

## TABLE OF CONTENTS

<i>Alphabetical list of acronyms, state institutions and non-governmental organizations</i> .....	1
<i>Key words and concepts</i> .....	3
<b>Introduction</b> .....	<b>5</b>
<b>1. Beyond appearances: definitions and mechanisms</b> .....	<b>7</b>
1.1. Defining violence against women .....	<u>8</u>
1.2. The obligation of the State .....	<u>10</u>
1.3. What violence are we talking about? .....	<u>12</u>
<b>2. Violence in and around the domestic sphere</b> .....	<b>13</b>
2.1. The law in France .....	<u>14</u>
2.1.1. <i>Recent progress</i> .....	14
2.1.2. <i>Measures taken by the State</i> .....	14
2.1.3. <i>How violence against women is handled by the courts</i> .....	17
2.1.4. <i>Civil action does not seek to punish the perpetrator and only applies to married women</i> .....	<u>17</u>
2.1.5. <i>Criminal Proceedings</i> .....	<u>20</u>
2.1.6. <i>Criminal prosecution is not sufficient to provide protection</i> .....	<u>20</u>
2.1.7. <i>Some examples of good practice: the Douai public prosecutor’s office</i> ...	<u>21</u>
2.1.8. <i>Spain a framework law to tackle gender violence</i> .....	<u>23</u>
2.1.9. <i>The difficulties and contradictions arising from the lack of connection between civil and criminal proceedings in cases of domestic violence</i> .....	23
2.2. Amendments to the law are still needed .....	24
2.2.1. <i>Creating an offence of “repeated violence”</i> .....	24
2.2.2. <i>Domestic violence also affects “exes”</i> .....	<u>25</u>
2.3. The failure of the State to exercise diligence in prosecuting the perpetrators .	<u>26</u>
2.3.1. <i>Little chance of the perpetrators of domestic violence being brought to justice</i> .....	26
2.3.2. <i>The diversity of practice throughout the country</i> .....	27
2.4. Access to justice of practice throughout the country .....	<u>27</u>
2.4.1. <i>The difficulty women have in lodging complaints</i> .....	<u>27</u>
2.4.2. <i>Reporting domestic violence can turn women’s lives upside down</i> .....	<u>28</u>
2.4.3. <i>Complicated procedures and inadequate support and housing solutions</i> .....	<u>29</u>
2.4.4. <i>Reporting cases to the authorities: the initial obstacles</i> .....	30
2.4.5. <i>Proving and assessing domestic violence</i> .....	32
2.4.6. <i>ITT is a confused concept despite the explanations given in case law</i> ....	<u>33</u>
2.4.7. <i>The difficulty of expressing domestic violence in terms of ITT</i> .....	<u>34</u>
2.4.8. <i>What happens to complaints?</i> .....	35
2.4.9. <i>The inappropriateness of penal mediation in the case of domestic violence</i> .....	<u>36</u>
2.4.10. <i>Criminal proceedings: punishing the perpetrators</i> .....	<u>38</u>
2.5. Domestic violence in the context of migration.....	39
2.5.1. <i>Different contexts, but the same sense of insecurity: their right of residence is at stake</i> .....	39

2.5.2. <i>The response of the French authorities: some progress and some shortcomings</i> .....	41
2.6. Forced marriage .....	42
2.6.1. <i>What do we mean by forced marriage</i> .....	<a href="#">42</a>
2.6.2. <i>The situation in France</i> .....	<a href="#">43</a>
2.6.3. <i>A recent increase in public awareness</i> .....	<a href="#">44</a>
2.6.4. <i>Forced marriages and the violent consequences for women</i> .....	<a href="#">44</a>
2.6.5 <i>Courses of action open to women who are victims of forced marriage</i> .....	<a href="#">45</a>
2.6.6. <i>Courses of action available after a marriage has taken place</i> .....	45
2.6.7. <i>Women who have been forced into marriage abroa and who lose their right of residence in France.</i> .....	<a href="#">48</a>
2.6.8. <i>Other possible courses of action.</i> .....	<a href="#">48</a>
2.6.9. <i>The limitations on the ‘fight’ to stop forced marriage.</i> .....	<a href="#">48</a>
2.7. Changing attitudes and practices .....	49
2.7.1. <i>Health professionals who are key interlocutors for women, are still insufficiently aware of the issue</i> .....	<a href="#">50</a>
2.7.2. <i>Urgences medico-judiciares (UMJ): dedicated interlocutors but all too rare</i> .....	<a href="#">50</a>
2.7.3. <i>The police</i> .....	<a href="#">51</a>
2.7.4. <i>Public prosecutors need to be made more aware of the issues</i> .....	<a href="#">52</a>
2.8. Conclusions and recommendations .....	53
<b>3. Women trafficked for the purpose of prostitution: both victims and offenders</b> .....	<b>57</b>
3.1. Trafficking in human beings: a system of control.....	<a href="#">58</a>
3.1.1 <i>Why me? What these women go through</i> .....	<a href="#">58</a>
3.1.2 <i>The methods traffickers use to control women</i> .....	<a href="#">61</a>
3.2. The provisions on the international law relating to trafficking in women for the purpose of prostitution .....	<a href="#">62</a>
3.2.1. <i>A criminal offence</i> .....	<a href="#">62</a>
3.2.2. <i>A violation of human rights: the obligation to take action</i> .....	<a href="#">64</a>
3.2.3. <i>Identifying the victims an essential stage in protecting individuals</i> .....	66
3.3 Trafficking in women for the purpose of prostitution in France .....	67
3.3.1. <i>Trafficking and living off immoral earnings</i> .....	<a href="#">68</a>
3.3.2. <i>The definition of traffecking contained in the French Criminal Code</i> .....	69
3.3.3 <i>Applying the offence of living off immoral earning to trafficking for the purpose of prostitution</i> .....	69
3.3.4. <i>Victims of trafficking convicted of living off immoral earnings</i> .....	71
3.3.5 <i>Both victims and offenders.</i> .....	<a href="#">71</a>
3.3.6. <i>The offence of passive or active soliciting: people in the hands of traffickers regarded as offenders</i> .....	73
3.3.7. <i>The increasing invisibility of people who have beent rafficked for the purpose of prostitution</i> .....	<a href="#">74</a>
3.3.8. <i>Enforcement: priority is given to cracking down on street prostitution</i> ...	<a href="#">76</a>
3.3.9. <i>The traffickers tighten their grip</i> .....	<a href="#">77</a>
3.4. Trafficking women who are illegal immigrants .....	79

3.4.1 Conditional regularization of illegal status.....	79
3.4.2 Implementation of this law in France .....	<u>80</u>
3.4.3. Regularization of status as proposed by France seen in the light of the Council of Europe Convention on Action against Trafficking in Human Beings	81
3.4.4. Conditional regularization in the context of a crackdown on illegal immigration .....	82
3.4.5. A condition of regularization: victims have between 48 hours and seven days to denounce their traffickers.....	<u>82</u>
3.4.6. Identity checks in France.....	<u>83</u>
3.4.7. “If you talk, you’re dead” .....	83
3.4.8. The different courses of action available in France and in Europe .....	84
3.4.9. Cooperation between State institutions and civil society is crucial.....	87
3.5. Conclusions and Recommendations .....	87



# France

## Violence against women: a matter for the State

### Alphabetical list of acronyms, state institutions and non-governmental organizations

- APIAF *Association pour la promotion d'initiatives autonomes des femmes*, Association for the Promotion of Autonomous Initiatives for Women
- Beijing Declaration and Platform for Action: In September 1995 the Fourth United Nations Conference on Women's Rights was held in Beijing, bringing together 189 States and 2600 non-governmental organizations. The conference ended with the adoption of a declaration (the so-called Beijing Declaration) and a Platform for Action (the so-called Beijing Platform for Action) which encouraged States to take both specific and general measures with regard to all women's rights. Five years later (Beijing+ 5), the States met again to restate their commitment and review the advances and setbacks that had taken place with regard to women's rights throughout the world. The last conference to take place was in January 2005 in New York (Beijing + 10).
- CAMS *Commission pour l'abolition des mutilations sexuelles*, Committee for the Abolition of Genital Mutilation
- CEDAW *Convention on the Elimination of Discrimination against Women*
- CEDAW Committee *Committee on the Elimination of Discrimination against Women*
- CHRS *Centres d'hébergement et de réinsertion sociale*, Accommodation and Social Reintegration Centres
- CNCDH *Commission nationale consultative des droits de l'homme*, National Consultative Commission on Human Rights
- CNDF *Collectif national droits des femmes*, National Women's Rights Collective
- Commission on Human Rights: United Nations body mandated to examine, monitor and publicly report either on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena

- of human rights violations worldwide (known as thematic mechanisms or mandates).
- DRDFE *Délégation régionale aux droits des femmes et égalité*, Regional Office for Women's Rights and Equality
  - ENVEFF *Enquête nationale sur les violences faites aux femmes (La documentation française, 2003)*, National Survey on Violence against Women
  - ECHR European Convention on Human Rights (full name: European Convention for the Protection of Human Rights and Fundamental Freedoms)
  - FNSF *Fédération nationale solidarité femmes*, National Women's Solidarity Federation
  - GAMS *Groupe d'action contre les mutilations sexuelles*, Action Group against Sexual Mutilation
  - Human Rights Committee: United Nations body made up of independent experts who monitor implementation of the International Covenant on Civil and Political Rights by the States parties.
  - ICCPR International Covenant on Civil and Political Rights
  - ICESCR International Covenant on Economic, Social and Cultural Rights
  - ITT *Incapacité totale de travail*, total incapacity for work
  - MFPPF *Mouvement français pour le planning familial*, French Family Planning Movement
  - Palermo Protocol: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementary to the United Nations Convention against Transnational Organized Crime
  - SDFE *Service aux droits des femmes et à l'égalité*, Women's Rights and Equal Opportunities Service
  - Torture Convention: Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
  - UDHR Universal Declaration of Human Rights
  - UMJ *Urgence Médico-Judiciaire*, a special medical unit that attends the victims of any type of crime which may require a certificate or on which the courts may request an expert opinion.

## **Key words and concepts**

### **Continuum of violence against women**

This is the link between the different ways in which violence against women manifests itself. Although the degree of seriousness or the extent of the violence perpetrated against women may vary, the common denominator is that it is rooted in gender-based discrimination.

### **Due diligence**

The obligation incumbent on States parties to international treaties on human rights to take action to punish the perpetrators of human rights violations, as well as to investigate the facts, take appropriate steps to prevent such violations and, finally, to provide the victims with appropriate reparation.

### **The difference between violence and conflict**

Within a couple, provided that both partners can express themselves freely, without constraint or fear, conflict is a means of raising issues and going on to overcome them. Violence enters into the equation when there is no equality, when it is always the same partner who “wins” and fear reigns. Then, one of the partners is under the control or grip of the other and conflict gives way to a system of domination. The violence usually starts off with words, attitudes and restrictions, which are imposed by one of the partners, always the same one. Sometimes physical aggression features from the very beginning. Overall, domestic violence manifests itself in repeated denigration, humiliation and physical, sexual and psychological abuse. This daily round of violence is often punctuated by periods of calm, also known as “honeymoon periods”. However, this should not be taken as a sign that the violence has entirely stopped.

### **Girl**

In this report, the term “girl” means any female under the age of 18.

### **Gender**

The social construct of female and male identity, which fixes the difference between the sexes well beyond biological observations. These norms, which are assimilated throughout childhood and adult life, fuel the systems of discrimination that exist between men and women and which are at work throughout human society.

### **Discrimination**

“Discrimination” means any distinction, exclusion, restriction or preference on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other situation which has the effect or

purpose of impairing or nullifying the recognition, enjoyment or exercise by everyone, on a basis of equality, of all human rights and fundamental freedoms.

## **Introduction**

Long seen by many as a private matter that should remain in the private arena, violence against women is seen by Amnesty International as a matter for the State. On 23 November 2005, the government published data from a survey carried out among police services that reveal figures that were already suspected but not any the less damning because of it: in France, a woman dies after being beaten by her partner every four days. More than half of such women have been subjected to domestic violence previously. The aim of this report is to document not the violence itself but the response made to it by the French authorities. Its findings and recommendations are the fruit of one year's work researching and bringing together data obtained from actors involved in this field.<sup>1</sup>

One may ask why Amnesty International is interested in this issue. The answer is simple: violence against women is, above all, a violation of human rights, the right to security, equality, liberty and sometimes even the right to life. France, as a signatory of the main human rights treaties, is responsible to the international community and, above all, to those within its borders for ensuring that the dignity and fundamental freedoms of everyone are respected. The obligations the State has in this respect are not confined to bringing its laws into line with international standards. The French authorities must make the necessary resources available to ensure that these rights are truly respected, guaranteed and protected. This means not only punishing the perpetrators of such violence and providing appropriate reparation to the victims but also taking all possible steps to prevent such violence. The State is not only accountable for its own actions but it must also protect people from violence committed by others.

This study sheds light on various manifestations of violence in France, namely domestic violence; the specific obstacles encountered by foreign women; the question of forced marriage, and the trafficking of women for the purpose of prostitution. Though not exhaustive, these examples are telling in that they reveal violence that is often hidden, long-term and sustained by a system of control.

---

<sup>1</sup> This study was completed on 25 November 2005 and therefore does not take account of any changes, particularly of a legislative nature, which have taken place subsequently. Such changes will be addressed in the course of Amnesty International's ongoing work on this issue.

Although, according to a national survey published in 2003, almost one in 10 French women is affected by domestic violence<sup>2</sup>, the response they obtain, particularly from the courts, remains half-hearted. This report analyzes the stumbling blocks these women come up against in their difficult search for justice. Nevertheless, solutions exist. In this document, Amnesty International makes various recommendations to the French authorities, based on the normative framework of human rights as well as on the reflections and experience of actors on the ground.

Furthermore, while legal tools do exist, women often have little knowledge of their rights, and professionals, whether they be police, public prosecutors, social workers or doctors, are generally not properly equipped to provide them with appropriate support. What these women need, in order to escape from the situation they find themselves in, especially to enable them to leave the perpetrator of the violence, is to have a real alternative open to them, as well as protection and a plan.

With this contribution to the struggle against violence against women, Amnesty International is sending out an alarm call to society and appealing to the State to fulfil its responsibilities. When a woman who has been the victim of domestic violence dares “to break her silence”, as women were invited to do during a campaign conducted during the 1990s to raise public awareness of the issue, she should no longer be confronted with incomprehension and indifference. Fifteen years on, this research by Amnesty International shows how difficult it still is today to grasp the seriousness of this phenomenon and respond to it. As long as violence against women is concealed or relativized, as long as it is not given sufficient attention by the State and is not recognized as a real problem by society as a whole, it will not stop. This is what it will take for France, which claims to be the cradle of human rights, to become the cradle of women’s rights.

25 November 2005.

---

<sup>2</sup> Figures taken from the *Enquête nationale sur les violences envers les femmes en France*, National Survey on Violence against Women in France, *La Documentation française*, Paris, 2003. (Hereafter referred to as *Enveff*.)

## CHAPTER 1

### **Beyond appearances: definitions and mechanisms**

Violence against women today still remains largely unrecognized and greatly underestimated. It is tightly bound up with enduring gender-based discrimination. This is what distinguishes it from other kinds of violence: it is committed against women first and foremost because they are women. This common denominator forms a common thread known as the “continuum” of violence against women.

In the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter referred to as CEDAW\*), discrimination against women is defined as “*any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women [...] of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field*”.<sup>3</sup> Sexism is the refusal to see another human being as an equal.

Laws constitute a crucial normative framework for fighting against discrimination but are not in themselves sufficient. They are only a first step in moving towards the eradication of violence against women. Such laws need to be enforced throughout the country and accompanied by a genuine change in attitudes. It is this change, which is bound to take much longer, that will make the difference in practice.

Violence against women is fuelled by a system of discrimination which keeps women in a subordinate position. Not all such discrimination leads to violence, however. Nevertheless, because it is often hidden, commonplace and an integral part of the norms and practices of social functioning, discrimination against women is an ideal breeding ground for violence. It still, even today, generates relationships of power and domination and is often translated into a sense of ownership of women’s bodies and minds.

---

<sup>3</sup> Article 1 of the Convention for the Elimination of Discrimination Against Women (CEDAW), which was adopted by the United Nations on 18 December 1979 and entered into force in France on 25 April 1984.

Violence against women is gender-based violence. Sexual identity is not only determined by biological identity, it is the result of a particular process of socialization. Any violence that is founded on that identity thus constitutes what is known as “gender-based violence”. Such violence is all the more powerful in that the inequality that it both leads to and fuels is a societal norm.

### **1.1 Defining violence against women**

Violence is difficult to define. International law has put forward a universally-accepted definition of violence against women and the discrimination in which it is rooted. International human rights texts, in particular the Universal Declaration on Human Rights<sup>4</sup> (hereafter referred to as the UDHR\*), have established equality for all and due respect for all the rights enshrined in such texts as a fundamental and inalienable principle.

Violence against women is first and foremost a violation, or series of violations, of the fundamental human rights that apply to any human being and which are protected by the main human rights treaties, such as the International Covenant on Civil and Political Rights (hereafter referred to as the ICCPR\*), the International Covenant on Economic, Social and Cultural Rights (hereafter referred to as the ICESCR\*) or the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. These rights include the right to live free from any form of torture or degrading or humiliating treatment<sup>5</sup>, the right to life<sup>6</sup>, the right to consent freely to marriage<sup>7</sup>, the right to better working and living conditions, the highest standards of health and equal protection under the law<sup>8</sup>, and the right to live free from any form of discrimination based on gender, race, religion or social origin<sup>9</sup>.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted on 18 December 1979. It recognizes conscious and deliberate forms of discrimination against women as well as the discriminatory consequences of certain social, economic and cultural behaviour or provisions. Article 1 specifies that:

---

<sup>4</sup> Articles 1 and 2 of the Universal Declaration of Human Rights.

<sup>5</sup> Article 7 of the ICCPR and Article 2 of the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (the Torture Convention), adopted by the United Nations General Assembly on 10 December 1984 and signed by France on 10 February 1985.

<sup>6</sup> Article 6 of the ICCPR, adopted by the United Nations General Assembly on 16 December 1966.

<sup>7</sup> Article 23 of the ICCPR, *op.cit.*

<sup>8</sup> Recommendation N°19 of the CEDAW Committee.

<sup>9</sup> Article 2 of the UDHR, article 26 of the ICCPR, article 2 of the ICESCR, article 1 of the CEDAW Convention.

*“... the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.*

In its recommendation N° 19, the CEDAW Committee\* expressly recognized violence against women as a form of discrimination and called on States to combat it in all its manifestations. The CEDAW Committee recommendations are the authoritative interpretation of the rights contained in the Convention, rights which States are under an obligation to implement, respect and guarantee.

The United Nations(UN) General Assembly committed itself to eliminating violence against women in December 1993. It defined it as follows:

*“any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”.*<sup>10</sup>

The Declaration on the Elimination of Violence against Women is not legally binding but does provide a universally-applicable definition of violence against women. It encompasses, but is not limited to, the following forms of violence:

*“(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;*  
*(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;*  
*(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs”.*<sup>11</sup>

---

<sup>10</sup> Declaration on the Elimination of Violence against Women, 23 February 1994, article 1.

<sup>11</sup> Article 2 of the Declaration on the Elimination of Violence against Women, General Assembly Resolution 48/104, 20 December 1993.

Moreover, the preamble to the Declaration states that this violence “*is a manifestation of historically unequal power relations between men and women*” and adds that it “*is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men*”.<sup>12</sup>

## **1.2 The obligation on States to take action**

International human rights law imposes certain obligations on States, the most obvious being to bring their own legislation into line with the treaties they have signed and ratified and to ensure that their officials respect all human rights.

States also have an obligation to ensure that these rights are given concrete expression in practice, both with regard to punishing the perpetrators and taking preventive action, as well as with regard to providing reparation to victims. What is more, this does not only apply to the acts and omissions of state officials. The State must ensure that human rights are respected by private actors and, if they are not, they must investigate and prosecute those responsible for any violations of these rights. The State is therefore responsible for its actions as well as its omissions. That being the case, the failure on the part of the State to punish an act of violence or to take all possible steps to protect someone who is at risk of serious violence can be considered to be a breach of its international commitments. This is known as the duty of due diligence. It means that the State has a duty to act diligently to prevent, investigate, punish and provide reparation for any violations of international rights. The State is responsible for ensuring that all women’s human rights are respected by its officials as well as by private actors and that any failure to do so is punished in accordance with the law.

At international level, several UN bodies, such as the General Assembly, the Security Council and the Human Rights Committee\*, have confirmed, when adopting declarations and resolutions, that these various levels of obligation apply in the struggle to stop violence against women.<sup>13</sup>

The CEDAW Committee stated that “*discrimination under the Convention is not restricted to action by or on behalf of Governments.[...] Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation*”. It

---

<sup>12</sup> Idem, preamble.

<sup>13</sup> For further details, see the report entitled “Making rights a reality: The duty of states to address violence against women”, published by Amnesty International in June 2004, ACT 77/049/2004.

recommended that “States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act”.<sup>14</sup>

This principle encompasses various mutually reinforcing obligations which allow a “virtuous circle” of good practice to be created:

- *Respect*: the State is responsible for ensuring that all of women’s human rights are respected, both by its own officials and by private actors, and that any failure to do so is punished in accordance with the law.

- *Punishment*: the State must investigate any actual or alleged violence and ensure that the perpetrators are prosecuted.

- *Protection*: the State is responsible for protecting women who are known to be at risk.

- *Prevention*: the State must take whatever *ad hoc* measures are necessary to prevent any potential harm being done to women. This means that the State has an obligation to use all the means at its disposal to combat sexist behaviour, in particular by incorporating this approach into its educational tools and school curricula, carrying out regular publicity campaigns and training its officials from an egalitarian perspective. However, that also means ensuring that the perpetrators of domestic violence do not go unpunished and that the State does everything it can to ensure that women have genuine access to justice.

- *Reparation*: the State must take action to ensure that women obtain fair compensation for any injuries they suffer. Over and beyond compensation, reparation also means that the violence and the rights violations to which they have been subjected should be acknowledged and that the perpetrator should be appropriately punished in keeping with national law.

Combating impunity, namely the failure to prosecute and punish those responsible for human rights violations, is at the heart of these obligations. Impunity itself is a violation of the rights of the victim in that it denies them access to justice and reparation, as well as the right to be recognized as a victim. Impunity helps to perpetuate violence because leaving perpetrators unpunished only bolsters their sense of domination over women.

