

Appendix 32: Violence against women and girls and the law (See General Recommendation 19 and Article 15)

The provision of specialised voluntary and community services for violence against women and girls (VAWG) is essential to facilitate women's access to legal remedies and ensure the effective functioning of the criminal justice system (CJS). However, police and court services that involve specialised expertise are being reduced following funding cuts; this includes the operating levels of Domestic Abuse Officers, and units on female genital mutilation (FGM), and Specialist Domestic Violence Courts (SDVCs).¹

Case study:²

"Women's first concern is their safety and that of the children, in order to continue with a successful conviction against the perpetrator they themselves need to be in a safe and supported position, in most cases the support and promise of an actual conviction is exceedingly rare."

Existing civil law remedies to address domestic violence (DV) have been strengthened. Yet women continue to experience barriers which prevent them from effectively accessing these remedies and there is concern at the lack of sensitivity to the specific needs of women affected by violence in the civil courts. There has been a thorough overhaul of the law on rape and other sexual offences. The law on FGM (See Appendix: 33) has been strengthened and a new criminal remedy to tackle the demand for prostitution has been introduced. Whilst we welcome these developments it is the implementation of the law that causes us concern. We question the effectiveness of new criminal offences for FGM and breaches of non-molestation orders because prosecutions are not being brought often enough, or not at all. We assert that the implementation of the criminal remedies available to prevent and respond to all forms of VAWG needs to improve so that we see an increase in prosecutions and convictions for all offences.³

Improvements in law and policy which provide protection and redress for women affected by violence must be accompanied by awareness raising work to challenge the discriminatory attitudes and stereotypes which perpetuate VAWG. Research⁴ has found that improvements in the law are not sufficient in isolation to

¹ Towers, J. and Walby, S. (2012) *Measuring the impact of cuts in public expenditure on the provision of services to prevent violence against women and girls*. Trust for London: London
<http://www.trustforlondon.org.uk/FullVAWGReport.pdf>

² Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

³ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

⁴ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

effectively eliminate VAWG. Women continue to report facing negative attitudes, stereotypes and a general lack of awareness from the very professionals from whom they seek support. In order to begin to address the discrimination that women experience in society, the Government must prioritise awareness-raising campaigns and initiatives and address the root causes of VAWG.⁵

Law and policy in the UK to prevent and prohibit VAWG has also focused on prosecuting perpetrators through the CJS. However, this does not always work in the interests of women experiencing VAWG or lead to their protection.

Case study:⁶

"The legal system as a whole is still rife with misogyny, belief in rape myths, women-blaming and minimalising the extent to which male sexual violence against women and girls is committed."

Many women who contact the police in an emergency feel let down by the CJS. Women who contact the police in response to an incident of violence need and deserve immediate and meaningful protection, as well as information on their rights and the remedies available to them so that they can make informed decisions about their future. However, there are concerns about how Domestic Violence Protection Notices (DVPNs) and Domestic Violence Protection Orders (DVPOs) work in practice, the most significant of which relate to service provision and training for the police to ensure an appropriate and uniform response. Civil law remedies play a key role in protecting victims, where prosecution of the perpetrator is not possible or desired. However, access to these remedies, support through the civil process and their enforcement needs to be improved to ensure that all women have access to the protection they offer.⁷

The Government should build upon previously successful Police Service and voluntary sector awareness-raising campaigns to pro-actively target individuals at higher risk of more hidden crimes. Cultural factors, language barriers, age and a lack of clarity between offences and non-offences all contribute to a lack of public awareness in these areas. Information should therefore be available in different languages so that those with English as a second or other language can be made aware of the law, how to access help from the police, and the wider support available.⁸

Women's access to justice is also being severely reduced. Court closures are forcing victims and witnesses in DV cases to travel more than 50 miles to and from

⁵ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

⁶ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

⁷ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

⁸ Victim Support (2012) *Listening and Learning: Improving support for victims in London*. Produced by Victim Support in partnership with the Home Office and Ministry of Justice

