



30<sup>th</sup> September 2016

Dear Ms Šimonović,

In response to your call for submissions regarding the need for a separate legally binding treaty on violence against women with its separate monitoring body, and how to deal with normative and implementation gaps to make progress on the prevention and elimination of violence against woman, we, the Haldane Society of Socialist Lawyers in the United Kingdom, through its sub-group the Haldane Feminist Lawyers, set out our views below.

The Haldane Society is a group of committed progressive socialist lawyers striving to achieve justice through campaigning, lectures, reports, legal observation and international solidarity.

The Haldane Feminist Lawyers is a sub-committee of the Haldane Society which takes a particular interest in promoting and enabling women's rights in the UK and internationally. In November 2015, the HFL organised an International Feminist Conference: *Women Fighting Back: International and Legal Perspectives*.

The Haldane Society seeks for following submissions to be made as per the questions raised in your call for submissions to relevant stakeholders:

**1. Do you consider that there is a need for a separate legally binding treaty on violence against women with its separate monitoring body?**

Although anti-discrimination measures and protection for women's rights are found elsewhere in international law, CEDAW is the primary mechanism for protecting women's rights. However, CEDAW does not deal explicitly with violence against women, which has been read into the convention through General Recommendations (particularly GR.19). Different treaty members attach different degrees of weight to general recommendations, but in the United Kingdom violence against women and girls has been included in the reporting process (after dealing with Articles 1-16 in turn). It is our view that CEDAW is not prominent nor given sufficient weight in the United Kingdom. Although the reporting process is helpful, it only goes so far, because it is relatively low profile, so even severe criticisms of state policy and practice can pass under the radar.

One concern we would have is in making sure any new monitoring body were adequately funded and linked with funding streams which would allow women's campaigning, community and advocacy organisations to feed into the monitoring process. A new convention on this issue would also benefit from a substantial awareness raising campaign from the UN (e.g. linking in with the He for She campaign, UN Women and the campaigning work on ending sexual violence in conflict). By

capturing the correct political moment for such a treaty, real practical gains could potentially be made.

We foresee two possibilities: the first would be for CEDAW to be re-drafted to include an article explicitly dealing with violence against women. The CEDAW Committee is used to dealing with violence against women issues and will need to continue to do so in order to deal with women's lives in a holistic way (e.g. the right to marriage encompasses forced marriage and forced separations, socio-economic rights have a close nexus with violence against women and prevention/support during recovery). However, unless substantially more resources were attributed to the Committee and the monitoring sessions were extended, then in practice this is unlikely to lead to any meaningful difference. Whilst it is useful and important to keep CEDAW as a 'Bill of Rights' for women, there is also a risk that by dealing with violence against women as just one issue in a long list, the focus is watered down.

The second possibility would be a new legally binding treaty on violence against women. This could be more far-reaching than a single article in CEDAW could account for - explicitly dealing with prevention/education, duties to investigate, rights to witness protection and therapeutic/practical rehabilitation for victims (see, for example, the Council of Europe Convention against Trafficking in Human Beings). This need not affect the CEDAW reporting process and the CEDAW Committee's jurisdiction on this issue and it is difficult to see how that could be changed without removing the holistic focus on women. Rather, it would provide a space for a far more detailed analysis on this issue. At the moment the United Kingdom has a strategy aimed at addressing violence against women and girls and a number of different policies, and so without going into substantial detail it can be hard to identify and address the manifold problems that still exist in this area. A new treaty would allow this to happen and so this is the course of action we would favour.

Given that the CEDAW Committee already has an individual communications procedure it is not clear whether this treaty would need the same (although there is nothing to stop it from doing so and allowing complainants to choose one or the other (which is already the case where a complainant has to choose between, e.g. the CEDAW Communications Procedure and the ECtHR). If a Communications Procedure is created, one addition we think would be of enormous assistance would be the appointment of a small pool of specialist Advocates General (such as is done in the Court of Justice of the European Union), or an equivalent provision to offer specialist opinions. At present the CEDAW Committee's jurisprudence is infrequently relied upon in courts in the United Kingdom. Unfortunately, a significant reason as to why this is the case is because the determinations are not reasoned in the way we expect a legal judgment to be and so it is difficult to draw out useful principles and findings. An Advocate General could write an opinion to advise the Committee. This would make an enormous difference. We would also recommend that the structure of any Communications Procedure be more open so that it is possible, where relevant, for specialist organisations/institutions or coalitions of the same to provide submissions with the permission of the Committee as *amicus curiae*; again this would help ensure that its final decision is as useful and well-informed as possible.

