



SUBMISSION

# A SUBMISSION TO THE JOINT COMMITTEE ON HUMAN RIGHTS INQUIRY "LEGISLATIVE SCRUTINY: ILLEGAL MIGRATION BILL"

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ISOBEL INGHAM-BARROW  
APRIL 2023

## ABBREVIATIONS

- The European Convention on Human Rights (ECHR)
- The Human Rights Act 1998 (HRA)



The Community Policy Forum is an independent think-tank seeking to promote evidence-based and community-centred approaches to issues concerning Islamophobia and structural inequalities facing British Muslim communities. We attempt this through connecting policymakers with academic research and experts and through providing platforms for engagement with diverse Muslim voices on areas of contemporary importance.

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#### **About the Author:**

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Amongst Muslim communities in the UK, asylum seekers and refugees are often amongst the most vulnerable and face significant barriers to accessing legal protections and support. Muslim asylum seekers are also one of the groups most likely to be disproportionately impacted by the provisions found within the Illegal Migration Bill in light of its heavy focus on those arriving through irregular routes, such as those crossing the Channel on small boats. As will be discussed below, Muslims are significantly overrepresented in such crossings due to the lack of safe routes for people from Muslim majority countries to seek asylum in the UK.

Consequently, Community Policy Forum's contribution to this inquiry reflects our focus on the ways in which the bill will impact the rights of Muslim asylum seekers, however, much of our analysis within this submission remains relevant to asylum seekers as a whole, regardless of religious identity.

**Ultimately, we firmly believe that the bill will dangerously infringe upon the human rights of those arriving in the UK through irregular routes whilst also contravening the UK's international human rights obligations.** It is noteworthy that the Home Secretary's statement attached to the bill is unable to confirm that the provisions within it are compatible with the European Convention on Human Rights (ECHR), thereby acknowledging that the bill will likely lead to breaches of our international human rights obligations.



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# INTRODUCTION

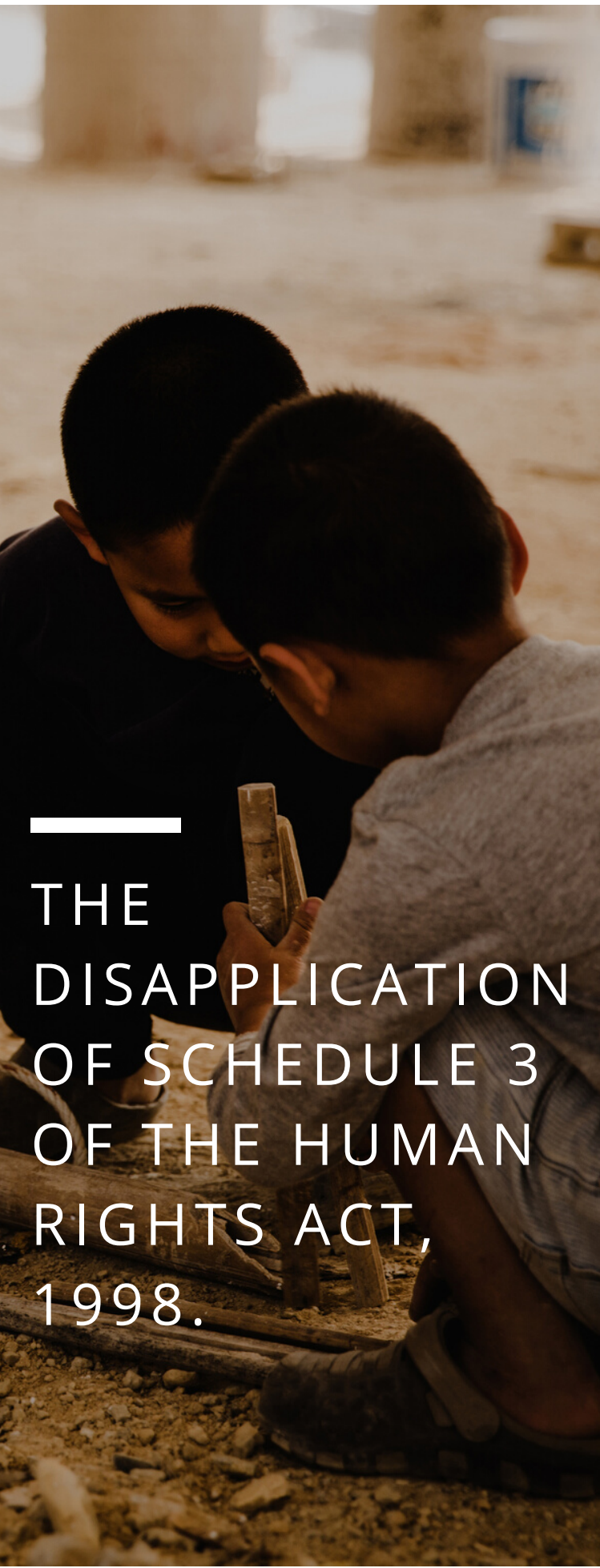
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**Moreover, this bill is representative of an overarching legislative trajectory over recent years that appears intent upon weakening our domestic human rights framework.**

Certainly, many of the provisions found within the bill echo those found in the currently shelved Bill of Rights, which itself would irreparably damage our human rights protections, would undermine executive accountability, create legal uncertainty, and violate our international obligations. For further analysis on the Bill of Rights, see our briefing [here](#).

