

# **LSE - The End of Impunity for Violence against Women? The Istanbul Convention in Europe. 7 March 2013**

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## **Introduction**

It is an honor to be here at this very important and timely event. I believe it is an important juncture in our work on violence against women.

The gang rape of the young woman in Delhi towards the end of last year sparked national and international outrage and protests. She came to symbolise the endemic nature of gender-based violence against experienced by women everywhere on a daily basis. We have been witness to an unprecedented wave of mass mobilisation of women against gender-based violence in India and indeed around the world. The heartening aspect of these events is that women everywhere are invoking their human rights to life, liberty and non discrimination and in the process they are extending and redefining conceptions of rights and justice to make them more progressive and inclusive. They are above all, laying claiming to international human rights legal standards and norms set out in various declarations, conventions and other instruments treaties.

However, the paradox is that at the same time, we are also witness to an unprecedented attack on feminism and women's rights globally. There are negotiations taking place at domestic and international levels including within

international human rights institutions themselves which give cause for grave concern. For example at the UN itself, counter measures are being proposed by religious right forces from all religions; their entire agenda is to invoke traditional values and morals to infringe upon human rights guaranteed by international law. There is considerable concern amongst women's groups that such forces are seeking to re-open negotiations on established international agreements on women's human rights which will undermine the very concepts of the universality and non-divisibility of human rights. The fear amongst many of us is that in the current political climate there is a real risk of capitulation to such forces.

At the same time, austerity measures enacted in the UK and elsewhere are already undermining government commitments established in international agreements to promote, protect and fulfil the human rights and fundamental freedoms of women and the situation is about to get a whole lot worse.

Black and minority women in the UK particularly are in a precarious position precisely because we not only have to contend with a general backlash against gender equality and the economic climate of cut backs but linked to this, the rise of religious power that is gaining in confidence and monopolising community resources which make exit and protection from gender-based violence difficult. In other words, the increasing interface of religion with gender-based violence and human rights is also having a profoundly negative impact on the realisation of women's human rights.

So, we are facing some really tough and challenging times but the point that I want to emphasize from the outset, is that in this economic and socio-political climate, it is

essential to remain vigilant to the threats to women's human rights that we face from many directions even as we celebrate the Istanbul Convention and its potential to help us safeguard and enhance women's human rights.

If I have time, I will come back to these challenges and dilemmas at the end.

## **UK**

In the UK, we have had a decade or more of often quite impressive policies, laws and initiatives on violence against women and this has included, finally, after years of hard campaigning, the recognition that specific forms of abuse such as forced marriage, honour based violence, ritual abuse, female genital mutilation and other harmful practices are also human rights abuses. (Of course, these developments haven't all gone uncontested. In fact they have posed interesting dilemmas for feminists. The advantages and disadvantages of pro-arrest policing of domestic violence, the criminalisation of forced marriage are two obvious examples.)

Over the last decade or more, those of us who work on violence against women have known that there has always been a gap between the rhetoric of 'zero tolerance' for violence against women and the reality - which also points to continuing systemic failures of the state to protect, prosecute and prevent violence against women – the crisis surrounding the protection of very young children in child abuse cases and of vulnerable young girls and boys in sexual abuse cases are just some examples.

## **Drawing on SBS' experiences**

I think that a similar crisis has been simmering for a while in relation to institutional responses to violence against women. Although there has been a discernable positive shift say in the policing of domestic violence, closing the gap between rhetoric and reality has remained unfinished business. I fear that we are actually going backwards in many respects, as different sets of state policies and initiatives reflecting current political/economic and social developments, are creating contradictory trends that undermine the gains that we have made.

SBS' casework experience on violence against women highlights some ongoing failures in state protection against all forms of gender-based violence. In the light of these failures, of course the Istanbul Convention will be a welcome tool because it will set the standard by which we can measure State commitment and accountability to women's human rights. It also has the potential to embed a culture of human rights especially in communities where women's human rights are being challenged by religious power and where ending impunity feels like a distant dream.

In many ways, the Istanbul Convention is far reaching and comprehensive for a number of reasons: For example, it makes clear the gendered nature of violence against women – an insight that we are in danger of losing, ironically because of the success of gender mainstreaming within State institutions. And because it establishes the unequivocal principle of 'due diligence' to which States must adhere.

What I would like to do is to draw on some of our recent cases to highlight how despite over a decade of improved practices and policies, effective implementation remains an elusive goal.

