Parliamentary **Assembly**
Assemblée parlementaire

Forced marriages and child marriages

Doc. 10590
20 June 2005

Report
Committee on Equal Opportunities for Women and Men
Rapporteur: Mrs Rosmarie Zapfl-Helbling, Switzerland, Group of the European People's Party

Summary

Forced marriages and child marriages constitute serious and recurrent violations of human rights and the rights of the child. It is an outrage that, under the cloak of respect for the culture and traditions of certain communities, there are authorities which tolerate forced marriages and child marriages although they violate the fundamental rights of each and every victim.

Forced marriage is defined as the union of two persons at least one of whom has not given their full and free consent to the marriage. Child marriage is defined as the union of two persons at least one of whom is under eighteen years of age. Such marriages should no longer take place in our societies that uphold human rights and the rights of the child.

The Parliamentary Assembly should urge the national parliaments of the Council of Europe member states to adapt their domestic legislation, if appropriate, so as to fix at or raise to eighteen years the minimum statutory age of marriage for women and men, make it easier for forced and child marriages to be prevented, detected and annulled and to bring to justice the perpetrators of rape within such marriages, as well as those who aided and abetted the contracting of such a marriage.

The Assembly should recommend that the Committee of Ministers of the Council of Europe instruct the appropriate intergovernmental committee to make a thorough analysis of forced marriages and child marriages and devise a strategy encouraging member states to take a number of specific practical measures.

I. Draft resolution *[Link to the adopted text]*

1. The Parliamentary Assembly is deeply concerned about the serious and recurrent violations of human rights and the rights of the child which are constituted by "forced marriages" and child marriages.

2. The Assembly observes that the problem arises chiefly in migrant communities and primarily affects young women and girls.

3. It is outraged by the fact that, under the cloak of respect for the culture and traditions of the migrant communities, there are authorities which tolerate forced marriages and child marriages although they violate the fundamental rights of each and every victim.

4. The Assembly defines forced marriage as the union of two persons at least one of whom has not given their full and free consent to the marriage.

5. Since it infringes the fundamental human rights of the individual, forced marriage can in no way be justified.

6. The Assembly stresses the relevance of United Nations General Assembly Resolution 843 (IX) of 17 December 1954 declaring certain customs, ancient laws and practices relating to marriage and the family to be inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights.

7. The Assembly defines child marriage as the union of two persons at least one of whom is under eighteen years of age.

8. The Assembly deplores the drastic effects of marriage on married children. Child marriage in itself infringes their rights as children. It is prejudicial to their physical and psychological welfare.

9. The Assembly is appalled to find that some national legislation permits the marriage of minors, sometimes in a discriminatory fashion with gender-based differences in minimum ages.

10. Such marriages should, in fact, no longer take place in our societies that uphold human rights and the rights of the child. In that respect, the Assembly concurs with the considerations set out in the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage which reaffirms “that all States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded”.

11. The right to marry is recognised in Article 12 of the European Convention on Human Rights. The Assembly nevertheless recalls the further provision in this Article for the exercise of this right to be governed by national laws.

12. It therefore stresses the need to take the requisite legislative measures to prohibit child marriage by making 18 years the minimum marriageable age. Thus, persons not having reached that age would not be able to lawfully contract marriage.

13. The Assembly therefore recommends that Council of Europe member states take the following legal measures regulating the right to marry:

13.1. ratify the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage, if they have not yet done so;

13.2. ratify the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the amendment and protocol thereto, if they have not yet done so;

13.3. ensure their compliance with Council of Europe Committee of Ministers’Recommendation Rec(2002)5 on the protection of women against violence.

14. The Assembly urges the national parliaments of the Council of Europe member states to:

14.1. renegotiate, discard or denounce any sections of international agreements and rules of international private law contrary to the fundamental principles of human rights, particularly as regards personal status;

14.2. adapt their domestic legislation, if appropriate, so as to:

14.2.1. fix at or raise to eighteen years the minimum statutory age of marriage for women and men;

14.2.2. make it compulsory for every marriage to be declared and entered by the competent authority in an official register;

14.2.3. institute an interview between the registrar and the bride and groom prior to the celebration of the marriage and allow a registrar who has doubts about the free and full consent of either or both parties to summon either or both of them separately to another meeting;

14.2.4. refrain from recognising forced marriages and child marriages contracted abroad except where recognition would be in the victims' best interests with regard to the effects of the marriage, particularly for the purpose of securing rights which they could not claim otherwise;

14.2.5. facilitate the annulment of forced marriages and possibly automatically annul such marriages;

14.2.6. lay down a maximum period of one year, in so far as practicable, to investigate and rule on an application for annulment of a forced marriage or a child marriage;

14.3. regard coercive sexual relations undergone by victims of forced marriages and child marriages as rape;

14.4. consider the possibility of dealing with acts of forced marriage as an independent criminal offence, including aiding and abetting the contracting of such a marriage.

