

**Written evidence presented by Professor Jackie Jones,
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of Women, September 2014**

GENDER-BASED VIOLENCE BILL

1. I want to thank the Committee for the invitation to be part of this academic panel and the opportunity to submit written evidence. Because of constraints on space, the submission makes four main points: human rights approach; gender neutrality; gender specific legislation; and legal definitions.

2. Wales finds itself at a crossroads: on the one hand, it has grasped the opportunity to enact groundbreaking legislation in the field of violence against women. To that end, many of the provisions in the Bill are to be applauded (e.g., establishment of an (Independent) Ministerial Advisor). Wales is seen around the world as a leader in this field, personally noted by the UN Special Rapporteur on Violence against Women during her visit to Wales in April 2014.¹ On the other hand, there are certain aspects of the Bill, which are of concern. I shall focus on the legal issues.

3. Basing the law in a human rights framework

3.1 Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments – at all levels. By basing the law in the human rights framework the state acknowledges its full commitment/obligations/responsibilities vis-à-vis its citizens, including protection and prevention from violence.

3.2 The full and equal enjoyment of all human rights and fundamental freedoms by women and girls is a priority for Governments and is essential for women's development. Recognition of the importance of the human rights of women is reflected in the fact that nearly every States of the United Nations has become a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹ The Special Rapporteur will present her report on the UK to the Human Rights Council in July 2015, in time for inclusion of the provisions of **this** new Act into the Report.

² Examples include the appointment of a Children's Commissioner, Older Persons Commissioner, mental health strategy, etc. Women are not excluded from this approach.

³ See reports of the Committee on the Elimination of Discrimination against Women, for example, CEDAW/C/NLD/CO/4; CEDAW/C/POL/CO/6; CEDAW/C/FIN/CO/6; CEDAW/C/UK/CO/6.

⁴ '118. Violence against women is a manifestation of the historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of women's full advancement. Violence against women throughout the life cycle derives essentially from cultural patterns, in particular the harmful effects of certain traditional or customary practices and all acts of extremism linked to race, sex, language or religion that perpetuate the lower status accorded to women in the family, the workplace, the community and society. Violence against women is exacerbated by social pressures, notably the shame of denouncing certain acts that have been perpetrated against women; women's lack of access to legal information, aid or protection; the lack of laws that effectively prohibit violence against women; failure to reform existing laws; inadequate efforts on the part of public authorities to promote awareness of and enforce existing laws; and the absence of educational and other means to address the causes and consequences of violence. Images in the media of violence against women, in particular those that depict rape or sexual

3.3 Violence against Women is acknowledged by governments around the world as one of the most pervasive forms of human rights violations in the world today (United Nations Commission on the Status of Women Conclusions 2013). In the EU the 2014 FRA Europe-wide Survey on violence against women has highlighted the staggering numbers of women who suffer violence (http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf). To this end, governments around the globe have and do enact legislation and national action plans/strategies that are gender specific in order to deal with the pandemic of violence against women. This has accelerated in recent years, with action in all parts of the globe.

3.4 The Bill needs to include and address all forms of violence against women and prevention thereof if it is to be grounded in a human rights framework – a commitment the Welsh government made in manifestos, policies, strategies and speeches². The definitions section will address this issue further.

4. Gender neutrality

4.1 Gender neutrality is not the right approach for the bill and is not proscribed by law. The UN Committee on the Elimination of Discrimination against Women has criticized States that have moved to the gender-neutral approach.³ The CEDAW Committee examined the UK in 2013 and made several recommendations regarding violence against women (paras. 34-41; CEDAW/C/GBR/CO/7; <http://www.nawo.org.uk/wp-content/uploads/2012/07/Concluding-Observations.pdf>).

4.2 The international, regional, EU and Welsh legal obligations proscribe a substantive equality approach, underpinned by an understanding that transformative change (or ‘improvements’ – as indicated in the Bill) can only happen when systemic change occurs. Making legislation gender neutral implies that men are subject to the same systemic obstacles and inequality as women and have suffered from the same level of historic discrimination as women. This is not the case.⁴ Therefore a different approach is required.

² Examples include the appointment of a Children’s Commissioner, Older Persons Commissioner, mental health strategy, etc. Women are not excluded from this approach.

³ See reports of the Committee on the Elimination of Discrimination against Women, for example, CEDAW/C/NLD/CO/4; CEDAW/C/POL/CO/6; CEDAW/C/FIN/CO/6; CEDAW/C/UK/CO/6.

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4.3 Gender neutrality furthers the agenda of silencing women's voices and making invisible the pervasive forms of violence perpetrated against them. It keeps women in their place, allowing the climate of fear to continue unabated, giving them the message that their experiences are not worthy of specific state action.

