Migrants' Access to Independent and Impartial Justice in the United Kingdom

Submission by Women in Refugee Law (WiRL) to the UN Special Rapporteur on the independence of judges and lawyers*

Call for inputs: Migrants' Access to Independent and Impartial Justice Systems | 24 November 2026

About WiRL

Women in Refugee Law (WiRL) is a global network of more than 400 members, established in 2021 to re-centre the experiences and rights of women within refugee law, policy and practice. Around 150 UK members include refugee and asylum-claiming women, legal practitioners and scholars, former judges, NGO workers, activists and service providers. This submission draws on WiRL research and members' expertise. It focuses on women seeking asylum, including women in families and the effects of the asylum justice system on women as mothers and their children.

WiRL welcomes the opportunity to respond to this call and highlight our concerns regarding refugee and asylum-seeking women. Our submission does not cover all the questions that the Special Rapporteur asks, but focuses on particular areas where we have evidence.

We consent to publication and are happy for our submission to be published on the Special Rapporteur's OHCHR homepage and confirm that no individual cases or identifying information are included.

Summary

The United Kingdom currently provides a judicial appeal to the First-tier Tribunal (Immigration and Asylum Chamber) against specified asylum, protection and human rights decisions, with onward appeal on an error of law to the Upper Tribunal and judicial review, where appropriate. These mechanisms are indispensable because errors in first-instance asylum decisions may expose women and children to persecution, torture, gender-based violence, trafficking, family separation and refoulement. Although successful appeals do not necessarily mean that every initial decision was unlawful, the substantial proportion of protection and human rights appeals that are allowed confirms that independent judicial appeal is not merely an administrative stage: it is an essential protective and error-correcting safeguard.[1] Yet effective access is undermined by a severe shortage of publicly funded legal representation, long delays, interpretation and evidential barriers, and inconsistent gender- and trauma-sensitive practice.[2]

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[1] Ministry of Justice, *Tribunal Statistics Quarterly: April to June 2026* (10 September 2026), reporting that 39% of determined protection appeals and 42% of determined human-rights appeals were allowed, https://www.gov.uk/government/statistics/tribunals-statistics-quarterly-april-to-june-2026/tribunal-statistics-quarterly-april-to-june-2026, accessed 16 November 2026.

[2] Jo Wilding, *No Access to Justice 2: Mapping the UK's Continuing Immigration and Asylum Legal Advice Crisis* (Justice Together, June 2025), https://justice-together.org.uk/articles/no-access-to-justice-2 ; Selbi Durdiyeva, *Cultural, Linguistic and Procedural Barriers to Access to Justice in Immigration and Asylum Tribunals: Report 1 – Language, Evidence and*

The proposed Immigration and Asylum Bill 2026[3] would progressively replace first-instance judicial adjudication with an Independent Immigration Appeals Authority (IIAA).[4] WiRL is concerned that the proposed authority lacks adequate structural separation from the Home Office, which is a party to the appeals, and that adjudicators need not possess the legal expertise and experience of existing judges. The reform risks prioritising turnover over independent, specialist and accurate adjudication. Weakening independent judicial scrutiny is particularly concerning when appeals continue to correct a substantial proportion of initial decisions. These risks have a specific and detrimental impact on women, whose claims frequently depend on delayed disclosure, testimony about private violence, complex "particular social group" analysis, and assessment of State protection, internal relocation, trafficking and family life.[5]

1. Access to independent adjudication and review

At first instance, the Home Office determines claims under the Refugee Convention, humanitarian protection and Articles 2, 3 and 8 of the European Convention on Human Rights. Appeals within statutory rights of appeal are presently determined by legally qualified judges in the First-tier Tribunal, institutionally administered through His Majesty's Courts & Tribunals Service. Its procedure rules, vulnerability guidance and Equal Treatment Bench Book support participation and fair fact-finding. The Upper Tribunal considers errors of law, and judicial review provides an additional public-law remedy.

