



# Joint Briefing on Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024

Amended version for website (case studies edited)

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## Introduction

1. This is a joint briefing of the Immigration Law Practitioners' Association (ILPA) and Rainbow Migration. We collectively recommend that each House does *not* approve the [Draft Nationality, Immigration and Asylum Act 2002 \(Amendment of List of Safe States\) Regulations 2024](#) ('Draft Regulations').

## Summary

2. The Draft Regulations seek to add Georgia and India to the list of not-yet commenced<sup>1</sup> 'Safe States'.<sup>2</sup> This would have two clear and far-reaching effects.
3. **First**, the Draft Regulations would mean that, under section 6 of the Illegal Migration Act 2023, absent 'exceptional circumstances', Indian and Georgian nationals, who meet the four conditions in section 2 of the 2023 Act:
  - may be removed to India or Georgia *without* any individualised assessment of India or Georgia's safety for the particular individual, including the State's ability and willingness to provide protection;
  - would have *no* ability to make a serious harm condition suspensive claim, on the basis that they would face a real, imminent and foreseeable risk of serious and irreversible harm if removed to India or Georgia before any application for judicial review was exhausted.<sup>3</sup>

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<sup>1</sup> Section 59 of the Illegal Migration Act 2023 ('2023 Act') is only commenced for the purpose of making regulations. See regulation 2(c) of [The Illegal Migration Act 2023 \(Commencement No. 1\) Regulations 2023](#).

<sup>2</sup> In section 80AA(1) (Safe States for the purposes of section 80A) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), as amended by section 59 of the 2023 Act.

<sup>3</sup> The requirements to meet the serious harm condition are further detailed in section 39 of the 2023 Act.

- would have *any* human rights claim or protection claim they make, regarding their removal to India or Georgia, declared inadmissible.<sup>4</sup>
4. Blanket inadmissibility of asylum claims is highly problematic. The Home Office accepts Indian and Georgian asylum claims not to be ‘unfounded’, as the [Secondary Legislation Scrutiny Committee \(SLSC\)](#) notes:

*‘The Home Office stated that of the applications from Georgian nationals that had been decided, asylum had been granted in 29% of cases in the year to September 2022 and 16% in the year to September 2023. For Indian nationals, 4% of applications were granted in the year to September 2022 and 7% in the year to September 2023. These figures suggest that, for Georgia in particular, a significant percentage of claims that would previously have been granted would be ruled inadmissible under the Regulations (barring exceptional circumstances).’*
  5. These changes mean that those Indian and Georgian nationals, who are *in fact* refugees, would never have the opportunity to have their entitlement to protection considered in the UK and could face unlawful *refoulement* to India or Georgia respectively.
  6. **Second**, the Draft Regulations would inappropriately extend the current inadmissibility process for asylum claims from European Union (EU) nationals, to cover Indian and Georgian nationals: making human rights claims regarding their entry to or removal from the United Kingdom inadmissible,<sup>5</sup> and providing no right of appeal.
  7. It would strip all Indian and Georgian nationals of their ability to make admissible human rights applications, including individuals who have always obeyed the law and are seeking to lawfully extend their stay or enter the UK on the basis of human rights. Individuals are singled out by their nationality, rather than by their behaviour. An individual’s claim would be inadmissible *regardless* of whether they entered with and have the appropriate permission to be in the UK, or whether they are lawfully seeking to enter the UK for the first time to be reunited with their family. Prohibiting consideration of human rights claims, which are overwhelmingly well-founded on the basis of the Home Office’s own statistics,<sup>6</sup> does not advance the purpose of the Illegal Migration Act 2023 to ‘prevent and deter *unlawful* migration’.

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<sup>4</sup> Illegal Migration Act 2023, section 5.

<sup>5</sup> Section 66, by reference to section 4(15) of the 2023 Act, defines a “human rights claim” as having the meaning given by section 113(1) of the 2002 Act.

<sup>6</sup> The Home Office’s own [statistics](#) on ‘Why do people come to the UK? For family reasons’, updated 14 November 2023, shows that in the year ended 2022, India was the second highest nationality for family-related visas: 5,820 visas were granted in the year ending September 2023, with a grant rate of 92%. From 1 January 2022 to September 2023, only 6 of 99 family-related visas were refused to Georgian nationals (see [Entry clearance visa applications and outcomes detailed datasets](#), year ending September 2023, Data\_Vis\_D02), constituting a 94% grant rate.

