



Rights of Women Response: MARRIAGE TO PARTNERS FROM OVERSEAS

About Rights of Women

Rights of Women is a well established not-for-profit feminist women's organisation committed to informing, educating and empowering women on the law and their legal rights. We are a membership organisation, with over 200 members, both individual women and other women's organisations. Our activities include producing publications, organising conferences and training courses and undertaking policy and research work. We run two national confidential free legal advice helplines for women provided by women, one general advice line specialising in family law issues, including domestic violence, and another on sexual violence and immigration and asylum law.¹

Overview of Rights of Women's Position on Marriage to Partners from Overseas

Rights of Women has been engaged in ensuring that women who are at risk of, or who have been forced into marriage can secure protection and justice through the law. To that end we were instrumental in the drafting of the **Forced Marriage (Civil Protection) Act 2007** which sought to protect survivors/victims of forced marriage from abuse by using civil remedies in the family courts. Rights of Women's position is that all women within the jurisdiction who experience violence or forced marriage should be offered equal protection from the law, regardless of their immigration status.

Over the last 2-3 years a great deal of work has been done in analysing family and criminal law to ascertain whether it adequately protects women from violence and forced marriage. The **Domestic Violence Crime and Victims Act 2004** introduced the Code of Conduct for Victims of Crime, made breach of a non-molestation order a criminal offence and amended the definition of 'associated persons' to enable more people to gain protection from the **Family Law Act 1996**. The Government consulted on whether forced marriage should be a specific criminal offence² and enacted the **Forced Marriage (Civil Protection) Act 2007** (expected to be implemented later this year) which will enable individuals and organisations to apply for Forced Marriage Protection Orders. Specific guidance for social workers, police officers and education professionals on dealing with forced marriage was

¹ Sexual Violence and Immigration/Asylum Advice Line: 020 7251 8887 (open Mondays 11am-1pm and Tuesdays 10am-12pm). General Legal Advice Line: 020 7251 6577 (open Tuesdays, Wednesdays and Thursday 2-4pm and 7-9pm and Friday 12-2pm).

² See 'Forced Marriage: A Wrong Not a Right, Right of Women Response to the Home Office-Foreign and Commonwealth Office Consultation on Criminalisation', available at www.rightsofwomen.org.uk.

developed and placed on a statutory footing³. Rights of Women is very concerned that while attention has been paid to whether domestic family and criminal law is meeting the needs of women who have experienced violence or forced marriage, immigration laws and policies have not been subjected to the same analysis. Instead, immigration law has been seen as operating within a different sphere, as having different priorities, with maintaining the integrity of our system of immigration control being considered more important than ensuring that individual women who have experienced violence and/or forced marriage receive protection. We therefore welcome the opportunity to contribute to this consultation on marriage to partners from overseas.

This response will address the questions posed in the consultation as well as outlining Rights of Women's position on forced marriage, violence against women and our concerns about the position of women who come to the UK to join their spouse, civil partner or partner and whose relationship breaks down because of domestic violence.

Rights of Women's Position on Forced Marriage

Violence against women is a key area of Rights of Women's work, both in terms of service provision and policy work. We are concerned that violence against all women and particularly that experienced by Black and Ethnic minority and / or Refugee women⁴ (BMER) women, is addressed appropriately and effectively. In line with international human rights laws, Rights of Women considers forced marriage to be a form of violence against women which violates a number of rights, including rights to freely enter into marriage, and to bodily and sexual integrity.

It is Rights of Women's position that specific forms of violence which BMER women experience disproportionately, such as forced marriage are part of a universal continuum of violence against women, which cuts across all boundaries, including race, ethnicity, religion, culture and class. Violence against women is a violation of internationally guaranteed human rights, rights which the UK has agreed to (such as the **UN Convention on the Elimination of All Forms of Discrimination Against Women** and the **Beijing Platform for Action**), and which are included in UK law under the **Human Rights Act 1998**. Rights of Women believes that the Government has an obligation under international law to exercise due diligence in addressing all forms of violence against women, including forced marriage. As Rights of Women believes that forced marriage is one form of violence against women we will examine the issues raised in this consultation in terms of how they protect women from all forms of violence, rather than focussing on forced marriage to the exclusion of other forms of abuse such as domestic violence.

The Need for a Legal Definition of Violence Against Women

It is Rights of Women's position that the above arguments on the relationship between violence against women, ethnicity, culture and religion, signal the need for a definition of violence against women in UK law. This would clarify

³ See <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1094234862113> for further information.

