



PRESS RELEASE: for immediate release

Government's Nationality and Borders Bill will wrongly deny refugee protection to people at risk of persecution say Peers and refugee campaigners

Members of the House of Lords plan to resist Government attempts to push through legislative change that will impose higher hurdles for people seeking asylum to prove that they are at risk of persecution, disproportionately affecting survivors of gender-based abuse, LGBTQI+ people, children and disabled people.

The new Bill proposes to raise the bar for assessing whether someone has a particular characteristic that gives rise to their fear of persecution. Rainbow Migration, Women for Refugee Women, ILPA (the Immigration Law Practitioners' Association) and 24 other civil society organisations highlight that the change will make it even more difficult for women and survivors of gender or sexuality-based persecution to be recognised as refugees and access the protection they need.

The Lord Bishop of Gloucester and Baroness Chakrabarti share their concerns and have tabled an amendment to reverse this change which will be considered next week during Report Stage in the House of Lords starting on 28th February 2022.¹

Clause 31: Challenging an internationally agreed standard

In order to receive refugee protection in the UK, a person seeking asylum must show that they have what the 1951 Refugee Convention describes as a 'well-founded fear' of being persecuted for reasons set out in the Convention. In recognition of the severe difficulties people can have in proving their asylum claims, as well as the potentially life-threatening harm to them should the wrong decision be made, the UNHCR has consistently called for a 'reasonable likelihood' standard of proof when assessing whether someone is a refugee.

For more than 20 years, UK courts have agreed with the UNHCR's approach, consistently applying the 'reasonable likelihood' standard for all elements of the refugee definition. The UK Supreme Court has explicitly rejected the higher 'balance of probabilities' threshold, which Clause 31 now seeks to introduce: 'Where life or liberty may be threatened, the balance of probabilities is not an appropriate test'.

In their joint briefing on the amendment to the clause, Women for Refugee Women, ILPA, Rainbow Migration, and 24 other organisations have stated that people who are wrongly refused asylum are likely to be retraumatised and forced into destitution. They could also be sent back to face serious harm,

¹ Clause 31 is expected to be examined on 2 March 2022.

including torture or even death. In addition to the human cost, the Government's proposed change will result in increased litigation, wasted judicial resources and prolonged decisions in a system already rife with delays. The Government has failed to provide proper justification for this clause, despite its serious, potentially life-threatening, consequences.

Alphonsine Kabagabo, Director of Women for Refugee Women, says:

"We work with women who are survivors of rape, trafficking, torture and persecution based on their sexuality and gender. Under the current asylum process, the women in our network already struggle to access refugee protection because the Home Office routinely disbelieves their stories. We are deeply concerned that Clause 31 will make it even harder for people who've fled persecution to be recognised as refugees. For many, this is a matter of life or death. This Clause could force women back into the dangers they fled, or make them vulnerable to new dangers like domestic abuse and modern slavery here in the UK. We want to see a supportive asylum process that treats people seeking protection with humanity and respect, so that they can begin to rebuild their lives."

Leila Zadeh, Executive Director at Rainbow Migration says:

"LGBTQI+ people already struggle to prove their sexual orientation or gender identity, particularly as they often have to talk about a very personal or private aspect of their lives following a lifetime of stigma and shame. If the bill goes ahead with this clause, more LGBTQI+ people will be refused asylum and face return to countries where they won't be free to be themselves and their lives will be at risk."

Zoe Bantleman, Legal Director at the Immigration Law Practitioners' Association, says:

"Clause 31 is particularly egregious. The Government's attempt at justifying their re-interpretation of 'well-founded fear' in the 1951 Refugee Convention is flawed. The Government claims its new two-stage test, with two different standards of proof, will lead to greater clarity and consistency in decision-making, when in fact, it will clearly lead to confusion and failure to recognise genuine refugees. Within the UK's fact-finding system, enforcement environment, and legal tradition, the simple holistic test should remain: 'Is there a reasonable likelihood that a person has a well-founded fear of persecution for a Convention reason?'"

/ENDS

Detailed policy briefing available upon request. Please be in touch to arrange interviews.

Immigration Law Practitioners' Association (ILPA)

www.ilpa.org.uk

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system.

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Women for Refugee Women

www.refugeewomen.co.uk

Women for Refugee Women is a charity that supports women seeking asylum in the UK and challenges the injustices that they experience. Together with our partners across England and Wales, we support hundreds of women who have fled gender-based abuse, including female genital mutilation, rape and honour-based violence. Our research has documented women's experiences of seeking asylum in the UK. In 2020, 78% of the women we spoke with had fled gender-based violence in their countries of origin. Many of these women would struggle to access protection under the Nationality and Borders Bill.

Rainbow Migration <https://www.rainbowmigration.org.uk>

Rainbow Migration supports lesbian, gay, bisexual, trans, queer and intersex (LGBTQI+) people through the asylum and immigration system. Our vision is a world where there is equality, dignity, respect and safety for all people in the expression of their sexual or gender identity.