8. Moreover, many human rights claims, unlike asylum claims, are based on a person's private and family life, their connection to the UK, such as having a partner or children in the UK, dependency on a person in the UK, or lack of ties to the country of proposed return. Imposing a near-blanket ban on consideration of human rights claims, due to the perceived 'general' safety of India or Georgia, is likely to cause breaches of individual human rights.
9. The below examples merely relate to Article 8 (the right to respect for private and family life); however, individuals may also have claims arising under the non-derogable rights contained in Articles 2 (right to life), 3 (right not to be subjected to torture or to inhuman or degrading treatment or punishment) and 4 (right to be free from slavery, servitude, and forced or compulsory labour) of the ECHR.

#### **Example 1: Family Reunification**

##### **Preventing a Georgian child lawfully residing in Georgia from joining their Georgian parent, a refugee, who is lawfully residing in the UK**

If an application for family reunion is made on the basis that refusing the child entry to the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998, because it would disproportionately interfere with the parent's right to respect for private and family life under Article 8 of the European Convention of Human Rights, the child's claim could not be considered under the Immigration Rules and would be declared inadmissible under section 80A of the Nationality, Immigration and Asylum Act 2002, as amended by the Illegal Migration Act 2023 (once in force), unless 'exceptional circumstances' apply. The child would have no right of appeal against that inadmissibility declaration. It would appear that the Home Secretary would not ordinarily consider the claim, and thus the extent to which family life is effectively ruptured, ties of the Georgian parent to the UK, whether there are insurmountable obstacles to the family living together in Georgia (given the parent is a refugee), and the child's best interests.

#### **Example 2: Leave to remain for spouse of British citizen**

##### **Forcing an Indian-British married couple to live outside the UK**

If an Indian national has leave to remain as a spouse of British national and makes an extension application for further leave to remain as a spouse under Appendix FM to the Rules and/or on the basis that removal would disproportionately interfere with their rights to private and family life under Article 8 of the European Convention of Human Rights, absent 'exceptional circumstances' their claim could not be considered under the Immigration Rules and would be declared inadmissible, without any right of appeal. If the individual has no other basis on which to remain in the United Kingdom, they are likely to overstay any existing leave they have, become subject to the hostile environment, and be liable to removal to India. In order to continue their family life, the British citizen spouse will likely have to leave the United Kingdom to try to live together as a couple in another country.

#### **Example 3: Long Residence Application**

**An Indian or Georgian national who has spent the last ten years studying, working and building a business in the United Kingdom might be forced to return**

If an Indian or Georgian individual had built up 10 years of continuous lawful residence in the United Kingdom and was seeking to settle on that basis, unless there were 'exceptional circumstances', it would appear that their claim also could not be considered under the Immigration Rules and would be declared inadmissible, without any right of appeal.

10. **The Home Office has not provided 'any clarity on whether existing claims will continue to be processed as previously or will be deemed inadmissible retrospectively, whenever the Regulations do come into practical effect. The House may wish to enquire further of the Minister on this point and to explore why this issue was not addressed in the [explanatory memorandum]' and why the Regulations are made now if the relevant 2023 Act provisions are not in force, as the SLSC [notes](#).**<sup>7</sup>
11. **The 'exceptional circumstances' provision is inadequate to stop the UK from breaching human rights.** The only examples of exceptional circumstances in the Illegal Migration 2023 Act are where a Member State has been suspended from the EU or has derogated from their obligations under the ECHR.<sup>8</sup> Importantly, India is not a signatory to the ECHR, and neither Georgia nor India are Member States of the EU. Furthermore, the operation of the 'exceptional circumstances' test remains opaque and impairs scrutiny, as the SLSC remarks in its [report](#):

*'The Home Office stated that guidance on this will be issued "in due course", but as this is critical to the operation of the policy in practice such guidance should have been made available alongside the instrument, and we suggest that proper scrutiny is not possible if the guidance is not published before the debate on these Regulations takes place.'*<sup>9</sup>

### **Evidence that Places in Doubt whether India and Georgia are Safe**

12. During its passage through Parliament, neither House considered or debated the safety or adequacy of the Illegal Migration Act's mechanisms in relation to India or Georgia. It was not proposed, at that time, that Georgia and India were in fact 'Safe States'.
13. In response to grave concerns regarding adding India to the list of states in the Schedule 1 to the 2023 Act, which does not have far-reaching consequences of these Draft Regulations, first, Lord Bellamy specifically assured the House during the debate:

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<sup>7</sup> Secondary Legislation Scrutiny Committee 4th Report of Session 2023–24 Drawn to the special attention of the House: Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024, 30 November 2023. Available at

<https://committees.parliament.uk/publications/42383/documents/210594/default/>

<sup>8</sup> Section 6(5) of the 2023 Act, and section 80A of the 2002 Act, refer to derogation under Article 15 of the European Convention on Human Rights, and the formal legal procedure for suspending an EU state, under Article 7(1) of the Treaty on European Union.

