conditions.

According to government guidelines on asylum accommodation and support, hotels are required to supply adequate food for asylum seekers. Nevertheless, the report reveals that the food provided in Home Office hotels is of low quality and often unsuitable, particularly for infants. These food-related issues disproportionately impact children, who have higher nutritional requirements than adults, as well as pregnant or breastfeeding women, who have more complex nutritional needs than other adults. Testimonies from asylum seekers consistently state that the food offered in hotels is insufficient, of poor quality, and lacks essential nutrients. Many families, in particular, encountered difficulties in obtaining appropriate food for their new-borns and infants, highlighting a concerning deficiency in catering to the nutritional needs of vulnerable individuals.

Another issue raised by the Report concerns the barriers to accessing education for children in hotel accommodations. Asylum-seeking families often face challenges in enrolling their children in local schools, especially when they arrive partway through the school year. In some cases, local schools may not permit immediate enrolment and may require them to wait until the following year before they can attend classes. Furthermore, when the Home Office relocates families from one hotel to another or assigns them to dispersal accommodation, it frequently results in additional disruptions to children's education. In addition to this, hotels may be situated far from schools and libraries, may lack reliable internet connectivity, and may have other unsuitable conditions that make it challenging for children to study effectively. These various factors collectively contribute to significant obstacles in ensuring uninterrupted access to education for children seeking asylum in the UK.

3.4.3 Breach of the International Convention on Economic, Social and Cultural Rights

Under article 25 of the Universal Declaration of Human Rights (UDHR) “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”¹³⁸.

This principle is also enshrined in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that:

“1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

¹³⁸ UDHR, Art 25(1).

The United Kingdom's ratification of the ICESCR in 1976 indeed imposes legal obligations on the country to uphold these rights, including the right to adequate housing. However, the report from Human Rights Watch suggests that the UK is not ensuring this right for asylum seekers and is falling short of meeting the international standards for adequate housing, thereby breaching its international obligations.

Furthermore, it's important to recognize the interconnectedness of human rights. Violations of the right to adequate housing can have cascading effects on the right to mental and physical health, as demonstrated in the report by Doctors of the World.

Regarding education, the right to education is enshrined in various international treaties, including the Convention on the Rights of the Child¹³⁹, the International Covenant on Economic, Social and Cultural Rights¹⁴⁰, the Convention on the Rights of Persons with Disabilities¹⁴¹, and the European Convention on Human Rights¹⁴². Additionally, it is part of UK domestic law through the Human Rights Act 1998¹⁴³. The evidence presented in the report suggests that the UK is failing to fulfil its obligations in ensuring that asylum-seeking children have access to compulsory education, thus falling short of its international and domestic legal commitments.

¹³⁹ Convention on the Rights of the Child, art. 28.

¹⁴⁰ ICESCR, art. 13.

¹⁴¹ UN Convention on the Rights of Persons with Disabilities (CRPD), December 13, 2006, 2515 U.N.T.S. 3 (entered into force May 3, 2008), art. 24. The United Kingdom ratified the CRPD on June 8, 2009.

¹⁴² Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), March 20, 1952, ETS No. 9, art. 2

¹⁴³ Human Rights Act 1998, sched. 1, art. 2.

CHAPTER 4. ILLEGAL MIGRATION ACT 2023

The summer of 2022 marked a remarkable turning point as the English Channel became a focal point of international attention due to the escalating influx of small boats attempting the treacherous crossing. This surge in maritime arrivals not only ignited intense debates within British society but also compelled policymakers to re-evaluate and reshape existing legislation, thereby bringing about significant changes in the country's approach to managing irregular migration. The data has revealed that the Nationality and Border Act, which was implemented on April 27, 2022, with the aim of decreasing arrivals, has proven ineffective. In fact, there has been a substantial rise in arrivals, reaching record-breaking levels. Curbing the arrival of small boats in the UK emerged as a paramount concern for the Conservative Party, and the Illegal Migration Bill was seen as the ideal tool to achieve this objective.

One of the central commitments made by Prime Minister Rishi Sunak in January 2023 was to prevent asylum seekers from reaching the UK via small boats. A significant element of the government's effort to fulfil this pledge is the introduction of the Illegal Migration Bill in March 2023. This legislation, aimed at curbing unauthorized migration, has generated substantial controversy. It has been characterized as one of the most contentious bills pursued by a British government in recent memory¹⁴⁴. On the contrary, the government characterizes the underlying policy as fundamentally humane, with its core aim being to disrupt the incentive that fuels the illicit activities of human smuggling gangs¹⁴⁵.

The Bill was proposed by the Secretary of State for the Home Office Department, Suella Braverman who promptly addressed the summer of 2022 landings, characterizing them as an "invasion" and expressing concerns about the

¹⁴⁴ Marson, L., Ineffective authoritarianism: How bad is the illegal migration bill?, Legal Action March 2023, <https://www.lag.org.uk/article/213909/-ineffective-authoritarianism-how-bad-is-the-illegal-migration-bill->.

¹⁴⁵ House of Commons Hansard, vol. 729, col. 576, 13 March 2023.

involvement of Albanian criminals¹⁴⁶. The main objective of the bill is to stop migrants crossing the English Channel by small boats, by making their asylum claims inadmissible and sending them back to their country or to a “Safe Third Country”.

This bill became Act on July 20, 2023. As we can read in the introductory text, this law is:

“ An Act to make provision for and in connection with the removal from the United Kingdom of persons who have entered or arrived in breach of immigration control; to make provision about detention for immigration purposes; to make provision about unaccompanied children; to make provision about victims of slavery or human trafficking; to make provision about leave to enter or remain in the United Kingdom; to make provision about citizenship; to make provision about the inadmissibility of certain protection and certain human rights claims relating to immigration; to make provision about the maximum number of persons entering the United Kingdom annually using safe and legal routes; to make further provision about the credibility of claimants making asylum and human rights claims; and for connected purposes.”¹⁴⁷

This bill, however, did not pass without criticism, raised in particular by both the UN Commissioner of Human Rights and the UN High Commissioners for Refugees. As observed in both Chapter 1 and Chapter 2, Albanians constitute the primary nationality among boat arrivals, making them a prominent focus of this legislation. In this chapter, we will delve deeper into the rationales behind the introduction of this legislation. We will examine the concept of a "Third Safe Country" and the key provisions within this new law and we will explore how it might negatively affect human rights and assess its implications within the context of our case study concerning the Albanian community.

¹⁴⁶ EuroNews, (2022), 'Inflammatory': UK interior minister Suella Braverman slammed over migrant 'invasion' remark, <https://www.euronews.com/2022/11/01/inflammatory-uk-interior-minister-suella-braverman-slammed-over-migrant-invasion-remark>.

¹⁴⁷ Illegal Migration Act 2023, Introductory text <https://www.legislation.gov.uk/ukpga/2023/37/introduction>.

4.1 Safe Third Country

One of the key aspects of significance within the Illegal Migration Act pertains to the removal of individuals who have entered the UK unlawfully, such as through small boats. The legislation frequently mentions that individuals with asylum claims deemed inadmissible should be sent back to their home country or to a "Safe Third Country". However, what exactly does this term mean? Before delving into the central components of the new Act, it is crucial to provide an explanation and grasp the concept of a "Safe Third Country" (STC).

4.1.1 Defining the concept of Safe Third Country

The 1951 Refugee Convention and its 1976 Protocol represent the international system for the safeguarding of refugees. A pivotal element of this safeguard is the customary principle of international law known as non-refoulement¹⁴⁸, designed to shield refugees and individuals seeking protection from being sent back to a nation where they may face persecution. Additionally, a critical aspect of this protective framework is the inherent right to seek and receive asylum from persecution, as articulated in Article 14 of the Universal Declaration on Human Rights, which states that "everyone has the right to seek and to enjoy in other countries asylum from persecution"¹⁴⁹. However, this right is limited in that it does not explicitly specify whether a refugee has the right to claim protection in a specific country (Costello, 2005). This lack of unambiguous law has created a gap in refugee and asylum laws, allowing States to implement practices whereby they can deem an asylum claim inadmissible on the basis that the applicant has the possibility of seeking asylum in another place. This concept has been formally articulated through the notion of a 'Safe Third Country' (STC).

¹⁴⁸ See para. 3.3.1.

¹⁴⁹ UDHR, art.14.

This concept is primarily used in the context of national and regional asylum and immigration laws, policies, and agreements, particularly in Europe and North America. The idea behind it is to regulate the allocation of responsibility for processing asylum claims when an individual seeks asylum in a country other than their home country, or in other simple words, as Lambert says “to send asylum seekers back whence they came”¹⁵⁰.

It's important to note that the specific criteria and procedures for implementing the Safe Third Country concept are not universally recognized under international law, therefore can vary from one country to another and may be subject to international agreements or bilateral arrangements.

As regards the European Union, a formalized version of this concept is set out in the Dublin Regulations. The regulation outlines the standards for establishing which EU member state is tasked with evaluating an asylum application. Typically, this responsibility falls upon the nation within the EU where the asylum seeker initially entered. Some other countries support the idea that if an asylum seeker has passed through or could have sought protection in a country considered safe before reaching their current destination, they may be required to seek asylum in that safe country instead.