II. Draft recommendation *[Link to the adopted text]*

1. The Parliamentary Assembly refers to its Resolution … (2005) on forced marriages and child marriages and asks the Committee of Ministers to ensure its application by member states.

2. It recommends that the Committee of Ministers of the Council of Europe instruct the appropriate intergovernmental committee to make a thorough analysis of forced marriages and child marriages and devise a strategy encouraging member states to take the following specific action:

2.1. institute prevention campaigns in primary, secondary and upper secondary schools, suited to the age of the pupils targeted, informing them of their rights and especially the right to make up one's own mind with regard to marriage, the right to choose one's future partner and the right not to marry before 18 years of age, aiming both at a general audience and at those particularly concerned;

2.2. inform persons under threat of forced marriage of the practical steps to be taken to forestall marriage, such as placing one's passport in safe keeping, lodging a complaint of theft of papers in the event of confiscation and giving the address of the proposed holiday location;

2.3. provide emergency reception facilities where young women and girls liable to be forcibly married can be heard, cared for and accommodated, shielding them from the pressure brought to bear by others and from possible abduction;

2.4. financially support associations and other non-governmental organisations that assist and support, shelter and protect potential or actual victims;

2.5. aid victims in their physical and psychological recovery;

2.6. punish the persons who voluntarily participated in the forced or child marriage, including the perpetrator of rape;

2.7. punish the persons who aided and abetted the contracting of the forced or the child marriage, considering as an aggravating circumstance the victim's dependency on these persons;

2.8. check the validity of any marriage celebrated abroad, making its transcription subject to the presence of both spouses and authorising the diplomatic staff to interview either or both spouses beforehand;

2.9. for this purpose, ensure that public service staff, particularly in the judicial and the police force and social, diplomatic and consular services, are properly informed and trained to detect forced marriages;

2.10. put an end to the custom of pledges of marriage and child betrothals, including cases involving very young minors.

III. Explanatory memorandum by Ms Zapfl-Helbling, rapporteur

I. Introduction

1. All over the world, marriage is considered a festive day and an important milestone in an adult's life. Unfortunately the situation confronting one of the future spouses, if not both, may be quite the opposite to this festive conception when they are compelled to marry and to bear the consequences. They are faced with what is known as a "forced marriage". If at least one of the partners is underage, it is called a "child marriage".

2. This schematic presentation, simplistic though it may be, sheds light on this phenomenon which takes many forms and has only lately attracted public attention.

3. Long regarded as a family and cultural practice, forced marriages and child marriages did not use to alert public opinion. The violence that followed thus used to be hidden.

4. In Europe and especially in France, newsworthy cases reported in the press highlighted the problem.

5. This was how recently, in a hard-hitting book entitled "Leïla, forcibly married"[1], a girl of Maghrebi origin residing in France chose to break the law of silence. Leïla, in her own words, put on record "things known to everyone but condemned by no-one", and made a plea for these ordeals to cease. Fatoumata Konta is also memorable; she was a young Senegalese schoolgirl living in France who in 2000 took a holiday in her native country but did not return. Kept captive by relatives who could not accept her having a relationship with a white man, she was able to run away, return to France and form an association[2] to rescue all women who like herself are cheated of their right to choose how to live their own lives just for the sake of tradition.

6. As can be seen, the media report on individual cases. While not reflecting the problem in its entirety, these examples have the merit of attracting attention to specific cases that appeal to an undiscriminating public. They could on the other hand be taken for rare isolated cases, but alas the situation is very alarming indeed. Although the issue is not addressed by empirical studies and no exact figures have been able to be collected, the phenomenon is actually one of fearful proportions. Today in France, 70 000 persons are estimated to be at risk of forced marriage[3]. This is believed to affect mainly girls of foreign origin living in France, either in early adulthood or underage, in some cases very much so. This estimate is of course difficult to corroborate. Marriage belongs to the private sphere and, in the absence of a national survey dealing with the question, it is very awkward to make absolutely certain that there has been genuine consent and not compulsion. What is more, most such unions are not sealed in France but in the girls' countries of origin during holidays. Several communities are concerned by these practices: Africans, Maghrebis, Asians and Turks. This estimate has been taken up by the GAMS (Group of women for the abolition of genital mutilation). GAMS for its part sets the number of adolescent girls aged 10 to 18 who are potentially threatened at 70 000 for all communities; they are resident in Île-de-France and six French departments with a high immigrant population (Nord, Oise, Seine-Maritime, Eure, Rhône, Bouches-du-Rhône). Some consider this figure far short of a true estimate. The practice is also

recorded in the United Kingdom[4], Germany and the countries of Eastern Europe. The marriages in question often take place in Muslim families[5].

