



imkaan



Briefing on the Police, Crime, Sentencing and Courts Bill

House of Lords Second Reading

September 2021

**End Violence Against Women Coalition
Imkaan
Latin American Women's Rights Service
Rights of Women
Southall Black Sisters
Working Chance**

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Contact

This is a joint briefing by the End Violence Against Women Coalition, Imkaan, Latin American Women's Rights Service, Rights of Women, Southall Black Sisters and Working Chance.

For further briefings from any of our groups, please contact Rights of Women in the first instance.

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Introduction

The Police, Crime, Sentencing and Courts Bill is progressing to the Second Reading in the House of Lords on 14th September 2021. As outlined in our earlier briefing¹, the Bill has rightly attracted public outcry – with the mobilisation of a mass movement to resist its oppressive measures and protests taking place across the country. At the time of writing, petitions calling for the Bill to be scrapped have amassed more than half a million signatures.²

We join in solidarity with those who oppose this Bill. As organisations which provide a wide range of services to survivors of Violence Against Women and Girls (VAWG), and undertake policy work informed by these experiences, we strongly reject any suggestion that this Bill supports women who have experienced violence to secure safety and justice.

Instead, the proposed legislation represents a deeply authoritarian approach to our fundamental rights and freedoms, containing a raft of measures which erode our civil liberties while failing to engage with or address the complex, underlying causes of VAWG. It relies on criminal justice cure-alls which will not positively alter the outcomes experienced by survivors and will exacerbate existing racial inequalities in setting the foundation for further criminalisation of Black and minoritised people.

Part Two: Approaches to violence

We share the concerns raised by others³ around the introduction of a new legal duty under Part 2 Chapter 1 for specified authorities in a local area to work together to reduce serious violence. This approach risks crude profiling, discrimination, intrusion into private life and creating a pipeline into the criminal justice system. The concept of ‘risk’ in this context is inherently racialised, and the scheme is ripe for abuse – especially in the absence of proper guidance on what may constitute risk in this context. We have concerns around discriminatory and disproportionate targeting of Black and minoritised communities, as well as the potential for data-sharing which threatens individual privacy and places minoritised women, and particularly migrant women, at risk.⁴

The proposed duty will no doubt work alongside the new Serious Violence Reduction Orders (SVROs) outlined in Part 10, about which we also have grave concerns. These orders would allow the police to carry out a suspicionless stop and search on a person subject to the order at any time – a measure which we consider profoundly disproportionate and unlikely to meaningfully address violence. Black people are already 8.9 times more likely to be subject to a stop and search than white people, and other people of colour are 4.1 times more likely to be targeted.⁵ Significantly, these disparities widen dramatically in instances where the

¹ *Joint written evidence submitted by End Violence Against Women and Girls, Latin American Women's Rights Service, Rights of Women, and Southall Black Sisters*. Available at: <https://bills.parliament.uk/publications/41570/documents/296>

² See, for example petitions by Greenpeace, 350.org and Friends of the Earth. See also the quarter of a million signatories to the “Do Not Restrict our Right to Peaceful Protest” petition, UK Government and Parliament Petitions, <https://petition.parliament.uk/petitions/579012>

³ See, for example, Amnesty (2021). *Written evidence submitted by Amnesty International UK*. Available at: <https://publications.parliament.uk/pa/cm5802/cmpublic/PoliceCrimeSentencing/memo/PCSCB05.htm>; Liberty (2021). *Liberty's Briefing on the Police, Crime, Sentencing and Courts Bill for Second Reading in the House of Commons*. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/03/Libertys-Briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-HoC-2nd-reading-March-2021-1.pdf>

⁴ HMICFRS, IOPC & College of Policing (2020). *Safe to share? Report on Liberty and Southall Black Sisters' super-complaint on policing and immigration status*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945314/safe-to-share-liberty-southall-black-sisters-super-complaint-policing-immigration-status.pdf

⁵ Home Office (2020). *Police powers and procedures, England and Wales, year ending 31 March 2020*. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march2020>

requirement for reasonable grounds is removed.⁶ The use of stop and search powers should be limited, not expanded.

While we are absolutely supportive of the aims of protecting communities from violence, including VAWG, we would not consider this a positive intervention for the reasons outlined above - and note that the duty will not address the underlying causes of VAWG, or any other type of violence.

We urge Members of Parliament to support amendments 97-112, which would remove Chapter 1 of Part 2 (provisions relating to the serious violence duty) from the Bill

Part Three: Our Right to Protest

Protest is a women's rights issue and a fundamental principle of democracy. Across the world, every day, women lead the charge in challenging state violence and corruption, fighting for human rights and securing justice for themselves and others who have been mistreated and discriminated against. Protest is firmly embedded in the struggle for women's rights – and particularly the rights of Black and minoritised women, who have always led movements for equality, justice and freedom, but have been marginalised in many mainstream protest movements.⁷ We draw on the experiences and expertise of the many other activists, groups and organisations which represent minoritised voices and rely on protest as a means by which to raise their voices in a system that refuses to hear them.

