

Doc. 11784
18 December 2008

Action to combat gender-based human rights violations, including abduction of women and girls

Report
Committee on Equal Opportunities for Women and Men
Rapporteur: Ms Antigoni PAPADOPOULOS, Cyprus, Alliance of Liberals and Democrats for Europe

Summary

Large numbers of women and girls in Europe today, most of them from immigrant communities, are at risk of being forcibly married, circumcised or enslaved, in the name of tradition, custom or religion. Often they are forced by their families to return to their countries of origin and, in some cases, abducted and illegally confined for that purpose.

Such practices, which constitute serious violations of human rights, shall be strongly condemned. Under the European Convention on Human Rights, member states have a duty to take action and to protect the victims. Owing to the rules of international private law governing the personal status of immigrants and persons with dual nationality, however, member states can find themselves frustrated in their efforts to identify, assist and repatriate victims.

Member states have a responsibility to do everything in their power to prevent and combat these practices and to protect the victims. No cultural or religious relativism can justify these acts.

The Assembly should invite member states to develop, at national level, policies to protect victims, prevent these violations and punish the perpetrators and, at international level, co-operation with the authorities in the countries of origin in order to strengthen women's rights and step up the fight against gender-based violence.

The Assembly should also invite the Committee of Ministers to draft as soon as possible a convention to combat the most serious and widespread forms of violence against women, including forced marriages, in keeping with Recommendation 1847 (2008) and to draft a new protocol to the European Convention on Human Rights on gender equality.

A. Draft resolution

1. Many countries in Europe are facing today problems of forced marriages, female genital mutilation and other serious human rights violations perpetrated against women and girls because of their gender. Estimates available in various countries indicate that thousands of women and girls, mostly from immigrant communities, are vulnerable to these forms of violence. While the practices in question are prohibited in Europe, these women and girls are victimised by the actions of their own families. They are abducted, illegally confined and, in some cases, forced to return to their countries of origin and, in the name of tradition, custom or religion, are forcibly married, circumcised or enslaved.
2. While it is encouraging to observe the progress made on women's rights in some countries of emigration, it is a setback that these practices tend to persist in immigrant communities in Europe, where certain traditions and rituals are perpetuated in the name of custom or religion. Forced marriages and human rights violations of this kind can often be an alibi to enable a non-national spouse to enter the country through family reunification.
3. The Parliamentary Assembly reaffirms that firm action must be taken to combat any human rights violation committed against women and girls. No physical or mental endangerment of a woman or girl is excusable in the name of cultural relativism. Under existing international instruments, and in particular the European Convention on Human Rights, all Council of Europe member states have an obligation to act, with due diligence, in such a way as to prevent such violations of human rights and fundamental freedoms.
4. Recalling its Resolution 1468 (2005) on forced marriages and child marriages, its Resolution 1247 (2001) on female genital mutilation and its extensive work on violence against women and trafficking in human beings, the Assembly considers that member states have a duty to do everything in their power to prevent and combat these practices, at both national and international level. Political determination is essential if these practices are to be eradicated.
5. The Assembly considers that member states should act both at national level, developing policies to protect victims, prevent violations and punish the perpetrators, and at international level, promoting women's rights and action against gender-based violence. At the same time, combating practices contrary to human rights such as forced marriages, female genital mutilation and any other form of gender-based violence should become a priority in the countries of origin, along with promoting women's rights and gender equality.
6. The Assembly notes that member states have difficulty in protecting victims or potential victims of practices contrary to human rights, especially when the victims have dual nationality, because under the rules of international private law or certain bilateral conventions, the consular missions of the member states have fewer opportunities to intervene in such cases.
7. The Assembly therefore calls on member states to do everything in their power, at national level, to:
 - 7.1. amend, if they have not already done so, their legislation, so as to prohibit and penalise, without any difference in treatment, all forced marriages (in accordance with Parliamentary Assembly Resolution 1468 (2005)), female genital mutilation and any other gender-based violations of human rights, also performed in the name of cultural or religious relativism;
 - 7.2. promote networking among social and political players with a view to exchanging information, and encourage concerted public action;
 - 7.3. prosecute abductions, illegal confinements and forced returns of women or girls when there is a known risk of their being subjected to practices such as forced marriage or female genital mutilation which are contrary to human rights and Council of Europe values;
 - 7.4. implement preventive measures, which might include:
 - 7.4.1. awareness and training programmes for women and girls and their family circles on respect for fundamental rights, the promotion of equality between women and men and the fight against practices contrary to human rights, particularly where these are based on gender;
 - 7.4.2. provision of information about the laws in force, made available in the languages of the communities concerned, highlighting the risks incurred by offenders and the protection arrangements that exist;

