



## **Rights of Women Response: FORCED MARRIAGE (CIVIL PROTECTION) ACT 2007 – RELEVANT THIRD PARTY**

### **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 criminal law and procedures in relation to sexual violence and immigration / asylum law.<sup>1</sup>

### **Overview of Rights of Women's Position on Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party**

Forced marriage<sup>2</sup> is a form of violence against women that the state has a positive obligation under domestic and international human rights laws to protect women from. Rights of Women worked closely with the Odysseus Trust and Southall Black Sisters in drafting the Forced Marriage (Civil Protection) Act 2007 as we have taken the view that civil law remedies can protect and empower women and importantly, unlike criminal sanctions, allow them to initiate and cease proceedings. We therefore welcome the opportunity to contribute to this consultation on the role of relevant third parties.

Rights of Women believes that a third party should **only** be able to make an application on behalf of another when:

- the woman/child concerned has given her informed consent to the application being made on her behalf; or
- the woman concerned is incapacitated from making a decision.

Rights of Women believes issues of consent or capacity should be explored at a leave hearing so that the court has an opportunity to examine the appropriateness of making an application for each individual concerned.

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<sup>1</sup> Sexual violence and immigration / asylum legal advice line: 020 7251 8887 (open Mondays 11am-1pm and Tuesdays 10am-12pm). General family law legal advice line: 020 7251 6577 (open Tuesdays, Wednesdays and Thursday 2-4pm and 7-9pm and Friday 12-2pm).

<sup>2</sup> Forced marriage was defined in Re SK [2004] EWHC 3202 (Fam): "There is a spectrum of forced marriage from physical force or fear of injury or death in their most literal form, through to the undue imposition of emotional pressure which is at the other end of the forced marriage range and that a grey area then separates unacceptable forced marriage from marriages arranged traditionally which are in no way to be condemned, but rather supported as a conventional concept in many societies."

In terms of organisations who should be empowered to make an application on a woman's behalf Rights of Women believes that:

- statutory sector organisations, such as local authorities, should be able to make such applications but that they need appropriate training and materials on the new law and guidance; and
- that women's organisations and BMER women's organisations in particular have a unique contribution to make in this area but that a framework of accountability needs to be put in place to ensure that women/girls are not placed at risk by intervention.

Finally, Rights of Women is concerned that as yet the issue of funding such applications has not been adequately addressed. If the protections offered by the Act are to be meaningful funding needs to be secured to enable third parties to make applications if and when appropriate.

### **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 women<sup>3</sup> (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.

### **Stigmatisation**

Before responding to the consultation questions, Rights of Women would like to take this opportunity to address concerns raised by some that the development of specific remedies to deal with forced marriage is racist or stigmatises those communities where such human rights abuses occur. As a feminist organisation concerned with the protection and safety of women, Rights of Women strongly disagrees with the use of such concerns to prevent the proper implementation of the Forced Marriage (Civil Protection) Act 2007.

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

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<sup>3</sup>Refugee women, including women seeking asylum.

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. 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, 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 a specific civil remedy for forced marriage is not about singling out certain communities, but rather is about 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.

Further, we believe that criticisms of the Forced Marriage (Civil Protection) Act 2007 based on stigmatisation of a particular community or religion, simply serves to perpetuate the myth that forced marriage occurs in only these communities/religions. This contradicts the evidence of both the Government, the police, statutory sector agencies and women's organisations like Rights of Women, which have reported cases from Middle Eastern, African, Turkish, Kurdish, Chinese and other communities.

### **The Need for a Legal Definition of Violence Against Women**

It is Rights of Women's strongly held 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 that matters such as forced marriage are an issue of violence against women. 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.

### **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 violence<sup>4</sup>. 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 16<sup>th</sup> 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 BMER 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**<sup>5</sup> Rights of Women believes that the current system, which forces

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<sup>4</sup> Immigration Rules paragraphs 289-289C

<sup>5</sup> [2003] EWCA Civ 364

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 Ministry of Justice to take the opportunity offered by this consultation to ensure that all women, regardless of immigration status, are protected from violence. 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.