As pointed out by Oliver Feeley-Sprague, giving evidence on behalf of Amnesty International UK in oral evidence, *“the right to peaceful protest is a right, enshrined in international law, that everybody has, and for centuries those rights have been used, often in very noisy and productive ways, to deliver everything from votes for women to preventing serious wrongdoing...Noisy and uneasy protest is often the way that we see very productive social change happen.”*⁸

Equally embedded in our history, and clearly present in recent times, is the state's violent response to protest. In 2020, widespread Black Lives Matters UK protests were met with police brutality.⁹ Environmental protest saw organisations blacklisted as domestic terrorists.¹⁰ Sister's Uncut draw on other recent and devastating examples: *“The violent policing of the Sarah Everard vigil, the reckless brutality of police against protestors in Bristol and London (including police pretending to be postmen to gain entry to a protestor's house, handcuffing her while half-naked), the use of mobile fingerprinting technology at protests to harvest public biometric data, and the £10,000 fine given to a nurse protesting the 1% NHS pay rise”*.¹¹

These unacceptable state responses to protest are shored up by the provisions of this Bill. The impact of the range of restrictions levied at our freedom of expression is explored more

⁶ Home Office (2020). *Police powers and procedures, England and Wales, year ending 31 March 2020*. Available at: <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march2020>

⁷ Lindsey. *Black Women Have Consistently Been Trailblazers for Social Change. Why Are They So Often Relegated to the Margins?*. 22 July 2020. Time. Available at: <https://time.com/5869662/black-women-social-change/>

⁸ Police, Crime, Sentencing and Courts Bill Deb, 20 May 2021, c165

⁹ Netpol (2020). *Britain Is Not Innocent*. Available at: <https://secureservercdn.net/50.62.198.70/561.6fe.myftpupload.com/wp-content/uploads/2020/11/Britain-is-not-innocent-web-version.pdf>

¹⁰ Duncan. *'Indefensible': Priti Patel condemned for backing police over decision to put Extinction Rebellion on terror list*. 13 January 2020. Independent. Available at: <https://www.independent.co.uk/news/uk/politics/priti-patel-extinction-rebellion-police-extremism-list-counter-terror-prevent-a9281731.html>

¹¹ Sisters Uncut (2021). *Why We're Marching on Mayday*. Available at: <https://www.sistersuncut.org/2021/04/28/why-were-marching-on-mayday/>

fully by organisations such as Netpol¹², Liberty¹³ and Big Brother Watch¹⁴, and we refer Members of Parliament to their materials.

In brief, the measures, found under Part Three of the Bill, comprise changes to the Public Order Act 1986 and Police Reform and Social Responsibility Act 2011, the introduction of the offence of Public Nuisance in statute and new legislation on memorials arising out of the demonstrations of summer 2020. Each of these measures demonstrates a creeping and authoritarian control over our ability to assemble and express our collective discontent and, as Netpol point out, *“we know from experience that the police are already quick to impose restrictions and conditions on protests”*.¹⁵

The Bar Council has observed that *“there are clear tensions between this section and the freedom of protest and expression (both protected under the European Convention on Human Rights). It gives expansive powers to the police, which encompass the arrest of one individual who is independently protesting. There are legitimate concerns that it would allow the Government to prevent protests with which it does not agree.”*¹⁶

The joint committee on human rights (JCHR) recently released their report on the Bill¹⁷ and added support to calls for the restrictions to protest to be scrapped. Harriet Harman, the committee’s chair, said: *“One of our most fundamental rights is to protest. It is the essence of our democracy. To do that, we need to make ourselves heard. The government proposals to allow police to restrict ‘noisy’ protests are oppressive and wrong. The government put forward new powers in areas where the police already have access to powers and offences which are perfectly adequate. The government has served up confusion where clarity and precision is essential.”*

Any attempt by the state to erode our right to protest is a stark warning to those most likely to be impacted by human rights abuses and state violence, including Black and minoritised women, migrant women, Deaf and disabled women and members of the LGBT+ community.

These measures bolster not only the state’s ability to restrict protest, but also further enable non-state actors to wield disproportionate power in our society. Netpol point out how these powers are ripe for abuse by big employers and corporations who seek to silence trade union activity.¹⁸

We call on Members of Parliament to resist each of these measures to curtail our freedom of expression.

