

Written evidence submission to the EU Home Affairs Sub-Committee

Brexit: Future UK-EU Asylum Cooperation

1 Executive Summary

- 1.1** The UK Government has a duty in its foreign policy to uphold human rights within Europe and globally, and to ensure that its commitments under the 1951 Geneva Convention and the 1967 New York Protocol are met. Working alongside EU states to ensure these obligations are met post-Brexit could have a positive impact on the UK's bilateral relations with other European states that are currently experiencing significant strain on their asylum systems.
- 1.2** The UK Government must ensure that family reunion for unaccompanied minors remains UK law after its withdrawal from the EU, in order to protect vulnerable refugee children in Europe. A no-deal Brexit would be detrimental to the rights of refugee children in Europe, and the Government must therefore commit to negotiate this within a specified time frame.
- 1.3** As part of its efforts to protect unaccompanied children, we recommend in the immediate term that the Government sets a meaningful timeframe and commit to filling the promised 480 Dubs places by October 2019 – three years after the first relocations took place. This must take place in parallel with the allocation of additional funding to enable councils to bring more children to safety, faster.
- 1.4** RRE believes that there is a raft of unintended consequences resulting from the current Common European Asylum System (CEAS) and its Dublin Regulation, in combination with national-level policies, which have meant that many refugees and displaced people across Europe have become trapped within unhealthy environments, facing a number of alarming human rights violations. Future negotiation with the EU post-Brexit must seek to address these issues within the context of Dublin IV.
- 1.5** Within its cooperation with France, rather than focusing on shifting responsibility for processing asylum seekers to its French counterpart, the UK Government ought to acknowledge the importance of European solidarity, alongside asylum applicants' individual circumstances, such as meaningful links between an individual and a specific country, and assume responsibility for applications with clear links to the UK. The Government moreover ought to ring-fence funding towards humanitarian efforts in Northern France, as part of its ample contributions towards security efforts.
- 1.6** RRE believes that a stronger role and mandate for UK Liaison Officers would be an important endeavor which could help prevent individuals from undertaking unauthorised and life-threatening border crossings to reach the UK. We recommend the deployment of a second UK Liaison Officer to Pas-de-Calais and an expansion of its mandate.
- 1.7** Future UK involvement in the EU's third country cooperation agreements on asylum and migration with e.g. North African states and Turkey must only take place where such third countries have a functioning asylum system and uphold, *de facto*, human rights law.
- 1.8** Future co-operation with the EU must be based on the principles of universal human rights enshrined in the UN Declaration and a commitment to uphold the 1951 Geneva Convention and the 1967 New York Protocol on the rights and protections for refugees.

2 About Refugee Rights Europe (RRE)

- 2.1** Refugee Rights Europe (RRE) is a human rights organisation and registered UK charity (No 1168841).
- 2.2** Founded in late 2015, our organisation uses its first-hand research on the situation for refugees and displaced people seeking protection in Europe, to encourage human rights-centered policy development at national and regional levels, in accordance with the Universal Declaration of Human Rights.
- 2.3** Further information can be found here: www.RefugeeRights.org.uk

3 RRE's response to the Sub-Committee's specific questions

3.1 What form should future UK-EU asylum cooperation take? What will be the key factors which determine the nature and extent of this relationship?

