



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

Report of the Bar Human Rights Committee
of England and Wales

To The Parliamentary Joint Committee on Human Rights
Inquiry into Violence Against Women and Girls (VAWG)

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Preface

To:
The Joint Committee on Human Rights
House of Commons
Westminster

The Bar Human Rights Committee of England and Wales (BHRC) welcomes the Parliamentary Joint Committee on Human Rights Inquiry into Violence Against Women and Girls (VAWG). The BHRC believes that there is a need for the UK to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It is hoped that implementation of the Convention will lead to a review of the current mechanisms and an improvement in the prevention, protection and prosecution of VAWG offences. The BHRC has previously expressed its grave concerns about the efficacy of the UK's response to FGM, and has concluded that the UK has been in breach of its international law obligations to protect young women and girls from mutilation. It has reached the same concerns in relation to the UK's response to stalking (in particular cyberstalking), forced marriages and sexual violence. In addition to recommending the UK ratify the Convention, the BHRC also makes a series of recommendations specific to VAWGs offences.

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This report has been considered and approved by the Executive Committee of the BHRC

The Bar Human Rights Committee (BHRC)

The BHRC is the international human rights arm of the Bar of England and Wales. Established in 1991, it is an independent committee of the General Council of the Bar of England & Wales. The Committee functions as an independent, legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda.

The BHRC's objectives include upholding the rule of law and internationally recognised human rights norms and standards, and supporting practicing lawyers, judges and human rights defenders. In carrying out this work, the BHRC has secured a reputation for legal expertise in the protection of human rights. The BHRC's reports and written submissions provide valuable tools to legal practitioners around the world and are read widely by policy makers within national and international bodies, thereby assisting in the development of the law.

Over the years the Committee has developed expertise in two areas of particular relevance to this Inquiry: the protection, enhancement and vindication of the rights of women and children. This work stream is reflected in the establishment of two [specialised units](#), The Child Rights Unit and the Women's Rights Unit.¹

¹ More information about the work of the BHRC can be found at <http://www.barhumanrights.org.uk/>

Executive Summary

Key Conclusions

The BHRC has reached the conclusion that the UK should immediately implement some of the measures set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Convention) and move swiftly towards ratification.

The BHRC Approach and General Comments

1. The chief objectives of the BHRC's submissions are:
 - to provide an analysis of the UK's international law obligations in respect of the prevention, protection and prosecution of the VAWGs offences;
 - to advise whether the UK should ratify the Convention;
 - to make a series of tailored recommendations directed at more effectively protecting against these VAWGs offences.
2. The BHRC believes that a proper understanding of the UK's existing international obligations, together with those which ratification of the Convention would introduce, is important to the current Inquiry. The UK is legally obliged to eliminate discrimination against women and girls, empower women. The UN and the Council of Europe have adopted some of the most important documents that set international standards and encourage nations to end violence against women.
3. The Convention obliges states to reform laws, implement practical measures to aid victims, and allocate adequate resources for an effective response to violence against women and domestic violence. The Convention sets out the 4Ps obligations:
 - a) Prevent
 - b) Protect
 - c) Prosecute
 - d) Policies (integrated, comprehensive and coordinated)
4. The BHRC supports the Council of Europe recommendations that the following measures are necessary to prevent VAWGs:
 - Training of professionals in close contact with victims;
 - awareness-raising campaigns;
 - education on gender equality and non-violent conflict resolution in interpersonal relationships as part of the National Curriculum;

- treatment programmes for perpetrators;
 - working closely with NGOs;
 - eradicating gender stereotypes in the media.
5. The BHRC supports the implementation of well-resourced and effective services for victims as recommended by the Convention including:
- Removal of a perpetrator of domestic violence from his or her home
 - Access to adequate information for victims
 - Shelters
 - 24/7 telephone helplines free of charge
 - Rape crisis or sexual violence referral centres
- 6. The BHRC further recommends:**
- importance of community engagement programmes directed at modifying attitudes towards and cultural practices relating to VAWGs;
 - the need for a consistent and coordinated institutional protection at national level and a meaningful data recording systems;
 - investment in resources such as guidelines and best practice manuals, to support meaningful implementation of the Convention;
 - tailored support for victims through the process.
7. The BHRC is committed to educating about, promoting and defending human rights. It believes that being aware of one's internationally recognised human rights is a tool in itself which empowers both victims and those advocating against such VAWGs.
8. The BHRC would like to highlight the importance of ensuring respect and dignity throughout the legal processes (applicable to both alleged victims and defendants).