We urge Members of Parliament to support amendments 1-7, which would remove Part 3 from the Bill

¹² Netpol (2021). *Explainer: What does the new policing bill say about restricting protests?* Available at: <https://netpol.org/2021/04/13/explainer-what-does-the-new-policing-bill-say-about-restricting-protests/>

¹³ Liberty (2021). *Liberty’s Briefing on the Police, Crime, Sentencing and Courts Bill for Second Reading in the House of Commons*. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/03/Libertys-Briefing-on-the-Police-Crime-Sentencing-and-Courts-Bill-HoC-2nd-reading-March-2021-1.pdf>

¹⁴ Big Brother Watch and Liberty (2021). *Liberty and Big Brother Watch’s Joint Briefing on the Protest Measures in the Police, Crime, Sentencing and Courts Bill for the “Do Not Restrict Our Rights to Peaceful Protest” Petitions Debate*. Available at: <https://www.libertyhumanrights.org.uk/wp-content/uploads/2021/03/Liberty-and-Big-Brother-Watch-briefing-for-a-petitions-debate-on-the-right-to-protest-and-the-PCSC-Bill-April-2021.pdf>

¹⁵ Netpol (2021). *Explainer: What does the new policing bill say about restricting protests?* Available at: <https://netpol.org/2021/04/13/explainer-what-does-the-new-policing-bill-say-about-restricting-protests/>

¹⁶ Bar Council (2021). *Police, Crime, Sentencing and Courts Bill 2021 Briefing for Committee Stage – Bar Council Summary*. Available at: <https://www.barcouncil.org.uk/uploads/assets/be1af036-bfa8-443a-b0ee968987e4a3c6/35a10138-1d43-4bda-8cbb040dc3655fee/Bar-Council-Briefing-Police-Crime-Sentencing-and-Courts-Bill-Committee-Stage-May-2021.pdf>

¹⁷ See: <https://committees.parliament.uk/committee/93/human-rights-joint-committee/publications/>

¹⁸ Netpol (2021). *Explainer: What does the new policing bill say about restricting protests?* Available at: <https://netpol.org/2021/04/13/explainer-what-does-the-new-policing-bill-say-about-restricting-protests/>

Part Four: Minoritised and Marginalised Women at the Sharp Edge

When police powers are bolstered still further, communities already experiencing over-policing and over-surveillance are placed at further risk. A disturbing example of this is plain on the face of these proposals, with Part Four of the Bill seeking to further criminalise Gypsy, Roma and Traveller (GRT) communities through a new criminal offence of trespass with the intent to reside, and the extension of existing powers in the Criminal Justice and Public Order Act 1994.

Analysis by Friends Families and Travellers points out that these measures will compound existing inequalities and disproportionately affect specific minority and ethnic communities in a way which likely conflicts with equality and human rights legislation.¹⁹

Lisa Smith, youth editor of Travellers Times and chair of the Advisory Council for the Education of Romany and Other Travellers (ACERT), states that GRT communities “*are being legislatively cleansed from Britain, and this bill must be scrapped before it further eradicates our traditions and destroys our already marginalised communities.*”²⁰

The Equality and Human Rights Commission have previously expressed deep concern over increasing powers to evict or ban encampments, stating in their submission to a 2018 consultation: “*We would remind the Government that all powers to remove unauthorised encampments must be exercised with a full awareness of the occupiers’ welfare needs, human rights, and, where applicable, their entitlement to protection under the Equality Act 2010. These cannot be circumvented by new powers.*”²¹

Furthermore, Martin Hewitt, chair of the National Police Chiefs’ Council (NPCC), told the Public Bill Committee that police leaders had not requested a change to the law and believed current powers to be sufficient. He said: “*From our group that work very closely on this issue, their view very strongly is that the fundamental problem is that there is an insufficient provision of sites for gypsy travellers to occupy.*”²²

Again, we refer to expert voices in this field for a full examination of the impact of these provisions²³, and call on Members of Parliament to resist their inclusion in the Bill.

We urge Members of Parliament to support amendments 8, 9 and 10, which would remove Part 4 from the Bill

The Criminalisation of Women

Many of the measures proposed in this Bill will have harmful long-term consequences for women, who will be at greater risk of being criminalised and being held in custody for longer. Given racialised approaches to policing and sentencing, this will disproportionately affect racially minoritised women. It is clear that this Bill is “*aimed at strengthening the use of*

¹⁹ Friends Families and Travellers (2021). *Briefing on new police powers for encampments in Police, Crime, Sentencing and Courts Bill: Part 4*. Available at: <https://www.gypsy-traveller.org/wp-content/uploads/2021/03/Briefing-on-new-police-powers-PCSCBill-and-CJPOA-002.pdf>

