Ministry of Justice's Consultation

Human Rights Act Reform: A Modern Bill of Rights

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

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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.

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Introduction

LAWRS welcomes the opportunity to respond to this consultation. However, we are deeply concerned about both the timeframe, the misleading framing of questions, and the derogatory language and dangerous suggestions contained in it.

As with previous consultations, the timeframe provided is extremely short for a topic of such technical nature, placing an even higher burden on frontline organisations wishing to respond which are already underfunded, understaffed, and dealing with increasingly complex needs and demands from service users. LAWRS is worried that the Human Rights Act (HRA) reform follows a set of Bills, currently moving through Parliament (Nationality and Borders Bill and Police, Crime, Courts and Sentencing Bill), aimed at curtailing civil liberties and people's fundamental rights whilst increasing the vulnerability of marginalised groups.

Following from previous consultations, the model chosen by the government is once again to suggest a set of problems for which questionable or no evidence is presented, mainly through case studies, while no data is made publicly available. Questions are then made with misleading and divisive language, baseless and often false premises, offering a solution to each problem which is presented as the only course of action.

The Bill of Rights consultation dangerously fosters binary narratives around rights-deserving and undeserving people. Furthermore, by using language such as genuine and ingenuine human rights claims, the government promotes the false argument that people game the system and abuse the human rights framework without offering evidence to support such a claim.

The Human Rights Act is the critical vehicle to urge public bodies to act and improve their response to victims of crime and human rights violations. It has been pivotal in ensuring these bodies take responsibility for their failures. Using the Human Rights Act, victims of serious crimes such as violence against women and girls (VAWG) and modern slavery have compelled public bodies to act according to the key principles for the protection of victims' fundamental human rights.

The consultation suggests that there has been an *"expansion and inflation of rights without democratic oversight and consent"*. This is purposely inflammatory and misleading, as the courts' power to interpret legislation to ensure that it is in accordance with international obligations is part of our checks and balances system, intrinsic to a democracy. Furthermore, the expansion of rights is desirable and in line with our international commitments to protect

everyone's human rights. Framing this expansion as "inflation" is a pernicious attempt to continue to devalue the human rights framework in the eye of the public.

It is also stated that the Bill of Rights will seek to *"restore common sense to the application of human rights in the UK"*. It is extremely concerning that the government is using this language. Human Rights have been established by consensus. They are intrinsic and universal, interdependent, indivisible, progressive and imprescriptible. *Common sense,* which can vary at different times and in different places, has no place in this discussion.

Restricting human rights goes against international obligations and the commitments of the UK government to protect victims. A consultation about human rights should be about extending protections to include all the people not currently supported by this government and vulnerable to violations of their human rights. Instead, this proposed Bill blatantly seeks to curtail victims' ability to exercise their rights, puting the focus specifically on migrant victims who are supposedly abusing the system in detriment of *"the rights of wider society"*. But society as a whole benefits from a robust human rights system and a kind and fair society in which everyone is protected.

We reject this proposal for a new Bill as it will undermine the protections in the Human Rights Act, introduce new barriers for people seeking justice, with a disproportionate effect on those with protected characteristics, and erode public bodies' accountability to guarantee that people's human rights are met. We urge the government to ensure that UK courts are linked to the European Convention on Human Rights (ECHR) jurisprudence.

A permission stage for human rights claims

Question 8: Do you consider that a condition that individuals must have suffered a 'significant disadvantage' to bring a claim under the Bill of Rights, as part of a permission stage for such claims, would be an effective way of making sure that courts focus on genuine human rights matters? Please provide reasons.

Response: No.

We reject the introduction of a permission stage for human rights claims. It is unnecessary, as the current system already has admissibility stages to determine whether any legal case presented is human rights related. If further stages were introduced, this would increase

barriers to victims of human rights violations in accessing the courts and make it harder for the most vulnerable to exercise their rights.

Migrant victims of serious crimes such as VAWG and modern slavery already face multiple structural barriers in seeking justice and accessing the courts. Lack of knowledge of their rights, lack of a suitable interpreter, discrimination, racism, difficulties in accessing legal aid or solicitors available to take on their case, among others, impede vulnerable victims of crime from filing claims despite severe human rights violations. Adding a permission stage to the current system would place a more significant burden on claimants to prove that they have experienced 'significant disadvantage', often before having access to legal advice and without the resources of the public bodies and the Government. It is also unclear what a 'significant disadvantage' would mean. However, exercising one's human rights cannot be a matter of scale.

We strongly oppose the language used in this question, which implies that the courts have been dealing with *ungenuine* human rights matters. As has been pointed out by many others, there is simply no evidence to suggest, as the government does in these proposals, that large numbers of *'spurious'* claims are being brought which *'devalue'* the concept of rights.

We find that this proposal is not only unnecessary, but it would actively contribute to preventing those in most need from getting redress. As it would restrict people's right to access to justice, it would also go against our international commitments.

Question 9: Should the permission stage include an 'overriding public importance' second limb for exceptional cases that fail to meet the 'significant disadvantage' threshold, but where there is a highly compelling reason for the case to be heard nonetheless? Please provide reasons.

