



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

**Report of the Bar Human Rights Committee
of England and Wales**

**To the Parliamentary Inquiry
into Female Genital Mutilation**

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February 2014

Preface

**To:
The Home Affairs Committee
House of Commons
Westminster**

The Bar Human Rights Committee of England and Wales (BHRC) welcomes the Parliamentary Inquiry into Female Genital Mutilation (FGM) as the UK has an obvious and urgent need to protect young women and girls far more effectively from the risk of genital mutilation. The BHRC has 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. During the period of the UK's breach, thousands 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. Immediate remedial action must be taken. To this end, the BHRC makes 12 recommendations for urgent implementation.

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

Executive Summary

3 Key Conclusions

The BHRC has reached **three key conclusions** in respect of the UK's response to FGM (1) that the UK has been in breach of its international law obligations to protect women and children from genital mutilation; (2) that the UK will continue to be in breach until an anti-mutilation mechanism that is comprehensive and cohesive is securely in place; (3) that during the period the UK has been in breach, [thousands](#)¹ of British national girls have been mutilated since FGM was criminalised in 1985; some of them could - and should - have been saved and their mutilation evidences a serious breach of the state's duty of care.

Further, the lack of FGM prosecutions – a crucial impetus to the Parliamentary Inquiry - is just one instance of a pattern of systemic failure to protect young women and girls that is detailed in this report. Taken together, these failures have unnecessarily exposed females in the UK to the risk of genital mutilation. This situation cannot continue. Action must be taken immediately. We make 12 recommendations that should be implemented without delay.

12 Recommendations

1. **Introduce 'FGM Protection Orders' (FGMPOs)**² modelled on Forced Marriage Protection Orders and Sexual Offences Prevention Orders. FGMPOs would prohibit respondents from carrying out FGM, prevent children at risk of FGM from being removed from the jurisdiction, and ensure the repatriation of survivors from abroad.
2. **Criminalise FGM for all children taken out of UK** to be mutilated, irrespective of whether 'settled' or not: the UK's legal obligations extend to all children within its jurisdiction - therefore UK organisers of such mutilations should face prosecution, irrespective of the child's status.
3. **Establish an [Anti-FGM Unit](#)**.³ There should be a central coordinating institution for the UK's anti-FGM response, equivalent to the Forced Marriage Unit in the Foreign and Commonwealth Office.
4. **Pass a legal requirement for mandatory training and reporting for frontline professionals** in regulated services (health, social care, education).
5. **Increase resources for combating FGM** in accordance with the UN [resolution](#)⁴ that state responses to the elimination of FGM should be properly resourced.
6. **Provide medical and emotional support for survivors**. The UK's international obligations require that effective remedial support for survivors is available, such as [reconstructive \(reversal\) surgery](#)⁵ and emotional/psychological support.
7. **Challenge cultural justifications for FGM** wherever they arise; be clear that this (i) accords with international consensus; (ii) is the stance of the United Nations; and (iii) forms part of the UK's international obligation to modify cultural or traditional practices that are harmful to women and girls.

¹ <http://www.newcultureforum.org.uk/home/?q=node/920>

² <http://www.legislation.gov.uk/ukpga/2007/20/section/1>

³ <https://www.gov.uk/stop-forced-marriage>

⁴ http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/67/146

⁵ <http://www.fpv.org.au/advocacy-projects-research/projects/female-genital-mutilation-cutting-in-victoria/>

- 8. Launch national awareness-raising campaign** which must emphasise that FGM is (i) a gross human rights violation; (ii) a crime and child abuse; (iii) a problem in and for British society, which we have a moral and legal duty to combat.
- 9. Introduce FGM into the National Curriculum.** Education about FGM is required for boys and girls to foster empowerment and personal autonomy among girls and respect for women's rights and bodies among boys.
- 10. Create community engagement programmes.** Develop a programme of sensitive, properly resourced community engagement projects to change attitudes about FGM. Community members should be encouraged to help run such initiatives.
- 11. Deprecate the marginalisation of migrant communities.** Racially demeaning depictions, whether in press, public or political debate, or through governmental action, further isolate migrant communities and act to perpetuate FGM as a form of social solidarity and identity.
- 12. Monitor FGM and collect data** to fill the knowledge gap about the incidence and distribution of FGM and monitor the effectiveness of the UK's interventions.