4.4 A gender-neutral approach cannot and will not improve 'prevention, protection or support' (as outlined in the Bill). There is very little purpose in passing a Bill that will not address the very violence it is meant to stop. Not focusing on women and girls has cost the lives of many women and girls. It condemns them to a life of misery. It would be a disgrace not to concentrate on these issues in the face of overwhelming evidence of abuse that has come to light since Jimmy Saville and the cases therefrom, the Rotherham Inquiry, the Oxford sex trafficking cases, and many others. Not making the legislation gender specific fails the victims and allows the climate of impunity to continue. This is the fertile breeding ground of the causes of violence against women and girls.

4.5 By failing to name the Bill a 'Violence against Women' Bill the historic moment for Wales to take a lead in the world on this issue will have been lost – forever. History remembers the bold moments – for example, US President Johnson's 1964 signing of the Civil Rights Act or the UN Platform for Action on Women's Rights signed at Beijing in 1995. It is what the women of Wales deserve.

5. Gender-specific legislation/international treaties on violence against women

5.1 There is international precedence for establishing laws and strategies specifically targeting violence against women. Some only (due to length restrictions) are detailed below.

5.2 There are two regional Conventions that establish legal frameworks for the protection of women, and prevent, punish and eradicate all forms of violence against women: the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (**Convention of Belem do Pará** - 1994: for Latin America and the Caribbean; see below); and the European Convention on Preventing and Combating Violence Against Women and Domestic Violence (**Istanbul Convention** – 2011: for Europe; <http://www.oas.org/en/mesecvi/docs/MESECVI-CoE-CSWPub-EN.pdf>).

5.3 The Istanbul Convention came into force on 1 August 2014. To date 14 member states of the Council of Europe have ratified it and 22 have signed it. The UK signed it on 8.6.2012. Under international law, **the fact the UK has signed the Convention means that it has made a commitment to do nothing in contravention of its terms.**

5.4 The Convention is specifically about violence against women and domestic abuse and offers a vast amount of protection and prevention provisions for victims. It is seen as the most progressive instrument in force today that clearly sets out states' obligations in the specific area of violence against women. The Convention does not exclude men (e.g., Preamble) but makes it clear that because of the vast numbers of victims of gender-based violence in Europe, the focus has to be women and girls.

5.5 Member states are required to ‘establish a comprehensive and co-ordinated policy addressing all forms of violence covered by the Istanbul Convention and offering a holistic response to violence against women.’ States Parties will be monitored by a group of independent experts (GREVIO) on these obligations. Wales has an historic opportunity to set up the mechanisms for this now. The Convention provides one of the legal bases for doing so.

5.6 Some examples of specific actions in the field of violence against women are

5.7 **UK:** The UK Violence against Women Strategy, along with local authority strategies (e.g., Lord Mayor of London); CPS Violence against Women Crime Report 2013-14; The newly appointed Seema Malhotra, Labour MP for Feltham and Heston, Shadow Minister for Preventing Violence Against Women and Girls; Women’s Safety Commission and the proposal to establish a Commissioner.

5.8 **UN:** UN, Secretary-General (2006), *Ending violence against women: From words to action. Study of the Secretary-General*, A/61/122/Add.1, 6 July 2006; UN Task Force on Violence Against Women, UN, General Assembly, Resolution on Intensification of efforts to eliminate all forms of violence against women, A/RES/61/143, 19 December 2006, p. 6; the new Model Protocol developed by the UN Human Rights Office and UN Women concerning the femicides in Latin America: <http://www.ohchr.org/EN/NewsEvents/Pages/EndingImpunityLAC.aspx>

5.9 **EU:** Council of the EU March 2010 Conclusions on the eradication of violence against women in the European Union; European Commission’s 2010 *Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence*; European Commission’s 2010 Communication concerning the Women’s Charter; Directive 2011/36/EC of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; Gender Equality Directive (recast) (Directive 2006/54/EC of OJ 2006 L 204); the EU mid-term review of the Strategy for equality between women and men (2010–2015); the EU Institute for Gender Equality.

5.10 **Council of Europe:** Parliamentary Assembly of the Council of Europe several recommendations and resolutions on violence against women and girls; a Task Force to combat violence against women was established in 2005. Istanbul Convention 2011: Gender Equality Strategies (http://www.coe.int/t/DGHL/STANDARDSETTING/EQUALITY/02_GenderEqualityProgramme/Council%20of%20Europe%20Gender%20Equality%20Strategy%202014-2017.pdf); Gender Equality Commission; Council of Europe held the Thematic Debate on “Violence against Women, the Council of Europe response, arch 2014; 29 July 2014 Commissioner for Human Rights issued a statement entitled ‘Fighting violence against women must become a top priority’.

5.11 **France:** New substantive gender equality law enacted in July 2014. **Greece:** National Programme for the Prevention and Combating of Violence against Women 2009–2013. **Lithuania:** Law on Protection against Domestic Violence of 2011 which includes provisions on prevention, protection and support measures, as well as in the

National Strategy for Combating Violence against Women of 2006. **Spain:** Government Delegation for Gender-based Violence.

