

Evidence Submission

Nationality and Borders Bill Public Bill Committee



Response by the Latin American Women's Rights Service (LAWRS)

4 November 2021

1. About Latin American Women's Rights Service (LAWRS)

- 1.1. LAWRS is a human rights, feminist organisation led by and for Latin American migrant women living in the UK. We support 5,000 women every year who are exposed to violations of their fundamental human rights, facing violence against women and girls, exploitation in low-paid sectors, trafficking, or enduring severe poverty and deprivation.
- 1.2. Our direct support includes casework for women experiencing gender-based violence, counselling and emotional support, advice and casework on employment rights and exploitation, family law and immigration, among others.
- 1.3. We also actively advocate for women's rights, migrant's rights and the rights of ethnic minorities, working with sister organisations in the women, migrant and anti-slavery and anti-trafficking sectors.

2. Introduction

- 2.1. LAWRS makes this submission to highlight the harm that many of the proposals within the Nationality and Borders Bill would cause to women subject to gender-based violence and modern slavery/human trafficking. As a specialist migrant and women's organisation, we reject claims made that its proposals would assist vulnerable migrants and women and girls. Instead, we submit that the Bill in its current form would cause harm and would greatly undermine the government's commitment to addressing VAWG and eradicating modern slavery and human trafficking.
- 2.2. At a time when there are important national conversations happening about how to prevent and address gender-based violence in our society, we are clear that the Nationality and Borders Bill in its current form will harm survivors and lead to greater victimisation of women. We support the written and oral evidence already provided by Women for Refugee Women, and we ask Bill Committee members to reconsider the proposals outlined below.
- 2.3. LAWRS is already troubled by the fact that the government is unable to meet international standards in responding to VAWG by ratifying the Istanbul Convention nine years after signing, largely due to its treatment of migrant survivors in the UK, as highlighted by the Step Up Migrant

Women campaign.¹ Our concern is that the government's record on addressing VAWG will be eroded even further should it proceed with this legislation in its current form. We are concerned that its proposals will create further difficulties for women and girls subject to abuse, and the organisations supporting them in the UK.

- 2.4.** Whilst the Equality Impact Assessment accompanying the Bill alleged that proposals could 'advance the equality of opportunity for 'a cohort of females,'² we set out some key ways in which they would cause harm to women and girls and increase the risk of gender-based violence as well as modern slavery and human trafficking.

3. Part 2: Asylum. Four ways the Nationality and Borders Bill will harm women and girls experiencing VAWG:

- 3.1. I. Clause 30. More barriers for survivors of gender-based violence to proving a well-founded fear.** Clause 30 has been highlighted by Women for Refugee Women as one of the most damaging, yet under-scrutinised aspects of the Bill in relation to women fleeing gender-based violence. The introduction of a restricted definition of 'particular social group' will harm women subject to gender-based violence because this ground in the Refugee Convention is frequently relied upon by survivors in order to obtain refugee status. The proposed definition will mean that two criteria must be met in order for an applicant to show that they are a member of a 'particular social group', rather than one (as is currently the case). This would represent an additional hurdle for those seeking to obtain refugee status and would disproportionately impact women. We echo the statement made by Women for Refugee women that: *"This change was not heralded in the consultation and is an unexplained regressive step that, coupled with the change in the well-founded fear test, will result in more women being wrongly refused asylum."*
- 3.2. II. Clause 10. The creation of a two-tier system.** It is wrong to differentiate between refugees based on their mode of arrival or when they apply for asylum. Not only is it not a fair assumption that those entering the country without a valid visa are not in genuine need of asylum, but there is also no evidence to support that establishing a tougher asylum system will deter people from taking such dangerous journeys or will deter criminal trafficking. In fact, all immigration measures that hinder the possibilities for migrants to regularise their status, increase the risk for exploitation and modern slavery.
- 3.3.** The UK asylum system should be reformed along the following principles: a) Effective access to the asylum process – all people seeking protection should have the opportunity to be able to do so. b) A fair, humane and efficient asylum system – all people seeking asylum should have their claims assessed fairly, humanely and efficiently. c) Reception conditions that promote dignity, liberty, empowerment and integration – support provided during the asylum system must ensure liberty, promote dignity,

