



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

Report of the Bar Human Rights Committee of England and Wales

**To the Office of the High Commissioner
for Human Rights**

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Report to the Office of the High Commissioner for Human Rights
by the Bar Human Rights Committee of England and Wales

SCOPE

The Bar Human Rights Committee of England and Wales (BHRC) is delighted to respond to the call by the Office of the High Commissioner for Human Rights (OHCHR) for information on the main challenges related to the mobilization, allocation and spending of resources for children. The OHCHR specifically invites examples of good practice in child-focused sectors, including health, education, social protection, child protection and child rights.

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.

FGM in the UK

The question of effective resource mobilization to protect children has arisen with pressing urgency in the UK in respect of a group of highly vulnerable young people. The UK's historic failure to protect young women and girls from Female Genital Mutilation (FGM) is part of a wider global problem.¹ Although figures vary (and must be considered with caution) the latest research indicates that in the UK 170,000 females are living with the legacy of genital mutilation and 65,000 girls under the age of 13 are at risk of mutilation.² The World Health Organisation (WHO) estimates that worldwide 125 million women have suffered FGM and 3 million more a year are mutilated.³

FGM was criminalised in the UK in 1985. Since that date there has not been a single successful prosecution.⁴ This disturbing fact exacerbated growing concerns

¹ The World Health Organisation defines female genital mutilation (FGM) as 'all procedures that involve partial or total removal of the external female genitalia, or other injury to the female genital organs for non-medical reasons':

<http://www.who.int/mediacentre/factsheets/fs241/en/>

² *An Unpunished Crime: The lack of prosecutions for Female Genital Mutilation in the UK*. Report by Bindel J. for the New Culture Forum:

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

³ WHO fact sheet on FGM: <http://www.who.int/mediacentre/factsheets/fs241/en/>

⁴ Two men presently await trial for FGM-related offences. For the ineffectiveness of FGM law in the UK, see article by Dexter Dias QC, Felicity Gerry and Hilary Burrage detailing 10 reasons and 10 solutions: <http://www.theguardian.com/commentisfree/2014/feb/07/fgm-female-genital-mutilation-prosecutions-law-failed>

about girls resident in the UK being at severe risk of mutilation, whether inflicted in the UK itself, or when taken back to country of origin to be mutilated abroad before being returned to the UK. These factors led to a Parliamentary Inquiry into FGM to which the BHRC submitted a report. Indeed in its consequent Inquiry report, the Home Affairs Committee of the UK Parliament described the FGM situation in the UK as an 'ongoing national scandal.'

Changes need to be made. The question at stake is how best to mobilise limited resources (financial, informational, social and cultural) to most effectively protect children from mutilation. It is for these reasons that the BHRC makes this written submission to the OHCHR, since we believe the optimal response to FGM is directly relevant to the issues raised in the UN's 'Towards a better investment in the rights of the child' initiative.

The BHRC considers FGM to be a child rights issue engaging cross-cutting questions around the right to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, discrimination and violence and, when – as sometimes happens - the procedure results in death, the right to life. FGM is a serious crime, gender violence, a fundamental breach of human rights and child abuse.

BHRC REPORT

In its report to the UK Parliament, the BHRC provided a critique of the UK's compliance with international law and other treaty obligations, and made a number of recommendations for (a) more effective child protection, and (b) greater state compliance with international treaty obligations. The recommendations are appended to this submission.⁵

Under International Human Rights law, states are under obligations (including positive obligations) to prevent, protect and investigate incidents of FGM. These obligations are reinforced by calls from international and regional human rights bodies, which highlight the need for state actions to be effective in practice. They also require that adequate resources must be allocated to combat FGM.⁶

Following its analysis of the UK's compliance with its international law obligations, the BHRC reached **three key conclusions** (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-

⁵ The BHRC report (dated February 2014) can be accessed here:

http://www.barhumanrights.org.uk/sites/default/files/documents/news/bhrc_fgm_submission_12_feb_2014.pdf

⁶ [Commission on the Status of Women](http://www.un.org/womenwatch/daw/csw/) (2010) <http://www.un.org/womenwatch/daw/csw/>;

[European Parliament](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0261&language=EN&ring=B7-2012-0304) (2012)

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0261&language=EN&ring=B7-2012-0304>; 2011 the Council of Europe (2011)

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

mutilation mechanism that is comprehensive and cohesive is securely in place; (3) that during the period the UK has been in breach, [thousands](#)⁷ 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. 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.

For the purposes of the present submissions, we focus on two of our recommendations. These are (1) the introduction of Female Genital Mutilation Protection Orders (FGMPOs), which we suggest should be modelled on the UK's existing Forced Marriage Protection Orders; and (2) the establishment of an FGM Unit, a central coordinating institution for the UK's anti-FGM response.

PREVENTATIVE POWERS

We recommended to the UK Parliament – and urge the OHCHR to recommend now - that the state should create a raft of preventative powers broadly equivalent to those available in the UK in Forced Marriage cases. The powers proposed include:

1. Applying to the court where it is suspected on clear and compelling evidence that a child is at risk of mutilation, and getting an order prohibiting any interference with the bodily integrity of the child;
2. Orders requiring relatives of a child overseas (and who has been in the UK) and is on clear evidence at risk of mutilation to reveal the location of the child so UK Consular staff abroad 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.)

