

Ministry of Justice's Consultation on the Victims' Bill



Delivering justice for victims A consultation on improving victims' experiences of the justice system

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

February 2022

About Latin American Women's Rights Service (LAWRS)

LAWRS is a by-and-for, feminist and human rights organisation addressing the practical and strategic needs of Latin American migrant women displaced by poverty and violence. LAWRS' mission is to provide Latin American migrant women with tools to assert our rights and pursue personal empowerment and social change. We directly support more than 5,000 women annually through culturally and linguistically specialist advice, information, counselling and psychotherapy, advocacy, development programmes, and workshops. LAWRS is based in London but supports Latin American women throughout the UK.

Contact:

Dolores Modern, Policy and Communications Coordinator on Employment Rights,
dolores@lawrs.org.uk

Elizabeth Jiménez-Yáñez, Policy and Communications Coordinator on Violence Against Women and Girls (VAWG), elizabeth@lawrs.org.uk

Introduction

Migrants, particularly those with insecure immigration status, have for a long time been direct victims of multiple crimes, while at the same time facing many barriers that render them unable to report such crimes, access the Criminal Justice System (CJS) and receive support from the police and other statutory agencies. In recent years, we have seen increasing levels of mistrust in the CSJ amongst migrant communities. Owing to the increased internal immigration controls within the provision of services that characterises the hostile immigration policy, this fear has expanded.

We believe that to improve victims' experiences of the Criminal Justice System, the Victims' Law has to ensure the needs of marginalised communities are met. From the point of reporting to the police, accessing support up to engaging further or not with criminal proceedings. In order to do that, it is key that the legislation recognises the specific experiences and needs of different groups of victims. A genuinely transformative Victims' Law must ensure that no one is discriminated against because of their protected characteristics and immigration status.

Victims' voices *Questions 1, 5*

Centering the voices of victims is critical to ensuring an effective justice system. It can improve victims' journeys in the CJS. By amplifying the voices of victims and survivors, interventions aimed to deliver justice will be shaped by the particular needs of those who are themselves experts by their own experience. Enhancing the voice of victims is even more relevant in the case of communities that are underrepresented in accessing the justice system. Nevertheless, at the moment, victims with insecure immigration status are prevented from having their voices heard. They are disempowered by the comprehensive immigration enforcement strategy embedded in everyday life activities, including the Criminal Justice System.

We agree that the key principles set out in the consultation are adequate as long as equalities obligations accompany those. Furthermore, it is needed that there is an explicit obligation and commitment to treating all victims equally without discrimination.

We support alternatives to criminal justice outcomes for victims. We understand that not all victims are keen to follow the same pathway to access justice. However, the possibility of engaging should be available for all victims without discrimination. We believe that the Victims' Bill should incorporate actions to build stronger communities and increase service-based interventions. The role of service providers such as LAWRS is central to this, particularly with a focus on working on prevention and addressing the root causes of violence and abuse to reduce crime and victimisation.

Safe reporting mechanisms

Questions 17, 18a, 18b, 28

Migrant communities, and more particularly migrant women victims of serious crimes such as domestic abuse and trafficking are often excluded from the Criminal Justice System (CJS). Currently, due to the increased cooperation between statutory services and Immigration Enforcement, migrant women are prevented from reporting abuse to the police let alone moving forward in the CJS. Our research shows that in cases of domestic abuse and other forms of VAWG, victims with insecure immigration status are unlikely to approach the police because they believe that they will prioritise their insecure legal status instead of being protected as victims of serious crimes.¹ Moreover, research shows that in cases involving migrant women, the police are even less likely to conduct criminal investigations and bring criminal charges.²

On the frontline, we witness women's anxiety in approaching any law enforcement authority. They fear that in doing so, they will face a real risk of being detained or deported and, in cases where women have children, being separated from them. These fears are not unjustified but founded on the harms of years of data-sharing policies that prevent migrant victims from accessing justice while hindering the police's ability to investigate crime and safeguard victims.

We know that in wider society, most victims and survivors of crime do not pursue prosecution for various reasons. Even for those that do, a minority are ultimately successful. However, it is unacceptable that migrant victims and survivors are subject to different expectations concerning how they choose to seek remedy and recover from VAWG and other serious crimes.