7.4.3. provision of information targeted at girls in the communities concerned about the protection arrangements available in the host country;

7.4.4. support for non-governmental organisations with a view to informing immigrant communities about any improvements in the law with regard to women's rights that might have occurred in the countries of origin and any changes in attitudes;

7.5. make arrangements to assist victims so as to ensure their protection (shelters, helplines) and their social and occupational reintegration after their return to their home country;

7.6. set up awareness and training programmes on gender-related violence for police forces (including border police), courts and health systems;

7.7. introduce an early warning system to enable relatives of victims or potential victims of gender-based violence to alert the authorities in the country of residence (and, where appropriate, its consular missions) to abductions, illegal confinements and any forced or arbitrary return of these victims to their countries of origin so that an official investigation can be launched and, where possible, introduce victim protection measures, such as issuing an order prohibiting them from leaving the country.

8. The Assembly further invites the member states, in their international relations, to:

8.1. increase awareness of the consular staff, through training and practical guides, on gender equality issues in the countries of origin, on the existing statutory arrangements concerning women's rights and their application, and on the serious risks facing women and girls who, in the name of practices contrary to human rights, are forcibly or arbitrarily returned to their countries of origin;

8.2. develop, for consular staff in particular, clear response protocols, setting out the procedures for locating and identifying victims, for facilitating their access to the consulate of the country where they are habitually resident and for facilitating their return and reintegration;

8.3. develop co-operation procedures with the national and local authorities in the countries of origin encouraging them to intercede with the families concerned so as to prevent or stop human rights violations and, where appropriate, impose the penalties prescribed by law;

8.4. introduce co-operation programmes with non-governmental organisations in the countries of origin in order to enable victims to be located and identified and to make the establishment of contacts with the victim's family easier;

8.5. speed up the granting of a return visa to any woman or girl victim of a violation of human rights, particularly when the original residence permit has expired;

8.6. step up co-operation with the authorities of the countries of origin and, through training programmes and financial assistance for example, encourage them to:

8.6.1. amend their legislation, if they have not yet done so, to prohibit any ritual or customary practices contrary to human rights in accordance with international legal instruments, particularly the United Nations Declaration on the Elimination of Violence against Women;

8.6.2. enact laws to give women more independence, improve gender equality and combat violence against women;

8.6.3. pursue vigorous policies to raise awareness of this legislation and ensure its effective application, both in urban and rural areas;

8.7. support non-governmental organisations in host countries and countries of origin, which play a vital role in prevention and assistance in this area and can act as a bridge between immigrant communities and their countries of origin.

B. Draft recommendation

1. Many countries in Europe are facing today problems of forced marriages, female genital mutilation and other serious human rights violations perpetrated against women and girls because of their gender. Estimates available in various countries indicate that thousands of women and girls, mostly from immigrant communities, are vulnerable to these forms of violence. While the practices in question are prohibited in Europe, these women and girls are victimised by the actions of their own families. They are abducted, illegally confined and, in some cases, forced to return to their countries of origin and, in the name of tradition, custom or religion, are forcibly married, circumcised or enslaved.

2. Recalling its Resolution (2008) on action to combat gender-based human rights violations, including abduction of women and girls, the Parliamentary Assembly requests that the Committee of Ministers:

2.1. draft as soon as possible a convention to combat the most serious and widespread forms of violence against women, including forced marriages, in keeping with Assembly Recommendation 1847 (2008);

2.2. encourage the European Centre for Global Interdependence and Solidarity (North-South Centre) to step up its programmes on gender equality and combating gender-based violence and continue the dialogue with countries of emigration and countries of immigration on gender equality issues, notably in civil law, and combating serious violations of human rights.

3. Recalling its Recommendation 1798 (2007) on respect for the principle of gender equality in civil law, the Assembly invites the Committee of Ministers to implement its provisions without further delay and in particular reiterates its demand that a new protocol to the European Convention on Human Rights on gender equality be drawn up.

C. Explanatory memorandum by Mrs Papadopoulos, rapporteur

Table of contents

	Pages
I. Background	5
II. Context and scope of the report	6
III. The authorities' role in protecting the victim and preventing abduction and confinement	8
IV. Encourage member states to combat breaches of human rights and remedy cases of abduction and illegal confinement	9
V. Some possible courses of action	10

I. Background

1. In March 2006 the Assembly Bureau seized the Committee on Equal Opportunities for Women and Men for report on the motion for a resolution entitled "Abduction and 're-education' of Muslim women and children who have become too 'Western-minded'". The motion stated that women and girls of immigrant communities in Council of Europe member countries were being abducted to their countries of origin (the Maghreb, Turkey, Syria, Iran, etc.) by family members who thought they had become too modern and too emancipated or because they rejected their families' marriage choice. The committee appointed Ms Bousakla (Belgium, SOC) as its rapporteur.