<sup>9</sup> Secondary Legislation Scrutiny Committee 4th Report of Session 2023–24 (n 6).

*'The first point to make is that if the migrant is a national of another country—with all respect to the Republic of Ghana, the Republic of Uganda or India, let us take Nigeria—and they make an asylum or human rights claim, for example because of a risk of persecution for their sexual orientation, they cannot be sent back to that country.'*<sup>10</sup>

Second, Lord Bellamy stated in response to the concerns the Lords expressed that the Home Secretary has powers in section 7 of the 2023 Act to 'exclude':

*'persons of particular sexual orientations or with particular protected characteristics set out in that clause'*.<sup>11</sup>

14. However, there is no such power in relation to section 80AA of the 2002 Act. The entire State is either safe in general for every description of person, or it is not.
15. The Home Secretary has not justified, properly or at all, *why* he is satisfied that Georgia and India meet the test detailed in subsection 80AA(3) of the 2002 Act that:
  - (a) *there is in general in that State no serious risk of persecution of nationals of that State, and*
  - (b) *removal to that State of nationals of that State will not in general contravene the United Kingdom's obligations under the Human Rights Convention.*
16. Moreover, subsection 80AA(4) details the matters to which the Home Secretary **must** have regard, and to which it is not clear that he has *in fact* had regard:
  - (4) *In deciding whether the statements in subsection (3)(a) and (b) are true of a State, the Secretary of State—*
    - (a) *must have regard to all the circumstances of the State (including its laws and how they are applied), and*
    - (b) *must have regard to information from any appropriate source (including member States and international organisations).*
17. There has been no separate impact assessment. The Explanatory Note for the Draft Regulations cross-refers to the [Impact Assessment](#) (No. HO 0438) published in relation to the Illegal Migration Bill, but nowhere in that Impact Assessment is there any mention of either India, Georgia, or their safety. The Draft [Explanatory Memorandum](#) to the Draft Regulations states the Home Secretary has determined India and Georgia are safe countries of origin, but provides no explanation of why or how the Home Secretary has come to this conclusion, and confirms no formal consultation was

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<sup>10</sup> [HL Deb 7 June 2023, Vol 830, Col 1392.](#)

<sup>11</sup> [HL Deb 7 June 2023, Vol 830, Col 1393.](#)

undertaken.<sup>12</sup> The [SLSC](#) recommended that ‘the House may wish to question the Minister further on how the Home Office arrived at the conclusion that it did’.

18. The ‘Executive Summary’ of the most recent US Department of State *2022 Country Report on Human Rights Practices* for each of [India](#) and [Georgia](#) does **not** put forward a situation of general safety in each country. The Home Office’s own Country Policy and Information [Note](#) (CPIN) *India: Actors of protection* (version 2.0, June 2023) admits varying effectiveness of the police and judiciary, incidents or arbitrary arrest and detention in 2022, as well as impunity for widespread human rights abuses including rape, torture, and death in custody.
19. **In light of these sources, it appears doubtful that the Home Secretary has properly carried out the statutory duties contained in section 80AA(4) of the 2002 Act.** The [SLSC](#) has stated, ‘there is clearly scope for different points of view. The House may wish to question the Minister further on whether the “widespread” and “significant” human rights abuses reported by the Home Office itself and by the US Department of State are consistent with the requirements of the Act.’
20. For instance, with regards to the rights of lesbian, gay, bisexual, trans, queer, and intersex (LGBTQI+) people, there is clear evidence of widespread human rights abuses against this community in both countries:
  - Whilst the Home Office’s CPIN *India: Sexual orientation and gender identity and/or expression* (version 5.0, August 2023) suggests that significant progress has been made for LGBTQI+ rights in India, the CPIN nonetheless notes that anti-LGBTQI+ attitudes persist and some sources indicate that societal discrimination and violence against this community is widespread, particularly in rural areas.
  - Similarly, the Home Office’s recently published CPIN *Georgia: Sexual orientation and gender identity and expression* (version 1.0, December 2023) notes widespread negative attitudes towards LGBTQI+ people prevail, and that anti-LGBTQI+ political rhetoric has fueled violence and discrimination against this community, particularly at public events such as Pride. It further cites evidence that LGBTQI+ people continue to face physical and psychological violence at home and in public, and that the state has been criticised for its failure to pursue perpetrators of violence against the LGBTQI+ community.
21. Rainbow Migration has previously raised concerns about the Home Office characterising countries as not ‘in general’ posing a risk to LGBTQI+ people in their CPINs, as this detracts from the correct legal test for risk in an asylum context. In the leading authority of *HJ (Iran) and HT (Cameroon) v SSHD* [2010] UKSC 32, the Supreme Court does not use the word ‘generally’ to refer to the *real risk*