However, it should be noted that the principle of non-refoulement is a fundamental aspect of the STC concept. The determination of whether a country is considered "safe" can be a matter of legal and political debate, as it involves assessing the country's commitment to protecting refugees and respecting human rights.

Goodwin-Gill and McAdam's argument suggests that the return of refugees and asylum seekers to a third country can be in accordance with international law if there is substantial evidence indicating the admissibility of such returns. In other words, they contend that under certain conditions and with the presentation of strong supporting evidence, it may be legally permissible to send refugees or asylum seekers to a third country as long as that country is considered a safe and

¹⁵⁰ Lambert, H. (2012). ‘Safe Third Country’ in the European Union: An Evolving Concept in International Law and Implications for the UK.

appropriate destination for them. Regarding the concept of a "safe country," it is crucial that there are both substantive and procedural guarantees for human rights.¹⁵¹

According to UNHCR, the guarantees required for a country to be considered a "safe country" include the following criteria: (1) protection from persecution, refoulement or torture; (2) protection of life; (3) accessible and durable solutions; (4) protection from arbitrary expulsion and deprivation of liberty; (5) preservation of family unity and integrity; (6) recognition and respect of specific protection needs¹⁵².

The UNHCR has acknowledged that, in specific situations and with the provision of suitable guarantees on a case-by-case basis, transferring the responsibility for evaluating an asylum claim to another country can be a suitable and justifiable measure¹⁵³.

The application of the STC concept can be legally and politically controversial. Determining which country is safe and whether it is safe for all asylum seekers can be contentious, and there may be debates over whether such agreements comply with international human rights and refugee protection standards. Indeed, some countries and legal scholars argue that it can be a valid tool for managing asylum flows, while others raise concerns about its potential to undermine the rights and protections of asylum seekers. Ultimately, the legal and ethical implications of the concept are subject to ongoing debate and scrutiny.

4.1.2 The Safe Third Country policy in the UK

The UK's participation in the Dublin Regulation ceased after the Brexit transition period ended on December 31, 2020. Following its departure from the European

¹⁵¹ G.S. Goodwin-Gill and J. McAdam, *The Refugee in International Law*, 395.

¹⁵² E. Feller (UNHCR): UN doc. A/AC.96/SR.585, para.28 (2004).

¹⁵³ UNHCR - The UN Refugee Agency. (2003). para.12. Note on International Protection. <https://www.unhcr.org/media/note-international-protection-14>.

Union, the British government's position relies on the “first country of asylum” principle. This principle suggests that people seeking protection should generally apply for asylum in the first safe country they reach rather than continuing their journey to other countries. It is designed to prevent “asylum shopping,” in which individuals move from one country to another in search of the most favourable asylum conditions¹⁵⁴.

This principle is highlighted in section 80B and 80C of the Nationality, Immigration, and Asylum Act of 2002¹⁵⁵, which outline the possibility of making an inadmissibility determination on an individual's asylum application if they have a specific “connection” with a third country that meets certain safety criteria. As a result of this determination, the Home Office is not obligated to assess the asylum claim concerning the individual's country of origin.

A "connection" can be established based on a range of conditions, but the most inclusive criterion mentioned is:

- (a) the claimant was previously present in, and eligible to make a relevant claim to, the safe third State, (b) it would have been reasonable to expect them to make such a claim, and (c) they failed to do so¹⁵⁶.

Section 37, Schedule 1 of the Illegal Migration Act furnishes us with a compilation of 57 countries¹⁵⁷ deemed safe according to the UK government. This implies that individuals hailing from these countries must have their asylum claims deemed inadmissible. It's worth noting that the list encompasses countries recognized as safe solely "in respect of men." Among the diverse nations featured on this list is Rwanda, which remains included despite the Court of Appeal's ruling in the case *AAA and others v. The Secretary of State for the Home Department*, which

¹⁵⁴ Aida, (2022), Country Report: United Kingdom, p.56 https://asylumineurope.org/wp-content/uploads/2022/03/AIDA-UK_2021update.pdf.

¹⁵⁵ Nationality, Immigration and Asylum Act 2002, Section 80, <https://www.legislation.gov.uk/ukpga/2002/41/section/80>.

¹⁵⁶ Home Office, (2022), Inadmissibility: safe third country cases, <https://www.gov.uk/government/publications/inadmissibility-third-country-cases/inadmissibility-safe-third-country-cases-accessible>.

¹⁵⁷ Illegal Migration Act 2023, s.37, Schedule 1, <https://www.legislation.gov.uk/ukpga/2023/37/schedule/1/enacted>.

concluded that Rwanda is not a safe country, thereby raising questions about the legality of the Rwanda Plan as a policy, as we've seen in Chapter 3¹⁵⁸.

At the forefront of this list is the Republic of Albania, a country also categorized as safe, despite the documented human rights violations discussed in Chapter 2. This raises questions about the criteria used to determine whether a country is considered safe or not.

As previously discussed, international refugee law does not provide explicit guidance on the procedural safeguards necessary for a receiving country to be deemed safe, nor does it precisely define what constitutes effective protection. Nevertheless, various international organizations and judicial bodies have played a role in outlining the conditions that must be satisfied for a country to be regarded as safe. For instance, the legal decisions of the European Court of Human Rights and the Court of Justice of the European Union can serve as valuable resources for elucidating the definition of effective protection (Lambert, 2012). However, numerous non-governmental organizations (NGOs) and international entities, including the European Council on Refugees and Exiles (ECRE) and the United Nations High Commissioner for Refugees (UNHCR), have also released their own sets of criteria for assessing whether a country can be considered safe or not, as we've seen in the previous paragraph.

According to Section 94 of the Nationality, Immigration, and Asylum Act 2002, a country may be classified as safe when, in general, there is a minimal likelihood of people who have the right to reside there being subjected to severe persecution and deporting them to that particular country typically does not violate the UK's human rights commitments.

Shpresa Programme and MiCLU persist in their efforts to advocate for the abolition of the list of safe countries. This is because they believe that Albania does not meet the criteria of a safe country and also because the creation of such a list, which results in the denial of asylum to individuals based on their place of origin, is unjust

¹⁵⁸ Para. 3.3.

and undermines the human rights of refugees, contrary to the principles outlined in the Refugee Convention. However, we can delve deeper into this topic later in our discussion.

4.1.3 Albania designated as a safe third country: the UK-Albania bilateral agreement

As we previously mentioned, precise standards and processes for putting the Safe Third Country principle into practice lack global consensus within international law. Consequently, these criteria can differ from nation to nation and may be influenced by international accords or bilateral agreements.

In December 2022, the British Prime Minister Rishi Sunak and the Albanian Prime Minister Edi Rama reached an agreement to strengthen collaboration in three key areas of mutual interest¹⁵⁹. These areas include: Security Issues and Home Affairs, with the primary emphasis on combating organized crime and addressing the challenges related to illegal migration; Economic Growth and Investments; Innovation, Youth, and Education.

The UK Government's goal was to secure agreements that would facilitate the swift return of Albanians who did not have a legal right to stay in the UK. As a result, on December 19, 2022, after a meeting between the two prime ministers, Albania was officially recognized as a safe country. The Home Secretary then announced that Albania had provided assurances that they could offer the necessary protection, in accordance with international obligations to genuine victims of modern slavery. This involved deploying Border Force officers at Tirana Airport, establishing a specialized unit with 400 staff members to expedite Albanian claims, and providing

¹⁵⁹ Home Office, (2022), UK-Albania Joint Communique: Enhancing bilateral Cooperation in areas of common interest, <https://www.gov.uk/government/publications/uk-albania-joint-communique-enhancing-bilateral-cooperation-in-areas-of-common-interest/uk-albania-joint-communique-enhancing-bilateral-cooperation-in-areas-of-common-interest>.

new country guidance to caseworkers to clarify that Albania is considered a safe country¹⁶⁰.

The main arguments used to decide whether Albania is a safe country or not are the following:

1. Albania is a NATO member since 2009. The alliance between the United Kingdom and Albania within NATO demonstrates their commitment to collective defence and security. In particular, their joint efforts to hold Russia accountable for its invasion of Ukraine highlight their commitment to upholding international law and addressing conflicts that threaten peace and stability. Russia's actions in Ukraine have been a matter of significant concern within the international community, and cooperation between the UK and Albania in this context reflects their shared values and commitment to international norms.
2. Albania is a negotiating country for EU membership. Being a candidate country for EU and a trusted partner in international organizations can also contribute to a country's recognition as a safe origin. This recognition is likely based on a positive assessment of Albania's progress in strengthening democratic institutions, the rule of law, and the implementation of significant judicial reforms.
3. Albania, like the UK, is part of the European Convention on Human Rights (ECHR), which, according to the two leaders, demonstrates the commitment of safeguarding human rights within their respective territories. Albania is also part of the Council of Europe Convention against Trafficking in Human Beings (ECAT). Both the UK and Albania's participation in ECAT, according to Sunak and Rama, signifies their shared efforts to combat

¹⁶⁰ House of Commons, (2022), Tackling illegal migration, removing those with no right to be here, and protecting the vulnerable, <https://hansard.parliament.uk/commons/2022-12-19/debates/2212196000257/TacklingIllegalMigrationRemovingThoseWithNoRightToBeHereAndProtectingTheVulnerable>.

human trafficking and support victims. Albania is a signatory of the UN Convention against Transitional Organized Crime (Palermo Convention 2000) and its Protocols. This UN convention and its protocols address various aspects of transnational organized crime, including human trafficking, smuggling of migrants, and firearms trafficking. By being parties to these agreements, both countries are committed to combating transnational organized crime and promoting international cooperation in this area.

