**Call for Evidence**  
**Legislative Scrutiny of Illegal Migration Bill**

**06 April 2023**

**Executive Summary**

In response to the Human Rights (Joint Committee)’s Legislative Scrutiny of the Illegal Migration Bill, we provide evidence and policy recommendations in relation to the following

questions:

*11. To what extent do the provisions of the Bill relating to both unaccompanied and accompanied children comply with the UN Convention on the Rights of the Child and domestic human rights obligations. In particular, is clause 3(2), which gives the Secretary of State the power to remove an unaccompanied child from the UK in certain circumstances, compatible?*

**We present evidence to support the following policy recommendations:**

* Young asylum seekers who arrive as unaccompanied children to the UK are extremely vulnerable and, therefore, should not be considered as illegal entrants under any circumstances.
* Unaccompanied migrant children’s claims are treated differently based on the country of origin; however, each application for asylum should be based on the circumstances of the individual claiming asylum and not solely on assumptions according to the country of origin, as is clearly the case with applications from young people from Albania.
* Our research indicates that unaccompanied migrant children are subject to considerable psychological harm as a consequence of the threat of detention and removal. In particular, the discretionary power of the Home Secretary to return Albanian unaccompanied minors to Albania may violate their human and children’s rights (as enshrined in the UNCRC and ECHR) and the duty of the UK authorities to respect them while considering their prospects of being returned.
* The discriminatory treatment of unaccompanied children solely based on their nationality and country of origin violates their rights to be treated equally and fairly in line with their children’s rights and the right to claim asylum.

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**About the study**

1. This response to the call for evidence is informed by the findings of a 20-month study (2021-2022), [Lives on Hold our Stories Told (LOHST),](https://vimeo.com/770709142)) involving detailed legal and policy analysis, as well as interviews with 69 unaccompanied young people seeking asylum from 13 different countries, and with over 50 professionals from the government, legal, welfare, education and civil society sectors. It provides the first detailed insights into young people’s experiences of the asylum process in England, during and in the aftermath of the Covid-19 lockdowns. Our sample ranged from 16-25 years old. The focus of our evidence is on the human rights of young unaccompanied asylum seekers, including both children and young adults who arrive as children but who ‘age out’ and become legal adults whilst still awaiting a decision on their claim. 56 of the young people interviewed arrived in the UK as children, 53 of whom ‘aged out’ whilst awaiting a final decision on their claim.
2. Of the 69 unaccompanied young people seeking asylum we interviewed for the LOHST project, 43 are Albanian. We also interviewed over 50 practitioners and Home Office officials, 13 of whom were ‘experts’ in Albanian migration. The research extends beyond the Albanian experience but reveals distinctly adverse perceptions and misconceptions of Albanians.

**Evidence on the vulnerability of unaccompanied migrant children and illegal entry**

1. It is a common misconception that Albanians in particular enter the UK under false pretences (*e.g.* as asylum seekers/victims of trafficking) to gain access to lucrative black market operations across the UK and Europe and deliberately ‘game the system’. This narrative has been heavily promoted in recent months by the media coverage of the Channel crossings, along with members of the Government.[[1]](#footnote-2) The reporting on the Channel crossings – and specifically on Albanians – fails to acknowledge the multiplicity of motivations underpinning migration and refute suggestions that many of those who come to the UK do so because of persecution in their home country and because there are no alternative safe routes of entry.
2. Prejudices and misinformation are reflected in how the Albanian claims are processed and assessed: they experience longer delays with their claims compared to most other nationalities and their initial claims tend to be refused. According to recent Home Office statistics, for example,[[2]](#footnote-3) for the period January-June 2022, 53% of Albanian asylum applicants were successful at initial decision, compared to 81% of other nationalities who were granted refugee status following an asylum application.[[3]](#footnote-4) Our research shows that Albanian asylum claims are treated differently by the UK immigration officials as their claims are deemed to be ‘undeserving’. There is a distinct gender disparity too: of the positive decisions on adult Albanians’ asylum applications, 86% were for women.
3. There is no single factor driving migration/Channel crossings – asylum-seekers may be trafficked and victims of persecution simultaneously**.** Our research reveals that the reasons driving young Albanians to seek asylum and other forms of protection in the UK are complex and include a mixture of exploitation, cultural blood feuds, trafficking and organised crime. The situations that have caused them to be exploited, trafficked and persecuted are, in turn, generated by the dire economic situation and weak/ineffective institutions and legal structures in protecting vulnerable groups in Albania. The complexity of the reasons behind Albanians’ decision to seek sanctuary in the UK further acts as a barrier to positive outcomes and influences the narrative that, as their cases do not fit the typical asylum-seeker profile, they are undeserving or not credible.
4. Our research demonstrates that unaccompanied migrant children in England are extremely vulnerable and Covid-19 has further compounded their legal, social and mental health situation. Our research findings showcase the distinctive vulnerabilities and aggravating mental health situation experienced by unaccompanied migrant children when accessing the UK asylum system. These are directly attributable to anxieties and insecurities related to their asylum status and the asylum process, including ongoing delays in the resolution of asylum applications. The asylum backlog and asylum decision delays exacerbated many of the mental health difficulties that young people were experiencing because of their pre- and peri-migration histories. Young people’s struggles to access statutory services throughout the pandemic, social care support, financial aid and accommodation, have had significant implications for their mental health and wellbeing. Our research demonstrates that the vast majority of unaccompanied children and young people seeking asylum in the UK are extremely vulnerable and suffer from PTSD or related mental health challenges due to trauma experienced pre and during migration and also due to how the UK asylum system manages their claims and treats them.[[4]](#footnote-5) A number of the young people we spoke to had had suicidal thoughts and/or attempted suicide whilst going through the asylum process in the UK.