²⁰ Smith. *I’m a Romany Gypsy – the government’s Police Bill will criminalise my culture*. 25 April 2021. Independent. Available at: <https://www.independent.co.uk/voices/police-bill-gypsy-traveller-b1836882.html>

²¹ ECHR. *Response of the Equality and Human Rights Commission to the Consultation: “Powers for dealing with unauthorised development and encampments”*. Available at: <https://www.equalityhumanrights.com/sites/default/files/consultation-response-powers-for-dealing-with-unauthorised-development-and-encampments-june-2018.pdf>

²² Police, Crime, Sentencing and Courts Bill Deb, 18 May 2021, c15

²³ Friends Families and Travellers (2021). *Briefing on new police powers for encampments in Police, Crime, Sentencing and Courts Bill: Part 4*. Available at: <https://www.gypsy-traveller.org/wp-content/uploads/2021/03/Briefing-on-new-police-powers-PCSCBill-and-CJPOA-002.pdf>

*surveillance, force and criminalisation techniques in the poor black and multicultural working-class neighbourhoods of this country*²⁴.

A coalition of criminal justice and race equality organisations has written to the Prime Minister²⁵ warning that the government's plans for policing and sentencing under this Bill will further entrench racial inequality in the criminal justice system. In Committee, Alex Cunningham MP noted the *“already shameful levels of racial disparity in our criminal justice system” – “the statistics speak for themselves. Black offenders are 26% more likely than white offenders to be remanded in custody, while the figure for black women is 29% more likely. Offenders from black, Asian and minority ethnic backgrounds are 81% more likely than white offenders to be sent to prison for indictable offences, even when factoring in higher not guilty plea rates.*²⁶

Measures contained in this Bill will lead to longer sentences, increased prison populations and more women being swept into the criminal justice system. This goes against the government's own Female Offender Strategy, which aims to reduce the number of women in custody. We remind Members of Parliament that rather than rehabilitating women, prisons are serving to further harm women, as reflected by the mental health crisis in women's prisons and a significant increase in self-harm cases in the women's estate. There were 11,988 self-harm incidents in women's prisons in the year up to December 2020. While the rate of self-harm incidents per 1,000 prisoners decreased by 13% in male establishments that year, it increased by 13% in women's establishments.²⁷

Dr Kate Paradine of Women in Prison spoke to the specific impact of sentence inflation on women in her oral evidence to the Committee:

*“We know that sentence inflation has knock-on effects throughout the system. There are many unintended consequences to, for example, focusing on the enforcement of community orders and including more and more enforcement measures without addressing the real issue, which is about support to ensure that those who have community sentences can complete them with the support that they need...We know that the women's prison population can be radically reduced, but not with some of these measures, which do not take into account the unintended consequences—particularly the impact on women who are primary carers and the best interests of their children”.*²⁸

A report commissioned by the Prison Reform Trust in 2020 warned that increasing sentence severity only adds to pressures on overcrowded and overstretched prisons across England and Wales, without bringing down crime or improving public confidence.²⁹ Chris Philp, the Minister currently responsible for sentencing, recently accepted that *“harsher sentencing tends to be associated with limited or no general deterrent effect”*³⁰ – and as observed by the

²⁴ Fekete (2021). *Policing in the Brexit State – Back to the 1980s*. Institute of Race Relations. Available at: <https://irr.org.uk/article/policing-in-the-brexite-state-back-to-the-1980s/>

²⁵ Joint letter (2021). *Police, Crime, Sentencing and Courts Bill could deep deepen racial inequality in the criminal justice system*. Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Parliament/PCSC%20Bill/Open%20letter%20to%20Prime%20Minister_FINAL.pdf

²⁶ Police, Crime, Sentencing and Courts Bill Deb, 10 June 2021, c467

²⁷ Ministry of Justice and Her Majesty's Prison and Probation Service (2021). *Safety in Custody Statistics, England and Wales: Deaths in Prison Custody to March 2021, Assaults and Self-harm to December 2020*. Available at: <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-december-2020/safety-in-custody-statistics-england-and-wales-deaths-in-prison-custody-to-march-2021-assaults-and-self-harm-to-december-2020>

²⁸ Police, Crime, Sentencing and Courts Bill Deb, 20 May 2021, c151

²⁹ Prison Reform Trust (2020). *Punitive prison policies risk repeating past mistakes*. Available at: <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/791>

³⁰ Dathan. *Longer jail terms don't stop crime, admits Chris Philp, justice minister*. 10 March 2021. The Times. Available at: <https://www.thetimes.co.uk/article/longer-jail-terms-dont-stop-crime-admits-chris-philp-justice-minister-g2jz9s8ng>

