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Welsh Women's Aid

Rhoi Merched a Phlant yn Gyntaf
Putting Women & Children First

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These are the views of:	<i>Welsh Women's Aid (Third Sector) - the national charity in Wales working to end domestic abuse and all forms of violence against women.</i>

About Welsh Women's Aid:

Welsh Women's Aid is the umbrella organisation in Wales that supports and provides national representation for independent third sector violence against women, domestic abuse, and sexual violence (VAWDASV) specialist services in Wales. Our membership comprises of 20 specialist support services. These services deliver lifesaving and life-changing support and preventative work in response to violence against women, including domestic abuse and sexual violence against children and young people, men and boys, trans and non-binary people, as part of a network of UK provision. As an umbrella organisation, our primary purpose is to prevent domestic abuse, sexual violence, and all forms of violence against women and ensure high quality services for survivors that are needs-led, gender responsive and holistic. We collaborate nationally to integrate and improve community responses and practice in Wales. We also award the Wales National Quality Service Standards (NQSS), a national accreditation framework for domestic abuse specialist services in Wales (supported by the Welsh Government) as part of a UK suite of integrated accreditation systems and frameworks. (More information on the NQSS can be found [here](#)).

Welsh Women's Aid fundamentally believe The Illegal Migration Bill will significantly impact women and children fleeing to the UK due to risk of serious harm and/or persecution in their home country and exacerbate the trauma of migrant survivors of VAWDASV.

The Istanbul Convention came into force on the 1st of November 2022; 10 years after it was first signed. Welsh Women's Aid were disappointed that the UK Government chose to ratify with reservations, including Article 59¹; which concerned support for migrant women and girls who

¹ Council of Europe Convention on preventing and combating violence against women and domestic abuse, Article 59.

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experience gender-based violence. This choice, alongside the Bill, demonstrates a complete lack of compassion for migrant women and children, and will cause significant harm to those migrants who are survivors of VAWDASV. This alarming pattern in legislation of choices to actively exclude the most vulnerable women and girls in our society, creates a two-tiered system of access and support. The implementation of this Bill will significantly undermine the UK Governments proclaimed commitment to addressing violence against women and girls.

General introduction of the Bill

The UN 1951 Refugee Conventions outlines the terms of refugees, their rights and the legal obligation of States to protect them. One of the core principles is non-refoulement, meaning that a refugee should not be returned to their country where they face serious threats to their life or freedom. Article 3² prohibits any discrimination to refugee's based on their race, religion or origin of country. There are currently no safe and legal routes for migrants to enter the UK, as highlighted by Stella Creasy MP during the Committee Stage³, and there will continue to be none if this Bill is enacted. Asylum must be sought from within the UK; however, many people fleeing war and persecution are unable to access or obtain the required passports or visas. As highlighted by the UNHCR, the Convention explicitly recognises that refugees may be forced to enter a country irregularly⁴. If the Bill was to be implemented, migrants will be penalised for entering the UK via irregular routes, whilst no accessible legal routes are found, creating an impossible situation for those in need. The Bill will not reduce the number of migrants who take irregular routes but *will* inevitably cause an increase in the number of women and children exploited in hidden and organised illegal trade. These women and children would then be likely returned to their country of origin where they have been subject to significant harm and/or violence. This process would contradict the UK's obligations under the Convention and would deny protection to asylum-seekers and refugees⁵. The implementation of Clause 1(5) will mean that numerous Articles under the European Convention on Human Rights, which is implemented under the Human Rights Act 1998 will not be fulfilled. Migrant women and children will not be able to have their claims heard if they unequivocally are fleeing harm and violence. This abolishes their right to life, liberty, security of a person and for a fair trial⁶. There is a clear disregard to support and uphold migrant survivors' human rights.

² The Convention relating to the Status of Refugees 1951, Article 3.

³ <https://hansard.parliament.uk/commons/2023-03-28/debates/6F481923-B613-4807-BD4B-B1ED72AC3A75/IllegalMigrationBill> , column 921.

⁴ The Convention relating to the Status of Refugees 1951, Article 31 (1).

