

## Submission to the Special Rapporteur on Violence against Women and Girls to inform her visit to the United Kingdom of Great Britain and Northern Ireland

February 2024

1. Women in Refugee Law (WiRL) is a global network of asylum seeking and refugee women, academics, practitioners, policymakers and activists. Our submission draws together recent evidence and knowledge from our UK members with lived experience of claiming asylum, and legal practitioners, advocates and researchers.<sup>1</sup> We have prioritised the most important issues identified by our members, rather than addressing every possible topic.
2. Most refugee women in the UK have experienced gender-based violence in their country of origin, *en route* to and/or in the UK, and would risk violence if returned.<sup>2</sup> The UK asylum system has long been criticised for its lack of gender-sensitive decision-making, procedures and reception conditions.<sup>3</sup> These problems persist and now recent legislative changes put refugee women and girls at greater risk of harm, contrary to the Government's commitment to address violence against women and girls.

### Compliance with the Convention on Preventing and Combating Violence Against Women and Domestic Violence

3. Article 59 Istanbul Convention ensures that women who have experienced violence are given an autonomous residence permit separate from their partners. However, on ratifying it only in July 2022, the UK entered a **reservation** to Article 59, meaning some of the most vulnerable survivors with irregular immigration status do not enjoy the same level of protection as other survivors, and face uncertainty due to the no recourse to public funds (NRPF) condition.
4. Before accepting Article 59, the Government sought evidence on the impact of the immigration status and NRPF provisions through a pilot scheme. An independent evaluation of its first year concluded that long-term support provisions, such as extending the Domestic Violence Indefinite Leave to Remain and Destitution Domestic Violence Concession to all survivors regardless of immigration status, and lifting the NRPF condition, are required.<sup>4</sup> Those findings mirror earlier research and evidence, clearly highlighting the need to provide **equal protection to all survivors, without discrimination**. The pilot was extended twice and is now set to end in March 2025.

---

<sup>1</sup> Contributors to the submission include: Christel Querton (University of the West of England), Moira Dustin (University of Sussex), Wan Abdullah (The Voices Network UK), Zoe Bantleman (Immigration Law Practitioners' Association), Emmaleena Käkälä (University of Strathclyde), Kama Petruczenko (Refugee Council), Sarah Robb (British Red Cross) and Women for Refugee Women.

<sup>2</sup> Women for Refugee Women found that 78% of women they interviewed for their research had experienced gender-based violence, P. Dudhia, 'Will I Ever be Safe? Asylum-Seeking Women made Destitute in the UK' (Women for Refugee Women 2020) <https://www.refugeewomen.co.uk/wp-content/uploads/2020/02/WRW-Will-I-ever-be-safe-web.pdf> 6.

<sup>3</sup> C. Querton, "I feel like as a woman I'm not welcome": A gender analysis of UK asylum law, policy and practice' (Asylum Aid; 2012) <https://www.asylumaid.org.uk/sites/default/files/2022-01/Querton%202012.pdf>.

<sup>4</sup> Southall Black Sisters, S Dhaliwal and L Kelly, 'Living at the Edge: CWASU Evaluation of the Support for Migrant Victims Programme' (London Metropolitan University, February 2023) <https://southallblacksisters.org.uk/news/support-for-migrant-victims-fund-evaluation/>.

5. The Government recently confirmed it would retain the reservation to Article 59 although they would introduce further concessions.<sup>5</sup> Yet, these concessions will only apply to a small group of women (partners of students or workers), consisting of a form of temporary leave (not intended to lead to settlement) and with recourse to public funds.<sup>6</sup> While welcome, these provisions fall short of what is required to protect **all survivors of violence regardless of their immigration status**.
6. Precarious immigration status and denial of support, including emergency support (due to NRPF status) exposes women to a particular risk of abuse or repeated violence, including trafficking. This cohort of women will continue to be trapped in a vicious cycle of violence unless the Government fulfils the obligations in Article 59.
7. Furthermore, our members are concerned about a **lack of compliance with Article 60 on gender-based asylum claims**, particularly in the context of regressive measures introduced through recent asylum legislation which will prevent survivors of gender-based violence from ever having their protection claims considered in the UK (see next section).
8. According to our shared expertise, and contrary to **Article 13 on awareness raising**, women seeking asylum often do not realise that their experiences of gender-based violence in the family and community may be relevant to claiming asylum. Moreover, the cumulative impact of the ‘hostile environment’, including restrictions on work, further and higher education, benefits and choice-based housing, all serve to isolate women who have experienced or risk experiencing violence, including FGM and “honour”-based violence.
9. Lack of information about domestic violence and custody of children in family and civil law was highlighted by one contributor with lived experience:

*Women or mothers [who have experienced] domestic abuse should be given transparent immediate information that she have rights to have her children with her too if she left the abusive relationship. For example, as a new person in the UK I am not aware of the civil or family law or any law in the UK and when I fled from my ex last 5 yrs ago I fled alone. I didn't know it's different here.*

10. Finally, the Home Office does not publish specific data on asylum claims, decisions, appeals and outcomes in cases involving SGBV, which is an obstacle to tracking progress and contrary to **Article 11 on data collection and research**.<sup>7</sup>

## **Gender Sensitive Asylum Procedures**

11. Recent **legislative changes** in the UK amount to a complete overhaul of the asylum system. The **Nationality and Borders Act 2022** (NABA) and the **Illegal Migration Act 2023** (IMA) have

---

<sup>5</sup> Letter from Home Secretary to Rt Hon Caroline Nokes MP on 11 January 2024 <https://committees.parliament.uk/publications/42928/documents/213464/default/>.

<sup>6</sup> Moreover, following the High Court ruling in *AM v SSHD* [2022] EWHC 2591 (Admin), survivors of gender-based abuse stranded overseas, due to transnational marriage abandonment, will receive entry clearance for settlement (indefinite leave to enter), which will allow them to return to the UK <https://www.bailii.org/ew/cases/EWHC/Admin/2022/2591.html>.

<sup>7</sup> Women and Equalities Committee, Equality and the UK asylum process, Fourth Report of the Session 2022-23 <https://committees.parliament.uk/publications/40580/documents/198406/default/> Recommendation 2, p. 71.

created new obstacles preventing women and girls from claiming asylum in the UK, contrary to international refugee and human rights law.

12. **Section 32 of NABA** introduced a raised two-fold test for the **standard of proof**, such that women and girls seeking asylum must prove on the higher civil standard, the balance of probabilities, both that they have (or may be attributed) a Refugee Convention characteristic and that they have a subjective fear of persecution as a result. Only then may a decision-maker consider whether there is a reasonable degree of likelihood that they would face persecution on return. This higher standard of proof may result in women and girls being erroneously denied refugee protection and disproportionately impact survivors of gender-based violence and trafficking, who will now need to prove that it is more likely than not that they form part of their particular social group. Perversely, girls, who cannot articulate their subjective fear, may be unable to meet this new test.<sup>8</sup>
13. **Section 33 of NABA** introduced a cumulative **definition of a particular social group**, requiring individuals show both the ‘protected characteristic’ and ‘social perception’ conditions are met. Survivors of gender-based abuse and trafficked women may meet the first limb but be unable to objectively prove that they are perceived as a distinct group in their country of origin.<sup>9</sup>
14. **The IMA**, building on the **statutory inadmissibility and the crime of arrival in NABA**,<sup>10</sup> is tantamount to an **asylum ban for women and girls arriving in the UK by means the Home Office deems irregular**.<sup>11</sup> Were it to be fully commenced, the impact for most women and girls seeking asylum would be:
  - a. permanent inadmissibility of their asylum and human rights claims;<sup>12</sup>
  - b. legal limbo with narrow exceptions for regularisation of status;<sup>13</sup>
  - c. removal from the UK, including to one of 57 third-country states, through a new duty on the Home Secretary to remove women and accompanied girls;<sup>14</sup>
  - d. a new “fast-track” system to suspend removal which significantly ousts the jurisdiction of courts and tribunals;<sup>15</sup>
  - e. indefinite detention of women (unless pregnant) and girls, with limited challenge in the first 28 days and disapplication of the safeguarding and welfare function of the Independent Family Returns Panel;<sup>16</sup>
  - f. removal of almost all protections for victims of modern slavery and human trafficking.<sup>17</sup>
15. The **Safety of Rwanda (Asylum and Immigration) Bill**, currently before Parliament, together with the IMA, would place non-Rwandan women, girls in families, and age-disputed

---

<sup>8</sup> See ILPA and WRW, ‘Joint Briefing on Clause 31 Well-founded Fear Test Nationality and Borders Bill, House of Lords Report Stage’ <https://ilpa.org.uk/wp-content/uploads/2022/02/ILPA-Women-for-Refugee-Women-and-Others-Joint-Briefing-Clause-31.pdf>.