But before I refer to some key failures highlighted by our casework, I want to touch on the government's response to the Convention at the time that it was drafted. Although we applaud the signing of the Convention by the UK government and would urge it to not delay in ratifying it, the government did raise key objections and made proposals which amongst other things, sought to undermine the due diligence standard and the recognition of violence against women as a human rights violation which would have seriously undermined its effectiveness and the standards and norms set down in international law.

I raise this because I think it is instructive and revealing of the institutional mind set that we are confronted with on a daily basis and which contributes to the flourishing culture of impunity for violence against women.

The government tried to amend key provisions of the Convention. They include:

a) An attempt to dilute the understanding that violence against women is not only an obstacle to women's human rights but of itself constitutes a violation of human rights. (The UK proposed to remove in article 3A) the reference to violence against women as a violation of human rights and replace it with the expression 'violence against women constitutes a serious obstacle for women's rights' there was no explanation provided for this removal but I agree with Amnesty International that the proposal

would have seriously weakened the legal basis of the treaty if it was to treat violence against women as just an obstacle to the enjoyment of human rights rather as a violation of human rights itself and undermines international law such as CEDAW which has identified violence against women as a violation of human rights since the early 90s.)

b) The UK also proposed to delete the term ‘the right to live free from violence’ But this would have undermined the right to life, the right not to suffer torture and other ill-treatment, and the right to liberty and security of their persons which are enshrined in international human rights law. (The proposal would have limited the basic legal obligation of this treaty.)

c) The UK also proposed to remove the term ‘due diligence’ from Article 5 which sets out the principles of state responsibility, including due diligence. But the concept of due diligence has been applied for some time by many international human rights courts and bodies and if removed would seriously undermine existing international law

Other objections that the UK had would have weakened provisions on sexual harassment and the recognition of gender based persecution in international refugee law for example on non –refoulement.

## **The SBS experience**

The recognition of gender based violence as a violation of women's human rights and as a form of discrimination against women is vital. Why? Because currently in the UK, the police, in our experience, often implement domestic violence policies in a gender neutral way which means that when they are then confronted with a domestic violence call out, they often record a report as a 'domestic dispute' . They often say that they cannot record domestic violence where cross allegations of abuse have been made by the perpetrator. Either deliberately or through ignorance, they fail to appreciate that domestic violence affects women disproportionately which is why it is gender based violence. They often can't distinguish between the victim and the perpetrator.

I suspect that what they are really doing is ensuring that they record so called violence against men which is increasingly assumed to affect men as much as women. Of course this isn't just a problem with policing. Many other institutions are also making these same mistakes. But the consequences are far reaching. Many Local authorities for example are now insisting that women's dv projects must also cater to men who are abused. Funding for specialist projects is being cut back, paradoxically in the name of equality.

A problem that we routinely encounter is the police dismissal of domestic violence reports. But more alarmingly, we have also encountered the criminalisation of women who report domestic violence - which takes State response into another area altogether. This has happened in some of SBS' cases where women have been

arrested, cautioned or prosecuted and made to stand trial, even though they have been the victims of domestic violence.

1. In one case, an Indian woman was cautioned by the police and misinformed about her right to legal advice and representation about the police caution. The background to her case is that she was subjected to repeated abuse, and was being thrown out of her matrimonial home by H and in-laws. She did not have secure immigration status, and so fearing homelessness and destitution, she resisted her husband and in-law's attempts to throw her out. (Her experiences are in fact very common amongst women with no immigration status) She called the police and on the say so of her husband and in laws who asserted that she assaulted them, she was arrested and made to spend the night in a police cell, mainly because the police could not find an interpreter for her. She did not speak English and did not know why she was kept at the police station. She was terrified. The next day, an interpreter was found but he advised her to admit to assaulting her husband and in-laws and to accept a police caution. He told her that the caution was not important and it would mean that she could get out of the police station which she was anxious to do. She acted on his advice but later the caution was used against her by the UKBA who tried to deport her saying that she was not a victim of domestic violence but that she was the perpetrator of domestic violence as evidenced by the caution. (As a victim of domestic violence she was entitled to seek to remain in the UK but only if she could prove this.)



2. In another case, an African women was charged with Grievous Bodily Harm after she tried to defend herself from her husband's violence. She bit his lip in an effort to free herself as he held both her arms tightly. He called the police who arrested and charged her but failed to do anything about the assault on her or to investigate her history of domestic violence. The whole thing went to trial but fortunately the jury believed her and she was acquitted. The process however, was really traumatizing for her but she was so relieved at the end because she too had insecure immigration status and her stay depended on the outcome of the trial.