¹ The Council of Europe's convention on preventing and combating violence against women and girls is internationally regarded as the "gold standard" for responding to violence against women and girls (VAWG), and the biggest hurdle to ratification, is the absence of any provisions for migrant survivors that would comply with Articles 4(3) and 59 of the Convention (these articles outline obligations to ensure that survivors have access to protection and support without discrimination regardless of immigration or refugee status)

² [New Plan for Immigration Overarching Equality Impact Assessment of policies being delivered through the Nationality and Borders Bill.](#)

empower people and support their integration in the community from the moment of arrival. d) Integration – policies should support people to realise their full potential and empower them to make a positive contribution to their communities. e) Dignity, liberty and humanity for those found not to be in need of protection – people refused asylum should not be detained and be treated in a safe, dignified and humane way at all times. f) Global solidarity and responsibility sharing – the UK should play a role in providing sustainable solutions to forced migration.³

- 3.4.** We object to Clause 10 of the Bill. As a specialist VAWG and modern slavery organisation, we are incredibly concerned by plans to exclude migrant and refugee women from a path to settlement and public funds because of how they arrived in the UK and how quickly they were able to make their claim.⁴
- 3.5.** As outlined by the 'by and for' specialist VAWG organisation Southall Black Sisters in their response to the New Plan for Immigration, Clause 10 takes no account of the "desperate circumstances in which many women...are forced to flee from their countries of origin, or of how the experience of gender-based violence shapes their journey to the UK and determines the extent to which they can adhere to complex and changing immigration rules on arrival."⁵ We know that prior to and after arriving in the UK, many survivors of gender-based violence and modern slavery do not know their rights and/or are deliberately deceived about asylum and immigration law. In many cases, survivors who arrive in the UK struggle to access the appropriate information or support in order to make an immediate claim. Women escaping gender-based violence and modern slavery must not be punished in these contexts.
- 3.6.** The proposal contradicts long-standing evidence about the difficulties that women face in disclosing abuse and trauma when they are victims of gender-based violence and modern slavery. It is widely understood by specialist women's and anti-trafficking organisations that the process of disclosing a history of violence and abuse is often incredibly difficult for survivors and can take an extended period of time.
- 3.7.** From our experience in providing support to victims/survivors with a trauma-informed approach, LAWRS understands that not only disclosing experiences of abuse can take time, but also women seeking asylum are often abused and victimised as part of their journey to the UK. In many cases, women will need time and holistic support, including culturally and linguistically sensitive counselling and legal advice, before feeling confident to disclose any information regarding their experiences of abuse.
- 3.8.** As explained by Women for Refugee Women in their oral evidence to the Bill committee: "*Women who have been traumatised, because they have been violated, raped and all that, cannot provide that evidence straight*

³ Latin American Women's Rights Service, [Consultation response to the New Plan for Immigration](#)

⁴ A woman who arrives in the UK via a 'safe third country' or who is unable to make herself known to authorities 'without delay' (and is subsequently recognised in the UK as a refugee) would fall under 'Group 2'. As a 'Group 2' refugee, she would have no automatic path to settlement, even where it is proven that she has a well-founded fear of persecution. She would have restricted family reunion rights and limited access to public funds. Clause 10(5) also allows the Home Secretary to set the length of any limited period of leave for 'Group 2' refugees, such that they may be indefinitely liable for removal. Temporary protection status could afford a person no more than 30 months of leave - according to the New Plan for Immigration - after which they will be reassessed for return or removal.

