

Position paper on the criminalisation of forced marriage

By the Iranian and Kurdish Women's Rights Organisation (IKWRO)

This paper sets out IKWRO's position on the criminalisation of forced marriage. It is based on our experience as a charity which provides assistance to women and girls who are at risk of or have experienced forced marriage. It is a response to the Home Affairs Select Committee's recent report on forced marriage, but is also aimed at government bodies, journalists, researchers and NGOs.

Monitoring of Forced Marriage Protection Orders

Under the Forced Marriage (Civil Protection) Act 2007 a forced marriage is a marriage in which one or both spouses do not (or in the case of some adults with disabilities cannot) consent to the marriage and duress is involved. Duress can include physical, psychological, financial, sexual and emotional pressure.

Both individuals and local authorities can apply directly to the courts for a Forced Marriage Protection Order (FMPO), and other people or organisations can also make applications with the court's permission. An FMPO can be used to prevent a forced marriage from taking place and can protect those who have been forced into marriage from further abuse. FMPOs may include restrictions or requirements to protect a victim from their spouse, family or anyone else who has been involved in forcing or attempting to force them to marry. It can relate to conduct occurring inside and outside England and Wales.

Breach of an FMPO is not a criminal offence but a power of arrest can be attached to an order. The court must attach a power of arrest to the order if violence has been threatened or used, unless the court considers that there will be adequate protection without it. Where a power of arrest is attached, police may arrest a person whom they suspect is in breach of the order.

In their recent report¹ on forced marriage the Home Affairs Committee expressed concern in relation to "inadequacies in the monitoring of compliance with an order after it is made and a lack of effective action in cases of breach". Only five breaches had been recorded as of December 2010, although the real number may be much higher, and a jail sentence for breaching an order has been handed down in just one case².

The committee recommended that the Government undertake and publish a review of the operation of the Forced Marriage Act on a yearly basis, to look at how orders are monitored, the real level of breaches and the judicial response to recorded breaches. IKWRO strongly supports this recommendation. We also recommend that measures are rapidly put in place to ensure that monitoring improves.

Making forced marriage a criminal offence

Forcing someone to marry is not a crime in the UK although perpetrators of forced marriage can be prosecuted for associated crimes, including abduction, rape, assault and threats to kill. The Committee recommended that the government should make it a criminal offence to force or to participate in forcing

¹ Home Affairs Committee Eighth Report Forced marriage:

<http://www.publications.parliament.uk/pa/cm201012/cmselect/cmhaff/880/88002.htm>

² <http://www.dailymail.co.uk/news/article-1357167/Jailed-Mother-refuses-bring-son-17-Nigeria-forced-undergo-exorcism-disobedience.html>

an individual to marry against their will. As the committee’s report states “it would send out a very clear and positive message to communities within the UK and internationally if it becomes a criminal act to force—or to participate in forcing—an individual to enter into marriage against their will. The lack of a criminal sanction also sends a message, and currently that is a weaker message than we believe is needed”.

IKWRO supports criminalisation of forced marriage as we believe that it would act as a deterrent and would help to change attitudes within practising communities. While some organisations claim that criminalising female genital mutilation has not been successful in reducing prevalence, a recent study showed a reduction in the more severe forms of FGM and growing opposition to it within practising communities³.

At the same time, we recognise that some women’s organisations have legitimate concerns about criminalising forced marriage. The main one is that making forced marriage a crime could reduce the protection available to victims. There is a worry that a criminal offence would have a high burden of proof, and that this could prevent the police from intervening to protect those at risk. Some organisations also point out that a criminal sanction would be imposed after the fact, when it is too late. IKWRO recognises these arguments and this is why we advocate that **the protections afforded by the Forced Marriage Act should be retained alongside any new criminal offence. This will mean that victims can access the same rapid protection they can now, while also ensuring that those who have forced or participated in forcing an individual to marry will be criminally liable.**

Some organisations have argued that criminalisation could put victims off coming forward. IKWRO is not aware of any data to support this assertion in countries where forced marriage is subject to criminal prohibition, and we believe that criminalisation could actually offer a valuable negotiating tool for young people at risk. Indeed, as colleagues at Danish organisation LOKK told us:

“Denmark has had a law against forced marriage since 2008... It has in no way been our experience that young people have stopped seeking help because of this law. On the contrary, the number of young people and professionals seeking help from LOKK has soared since 2008.”

We recognise that creating a new criminal offence is not the only solution to forced marriage, and that any new law will only be effective if it is accompanied by efforts to raise awareness and promote discussion among communities who practice forced marriage. Alongside this, we are calling for improvements in the existing forced marriage protection and prevention frameworks, including better monitoring of FMPOs, an improved response by schools and other statutory bodies and greater support for forced marriage survivors.

Improving efforts by schools

The committee’s report highlighted a failure by many schools to tackle forced marriage. Evidence from expert witnesses highlighted fear of offending parents as a key reason, alongside lack of awareness of the Forced Marriage Act and statutory guidelines among many education professionals.