Victims' Commissioner in oral evidence, *"it is by no means the case that everybody who is a victim of crime wants extremely heavy sentencing"*.³¹

Responding to Violence Against Women and Girls (VAWG)

Barriers to Justice

At every juncture of our crumbling justice system, survivors are let down: when they report to the police and are dismissed or referred to the Home Office for immigration enforcement purposes, when they are exposed to misogynist myths around domestic and sexual violence, when their case is dropped, when the Crown Prosecution Service tell them there is insufficient evidence to prosecute their abuser, when they are told their case will not progress unless they hand over sensitive medical records or phone data, when they are too fearful to attend court, when they are re-traumatised, when their abuser is convicted and sentenced but is not rehabilitated.³² Most importantly, they are failed before they ever come into contact with the criminal justice system – as participants in a society which has allowed VAWG to become so endemic.

Survivors are denied justice and healing at every step of this inadequate system, and this is demonstrative not of a system that is broken but a system which works exactly as it was designed – to uphold patriarchal and discriminatory approaches to 'justice'.

Polygraph Testing

The inclusion of provisions around polygraph testing in this Bill speaks to the Government's tendency to introduce technological gimmicks as a cure-all to complex social problems. We note the inclusion of similar provisions in the recently passed Domestic Abuse Act³³ – provisions for which there was no call in the VAWG sector, and indeed no consultation.

Far from extending the use of tools which lack an evidential basis and exacerbate discriminatory approaches, we should instead roll back on their use and re-focus on what is actually needed to address the causes of VAWG. It is alarming to see such proposals put forward at the expense of proven and established measures to support the real needs of survivors in relation to safety, justice and accountability.

Mobile Phone Extraction

We do not support the inclusion of provisions around Mobile Phone Extraction in Part Two of this Bill.

There has been a hard-fought campaign against intrusive and unnecessary data collection practices in relation to victims of crime (see, for example, Big Brother Watch's campaign End Digital Strip Searches and their report 'Digital Strip Searches: the police's data investigations of victims'³⁴). In 2018, Privacy International lodged a complaint with the Information Commissioner's Office³⁵ highlighting the myriad of rights risks presented by police practices

³¹ Police, Crime, Sentencing and Courts Bill Deb, 20 May 2021, c112

³² Collated testimonies from women using our services who have been through various stages of the Criminal Justice System

³³ Home Office (2021). *Policy paper: Mandatory polygraph tests factsheet*. Available at: <https://www.gov.uk/government/publications/domestic-abuse-bill-2020-factsheets/mandatory-polygraph-tests-factsheet>

³⁴ Big Brother Watch (2019). *Digital Strip Searches: The police's data investigations of victims*. Available at: <https://bigbrotherwatch.org.uk/wp-content/uploads/2019/07/Digital-Strip-Searches-Final.pdf>

³⁵ Privacy International (2021). *Press release: Privacy International issues complaint to UK Information Commissioner about police downloading data from phones of suspects, witnesses and even victims of crime without consent*. Available at:

around the extraction of data from mobile phones, which led to a critical ICO report on the subject.³⁶

During Committee Stage, Sarah Jones MP delivered the powerful account of “Courtney”, a survivor of sexual violence:

*“After a two-and-a-half-year investigation into my sexual assault case, which had witnesses and a potential second victim, the police told me the CPS was going to drop my case if I didn’t give them a download of my phone. When I asked them what was the reasonable line of inquiry, they told me that I could be lying. There could be something that discredits me on there. I could be hiding something. And to me, that’s not reasonable. I was asked why I was concerned, but actually it’s totally rational to fear giving your phone over to the police. I think most people would not want to give the contents of their phone to their mother, let alone the government or the person who attacked them who may, because of rules around disclosure, get access to it. When I refused my case was immediately dropped”.*³⁷

This Bill, for the first time, seeks to put these invasive practices on a statutory footing – but the proposals fail to adequately protect the rights of victims when it comes to mining their phone data – data that relates not only to them, but their friends, relatives, colleagues and communities.

There must be sufficient safeguards to ensure that police officers and others do not simply snatch all the data that is available from a device – something entirely absent from the provisions of the Bill as currently drafted.