⁵ Southall Black Sisters (May 2021) [Lessons not Learned: The Home Office's New Plan for Immigration represents an escalation of the 'hostile' environment policy, not a break from it.](#)

*away. They need time to heal, to be protected, to access mental health support. They need time to understand the system.*⁶

- 3.9.** It is unacceptable that women be penalised for a delay in this context. It is for this reason that we also object to Clause 16 and Clause 17 which specify that if a person fails to provide evidence within a specified period their credibility could be damaged, and to Clause 23 which encourages decision-makers to give 'minimal weight' to later evidence 'unless there are good reasons', which is undefined in the Bill and therefore left entirely to the discretion of the Home Secretary.
- 3.10.** The government's explanatory notes on the Bill state that temporary protection status 'may only allow access to public funds in cases of destitution'. Institutionalising women's precarity and destitution through 'temporary protection status' creates conditions that are ripe for abuse and exploitation. We already know that living in a state of limbo in the UK without routes to settlement and being excluded from the welfare safety net, traps women in harmful and abusive situations⁷ and puts them at risk of escalating violence and exploitation. The government's own draft statutory guidance framework for domestic abuse reports that survivors' lack of access to public services and funds⁸ can create dependency on others, which is often exploited by abusers to exert control over them. This was affirmed by research by Women for Refugee Women in 2020 with women seeking asylum, which found that 35% said that destitution forced them to stay in a relationship they would not have otherwise stayed in: 38% of those who stayed in an unwanted relationship were raped by their partner, 41% experienced another form of sexual violence, and 35% were physically abused.
- 3.11.** The creation of such a temporary protection status will create conditions that coerce women into withstanding abusive relationships and environments to avoid destitution, homelessness and the fear of return to countries where they have fled danger.⁹
- 3.12.** Furthermore, restricting access to public funds would lead to further pressure on specialist services supporting VAWG and modern slavery victims, who are already struggling to meet the demand for support from migrant survivors with insecure immigration status and/or subject to the No Recourse to Public Funds (NRPF) condition, who are at heightened risk of abuse.
- 3.13.** In the case of VAWG services, figures from Women's Aid for England and Wales shows that in 2019/20, almost 4 in 5 migrant women subject to NRPF were turned away from a refuge¹⁰ and this group makes up a large cohort of service-users of specialist 'by and for' services for black and minoritised women. During the passage of the Domestic Abuse Act in Parliament, the Government acknowledged that there is a gap in protection for women with insecure immigration status and subject to NRPF, and established a temporary Support for Migrant Victims scheme. However, it has capacity to support a maximum of 500 women over a 12-month period and many women remain without protection. This clause

⁶ HC Deb (23 September 2021) [col 107](#)

⁷ Southall Black Sisters (2021) [The Domestic Abuse Bill and Migrant Women: Briefing Paper 2](#).

⁸ See Paragraph 77 page 21 of Home Office (July 2020) [Domestic Abuse Draft Statutory Guidance Framework](#).

⁹ Southall Black Sisters (2021) [The Domestic Abuse Bill and Migrant Women: Briefing Paper 2](#).

¹⁰ Women's Aid (2020) Nowhere to turn 2020: [Findings from the Fourth Year of the No Woman Turned Away Project](#)

would only worsen an already urgent problem created by immigration policies.¹¹

- 3.14.** Restrictions to family reunion rules for those with temporary protection status will also disadvantage women seeking to join a spouse, putting more women at risk of being compelled to make dangerous journeys.
- 3.15. III. Clause 11. The expansion of accommodation centres which are re-traumatising for women and girls.**
- 3.16.** We object to clause 11 which would expand asylum accommodation centres for people waiting for their asylum claims to be processed, without any time limit (under subsection 8). The expansion of accommodation centres will negatively impact women seeking asylum, many of whom are survivors of rape and other forms of gender-based violence and modern slavery. Many women already wait for claims to be processed for years, and these environments are inappropriate and often re-traumatising for survivors. Being confined to living in closed environments that feel unsafe, with restricted liberty or autonomy to make decisions about their daily routines and company shares many parallels with survivors' previous experiences of gender-based violence and modern slavery of having been imprisoned and controlled.
- 3.17.** The lack of privacy that characterises such sites is also harmful for women who have experienced gender-based violence and modern slavery as it hinders survivors' ability to disclose their history. The APPG on Immigration Detention notes that in Napier Barracks and Penally Camp, 'the lack of private space was forcing residents to hold sensitive discussions, for example with lawyers, within earshot of other residents and/or staff'. Accommodation centres are the antithesis of environments conducive to the disclosure of gender-based violence including rape and sexual exploitation, let alone recovery. The use of accommodation centres will harm women's ability to get their claims for protection recognised.
- 3.18. IV. Clause 26, schedule 3. Offshore processing and detention of women seeking asylum. We object to the detention and off-shore processing of people seeking asylum, particularly due to the serious risk of gender-based violence occurring in these centres.** Previous investigations of detention centres in the UK, such as the Lampard Report (2015) on Yarl's Wood highlighted that between 2007-15, 10 members of staff were dismissed for incidents involving 'sexual impropriety' towards women held there.¹² The UK government will have even less control over the treatment of detainees in offshore detention centres. Thus, the risk to women of sexual violence and abuse in such centres will be increased. The sexual harassment and violence of women detained offshore by the Australian government has been well documented¹³ and it is indefensible that the UK government puts women and girls at risk in this way.
- 3.19. Recommendation.** LAWRS urges members of the Bill Committee to object to these proposals, which will harm women subject to gender-based violence and increase the risk of re-victimisation and re-traumatisation in