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<sup>12</sup> Explanatory Memorandum to the Draft Nationality, Immigration and Asylum Act 2002 (Amendment of List of Safe States) Regulations 2024 <[https://www.legislation.gov.uk/ukdsi/2024/9780348253481/pdfs/ukdsiem\\_9780348253481\\_en\\_001.pdf](https://www.legislation.gov.uk/ukdsi/2024/9780348253481/pdfs/ukdsiem_9780348253481_en_001.pdf)> accessed 19 December 2023.

which openly LGBTQI+ people would face, but in fact reaffirms the principle that a ‘real risk’ may exist even where something does not ‘generally’ happen (§91). The relevant Home Office CPINs cited above still fail to refer to the ‘real risk’ of persecution, which remains the correct legal threshold. Nonetheless, they do both note that each individual claim should be considered on a case-by-case basis and the onus is on the LGBTQI+ person to prove such a ‘real risk’ of persecution or serious harm exists for them. As outlined above, there is evidence in the Home Office’s own CPINs for both countries that do indeed demonstrate there are many circumstances where LGBTQI+ people from India or Georgia could be at real risk of persecution if returned.

22. This is clearly supported by the relevant case studies set out below and in international jurisprudence. For example, between 2019 to 2021, the Refugee Protection Division of Canada’s Immigration and Refugee Board made 11 positive decisions in relation to grants of refugee protection to Indian nationals based on their sexual orientation, gender identity or expression or sex characteristics (SOGIESC).<sup>13</sup> Furthermore, as recently as August 2023, in Germany the Administrative Court of Halle granted refugee status to a gay man from Georgia.<sup>14</sup> Crucially, in that case the Court found that based on country-of-origin information, the Georgian state was neither willing nor able to effectively protect gay and transgender people from non-state persecution, that the lack of state protection constituted a systemic problem, and that no internal flight alternative was available because such persecution was not limited to individual parts of Georgia and the state’s willingness to provide protection was lacking throughout the entire country.
23. Therefore, it is clear that adding India and Georgia to the list of ‘Safe States’ would be wholly inappropriate and would place LGBTQI+ nationals of both countries at risk of persecution, torture, inhuman or degrading treatment, or serious harm. If all these claims are deemed automatically inadmissible under the Illegal Migration Act 2023, for the reasons outlined above, LGBTQI+ people seeking asylum would not be given an opportunity to set out their protection claims, have these claims assessed in line with the correct legal test and authorities for LGBTQI+ asylum cases (as set out by the Supreme Court in *HJ (Iran)*), and would instead need to raise a challenge using the unclearly defined ‘exceptional circumstances’ provision. If they are unable to meet this stringent threshold, they could then be at risk of *refoulement* and/or serious breaches of their human rights, with limited recourse to challenge their removal from the UK.
24. Please see the Annex for further examples of objective evidence.

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<sup>13</sup> See reported cases under ‘India’ and ‘SOGIE’ here: <<https://refugeelab.ca/rllr/>>

<sup>14</sup> Germany, Regional Administrative Court [Verwaltungsgerichte], *Applicant v Federal Office for Migration and Refugees (BAMF)*, No 5 A 374/22 , 07 August 2023, <<https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=3774>>

## Case Studies

25. Rainbow Migration has supported both Indian and Georgian nationals for several years who have been granted asylum in the UK or leave to remain on human rights grounds. They have provided the following case studies from LGBTQI+ individuals that they are currently supporting. Pseudonyms have been used to protect their identities.

### **Georgia - Case Study 1: "Ana"**

"Ana" is a bisexual women from Georgia, who entered the UK in 2023. Ana was attacked and brutally beaten by some men that she believes were hired by her father. She realised she had to leave the country for her own safety. She suffers immensely with her mental health and still struggles to speak openly about her sexual orientation as a result of the suppression and persecution she has faced. She would have no protection and support if returned to Georgia. She will likely be detained. Her claim is ongoing but we believe she has a strong case and would be at risk of persecution if returned to Georgia.

### **Georgia - Case Study 2: "Noah"**

"Noah" is a gay man from Georgia. He has strong evidence of the past persecution he and his partner have faced, including hospital records documenting injuries they sustained after homophobic attacks, a police report making clear they were not going to investigate the attack, and supporting evidence from his former employer. Noah fears further persecution from his family and members of his community. His father physically attacked him after finding out about his sexual orientation, to the extent that the he ended up in hospital. His relatives also forced him to go to a hospital for people with severe mental illnesses and tried to perform an exorcism on him at a church. He was forcibly given incapacitating medication, which his family thought would 'help' him, and taken to an uncle's house where he was continuously monitored. He would not be able to seek protection from the state. This is because when his partner was subjected to a homophobic attack, they called the police but they did not do anything. Furthermore, his father has connections to the police, and in the past when he tried to report the fact his father attacked him, the police said his father was right to do this. He would not be safe anywhere in the country, as he already tried to move to another city to escape the violence but attacks happened there too.