³ Tackling FGM Special Initiative Peer Research (2011) – available at http://www.trustforlondon.org.uk/Peer_study_summary.pdf

Staff in some schools have told IKWRO that they do not call the police in forced marriage cases because of the enormous consequences that resisting the marriage can have for a young person. Both women who gave evidence to the committee disclosed that after resisting or leaving a forced marriage they became estranged from their families. As one student counsellor explained at a training we ran, she was afraid to encourage students to embark on such a dramatic course of action, particularly when the family has been a loving one and the young person does not want to be separated from them. The counsellor said she would worry that the young person may end up alone or on the streets and vulnerable to other forms of abuse.

This is where an improved understanding of FMPOs comes in. In our training we explained that under some FMPOs a young person can remain with their family, but the family will be barred from taking any action which could lead to the young person being forced into marriage. Provided the order is monitored (this links to the points made above) it can protect the victim without them having to be separated from their family. This helped the student counsellor to feel more secure about contacting the police.

Schools have a vital role to play in training teachers so that they can identify and help pupils at risk. They are also in a position to make young people aware that forced marriage is a breach of their human rights, and to let them know that help is available. **IKWRO strongly supports the committee's recommendations for improvements in schools' responses and calls on the Department for Education to urgently acknowledge and tackle the failure by schools to protect young people at risk.**

Improving the response by other statutory bodies

As highlighted by the committee's report, some local authorities are not implementing the statutory guidance on forced marriage in line with their obligations. Once the review of implementation of the guidance is complete, adequate resources must be put in place to address gaps in implementation.

Training for police officers and staff, particularly those who act as first point of contact with the public is also vital. While IKWRO has seen a great improvement in the knowledge of specialist staff in recent years, many of those on the front line still have very limited understanding of issues such as forced marriage and are turning victims away on an unacceptably regular basis.

In November the National Police Improvement Agency consulted IKWRO on a training module on forced marriage, "honour" based violence and female genital mutilation, but there are now suggestions that cuts to police budgets could prevent it from going any further. Training in forced marriage was promised as early as 2008 in ACPO's Honour based violence strategy and again in the government's recent action plan on violence against women and girls. **It is vital that commitments to roll out training to police and other bodies are rapidly delivered on in order to ensure victims are getting the protection they need.**

Support for survivors of forced marriage

IKWRO commends the excellent work of the Forced Marriage Unit in protecting those who are at risk of or have experienced forced marriage. At the same time, there are areas in which the UK response could improve. One concern is that people who are repatriated from overseas have to pay for their flight home. If they do not have money it is loaned to them, to be repaid on their return. Most survivors of forced marriage have very limited financial resources and the burden of repaying their flight costs creates stress at

a time when they are already struggling. Given the relatively small number of individuals affected, **IKWRO recommends that the Foreign Office looks at ways to fund repatriation costs in these cases.**

Another issue arises when one of the parties to a forced marriage applies to enter the UK on a spousal visa. The person who has been forced into the marriage can only stop the visa from being granted by making a disclosable statement saying that they do not support the application, which they often cannot do for fear of recriminations. **It is vital that the UK Borders Agency looks at ways to ensure that victims of forced marriage are able to prevent their spouse from entering the country without putting their safety at risk.**

A further issue arises when a victim of forced marriage needs to move to another area to guarantee their safety. Sometimes local authorities refuse to house women in this position, and argue that they have left home voluntarily. **IKWRO strongly recommends that the Department for Communities and Local Government takes urgent action to remind housing authorities of their responsibilities in relation to those who are at risk of or who have experienced forced marriage.**

Finally we want to highlight the need for long term support for victims of forced marriage, who are often socially isolated and traumatised by what has happened to them. They may suffer from mental health problems and can be vulnerable to sexual exploitation. **IKWRO recommends that the government provides funding for services and projects which provide support to survivors of forced marriage to enable them to recover from their experiences and rebuild their lives.**

IKWRO's recommendations:

1. The Home Office should undertake and publish reviews of the operation of the Forced Marriage (Act on a yearly basis, to look at how orders are monitored, the level of breaches and the judicial response to these. Measures should be rapidly put in place to ensure that monitoring improves.
2. Parliament should create a new criminal offence of forcing or participating in forcing someone to marry, accompanied by severe criminal penalties. Alongside this, existing civil remedies to forced marriage should be retained in order to ensure the maximum level of protection for those at risk.
3. The Department for Education should urgently acknowledge and tackle the failure by schools to protect young people at risk.
4. The Home Office should work with ACPO and the National Police Improvement Agency to ensure that commitments to roll out training to the police and other bodies are rapidly delivered on.
5. The FCO should look at ways to fund repatriation for victims of forced marriage who cannot afford their own costs.
6. UKBA should urgently implement measures to enable victims of forced marriage to prevent their spouse from entering the country without putting their safety at risk.
7. The Department for Communities and Local Government should take urgent action to remind housing authorities of their responsibilities in relation to those who are at risk of or who have experienced forced marriage.
8. The government should provide funding for services and projects which provide support to survivors of forced marriage to enable them to recover from their experiences and rebuild their lives.