4. Both the UK and Albania are members of the Council of Europe, an intergovernmental organization dedicated to promoting democracy, human rights, and the rule of law in Europe. Membership in this organization reflects their shared commitment to these values and their cooperation in achieving these objectives collectively.

During this meeting, the two PMs, recognized that as parties to ECAT and ECHR, they have to increase their efforts to combat illegal migration and human trafficking. So, it was agreed that removals of Albanians had to be increased, including those aged 18 and above, who have been identified by UK authorities as victims of modern slavery, as defined by UK law, and victims of human trafficking, as defined by the Albanian law¹⁶¹.

In accordance with the principles of the European Convention on Human Rights (ECHR), such repatriations will be conducted with utmost consideration for the rights, safety, and dignity of the individuals, taking into account any ongoing legal proceedings related to their victim status, and a preference for voluntary returns whenever possible.

Regarding the return of undocumented migrants, both parties emphasized the importance of promptly and effectively implementing the bilateral readmission agreement between the UK and Albania. Upon their return to Albania, individuals

¹⁶¹ Home Office, (2022), Policy Paper, UK-Albania Joint Communique: Enhancing bilateral Cooperation in areas of common interest, para.3.3.

will have access to necessary support and protection against re-trafficking, as outlined in the ECAT.

In the report¹⁶² released by the Home Office following the agreement between the two PMs on 13 December 2022, it is stated that under UK law, claims made by Albanian nationals and individuals from other countries considered safe can be subject to certification according to Section 94 of the Nationality, Immigration, and Asylum Act 2002. And this is how the UK Parliament has enacted legislation to include Albania in its list of safe countries, in accordance with section 94 of the 2002 Act. Albania is designated as a safe country due to the general absence of significant risks of persecution for individuals who have the right to live in Albania. Albania is now included in the list of “safe countries” in the Illegal Migration Act.

It's important to recognize that the designation of a country as a "safe country" for asylum seekers can be a complex and contentious matter. While legal criteria and assessments are made to determine this status, real-world conditions and experiences can vary, leading to concerns and debates about whether a country genuinely qualifies as safe. In the case of Albania, there may be differing viewpoints and concerns about the alignment between its designation as a safe country and the actual conditions faced by certain individuals or groups within the country. Such concerns often involve issues related to specific regions, vulnerable populations, or the enforcement of rights and protections. Assessing whether a country is genuinely safe for all individuals entitled to reside there requires a comprehensive and ongoing evaluation of factors such as human rights, rule of law, and the protection of vulnerable groups. These assessments can evolve over time, and decisions may be subject to legal challenges and changes in policy. Ultimately, the determination of whether Albania is indeed a safe country is a complex issue, and it may involve legal, political, and humanitarian considerations. Public debate and discussion surrounding such matters are important in ensuring that policies accurately reflect the realities faced by individuals seeking asylum. In the last

¹⁶² Home Office, (2022), Joint UK-Albania communique in relation to trafficking, <https://www.gov.uk/government/publications/joint-uk-albania-communique-on-trafficking/joint-uk-albania-communique-in-relation-to-trafficking>.

paragraph of this chapter, we will discuss more in depth the human rights issues in Albania.

4.2 Key Provisions of the Illegal Migration Act

4.2.1 Reasons and Background

Since the summer of 2022, the government, led by the Conservative Party, has been dedicated to introducing legislation aimed at curbing the substantial influx of migrants arriving illegally on the English coast. Consequently, one of the primary goals of the government's policy, under the leadership of Prime Minister Rishi Sunak, has been to put an end to these arrivals. Prime Minister Rishi Sunak initiated the "stop the boats" campaign, with the objective of reducing illegal immigration and "making things fairer for the British people"¹⁶³.

The Illegal Migration Act¹⁶⁴ represents yet another policy introduced by the British government to stop illegal migration. As we can read from the policy paper of the British Government "The Illegal Migration Bill will change the law to make it unambiguously clear that, if you enter the UK illegally, you should not be able to remain here. Instead, you will be detained and promptly removed either to your home country or to a safe country where any asylum claim will be considered"¹⁶⁵.

As we've seen, 2022 was characterized by a substantial increase in the number of people crossing the English Channel in small boats, with 45,700 individuals making the journey, in contrast to 28,500 in 2021¹⁶⁶ and 8,500 in 2020. Among these individuals, the majority was Albanian¹⁶⁷. Furthermore, it's worth noting that the

¹⁶³ Conservatives, Stop the Boat, <https://action.conservatives.com/stoptheboats/>.

¹⁶⁴ Illegal Migration Act 2023 <https://www.legislation.gov.uk/ukpga/2023/37/contents>.

¹⁶⁵ Home Office, (2023), Illegal Migration Bill: overarching factsheet, <https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-overarching-factsheet#:~:text=The%20Illegal%20Migration%20Bill%20will,asylum%20claim%20will%20be%20considered.>

¹⁶⁶ This means 60% increase in asylum claims in 2022 compared to 2021.

¹⁶⁷ See Chapter 2, Para. 2.2.

annual cost of the current system amounts to £3 billion, which includes a daily expenditure of £6 million on housing. The Explanatory Notes for the law also emphasize that all those arriving via Channel crossings pass through safe European countries, like France, during their journey, where migrants could readily seek asylum. Additionally, a significant portion of asylum seekers come from countries where there is no imminent risk of persecution, including Albania, that are considered safe in terms of asylum claims.

The government's contention is that the significant influx of small boat arrivals has contributed to a growing backlog of pending asylum claims, which the Home Office has yet to process. As of December 31, 2022, there were 132,200 primary applicants awaiting an initial decision on their asylum applications.

The Act will extend the provisions set forth in the Nationality and Border Act 2022, which has already implemented significant reforms reinforcing modern slavery laws and imposing stricter criminal penalties for unlawful entries. This Act simply represents a strategy to facilitate the prompt deportation of individuals who arrive in the UK unlawfully.

The primary objectives of the act are as follows: deter illegal migration into the UK by eliminating the motivation to undertake perilous small boat journeys; expedite the deportation of individuals lacking the legal right to be in the UK, thereby creating more resources to assist those genuinely seeking asylum through secure and lawful means; prevent individuals entering the UK through unlawful and hazardous means from manipulating modern slavery protections to impede their removal; maintain the UK's commitment to aiding those truly in need by pledging to resettle a specific number of the most vulnerable refugees in the UK each year.¹⁶⁸

Let's now analyse in more depth what were the most significant changes compared to the previous act in place.

¹⁶⁸ Home Office, (2023), Illegal Migration Act 2023, <https://www.gov.uk/government/collections/illegal-migration-bill#:~:text=The%20Illegal%20Migration%20Act%20changes,or%20a%20safe%20third%20country>.

4.2.2 Removal of illegal migrants from the UK

Under the new legislation, the UK Government guarantees the repatriation or transfer to another safe third country for all individuals who enter the UK unlawfully. The significance of the safe third country policy is crucial in this context.

Clauses 2 to 10 of the Act explicitly outlines the duties of the Secretary of State regarding the organization of removal arrangements. The Act became effective on July 20, 2023. Consequently, from this date onward the Home Secretary is obligated¹⁶⁹ to arrange the removal of all individuals who enter the UK from a safe third country and do not possess the leave to enter¹⁷⁰ or leave to remain¹⁷¹ in the United Kingdom. However, the Home Secretary retains the authority to change this date if deemed necessary.

Those individuals are going to be removed to their country of citizenship or to a place where they hold an ID or passport if it is deemed safe to do so. The law specifies 57 countries under two specific conditions: either it is the safe third country from which they travelled to the UK, or there is a reasonable belief that they will be admitted to that country, possibly through an agreement on the transfer of asylum, for example¹⁷². It's important to recognize that this duty primarily pertains to adults, as the Home Office lacks the authority to deport unaccompanied children. However, once these individuals reach the age of 18, the Home Secretary does have the authority to initiate removal proceedings.

¹⁶⁹ Illegal Migration Act 2023, Section 2, Duty to make arrangements for removal
<https://www.legislation.gov.uk/ukpga/2023/37/crossheading/duty-to-make-arrangements-for-removal/enacted>.

¹⁷⁰ "Leave to enter" means the official authorization granted by UK immigration authorities to individuals who are not British, Irish, or Commonwealth citizens with the right of abode, allowing them entry into the UK. Typically, this authorization is in the form of a visa.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116013/immigration_glossary.pdf.