2. At its first discussion of the subject on 14 September 2006, the committee agreed to give thought to a change of report title and to base its work on specific cases and fact-finding visits. On 6 September 2007, at the suggestion of its Chair, Ms Bilgehan, it decided to reword the title to read "Abduction and illegal confinement of women and children motivated by practices contrary to human rights" so as to widen the topic and take in communities settled in Europe where traditions persisted which were being used to justify infringements of women's basic rights. This refocused the report on human-rights violations suffered by women and girls of communities which, notably abductions and illegal confinements, whether in the host country or the country of origin, aimed at imposing, in the name of tradition or religion, practices which were contrary to human rights (in particular forced early marriage and female genital mutilation).

3. As Ms Bousakla was no longer able to continue as rapporteur, the committee appointed me as rapporteur on 4 October 2007 to continue the newly reoriented work. The committee decided to organise, on 11 March 2008, an exchange of views on the means of action and prevention that member states might develop in order to promote respect for the fundamental rights of girls and women who were at serious risk for reasons of gender. This exchange of views was attended by Ms Hanna Siddiqui, joint co-ordinator of "Southall Black Sisters" (United Kingdom), Mr Svenn Joar Bjerkern, Adviser, Ministry of Foreign Affairs of Norway, Consular Services and Security Section, Ms Christine Jama, Director of "Voix des Femmes" (France), and Ms Gül Ayse Basari, adviser to the "Orientexpress" women's association, Austria¹.

4. In order to gather additional information, I have invited the national delegations to the PACE to answer a questionnaire². The delegations of Belgium, Denmark, Finland, France, Germany, Norway, Switzerland and Turkey did reply to this questionnaire noting that they do experience such problems. Lithuania, Luxembourg, Monaco and Poland have indicated that the problem does not occur in their countries. During a fact-finding visit to Morocco on 28-29 October 2008, the Co-secretary of the PACE Committee on Equal Opportunities for Women and Men, Ms Sylvie Affholder and myself, were informed by the Moroccan authorities and non-governmental organisations of the progress made on women's rights and of the difficulties that still exist when it comes to implementing new measures on equality issues. During the visit, we had also the opportunity to exchange views with consular officials from 12 Council of Europe member states organised under the auspices of the Swedish Ambassador³, Mr Odevall, and to compare consular practice regarding victim support.

¹ See declassified minutes of the hearing, AS/Ega (2008) PV 2 addendum.

² See Doc. AS/Ega (2008) 14 rev, referred to hereafter as "PACE questionnaire", available on request from the secretariat of the Committee on Equal Opportunities for Women and Men.

³ Sweden chaired the Committee of Ministers of the Council of Europe from May 2008 until November 2008.

5. During a fact-finding visit to Morocco on 28-29 October 2008⁴, the Co-secretary of the PACE Committee on Equal Opportunities for Women and Men, Ms Sylvie Affholder and myself notably met Ms Latifa Akherbach, State Secretary of Foreign Affairs and Co-operation, Ms Nouza Skalli, Minister of Social Development, Family and Solidarity, Ms Bassima Haqquaoui, Chairperson of the Standing Committee in charge of social affairs of the Chamber of Deputies, Ambassador Bruno Dethomas, Head of the EU Delegation to Morocco, as well as representatives of the Democratic League of Women's rights (LDDF), the Association of Women's Rights in Morocco (ADFM), the Ytto Foundation and UNIFEM. We were informed by the Moroccan authorities and non-governmental organisations of the progress made on women's rights and of the difficulties that still exist when it comes to implementing new measures on equality issues. During the visit, we had also the opportunity to exchange views with consular officials from 12 Council of Europe member states organised under the auspices of the Swedish Ambassador⁵, Mr Odevall, and to compare consular practice regarding victim support.

6. My priority task, therefore, is to frame the problem and gauge its extent. The problem is a serious one, in some countries, even though it may prove to be marginal in others. It seems hard to evaluate, how many women and girls fall victims to abduction and/or illegal confinement and are at risk of serious interferences with their basic rights, because the victims are often returned to the country of origin or placed with relatives and vanish from the statistics. The second task of this report is to pay more attention to how member countries, at the national level, can prevent such occurrences and protect women and girls from grave interference when custom, tradition or religion pose a threat to personhood and also at the international level, how they can take preventive and protective action when women or girls – whether nationals or habitual residents – fall victims, or risk falling victims, to such practices.