<http://www.victimsupport.org/About-us/Policy-and-research/-/media/Files/Publications/ResearchReports/VSA%20reports/Listening%20and%20learning%20-%20London>

hearings. 18 SDVCs closed between 2011-12, with a further four closures planned for the next three years. The specialist sites were former magistrates' courts converted since 2005 to make it easier for victims to give evidence and bring more offenders to justice. The Government's programme to close 142 courts in England and Wales includes 22 SDVCs. This could impact on victim's ability to go to court.⁹

Lack of legal cases

Prosecutions and convictions for crimes of VAWG have risen by 15,000 between 2008-12.¹⁰ Since the CPS adopted its own VAWG strategy the volume of prosecutions has risen year on year, from 68,930 in 2006-07 to 95,257 in 2011, a rise of 38%. Convictions have also risen by 52%, from 44,836 to 68,154. In 2010-11 alone there was an 11% rise in the volume of both prosecutions and convictions. This is against an overall drop in the volume of cases heard at magistrates' courts of 3.6% - where the majority of VAWG crimes are heard.¹¹ However, there is still a long way to go as this does not reflect the prevalence of VAWG and the root issues must still be addressed. (See General Recommendation 19)

Case study:¹²

"More would take legal action if it resulted in them and their children being any safer or adequate punishment."

Women continue to lack confidence in the CJS.¹³ Research suggests that victims still perceive a culture of disbelief when reporting abuse to the police. This is particularly true for asylum seeking or trafficked women, or women working in prostitution, who often feel they are more likely to be treated as perpetrators than victims.¹⁴ Women fear not being believed, and they know that the chances of a conviction are low. Reporting procedures vary from area to area and there are wide variations between local areas in the rate at which rape complaints are written off by the police ('no-crimed'), meaning that they do not believe an offence has taken place. The rate of 'no-criming' varies between 2% and 30% of complaints and allegations of rape are 'no-crimed' four times as often as allegations of grievous bodily harm.¹⁵

⁹ Hyde, J (2012) 'Victims face trek as violence courts shut', *The Law Society Gazette*, 26th July 2012 <http://www.lawgazette.co.uk/news/victims-face-trek-violence-courts-shut>

¹⁰ Kelly, J. (2012) 'Rise in convictions for violence against women', *BBC News*, 23rd July 2012 <http://www.bbc.co.uk/news/uk-18949533>

¹¹ Crown Prosecution Service (2011) *Violence against Women and Girls Crime Report, 2010-2011*. CPS: London Page 4 http://www.cps.gov.uk/publications/docs/CPS_VAW_report_2011.pdf

¹² Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

¹³ Kelly, L. et al (2005) *A gap or a chasm? Attrition in reported rape cases*. Home Office Research Study 293, Home Office: London <http://library.npia.police.uk/docs/hors/hors293.pdf>

¹⁴ Against Violence and Abuse (2010) *And Still Like Dust We Rise: London survivors of domestic and sexual violence*. AVA: London <http://www.avaproject.org.uk/our-resources/reports--publications/and-still-like-dust-we-rise-london-survivors-of-domestic--sexual-violence-%282010%29.aspx>

¹⁵ Criminal Justice Joint Inspection (2012) *Forging the links: Rape investigation and prosecution*. A joint review by HMIC and HMCPsi. http://www.hmcpsi.gov.uk/documents/reports/CJJI_THM/BOTJ/forging_the_links_rape_investigation_and_prosecution_20120228.pdf

Case study:¹⁶

“Women are scared of pursuing legal/criminal options for several reasons. It may alert social services - women still think (and are often told) that they will get their children taken off them; they are also frightened of further abuse/violence from the perpetrator/his family/friends. Cost of civil remedies is also a barrier for some women.”