5.12 The above list makes clear that gender specificity in legislation is not an isolated occurrence. Indeed, it is becoming **more** prevalent. There are no legal impediments that I can see making it unlawful to enact gender specific legislation. Threats of legal action are a concern regardless of subject matter; why should women's rights be treated with more caution than other areas? This is a manifestation of passive violence that halts progress for women's full citizenship.

6. Legal Definitions

6.1 The Bill is not developing any new laws. It is therefore surprising to see that the definition of gender-based violence and abuse proposed in the Bill is different to the nationally and internationally agreed legal definition.

6.2 The definition focuses on some of the causes of gender-based violence, rather than on what happens when gender-based violence occurs. In other words, it flips the emphasis without providing the powers to address the causes. The proposed national and local action plans and the Ministerial Advisor role are designed to provide leadership. If the Bill remains unchanged, the focus will be narrow and a key opportunity will have been lost. It is unhelpful to the degree of being exclusive, rather than inclusive. **The Bill should adopt the internationally recognized definition.** In this way, it can still address the causes as well as the consequences of violence, fulfilling its original aim.

6.3 Gender-based violence (GBV) is violence that is directed against a person on the basis of gender. It constitutes a breach of the fundamental right to life, liberty, security, dignity, equality between women and men, non-discrimination and physical and mental integrity.

6.4 However, the bill defines gender-based violence very differently (narrowly) as:

'gender-based violence' (*"trais ar sail rhywedd"*) means—

1. (a) violence, threats of violence or harassment arising directly or indirectly from values, beliefs or customs relating to gender or sexual orientation;
2. (b) female genital mutilation;
3. (c) forcing a person (whether by physical force or coercion by threats or other psychological means) to enter into a religious or civil ceremony of marriage (whether or not legally binding);

6.5 International definitions of Violence against women and gender-based violence

6.6 **United Nations** Declaration on Violence against Women and The Beijing Declaration Platform for Action:

Article 1: "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 2: Violence against women shall be understood to encompass, but not be limited to, the following:

(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.

6.7 **United Nations** General Recommendation No. 19 on Violence against Women, Committee on the Elimination of Discrimination against Women (CEDAW):

Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.

6.8 **The Council of Europe** defines violence against women as ‘all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’

Gender-based violence includes:

- domestic violence, sexual harassment, rape, sexual violence during conflict and harmful customary or traditional practices such as female genital mutilation, forced marriages and honour crimes;
- trafficking in women, forced prostitution and violations of human rights in armed conflict (in particular murder, systematic rape, sexual slavery and forced pregnancy);
- forced sterilisation, forced abortion, coercive use of contraceptives, female infanticide and prenatal sex selection.

6.9 **The Convention of Belem do Pará** defines violence against women:

Article 1: For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Article 2: Violence against women shall be understood to include physical, sexual and psychological violence:

a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse;

b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and

c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

6.10 The Bill defines ‘**abuse**’ as ‘physical, sexual, psychological, emotional or financial abuse’. Again this is **very narrow** is exclusive, rather than inclusive, leaving other pervasive acts of violence out of legal regulation. At a minimum, ‘Coercive control’ should be included. The ‘Domestic abuse’ definition is far too wide to become meaningful in law.

6.11 The Bill is peppered with non-compulsory language: ‘may’. It is recommended that ‘may’ is replaced by ‘shall’ in order to progress the statutory duty on local authorities. This includes:

- a) Section 8 (2) (b);
- b) Section 12 (2) changed from ‘The statutory guidance *may* amongst other things, address –’ to ‘must’ to ensure the core guidance is covered across authorities;
- c) Section 20 (2) changed from ‘The Welsh Ministers *may* publish a report sent to them by the Ministerial Adviser that is not mentioned in an approved plan’ should be changed to a ‘must’ to ensure transparency and public scrutiny.

6.12 Gender specific legislation requires targeted action that is broad enough yet focussed enough to address the most pervasive forms of violence against women. The international and UK definitions agreed by the sector and the legal community will ensure a solid legal basis for Welsh legislation; it will ensure compliance with intentional, national and Welsh legal obligations.

7. Recommendations

7.1. The Bill should be placed into a human rights framework that addresses violence against women.

7.2 The Bill should be gender specific, rather than gender neutral.

7.3 The Bill should adopt the internationally agreed definitions.

7.4 All of these factors need to be addressed in gender-specific actions in order to fulfill the aims of the Bill to ‘improve’ women’s lives and to provide equality of outcomes for women in Wales.

7.5 Other considerations concerning the Independent Ministerial Advisor, lack of education provisions and consultation with Health Board alone could not be dealt with here, but their deviation or omission from the direction originally outlined in the White Paper for this Bill is of significant and notable concern.