---

<sup>14</sup> CEDAW Committee, General Recommendation N°19, eleventh session, 1992.

### 1.3 What violence are we talking about?

There are still a number of preconceived ideas about this: that alcoholism is involved, that either the perpetrator or the victim have mental problems, that they come from a disadvantaged culture or social class, and so on. However, violence affects all women, regardless of origin or occupation.

In cases of violence against women, the perpetrator is often known to, or indeed a close relative of, the victim. It is often this closeness that stands in the way of the woman obtaining justice. Many police officers, public prosecutors and doctors still think that such violence is simply indicative of interpersonal conflict. It is largely unrecognized and underestimated and, even today, is very rarely denounced. It is often the women themselves who do not dare, or do not know how, to talk about it.

Whatever form it takes, violence against women is accompanied and fuelled by a form of leverage, a complex system of domination governed by control and fear. Most women who are subjected to domestic violence are trapped: they are aware of their situation but they cannot, or often do not know how to, escape from it.<sup>15</sup> Numerous studies carried out in France and Europe confirm that such women face real danger when they denounce such violence, in terms of possible attacks on their physical and mental wellbeing and even attempts on their lives.<sup>16</sup> According to professionals, it is at the point of break-up, which is supposed to bring the violence to an end, that there is greatest risk of it increasing exponentially.

The leverage the perpetrator has is fuelled by the fact that such violence often remains hidden and the relationship between the perpetrator and the victim is an intimate one. The women involved are usually isolated and under constant threat, and face a real risk of reprisals. Given that the perpetrator of the violence may be the father of their children or a member of their family, and that women may be perceived as lacking respect for the family, feelings of guilt keep them quiet. Some feel responsible for the failure of the relationship, a feeling that is all the stronger given the particular image that the role of the woman within a relationship has. This ambivalence is further heightened by the risk that they will end up in an extremely precarious situation (with no income or accommodation) as well as by the fear of losing their children. In the case of women who have been subjected to trafficking, the main reason why they do not report what has happened to them is that they face a real risk of threats and attacks on their lives and there is no specific alternative open to them to enable them to escape the violence.

---

<sup>15</sup> Enveff, *La Documentation française*, 2003, p.85.

<sup>16</sup> Enveff, *La Documentation française*, 2003, "Les femmes victimes de violences conjugales : le rôle des professionnels de santé", report to the Minister of Health prepared by a group of experts chaired by Professor R. Henrion, February 2001.

## CHAPTER 2

### Violence in and around the domestic sphere

A. has suffered violence from her partner since 1998. In 2000, she lodged a complaint for the first time. She was referred for penal mediation (see below for further discussion of this measure), in the course of which the perpetrator promised to stop assaulting her. Following the mediation, A. made a suicide attempt and was hospitalized. After her partner had hit her and pushed her down the stairs, A. lodged another complaint, accompanied by a medical certificate. She was immobilized for over a month and unable to get around the house. Her partner was held in police custody for 24 hours following which the couple were summoned together to explain what had happened. *“We were both there but they only addressed him, they didn’t ask me for my version of events....”* As they were leaving, he told her, *“You’ve no right to say anything any more because you suffer from depression and you’ve been locked up”*. No further action was taken on the complaint.

A. does not have sufficient fixed regular income to be able to afford private accommodation. She has applied for council housing but so far has not been offered anything. She is still being subjected to violence by her partner but, as long as she is working from home, she refuses to leave. For her, *“Staying put in my home is also a way of fighting back”*.

*Testimony gathered by Amnesty International in 2005.*

The French State has undeniably taken some steps towards improving its response to the issue of domestic violence. However, coordination, will and resources are still lacking which means that such measures are applied in a very *ad hoc* way throughout the country. The procedures women have to go through to get access to justice remain slow and complex and, when confronted with them, they are often discouraged by what appears to them to be an obstacle course. It should be remembered that the State has an obligation to ensure that such violence does not go unpunished, that the victims obtain reparation and that, in addition, there is a genuine change of attitude among professionals as well as the general public.

## 2.1. The law in France

### 2.1.1. Recent progress

Over the past twenty years, the State has taken numerous steps to bring its legislation into line with the principles of international law and human rights relating to the struggle against discrimination and violence against women in France.

However, it was only in 1994, when the new Criminal Code came into force, that the seriousness of domestic violence was acknowledged through the introduction of an aggravating circumstance that applies in the event that the spouse or partner of the victim uses criminal violence at the time of an incident.<sup>17</sup> Rape within marriage has been recognized in case law since 1990.

Today a growing number of women are daring to break their silence to denounce the violence they face from their partner. However, the shortcomings in the justice system, indeed the lack of response from the courts, reinforce the perpetrators' sense of impunity as well as the idea that justice stops at the entrance to the home.

Over and above their purely regulatory function, laws are very valuable in terms of setting standards, as pointed out by Lydia Cerniglia from Solidarité Femmes, Women's Solidarity, in Grenoble: "*In naming an offence, the law designates it as a reprehensible act and changes the way one looks at it. By doing so, it changes attitudes and shapes culture. The law therefore has both a symbolic and educational function. It helps to encourage genuine prevention work directed at youth and to mould the behaviour of future generations*".<sup>18</sup>

In actual fact, numerous obstacles still stand in the way of these women being recognized as victims.

### 2.1.2. Measures taken by the State

At present, State action to tackle violence against women takes place at different levels, in particular within the *Ministère délégué à la Cohésion sociale et à la Parité*, Department for Social Cohesion and Parity, or the Justice Ministry, though there is no proper coordination of such work at a national level.

---

<sup>17</sup> Criminal Code, art. L222 -13.

<sup>18</sup> "*De la nécessité des poursuites dans les situations de violences conjugales*" by Lydia Cerniglia, Solidarité Femmes, Grenoble, June 2004, in *Justice et violences conjugales*, Fédération nationale Solidarité Femmes, Paris, 2005.

In the follow-up to international meetings on the issue of women's rights, in particular after the Fourth World Conference on Women's Rights in 1995, and then in 2005<sup>19</sup>, France has taken some measures at a legislative level and in connection with the work of professionals in order to fight more effectively against domestic violence.

A specialized administration has been set up by the French State to deal with women's rights and equality. Depending on the government in question, this service has fallen under the aegis of a Secretary of State or a *Ministre à la Parité et à l'Égalité professionnelle*, Minister for Equal Opportunities<sup>20</sup>, or, more recently, the Department for Social Cohesion and Parity.

The service coordinates the work of a decentralized network of regional and departmental offices for which the *préfet de région*, regional prefect, is responsible. Since 1989, these women's rights offices have been running, in particular, *Commissions départementales d'action contre les violences faites aux femmes*, Departmental Commissions for Action against Violence Against Women, which bring together actors in the field, from both state institutions and non-governmental organizations, in order to coordinate training and awareness-raising for those involved and to deal with matters relating to accommodation and housing for women who have been the victims of violence.

The work done by these commissions and how dynamic they are can vary considerably from region to region. However, they have enabled an essential dialogue to be opened and, in some *départements*, have resulted in the adoption of protocols for dealing with violence based on good practice.

With regard to the effectiveness of the decentralized service for women's rights and equality, a report by the *Inspection générale des affaires sociales (IGAS)*, General Inspectorate for Social Affairs, points out that the service has played a beneficial role in that it has spurred on implementation of public policy and has sometimes also taken on the role of eminent expert, for example, in the struggle against domestic violence, as in Allier and Seine-Saint-Denis<sup>21</sup>. It concludes that the service has relatively

---

<sup>19</sup> Fourth United Nations World Conference on Women, held in Beijing in 1995, during which the Beijing Declaration and Platform for Action on women's rights was adopted. In 2005, a similar conference was held in New York, called the Beijing+10 Conference.

<sup>20</sup> Nicole Ameline held this post until the referendum of 29 May 2005. As a result of the subsequent change of government, Catherine Vautrin was put in charge of the Department for Social Cohesion and Parity, which comes under the Ministry for Employment, Social Cohesion and Housing.

<sup>21</sup> "*Inspection des services déconcentrés des droits des femmes et de l'Égalité*", Summary Report N°2004092, by Danièle Larger, Danielle Vilchien, Jean-Baptiste Bastianelli and Christian Gal, members of the *Inspection générale des affaires sociales (IGAS)*, in *La lutte contre les violences au sein du couple*, Senate Information Report N° 229 (2004-2005) by Jean-Guy Branger, 9 March 2005.

limited resources and that its work throughout the country as a whole is variable. The IGAS report stresses that greater effectiveness would be possible but only if there were a genuine coordinated and integrated policy which placed equal opportunities at the heart of all State action and did not make do with individual actions. In this connection, the *Plan global de lutte contre les violences faites aux femmes (2005-2007) : 10 mesures pour l'autonomie des femmes*, Comprehensive Plan for Tackling Violence Against Women (2005-2007) : 10 Steps towards Women's Autonomy, launched by Nicole Ameline, the former Minister for Equal Opportunities, is an important step in the direction of adopting a coordinated strategy at national level. Under this action plan, emphasis would be placed on the provision of housing, professional support and security to victims and the allocation of resources to specialist organizations, as well as on information-gathering and the prevention of violence against women. While it is still somewhat too soon to comment on the specific results of the plan, it is not too soon to regret that it has not been followed up with action coordinated across the different ministries. It continues to be a strategy taken up essentially by the regional women's rights offices which often have very limited human and financial resources. In order for such a plan to be genuinely effective, it is crucial that it is adopted at an inter-ministerial level, taken up by all public authorities and given proper budgetary provision. It is all the more difficult for it to be implemented by a single ministry now that, since the change of government brought about as a result of the 29 May 2005 referendum, the Ministry for Equal Opportunities has been relegated to the status of Department (*Ministère délégué*) for Social Cohesion and Parity. It has gone from being a ministerial office with over 20 people to a department of four people with Catherine Vautrin at its head.

On 23 November 2005, Catherine Vautrin submitted a document to the Council of Ministers outlining the main areas of work scheduled for 2006 and reporting on the results of the work undertaken in the year just ended. Several examples of good practice are mentioned, including emergency accommodation voucher schemes and initiatives on reintegration. However, they cannot be seen as coordinated effective action at a national level. The communication also lists four measures to support the victims of violence. The first measure, inspired by the shelter scheme used for elderly people and the disabled, concerns accommodation: the proposal is to place women who have suffered violence with host families who would be remunerated for taking them in. Several organizations have already expressed reservations about a system which is likely to treat women as children rather than increase the resources allocated to existing accommodation facilities. The second measure concerns the setting in place of more effective medical care in eight departments within metropolitan France. The third measure concerns the strengthening of sanctions against the perpetrators of violence and the fourth consists of a proposal to distribute 8,000 copies of a support booklet, which would also be available on the internet, to all professionals. These

measures show that recognition of the issue has improved but they are still not enough to ensure that there is a national strategy to prevent domestic violence, punish the perpetrators and protect the victims. In particular, the plan does not address the question of speedier and more effective handling of such cases by the courts, the question of accommodation and alternative solutions for women who have suffered violence, the monitoring of protection measures and, lastly, the question of the financial, material and human resources that are necessary for rigorous and uniform implementation throughout the whole country.

Other ministries, such as the Justice and Interior Ministries, have also taken action on this issue. In September 2004, the *Direction des affaires criminelles et des grâces*, Office for Criminal Affairs and Pardons, of the Justice Ministry published a *Guide de l'action publique*, Criminal Prosecution Guide, on the issue of tackling domestic violence<sup>22</sup>, which gives some examples of good practice for actors involved in handling such cases in the courts. The guide, which is complete and practical and has been distributed to all public prosecutors' offices, is not binding and professionals within the health service and police as well as social services are still largely unaware of its existence.

Dominique Perben, who has been Minister of Justice since May 2004, has also suggested to the main television channels the idea of a short film to raise public awareness about domestic violence in which a special free telephone number (*le numéro vert 08 VICTIMES*) would feature. However, this number does not deal specifically with domestic violence but provides a sympathetic ear and advice to all victims of any type of breach of the French Criminal Code. Though interesting, this campaign is a good illustration of the lack of coordination between the different resources that already exist.

### ***2.1.3. How violence against women is handled by the courts***

In France, women who have been subjected to domestic violence can seek justice either by means of criminal prosecution, which allows the perpetrator to be punished and the victim to be awarded compensation, or through a civil action, which allows the consequences of the breakdown in a couple's relationship to be resolved.

### ***2.1.4. Civil action does not seek to punish the perpetrator and only applies to married women***

#### Divorce

---

<sup>22</sup> “*La lutte contre les violences au sein du couple*”, *Guide de l'action publique*, Direction des Affaires Criminelles et des Grâces, Ministry of Justice, September 2004.

Many cases of violence against women will never be prosecuted in a criminal court, either because the woman did not lodge a complaint or because the complaint came to nothing. On the other hand, married women who have suffered violence at the hands of their husband, can access a divorce procedure allowing them to be separated from the perpetrator of the violence. This procedure is not always enough to put an end to the violence since separation can sometimes lead to renewed violence but divorce is often seen as the only possibility for women who do not wish to have their husband brought before a criminal court or, at least at the time the violence occurs, are not ready to do so.

a) The four types of divorce established in the Civil Code are:

Divorce by mutual consent: the least contentious form, in that the couple make a joint application for divorce and at the same time submit an agreement regarding the divorce settlement.

Divorce resulting from acceptance that the marriage has broken down: this can be requested by one or both parties, without taking into consideration what may have led to the breakdown. The judge grants the divorce if convinced that the two parties have freely consented to it.

Divorce resulting from definitive deterioration of the marriage bond: this can be requested by either party, once the couple have been living apart for at least two years.

Divorce on grounds of misconduct: this can be requested by one of the parties when the other party is alleged to have seriously or repeatedly breached their marriage duties and obligations. It is in these kinds of cases that domestic violence can appear as a ground for misconduct justifying a divorce.

In the context of divorce on grounds of misconduct, the violence suffered by one of the parties can be taken into account. This procedure is still complicated and often slow. It is difficult to obtain evidence of the violence, especially if there is no parallel criminal prosecution. Given the complexity and slowness of this process and also because they are concerned about the risk of reprisals from their husband, women can be reluctant to seek divorce on grounds of misconduct, as in the case of lodging a complaint.

b) Seeking the eviction of a violent spouse by making an emergency appeal to a judge (*référé*) concerning the violence

Before the entry into force of the law dated 26 May 2004<sup>23</sup>, a judge could already take emergency measures once an application for divorce had been received.

Since the new rules came into effect, namely since 1 January 2005, the law specifically states that, in the event “of violence committed by one of the spouses putting the other spouse or a child or children in danger, a judge can rule that the couple should live apart, making it clear which of the two should continue to reside in the marital home. Other than in special circumstances, the home is allocated to the spouse who is not the perpetrator of the violence”.<sup>24</sup> This measure ceases to apply after four months if no request for divorce or legal separation is received.

Prior to 2005, family court judges could only rule on allocation of the marital home at the time of the conciliation hearing in the presence of the two parties. Now, in the context of an emergency procedure and regardless of any divorce proceedings, a family court judge can, at the request of the victim, order the removal of the violent spouse. These measures concern use of the marital home, the exercise of parental authority and how much each spouse should contribute to the marital expenses.

Having their husband removed from the home is not, however, always the route women would choose to go down to bring about a split. The marital home may be associated with the violence in that it is seen as the place where it occurred. The *Fédération nationale Solidarité Femmes*, National Women’s Solidarity Federation, which brings together 54 organizations from all over the country, points out that “*the marital home gradually becomes associated with the image of the violent man, the place where the husband makes all the decisions and appropriates all the living space. In such a set-up, women have no personal space, they are part of the man’s property and possessions*”.<sup>25</sup> Later on, mainly for financial reasons, women may wish to return to the marital home.

This law only came into effect on 1 January 2005 and it is therefore hard to assess what effect it has had on domestic violence. Nevertheless, some weaknesses can already be identified. It was not accompanied by the establishment of an effective and systematic mechanism for ensuring that such measures are followed up, especially with the provision of protection and support to the victim. Any such system should be developed in conjunction not only with the police service but also with a partnership network of organizations and others with specialist knowledge of the issue. In itself, having the husband removed by a judge may not therefore be enough to end the

---

<sup>23</sup> Law N°2004-439 of 26 May 2004, which came into force on 1 January 2005.

<sup>24</sup> Criminal Code, article 220-1.

<sup>25</sup> “*Violences conjugales et exclusion sociales*”, Fédération nationale Solidarité Femmes, February 2005, p.14.

violence. Amnesty International believes that this measure should be accompanied by a genuine strategy for protecting the victim and punishing the perpetrator which, among other things, would allow for better coordination between the way cases are handled in the criminal courts and in the civil courts, especially where protection of the victim is concerned.

Furthermore, it should be remembered that only married women are affected by these new arrangements.

#### **2.1.5. Criminal proceedings**

Since the introduction of the new Criminal Code in 1994, being a spouse or cohabitee is deemed to be an aggravating circumstance in the case of some violent offences. These include acts of torture or barbarism<sup>26</sup>, violence resulting in unintentional death<sup>27</sup>, violence resulting in mutilation or permanent disability<sup>28</sup> and violence leading to *incapacité totale de travail* (ITT)\*, total incapacity for work, for a period of eight days or more<sup>29</sup>. The main benefit of this amendment to the Criminal Code is that domestic violence is now a crime even if it does not result in the granting of ITT. It means that women can lodge a complaint even when there are no physical effects of the violence or they are no longer visible. Thus, once there is domestic violence, it must be considered an offence.

On the other hand, this aggravating circumstance does not apply in the case of murder, the administering of harmful substances, threatening to commit a serious crime (crime) or intermediate offence (*délit*)<sup>30</sup>, rape and other types of sexual assault, false imprisonment (*séquestration*) and malicious telephone calls.

#### **2.1.6. Criminal prosecution is not sufficient to provide protection**

Emine was killed by her ex-husband, Osman, after she had obtained a divorce and then twice lodged a complaint for violence and threats. “*For nearly ten years, she virtually never went out except in the company of her husband.*” After she had fled the first time, her husband found her. In 2001 the divorce came through but he went on harassing her, “*laying siege to her home, following her and assaulting her when she went out*”. In the autumn of 2004, Osman reappeared and mounted guard in the street where she lived for several days. “*Emine regularly called the police who knew her address by heart. At the Strasbourg police headquarters, the unit responsible for*

---

<sup>26</sup> Criminal Code, article 222-3.

<sup>27</sup> Criminal Code, article 222-8.

<sup>28</sup> Criminal Code, article 222-10.

<sup>29</sup> Criminal Code, articles 222-12 and 222-13.

<sup>30</sup> In France, offences are classified according to the degree of seriousness as *crimes*, *délits* and *contraventions*. A *crime*, the most serious, usually incurs a heavy prison sentence, a *délit* carries a shorter prison sentence, and a *contravention* is punishable by a fine.

---

*dealing with intrafamily violence, a single body operating throughout France, confirmed that she had filed several complaints...".* On 31 January, thinking that Osman was no longer in Strasbourg, she left her home. That is when he killed her. It happened in mid-afternoon outside of the nursery school attended by the youngest of their three children, just a few metres from the flat where she lived almost as a recluse. Osman was arrested in a nearby tearoom. He was covered in blood and did not resist arrest. According to witnesses quoted in the press, he simply said, *"That's it, I've killed this woman. That's it, I did it"*.<sup>31</sup>

The threat hanging over women who have suffered domestic violence is real and a genuine protection system needs to be put in place in order to ensure their safety. Certain measures, such as issuing a summons against the perpetrator with a statement of charges (*convocation par procès verbal*) or simply reminding him what the law says (*rappel à la loi*), can deter fresh violence. However, as pointed out in the Criminal Prosecution Guide on tackling domestic violence, *"at the investigation stage, there is no juridical framework within the Criminal Code for allowing the accused to be restrained from having contact with the victim or forcing him to remove himself from the marital home"*.<sup>32</sup>

Within the framework of a trial, some measures can be taken, in particular deferment of sentence accompanied by a probation order (*l'ajournement avec mise à l'épreuve*). In such cases the perpetrator receives no punishment as long as he complies with certain obligations laid down by the judge. Finally, at the end of a trial, the judge can impose certain penalties, ranging from imprisonment to a suspended sentence accompanied by a probation order (*sursis avec mise à l'épreuve*). The judge can also rule on whether it is necessary for the perpetrator to be monitored by an organization providing support to the perpetrators of violence.

#### **2.1.7. Some examples of good practice: the Douai public prosecutor's office**

According to Françoise Guyot, Deputy Prosecutor at the Paris Public Prosecutor's Office, *"All too often domestic and family violence is dealt with belatedly by the courts. ... the perpetrator gets caught up in a progressive cycle of violence and the victim has already been marginalized by the lack of judicial response. I am obliged to state that, in such a context, many cases of serious violence or deaths resulting from fatal blows could be prevented if the public prosecutor's office were to intervene at the first sign of violence"*.<sup>33</sup>

---

<sup>31</sup> "Osman a tué Emine, comme promis", an article that appeared in *Libération* on 8 March 2005.

<sup>32</sup> "La lutte contre les violences au sein du couple", *Guide de l'action publique*, op.cit., p. 61.

<sup>33</sup> "Politiques pénales", Françoise Guyot, an article that appeared in *Actualité juridique famille*, N° 12/2003.

Luc Frémiot, a public prosecutor at the *Tribunal de grande instance*, Court of First Instance in civil and criminal matters, in Douai, has put in place a procedure for swift and effective intervention which ensures that any measures adopted are followed up. Any indication of domestic violence has to be followed up. The perpetrators are systematically arrested for questioning. Depending on the seriousness of the case, they may be reminded of the law (*rappel à la loi*), summoned to an immediate hearing (*comparution immédiate*) or ordered to temporarily leave the family home (*éloignement provisoire du domicile*).<sup>34</sup> The latter measure has been devised within the framework of an arrangement with an Emmaüs hostel which takes the men in for a period of one or several weeks during which they get involved in the life of the hostel and take part in a therapy group. They are regularly monitored by an organization that provides victim support and undertakes judicial supervision and which also supports the women involved. At the end of this period, and again depending on the seriousness of the case, the perpetrator of the violence can be summoned before a *tribunal correctionnel*, a criminal court responsible for dealing with offences known as *délits* [see footnote 30], or he can return home under certain conditions. The same organization will continue to monitor him to ensure that he does not reoffend.