7. Exact statistical figures are not readily available and, indeed, are sadly lacking. In Switzerland however, 17,000 forced marriages are estimated to have already taken place or be in progress, while some 7,000 women and girls have apparently been victims of genital mutilation or have been threatened with it. The likelihood is, moreover, that such offences also involve individuals being abducted and/or illegally confined⁶. The "Women's Earth" association in Germany comes across between 170 and 190 women victims of forced marriages every year. In 2007, 48 of them were abducted and/or illegally confined in order to be forcibly married abroad. According to the report produced by the Bundestag in 2006 based on estimates by NGOs, 30,000 women could be at risk of female genital mutilation⁷. The Forced Marriage Unit in the United Kingdom deals with 400 cases every year⁸. In France, some 70,000 girls between the ages of 10 and 18 are at risk of forced marriage and 65,000 women and girls are mutilated or threatened with mutilation⁹. Although they are only estimates, the above figures do suggest that thousands of women in Europe are at risk of serious human rights violations, because of their gender and origin.

II. Context and scope of the report

8. First of all, I would like to describe the context of such abductions and illegal confinements and to identify how they can be averted or remedied. The report restricts itself to cases of abduction or illegal confinement possibly resulting in practices classed as serious contraventions of basic human rights, such as forced marriage, female genital mutilation, slavery or gender-related violence (notably rape). It does not deal with abductions of children of mixed-nationality partnerships in which the partners are in dispute over custody, because that is a matter dealt with by other legal instruments.

9. The practices contrary to human rights, under consideration in this report, are mainly attributable to the great pressures exerted in some immigrant or other communities with markedly patriarchal cultures which regard preserving family honour or maintaining ancestral customs (forced marriage, female genital mutilation, etc.) has taking precedence over basic human rights and which view the group as taking precedence over the individual. Needless to say, this has a paralysing effect on integration and emancipation of women and girls (particularly in Muslim, Hindu and Sikh communities)¹⁰ in the host countries.

⁴ See Doc. AS/Ega/Inf (2008) 9.

⁵ Sweden chaired the Committee of Ministers of the Council of Europe from May 2008 until November 2008.

⁶ Estimates supplied by the Federal Department of Foreign Affairs of Switzerland in its reply to the PACE questionnaire.

⁷ Germany's reply to the PACE questionnaire.

⁸ See <http://www.fco.gov.uk>

⁹ France's reply to the PACE questionnaire.

¹⁰ Ain O Salish Kendra (ASK) and Shirkat Gah, Interights submission to the Home Office Working Group information-gathering exercise on forced marriages, March 2000.

10. Abduction of women and girls may be accompanied by isolation in the country of origin, illegal confinement or “resocialisation” to make them adopt ways regarded as compatible with local customs. Parents who arrange such abductions may be planning a forced marriage. In extreme cases daughters may be returned to the country of origin in order to undergo genital mutilation in the name of tradition. This particular form of violence also renders them more vulnerable to HIV/Aids.

11. Two cases need distinguishing. When the breach of human rights takes place on the territory of a Council of Europe member state any infringement of basic human rights should be punishable, with no difference of treatment in the name of cultural relativism. No attempt to justify such an infringement on the ground of a particular practice or custom is acceptable.

12. The question becomes more complex when the infringement takes place in a third country, the woman or girl being returned to a country of origin where the practice contrary to human rights persists and is tolerated, whether in law or fact. In such cases what scope is there for Council of Europe member countries to protect and assist victims of human-rights infringements, given that they may have dual nationality and given also the rules of public international law on, for example, consular protection? Faced with a woman’s disappearance in such cases, the immediate entourage often feels powerless to assist. A school can but note a pupil’s absence at the start of a new term. Relatives cannot instigate an official search or investigation. The crime goes unpunished.

13. Abductions or illegal confinements involve removing adult women, or girls, from their life setting, in some cases sending them to family in the country of origin, because their behaviour is judged to have become inappropriate to the role which traditional society assigns to them. The aim is to resocialise them in accordance with the parents’ life choices.

14. There have been cases of countries taking steps – possibly in response to a wave of public protest – to assist victims and facilitate their return to the host country. I have taken two examples, one involving a girl, the other an adult woman.

15. In February 2000 the parents of Fatoumata, a pupil at a *lycée* in France, decided they could not tolerate her associating with a young man who was neither Muslim or Senegalese. Feeling betrayed by his daughter, the father had stopped speaking to her. While on holiday at her grandparents’ home in Senegal she was persuaded by her father to let him have her passport, supposedly so that he could arrange for a week’s extension of her visit. Instead she was taken to the family’s remote village in the Casamance region, a place without telephones or electricity. Her father admitted to her that he had joined her to prevent her from returning to France, a country which he said had destroyed his family and hopes. In France Fatoumata’s school, which had no trace of her, went into action, appealed to the home affairs minister and collected 600 signatures among her fellow pupils. The petition was handed over to Viviane Wade, the wife of the Senegalese president, while she was on a visit to the Senegalese embassy in Paris. Thanks to the combined efforts of the French and Senegalese authorities, Fatoumata succeeded in returning to France in July 2000, probably thus escaping a forced marriage¹¹.