- 3.1.1** The UK should play a role in supporting other European states to implement humane policies in regards to refugees and asylum seekers. This includes ensuring effective UK family reunification procedures which could mitigate dangerous bottle-neck scenarios in Europe, where individuals eligible for family reunification are stuck in inhumane conditions due to lack of access to the procedure and unnecessarily lengthy case processing. Research indicates that the lack of effective procedures exacerbates human suffering and encourages secondary movements while overcrowding and draining of resources breeds resentment among local populations as well as dwindling cooperation of frontline Member States. Effective family reunification is thus in the interest of displaced people, host communities and governments alike.
- 3.1.2** If the UK expects to remain a part of the Dublin Regulation post-Brexit, the UK ought to be prepared to take part in any responsibility sharing that is agreed as part of the Dublin IV Regulation. This has the potential of alleviating some of the harmful unintended consequences currently experiences within the Common European Asylum System and Dublin III. See also paragraph 3.4 below.
- 3.1.3** The UK should also be prepared to support the potential omission of the first irregular entry criterion, by which the Member State through which an individual first enters the EU is responsible for the processing of their asylum claim, in order to alleviate disproportionate pressure on EU front-line states and ensure a more even distribution of asylum claims across Europe, including the UK.¹
- 3.1.4** As part of future UK-EU asylum cooperation, the UK moreover ought to work with other European states to develop a well-functioning and sufficiently resourced operational plan for search and rescue missions in the Mediterranean with disembarkation in the EU, to prevent further deaths.²

¹ RRE has produced a comprehensive set of policy recommendations in light of the ongoing reform of the CEAS: <http://refugeerights.org.uk/wp-content/uploads/2018/09/CEAS-Policy-Recommendations.pdf>.

² <https://www.unhcr.org/desperatejourneys/>

3.2 What is your view on the extent to which rights of asylum seekers in the UK will be upheld and protected after Brexit?

- 3.2.1** We are concerned that the UK's exit from the European Union may lead to a weakening of protections afforded to refugees and asylum seekers; this must under no circumstances be the case. Indeed, the UK must ensure that it continues to uphold its commitments under international human rights and refugee law.
- 3.2.2** The UK ought to uphold its commitment to protect and promote human rights by taking an active role in the protection of human welfare of asylum seekers wishing to submit their asylum claim in the UK, including by engaging in responsibility sharing across Europe.
- 3.2.3** Indeed, as mentioned elsewhere, the UK must ensure that it continues to fulfil its human rights obligations in its foreign policy relations with the rest of Europe and third countries. There should be an expansion of safe, legal routes to safety to ensure that refugees and displaced people are not forced to take dangerous routes in the first instance. In particular, the UK Government must ensure that unaccompanied minors already in Europe, with family in the UK, are able to reach safety in the UK.

3.3 What is your assessment of the success of CEAS, in particular the Dublin system? Has it achieved its aims?

- 3.3.1** Throughout Europe, refugees and displaced people are facing widespread and alarming human rights violations. RRE has been documenting the human rights situation since 2016, and its reports from Calais³, Paris⁴, Brussels⁵, Italy⁶ and Greece⁷ show that the current European approach to asylum and migration management is simply not working.
- 3.3.2** RRE believes that there is a raft of unintended consequences of the current Common European Asylum System (CEAS) and its Dublin Regulation, in combination with national-level policies, which have meant that refugees and displaced people across Europe have become trapped within unhealthy environments and face a number of alarming human rights violations. Research conducted by RRE from early 2016 to-date indicates widespread human suffering across the continent, as a direct or indirect result of the CEAS, Dublin protocols and national level policies, and calls for meaningful change.⁸
- 3.3.3** The living conditions documented⁹ by RRE have indicated that refugees and displaced people are often denied access to basic shelter and adequate sanitation facilities. Many are living in sub-par, unsanitary conditions in overcrowded reception centres at the 'hot-spots' in Greece and Italy, or in complete destitution at transit-points such as Calais, Ventimiglia, and the streets of major cities such as Paris and Brussels.