⁵ <https://www.migranthehelpuk.org/news/statement-on-the-governments-announcement-of-the-illegal-migration-bill>

⁶ <https://rm.coe.int/commhr-2023-8-letter-to-united-kingdom-speaker-of-the-houses-of-parlia/1680aaad61>

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Duty to make arrangements for removal

WWA strongly believe that this Bill demonstrates a significant lack of understanding or appreciation of the desperate circumstances that many women and children are forced to flee, and the lack of choice on a route to safety that is accessible to them. Women and children would not cross waters in a small boat, unless the risk of serious harm and death was less severe and scary than that which they were escaping. 48% of people displaced across borders are estimated to be women and girls⁷ and up to 70% of female forced migrants have experience sexual or gender-based violence⁸. The vulnerability and trauma of displaced women and children has not been considered following the introduction of the Bill, and this oversight will result in further traumatising by the institutions whose fundamental duty is to protect. Removing migrants who have arrived irregularly, as stated above, disregards Article 31 of the 1951 Convention. It explicitly highlights that the state should not impose penalties on account of their illegal entry or presence on refugees. There are currently no legal routes in the UK and therefore migrants are having to travel across continents- the removal of migrants who arrive via irregular routes constitutes a complete asylum ban⁹. The Refugee Council highlighted in March 2023 that no Ukrainian nationals had been recorded entering via crossing the channel (via boats) as over 200,000 visa's had been provided to those displaced by the war¹⁰. It is unclear why this is not a standardised procedure for all migrants displaced by war irrespective of their location in the world and we believe that this same commitment must be made to all migrants, as highlighted by Olivia Blake MP during the Committee Stage¹¹. We believe this must be regardless of how individuals enter into the country; when individuals are fleeing persecution, conflict, violence, and human right violations. Analysis of recent data published from the Home Office found that the vast majority of those arriving via small boats would be accepted as refugees, if their application was heard¹². Removing the protection claims, human rights claim and focusing on the method of arrival, dissolutions the fundamental fact that migrants have the right to seek and enjoy asylum from persecution, unconditionally. It also allows the Secretary of State to still have duty to removal an individual, even though there may be legitimate legal proceedings happening, which would end their removal¹³. This denies protection for those migrants involved and undermines the rule of law¹⁴. The

⁷ <https://www.unhcr.org/62a9d1494/global-trends-report-2021>

⁸ <https://jantrust.org/blog/migrant-women-in-the-uk-are-at-risk-of-becoming-victims-of-modern-slavery/>

⁹ <https://www.unhcr.org/uk/news/press/2023/3/6407794e4/statement-on-uk-asylum-bill.html>

¹⁰¹⁰ <https://www.refugeecouncil.org.uk/wp-content/uploads/2023/01/Refugee-Council-Channel-Crossings-briefing-March-2023.pdf>

¹¹ <https://hansard.parliament.uk/commons/2023-03-27/debates/5D4369C7-D5F5-42D5-B8DF-462BC5DDA601/IllegalMigrationBill>, column 753.

¹² <https://www.refugeecouncil.org.uk/latest/news/majority-of-people-on-small-boats-crossing-channel-last-year-are-refugees-new-analysis-shows/>

¹³¹³ <https://publiclawproject.org.uk/content/uploads/2023/03/Illegal-Migration-Bill-briefing.pdf>, paragraph 20.

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Bill intends to be retrospective; the duty would apply on or after the 7th of March 2023. This retrospective nature will discriminate against migrants who acted with no knowledge of this law and its consequences to them, further regressing their freedom, access to autonomy and choices. We categorically believe that everyone has the right to live life without fear and to be able to claim asylum to achieve this.

Detention and bail

The Refugee Council highlighted in March 2023, that nearly half of those who crossed the channel were from 5 countries, Afghanistan, Iran, Syria, Eritrea and Sudan. All of these countries have current asylum grant rates of over 80%, with three countries having rates of 98%¹⁵. This further reiterates that of those who use irregular routes to reach the UK, a significantly high number would be granted asylum if their application was allowed. Detention under the Bill for migrants who have taken irregular routes into the UK, again, contravenes Article 31 of the Convention¹⁶. States must not impose penalties on the account of their illegal entry¹⁷. Without the implementation of the Bill, there is already a current back log of the processing of asylum applications and migrants are remaining in detention for significant periods of time. Significantly reducing the processing times for applications should be one of the main UK Governments priorities, but this has not been addressed in the Bill. Women and girls who have fled to the UK, escaping violence and risk of serious harm, are being held in conditions which present a clear threat to their wellbeing and even their lives. Currently, there is no regulation on the time spent in these institutions and as highlighted by Refugee Action this a violation of an individual's right to liberty- a fundamental human right¹⁸. The Bill would allow the Secretary of State to determine what is a reasonable period of detention and not the courts. This could allow for situations where women and children are detained for a significant amount of time, unless they are able to be granted bail - which can only be applied for after 28 days of detention. As highlighted by Alison Thewliss MP during Committee Stage, this means that thousands more migrants will be trapped in the system indefinitely¹⁹. There is a lack of accounting for the vulnerability of women and child migrants, a lack of understanding of the retraumatisation that can occur when a survivor of VAWDASV is detained in such an environment, and a disregard that they must be able to access essential services as soon as they enter the UK, irrespective of their method of entry. The risk

¹⁴ *ibid.*

¹⁵ <https://www.refugeecouncil.org.uk/wp-content/uploads/2023/01/Refugee-Council-Channel-Crossings-briefing-March-2023.pdf>

¹⁶ The Convention relating to the Status of Refugees 1951, Article 31 (1).