<sup>9</sup> Ibid. For a critique of the ‘social perception’ limb, see Querton, C. (2022) “One Step Forward, Two Steps Back? Interpreting ‘Particular Social Group’ in the European Union” *International and Comparative Law Quarterly*, 71(2), 425-451.

<sup>10</sup> Nationality and Borders Act 2022, s 16 and s 40 respectively.

<sup>11</sup> For detailed briefings see ILPA, ‘Illegal Migration Bill: ILPA Briefings’ <https://ilpa.org.uk/ilpa-briefings-on-illegal-migration-bill/>.

<sup>12</sup> Illegal Migration Act 2023, s 5.

<sup>13</sup> Ibid, ss 30 to 37.

<sup>14</sup> Ibid, ss 2 and 4 and Schedule 1.

<sup>15</sup> Ibid, ss 38 to 56.

<sup>16</sup> Ibid, ss 11 to 14.

<sup>17</sup> Ibid, ss 22-29.

unaccompanied girls, **at risk of ill-treatment in Rwanda** and with **insufficient access to legal remedies to prevent breaches of their human rights**.<sup>18</sup>

16. Most women and girls have no choice but to reach the UK by ‘irregular’ means because **available safe routes for women and girls remain insufficient, restrictive and/or nationality specific**. Consequently, women will be left in limbo outside the asylum system, at risk of homelessness and at heightened risk of violence and trafficking. The Afghan Citizens Resettlement Scheme,<sup>19</sup> meant to offer a route to resettlement for ‘those who are particularly vulnerable, such as women and girls at risk and members of minority groups’ shows the **inadequacy of the UK’s safe routes**.<sup>20</sup> More than two years since opening, this safe route has yet to materialise.

### **Asylum Claims based on FGM and "Honour" based Violence**

17. Female Genital Mutilation (FGM) has been a specific criminal offence in the UK since 1985, and legislation has since been strengthened subsequently by both central and devolved Governments to include extra-territorial offences, raise the maximum penalty to 14 years, and implement a mandatory reporting duty.<sup>21</sup> Nonetheless, **FGM-affected women and girls at risk face particularly vulnerabilities in the UK** because of asylum management and contradictions between devolved child protection and reserved immigration policies. FGM-affected women often **spend years in the asylum system**, and survivors have described **asylum interviews as a retraumatising experience**, where disclosures of trauma are responded to with hostility and disregard. Women have shared their experiences of undergoing **invasive genital examinations to prove their FGM-status**, only to have these medical certificates questioned by asylum interviewers. Often, women face these problems even when their disclosures are supported by Home Office country policy information.<sup>22</sup>
18. FGM survivors continue to experience transnational pressures from extended family members to practise FGM. The way transnational risks are treated by different public authorities perpetuates **ongoing disempowerment and uncertainty for FGM survivors**. FGM survivors have recounted how they are placed under constant suspicion by social workers, teachers and health professionals who fear women with daughters may be planning FGM. In contrast, evidence for FGM-based asylum claims, based on ongoing risk including letters from family members that pressure women to return to subject their daughters to FGM, is frequently challenged/questioned.<sup>23</sup>

### **Gender Sensitive Reception**

19. Refugee-led research identifies **housing** as one of the most pressing issues facing refugee women, including “challenges accessing **safe and appropriate housing**, risks of **street homelessness** and

---

<sup>18</sup> See ILPA, ‘Safety of Rwanda (Asylum and Immigration) Bill’ <https://ilpa.org.uk/safety-of-rwanda-asylum-and-immigration-bill/>.

<sup>19</sup> Third Pathway.

<sup>20</sup> Home Office, ‘Afghan citizens resettlement scheme’ (published 18 August 2021) <https://www.gov.uk/guidance/afghan-citizens-resettlement-scheme>.