Speed is at the heart of the intervention of the Douai public prosecutor's office, with the perpetrator being brought to court swiftly rather than in two or even three months' time as is usually the case. It also places stress on monitoring the perpetrator and supporting the victim. It has banned the use of penal mediation (*médiation pénale*). Undoubtedly encouraged by the high media profile this penal policy has acquired, more and more women are daring to break their silence.

Other cases of good practice exist in France. More and more public prosecutor's offices and police services are putting strategies in place to improve their handling of domestic violence. However, such initiatives are not always coordinated between the different authorities involved and these examples are certainly still rare enough to attract attention. They rely on the initiative of individuals and the response of the justice system is very uneven across the country. Furthermore, a judicial response is not enough to stop such violence and put an end to impunity. The difficulties encountered by women who decide to leave and report a man who is often the person closest to them, sometimes the father of their children or someone for whom they still have feelings, touch on the complexity of human relationships. It is therefore necessary to take the scale of these difficulties into account and ensure that women have genuine alternatives and adequate support and that any allegations of violence are systematically dealt with by the courts.

---

<sup>34</sup> Article 41-2 of the Code of Criminal Procedure.

### ***2.1.8. Spain: a framework law to tackle gender-based violence***

The law adopted by the Spanish Government on 22 December 2004 on this issue has set an important precedent because, as well as prevention measures, it provides for the creation of courts specializing in violence against women in which one and the same judge can rule on both the civil aspects and the criminal aspects of a case involving such violence. The advantage of this law is that the control and domination that operate within this type of violence are recognized in law. It also provides a coherent normative framework for fighting violence against women at a national level. On 25 November 2005, the Spanish Vice-President, Maria Teresa Fernandez de la Vega, announced that the number of complaints of domestic violence filed in Spain had increased by 7.6 per cent in the first half of 2005, while the number of protection orders issued for women under threat had increased by 19 per cent. She also mentioned 4,421 female victims of violence on low incomes who had received financial assistance while seeking to return to work (*renta de inserción*) and 2,149 women who had benefited from a telephone helpline allowing them to call the emergency services and be located at any time in the event of danger.<sup>35</sup> In France, the Collectif national Droits des Femmes (CNDF\*), National Women's Rights Collective, has announced that they are preparing a draft law along similar lines to be presented in November 2006. Such a proposal is all the more interesting in that it would allow the work being done on prevention, training, protection measures, punishment and support for women who have been threatened with or subjected to violence by a man within their circle to be linked up.

### ***2.1.9. The difficulties and contradictions arising from the lack of connection between civil and criminal proceedings in cases of domestic violence***

According to Marick Geurtz, a member of the Fédération nationale solidarité femmes (FNSF\*), National Women's Solidarity Federation, "*Today, there is very little connection between the different criminal and civil procedures. They go on taking the same old family background approach and sometimes contradict each other*".<sup>36</sup>

As a rule, under French law civil and criminal procedures are separate. However, in the context of an emergency appeal to a judge in connection with violence (*référé violence*), there is from then on a bridge between the two because, as soon as such a measure enters into play, the public prosecutor's office must be alerted. As long as it is followed up by the public prosecutor's office, this measure is a first step towards improving the connection between civil and criminal proceedings.

<sup>35</sup> Agence France Presse (AFP), 25 November 2005.

<sup>36</sup> "*Pour une véritable cohérence entre le code pénal et le code civil*", article by Marick Geurtz which appeared in *Actualité Juridique Famille*, éditions Dalloz, N°12/2003, December 2003.

As Catherine Morbois, the regional women's rights officer for l'Île de France, has pointed out, up till now in France, a man can be summoned to appear before a criminal court for having used violence against his wife while at the same time being given regular visiting rights to see his children by a family court judge without even any provision being made to ensure that the two parents do not meet. It is also possible, in the context of divorce proceedings, for violence against a spouse to be recognized as a reason for divorce on grounds of misconduct without, nevertheless, the perpetrator being prosecuted in the criminal courts. In this respect, it would be interesting to look at the possibility of any violence found in the course of civil proceedings being systematically reported to the public prosecutor's office.

It should be possible for the criminal courts to act swiftly to have a spouse or cohabitee removed from the family home.

In the words of the Association pour la promotion d'initiatives autonomes des femmes (APIAF\*), Association for the Promotion of Autonomous Initiatives for Women: "*On the one hand, men do not feel as if they have committed an offence, they find it hard to admit to blows, injuries and other types of assault and defend themselves by saying "It's my wife" or presenting themselves as the victims. On the other hand, women do not feel protected: they think that lodging a complaint will protect them, give them some peace, but the law does not afford that protection, it is there to punish. They [criminal proceedings] need to be brought into line with civil procedures (divorce, parental authority) so that women and children can be protected in the marital home by, in certain cases, having the violent spouse removed*".<sup>37</sup>

## **2.2. Amendments to the law are still needed**

### **2.2.1. Creating an offence of "repeated violence"**

In French law, the rule on non-cumulation of sentences states that sentences of the same kind cannot be cumulative and that the perpetrator will therefore be judged on the most serious offence.<sup>38</sup> In the case of repeated violence over a period of time, it is the most serious incident which will be judged and not the repetition. However, in the case of domestic violence, it is precisely an accumulation of humiliating, degrading and violent acts that go to make up the violence and it would not be easy to isolate one from another. If just one of these acts had to be isolated, it is not clear that it would in itself be sufficient to be characterized as violence, despite the aggravating circumstance from which marital violence benefits. The 2004 bill proposed by Senator Roland Courteau, which was inspired by recommendations from

---

<sup>37</sup> *Rapport d'activité 2004, APIAF: Association pour la promotion d'initiatives autonomes des femmes, Toulouse.*

<sup>38</sup> Criminal Code, article 132-3.

organizations and specialist jurists, therefore requested that an article be inserted in the Criminal Code making it possible to punish “with a three-year prison term the fact that any person habitually engages in acts of physical or psychological violence against their spouse, ex-spouse, cohabitee or ex-cohabitee or, in the context of a civil solidarity pact (*pacte civil de solidarité*)<sup>39</sup>, their partner or ex-partner”.<sup>40</sup> Following the tabling of this bill, Senator Jean-Guy Branger, in a briefing to the Senate on domestic violence, laid particular emphasis on the fact that “there are acts, especially of a psychological nature, which can be bearable when they do not happen very often but which are not if they become habitual and are repeated over and over again”.<sup>41</sup> The bill was also included among recommendations to the Senate put forward by the Senate Commission on Women’s Rights and Equal Opportunities for Men and Women. In the end, Parliament did not adopt the bill on the grounds that current legislation provides an aggravating circumstance in cases where the perpetrator is the spouse or cohabitee of the victim, already allowing such violence to be punished as an offence (*délit*) without having to rely on an assessment of the injuries inflicted on the victim. However, this aggravating circumstance on its own seems insufficient to describe the specificity of such violence and Amnesty International believes that the introduction of the notion of habitual violence into the law would enable a better response to be made to domestic violence, both in terms of punishing the perpetrators and recognizing what the women involved have gone through.

### 2.2.2 Domestic violence also affects “exes”

As Aude Woillez, from SOS femmes, SOS Women, in Marseille, who is training to become a judge<sup>42</sup>, points out, “When a man commits violence against a woman with whom he has lived or with whom he has been in a couple relationship, such violence is never a trivial matter. It is almost always the continuation of a long series of violent incidents that began when the couple were together”.<sup>43</sup>

The provisions of the 1994 Criminal Code defining domestic violence do not include former spouses or cohabitees. A bill enabling the aggravating circumstance to be extended to “exes” is under discussion. It was unanimously adopted in the Senate on

---

<sup>39</sup> An agreement between two adults of the same sex or different sexes establishing the arrangements under which they conduct their life together.

<sup>40</sup> Bill N° 62 (2004-2005) “seeking to combat violence against women and domestic violence in particular by means of a comprehensive system of prevention, assistance for victims and repression” tabled in the Senate on 10 November 2004 by Senator Roland Courteau and several of his colleagues, art. 1.

<sup>41</sup> Briefing report N° 229 (2004-2005) tabled in the Senate on 9 March 2005 by Senator Jean-Guy Branger.

<sup>42</sup> She is a student at the *École Nationale de la Magistrature* [the training college for the judiciary, based in Bordeaux].

<sup>43</sup> *Justice et violences conjugales*, Fédération nationale Solidarité Femmes, Paris, 2005, pp. 66-67.

23 November 2005 and tabled for discussion in the National Assembly on 13 December 2005. It would therefore appear that this amendment, which individuals and organizations involved with the issue have been hoping for many years, is about to be adopted. Amnesty International can only encourage its adoption.

### **2.3. The failure of the State to exercise diligence in prosecuting the perpetrators**

*“OK, they [the women] speak out, and then what?! It’s all very well to say you have rights but what if it’s not possible to have them enforced? It’s not right...”*.<sup>44</sup>

#### **2.3.1. Little chance of the perpetrators of domestic violence being brought to justice**

According to figures from the Justice Ministry, there were 5,568 convictions for offences (*crimes et délits*) committed by spouses in 2002 and 7,922 convictions in 2003, making an increase of 2,354.<sup>45</sup>

The increase denotes an improvement in the way the justice system responds to this type of violence. However, the courts are still only dealing with a limited number of such cases. The FNSF alone is approached by about 36,000 women every year, mainly in connection with domestic violence, thus indicating the size of the phenomenon. Non-governmental organizations are not the only ones to make this assessment. According to the Director General of the National Police, Michel Gaudin, domestic violence accounts for about 30 per cent of calls to local police stations and, in his words, *“in the opinion of the services on the ground, such violence [...] is growing and becoming an everyday occurrence”*.<sup>46</sup>

Of course the justice system cannot address types of violence for which it has not been given responsibility. However, according to the Enquête nationale sur les violences faites aux femmes [Enveff\*], National Survey on Violence against Women, only 13 per cent claiming to have suffered violence had lodged complaints.<sup>47</sup>

---

<sup>44</sup> Intervention by Marie-Dominique de Suremain at a symposium on fighting violence against women, Senate, March 2005.

<sup>45</sup> Official figures from the *Direction de l’administration générale et de l’équipement* at the Ministry of Justice, *Sous-département de la statistique des études et de la documentation*, National Criminal Records, 2004.

<sup>46</sup> Remarks made by Michel Gaudin at a hearing before the Senate Commission on Women’s Rights and Equal Opportunities for Men and Women, 1 February 2005.

<sup>47</sup> *Les violences envers les femmes en France, Une enquête nationale*, headed by Maryse Jaspard, *La Documentation française*, 2003.

The number of complaints lodged for domestic violence is not systematically recorded. It is hard to make a definite assessment of the percentage of complaints which have been the subject of legal proceedings. The gathering of such statistics would not only allow the authorities to have firm figures on what they are dealing with but also to understand at what level of the justice system follow-up comes to a halt.

### **2.3.2. The diversity of practice throughout the country**

It is left to each public prosecutor's office to decide on the "appropriate" follow-up to be given to any cases reported to it. This makes it inevitable that practice within the French justice system should vary. This freedom can nevertheless be limited by directives from the State.

Some public prosecutor's offices have used the leeway they have to set up schemes enabling them to tackle domestic violence in a systematic way. Though still too few, they prove indisputably that having a clear will to do something about it means that they are able to fight more effectively against such violence. As Françoise Guyot, Deputy Prosecutor at the Paris Public Prosecutor's Office, points out, "*many prosecutor's offices now have penal policy on the issue but it has to be said that these directives vary greatly from one tribunal de grande instance [court of first instance in civil and criminal matters] to another, even within the same département; this lack of consistency is very damaging and incomprehensible for the victims and organizations on the ground*".<sup>48</sup>

## **2.4. Access to justice: an obstacle course**

*Judge: "Sir, you have used violence against a person".*

*Violent man: "That's not a person, that's my wife!"*<sup>49</sup>

### **2.4.1. The difficulty women have in lodging complaints**

The first obstacle that stands in the way of justice for women who have suffered domestic violence arises from the difficulty they have in lodging complaints. They also find it harder to report brutality that takes place in private than that which takes place in a public place or their work place.<sup>50</sup> Some may feel guilty towards their partner or the family unit and home they are supposed to be protecting. If they end up

<sup>48</sup> "*Politiques pénales*", Françoise Guyot, an article that appeared in *Actualité juridique famille*, N° 12/2003.

<sup>49</sup> Symposium entitled "*La violence au sein des couples, les femmes brisent le silence : améliorons la loi*", 31 March 2005.

<sup>50</sup> *Les violences envers les femmes en France, Une enquête nationale*, headed by Maryse Jaspard, *La Documentation française*, 2003.

leaving, or indeed if they report their violent partner, they expose themselves to the real risk of reprisals from him, including the possibility that he will try to kill them.

In addition, the police are not always trained to deal with women who have been subjected to domestic violence.

N. had this to say about the first time she turned to the police:

*“The first time was when I wanted to throw him out and he took my keys and threw me out of my flat. When I went to the police, I heard someone say, “you did without society when you got together with this man and you will do without it when you leave him” (...).”*<sup>51</sup>

Lack of information about their rights also helps to keep these women silent, or even in denial. Nevertheless, getting the courts involved may help them to overcome their fear, become aware of their rights and rebuild their lives. According to Catherine Valadaud, who is in charge of services at the Louise Labbé refuge for women who have suffered violence in Paris, *“A judge tells them the law and, for the first time, they realize that they can confront their husband and his all-powerful image falls away”*.<sup>52</sup>

#### **2.4.2. Reporting domestic violence can turn women’s lives upside down**

P. had suffered years of violence from the partner she lived with. Following a change of job, he moved to another town, terminated the contract on their rented home and told her she had to leave.

*“I contacted some lawyers who told me that, legally speaking, I didn’t exist and that the lease on the house in the name of Mr and Mrs [P] did not allow me to stay there. (...) For two years I have been struggling with myself and the problems I have in finding work and getting off of income support (contrats d’insertion RMI) which [in the case of the over-50s] you have to reapply for every six months...”*

With no money or work, despite having a post-graduate qualification (*diplôme de troisième cycle*), A. is unable to find housing. She no longer has any furniture and has been sleeping on a mattress for months.<sup>53</sup>

When women do manage to get over the threats and their fears and decide to speak

---

<sup>51</sup> Testimony obtained by Amnesty International, 2005.

<sup>52</sup> *Femmes Libres*, Aurine Crémieu and Hélène Jullien, Le Cherche Midi, Paris, 2005, p. 60.

<sup>53</sup> Testimony obtained by Amnesty International in 2004.

out, they face crucial issues such as their economic survival, housing, children. How can they find, go back to or keep a job, find accommodation and pay the rent, look after the children and make sure they are protected? They face material and practical considerations which make it very difficult for them to abandon their home and report their partner. In C.'s case, after facing violence from her partner for 10 years, it was

*“after a terrible scene, in which he dragged her by the hair, repeatedly punched her and hurled insults at her, [that] she left ‘with her two children under her arm’. She left everything behind: ‘a comfortable life, a nice house, ...’. A month and a half of wandering ensued: with her two three-year-old darlings, she ended up moving house seven times”.*<sup>54</sup>

#### **2.4.3. Complicated procedures and inadequate support and housing solutions**

When women decide to leave their partner, they come up against complicated procedures, which are often slow and difficult, causing them to become discouraged and even to give up.

There are a certain number of organizations providing help in this area but they are unable to deal with every case. In addition to this isolation, the women have to endure repeating the details of the violence they have suffered to one professional after another. Worn down by the repeated violence and often still living with the assailant, they have to show great courage in order to cope with all the constant running around and the complexities of the administrative and medical procedures, all the while continuing to undertake the tasks of everyday family life, especially with regard to the children.

APIAF, an organization in Toulouse responsible for the care of women who have suffered domestic violence, said the following: *“We should point out here that we are finding it more and more difficult to find emergency accommodation places. Several women have been obliged to go away again without having any proper solution. Temporary provisions, such as a three-day stay in a hotel for women with children, are not very appropriate in situations in which women who have already been rendered vulnerable by the violence they have gone through cannot take the risk of a “false” departure that is not secure”.*<sup>55</sup> The organization concluded: *“We feel that we are in a paradoxical situation, in which women are increasingly breaking their silence and expecting the courts to recognize them as victims and protect them and their children”.*<sup>56</sup>

<sup>54</sup> *Femmes Libres*, op.cit., p 59.

<sup>55</sup> *Rapport d'activité 2004*, APIAF (Association pour la promotion d'initiatives autonomes des femmes), Toulouse.

<sup>56</sup> *Idem*, p. 9.

Up till now national information campaigns on domestic violence have mainly encouraged women to break their silence. The State has not, however, ensured that once the silence has been broken, attention is paid to what such women are saying and that a genuine system is in place to provide them with security, support and compensation for their injuries.

The provision of accommodation and support to women who have suffered domestic violence still raises serious problems. Organizations are overwhelmed with requests and there is less funding. According to the FNSF, “*Of the 34 member organizations which replied to our survey, 19 have financial problems: reduced grants, a growing budget deficit, threats of redundancy, and stagnant resources while expenditure is on the increase... The deficits and lost funding amount altogether to almost 500,000 euros and they are only a part of the whole picture. On the whole they are in a precarious situation and funding is sluggish. Local funding does not make up for the reduction in state funding and is unstable from one year to another*”.<sup>57</sup>

Despite the promises made by the former Ministry for Equal Opportunities<sup>58</sup>, as well as the Social Cohesion Plan launched by Jean-Louis Borloo, the Minister for Employment, Social Cohesion and Housing, the resources given to organizations specializing in the care of women who have suffered domestic violence have, on the whole, been revised downward. The State has a duty to put an effective system in place to provide women with access to not only emergency accommodation solutions but also social housing and social and economic support to help them escape from the control of their violent partner.

#### ***2.4.4. Reporting cases to the authorities: the initial obstacles***

##### Lodging a complaint

For a case of domestic violence to be acted on by the courts, they must be informed about it. The most effective way of bringing a case to the attention of a public prosecutor’s office so that appropriate steps are taken is still to lodge a complaint (*plainte*).

The task of recording a complaint and then transmitting it to the prosecution service falls mainly to police stations. Complaints are usually filed by the women themselves but close relatives and professionals can also alert the police so that they can go to the scene of the crime to make a report and conduct a local investigation (*enquête de*

---

<sup>57</sup> Press release issued by the *Fédération nationale Solidarité Femmes* on 8 March 2005.

<sup>58</sup> *Le plan global de lutte contre les violences conjugales, “Dix mesures pour l’autonomie” des femmes*, adopted in the Council of Ministers on 24 November 2004.

*proximité*). These procedures are still not systematically carried out across the country because police officers do not have the necessary resources and are not given clear guidelines on how to deal with the issue.

As Maryvonne Chapalain, Chief of Police at the Paris police headquarters, has pointed out, as soon as the police have received a complaint or declaration (*main courante*) [concerning a possible offence], they should call the victim back within the following 48 hours. She went on to say that this would be ideal if it was systematically implemented.<sup>59</sup>

In some cases, the reporting of an offence simply leads to the recording of a declaration (*main-courante*) which does not give rise to legal proceedings. This may well be the choice of the woman who may not feel ready to start legal proceedings against her partner or may fear retaliation, or it may be the result of advice given to her by the police who might believe that what took place was too insignificant to warrant lodging a complaint.

The Criminal Prosecution Guide on tackling domestic violence states that “*if an investigation service is authorized to accept reports of offences, good practice dictates that this task be allocated to investigators who have been trained in the specificities of litigation on domestic violence, in order to be in a better position to give a sympathetic ear to the victim and, on the basis of what she says, assess the seriousness of the situation*”.<sup>60</sup> The authors of the guide emphasize that, knowing how difficult it is for victims of domestic violence to report what has happened to them, “*it is important to seize any chance there might be of conducting an investigation into a situation that may have already been going on for a long time*”. They go on to say that “*simple declarations (mains-courantes) or judicial information reports (procès-verbaux de renseignement judiciaire) cannot give an account of the complexity and context of cases of this kind*”.<sup>61</sup>

It is essential for genuine follow-up to take place so that these recommendations are implemented in practice.

#### Reporting an offence

Lodging a complaint at a police station is not the only means of seeking justice. French law states that any official, public officer or recognized authority must report

---

<sup>59</sup> Symposium on “*La violence au sein des couples, les femmes brisent le silence : améliorons la loi*”, 31 March 2005.

<sup>60</sup> *La lutte contre les violences au sein du couple, Guide de l'action publique*, p. 24.

<sup>61</sup> *Idem*, p. 29.

any offence (*délit* or *crime*) that has been brought to his or her knowledge without delay, including all relevant information, official reports or records.<sup>62</sup>

#### **2.4.5. Proving and assessing domestic violence**

To prove and assess domestic violence, the courts use an assessment based on the number of days the victim is deemed eligible for a benefit known as “*incapacité totale de travail (ITT)*”, “total incapacity for work”.

*“All those years, when I had marks, I tried to get doctors to make a report. I got a wide range of responses. After I had been forced to have sexual relations, one of them told me, “Oh, you know, with this kind of thing, in a woman who has already had a child, you can’t really see much”. (...) A psychiatrist I saw several times because I was depressed refused to mention anything other on the certificate than the days she had seen me. Even though she had advised me to leave [my partner]. I had accumulated a certain number of medical certificates but when I asked for a divorce, my own lawyer “advised” me to only submit a few because the judge might criticize me for having agreed to marry him even though he had been violent before”.*<sup>63</sup>

The occurrence of violence within a couple relationship is definitely a criminal offence. In such cases the provisions of the law look at the gravity of the offence (whether it is a *contravention*, *délit* or *crime* [see footnote 30]) and not the nature of the violence. The violent act is not especially defined other than in terms of the consequences for the victim or the status of the perpetrator or the victim (namely, whether one or the other is a juvenile, has authority over the other, is a spouse, and so on). Given this, even if there is an aggravating circumstance, an ITT evaluation is still a key component of any judgement. In theory, lawyers involved in cases of domestic violence can put forward any kind of evidence and judges can ask for additional expert opinions or for a preliminary investigation (*instruction*) to be opened. However, as a preliminary investigation<sup>64</sup> is not obligatory in the case of a *délit* (as opposed to the case of a *crime*) and in the absence of other evidence such as the findings of a local investigation (*enquête de proximité*), a medical certificate and the number of ITT days granted often form the cornerstone of the judgement.