The Bill now before Parliament would establish the IIAA and eventually transfer most first-instance immigration and asylum appeals from the Tribunal. The Home Secretary would appoint the Chair and first Chief Executive, while the Chief Executive would appoint adjudicators. The Bill would require the new appeals authority not only to determine individual appeals fairly and independently, but also to have regard to the wider public interest and to its role within the immigration and asylum system. This system is expressly intended to support faster resolution of cases and the removal of people whose appeals are unsuccessful. Requiring the authority to consider these wider government objectives risks creating actual or perceived bias, particularly because the Home Office would be a party to the appeals that the authority determines. Replacing specialist judges with adjudicators who need not have equivalent legal qualifications removes independent judicial oversight without demonstrating that judicial structure causes the backlog.[6]

Procedure (Public Law Project, June 2026), https://publiclawproject.org.uk/content/uploads/2026/07/PLP_Cultural-Linguistic-and-Procedural-Barriers.pdf ; Women in Refugee Law, *Submission: The New Independent Appeals Body – Call for Evidence* (20 April 2026), https://wirl.org.uk/wp-content/uploads/2026/04/WiRL-submission_Asylum-Appeals-Body_April-2026.pdf .

[3] Immigration and Asylum Bill 2026–27, Bill 153 (as amended in Public Bill Committee, 4 November 2026), UK Parliament, https://bills.parliament.uk/bills/4254.

[4] Home Office, *Immigration and Asylum Bill: Independent Immigration Appeals Authority* (8 October 2026), https://www.gov.uk/government/publications/immigration-and-asylum-bill-2026-factsheets/immigration-and-asylum-bill-independent-immigration-appeals-authority.

[5] Women in Refugee Law (WiRL), *The New Independent Appeals Body* above in n 2; Gina Clayton, Tanya Crowther, Jane Kerr, Sarah Sharrock and Debora Singer, *Through Her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals* (NatCen Social Research and Asylum Aid, November 2017), https://www.asylumaid.org.uk/sites/default/files/2021-07/2017_Through-Her-Eyes_Enabling%20Women's%20Best%20Evidence.pdf .

[6] Immigration Law Practitioners' Association (ILPA) (2026a), *Statement on the Independent Immigration Appeals Authority*, 1 July 2026. https://ilpa.org.uk/ilpa-statement-re-independent-immigration-appeals-authority-1-july-2026/, JUSTICE (2026), *Immigration and Asylum Bill briefing and IIAA materials*. https://justice.org.uk/briefings/asylum-and-immigration-bill,Liberty (2026), *The Immigration and Asylum Bill risks weakening our right to family life*. https://www.libertyhumanrights.org.uk/issue/the-immigration-and-asylum-bill-risks-weakening-our-right-to-family-life/, Women in Refugee Law (2026), *Submission: The new Independent Appeals Body*, 20 April 2026. https://wirl.org.uk/resource/submission-to-new-independent-appeals-body/ .

For women's asylum claims, legal expertise is particularly important. Gender-related persecution cases are complex because they may engage membership of a particular social group, non-State actor violence, the availability and effectiveness of State protection, internal relocation, trafficking, and engagement with additional international legal instruments such as the Convention on the Elimination of all Forms of Violence against Women (CEDAW) and Article 60 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention). Training cannot fully substitute for the analytical discipline and security of tenure associated with an independent, legally qualified judiciary. Appointments, remuneration, discipline, case allocation and administration must be demonstrably separate from the Home Office, which is defending the challenged decisions.

2. Legal assistance

Asylum remains within the scope of legal aid in England and Wales, but formal eligibility does not ensure that a qualified provider has capacity. Dr Jo Wilding (2025)[7] estimates a minimum 57% deficit in England and Wales in 2023-24 between the number of new claims for asylum or appeals and the number of new legal-aid matters opened, representing an increase from a 51% deficit in 2022-23 and a 40% deficit in 2021-22.

The consequences are gendered. According to domestic analysis,[8] represented women felt better informed, prepared and able to present relevant facts. Legal representation is needed long before the appeal hearing to build trust, identify legally relevant facts, prepare a detailed witness statement, obtain medical or psychological evidence, research country conditions and explain delayed disclosure. Without it, an appeal may be formally available but practically ineffective.

3. Procedural and evidential safeguards for women and children

Women who have experienced sexual or gender-based violence may disclose late because of trauma, shame, threats, cultural constraints, dependence on a relative, distrust of officials or fear of an interpreter. Trauma may affect memory, including of events and chronology, and presentation or demeanour. Gender-based violence often occurs in private and may leave limited physical evidence; the woman's testimony may be the principal evidence. Asylum decision-makers must not treat delay, inconsistency or the absence of documentation as determinative without contextual assessment.

