**Submission from ASSIST Sheffield to the UN Special Rapporteur on Poverty and Human Rights**

Our submission is limited to the particular manifestation of poverty with which we work – the absolute destitution of refused asylum seekers. We have only answered the questions where we have direct knowledge.

A. GENERAL

1. What is the definition of poverty and extreme poverty that your organization employs in the context of the United Kingdom and to what extent do official definitions used by the state adequately encompass poverty in all its dimensions?

ASSIST Sheffield supports destitute asylum seekers, usually those who have been refused asylum. Our clients are not entitled to housing or to work or benefits. They are completely destitute. During their asylum claim they have usually been supported by the Home Office, but asylum seekers without dependent children lose all Home Office support 21 days after they have exhausted their appeal rights (Immigration and Asylum Act 1999 ss. 94 and 95 and reg.3 Asylum Support (Amendment) Regulations 2002 SI 2002/472).

Home Office support is provided on the basis that the asylum seeker meets the statutory test for destitution whereby a person is destitute if s/he:

1. does not have adequate accommodation or any means of obtaining it…; or
2. has adequate accommodation or means of obtaining it but cannot meet other essential living needs. (Immigration and Asylum Act 1999 s.95).

Self-evidently, as our clients have usually relied on asylum support, once that support has been taken away, they meet the statutory definition of destitution. However, we cannot support all refused asylum seekers, and apply our own threshold test. All our clients are homeless and have no income nor any entitlement to income. We ask questions such as whether the person is sleeping on the street or in a station or bus shelter, whether they can stay in the same place each night or have to move every night, whether they stay overnight somewhere where their presence is against a regulation (e.g. some asylum seekers are given floor space by others who are in Home Office accommodation, but this is a breach of their terms of occupancy). We ask whether they have access to somewhere they can prepare and cook food (if for instance they were to go to a food bank), whether they can get food regularly or whether there are days when they have no access to food, the state of their health, whether they are taking medication and if so whether this is affected by whether they can get food.

These questions address the most basic conditions of life. They are gradations of destitution. All are destitute within the terms of s.95, but the purpose of the statutory definition is to delineate who may qualify for asylum support during their asylum claim. It is not intended to apply to our clients since government policy in relation to refused asylum seekers is to create destitution, not avoid it (as discussed e.g. by A. Randall, *Third Sector Research Centre Working Paper 131 Challenging the destitution policy Civil society organisations supporting destitute migrants* July 2015, and ). No definition or test is applied by the government to our clients because the policy is to disclaim any responsibility for their survival.

Nevertheless, your question on the adequacy of the definition is important to us. The statutory definition does not come close to describing the actual experience of destitution, which affects a person in all aspects of their life.

Our clients, many of whom are young men, often cannot enter into relationships – they cannot offer to buy a coffee or see a film or even pay a busfare. They fear being thought of by a prospective partner as exploiting that person; they are ashamed of their own destitution. They have no home to take someone to, no future to offer. They are prohibited from using their skills, talents and work experience except in limited volunteering.

By law they cannot open a bank account, hold a UK driving licence, drive using a UK driving licence, rent property, work in employment or self-employment, get access to secondary health care except in an emergency, or obtain a student loan. Working illegally is now a criminal offence. A conviction will jeopardise any eventual attempts to regularise their immigration status.

Over time, destitution has a corrosive and devastating impact on mental and physical health and psychological integrity. The UK does not apply any definition to this problem. Statutory measures (asylum support and its withdrawal) are all posited on the fiction that destitution will be short term. However, it is not.

(2) What is your view on the current official measurement of poverty by the government, what are the shortcomings of the current measurement and what alternatives would be feasible?

As explained, no measure is applied to our clients. The statutory definition of destitution is intended to apply to relatively short-term situation – the period while applying for asylum (Immigration and Asylum Act 1999 s.97). The practical reality is that people may spend years on asylum support, and so the destitution threshold becomes increasingly inappropriate. Other organisations are more equipped to comment on this issue.

