

## Nationality and Borders Bill:

The following is an extract from the joint submission of Migrant Voice and Amnesty International UK to the Public Bill Committee on this Bill. It considers one of the primary objectives Ministers claim to be pursuing by this Bill. That objective is **“to break the business model of people smugglers and human traffickers”**.<sup>1</sup> As explained in this extract, the Bill, if implemented in its current form, will not only fail to meet that objective but is likely to enable that so-called ‘business’, in reality cruel exploitation, to continue to thrive.

1. This objective is so central to the Government’s case advanced for this Bill that the Home Secretary emphasised it several times during her Second Reading speech: *Hansard* HC, 19 July : Cols 706, 713 and 718. It is striking, however, that the Government’s Equalities Impact Assessment on the Bill, in relation to this objective and that of deterring unauthorised entry to the UK acknowledges that *“evidence supporting the effectiveness of this approach is limited”*.<sup>2</sup>
2. Part 3 of the Bill contains measures to:
  - a. increase criminal sentences (Clauses 37 & 38);
  - b. increase or extend other penalties (Clause 39 & Schedule 4)
  - c. increase border control powers, particularly at sea (Clauses 40-42 & Schedule 5); and
  - d. extend the reach of criminal law and prosecution including to those, who for no gain assist someone to enter the UK without permission (Clauses 37 & 38).
3. These appear to be the measures most in Ministers’ minds when they speak of breaking the business model of criminal gangs that engage in people (and other) smuggling and human trafficking. Regrettably, however, these measures are singularly ill-designed to achieve that objective. Coupled with other measures in this Bill, the outcome that will likely be achieved is the precise opposite – that human exploitation by organised crime will not only continue to thrive but be even further enabled.
4. There are three reasons that compel that miserable assessment:
  - a. The people most at risk from measures in Part 3 are not organised criminals. Clause 38(2) enlarges the scope of the offence of assisting a person seeking asylum to enter the UK. Currently, the offence is only committed where the assistance is *“for gain”* of the person providing it.<sup>3</sup> The enlargement is to capture people who provide assistance for no gain. Such people are manifestly not organised criminals nor engaged in human exploitation. Moreover, as can be seen right across Europe, including in the UK, it is in practice increasingly the people being exploited by organised crime – not their abusers – who are the targets for prosecutions and punishment from the greater emphasis on criminal prosecution and punishment relating to crossing borders without permission such as in Clauses 37 and 38.<sup>4</sup> The extension of the maximum sentence for entering the UK without permission to up to 4 years by Clause 37 targets these same

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<sup>1</sup> An objective emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 705, 706, 713 & 718 per the Home Secretary

<sup>2</sup> See EIA, paragraph 21(a), *op cit*

<sup>3</sup> See section 25A(1)(a) of the Immigration Act 1971

<sup>4</sup> Sadly, the CPS was compelled by this practice to issue guidance on prosecutions but the Bill, if unamended, will merely increase the pressure on the CPS and others to increase numbers and visibility of prosecutions by targeting the victims of smugglers, who can be found, as opposed to their abusers, who often cannot. That guidance is available here: <https://www.cps.gov.uk/cps/news/cps-publishes-updated-guidance-handling-illegal-entry-cases-small-boats>

people. This is compounded by Clause 34, which is intended to diminish the existing protection against prosecution of a refugee that is necessary in domestic law to comply with the UK's international law obligations.<sup>5</sup> None of this can or will break the business model of organise crime and exploitation. Indeed, it can only increase the reliance of people, already vulnerable to that exploitation, upon the gangs that remain the sole source of any prospect that people may ultimately escape their situations of insecurity, exploitation and deprivation by reaching a place of safety.

- b. Although we acknowledge that some of Part 3 is on its face directed at ruthless and organised crime and exploitation, it is not designed to achieve any reduction in this. For example, extending the potential prison sentence for assisting unauthorised entry from 14 years to life is not designed to do so.<sup>6</sup> There is no reason to think that organised criminals who are not deterred by a possible 14 years prison sentence will be any more deterred by a potential life sentence. Exploitation thrives upon the opportunity for unscrupulous people to make large profits from the vulnerability of other people by reason of their insecurity and deprivation. That exploitation is further enabled because the prospect is remote that those making these profits – especially those at the higher end of criminal gangs, networks and loose chains – will ever face prosecution or punishment. Raising maximum sentences still further addresses none of that.
  - c. The remainder of the Bill is largely directed to increasing the vulnerability of the people on whom organised crime and exploitation prey. That is particularly but not solely the case with Part 2. Making the UK's asylum system even more inaccessible and increasing the exclusion of, and hostility towards, people seeking asylum is a boon for organised crime and exploitation – for other abusers too. This will be calamitous to the objective of breaking the business model of people smugglers and human traffickers in three ways. First, making journeys to the UK harder – such as by Clauses 39 to 41 – while providing no alternative for the people driven to make them, simply passes ever more power to those who exploit this. Second, increasing exclusion and hostility in the UK merely provides new opportunities to exploit people made vulnerable to that even after reaching the UK. Third, the harsher the response to the victims of exploitation, the less likely those victims will or can assist any investigation or prosecution of their abusers.<sup>7</sup>
5. We would support real and effective measures to reduce and end exploitation of people by smugglers and traffickers. The relevant measures in this Bill either miss or are not directed at that target. Of especial concern among the provisions of Part 3 are:
- a. Clauses 37 and 38, particularly as these: (1) extend the scope of existing offences; and (2) signal an intent to criminalise people for exercising their right to seek asylum, for entering the UK in circumstances for which they cannot properly be considered culpable (including but not limited to people lured or compelled to enter for the purpose of their exploitation) or for providing assistance to such people for purely humanitarian reasons (even in circumstances necessary to avoid imminent loss of life or serious harm). Not only do provisions such as these promise to make people even more

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<sup>5</sup> This is addressed further in the section on fulfilment of the UK's international obligations.

<sup>6</sup> See clause 38(1)

<sup>7</sup> This was, in significant part, expressly put to the Home Secretary at Second Reading in an intervention which she described as "*absolutely right*": see *Hansard* HC, Second Reading, 19 July 2021 : Col 716, exchange between Sir Ian Duncan Smith and the Home Secretary.

vulnerable to exploitation. They directly undermine the spirit and letter of the international law obligations upon the UK.<sup>8</sup>

- b. Clause 41 and Schedule 5, particularly to the extent that these provisions signal any intent to intercept and push back boats into another country's territorial waters. This directly undermines the spirit or letter of those same international law obligations.<sup>9</sup> Moreover, pushing people back without resolving their circumstances merely places them back in the position of dependence on smugglers and others who may exploit them again.

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<sup>8</sup> UNHCR's assessment of the Government's plans is available here:  
<https://www.unhcr.org/uk/publications/legal/60950ed64/unhcr-observations-on-the-new-plan-for-immigration-uk.html>

<sup>9</sup> *ibid*