Despite the importance of this medical-legal concept in criminal procedure, it is not defined in any legal text and gives rise to very wide-ranging interpretations. This is all the more so in the case of domestic violence where it is a question of assessing

---

<sup>62</sup> Code of Criminal Procedure, article 40.

<sup>63</sup> Testimony obtained by Amnesty International, 2005.

<sup>64</sup> The stage of investigation prior to trial.

---

violence that has often taken place over a long period of time and consists of humiliation, denigration and moral and psychological hounding.

#### ***2.4.6. ITT is a confused concept despite the explanations given in case law***

*“I (...) tried to provide evidence of his violence but it was particularly difficult because he was careful to hit me in places where it left fewer traces (punches in the stomach) and the few medical certificates I was able to use did not say much.”*

Mrs N., testimony obtained by Amnesty International.

The type of medical certificate used in the preliminary investigation of a domestic violence case consists of two parts: a description of the injuries inflicted and the ITT evaluation. It can be issued by a general practitioner, a forensic pathologist or a doctor from an emergency department.

Contrary to what its name suggests, the number of days of total incapacity for work does not imply immobility or total physical incapacity and is not necessarily identical to the number of days of sick leave (*arrêt de travail*), for which a different evaluation and a different certificate apply.

Case law from trials has specified that an evaluation of total incapacity for work (ITT) should assess the consequences any violence has for “work” in the sense of habitual or personal activity, bodily work or any activity, even if not necessarily physical or professional. Not being able to leave your home, for example, ought to be taken into account in such an assessment, whether it is due to a broken leg, a facial bruise that you do not want others to see, or significant psychological trauma.

A’s partner pushed her down the stairs at her home so that she fell “*head first*”. A medical certificate stated that there had been a “*marital brawl*” and found “*trauma to the left knee following direct impact*”. A doctor at an emergency department issued her with a sick leave certificate but made no reference to her entitlement to ITT on the grounds that “*Only Urgences Médico-judiciaires (UMJ\*)* [a special medical unit that attends the victims of any type of crime which may require a certificate or on which the courts may request an expert opinion] *are authorized to decide on total incapacity for work (ITT in the penal sense of the term)*”.<sup>65</sup> She was prescribed analgesics. Shortly afterwards, A. consulted a specialist who, after taking an X-ray, diagnosed a ruptured ligament caused “*by traction on the stairs causing twisting of the left knee then a fall to the knees*”.<sup>66</sup> A. was immobilized for six weeks.

---

<sup>65</sup> Extract from the original medical certificate issued to A.

<sup>66</sup> Idem.

#### **2.4.7. The difficulty of expressing domestic violence in terms of ITT**

While there may be a good deal of variety in the way physical violence is assessed, psychological violence is very rarely taken into account. According to a lawyer who met with Amnesty International, “*The main difficulty is psychological violence. Medical certificates do not talk about it enough and it’s a pity that social workers do not talk about it at all! There’s too much silence everywhere!*”.<sup>67</sup>

The Criminal Prosecution Guide on tackling domestic violence nevertheless gives some guidance on how the medical profession could provide better care to victims.

*“Total incapacity for work is not only an expression of injuries of a physical nature, it should also include psychological trauma. In order to assess the latter in terms of the number of days of total incapacity for work, the practitioner should seek to find out as precisely as possible the correspondence between her psychological suffering and what happens in her everyday life”.*<sup>68</sup>

It would therefore appear to be crucial in the case of domestic violence to ensure that practitioners are able to see the person again a few days or a week later in order to carry out a second assessment as well as to monitor the condition of the victim. Among other things, this should allow the practitioner to gain a fuller appreciation of the impact the violence has had on the person’s everyday life. Here again, this type of attention needs to be coordinated at a national level and be accompanied by the resources required to implement it.

As Police Chief Maryvonne Chapalain has pointed out, “*Everything will depend on the gravity of what has happened... If the ITT is low, we will not necessarily go and look for the person*”. In addition, Françoise Guyot said that “*some doctors from Urgences médico-judiciaire (UMJ) (...) put three days’ ITT (for psychological violence) and when that is the case, the courts will take note because judges lay great store on the number of ITT days, for them it is a measure of proof and they are responsive to it*”.<sup>69</sup>

Urgent reflection therefore needs to be done to find a way of standardizing the way domestic violence is assessed, ensuring in particular that psychological violence is taken into account.

---

<sup>67</sup> Interview with Amnesty International, 2005.

<sup>68</sup> *La lutte contre les violences au sein du couple*, *Guide de l’action publique*, p. 49.

<sup>69</sup> Interventions made during a symposium organized by the Senate on “*La violence au sein des couples, les femmes brisent le silence : améliorons la loi*”, 31 March 2005.

#### **2.4.8. What happens to complaints?**

When a complaint reaches the public prosecutor's office, it is examined and, depending on its contents, the matter can be closed without further action, an alternative measure to prosecution can be taken, an investigation can be opened or a prosecution can be started.

##### Closure with no further action

When a complaint is subject to "plain" closure with no further action, meaning that no other measure, such as reminding the perpetrator of the law (*rappel à la loi*), holding him in police custody or opening an investigation, has been carried out, it reinforces the feeling of victims that such violence is not the concern of the courts. It is essential, as in the case of Douai, and following the example of other public prosecutor's offices, to stop treating these types of allegations of violence in this way.

One of the main reasons why a complaint may be closed without any further action being taken is if there is insufficient evidence or the damage done is deemed to be insignificant or inadequately described. In order to be able to pursue the case, the public prosecutor's office must be in possession of elements that constitute an offence. Unless there has been a preliminary investigation, a medical certificate and the part concerning the ITT assessment of any violence carried out is often the main evidence available in a case.

In practice, in the absence of specific evidence of domestic violence, the public prosecutor's office will close complaints without taking any further action.

Another important reason why this happens can be to do with the attitude of the complainant. She may in the end decide to withdraw her complaint, for example, after receiving threats from her partner or because she thinks the situation can change. Unsettled by the violence she has suffered, a victim's psychological state may be such that she is unable to lodge a coherent complaint and what she says will sometimes be challenged.

After spending time in hospital for depression as a result of being subjected to domestic violence by her partner, A. lodged a new complaint. However, she was discouraged by the police to whom she reported the violence: "*My word is no longer worth anything (...) There will always be a mitigating circumstance for the assailant*". Despite the fact that she was immobilized for six weeks as a result of the violence, her complaint was closed with no further action being taken.

The prosecution service may also make an initial decision to close a complaint without taking further action but later reverse its decision. It can also decide to pursue a case in which the victim has withdrawn her complaint. There are therefore many possibilities but, nevertheless, according to the organizations, professionals and victims Amnesty International talked to, too many complaints are closed with no further action being taken.

#### Alternative measures

Measures other than prosecution may also be considered. This is the case when the requirements for prosecution are not met or the damage done is deemed insufficient to merit prosecution. They may take the form of a reminder of the law (*rappel à la loi*), a warning, conditional closure, a swift social investigation [of the circumstances of the family] (*enquête sociale*) or referral for penal mediation (*médiation pénale*).

The first four have the advantage of sending out a warning to the alleged perpetrator that he will be subjected to criminal proceedings if he uses violence again.

#### ***2.4.9. The inappropriateness of penal mediation in the case of domestic violence***

*“In order to play its role, the law must devote itself to understanding, expressing its disagreement with this or that behaviour and defining any transgression. But it won’t manage to do so without a trial. The current trend of dispensing with trials deprives the law of its very essence.”*<sup>70</sup>

Penal mediation is defined as a measure that seeks to “bring the perpetrator and victim together in order to reach an agreement about methods of reparation, as well as to re-establish ties and encourage, as far as possible, the conditions required for there to be no recurrence of the offence when the parties are summoned to see each other again”.<sup>71</sup> Such mediation can take the form of reparation of a symbolic nature (an apology, understanding of the other’s position) or a financial nature (possible compensation as proposed by the victim and agreed by the perpetrator). Penal mediation can only take place if a complaint has been lodged and the two parties agree to it.

---

<sup>70</sup> Lydie Cerniglia, Solidarité Femmes, Grenoble, *Justice et violences conjugales*, Fédération nationale Solidarité Femmes, Paris, 2005, p 34.

<sup>71</sup> Circular on penal policy with regard to alternative responses to legal proceedings and appeals to the delegates of the prosecutor, prepared by the Office for Criminal Affairs and Pardons, published in the official gazette of the Ministry of Justice N° 93 (01/01- 31/03/2004) CRIM 2004-03 E5/16-03-04, NOR : JUSD0430045C.

---

The vast majority of organizations and professionals working in the field of domestic violence oppose the use of penal mediation to deal with it. Françoise Guyot, the Deputy Prosecutor at the Paris Public Prosecutor's Office, said this on the matter: "*The goal of penal mediation is to help bring the two parties together. However, here it is not a question of two parties but of an alleged perpetrator of violence and a victim. Penal mediation allows a solution to conflict to be sought. However, here the question is not one of conflict but rather of violence*".<sup>72</sup>

Indeed penal mediation is inappropriate in cases of domestic violence because, on the one hand, it is based on the premise that the two parties are on an equal footing and, on the other, because it does not allow the perpetrator to be informed that he has broken the law, thereby reinforcing his sense of impunity.

After lodging a complaint following two years of repeated violence, A. was referred for penal mediation by a *tribunal de grande instance* (court of first instance in civil and criminal matters). The mediator told her, "*You're not really going to jeopardize this man's career*". A. said, "*I was not asked what I did (...), first and foremost it was the man's career – he's an architect – that had to be looked at*". Following the mediation, the mediator sent A's partner the following letter to sign: "*I, the undersigned, Mr. X, promise that I will no longer be violent towards my partner, Mrs C., or threaten her in any way. I regret the actions I have been accused of*".<sup>73</sup> A. withdrew her complaint: "*I was psychologically tired, I had no strength any more*". She became depressed and tried to commit suicide.<sup>74</sup>

Penal mediation thus implies that the two parties are equally autonomous and able to speak out. However, in cases of domestic violence, women are usually subjected to a system of control which undermines their ability to freely express themselves.

Besides, it is rare for a penal mediator to be prepared to intervene in domestic violence issues. Any citizen can apply to become a penal mediator. They are then appointed to the post by a procureur de la République (prosecutor in the courts of first instance) and given minimal training which has not been standardized at a national level.

The Criminal Prosecution Guide recommends that certain precautions be taken when using this measure, especially if the perpetrator is especially dangerous, the victim

---

<sup>72</sup> Speech made during a symposium entitled "*La violence au sein des couples, les femmes brisent le silence : améliorons la loi*", 31 March 2005.

<sup>73</sup> Letter on headed paper from the *tribunal de grande instance* in X.

<sup>74</sup> Testimony obtained by Amnesty International, 2005.

appears to be particularly traumatised by the situation, the accused is in total denial or either of the two is opposed to it.<sup>75</sup>

These precautions can only be taken if penal mediators are adequately trained and aware of the difficulties of applying this measure in cases of domestic violence. It is also essential for victims to be informed of their rights and to be accompanied by a lawyer, especially when consenting to penal mediation.

However, the various precautions mentioned imply that the public prosecutor's office is aware of the facts, which is not the case if there has been no preliminary investigation (*instruction*) or swift social investigation [of the circumstances of the family].

Amnesty International therefore has serious reservations about using penal mediation in cases of domestic violence. Other measures, such as reminding the perpetrator of the law, carrying out a swift social investigation [of the circumstances of the family], removing a violent spouse from the home, or indeed ordering the perpetrator of the violence to undergo therapy are more appropriate and should be given preference.

#### **2.4.10. Criminal proceedings: punishing the perpetrators**

In the event that the public prosecutor's office decides to bring the alleged perpetrator to justice, if found guilty, he will be punished in accordance with the sentences laid down in the Criminal Code. In the end, imprisonment and fines are not often used in cases of domestic violence. Several organizations and lawyers who met with Amnesty International said that many trials for domestic violence still end with suspended sentences. Senator I. de Richemont, the rapporteur for various draft bills relating to domestic violence, said the following: "*The penalties imposed remain far below the established legal maximum. For example, in cases of ITT of more than eight days, the average prison sentence is usually less than six months, whereas if the aggravating circumstance were to be applied, the maximum prison sentence would increase to five years*".<sup>76</sup> The low conviction rate stems from all the difficulties outlined here and contributes to the fact that women remain silent. The Spanish example shows how having a strong policy in this regard can free women to speak out. Since the law on gender-based violence was adopted in Spain in the summer of 2004, there has been a 7.5 per cent increase in the number of complaints lodged.

---

<sup>75</sup> *La lutte contre les violences au sein du couple, Guide de l'action publique*, p. 92-93.

<sup>76</sup> Official annotated Senate record, 29 March 2005.

## 2.5. Domestic violence in the context of migration

Male domination of a partner and the use of violence towards that person is common across all social classes, cultures and nationalities. However, certain social constructs, such as those based on place of origin, age or sexual orientation, are sometimes the source of inequalities that may foster or reinforce the hold one partner has over the other. So it is not a matter of regarding these different characteristics as cumulative elements, but rather as elements of a complex system of inequality and domination, in which different forms of discrimination and exclusion overlap and reinforce each other.

Foreign women who are both irregular migrants and victims of domestic violence face many difficulties. They often believe that, by reporting their situation to the justice system, the police or social services, they will risk losing any chance they may have of being allowed to stay in France. Returning to their country of origin in such circumstances means exposing themselves to rejection, ostracism and even threats or attempts on their life, because of a perception that they have failed in their marriage and therefore sullied the dignity of the entire community.

The police and justice system sometimes hold back from responding to this type of violence on grounds of cultural difference. Sexist and controlling behaviour are thus legitimised by social norms which the system would prefer not to take a position on.<sup>77</sup>

### 2.5.1. Different contexts, but the same sense of insecurity: their right of residence is at stake

These interlinked and complex contexts are particularly applicable to migrants, who may be subjected to various forms of discrimination and exclusion at the same time.<sup>78</sup> All women subjected to domestic violence encounter difficulties but foreign<sup>79</sup> women face other obstacles, particularly when their administrative situation is insecure.<sup>80</sup> They are generally ill-informed about their rights and are often more isolated when it

---

<sup>77</sup> *La 'différence culturelle' et le traitement au pénal de la violence à l'endroit des femmes minoritaires: quelques exemples canadiens*, by Sirma Bilge, in *Journal International de Victimologie*, April 2005.

<sup>78</sup> The circumstances of migrants vary greatly: some people are born in France of foreign parents and obtain, at their request, French nationality on reaching the age of majority. Others enter France in the context of family reunification or to marry a French partner. Others have fled persecution (and can therefore seek refugee status), arrive with a tourist visa (of limited duration) or, having evaded border controls, are deemed to be "illegal immigrants" or "without papers".

<sup>79</sup> According to the *Institut national de la statistique et des études économiques* (INSEE), National Institute of Statistics and Economic Studies, the definition of "foreigner" is any person residing in France who does not have French nationality; cited in *Les immigrés en France*, Insee, 2005.

<sup>80</sup> 'Administrative situation' here refers to their right of residence in France, that is, whether or not they have a residence permit.

comes to leaving their partner and finding accommodation, work and a viable alternative. Haoua Lamine, President of Femmes de la Terre, Women of the Earth, says that, “in many cases, not having the right of residence is tantamount to having no rights at all. This knowledge prevents people from taking action and is responsible for perpetuating many situations that could be improved”.<sup>81</sup>

Although any woman may face domestic violence, foreign women are especially isolated when it happens to them. Given that they often have no alternative solution, they make up around 30 per cent of women assisted by member associations of the Fédération nationale solidarité femmes, National Women’s Solidarity Federation.

The isolation experienced by foreign women who are subjected to domestic violence is reinforced by the very real risk of losing their right of residence, especially if it depends on their status as the partner of a French citizen or holder of a residence permit. Their husbands or partners, aware that the woman is dependent on them for obtaining or renewing their French residence permit, do not hesitate to blackmail them, for example, by threatening to tell the Prefecture that their marriage is one of convenience if they decide to lodge a complaint.

*“Madame B is Moroccan, married to a Frenchman. They met in Morocco. He promised her the earth, she left everything for him, her country, her job and her family. She obtained her first residence permit. He soon became violent, would not allow her to work, wanted to make an object of her, including a sexual object. She fled and tried to lodge a complaint against him. At the police station, she was told that it would be sufficient to just make a declaration (main courante). She was able to find organizations to help her in the days after she fled, then she found a job and somewhere to live. Little by little, she began to recover from the traumatic experience she had suffered at the hands of her husband. Furious that she did not return to the marital home, he had the marriage annulled, claiming that it was a marriage of convenience. The prefecture did not renew her residence permit because her marriage had been annulled and told her to leave the country. No longer having a residence permit, she lost her job and her accommodation. She later learned that her husband had married for a third time, using the same ploy on each occasion, without ever being held to account for it”.<sup>82</sup>*

---

<sup>81</sup> *Femmes étrangères, parfois une double discrimination*, by Haoua Lamine, in *Réalités Familiales*, N° 64-65 – 2002.

<sup>82</sup> Personal testimony given to *Femmes de la terre*, Women of the Earth, and published in “*Femmes étrangères, parfois une double discrimination*”, by Haoua Lamine, in *Réalités familiales*, N° 64-65 – 2002.

Some men do not want to get saddled with such negotiations and are likely to throw their wife out if she does not behave as they would wish, without being taken to court for so doing.

*“Madame D is Ivorian. She married a Frenchman in Côte d’Ivoire, in a traditional marriage (not recognized in France). He sent for her to come to France. She then realized that he already lived with another woman, and that the latter wanted her to work as a domestic help in the house. She had a child, who had French nationality because the father is French and recognized the child as his. The day that Madame D. rebelled, her “husband” took her passport away and his first partner threw her out. She found herself out on the street with a child that her husband wanted to take away from her. She had no right of residence. She could obtain it if she could prove that her son was French. For that to happen, the father had to provide documentation, which he refused to do, thinking that it was a good way of keeping her at his mercy”.*<sup>83</sup>

### **2.5.2. The response of the French authorities: some progress and some shortcomings**

The law on immigration control, residence of foreign nationals in France and nationality, of 26 November 2003, reduced the validity of residence permits for family members benefiting from family reunification from 10 years to one year.<sup>84</sup>

If a relationship breaks down (*rupture de vie commune*) within two years of the issuing of a temporary residence permit, the woman can be refused renewal of her permit or have it withdrawn.<sup>85</sup> However, since 2003, “*when a relationship is ended at the initiative of a foreigner because of domestic violence suffered at the hands of his or her spouse, the authorities may renew their permit*”.<sup>86</sup>

This new provision, which seeks to ensure that more attention is paid to violence suffered by foreign women, is an important first step. However, it can only be put into practice if women have access to information and protection and support mechanisms. It leaves *préfets* with wide room for manoeuvre, resulting in wide variations in practice. In some cases, such as *département 93*, the local authorities have taken

<sup>83</sup> Personal testimony given to *Femmes de la terre*, Women of the Earth, and published in “*Femmes étrangères, parfois une double discrimination*” by Haoua Lamine, in *Realités familiales*, N° 64-65 – 2002.

<sup>84</sup> Law 2003-1119, 26 November 2003, on immigration control, residence of foreign nationals in France and nationality.

<sup>85</sup> *Code de l’entrée et du séjour des étrangers et du droit d’asile*, Code of entry and residence of foreigners and the right to asylum, article L431-2.

<sup>86</sup> *Idem*

significant account of such violence. Foreign women who are victims of violence, irregular migrants or exposed to the risk of losing their residence permit have had their situation regularised, giving them the right to work and a greater chance of finding accommodation and training where necessary, as well as the chance to escape from the clutches of their partner.

However, in other regions, several social workers, regional officers and associations told us that such outcomes remain rare. Many women still have to deal with the lack of awareness of police officers, who refuse to record their complaint on the grounds that they do not have a residence permit, which is against the law. Social workers and health professionals are also not sufficiently informed of the rights these women have or the steps they might take to assist them. There are significant difficulties in getting domestic violence recognized for all women but this is even more the case for foreign women who are irregular migrants.<sup>87</sup> It is therefore essential that women, whatever their administrative situation, are granted the same level of protection and attention by the authorities. The state must ensure that information is available to all, in several languages, and that all officials are made aware of the particular nature of this issue.

## **2.6. Forced marriage**

One dimension of family and domestic violence that adds to the difficulties encountered by migrant women is forced marriage, an issue which is all too often ignored or underestimated when considering violence towards women and girls in France.

### **2.6.1. What do we mean by forced marriage?**

*“Forced marriage is any imposed marriage that is contracted in the name of superior interests: the homeland, the church, religion, continuity of the family line, the consolidation of interests or the augmentation of assets...”*<sup>88</sup>

Forced marriage is a traditional and customary practice that is contrary to fundamental rights and women’s rights. To force a woman into a union, whether it be institutional (namely, marriage) or symbolic, religious or traditional (referred to here as “union”), is a denial of her liberty and her right to equality that generally entails serious attacks on her physical and moral integrity. International law has therefore recognized the principle of free consent to marriage as one of the fundamental principles enshrined in

---

<sup>87</sup> Appeal by *Femmes de Turquie*, a Turkish women’s group, 20 March 2003, *Pour le retour d’Alev*.

<sup>88</sup> *Prévention de la pratique des mariages forcés : Première initiative de formation des personnels du service social en faveur des élèves en Seine-Saint-Denis, Délégation régionale aux droits des femmes*, Regional Office for Women’s Rights, 2000, p 4.

the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and many other UN instruments. However, it was only recently, with the adoption, in 2003, of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, that the legal age of marriage was set at 18 for both parties.

Various regional instruments have recently incorporated provisions banning these practices, such as:

- The African Charter on the Rights and Welfare of the Child, adopted in 1990, and that came into force in 1999, condemns the marriage and engagement of children;
- The Bamako Declaration by African Francophone ministers on the protection of children of 29 March 2001 stated that the consent of intending spouses must be freely given and that if this is not the case, the marriage is null and any sexual act will be considered as sexual violence;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in 2003 (in particular, article 6).

### ***2.6.2. The situation in France***

The forced marriage situation in France is very diverse and calls for an appropriately varied response. Those concerned are:

- Girls<sup>89</sup> or women with a residence permit in France or of French nationality, who are quite often threatened with forced marriage to a man residing in their country of origin or in that of their parents. The forced marriage may take place during a visit abroad and she may be forced to stay there but it might also take place in France.
- Girls or women of foreign origin who come to France to marry a French national or a compatriot.