7. While the phenomenon is difficult to assess because the subject is taboo[6], all associations discern an increase in forced marriages in every community where they are practiced, whether the brides are from Turkey, the Maghreb, Black Africa or Asia. The GAMS thinks this rise is accounted for chiefly by demographic but also by administrative factors: the girls born as a result of the early 1980s family reunification policy are reaching marriageable age at the present time. For the husbands arriving from abroad, it is also a strategy to obtain official documents, such as resident permits.According to the ELELE association, the majority of girls and boys of Turkish origin who have grown up in France fall victim at the age of 18 or 19 to arranged marriages with young Turkish nationals. These are often unions with a first cousin on the mother's side.

8. Although this phenomenon concerns many other European countries, there are no quantitative data relating to them and so the figure issued for France seems to be the only one available[7].

9. The root causes[8] of this practice lie chiefly in the tendency for traditions to become fossilised in migrant communities. According to Ms Sen[9], migrant communities are often more conservative than those remaining in the home country. This occurs in Muslim communities but also in others. Still, one must avoid stigmatising Islam and remain watchful. Ms Sen pointed out that tolerance or feeling for culture cannot serve as excuses for condoning these marriages, for hiding behind a moral blindness. She added that men may also be forced to marry, for example when they display homosexual tendencies, not accepted in some cultures.

10. There have been few studies on the subject, and so real-life accounts are the principal basis on which one can ascertain whether a marriage is forced, or rather to form a picture of it and determine the constants involved. In order to appreciate the full extent of this notion, the Committee on Equal Opportunities for Women and Men organised a hearing[10] in Antwerp on the theme, taking statements from two victims of forced marriage as well as from experts. The Committee was very much moved by the courage of Hafida B. whose testimony succeeded in putting into words what had been a most distressing experience for herself and her sister (see her statement appended to the minutes of the hearing). The rapporteur would also like to thank the Mouvement français pour le planning familial (MFPF) for inviting her to an international colloquy on forced marriages[11] which enabled her to grasp the problems facing young victims and to let herself be inspired from the work of the social actors directly involved with them.

II. Concepts hard to pinpoint

A. Forced marriage and related concepts: the problem of consent of one or both future spouses

11. Marriage is generally defined as a solemn act whereby two persons found a union between themselves, the conditions, effects and dissolution of which are governed by statutory provisions in each country. This act centres on the commitment and consent of the future spouses to found a couple and to live together.Love is often said to be the foundation of marriage, described as a communion of life and love - *communitas vitæ et amoris conjugalis* - but it should be emphasised that marriage is also a conjugal institution within society. Thus if one of these elements is lacking, we no longer speak of marriage in the strict sense. The question that arises, therefore, is essentially to establish whether one or both future spouses have consented, and if so, whether the consent was full and free with the aim of entering into married life.

12. Two further concepts spring to mind when speaking of forced marriages: arranged marriages and marriages of convenience. These designations, though similar, do not correspond to the same reality. Furthermore, some terms may overlap. Ms Rude-Antoine cites the following concepts[12]: arranged marriage, customary marriage, traditional marriage, conventional marriage, early marriage, child marriage, simulated marriage, ostensible marriage, fictitious marriage, fraudulent marriage, marriage of convenience, undesirable marriage, suffered marriage.

13. Although these concepts share the characteristic of being at variance with the true spirit of marriage, namely a loving commitment, the rapporteur considers it important to distinguish them while emphasising that the borderline between one and the other is sometimes difficult to draw and in any event depends on a case by case analysis.

1. The difference between arranged marriage and forced marriage: the problem of consent to marriage

14. Distinguishing arranged marriage (and other concepts) from forced marriage is no easy matter; discerning the precise point of transition from one to the next really involves factual analysis of the situation that presents itself, rather than just rhetoric.

a. Arranged marriage

15. Arranged marriage is typified by the intervention of someone outside the future couple, usually the parents of the future spouses or a broker. This brokerage can occur at the request of either or both future spouses or of the family, or at the parents' instigation. In certain communities and countries, it is customary for the parents to organise the marriage. But the ultimate choice of accepting the arrangement rests with each of the future spouses. The problem is to ascertain how far it is possible for them to choose and to make up their minds in a properly informed manner. The family environment may well be so powerful that choice is induced by upbringing or deference to custom. True, the distinction between actual pressure and psychological manipulation may be tenuous. The conceptual niceties hinge on the fact of knowing whether it is possible to speak of free and informed consent, and largely depend on the socio-cultural setting. Only a close, detailed analysis allows a proper grasp of the person's particular situation.