¹⁷¹ "Leave to remain" permits an individual to reside in the UK for the duration specified in their permit or authorization.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/116013/immigration_glossary.pdf.

¹⁷² Illegal Migration Act 2023, Section 6.

As we can read in Section 6 of the Illegal Migration Act, individuals who meet the criteria for removal should be deported "as soon as is reasonably practicable" unless the Home Secretary deems that there are "exceptional circumstances" that hinder their removal.

The Act also includes provisions for detaining individuals who meet the criteria for removal. Section 11 introduces a new authority for the Home Office to detain people for a period of 28 days, during which time they do not have access to immigration bail or judicial review. Specific conditions and exceptions apply to unaccompanied children and pregnant women.

What is important to note here is that this duty will be in effect irrespective of whether an individual submits and asylum or human rights claim, asserts to be a victim of modern slavery or human trafficking, or initiates an application for judicial review concerning their removal from the UK (Home Office, 2023). This signifies that individuals who enter the UK unlawfully through a safe third country will have all asylum claims or human rights claims related to their home country deemed "inadmissible," and these claims will not be reviewed within the UK.

4.2.3 Modern Slavery Claims

Clauses 22 to 29 of the Act are dedicated to the Modern Slavery policy that will be adopted¹⁷³. The Home Office has stated that "it is vital that the government takes steps to reduce or remove incentives for individuals to enter the country illegally. These illegal practices pose an exceptional threat to public order, risk lives, and place unprecedented pressure on public services"¹⁷⁴. That said, the provision in the Illegal Migration Bill aims to address the urgent and significant public order concerns stemming from the unique circumstances associated with unlawful entry

¹⁷³ Illegal Migration Act 2023, Modern Slavery, <https://www.legislation.gov.uk/ukpga/2023/37/crossheading/modern-slavery>.

¹⁷⁴ Home Office, (2023), Illegal Migration Bill: modern slavery factsheet, <https://www.gov.uk/government/publications/illegal-migration-bill-factsheets/illegal-migration-bill-modern-slavery-factsheet>.

into the UK. These circumstances include the strain placed on public services due to a high volume of illegal entrants and the tragic loss of life resulting from perilous and illicit journeys.

The provisions related to modern slavery in the Act apply to several categories of individuals, including those who enter the UK through irregular means (such as arriving by small boats), non-British citizens subject to deportation orders, and individuals who have received immediate prison sentences. Under these measures outlined in the Act, individuals falling within these groups who are identified by the Home Office as potential victims of modern slavery may not be offered specialized support, and there is a possibility of their detention and removal from the UK. The only exception to these measures is if the Home Secretary determines that individuals need to remain in the UK to cooperate with a law enforcement investigation.

The suspension of support would come after the Home Office reaches a decision on “reasonable grounds” through the formal identification process within the National Referral Mechanism (NRM) to recognize individuals as potential victims of modern slavery. However, in the case of this specific group of individuals, a final decision on “conclusive grounds” within the NRM would not be made.

The Home Office emphasizes the importance of implementing these modern slavery measures, particularly concerning the data related to asylum seekers who have been referred to the National Referral Mechanism (NRM).

In 2022, there were approximately 17,000 referrals made to the NRM, marking the highest annual number on record. This represented a significant increase of 33% compared to the previous year, which saw 12,706 referrals, and a remarkable 625% increase since 2014 when there were 2,337 referrals. In terms of processing times, the average duration from the point of referral to the final decisions based on conclusive grounds in 2022, as determined by the competent authorities, was 543 days. This was slightly longer compared to the preceding year when the average processing time was 449 days. In 2022, the nationality most frequently referred to

NRM was Albanian nationals, comprising 27% of all individuals referred, which amounted to 4,613 people.

In brief, the Act establishes a system in which victims of trafficking and modern slavery who enter the UK irregularly could face significant consequences. They may not have access to crucial support, and upon arrival, they could be detained without the opportunity for consideration, appeal, or reconsideration of their situation. This raises concerns about the potential impact on the rights and well-being of individuals who may be in vulnerable situations. As we will later analyse, the implementation of this Bill has the potential to heighten the risk of trafficking for individuals who have previously been trafficked and for those who are at a high risk of falling victim to trafficking¹⁷⁵.

4.2.4 Safe Legal Routes

Clauses 60 and 61 are dedicated to safe and legal routes. A "safe and legal route" to the UK refers to a journey that is officially sanctioned and approved by the UK Government. Typically, this means that the immigration rules established by the Home Office allow for the journey to take place without requiring a visa. Alternatively, a "safe and legal route" can also involve a journey made with a visa specifically granted for the purpose of undertaking that journey (Amnesty International, 2023).

The British government frequently emphasizes the importance of "safe and legal routes" as a justification for enacting more stringent legislation to discourage refugees from attempting to reach the UK independently. The rationale behind this argument is that refugees should utilize established, secure pathways rather than embarking on perilous journeys, such as crossing the English Channel in small boats or hiding in the back of lorries, in order to seek asylum. The aim is to ensure the safety and well-being of refugees while also maintaining control over

¹⁷⁵ Anti-Slavery Org, (2023), What does the "Illegal Migration" Bill mean for victims of modern slavery?, <https://www.antislavery.org/illegal-migration-bill-modern-slavery/>.

immigration processes. Let's now see which the safe and legal routes are existing for refugees in the UK.

4.2.4.1 Refugee Family Reunion

This pathway allows refugees who have been granted protection in the UK to apply for their eligible family members, such as spouses, children, or dependent relatives, to join them and seek refuge in the country¹⁷⁶. The introduction of the Nationality and Borders Act 2022 has brought about changes to the Refugee Family Reunion route in the UK. Under these changes, individuals granted asylum and recognized as refugees are now categorized into two distinct groups. Group 1 includes individuals who directly and promptly travelled to the UK from the country they fled, and they have valid reasons for their unlawful entry or presence in the UK. Those in Group 1 are automatically eligible to sponsor eligible family members under the Refugee Family Reunion route; Group 2 includes all other individuals, who did not meet the criteria of Group 1. Members of this group can only sponsor eligible family members through the Refugee Family Reunion route if the rejection of their application would result in a violation of the UK's international obligations under the European Convention on Human Rights.

4.2.4.2 Refugee Resettlement Programs

Refugee Resettlement Programs¹⁷⁷ are programs that involve the UK government working with international organizations like the United Nations High Commissioner for Refugees (UNHCR) to identify and resettle vulnerable refugees from conflict zones or refugee camps in other countries to the UK. These programs are designed for individuals who have already been granted asylum and have refugee status in a country other than the UK. Under these schemes, individuals are voluntarily transferred to the UK and are given permanent residence status upon arrival. Importantly, they do not need to go through the asylum application and

¹⁷⁶ Immigration barristers, (2021), Refugee Family Reunion: A practical guide, <https://immigrationbarrister.co.uk/refugee-family-reunion-a-practical-guide/>.

¹⁷⁷ Home Office, (2021), UK Refugee Resettlement: Policy Guidance, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1011824/Resettlement_Policy_Guidance_2021.pdf.

processing procedures in the UK. Instead, they are directly resettled in the UK, offering them a safe and stable environment in which to rebuild their lives. In Refugee Resettlement Schemes, individuals do not typically apply to be resettled on their own initiative. Instead, they are identified and referred to these schemes through various channels, which may include the UK and/or foreign immigration authorities, NGOs and the UNHCR. There are three resettlements schemes: the UK Resettlement Scheme¹⁷⁸; Community Sponsorship¹⁷⁹ ; Mandate Resettlement Scheme¹⁸⁰. Both the UK Resettlement and Community Sponsorship schemes are intended for refugees in vulnerable situations, often residing in refugee camps near conflict zones or unstable regions. In the UK Resettlement Scheme, the responsibility for the integration of individuals with refugee status upon their arrival in the UK rests with local authorities. In contrast, the Community Sponsorship Scheme pairs these individuals with local community groups that have volunteered to offer integration support within the UK. Meanwhile, the Mandate Resettlement Scheme is tailored for individuals who have close family members already living in the UK, with legal permission to stay or in the process of securing permanent status. These family members are willing to provide accommodation and support for their relatives seeking resettlement in the UK (Foxley, 2023).

4.2.4.3 Nationality-Specific Immigration Routes

Nationality-Specific Immigration Routes refer to immigration pathways or programs that are specifically designed for individuals from certain countries or nationalities. These routes are established to accommodate the unique circumstances, needs, or relationships of individuals from particular countries when seeking entry or residence in another country. In the current context, Nationality-

¹⁷⁸ Home Office, (2021), UK Refugee Resettlement: Policy Guidance, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1011824/Resettlement_Policy_Guidance_2021.pdf.

¹⁷⁹ Home Office, (2023), Community sponsorship: guidance for prospective sponsors, <https://www.gov.uk/government/publications/apply-for-full-community-sponsorship/community-sponsorship-guidance-for-prospective-sponsors>.

