

## **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 “**better protect refugees and survivors of modern slavery.**”<sup>1</sup> Far from achieving this aim, the provisions of this Bill expressly set out to both reduce access to protection and, for many of the people who may nonetheless still secure protection, to reduce the quality of the protection that is provided.*

1. Far from setting out to better protect people entitled to protection here, the Bill expressly sets out to do the opposite. There are certain parallels between the approach to asylum (Part 2) and that to modern slavery (Part 4). However, since Part 2 is thicker with obstacles to providing any, let alone better, protection and since some victims of modern slavery will also have good claims to asylum, this submission’s focus is on that Part (Asylum).
  - a. It would make it harder for people to establish their refugee status and entitlement to asylum. This is done directly by various measures. It is also done indirectly by more widely undermining a refugee’s capacity to engage with processes by which their status and entitlement will be determined.
  - b. In the case of many refugees, Clause 10 expressly sets out to diminish the quality of the protection that will be provided to someone who, despite the increased barriers to doing so, establishes their refugee status.
2. There are several direct ways by which the Bill, if implemented, will make it harder for a person in the UK to establish their refugee status and entitlement to asylum in the UK.
  - a. Clause 14 begins by refusing to admit a refugee into the UK’s asylum system.<sup>2</sup>
  - b. If the refugee is nonetheless admitted to that system – either because it is decided not to exercise the powers in the clause to refuse admission or because the underlying intention to require some other country to take responsibility for the refugee’s claim cannot in the event be fulfilled – Clauses 16 to 23 establish various impediments to refugees proving their status by directing decision-makers to either exclude evidence or make adverse presumptions about the probative value of the evidence (Clause 23) or the credibility of the refugee (Clauses 17 and 20).
  - c. Clauses 21 and 24 create procedural barriers by accelerating the appeals system and reducing the prospect that an appeal is successful in revealing any error in the assessment of the refugee’s claim.
  - d. Clause 25 simply removes the right of appeal altogether.
  - e. Clause 26 provides for the potential to simply banish the refugee to some far-flung place – where standards of welfare, protection and ability to engage meaningfully in any asylum process cannot be guaranteed – to be held indefinitely while some consideration may be given to the refugee’s claim.<sup>3</sup>

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<sup>1</sup> An aim emphasised at e.g. *Hansard* HC, Second Reading, 19 July 2021 : Col 706, 709 & 716 *per* the Home Secretary

<sup>2</sup> This clause essentially places on the statute book the immigration rules introduced by the Home Secretary from 23.00 hours on 31 December 2020.

<sup>3</sup> More is addressed on this clause in the later section on fulfilment of international commitments.

- f. Clauses 27 to 35 compound the foregoing by seeking to unilaterally confine the meaning and effect of an international status (that of being a refugee) by statutory definition.<sup>4</sup>
3. Much of these same and other provisions will also indirectly undermine refugees' capacity to establish their status. Given the frequent traumatic experiences of real danger and serious abuse on the journeys many refugees make, imposing greater emotional and psychological distress can only be anticipated to profoundly undermine a person's capacity to effectively engage with the asylum system on which their very life may depend. Exaggerating the inevitable dependence of refugees on legal representatives and others – such as interpreters, translators, country and medical experts – also undermines that capacity.
- a. Clause 11, which permits categorisation of people seeking asylum for the purpose of differentiation in the type of accommodation provided, is amongst other things, intended to enable the use of accommodation centres. The prospect here is that people will be effectively held in relatively isolated conditions, closely akin to detention. Among the many objections is that doing this will be likely to significantly exacerbate any incapacity to effectively engage with the asylum system – whether as a direct result of the isolation or as a result of its emotional and psychological impact.
- b. Clause 14 will impose a prolonged period of limbo and anxiety upon a refugee who is refused entry to the asylum system while officials attempt to find some other country willing to receive the person. Where the refugee has already suffered violence, deprivation and exclusion in that place, the distress of this will be exacerbated. It will also be exacerbated if the refugee's true connection is in the UK – particularly if there is family here.
- c. Clause 16, for example, empowers the imposition of additional procedural requirements – to submit evidence by a specified date; and, if evidence is submitted after that date, to submit a statement setting out reasons for this. This new bureaucracy is artificial since it is already intrinsic to the decision-making process that evidence must be submitted in sufficient time for it to be considered and a decision will not ordinarily be delayed or reviewed if no reason is given for that to happen. Clause 16, therefore, either is unnecessary or will establish greater systematic insensitivity to the barriers a refugee faces to effective engagement with the asylum system. All refugees will need some or all of the following – legal advice and representation, interpreter and translator services, medical and other expert services. The availability and quality of none of this is within the refugee's control. Other matters outside the refugee's control will also impact the capacity to comply with any requirements made under this clause – such as access to and adequacy of accommodation and healthcare. A serious risk with measures such as this is the creation of tasks, demands and anxieties solely to serve whatever arbitrary demands the system, and those operating it, may set rather than serving what should be the purpose of the system in identifying people with refugee status and providing asylum to them. The worst of this is the risk that a traumatised or confused individual is presented with a piece of paper – the importance of which she, he or they are in no state to comprehend – setting a deadline that is then overlooked and creating a bureaucratic barrier to that person's claim being fully and fairly presented and considered.
- d. It is not merely the accelerated procedures in Clause 24 that will impede effective preparation, presentation and, hence, consideration of an asylum claim. Detaining