b. Forced marriage: negation of freedom of matrimonial consent

16. To Ms Sen, forced marriage is chiefly characterised by the absence of consent[13], since marriage requires the parties to give free and informed consent which is not extracted under pressure. When the consent of either future spouse is lacking or vitiated by external factors, there is no longer any question of free and informed choice. By comparison with arranged marriage, an element of constraint enters into the decision to marry and so, once there is an element of constraint, it is permissible to speak of forced marriage.

17. In other words, one future spouse or both do not have the choice of opting out, because the family then resorts to coercive methods such as pressure of various kinds, emotional blackmail, physical duress, violence, abduction, confinement and confiscation of official papers. For practical purposes, the future spouses have no possibility of choosing whether or not to marry.

18. The rapporteur finds the expression "suffered marriage" (mariage subi) very meaningful and particularly descriptive of the situation. It aptly demonstrates that an element of constraint exists. Once there is interference with the person's free will, irrespective of whether the constraint is identified as physical, material or moral, marriage is suffered. Contentious marriage is contrary to the fundamental principle of freedom to decide whether or not to marry the person of one's choice.

2. Marriage of convenience: marriage diverted from its matrimonial intent

19. This is an area where case-law has a certain importance since here it is the courts that have to assess the validity of the marriage and determine whether or not it is a "sham". French court practice regularly provides examples of such unions being annulled. Recently, in two judgments of 16 September 2004, the Paris court of appeal annulled two marriages. In both cases, a foreign national (an Algerian and a Moroccan as it happened) had married a French national. A few years later, annulment of the marriage was sought at the request of one of the spouses and the public prosecutor. The court of appeal invoked the "purpose alien" to the institution of marriage. In the judges' assessment, it is interesting to look at the circumstances which lead to their conviction that genuine matrimonial intent was lacking[14]. In the first case, the foreign national had married upon the expiry of his short stay visa, he had been asked to leave the national territory within the month, the marriage had not been consummated and a very short time had elapsed between the celebration of the marriage and the application for its annulment. In the second case, the judges also found evidence that there was no cohabitation

although there was a much later application for annulment, twelve years having elapsed since the celebration of the marriage. This kind of marriage of convenience is thus distinguished by the fact that marriage is contracted for an unrelated purpose, very often to obtain a residence permit. It is to be construed rather as a kind of evasion of the law. According to Ms Drif[15], this is a marriage in which two individuals agree to get round the law.

20. Other terms such as “fraudulent marriage”[16] were noted during the preparation of this report. The rapporteur stresses that each of these concepts may correspond to a different reality, but she would rather stick to those concepts in mainstream use which lend visibility to the situation of victims of forced marriages. In this connection, she considers that the topic of “marriages of convenience” could be covered by a separate report.

3. Utility of these conceptual distinctions: the particular situation of victims of forced marriages

a. Only victims of forced marriages suffer infringements of their fundamental rights

21. The rapporteur would like to insist on the fact that the terminology can be deceptive in so far as the term “arranged marriage”, more acceptable to our minds, can be used in situations that are actually “forced marriages”. The distinction is drawn according to the criterion of genuine consent to marriage. For instance, the situation may indeed arise where a girl announces the imminent celebration of an ”arranged” marriage, making a point of the fact that her family has chosen a future husband for her but not mentioning her feelings on the matter. She may be too timid or even imbued with a family or cultural tradition that prevents her from voicing her opinion. When a marriage fits this description it should alert the competent authorities, prompting them to query the freedom of matrimonial consent. In other words, a marriage referred to as “arranged” may conceal the reality of a “forced marriage”. As Ms Roussel said in conclusion to the MFPF colloquy [17], the term “arranged marriage” is to be avoided and “forced marriage” preferred.