These civil powers would provide a range of injunctive remedies to courts 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](#);⁸ (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.

It is the professional experience of members of the Committee that in respect of family law cases involving so-called 'honour crime', those vulnerable to threat have been more prepared to come forward when such an approach is adopted. In

⁷ <http://www.newcultureforum.org.uk/home/?q=node/920>

⁸ See section 1(1): <http://www.legislation.gov.uk/ukpga/1989/41/section/1>

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.

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.

The creation of a Forced Marriage Unit in the UK has provided an invaluable resource and centre of accumulating specialist knowledge and expertise.⁹ The Unit has intervened in over 600 cases since its inception in 2005.¹⁰ An obvious overlap exists between FGM and Forced (and Early) Marriage. Both are human rights violations inflicted on some of the most vulnerable girls. Both intervene in the sexuality of young women. Both remove autonomy and seek to control. Sometimes FGM and Forced and Early Marriage go hand in hand: the marriageability secured by FGM is a necessary step before the early marriage of an at-risk young girl.

It should be noted that proposals for the creation of FGM Protection Orders are presently going through the process of Parliamentary consultation.¹¹

CONCLUSION

In our submissions to the UK Parliament, the BHRC stressed that effective national policy around child-focused issues must place great emphasis on harm prevention. The policy interventions that we recommended further that objective.

The prosecution of individuals genitally mutilating children, or who are complicit in its infliction, is an important step in terms of social justice. Not only does resolute state action of this kind possess significant symbolic value, but it constitutes a graphic demonstration of the state's solidarity with survivors and those at-risk. Further, it marks the nation's collective deprecation of the damaging practice. Consequently, we support prosecutions. But there is a risk. The reality is that it will prove impossible to prosecute FGM into extinction. Such resources as are available for combating such genital mutilation need to be most effectively deployed. Therefore we fully endorse the UN's approach of devoting resources and institutional efforts to working with practising communities to achieve the 'collective abandonment' of genital mutilation.¹² In the meantime, however, girls remain at severe risk of mutilation.

⁹ <https://www.gov.uk/stop-forced-marriage>

¹⁰ The Forced Marriage Unit is jointly run by the Foreign and Commonwealth Office and the Home Office. It has frequently rescued British women taken abroad to be forced into marriage.

¹¹ BHRC members have been invited to advise *qua* barristers on the drafting of new legislation.

¹² Third sector organisations such as Tostan provide community empowerment programmes in Africa, supporting the elimination of FGM through education. Many programmes are funded by the UN and have been effective in reducing the prevalence of FGM. Over 7,000 communities in Africa have

The thrust of our submissions to the OHCHR (and indeed previously to the UK Parliament) is that greater state resources must be devoted to providing more robust preventative mechanisms that equip the state with tools to intervene proactively before at-risk girls are mutilated.

The UK's experience is that a specific unit dedicated to Forced Marriage has proved to be a success and has undoubtedly enhanced the protection vulnerable girls are afforded by the state against that form of sexual and social exploitation. The unit devoted to FGM that we have recommended would provide a similar level of preventative protection. We foresee that such units would be of great advantage in other jurisdictions.

But beyond this, we envisage that *a network of such specialist units across the globe and working in close coordination* would result in a more robust shield against genital mutilation. This network could be strengthened further by regular liaison with a central point of reference within the UN's human rights programme. FGM is a highly fluid, mobile and transnational form of social harm directed against girls and young women. The preventative mechanisms need to be similarly transnational and flexible.

Viewed thus, the creation of a range of specifically tailored civil preventative powers (FGMPOs) provides an additional piece in the protective matrix and would furnish the FGM unit with an array of legal remedies permitting a proactive state approach.

The BHRC offers these suggestions in the hope – and expectation, should they be adopted – that carefully calibrated policy interventions of the kind outlined above will in a concrete and durable way prevent at-risk girls from being genitally mutilated. There can be few greater priorities in the mobilization and deployment of valuable national and international resources.

publicly announced their abandonment of FGM and child/forced marriage: www.tostan.org/female-genital-cutting. Space prevents our developing the argument further, but it is our judgment that resources allocated to emancipatory education will crucially contribute to fighting FGM.

APPENDIX

The BHRC's Recommendations to the UK Parliament (as at February 2014)

- 1. Introduce 'FGM Protection Orders' (FGMPOs)** modeled 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.¹³
- 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.¹⁴
- 3. Establish an Anti-FGM Unit.** There should be a central institution for the UK's anti-FGM response, equivalent to the Forced Marriage Unit in the Foreign and Commonwealth Office.¹⁵
- 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 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 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.
- 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.

¹³ Now going through Parliamentary consultation process.

¹⁴ We submitted that the exclusion from protection of non-settled children was 'morally indefensible.' In the Queen's Speech, the government committed to extending protection to children 'habitually resident' in the UK.

¹⁵ There are intimations that the government will reconsider its position and may implement this proposal.