<sup>21</sup> Prohibition of Female Circumcision Act 1985; The Female Genital Mutilation Act 2003 covering England, Wales and Northern Ireland, and The Prohibition of Female Genital Mutilation (Scotland) Act 2005, which covers Scotland; The Serious Crime Act 2015 and The Female Genital Mutilation (Protection and Guidance) (Scotland) Act 2020.

<sup>22</sup> Käkälä, E. (2022). Strategies of denial: Women’s experiences of culture of disbelief and discreditation in the treatment of asylum claims on the grounds of female genital cutting (FGC). *Journal of Ethnic and Migration Studies*, 48(3), 560-577.

<sup>23</sup> Käkälä, E., Likonde, D., Nimyel, A., Gitteh, F. C., Salim, L., & Sillah, A. (2021). Falling Between the Cracks: Contradictions in Approaches to Protecting Girls and Women from Female Genital Mutilation (FGM) in Scotland. Research report, University of Strathclyde.

difficulties **building and maintaining support networks** in women’s new communities”.<sup>24</sup> Refugee women have shared their experience of being homeless and sleeping on the streets with their children,<sup>25</sup> leading some to experience rape and sexual violence.<sup>26</sup> They have reported living in unsuitable accommodation and in sub-standard conditions.<sup>27</sup> As asylum seekers are provided with accommodation on a no-choice basis, frequent transfers to different parts of the country disrupt their support networks, leaving them without essential support and feeling isolated.<sup>28</sup> One WiRL member shared her personal experience as an example of what many women have to undergo:

*We got no option to move out from Leeds where I received my mental health support as well as from other organisations in the domestic abuse. As we moved to temporary accommodation outside of our support systems my mental health and my baby too become a toll. I can't get GP registered as soon as I moved it's took almost 2 months and I can't talk with local charities on domestic abuse because I not registered with any GP at their area. Imagine that.*

20. She also highlighted the need for better data sharing amongst public authorities, noting:

*Home Office should have up-to-date information or connection between themselves. For example, in my case, the decision maker who gave me decisions letter not even have my current address (as I been moved 6 times since 2019).*

21. Afghan women arriving in the UK under the Afghan Citizens Resettlement Scheme or the Afghan Relocations and Assistance Policy for example have been housed in hotels and said that “months in a setting meant to be temporary had meant a loss of routine and personal space, led to **increased domestic violence, and harmed their mental health**”.<sup>29</sup>

22. There are strong concerns about the safety and suitability of **asylum hotels** as a type of accommodation, with many asylum seeking women reporting feeling unsafe. Hotels are often very **male dominated environments** in terms of other residents and staff. The staff in the hotels are poorly trained and this can mean that risks or disclosures around domestic abuse, sexual assault or other forms of gender-based violence can be minimised or ignored. There is **no adequate mechanism in place that enable safe reporting for women, leaving them at further risk of violence**.

## Conclusion

23. Although violence against women and girls is pervasive across the UK, this brief contribution has highlighted the most pressing reasons for why **women and girls with insecure immigration status** are exposed to **further harms and lack of redress**.

---

<sup>24</sup> British Red Cross and the VOICES Network, ‘We want to be strong, but we don’t have the chance: Women’s experiences of seeking asylum in the UK’ (2022) [https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/we-want-to-be-strong-womens-experiences-of-seeking-asylum-in-the-uk.pdf?sc\\_lang=en&hash=2330A3ED52B282A7B75E190A333365F6](https://www.redcross.org.uk/-/media/documents/about-us/research-publications/refugee-support/we-want-to-be-strong-womens-experiences-of-seeking-asylum-in-the-uk.pdf?sc_lang=en&hash=2330A3ED52B282A7B75E190A333365F6) 28.

<sup>25</sup> Ibid 29.

<sup>26</sup> Women for Refugee Women, ‘Will I ever be safe? Asylum-seeking Women made Destitute in the UK’ (2019) <https://www.refugeewomen.co.uk/not-safe/>.

<sup>27</sup> British Red Cross and the VOICES Network (2022) 30.

<sup>28</sup> Ibid 30.

<sup>29</sup> Human Rights Watch and JustFair, “‘I Felt So Stuck’: Inadequate Housing and Social Support for Families Seeking Asylum in the United Kingdom” (2023) [https://www.hrw.org/sites/default/files/media\\_2023/09/crd\\_uk0923web.pdf](https://www.hrw.org/sites/default/files/media_2023/09/crd_uk0923web.pdf) 15.