

In Their Own Defence: Violence against girls, and girls as human rights defenders

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Abstract

This paper was presented as a background document for the 2009 United Kingdom-India Education and Research Initiative (UKIERI) Colloquium. The colloquium intended to explore the systems, mechanisms and practices available for female victims of violence under the age of 18 to assert themselves in the face of violation of their human rights. It further aimed to stimulate debate and reflection with the purpose of ascertaining whether there is a research and education agenda which merits to be pursued in seeking to reduce violence and to empower the affected girls and women. After establishing some key concepts, the paper raises crucial questions that acted as important guidelines for the discussions that took place during the colloquium.

1. Introduction

Light out. Rape. Light on. Mould. Rape. In front of the children. The uncertainty. Birth. Death. Rape.¹

Orthodox youth's lack of access to adults outside the community can lead to child sexual abuse by family members and religious leaders.²

Police, campaigners and MPs are increasingly concerned that girls and young women are being missed by existing campaigns and initiatives on domestic violence.³

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¹ These words are from Christiane Burkheiser, State Prosecutor in the Josef Fritzl case, when describing the abuses suffered by the victim. See K. Connolly, 'Light out. Rape. Light on. Rape. In front of the children. Birth. Death. Rape', *The Guardian*, 17 March 2009. Available at <http://www.guardian.co.uk/world/2009/mar/17/josef-fritzl-austria-trial>. Last access 26 October 2010.

² T. Maher, 'Orthodox Jews like me are facing indoctrination and abuse: Closed communities are using faith-based schooling for ideological control', *The Guardian*, 21 March 2009. Available at <http://www.guardian.co.uk/commentisfree/2009/mar/20/faith-schools-judaism-religion-ideology>. Last access 26 October 2010.

³ J. Kirkup, 'Teenage Girls and Risk of Violence Prompt New Education Campaign', *Telegraph.co.uk*, 6 March

Under-18s are formally excluded from the current Government definition of domestic violence, something the Association of Chief Police Officers has said makes it harder for them to address the problem.⁴

Society needs to look at domestic violence from a child's point of view. We need to ensure that children who are victims of domestic violence are able to seek help, and when they do, there are services there to support them.⁵

The above extracts remind us of the vulnerability faced by girls under the age of majority.⁶ Girls and young women are perhaps the most likely to suffer violence, oppression and gender discrimination, yet the least likely to be taken into account in designing strategies to combat such abuses and hostility.⁷ The World Health Organisation (WHO) informs us that there is widespread trafficking of girls for forced labour, that many girls are forced into child marriages, and that one in five women report sexual abuse as children and are likely to continue to face this in later life.⁸ The use of force (sometimes lethal) is influenced by factors such as status, age, sex and gender,⁹ yet some States are only now coming to terms with the need to develop programmes that centre on the rights of the child in violence reduction initiatives, in line with the global vision of the Convention on the Rights of the Child (CRC).¹⁰

The International Women's Day 2009 was themed around *Women and Men United to End Violence against Women and Young Girls*.¹¹ This inspired the 2009 United Kingdom-India Education and Research Initiative (UKIERI) Colloquium to consider the following: On the issue of *violence to females aged under 18* what is known about the practices, systems and mechanisms available to the victims to assert themselves in the face of such violations of their human rights? The colloquium intends to explore this question and to stimulate debate, reflection

2009. Available at <http://www.telegraph.co.uk/education/educationnews/4950562/Teenage-girls-at-risk-of-domestic-violence-prompt-new-education-campaign.html>. Last access 26 October 2010.

⁴ Kirkup, 'Teenage Girls'. See fn.3.

⁵ National Society for the Prevention of Cruelty to Children (NSPCC), 'Thousands of children hurt trying to stop arguments between adults at home says NSPCC', Press Releases, 26 January 2009. Available at http://www.nspcc.org.uk/news-and-views/media-centre/press-releases/2009/09-01-26-children-hurt-stopping-arguments/09-01-26_thousands_of_children_hurt_trying_to_stop_arguements_between_adults_at_home_says_NSPCC_wdn75059.html.

