

Sir Peter Gross
Chair of the Independent Human Rights Act Review
Independent Human Rights Act Review Secretariat

By email to: IHRAR@justice.gov.uk

1 March 2021

Dear Sir Peter Gross

Clean Air London: Submission to the Independent Human Rights Act Review

I am writing on behalf of Clean Air in London (CAL) in response to the Call for Evidence on your review of the Human Rights Act.

CAL campaigns to achieve, urgently and sustainably, full compliance with World Health Organisation (WHO) guidelines for air quality throughout London and elsewhere. CAL is a not-for-profit company limited by guarantee. Further details about CAL can be found at: <https://cleanair.london>.

CAL is independent of any government funding, has cross-party support and a large number of supporters, both individuals and organisations. CAL provides a channel for both public concern and expert opinion on air pollution and climate change.

The terms of reference are available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/953348/ihrar-call-for-evidence.pdf

Thank you for the opportunity to respond to this review.

Right to a clean and healthy environment

As mentioned above, CAL campaigns to achieve, urgently and sustainably, full compliance with WHO guidelines for air quality throughout London and elsewhere in the UK.

CAL's work is centred on the right of all persons to a clean and healthy environment, which includes the right to clean air. Such rights are predicated on Articles 2 and 8 of the European Convention on Human Rights (ECHR)¹.

¹ See, for example, *Lopez Ostra v. Spain*, judgment of 9 December 1994, *Guerra and Others v. Italy*, judgment of 19 February 1998, *Öneryıldız v. Turkey* [GC], judgment of 30 November 2004, *Moreno Gómez v. Spain*, judgment of 16 November 2004, *Budayeva and Others v. Russia*, judgment of 29 September 2008, *Tătar v. Romania*, judgment of 27 January 2009, *Deés v. Hungary*, judgment of 9 November 2010, *Dubetska and Others v. Ukraine*, judgment of 10 February 2011, *Kolyadenko and Others v. Russia*, judgment of 28 February 2012, *Vilnes and Others v. Norway*, judgment of 5 December 2013, *Brincat and Others v. Malta*, judgment of 24 July 2014, *Jugheli and Others v. Georgia*, judgment of 13 July 2017, *Cordella and Others v. Italy*, judgment of 24 June 2019.

CAL believes that, as we tackle the twin problems of poor air quality and climate change, domestic courts must enforce these rights consistently with the ECtHR's case law.

Theme one - relationship between domestic courts and the ECtHR

The margin of appreciation afforded to the UK when implementing the ECHR should not be used as a means to undermine the right to a clean and healthy environment. Domestic courts should therefore be empowered to ensure due protection of this right, in accordance with ECtHR case law.

Furthermore, the margin of appreciation does not prevent the UK from adopting a stronger stance regarding the protection of human and environmental rights, including the right to clean air. Such a move would mark a positive step towards addressing air pollution and greenhouse gas emissions holistically in the build up to the UN Climate Change Conference (COP26) in November 2021.

In this context, CAL draws to your attention the important report titled 'The case for universal recognition of the right to a safe, healthy, clean and sustainable environment'² published on 23 February 2021 and the statement by Michelle Bachelet, UN High Commissioner for Human Rights, at the 46th session of the UN Human Rights Council that day³. The UN's direction of travel on environmental rights is quite clear.

Theme two - impact of the HRA on the relationship between the judiciary, the executive and the legislature

The balancing act the courts are required to undertake in the context of the Human Rights Act (HRA), between questions of law and questions of policy, is not unique to the HRA. The same task is routinely carried out by the courts when they decide the legality of public decision-making in other contexts.

The courts are well-practiced at addressing the legality of a decision and not its merits. This is true in the sphere of human rights as it is in other cases involving judicial review of decisions by politicians and public bodies.

In considering the separation of powers and the role of the judiciary in upholding human rights, it is also important to consider what other international legal obligations the UK is bound by. In particular, as regards human rights that also embody environmental rights, the UK is not only bound by the ECHR but also by the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention).

Under the Aarhus Convention, the UK is required to ensure access to judicial proceedings to uphold and enforce environmental rights, including the right to information and the right to participate in environmental decision-making, and to challenge breaches of environmental rights enshrined in domestic law (Article 9, Aarhus Convention).

² <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment/>

³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26779&LangID=E>

Consequently, the UK must ensure that breaches of the right to a clean and healthy environment, as enshrined in Articles 2 and 8 of the ECHR, can be adjudicated in domestic courts. Furthermore, such proceedings must provide adequate and effective remedies and be fair, equitable, timely and not prohibitively expensive.

Lastly, CAL encourages you to consider whether the format or style of Court judgments could be improved upon to ensure that the Government is held to a high standard but can also benefit so that the same mistakes are not repeated.

Please contact me if you would like further information.

Yours sincerely

Simon Birkett
Founder and Director

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The Rt. Hon. Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice
David R. Boyd, UN Special Rapporteur on Human Rights and the Environment
John Knox, former Special Rapporteur on Human Rights and the Environment
Kate Harrison, Principal, Harrison Grant Solicitors