### **Language**

In this consultation Rights of Women will refer to the victim/survivor of forced marriage or the person believed to be at risk as "she" because in over 85% of cases it is women and girls who experience this form of gender-based violence (see above, the need for a legal definition of violence against women). We will also use the terms "victim" and "survivor" although we acknowledge that many women prefer to be referred to as survivors.

The remaining subheadings reflect the consultation questions and Rights of Women's response to these.

### **1. In what circumstances is it appropriate for a third party to make an application on behalf of another? Are there circumstances where it is not appropriate?**

As mentioned above, Rights of Women has championed the use of civil remedies in forced marriage cases because it gives the victim / survivor choice about when to commence proceedings, what remedy to seek, when to end proceedings and whether / how to enforce any order obtained. Rights of Women has consistently emphasised the importance of enabling and empowering women to seek the remedy best suited to them in previous consultation responses.<sup>6</sup> Consequently, Rights of Women is concerned that the use of relevant third parties has the potential not only to undermine one of the significant strengths of the Act, but more importantly, may, if not implemented with appropriate safeguards, put women and girls at risk of greater harm or violence.

A woman who is at risk of, or who has been subjected to, a forced marriage, whether in the UK or abroad, may be at risk of violence, including sexual violence, from her spouse, family or extended family. She may be isolated from friends or family, prevented from leaving her home or from accessing support. She may not speak English as her first language and she may have an insecure immigration status (and therefore no recourse to public funds, see above). She may wish to end her marriage / purported marriage or may wish to remain within it. A woman or girl who seeks protection from forced marriage may fear violence from family members and her wider community, in the short and long-term. The issues surrounding forced marriage are complex and must not be underestimated. The consequences of an intervention into a woman's

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<sup>6</sup> See 'Forced Marriage: A Wrong Not a Right, Right of Women Response to the Home Office- Foreign and Commonwealth Office Consultation on Criminalisation (2005)' and Rights of Women's Consultation Response to Forced Marriage (Civil Protection) Bill (2007) available at [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

life, without her knowledge or informed consent could be serious and life changing and could put her at risk of serious violence, including death, for the rest of her life.

Rights of Women believes that this question raises two distinct but interconnected points:

1. In what circumstances is it appropriate for a third party to make an application on a woman's behalf; and
2. If it is appropriate for a third party to make an application, which organisations should be able to do so (issues raised by question 3 of the consultation)?

The following refers to the first of these questions, however, the below must be read out in conjunction with our response to question 3.

Rights of Women takes the view that in the majority of cases it will not be appropriate for a third party to make an application on behalf of another person and that anyone who seeks to make such an application, whether an individual, such as a teacher or an organisation (either voluntary or statutory) should first have to seek the court's permission to do so.

Rights of Women believes that a third party should only be able to make an application on behalf of another when:

- the woman concerned has given her informed consent to the application being made on her behalf; or
- the woman concerned is incapacitated from making a decision.

Rights of Women acknowledges that there may be cases where a woman would prefer an organisation to make an application on her behalf and that a third party, such as a BMER women's organisation may be best placed to do this. However, this consent must be informed consent and safeguards need to be put in place to ensure that the woman concerned fully understands the application process and the long-term consequences that making an application, or not making an application, may have on her. Rights of Women therefore believes that provision should be made to ensure that a woman considering either making her own application, or having a third party do so on her behalf, be able to access free and confidential legal advice and information (for example, by contacting a solicitor or Rights of Women's legal advice line). To facilitate this Rights of Women believes that an information pack, in relevant languages, should be developed (see our answer to question 8 below).