The Bar Human Rights Committee (BHRC)

1. 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.
2. 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.
3. 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.⁶
4. For the last four years, the BHRC has been working in Nigeria in partnership with UNICEF and has produced training manuals in conjunction with UNICEF and US AID. FGM remains prevalent as a harmful cultural practice throughout [Nigeria](#).⁷ The BHRC's work has focused on Child Protection Networks within Nigeria, and one component of the training concerned strategies for eradicating cultural practices that are harmful to children, including FGM. The training involved 5 delegations between 2011 and 2013 delivering training to over 300 delegates from Child Protection Networks and the National Human Rights Commission of Nigeria. The BHRC delegations trained lawyers, police magistrates, social workers and NGOs.

The Approach of the BHRC to the Inquiry

⁶ More information about the work of the BHRC can be found at <http://www.barhumanrights.org.uk/>

⁷ See UNICEF report for more on FGM in Nigeria: http://www.unicef.org/nigeria/FGM_.pdf

5. The chief objectives of the BHRC's submissions are
 - to provide an analysis of applicable international law and the UK's international law obligations in respect of the prevention, prohibition and punishment of FGM;
 - to make a series of tailored recommendations flowing from that analysis directed at more effectively protecting young women and girls from FGM.

6. We are of the firm view that proper appreciation of the UK's international law position is relevant to the Inquiry in a number of respects. We start from the position that it is essential to understand that better protection of girls from mutilation is required not just as a matter of good policy, moral necessity, or political fashion, but also by virtue of the UK's express obligations under international law. Better protection of women and children is thus a democratic demand indispensable to the effective safeguarding of human dignity and bodily integrity and for the enhancement of gender equality.

7. It is the aim of the BHRC that this understanding becomes widely shared by survivors, campaigners, activists, politicians, civil society and those who presently subscribe to the practice of FGM. This is because the fundamentally reactive approach that has dominated the UK's response for the last three decades, and that has failed thousands of mutilated young women and children, is in breach of international human rights law. This attests to the urgency of the response now required.

8. The BHRC is committed to promoting, educating about and defending human rights. It profoundly believes that being cognisant of one's rights can be a tool that can in itself empower both survivors and those who would make a stand against this egregious practice. Girls who have been mutilated need to know that what has happened to them is regarded as abhorrent and a serious violation by the international community. Young women who wish to resist mutilation need to know that they have an internationally recognised human right not to be violated.

9. We therefore proceed to offer an analysis of the UK's international law obligations, and following directly from this make recommendations that have the twin objectives of (1) better protecting girls at risk of FGM by strengthening the UK's anti-mutilation mechanism and (2) making the UK's response to FGM conform to international law.

Analysis of UK's International Law Obligations

10. Why is the UK in breach of its international law obligations to protect young women and girls from FGM? What international commitments has it subscribed to?
11. By ratifying the Convention on the Elimination of All Forms of Discrimination against Women 1979 ([CEDAW](#))⁸ the UK committed itself to *eliminate* discrimination against women. FGM unambiguously constitutes one of the most abhorrent forms of discrimination against young women and girls.
12. Further, by virtue of the UN Convention on the Rights of the Child 1989 ([CRC](#))⁹ the UK has *positive* obligations in international law to *ensure* that children are not subjected to cruel, inhuman or degrading treatment (art. 37). FGM constitutes an irreparable violation of the child's bodily integrity and physical and psychological health.
13. FGM is also a violation of the UN Convention against Torture 1984 ([CAT](#)),¹⁰ which has been ratified by the UK. As such the UK has a positive obligation to take legislative, administrative, judicial or other measures to prevent acts of torture within its jurisdiction (art. 2).
14. Intrinsic to these legal obligations is the requirement that states must not only respond to FGM but respond in an effective way. Passing [legislation](#), as the UK has done,¹¹ remains an insufficient response if implementation is not effective in practice. It needs to be combined with other measures that are necessary to trigger the legislation (by, for example, having adequate mechanisms for frontline professionals to report instances of FGM and thereby provide the police with evidence).
15. This obligation was reinforced in 2010 by the [Commission on the Status of Women](#) which resolved that states should ensure the effective implementation of national legislative frameworks and institute adequate accountability mechanisms to monitor the impact of anti-FGM measures.¹²
16. Furthermore, the [European Parliament](#) resolved in 2012 that Member States should not only enact legislation, but develop 'a full range of prevention and protection measures, including mechanisms to coordinate, monitor, and evaluate law enforcement.'¹³

⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

⁹ <http://www.unicef.org/crc/>

¹⁰ <http://www.un.org/documents/ga/res/39/a39r046.htm>

¹¹ <http://www.legislation.gov.uk/ukpga/2003/31/contents>

¹² <http://www.un.org/womenwatch/daw/csw/>

17. Critically, the European Parliament's Resolution called on 'relevant UN entities and civil society, through the allocation of appropriate financial resources, actively to support targeted, innovative programmes and to disseminate best practice guidelines that address the needs and priorities of girls in vulnerable situations, including those subjected to female genital mutilation.'¹⁴
18. This call for adequate resources to combat FGM echoed the stipulation made by the Council of Europe in 2011 that states should allocate 'adequate resources' to prevent forms of violence against women, of which FGM is undoubtedly one of the most serious (the '[Istanbul Convention](#)').¹⁵
19. Therefore it is beyond argument that international law requires that the UK creates an effective anti-mutilation mechanism that operates in a multi-level and multi-agency way (legal, administrative, educational, health) and that constitutes a proactive - as opposed to tokenistic and reactive - commitment to protecting girls in the UK from FGM.
20. The UK has a legal duty to ensure that such preventative and protective mechanisms are adequately resourced to the maximum extent of available resources (see CRC, art. 4).
21. The anti-mutilation mechanism must be monitored and maintained – the commitment to eliminate mutilation must be ongoing and not just a short-term response to present public concern.
22. Looking at the case of the UK in the round there is very serious doubt whether the UK has complied with these obligations domestically.
23. One of the historic difficulties in combating FGM has been the anxiety about challenging cultural or traditional practices. However, in a [General Resolution](#) in 2007,¹⁶ the UN emphasised that custom, tradition or religious beliefs cannot be used as excuses for avoiding the obligation to eliminate violence against women and girls.
24. It follows that wherever 'cultural' justifications for FGM are advanced they must be challenged and never used as an excuse for the failure to protect young women and girls. It must be made

¹³ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0261&language=EN&ring=B7-2012-0304>

¹⁴ *ibid.*

¹⁵ <http://www.conventions.coe.int/Treaty/EN/treaties/html/210.htm>

¹⁶ http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/61/143&Lang=E

absolutely clear when such challenge is made that the action is in accordance with international consensus and UN policy.

25. Beyond this, the UK must fearlessly implement the international law principle that it is legitimate, necessary and desirable for a state to intervene to modify social and cultural patterns of conduct that result in discrimination against women: CEDAW, art. 5. FGM is a paradigmatic example where entrenched traditional practices that seriously disadvantage and damage women should be modified by a range of interventions.
26. Furthermore, hitherto there has been a lack of a coordinated and comprehensive campaign of awareness-raising domestically that dispels any ambiguity about the status of FGM as a social practice. Fundamental to such a campaign would be the unequivocal message that FGM is not only a serious crime and child abuse, but a fundamental breach of human rights and gender violence against women and girls.
27. Notoriously, not a single prosecution has been brought. But during the ensuing period of nearly thirty years, many [thousands](#)¹⁷ of young women and girls who are British citizens or nationals have been mutilated either in the UK or when they have been taken back to the country of family origin. In a recent [report](#), Bindel and colleagues estimated that presently in the UK 170,000 girls aged 15 and over are living with the consequences of FGM.¹⁸
28. However, the lack of prosecutions is simply one instance of a far greater systemic failure that traverses the entire landscape of state institutions and civil society. The UK has [failed in 10 critical respects](#).¹⁹ The UK has failed to provide:
 1. adequate education about FGM for boys and girls as part of the National Curriculum;
 2. sufficient training for professionals on risk awareness, the law and survivor support;
 3. effective and mandatory professional referral systems among regulated services (health, social services, education);
 4. sufficient community engagement programmes directed at modifying attitudes to FGM and behaviour in practising communities;
 5. consistent and coordinated institutional protection nationally;
 6. acceptable medical and psychological support services for survivors;

¹⁷ <http://www.newcultureforum.org.uk/home/?q=node/920>

¹⁸ <http://www.newcultureforum.org.uk/home/?q=node/920>

¹⁹ See also recent article by Dexter Dias QC, Felicity Gerry and Hilary Burrage detailing 10 reasons why the UK's FGM law has proved ineffective and 10 solutions: <http://www.theguardian.com/commentisfree/2014/feb/07/fgm-female-genital-mutilation-prosecutions-law-failed>