⁴Refugee women, including women seeking asylum.

that forced marriage is an issue of violence against women, and that ethnicity and culture etc, are relevant to understanding barriers and access to legal remedies and support services. Rights of Women has consistently called for a statutory definition of violence against women based on the United Nations Declaration on the Elimination of Violence against Women, which reads:

“violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’ (Article 1).

Article 2 of the Declaration further states that violence against women encompasses, but is not limited to:

‘(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.’

Such a definition is specific enough to be enforceable and at the same time flexible enough to encompass the wide ranging manifestations of violence that women experience. As the UN Special Rapporteur and other human rights bodies, have further explained, violence against women includes forced marriage and other specific forms of violence against women that BMER women experience disproportionately.

An Important Note on Stigmatisation

Rights of Women would like to take this opportunity to address concerns raised by some that the development of remedies to assist women who have experienced forced marriage is racist or stigmatises those communities where such human rights abuses occur.

As noted above, it is Rights of Women’s position (and that of United Nations bodies) that forced marriage is a form of violence against women. According to international human rights law arguments, violence against women cannot be justified by culture, religion or ethnicity. To view forced marriage as an issue of race or ethnicity, culture or religion, masks the violence experienced by BMER women. Whilst Rights of Women does not subscribe to the rhetoric that forced marriage is an issue of community relations, race, ethnicity or religion, we do recognise that these may be factors in addressing forced marriage, presenting cultural barriers in terms of access to services, protection, support and legal justice. Thus many women who have experienced forced marriage have found it difficult to access assistance,

support and protection, particularly from State bodies and institutions such as the police, the BIA, social services and the courts. It is therefore vital that women who have hitherto been marginalised from protection are able to apply for a remedy and access justice. The creation of remedies for forced marriage is not about singling out certain communities, but rather redressing this historical marginalisation. It is about recognising that BMER women who fear being forced into marriage are a specific group that have historically been marginalised or excluded from the legal process and who often face very real barriers in terms of accessing assistance.

Rights of Women believes that arguments based on stigmatisation cannot be used to deny women justice. The same argument can be made in relation to any work which seeks to challenge violence against women within BMER communities. As such this stigmatisation argument can and is used to challenge the valuable work of many BMER women's organisations providing support, advocacy and advice for women. Indeed, the issue of stigmatisation has consistently been used by many individuals, organisations or "community representatives" under the banner of cultural cohesion, calling for self-policing and the labelling of any type of State intervention or protection as racist. Rights of Women is very concerned that women's organisations, and particularly BMER women's organisations, do not align themselves with those who have traditionally opposed their work to challenge violence against BMER women.

Further criticisms based on stigmatisation serve to perpetuate the myth that forced marriage occurs only within certain communities/religions. This contradicts the evidence of the Government, the police, statutory sector agencies and women's organisations, which have reported forced marriages cases from women of all ages from Middle Eastern, African, Turkish, Kurdish, Chinese and other communities.

Focus of the consultation

Under Article 1 of the **European Convention of Human Rights 1950** (the ECHR) the UK is required to secure the Convention rights and fundamental freedoms of "everyone within their jurisdiction". A failure to effectively protect a woman from violence, including forced marriage, may be a breach of:

- Art 2 ECHR (her right to life);
- Art 3 ECHR (her right to be free of inhuman and degrading treatment);
- Art 12 ECHR (her right to marry and found a family); and
- Art 13 ECHR (her right to an effective remedy).⁵

These rights are not dependant on a woman's immigration status and discrimination between women within the jurisdiction on the grounds of their immigration position could breach Art 14 ECHR (the prohibition of discrimination). However, instead of focussing on the position of all women who may be at risk of violence the consultation presumes throughout that the person in need of protection is the person who is sponsoring the application. In Rights of Women's experience the perpetrator of violence is as likely to be the person sponsoring the application as it is to be the person who arrives in the UK on a spousal visa. If violence against women and the abuse of the

⁵ See for example **Kontrova v Slovakia [2007]** Application no 7510/04 31st May 2007.

spousal visa application process is to be challenged then any changes made have to offer adequate protection to all women who have experienced violence and / or forced marriage irrespective of whether they are the sponsor or the person who has arrived from overseas.