Civil marriage, the only officially recognized type of marriage, is regulated by the Civil Code and the Code of Civil Procedure. The man must be over 18 and the woman must be over 15.<sup>90</sup> 'Forced marriage' is not an offence in itself, but there are a certain number of common law provisions that allow legal proceedings to be taken against the organizers of a forced marriage and, in certain conditions, the marriage to be annulled. However, forced marriages have to be detected before that can happen.

---

<sup>89</sup> In this report, "girl" means a female under the age of 18.

<sup>90</sup> A bill adopted on 29 March 2005 by the Senate amends this provision of the Civil Code dating from 1804. It sets the legal age of marriage at 18 for women. It has to be adopted by the National Assembly before it can be incorporated into French law.

### **2.6.3. A recent increase in public awareness**

At the end of the 1990s, campaigning organizations and the regional offices for women's rights, especially the one in Île-de-France<sup>91</sup>, tried to attract the attention of the authorities to this issue. As a result of the work done by organizations such as Agir avec Elles<sup>92</sup>, Take Action With Them, Ni Putes Ni Soumises, Neither Prostitutes Nor Submissives, the Mouvement français pour le planning familial (MFPF\*), French Family Planning Movement, and Groupe d'action contre les mutilations sexuelles (GAMS\*), Action Group against Sexual Mutilation, the French authorities and the public are now aware of the extent of the phenomenon. Whether they are minors or not, these women all need protection, shelter and support in order for their rights to be respected. This also means taking account of their wish not to break all links with their family and parents.

In 2002, the Ministry of Education organized a conference on this issue.<sup>93</sup> In 2003, the *Haut Conseil à l'Intégration*, National Council for Integration, also made a number of recommendations aimed at preventing the operation of these practices within the country. Most of its recommendations are still relevant.

### **2.6.4. Forced marriages and the violent consequences for women**

"What does an adolescent learn on the day of their forced wedding? That their body and their life no longer belong to them..."<sup>94</sup> Violence, rape, unwanted pregnancy, pressures from the in-laws, conditions of servitude and kidnapping are all practices currently associated with forced marriage. These forms of violence are methods of the woman who has been forced into marriage under control. As this violence takes place within what should be a place of safety, the home, it has dramatic consequences on the lives of the women involved, leading, for example, to self-harm, attempted suicide, drug-taking, failure at school, crime, eating problems, psychosomatic problems, loss of identity and psychological distress.

---

<sup>91</sup> *Prévention de la pratique des mariages forcés*, Délégation Régionale Droit des Femmes et Égalité, Regional Office for Women's Rights and Equality, Île-de-France, 2000, op. cit.

<sup>92</sup> A network of organizations working on the issue of forced marriage.

<sup>93</sup> *Égalité, Mixité, Laïcité, De la mission générale de l'émancipation par l'école à la lutte contre les mariages forcés et pour l'égalité des droits*, a conference organised by the Ministry of Education, Paris, March 2002.

<sup>94</sup> Marie-Hélène Franjou, paediatrician and member of GAMS; comments reported in *Prévention de la pratique des mariages forcés*, Délégation régionale aux droits des femmes, Regional Delegation for Women's Rights, 2000, op.cit.

### ***2.6.5. Courses of action open to women who are victims of forced marriage:***

The different stages at which forced marriage can be prevented before it happens and the responsibilities of the general public and professionals.

French law states that all persons have a duty to assist a person in danger, as long as such assistance does not involve unreasonable risk to themselves.<sup>95</sup> Professionals bound by professional confidentiality are, in principle, exempt from this duty. However, article 226-14 of the Criminal Code releases from professional confidentiality “*anyone who informs the judicial, medical or administrative authorities of deprivation or abuse, including sexual abuse, which comes to their knowledge, and which has been inflicted on a minor or on a person who is unable to protect herself or himself owing to their age or physical or mental capacity.*” The law also states that no disciplinary action may be taken against the professional concerned.

In addition, the law of 10 July 1989 on child protection makes it a duty for staff who have knowledge of violence perpetrated against minors aged 15 or under to report the fact. However, teachers, doctors, nurses and social workers can only intervene if they are aware of a risk. To that end, they need to receive training to enable them to assess the situation and the degree of danger and to detect the signs of forced marriage.

#### The need for appropriate support

Once the authorities have been informed, it is essential that support is available for the girl or woman under threat. The woman may be reluctant to be involved in any mediation that would mean confronting her family, and intervention by the authorities may also precipitate a decision by the parents. As in all cases of violence against women, it is essential that women are supported in whatever action they take and that their safety is ensured at every stage of any legal proceedings.

This is how Christine Jama, a legal expert and member of Voix de Femmes, Women’s Voices, explains it: “*Where a victim’s access to the law is concerned, we must stress the crucial importance of listening. Many young women need to be able to change their minds several times before reaching a decision. Deciding to break with one’s family to avoid a forced marriage is not something to be undertaken lightly.*”<sup>96</sup>

### ***2.6.7. Courses of action available after a marriage has taken place***

*“I want it [the marriage] annulled.”*

*“Why should I divorce, I was never married!”*

<sup>95</sup> Article 223-6 of the Criminal Code.

<sup>96</sup> Speech made by Christine Jama at a MFPP conference, 4-5 November 2004.

Latifa Drif of the MFPP in Hérault says that “most young girls want to annul their marriage as a form of symbolic reparation”.<sup>97</sup>

#### Application for annulment

Forced marriage in itself is not an offence under French law. However, as the Civil Code stipulates that “there is no marriage if there is no consent”<sup>98</sup>, marriage can be annulled by a judge at the request of either of the two spouses, or by the Public Prosecutor’s Office.<sup>99</sup> In all cases, annulment must take place within a year from the marriage taking place. However, before the matter can go to court, there has to be a “French connection” (*facteur de rattachement*), for example, in that a French national is involved, the marriage took place in France or the marital home is in France.<sup>100</sup>

#### If the marriage has taken place abroad

Under the provisions of the Civil Code, a marriage that takes place abroad can only be contested in a French court if one of the spouses is French. If both spouses are foreign nationals, the national law of their country takes precedence. Under French law, any marriage contracted abroad is considered valid if it has been celebrated in accordance with the laws of the country in question, including customary law, if the country in question has incorporated customary law into its own body of law.<sup>101</sup>

#### Prior to civil registration

For a foreign marriage to be considered valid in France, it must be recorded in the register of births, marriages and deaths by the *service central d’état civil*, an office within the Ministry of Foreign Affairs which is based in Nantes. If either of the two spouses is French, the spouse wishing to have the marriage annulled can ask the State Prosecutor to stop the marriage being registered in France. Diplomatic or consular representatives responsible for registering marriages in France can also defer registration and alert the State Prosecutor if they think that the marriage might or should be annulled. This procedure, being a State responsibility, takes away some of the guilt the woman might feel and also provides protection because she can point to the fact that it was the French State that made the decision. However, the period in which this may take place is very short, as the prosecutor has six months to declare

---

<sup>97</sup> Testimonies taken from the minutes of an international meeting organized by the MFPP.

<sup>98</sup> Civil Code, article 146.

<sup>99</sup> Civil Code, articles 170-1 and 180.

<sup>100</sup> This is the case since adoption by the European Union Commission of Regulation 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses. Previously, the location of the marital home was not considered as a factor allowing referral to a French court.

<sup>101</sup> Civil Code, article 147.

annulment and, since 2005, all such procedures have been centralized at the registry office of the Ministry of Foreign Affairs, based in Nantes.<sup>102</sup>

#### After civil registration

A marriage can still be annulled after registration. This procedure is complex, very slow and expensive. In theory, women have access to legal aid to cover the costs of the procedure. In practice, it is rarely quick or simple to obtain such aid.

If the marriage has taken place abroad without the presence of the woman and she is a French national, the marriage is considered null and void in France.<sup>103</sup> French consulates and embassies have a key role to play in facilitating the protection and repatriation of these women.

#### The issue of personal status under the law

International law, especially international human rights law, takes precedence over national law which means that, in some cases where there are conflicting laws, it is possible to make a ruling. All individuals residing in a territory, though subject to the laws of that territory, remain subject, in the case of personal matters, to the national law of the country of which they are a national. Bilateral agreements established between France and certain other countries, especially in North Africa, further increase the complexity of jurisdictional issues.

For example, the Civil Code stipulates that, in the case of divorce, French law can be applied to two foreign nationals if their principal residence is in France. The bilateral agreement established with Morocco in 1981 allows an exception to be made to this rule in that Moroccans residing on French territory who want a divorce remain subject to Moroccan law.

Many women in France therefore come up against these complicated conflicts of law and, despite being in France, remain subject to personal status regulations contained in the codes and laws in force in their country of origin.

In this respect, as recommended by the *Haut Conseil à l'Intégration* in 2003 and in the joint report by the Department of Equal Opportunities and Social Cohesion and the Ministry of Justice in March 2005, it is important for any woman in France who has been subjected to forced marriage and violence to be allowed to benefit from the same types of protection that the French authorities offer other women.

---

<sup>102</sup> Article 1056-1 of the *Nouveau Code de Procédure Civile* (NCPC), New Code of Civil Procedure, introduced by Decree N° 2005-170 of 23 February 2005, article 5 (Official Gazette, 25 February 2005, in force since 1 March 2005).

<sup>103</sup> Civil Code, article 146-1.

### ***2.6.7. Women who have been forced into marriage abroad and who lose their right of residence in France***

Under French law, a foreigner with a residence permit, which is valid for 10 years, loses their right of residence if they leave the country for more than three years.<sup>104</sup> This can happen in the case of women and girls who have been born on French territory, or who have had a major part of their education there, or whose family ties are all in France, but are forced into marriage and kept in a country they know nothing or little about. After three years' absence, they can only return to France on a tourist visa allowing them to stay for a maximum of three months.

Amnesty International requests the State to take all necessary measures to facilitate the return of these women and to restore their right of residence to them.

### ***2.6.8. Other possible courses of action***

It is also possible to take action against forced marriage as a form of domestic violence. However, in addition to the usual problems associated with such a course of action, which apply to all women who suffer domestic violence in France, foreign women face still more difficulties because of their:

- Administrative status: this applies in the case of family reunification as well as in the case of any female asylum seeker who has been refused a residence permit or whose residence status is insecure in that she does not know whether it will be renewed.
- Ambivalence: this is all the greater in that they do not necessarily want to reinforce the stigma attached to their community by denouncing the injustices done to them.
- Ignorance of their fundamental rights.

### ***2.6.9. The limitations on the 'fight' to stop forced marriage***

Organizations working on the ground with women who have been subjected to, or are under threat of, forced marriage, especially the members of Agir Avec Elles (comprising Voix d'elles, GAMS and the Commission pour l'abolition des mutilations sexuelles (CAMS), Committee for the Abolition of Genital Mutilation), have expressed their opposition to making forced marriage a criminal offence. Making it an offence in itself would pose new problems: women would no longer dare to approach such organizations for fear of seeing their parents taken to court. All they usually want is for their marriage to be annulled, not court action against their parents. However, the creation of a specific offence of forced marriage would allow legal action to be taken against those who are responsible for forced marriage without having to resort

---

<sup>104</sup> Article 18 of regulation N°45-2658 of 2 November 1945, repealed by regulation 2004-1248 of 24 November, article 5 III.

to invoking other more serious offences, such as rape, sexual violence, and so on. What, therefore, should be done?

It is essential to allow these girls and women to benefit from the same types of protection as all other women who are victims of violence, especially those who are victims of domestic violence, and to fight against the impunity of the perpetrators.

In conjunction with all organizations working with women on the ground, the state should conduct a serious study into this issue with a view to developing more effective methods of preventing forced marriage.

At the same time, it is necessary to mobilize and educate all those who find themselves in contact with individuals who are at risk of forced marriage, especially, teachers, health professionals and social workers. The aim should also be to involve them in developing a strategy to prevent forced marriage based on equal treatment for girls and boys that guarantees them access to their rights and sex education.

Finally, it is necessary to strengthen the work already being done to make information available to newly-arrived women in a language they understand, as well as in embassies and consulates, so that everyone, whether they be male or female, has the means to identify and prevent these practices.

## **2.7. Changing attitudes and practices**

The State response will depend on its ability to change attitudes and practices. To be specific, this means training and raising awareness among professionals.

Professionals who have to deal with domestic violence issues – justice officials, the police, health professionals – should be made aware of the issues and properly trained so that women’s rights are fully guaranteed and respected.

Recommendation 19 of the CEDAW Committee<sup>105</sup> reminds States that “*Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention*”. This assertion is also contained in the Declaration on the Elimination of Violence against Women, UN General Assembly Resolution 52/86 and the Beijing Declaration and Platform for

---

<sup>105</sup> The Committee on the Elimination of Discrimination against Women (CEDAW Committee) is a United Nations body responsible for monitoring the progress made by States parties to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It was set up in 1982 and is made up of 23 experts of different nationalities.

Action\*, which stressed the need for States to fund such training.<sup>106</sup>

**2.7.1. Health professionals, who are key interlocutors for women, are still insufficiently aware of the issue**

Women who have suffered domestic violence are reluctant to report the brutality to which they have been subjected by their partner. However, when they do decide to do so, their first interlocutor is usually a doctor.

The *Enveff* survey therefore questioned women to try to find out which institutions, police stations, lawyers, social workers, doctors, forensic services, and so on that they had told about such violence. It emerged from the survey that “*although the law views the brutal behaviour of a partner as a most reprehensible act, it is rarely denounced to the courts. However, it is true to say that while such behaviour is rarely denounced to the courts, it is often reported to doctors*”. It concludes that, “*It is therefore clear that the training of health-care personnel should be a matter of priority today*”.<sup>107</sup>

However, the basic training programme for doctors does not contain a compulsory module on the issue of domestic violence and doctors are still often ill-prepared to deal with what their patients are telling them.

Women usually go to their general practitioner who is often known to both the victim and the perpetrator. This often makes them reluctant to do so. If they get over that hurdle, then it may be the doctor who has difficulty. How should he or she respond to a report of violence? Doctors may be tempted to see it as a private matter or to doubt the word of the victim who, having been subjected to repeated psychological violence from her partner, may make confusing statements. Doctors may also see women in their consulting rooms for years and not realize that they are being subjected to violence. In the case of beatings, women have learned to cover them up. Besides, even when doctors detect violence or accept what the victim says, they are not necessarily equipped to know how to deal with it and how to support and protect the victim.

**2.7.2. Urgences médico-judiciaires (UMJ): dedicated interlocutors but all too rare**

The UMJ is the service that is in the best position to attend women who have suffered domestic violence. Its job is, in fact, to attend the victims of any type of crime which may require a certificate or on which the courts may request an expert opinion. Women who have been subjected to domestic violence go there either on the instructions of the police or as a result of the beatings or injuries that have caused them to go to hospital.

---

<sup>106</sup> See also Recommendation Rec. (2002)5 of the Committee of Ministers to Member States on the Protection of Women against Violence, adopted on 30 April 2002.

<sup>107</sup> *Enveff*, 2003.

However, there are not very many such units in the country. They exist in university hospitals and, very occasionally, in other hospital structures, except in Île-de-France where they exist in each *département*. Elsewhere, there is on average only about one per region, often located in the biggest town. It is much more difficult for women living well away from large towns to have access to them. Furthermore, Patrick Chariot, a forensic pathologist and one of the co-authors of the Criminal Prosecution Guide, has said that “*the fact that a service exists does not mean that it is well used*”. In fact, he regrets the fact that the police do not necessarily direct people to the UMJ but still often prefer to leave them to obtain a certificate from their family doctor.<sup>108</sup>

A UMJ unit is usually made up of a multi-disciplinary team, including one or several doctors and a psychiatrist or psychologist. Some also have agreements with organizations authorized to provide round-the-clock legal or psychological support. UMJ consultations can be funded in different ways. If a consultation takes place at the request of a court, then it is the court which covers the cost. In other cases, the woman herself will be responsible for paying the consultation fees.

The State, through government ministries or *collectivités territoriales* [municipal, departmental and regional authorities], has organized various training sessions for health professionals. Non-governmental organizations have also invested a lot of work in such training. However, it is the responsibility of the State to ensure that it is ongoing and systematic for all health professionals.

### **2.7.3. The police**

The attention given to victims of domestic violence in police stations has considerably improved in recent years. Several organizations have said, however, that the police do still sometimes discourage victims from lodging a complaint, particularly if they are unable to supply a medical certificate to support the violence.

Marie-France Casalis, who is an adviser at the Île-de-France Regional Office, and Maryvonne Chapalin, Chief of Police at the Paris police headquarters, have also said that police officers are baffled by the “comings and goings” of women who often, after having lodged a complaint, go back and withdraw it. Some still discredit what the women say. As Maryvonne Chapalain points out, “*women rarely go [to the police] after each bout of violence, but rather after enduring years of it*”. She adds that often “*women are reluctant to lodge a complaint because they think that their children will*

---

<sup>108</sup> Patrick Chariot is the editor of the journal *Médecine légale et société* and participated in the working group set up by the Justice Ministry regarding the publication of the *Guide de l'action publique sur la lutte contre les violences au sein du couple*.

be taken away from them, or that “things will get better”.” Again, in her words, “It is also the role of the police to make them realize that this is probably a myth”.<sup>109</sup>

The role of the police is nevertheless crucial because it is often only by going through them that these women can obtain justice. If the police were given better training and had a better understanding of the difficulties faced by women who are driven to lodging a complaint and leaving their partner, they would be able to give them more appropriate attention.

In order to train police about the realities of domestic violence, the State offers, in particular, periods of in-service training, concentrated mainly in the area around Paris. In addition, the collaboration that takes place in the context of committees set up to deal with violence against women, which is co-ordinated by the regional women’s rights offices, provides an ideal forum to improve dialogue between non-governmental organizations and the police service. Some towns in France, for example, Strasbourg, have witnessed the creation of specialist units to deal with domestic violence, or the designation of dedicated officers in police stations (in Paris).

Though organized on an *ad hoc* basis throughout the country, these measures are very encouraging. They would benefit from being incorporated into a comprehensive national plan in which genuine resources were made available to ensure that the police force as a whole receives training about the realities of domestic violence. Such a strategy should also envisage setting up appropriate mechanisms for attending to the needs of these women in all police stations throughout the country.

#### **2.7.4. Public prosecutors need to be made more aware of the issue**

According to Françoise Guyot, Deputy Prosecutor at the Paris Public Prosecutor’s Office with responsibility for the issue of violence against women, the weakness of the justice system’s approach to this issue is due in large part to a lack of awareness on the part of public prosecutors and the inadequate training they receive.<sup>110</sup> According to her, “being involved in partnership schemes has enabled both parties to gain a better understanding of these situations by taking a broader range of approaches to them. Nevertheless, an understanding of the realities of domestic violence is still not well entrenched in the justice system: its complexities and psychological dimensions are still hard for public prosecutors to grasp”.<sup>111</sup> She also pointed out that the issue does not appear on the syllabus of the *École de la*

---

<sup>109</sup> Senate symposium on “*la lutte contre la violence contre les femmes au sein du couple*”, 31 March 2005.

<sup>110</sup> *Idem*.

<sup>111</sup> Intervention during a symposium held by the Senate on “*La violence au sein des couples, les femmes brisent le silence : améliorons la loi*”, 31 March 2005.

*magistrature* [the training college for the judiciary], although recently some teaching staff devoted a working group to the subject.

Public prosecutors play a key role in enabling women who have been subjected to domestic violence to access the justice system. They are the ones who decide on the merits of a case: they decide whether to open a preliminary investigation and whether or not the person implicated should be prosecuted. For this to happen, it is not necessary for the woman to pursue her complaint because, once a matter has been brought to their attention, they can, if they deem it appropriate, decide to follow it up themselves. This option relieves women of some of the guilt they feel. However, it should be used with caution and only with the agreement of the victim.

Public prosecutors also have the power and thus the responsibility for deciding what measures should be taken to guarantee protection for women who have suffered domestic violence. Right from the start of proceedings they may decide to issue the accused with a summons or order him to leave the marital home. Later on, once sentence has been passed, they can decide to take other measures to, in theory, give the woman some security and peace of mind.

The inadequacy of the justice system's response to domestic violence cannot be considered without taking into account the inadequacy of the human and material resources available to public prosecutors. Deputy Prosecutor Françoise Guyot puts the number of cases they have to deal with each month at almost 1,000.<sup>112</sup> In addition, given the amount of work that needs to be done, public prosecutors' offices cannot act alone. Only concerted work between the different professionals working in the field, the State and non-governmental organizations will bring results.

The work carried out by the committees on violence against women at *département* level has meant that the ground has been prepared. These positive steps towards improving the way in which public prosecutors deal with domestic violence can only achieve actual results if they are accompanied by an increase in awareness and the strengthening of basic and ongoing training on the subject.

## **2.8. Conclusions and recommendations**

Although measures and provisions for fighting domestic violence do exist, they are very diverse and patchy and are not applied in a uniform way across the country.

Amnesty International calls on the State to establish a framework for its intervention and to ensure that all its services have the necessary resources and information to be

---

<sup>112</sup> *Idem.*

able to carry out coordinated and effective work. Finally, Amnesty International urges the French authorities to ensure that all women who suffer domestic violence in France have the right to similar protection, whatever their nationality or residence status.

**In particular, Amnesty International recommends that the State:**

- introduces legislation to make habitual violence in the context of domestic violence an offence and extends the aggravating circumstance to cover former cohabitantes and spouses;
- ensures that the system for carrying out ITT evaluations is standardized and that it allows the different types of violence inflicted on women to be taken into account. When making such evaluations, the opportunity should also be taken to offer follow-up to the women concerned.

**End impunity and protect the victims**

- Amnesty International calls on the authorities to ensure that there is a better connection between civil and criminal proceedings.
- As soon as the competent authorities become aware of a situation of violence, they should without delay make sure that appropriate protection measures are taken to protect the woman from further violence and that the perpetrators are summoned to appear in court without delay and removed from the family home if the situation warrants it. In the event of the latter, it is essential that the situation of both the victim and the perpetrator is monitored.
- Amnesty International has serious reservations about the use of penal mediation in cases of domestic violence.