22. In the case of sham marriages of convenience or arranged marriages, in so far as the parties’ consent is not vitiated, the question of infringement of fundamental human rights does not arise. The effects are therefore more of a social nature, being calculated to circumvent immigration regulations for instance. The rapporteur considers that the likelihood of assimilating the different situations would be prejudicial to victims of forced marriages, as distinct provision needs to be made for them in practice. In the case of forced marriages, victims require an adequate form of protection. In the case of arranged marriages and marriages of convenience it is no longer possible to talk about “victims” since the contracting parties consent to the act; “principals” is more appropriate. What is more, in the case of “marriages of convenience”, the principals should be punished because they are acting to evade the law. The rapporteur therefore considers that failure to discriminate between these various situations would detract from a proper understanding of her report which is about raising awareness of the situation in which victims of forced marriages – and incidentally child marriages – find themselves, and the measures needed to stamp out these practises. It is a matter of illustrating the cases of human rights violations, and above all of avoiding an unwarranted association with immigration-related issues.

b. The consequences of forced marriages: repeated violations of human rights

23. When consummated, as it is in the vast majority of cases since consummation of the marriage is encouraged[18], forced marriage is primarily an act of rape. The young bride does not have the freedom to accept or to refuse sexual relations, nor the freedom to exercise her reproductive rights. She must submit. In fact, a whole catalogue of elementary and fundamental rights is trampled underfoot. The woman no longer has the right to speak. She is perceived as an object. The rapporteur was struck by Hafida B.’s statement highlighting the fact that her parents, in organising the forced marriage, had sacrificed her own happiness to that of her family[19]. Deprivation of happiness and infliction of violence are the victims’ horrific daily lot. According to Ms Sen[20], forced marriage can also be regarded as a modern-day form of slavery. From rape to wrongful seclusion, the rapporteur thinks no terms are strong enough to condemn these repeated violations of human rights. In the view of the MFPF[21], “Women are truly the first victims of these situations: considered a means of barter, raped on the wedding night and thereafter, possibly raped on a daily basis, humiliated, locked up and beaten by the husband who is forced upon them. They are exposed to every form of violence”.

24. Child marriages by definition constitute forced marriages, as a child cannot be considered to have freely given consent to marriage[22].

B. Child marriage: a problem of informed capacity to consent fully to marriage

1. Overview of the situation

25. Child marriages take place all over the world but are a common practice in certain parts of Africa and Southern Asia. Unicef published a report entitled “Early marriage: child spouses” on 7 March 2001[23] on this highly sensitive issue. In 1993 in Rajasthan (India), Unicef notes that 56% of women were married before the age of 15 and 17% before the age of 10. Worse still, in this state of the Indian Union children aged 2-3 are offered in marriage by their parents – according to the report, “the tried and tested way of organising the passing on of property and wealth within the family”.

26. In industrialised countries, women seldom marry before 18 years of age (4 % in the United States and 1% in Germany), apart from some economically fragile countries of Eastern Europe (Albania and “the former Yugoslav Republic of Macedonia”), or in Gipsy communities.

27. For Europe, the report records that in Albania, “Families in rural areas, reduced to abject poverty by the post-Communist transition, encourage their daughters to marry early in order to catch potential husbands before they migrate to the cities in search of work, and to avoid the threat of kidnapping on the way to school”[24].

28. The rapporteur has no data on Roma child marriages although they indubitably exist. Apparently the childhood and adolescence of Roma children end when they found their own families. A Roma proverb says, “Put your daughter on a chair, and as soon as her feet reach the ground, she is mature enough to be married”. Tradition dictated that the Roma girl, on reaching ”adulthood” ie adolescence, was entrusted by her mother, already caring for several other children, to her future husband who had the duty of ”training” her[25]. Actually the parents entrusted their teenage daughters to the families of the husbands and the girls were often compelled to marry the husband chosen by their parents. Husbands were usually, though not as a rule, chosen by the fathers. Thus Roma girls married not for romantic love but to comply with the wish of their families. In the past and to this day, the couple did not have their civil or religious wedding (bijav) until after the birth of the first or second child.

29. As shown above for adults, underage persons can also be married abroad, after which they may or may not return to Europe to settle.

30. Thus the problem of early marriage persists in Europe.

2. Definition of child marriages

31. According to the United Nations Convention on the Rights of the Child of 20 November 1989, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”[26]. The terminology used here corresponds to that of “early marriage”, particularly revealing in that marriage occurs earlier than normal. Child marriage is therefore the union, whether or not official, of two persons at least one of whom is a minor. In general, European national legislation lays down requirements of minimum marriageable age. Some countries’ legislation expressly permits minors to marry. That of others provides for exceptions to the minimum age, called “age exemptions”, either with or without the parents’ consent. The rapporteur also observes that some countries specify different ages for men and women in respect of marriage, authorising the marriage of underage girls. French legislation does so[27]. The rapporteur thinks that at all events this gender-based discrimination should cease and the statutory age should be the same for women and men.