**Failure to comply with Art.3 UNCRC on the ‘best interests of the child’ if unaccompanied migrant children are returned to an unsafe country**

*Clause 3, page 4, line 9-12: ‘The Secretary of State may make arrangements for the removal of a person from the United Kingdom at a time when the person is an unaccompanied child’*

1. Article 3 of the UN Convention on the Rights of the Child’ (UNCRC) focuses on the ‘best interests of the child’ and is a foundational principle of this international convention. Art.3 (1) UNCRC states that:

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

Section 55[[5]](#footnote-6) of the Borders, Citizenship and Immigration Act 2009 contains a mandatory duty on the Home Office to safeguard and promote the welfare of children in the UK as they carry out their functions in any aspect of immigration. The Supreme Court has explicitly confirmed that the section 55 duty should be discharged in line with the ‘best interests’ principle contained in Article 3 of the UNCRC[[6]](#footnote-7).

1. The UK courts have declared that, insofar as the UNCRC has not been directly incorporated into UK primary law, the rights contained within it cannot be directly relied upon before the national authorities.[[7]](#footnote-8) Nonetheless, as an international treaty, ratified by the UK in 1991, it remains a legally binding source of law and domestic law should be developed and implemented in good faith and in keeping with the spirit of its international human rights obligations.[[8]](#footnote-9)
2. The correct substantive and procedural requirements for assessments of children’s best interests under Article 3 UNCRC are set out in General Comment No.14 of the UN Committee on the Rights of the Child (UN Doc 2013 CRC/C/GC/14). This guidance has been used to inform the UK courts’ interpretation of ‘best interests’ in a range of cases.[[9]](#footnote-10) Specifically, GC 14 defines best interests as (para 6):
   1. a substantive right, entailing an intrinsic obligation on all states to ensure that the child’s best interests are at least a primary consideration informing all decisions concerning the child;
   2. a fundamental interpretative legal principle requiring that if a legal provision is open to more than one interpretation, the interpretation that most effectively serves the child’s best interests should be chosen; and
   3. a rule of procedure requiring procedural guarantees to be put in place to enable decisions around what is in the child’s best interests actually to occur and be evidenced in practice. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations, be they broad issues of policy or individual cases.”