There have been other cases in a similar vein. The continuing confusion and at times willful failure and misconduct on the part of the police have led us to employ a series of strategies to force the issue of accountability. We have a policy of pursuing these failures through the police complaints system, but the police professional standards departments who investigate such complaints almost always defend police action or uphold their version of events.

### **Spectacular failure to exercise due diligence**

However, in the more dramatic cases of police failure that have led to fatalities or 'near miss' deaths, we have had to resort to legal action which invoke international human rights law and standards. The Convention places emphasis on States to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence against women, which we hope will help to strengthen our arguments in such cases.

The response of the police to the case of Banaz Mahmood, a young Kurdish Iraqi woman, is a case in point.

### **Banaz Mahmood**

Banaz Mahmood, a married woman, was killed for seeking a divorce from her violent husband so that she could marry her boyfriend. However her family considered him 'unsuitable' because he was from a different ethnic and tribal background. She was raped, strangled and buried in a suitcase by a group of men from her community at the instigation of her father and uncle, who were convicted of her murder in 2007. Banaz' case received high profile media coverage as an 'honour' killing. However, its real significance was not only that it was an honour killing, but the fact that, prior to her murder, the police knew about the danger to her life but failed to act to protect her. Before her death, Banaz and her boyfriend had been subjected to a number of death threats and an attempt by her father to kill her.

On New Years Eve in 2005, Banaz' father plied her with drink in order to reduce her ability to defend herself as he prepared to strangle her. However, before he could attack her, she managed to escape into their back garden and tried to alert her neighbour by banging on her neighbour's window which she accidentally broke. Receiving no response from the neighbour, Banaz jumped over the garden fence and ran bleeding and bare footed into a coffee shop where the police and an ambulance were called. Banaz told the police about her father's attempt to kill her and repeatedly asked for her boyfriend fearing that he was also in danger. However, the police

response was dismissive. Instead of investigating the incident as one of attempted murder, they considered charging her for criminal damage for breaking the neighbour's window! The police officer either assumed that Banaz was drunk and was merely seeking attention from her boyfriend or that she was simply 'rebellious' against her parent's cultural beliefs and practices and did not therefore take her allegation seriously.

Legal action against the Metropolitan Police has been brought by Banaz' sister who tried to help her, is pending. Her claim concerns failure of the police to record or investigate Banaz' allegations of violence and threats to her life in accordance with their own policies and in breach of articles 2, 3, 8 and 14 of the ECHR (covering the right to life, right not to be subject to inhuman and degrading treatment, right to respect for private and family life and right not to be discriminated in the enjoyment of substantial rights).

The other case concerns Nosheen Amjad.

### **Nosheen's case**

Nosheen came to the UK as a bride on a spousal visa. She married Pakistani national (10 years her senior). In the UK, she lived with her husband and in-laws. She was already vulnerable due to newness in the UK, lack of English, isolation and immigration status all of which was exploited by her husband and in-laws. Each of these factors is also officially identified as risk factors. Within weeks of arriving to UK, She reported to her sister and parents that she was subjected to verbal and

physical abuse and imprisonment from her husband and in-laws. She tried to leave home on 3 occasions and on each was sent back. She also reported to her GP who once threw her mother-in-law out of his surgery because she insisted on being present when he was trying to examine Nosheen. She told him that she was stressed out because she was made to do all the housework and was being forced to conceive.

So, there was evidence of abuse including psychological abuse and forced pregnancy.

However, within 7 months of being in the UK, Nosheen was found set alight in her garden by neighbours. In hospital as she was recovering, she said: 'I don't want my husband and in-laws visiting me' but the hospital didn't act on this. There was no attempt to investigate why she was saying these things. Her husband and in-laws were given unrestricted access to her and immediately following one of their visits, she suffered catastrophic brain injury. (Her medical notes show that the ventilator that she was on had been disturbed). There was no investigation by the hospital as to how the incident had happened. She is now cortically blind, in a minimally conscious state and needs 24 hour care. Her condition is life long.

In this condition, the State tried to deport her as she did not have secure immigration status. But this was successfully prevented through legal action.

More generally, there has been no State investigation into what happened to her including at the hospital. Initially the case was treated like a 'honour crime' by the police but when she could no longer talk, police investigation, superficial as it was, stopped altogether. When we questioned the police about their lack of investigation

last year, we were told that they did not believe that she was not a victim of domestic violence. Their view was that she had attempted suicide as a 'cry for attention' and that the real problem lay with her parents for not letting her return to them in Pakistan.