Response: We reject the introduction of a permission stage for the reasons outlined above (question 8).

Judicial remedies: section 8 of the Human Rights Act

Question 10: How else could the government best ensure that the courts can focus on genuine human rights abuses?

Response: the Government should provide the courts with appropriate resources so that they are able to resolve all human rights claims brought forward.

We reject the framing of this question and the insistence on the genuine/ingenuine dichotomy that is continually put forward throughout this and other Bill's consultations, such as the one on the "New Plan for Immigration" that informed the Nationality and Borders Bill. In recent years, the government has been challenged on countless occasions for claiming that migrants are abusing the system (for example, through the National Referral Mechanism or filing ingenuine asylum applications) despite lack of evidence to support this.

We believe that more claims brought to the courts could only respond to a greater awareness and better understanding of human rights and the governments' obligations to protect them. If the government aims to *"reduce the number of human rights-based claims being made overall"*, it should act proactively and protect vulnerable individuals, for instance, by ensuring that public bodies are actively assuming their duties under the HRA and the ECHR. In the case of migrants, reducing claims is inherently tied to ending hostile policies that prevent migrants, mainly those with insecure immigration status, from securing their fundamental human rights.

The goal of any Human Right Act or Bill of Rights should be to enhance access to justice and avenues of accountability for everyone. We believe that rather than put the focus on so-called ingenuine claims, the government should work towards strengthening the ability of individuals to use the courts to secure their rights.

Positive obligations

Question 11: How can the Bill of Rights address the imposition and expansion of positive obligations to prevent public service priorities from being impacted by costly human rights litigation? Please provide reasons.

Response: Positive obligations are not *imposed* on any State. They are part and parcel of the human rights protected in the European Convention of Human Rights to which the UK has been a signatory since 1951. Positive obligations are instrumental to an improved provision of public services. Any action taken to restrict them would be in detriment of our human rights and put the UK below the standards to ensure robust protection of people's fundamental rights and freedoms.

We are deeply concerned by the explicit wish to *"restrain the imposition and expansion of positive obligations"*, and the suggestion that outcomes of individual litigation can distort priorities and decisions for everyone in society. Human rights must be everyone's priority. When one person's human rights are being violated, everyone's rights are at risk.

The framing of this question evidences once more that the government seems to ignore the value of human rights, positioning them as a financial burden rather than an essential avenue of redress for individuals, and a route to a fairer society. Furthermore, the examples provided do not support the government's argument.

In contrast, positive obligations have provided women and other marginalised groups with routes to file claims against public bodies that are acting in breach of their rights. They allow the scrutinising of public agencies, offering the government and these agencies an opportunity to improve their work to protect victims' rights and prevent future human rights violations.

We reject the argument that the enforcement of positive obligations is preventing public bodies from focusing on key service priorities. As stated in 'Osman test', positive obligations are enforced in a proportional way so as to ensure that they are not a burden on the state. This means that it has to be done through realistic expectations and in a balanced way between this expectation and victims' rights.

The suggestion that human rights litigation prevents the government from focusing on public service priorities is worrying, especially in light of the prevalent evidence of systemic institutional violence exerted by police officers against women and girls. From LAWRS' perspective, improving the response to VAWG should be a priority from the government. In this context, positive obligations on public authorities are essential. Furthermore, if this government is really committed to ending VAWG and modern slavery, it should strive to provide consistently better support to *all* victims, for which these positive obligations are essential.

Respecting the will of Parliament: section 3 of the Human Rights Act

Question 12: We would welcome your views on the options for section 3. Option 1: Repeal section 3 and do not replace it. Option 2: Repeal section 3 and replace it with a provision that where there is ambiguity, legislation should be construed compatibly with the rights in the Bill

of Rights, but only where such interpretation can be done in a manner that is consistent with the wording and overriding purpose of the legislation.

Response: We reject both options. We see no reason for repealing or amending section 3 of the Human Rights Act.

The government states in this consultation that it is concerned about *"the expansion of rights without proper democratic oversight"* and suggests that the power and duty on UK courts to reinterpret legislation should be limited. This disregards the system of checks and balances by which the judiciary should also have some level of oversight on legislation, in particular when it is in contradiction with international treaties, to ensure people's rights are respected.

The IHRAR has also rejected the view that section 3 had *"reduced democratic accountability"*, concluding that *"the majority of the Panel did not accept that the evidence supported the view that either Government or Parliament had effectively delegated responsibility in this way to the UK Courts, nor that section 3 in its current form promoted such an approach"*.

The consultation mentions the potential for section 3 to alter substantially the meaning of primary legislation. However, it was concluded by IHRAR that there was *"little to no evidence to support the position that UK Courts are misusing section 3"* and that, at least since 2004, *"judicial restraint could properly be said [to] have been exercised in the use of section 3; not least demonstrated by the number of times it has been used to interpret legislation".*

The government suggests that it should be Parliament, rather than the courts, who addresses incompatibility between primary legislation and human rights. However, not only is this impracticable at the time of deciding on a case which might be time-sensitive, but it is also dependent on the political will of each government. We are currently witnessing, as the Nationality and Borders Bill goes through Parliament, that many elected representatives have no qualms in defending and voting for clauses that go completely against the Refugee Convention. In fact, section 3 does not prevent Parliament from legislating against the Conventions, nor does it prevent it from addressing incompatibilities with human rights.