1. The Illegal Migration Bill allows the Home Secretary (Clause 3) to remove unaccompanied children from certain countries (EEA, Switzerland and Albania) in line with her duty, which is discretionary for unaccompanied children, to remove those who entered the UK illegally. This removal will be carried out on the assumption that i) -countries like Albania are ‘safe’ for vulnerable populations to be returned; and ii) – this decision will be carried out without the need to carry out a ‘best interests of the child’ assessment, which could provide a verdict on whether it is safe for an unaccompanied child to be returned to a country which he/she fled from originally. The Bill constitutes a failure of the UK’s responsibilities under the Refugee Convention, and these provisions undermine children’s rights, particularly Article 2 (non-discrimination) and Article 3 UNCRC and will cause considerable damage to their situation and well-being.
2. In a factsheet on small boat crossings (since July 2022) the Home Office referred to Albania as “a safe and prosperous country.”[[10]](#footnote-11) In a recent Country Policy and Information Note (CPIN) on Albanian blood feuds (a common basis for asylum claims), dated September 2022, the Home Office stated that “there is, in general…no serious risk of persecution of persons entitled to reside in that state or part of it” and that the Albanian state is “both willing and able to offer effective protection to persons affected by blood feud.[[11]](#footnote-12)
3. It is important to note that CPINS are drafted by the Home Office and their desk-based reports rather than fact-finding missions, conducted by independent country experts. As such the CPINs on Albania tend to draw on outdated and inaccurate information on the situation in Albania and paint Albania as a safe country of origin. In any case, the fact that a country is deemed to be safe should not undermine the right to claim asylum. Our research reveals numerous examples of third sector organisations achieving better outcomes for young Albanians by providing legal representation and advice and engaging in more effective evidence gathering that is sensitive to the specific, complex experiences of Albanians.[[12]](#footnote-13)
4. We know from our research with Albanian young people and unaccompanied children that the reasons for fleeing to the UK are complex as the causes that underpin Albanian asylum claims are intimately linked to the socio-economic situation and the weak institutions in Albania, which creates favourable conditions for the proliferation of organised crime, trafficking and pursuit of blood feuds. Moreover, the lack of safe entry into the UK steers many young people into exploitative arrangements, not just in order to enter the UK, but post entry, where they face sex or labour exploitation[[13]](#footnote-14). They are subsequently identified in these illegal employment spaces in Britain and then viewed through a criminal justice lens which avoids recognising their vulnerability or exploitation.

**Failure to comply with Art.3 (ECHR)[[14]](#footnote-15) if unaccompanied migrant children are not provided state protection from persecution or torture and are instead returned to an unsafe country**

*Clause 4, page 4, line 37 – 40: ‘If a person who meets the four conditions in Section 2 makes a protection claim, or a human rights claim within subsection (5), the Secretary of State must declare the claim inadmissible’.*

1. Article 3 of the European Convention on Human Rights (ECHR) focuses on the protection from torture and inhuman treatment. More specifically, Art.3 ECHR states that:

*“No one shall be subjected to torture or to inhuman or degrading treatment or punishment”.*

This article aims to protect anyone (who is under the jurisdiction of the ECHR) from torture (mental or physical); inhuman or degrading treatment or punishment, anddeportation or extradition (being sent to another country to face criminal charges) if there is a real risk they will face torture or inhuman or degrading treatment or punishment in the country concerned. Therefore, no extradition must be sought if someone is at(high risk of suffering torture via that extradition, which is a conclusion reached by the Strasbourg Court via its interpretation of the ECHR and the Geneva Refugee Convention.[[15]](#footnote-16)

1. By allowing the removal of Albanian unaccompanied children to Albania, the new Bill breaches the UK’s compliance with Art. 3 ECHR. Evidence from our project shows that vulnerable Albanian unaccompanied children are at high risk to their lives if returned to Albania as Albanian institutions and rule of law are weak, corruption is endemic and overall, there is a radical discrepancy between the laws and institutions that exist on paper and how they work in practice. For instance, an interviewee explained the discrepancy between the reported safety and protection available in Albania and the reality facing those who are returned to Albania, giving the tragic example of a young asylum-seeker who was murdered only weeks after his return to the country.

**Evidence on the return of unaccompanied children to unsafe countries of origin**

1. Attempts to relocate asylum seekers to third countries for processing their asylum claims raise grave concerns that many of those relocated could, in fact, be unaccompanied children. Whilst the UK is prohibited from returning or relocating those who are deemed to be unaccompanied children, we have gathered compelling evidence in the course of our research of the UK authorities disputing children’s age on arrival and concluding (erroneously, in many cases) that they are adults.[[16]](#footnote-17) As a result, we received distressing accounts from young people of being placed in unsuitable accommodation with adults or placed in immigration detention.
2. The very threat of relocation is causing significant anxiety and distress to young asylum seekers who are already in the UK, many of whom arrived as unaccompanied children and are still awaiting a decision on their asylum claim. Some of our young participants have expressed deep concern to us that they may be relocated to Rwanda. This threat is impacting significantly their mental health[[17]](#footnote-18) and well-being, and is likely to contribute to decisions to go ‘underground’ or fall into the hands of criminal gangs to avoid detection.