Women who have come to the UK on a spousal visa and who experience domestic violence

Under the Immigration Rules victims/survivors of domestic violence who were admitted to the UK with limited leave as spouses, civil partners or partners can apply for Indefinite Leave to Remain (ILR) if they can provide evidence that their relationship broke down before the end of their period of limited leave because of domestic violence⁶. While the victim/survivor's application for ILR is being processed she has no recourse to public funds. The Home Office has recognised that women who have made applications under the domestic violence rule are extremely vulnerable as a letter from Margret O'Mara (Director, Crime Reduction and Community Safety Group) dated 16th Feb 2006 states:

“However, while this application is pending, and despite its being considered as quickly as possible, their existing immigration status means they have no access to housing provision. In addition, as the majority of these women are from BME communities, there are often additional barriers such as language which can impede obtaining accurate case histories in the assessment process. **Without a place of safety or any means of support, these women are often forced to return to their home to face further abuse and in some extreme cases, homicide.**”

Following the case of **R (Q and others) and the Sec of State for the Home Dept**⁷ Rights of Women believes that the current system, which forces women experiencing violence to choose between prolonged periods of destitution or return to their violent relationship, is incompatible with the UK's obligations under Art 3 and 14 of the ECHR. Rights of Women therefore urges the BIA to take the opportunity offered by this consultation to ensure that all women, regardless of immigration status, are protected from violence and that all abuses of the spousal visa application process are tackled, whether the abuse is perpetrated by the person coming to the UK or the person sponsoring the application. To this end Rights of Women believes that women experiencing domestic violence who are making an application under the domestic violence rule should be exempt from the no recourse to public funds rule.

Q1. Do you think we should increase the minimum age at which someone could sponsor or be sponsored as a spouse, from 18 to 21?

Rights of Women does not agree with the proposal to increase the age limit again to 21 (the age limit has already been increased from 16 to 18) as there is no evidence that increasing the age required to enter the UK will protect women from forced marriage. Forced marriage affects women of all ages, not

⁶ Immigration Rules paragraphs 289-289C

⁷ [2003] EWCA Civ 364

just those who are under 21 years old. Rights of Women's experience in advising women who have experienced forced marriage and domestic violence is that increasing the age limit will only make women and girls more vulnerable by increasing the time, either before or after marriage, that they have to remain abroad before they can return to the UK⁸. For example, a girl of 16 may be taken from the UK to enter into a marriage abroad. At the moment she will have to remain overseas for 2 years before she can return to the UK with her spouse. Increasing the age to 21 will mean that she would have to remain abroad for 5 years before she could return to the UK. This presumes that the youngest a girl a girl can marry is 16, however, Rights of Women has advised on cases where girls under 16 have been forced into a marriage outside the UK.

Increasing the time that a woman or girl may have to remain abroad before she can return to the UK with her spouse increases the time that she may be subject to domestic violence. It will also prevent many women from obtaining an annulment as the time limit for having a marriage annulled because it was entered into without the full and free consent of both parties is 3 years from the date of the purported marriage.

Q2. Should someone intending to sponsor a partner from overseas declare this intention before they leave the UK on the visit/trip?

Rights of Women provisionally agrees with the proposal that people who intend to marry overseas and then sponsor their spouse should provide details of the person to be sponsored before leaving the UK as this could provide a safeguard to women and girls who may not otherwise know that a marriage is being planned. Rights of Women also believes that such a rule would benefit the many women who enter into legitimate marriages abroad but who have their attempts to sponsor their spouse turned down. However, Rights of Women believes that safeguards should be put in place to ensure that people who leave the UK with no intention of marrying or forming a civil partnership but who subsequently do and seek to return with their spouse or civil partner are not penalised by the introduction of an additional requirement. Further information on this proposal and how it would work in practice is therefore needed.

Q3. Should potential sponsors be given more opportunities to have a confidential interview if they request one?

Rights of Women agrees with the idea that potential sponsors could be given a confidential interview or the opportunity to make a confidential statement to enable them to discuss any concerns they have about their marriage or sponsorship. However, this interview should offer a holistic service to a woman who has concerns and is at risk, for example by:

- Referring her to the Forced Marriage Unit
- Referring or signposting her to a solicitor, law centre or other advice organisation, such as Rights of Women, to enable her to get advice on the remedies available to women who have experienced or are at risk of forced marriage and domestic violence.

⁸ This danger is examined, although insufficiently, at paragraph 2.11 of the consultation.

- Signposting or referring her to women's organisations such as Women's Aid or a refuge for support and accommodation.

It is also important that interviews are conducted in a non-adversarial and sensitive way, that provision is made for the use of interpreters and for a support worker, friend or legal adviser to accompany the proposed sponsor. Careful consideration also needs to be given to how such a meeting could be arranged and any information obtained used without putting the woman at risk from violence or abuse. Rights of Women also believes that provision needs to be made for those who conduct the interview to receive specialist training on the needs of BMER women and violence against women more broadly to ensure that interviewers are sufficiently aware of the particular needs of and difficulties faced by BMER women who have experienced or are at risk of forced marriage or other forms of gender based violence. Finally, it is vital that such meetings are not used to assess the genuineness of the relationship but are instead focussed on the safety and needs of the woman concerned.