³ http://refugeerights.org.uk/wp-content/uploads/2018/08/RRE_TwelveMonthsOn.pdf

⁴ http://refugeerights.org.uk/wp-content/uploads/2018/08/RRE_StillOnTheStreets.pdf

⁵ http://refugeerights.org.uk/wp-content/uploads/2018/09/RRE_LeftInBetween.pdf

⁶ http://refugeerights.org.uk/wp-content/uploads/2018/08/RRE_InDangerousTransit.pdf

⁷ http://refugeerights.org.uk/wp-content/uploads/2018/11/RRE_AnIslandInDespair.pdf

⁸ <http://refugeerights.org.uk/reports>

⁹ <http://refugeerights.org.uk/wp-content/uploads/2018/07/LivingConditions2.pdf>

- 3.3.4** As regards health conditions, large numbers of displaced people have experienced health problems since arriving in Europe, often due to unhealthy living environments or the experience of violence. Mental health issues are widely reported¹⁰, ranging from insomnia and anxiety to suicidal tendencies among respondents. In light of this, it is alarming that only a small proportion of displaced people appear to have access to medical care on European soil.
- 3.3.5** Within the context of border closures, RRE has documented¹¹ worrying occurrences of police violence in the form of physical violence, verbal abuse, the excessive use of tear gas and reports of arbitrary detention, including of unaccompanied minors. In many locations, this violence is reported to take the form of dangerous or life-threatening forms.
- 3.3.6** The failings of the CEAS have also put children¹² at increased risk of, or exposure to, violence and ill-health. The lack of legal advice, guidance and adequate safeguarding mechanisms for displaced children in Europe puts them at heightened risk of exploitation and abuse and can often lead to them taking life-threatening journeys or falling into the hands of traffickers.
- 3.3.7** As regards the situation of women in displacement, research¹³ raises severe concerns about the lack of safeguarding measures and adequate camp design, coupled with a lack of access to sexual and reproductive healthcare, including during pregnancy and following rape, which not only allows high levels of sexual and gender-based violence to unfold but also exacerbates the consequences of such violence.
- 3.3.8** Moreover, amidst the deadlock on the Dublin IV negotiations, externalisation of EU asylum is gaining traction. Lacking any basis in human rights or refugee law, concepts such as ‘Regional Disembarkation Platforms’ and ‘Controlled Centres’ threaten to weaken and offshore EU protection obligations. Moreover, the very similar existing ‘Hotspot’ approach violates human rights and traps refugees and displaced people in inhumane living conditions for prolonged periods, while failing to bring about efficient procedures or equitable responsibility sharing.
- 3.3.9** The current ongoing reform efforts aimed at changing the Common European Asylum System is an important opportunity to implement lessons learned from recent years, creating a system that works better for the displaced, host communities, national governments and EU institutions. Such a system safeguards human rights while saving human, material and financial resources that go to waste when asylum is handled in an inhumane and inconsistent manner. We encourage the UK Government to support positive and humane reforms of the CEAS as part of the post-Brexit UK-EU cooperation.

3.4 How has EU asylum law influenced the UK? Has the UK “levelled up” to EU standards, or vice versa?

¹⁰ · <http://refugeerights.org.uk/wp-content/uploads/2018/07/Health-in-displacement-3.pdf>

¹¹ · <http://refugeerights.org.uk/wp-content/uploads/2018/07/Information-and-Education-1.pdf>

¹² · <http://refugeerights.org.uk/wp-content/uploads/2018/07/Children-in-Displacement-2.pdf>

¹³ · <http://refugeerights.org.uk/wp-content/uploads/2018/07/Women-in-Displacement-1-1.pdf>