Enabling women's effective presentation of their claims requires:

- qualified, independent interpreters matched for language and dialect, with trauma awareness and the option of a female interpreter;
- sufficient preparation time and funded access to medical, psychological and country experts;
- early identification and recording of vulnerability and reasonable adjustments, including an all-female hearing panel, breaks, sensitive questioning, accessible facilities and childcare;
- an oral hearing whenever credibility, vulnerability or contested facts are material;
- pre-hearing identification of disputed issues, so women are not cross-examined unnecessarily on distressing facts; and
- gender-sensitive, holistic and intersectional country-of-origin information that records information gaps and treats lived experience as expertise.

[7] Jo Wilding, *No Access to Justice,* above in n 2.

[8] Gina Clayton, Tanya Crowther, Jane Kerr, Sarah Sharrock and Debora Singer, *Through Her Eyes: Enabling Women's Best Evidence in UK Asylum Appeals,* above in n 5.

A rigorous approach to asylum adjudication is particularly important in light of the evidentiary obstacles for women. Recent WiRL and Asylos research (Querton and Wilbourn, 2026)[9] highlights that information on violence against women may be unavailable because abuse occurs in private, official statistics under-record it, and country assessments may marginalise relevant material. Absence of information must not be treated as absence of risk. Safe-country designations require particular scrutiny of risks to lesbian, bisexual and trans women, trafficked and disabled women, women from minority groups, and women with children. These safeguards also protect children.

The Immigration and Asylum Bill 2026 proposes to narrow the legal definition of family life and therefore may exclude relationships such as grandparents caring for grandchildren or adult relatives providing essential care, and may constrain proportionality assessment.[10] Article 8 ECHR decision-making must preserve an individualised assessment of family life and children's best interests.

4. Scale, delay and the corrective function of appeal

Official data show a serious capacity crisis. Between April-June 2026, the First-tier Tribunal received 21,762 cases and disposed of about 17,000. The open caseload reached 156,000, 48% higher than a year earlier. Mean clearance time was 72 weeks for asylum/protection appeals and 74 weeks for human-rights appeals. Of the 7,500 cases substantively determined, 39% of protection appeals and 42% of human-rights appeals were allowed.[11] These rates do not prove that every initial decision was unlawful, because evidence or circumstances may change. They do, however, show that independent appeal performs a major protective and error-correcting function.

Women are represented within this caseload and are therefore affected by these substantial delays. For women awaiting decisions on claims involving gender-based persecution, trafficking or family life, delay may prolong insecurity, family separation and uncertainty about safety and status. Delay prolongs insecurity and poverty within families, while accelerated procedures can prevent mothers from obtaining evidence or disclosing violence. However, the published statistics do not provide information about the scale or the particular nature of this impact.

The pressure largely reflects an exceptional rise in incoming work. Annual First-tier Tribunal submitted appeals increased from 37,773 in 2022–23 to 117,722 in 2025-26. The Ministry of Justice attributes the steep rise from late 2023-24 principally to protection appeals generated by Home Office work on legacy claims. Despite a 30% annual rise in quarterly disposals, submitted appeals still exceeded disposals. Replacing judges therefore does not solve the underlying arithmetic and does not address the root of the problem, which is the quality of the initial decisions made by the Home Office.[12]

The published data also limit accountability. Recent ordinary Upper Tribunal appeals data are unavailable because of case-management-system migration. Statistics do not show outcomes by sex,

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[9] Christel Querton and Emily Wilbourn, *The Impact of "Safe Country" Concepts on Women Seeking Asylum in the UK* (Women in Refugee Law and Asylos, 2026), https://wirl.org.uk/database-entry/querton-wilbourn-the-impact-of-safe-country-concepts-on-women-seeking-asylum-in-the-uk-2026/.

[10] Home Office, 'Immigration and Asylum Bill: Article 8 Reform' (8 October 2026), https://www.gov.uk/government/publications/immigration-and-asylum-bill-2026-factsheets/immigration-and-asylum-bill-article-8-reform; Immigration and Asylum Bill 2026–27, Bill 153 (as amended in Public Bill Committee, 4 November 2026), https://bills.parliament.uk/bills/4254; Liberty, 'The Immigration and Asylum Bill risks weakening our right to family life' (2026), https://www.libertyhumanrights.org.uk/issue/the-immigration-and-asylum-bill-risks-weakening-our-right-to-family-life/.

[11] Ministry of Justice, *Tribunal Statistics Quarterly: April to June 2026* (10 September 2026), above in n 1.