¹⁸⁰ Home Office, (2012), Mandate Refugees, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257392/manadaterefugees.pdf.

Specific Immigration Routes are in place for only three specific countries, which are Afghanistan, Ukraine and Hong Kong.

Having said that, it seems that the legal remedies proposed by the UK government are relatively limited. In the following paragraph, we can delve deeper into the concept of safe and legal routes and explore the challenges associated with this concept. Additionally, we can discuss the perceived failure of the British government to ensure safe and legal routes for Albanians, addressing the concerns and issues related to this matter.

4.3 Additional Human Rights Concerns

Upon a comprehensive examination of the key provisions within the Illegal Migration Act 2023, it becomes evident that several contentious aspects have come to the forefront, raising doubts regarding their alignment with established human rights principles and international obligations.

The UN High Commissioner for Human Rights, Volker Türk, and the UN High Commissioner for Refugees, Filippo Grandi, cautioned that the recently approved Illegal Migration Bill in the United Kingdom contradicts the nation's commitments under international human rights and refugee laws, and it is expected to have significant implications for individuals seeking international protection¹⁸¹. The Joint Council for the Welfare of Immigrants (JCWI) in their report released in April 2023, stated that the Bill is an exceptionally dangerous piece of legislation which blatantly ignores international human rights law and will have serious consequences for people seeking refuge in the UK.

¹⁸¹ UNHCR, (2023), UK Illegal Migration Bill: UN Refugee Agency and UN Human Rights Office warn of profound impact on human rights and international refugee protection system, <https://www.unhcr.org/news/press-releases/uk-illegal-migration-bill-un-refugee-agency-and-un-human-rights-office-warn>.

The Illegal Migration Act contains exceptionally strict and, in some instances, unprecedented provisions related to human rights. This is exemplified by the fact that, during the introduction of the Bill to Parliament, the Home Secretary was unable to issue a statement affirming its compatibility with human rights, as is typically customary. The Human Rights Act of 1998 introduced this additional stage in the legislative process, mandating that the government minister responsible for a Bill either confirm that the proposed law complies with human rights or acknowledge the inability to do so, while expressing the government's intention to proceed with the Bill. In this case, the government was compelled to make the latter statement, essentially conceding that the provisions of the Bill were such that it could not assert their alignment with human rights¹⁸².

According to the Refugee Council, the consequences of this Act are going to be very detrimental. Their estimation suggests that over 190,000 individuals could be denied access and pushed into destitution as a result of the government's stringent measures against desperate people seeking safety and refuge. Furthermore, approximately 45,000 children may face detention in the UK when their asylum claims are declared "inadmissible." Additionally, the Act is projected to incur a cost of around £9 billion over three years for detaining refugees in detention centres and accommodating individuals who cannot be removed to other countries¹⁸³.

According to Arnell, a human rights researcher at the Robert Gordon University, there is no dispute that the Bill constitutes an unparalleled assault on the UK's framework for safeguarding human rights and stands as a challenge to international human rights and refugee law.

The title of the Act itself is imprecise and controversial as it makes reference to "illegal migration". According to international law, countries where potential refugees arrive are obligated to assess, ascertain, or formally determine refugee status. This principle is inherent in the United Nations (UN) Convention on the

¹⁸² Arnell P., (2023), The UK's Illegal Migration Bill: Human rights violated, SAGE, <file:///Users/alexiamalaj/Downloads/arnell-et-al-2023-the-uk-s-illegal-migration-bill-human-rights-violated.pdf>.

¹⁸³ Refugee Council, (2023), What is the Illegal Migration Bill? <https://www.refugeecouncil.org.uk/information/what-is-the-illegal-migration-bill/>.

Status of Refugees from 1951. Therefore, the act of "arriving" in a country cannot be deemed unlawful under this framework. The 1951 Refugee Convention, to which the UK was an original signatory, explicitly acknowledges that refugees may be forced to enter a host country through irregular means¹⁸⁴ (UNHCR, 2023). These inconsistencies regarding that we find in the name of the Act, reflect also in the substantive provisions of the legislation.

According to JCWI this Act is set to increase the number of people undertaking dangerous journeys across the Channel, leading to more tragic and avoidable deaths, both at sea and in the UK. It effectively constitutes a ban on seeking asylum and fundamentally undermines the fundamental principle of refugee protection in the UK, which was already under scrutiny following the entry into force of the Nationality & Borders Act in 2022.

Let's now undertake a more comprehensive analysis to elucidate the areas where there is a conflict between human rights and international obligations within the new Act.

4.3.1 Breach of the 1951 Refugee Convention

One of the most evident breaches in international law is the breach of the Refugee Convention. The UN High Commissioner for Refugees expressed that this legislation constitutes a pronounced violation of the 1951 Refugee Convention as it underscores that refugees should typically not face penalties based on their method of entry, as outlined in article 31(1), which states that:

“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present

¹⁸⁴ UNHCR, (2023), UK Bill ‘significantly erodes’ human rights and refugee protections, UN agencies warn, <https://news.un.org/en/story/2023/07/1138812#:~:text=The%20Bill%20denies%20access%20to,traffic%20or%20modern%2Dday%20slavery.>

themselves without delay to the authorities and show good cause for their illegal entry or presence”¹⁸⁵.

The 1951 Refugee Convention explicitly acknowledges that refugees may be forced to enter a host country irregularly due to their dire circumstances. Many individuals fleeing conflict and persecution often lack formal documents like passports and visas, and they have limited access to safe and legal routes for seeking refuge.

4.3.2 Expansion of detention facilities and the elimination of protections for vulnerable people

Gillian Triggs, assistant to the High Commissioner for UNHCR, stated that she is “profoundly concerned” by this new legislation as it withholds the entitlement to seek refugee protection from individuals who arrive in the UK through irregular means, including those who take life-threatening journeys to cross the English Channel in small boats. Instead, these asylum-seekers are subjected to detention and deportation, without the opportunity for their individual circumstances to be evaluated or considered.

Clauses 11-15 of the Act are dedicated to the methods of detention and bail. The legislation significantly enlarges the detention system in the UK, resulting in a substantial rise in the indefinite detention of individuals. It introduces extensive new authorities for the Secretary of State to authorize immigration detention, eliminates judicial oversight of government decisions, and removes critical protections for vulnerable demographics, such as survivors of slavery and trafficking, pregnant individuals, and children. Clauses 11-13 allow for the detention of individuals based on their mode of entry into the UK, a practice which breaches Article 31 of the Refugee Convention. Furthermore, clause 12 states that:

“A person liable to be detained under this section may be detained for such period as, in the opinion of the Secretary of State, is reasonably necessary

¹⁸⁵ 1951 Refugee Convention, art. 31.

to enable the decision to be made, the removal or examination to be carried out, or the directions to be given.”

Therefore, there is no time limit according to which an individual should be detained but it all depends on the concerns of the Home Secretary.

In addition, Clause 13 states that:

“A person who is being detained (...) must not be granted immigration bail by the First-tier Tribunal until after the end of the period of 28 days beginning with the date on which the person’s detention under paragraph 16(2C) of that Schedule or section 62(2A) of that Act began”.¹⁸⁶

This clause significantly restricts the ability to seek release through immigration bail or judicial review within the initial 28 days of detention, making it exceedingly difficult to pursue these avenues during that period.

Judicial review plays a crucial role in assessing the legality of detention for individuals in immigration custody, particularly when considering compliance with the Adults at Risk policy¹⁸⁷, which aims to prevent the detention of vulnerable individuals. Restricting access to the courts for nearly all cases will result in an unprecedented and deeply concerning deprivation of liberty for those in immigration detention. In addition, this will have a severe negative impact on the mental health of the detainees, which are very vulnerable from this point of view, as we’ve analysed in the previous chapter.

As we’ve previously discussed, in accordance with UK law, detention should only be employed as a last resort and should not be used as a form of punishment, an alternative to a criminal sentence, or as a deterrent. Nevertheless, the UK stands as the sole European country where indefinite detention is legally permissible, a practice that has been characterized as akin to a “form of torture”.

¹⁸⁶ Illegal Migration Act, Clause 13, Section (3A) (a).

¹⁸⁷ Home Office, (2023), Adults at risk in immigration detention https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152054/Adults_at_risk_in_immigration_detention_GOV.pdf.

The UK continues to breach the previous obligations that we've listed in Chapter 3 in matters related to detention. Specifically, article 3 and 5 of the ECHR and article 5 and 9 of UDHR.

4.3.3 Suspension of Modern Slavery Protection

One of the most contentious elements of the Act is found in the clauses pertaining to modern slavery¹⁸⁸. These clauses effectively restrict individuals who are victims of modern slavery from seeking asylum or relying on the protections offered by the Modern Slavery Act 2015. This contradicts the UK's obligations under the Council of Europe Convention on Action against Trafficking in Human Beings, which mandates specific protections and support for victims of human trafficking and modern slavery.

The parliamentary Joint Committee on Human Rights (JCHR) has expressed that the suspension of modern slavery protection constitutes an “overwhelmingly clear” violation of Article 4 of the European Convention on Human Rights (ECHR), which explicitly prohibits slavery¹⁸⁹.