Where a woman has not given her consent to an application being made on her behalf Rights of Women believes that an application should only be made where it is believed that **she does not have the capacity to act**. This may be because:

- she is outside of England and Wales;
- she is vulnerable because of a mental health problem or disability;
- she is unable to make a choice because of the pressure that she is under.

In this respect we believe the test should be the same as is currently applied by the High Court when being asked to exercise its inherent jurisdiction: **“The inherent jurisdiction can be invoked wherever a vulnerable adult is, or is reasonably believed to be, for some reason deprived of the capacity to make the relevant decision, or disabled from making a free choice, or incapacitated or disabled from giving or expressing a real and genuine consent.....”**<sup>7</sup> Cases where the court has exercised its inherent jurisdiction have made clear that a woman may be incapacitated from making decisions because of constraint, coercion or undue influence.

Rights of Women believes that the issues of consent and capacity should be dealt with in an application for leave to apply for protection under the Forced Marriage (Civil Protection) Act 2007. Currently the Act provides for a leave stage where the applicant is a third party such as a teacher or friend. There is no reason why such a stage could not be introduced for applicants who are relevant third parties because, as outlined above, the issue of whether an application is appropriate in a particular case is different from the question of which organisations are best placed to make such applications. Rights of Women therefore believes that the leave stage is an important safeguard for women as it will ensure that the court examines the circumstances of each case to ensure that a hearing an application is appropriate.

## **2. Are there any other circumstances when is it appropriate for a third party to make an application on behalf of a child under 16? Are there circumstances where it is not?**

Under UK law it is not possible for a child under 16 to enter into a legal marriage (children between the ages of 16-18 may with their parents consent). Rights of Women wishes to ensure that the primary responsibility for safeguarding the welfare of children remains with local authorities who have an obligation under the Children Act 1989 to ensure the safety and welfare of children within their area. Rights of Women is concerned that evidence appears to suggest that local authorities are failing to protect girls from forced marriage. For example, evidence given to the Home Affairs Select Committee suggests that in some areas significant numbers of girls are missing who are believed to be at risk of forced marriage.<sup>8</sup>

Rights of Women believes that similar rules to those that currently apply in relation to applications for a non-molestation order / occupation order should apply in relation to forced marriage protection orders; namely that an applicant between the ages of 16-18 may consent to a third party making an application to the court where she has sufficient understanding of the issues. The above comments in relation to the importance of consent being informed and the provision of information and legal advice apply equally here.

Where the child at risk is either under 16 or between the ages of 16-18 but without the capacity to make a decision or her own application it may be

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<sup>7</sup> Mr Justice Mumby at paragraph 79, *A Local Authority v. Ma, Na, Sa (by her children's guardian LJ)* [2005] EWHC 2942 (Fam).

<sup>8</sup> Minister for Children, Kevin Brennan told the Home Affairs Select Committee who were investigating domestic violence that 33 children were missing from Bradford this year.

appropriate for a third party to make an application on her behalf. Again, it may be that a BMER women's organisation or children's organisation may be best placed to make such an application if the local authority is not dealing with the case appropriately (for example, by failing to follow the guidance for social workers). However, as discussed above in relation to adults, Rights of Women believes that issues of consent and capacity should be explored at a leave hearing to ensure that an application is appropriate in each particular case. Rights of Women believes that a leave hearing could perform two functions in such situations, enabling the court to assess the suitability of an application for the girl concerned as well as seeking the involvement of the local authority.

**3. Which type of person or organisation do you think should act as a relevant third party? Please give reasons to support your answer.**

**4. Which type of person or organisation do you think should act as a relevant third party for children aged under 16? Please give reasons to support your answer.**

As discussed above in our answer to question 1, Rights of Women believes that the question of whether an application in any particular case is appropriate is separate from the issue of which type of organisation should be able to make an application. The question of what type of organisation should be able to act as a relevant third party is complex, raising as it does issues concerning the capacity of an organisation to provide legal advice and ongoing support to vulnerable women and girls. Rights of Women believes that certain statutory organisations, such as local authorities, should be able to make applications as third parties much in the same way as they can currently apply to the High Court either to make a child a ward of court or for the exercise of the court's powers under its inherent jurisdiction. However, it is important that local authorities and any other statutory organisation empowered to make an application does so in accordance with the child / vulnerable adults' best interests and the relevant guidance (due to be revised and placed on a statutory footing this year).