The space within this submission does not allow for a full examination of all the ramifications for human rights that are contained within the Illegal Migration Bill, therefore, we will be focussing on the bill's provisions relating to:

- 1.The disapplication of Schedule 3 of the Human Rights Act, 1998 (HRA).
- 2.The prevention of people from bringing valid human rights claims under Clause 4.
- 3.Clause 51 and the potential contravening of Article 14 of the ECHR.



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THE  
DISAPPLICATION  
OF SCHEDULE 3  
OF THE HUMAN  
RIGHTS ACT,  
1998.

***Question 2. Clause 1(5) provides that section 3 of the Human Rights Act does not apply in relation to provisions made by or by virtue of this Act. Section 3 HRA requires courts and public authorities to read legislation in a way which is compatible with Convention rights, so far as it is possible to do so. What are the implications of the disapplication of section 3 HRA?***

Since the enactment of the HRA, Section 3 has been vital in allowing individuals to protect their human rights through domestic courts by allowing legislation to be read “restrictively or expansively” as long as it does not alter “the underlying thrust of the enacted legislation.” The Illegal Migration Bill is not the Government’s first attempt to weaken the protection of this important provision. Like the Illegal Migration Bill, the Bill of Rights attempts to remove the responsibility to read legislation compatibly with the EHRC as far as is possible. This is despite declarations from both the JCHR and the Justice Committee that recent case law indicates that Section 3 is being used appropriately and, therefore, they cannot find justification for significant changes to the current approach taken by the courts.

**If enacted, Clause 1(5) will allow the provisions of the Illegal Migration Bill to be undertaken without any consideration for the human rights implications incurred by those caught within its remit.** Furthermore, the inclusion of this clause appears to indicate a pre-existing acknowledgement of the conflict between the bill and our human rights obligations, hence the necessity of this provision removing the obligation to consider such rights. As noted by ILPA; **Clause 1(5) “puts the Government on a direct collision course with the domestic courts, the European Court of Human Rights, the Council of Europe, and other international bodies.** It is reckless and careless of its need to act in line with the international treaties it has signed. It is a direct provocation.”

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***Question 4: Clause 4 provides that any 'protection claims' (under the Refugee Convention or claims for humanitarian protection) and or 'human rights claims' (under section 6 HRA) made by persons who meets the conditions in clause 2 must be declared inadmissible. What are the human rights implications of clause 4?***

Clause 4 of the bill requires the Secretary of State to remove an individual, regardless of any existing legitimate legal proceedings which the Secretary of State may or may not be successful. The Public Law Project has described this as “a blatant attempt to circumvent the rule of law and a denial of protection for the individuals concerned.”

Moreover, the central tenet of human rights is that they are universal – not dependent on identity, circumstances, or behaviour, but upon humanity. Restricting the ability of individuals to access human rights protections on the basis of their method of entry into the country seems at odds with this principle of universality.

Clause 4 must also be seen within the context of other provisions of the bill, especially those relating to removals to a “safe third country” in light of the practical realities of such removals. It is foreseeable in many cases that removals will be subject to the establishment of a returns agreement (of which it seems only an agreement with Rwanda is currently in place). As such, similar agreements would be required with other countries to facilitate removals on the scale envisaged by the bill. **The consequence of Clause 4 would be that large numbers of people would be unmovable while also prohibited from regularising their status, leaving them in a state of limbo and indefinite state of detention, which has implications for our duties under Articles 3 and 5 of the ECHR and HRA.**