We are of course now taking action, arguing that the State has failed to adhere to international law that obliges it to investigate and prevent to acts of violence with due diligence. SBS is approaching the case in 2 ways:

- We are helping her father to challenge the UK government under Article 2 and 3 and 14 of the ECHR which includes events at the hospital that were never investigated. These articles raises claims based on the investigative and protective obligations inherent in Art 2, 3 and 14 of the ECHR in respect of injuries caused to Nosheen.
- We are also arguing that even if this was a case of attempted suicide and not murder, there is insufficient legislation to deal with the situation. We argue that suicide should be considered in similar vein to homicide where the aggravating feature is domestic or sexual violence. We want to see a new law on suicide aggravated by domestic violence. This is a pertinent demand in a context where the links between suicide and abuse are well established and where in particular the attempted and completed rates of suicides amongst South Asian women in the UK in particular, are up to 3 times the national average.

The Istanbul Convention in both Banaz and Nosheen's case is vitally important because it endorses the view that gender-based violence triggers duties on States even where violence is perpetrated by non-State agents. It emphasizes the significance of the issue of violence against women and its relationship to human rights standards.

Banaz' death is one in a long line of deaths of women and children in the UK in circumstances where the dangers to their lives were known to the police. There is in fact an unnerving similarity of inadequate law enforcement experienced by women who report domestic violence across the world.

In a report entitled 'Learning The Lessons' on domestic violence in the UK, the Independent Police Complaints Commission (IPCC) highlighted recurring failures in the cases that they investigated – almost all involving women who died following reports to the police. All the cases highlighted common failures including the lack of supervision by specialist domestic violence officers/units, lack of awareness of triggers and risk indicators, failure to pursue investigations effectively or provide adequate support and failure of communication within the police force and across a number of agencies.

In 2010, the IPCC said that 16 people were murdered in England and Wales during 2009-10 after the police had been informed about concerns over their safety. & of these were women killed by current or former partner or friend.

But despite the IPCC reports and the introduction of other measures including the existence of homicide reviews, all aimed at learning lessons from previous mistakes,

the reality is that the duty to protect and to conduct investigations capable of bringing perpetrators to justice has been regularly flouted by the UK government.

We have to continue to press for State accountability in various ways and the Convention will be an important tool to draw on because it will help to reiterate the principle that violence against women is a form of gender discrimination in itself; that the police and other authorities must be fit for purpose in protecting women and that a failure to exercise due diligence contributes to the culture of impunity for violence against women.

### **Other issues**

Of course, the Convention on its own cannot guarantee any of these things, particularly when contradictory policies contributes to the creation of conditions that far from transforming patriarchal gender structures and values actually perpetuate and entrench violence against women.

Just two examples:

**Legal Aid** - austerity measures and the withdrawal of legal aid will deny women protection. (Many women's services are also shutting down.) Legal aid for domestic violence victims in family and children cases will not be available unless they can prove they are victim of domestic violence – the threshold for evidencing domestic violence however is set very high. So many women will effectively be excluded from protection.

So for example, the Convention could be used as a campaigning tool against the withdrawal of legal aid and other measures that deny access to justice

### **Religion and the challenge to human rights law**

As I stated at the beginning, the struggle by women to keep religion and the human rights law separate is one of the most urgent struggles that is now taking place globally.

Although the UK State has begun to assert more clearly the view that harmful cultural practices will not be tolerated, the faith based approach that is currently being promoted contributes to a contradictory set of policies aimed at recognising and protecting religious identity, increasingly to the detriment of women's rights.

This is clearly evident in recent debates and developments in respect of the demand to incorporate aspects of personal laws (Sharia laws) in relation to the family in particular, within the English legal system, a move which, unsurprisingly, in an economic context where controlling time consuming litigation and slashing the legal aid budget is an overriding objective, is also encouraged by leading establishment figures in the judiciary and the Church itself. But what we are really witness to is the subversion of the secular human rights framework and the principles of equality, universality and the indivisibility of human rights – principles which are not 'alien' or 'western' to minority women as is evident in the struggles that women are waging throughout the world.



So, can the Convention help prevent human rights principles from being undermined by those who seek to invoke cultural diversity and religious autonomy to in effect, maintain gender inequality? I know the Convention states clearly that no one can use tradition and custom to justify violence against women but can we read into this the right not to be denied access to a secular human rights framework?

We are going to have to work hard and creatively to make the Convention work for us. It will involve the simultaneous use of multiple legal and political strategies at the State and community levels.