1. Eg. Matt Dathan, ‘Organised crime fears after 10,000 Albanian men arrive on small boats’ The Times (26 October 2022) accessed 13 November 2022; Lucy Williamson, ‘Channel crossings: Albanian migrants recruited to the UK by gangs’ BBC News (4 November 2022) accessed 13 November 2022; Phoebe Southworth and Charles Hymas, ‘’Exponential rise’ in Albanian migrants crossing the channel this year’ The Telegraph (26 October 2022) accessed 4 April 2023. [↑](#footnote-ref-2)
2. ‘Factsheet: Small Boat Crossings since July 2022’ (GOV.UK) accessed 3 April 2023. [↑](#footnote-ref-3)
3. The grant rate in the year ending June 2022 is the highest grant rate in over thirty years (since 82% in 1990, although volumes were lower at the time) (See Home Office stats “How many people do we grant asylum or protection to?”, 23 September 2022). Therefore, this high overall grant rate constitutes an exception rather than the norm. [↑](#footnote-ref-4)
4. See our Age Assessment Research Briefing, available from <https://livesonhold.org/wp-content/uploads/2023/01/LOHST-Project-Briefing-1.pdf> [↑](#footnote-ref-5)
5. This also includes the accompanying statutory guidance entitled ‘Every Child Matters’ and the Human Rights Act 1998, which incorporates the European Convention of Human Rights into domestic law. [↑](#footnote-ref-6)
6. *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166 [↑](#footnote-ref-7)
7. [*SC v Sec of State for Work and Pensions* [2021] UKSC 26](https://www.bailii.org/uk/cases/UKSC/2021/26.html) [↑](#footnote-ref-8)
8. Vienna Convention on the Law of Treaties, Article 31(1)-(2 [↑](#footnote-ref-9)
9. See for example *R (on the application of AM) v SSHD* [2017] UKUT 262; *Mathieson v SSWP* [2015] UKSC 47 at [39]; and *R (SG and Others) v SSWP* [2015] UKSC 16, [105] c/f [152 [↑](#footnote-ref-10)
10. ‘Factsheet: Small Boat Crossings since July 2022’ (GOV.UK) accessed 3 April 2022. [↑](#footnote-ref-11)
11. Home Office, ‘Country Policy and Information Note Albania: Blood Feuds’ (2022). [↑](#footnote-ref-12)
12. See the work of the ‘Breaking the Chains’ project, led by the Migrant and Refugee Children’s Legal Unit; eg. Esme Madill, ‘Albanian Asylum Claims: Making a Difference’ (Free Movement, 7 October 2020) accessed 3 April 2023. [↑](#footnote-ref-13)
13. See the work of the ‘Breaking the Chains’ project, led by the Migrant and Refugee Children’s Legal Unit; eg. Esme Madill, ‘Albanian Asylum Claims: Making a Difference’ (Free Movement, 7 October 2020) accessed 3 April 2023. [↑](#footnote-ref-14)
14. The Human Rights Act 1998 incorporated the ECHR into the statutory framework for assessing violations of human rights in the UK. [↑](#footnote-ref-15)
15. According to the *UNHCR Manual on Refugee Protection and the ECHR. Factsheet on Article 3*, “the Court considers that Article 3 of the ECHR can be used by those in need of international refugee protection. While the ECHR is not an international instrument concerned with the protection of refugees per se, Article 3 has been interpreted by the Court as providing an effective means of protection against all forms of return to places where there is a risk that an individual would be subjected to torture, or to inhuman or degrading treatment or punishment” (see <https://www.unhcr.org/3ead2d262.pdf> ) [↑](#footnote-ref-16)
16. Reported further in a more detailed research findings briefing on age assessment, available [here](https://livesonhold.org/wp-content/uploads/2022/12/Briefing-1.pdf) [↑](#footnote-ref-17)
17. See our Mental Health Research Briefing available from <https://livesonhold.org/wp-content/uploads/2023/01/LOHST-Project-Briefing-MH.pdf> [↑](#footnote-ref-18)