

## Women for Refugee Women's Briefing on the Nationality and Borders Bill 2021 – House of Commons, Second Reading, July 2021

### **Background**

Women for Refugee Women (WRW) works closely with women who come to the UK to seek sanctuary. Together with our partners across England and Wales, we support hundreds of women who have fled sexual and gender-based violence, and trafficking. This briefing focuses on the potential impact of the Nationality and Borders Bill 2021 (the Bill) on these women. WRW is especially concerned about the harm it could have on women because of their specific vulnerabilities and their particular experiences of violence. **Vulnerable women already struggle to get protection in the asylum system.** As well as experiencing sexual violence in their countries of origin, many are abused again on their journeys to safety. Far from protecting vulnerable women, the Bill would make it even harder for them to be recognised as refugees and live in safety in the UK.

**We strongly urge MPs to attend the Second Reading debate on 19<sup>th</sup> and 20<sup>th</sup> July, and vote against the Bill or speak out against the harms it would have on vulnerable women seeking safety.**

### ***A two-tier system – inadmissibility & temporary protection***

*Helen fled religious persecution from Eritrea. During her journey, she was detained for six months by traffickers in Libya, who raped her multiple times. Eventually, Helen was able to get to Italy via boat. Upon arriving in Italy, the people she was travelling with told her they were going to the UK. Helen, who was severely traumatised and in fear for her safety, was forced to make a sudden decision in a chaotic and uncertain environment. She decided to journey with these people to the UK and became pregnant and miscarried en route. Helen now has refugee status, but under the government's proposed changes she would have been denied safety in the UK.*

Contrary to Home Office claims, **women are often compelled to take irregular routes to reach safety.** Even if new safe routes were created by the government, they would simply not be available to all those in need of protection. Many women would not be able to safely reach an embassy to apply for a humanitarian visa or cross a border to access a resettlement programme, if those routes did indeed exist. Others would only be able to disclose their stories once they reach a country they consider safe. LGBT+ women, who are forced to live their lives in hiding, are often unaware that they are refugees when they arrive, only realising that they can seek asylum much later.

### **We wholly object to the two tier-system that would harm some of the most vulnerable women.**

Under the proposed changes women who arrive irregularly, including through a safe third country, could be prosecuted and imprisoned for one to four years.<sup>1</sup> The Home Office would seek to remove the woman, even if she is in desperate need of protection, to a country it considers safe.

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<sup>1</sup> Part 3, Clause 37

With reference to ‘Group 1’ and ‘Group 2’, the Bill distinguishes between refugees depending on how they travelled to the UK.<sup>2</sup> If a woman has arrived through a safe third country or has not presented herself to the authorities “without delay”, and is subsequently recognised in the UK as a refugee, she would fall under ‘Group 2’. As a ‘Group 2’ refugee she would have no automatic path to settlement, even if she has proved a well-founded fear of persecution. The Bill gives the Home Secretary broad discretion to set the length of any limited period of leave given to ‘Group 2’ refugees, such that they may be indefinitely liable for removal.<sup>3</sup> The New Plan for Immigration suggests that temporary leave would be for a period of 30 months, after which they will be reassessed for removal.<sup>4</sup>

Women often find it more difficult to qualify for refugee status than men because of the absence of gender or sex as a ground under the UN Refugee Convention. Indeed, Home Office decision-makers frequently show a poor understanding of sexual and gender-based violence, its effect on disclosure and how it falls within the UK’s obligation to grant asylum. Having to periodically prove the need for protection would increase the **risk of vulnerable women being refused asylum** – women who would instead be detained, forced into destitution and at constant risk of removal.

The Bill also allows the Home Secretary to restrict the ability of ‘Group 2’ refugees to reunite with loved ones and access public funds.<sup>5</sup>

*“Without permanent settlement, we would never have the chance to heal from the trauma that we have suffered. We would never be able to plan our lives. We would never be able to contribute to society, to build families and relationships and put down roots. It is inhumane to do this to us.”<sup>6</sup>*

(Asylum-seeking and refugee women from Rainbow Sisters, a group of over 70 lesbian, bisexual and trans women and non-binary people supported by Women for Refugee Women).