32. Disputes may admittedly arise concerning the age at which a child is deemed capable of consenting in a fully mature, independent and enlightened manner to sexual relations or to marriage[28]. If no clear consent has been given by one or the other of the children concerned, it is plainly a case of forced marriage. For marriages before 10 years of age, consent is not even a material consideration. Children are not capable of consenting. Likewise, in

marriages at puberty or shortly afterwards, between about 10 and 14, there can be no question of consent. Someone so young cannot be expected to understand what is involved in accepting a lifetime partner. The question of matrimonial consent becomes more complex at age 15 or 16 when girls may have reached the statutory age of sexual consent. The rapporteur considers that a distinction should be drawn between the age of sexual maturity and the age of matrimonial consent. A child's having reached the age of sexual consent does not signify his or her readiness for marriage.

3. The consequences for married children

33. The specific implications of child marriages are many, ranging from restriction of their personal freedom to impact on health and education. For boys and girls alike, an early marriage has far-reaching physical, intellectual, psychological and emotional consequences. It cuts short the opportunities afforded by study and the chances of personal development. In addition, for girls early marriage nearly always means premature pregnancy and childbearing - the cause of high maternal mortality rates - and is likely to lead to a lifetime of domestic and sexual subservience over which they have no control. Teenage girls are also more subject than grown women to sexually transmissible diseases, HIV/Aids included. The prejudice entertained in several countries that sexual intercourse with a virgin cures HIV/Aids dangerously aggravates this situation of vulnerability.

34. Following the lead of Unicef, the rapporteur would like to develop this assessment in order to convince state authorities to put an end to the offending practices, seen as a major obstacle to the attainment of the rights of the child. "Forcing children, especially girls, into early marriages can be physically and emotionally harmful," says Carol Bellamy, Executive Director of Unicef[29]. The rapporteur agrees with the assertion that this practice violates the right to personal freedom and development. Hitherto no effort has ever been made to address the child marriage issue in terms of a *per se* violation of human rights as such. Child marriages are no longer permissible in our democratic societies. The rapporteur wholeheartedly endorses the recommendation of the Committee of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to the effect that the minimum age of marriage for both sexes should be 18, on the ground that "When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act."[30]

35. The rapporteur is therefore in favour of having marriage for children below 18 years of age prohibited on principle, since in her eyes there is no valid cause for the legitimation of underage marriage. Nor should child marriages contracted abroad be recognised. However, a child who is a victim of a child marriage should be accorded all rights which he/she could enjoy as husband or wife and which they could not claim otherwise.

III. State responsibility: requisite measures

36. The rapporteur observes that the whole issue of forced marriages hinges on the delicate balance between respect for cultural diversity and respect for human rights. In this instance however, considering the tragedies suffered by the victims, it is plain that human rights must not yield to the customs of a given community. Without stigmatising foreign communities, State authorities have an active duty to enforce human rights in their countries. It is a clear political issue of societal management and not a private matter confined within the family – or community – as might be claimed.

37. Aware that suitable legislation is necessary though not sufficient to end these undesirable situations, the rapporteur feels that governments should make adequate efforts to guard against the marriages at issue. Also, victims should be offered appropriate facilities for their recovery.

38. Firstly, national legislation should be brought into line with the fundamental principles of human rights in this regard, and the relevant international conventions should be ratified by the Council of Europe member states. Those of the European Union should enforce the European Parliament Resolution on the situation of women from minority groups in the European Union (2003/2109(INI)) of 9 March 2004[31]. Accordingly, for women of migrant origin, the primacy of the personal status laws of their country of origin is in no way justified and will need to be discarded in so far as its application infringes fundamental human rights. In effect, the application of international private law rules can sometimes lead to the recognition of

regulations of the country of origin which would be contrary to human rights, for example the recognition of repudiation as a means of ending a marriage contract. Similarly, the various countries' legislation should be harmonised so as to align the minimum legal age for women and men at eighteen full years. The Council of Europe member states should not recognise forced marriages and underage marriages contracted abroad except where recognition would be in the victims' best interests as regards the effects of the marriage, particularly to secure rights which they could not otherwise claim.

39. Furthermore, the consequences of the offending marriages must not be protracted. Accordingly, when in spite of all efforts to the contrary such a marriage has been contracted, national legislation must prescribe procedures to aid the dissolution of forced marriages and enjoin the courts to make prompt rulings, within not more than one year if practicable. Finally, to guard against concealed and undeclared marriages, it should be made compulsory to have every marriage declared and recorded by the appropriate authority in an official register. States should ensure that no marriage can be lawfully contracted without the free and full consent of both the future spouses. This consent must be expressed by each of the future spouses in person, before the authority empowered to celebrate the marriage and in the presence of witnesses, after adequate public notice has been given, in accordance with the provisions of the law. However, one party's obligatory presence may be dispensed with if the competent authority is satisfied that the circumstances are exceptional and that the absent party's consent has been expressed, and not withdrawn, before a proper authority in the manner prescribed by law.