- 3.4.1** RRE would like to highlight the UK’s seemingly unfulfilled responsibility in helping to meaningfully address the precarious and untenable bottle-neck scenario which has been unfolding in Northern France for decades. This situation has more recently spread further afield to European cities, including Brussels and Paris where aspiring asylum seekers gather in the hope that they will make it across to Britain. The current approach of continuous uprooting, police violence and intimidation tactics in Northern France – combined with the absence of meaningful safe and legal routes for prospective asylum-seekers including those looking to be reunited with family in Britain – directly hinders an effective resolution to a detrimental and decades-long situation at Britain’s doorstep.
- 3.4.2** Rather than contributing further amounts of funding towards heightened securitisation in the area, the UK ought to meaningfully address the situation alongside France through new solutions, in order to be perceived as levelling up to EU standards.
- 3.4.3** The interception and blanket return of asylum seekers alluded to in the recent signing of the UK-Joint Action Plan¹⁴ is moreover deeply concerning. The UK must fill its obligations to allow asylum applicants to have their asylum claims assessed on an individual basis – in line with international refugee law. Sending people back to France seemingly fails to take into consideration the context in which refugees and displaced people are currently living in Northern France, and indeed the wider context of overstretched asylum systems elsewhere in Europe.
- 3.4.4** Hence, rather than focusing its efforts primarily on shifting responsibility for processing asylum seekers to France, the UK Government ought to acknowledge the importance of European solidarity, alongside asylum applicants’ individual circumstances, such as meaningful links between an individual and a specific country, and assume responsibility for applications with clear links to the UK.

3.5 What is your opinion on the Government’s policy on family unification for asylum seekers?

- 3.5.1** RRE believes that the Government’s policy and rules on family reunification ought to be revised, in accordance with the recommendations formulated by the ‘Families Together’ coalition (of which RRE forms part), namely:
 - 3.5.1.1** Child refugees in the UK ought to have the right to sponsor their close family so they can rebuild their lives together and help them integrate in their new community;
 - 3.5.1.2** The definition of who qualifies as family ought to be expanded so that young people who have turned 18 and elderly parents can live in safety with their families in the UK;
 - 3.5.1.3** The reintroduction of legal aid so refugees who have lost everything must have the support they need to afford and navigate the complicated process of being reunited with their families.¹⁵

¹⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773403/UK_France_declaration_24_Jan_13.00.pdf

¹⁵ For more information on the coalition and its position please see: <http://refugeestogether.co.uk/>.

- 3.5.2** The UK must ensure that, upon exiting the European Union, family reunification for unaccompanied minors with family in the UK is urgently renegotiated, within a specified timeframe, to ensure that refugee children are not left trapped in potentially harmful environments.¹⁶ While the Government has committed to negotiating a family reunification route for minors in Europe which is legislated as part of the European Union (Withdrawal) Act, Clause 17,¹⁷ concrete safeguards must be in place as part of the Immigration Bill 2017-2019.
- 3.5.3** The Government's position on refugee family reunion in its Immigration White Paper was disappointing. It is particularly concerning that while the Government has said it will consult on the White Paper, it is not clear how or to what extent this will involve civil society and whether there is an opportunity to consult specifically on those sections related to refugees.

3.6 What systems and service should be in place to meet the needs of children seeking asylum, especially unaccompanied asylum-seeking children?

- 3.6.1** If the UK fails to reach an agreement with the European Union, it is RRE's concern that this will lead to a gap in provision for unaccompanied minors in Europe, who will no longer be covered by legislation that would enable them to reach their family safely and legally in the UK. Such a gap in provision may lead to more vulnerable children taking increasingly desperate and dangerous journey's in order to reach the UK. For this reason, RRE believes that the Government ought to agree a timescale by which family reunion for unaccompanied minors will be negotiated, in the event of a no deal.
- 3.6.2** Safe and legal routes for asylum-seeking children must be expanded. The Sandhurst Treaty, signed in January 2018, included the creation of UK Liaison Officers whose role was to facilitate the safe, legal transfer of individuals with the right to come to the UK, both through family reunion and under S.67 of the Immigration Act 2016, or the 'Dubs' amendment. RRE believes that the UK Government ought to expand the role of the UK Liaison Officers to include the identification and to facilitate the swift transfer of vulnerable children in Northern France. See also paragraph 3.7 below.
- 3.6.3** In the immediate term, we recommend that the Government sets a meaningful timeframe and commit to filling the promised 480 Dubs places by October 2019 – three years after the first relocations took place. This must take place in parallel with the allocation of additional funding to enable councils to bring more children to safety, faster.