Rights of Women believes that significantly more needs to be done to make statutory organisations aware of domestic violence<sup>9</sup> and to ensure that the service that they provide is safe and appropriate. For example, an inspection of CAFCASS and the Court Service found considerable failings in both organisations' response to domestic violence cases that had the effect of putting women and children at risk of further violence or abuse<sup>10</sup>. Similarly, Rights of Women is concerned that very few professionals are aware of the existing guidance on forced marriage and that there is no mechanism by

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<sup>9</sup> The Government defines domestic violence as "...any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality." This definition includes violence from family members other than a woman's partner as well as specific forms of violence such as forced marriage and FGM.

<sup>10</sup> Domestic Violence, Safety and Family Proceedings: Thematic review of the handling of domestic violence issues by the Children and Family Court Advisory and Support Service (CAFCASS) and the administration of family courts in Her Majesty's Courts Service (HMCS) (2005).



which it can be ascertained whether or not it is being followed or is successfully protecting women/girls<sup>11</sup>. Rights of Women believes that the Forced Marriage (Civil Protection) Act 2007 will fail to provide any meaningful protection for women / girls unless its implementation is accompanied by a widespread training programme and the development of materials that can be used by professionals who may encounter women / girls at risk.

In terms of the role of non-statutory organisations, Rights of Women believes that women's voluntary organisations and particularly BMER women's organisations may be best placed to make an application either with the consent of, or on behalf of, a vulnerable woman or girl. However, given the complexity of the issues involved, Rights of Women believes that structures need to be put in place to ensure that any non-statutory organisation who is given the ability to make an application has the capacity to do so and acts in the girl or woman's best interests. This is important because the traditional safeguards and mechanisms of accountability that are in place for statutory bodies (the ability to challenge decisions by way of judicial review, obligations as public authorities under the Human Rights Act 1998, statutory requirements or guidance and the existence of a complaints procedure) do not apply to non-statutory organisations nor do any equivalent safeguards.

Rights of Women believes that any system introduced that would enable non-statutory organisations to make applications as third parties would need to address the following issues:

- The legal knowledge / capacity of the organisation must enable it to either give legal advice around family law remedies. This could be in the form of an in-house lawyer or the development of a system of funding that would enable organisations to apply for public funding to get advice, both for the organisation and for the woman / girl concerned. The importance of access to proper legal advice cannot be overemphasised. The Government has acknowledged the harm that may be caused by the giving of inaccurate / improper advice by its regulation of immigration advisors<sup>12</sup>.
- Guidelines, such as those that are currently in place for police officers or social workers would need to be developed and placed on a statutory footing to ensure consistency<sup>13</sup>. Such guidelines should be developed following the principle that action should only be taken when it is in the best interests of the woman / girl concerned.
- Multi-agency working to ensure that all the woman / girl's needs are met (e.g. accommodation, benefits, health and welfare, legal issues such as divorce / annulment, domestic violence injunctions, appropriateness of using Multi-Agency Risk Assessment Conferences).
- Appropriate risk assessment, both before and after an application is made (to ensure the woman/girl's continued safety).

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<sup>11</sup> Rights of Women has advised and trained a number of professionals (including teachers and police officers) who have expressed concerns about the lack of available information about forced marriage and appropriate remedies.

<sup>12</sup> For further information on the regulation of immigration advice see the OISC website at <http://www.oisc.gov.uk/>.