40. Of course, legislative changes will not be sufficient to eradicate forced marriages and child marriages. Attitudes must also evolve, and the young women and girls affected by this practice must be protected.

41. Secondly, preventive measures and arrangements for the protection of victims will need to be applied. Anticipatory information and prevention work directed at the principal target groups can prove effective on the ground. For instance, activities organised in predetermined school catchment areas could have an impact on pupils of both sexes. In some schools, the gravity of the situation and sexist violence were brought home to pupils through role-playing in forced marriage situations. The speakers at the colloquy organised by MFPF considered this type of approach very instructive for the young participants[32], and it is seen by the rapporteur as a source of good practices for making young people appreciate values based on respect for human rights.

42. There must also be prior identification of potential victims among the young women, as some are disinclined to make sudden disclosures and others are not sufficiently conscious of their position. In this connection, Ms Drif submits that a request for contraception or for hymen repair surgery may point to a situation of violence and specifically one of forced marriage[33]. Social workers in contact with the young women concerned should look into the requester's real situation.

43. One conceivable measure is mediation to be developed with the family. Experts have a cautious approach to mediation. Ms Sen reported that in the United Kingdom, the Government suggested a solution of this kind which the feminist lobby sidestepped because of the inherent problem of domestic violence, extremely difficult to manage and placing the safety of the girls at risk[34]. Ms Drif stressed that mediation must be carried out with the girl's agreement as soon as she learned of the projected marriage, and the aim of negotiation would be to prevent not only the forced marriage but also a break with the parents[35]. The rapporteur is not convinced of the effectiveness of mediation in this type of situation. She therefore insists that mediation be carefully conducted, with experienced staff and in an extended time-frame. Moreover, the girls must be given shelter.

44. These considerations prompt the rapporteur to highlight the importance of informing and training social workers and generally the staff in contact with actual or potential victims.

45. With regard to certification of the authenticity of consent, for instance, Ms Drif[36] points out that when a girl is married before a Moroccan judge, the marriage can be transcribed in the French Consulate in Morocco in the girl's absence. The attendance of both spouses in person should therefore be stipulated.

46. When dealing with a young woman or a girl under threat of forced marriage, the first thing to advise is that she put her original papers (identity card or passport) in safe keeping outside the home[37]. This is an important precaution when the noose tightens: it is the only way to stop the parents sending their daughter away “on holiday” to the home country, where it is virtually impossible for her to escape the forced marriage. Where the papers are confiscated, the girl should report their theft to the competent authorities. She should leave the address of the intended holiday location[38].

47. In conclusion, the rapporteur asks the Assembly to adopt, on the one hand, a resolution that envisages legal measures regulating the right to marry and, on the other hand, a recommendation on practical measures to prevent forced marriages and child marriages and protect victims, as set out in the above draft.

Reporting committee: Committee on Equal Opportunities for Women and Men

Reference to Committee: Doc N° 9966, reference N° 2891 of 25 November 2003.

Draft resolution and draft recommendation unanimously adopted by the Committee on 3 June 2005.

Members of the Committee: Mrs Minodora Cliveti (Chairperson), Mrs Rosmarie **Zapfl-Helbling** (1st Vice-Chairperson), Mrs Anna **Curdova** (2nd Vice-Chairperson), Mrs Svetlana Smirnova (3rd Vice-Chairperson), Mrs Manuela **Aguiar**, Mrs Edita Angyalova, Mrs Antunovic,Mr John Austin, Mr Oleksiy Baburin, Mr Denis Badré (alternate: MrGuy **Branger**), Mrs Gülsün **Bilgehan**, Mrs Circene, Mr Brendan Daly, Mrs Krystyna Doktorowicz, Mrs Lydie **Err,** Mrs Catherine **Fautrier,** Mrs MariaEmelina **Fernández Soriano,** Mr George **Foulkes**, Mr Guiseppe Gaburro, Mr Pierre Goldberg, Ms Gultakin Hadjiyeva, Mrs Carina **Hägg**, Mr Hedeboe, Mrs Eleonora Katseli (alternate: MrsMaria **Damanaki**), Mrs Synnove Konglevoll, Mrs Monika Kryemadhi, Mrs Minna Lintonen, Mrs Danguté Mikutiene, Mrs Fausta Morganti, Mrs Hermine Naghdalyan, Mr Hilmo Neimarlija, Mrs Vera Oskina, Mrs Patrizia Paoletti Tangheroni, Ms Riorita Patereu, Mrs Fatma Pehlivan, Mrs Antigoni Pericleous-Papadopoulos, Mr Leo Platvoet, Mrs Majda Potrata, Mr Jeffrey Pullicino Orlando, Ms Valentina Radulovic-Ščepanovic, Mrs Claudia Roth, Mrs Marlene Rupprecht, Mr Össur Skarphédinsson, Mrs Darinka Stantcheva, Ms Agnes Vadai, Mrs Gisela **Wurm**, Mr Andrej Zernovski.