We agree that sharing some data amongst different agencies can enhance the protection of victims of serious crimes. For instance, within Multi-Agency Risk Assessment Conferences (MARACs) for VAWG victims. We maintain that any exchange with the Home Office for immigration control purposes contributes to increasing the vulnerability of victims. As stated by the HMICFRS report on the first super-complaint, “[...] sharing information on victims of domestic abuse with Immigration Enforcement does not constitute safeguarding”.³ Safe reporting mechanisms, already in practice in other parts of the world, such as the Netherlands and New York, can help the police protect victims, carry out successful investigations and hold perpetrators to account.⁴

1

<https://stepupmigrantwomenuk.files.wordpress.com/2019/05/the-right-to-be-believed-key-findings-final-1.pdf>

2

https://research-information.bris.ac.uk/ws/portalfiles/portal/188884552/Policy_evidence_summary_1_Migrant_women.pdf

3

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

⁴ <https://www.youtube.com/watch?v=IsiEXvqFpuo>

For the Victims' Bill it is imperative that the Government puts in place effective safe reporting mechanisms and ends data-sharing policies when victims approach the police and other statutory services. Failing to ensure victims with insecure immigration status can access the CJS will prevent it from delivering justice to those who have committed a crime. Furthermore, it will exacerbate public harm as offenders remain unpunished and free to abuse other women.⁵

In this respect, we are disappointed by the Home Office's rejection of the effective separation between police and immigration control functions as part of their "Home Office and Police data sharing arrangements on migrant victims and witnesses of crime with insecure immigration status" Review. Equally, we believe that the Immigration Enforcement (IE) Migrant Victims Protocol proposed by the Home Office will fail to guarantee all victims, irrespective of their status, can report safely to the police. The Protocol won't encourage victims with insecure status as Immigration Enforcement will have a crucial role in its delivery. Furthermore, the Protocol will be designed around the concept that Immigration Enforcement can play a safeguarding role while enforcing immigration laws. We have argued and presented evidence that there is a conflict of interest in Immigration Enforcement intending to roll out this Protocol.⁶

We are convinced that the implementation of this Protocol will jeopardise the most significant aim of the Victims' Bill "to substantially improve victims' experiences of the Criminal Justice System".⁷ In this sense, the Victims' Bill offers the opportunity to enshrine in legislation safeguarding provisions for victims of crime with insecure immigration status at the point of reporting a crime or accessing support.

Equal access to the Criminal Justice System

Questions 3, 4, 9a

Guaranteeing equal access for all victims is critical in ensuring that victims have their voices heard, access support, and get redress. In its current form, migrant women see the justice system as re-victimising, inaccessible and as one that negatively impacts their mental health, and as a tool that perpetrators use to extend the abuse towards them. This statement comes from actual experiences of women we support, who often access the system unaware of their rights and entitlements, see court decisions made based on their immigration status and are discriminated against.

5

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

6

https://lawrs.org.uk/wp-content/uploads/2022/02/Joint-Response-to-Home-Office-Review_-data-sharing.pdf

7

<https://www.gov.uk/government/consultations/delivering-justice-for-victims-a-consultation-on-improving-victims-experiences-of-the-justice-system>

To ensure victims are aware of the Victims Code information must be accessible to those with protected characteristics. The Ministry of Justice has to make information available to migrant communities. One of the most successful ways is by funding and engaging with community-based services. Information needs to be translated to multiple languages and disseminated through outreach campaigns in partnership with those organisations trusted by the community.

Overall, there is a need for change to improve communications with victims of crime, including existing timings and methods of communication. On the frontline, we face systemic failures regarding updating victims about investigations and outcomes of their criminal cases. In recent months, our service has encountered issues regarding the lack of communication of critical information between the police and our service users at risk of further abuse. There is a failure of communicating relevant information such as perpetrators' release dates or whether cases are closed. This situation jeopardises and delays applications for protective measures such as non-molestation orders, increases mental health impacts on victims and exposes them to further harm, including the risk of fatal outcomes.

Our service has come across cases where miscommunication extends to failure from the police to keep appropriate levels of communication and information sharing with relevant statutory services such as social services and children social services. We often face cases where police don't provide women with critical information such as crime reporting numbers or/and any contact details on who they should talk to if they have questions or require an update of their cases. In cases where there is communication with victims, there is an ongoing trend of police encouraging or pressing victims to close cases despite their vulnerability. Victims feel that their claims are dismissed, and police don't take reports of abuse seriously. They don't feel treated with dignity.