**The resources needed to take action**

Amnesty International calls on the authorities to:

- ensure that specialist organizations are adequately funded on a permanent basis to be able to carry on with their work;
- increase the resources available to the *Service aux droits des femmes et à l'égalité (SDFE\*)*, Women's Rights and Equal Opportunities Service, and ensure that all *départements* have a *Commission d'action contre les violences faites aux femmes*, Action Committee against Violence against Women, which should meet on a regular basis;
- strengthen coordination at a national level, especially in order to be able to gather data on the work being carried out by the State throughout the country as a whole;
- give the police services working at night as well as during the day the resources and personnel they need to successfully carry out their work to protect victims and crack down on domestic violence;

- ensure that shelter schemes, housing solutions and socioprofessional support are genuinely available for women who have suffered domestic violence. Such arrangements should be incorporated into a coherent and coordinated policy that is implemented in a uniform way at national as well as local level.

### **Prevention, awareness-raising and training**

Amnesty international requests the authorities:

- to put in place continuous training for all professionals involved on the ground;
- to ensure that free telephone numbers (*numéros verts*) and information on women's rights can be accessed by anyone, male or female;
- to ensure that statistics and studies of the subject are updated and that the Justice and Interior Ministries systematically record the number of complaints concerning domestic violence that are lodged as well as how many of them go to court or are closed, specifying the gender of both victim and perpetrator;
- to ensure that national campaigns to raise public awareness are organized on a regular basis;
- in conjunction with Ministry of Education, to raise awareness among pupils of sexual issues and the prevention of sexist behaviour.

With regard to forced marriages, the State should act with due diligence to prevent them, investigate them when they occur and punish them in accordance with national law. It should ratify the 1962 United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

The State should ensure that:

- an in-depth study of this phenomenon is carried out by means of, for example, a survey in schools;
- shelter facilities are put in place to receive girls/women who are facing or have already undergone forced marriage and who feel obliged to leave home;
- such facilities should provide support from psychologists and educators;
- financial help is made available to these girls to enable them to carry on with their studies or to undertake professional training;
- a nationally-coordinated awareness-raising policy is put in place in order to end the disparities between the different regions;
- the grants allocated to organizations working to prevent forced marriage are not cut;
- provide training on the issue for state employees (social workers, staff in the education system and members of the police service and *Gendarmerie*);
- registry office officials are trained to become more vigilant in detecting this kind of problem;

- prevention measures are instituted for pupils in secondary schools (*collèges and lycées*) and that they are informed about the issue.

## CHAPTER 3

### **Women trafficked for the purpose of prostitution: both victims and offenders**

Trafficking in women for the purpose of forcing them into prostitution is not only a criminal offence but also a violation of human rights which, among other things, threatens the liberty, security, mental and physical integrity and even the lives of these women.<sup>113</sup> International law, and human rights treaties in particular, impose a duty on France to respect and protect the rights of persons who have been trafficked. According to these obligations, the French authorities have to exercise due diligence to prevent trafficking in human beings, to investigate allegations of such activities and punish the perpetrators and, lastly, to provide assistance to the victims and ensure that they receive adequate reparation.

Since the Law on Internal Security was adopted in 2003, France has incorporated the offence of trafficking in human beings into national law and increased the penalties for living off immoral earnings. This law also makes provision for a temporary residence permit to be issued to victims of trafficking, provided they denounce the traffickers. However, no provision has been made for any mechanism to ensure the safety of such persons and support structures are cruelly lacking.

These days, in the absence of any real political will, or the means of identifying the victims of trafficking for the purpose of prostitution, such persons are regarded as offenders. Action is taken against them as prostitutes engaged in the practice of soliciting, on the one hand, and, in some cases, as illegal immigrants, on the other. Under the terms of international treaties, the authorities are obliged to ensure that such people have access to information concerning their rights in a language they understand. Initial and ongoing training of all professional workers involved, especially law enforcement officials, investigating judges and the social services, must deal with the practice of human trafficking for the purpose of prostitution. Lastly, trafficked women must have access to adequate and secure reception and support facilities to guarantee that their fundamental rights are protected unconditionally. France cannot limit itself to prosecuting and punishing the traffickers but must put respect for, and the protection of, fundamental human rights at the heart of its action.

---

<sup>113</sup> In this report, 'woman' usually refers to women and girls. 'Girl' or 'young girl' refers to females under 18 years of age.

Amnesty International calls on the French authorities to ensure that anyone in the hands of traffickers receives unconditional help and protection and is not prosecuted for actions that result from the fact that they are victims of trafficking in human beings.

The testimonies reported here were obtained during interviews conducted by Amnesty International with people who have been trafficked, or with the assistance of their lawyers and the organizations that have supported them.

### **3.1. Trafficking in human beings: a system of control and leverage**

Trafficking in women for the purpose of forcing them into prostitution is one of the most serious abuses of fundamental human rights.<sup>114</sup> These women are subjected to repeated violations of their rights by traffickers and by those who pay for their services. They are all the more exposed to violence if they are in a country whose authorities show contempt for their rights and deny them protection and access to justice.

In France it is still too frequently the case that the authorities and society see these women as nothing more than prostitutes who are disturbing the peace and, if they are illegal immigrants, undesirables who cannot be helped.

#### **3.1.1. “Why me?”: what these women go through**

More than once, when giving her testimony, F. asks: “*Why me? Why was I trafficked? Why did the traffickers pick me out to make money for them? And why am I now being convicted? Why me?*”

Most of the women<sup>115</sup> trafficked for the purpose of prostitution in France come from eastern Europe, the Balkans, North Africa, sub-Saharan Africa and Asia. Cases of French women have been reported to us, but they are far less common.

France is both a destination and transit country, to which women are brought by the traffickers before sending them on to another, usually European, country. These

---

<sup>114</sup> Trafficking in human beings covers the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. However, in this report, we deal with trafficking for the purpose of forced prostitution only.

<sup>115</sup> Some of the women whose testimony we gathered arrived on French soil when they were under 18 years of age. We have not studied the particular situation of girls here, even though some of the victims of human trafficking in France are also girls.

women may also be recruited, coerced or abducted by the traffickers when they are already on French soil.

In her testimony, C. Boucher, director of the organization *les Amis du Bus des femmes*<sup>116</sup>, says: “*It starts as a way of coping, of finding the wherewithal to support their family or maybe working just for a year or two to save up for the future. They pay someone to obtain documentation or to find them a way of leaving the country. Sometimes they are aware of the risk of prostitution but they tell themselves they will be able to withstand it. But the methods used by the traffickers are unbelievable; the network is organized in such a way that they will simply not be able to hold out against it*”.<sup>117</sup>

Behind this life path is often a context of poor living conditions, social and economic instability, poverty and occasionally armed conflict. In many countries, women face unequal access to education, the employment market and justice and are subjected to particular types of violence that are linked to their status as women. In addition to inequality based on gender, there may also be discrimination associated with belonging to a minority community or based on origin. Trafficking therefore takes place in an environment of discrimination and violence. The prospect of migration or the promise of well-paid work abroad is an effective lure for women who want to escape that environment, and it is not until they find themselves in the hands of the traffickers that they become aware of the reality and extent of the violence.

Legal migration routes are strictly controlled by western European states in general and France in particular, and even more obstacles are placed in the way of female migrants who have few qualifications or resources. As the organization *Cabiria* puts it, “*There are very few lawful, independent paths open to women into the employment market of another country*”.<sup>118</sup>

During preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,<sup>119</sup> different expert groups<sup>120</sup> drew attention to

---

<sup>116</sup> *Les Amis du Bus des Femmes* is an organization set up under law 1901 to provide health and social support to prostitutes and victims of trafficking for the purpose of prostitution.

<sup>117</sup> Interview with Amnesty International, 2004.

<sup>118</sup> *Femmes et migrations*, Cabiria, under the direction of Françoise Guillemaut, ed. *Le Dragon Lune*, 2002, pp. 26-27.

<sup>119</sup> World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, at the initiative of the United Nations from 31 August to 8 September 2001.

<sup>120</sup> In particular, “Gender and Racial Discrimination”, Report of the Expert Group Meeting, United Nations Division for the Advancement of Women (UNDAW), Office of the High Commissioner for Human Rights (OHCHR), United Nations Development Fund for Women (UNIFEM), 21-24

the fact that gender-based discrimination was also often accompanied by other forms of discrimination based on belonging to a particular racial, ethnic or social group, thereby exposing some groups of women wishing to escape such discrimination to the risk of exploitation. In this connection, the UN Special Rapporteur on violence against women, its causes and consequences, recalled that “*women can often only choose between irregular domestic work or the illegal sex industry. Once they are in, they have to face different discriminatory stereotypes, such as being a prostitute and an illegal migrant doing domestic or sweatshop work*”.<sup>121</sup> She draws attention to the fact that these women, who are detained mainly because of their illegal residence status, find it very difficult to get recognition and appropriate reparation from the authorities for the wrong done to them.

Traffickers take advantage of the inequality and difficulties women encounter in gaining access to employment, education and social protection. They use false promises, deception and abuse to attract and recruit them, not hesitating to recruit from within their own circle or to abduct women. These women are sold, sometimes several times over, and, by using violence, daily humiliation and threats and depriving them of their freedom, are forced to prostitute themselves.

Faced with what amounts to a regime of terror, women constantly have to devise survival and resistance strategies, including refusing to comply or resorting to whatever means are open to them, including collaboration, to avoid beatings, degrading and humiliating treatment or reprisals.

At this stage it is essential to point out that trafficking in human beings must not be confused with the illegal smuggling of migrants. The distinction between the two is often blurred, particularly where the concern is to control borders.<sup>122</sup> In fact, trafficking in human beings does not require a border to be crossed, and its ultimate aim is not transportation, but the exploitation of others by means of coercion, force, threats, abuse or deception.

---

November 2000, Zagreb, Croatia. See also: “The Bellagio Consultation”, report of the Consultation on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance, held at Bellagio, Italy, 24-28 January 2000, A/CONF.189/PC.1/10.

<sup>121</sup> Contribution by Radhika Coomaraswamy (Sri Lanka), Commission on Human Rights Special Rapporteur on violence against women, on the subject of race, gender and violence against women at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, submitted on 27 July 2001, ref. A/CONF.189/PC.3/5, paragraph 105.

<sup>122</sup> The smuggling of migrants is covered by an additional Protocol to the UN Convention against Transnational Organized Crime (Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000).

### **3.1.2. The methods traffickers use to control women**

Classified advertisements, the use of pimps, and also the poverty which motivates families to send their children away to work to subsidize the needs of those back home; there are many ways in which to deceive and abuse women, and sometimes families, who are seeking a more promising future. Recruitment may take the form of a bogus, symbolic or genuine contract: the family or woman then owes a sum of money, allegedly to pay for passage to another country but which marks, in fact, the beginning of a relationship of servitude based on debt.

For K., who is from a small town in a country of eastern Europe, the exploitation started very early on. She soon became caught up in a cycle of debt and drugs and found herself being handed over to a local pimp by Y, a man she had thought of as her boyfriend. Having borrowed money from Y, K and a friend were going to be forced to prostitute themselves for the first time.

*K. tells their story: “We called Y. We asked him to lend us some money. He said that we would have to pay it back in a week. As he was my boyfriend, I didn’t suspect anything. Ten days later, he said we had to pay back our debt and introduced us to B and A (a man and a woman). They were pimps; they told us that it would be just this once, to repay our debt. They said that what we were going to do would remain a secret between us. I said alright and I did it once. When I went back to the office [the pimps’ office], they offered me some white powder called PICO. I was disgusted at what I had just done and so I took some. The next day, they came to find me and offered me some more. Once I had taken it, they said I had to pay for it. So I had to go back to the office and I was obliged to work for them for a year. I was always owing them money. I left school and slept in a room above the office. I told my mother that I was living with my boyfriend. Y agreed to confirm this in front of my brother, because he was very worried. When I turned 18, they said that I had to go [to a country in western Europe] to repay what I owed but that I could keep the rest. I had no choice – I had to do what they said”.*

She was sold once, and then again, after which she was forced to work as a prostitute in France. Her attempts to escape and her approaches to the French authorities to try to escape from the traffickers all ended in failure.

In some countries of sub-Saharan Africa, these acknowledgements of debt may be accompanied by rituals carried out by spiritual guides, thereby cementing what is a very powerful link in the eyes of the persons concerned.<sup>123</sup>

---

<sup>123</sup> *Prostitution africaine en Occident - Vérités, mensonges, esclavage*, Amély-James Koh-Bela, Ccinia Communication, 2004.

Regardless of the context and country of origin, 'recruitment' is often carried out by acquaintances or people with influence in the community of origin. This familiarity between the recruiter and the victim creates trust on the part of the victim in the beginning. Later on, it acts as a guarantee of the women's silence and obedience. Indeed, the traffickers are better able to target their threats against their victims: they know their language and the town or village from which they come, as well as their family and close friends, and can threaten to take reprisals against the latter. Playing on the women's sense of shame, isolation and social relationships, the traffickers manipulate them with psychological violence and, in some cases, have no hesitation in resorting to physical violence against them or their families in order to establish a real regime of terror.

As soon as they arrive in France, or sometimes from the very start, they are deprived of their documentation, personal possessions and liberty; contact with the outside world is carefully limited. Repeated rape is often part of the violence that accompanies and maintains this control.

*F. was recruited by a man whom she believed to be her boyfriend and who promised her a job in a neighbouring country. As soon as they were over the border, the 'boyfriend' disappeared, and between five and seven men came into the hotel room. They repeatedly subjected her to rape, as well as physical violence and threats, until she no longer offered any resistance. She was then sold for the first time, and then a second time, the sale taking place in her presence. The day before the hearing at which she and members of the network were charged with living off immoral earnings, her lawyer asked her which act of violence or humiliation had marked her the most. F replied, "Being sold as if I were a cow".*

## **3.2. The provisions of international law relating to trafficking in women for the purpose of prostitution**

### ***3.2.1. A criminal offence***

In a context where a growing number of states are increasingly concerned by the issue of transnational crime and border security and control, in 2000 the UN adopted the additional Protocol to the UN Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children, commonly known as, and hereafter called, the Palermo Protocol\*.

The Palermo Protocol, which was ratified by France on 12 December 2000, established an internationally-accepted definition of the offence of trafficking in human beings. It requires states parties to take such steps as are necessary to prevent and investigate trafficking, prosecute the perpetrators and adopt comprehensive policies and programmes to guarantee to protect and assist the victims of trafficking in human beings.<sup>124</sup>

According to article 3 of the Palermo Protocol:

*“a) trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*

*b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.”*

This definition consists of three elements which, when they are all present and identified, lead to the conclusion that an offence of trafficking has been committed:

- an action (recruitment, transportation, transfer, harbouring or receipt),
- a means (threat or use of force or other forms of coercion, etc.),
- a goal (for the purpose of exploitation, which means that the exploitation does not need to have been established; the intention itself is sufficient.).

The second part of the definition (subparagraph b) contained in the Palermo Protocol is crucial. It states that it is irrelevant that the trafficked person may have consented to engage in prostitution, or consented to collecting the earnings of the other women in the network; provided that she has acted as a result of coercion, or has been deceived, abused or threatened for the purpose of exploitation, she must be regarded as a victim of trafficking and, as such, given protection.

With regard to persons under 18 years of age, the Palermo Protocol states that *“the recruitment, transportation, transfer, harbouring or receipt of a child<sup>125</sup> for the*

---

<sup>124</sup> Palermo Protocol, articles 9 and 6.

<sup>125</sup> In this report, ‘children’ and ‘minors’ mean persons under 18 years of age.

*purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article".*<sup>126</sup>

Concerned at the widespread incidence of trafficking in persons in Europe, and taking the view that greater co-operation between states was called for to provide enhanced protection and respect of the rights of trafficked persons, on 3 May 2005 the Council of Europe<sup>127</sup> adopted the Council of Europe Convention on Action against Trafficking in Human Beings<sup>128</sup>. This treaty incorporates the international definition of trafficking contained in the Palermo Protocol but focuses on both national and transnational forms of trafficking and does not require that it be linked with organized crime.<sup>129</sup>

### **3.2.2. A violation of human rights: the obligation to take action**

Not only is trafficking in human beings for the purpose of exploitation classified as a criminal offence, it also constitutes a violation of human rights. International treaties inspired by the Universal Declaration of Human Rights (UDHR), notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights - ECHR\*), require states parties to guarantee the respect of human rights on their soil.<sup>130</sup>

France, having signed and ratified these treaties, is consequently under an obligation to take effective action to combat all human rights violations, including trafficking in human beings, acts of torture and violations of the right to physical and mental integrity inflicted on victims of trafficking in human beings, and to punish the perpetrators. Trafficking in women for the purpose of exploitation is recognized as one of the forms that violence against women can take. The obligation with regard to due diligence set out in the first chapter of this report therefore applies to trafficking. It imposes a duty on the authorities to punish such violations, as well as to take whatever steps may be necessary to prevent them and, where appropriate, to ensure effective redress and appropriate compensation.

---

<sup>126</sup> Palermo Protocol, article 3 (c).

<sup>127</sup> The Council of Europe is a regional intergovernmental organization with 46 Member States as of 2005. See [www.coe.int](http://www.coe.int) for more information.

<sup>128</sup> This Convention was opened for ratification on 16 May 2005 to Member States of the Council of Europe, the European Union and other States. It will enter into force when it has been ratified by ten countries.

<sup>129</sup> Article 2 of the European Convention against Trafficking in Human Beings, *op. cit.*

<sup>130</sup> We should also mention the International Convention on the Elimination of All forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Convention on the Rights of the Child.

Women who are victims of trafficking are deprived of their liberty and security of person<sup>131</sup>, of their right to liberty of movement<sup>132</sup> and of their right to a private and family life<sup>133</sup>.

They are usually subjected to torture, in particular rape and other cruel, inhuman and degrading treatment, such as physical and sexual abuse or repeated psychological threats, and are sold, often more than once.<sup>134</sup> In some cases, the violence may also entail an attack on their right to life.<sup>135</sup>

Trafficking in persons for the purpose of prostitution is a violation of human rights and a criminal offence which particularly affects women and is rooted in the types of discrimination at work in the countries of origin as well as in the reasons behind migration. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) commits states parties to taking “*all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women*”.<sup>136</sup>

Violence inflicted on women who are victims of trafficking is the work of private, non-state actors, be they criminal gangs or individuals acting independently of any organized network.<sup>137</sup> Nevertheless, the state has a responsibility to make every effort to prevent and investigate human rights violations of this kind and to punish the perpetrators and provide redress for the harm caused. These obligations apply to acts of violence carried out by the state and its agents, as well as to types of violence perpetrated by private actors or individuals, such as trafficking.<sup>138</sup> Meeting these obligations can be understood as the need for states to punish trafficking by applying the law, and to ensure that, in practice, not only is trafficking effectively suppressed but also that the victims can seek remedy through the courts and have access to appropriate reparation, and, lastly, that a genuine prevention strategy is adopted to combat the real, deep-seated causes of trafficking.

---

<sup>131</sup> ICCPR, article 9; ECHR, article 5.

<sup>132</sup> ICCPR, article 12.

<sup>133</sup> ICCPR, article 17; ECHR, article 8.

<sup>134</sup> ICCPR, article 7; ECHR, article 3 ; International Convention on the Rights of the Child, article 37.

<sup>135</sup> ICCPR, article 6.

<sup>136</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 6.

<sup>137</sup> On this point, in particular, see the definition given in the Council of Europe Convention referred to above.

<sup>138</sup> General Recommendation N°19 of the Committee on the Elimination of Discrimination against Women, adopted in 1992.

Lastly, trafficking is similar to slavery in that it is, above all, a complete denial of another person's liberty.<sup>139</sup> Through coercion, violence and a system of dependence, traffickers ensure that their victims remain submissive. Some victims are sold, others bartered, or duped – all are victims of serious violence carried out within a logic of exploitation. Trafficking in women is, therefore, a form of enslavement which is sometimes called 'modern-day slavery'. The international Convention on the Abolition of Slavery of 25 September 1926 defines slavery as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.<sup>140</sup>

### ***3.2.3. Identifying the victims: an essential stage in protecting individuals***

Anyone should be deemed to be a victim from the moment there are reasonable grounds to believe that he or she is, or has been, a victim of trafficking.

If the law makes provision for the punishment of perpetrators and for some form of protection for the victims of trafficking in human beings but the authorities do not recognize any potential victim as having this status, then the law is ineffective and protection non-existent.

On this subject, the Palermo Protocol, as well as the recommendations of the Office of the High Commissioner for Human Rights and the Brussels Declaration, all reaffirm the need for specialized training, not only for law enforcement officials at local and national level, at borders and in embassies and consulates, but also for investigating judges and public service professionals who are likely to encounter this phenomenon.<sup>141</sup> The Organization for Security and Co-operation in Europe (OSCE) has also issued a number of guidelines to ensure that all provisions with regard to identification are designed to protect and guarantee fundamental human rights.<sup>142</sup>

To this end, the European Convention on Action against Trafficking in Human Beings requires States Parties in particular to adopt "*such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other*

---

<sup>139</sup> The right to liberty and security of person is enshrined in article 9 of the ICCPR, and in article 5 of the ECHR.

<sup>140</sup> United Nations Convention on the Abolition of Slavery, article 1, paragraph 1.

<sup>141</sup> Palermo Protocol, *op.cit.*; Recommended Principles and Guidelines on Human Rights and Human Trafficking produced by the Office of the High Commissioner for Human Rights (OHCHR), report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, 20 May 2002; Brussels Declaration on Preventing and Combating Trafficking in Human Beings, at the initiative of the European Commission, September 2002.

<sup>142</sup> Organization for Security and Co-operation in Europe (OSCE), Ministerial Council, Decision N° 2/203 "Combating Trafficking in Human Beings", MC.DEC/2/03, 2 December 2003; and the OSCE "Anti-Trafficking Guidelines", adopted 1 June 2001.

---

*parties and relevant support organisations*". It adds that States must ensure that "its competent authorities [are provided with] persons who are trained and qualified in preventing and combating trafficking in human beings [and] in identifying ... victims".<sup>143</sup>

The Convention also calls on States to ensure that "if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for [in the present Convention] has been completed".<sup>144</sup>

In France there is currently no provision for victims of trafficking to be identified by people with special training in the field. Victims of trafficking are therefore frequently arrested as prostitutes and offenders under the law on soliciting and, if they are foreign nationals, are likely to be deported.

### ***3.3. Trafficking in women for the purpose of prostitution in France***

Given the silence of those in the hands of traffickers and the hidden, illicit nature of the phenomenon, it is still very difficult to be precise about the true extent of trafficking.