⁶ In the UK, the age of majority is 18 years old; the UN Convention on the Rights of the Child also defines a child as a person under the age of 18 years.

⁷ The UK Government launched a consultation on this issue: *Together We Can End Violence against Women and Girls Strategy*, Home Office Crime Reduction (9th March 2009).

⁸ World Health Organization, Violence against Women, Fact sheet No. 239, November 2009, available at <http://www.who.int/mediacentre/factsheets/fs239/en/print.html>.

⁹ UN General Assembly, Rights of the Child, Report of the independent expert for the United Nations Study on Violence against Children UN Doc.A/16/299, 29 August 2006, para.29. Available at http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf. Last access 26 October 2010.

¹⁰ Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

¹¹ See http://www.unis.unvienna.org/pdf/factsheets/UNVAW_Background_022009.pdf and <http://www.un.org/events/women/iwd/2009/>.

and exchange of ideas with a view to ascertaining whether there is a research and education agenda which merits to be pursued in seeking to reduce such violence and to empower the affected girls and women.

2. The General Context

The fact that girls need to assert their human rights at all tells us that the problem does not lie with the girls themselves. The real issue begins with the system of institutionalised violence that makes girls its victims. Consideration of some basic concepts, alone or together, may assist in revealing how such violence comes to pass. Among the concepts are: institutional discrimination, violence, and the girls and the law.

2.1 *Institutional Discrimination*

There is a general tendency to focus on the abuse of victims by individual perpetrators and on the punishment of the individuals who committed the gross acts, and those who failed to protect the victims. A recent example in the United Kingdom was the case of Victoria Climbié.¹² The Victoria Climbié' Inquiry¹³ was an independent statutory inquiry designed to investigate the factors that led to the death of this child and to learn lessons to prevent such events from occurring in the future. Lord Herbert Laming chaired the inquiry which makes harrowing reading. The two adults convicted of the murder of this girl are rightly condemned for their treatment of Victoria, but the child had gone through many hands in the form of Social Services, Housing and Medical Services and the police in her short and brutal life. Given this, how did the testament to her life end up with the following report?

A post-mortem examination was carried out the following day by Dr Nathaniel Carey, a Home Office-accredited pathologist. He found the cause of death to be hypothermia, which had arisen in the context of malnourishment, a damp environment and restricted movement. He also found 128 separate injuries on Victoria's body, showing she had been beaten with a range of sharp and blunt instruments. No part of her body had been spared. Marks on her wrists and ankles indicated that her arms and legs had been tied together. It was the worst case of deliberate harm to a child he had ever seen.¹⁴

Clearly institutions also failed Victoria. Why? According to Lord Laming, bureaucratic procedures¹⁵ get in the way of the delivery of services that should be child friendly.¹⁶ The recommendations of the Inquiry include 'to advise on the implementation of the UN Convention

¹² Victoria Adjo Climbié was born near Abidjan in the Ivory Coast on 2 November 1991. She died in February 2000 in London. She was tortured to death by that great-aunt, Marie Therese Kouao and her boyfriend Carl Manning.

¹³ Department of Health and The Home Office, *The Victoria Climbié Inquiry, Report of an Inquiry by Lord Laming* (January 2003). See <http://www.publications.parliament.uk/pa/cm200203/cmselect/cmhealth/570/570.pdf>. Last access 26 October 2010.

¹⁴ *The Victoria Climbié Inquiry*, para.3.84. See fn.13.

¹⁵ *The Victoria Climbié Inquiry*, para.17.85. See fn.13.

¹⁶ *The Victoria Climbié Inquiry*, para.17.93. See fn.13.

on the Rights of the Child’,¹⁷ but perhaps the most interesting part of the Inquiry for our purposes was that raised by Ratna Butt, Head of the Race Equality Unit.¹⁸ Butt points to the failure of professionals to question the practices of carers and professionals, many of whom were, like Victoria and her carers, black. Butt surmises

Several times during this Inquiry I found myself wondering whether a failure by a particular professional to take action to protect Victoria, may have been partly due to that professional losing sight of the fact that her needs were the same as those of any other seven-year-old girl, from whatever cultural background.¹⁹