Women who are at risk of, or who have experienced violence, also may not want to access civil or criminal legal remedies at all and in particular, many do not want to engage with the CJS. We believe that women have the right to choose their route to rehabilitation and underscore the urgent need for the expansion in provision of specialist support services which are not linked in any way to the enforcement of law and the CJS.¹⁷ (See Appendix: 5)

Case study:¹⁸

“The Government has concentrated on victims who are in the Criminal Justice System and have set all their targets on brought to justice outcomes thereby failing the vast majority of rape and child sexual abuse victims/survivors who will never report to the police.”

The concepts of consent and reasonable belief that have evolved through case law have not succeeded in completely clarifying the law, and, for example, issues around ‘drunken consent’ still emerge for the Court of Appeal to consider. Reliance on judges giving set directions to clarify matters to a jury in Crown Court trials may not be ideal in terms of creating consistency in the law for victims and perpetrators of sexual violence. There is also the lack of support for victims taking civil remedies instead of using the CJS. It is possible to sue a perpetrator of sexual violence for damages under civil law but this is potentially expensive and relatively rare. No particular assistance is given to victims of sexual violence who want to pursue this option, for example, legal aid would be extremely difficult to obtain (and particularly difficult now following changes See Appendix: 28), whereas victims in the CJS need to meet very few costs. Non-molestation orders are only available where the victim of sexual violence is ‘associated’ to the perpetrator. Furthermore, non-molestation orders are designed for protection against further violence, rather than punishment for sexual violence that has occurred.¹⁹

Numerous independent reports have criticised the police for their insensitive and dismissive approach to victims of sexual violence. The 2009 Victim’s Champion

¹⁶ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

¹⁷ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

¹⁸ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

¹⁹ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London
http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

report²⁰ featured some heavily critical comments of the police and the way in which rape complaints were handled and prosecuted. In light of this, police policy in relation to rape needs to be examined as a crucial component in the Government's response to sexual violence. The problem is that whilst guidance is excellent and senior levels of police create policies, train specialist police officers and fulfil community liaison roles as they are required to do by the various strategies, the lower ranks of police officers are not necessarily receiving or taking on board the policies and training in place. Evidence, including the Victim's Champion report and the *Stern Review*,²¹ shows that women who have experienced sexual violence are not always being met with best practice from the police, and it is practice, rather than the policies, that needs to change. The implementation of policies is patchy (in rank and geographical areas) and so, until training is consistent and, very importantly, monitored for results, work still needs to be done by police to fulfil international obligations to implement gender sensitive policies in relation to sexual violence and ensure legislation is used effectively by having an effective CJS. It is also clear that more could be done to gather information about the prevalence of sexual violence against women in the UK and to analyse and disseminate information already gathered, so that it can be used to direct and influence law and policy in this area.²²

Whilst we welcome the CPS policies in relation to rape and related sexual offences, the problem appears to be in their implementation. The Government has aimed to train all Chief Crown Prosecutors and this is most certainly welcomed, but it is suggested that training and guidance be disseminated to all case workers and prosecutors within the CPS so that all staff (including those who may not be legally trained) know the minimum standards for how to approach a case of rape and approach a victim of sexual violence. Training should also look at particular problems faced by particular groups of sexual violence victims in trial e.g. those that do not speak the language or have insecure immigration status and those that are disabled.²³

Case study:²⁴

"The women I spoke to were clear that if they are not treated with dignity when first reporting rape, it is unlikely they would continue to support a prosecution. Women felt that the attitudes and response of police officers need to change and rape needs to be treated more seriously; they wanted a greater investment in ensuring that the police provide a believing, sensitive and consistent response."