3.7 What might the UK's participation in the EU's Immigration Liaison Officer network look like after Brexit and what impact that could that have on asylum cooperation?

- 3.7.1** RRE believes that the UK has a clear interest in participating in the EU's Immigration Officer network post-Brexit. We call for a stronger role and mandate for UK Liaison Officers, which we believe could help prevent individuals from

¹⁶ Currently legislated under Article 8 of Dublin III Regulations. RRE are not calling for a renegotiation of Dublin III but focusing specifically on family reunion provision.

¹⁷ <http://www.legislation.gov.uk/ukpga/2018/16/enacted>

undertaking unauthorised and life-threatening border-crossings to reach the UK. We recommend the deployment of a second UK Liaison Officer to Pas-de-Calais.

- 3.7.2** The UK Liaison Officers should conduct regular meetings and/or calls with key organisations operating on the ground in Pas-de-Calais and other key locations.
- 3.7.3** We believe that Home Office presence on the ground is of vital importance, to ensure that the British authorities witness firsthand the detrimental impact of the border situation on children and youth seeking a solution to their predicament, which may help encourage the formulation of new policy solutions to decades-long problems.

3.8 After Brexit, the UK will need to negotiate new bilateral agreements with some third countries to facilitate the return of irregularly staying migrants to their country of origin. Do you have any concerns about the UK negotiating these agreements?

- 3.8.1** We are concerned that new bilateral agreements might be entered into with states that are not operating a functioning asylum system adopted through national legislation, or states which are not party to the 1951 Geneva Convention and the 1967 New York Protocol, or states which are not complying with international human rights law in practice.
- 3.8.2** To safeguard its international standing as a strong liberal democracy with a proud human rights record, the UK ought to carry out human rights impact assessments before entering into cooperation agreements with third party states and include conditions in all cooperation agreements concerning asylum and migration management to ensure human rights protection for all individuals. Such conditions include, but are not limited to, the obligation of non-refoulement, access to a fair asylum procedure and right to effective remedy, access to information and legal assistance, safe and adequate reception conditions, access to family reunification procedures, and no risk of arbitrary detention.
- 3.8.3** Specifically, prior to concluding new agreements, the UK ought to consider carrying out human rights impact assessments against the Art. 44 & 45 of the Proposed Asylum Procedures Regulation and have them vetted by an independent human rights body such as the Council of Europe.

3.9 How does the UK cooperate with other countries on asylum matters through bilateral and (non-EU) international channels? Should the UK seek to enhance this cooperation after Brexit?

- 3.9.1** The UK's involvement in funding of Libyan detention centres must end in light of the growing evidence of grave human rights abuses, including reports of torture, rape and slavery¹⁸. Returning individuals to such conditions would appear to violate the principle of *non-refoulement* enshrined in the 1951 Geneva Convention. The desire to reduce migration to Europe and the UK must not come at the expense of human rights.

¹⁸ See <https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf> and <https://www.msf.ie/article/migration-european-government-policies-condemn-people-be-locked-libya-or-drown-sea> and <https://edition.cnn.com/specials/africa/libya-slave-auctions>

3.9.2 The UK's absence in search and rescue efforts in the Mediterranean does nothing to help prevent more lives being lost at sea. RRE recommends introducing such efforts into relevant future foreign policy agreements on migration management in the Mediterranean region.

3.9.3 Any future British support towards border enforcement in the Mediterranean must come with unequivocal human rights accountability for implementing parties. Reports that Frontex have failed to uphold international standards and concerns raised over transparency and accountability of its operations should be investigated¹⁹, while the UK must ensure that any funding is conditional upon these human rights standards being upheld.

3.10 How important will the UK-France relationship be in managing migration flows?

3.10.1 Upholding a positive UK-France relationship post-Brexit will of crucial importance, and RRE firmly believes that there is an opportunity to seek a more humane approach which better upholds international human rights obligations.