Butt suggests that the inquiry reveals that assumptions about Victoria’s cultural background, as a child newly arrived from Africa may have clouded professional judgement. Professionals fear that their questioning may result in accusations of racism. Furthermore, there is an undercurrent that looks at the importance of cultural heritage in the assessment and delivery of service provision. These may detract from the primary importance of ‘the child comes first’ philosophy.²⁰

Therefore, the real challenge is to understand that institutions are made up of social actors who carry out social roles in the form of ‘institutional scripting’.²¹ The latter could be described as the everyday language of normality fed into a complex matrix of institutional practices and policies that often, taken together, allow troubling issues relating to human rights to become overlooked.²² This occurs whether the institution is one set up by the state, church, or family.

2.2. *Abuse and Violence*

The normality of institutional discriminatory practices feeds its way into levels of violence committed against girls which are viewed as acceptable. This paper uses interchangeably the terms violence and abuse. However, because the harm to girls is much wider than physical assault, and due to the fact that our focus of concern is precisely the abuse of the human rights of girls, the term ‘abuse’ is a better conveyor of the terrible experiences suffered by girls. The concept of abuse used is taken from the 2009 report from The Commission to Inquire into Child Abuse,²³ which provides as follows:

- Physical abuse – the willful, reckless or negligent infliction of physical injury on, or failure to prevent such injury to, the child;
- Sexual abuse – the use of the child by a person for sexual arousal or sexual gratification

¹⁷ The Victoria Climbié Inquiry, See fn.13.

¹⁸ The Victoria Climbié Inquiry, paras.16.1-16.13. See fn.13.

¹⁹ The Victoria Climbié Inquiry, para.16.2. See fn.13.

²⁰ The Victoria Climbié Inquiry, para.16.10. See fn.13.

²¹ P. L. Berger and T. Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Doubleday, 1966).

²² This comment is taken from F. Brennan, J. Dine and S. Hanson, *Race and Religion: Challenging Human Rights* (forthcoming).

²³ The Commission to Inquire into Child Abuse, Commission Report (20 May 2009), available at <http://www.childabusecommission.ie/index.html>. Last access 26 October 2010.

- of that person or another person;
- Neglect – failure to care for the child which results, or could reasonably be expected to result in serious impairment of the physical or mental health or development of the child, or serious adverse effects on his or her behaviour or welfare;
 - Emotional abuse – any other act or omission towards the child which results, or could reasonably be expected to result in serious impairment of the physical or mental health or development of the child, or serious adverse effects on his or her welfare.²⁴

The Commission reported on the systematic and widespread abuse of children in care, and considered the failure of institutions to implement legislation to protect the vulnerable. The reason for such failure is the adoption of nineteenth century practices that incorporate abuse. A result of the adoption of these practices is that abuse is seen as logical, necessary and efficient as a way of controlling children for the ‘good’ or utility of the organisation or for the wellbeing of the child, or for both purposes. This idea underlying abuse is reflected in a number of ways in which the rights of children are not considered important. Children are seen as a means to fulfil other individuals’ purposes – as *existing* for others. Fundamentally, children and childhood are not seen as ends in themselves. No more pronounced is this idea than in the way girls are viewed and consequently treated by society at large.

2.3. *Girls*

Are girls seen by society as persons in their own right or as existing for others? The social perception of girls fundamentally informs the status of girlhood in society and the way in which society responds to girls in times of crisis.

Certainly, it is correct to respond to forms of abuse committed against girls such as female infanticide and genital mutilation which are, as suggested by Jane Caputi and Diana Russell, forms of femicide:

Femicide includes mutilation murder, rape murder, battery that escalates into murder, the [i]mmolation of witches in Western Europe and of brides and widows in India, and crimes of honor in some Latin and Middle Eastern countries, where women believed to have lost their virginity are killed by their male relatives. Calling misogynist killings femicide removes the obscuring veil of non gendered terms such as homicide and murder.²⁵

However, Caputi and Russell also point out that

Femicide is on the extreme end of a continuum of anti-female terror that includes a wide variety of verbal and physical abuse, such as rape, torture, sexual slavery (particularly in prostitution), incestuous and extrafamilial child sexual abuse, physical and emotional battery, sexual harassment (on the phone, in the streets, at the office, and in the classroom), genital mutilation (clitoridectomies, excision, infibulations), unnecessary

²⁴ The Commission to Inquire into Child Abuse. See fn.23.