<sup>13</sup> See section 63Q of the Family Law Act 1996

- The existence of a duty of care and the nature of any on-going responsibility that an organisation has to the woman / girl concerned.
- Developing a mechanism by which a woman / girl on whose behalf an organisation makes an application is able to contribute to and if necessary challenge decisions made about her case.
- Confidentiality, both for the woman and the organisation.

Rights of Women believes that these issues would need to be addressed whether the person concerned was an adult or a child. However, where an application is made on behalf of a child additional safeguards may need to be put in place to ensure that local authorities are aware that a child may be at risk.

**5. Based upon your answers to questions 3 & 4, what type of funding or resources would a relevant third party need?**

Rights of Women does not believe that the estimates for the cost of implementing this section of the Forced Marriage (Civil Protection) Act 2007 are accurate. The first problem is that by basing its analysis on work undertaken by the Forced Marriage Unit the consultation proceeds on the basis of what may be a significant underestimation of the scale of forced marriage. Research recently carried out in Luton suggests that in that area alone three hundred women contacted support groups because of forced marriage<sup>14</sup>. As referred to in the consultation, approximately 30 forced marriage cases were dealt with by the High Court. As with all violence against women, forced marriage is under reported and many women / girls do not seek assistance from the Government or from the voluntary sector.

Secondly, it is not clear how the cost of £2,800 has been arrived at, in particular, there is no reference to the cost of:

- Accommodation for the woman / girl concerned either in a refugee or in other safe, appropriate accommodation.
- Financial support where the woman concerned has no recourse to public funds.
- Risk assessment.
- Other legal remedies that may have to be initiated including annulment proceedings, non-molestation orders or occupation orders.
- Interpreters and translation fees.
- Application fee of £60
- The increased legal costs if the respondent(s) contests the application.
- Service of any order that is made (usually by a process server).
- Time of support workers in attending hearings and assisting in the preparation of evidence for hearings
- Commission of any relevant expert reports.
- Enforcement of the order(s) if it is breached.

As the consultation makes clear, it has so far been assumed that the relevant third party will bear the costs of making and pursuing the application as it is

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<sup>14</sup> "Forced marriage, family cohesion and community engagement: national learning through a case study of Luton" (2008) by Dr Nazia Khanum OBE

currently not possible for an organisation to make an application for public funding. The consequence of this for statutory sector organisations who are third parties may not be significant as they may have their own legal departments or in-house lawyers and be familiar with the process of making applications to the courts.

For non-statutory organisations, particularly women's and BMER women's organisations, who are already overstretched and facing a funding crisis<sup>15</sup>, the costs involved are likely to be prohibitive. There is no point in giving non-statutory organisations the ability to act as third parties if they are not given the resources to exercise this in support of vulnerable women and girls. Bridget Prentice, the Minister responsible recognised this in a recent meeting when she stated "We don't want to put in place an Act only to prevent, through other changes, women accessing it...we don't want to block off that avenue [the ability of third parties to make applications]..."<sup>16</sup>.

It is clear therefore, that funding needs to be put in place to enable non-statutory relevant third parties to make applications to the court in the limited number of cases where it would be appropriate. This could be achieved through:

- the provision of ring-fenced funding for such applications that could be administered by women's organisations and / or local government; or
- changes to the current rules around public funding to enable organisations to receive funding for such applications. This could be done on an assessment of the financial position of the woman concerned (public funding is currently available for victims/survivors who are under 18 and the court or their appointed guardian will appoint a solicitor).

**6. What safeguards should there be for a victim to ensure that the relevant third party acts in their best interests?**

**7. Are there any other safeguards required for a relevant third party acting on behalf of children aged under 16?**

Rights of Women believes that the introduction of a leave requirement and the development of a regulatory framework that deals with the issues raised in our answer to question 4 will provide appropriate safeguards for women / girls at risk of or who have been subject to forced marriage.

Rights of Women would also like to stress that the availability of high quality legal advice is a vital safeguard from harm for all women / girls who are at risk of or who have experienced domestic violence.