²⁰ Payne, S. Victims' Champion (2009) *Rape: The Victim Experience Review*. Home Office: London <http://wnc.equalities.gov.uk/work-of-the-wnc/violence-against-women/news-and-updates/280-rape-the-victim-experience-review.html>

²¹ Government Equalities Office (2010) *The Stern Review: A report by Baroness Vivien Stern CBE of an independent review into how rape complaints are handled by public authorities in England and Wales*. GEO: London

http://webarchive.nationalarchives.gov.uk/20100418065537/equalities.gov.uk/stern_review.aspx

²² Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

²³ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

²⁴ Payne, S. Victims' Champion (2009) *Rape: The Victim Experience Review*. Home Office: London <http://wnc.equalities.gov.uk/work-of-the-wnc/violence-against-women/news-and-updates/280-rape-the-victim-experience-review.html>

The law relating to DV has developed in a piecemeal way which has resulted in some forms of violence having specific legal remedies and/or criminal offences while others do not. There are a range of criminal and civil law remedies which are designed to respond to and protect women from DV. However, the way that civil remedies have to be obtained can deter women from using them.²⁵

Case study:²⁶

“What was the most important thing the police did? Referring me to [support services]... but it’s all down to the police responding correctly in the first place.”

Female victim of domestic abuse

Special measures have been available in the criminal courts for some time providing women with protection from their perpetrator during the court process and improving the quality of their evidence. Other protections in the criminal courts include separate waiting areas and pre-court visits. However, there is a lack of adequate support and protection for victims going through the civil court process, as special measures and other forms of support for witnesses are not currently available in the civil courts. While women cannot be personally cross-examined by an alleged perpetrator of sexual violence in the criminal courts, women going to the civil courts can be personally cross-examined by the person responsible for the violence they are experiencing. The lack of procedural protections in the civil courts act as a barrier to women accessing protection. Therefore measures developed to improve the evidence of witnesses in criminal courts should be available in the civil courts to enable those experiencing violence to access the remedy that they believe will most meet their needs.²⁷

In cases of DV there is also evidence to suggest that authorities do not act effectively to protect women they know to be vulnerable. The Independent Police Complaints Commission’s (IPCC) investigation into domestic abuse cases where the woman has been seriously injured or killed shows that the failure to prevent deaths and serious injuries is in part explained by police attitudes. In some cases police did not listen to or believe victims who asked for help. In other cases, police appeared not to understand DV, did not identify risks or appreciate how these might escalate. Calls were wrongly prioritised with fatal consequences.²⁸ The IPCC has made useful recommendations to improve policing, but again there is evidence from some high profile cases that some local forces have failed to implement them.²⁹

²⁵ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

²⁶ Victim Support (2012) *Listening and Learning: Improving support for victims in London*.

Produced by Victim Support in partnership with the Home Office and Ministry of Justice

http://www.victimsupport.org/About-us/Policy-and-research/~/_media/Files/Publications/ResearchReports/VSA%20reports/Listening%20and%20learning%20-%20London

²⁷ Rights of Women (2010) *Measuring up? UK compliance with international commitments on violence against women in England and Wales*. ROW: London

http://www.rightsofwomen.org.uk/pdfs/Measuring_up_A_report_by_Rights_of_Women.pdf

²⁸ Independent Police Complaints Commission (2010) *Learning the lessons, Bulletin 11: Gender and domestic abuse*. <http://www.learningthelessons.org.uk/Pages/bulletin11.aspx>

²⁹ See Independent Police Complaints Commission (2012) ‘IPCC publishes findings from investigation into Merseyside Police’s response to women’s concerns’, [IPCC website](http://www.ipcc.gov.uk), 20th July 2012

The 2009/10 annual report of the IPCC noted an increasing number of deaths in DV cases in England and Wales where the victim was in prior contact with the police.³⁰ Since the IPCC was created in 2004, it has recorded 26 cases of women who had prior contact with the police about DV incidents, who were subsequently killed by their partners or ex-partners.³¹

Case Study:³²

In 2010, the IPCC carried out an investigation into the way Lancashire Constabulary failed to respond to calls from a woman that the police knew was a repeat victim of DV. Early in the morning she went to the police to report that her ex-partner had attacked her the evening before; she had a black eye and swollen face. An arrest request was issued, but not carried out due to the lack of police patrols. She called six times through the day to report that her ex-partner was harassing her and sending text messages saying that he was going to hurt her. A phone call was also made by the nursery staff where her children were placed, because they feared she was in danger. No patrols were sent to her house and the police arrest warrant was not followed through. By the end of the day her ex-partner had stabbed her and poured boiling water over her. The IPCC's investigation concluded that the police failed to identify the vulnerability of the victim and opportunities were missed to give her the protection she needed.