Giving oral evidence to the Public Bill Committee, Victims’ Commissioner Vera Baird observed that *“you will find that the view is that on the ground it is practically routine for rape and sexual assault complainants to be asked to hand over digital devices, and for most of the material on it to be trawled, so far as they are aware. Apparently, according to my network of stakeholders, the CPS frequently seeks a level of material straight away, before it charges, and if a complainant refuses, the case just does not get considered for charge. That is very, very troubling, and it has a chilling effect not only on current victims, but on reporting, and it could impact victim attrition.”*³⁸

The Commissioner also referred to a Home Office funded pilot of independent legal advice for rape complainants dealing with digital download matters: *“that pilot disclosed that about 50% of the requests for digital download of rape complainants’ devices were not necessary or proportionate”.*³⁹

It is clear that there is a great deal of work to be done in order to carefully balance the privacy rights of survivors against a suspect’s right to fair trial and, in our view, existing guidance provides more protection to survivors than these provisions. We are also awaiting a specific ICO investigation into the use of mobile phone extraction against rape survivors, and the Government is advised to await this report before proposing legislation pertaining to the use of this technology.

<https://privacyinternational.org/press-release/1755/press-release-privacy-international-issues-complaint-uk-information-commissioner#:~:text=Privacy%20International%20has%20today%20a,even%20victim%20of%20a%20crime>

³⁶ Privacy International (2020). *Press release: Critical ICO report says the Police must stop taking data from victims’ phones without better safeguards*. Available at: <https://privacyinternational.org/press-release/3941/press-release-critical-ico-report-says-police-must-stop-taking-data-victims>

³⁷ Police, Crime, Sentencing and Courts Bill Deb, 27 May 2021, c276

³⁸ Police, Crime, Sentencing and Courts Bill Deb, 20 May 2021, c110

³⁹ Police, Crime, Sentencing and Courts Bill Deb, 20 May 2021, c110

The list of people authorised to collect data from devices is also alarming – it should not, under any circumstances, include employees of Common Council of the City of London and immigration officers, a provision for which there is no justification. The authorisation of these powers for immigration officers is an extension of the Government's hostile environment agenda and must be resisted.

There is also a notable absence of a robust system of redress where powers to extract data have been misused. In light of the ICO's findings that highly sensitive personal data held was not always encrypted and then copied onto CDs, DVDs and USB drives and transported by unsecured means, it is clear that such redress processes are sorely needed – although, of course, provision to end the widespread use of such practices is needed in the first instance.

Any law relating to mobile phone extraction must provide adequate safeguards that minimise the invasion of privacy to which survivors are subjected and provide a clear route of redress where practices fall short of this standard. The wider issue of the basis for such processing, including the problems presented by a model relying on consent, must also be fully investigated.

Failure to address the underlying causes of Violence Against Women and Girls

There is a painful irony to the fact that the Government seeks to co-opt the VAWG sector and the women it supports as beneficiaries of this Bill when it recently and repeatedly voted down a Lords amendment to the Domestic Abuse Act 2021 which would have ensured equal protection for migrant women,⁴⁰ and an amendment that would have granted women survivors of abuse who are coerced into committing crimes by their abusers a legal defence in court.⁴¹

The framing of this Bill, the lack of consultation around its provisions and the driving forces behind it all do a disservice to this urgent issue. This Bill is not the place to meaningfully address what is needed for a better system. However, we encourage Members of Parliament to utilise this perspective in understanding the damage this Bill exacerbates in our society.

The underlying causes of VAWG are complex. Any attempt to recognise and address those causes requires an intersectional approach, and must be sensitive to the ways in which the criminal justice system and associated agencies have re-victimised and re-traumatised countless women, disproportionately affecting those with multiple identities such as Black and minoritised women, women with disabilities, and LGBTQ+ women.

The Government must listen to the expertise within the VAWG sector, and particularly specialist organisations run by and for Black and minoritised women, to understand what measures require investment – including challenging myths and stereotypes, addressing the socio-economic inequalities which create the conditions for VAWG, equipping vulnerabilised communities to speak out and challenge perpetrator behaviour and providing children and young people with the knowledge, tools and safe environment to end VAWG.

Part of developing a nuanced understanding of the complexity of VAWG is recognising the gendered experience of violence. This recognition must be at the heart of Government efforts to address VAWG – something which is, regrettably, not reflected in the recently proposed, fragmented 'dual strategies' approach which sees domestic abuse separated from other forms

⁴⁰ Step Up Migrant Women (2021). *Step Up Migrant Women responds to clauses to the Domestic Abuse Bill on data-sharing*. Available at: <https://stepupmigrantwomen.org/2021/04/27/step-up-migrant-women-responds-to-clauses-to-the-domestic-abuse-bill-on-data-sharing/>

⁴¹ Working Chance (2021). *Domestic abuse survivors who offend need a legal defence: here's why*. Available at: <https://workingchance.org/latest/domestic-abuse-survivors-who-offend-need-a-legal-defence-heres-why/>

of VAWG. It is essential that the gendered nature of domestic abuse is recognised, and that approaches to VAWG are introduced that specifically acknowledge and include domestic abuse as a gendered form of violence that is exacerbated by racial, socio-economic and other forms of discrimination.