²⁵ J. Caputi and D. E. H. Russell, ‘Femicide: Speaking the unspeakable’ in J. Radford and D. E. H. Russell (ed.), *Femicide: The Politics of Woman Killing* (New York: Twayne Publishers, 1992).

gynecological operations (gratuitous hysterectomies), forced heterosexuality, forced sterilization, forced motherhood (by criminalizing contraception and abortion), psychosurgery, denial of food to women in some cultures, cosmetic surgery, and other mutilations in the name of beautification. Whenever these forms of terrorism result in death, they become femicides.²⁶

This notion of a continuum of abuse resulting in death underlies a far more worrying idea that relates back to the Climbié case. Extreme forms of violence are not seen as connected to the institutionalisation of norms of behaviour that contribute to the reinforcement of the position of girls as subjects for others, rather than persons in their own right. Failure to acknowledge this has severe consequences as society risks failure – and evidently does fail – to tackle some of the root causes that prevent girls from acting in their own defence to assert and enjoy their human rights.

2.4. *The Law*

The legal context concerning the systems, mechanisms and practices available to girl victims to assert themselves in the face of violations is usefully placed in the United Nations Convention on the Rights of the Child (CRC).²⁷ The Convention was ratified by the UK on 16 December 1991 and came into effect on the 15 January 1992.²⁸ It refers to particular rights, all of which apply to all children and young people without discrimination,²⁹ including:

- Special protection measures and assistance
- Access to services such as education and health care
- Development of personalities, abilities and talents to the fullest potential
- To grow up in an environment of happiness, love and understanding
- To be informed about and participate in achieving their rights in an accessible and active manner and with the ‘views of the child being given due weight’.
- To the ‘best interests of the child’ being the ‘primary consideration’.

The overarching objective of the CRC is to provide ‘a global standard for the way children are treated.’³⁰ This focus on the rights of the child has been brought home in the UK through its third and fourth Report to the UN Committee on the Rights of the Child (Report).³¹ The Report refers to UK legislation aimed at the eradication of discrimination against the child including the prohibition of racial and religious discrimination and discrimination on the grounds of sexual

²⁶ Caputi and Russell, ‘Femicide’. See fn.25.

²⁷ The Human Rights Act 1998 also applies in the context of children and protection under the European Convention on Human Rights with respect to the UK.

²⁸ According to the information provided by the Department for Children, Schools and Families, *Every Child Matters* (2007), available at <http://www.dcsf.gov.uk/everychildmatters/strategy/strategyandgovernance/uncrc/unitednationsconventionontherightsofthechild/>. Last access 26 October 2010.

²⁹ Information provided by the Department for Children, Schools and Families, *Every Child Matters* (2007). See fn.28.

³⁰ Department for Children, Schools and Families, *Every Child Matters* (2007). See fn.28.

³¹ UK Government, *The Consolidated 3rd and 4th Periodic Report to the UN Committee on the Rights of the Child*, available at <http://www.dcsf.gov.uk/everychildmatters/resources-and-practice/IG00249/>. Last access 26 October 2010.

orientation or disability. There is said to be some movement by the Government to give a voice to the views of children and young people through the Youth Parliament,³² but there does not appear to be sufficient focus on the place of *gender* discrimination and violence in the construction of the lived experience of girls. Notably, the Report has failed to address the problem of gender discrimination in the context of the rights of the child. The Convention on the Elimination of All Forms of Discrimination against Women, for instance, was not given much attention.