### ***Restrictions in bringing late evidence***

The one-stop process would force traumatised women to raise all the reasons for why they need protection at the outset. If they fail to do so, their credibility could be damaged.<sup>7</sup> In addition, Home Office decision-makers and judges are instructed to give “minimal weight” to later evidence “unless there is good reason”.<sup>8</sup> It is clear therefore that the Bill goes directly against the Home Office’s own guidance which states that late disclosure should not automatically prejudice a woman’s credibility.<sup>9</sup>

There are many good reasons for why women who have fled sexual and gender-based violence cannot share relevant experiences at the initial stage, as acknowledged in Home Office guidance; this includes “guilt, shame, concerns about family ‘honour’ or fear of family members.”<sup>10</sup> The same

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<sup>2</sup> Part 2, Clause 10

<sup>3</sup> Part 2, Clause 10(5)

<sup>4</sup> *New Plan for Immigration*, page 20.

<sup>5</sup> Part 2, Clause 10(5)

<sup>6</sup> *Response to consultation on New Plan for Immigration*, Rainbow Sisters: <https://www.refugeewomen.co.uk/rainbow-sisters-strongly-oppose-the-governments-proposed-immigration-plan/>

<sup>7</sup> Part 2, Clause 17

<sup>8</sup> Part 2, Clause 23(2)

<sup>9</sup> *Gender issues in the asylum claim*, Home Office (10 April 2018):

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/699703/gender-issues-in-the-asylum-claim-v3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699703/gender-issues-in-the-asylum-claim-v3.pdf)

<sup>10</sup> *Gender issues in the asylum claim*, Home Office (10 April 2018)

guidance acknowledges that women who have been trafficked to the UK may be facing threats from their traffickers at the time of their interview, such that they are unable to speak openly. Some women, who have fled persecution because of their sexual orientation, are not able to disclose their sexuality during the time of their initial claim; they may still be coming to terms with it themselves, a process which can take years. The backlog of asylum cases urgently needs addressing, but restricting the ability of vulnerable women to bring evidence is neither a fair nor effective solution.

*Gloria and her husband were supporters of the opposition political party in the Democratic Republic of Congo. When the government started to suspect that her husband was talking to journalists about human rights abuses, they targeted both him and Gloria. Gloria was raped by soldiers and taken to prison. Upon release, she and her husband fled to Congo Brazzaville, but they were forced back into the DRC and targeted by the government again. Gloria was violently raped again by several soldiers and held in a detention centre from where she was trafficked to the UK. When she arrived here, Gloria was detained in a house and forced to have sex with several men for weeks, until a cleaner helped her to escape. This woman encouraged her to claim asylum, but Gloria was too scared to talk about her traffickers in the interview, so she couldn't explain why she hadn't claimed asylum earlier. Her male interpreter at the interview did not speak Lingala fluently, and got angry with her when she tried to clarify points. She had no mental health support so was unable to discuss the extreme sexual violence she had experienced, and her lawyer never explained to her that the experience of being trafficked was relevant to her claim. She was refused asylum and taken to Yarl's Wood, which she found highly traumatic, given her previous experiences of incarceration in the DRC. She was released from Yarl's Wood and then came to WRW to seek help as she was homeless. She joined one of our creative projects and over time she began speaking about her story. She now has a positive reasonable grounds decision, and is preparing further submissions for a fresh asylum claim. Under the Bill, Gloria could be prohibited from presenting evidence of the violence she has faced, with the risk of being returned to her persecutors. She continues to suffer from post-traumatic stress disorder, depression and suicidal thoughts.*