For our clients, the purported purpose of the policy of absolute destitution is that it induces people to return to their home country. However, the reality is that only a small percentage of refused asylum seekers return or are returned to their country of origin. Conclusions from the published immigration statistics are very approximate, but give an indication. The most recent published annual cohort figures are for 2016. Around 48% of 30,747 applicants were finally refused asylum after appeal, meaning that some 14,758 people were in theory eligible to return to their home country by force or choice.[[1]](#footnote-1) Immigration statistics show that of 12,049 enforced removals in 2017, 2722 were of people who had at some stage claimed asylum. Of 22,881 voluntary returns (or 20,502, depending on system used), 2,594 were of people who had at some stage claimed asylum[[2]](#footnote-2). In other words, under half of refused asylum seekers had left the country in the year after becoming appeal rights exhausted. The change in how figures are compiled makes year on year comparison difficult, but overall the trend of removals and departures appears to be downward.

The policy of destitution makes no allowance for this, apparently relying on a fiction that this situation also lasts for only a short time. The statutory definition, referring to lack of adequate housing and ability to meet essential living needs, does not begin to recognise the multiple effects of long-term destitution. We have described some in the answer to (1) above and (3) below.

The problem in this case is not the definition as such. It is the official denial of the existence of this population who are in absolute poverty and therefore the failure to apply any definition to them. Occasional reference to their existence is often in terms of attributing blame to the individuals or to the failures of the immigration system, not in terms of recognition of their absolute poverty.

(3) What are the most significant human rights violations that people living in poverty and extreme poverty in the United Kingdom experience? Please exemplify by referring to specific cases and relevant norms of international human rights law.

In *Limbuela v SSHD* [2005] UKHL 66 the House of Lords accepted that a policy which subjected people to absolute destitution was a violation of Article 3 ECHR in that it constituted inhuman and degrading treatment. The policy under challenge in that case applied to people with a current asylum claim. The only reason in law why the present policy of destitution for refused asylum seekers is not accepted similarly to be a breach of Article 3 is the theory that they have the option to return home. While the legislation does make provision for asylum support to be given where there is provably no safe route home, or the person is not medically fit to fly, or where the person is actively seeking to return but is prevented from doing so, the actual reality that they will not be returning is not treated as a situation in which their rights are breached by ongoing destitution. Since however the practical reality is that many *are* living in situations of absolute deprivation or exploitation, their situation can be described as inhuman and degrading treatment and a violation of Article 3.

We know people who have been destitute in the UK for 18 years. Their lives have been destroyed. One – who is by nature friendly and hard-working - survives in a cycle of exploitation and addiction. Another became so habituated to street-sleeping and destitution that he could not live indoors and became seriously ill. We know a 50 year old woman who is sleeping in the railway station. She is a Christian, has no addictions; she is illiterate. Her English is poor. She is clearly vulnerable.

In the above cases, we would also argue that there are violations of Article 8 ECHR – the right to respect for private life. Private life under Article 8 has been held to encompass psychological integrity. These three people are living in extreme stress and in the case of two, their mental health has broken down under the strain. We have seen this happen to others also.

Another person we know has become, in effect, a peripatetic unpaid domestic worker. She moves between friends, and ‘earns’ her way by doing domestic work in each household. We think this is one of the lesser examples of breach of Article 4 ECHR, the prohibition on forced labour, as these are the situations we often do not hear about directly.

As regards which violations are most significant, we refer you to Maslow’s hierarchy of needs. It will be apparent that the needs of destitute asylum seekers are denied from the base to the apex of the triangle.

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Our perception is that, over time, hopelessness about ever meeting needs towards the apex of the triangle has an increasingly deleterious effect on meeting basic needs. For instance, despair about ever having a feeling of accomplishment can exacerbate mental health problems resulting in sleeplessness and inability to maintain relationships which in turn can affect maintaining physical safety, since our clients are almost entirely reliant on the goodwill of others to keep a roof over their heads. Hopelessness can also lead to exploitation and addiction, undermining an individual’s ability to meet the physiological needs at the base of the triangle, even when the means to do so may be available. Thus, our observation is that when violations are extended over time, it becomes less possible to say that some are more significant than others, as they become mutually reinforcing.