¹¹ Southall Black Sisters (2021) [Briefing Paper on the government's Pilot Project to support Abused Women with No Recourse to Public Funds \(NRPF\)](#)

¹² Lampard, K. (2016) [Independent Investigation into Concerns about Yarl's Wood Immigration Removal Centre.](#)

¹³ See, for instance, Refugee Council of Australia (2020) [Australia's Man-made Crisis on Nauru.](#)

the UK. The UK government has promised victims and survivors and women's organisations like ours that it is committed to preventing and addressing violence against women and girls in all its forms. However, our expertise and experience tells us that the proposals outlined above in the Nationality and Borders Bill, seriously undermine these commitments.

4. Part 4: Modern Slavery. The harmful impact that the Nationality and Borders Bill will have on migrant victims of modern slavery and human trafficking

- 4.1.** Part 4 of the Nationality and Borders Bill introduces a series of changes to the support already provided to victims of modern slavery and trafficking in the UK. LAWRS, along with a wide range of other anti-trafficking and migrant organisations, is concerned about the government's intention to conflate modern slavery, exploitation and trafficking with immigration matters.
- 4.2.** LAWRS is concerned that the clauses in Part 4 of the Bill will mean moving away from the international obligations contracted by the UK in relation to modern slavery and trafficking; will reduce support and erode trust in authorities by victims in general, and migrants in particular, in the protection system provided through the NRM; will hinder the authorities' ability to prosecute exploiters and traffickers and prevent exploitation; and will put vulnerable migrants at further risk of exploitation and trafficking.
- 4.3. I. Clauses 46- 48: identification, disclosure and credibility.** Clause 46 introduces a timeframe in which victims with a protection and human rights claim must provide relevant information on their exploitation or trafficking case, as specified in the "slavery or trafficking information notice" (STIN), while clause 47 sets out that late disclosure must be considered damaging to the individual's credibility, unless there are 'good reasons' for the delay.
- 4.4.** It is LAWRS' experience that victims of modern slavery and trafficking do not tend to self-identify as such, and do not always have a clear understanding of what the relevant information is in regards to their experience. Furthermore, evidence from our service, as well as the sector¹⁴¹⁵, establishes that as a result of trauma, fear, guilt/shame and other factors, victims of modern slavery and trafficking can take weeks, months, and even years to disclose their whole experience even to a trusted advisor.
- 4.5.** Were these clauses included in the Bill, these barriers to disclosure would be ignored and victims would be punished for "late disclosure" or for their inability to self-identify, with the possible consequence of being pushed further underground and afraid to come forward for support, and at risk of being re-trafficked and further exploited and abused.
- 4.6.** LAWRS rejects the government's stated reason for introducing the STIN: to reduce alleged abuse of the National Referral Mechanism (NRM) system. While no evidence has been presented to support this claim, the official statistics from the NRM contradict this view: in 2020, 92% (9,765) of reasonable grounds and 89% (3,084) of conclusive grounds decisions made by the Single Competent Authority were positive.¹⁶

¹⁴ [Written Evidence submitted by Focus on Labour Exploitation \(FLEX\) \(NBB43\)](#)