Noah is extremely fearful of being returned to Georgia as he said his life would be in danger and he would rather take his own life than go back and face persecution. He managed to secure legal representation very shortly before his asylum interview, and was granted refugee status by the Home Office this year.



### **India - Case Study 1: "Saanvi"**

"Saanvi" is a lesbian woman from India, who arrived in the UK in 2020 on a student visa and claimed asylum after six months. Her claim was initially linked to her ex-girlfriend, who also identified as a lesbian woman. Saanvi's relationship with her family had broken down as a result of them finding out about her same-sex relationship. Her family said if she returns to India, they will kill her straight away. Saanvi feared the severe punishment she would face as a lesbian woman, and said she would rather take her own life than face persecution on return to India.

She had her main asylum interview and provided extensive evidence of her claim as a lesbian woman from India. However, during the course of the asylum process, her relationship with her ex-girlfriend broke down due to physical, emotional and psychological abuse. Her ex-girlfriend also leveraged Saanvi's precarious immigration status against her as a tool of coercive control, such as threatening Saanvi with the prospect of deportation. After Saanvi fled her abusive ex-girlfriend, the risk of persecution for her in India increased further. In retaliation, her ex-girlfriend had spread dangerous rumours about Saanvi to her family in India, who she already feared. After this, one of Saanvi's relatives called her, berated her and threatened her further.

After she informed the Home Office that she and her ex-girlfriend were no longer in a relationship, Saanvi was invited to a second asylum interview. It was at this point that she contacted Rainbow Migration to explain the abuse she had experienced and her fear of persecution in India. She did not have legal representation, so Rainbow Migration helped her to prepare for this interview and advised her on evidence. She was given 72-hours by the Home Office in which to submit any further evidence, so Rainbow Migration provided advice on an urgent basis. She had extensive evidence of the abuse, including a non-molestation order, hospital records of injuries sustained as a result of her ex-girlfriend hitting her, a letter from Victim Support and one from her MP's caseworker. She also had evidence of threats from her family in India. A few weeks after her second interview, Saanvi was granted refugee status in the UK by the Home Office.

### **India - Case Study 2: "Amara"**

"Amara" is an Indian national who claimed asylum in 2022 because of her sexual orientation. She is a lesbian and fears persecution at the hands of her father, who is a politician in India. Amara's father has influential friends who are also politicians, which would make it impossible for her to seek protection from the police or authorities in India. She has evidence of her father's threats and contact with other politicians.

Unfortunately, her asylum claim was refused by the Home Office this year and certified as clearly unfounded, despite the clear basis for her claim and evidence provided. Her lawyers challenged this, and the Home Office indicated that they will reconsider their decision. It is, therefore, clear

that this claim does have merits, and, based on Amara’s experiences, clearly India cannot be considered safe in this context.

26. Another ILPA Member has also provided the following case study:

**India - Case Study 3: “Nisha”**

“Nisha” is from a traditional family who arranged for her to marry a fellow Indian national from another village. She did not have any say in her family’s choice of husband and after marriage she moved in with her in-laws as expected of her socially and culturally. She did not feel welcome in her new home, and her in-laws treated her more like a servant than their daughter-in-law. Her husband became verbally and physically abusive towards her. She felt trapped in her marriage and knew that it was out of the question for her to return to her own family, contrary to the accepted social and cultural norms.

Nisha’s husband wanted to go abroad. Nisha’s successfully applied for a visa, with her husband as her dependent, and they came to the UK together. She hoped that being away from home would help their marriage, but this turned out not to be the case. Her husband’s abuse escalated and the police had to be called. He was arrested, and Nisha hospitalised. When her in-laws found out about the arrest, they started calling Nisha, threatening to harm her and her child. Her husband also threatened her through a third party. Before Nisha’s visa expired, she claimed asylum.

Nisha is legally present in the UK. She is *not*, therefore, someone to whom the Illegal Migration Act 2023 is meant to apply, and yet she would have her asylum claim treated as inadmissible under these Regulations if section 59 is fully commenced.