**8. How can we adapt our court administration to meet the needs of those who use the Act?**

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<sup>15</sup>For further information on the challenges faced by BMER women's organisations see Imkaan's submission on the provision of BMER services to the Home Affairs Select Committee [www.imkaan.org.uk](http://www.imkaan.org.uk).

<sup>16</sup> Forced Marriage (Civil Protection) Act 2007 – Relevant Third Party Consultation meeting organised by the Ethnic Minorities Foundation held on 11<sup>th</sup> March 2008 at The Committee Room, No 2 Millbank, London SW1P 3LX.

Rights of Women welcomes the fact that court forms and their notes for guidance are written in plain English and are available from Her Majesty's Courts Service website. Rights of Women hopes that the application form for an order under the Forced Marriage (Civil Protection) Act 2007 and the accompanying notes for guidance will be as accessible as the current application forms are for a non-molestation order / occupation order.

Rights of Women wishes to ensure that when a case is initiated by a third party (either with her consent or without where she does not have the capacity) that the victim / survivor is, wherever possible, kept fully informed about the application being made and the possible consequences of it for her including:

- that she may have to give evidence at one or possibly more hearings and that this may be in the presence of the perpetrator(s);
- the special measures that may or may not be available (e.g. the possibility of giving evidence by live link, pre-recorded evidence in chief);
- how she may participate in the application process, including how she can oppose an application made by a third party on her behalf;
- the consequences for her of an order being made or not being made in terms of her personal safety, both in the short and long term;
- how an order may be enforced;
- other options available to her (for example, annulment of a forced marriage, non-molestation orders / occupation orders, non-legal options including time spent in a women's refuge).

Rights of Women would therefore like to see the development of an information pack<sup>17</sup> that should be produced in relevant languages and be made available to women at risk of forced marriage or victims / survivors of forced marriage that gives essential information on the process of applying for an order and the consequences for her of an application being made on her behalf.

In terms of the availability of practical arrangements that may facilitate the process of attending court and giving evidence, Rights of Women is concerned that the measures described in the consultation (such as pre-recorded evidence in chief or the use of screens) are either not currently available for civil matters at all or are available only in certain courts. Rights of Women would like to see the provision of "special measures" like those currently available in criminal proceedings<sup>18</sup> in all applications made under the Family Law Act 1996 to enable vulnerable victims of domestic / sexual violence to give their best evidence.

Finally, Rights of Women notes that the consultation refers to the fact that "interpreters may be available" for applications made under the Family Law

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<sup>17</sup> See Rights of Women's publications Pathways to Justice: BMER women, violence and the law and our Domestic Violence DIY Injunction Handbook (Second Edition) as examples of comparative material [www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk).

<sup>18</sup> For information about special measure currently available to survivors of serious sexual violence see, Ministry of Justice Circular 25/06/07 [http://frontline.cjsonline.gov.uk/includes/downloads/guidance/better-trials/2007-06-20\\_section\\_27\\_YJCEA\\_1999\\_circular\\_final\\_version.pdf](http://frontline.cjsonline.gov.uk/includes/downloads/guidance/better-trials/2007-06-20_section_27_YJCEA_1999_circular_final_version.pdf).

Act 1996. However, in Rights of Women's experience, while the provision of interpreters by the courts in family cases may be theoretically available, in reality, women making such applications have to provide their own interpreter and where they are not receiving public funding, pay for this privately. Rights of Women would therefore like to see the provision of interpreters by the court in cases where an applicant is not in receipt of public funding and cannot afford to pay for it herself in all domestic violence / sexual violence cases. This is as important in cases where it is a woman making her own application for a forced marriage protection order or where it is a third party doing so on her behalf because of the possible consequences for her of the court either making, or not making, the order sought

### **Conclusion**

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

**Rights of Women ©**  
**19<sup>th</sup> March 2008**