The Impact of Mainstream Culture and Media

9. In focusing on specific cultural practices which lead to violence against women there is a risk of forgetting that violence against women is a problem shared across cultures in the UK and one that is compounded by mainstream media and culture.² International law recognises that violence against women is facilitated by historical and structural social and cultural power dynamics which place women in an inherently more vulnerable position than men. The promotion of gender stereotypes is identified as a significant factor in this.

² http://www.oecd.org/dev/poverty/Wikigender%20online%20discussion_VAW_Feb2013.pdf

10. The UK has a legal obligation to take steps to eliminate prejudices and cultural practices which are predicated on the inferiority or superiority of one gender ahead of another. This includes, in particular, taking positive action to challenge negative attitudes amongst men and boys and engage them in preventing such attitudes spreading.
11. The link between the portrayal of woman and girls as sex objects and violence against women is well established.³ The portrayal of women and girls as objects in the mainstream media, television, computer games and on the internet dehumanises women which is a significant psychological contributor to violence against women . Increasingly women and girls are portrayed as submissive while men and boys are encouraged to aspire to a hyper-masculine, dominant and even violent archetype.
12. It is quite clear that the UK's obligations under international law mandate that this issue should be addressed. The causal link between objectifying portrayals of women and girls in the media and violence against women should be publicly recognised and public awareness campaigns and educational initiatives in schools and communities should seek to address negative attitudes amongst men.
13. We now turn to consider the individual Convention offences analysing the UK's international law obligations and making recommendations with the double objectives of (1) better protecting women and girls at risk of VAWGs offences by strengthening the UK's mechanisms and (2) ensuring that the UK's response to these offences and practices conforms to international law.

The Convention Offences and International Obligations

14. The Convention's coverage is extensive, the BHRC submissions will focus on 5 Convention offences:
 - FGM is a paradigmatic example of VAWGs
 - Forced Marriage is an area where the UK has made some progress but more is needed
 - Stalking (including cyber-stalking) is an area where additional work is required
 - Sexual offences including rape are examples of where the focus on the victim is at times inadequate.
 - 'Honour' based justifications of violence needs to be tackled.

These offences also involve psychological violence, physical violence and sexual harassment.

³ <http://www85.homepage.villanova.edu/jeremy.kees/publications/ja%20violence%20final.pdf>

15. As stated, besides the Convention, the UK has existing international obligations, in particular under [CEDAW](#)⁴ which requires the elimination of discrimination against women and girls which VAWGs offences unequivocally represent. This obligation is further detailed in the UN Convention on the Rights of the Child 1989 ([CRC](#)).⁵ Some offences are also prohibited by the UN Convention against Torture 1984 ([CAT](#)),⁶ which places positive obligations on the UK to take all measures to prevent.

16. The criminalisation of these offences is not sufficient to fulfil its obligations. Effective implementation also requires additional non-legal measures such as those set out above. The UK is required to provide adequate resources for such measures.

‘Honour’-based violence

17. ‘Honour’-based violence (HBV) is a highly gendered form of violence, both in terms of its victims and its perpetrators: men are generally only targeted through their association with ‘transgressive’ women. It is designed to control women in order to maintain the patriarchal status quo —men victimise and abuse women in their communities in order to sustain their dominance within the social system; in this way HBV can be seen as one form of VAWGs. So-called honour killing is an extreme form of HBV, and typically refers to the murder (or attempted murder) of a woman by members of her family.⁷ ‘Honour’ based violence is a violent crime or incident committed to protect or defend the honour of a family or community. Those who are seen to violate their cultural or religious norms appear to bring shame on their family or community, and therefore often become victims of so-called ‘honour’ violence.

18. The BHRC recommends:

- HBV be an aggravating feature of an offence and making HBV a specific aggravating feature in sentencing guidelines
- education, training and engagement with communities at risk.

Female Genital Mutilation

19. Female Genital Mutilation (FGM) is a practice which results in gender violence and irreparable harm against women and girls; it is an egregious breach of their human rights; it frequently is justified on the basis of tradition and ‘culture’; and it directly engages the rights protections contained in CEDAW and the Convention.

⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁵ <http://www.unicef.org/crc/>

⁶ <http://www.un.org/documents/ga/res/39/a39r046.htm>

⁷ The definition of ‘honour’ in this section is quoted from Gill, A., Strange, C., Roberts, K. (2014) (eds) *‘Honour’ Killing and Violence: Theory, Policy and Practice*, London: Palgrave Macmillan, pp 10-25.

20. The BHRC has submitted a [report](#)⁸ to the Home Affairs Committee Inquiry into FGM. In brief, the BHRC has concluded that the UK has been in breach of its international law obligations to protect young women and girls from harm since it has failed to provide an effective anti-mutilation mechanism. During the period of the UK's breach, [thousands](#)⁹ of British girls and young women have been unnecessarily exposed to the risk of mutilation and have suffered irreparable physical and emotional damage. Many could – and should – have been saved. This constitutes a serious breach of the state's duty of care.

21. Importantly, ratification of the Convention emphasises the fact that FGM is a problem in – and for – Britain today. For too long FGM has been regarded as someone else's problem. In that period thousands of British girls have been unnecessarily mutilated. Proactive interventions and effective mechanisms are crucial for the purposes of combating FGM because it is a deeply ingrained social norm which cannot simply be eliminated by prohibition and prosecution. What is essential is to recalibrate and redirect the societal forces that create the pressure for parents and familial kinship groups to mutilate their children.

22. The BHRC recommends:

- community engagement founded on principles of human rights, respect and realism
- adequate resources in line with the UK's existing international obligations.

Forced Marriage

23. The forcing of children and young adults to marry against their will gives rise to gross abuses in human rights especially affecting people of either sex within our British Asian communities and elsewhere. It is the experience of the Working Group that there has been a sustained effort in the last 5 years to tackle the issue of forced marriages (FM) in the UK. This has been facilitated by awareness raising campaigns by the Forced Marriage Unit and the introduction of the Forced Marriage (Civil Protection) Act 2007 (the 2007 Act).¹⁰ However there is more than the Government can do in order to protect girls who are at risk or who have already been forced into a marriage.

24. FMs breach the right to bodily integrity guaranteed by a range of international human rights instruments and also international customary law; they are undoubtedly a human rights issue. Protection against FM is enshrined in several international treaties which make clear the need for consent of both spouses (Article 16(2) UDHR; Article 12 ECHR; CEDAW, Article 16(1)(b)).

⁸ <http://www.parliament.uk/documents/commons-committees/home-affairs/FGM%20written%20evidence.pdf>

⁹ <http://www.newcultureforum.org.uk/home/?q=node/920>

¹⁰ <http://www.legislation.gov.uk/ukpga/2007/20/contents>

Article 1 CRC recommends that all States Parties establish eighteen as the minimum age for consent with regard to marriage.¹¹

25. The Convention calls upon state parties to criminalise “the intentional conduct of forcing an adult or a child to enter into a marriage”, including luring a person abroad for these purposes. Currently the government intends to criminalise forced marriages. There have been extensive concerns in relation to this raised by victims and practitioners that this may drive the forced marriages further underground¹². The criminalisation of FGM in 1985, to which similar considerations apply, has yet to see a prosecution. If a criminal law is brought in, it must be implemented in a manner which takes into account these legitimate concerns and the protection of victims should remain at the forefront of the governments efforts. Ratification of the Convention would require an holistic approach which would be more effective than legislation alone.
26. The Convention further provides that State Parties “shall take the necessary legislative or other measures to ensure that marriages concluded under force may be voidable, annulled or dissolved”. Voiding a marriage does not require a formal decree and will render the marriage as though it never existed. England and Wales has legislated on the voiding of marriages, however other measures are required.
27. Current government guidance on forced marriages suggests that mediation should not be used in cases of forced marriages¹³. There is good reason for this as forced marriage orders occur under immense pressure from the community and relatives. Mediation can add to the pressure a victim may feel to withdraw an application for a forced marriage protection order. The government is urged to re-look at the proper role of mediation in limited cases. The BHRC does not agree that mediation should never be used in this context. Family cohesion can be vital for children. We recommend an accredited panel of international family law accredited mediators with specialized training in the sensitives surrounding forced marriages.
28. Evidence from the Forced Marriage Unit suggests that there is a high risk of abduction for the purposes of a forced marriage during school holidays.¹⁴ School teachers and front line practitioners in areas where forced marriages is a re-occurring issue should also be given specific training to speak to young girls who may be concerned about forced marriage. Such training should be

¹¹ Convention on the Rights of the Child (1989) UN General Assembly Resolution 44/25, UN Doc. A/44/49, 20 November 1989, available at <http://www2.ohchr.org/english/law/crc.htm>. Many early and child marriages can also be described as FMs on the basis that minors are not deemed to lack the legal capacity to consent due to their age. In the UK the current legal age for marriage is 16. [UK] Parliament (2013) The Laws of Marriage, available at: <http://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/relationships/overview/lawofmarriage/>.