**Annex of Objective Evidence**

27. The ‘Executive Summary’ of the US Department of State’s 2022 [Country Report on Human Rights Practices: Georgia](#) states:

*‘Significant human rights issues included credible reports of: torture or inhuman, cruel, or degrading treatment; arbitrary arrest or incarcerations; serious problems with the independence of the judiciary, along with investigations and prosecutions widely considered to be politically motivated; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media, including violence and threats of violence against journalists; substantial interference with the freedom of peaceful assembly and freedom of association; refoulement; and crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons and activists.*

*The government took steps to investigate some officials for human rights abuses, but impunity remained a problem. The government's failure to credibly investigate and prosecute the organizers of July 2021 violence in advance of the Pride March resulted in impunity for those abuses. Lack of accountability also continued for the inappropriate police use of force against journalists and protesters during June 2019 demonstrations and the 2017 abduction and rendition from the country of Azerbaijani journalist and activist Afgan Mukhtarli.*

*Russian-occupied regions of Abkhazia and South Ossetia remained outside central government control, and de facto authorities were supported by Russian forces. The cessation of hostilities from 2008 remained in effect, but Russian guards restricted the movement of local populations. Significant human rights issues in the regions included credible reports of unlawful detentions; restrictions on movement, especially of ethnic Georgians; and restrictions on the ability of ethnic Georgians to own property or register businesses and to receive education in their native language. While there was little official information on the human rights and humanitarian situation in South Ossetia, de facto authorities refused to permit most ethnic Georgians driven out by the 2008 conflict to return to their homes there. De facto authorities did not allow most international organizations regular access to South Ossetia to provide humanitarian assistance. Russian "borderization" of the administrative boundary lines continued, further restricting movement and separating residents from their communities and livelihoods. Russian and de facto authorities in both regions committed abuses with impunity.'*

28. The 'Executive Summary' of the US Department of State's 2022 [Country Report on Human Rights Practices: India](#) states:

*'Significant human rights issues included credible reports of: unlawful and arbitrary killings, including extrajudicial killings by the government or its agents; torture or cruel, inhuman, or degrading treatment or punishment by police and prison officials; harsh and life-threatening prison conditions; arbitrary arrest and detention; political prisoners or detainees; arbitrary or unlawful interference with privacy; restrictions on freedom of expression and media, including violence or threats of violence, unjustified arrests or prosecutions of journalists, and enforcement of or threat to enforce criminal libel laws to limit expression; restrictions on internet freedom; interference with the freedom of peaceful assembly and freedom of association; restrictions on freedom of movement and on the right to leave the country; refoulement of refugees; serious government corruption; harassment of domestic and international human rights organizations; lack of investigation of and accountability for gender-based violence, including domestic and intimate partner violence, sexual violence, workplace violence, child, early, and forced marriage, femicide, and other forms of such violence; crimes involving violence or threats of violence targeting members of national/racial/ethnic and minority groups based on religious affiliation, social status or sexual orientation; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, and intersex persons; and existence of forced and compulsory labor.*

*A lack of accountability for official misconduct persisted at all levels of government, contributing to widespread impunity. Lax enforcement, a shortage of trained police officers, and an overburdened and underresourced court system contributed to a low number of convictions.*

*Terrorists in Jammu and Kashmir, northeastern states, and Maoist terrorism-affected areas committed serious abuses, including killings and torture of armed forces personnel, police, government officials, and civilians; kidnapping; and recruitment and use of child soldiers.'*

29. The Home Office's own Country Policy and Information [Note](#) (CPIN) *India: Actors of protection* (version 2.0, June 2023) states:

*'2.1.1 In general, the state is both willing and able to offer sufficient protection to persons fearing non-state actors. Protection may not be available in conflict areas where armed insurgent or terrorist groups are active. [...]*

*2.1.5 Police effectiveness and conduct varies from state to state, although there have been improvements in police numbers in recent years, it is undermined by inadequate training and equipment, limited resources, and corruption. Police investigation can be obstructed by some police officers refusing to register victim's complaints, insufficient training, outdated forensic and cyber infrastructure. Underprivileged groups are affected by limited enforcement of protective laws (see *Capabilities of the security forces*).*

*2.1.6 The law prohibits arbitrary arrest and detention, however, incidents of both were reported in 2022, although there is no data on the number of times these occurred. Human rights abuses including rape, torture, and deaths in custody are reported to be widespread and conducted with impunity. Excessive force by security forces in areas of conflict are also reported, including extra-judicial killings, rape, torture, arbitrary detention, kidnappings and destruction of homes (see *Capabilities of the security forces – Human rights abuses*).*

*2.1.7 There are legal remedies for severe police misconduct and corruption, although some victims may be reluctant to report police violations. [...]*

*2.1.8 Whilst there is, in general a functioning independent judicial system, including public trials, presumption of innocence and free legal counsel, corruption within the judiciary is reportedly prevalent. The effectiveness of the judiciary is also limited by understaffing, causing severe delays to adjudication and a backlog of cases, particularly affecting marginalised, poor and vulnerable groups.'*