## **2. Do you consider that there is an incorporation gap of the international or regional human rights norms and standards?**

In the United Kingdom, there is an incorporation gap of international and regional human rights

norms and standards as it remains the case that international law is viewed not only with scepticism but also that those who are most greatly impacted by violations of international human rights standards are often reluctant to raise their concerns or find it more difficult for their voices to be heard. Furthermore, in the wake of the referendum for the UK to leave the European Union, there is waning pressure to adhere to European human rights standards and the current government is seeking to repeal the Human Rights Act 1998 (which “brought [European Convention] rights home”).

More generally, there is of course a clear lacuna in terms of “hard law” to ensure state incorporation of international/regional human rights norms and standards.

### **3. Do you believe that there is a lack of implementation of the international and regional legislation into the domestic law?**

The United Kingdom has a dualist legal system and there is a substantial implementation gap in relation to international law. If one tries to rely on CEDAW in the domestic context one either has to frame the argument within one of the more general fundamental rights enshrined within the European Convention of Human Rights (brought into UK law by the Human Rights Act 1998, although the current government have stated they intend to replace this Act) or it is only treated as informative or advisory. When reporting, the United Kingdom generally claims that articles in human rights treaties are implemented by other legislation, but these are not as cross-cutting as the articles in the convention (for example CEDAW Art.12.2 includes the right to nutrition during pregnancy, but this is not reflected in social security or homelessness law and only in social welfare law in Wales and migrant women with insecure immigration status - including those experiencing or fleeing violence - often receive significantly inferior treatment/protection than British women without access to an effective remedy in law).

### **4. Do you think that there is a fragmentation of policies and legislation to address gender-based violence?**

Whilst offences such as murder, rape, assault and threatening behavior will of course result in criminal penalties in the UK, there are a number of civil remedies which can be applied for by women seeking an escape from violence, including Occupation Orders and Non-Molestation Orders (or which may be imposed by a Court even if the perpetrator is not convicted). Breaching civil orders such as non-molestation orders is a criminal offence and can have serious penalties, including imprisonment. Statutes such as Protection from Harassment Act 1997 provide non-harassment and restraining orders, and two further stalking offences were added in 2012. In 2014, Domestic Violence Protection Orders began as did the Domestic Violence Disclosure Scheme (Clare's law) to specifically address violence in the home. An offence criminalising “revenge pornography” was introduced in April 2016, however most defendants have avoided immediate imprisonment for such actions.

Further orders to enable state intervention and updating amendments to criminal offences such in respect of FGM and forced marriage enable the UK to put forward the image that a hardline approach is being taken on such issues, but unfortunately adequate funding and training to properly deal with these matters adequately.

Whilst there are many laws in place to combat violence against women, there is still a heavy reliance on viewing the offences in terms of actual physical harm rather than looking at the broader and more frequent definition of violence which could also include economic, financial and emotional control and coercion. Although in 2015, the offence of coercive or controlling behaviour against an intimate partner or family member came into force, in practice, these offences are rarely charged and the grey areas around the offences have not yet been elucidated or the effects of the creation of this new offence sufficiently reported upon.

What is clear is that the United Kingdom is not afraid to legislate to further specify instances of violence against women which amount to a criminal offence. The United Kingdom has increased the number of offences which constitute violence against women in recent decades.

Whether or not this has led to a decrease in gender-based violence remains to be seen. One such example of a failure to address gender-based violence would be the understandable reluctance to report incidents to the police for several reasons:

- i. A person experiencing violence and in particular, in domestic circumstances, must justify why and how she has experienced said violence
- ii. Having done so, she may still be disbelieved by society and by the police after having gone through not only trauma related to violence but also the trauma of being treated as a victim needing saving rather than a person with agency who seeks support through normative frameworks
- iii. Often reporting violence does not result in the end of said violence by the alleged perpetrator
- iv. Financial, housing and legal restrictions mean that many of those who may need to leave the violence are unable to do so because there is no access to benefits upon which women previously relied due to cuts to legal aid, inadequate housing, the inability to find work or the need to stay with an alleged perpetrator due to financial necessity, to take care of children, to have a home or due to immigration requirements, etc.
- v. The time needed to get access to justice may mean that even though international frameworks offer access to due diligence, due diligence is often difficult to achieve due to several factors: including but not limited to, the costs of pursuing court cases, the strain that cases have on the family, the trauma which must be relived repeatedly when presenting one's version of events and the time commitment required to ensure the justice is achieved which is often impractical and which further removes one who has experienced violence from mainstream society, further excluding her from the mechanisms in society necessary to ensure the furtherance of her objectives e.g. having a home free from violence in any form.
- vi. Reporting the violence could, in the short term, increase violence against the woman if the alleged perpetrator blames her for the reporting or blames her for having gone to the police to take action in accordance with the law, against him
- vii. Alleged perpetrators often blame the woman reporting against him in order to create doubt as to his involvement in the offence and so that he might be released from detention

Furthermore, justice in the form of criminal punishment towards the perpetrator is not in many cases enough to deter further violence. Going through the criminal justice system may not be the form by which the woman as an agent in combating the violence which she is being subjected to

seeks to rectify the situation and/or remove herself from the situation. Community-based resolution options should also be available.

Notwithstanding a robust criminal justice system, without a society willing to provide for woman's other needs (e.g. housing, food, childcare, etc.), as the presence of violence in the home or the reporting of this violence thereby creates or aggravates those needs, access to a space free from violence is a reality which will only be accessible to women with sufficient financial means or those who are lucky enough to have in-built support networks.

**5. Could you also provide your views on measures needed to address this normative and implementation gap and to accelerate prevention and elimination of violence against women?**

It would be helpful for a treaty on violence against women and girls to focus on the underlying and systemic power dynamics of violence against women, rather than categorising specified perceived types of violence.

In the United Kingdom there is a trend towards categorising and labelling different kinds of violence against women (e.g. domestic abuse, forced marriage, female genital mutilation, crimes in the name of honour, forced marriage, trafficking for sexual exploitation etc), which helps ensure that state policies and training for front line staff cover deal with different situations. However, terminology and even contexts of abuse evolve and it would be problematic to try to exhaustively list types of violence against women in an international treaty. This approach in the United Kingdom also results in an uneven allocation of resources, for example in the United Kingdom being recognised as a victim of human trafficking provides a potentially greater range of rights and entitlements than being a survivor of rape/domestic abuse which is not defined as trafficking.

It would be helpful to be able to point to a treaty that (among all the other issues that are likely to arise):

- i. Recognises the role of prevention work, including education and sex/relationship education which teaches about consent. The Children's Commissioner in England conducted research on young people's attitudes to consent and despite some extremely alarming findings, her recommendations have not been implemented because of sensitivities about talking to children about sex and consent. Sex education has been removed from the science curriculum and is taught very inconsistently in schools;
- ii. Recognises the need for victim-focused prosecutions, where cases are dealt with by specially trained prosecutors and courts. There was a model of domestic violence specialist courts in England, but a high proportion of these have been closed down;
- iii. Recognises the need for a speedy resolution of cases in the criminal justice system, so cases are not listed months or years after allegations are made, hampering women's recovery;
- iv. Recognises a right to rehabilitation and recovery encompassing mental, physical and sexual health and help with homelessness and destitution for all women;
- v. Recognising women's need for advocacy services and the obligation of the state to fund women's specialist services, including specialist services suitable for women at risk of intersectional discrimination in a mainstream service. For example, the

charity Southall Black Sisters won a legal challenge in the United Kingdom against a decision by the local authority to withdraw support for their service in favour of a generic service despite the obvious need in their geographical area for a domestic abuse service specialised in assisting South Asian women. Despite this, local authorities and national government persistently favour funding generic housing providers over specialist shelters with a more nuanced and suitable community focus. Similarly, the government gave the tender for housing victims of trafficking to the Salvation Army (when it has previously been with a women's rights charity called the Poppy Project), despite the Salvation Army having an explicitly Christian ethos that in principle does not support gay, lesbian, bisexual, transgender or queer issues and is anti-choice/abortion. It is important that every effort possible is made to provide for women no matter their race, disability or other status.