The Bill also fails to understand the root causes of women's offending and how, for many women, it is tied to abuse, trauma, and violence. More than half of women in prison experienced abuse as a child, while 57% experienced domestic violence as adults.⁴² Women who face multiple disadvantages, including domestic violence, are at more risk of offending – at times as a result of coercion from abusive partners or family members. It should also be noted that the majority of women in prison have been sentenced for non-violent crimes which can be better addressed outside custody. The Bill's punitive approach will criminalise more women for the effects of the abuse and violence they have experienced. Once we understand why women offend, it becomes clear that the solution to preventing crimes is by providing women the support they need in the community and to resolve the conditions that lead to offending.

From Persecution to Prevention

While criminal justice responses to VAWG are often motivated by an understandable need for recognition and justice, they are unlikely to reduce violence and harm – they are simply harsher criminal law penalties, in whatever form. It is also worth noting the raft of criminal justice measures which already exist intended to address VAWG, which are often under-utilised and ineffective. We urge caution around the introduction of measures ostensibly focused on addressing VAWG which, in reality, focus on policing and prisons rather than prevention. Such measures are unlikely to reduce violence and harm in practice and create conditions that allow institutions to abuse their powers, perpetuate VAWG and re-traumatise survivors.

The reality is that the vast majority of people who commit VAWG will not be prosecuted, and policing and imprisonment are highly discriminatory in their targeting.⁴³ For example, there has been a marked decline in prosecutions for rape – over the past five years, cases reported to police have risen sharply, but the proportion progressing to a prosecution in that time has more than halved.⁴⁴ In the year to the end of March 2020, 58,856 cases of rape were recorded by police forces in England and Wales. These led to just 2,102 prosecutions, compared with 3,043 in the previous 12 months.⁴⁵ The decline in prosecutions for rape, despite efforts to address the issue, led to Regan and Kelly to suggest that *“legal reforms and changes in the investigation and prosecution of rape have had little, if any, impact on convictions”*.⁴⁶ It should also be noted that any changes to the law relating to VAWG, symbolic as they may be, do not indicate an inevitable change in public attitudes, or the approaches of the state.

Rather than focusing, yet again, on criminal justice measures, the focus should instead be on examining and addressing the misogynistic and discriminatory assumptions of the law and its systems. A continued reliance on the criminal justice system to protect women is ultimately an acceptance of the social, legal, and political structures that underpin male privilege and use of

⁴² Prison Reform Trust (2017). There's a reason we're in trouble: Domestic abuse as a driver to women's offending. Available at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/Domestic_abuse_report_final_lo.pdf

⁴³ These issues are explored in a report by the Centre for Women's Justice, End Violence Against Women coalition, Imkaan, and Rape Crisis England & Wales, in their response to the England & Wales Government's 'End to End' Review of the Criminal Justice System's Response to Rape. See: <https://www.endviolenceagainstwomen.org.uk/wp-content/uploads/C-Decriminalisation-of-Rape-Report-CWJ-EVAW-IMKAAN-RCEW-NOV-2020.pdf>

⁴⁴ Crown Prosecution Service. *CPS data summary Quarter 4 2019-2020*. Available at: <https://www.cps.gov.uk/publication/cps-data-summary-quarter-4-2019-2020>

⁴⁵ Ibid

⁴⁶ Regan and Kelly (2003). *Rape: Still a Forgotten Issue*. Child and Woman Abuse Studies Unit, London Metropolitan University

violence, focusing as it does on individualising this harm rather than addressing structural issues.

The Role of the State

Addressing the underlying causes of VAWG requires recognition of the misogyny which lies at the heart of our society and is perpetuated by the state – and a deep understanding of the intersectional nature of that discrimination. Housing, equal pay, education, employment, access to healthcare, parental policies, provision for mental health support, welfare benefits and addressing inequalities based on race, faith, migrant status, disability, sexuality, gender identity, class status and age are all areas which require Government action.

The Government must also acknowledge and seek to address the role the state has played in perpetuating VAWG and the power that its institutions have as a key driver of this harm (see the examples drawn on above, including the policing of the vigil for Sarah Everard and Home Office hostile environment policies, as well as proposals set out for example in the New Plan for Immigration, which create the conditions for the abuse and exploitation of migrant women). There are *“structural causes of violence, including the state’s role in passing laws and policies that entrench inequality or enable discrimination to flourish.”*⁴⁷

The Future of the VAWG Sector

It will not be via this Bill that the dangerous underfunding of the VAWG sector is addressed – and the approach outlined in this Bill is the antithesis to the holistic and well-evidenced approach which would be needed to address the prevalence of VAWG in our society.