30. There is also, for example, established Country Guidance from the Upper Tribunal in *AR and NH (lesbians) India CG [2016] UKUT 00066* (IAC), which states in its headnote:

*'(2) A risk of persecution or serious harm for a lesbian woman in India, where it exists, arises from her family members, and the extent of such risk, and whether it extends beyond the home area, is a question of fact in each case.*

*(3) The risk of persecution or serious harm is higher for uneducated lower class lesbian women in rural areas, who remain under the control of their family members and may not be permitted to leave the home to continue meeting their lesbian partners.*

*(4) Where family members are hostile to a lesbian woman's sexuality, they may reject her completely and sometimes formally renounce her as a member of that family. In such a case, whether relocation to a city is unduly harsh will be a question of fact, depending on the ability of such a lesbian woman to survive economically away from her family and social networks.'*

31. As confirmed by the Supreme Court in *AAA (Syria) & Ors v Secretary of State of the Home Department* [\[2023\] UKSC 42](#), the 'principle of non-refoulement is therefore given effect not only by the ECHR but also by other international conventions to which the United Kingdom is party',<sup>15</sup> listing Article 33(1) of the Refugee Convention, Article 3(1) of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, Articles 2, 6 and 7 of the United Nations International Covenant on Civil and Political Rights of 1966 and Article 3 of the European Convention on Human Rights. The Supreme Court suggested that it may also form 'part of customary international law.'<sup>16</sup> In addition, the Supreme Court noted the principle 'has also been given effect in our domestic law by a number of statutes enacted by Parliament',<sup>17</sup> including section 2 of the Asylum and Immigration Appeals Act 1993, section 6 of the Human Rights Act 1998, section 82(1) of the 2002 Act read together with section 84(1) of that Act, and paragraph 17 of Schedule 3 to the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
32. There is a duty upon the United Kingdom not to remove an individual to a state where there are substantial grounds for believing that they would be at real risk of such ill-treatment. However, even if a court or tribunal did reach such a conclusion, the ouster clause in section 54(3) of the 2023 Act states that a 'court or tribunal may not grant an interim remedy that prevents or delays, or that has the effect of preventing or delaying, the removal of the person from the United Kingdom'. The ability of courts and tribunals to have regard to Rule 39 interim measures indicated by the European Court of Human Rights is also subject to Ministerial determination, by virtue of section 55 of the 2023 Act.
33. Nevertheless, the Home Office's own Country Policy Information Notes accept concerning gaps in safety for certain individuals, even if they allege that there is no 'general' risk of persecution.

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<sup>15</sup> §26.

<sup>16</sup> §25.

<sup>17</sup> §27

34. For example, in the 'Georgia: Political parties and affiliation' [CPIN](#) (version 2.0, December 2023) it is stated at:

- §3.1.2 that *'High-profile opponents of, and managers of media channels opposed to, the government may be subjected to verbal and physical assaults, politically-motivated prosecution and imprisonment and their cases overseen by a judiciary subject to political influence.'*
- §3.1.5 that *'According to the Public Defender's office in the 2021 period before local elections, 69 individuals were dismissed from local government or allegedly harassed on account of their political views. GD affiliated groups have been known to put up 'blood-stained posters' to vilify the opposition and activists before elections. In June 2023 there were reports of 6 critics of the government being subjected to physical attacks reported to be instigated or planned by the ruling party to intimidate opponents, a practise denied by the GD.'*
- §3.1.9 that *'The Constitution and legislation provide for an independent judiciary, although its impartiality is affected by state interference.'*
- §3.1.12-3.1.13 that *'The Public Defenders Office (PDO), media observers, NGOs, and opposition parties claim some criminal prosecutions targeting critical media sites or their owners are politically motivated. Journalists can be prevented from reporting on key issues and face censorship, harassment, verbal abuse and dispersal when reporting on public events or posing critical questions.'* In some cases, *'journalists experience physical abuse from the state, including by government officials.'*

35. Reporters Without Borders (RSF), in its 2023 World Press Freedom Index (WPFI), on [Georgia](#) further noted: *'Verbal and physical assaults on journalists are frequent, including by senior government officials, especially during election campaigns. A sustained and brutal assault on 50 reporters during homophobic counter-demonstrations in July 2021, in front of impassive [s]ecurity forces, marked an unprecedented setback. The lack of transparency and progress in the investigation of the event, as well as the three and a half year sentence for the director of an opposition TV channel, Nika Gvaramia, speak to the impunity enjoyed by those who commit crimes against journalists.'*