### **Proving a well-founded fear of persecution**

The Bill introduces a two-part test, with a balance of probabilities standard, for determining whether an individual has a well-founded fear of persecution.<sup>11</sup> It also introduces a narrower definition of 'particular social group', a ground in the UN Refugee Convention that is frequently used by women escaping gender-based violence.<sup>12</sup> In addition, the Bill provides for a more restricted definition of internal relocation. Women who flee violence by private individuals are often wrongly refused asylum on the grounds that they can live safely in another part of their country. UNHCR standards require decision-makers to consider whether the area is practically accessible to the applicant.<sup>13</sup> This is mirrored in Home Office policy, which states that the ability of the individual to relocate *in practice* must be assessed.<sup>14</sup> Yet under the Bill decision-makers must now "disregard any technical obstacles relating to return to that part of [the] country",<sup>15</sup> even though women can often face significant

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<sup>11</sup> Part 2, Clause 29(2)

<sup>12</sup> Part 2, Clause 30

<sup>13</sup> *Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UNHCR (23 July 2003): <https://www.unhcr.org/publications/legal/3f28d5cd4/guidelines-international-protection-4-internal-flight-relocation-alternative.html>

<sup>14</sup> *Gender issues in the asylum claim*, Home Office (10 April 2018)

<sup>15</sup> Part 2, Clause 32(2)(b)

barriers. **Any increase in the burden that is already placed on vulnerable women would only make it harder for them to access safety.**

### ***Accommodation centres***

The Bill makes reference to asylum accommodation centres, but holding women in isolated centres, where they cannot access community support, can hinder access to lawyers and the disclosure of relevant experiences, thereby delaying the resolution of cases.<sup>16</sup> Research into accommodation centres elsewhere in Europe has found that they can be completely inappropriate for survivors of sexual and gender-based violence.<sup>17</sup> Under the proposed changes, where the person has arrived through an irregular route, the Home Office will first attempt to remove them and, only if that is not possible within “a reasonable period”, will process their asylum claim.<sup>18</sup> It is very likely therefore that vulnerable women will be in accommodation centres for several months, if not longer, delaying access to justice for refugees with a clear claim to protection while forcing them to relive traumatic memories of confinement and abuse.

### ***Off-shore processing of asylum claims***

The Bill allows the government to remove people seeking asylum to outside the UK whilst their claims are being processed.<sup>19</sup> We are extremely concerned that **off-shore processing would pose a serious risk to women and children of sexual abuse and retraumatisation**. The Australian government’s own reports on its offshoring facility in Nauru revealed horrifying accounts of sexual abuse of women and children over the years, in addition to hundreds of incidents of threatened and actual self-harm. Even in the UK there have been longstanding concerns about sexual abuse at Yarl’s Wood and the deeply traumatising nature of detention for already traumatised women.<sup>20</sup>

### ***Modern Slavery & Trafficking***

Identifying victims of trafficking is a two-stage process, the first part being the reasonable grounds test, which acts as an initial filter before a conclusive grounds decision is taken. Under the Bill victims of slavery or trafficking may be served with a notice, upon which they must produce information about their exploitation within a specified period.<sup>21</sup> Failure to provide the information in that period, and “without good reason”, would damage their credibility in relation to a reasonable or conclusive grounds decision.<sup>22</sup> Yet it can take many months, often years, for a woman who has been forced into sexual or other exploitation to speak about the abuse she has suffered.

The Bill also changes the test for issuing a reasonable grounds decision from reasonable grounds to believe that a person “may be a victim” to reasonable grounds to believe that a person “is a victim”.<sup>23</sup> Yet it is vital that potential victims are given a sufficient window to access urgent support. The change

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<sup>16</sup> Part 2, Clause 11

<sup>17</sup> *Reimagining Refugee Rights: Addressing Asylum Harms in Britain, Denmark and Sweden*, Victoria Canning (2019): <https://www.statewatch.org/media/documents/news/2019/mar/uk-dk-se-reimagining-refugee-rights-asylum-harms-3-19.pdf>