¹⁵ [Nationality and Borders Bill Part 4: Modern Slavery Consideration paper](#)

¹⁶ [Modern Slavery: National Referral Mechanism and Duty to Notify statistics UK, end of year summary, 2020](#)

- 4.7.** Furthermore, the fact that the NRM is currently receiving around 10,000 referrals per year¹⁷ when the UK is expected to have 100,000 victims of trafficking and exploitation, is a clear indicator that more should be done to reach potential victims, rather than deter them from accessing support.
- 4.8.** Clauses 46 and 47 will also only apply to victims who have made a protection or human rights claim, therefore discriminating between different groups of victims, as UK nationals and victims with other immigration status will not be served a STIN.
- 4.9.** Clause 48 modifies Section 49 of the Modern Slavery Act (2015) from the current language of 'having reason to believe someone may be' a victim to 'is a victim'. This change risks raising the threshold for victims at the time of receiving reasonable grounds decisions in the NRM if they are not able to provide enough information/evidence that they are in fact victims, potentially denying support to victims, leaving them more vulnerable to further exploitation, detention and deportation. As described above, this is a process that can take time due to barriers to disclosure: *"Existing research establishes that victims' narratives are likely to emerge in a piecemeal fashion and become more coherent as trust and relationships are established. It has also been observed that during the reflection and recovery period, many victims initially recall their experiences with contradictions or inconsistencies"*.¹⁸
- 4.10.** These clauses go against the government's own guidance and organisations' experience, and will have an adverse effect on victims' identification, self-identification, confidence to report exploitation and human trafficking, and access to support for vulnerable victims.
- 4.11.** **II. Clause 49: Recovery period.** Clause 49 reduces the recovery period for victims in the NRM from a minimum of 45 days to 'at least' 30 days. This is the period between receiving a Reasonable Grounds decision and a Conclusive Grounds decision.
- 4.12.** As explained in [research](#), the recovery period must ensure that the victim has enough time and adequate support to reach true safety, cooperate with authorities, and start rebuilding their life. In order to adequately support victims of modern slavery and trafficking, the recovery period should be extended, rather than reduced.
- 4.13.** Reducing the recovery period will lead to rushed decision making, further difficulties in obtaining evidence for the case, less cooperation with authorities and therefore, less access to valuable intelligence which can help the authorities hold perpetrators to account.
- 4.14.** **III. Clause 51: Identified potential victims etc: disqualification from protection.** Clause 51 disqualifies from protection and support and lifts the prohibition on removal for potential victims who are considered a 'threat to public order', including if 'the person has been convicted of any other offence listed in Schedule 4 to the Modern Slavery Act 2015 anywhere in the United Kingdom, or of a corresponding offence'.

¹⁷ Ibidem

¹⁸ [Nationality and Borders Bill Part 4: Modern Slavery Consideration paper](#)

- 4.15.** Much has already been said about this contentious clause¹⁹. LAWRS supports [views from the sector](#) opposing the clause. It is widely acknowledged, and it has been our experience supporting victims, that perpetrators can force victims into criminal activity: *"NRM statistics show that 48% of all identified victims in 2020 had elements of criminal exploitation in their cases and the largest government care provider to victims of slavery, Hestia, published data on male victims in their service which showed that 50% of male victims had spent time in prison or in detention."*²⁰
- 4.16.** Denying victims protection and support as a result of this would be punishing them for their exploitation, and could not only erode trust in the authorities and decrease reporting, but also reduce the ability of authorities to prosecute perpetrators and lead vulnerable victims to re-exploitation.
- 4.17. Recommendation:** It is LAWRS' recommendation that Part 4 be removed entirely from this Bill. If it is to be included, its clauses should be amended taking into account the vast knowledge and experience in the anti-slavery and anti-trafficking sectors.

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¹⁹ [Statement from Leading Organisations in the Anti-Slavery Sector; Nationality and Borders Bill Part 4: Modern Slavery Consideration paper; Written Evidence submitted by Focus on Labour Exploitation \(FLEX\) \(NBB43\)](#)

²⁰ [Statement from Leading Organisations in the Anti-Slavery Sector](#)