The JCWI argues that these provisions constitute a violation of the international obligations stipulated in the Council of Europe Convention against Trafficking in Human Beings (ECAT). Denial of access to asylum for individuals, even when formally recognized as victims of modern slavery, increases their susceptibility to exploitation and puts them at risk of returning to the control of their traffickers.

The predominant demographic among trafficking survivors in the UK comprises migrants, a substantial portion of whom have entered the country through irregular means and presently reside within the UK without legal status. Given their already precarious circumstances, denying them access to protection exposes them to the

¹⁸⁸ Illegal migration Bill 2023, clauses 22-29.

¹⁸⁹ Committees, (2023), Legislative Scrutiny: Illegal Migration Bill, <https://committees.parliament.uk/publications/40298/documents/196781/default/>.

possibility of detention and subsequent repatriation, significantly elevating the risk of them falling victim to re-trafficking, violating their human rights.

The Anti-Slavery Organization also argues that this Act removes critical support provisions outlined in the Modern Slavery Act. The decision to eliminate protection for victims of trafficking (VOTs) and victims of slavery (VOSs) was highly criticized also by the former conservative Prime Minister Theresa May, who argued that the bill was “shutting the door on victims who are being trafficked into slavery here in the UK”¹⁹⁰.

One the main arguments to this provision made by the UK Government is that people are abusing the modern slavery system to get protection. However, the Modern Slavery PEC Organization has showed in their factsheet that the available evidence does not substantiate the UK Government's assertions that these measures are necessary due to the 'abuse' of the modern slavery support system¹⁹¹. The data on individuals arriving on small boats and their referral to the NRM suggests that the Home Office has recognized them as modern slavery victims at rates similar to all NRM referrals. Despite changes in the pattern of NRM referrals for small boat arrivals, this doesn't necessarily indicate misuse of the system. Contrary claims of system abuse are contradicted by other evidence. Between 2018 and 2022, only 7% of small boat arrivals were referred to the NRM (6,210 individuals). Among those with conclusive decisions (505 individuals), 85% were confirmed as modern slavery victims, in line with the average for all NRM referrals.

Home Office Ministers have cited an increase in NRM referrals for individuals detained for immigration removal as evidence of abuse. However, data for this group shows that the Home Office found reasonable grounds to believe they were modern slavery victims in 93% of cases between January and September 2022, compared to 88% for all NRM referrals during the same period. The rise in NRM

¹⁹⁰ House of Commons Hansard, vol. 729, col. 593, 13 March 2023.

¹⁹¹ Modern Slavery PEC, (2023), Fact sheet: modern slavery and the Illegal Migration Bill, <https://modernslaverypec.org/assets/downloads/Illegal-Migration-Bill-modern-slavery-fact-sheet.pdf>.

referrals for those referred from detention for removal may be due to various factors, including improved identification of victims, better safeguards, and survivors self-identifying, possibly with the help of legal advice or support during immigration detention (Jovanovic, 2023).

In conclusion, the proposed modern slavery measures in the Act are inconsistent with the UK's legal obligations under Article 4 of the ECHR, which is incorporated into UK law through the HRA, as well as its international commitments under the ECAT.

4.3.4 Removal of illegal migrants

As we've seen, clauses 2-10 impose a duty to the Secretary of state to arrange removals of people entering the UK illegally. In particular, sections 5-6 provide the Secretary of State with the authority to determine whether to deport an individual seeking asylum to a nation where they apprehend persecution, using a broad evaluation. However, there is a misconception that all refugees are escaping war-torn areas with widespread indiscriminate violence.

The JCWI report¹⁹² highlights the case of Albanians, stating that the British government has contributed to and propagated this misunderstanding by stigmatizing Albanian migrants, frequently describing Albania as a country and falsely asserting that their claims are automatically invalid.

This overlooks the fact that while there might not be an overall state of jeopardy in Albania, specific groups, such as trafficked women, are acknowledged to be in significant danger. Throughout the asylum system, a substantial number of individuals fear persecution not due to the general conditions in their home country, but because of their unique characteristics, including their sexual orientation or

¹⁹² JCWI, (2023), Illegal Migration Bill 2023 Briefing, <https://www.jcwi.org.uk/Handlers/Download.ashx?IDMF=90bd75fb-9794-4c22-b7b5-16558cdb991f>.

gender identity. By prioritizing general risk assessments over individualized evaluations, the government is exposing these claimants to increased jeopardy.

These provisions could result in individuals being sent back to nations where they would be subjected to torture and inhumane or degrading treatment, thereby violating the fundamental principle of non-refoulement, breaching article 33 of the Refugee Convention, but also various international and regional instruments, including also international customary law, such as article 3 of ECHR and HRA.

4.3.5 Inexistence of safe legal routes

In recent months, in furtherance of the Illegal Migration Act, the British government has frequently talked about safe and legal routes, expressly indicating that, for a substantial portion of individuals, the perilous undertaking of a voyage in a small vessel to traverse the English Channel is unnecessary. As was briefly discussed in paragraph 4.2.4, an overview of the categories of safe and legal routes advanced by the government was provided, revealing their inherent constraints. However, although the government certifies that there are safe and legal routes for everyone, this is not true, on the contrary these routes are very limited and not accessible to anyone.

Amnesty International on March 2023 has unveiled some truths about the “safe and legal routes” rhetoric used by the British Government¹⁹³.

First of all, the government doesn't allow anyone to claim asylum outside the UK, so you have to be physically present to claim asylum.

The Government's policy states that:

“As a signatory to the 1951 Refugee Convention, the UK fully considers all asylum applications lodged in the UK. However, the UK's international obligations under the Convention do not extend to the consideration of asylum applications lodged abroad and there is no provision in our

¹⁹³ Amnesty International, (2023), The truth about safe and legal routes <https://www.amnesty.org.uk/resources/truth-about-safe-and-legal-routes>.

Immigration Rules for someone abroad to be given permission to travel to the UK to seek asylum. The policy guidance on the discretionary referral to the UK Border Agency of applications for asylum by individuals in a third country who have not been recognised as refugees by another country or by the UNHCR under its mandate, has been withdrawn. No applications will be considered by a UK visa-issuing post or by the UK Border Agency pending a review of the policy and guidance.”

This is policy dates back to 2012 and became law in 2022 with the Nationality and Border Act, Clause 14¹⁹⁴.

Furthermore, in accordance with the immigration regulations¹⁹⁵ established by the Government, it is not possible to enter the UK explicitly for the purpose of seeking asylum. These regulations mandate that individuals from countries with a substantial number of asylum seekers heading to the UK must secure a visa for their journey. However, the rules do not offer a visa option for individuals intending to seek asylum upon arrival. Should an applicant for a visa be suspected of seeking asylum, the regulations specify that the visa application will be denied or, if previously granted, revoked.

As previously discussed, the Home Secretary has established nationality-specific immigration routes for individuals coming from Ukraine¹⁹⁶, Afghanistan, and Hong Kong. However, it's worth noting that there are no equivalent visa systems in place for individuals of other nationalities who are fleeing persecution and seeking asylum in the UK, irrespective of whether they have family ties or any other connections to the country. This can result in a disparity in the treatment of asylum seekers from different regions, raising concerns about equitable access to protection for all individuals seeking refuge in the UK.

¹⁹⁴ Nationality and Borders Act 2022, Section 14, <https://www.legislation.gov.uk/ukpga/2022/36/section/14>.

¹⁹⁵ Home Office, Immigration Rules, <https://www.gov.uk/guidance/immigration-rules>.

¹⁹⁶ Home Office, (2023), Immigration Rules Appendix Ukraine Scheme, <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-ukraine-scheme>.

Finally, the Refugee Convention gives the right to anyone to seek asylum. Article 14 of the UDHR states indeed that:

“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

Therefore, asking for asylum does not constitute anything unlawful and anyone can do it, whatever their nationality.

4.4 Is Albania really a “safe country”?

Albania has been officially designated as a safe country, as evidenced in paragraph 4.1.3 of this chapter. Nevertheless, it is noteworthy that in 2022, Albanian nationals were the predominant group embarking on perilous journeys via small boats. This raises the question: If a nation is indeed considered safe, what motivates a significant number of its citizens to undertake dangerous journeys in search of refuge?

As we’ve seen in Chapter 1, Albania has endured a series of adversities throughout its history, including occupation, colonization, communism, and warfare, and it currently grapples with the persistent issue of political corruption, which has long-lasting repercussions. This has initiated the modern-day mass emigration of Albanians, a trend that has been ongoing since the 1990s and has consistently taken place through unofficial and illegal means, as highlighted by King and Barjaba.

Presently, Albania faces the highest rate of administrative corruption in the Western Balkans, with 57% of its citizens occasionally asked for bribes, and 47% participating in corrupt dealings. This widespread corruption exacerbates the dire poverty faced by many Albanian families, who live on less than \$1.90 per day. Desperate parents often resort to marrying off their teenage daughters to much older, financially stable men, believing it will improve their own financial situation. Tragically, they are unaware that these young daughters are often trafficked to Italy and forced into prostitution (MiCLU, 2023).