<sup>18</sup> Part 2, Clause 14

<sup>19</sup> Schedule 3

<sup>20</sup> More than 85% of women we spoke to for our *I Am Human* (2015) report said that male guards had seen them in intimate situations including while naked, in the shower, on the toilet or in bed. Forty percent of women we spoke with for that report said that they had self-harmed whilst detained: <https://www.refugeewomen.co.uk/wp-content/uploads/2019/01/women-for-refugee-women-reports-i-am-human.pdf> For our *Detained* (2014) report one in five women said they had tried to kill themselves in detention: <https://www.refugeewomen.co.uk/wp-content/uploads/2019/01/women-for-refugee-women-reports-detained.pdf>

<sup>21</sup> Part 4, Clause 46

<sup>22</sup> Part 4, Clause 47

<sup>23</sup> Part 4, Clause 48

is said to be necessary to stop people claiming to be trafficking victims in order to prevent removal from the UK, but this is wholly unsupported by evidence. The government's own statistics show that the majority of people in immigration detention who are referred into the National Referral Mechanism are then recognised by the Home Office as potential victims of trafficking.<sup>24</sup> Research has also shown that 81% of reasonable grounds rejections that were challenged were granted a positive ruling, in favour of the applicant.<sup>25</sup> **These changes are likely to harm the most vulnerable women, keeping them in the hands of perpetrators, or making them liable to detention and removal.**

The Bill disqualifies women from trafficking protections if they are a “threat to public order”, defined broadly to include those who are sentenced to a period of imprisonment of 12 months or more.<sup>26</sup> WRW are aware of women who have experienced sexual and other forms of labour exploitation, who have been prosecuted and imprisoned for criminal offences related to their exploitation, and who need protection. It is wholly unfair to punish victims for the crimes they were forced to commit.

### ***Accelerated appeals procedure for people in detention***

The accelerated procedure is likely to harm women with gender-based or trafficking claims.<sup>27</sup> The previous Detained Fast Track process, which was found to be “systematically unfair” by the Court of Appeal, was inherently unsuitable and heavily criticised for its handling of gender-related and trafficking claims.<sup>28</sup> Women from some of the most oppressive countries who faced persecution were wrongly refused asylum and deported as a result of the Detained Fast Track.

### ***Recommendations***

We urge the government to abandon the above proposals and instead:

- 1) Increase safe and legal routes to the UK for people seeking asylum;
- 2) Ensure the asylum system has a culture of protection at its core rather than one of disbelief;
- 3) Ensure quality legal representation at all stages of the asylum process;
- 4) Ensure specialist mental health support;
- 5) End the policy of enforced destitution;
- 6) End the detention of women.

**For more information about any of the issues discussed here, please feel free to contact Priscilla Dudhia, Policy & Advocacy Coordinator, at [priscilla@refugeewomen.co.uk](mailto:priscilla@refugeewomen.co.uk) or Alphonsine Kabagabo, Director of Women for Refugee Women, at [alphonsine@refugeewomen.co.uk](mailto:alphonsine@refugeewomen.co.uk).**

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<sup>24</sup> *Issues raised by people facing return in immigration detention*, Home Office (16 March 2021):

<https://www.gov.uk/government/publications/issues-raised-by-people-facing-return-in-immigration-detention/issues-raised-by-people-facing-return-in-immigration-detention>

<sup>25</sup> *New data: Majority of trafficking claims found to be ‘positive’ after reconsideration*, After Exploitation (2 July 2021):

<https://afterexploitation.com/2021/07/02/new-data-majority-of-trafficking-claims-later-found-to-be-positive-after-reconsideration/>

<sup>26</sup> Part 4, Clause 51

<sup>27</sup> Part 2, Clause 24

<sup>28</sup> *Fast-tracked unfairness: detention and denial of women asylum seekers in the UK*, Human Rights Watch (February 2010)

<https://www.hrw.org/report/2010/02/23/fast-tracked-unfairness/detention-and-denial-women-asylum-seekers-uk>