There have also been cases of so called 'honour' killings reported where the police knew of threats to the victim but did not respond adequately. The most well-known of those cases is that of Banaz Mahmud who was gang-raped and killed in a brutal 'honour' killing in January 2006. Five men including her father and uncle were convicted of the killing. However, the IPCC investigation into the way the police handled her complaints identified that opportunities may have been missed to prevent the tragedy and that Banaz Mahmud was let down badly by the service she received from the police.³³

The removal of advice on complex welfare benefits issues, housing issues and immigration issues and removal of legal aid for women in violent relationships has

http://www.ipcc.gov.uk/news/Pages/pr_200112_merseysidemott.aspx; Independent Police Complaints Commission (2011) 'IPCC finds individual and systemic failures in Nottinghamshire Police's handling of domestic incidents involving Casey Brittle', *IPCC website*, 18th October 2011 http://www.ipcc.gov.uk/news/Pages/pr_181011_brittle.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Release and Davies, L. (2012) 'Essex police failed woman murdered by her e-partner, watchdog says', *The Guardian*, 22nd August 2012 <http://www.guardian.co.uk/uk/2012/aug/22/police-failed-woman-david-oakes-ipcc>

³⁰ Independent Police Complaints Commission (2010) *Annual Report 2009/2010*.

http://www.ipcc.gov.uk/en/Pages/corp_reports-plans.aspx

³¹ Equality and Human Rights Commission (2012) EHRC Submission to the UN Committee Against Torture: list of issues on the UK's 5th periodic report.

http://www2.ohchr.org/english/bodies/cat/docs/ngos/EHRC_report_CAT50_UK%20ListofIssues.pdf

³² Independent Police Complaints Commission (2010) *Investigation into contact with Lancashire Constabulary regarding the safety of Ms A on September 2010*. <http://tinyurl.com/q82kmhy>

³³ Independent Police Complaints Commission 'IPCC explains Mahmud discipline outcome and publishes findings', *IPCC website*,

http://www.ipcc.gov.uk/news/Pages/10122008_mahmoddisciplineoutcome.aspx?auto=True&l1link=pages%2Fnews.aspx&l1title=News%20and%20press&l2link=news%2FPages%2Fdefault.aspx&l2title=Press%20Releases

already had a huge impact on the ability of these women to escape abuse and obtain access to justice. (See Article 13)

Cuts in legal aid from 2011 and new cuts coming soon are rendering women unable to access justice. (See Appendix: 28) Since 2011 all women unable to provide proof of earnings are unable to access legal aid. Previously it was enough for a civil society organisation to evidence that a woman was very poor and did not have means. This has meant that the only avenue available for victims of DV is to go to the police. However, there is evidence that poor women unable to show proof of earnings cannot apply for an injunction.

There is concern about the consistency in service given to women whose cases go to a SDVC. In some areas women report feeling safe and supported while in others CPS Prosecutors remain overburdened (which can result in poor quality advocacy or decision making) and a number of cases continue to be listed for the same time (with the consequence that trials are adjourned). SDVCs have to be 'more than a name'; they have to guarantee a consistently high response to survivors of DV who use them.

Case study:³⁴

According to cases from Latin American Women's Rights Service (LAWRS) on DV it is increasingly hard to access family solicitors. They do financial assessments before taking cases even if cases are very strong. In reality family solicitors are asking for payslips. A large percentage of the women that LAWRS work with do not have payslips because they receive cash in hand. Other clients have 'no recourse to public funds'. The most vulnerable women are unable to access solicitors, the family courts and ultimately unable to access justice. Therefore, a two tier system for accessing justice has been created.

³⁴ Latin American Women's Rights Service <http://www.lawrs.org.uk/> Accessed: 22/03/13