In a report entitled ‘Violence and Discrimination: Voices of Young People: Girls about Girls’,³³ gender-based abuse is identified as “alarming”.³⁴ Some enlightening extracts of testimonials given by young girls in this report include:

I never ever understand why boys and girls are not equal to each other. In rural areas elders think that girls are born to give birth and to marry and for cleaning the house. Girls who live in rural areas (...) are not sent to schools. Their parents are not aware of the changing world yet.³⁵

[V]iolence against children, especially girls, has crossed all limits. Every day in almost every part of India a girl is raped in public transport, or one is molested at malls & market places in front of people who remain silent and do nothing. Even the police constables abuse and insult the victims and their families. People feel that a girl is meant to be used - either as a doormat, a maid, a birth-giving machine or as a source of physical pleasure. Something seriously concrete needs to be done to change the current scenario because now a girl does not feel safe even in her own house, let alone the streets.³⁶

Adults need to see that, with support and opportunities, children and young people have the capacities to be not only recipients but also partners in the process of ending discrimination and violence against girls and women. For one 13 year-old girl from Bangladesh, her experience as a peer educator has given her power to promote change in her community and gain respect: Before working as a Peer Educator I was never allowed to talk in front of adults. Now I am getting the chance and the courage to talk in my family and community. When I share the information I learned from my course, people not only listen to me but they respect me. To do so, young people recognize the need for governments and other responsible adults, including parents and guardians, to promote protective spaces for young people to participate and create opportunities for them to act for themselves.³⁷

³² See <http://www.ukyouthparliament.org.uk/>. Last access 26 October 2010.

³³ United Nations, Division for the Advancement of Women (DAW), in collaboration with UNICEF, Expert Group Meeting, Elimination of all forms of discrimination and violence against the girl child, Violence and Discrimination. *Voices of young people: Girls about girls*, UNICEF Innocenti Research Centre, Florence, Italy, 25-28 September 2006. Available at http://www.un.org/womenwatch/daw/egm/elim-disc-viol-girlchild/UNICEFEGM_GirlaboutGirlsFINAL.pdf. Last access 26 October 2010.

³⁴ United Nations, *Voices of young people: Girls about girls*, p.3. See fn.33.

³⁵ United Nations, *Voices of young people: Girls about girls*, p.4. See fn.33.

³⁶ United Nations, *Voices of young people: Girls about girls*, p.5. See fn.33.

³⁷ United Nations, *Voices of young people: Girls about girls*, p.10. See fn.33.

So far, the law in the UK fails to yield effective systems, mechanisms and practices to ensure not only the effective enjoyment of the rights of the child, but is specifically fails to ensure the effective voice and participation of girls to this end.

3. Concluding Remarks

In the critical dialogue concerning girls acting in their own self defence, it is important not to forget that everyone is responsible for the institutionalised discourse that reinforces the inferior position of girls (and eventually women) in the protection of their human rights. This colloquium provides an opportunity to set the wheels in motion to bring about changes in this respect through better research, policy and practice.

Some of the most important questions that arise are the following:

- Is anything known about human rights defenders amongst the girl victims of violence – do they exist?
- Are there mechanisms/organisations used by the girl victims themselves to challenge these violations?
- Can girl victims use the CRC (or other instruments) effectively? Are systems in place to enable them to assert themselves and advance their own claims?
- What work is being done to empower girl victims?
- Does the CRC stipulation regarding children's rights to information and effective participation work in practice and, if so, how? If not, what are the obstacles and how can they be overcome?
- What strategies (if any) have girls used/developed to protect their human rights?
- Is there anything that can be learnt from countries where girls have had to develop strategies as human rights defenders of their human rights because there is ineffective State protection?
- How is the fact of abuse viewed in law, in the community, in the family, by the victim and the perpetrator?
- What is done at each of these levels to stop the abuse and provide remedy and rehabilitation for the victim?
- Can a victim reclaim her sense of self by being a defender of other victims of abuse?
- Does the law provide adequate and additional safeguards and protections for such a defender?

In the context of the University of Essex Human Rights Centre's cooperation with the Children's Legal Centre (Essex), the Centre for the Study of Developing Societies (New Delhi), the V.M. Salgoacar College of Law (Goa) and Children's Rights Goa – supported through the United Kingdom-India Education and Research Initiative (UKIERI) – these and other questions will be treated at the colloquium. Furthermore, focusing on the situations in the UK and India, as concrete examples, enables some specifications, in context, and allows comparisons.