16. In August 1997 Nadia F., an 18-year-old with dual Norwegian and Moroccan nationality living in Norway with her family, was drugged by her parents and taken by force to the Rif region of Morocco. Her father was unable to accept the way of life Nadia had adopted in Norway. Though held against her will, Nadia managed to get to a phone and alert her former employer, who reported the matter to the Norwegian authorities. The Norwegian foreign ministry asked the Norwegian embassy in Rabat to have the matter investigated. This was the sixth such case in the space of 18 months. The Norwegian and Moroccan foreign ministries and home affairs ministries co-operated on the case. The Norwegian ambassador contacted Nadia’s father in an unsuccessful attempt to negotiate. An Interpol arrest warrant was issued. The case received media coverage in both Morocco and Norway. The father was forced to let his daughter return to Norway, where the authorities found her a job in the education ministry. Because she then came under pressure from her community of origin the Norwegian authorities transferred her to a secret location. Her husband and employer made a complaint against the parents for abduction, illegal confinement and attempted forced marriage, though the third of these grounds had to be dropped for lack of evidence. On 10 November 1998, allowance being made for the family context and after Nadia had pleaded for leniency, the father and mother were given suspended prison sentences of 15 months and 12 months respectively, fined and ordered to pay the costs of the case¹².

¹¹ Fatoumata Association for Women’s Emancipation, <http://afef.free.fr/>

¹² www.maroc-hebdo.press.ma

17. In these two cases, a solution could be found – but is it always the case? Even these two examples show how difficult it is for the authorities to identify the danger situations facing women and girls, if necessary instigate an official search and enlist a third country's co-operation, assist the victim and find a solution to the family conflict.

III. The authorities' role in protecting the victim and preventing abduction and confinement

18. Whereas it is difficult to assess how many abductions and confinements are committed against women, I would like to recall the figures mentioned by Ms Rosmarie Zapfl-Helbling (Switzerland, EPP/CD), Parliamentary Assembly rapporteur on forced marriages and child marriages in 2005: "Today in France, 70 000 persons are estimated to be at risk of forced marriage. 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. (...) 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)¹³.

19. I regard it as member states' duty to do everything in their power to protect victims or potential victims and prevent gender-related infringements of basic rights.

20. I would draw attention to the Assembly's work on forced marriage and child marriage¹⁴ and on female genital mutilation¹⁵, which are practices contrary to human rights. In particular Ms Zapfl-Helbling pointed out states' responsibilities and said that "governments should make adequate efforts to guard against such marriages"¹⁶.

21. Council of Europe member countries have a duty to take action and protect women in this matter under the United Nations Convention on the Elimination of All Forms of Discrimination against Women and the European Convention on Human Rights. In this connection it is worth drawing attention to:

- article 4 of the 1993 United Nations Declaration on the Elimination of Violence against Women, which calls on states to "pursue by all appropriate means and without delay a policy of eliminating violence against women"¹⁷ and, for that purpose, "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women whether those acts are perpetrated by the State or by private persons";

- article 2.2 of the 1989 United Nations Convention on the Rights of the Child: "States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members". Article 11.1 adds: "States Parties shall take measures to combat the illicit transfer and non-return of children abroad". Article 11.2 provides: "To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements;

- the legal instruments of the Hague Conference on Private International Law (the 1996 Convention on the Protection of Children for example) also shed light on the issues for us in terms of the child's best interests.

22. When offences are committed in a third country against a national of a Council of Europe member state, consular protection, which is governed by the 1930 Hague Convention, may sometimes, given developments in public international law, allow a state party, in exceptional cases and subject to the rules of public international law, to give diplomatic or consular protection or assistance to any of its nationals who also has another nationality, for example in cases of child abduction¹⁸.

¹³ Document 10590. See also CDEG (2005) 1 on Forced marriages in Council of Europe member states, A comparative study of legislation and political initiatives, Prepared by Ms Edwige Rude-Antoine, Doctor of Law, Research Officer CERSES/CNRS.

¹⁴ Resolution 1468 (2005), Recommendation 1723 (2005) and document 10590 (rapporteur Ms Zapfl-Helbling, Switzerland, EPP/CD).

¹⁵ Resolution 1241 (2001) and document 9076 (rapporteur Ms Vermot-Mangold, Switzerland, SOC).

¹⁶ Document 10590, paragraph 37.

¹⁷ See also the conclusions of the 51st session of the Commission on the Status of Women, on the elimination of all forms of discrimination and violence against the girl child.