In France, the *Direction générale de l'action sociale et sanitaire (DGASS)*, Department of Social Services and Health, estimates the number of prostitutes on French territory at 14,000.<sup>145</sup> According to the Plateforme contre la traite des êtres humains, Platform against Trafficking in Human Beings, a group made up of nine organizations, 80 per cent of them are foreigners. However, according to the *Office central du ministère de l'Intérieur chargé de la répression de la traite des êtres humains*, Interior Ministry Central Office for the Suppression of Trafficking in Human Beings, "No foreign women are engaged in prostitution on French soil on their own account".<sup>146</sup> So are they all victims of trafficking? In the view of the Toulouse-based l'Amicale du Nid, "It is difficult to imagine that the foreign women engaged in prostitution in France have not, at some time or other, turned to some

---

<sup>143</sup> Council of Europe Convention on Action against Trafficking in Human Beings, article 10, 1) and 2).

<sup>144</sup> Idem, article 10, 2).

<sup>145</sup> This assessment is based on the number of prostitutes identified by the regional DGASS. It does not claim to be accurate, since it is very difficult to be sure that all situations have been discovered and that individuals have not been counted twice. Some organizations, including the Platform against Trafficking in Human Beings, believe that the real figure is much higher.

<sup>146</sup> Intervention made by Émile Lain, *Office central de répression de la traite des êtres humains*, Central Office for the Suppression of Trafficking in Human Beings, hereafter called OCRTEH, at a symposium entitled "Copyrights: *Coopération multidisciplinaire entre le secteur privé et public pour la protection des victimes de la traite des êtres humains*", held at the *Mairie de Paris* on 3 June 2005.

kind of trafficking network”.<sup>147</sup> Although some of them may have now succeeded in escaping from the clutches of the traffickers, the degree of organization required to make the journey, arrive, obtain false documentation, find a place or structure to work from, dispatch women to locations where prostitution takes place, introduce them to prostitution and their first client, and so on, means that these women did probably not turn up on the streets of France by their own efforts alone. This does not mean that all such women were recruited abroad and then brought to France. Some of them, both French citizens and foreign nationals, may in fact have been recruited directly on French soil, by individuals or organized networks that take advantage of the precarious situation in which some women find themselves as a result of exclusion and their illegal status in order to lock them into a system of exploitation and prostitution.

### **3.3.1. Trafficking and living off immoral earnings**

As a party to the Palermo Protocol, France was under an obligation to adopt legislation providing for the punishment of trafficking in human beings, as defined in that Treaty. In 2003, as a result of pressure from civil society<sup>148</sup>, the definition of trafficking in human beings was incorporated into the French Criminal Code. At the same time, penalties for the offence of living off immoral earnings were increased significantly.<sup>149</sup> The law of 18 March 2003 on internal security which introduced these changes also opens up the possibility for trafficked persons to obtain a temporary residence permit, on condition that they denounce their pimp or trafficker.

Although a definition of trafficking now exists, organizations and lawyers involved in legal proceedings against criminal networks responsible for trafficking in human beings deplore the fact that, to their knowledge, in the two-and-a-half years since the introduction of the offence of trafficking in human beings into French law, there have been no convictions for trafficking for the purpose of prostitution. This does not mean that, during that time, no traffickers have been investigated, prosecuted or brought to judgement. However, any convictions there have been were for living off immoral earnings. Since coercion is not intrinsic to the definition of living off immoral earnings, the fact that traffickers have been convicted of that offence rather than the offence of trafficking raises the question of whether trafficked persons are victims.

---

<sup>147</sup> Interview with Amnesty International, 2005.

<sup>148</sup> Stemming from joint work carried out by the *Commission des affaires étrangères*, Foreign Affairs Committee, and the *Commission des affaires culturelles, familiales et sociales*, Cultural, Family and Social Affairs Committee, on the various forms of modern-day slavery, 27 March 2001, and resulting in a report to the National Assembly on “*the bill (...) strengthening the struggle against the different types of slavery in existence today*” by C. Lazerges, 22 January 2002, Report N° 3552.

<sup>149</sup> Criminal Code, article 225-4-1 (incorporated as a result of Law N° 2003-239 of 18 March 2003, art. 32).

Indeed, if coercion and deception are not essential elements, then they are not necessarily victims but merely the targets of those living off immoral earnings.

### **3.3.2. The definition of trafficking contained in the French Criminal Code**

*“Trafficking in human beings is the act, in exchange for remuneration or any other benefit or promise of remuneration or benefit, of recruiting a person, transporting them, transferring them and providing them with accommodation or reception facilities in order to put them at the disposal of a third party, possibly unidentified, either to allow the offences of living off immoral earnings, assault or sexual abuse, the exploitation of begging, or the provision of undignified working or living conditions to be committed against that person, or to force that person to commit a serious crime (crime) or offence (délit) of any kind.”*<sup>150</sup>

The penalty for the offence of trafficking in human beings is seven years’ imprisonment and a fine of 150,000 euro. If trafficking is committed in relation to a minor, a particularly vulnerable person, or a number of people, or if it is accompanied by threats, coercion, violence or fraudulent practices, the penalty increases to ten years’ imprisonment and a fine of 1,500,000 euro.<sup>151</sup> The penalty for trafficking committed by an organized gang is 20 years’ imprisonment and a fine of 3 million euro.<sup>152</sup>

In the absence of any convictions for the offence of trafficking for the purpose of prostitution<sup>153</sup>, it is difficult to measure the impact its existence might have on combating trafficking in France. In the Criminal Code, the offence of trafficking in human beings is found side by side with the offence of living off immoral earnings.

### **3.3.3. Applying the offence of living off immoral earnings to trafficking for the purpose of prostitution**

Under French law, the offence of living off immoral earnings is committed when anyone, in any way:

*“1. Aids, assists or covers up the prostitution of another;*

---

<sup>150</sup> Criminal Code, article 225-4-1, article 225-5 (incorporated as a result of Law N° 2003-239 of 18 March 2003, articles 32 and 50.1).

<sup>151</sup> Criminal Code, article 225-4-2.

<sup>152</sup> Criminal Code, article 225-4-3.

<sup>153</sup> There have been convictions in cases of exploitation of the person on grounds of trafficking but not in cases of exploitation for the purpose of prostitution.

2. Profits from the prostitution of another, shares the products thereof or receives payments from a person who habitually practises prostitution;
3. Hires, leads or pushes a person into prostitution, or exerts pressure on that person to practise or continue practising prostitution.”<sup>154</sup>

The offence of living off immoral earnings may be aggravated by circumstances very similar to those applicable in the case of trafficking, notably by the use of coercion, violence or fraudulent practices, or when it is committed against a minor or someone whose particular vulnerability is apparent or known to the perpetrator. The penalties are then the same as those for trafficking.<sup>155</sup> In that case the two offences are virtually identical.<sup>156</sup>

In addition, the law states that anyone may be prosecuted for living off immoral earnings if they cannot justify resources relating to their lifestyle when they are living with, or habitually keep company with, a prostitute. Legal action will also be taken against anyone who acts as an intermediary between a prostitute and someone who is exploiting or paying for prostitution, and anyone who hinders prevention, monitoring, assistance or re-education work undertaken by qualified bodies in respect of prostitutes.<sup>157</sup>

Unless aggravating circumstances exist, the offence of living off immoral earnings does not require there to be any exploitation or coercion, and prostitutes accused of living off immoral earnings are not necessarily defined as victims. It is true that it can be used to punish acts involved in trafficking. Nevertheless, because it applies to acts of several different kinds, it is not possible to guarantee, from the victims' viewpoint, that the exploitation to which they have been subjected will be fully taken into account. So the difference between the two offences lies not so much in the punishment imposed on the perpetrators but at the level of recognition of the victims.

---

<sup>154</sup> Criminal Code, article 225-5 (Law N° 2003-239 of 18 March 2003, article 50.1).

<sup>155</sup> Criminal Code, article 225-7, as amended by Law N° 2003-239 of 18 March 2003, article 50.1 (*Journal officiel de la République française (JORF)* [official bulletin giving details of laws and official announcements], 19 March 2003).

<sup>156</sup> The aggravating circumstances established in article 225-7 of the Criminal Code for living off immoral earnings, and those laid down in article 225-4-2 for trafficking in human beings, are identical except for subparagraphs 7 and 9 of article 225-7, which do not appear among the circumstances established in article 225-4-7, and subparagraphs 6 and 7 which do not appear, or appear only in part, among the aggravating circumstances laid down for the offence of living off immoral earnings.

<sup>157</sup> Criminal Code, article 225-6, as amended by Law N° 2003-239 of 18 March 2003, article 50.1 (*JORF*, 19 March 2003).

### **3.3.4. Victims of trafficking convicted of living off immoral earnings**

Under French law, “anyone acting under the influence of force or coercion which they are unable to withstand, shall not be held criminally liable”.<sup>158</sup> Nevertheless, some victims of trafficking in human beings have been accused of living off immoral earnings alongside their traffickers and have been unable to benefit from appropriate forms of protection. The Palermo Protocol commits states to regard as irrelevant the fact that a victim of trafficking in human beings may have given consent, when threats, or the use of force or other forms of coercion, such as abduction, fraud, deception, the abuse of authority or of a position of vulnerability, or the giving or receiving of payments or benefits have been used to achieve the consent of a person having control over another person.<sup>159</sup>

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, developed by the Office of the UN High Commissioner for Human Rights (UNHCR), recall in this respect the need for States to take account of coercion in the case of trafficked persons, in order to respect their fundamental rights. According to the UNHCR, “*Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons*”.<sup>160</sup> Lastly, for its part, the Council of Europe Convention on Action against Trafficking in Human Beings requires States Parties to provide for “the possibility of *not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so*”.<sup>161</sup>

### **3.3.5. Both victim and offender**

J. comes from a country in eastern Europe. Her husband and father died during the Balkans conflict. She was approached by a local man who suggested going to France to work in a hotel. After arriving in France, she was beaten and held against her will, and then forced to work as a prostitute. She escaped to Italy but the traffickers caught her. Forced back into prostitution, she was also made responsible for reporting on the behaviour of the other women in the network and for collecting the earnings from their prostitution and delivering the entire amount to the head of the network. She was arrested by the French police and held on remand with members of the network who continued to inflict violence on her and threatened her in writing that they would take

<sup>158</sup> Criminal Code, article 122-2.

<sup>159</sup> Palermo Protocol, article 3 (b).

<sup>160</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking, presented to the Economic and Social Council as an addendum to the Report of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1).

<sup>161</sup> Council of Europe Convention on Action against Trafficking in Human Beings, adopted on 4 May 2005, article 26.

revenge on her family back home unless she testified on their behalf. While in custody, J. made a suicide attempt.

In the police report and in the final judgement, J. was recognized as a victim of the offence of living off immoral earnings, with aggravating circumstances (violence and the use of coercion). The court had evidence of these threats, in particular, the threatening letter and expert reports on the violence to which she had been subjected. J. was sentenced to 18 months' imprisonment for living off immoral earnings, with aggravating circumstances, and permanently excluded from France. The traffickers were also convicted of living off immoral earnings, with aggravating circumstances, but were given a much heavier sentence.

In another case, F.<sup>162</sup>, who was tried alongside the traffickers who had subjected her to violence, coercion and threats, was convicted of "aiding the prostitution of another" and using fake identity papers. A victim of exploitation by a trafficking network operating in several different European countries, F. had been appointed by the traffickers to collect the earnings of the other women being exploited by the network. She was therefore obliged to visit different post offices, each time with a different identity, in order to pay in all the earnings to traffickers from the network who did not live in France. No mention of trafficking in human being is made in the judgement. In the end, F. was given a three-year suspended sentence for living off immoral earnings. The two traffickers were tried on the same count, but were given much heavier sentences, namely seven and nine years' imprisonment. In this particular case, in spite of everything, F. had her immigration status regularized by the authorities on the grounds that she had cooperated with the courts, and she was given a 10-year residence permit.

In a ruling concerning the Law on Internal Security, the Constitutional Council recognized that certain people, though they had acted under coercion, could, in the eyes of the law, be both victim and offender. It simply asks the judge, when passing sentence, to take into account any "*circumstance in which the person responsible has acted under threat or coercion*".<sup>163</sup> This is in spite of the fact that the Criminal Code states that people who act under coercion cannot be held criminally liable<sup>164</sup> and no offence (*délit*) or serious crime (*crime*) can exist where there has been no intent.<sup>165</sup>

---

<sup>162</sup> The case of F. was reported to us by an organization that supported F. during the court case. The facts have been verified through various interviews conducted with people who attended the proceedings but who wish to remain anonymous.

<sup>163</sup> Constitutional Council ruling N° 2003-467 DC of 13 March 2003 on internal security, paragraph 63.

<sup>164</sup> Criminal Code, article 122-2.

<sup>165</sup> Criminal Code, article 121-3.

Coercion is a very sensitive and complicated component to prove. The realities of trafficking may cause women to commit acts that are reprehensible in the eyes of the law. This is, moreover, stated in the French Criminal Code, since it affirms that the purpose of trafficking in human beings may be “to force that person to commit a serious crime (*crime*) or offence (*délit*)”.<sup>166</sup> The offence of living off immoral earnings does not allow account to be taken of the complexity of a situation, or the degree to which these women are coerced. As a result, they are not given proper protection. In the case of J., the French authorities have not taken the necessary steps to protect her from being forcibly returned to a country where she is at risk of being taken once again by traffickers and subjected to further violations of her human rights.

While it may not be possible to rule on the level of guilt in each individual case, it is essential that all situations be considered from the viewpoint of trafficking in human beings so that the full extent of the exploitation of these persons is taken into account. If this happens, then the protection of victims, and recognition of the serious violations of their rights to which they have been subjected, will not be neglected.

### ***3.3.6. The offence of passive or active soliciting: people in the hands of traffickers regarded as offenders***

The Law on Internal Security adopted in France on 18 March 2003, through which the State introduced the offence of trafficking in human beings, also reintroduced the offence of passive soliciting. In the absence of mechanisms for identifying victims of trafficking in human beings, anyone engaging in prostitution is likely to be arrested and charged with this offence. More importantly, the offence of soliciting has pushed prostitutes in general, and trafficked persons in particular, further underground and has, as a result, increased their vulnerability.

Soliciting is defined as “*the act of publicly soliciting, by any means, including passively, another person for the purpose of encouraging them to engage in sexual relations in exchange for payment or the promise of payment*”.<sup>167</sup> This offence is punishable by two months’ imprisonment and a fine of 3,750 euro, and may be accompanied by expulsion from French territory, regardless of residence status.

Under this offence, a particular way of dressing, spending long periods on the pavement, a conversation with the driver of a car or a look or attitude can be punished if deemed by law enforcement officials to constitute ‘soliciting’. This offence was abolished when the new Criminal Code was adopted in 1992 because “*of the imprecise nature of the constitutive element of this offence, which led to its random*

---

<sup>166</sup> Criminal Code, article 225-1.

<sup>167</sup> Criminal Code, article 225-10-1, (incorporated as a result of Law N° 2003-239 of 18 March 2003, article 50.2, *JORF*, 19 March 2003).

application by the services responsible for carrying out investigations".<sup>168</sup> As Johanne Vernier, a legal expert and member of the Groupe d'information et de soutien aux immigrés (GISTI), Information and Support Group for Immigrants, commented, "In principle, the law has a duty to be accessible, precise and predictable, so that I can adjust their behaviour and predict, with a reasonable amount of certainty (possibly taking advice on the matter), the likely consequences of that behaviour. It has to be said that the new article 225-10-1 [on passive and active soliciting] does not indicate clearly and precisely what specific act constitutes soliciting in public, particularly in the case of passive soliciting".<sup>169</sup>

A circular on implementation of the Law on Internal Security gives the following grounds for reinstating this provision: "On the one hand, because passive soliciting is likely to give rise to public order offences, especially a breach of the peace, public health or law and order, and, on the other, because cracking down on such acts deprives those living off immoral earnings of their source of profit and so frustrates the trafficking in human beings".<sup>170</sup> This provision begs the following question: Can the State claim to be taking action against trafficking in human beings, and consequently in favour of the rights of these persons, while at the same time targeting them for repression?

### **3.3.7. The increasing invisibility of people who have been trafficked for the purpose of prostitution**

For the year 2004, the Interior Ministry recorded 3,290 reported acts of soliciting (police reports and complaints), including 1,726 for the city of Paris alone.<sup>171</sup> Of those detained, 81% were foreigners, mainly from countries of Eastern Europe and sub-Saharan Africa, but also increasingly from countries in Asia. With regard to the offence of soliciting, the Interior Minister stated at that time that it was "the best way of protecting prostitutes. (...) Why has a young Albanian girl been put onto the Paris streets by pimps? Because these modern-day slave-masters have nothing to lose. By penalizing passive soliciting, we are lifting these unfortunate girls out of the networks that are exploiting them".<sup>172</sup>

<sup>168</sup> Ministerial response N°19596 from the *Garde des Sceaux* (French Justice Minister), published in the Official Gazette of the National Assembly, 9 January 1995, p.212.

<sup>169</sup> "La Loi pour la sécurité intérieure: punir les victimes du proxénétisme pour mieux les protéger ?" by Johanne Vernier, in *La prostitution à Paris*, under the direction of M.E. Handman and J. Mossuz-Lavau, éditions La Martinière, Paris, 2005, p.133.

<sup>170</sup> Circular on implementation of the Law on Internal Security N° CRIM 2003-07 E8/03-06-2003, NOR : JUSD0330082C, published in the Official Gazette of the Ministry of Justice N°90, 1 March to 30 June 2003.

<sup>171</sup> Official figures issued by the Interior Ministry, November 2005.

<sup>172</sup> *Le Monde*, 3 September 2004, "Des associations constatent un timide reflux de la prostitution".

The provisions of the Law on Internal Security are, however, contradictory. The law forgets that the victims of trafficking it is seeking to protect are sometimes the very same women who are affected by the crackdown on visible prostitution. Indeed, when enforcing this law, the State makes no distinction between prostitutes who are the victims of trafficking in human beings and other prostitutes.

Far from protecting people who have been trafficked, this law exposes them to being held in police custody, a criminal conviction, a fine and up to two months' imprisonment, as well as possible expulsion from the country.

The circular on implementation of the Law on Internal Security is very explicit in this regard: "*Where a person who is engaged in prostitution is an illegal immigrant, or where that person is a foreign national who is a legal immigrant but whose residence permit may be withdrawn (...), it can only be beneficial if, during the investigation, an administrative procedure is instituted to allow the person concerned to be escorted to the border, thus avoiding criminal proceedings*".<sup>173</sup> In addition, the circular states that withdrawal of a residence permit does not have to be the consequence of an eventual firm conviction for soliciting.<sup>174</sup>

In January 2004, when the Interior Ministry announced a 40 per cent fall in prostitution in Paris,<sup>175</sup> organizations working on the ground with prostitutes and victims of trafficking<sup>176</sup>, as well as the *Mairie de Paris*,<sup>177</sup> said that these figures were, in fact, merely evidence of the reduced visibility of prostitution, as prostitutes were being pushed increasingly underground. A social worker gave Amnesty International the following testimony: "*Prostitutes are hiding themselves away, working on the outskirts of towns; they don't use the main streets any more, they start work later, they no longer dare to go to see the police officers with whom they often used to have a good relationship. Some of them live in town and catch a train in the evening to go to small towns or to main roads to find long-distance lorry drivers. They are escaping the crackdown but they are also exposing themselves to all sorts of violence. We don't know how to protect them any more*".<sup>178</sup> The interviews Amnesty International conducted with professionals working in the social and health sectors and organizations specializing in providing accommodation and help for these women to

<sup>173</sup> Circular on implementation of the Law on Internal Security, op.cit.

<sup>174</sup> Ibid.

<sup>175</sup> Address by Nicolas Sarkozy to the National Assembly, parliamentary questions, 13 January 2004, *Le Monde* 14 January 2004.

<sup>176</sup> Letter of 3 March from the organizations Cabiria and Grisélidis to mayors and *préfets*.

<sup>177</sup> Article published in *le Monde* on 14 January 2004, "*La Mairie de Paris doute d'une baisse spectaculaire de la prostitution*".

<sup>178</sup> Amnesty International interview with Jean-Baptiste March, of the organization HAS, Marseille, May 2005.

get back into society all concur on one point: the crackdown on street prostitution has resulted in a clear erosion of respect for the rights of prostitutes in general and the victims of trafficking in particular.

A report produced by the *Mairie de Paris* documents incidents of violence against prostitutes, including assaults with teargas, chases in which the woman was tackled to the ground, the theft of money and confiscation of condoms and medication. It appears that violence of this kind is perpetrated by clients and local residents as much as by the police. The report also cites incidents of degrading treatment in police custody, including, for example, brutality and sexual abuse, depriving detainees of food and drink, and forcing them to do the cleaning in police stations.<sup>179</sup>

At risk of arrest as offenders and of being expelled from France, trafficked women are therefore all the more in danger of being kept under the grip of the traffickers.

Amnesty International joins with other organizations in expressing its concern that this law is applied in such a way that respecting and safeguarding the human rights of the individuals involved is not seen as a priority, one of the consequences of which is that trafficked persons become isolated.

### **3.3.8. Enforcement: priority is given to cracking down on street prostitution**

This apparent contradiction is reflected in practice by the priority given to cracking down on street prostitution to the detriment of affording protection to trafficked persons. Although the numbers of police officers specifically deployed to crack down on prostitution have increased significantly, the *Office central de répression de la traite des êtres humains*, Central Office for the Suppression of Trafficking in Human Beings (OCRTEH), which is the only Interior Ministry body specializing in the issue of trafficking in human beings, has only 30 specialist officers to investigate incidents of trafficking and living off immoral earnings. According to members of OCRTEH, this number is still far from sufficient to enable them to cover the whole of France, despite the network of police stations that exists throughout the country.<sup>180</sup> And yet this unit plays a fundamental role, because it keeps a central record at national level of all information on cases of trafficking and living off immoral earnings, co-ordinates the work to stop the activities of traffickers and pimps, co-operates at a European and international level on these issues and carries out investigations into the most serious cases of trafficking and living off immoral earnings. Furthermore, the unit has a long

---

<sup>179</sup> “*L’action de la ville de Paris en matière de prévention et de lutte contre la prostitution*”, Observatoire de l’égalité, Secrétariat général de la Ville de Paris, January 2004; see also the press releases issued by the Toulouse-based organization *Grisélidis* (dated 13 January 2005, 28 November 2004 and 15 May 2004) and the Lyon-based organization *Cabiria* (12 May 2004).