We take this opportunity to remind Members of Parliament ahead of the Second Reading that there are many opportunities to resource this essential work which do not rely on the provisions contained within this Bill. Most sorely in need of specific and ring-fenced funds are specialist by and for organisations and their essential work to support Black and minoritised women, migrant women, Deaf and disabled women and LGBTQ+ survivors. These organisations must be recognised for their vital work and funded accordingly.

Conclusion

Far from reforming our justice system and supporting survivors of VAWG, this Bill entrenches a reliance on powerful institutions with histories of discriminatory approaches and weak accountability mechanisms. It is a law-and-order response that does nothing to address the underlying causes of offending while threatening our ability to express dissent about the state’s complicity in VAWG by fundamentally undermining our right to protest.

VAWG is endemic in our society, and further enabled by systemic racism. The Government should not rush through legislation which exacerbates inequality and contains only tokenistic gestures for addressing the real issues. In a society where women are disbelieved and shamed within a criminal justice system which is supposed to protect them, we demand better – an approach to VAWG built on a rigorous evidence base which centres and empowers all survivors, without discrimination.

⁴⁷ Lamble (2021). *The false promise of hate crime laws*. Available at: <https://abolitionistfutures.com/latest-news/the-false-promise-of-hate-crime-laws>

**End Violence Against Women Coalition
Imkaan
Latin American Women's Rights Service
Rights of Women
Southall Black Sisters
Working Chance**

September 2021

About us

The End Violence Against Women Coalition (EVAW)

EVAW is a coalition of more than 100 specialist women's support services, researchers, activists, survivors and NGOs working to end violence against women and girls in all its forms. Established in 2005, we campaign for every level of government to adopt better, more joined up approaches to ending and preventing violence against women and girls, and we challenge the wider cultural attitudes that tolerate and condone this abuse.

Imkaan

Imkaan is a second-tier support organisation for the Black and minoritised women and girls ending VAWG sector in the UK that has 41 members in England, Scotland and Wales. Imkaan provides capacity building and sustainability support to member organisations as well as undertaking research, strategic advocacy and policy work. Imkaan works to achieve systemic change through the ongoing inclusion of Black and minoritised women and girls in all aspects of society by promoting their participation, representation and involvement. Imkaan works from a Black feminist intersectional perspective using human rights, social justice and equalities frameworks.

Latin American Women's Rights Service

The Latin American Women's Rights Service (LAWRS) is a feminist and human rights organisation led by and for Latin American migrant women in the UK. We support the multiple immediate and long-term needs of Latin American migrant women exposed to intersectional discrimination on the basis of gender, race and migration status, and to violations of their fundamental human rights. We work with women and girls facing violence, exploitation and trafficking, and those enduring difficult living and working conditions in low-paid jobs and facing barriers to social protection.

Our programmes promote economic security and access to social protection by providing information and advice; tackle VAWG through support and advocacy and trauma informed counselling; identifies and supports victims of labour exploitation and trafficking; and bridges inequalities and fosters inclusion through community outreach programmes.

Rights of Women

Rights of Women is a legal rights organisation which specialises in supporting women who are experiencing – or at risk of experiencing – all forms of Violence Against Women and Girls (VAWG), including domestic and sexual violence. In our approach, we recognise the additional barriers posed by the intersection of gender-based abuse, racism, structural inequality and other forms of discrimination and oppression that impact on women's vulnerability, exclusion and marginalisation.

By offering a range of services – including specialist telephone legal advice lines, legal information and training for professionals – we aim to increase women's understanding of their legal rights and improve their access to justice. We empower women to make informed choices where they come into contact with the criminal, family, employment or immigration and asylum legal systems so they can live free from violence.

Southall Black Sisters

Southall Black Sisters (SBS) is one of the UK's leading women's organisations for black and minority ethnic (BME) women. Established in 1979, we operate an advice, advocacy and campaigning centre. The bulk of our work is directed at assisting women and children – the overwhelming victims of domestic and other forms of gender-related violence – to obtain effective protection and assert their fundamental human rights. We draw on our casework experience to develop our policy and campaigns work and legal interventions, which by its very nature addresses issues of multiple or intersectional discrimination, involving the simultaneous experience of race, gender and other forms of discrimination. Whilst based in West London, we have a national reach. For more information see <https://southallblacksisters.org.uk/about/>.

Working Chance

Working Chance is the UK's only charity dedicated exclusively to supporting women with convictions into employment. We provide women with convictions with the skills and support they need to develop their employability, and help them build lives that give them purpose, hope and financial independence. We also work to create better-informed and more empathetic attitudes about women with convictions and to raise awareness about the issues that often underlie women's offending. Find out more at workingchance.org.