¹⁸ Paragraph 102 of the explanatory report to the European Convention on Nationality, Article 4.

23. However, in spite of international obligations taken on by member states, the risks run by women and girls who undergo the burden of customs and traditions are still misunderstood or misinterpreted. We are reminded of the furore caused in Italy by the Supreme Court ruling in August 2007 which acquitted Fatima's parents, a young girl who had been tied up, kidnapped and beaten by her father "not for reasons of persecution or contempt" said the Court but because "the girl's behaviour was judged to be incorrect". Bologne's prosecutor, who had sought to appeal against the acquittal, considered for his part that Fatima had been kidnapped and tied to a chair, "then liberated only once she had be brutally beaten by her parents who wanted to punish her for spending time with a male friend and more generally for her lifestyle"¹⁹.

IV. Encourage member states to combat breaches of human rights and remedy cases of abduction and illegal confinement

24. In this Parliamentary Assembly report I would like to highlight the good practices developed in Council of Europe member countries. As illustrated by the two examples already given, the public authorities and civil society have a role to play in exposing, combating, preventing and, in appropriate cases, punishing acts of violence. I would like to suggest three focuses for our work:

Development of intervention measures for assisting victims or potential victims of breaches of basic rights. Such measures could include:

- in the Council of Europe member countries, the aid available for victims (shelters, telephone lines, protection measures for victims of practices contrary to their human rights) and training programmes for the police, magistrates and social workers aimed at helping them to better understand the risks run by women and girls and the traditional practices that go against a person's human rights and put women and girls' physical and mental well-being in danger. Creating networks between all the parties involved is likewise essential to ensure detection, assistance and full support for victims²⁰;
- in third countries, co-operation with embassies or consulates and local NGO networks; gender training for foreign affairs staff; allowing consulates to be proactive and seek national authorities' help in tracing women or girls who are suspected victims of infringements of human rights; closer legal cooperation both between European countries and with the authorities in countries of origin and the host countries; and providing police and judges in countries of origin with training in action to combat forced marriage, female genital mutilation and other practices contrary to human rights;
- attention should be drawn here to the good practices identified while preparing this report. Finland has plans to provide assistance to persons in distress who ordinarily reside in Finland and are temporarily in a third country. Particularly in cases where this distress is caused by illegal confinement, the diplomatic mission can inform the competent authorities in the third country and also the competent Finnish authorities, facilitate communication between the competent authorities and the person who has been unlawfully deprived of their freedom and also their family and follow up the case with the authorities in the third country²¹.

Introduction of prevention measures, in particular targeting younger women and their families. Prevention might include producing a practical guide for dual nationals on victim assistance measures, including diplomatic protection; assistance to NGOs active in promoting women's rights in the countries of origin and in the host countries; awareness-raising campaigns and information drives on forced marriage and female genital mutilation; setting up victim assistance facilities in the Council of Europe countries and countries of origin; setting up mediation and conciliation facilities to facilitate dialogue with parents if that is at all possible.

Some states have opted for an active policy of action against forced marriages and arranged marriages. During the committee discussions, I was told that Austria has introduced stringent administrative requirements in an effort to prevent marriages of convenience. In the United Kingdom, with the entry into force on 25 November 2008 of the Forced Marriage (Civil Protection) Act 2007, the minimum age at which

¹⁹ Eric Jozsef, La justice italienne absout la charia en famille, Libération, 10 août 2007

²⁰ In France, the association "Voix des femmes" is thus calling for an early-warning unit to be set up, which would bring together various institutions and associations to facilitate prevention and assistance for persons at risk of forced marriage. See AS/Ega (2008) PV2 addendum.

²¹ Finland's reply to the PACE questionnaire

a person can obtain a marriage visa to enter the United Kingdom has been raised to 21²², as has the minimum age for British nationals wishing to marry abroad. The prior permission of the Home Office will be required if the marriage is contracted before the minimum age.

During my fact-finding visit to Morocco, I observed that consulates often admit to being powerless when victims of forced or arranged marriages also have Moroccan nationality. In some cases, where a victim is able to be identified by the consular services, a “case-by-case” approach can lead to the girl being repatriated. According to NGOs working in the field, however, such cases are extremely rare and are merely the tip of the iceberg. Several consular officials, moreover, said they had to “improvise”, the most they could do in some cases (marriages involving under-age girls, for example²³) being to delay the granting of a visa until the spouse reached the age of 18.

Verification protocols in consulates, however, could help to combat forced marriages for the purpose of migration. The French consulate, for example, has introduced procedures for vetting civil marriages, which include interviewing the spouses separately if one of them is under age. In case of doubt, or if there is sufficient evidence, the consul can refer the matter to the Prosecutor of Nantes who has the power to annul the marriage, within a time-limit of 5 years, in case of lack of consent or if the marriage was contracted fraudulently²⁴.