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<sup>4</sup> There is also more on this clause in the later section on fulfilment of international commitments.

someone – who may well begin with vivid fears concerning authority and detention by reason of past experiences in the country the person has fled or countries the person has passed through – will itself exacerbate or create significant emotional and psychological barriers to that.

- e. Clause 26 and Schedule 3 are to enable the creation of what is often referred to as offshore processing. That anodyne description means transporting people seeking asylum from the UK to another country to be held pending determination of their claim. It is the antithesis of providing better protection. Rather, it dramatically enlarges on the problems of other provisions that impose isolation and other deprivation upon refugees and thereby inhibit or prevent them from engaging effectively in any process for fully and fairly receiving and considering their claim to asylum.<sup>5</sup>
4. Clause 10 is directly opposed to improving protection for refugees. This clause is solely concerned with people who have established both their refugee status and entitlement to be in the UK. The sole purpose of this clause is that some refugees are to receive lesser protection than is the case now and less protection than other more favoured refugees. There is to be uncertainty about the duration and durability of the protection provided as well as diminished quality as to that protection. None of this is about improving protection. It is expressly about withholding or reducing that.
5. Parts 4 and 5 of the Bill include provisions that are also directly opposed to improving protection of victims of modern slavery and children respectively:
  - a. Clause 46 operates in a similar way to Clause 16 and shares all the deficiencies of that clause. Clause 46 must be read with Clause 47 (just as Clause 16 is to be read with Clause 17). In short, victims of modern slavery will be made at the mercy of arbitrary demands of the system and those operating it, which ultimately threaten to exclude victims from the protection to which they are entitled and in need.
  - b. Clause 58 is described as a placeholder clause.<sup>6</sup> The Summer has passed and no substantive provision has as yet been published. Ministers suggest that among their motivations for the provision that is intended to come is a concern over safeguarding.<sup>7</sup> This is very far from new. The department has long suggested there to be especial child safeguarding concerns arising if an adult is wrongly treated as a child in the asylum system. It is yet to advance particular evidence for these concerns let alone to support any balanced consideration of the relevant safeguarding risks. Yet, there is reason to consider that a more sceptical approach to assessing age would endanger children. Children are vulnerable to abuse, neglect and exploitation by virtue of their age and, if unaccompanied, it is the state's duty to take steps to provide the support and supervision needed to, among other things, safeguard against these harms. Sources of harm can be British citizens or foreign nationals, adults or children, professionals, officials or other staff, people seeking asylum or members of the public. What is key – unless a specific source of harm can be identified – is that the environment provided for the child is one where there is support and supervision alongside awareness and monitoring of risks. Wrongly treating an adult as a child does not in itself put any child at risk unless that adult is a risk to children (just as would be the case if a particular child were a risk to

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<sup>5</sup> Amnesty International responded in June 2003 to the same or very similar proposals put forward by the UK Government in that year for offshore processing with detailed analysis of the risks and harms these entailed in its *Unlawful and Unworkable – extra-territorial processing of asylum claims*; the report is available here: <https://www.amnesty.org/en/documents/ior61/004/2003/en/>

<sup>6</sup> See the Bill's Explanatory Notes, paragraph 596

<sup>7</sup> These concerns were foregrounded, for example, in the *New Plan for Immigration*, page 22, *op cit*

other children). Wrongly treating a child as an adult, however, does put that child at risk because it deprives that child of all the support, supervision, awareness and monitoring that ought to be provided. Moreover, there are other harms done to the child, which may also exacerbate the child's vulnerability. These include the emphatic challenge to the child's sense of identity and capacity to trust constituted by denying the child's age,<sup>8</sup> the removal of other safeguards necessary for safely determining the child's asylum claim and the possibility that the child may be removed or returned to some other country without child safeguarding measures in place or even any intention or appreciation of the need for that.<sup>9</sup>

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<sup>8</sup> *When is a Child not a Child: Asylum, Age Disputes and the Process of Age Assessment*, Heaven Crawley, May 2007

<sup>9</sup> Immigration Rules, paragraph 352ZC(c) provide for a grant of limited leave to remain to an unaccompanied child refused asylum where "*there are no adequate reception arrangements in the country to which they would be returned if leave to remain was not granted*".