Q4. Do you think we should introduce a Code of Practice as outlined in this consultation paper?

Rights of Women agrees that guidance should be developed to set out how an application for a spousal visa should progress if one of the parties is identified as being vulnerable to forced marriage. However, rather than the introducing of a Code of Practice, Rights of Women advocates the development of formal guidance which would be placed on a statutory footing under the **Forced Marriage (Civil Protection) Act 2007** alongside the guidance that is currently given to education professionals, social workers and the police. The Guidance should be focussed on protecting vulnerable women from forced marriage and outline the service that women can expect to receive from relevant agencies such as the BIA or UKvisas.

Rights of Women believes that the introduction of a discretionary Code of Practice would be very problematic, as it means the service victims/survivors receive is dependant on the attitude of the individual they are dealing with. It is important that all State agencies understand that forced marriage is unlawful and that they do have a responsibility to address this abuse of human rights, by challenging its occurrence and providing appropriate protection for victims/survivors.

Q5. We have suggested some of the factors that might indicate vulnerability to a forced marriage (for example, discrepancies in age, main language spoken etc); what additional factors do you think there might be?

Q5a. If some of the factors that create vulnerability were present, should there be a power to refuse on those grounds alone, without the sponsor having to provide an evidential statement?

Rights of Women believes that if the power to refuse applications in cases where the sponsor had not produced an evidential statement is introduced it should be limited to cases where it has been shown, in legal proceedings, that

the proposed sponsor lacks the mental capacity in domestic law to enter into a marriage (for example, because of a disability or mental health problem).

Rights of Women believes that the identification of other factors as indicators of a vulnerability to forced marriage and the power to refuse applications on those grounds alone may result in genuine applications for spousal visas being refused. Many applications for spousal visas from refugee or migrant communities may involve differences in age or the main language spoken and no evidence has been adduced to show that marriages where these factors are present are more likely to be forced than marriages entered into with the full and free consent of both parties. Rights of Women believes that applications should only be refused (where all the usual legal criteria are met) where this is the wish of the applicant herself. The proposed sponsor's views may be ascertained through the provision of an evidential statement or through a confidential interview (as suggested in question 3 above).

Q6. Do you think that we should do more to bring about revocation of indefinite leave to remain if individuals abuse the marriage route to gain settlement?

Q6a. If you answered yes to question 6, what proof do you think might be necessary to do this?

Q7. Do you think we should be able to revoke indefinite leave to remain after it has been granted if the sponsoring partner is abandoned?

Q9. What sanctions could we use if individuals abuse the marriage route to gain settlement?

Rights of Women believes that forced marriage is best tackled by the introduction of systems that enable women to access support and talk through their concerns rather than by the introduction of penalties such as stripping someone of ILR. Consequently Rights of Women welcomes innovations like the use of a confidential interview as a means of empowering women to seek protection and justice.

Rights of Women is concerned that the introduction of a system that enables ILR to be removed from the spouse who has come to the UK may be abused in cases where it is the sponsor that is the violent and abusive partner and the applicant who is the victim/survivor. Many women who come to the UK as the spouse, civil partner or partner of someone who is present and settled in the UK and who experience violence often have their immigration position used to prevent them from seeking legal advice and support. Rights of Women believes that any changes that enable the removal of ILR may be open to manipulation and abuse. Rights of Women would also oppose the introduction of any measure that could remove ILR from an applicant who had subsequently abandoned his/her sponsor because it could be used to prevent women who leave their abusive partner from obtaining settlement and protection from violence. Furthermore, Rights of Women believes that the introduction of such changes is unnecessary because if a person from outside the jurisdiction is convicted of any criminal offence he may be denied ILR.

If the BIA rejects these arguments and is minded to enable the removal of ILR in some circumstances Rights of Women believes that this should only be done where the sponsor herself has taken action to end the marriage because

she was either forced into marriage or experienced violence during the marriage. To ensure that perpetrators of violence do not abuse such a provision the only evidence that should be accepted by the BIA should be either:

- the annulment of the marriage on grounds that it was entered into without the full and free consent of both parties; or
- divorce on the grounds of unreasonable behaviour where one of the examples of unreasonable behaviour given is that the woman concerned experienced domestic violence.

Q8. Do you think we should do more to investigate allegations of abuse of marriage for immigration advantage after entry?

Q8a. If you answered yes to question 8, how might these be investigated?