- vi. Recognising the need for consistent policing. In the United Kingdom there is some scope in the criminal justice system for community based resolutions and we understand the same is true of some other jurisdictions. These can be effective, but at the same time would need to be very carefully designed and monitored. For example, there has been substantial concern in the women's sector, including among Muslim women's rights campaigners, about closed Sharia mediation or arbitration services purporting to make decisions in domestic abuse cases.
- vii. Ensuring that the funding is there to support the services which women who have been susceptible to such violence previously or who continue to be subject to it, select
- viii. Allowing women who have survived violence (regardless of their immigration status, socioeconomic level, class, race, religion, ethnicity or sexual orientation) to inform policy and legal decisions as to the practices which ensure their freedom from violence in all its forms
- ix. Requiring the UK to demonstrate how new policies have or have not been effective in terms of the state's obligation to prevent, investigate, prosecute or offer justice and provide redress for those impacted by violence. (Declaration on the Elimination of Violence Against Women GA Res 48/104 UN (23 February 1994); General Recommendation 28. CEDAW/C/2010/47/GC.2 UN (19 October 2010) 1, 19; Special Rapporteur on Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women E/CN.4.2006/61 (20 January 2006) para 29.)
- x. Asking the international community to share laws, policies and best practices which have been particularly effective in allowing for greater access to human rights and namely, to be free from gender based violence
- xi. Creating a mechanism which offers effective, sufficient, timely remedies to women impacted by GBV.

Through the CEDAW Committee's jurisprudence, it is evident that while women have won some of the cases which have been brought before the Committee, the remedy was often ineffective, insufficient or too late to prevent GBV. In fact, the limitations of the Committee often come in the form of cases which are inadmissible: these result from not exhausting domestic remedies, the statute of limitations on the CEDAW OP ratification date or for double jeopardy in a criminal case such as *Karen Tayag Vertido v. Philippines*. Another instance, concerning remedy was the case of *B. J. v. Denmark* where a man was prevented from entering a club due to his race. This resulted in a disproportionate remedy for the violation caused, where the Court noted that: "[b]eing refused access to a place of service intended for the use of the general public solely on the ground of a

person's national or ethnic background is a humiliating experience which ... may merit economic compensation and cannot always be adequately repaired or satisfied by merely imposing a criminal sanction on the perpetrator.' Disappointingly, however, this outcome was not a blanket precedent, but rather reflective of decisions to be taken on an *ad hoc* basis.

Similarly, this decision could be applied to cases of gender-based violence. Where a man is incarcerated for a maximum of 3 years, as per the regulations in the PWDVA or alternatively, given a fine which amounts to less than the woman needs to survive, it is an ineffective remedy for the harm committed and does not pass the tests of proportionality and appropriateness. While Yakin Erturk suggests that the full implementation of 'prevention and compensation...is the main potential for [expansion], it is not solely a question of implementation, but also about concretizing understanding of each of the elements of due diligence through action plans and scheduled activities. It suggests that international legal priorities should shift to reflect many women's inability to leave GBV as financial. Prioritising compensation or access to resources and prevention in the short term could lead to greater freedom from violence for women over the long term.

Further, for any mechanism to be effective:

- Women should feel that they are able to voice their concerns about violence.
- Women should not feel pressured to settle for insufficient remedies through mediation.
- Positive action measures including payment for any form of labour should be adopted for all women
- Any new UN instrument should have intersectional provisions to be more fully inclusive including: low socio-economic status, low caste, different races, LGBTI, children
- Fast track proceedings- should have specific criteria and quick turnaround for those in the most urgent circumstances of gender-based violence
- The vetting process for cases needs to be thorough but more reflective of the reality, rather than further prolonging access to due diligence measures.

The Haldane Society believe that it is necessary to work in solidarity with those women who have been effected by violence. The Haldane Society further recognises that gender violence and gender oppression is compounded by other forms of oppression, including but not limited to racial oppression, class oppression, ableism, transphobia and homophobia. To achieve this end, it is imperative that due diligence is implemented and that any new treaty created by the UN is fully inclusive, efficient and acknowledges that discrimination and gender based violence must end through measures adopted by the UN which hold states and private actors to account.

Yours sincerely,

Haldane Society of Socialist Lawyers  
Haldane Feminist Lawyers