Option 1: The government recognises that the IHRAR Panel did not support the repeal of section 3 and that they are minded to agree. However its first option for reform is to in fact repeal it and not replace it.

It is stated in this option that *"the common law presumption that Parliament does not intend to act in breach of international law, including treaty obligations, would apply"*. However, as noted above, we are witnessing that this is not necessarily true and rather dependent on political aims.

Option 2: This option would also limit the power of the courts in interpreting legislation, and therefore weaken the effectiveness of the Bill of Rights. As option 1, it would reduce rights protection for victims.

Stripping the courts of the power to interpret legislation would in practice result in public bodies having no deterrent against breaching Convention rights, the courts having no means to correct human rights violations and people being unable to enforce their rights through the courts.

Deportations in the public interest

Question 24: How can we make sure deportations that are in the public interest are not frustrated by human rights claims? Which of the options, below, do you believe would be the best way to achieve this objective? Please provide reasons.

Option 1: Provide that certain rights in the Bill of Rights cannot prevent the deportation of a certain category of individual, for example, based on a certain threshold such as length of imprisonment.

Option 2: Provide that certain rights can only prevent deportation where provided for in a legislative scheme expressly designed to balance the strong public interest in deportation against such rights.

Option 3: Provide that a deportation decision cannot be overturned, unless it is obviously flawed, preventing the courts from substituting their view for that of the Secretary of State.

Response: We reject all options proposed.

We reject the premise and framing of this question. We do not believe a human rights claim is made to *"frustrate"* a deportation, but rather to assert one's rights. If a human rights claim is made, the claimant has a right to a fair process and consideration of their case. Once again, the language in this question is problematic.

The government suggests without evidence that they believe *"that the confidence of the wider public in our human rights framework is eroded when foreign criminals and others who present a serious threat to our society – including those linked with terrorist activity – can evade deportation, because their human rights are given greater weight than the safety and security of the public."* Not only is this a baseless claim, but were it true, the government should ensure that the public has a clear understanding of human rights law and why deporting someone in breach of their human rights would be not only inhumane, but also dangerous, as it would mean an actual erosion of the international framework of human rights that protects us all.

All three options contravene the fundamental principles of universal human rights law and the rule of law. The proposal to provide that *"certain rights cannot prevent deportation of a category of individual"* would exclude a group of people from their rights, breaching their universality. Governments are responsible for ensuring that human rights are respected and applied to everyone in the same way.

Irregular migration

Question 25: While respecting our international obligations, how could we more effectively address, at both the domestic and international levels, the impediments arising from the Convention and the Human Rights Act to tackling the challenges posed by illegal and irregular migration?

Response: We strongly reject the premise of this question which frames the Convention and the Human Rights Act as *"impediments"* and the demonisation of migrants that recurs throughout this consultation.

Human rights claims have no less merit because they are made by an irregular migrant. In fact, the premise behind this question suggests that the vulnerabilities experienced by migrants, in particular undocumented migrants, that may lead them to experience human rights violations, are still not understood by the government.

Human Rights issues should never be considered through the lens of immigration policy, except when designing policy that seeks to protect the human rights of those with intersecting vulnerabilities.

It is unclear exactly what the challenges mentioned are. Especially considering that the UK is currently the fifth economy of the world and its levels of migration are not comparatively high. In terms of irregular migration, the lack of data makes it difficult to assess to what extent this is or could be a challenge.

However, our frontline work has evidenced that the lack of safe routes for migration and this government's policies on migration and asylum are leaving many people at risk, vulnerable to VAWG, exploitation and destitution.

Moreover, when designing legislation concerning migrants it is important to consider that lack of immigration status can be the result of many different situations, including high fees and complex visa processes, a complex immigration system, lack of access to information, and abuse and exploitation, among others.

This government's consistent and pernicious narrative of an immigration crisis in the UK has led to the demonisation of migrants becoming institutionalised in hostile environment policies that create further vulnerabilities and prevent migrants from exercising their human rights. The illegal working offence is a clear example of this, as it has prevented irregular migrants from working in safe conditions and fostered modern slavery offences. In addition, the No Recourse to Public Funds (NRPF) condition has been found by UK courts to be in breach of the Convention as it increases the vulnerability of migrants to destitution and poverty.

Tackling the challenges posed by irregular migration should be about protecting and providing a safe environment for all people, regardless of their immigration status, and ending the hostile environment. This would ensure that people can fully exercise their human rights by freely accessing services and support when needed. We reject this government's proposal to reduce the scope of the Convention and the Human Rights Act, which will inevitably result in more people's rights being breached, with those with protected characteristics being the most affected.