7. meaningful data recording systems;
 8. appropriate monitoring of intervention effectiveness;
 9. adequate institutional resources and funding domestically;
 10. necessary institutional conditions and cultures to prosecute those involved in mutilation.
29. When these failures are evaluated against the backcloth of the state's international commitments, it is plain that the UK has been in breach of its international obligations to protect young women and girls. Taken together, these failures, individually and cumulatively, have unnecessarily exposed young women and girls to the risk of genital mutilation since FGM was [criminalised](#) in the UK in 1985.²⁰ The many thousands of British national girls who have been mutilated since the UK passed FGM legislation in the 1980s have suffered irreparable harm. Some of these young women could – and should – have been saved. Their mutilation evidences a serious breach of the state's duty of care. This situation cannot continue. Action must be taken immediately.
30. In the Executive Summary, we make a number of recommendations that should be implemented without delay. We now proceed to develop some of them, which are legal in nature.
31. **Lack of effective preventative legal mechanisms.** As explained above, the UK has positive obligations in international law to act to prevent genital mutilation from occurring. Prevention can occur through three prime mechanisms:
1. Desistance: through education and community engagement;
 2. Deterrence: through fear of criminal sanction;
 3. Legal interventionism: through court order.
32. Presently the UK lacks sufficiently tailored or targeted legal powers to assist in intervening in cases where FGM is suspected. Better (and mandatory) reporting will alert authorities to cases where serious risk of mutilation is suspected. In these cases, the state's response would be strengthened by having a series of powers whereby the court could intervene without necessarily resorting to taking the child into care.
33. We recommend that powers be created broadly equivalent to those available in Forced Marriage. The powers proposed would include:
1. Applying to the court where it is suspected on clear and compelling evidence that the child is at risk of mutilation, and getting an order prohibiting any interference with the bodily integrity of the child;

²⁰ http://www.legislation.gov.uk/ukpga/1985/38/pdfs/ukpga_19850038_en.pdf

2. Orders requiring relatives of a child overseas who has been in the UK and is on clear evidence at risk of mutilation to reveal the location of the child so Consular staff can intervene;
 3. Power to prevent an at-risk child being removed from the UK;
 4. (We would add that there should be a power to repatriate mutilation survivors to ensure they obtain immediate medical and psychological support.)
34. These civil powers would provide a range of injunctive remedies to courts across the country and would have the virtues of being (1) ‘victim’-centric, directed at (rather than prosecution) prevention and protection of the child, and thus embodying the paramount principle of the [Children’s Act 1989](#); ²¹ (2) flexible and capable of being tailored to the specific facts of the case; (3) nevertheless backed by criminal sanction for breach in a way that is likely to focus the child’s carers on their duty to protect.
35. It is the professional experience of members of the Committee that in respect of family law cases involving honour crime, those vulnerable to threat have been more prepared to come forward when such an approach is adopted. In appropriate cases, the police can apply to the court for disclosure of the judgment and, certainly in child sex abuse cases, this has led to prosecution.
36. Equally in relation to Forced Marriage powers, it is the experience of this Committee that injunctive relief specifically developed for a social problem (such as Forced Marriage) proved effective in a number of respects. The powers have the virtue of being focused on a particular social ill; are easily understood by judges, lawyers and (crucially) those at risk of abuse; and have been subject of specific judicial training in areas of high prevalence. Similar considerations obviously apply to FGM.
37. Further, it should be noted that during the [Parliamentary debates](#) ²² on the Forced Marriage (Civil Protection) Bill, the UK’s international law obligations were invoked. Precisely the same logic applies to FGM. An urgent need to protect vulnerable young women and children also exists in respect of genital mutilation.
38. **Non-settled children.** Presently it is not a criminal offence under the 2003 Act if a person in the UK arranges for a non-settled child to be taken out of the UK to be mutilated. The UK’s human rights obligations apply to all children within its jurisdiction, therefore anyone in the UK who is

²¹ See section 1(1): <http://www.legislation.gov.uk/ukpga/1989/41/section/1>

²² <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70126-0001.htm#07012689000023>

arranging for children to be taken out of the jurisdiction to be mutilated should be guilty of a criminal offence. This gap in the law not only fails to reflect the highly mobile nature of the affected communities, but is morally indefensible. This loophole in the law must be closed.

London, 12 February 2014