36. In relation to India, the United Nations Human Rights Council (UNHRC), in its [Summary of Stakeholders' information](#) submissions on India: Report of the Office of the United Nations High Commissioner for Human Rights, 22 July 2022, noted that: *'HRW stated that people who protested or criticized the Government were frequently labeled "anti-national" and the authorities targeted them by bringing politically motivated criminal cases under the broadly worded counterterrorism law, the Unlawful Activities Prevention Act, sedition law, or by alleging financial fraud or irregularities.'* Amnesty International, in its World Human Rights [report](#) covering the human rights situation in India in 2022, noted that: *'On 25 April, Jignesh Mevani, an independent Dalit member of the Gujarat Legislative Assembly, was re-arrested immediately after he was granted bail by a court*

*in the state of Assam. His first arrest came after he posted on Twitter calling on Prime Minister Narendra Modi to maintain peace in the state of Gujarat, which was witnessing religious violence.'*

37. In *BK (Risk – Adultery -PSG) India CG [2002] UKIAT 03387* it was found that women from rural India who had committed adultery could form part of a particular social group. The Home Office's [CPIN](#) 'Women fearing gender-based violence, India, November 2022', accepts at §2.3.3 that '*[s]ince the BK case was heard, the position of women has not significantly changed or deteriorated. Therefore, there are not 'very strong grounds supported by cogent evidence' to justify a departure from the BK case.*' The CPIN goes on to state, '*[w]hile many women face sexual and gender-based violence, predominantly in a domestic context, in general, women are not at real risk of persecution or serious harm from non-state actors*', before listing the following:

*'2.4.3 Some women may be at more risk of persecution or serious harm, including those who are seen to have transgressed social, cultural and religious norms, or are single and living alone, or belong to a Scheduled Caste or Tribe. [...]*

*2.4.5 An Indian woman's ability to exercise her social, economic and human rights varies according to her social position in terms of education, economic independence, religion, location (urban or rural) caste and marital status [...]*

*2.4.6 Gender-based violence against women and girls in India is widespread, particularly in the north, compounded by patriarchal attitudes and gender stereotypes. In the 2019-2021 National Family Health Survey (NHFS-5) of 636,699 households throughout India, 44% of men stated they agreed with one or more reasons for 'wife-beating'. A study undertaken by the Pew Research Centre found that nearly nine-in-ten Indians (87%) completely or mostly agreed with the notion that "a wife must always obey her husband." [...]*

*2.4.7 According to the National Crime Records Bureau (NCRB), 428,278 cases of crime against women were registered during 2021, an increase of 15.3% since 2020 (371,503 cases). [...]*

*2.4.8 Practices such as forced or child marriages, dowry-related deaths, domestic violence, rape, acid attacks, 'honour', unsafe gender-selective abortions, sexual harassment, coerced and involuntary sterilization and accusations of witchcraft continue to be practised despite laws prohibiting them [...]*

*2.4.9 Women from minority groups, including Dalits (who are at the bottom of the caste system) often face multiple and intersecting forms of discrimination and violence because of their gender combined with their low status'.*

38. Similarly, the Home Office's [CPIN](#) 'Religious minorities and scheduled castes and tribes, India, November 2021' from §2.4.7 to §2.4.39 lists a range of State and societal mis-treatment of ethnic minorities and scheduled castes. It further states at §2.4.42 that persons '*entering into inter-faith*

*marriages may, in some cases, be subject to disapproval from their families, discrimination, societal exclusion or family or communal violence’.* The CPIN also notes failings in the protection from the State:

*‘2.5.3 Police effectiveness and conduct varies from state to state, undermined by inadequate training and equipment, limited resources, political influence and corruption. Police investigation can be seriously hampered by some police officers refusing to register victims’ complaints, poor quality of investigations, insufficient training and legal knowledge, inadequate and outdated forensic and cyber infrastructure, and a lack of public trust. Their investigations may also be affected by bias in relation to class, caste, ethnicity and religion of the victim or offender or in relation to down-playing crimes in certain areas of the country. There continue to be reports of police intimidating, harassing, and extorting some members of religious minorities and Dalits. Some sources have claimed that there is an absence of police protection for religious minorities while some victims may be reluctant to report violations due to fear of retribution (see CPIN India: Actors of protection, State treatment of religious minorities).*

*2.5.4 There are isolated examples of state discrimination against religious minorities and Dalits, particularly in the wake of large-scale protesting or in cases of bovine slaughter and religious conversion, including police hostility and harassment. The police are sometimes unwilling to investigate and pursue those responsible for committing acts of violence against religious minorities and Dalits and complainants can be subject to victimisation by the police. Whilst there are reports of police mistreatment of members of religious minorities and Dalits, there is no generalised risk of state mistreatment or inaction facing all members.’*

21 December 2023