Lastly, bilateral agreements could be concluded or revised so that, for example, consular authorities of a country of which a woman or girl had the nationality or was a habitual resident could take protective measures. This would include having access to them, being allowed to interview them face to face in private, and arranging for legal representation. It is worth noting here that under the bilateral convention between Belgium and Morocco, the two countries’ ministries of justice have set up a joint commission to enable the Belgian consular authorities to work with the local Moroccan authorities. In the event of a family dispute (e.g. between a father and a mother habitually resident in Belgium concerning the custody or place of residence of their child)²⁵, the joint commission can be asked to request the Moroccan authorities to begin mediation with the family concerned, and in particular to apply the provisions of the family code adopted in 2003, which represents a major step forward in terms of women’s rights in Morocco. A similar procedure should be introduced to enable friends and relatives of victims of gender-based violence habitually resident in Europe to alert consular officials and initiate co-operation with the authorities in the country of origin.

V. Some possible courses of action

25. The Parliamentary Assembly should make it clear that any abduction or illegal confinement of women or girls in the name of practices contrary to human rights is to be firmly condemned and must give rise to countermeasures: no physical or mental endangerment of a woman or girl is excusable in the name of cultural relativism.

26. The Assembly should call on member states to do everything in their power to reinforce prevention of forced marriage and any practice contrary to human rights in the host country or the country of origin, alert public authorities and consular authorities to the serious risks to which women and girls forcibly or arbitrarily returned to their countries of origin are exposed.

27. In particular the Assembly could call on member states to:

- amend, if they have not already done so, their legislation prohibiting and penalising forced marriages (in accordance with Parliamentary Assembly Resolution 1468 (2005)), female genital mutilation and any other gender-based violations of human rights;

²² 30% of cases dealt with by the Forced Marriage Unit involved victims aged between 18 and 21 years (cf *Law Society Gazette*, 9 October 2008).

²³ Under the new family code, adopted in 2003, the statutory age for marriage is 18, unless a court gives prior approval. In 2007, the courts received 38,710 requests for under-age marriages, 86.79% of which were approved. Source: Ministry of Justice report cited in the 2007 report “Droit des femmes et Code de la famille, après 4 ans d’application” by *la Ligue Démocratique pour les Droits des Femmes du Maroc*.

²⁴ In 2007, the French consulate in Rabat registered 1,400 marriages (the majority of them involving persons with dual nationality). In 200 cases, the Prosecutor of Nantes was asked to annul the marriage for lack of consent. In 10 cases (i.e. 5% of cases brought) it was found that the marriage was forced.

²⁵ In Morocco, only the father has parental authority. He can thus refuse to allow his children to leave Moroccan territory.

- prosecute abductions, illegal confinements and forced returns of women or girls when there is a known risk of their being subjected to practices such as forced marriage or female genital mutilation which are contrary to human rights and Council of Europe values;
- introduce procedures at consulates to facilitate the identification of victims and speed up the granting of a return visa to any woman or girl victim of a violation of human rights, particularly when the original residence permit has expired;
- implement preventive measures, which might include:
 - awareness and training programmes for women and girls and their family circles on respect for fundamental rights, the promotion of equality between women and men and the fight against practices contrary to human rights, particularly where these are based on gender;
 - provision of information about the laws in force, made available in the languages of the communities concerned, highlighting the risks incurred by offenders and the protection arrangements that exist;
 - provision of information targeted at girls in the communities concerned about the protection arrangements available in the host country;
- make arrangements to assist victims so as to ensure their protection (shelters, helplines) or their social and occupational reintegration after their return to their home country;
- set up awareness and training programmes on gender-related violence for police forces (including border police), courts, health systems and consular authorities;
- support non-governmental organisations in host countries and countries of origin, which play a vital role in prevention and assistance in this sphere;
- facilitate networking among social and political players with a view to concerted public action;
- reinforce co-operation with the authorities of the countries of origin and encourage them to:
 - amend their legislation, if they have not yet done so, to prohibit any ritual or customary practices contrary to human rights in accordance with international legal instruments, particularly the United Nations Declaration on the Elimination of Violence against Women, and pursue vigorous policies to ensure the application thereof;
 - prosecute gender-based violations of human rights;
 - locate and identify victims and facilitate their access to the consulate of the country where they are habitually resident.

28. The Parliamentary Assembly should encourage the Council of Europe to draft as soon as possible a Convention to combat the most serious and widespread forms of violence against women, including forced marriages, according to Recommendation 1847 (2008). It should also promote in collaboration with the North-South Centre, the issue of gender equality (notably in civil law) as well as concerted action against gender-based violence through closer co-operation between emigration and immigration countries.