(4) Could you specify how poverty and extreme poverty in the United Kingdom intersect with civil and political rights issues (such as for example the right to political participation or the right to equality before the law)? Please exemplify by referring to specific cases and relevant norms of international human rights law.

Not only asylum seekers, but even recognized refugees do not have the right to vote in the UK. Since their future normally lies here, this is inexplicable. This is not a poverty issue, however. Refused destitute asylum seekers cannot vote but do have access to their MP. They theoretically have access to legal aid to make applications to try to regularize their status. However, in practice, cuts in legal aid and the practical effects of destitution make this access often very difficult. [[3]](#footnote-3)

Engaging in political dialogue or other civic participation is sometimes welcomed by destitute asylum seekers, but also may feel unsafe, as they are sometimes frightened to draw attention to themselves.

(5) Could you specify how poverty and extreme poverty in the United Kingdom intersect with economic and social rights issues (such as the right to education or the right to health care)? Please exemplify by referring to specific cases and relevant norms of international human rights law.

Destitute asylum seekers have no access to student loans and are treated as international students for fees purposes. This is so no matter how long they have lived in the UK. One man we know who has been in the UK for 15 years, is 65 years old and has a chronic illness is unlikely to be removed from the UK because the Home Office would be unable to ensure his safety to travel. He would like to study something he finds interesting to occupy his life and mind and create some structure to his days. He was refused a place at college because of his immigration status.

The NHS (Charges to Overseas Visitors) (Amendment) Regulations 2017 came into force on 23 October 2017. These regulations apply to destitute refused asylum seekers. They:

• Extend charging into community healthcare services Includes services delivered by NHS providers and charities and social enterprises under contract to the NHS. Services include community midwifery, community mental health services, termination of pregnancy services, district nursing, support groups, advocacy services, drug and alcohol services, and specialist services for homeless people and asylum seekers. Excludes health visitors and school nurses. • Introduce obligatory up-front charging If a patient cannot prove that they are entitled to free care, they will receive an estimated bill for their treatment, and treatment will be withheld until the patient pays in full, unless treatment is deemed ‘urgent’ or ‘immediately necessary’. <https://health.cityofsanctuary.org/wp-content/uploads/sites/47/2018/06/Healthcare-Charging-Briefing-for-refugee-and-asylum-support-groups-FINAL.pdf>.

While the regulations remove significant aspects of health care entitlements from our clients, poverty intersects with the application of the regulations. For instance, where patients are charged, and an arrangement is made for payment by small instalments, payment has to be made at the hospital, incurring a £3 return bus fare – possibly more than the payment made.

(6) Which areas of the United Kingdom should the Special Rapporteur visit in light of the poverty and human rights situation in those locations?

Areas of asylum dispersal, to observe these issues.

(7) Which individuals and organizations should the Special Rapporteur meet with during his country visit to the United Kingdom?

 Refugee Action concerning the inadequacy of asylum support. NACCOM and/or its member organisations concerning asylum destitution.

ASSIST Sheffield is collaborating with Sheffield Hallam University in issuing an invitation to the Special Rapporteur, and will be present at that visit if he is able to come.

Gina Clayton

ASSIST Sheffield

September 2018

1. <https://www.gov.uk/government/publications/immigration-statistics-year-ending-june-2018/how-many-people-do-we-grant-asylum-or-protection-to#outcome-of-asylum-applications> para 8 [↑](#footnote-ref-1)
2. Immigration quarterly statistics. Table: Returns 1 June 2018 [↑](#footnote-ref-2)
3. See *Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers* G. Clayton 2015 <http://www.naccom.org.uk/wp-content/uploads/2015/09/models-of-immigration-advice1.pdf> [↑](#footnote-ref-3)