Another area of concern is the downfall of interpreter provision for victims of crime—both when victims with limited English skills report crimes or attend courts. Amongst many migrant communities, language barriers are one of the main obstacles to escape abuse and access support. We have seen instances where the police don't use translators and ask for family members (including children) or neighbours to provide translation, which is inappropriate and increases the risk of re-traumatisation of victims and their family members. In this sense, it's relevant that law enforcement agents understand the relevance of communication barriers amongst victims of crime. More importantly, how the failure to provide certified interpreters re-victimises victims.

In general, we see a lack of understanding of the increased vulnerability of migrant women produced by their immigration status, limited English proficiency, and intersecting structural barriers that impede them being safe. Low police referrals into specialist 'by and for' services confirm this. These are best suited to cater for the needs of migrant women, particularly those with insecure legal status. We believe that police should maintain a trauma-informed approach throughout all interactions with victims. Establish clear referral pathways with specialist

community organisations to ensure the most marginalised victims of crime can be safe, access the Criminal Justice System and get redress. Furthermore, the Victim's Law should consider the introduction of clear and effective systems of oversight to ensure it is implemented across agencies, and that there is proper scrutiny and accountability for failures to implement it.

Migrant victims' access to support

Question 27, 31, 40

Victims experiencing intersecting and overlapping forms of violence value and need access to wraparound holistic specialist support and advocacy which recognises the ways inequalities intersect, and the impact of this through 'by and for' Black and minoritised VAWG organisations. As aforementioned, these services are tailored to provide culturally and sensitive competent support to migrant victims. This support can remove much anxiety for victims. Support and intersectional advocacy from Black and minoritised organisations can lead to qualitatively different experiences for women and sometimes more positive and proactive responses from the police and other agencies.

Whilst useful, the IDVAs and ISVAs services role do not reflect the realities of the needs and services provided by specialist 'by and for' organisations. For specialist organisations, which tend to be smaller and deal with more complex cases, it isn't practical to separate the IDVA, and ISVA functions as cases often need both types of specialism, including support to go through the Criminal Justice System as a victim of crime. In this sense, these roles do not respond to the needs of our service users or to the realities of providing specialist services for black, minoritised and migrant women.

There is also a second issue which is that the training to gain IDVA and ISVA accreditations is resource-intensive in terms of cost and staff time. Specialist 'by and for' organisations are traditionally underfunded, which requires that a high proportion of our resources are allocated to salaries in order to face high levels of demand.

Despite the wealth of evidence of the key role and social value of that specialist 'by and for' services play in supporting vulnerable victims, who otherwise would be left unprotected, there is a critical underfunding amongst these services. Current commissioning frameworks including competition schemes have a devastating impact on services such as LAWRS. The Victims Bill offers an opportunity to overhaul the procurement regime. We join calls to establish ring-fenced, flexible and long-term grant funds for specialist 'by and for' services.

Recommendations

- **Introduccion of safe reporting mechanisms:** Inclusion of clear statutory separation between any form of immigration enforcement and reporting a crime or accessing support.
- **Inclusion of a victim-centred approach in the CJS:** The Victims' Bill should ensure that victims' experiences inform CJS practices. This approach should acknowledge the experiences of migrant women, many of whom have limited knowledge of the system and access to support to navigate the CJS.
- **Expansion of training:** To improve understanding of the circumstances and increased vulnerability of migrant women. Guidance and training must incorporate awareness raising material about the specific issues affecting migrant victims, particularly about how immigration status may be used by perpetrators as a tool of control. Ongoing training on victim identification, anti-racism, modern slavery, VAWG, a trauma-informed approach to support. Specialist 'by and for' organisations need to be included in the roster of training agencies as they are best placed to provide comprehensive intersectional approaches that are required to support victims with multiple overlapping inequalities.
- **Create clear referral pathways with 'by and for' organisations** supporting victims of crime, supported by sustainable funding to ensure they have the capacity to provide specialistic holistic wraparound services.
- **Improving communication with victims and with supporting organisations**, specially 'by and for' services, to ensure a greater degree of coordination between statutory agencies and voluntary sector services.
- **Improve outreach strategies** working together with community based services both to inform police and other statutory agencies practices as well as a link to communities who may be less well known to the CJS.
- **Develop funding streams aimed at supporting specialist 'by and for services'** taking into consideration their specialist service delivery models and the historic underfunding affecting their sustainability. Where funding is distributed through local authorities or PCCs there needs to be a requirement to engage with local specialist 'by and for' services in the design of commissioning or funding requirements and for funding to be ring-fenced for local specialist services to ensure effectiveness (e.g. reaching marginalised and disadvantaged communities) instead of mere efficiency (in terms of overall volume).