Albania has earned the unfortunate distinction of being referred to as the first narco-state in Europe¹⁹⁷. The nation's history is marked by political instability, blood feuds, and vengeful killings. Many Albanian asylum seekers cite instances of domestic violence, "honor-based" violence, gender-based violence, and the persecution of specific children in their applications. Notably, a significant number of trafficked women and children who find themselves in the UK originate from Albania. Every year, unaccompanied, exhausted, and traumatized Albanian children seeking asylum, often victims of trafficking or fleeing violence, make their way to the UK (Madill, 2020).

That being said, it is imperative to acknowledge the myriad challenges confronting Albanian society today. Issues such as poverty, crime, and deeply ingrained customs like *gjakmarrje* place the lives of numerous Albanians in danger, compelling them to seek refuge either in the United Kingdom or other European nations. In Chapter 2, while discussing the asylum claims made by Albanian seekers, we underscored the primary motivations driving their requests for asylum in the UK, while also emphasizing the inadequacy of the Albanian government in providing adequate protection.

However, despite this Albania has been designated a safe country, meaning that people are not actually at risk of persecution, so their asylum claims become inadmissible in the UK. The criteria and methods for establishing that a country is safe are very imprecise and controversial and can have dangerous consequences on the lives of refugees, as we will analyse subsequently.

4.4.1 Controversy related to the concept of STC

Throughout the years, the concept of a safe third country has attracted considerable criticism. It has been characterized as a policy that endangers the lives of countless

¹⁹⁷ Reed M., (2019), Vice, The Inside story of Europe's First Narco State
<https://www.vice.com/en/article/zmpq89/the-inside-story-of-europes-first-narco-state>.

refugees, contravenes the principle of non-refoulement, and restricts access to asylum protection. Due to the absence of a universally accepted definition for the term, the principle of a safe third country operates differently within various systems. It can function as a criterion for determining the admissibility of protection claims, effectively serving as an exclusionary clause from refugee status during the merit's evaluation phase, or it may fulfil both of these roles simultaneously¹⁹⁸ (Moreno-Lax, 2015).

Already in 1995, the ECRE highly criticized the concept of STC stating that with this policy European States “are erecting one barrier after another in their attempt to prevent persons seeking refuge in Europe”¹⁹⁹. Many criticisms have also been raised about the fact that refugees were bounced from one state to another waiting for their claims to be considered by states that did not want to take on this responsibility²⁰⁰. Richard Dunstan defined this principle as “playing human pinball”²⁰¹. This concept is also often used as an interdiction tool. This use justifies interventions aimed at hindering the transit of people or facilitating the summary return of those who have arrived on national territory, before they even have the opportunity to submit an application for protection.

According to Moreno-Lax, the fundamental premise at the core of this notion is that due to the absence of explicit guidance in the 1951 Refugee Convention (CSR) regarding the allocation of responsibility for asylum claims and the lack of a specific mandate to automatically recognize refugees and offer them permanent protection, States possess the discretion to redirect asylum seekers to safe countries. This is permissible as long as they fulfil their obligations under the Convention, with a particular emphasis on adhering to the non-refoulement provision as outlined in Article 33 of the CSR. However, as we have seen in the case of Rwanda, which

¹⁹⁸ Moreno-Lax V., (2015), The Legality of the “Safe Third Country” Notion Contested: Insights from the Law of Treaties <file:///Users/alexiamalaj/Downloads/59632a847.pdf>.

¹⁹⁹ ECRE, (1995), Safe Third Countries: Myths and Realities, <file:///Users/alexiamalaj/Desktop/403b5cbf4.pdf>.

²⁰⁰ Ibid.

²⁰¹ Dunstan, (1995), Playing Human Pinball the Amnesty International United Kingdom Section Report on UK Home Office 'Safe Third Country' Practice.

was found being unsafe from the court of appeal breaching this sacrosanct article, it is clear that the STC policy is not very efficient.

Many researchers conducted by MiCLU and other NGOs and charities in the UK have however found that Albania is not a safe country either. At the same time the Home Office has also recognized a serious issue relating to human trafficking in Albania.

4.4.2 No real risk of persecution

In the context of Albania, the Home Office holds the position that it qualifies as a safe country, primarily due to the absence of armed conflict within its borders, its ratification of European conventions aimed at combatting human trafficking, and its status as a candidate country actively seeking European Union membership²⁰².

MiCLU responded by pointing out that the Refugee Convention does not require a country to be in a state of war for individuals to potentially face persecution. It is internationally acknowledged that a refugee is an individual who could encounter persecution in their country of origin, based on the five officially recognized grounds outlined in the CSR: race or ethnic origin, religion, political opinion, nationality, or affiliation with a particular social group. Therefore, the absence of a state of war is not a determining factor in classifying a country as safe.

Furthermore, the Home Office's argument that Albania has ratified conventions aimed at safeguarding human rights is contested. Ratifying conventions does not guarantee the comprehensive adherence to all the principles enshrined within them. To gain a deeper understanding of the issue of human trafficking and modern slavery in Albania, it is important to note that Albania lacks legislation explicitly prohibiting slavery, as well as institutions and practices similar to slavery and servitude. There is an absence of anti-slavery provisions within domestic legislation.

²⁰² House of Commons, (2023), Asylum and migration: Albania, <https://committees.parliament.uk/publications/40291/documents/204657/default/>.

Ultimately, the Home Office, as acknowledged in its CPIN, does recognize the issue of human trafficking and the vulnerability of specific groups of Albanians to persecution and there's no sufficient actors of in the country²⁰³.

The UNHCR expresses its concern regarding the inclusion of Albania on the list of safe countries, especially in light of the published country guidance and rulings from UK courts that acknowledge²⁰⁴ the potential risk of persecution faced by specific groups of Albanian citizens²⁰⁵.

4.2.3 Economic migrants abusing the Modern Slavery System

The Home Secretary, Suella Braverman, and the Minister of Immigration, Robert Jenrick, have put forth the argument that the majority of individuals who arrive illegally from Albania are not refugees but rather economic migrants who may be exploiting the modern slavery system²⁰⁶.

This viewpoint finds support from Andi Hoxhaj, a lecturer in law at the University College of London (UCL), who notes that unemployment in Albania is notably high, particularly among those aged 18 to 34, with an estimated rate of approximately 60%. Hoxhaj further estimates that approximately 40% of those leaving the country are doing so in search of improved economic opportunities²⁰⁷.

MiCLU, on the other hand, argues that migrants leave their home countries for a variety of reasons, often with these factors overlapping and circumstances can evolve after departure, leading to a different set of reasons for not returning to their place of origin. The data accessible within the UK demonstrates that substantial numbers of Albanians who arrive in the country and apply for asylum also furnish information in support of their asylum requests, often indicating that they may have

²⁰³ Home Office, (2022), Country Policy and Information Note, Albania: Actors of Protection https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126811/ALB_CPIN_Actors_of_Protection.pdf.

²⁰⁴ Ibid p. 44.

²⁰⁵ UNHCR, (2023), Legal Observations on the Illegal Migration Bill.

²⁰⁶ Ibid p. 123.

²⁰⁷ Ibid.

been victims of human trafficking or modern slavery. Given the extensive reports concerning Albanian criminal gangs engaged in operating trafficking and smuggling networks across Europe, including the UK, it is reasonable to anticipate that an escalation in the activities of such criminal organizations could result in a corresponding increase in the number of individuals falling victim to exploitation within these networks.

During the first half of 2022, a significant portion, specifically 56%, of all decisions made regarding Albanian asylum applications concluded with the grant of protection or other forms of leave²⁰⁸. It's important to note that these statistics do not factor in subsequent appeals, and historical data from the Home Office suggests that approximately half of appeals filed by Albanian asylum seekers over the past six years were successful. These figures collectively indicate that a substantial majority of individuals from Albania who seek asylum have legitimate claims and are indeed in need of protection.

4.2.4 Organized Crime

Organized crime in Albania can be predominantly attributed to the transitional phase in the country's history. It has emerged as a consequence of and in tandem with Albania's social and economic challenges, leading to a reciprocal influence between these factors. Instances of misconduct in official capacities have paved the way for the proliferation and expansion of illicit activities such as smuggling, trafficking, tax evasion, subpar public services, as well as thefts and robberies across various sectors of the public economy. Moreover, this environment has contributed to self-imposed isolation, vendettas, and various conflicts, particularly those related to property disputes, which, when considered together, have posed significant threats to national security (Tabaku, 2005).

As stated by Arben Tabaku, criminal networks exhibit a high degree of interactivity among their members, particularly in activities related to human trafficking, drug

²⁰⁸ Home Office Immigration statistics, year ending June 2022.

trafficking, and arms smuggling. These groups do not adhere strictly to specialization in specific areas of criminal activity; instead, they tend to expand or contract their operations depending on the demand and opportunities in various illicit endeavours.