¹⁷ *ibid.*

¹⁸ <https://www.refugee-action.org.uk/wp-content/uploads/2023/03/Hostile-Accommodation-Refugee-Action-report.pdf>

¹⁹ <https://hansard.parliament.uk/commons/2023-03-28/debates/6F481923-B613-4807-BD4B-B1ED72AC3A75/IllegalMigrationBill>, column 883.

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of serious harm and violence does not disappear when women and children arrive in the UK. Within immigration detention centres, there has been significant levels of gender-based violence found²⁰. As highlighted by the Council of Europe Commissioner for Human Rights²¹, we strongly believe that the holding of migrant women and children in detention camps, with their claims being inadmissible, is inhumane and contravenes the UK's human right and international law obligations.

Modern Slavery, trafficking, and children

The Illegal Migration Bill could alter focus to the criminalisation of the gangs and criminals who 'own' or 'facilitate' the irregular routes. In December 2020, the UK Government ended the only safe route in operation for people seeking asylum²². The justification of the disapplication of many modern slavery provisions based on a person being a "threat to public order" due to them arriving irregularly is prejudicial, based on the prior action of the UK Government removing safe and legal routes. The International Organisation for Migration have highlighted that women and girls are disproportionately affected by modern slavery and account for 71% of the total, and 99% of victims of forced labour in the commercial sex industry²³. The risk of modern slavery and trafficking does not end after a women or girl enters the UK. Victims of adult or child sexual exploitation remain vulnerable to further exploitation. The Bills' intended removal of potential victims of slavery or trafficking is not compatible with the UK's International human rights or trafficking obligation. Under the Council of Europe Convention on Action against Trafficking in Human Beings, states must protect the rights of the victims of trafficking, promote a human rights-based approach and a child sensitive approach²⁴. Jane Hutt MS: Minister for Justice, in her Legislation Consent Memorandum, has highlighted that the Welsh Government position is that of 'child first, migrant second' and that the Bill does not recognise the devolved context of Wales; therefore, she cannot recommend the Senedd gives consent to these provisions²⁵.

With the creation of this Bill and the removal of support provisions for those who arrive irregularly, the UK Government have significantly disregarded the duty that they have to provide support to potential victims of slavery or trafficking. The 'stop the small boats campaign' neglects the need to protect migrants from being exploited by criminal gangs and instead focuses heavily on their method of arrival. We strongly believe the UK Government need to focus on the reason why migrants are having to resort to dangerous irregular routes and those who facilitate this; there must be a

²⁰ <https://www.birmingham.ac.uk/documents/college-social-sciences/social-policy/iris/2022/sereda-wales-report.pdf>

²¹ <https://rm.coe.int/commhr-2023-8-letter-to-united-kingdom-speaker-of-the-houses-of-parlia/1680aaad61>

²² Dublin Regulations (EU 604/2013)

²³ https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.

²⁴ Council of Europe Convention on Action against Trafficking in Human Beings, Chapter I Article 1(b) and Chapter II Article 5(3).

²⁵ <https://senedd.wales/media/y1pndlk0/lcm-ld15778-e.pdf>.

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commitment to make safe and available routes for all migrants and trauma-informed support available for all. The crime of human trafficking and modern slavery does not happen in silo, factors such as discrimination and a disregard of human rights by a state facilitate gangs to take advantage of vulnerable people in desperate situations. The Bill demonstrates a priority of immigration enforcement and a complete lack of understanding of the trauma experienced by migrant women and children before, after and during re-settlement.

Conclusion

We believe that the implementation of this Bill, puts migrant women and children at risk of further significant harm and will further traumatise survivors of VAWDASV. The UK Government have vocally expressed their commitment to violence against women and girls, however this Bill significantly undermines this commitment. The Bill contravenes the UK's domestic and international human rights, human trafficking and rights of the child obligations. We call on the UK Government to re-think this Bill and focus on the rights and protections of women and children migrant victims, and the establishment and maintenance of safe and legal routes. Everyone, regardless of immigration status, must be able to live a life without fear in the UK.

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