¹² <http://www.theguardian.com/world/2012/jun/08/criminalisation-forced-marriage-push-issue-underground>

¹³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35532/fmu-right-to-choose.pdf

¹⁴ <https://www.gov.uk/government/news/forced-marriage-warning-as-summer-holidays-approach>

accompanied by community engagement initiatives to be able to speak to community leaders about the law and the human rights concerns surrounding forced marriage.

29. The BHRC recommends:

- The government should be cautious in criminalizing FM.
- An accredited panel of international family law accredited mediators with specialized training.
- Early intervention – investing in short and long term early intervention and prevention initiatives against harmful practices, particularly FM and against violence against women and girls.
- Specific training to school teachers and front line practitioners in areas where FM is a re-occurring issue.
- Community engagement initiatives to be able to speak to community leaders about the law and the human rights concerns surrounding FM.
- Consider the introduction of a questionnaire system for those who conduct marriages in the UK to assist in the identification of FM and a similar questionnaire as a requirement for any marriage to be recognised in UK if conducted abroad.

Stalking and Cyber-Stalking

30. The British Crime Survey estimates up to 5 million people experience stalking each year. There are no official statistics on the percentage cyber-stalked.¹⁵ Grooming a child on the internet is not an offence, only meeting a child after sexual grooming.¹⁶ Cyber-stalking of adults or children is not a specific criminal offence and has to be fitted into other offences. Figures show that the majority of stalking victims (80.4%) are female while the majority of perpetrators (70.5%) are male.¹⁷ The majority of stalkers are known to their victims either as ex-partners or acquaintances, but some people are stalked by complete strangers.¹⁸ Victims do not tend to report to the police until the 100th incident¹⁹. Of the 80 cases analysed by Napo in 2011 only those perpetrators eventually charged with murder, attempted murder, GBH, wounding or serious sexual offences received substantial custodial offences. Each of those cases was preceded by stalking behaviour. New stalking legislation is disappointing as it largely concentrates on causing fear of violence rather than psychological harm.²⁰ Cyber-stalking remains undefined.²¹

¹⁵ <http://www.theguardian.com/uk/2011/apr/08/cyberstalking-study-victims-men>

¹⁶ Section 15 Sexual Offences Act 2003

¹⁷ National Stalking Helpline, 2011

¹⁸ <http://www.dashriskchecklist.co.uk/uploads/Victim%20Survey.pdf>

¹⁹ Sheridan 2005

²⁰ http://www.huffingtonpost.co.uk/2012/03/11/new-stalking-law-dissapoi_n_1337324.html

²¹ <http://womensissues.about.com/od/violenceagainstwomen/a/CyberstalkingFS.htm>

31. The BHRC recommends:

- Introducing an offence of grooming a child on the internet
- A review of harassment and stalking legislation to specifically address / define cyber-stalking / trolling and psychological harm
- Comprehensive services for stalked victims (online or on the ground)
- A programme of education on responsible use of social media
- Provision of sentencing options for courses on responsible use of social media.

Sexual Violence and Trafficking

32. Approximately 85,000 women are raped on average in England and Wales each year and over 400,000 women are sexually assaulted each year. 1 in 5 women (aged 16-59) has experienced some form of sexual violence since the age of 16. 33% of girls between the ages of 13 and 17 in the UK have reported experiencing sexual violence from a partner. Fewer than 1 in 4 people who suffer abuse at the hands of their partner - and only around 1 in 10 women who experience serious sexual assault - report it to the police. Although conviction rates have increased (rape 63% and domestic violence 70%), the number of rape and domestic violence cases police refer to the CPS have fallen.

33. Likewise, in respect of trafficking, while the number of referrals of potential victims in the first half of 2013 has risen by 48%, this is not matched with a rising number of convictions of traffickers. In 2012, a total of 13 convictions for human trafficking and forced labour were recorded on a principal offence basis in England and Wales. The European Court of Human Rights has recently found that the UK violated their positive obligations under Article 4 to facilitate access to the authorities.