Rights of Women believes that more could be done to assist women who are experiencing violence and who have either sponsored the person who is abusing them or have come to the UK to join a spouse who subsequently proves to be violent. Rights of Women is particularly concerned that many women in this position who report violence to the police or the courts do not receive an adequate service from the BIA when they either seek to withdraw their sponsorship of their violent partner or apply for ILR under the domestic violence rule. For example, many women have sought advice from Rights of Women because:

- the BIA has failed to respond to, or investigate, information they have provided on the spouse that they have sponsored;
- the BIA has failed to take enforcement action against a spouse/former spouse when they have withdrawn sponsorship because of violence;
- the BIA has failed to process applications under the domestic violence rule swiftly;
- the BIA has failed to take action against abusive husbands who bring a second wife into the UK when the first wife has been granted ILR under the domestic violence rule.

Rights of Women thinks that the BIA has a duty to take action against perpetrators of violence against women who use the spousal visa process as a means of either obtaining settlement in the UK or abusing a spouse who has come to the UK from abroad. However, Rights of Women believes that the BIA should only investigate purported abuses of the system when their involvement is requested by the victim/survivor of the violence or the police to ensure that the victim/survivor is not placed at risk of further or more serious violence.

Q10 What provisions might be necessary for safeguarding women, in particular, after the entry of a sponsored spouse? (For instance; a helpline, access to immigration advice, and support in making statements).

As discussed above, Rights of Women believes that enabling a woman to attend a confidential interview may be useful as she could discuss any concerns she had about her marriage / sponsorship without the knowledge of

her family or spouse. However, Rights of Women is not convinced that the BIA is the agency best placed to provide independent immigration advice or support to women who have experienced violence or forced marriage. There are many specialist women's organisations, including BMER women's organisations, which provide support and advice to women who are experiencing violence or forced marriage. Rather than offering additional services Rights of Women believes that the BIA should seek to work more effectively in either taking action where a woman wishes to withdraw her sponsorship of her partner or in processing applications for ILR under the domestic violence rule faster.

Q11. What is wrong with the current system in relation to abandoned spouses that could be improved?

Q11a. What changes could be made to improve communications with abandoned spouses? E.g. provide further information to them about further applications or applications for indefinite leave to remain by the person they sponsored, and even seek their views, so that their role as a sponsor is not ended by their being abandoned.

Rights of Women believes that there are two situations where a woman may be abandoned:

- she may be abandoned in the UK by her spouse who has or intends to abuse the spousal visa process to obtain settlement; or
- she may be abandoned in her country of origin by her spouse who is present and settled in the UK. Rights of Women has advised on many cases where a woman is brought to the UK, subjected to domestic violence and abandoned in her country of origin. In many cases this desertion involves separating her from her British children.

Rights of Women welcomes the increased information now given to sponsors and the commitment to respond more effectively to information provided to the BIA by women who have experienced violence. However, Rights of Women does not agree that former sponsors should be kept informed of any subsequent applications made by the spouse or partner who they sponsored. As discussed above, Rights of Women is concerned that some of the developments proposed in this consultation may be used by violent spouses who are present and settled in the UK against partners who come from abroad. Many women who experience violence may flee their relationship and in time may seek to form new relationships. Giving information to a former sponsor could put a woman in this situation at risk of further violence or abuse.

Finally, Rights of Women is very concerned that the Immigration Rules do not make provision for those who are brought to the UK for marriage but who are abandoned in the country of origin. This abandonment may occur during the probationary period or after it (in the latter case women are often misled as to their immigration position and only realise that they do not have ILR when they attempt to return to the UK). While there are provisions that enable a parent to come to the UK to maintain contact with a child when there is a court order in place, there is no such provision to enable a woman to return to apply for contact or residence of her children or to initiate divorce proceedings.

Rights of Women believes that the issues raised by abandonment are complex and ought to be addressed through a separate consultation on how the Immigration Rules should be changed to enable abandoned spouses to return, in certain circumstances, to the UK.

Conclusion

In conclusion Rights of Women recommends the following:

- That the age requirement for sponsoring a spouse should **not** be increased to 21.
- That women who experience violence and who are either sponsors of their abuser or who have come to the UK to join them should be offered a better service by the BIA, for example, through the provision of a confidential interview and faster domestic rule decisions.
- That women who apply for ILR under the domestic violence rule should be exempt from the no recourse to public funds rule.
- That the BIA should consult on how the Immigration Rules should be changed to enable abandoned spouses to return to the UK.

Rights of Women urge the BIA to seriously consider the issues outlined above.

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