The transportation of individuals on small boats across the Channel is largely coordinated by criminal gangs. According to Dan O'Mahoney, who serves as the UK Channel Clandestine Threat Commander, the notable surge in the number of Albanians utilizing this route can be primarily attributed to the presence and activities of Albanian criminal organizations in northern France. These criminal groups have established themselves in the region and have started facilitating the movement of a significant volume of migrants²⁰⁹. He also stated that “there is a huge amount of very harmful serious organised criminality within the UK committed by Albanian criminal gangs ... drug smuggling, human trafficking, guns or prostitution”²¹⁰. As per Dr. Andi Hoxhaj, organized crime within the UK might serve as a factor contributing to the increase in irregular travel. He has suggested that due to high unemployment rates, many men residing in rural areas may be enticed by offers of free transportation to the UK in exchange for engaging in employment, often in activities like cannabis farming or other illicit and criminal endeavours, for a duration of 12 to 18 months. This situation could potentially drive individuals to undertake irregular travel in search of such opportunities²¹¹.

Albanian organized crime is the real issue. According to the National Crime Agency (NCA), Albanian criminal organizations have also shown a preference for establishing what are known as "county lines." These are intricate networks used to distribute drugs across the United Kingdom, facilitating the movement of narcotics

²⁰⁹ House of Commons, (2022), Oral Evidence: Channel Crossing
<https://committees.parliament.uk/oralevidence/11390/pdf/>.

²¹⁰ Ibid.

²¹¹ Hoxhaj A., Written Evidence, para 4,
<https://committees.parliament.uk/writtenevidence/114643/pdf/>.

from major urban centres into coastal and inland regions. In doing so, they have conquered the cocaine market in the UK²¹².

Due to the significant influence and extensive network of Albanian organized crime, it becomes relatively easy for Albanian individuals to become victims of traffickers and, whether knowingly or unknowingly, become involved in criminal activities. This often results in their exploitation and forced participation in illegal work and sex trafficking. The reach of these criminal organizations can make people, especially those in vulnerable situations, more susceptible to such unfortunate circumstances.

Esme Madill states that denying asylum claims from Albanian seekers or prolonging their waiting times for a response heightens their vulnerability to falling victim to human traffickers and it's extremely dangerous and life threatening considering also the fact that Albanians have for some time formed one of the largest groups trafficked in the UK, as data from the NRM shows.

4.4.5 Safe and legal routes for Albanians

As mentioned earlier, Amnesty International has shed light on the reality of "safe and legal routes," leading us to the realization that the government does not, in fact, offer such routes for everyone.

When it comes to Albania, which is a country situated in the Balkans and not within the European Union, obtaining a visa is exceedingly challenging, as it demands qualifications that are beyond the reach of most Albanian citizens. The absence of accessible safe and legal routes, as noted by Dr. Andi Hoxhaj, significantly contributes to the encouragement of irregular immigration²¹³.

²¹² Irpi Media, (2022), How the Albanian mafia conquered the cocaine market in UK, <https://irpimedia.irpi.eu/en-albanian-mafia-uk-cocaine-supply/>.

²¹³ Ibid p.123.

Qirko, the Albanian Ambassador to the UK, has advocated for the expansion of visa opportunities that would allow Albanians to legally work in the UK. This proposal aims to provide a legal avenue for Albanians to reach the UK for employment, reducing the risk of them resorting to illegal means and falling prey to human traffickers. Similarly, a group comprising cross-party Albanian MPs, Albanian Ministers, and NGOs has voiced the same request. They highlight the construction sector as an area where the skills of Albanian workers could help fill job vacancies in the UK. Nonetheless, the UK government has rejected these proposals, asserting that there is no necessity for special visa arrangements for Albanians since Albania is not currently in a state of war²¹⁴.

However, it is essential to take into account that the majority of Albanians, as demonstrated by the data presented in this thesis, are victims of trafficking. In such dire circumstances, questions about visa applications become secondary. The primary issue that urgently needs to be addressed is organized crime, which is responsible for generating trafficking victims. It appears that both the UK and Albania may be overlooking this critical problem.

Rather than focusing on addressing the root cause and dismantling organized crime networks, the English government's approach seems to involve blaming and stigmatizing the victims. This approach not only denies them their right to seek asylum and request protection but also diverts attention from the actual source of these grave issues.

²¹⁴ Ibid.

CONCLUSION AND PERSONAL CONSIDERATIONS

My arrival in the UK coincided with Suella Braverman's declaration in Parliament, where she labelled Albanians as criminals and suggested they had no right to stay in the UK. In November 2022, I found myself in the middle of a protest in front of Westminster, where thousands of Albanians were trying to demonstrate that they were not criminal, emphasizing that they were honest workers who paid taxes, very unsure of what was happening. Later, I became involved in protests against the Home Office regarding the disappearance of unaccompanied children from hotels, the majority of whom were Albanian. In March, along with the entire city of London, I participated in demonstrations against the Illegal Migration Bill and the Rwanda Plan. Finally, in May, I had the opportunity to engage in discussions with Baroness Lister in Parliament, where we addressed the problematic nature of including Albania in the list of safe countries.

Throughout this challenging and hostile atmosphere, I observed the young asylum seekers from the Shpresa Programme ask insistently Esme questions about their future, wondering if they would face detention or potential relocation to Albania or Rwanda.

The legal landscape was constantly shifting, and unsettling rumours were circulating. There were speculations that Prime Minister Edi Rama might send Albanian police to English coasts to repatriate those who had crossed the Channel. Whispers also persisted that they could soon find themselves in Rwanda. In an unexpected twist in February, the Home Office sent them letters, summoning them all for the big interview with just two days' notice. This abrupt notification left them in a state of panic, without adequate time to seek advice from their lawyers. This added an overall sense of uncertainty and anxiety among these young asylum seekers.

The arrival of so many Albanians seemed to greatly disturb the British government which, after various reforms and changes in immigration laws, approved the Illegal Migration Bill on 20 July 2023, officially becoming an Act.

Through this thesis, my aim has been to shed light on the injustices inherent to the British asylum system and to highlight how the recent legislative changes introduced between 2022 and today have resulted in the violation of the human rights of refugees and asylum seekers. Additionally, I've aimed to provide clarity on the nuances of contemporary Albanian migration, elucidating the motivations behind why Albanians seek asylum, and addressing any lingering doubts surrounding this issue.

In the first chapter, the research explored the origins of contemporary Albanian migration, which began in the 1990s due to significant economic and political changes in Albania. The focus was on understanding the historical context for the high number of Albanian migrants heading to the UK.

The second chapter delved into the asylum-seeking process in the UK, particularly for Albanian asylum seekers. It highlighted various reasons for seeking asylum, including human trafficking, blood feuds, gender-related issues, and domestic violence. Discrimination and challenges from the Home Offices, exacerbated by the Hostile Environment Policy, were also discussed, impacting the mental well-being of Albanian asylum seekers.

The third chapter exposed human rights violations within the British asylum system. It discussed concerns related to the Nationality Border Act of 2022, indefinite detention, the Rwanda Plan, and substandard living conditions for asylum seekers. The aim was to draw attention to these violations and emphasize their detrimental effects on the lives of vulnerable individuals.

In the concluding chapter, the research analysed the implications of the Illegal Migration Act, which included Albania as a safe country. The concept of safe third countries was criticized as counterproductive, and the existence of truly safe and legal routes to seek asylum in the UK was questioned. The accuracy of Albania's categorization as a safe country was also challenged.

We can conclude that the purported reforms of the British asylum system, ostensibly aimed at curbing illegal migration and combating human trafficking, have regrettably fallen short of upholding the nation's obligations under international human rights law, notably the 1951 Refugee Convention. The implementation of the Illegal Migration Act, rather than providing protection, raises concerns about exposing vulnerable individuals to additional harm and risks. These risks encompass exploitation, human trafficking, including forced labour and sexual exploitation, arbitrary detention, and potential exposure to torture and other forms of cruel, inhuman, or degrading treatment. The United Nations High Commissioner for Refugees (UNHCR) experts have categorically labelled this new act as a de facto ban on asylum seekers. Furthermore, this policy shift has fuelled hostility, xenophobia, and discrimination against migrants, asylum seekers, and refugees. Particularly troubling has been the unjust targeting of Albanians by some British politicians and national newspapers, such as the Daily Mail. Albanians have been unjustly portrayed as invaders and criminals, despite the fact that such portrayals fail to reflect the reality that Albania is designated as a safe country. All too often, these actions seem to serve as a distraction from political shortcomings and policy failures. It is crucial to recognize that individuals seeking asylum or refuge are often fleeing perilous situations, and their rights and dignity should be upheld rather than compromised by political expediency. Indeed, the British government's approach appears to shift blame onto the very individuals who are often victims of circumstances beyond their control.

By failing to establish safe and legal routes into the UK that would provide a legitimate alternative to human trafficking, the government is effectively subjecting a highly vulnerable group to further hardship and risk, when they are in desperate need of protection.

In light of these concerns, it is imperative that the British government re-evaluates its approach to asylum and immigration policies, ensuring that they align with international human rights standards.

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