34. The ratification of the Convention would serve as a sharp reminder to the Government of their obligations to investigate, prevent, protect and prosecute sexual violence against women. It would require a comprehensive state approach to tackling violence against women and will help improve responses and awareness of these under-reported crimes as well as ensure a sufficient focus on prevention.

35. There is a need for comprehensive laws on slavery and sexual servitude as current law is piecemeal and trafficking is an unhelpful label. Sexual abuse committed abroad by British Citizen on a child can be prosecuted in England and Wales - this needs to be extended to adult victims to account for those who groom women on the net and commit offences abroad (including Scotland) - law not currently dealing with transnational serial offender.

36. **The BHRC recommends:**

- The introduction of a National Rapporteur on trafficking, based on the Dutch model
- Research into new law on anonymity for teachers and whether that is affecting the reporting of abuse
- Mandatory reporting
- Introduction of a grooming offence: Sexual grooming on the internet a distinct offence
- tailored support through legal processes
- detailed information on how court proceedings are conducted
- conduct of cases by specialised accredited advocates (more than proposed QASA requirements)
- publication of all court documents to include judicial directions to juries in criminal trials so long as anonymity can be satisfactorily achieved.

Legal Aid Cuts

37. Based on the experience of members of the Working group, the BHRC would like to draw the Inquiry's attention to certain issues, whilst at the same time mindful of our mandate.

38. The removal of legal aid from the majority of family and immigration cases, where instances of VAWG are seen most acutely. There are fundamental practical difficulties for women who experience domestic violence obtaining legal aid. The same is true of victims of trafficking, where evidence of trafficking is required to qualify for legally aided representation, however such representation is required to demonstrate and evidence trafficking. The residence test in particular has a disproportionate impact on women..

39. Where a case concerns a protected right or one with great importance to the individual woman, it is likely that a failure to provide access to legal advice will breach the UK's obligations under CEDAW.

40. In 2013 the CEDAW Committee published recommendations for the UK where they raised access to legal aid as a key area for concern. The ongoing cuts to legal aid, the consequent lack of effective access to justice and implementation of the 4Ps leads the BHRC to conclude that the UK is likely to be in breach of its obligations under CEDAW.

41. Women and girls who have been subjected to violence appear as both complainants and defendants in the CJS. The cuts in the CJS impact upon both the State's ability to investigate

and prosecute acts of violence against women and the provision of representation to those accused of criminal offences.

42. The importance of quality advocacy must not be underestimated for both prosecution and defence.²² This is of particular importance to cases involving violence against women and girls which raise sensitive and traumatic issues and where such expertise guards against unnecessary trials, unnecessary and often inappropriate questioning and consequently limits the trauma arising from such experiences. The cuts will result in the loss of highly skilled representatives, the body of expertise in such cases and ultimately the ability of the State to effectively secure the rights of women and girls in accordance with its Convention obligations.
43. The difference that legal aid can make to a woman's safety cannot be underestimated. Access to legal aid is a lifesaving resource. The BHRC calls upon the government to be ever vigilant to ensure that cuts do not disproportionately impact on women. The Committee is referred to the UK CEDAW Shadow Report, Appendix 18 for detailed analysis.²³
44. The BHRC is of the firm view that many of the above recommendations could be implemented immediately but ratification of the Convention would assist in the UK's endeavours to combat and eliminate VAWGs. It would impose a further international law obligation on the UK to challenge traditional and 'cultural' justifications for FM, FGM and 'honour' crimes. Ratification would emphasise that the state has a positive duty in law to intervene in a proactive way to modify practices that result in harm, violence and degradation to women and girls. It would provide a further basis in law for those who wish to persuade the state to provide adequate and meaningful resources to construct an effective mechanism to protect women from gender violence and harm. The Joint Committee's Inquiry will have accomplished something of lasting value if it makes more likely the ratification of the Convention and – as critically – helps foster a spirit of respect for the dignity and bodily integrity of women and girls.

London, 5 March 2014

²² See,

http://www.barcouncil.org.uk/media/236218/next_steps_treasury_counsel_consultation_response31.10.13.pdf

²³ Womens Resource Centre, at http://thewomensresourcecentre.org.uk/wp-content/uploads/Appendix-28_Legal-aid_FINAL2.pdf and more generally, <http://thewomensresourcecentre.org.uk/our-work/cedaw/cedaw-shadow-report/>