3.10.2 For many years, a bottleneck scenario has been unfolding in Northern France, characterised by precarity, rough-sleeping, dangerous and unauthorised border-crossings, and widespread reports of police violence²⁰. The use of tear gas and intimidation tactics, as well as what may appear to amount to sleep deprivation, is continuously reported by aid groups operating in Northern France. The current policy response taken by both French and British Governments appears to directly hinder an effective resolution to this decades-long situation.

3.10.3 We therefore recommend a constructive UK-France relationship which would include, but not be limited to, the following proposed developments:

3.10.3.1 The UK Government ought to allocate funding to the deployment of specialist Home Office caseworkers to Northern France, hosted under the auspices of the Office for Immigration and Integration (OII) but based in Calais and Dunkirk, where they hold regular meetings with frontline organisations to ensure the identification of and speedy transfer of displaced children under family reunification processes and Dubs scheme. This could either take the shape of an expanded Liaison Officer mandate, or be implemented separately.

3.10.3.2 In the interest of healthy relations with France, and in order to uphold its legal obligations under international law, the UK ought to refrain from returning asylum seekers crossing the Channel from France without having first had asylum claims assessed and the individual circumstances of applicants considered in line with the 1951 Geneva Convention and the 1967 New York Protocol.

¹⁹ <https://www.amnesty.ch/de/themen/asyl-und-migration/festung-europa/dok/2015/die-kampagne-sos-europa/bericht-the-human-cost-of-fortress-Europe>

²⁰ <https://www.hrw.org/report/2017/07/26/living-hell/police-abuses-against-child-and-adult-migrants-calais>

3.10.3.3 The UK Home Office ought to amend the Sandhurst Treaty signed in January 2018, and stipulate that no less than 10% of the additional £44.5 million of UK funding allocated for border security is ring-fenced for strictly humanitarian purposes, which would include but not be limited to: the deployment of additional social workers, interpreters and medical staff; the provision of shelters irrespective of immigration status; and physical and mental healthcare, with a particular focus on access to sexual and reproductive healthcare in line with the Minimum Initial Service Package (MISP) on Reproductive Healthⁱ.

3.10.3.4 In addition, 10% of the £3.6 million Dublin Development Fund agreed as part of the Sandhurst Treaty, must be used to support unaccompanied minors in the area.

3.11 Are there any other comments you wish to add?

3.11.1 RRE would also like to seize this opportunity to highlight that the rhetoric and narrative used by the UK Government to describe those aspiring to seek asylum in the UK, ought to be carefully considered. We are alarmed that the growing rhetoric amongst some Government departments refers to those seeking asylum in Europe and the UK as an ‘influx of migrants’, which feeds into the harmful and largely questionable dichotomy between the ‘deserving refugee’ and ‘undeserving migrant’. Such language is unlikely to contribute to a rational and empathetic public response to the arrival of individuals fleeing persecution, war and protracted crises.

3.11.2 RRE encourages the UK Government to take a lead in underlining to the wider British public that *all* individuals have an inalienable right to have their asylum claim *assessed* regardless of their (suspected) country of origin or the means by which they had to resort to in order to reach Europe and/or the UK.

3.12 Conclusion and Recommendations

3.12.1 The UK Government has a duty in its foreign policy to uphold human rights within Europe and globally, and to ensure that its commitments under the 1951 Geneva Convention and the 1967 New York Protocol are met. Working alongside EU states to ensure these obligations are met post-Brexit could have a positive impact on the UK’s bilateral relations with other European states that are currently experiencing significant strain on their asylum systems.

3.12.2 In view of its withdrawal from the EU, the UK has a unique opportunity to support and implement policies which will protect the rights of refugees and displaced people arriving in Europe, whilst also strengthening cooperation with other EU states.

ⁱ <http://iawg.net/areas-of-focus/misp/>