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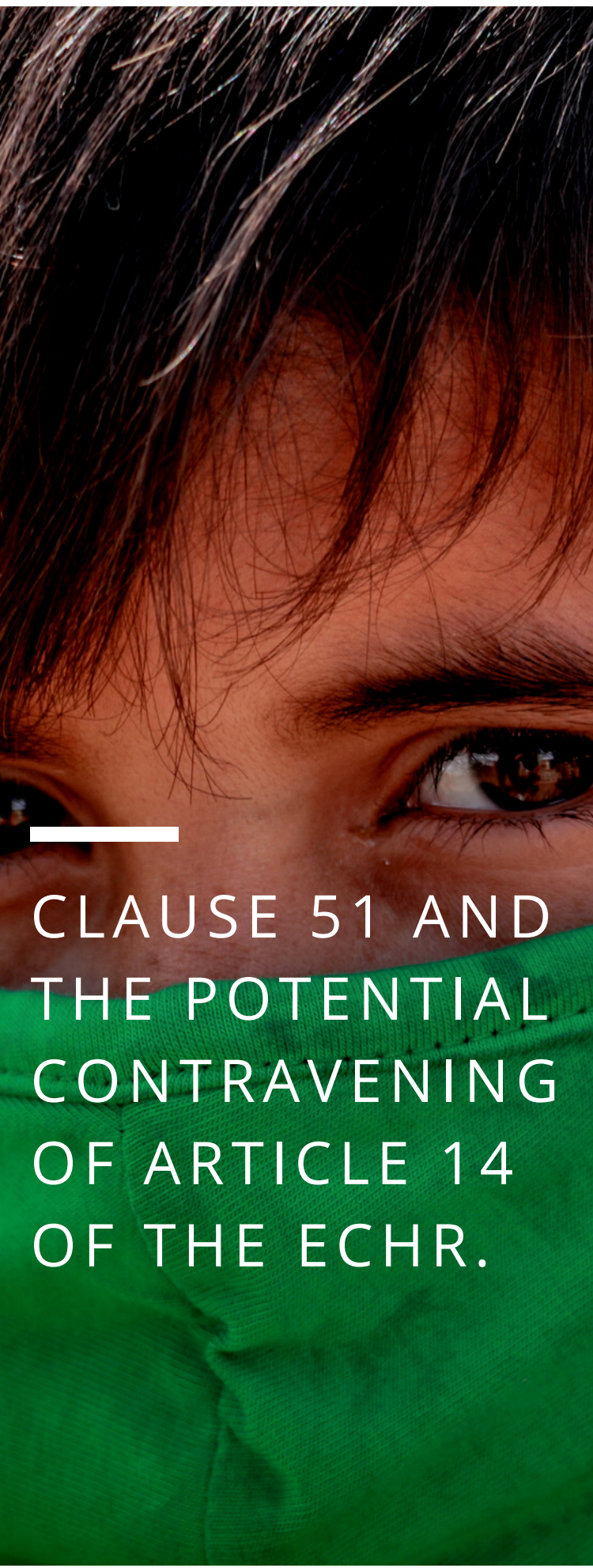
THE PREVENTION OF PEOPLE  
FROM BRINGING VALID HUMAN  
RIGHTS CLAIMS UNDER CLAUSE 4.



**Question 18. Clause 51 of the Bill would give the Secretary of State a duty to make regulations specifying the maximum number of asylum seekers who could enter the UK via 'safe and legal routes'. The consequence of this cap being breached would be that the Secretary of State would have to lay a statement before Parliament explaining why the number who entered the UK exceeded the number specified in the regulations in a given year. Does such a 'soft' cap, in principle, comply with the UK's obligations under the UN Refugee Convention?**

One of the most concerning aspects of Clause 51 is the fact that it effectively gives the Government unrestricted power to dictate who has the right to protection based upon their nationality. Without clear guidelines on how these categorisations are to be made, there it is inevitable that discriminatory practices will infiltrate this process.

Indeed, even when considering existing bespoke routes to asylum (such as the Afghan Citizens Resettlement Scheme), in practice it is virtually impossible for asylum seekers from Muslim majority countries to arrive safely and legally in the UK. It is for this reason that they are disproportionately represented within small boats crossings and similar methods of entry. According to Home Office data, excluding those recognised as stateless, all bar one of the most frequent countries of origin recorded amongst those arriving via this route came from countries with significant Muslim populations.



CLAUSE 51 AND  
THE POTENTIAL  
CONTRAVENING  
OF ARTICLE 14  
OF THE ECHR.

Small boat arrivals, by nationality, 2018 to 2022						
Rank (2022)	Nationality	2018	2019	2020	2021	2022
1	Albania	16	13	54	815	12,301
2	Afghanistan	3	69	494	1,437	8,633
3	Iran	238	1,213	2,373	8,319	5,642
4	Iraq	33	471	1,648	6,117	4,377
5	Syria	1	14	776	2,451	2,916
6	Eritrea	0	0	511	2,875	1,942
7	Sudan	0	0	969	1,064	1,704
8	Egypt	0	1	53	366	1,160
9	Turkey	0	2	10	69	1,076
10	India	0	0	64	67	683
11	Ethiopia	0	5	108	544	514
12	Vietnam	4	3	118	1,403	477
13	Kuwait	0	2	79	537	382
14	Georgia	0	0	3	0	300
15	Pakistan	0	25	104	161	207
16	Stateless	0	2	389	498	203
17	Sri Lanka	0	0	18	80	176
18	Yemen	0	0	252	135	153
19	Algeria	0	0	10	109	130
20	Libya	0	0	28	160	127
	All other nationalities	4	23	405	737	691
	Not currently recorded	0	0	0	582	1,961
	<b>Total</b>	<b>299</b>	<b>1,843</b>	<b>8,466</b>	<b>28,526</b>	<b>45,755</b>

"Irregular Migration to the UK, Year Ending December 2022," Home Office, February 23, 2023, <https://www.gov.uk/government/statistics/irregular-migration-to-the-uk-year-ending-december-2022/irregular-migration-to-the-uk-year-ending-december-2022>.

**As such, providing the Government with further powers to unilaterally restrict the number of entrants from certain countries will only compound the existing structural discrimination within the current system, representing serious conflicts with Article 14 of the ECHR and HRA.**

**For more information regarding the broader implications of the bill on Muslim refugees, contact Community Policy Forum at [research@communitypolicyforum.com](mailto:research@communitypolicyforum.com)**



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