N.B. The names of the members who took part in the meeting are printed **in bold.**

Secretaries of the Committee: Mrs Kleinsorge, Mrs Affholder, Ms Devaux

---

[1] « Leïla, mariée de force », Oh! Editions, July 2004.

[2] Association Fatoumata pour l’émancipation des femmes.

[3] 2003 report of the Higher Council for Integration, p. 63.

[4] Seer Cedaw thematic shadow report 2003, Violence against women in the UK, P. Sen, C. Humphreys and L. Kelly, Womankind worldwide, pp. 26-29. See also Revealed : the child brides who are forced to marry in Britain, The Observer, 22 February 2004, and Femmes d’ailleurs - Multiplication des mariages forcés en Grande-Bretagne, Courrier international, 3 March 2004.

[5] Girls' Nightmare in Muslim Families: Forced Marriages in Europe, A. Kamguian, Institute for the Secularisation of Islamic Society http://www.secularislam.org/women/nightmare.htm.

[6] On this point, see Mariage forcé, un tabou qui perdure, C. Jama, association Voix de femmes.

[7] See also Mariages arrangés, mariages forcés, M. Roques, Lien social no. 627, 27 June 2002.

[8] See also the thesis by A. Leo Le mariage forcé chez les jeunes filles d'origine maghrébine: analyse d'une forme de violence, October 2003, published on the website of MFPF http://www.planning-familial.org/themes/theme04-violences/memoire.pdf.

[9] Professor at the London School of Economics (see next footnote).

[10] Minutes of the hearing in Antwerp on 18 October 2004 AS/Ega/violence (2004) PV 3.

[11] International colloquy on forced marriages, 4-5 November 2004, Paris, records unpublished to date.

[12] "Mariages forcés" by E. Rude-Antoine, article in "Le Monde" of 12 April 2005.

[13] Minutes of the hearing, op. cit, p. 6.

[14] See Mariage – concubinage – pacte civil de solidarité, Recueil Dalloz 2005, no. 12, pp. 809-818.

[15] Minutes of the hearing, op. cit., p. 9 – "mariage blanc" translates as "marriage of convenience".

[16]Id.; see also the aforementioned article by E. Rude-Antoine.

[17] See footnote 11.

[18] See Ms Sen, minutes of the aforementioned hearing, p. 6.

[19] See statement appended to the minutes of the hearing, op. cit.

[20] Minutes of the hearing, p. 6.

[21] Introductory document to the colloquy organised by MFPF, 4-5 November 2004, Paris.

[22] Stop violence against women - Turkey: women confronting family violence, Amnesty international, 2 June 2004.

[23] French title "Le mariage précoce", Innocenti Digest No. 7, March 2001 http://www.unicef-icdc.org/publications/.

[24] Unicef Report, op. cit., p. 2.

[25] http://www.romove.cz/fr/article/1854

[26] Article 1.

[27] Article 144 of the Civil Code: "A man who has not turned eighteen and a woman who has not turned fifteen may not contract a marriage". A recent bill envisages raising the age to eighteen for each of the future spouses.

[28] Unicef Report, p. 8.

[29] http://www.unicef-icdc.org/presscentre/

[30] General recommendation No. 21, 1994, paras. 36 and 37.

[31] See in particular paras. 17-20 on Roma women http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+P5-TA-2004-0153+0+DOC+XML+V0//FR&L=FR&LEVEL=3&NAV=S&LSTDOC=Y.

[32] See also the various preventive actions put in place by the Île-de-France regional task force for women's rights and equality.

[33] Minutes of the hearing, op. cit, p. 4.

[34] Minutes of the hearing, op. cit, p. 11.

[35] Minutes of the hearing, op. cit., p. 11.

[36] Minutes of the hearing, op. cit., p. 10.

[37] See Mariages forcés: 70 000 filles menacées ("forced marriages: 70 000 girls threatened), article in Le Parisien of 17 May 2004.

[38] See document "Mariages arrangés, mariages contraints, mariages forcés … se former pour agir", October 2004, published by the Délégation régionale aux droits des femmes et à l'égalité d'Île-de-France (regional task force for women's rights and equality).