29. In respect of the principle of gender equality in civil law, I would finally like to recall the Assembly's notice, in its Recommendation 1798 (2007), that is: "Regarding the principle of gender equality in private international relations, rules of private international law providing for attachment to the husband's or father's national law are especially worrisome, as is the inequality resulting from the application of discriminatory rules of foreign law". It therefore invited the Committee of Ministers to "draw up a new protocol to the European Convention on Human Rights enshrining gender equality as a fundamental human right with pre-eminence over any provision deriving from, or applicable under, private international law agreements or conventions".

30. Arguing that "several legal instruments aimed at combating both all forms of discrimination against and violence towards women, have already been adopted", the Committee of Ministers replied that, at that stage, it did "not see the need for drafting a new protocol to the European Convention on Human Rights",

as the Assembly proposed in paragraph 9.1 of its recommendation.²⁶ I do not share this view. The reality faced by abducted women subject to human rights violations show that these instruments are not sufficient to provide adequate protection of the victims. I strongly believe that such a Protocol would enhance the protection of women and prevent the importation of discriminatory practices from abroad, which may be contrary to the principle of gender equality or even constitute a violation of human rights, as explained in this report. Therefore the Assembly should reiterate its demand to the Committee of Ministers that a new protocol on gender equality to the European Convention on Human Rights be drawn up

²⁶ Doc. 11648

Reporting committee: Committee on Equal Opportunities for Women and Men

Reference to committee: Doc. 10753, reference No. 3200 of 17 March 2006, extended on 29 May 2008

Draft resolution and draft recommendation unanimously adopted by the committee on 5 December 2008.

Members of the committee: Mr Steingrímur J. Sigfússon (Chairperson), Mr José **Mendes Bota** (1st Vice-Chairperson), Mrs Ingrida **Circene** (2nd Vice-Chairperson), Mrs Anna **Čurdová** (3rd Vice-Chairperson), Mr Frank Aaen, Mr Francis Agius, Mr John **Austin**, Mr Lokman **Ayva**, Ms Marielouise Beck, Mrs Anna Benaki (alternate: Mr Ioannis **Giannellis-Theodosiadis**), Mr Laurent Béteille, Mrs Oksana Bilozir, Ms María Delia Blanco Terán, Mrs Olena Bondarenko, Mr Pedrag Bošcović, Ms Anna Maria **Carlioni**, Mr James Clappison, Mrs Minodora Cliveti, Ms Diana Çuli, Mr Ivica Dačić, Mr David Darchiashvili, Mrs Lydie Err, Mrs Catherine Fautrier, Mrs Mirjana Ferić-Vac, Ms Sonia Fertuzinhos, Mrs Alena **Gajdušková**, Mr Guiseppe Galati, Mrs Claude Greff, Mr Attila **Gruber**, Mrs Carina **Hägg**, Mr Ilie Ilașcu, Mrs Fatme Ilyaz, Ms Francine John-Calame, Ms Nataša Jovanović, Mrs Birgen **Keleş**, Mrs Krista Kiuru, Mrs Angela Leahu, Mr Terry Leyden, Mrs Mirjana Malić, Mrs Nursuna **Memecan**, Mrs Danguté Mikutienė, Mr Burkhardt Müller-Sönksen, Mrs Christine **Muttonen**, Mrs Hermine Naghdalyan, Ms Fiamma Nirenstein, Mrs Yuliya Novikova, Mr Mark Oaten (alternate: Ms Christine **McCafferty**), Mr Kent Olsson, Mr Jaroslav Paška, Mrs Antigoni **Papadopoulos**, Mr Claudio Podeschi, Mrs Majda Potrata, Ms M^a del Carmen **Quintanilla Barba**, Mr Frédéric Reiss, Mrs Mailis Reps, Ms Maria Pilar Riba Font, Ms Jadwiga Rotnicka, Mrs Marlene Rupprecht, Mrs Klára **Sándor**, Ms Miet **Smet**, Mme Albertina Soliani, Mrs Darinka **Stantcheva**, Mrs Tineke Strik, Mr Michał Stuligrosz, Mrs Doris **Stump**, Mr Han Ten Broeke, Mr Vasile Ioan Dănuț Ungureanu, Mrs Tatiana Volozhinskaya, Mr Marek **Wikiński**, Mr Paul Wille, Mrs Betty Williams (alternate: Baroness Anita **Gale**), Mr Gert Winkelmeier, Ms Karin S. Woldseth, Mrs Gisela **Wurm**, Mr Andrej Zernovski, Mr Vladimir Zhidkikh, Mrs Anna Roudoula **Zissi**.

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

Secretariat of the committee: Mrs Kleinsorge, Mrs Affholder, Mrs Devaux