[12] Independent Chief Inspector of Borders and Immigration, *An Inspection of Asylum Casework (June–December 2025)* (25 June 2026), finding that asylum decision quality had declined significantly to an "unacceptable level", with consequences for the wider system, https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-asylum-casework-june-december-2025.

type of gender-based claim, representation status, vulnerability, interpreter problem, hearing mode, remittal or final result. Nor do they adequately explain the 29% of disposals recorded as withdrawals or the 17% struck out for non-payment between April and June 2026.

The absence of sex- and gender-disaggregated data means that the effect of delay, lack of representation, withdrawals, and appeal outcomes on women cannot be properly monitored. Nonetheless, the impact on women should not be treated as absent simply because it is not measured.

5. Accelerated procedures and effective remedies

Speed is important, but must not displace accuracy. The Bill would introduce claim notices requiring people facing removal or deportation to raise any immigration, asylum, human-rights or modern-slavery grounds within a specified period. Claims made after that deadline could be dealt with through a fast-track late-claims procedure, with an expedited appeal where the claim is refused. These compressed procedures risk penalising women who disclose gender-based violence or trafficking late because of trauma, shame or coercion, or who are unable to obtain legal advice and supporting evidence within the prescribed period. The case of *R (PN (Uganda)) v Secretary of State for the Home Department [2020] EWCA Civ 1213,*[13] illustrates the irreversible and gendered harm that can follow from an accelerated system lacking adequate safeguards: after rapid refusal and appeal within the former Detained Fast Track, the appellant was removed and subjected to further SGBV before the UK later facilitated her return following judicial review findings of unlawfulness.

Challenges to removal must have automatic suspensive effect where a credible risk of persecution, torture, trafficking, sexual violence or onward refoulement is raised, or effective interim relief must be realistically accessible. Review must permit examination of fact and law, new evidence and changed circumstances, and must provide an enforceable remedy. Internal review by the IIAA cannot replace effective access to the Upper Tribunal and judicial review.

6. Challenges facing lawyers and civil society

The proposed IIAA would operate against the background of an existing shortage of publicly funded immigration and asylum legal representatives. Inadequate legal-aid remuneration, high caseloads, and expedited procedures may limit advisers' ability to take instructions sensitively and obtain medical, psychological and country evidence. Expanding adjudicative capacity without increasing access to specialist representation risks producing faster decisions without ensuring fair and gender-sensitive participation and just access to the legal processes.

Refugee-led and women's organisations provide trusted information and specialist knowledge but cannot substitute for regulated legal representation. Their expertise, alongside that of specialist legal advisers and clinicians, should inform the IIAA Procedure Rules, the training of adjudicators and casework staff, gender-sensitive country information, and independent monitoring. Women with lived experience should be meaningfully involved in designing and evaluating this work, but without transferring the State's responsibilities to civil society.

[13] *R (on the application of PN (Uganda)) v Secretary of State for the Home Department* [2020] EWCA Civ 1213, https://www.judiciary.uk/judgments/pn-uganda-v-sshd/.

Recommendations

1. Retain independent, judicial first-instance determination of asylum and human-rights appeals. If the IIAA proceeds, place appointments, tenure, discipline, case allocation and administration under structures independent of the Home Office, using the Judicial Appointments Commission or an equivalent body.
2. Require legally qualified and experienced adjudicators with specialist refugee, human-rights, equality and family-law competence; preserve effective Upper Tribunal appeal, judicial review and interim relief.
3. Restore sustainable legal aid for early advice, preparation, representation and necessary expert evidence, with capacity planning by region and appeal stage.
4. Prohibit adverse treatment of late disclosure unless trauma, gender-based violence, trafficking, disability, age, interpretation, coercion and access to advice have been assessed.
5. Guarantee a female interpreter where requested, vulnerability identification and reasonable adjustments, including an all-female hearing, childcare, sufficient preparation time and oral hearings where fair participation requires them.
6. Require gender-sensitive, intersectional and regularly updated country information, transparently recording gaps and including women with lived experience as co-producers of knowledge, at all stages of asylum decision-making.
7. Publish anonymised decisions and disaggregated data on sex/gender, type of claim, representation, vulnerability, hearing mode, withdrawals, strike-outs, appeals, remittals and final outcomes.
8. Improve Home Office initial decision quality and pre-hearing issue narrowing so that speed does not merely transfer flawed initial decisions into a larger appeal backlog.
9. Protect the independence and confidential work of lawyers, community justice workers and civil-society organisations, and consult refugee women and specialist organisations in all aspects of asylum adjudication law, policy and practice.