<sup>180</sup> Amnesty International interview with Sylvain Fournier, OCRTEH officer, 2004.

history of collaboration with organizations involved in providing support and protection for victims and, with more staff and resources, could probably help to improve the process of identifying victims with a view to respecting and protecting their human rights.

At the Paris police headquarters, there is a special unit, *Unité de soutien aux investigations territoriales (Usit)*, devoted to the crackdown on prostitution, to support investigations carried out throughout the country. As of December 2004, *Usit* had recorded 2,800 cases of soliciting brought since it was set up in October 2003, of which, according to the Paris police chief, only “about 10” had led to the shutting down of a network bringing people in from eastern Europe.<sup>181</sup> At the same time, shortly after the Law on Internal Security had been adopted, at the judicial level, the Paris Prosecutor called on judges to systematically conduct immediate hearings in cases of soliciting and aggressive begging.<sup>182</sup>

### **3.3.9 The traffickers tighten their grip**

What are the consequences of this law from the traffickers’ point of view? They adapt. To avoid the risk of being caught if the women they exploit are arrested, they take steps to ensure that the women are less visible, as in a case reported by a *Bus des Femmes* representative:

*“They are put into vans naked, or wearing nothing more than a G-string, and given barely one meal a day. They are terrorized, believing they are under surveillance every minute of the day and night. This is not necessarily the case, but the system of organized terror is psychologically very powerful. Occasionally they have a mobile phone, which will ring when they have been away from the van for more than 10 minutes. For example, while I’ve been talking to you, if you had been one of them, it would have rung more than four times in half an hour to tell you, ‘OK, you’ve had your coffee and your biscuit, that’s enough. Come back now’. And, terrified, you would have got up and left.”*<sup>183</sup>

The vast majority of organizations working on the ground with whom Amnesty International held meetings strive to establish a relationship of trust with women who are being kept under strict control by the traffickers and for whom the idea of having a relationship with the police means repression. This merely heightens the women’s vulnerability and isolation, which in turn sustains the traffickers’ hold over them,

<sup>181</sup> Intervention by Pierre Mutz, *Préfet de Police de Paris*, at the session of the *Conseil de Paris*, held on 13-14 December 2004.

<sup>182</sup> Press release on the penal policy of the Paris Prosecutor, *Syndicat de la magistrature*, 15 April 2003

<sup>183</sup> Interview with Amnesty International, 2004.

since they are all the less inclined to reveal their situation if they are arrested by law enforcement officials as offenders rather than being viewed as victims of serious human rights violations.

The only possibility open to them under French law is to reveal who their trafficker is. This is the only condition on which they may, at the discretion of the *préfet*, be issued with a temporary residence permit.

The resources poured into taking action against pimps have definitely produced results, with the OCRTEH recording a total of 47 networks shut down in 2004, compared with 39 for the previous year and 30 in 2002.

However, although the Law on Internal Security made provision for measures to protect victims of trafficking, political will has been clearly directed towards a visible crackdown on prostitution in the interests of public order, at the expense of a strategy for supporting victims and assisting them back into society. The crackdown is also linked in with the strengthening of measures to deal with illegal immigrants. Trafficked persons are, therefore, at particular risk. Many are irregular migrants and are, as a result, dual 'offenders': firstly, because of the soliciting law and, secondly, because of the law concerning the conditions under which foreigners may enter and reside in France. In fact, in the majority of cases, both of these offences are the result of their exploitation by traffickers.

For some trafficked women, returning to the country of origin can involve a considerable risk that reprisals will be taken against them by the traffickers. As a signatory of the Torture Convention\*, France is under an obligation not to expel, forcibly repatriate or extradite anyone to another State where they may be at risk of torture or degrading or humiliating treatment.<sup>184</sup> The ICCPR, to which France is a party, also commits it to ensuring that anyone expelled from the country, as well as anyone who is detained or arrested, will have access, in a language they understand, to the grounds on which the decision was based, and to an appropriate appeal procedure.<sup>185</sup> The Palermo Protocol urges France to take all necessary measures to protect women against revictimization.<sup>186</sup> However, the incidence of arrest and conviction on grounds of soliciting, the expulsions from the country that have occurred and the failure to protect such people from falling into the clutches of traffickers who, in most cases, know the country, town or village they come from, are all reasons for believing that the French authorities are not meeting their obligations.

---

<sup>184</sup> Convention against Torture, article 3.

<sup>185</sup> ICCPR, articles 9, 13 and 14.

<sup>186</sup> Palermo Protocol, article 9, 1(b).

The French authorities should not content themselves with putting in place mechanisms to protect and identify victims of trafficking but should also consider adopting legislative measures to permit such people to remain in the country.<sup>187</sup> In the event of the organized return of a victim of trafficking to their country of origin, the State should take into account the safety of the person concerned, as well as any legal proceedings that may be taking place in connection with the fact that they are a victim of trafficking, and should, as far as possible, ensure that any such return is voluntary.<sup>188</sup> It is essential for the French State to regard such people not as offenders or undesirables but as individuals who have had their human rights violated.

### 3.4. Trafficked women who are illegal immigrants

#### 3.4.1 Conditional regularization of illegal status

Article 76<sup>189</sup> of the Law on Internal Security of 18 March 2003 introduced some form of protection for trafficked persons for the first time, since it states that “*unless their presence constitutes a threat to public order, foreign nationals may be issued with a temporary residence permit if they have lodged a complaint against someone accused of having committed an offence [of trafficking or living off immoral earnings] against them, or if they are giving evidence in criminal proceedings involving a person charged with such offences. A temporary residence permit entitles the holder to seek employment*”.<sup>190</sup> The law adds that “*if the case against the person being prosecuted results in a firm conviction, a residence permit may be issued to the foreign national who lodged the complaint or gave evidence*”.<sup>191</sup>

Apart from the fact that the regularization of immigration status is conditional upon a denunciation, this provision does not provide real protection but simply the possibility of regularization, a decision which lies at the discretion of the *préfets*. Yet the Law on Internal Security states that an implementing decree needs to be adopted to determine the arrangements for receiving and accommodating persons to whom such a permit

---

<sup>187</sup> Idem, article 7.

<sup>188</sup> Idem, article 8.2.

<sup>189</sup> Law on Internal Security (known as the “Sarkozy Law”) N° 2003-239 of 18 March 2003, article 76, repealed by Order N°2004-1248 of 24 November 2004 (which came into force on 1 March 2005), now articles L316-1 and L316-2 of the Code of Entry and Residence of Foreign Nationals and the Right of Asylum.

<sup>190</sup> Articles L316-1 and L316-2 of the Code of Entry and Residence of Foreign Nationals and the Right of Asylum, introduced as a result of Article 76 of the Law on Internal Security N° 2003-239 of 18 March 2003, repealed by Order N° 2004-1248 of 24 November 2004 (which came into force on 1 March 2005).

<sup>191</sup> Idem.

has been issued. Two-and-a-half years later, the decree has still not appeared and no protective mechanism has been put in place by the public authorities.

In addition, there is not even any justification for such a denunciation to be made to meet the needs of police investigations, since the OCRTEH can be mandated to investigate and arrest the traffickers without the need for a complaint to have been lodged.

### **3.4.2 Implementation of this law in France**

Between March 2003, when the Law on Internal Security was adopted, and the end of 2004, 352 people were granted residence permits: 172 for 2003 and 180 for 2004.<sup>192</sup>

Some police stations have only issued temporary residence permits of one month's duration, renewable only on condition that the denunciation results in the arrest and conviction of the traffickers in question (who are arrested as pimps). Others have issued six-month permits and some have even issued 10-year residence permits.<sup>193</sup>

However, as in the case of K., denunciation does not always lead to regularization. The Interior Ministry responded to her application in the following terms: "*Without doubting Miss [K]'s Status as the victim of a network of pimps, it transpires from the information you have kindly provided that she only lodged a complaint with the police once her application for asylum had been rejected by OFPRA on ... Meanwhile, the person against whom she lodged her complaint as the perpetrator of the exploitation of which she was a victim was arrested and imprisoned for living off immoral earnings, with aggravating circumstances, in August 2004 and the case was brought to a close in April 2005. The applicant did not therefore co-operate in advance with the police and the courts with a view to shutting down the prostitution network to which she belonged.*"<sup>194</sup>

Despite the intervention of her lawyer and Amnesty International, K. has been unable to pursue the complaint she lodged, in which she denounced two people, one of whom is still at large. K. continues to live in hiding, with no resources, and at risk of being returned to her country of origin, where she fears reprisals from the traffickers who know which town she comes from and could take revenge on her family. K. is thus a victim of trafficking for the purpose of sexual exploitation and, although the traffickers are responsible for the violence used against her, the French State, by its

---

<sup>192</sup> Figures provided by the *Direction des libertés publiques et des affaires juridiques*, Office for Public Liberties and Legal Affairs.

<sup>193</sup> Interviews conducted by Amnesty International in Toulouse, Nice and Paris, 2004-2005.

<sup>194</sup> Response given by the Interior Ministry's Office for Public Liberties and Legal Affairs.

---

refusal to offer her any protection, is failing in its duty to respect and guarantee fundamental human rights.

### ***3.4.3. Regularization of status as proposed by France seen in the light of the Council of Europe Convention on Action against Trafficking in Human Beings***

Amnesty International takes the view that article 76 of the Law on Internal Security makes inadequate provision for the protection and assistance of individuals: firstly, because it offers protection that is conditional upon denunciation and, secondly, because it does not allow an adequate reflection period. The Council of Europe Convention on Action against Trafficking in Human Beings sets out a number of minimum standards with regard to the protection and assistance of victims of trafficking. Amnesty International takes the view that the provisions of this convention are an essential means of guaranteeing the fundamental rights of trafficked persons and that it is vital that France signs and ratifies it. A protective mechanism of this kind should give such individuals the opportunity of obtaining a residence permit on the basis of personal need and risk, rather than making it conditional on the making of a denunciation, as French law does.

Under the terms of the treaty, *“Each party shall provide in its internal law a recovery and reflection period of at least 30 days [...], which shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on co-operating with the competent authorities”*.<sup>195</sup> The Convention specifies that this measure should apply to everyone, provided that *“there are reasonable grounds to believe that the person concerned is a victim”*.<sup>196</sup> This means therefore that States cannot reasonably ask victims to co-operate during this 30-day period and the article specifically states that *“it shall not be possible to enforce any expulsion order against him or her (...) During this period, the Parties shall authorize the persons concerned to stay in their territory”*.<sup>197</sup> In addition, the Convention adds that States have an obligation to assist victims of trafficking in their physical, psychological and social recovery, regardless of their residence status and without imposing any conditions with regard to co-operation.<sup>198</sup> The Convention states that such assistance *“shall include, at least: standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance; access to emergency medical treatment; access to education for children”*. States also have an obligation to inform them of their rights and of the procedures whereby such rights can be exercised, in a language they understand.

---

<sup>195</sup> Council of Europe Convention on Action against Trafficking in Human Beings, article 13.

<sup>196</sup> *Idem*.

<sup>197</sup> *Idem*.

<sup>198</sup> *Idem*, article 12.

#### **3.4.4. Conditional regularization in the context of a crackdown on illegal immigration**

French law lays down no specific time period during which individuals can enjoy protection because of their status as victims of trafficking. However, under the current legislation relating to foreign nationals who have entered France as irregular migrants, there are several regulations limiting the period available to victims of trafficking to denounce their trafficker.

#### **3.4.5. A condition of regularization: victims have between 48 hours and seven days to denounce their traffickers**

Under current French legislation, foreign nationals must be able to produce a document authorizing them to travel or remain in France.<sup>199</sup> In the absence of any such document, they may be issued with a police order, in writing, stipulating that they be escorted to the border. This order may either be delivered to them in person, in which case they have 48 hours in which to lodge an appeal, or sent by registered post with acknowledgement of receipt, in which case the person has seven days in which to lodge an appeal to the competent authorities to have the order revoked. If there is no appeal, or if it is rejected, the order to escort the foreign national to the border may be implemented by force. If a foreign national is unable to leave French territory, he or she may be placed in a detention centre or kept under house arrest.

Not all trafficked foreign nationals in France are irregular migrants; they may come from a member state of the European Union or from a country with which France has entered into a bilateral agreement entitling them to a particular status or to a residence permit.

However, given their exploitation by traffickers, it is the case that many people who have been trafficked for the purpose of prostitution are illegal immigrants. In addition, those who are foreign nationals in possession of a valid residence permit may have it withdrawn if they are caught soliciting.<sup>200</sup>

Along with all other irregular migrants on French territory, these persons may be subjected to an identity check and escorted to the border. Victims of trafficking face further risk if they have their identity checked because they can be arrested under the law on soliciting. Against this background, it is important to understand the context in which these identity checks are carried out.

---

<sup>199</sup> Article 8.2 of the Order (*Ordonnance*) of 1945, art. L. 611-1 of the Code of Entry and Residence of Foreign Nationals and the Right of Asylum.

<sup>200</sup> Article 12 of Order 45-2658 of November 1945.

### 3.4.6. Identity checks in France

In France, identity checks<sup>201</sup> are subject to a number of rules that create a framework within which such checks can be carried out. The police may be authorized to carry out a check if a person is suspected of having committed, or did commit, an offence, in order to prevent a breach of the peace, or in border areas and areas open to international traffic (airports, stations, etc).<sup>202</sup> When none of these conditions apply, the police may also invoke ‘objective criteria’ that lead them to assume that the individuals whose identity is to be checked are foreigners. The Constitutional Council, in a ruling dated 13 August 1993, specifically stated that such criteria should exclude “any personal discrimination of any kind”.<sup>203</sup> In theory, therefore, physical appearance, mode of dress, speaking in a foreign language and, in particular, the colour of one’s skin cannot be deemed to constitute ‘objective criteria’. This ruling by the Constitutional Council, the intention of which was to prohibit the ‘*délit de faciès*’ (an offence based on physical appearance), is unfortunately of very limited applicability, something which has been criticized by the UN Commission on Human Rights\* as well as by Amnesty International in its report on police impunity in France.<sup>204</sup> Foreign women who are victims of trafficking are all the more likely to pay the price in that they can be arrested for soliciting at any time.

### 3.4.7. “If you talk, you’re dead”<sup>205</sup>

When trafficked women, who are also illegal immigrants, are subjected to an identity check, they, like any other illegal immigrant in France, have at best seven days and at worst 48 hours in which to lodge an appeal.

*“They told her, ‘If you talk, you’re dead’, or, ‘If you talk, your family will suffer’. I don’t know about you but, if I were in her place, I’d believe them. Especially if, like her, you had seen other women beaten up, if you knew that they knew your village, your family, if you had seen just how far they were prepared to go to keep the network going, if you had been raped and humiliated so many times, if you lived in constant fear. I don’t know about you but I wouldn’t give evidence”.*<sup>206</sup>

How can they make a decision within 48 hours or seven days about whether to expose their trafficker and lay themselves open to reprisals that might also be inflicted on

<sup>201</sup> Article 78-2 of the Code of Criminal Procedure.

<sup>202</sup> *Le Guide de l’entrée et du séjour des étrangers en France*, Gisti, La Découverte, Paris, 2005.

<sup>203</sup> Constitutional Council, Ruling 93-325 DC of 13 August 1993.

<sup>204</sup> Amnesty International, *The Search for Justice. The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment*, 6 April 2005, EUR 21/001/2005.

<sup>205</sup> As recounted by a victim of trafficking to an organization with which Amnesty International met in 2004.

<sup>206</sup> Testimony of Claude Boucher, director of *Bus des Femmes*, given to Amnesty International in 2004.

their family and those close to them? Indeed, how can they decide to co-operate with the police when they are engaged in an activity which is seen in France as a crime? The police officers they have to deal with if they decide to do so are often the very same officers who arrested them for soliciting at the time of an identity check and in these conditions it is hard to imagine exposing a trafficker who has time and again demonstrated their determination to resort to violence to get what they want. Moreover, they are not systematically given information on their rights in a language they fully understand and, if they are considering exposing their trafficker, they have no guarantee of protection against any possible reprisals their trafficker may take.

So making the granting of a residence permit conditional upon denunciation is tantamount to denying the oppression, coercion and isolation experienced by these women.

The Italian model is very instructive with regard to this issue. Italian law gives victims of trafficking in human beings a six-month residence permit, which is not dependent upon their making a denunciation, and provides them with shelter, material and social assistance and psychological monitoring.<sup>207</sup> Once women are given shelter and protection and they gradually regain their confidence, the Italian experience shows that there is a strong probability that they will talk of their own volition.

Amnesty International calls on France to train its officials to understand that trafficking in human beings is not only an offence punishable by law but also a serious violation of the human rights of those who are exploited in this way. It is therefore essential that the State ensures that its officials receive training about the realities of the violence and coercion to which victims of trafficking for the purpose of prostitution are subjected and that they guarantee that such persons have access to information on their rights in a language they understand, as well as access to support and effective protection.

#### ***3.4.8. The different courses of action available in France and in Europe***

##### Assisted return

It is important that some assisted return mechanism exists to facilitate protection and support for women who can, and wish to, return to their country of origin. However, returning in this way entails certain risks, starting with the strong risk of reprisals from the traffickers. Once back in their own country, these women may also be stigmatized and rejected by their families, friends and acquaintances, something

---

<sup>207</sup> Article 18 of Italian Law 268/98; the Law on Immigration 286/1998 has also enabled a fund to be set up for anti-trafficking measures, sustained mainly by confiscating the profits derived from trafficking in human beings.

which may stand in the way of their ability to rebuild their lives, not only from the psychological point of view, but economically and socially, too.

K.'s testimony demonstrates the degree to which the traffickers are organized and able to react quickly: the first time she tried to escape the network with money she had secretly saved up from the money clients had paid, she was picked up during a French police check and had her passport and savings confiscated but was not charged with any offence. The following day, K. recovered her passport, but not the money. Taking advantage of the diversion caused by the police operation, K. and a friend fled, hoping to escape the trafficker. Having no money, they continued to work as prostitutes in order to survive but lived in fear that their trafficker would find them. Receiving constant telephone threats and pursued in the street, K. and her friend eventually managed to recover their money with the help of an organization and a lawyer. They immediately bought tickets to return to their country of origin. To save money, they purchased return tickets. Less than three days after arriving back in their country, one of the traffickers turned up at K.'s sister's house, where she was staying. He ordered her to leave for Spain at her own expense and threatened to 'settle the score with her'. K. refused and fled the following day, not knowing where to go. She used the return ticket to go back to France where she managed to make contact with some individuals and organizations and is hoping to find protection.

According to the Ministry for Social Cohesion, 13 people took advantage of assisted return arrangements in 2004.<sup>208</sup> However, a great deal of work remains to be done with decentralized services dealing with social security, women's rights and child welfare, as well as the *Agence nationale d'accueil des étrangers et des migrations* (ANAEM), National Agency for Aliens and Migration, to publicize this service and the opportunities open to victims of trafficking in human beings.

Secure accommodation set in place by the Réseau Ac.sé and co-ordinated by Accompagnement Lieux d'accueil Carrefour éducatif et social (ALC), Support, Shelter, Educational and Social Meeting Point, based in Nice

Réseau Ac.sé has set up a secure accommodation system in partnership with different French organizations and *Centres d'hébergement et de réinsertion sociale (CHRS)\**, Accommodation and Social Reintegration Centres. The way the system operates is by member organizations providing one or more places in their accommodation units. In this way, victims of trafficking can be moved quickly to another location, and thus removed, at least geographically, from the clutches of the traffickers.

---

<sup>208</sup> Intervention by S. Alidières at a symposium on trafficking in human beings held at the National Assembly on 4 April 2005.

The network takes in only those victims who want protection and who freely accept the principle of being moved away. The idea behind this is to avoid imposing decisions on people whose freedoms have already been sufficiently abused, and also to guarantee their safety and that of the reception centre. The network currently has 33 member organizations (there were initially 24) and has capacity for 46 people. When taking in a victim, the first stage is for the organization that was responsible for identifying the victim to carry out an assessment. This assessment process focuses on the rights of the individual and presents the people concerned with the different options open to them under French law, that is to say, the possibility of having their immigration status regularized if they agree to cooperate with the authorities, or of benefiting from assisted return, if that is what the individual concerned wishes. This first body then undertakes to shelter that person for 48 hours, during which time the Ac.sé co-ordinating unit puts out an appeal to its members for a place in secure accommodation. Of 168 victims identified in 2004, 111 were taken in, 21 of whom chose to return to their country of origin. Ac.Sé expects to succeed in finding secure accommodation for 66 per cent of victims, an improvement that has been achieved since 2003 as a result of an increase in the network's capacity and an improved ability to assess and cater for the needs of victims. There is therefore less loss of contact and a higher number of successful integration projects, demonstrating, if such demonstration were needed, the effectiveness of building up long-term experience and training in addressing the needs of victims.

Most of the people who have benefited from secure accommodation have been from eastern Europe. However, the network co-ordinators have noted an increase in the number of Nigerian women and women from sub-Saharan Africa in general, for whom providing support is less straightforward. Indeed, women from sub-Saharan Africa find denunciation much more difficult because of family links and/or symbolic powers. If they do not make a denunciation, it is difficult for these women to have their residence status regularized under French law and, as a result, they spend longer in the network's care, with poorer prospects of integration.

This system of providing accommodation, and the procedures for taking in and identifying victims that it involves, was set up in collaboration with DGASS, the State-run social services department.

However, as pointed out by Erik Kerimel, president of a CHRS in Marseille, there are already long waiting lists (350 applications for every 70 places available in these accommodation facilities, for example) for places in social housing units for the population as a whole. Making places available specifically for trafficking victims could, in some cases, mean that such facilities will become all the more filled up, especially as there has been no increase in their funding.

### ***3.4.9. Cooperation between State institutions and civil society is crucial***

It is increasingly the case in European countries that the various public services and non-governmental organizations are coming together to co-operate not only on preventive measures but also on victim support and protection. For instance, within the framework of the European police and judicial co-operation programme, AGIS, the COPYRIGHTS project has begun work on comparing the experiences of six European countries - Italy, Bulgaria, Slovakia, Romania, France and Portugal - with a view to evaluating the strengths and weaknesses of each one. This joint research effort will highlight the effectiveness of having an integrated approach, where prevention, punishment and reparation are perceived within a human rights perspective. It also reaffirms the need to separate the concepts of witness and victim. This study, which is the result of a joint project between five non-governmental organizations and three public institutions from the countries involved<sup>209</sup>, is proof of a successful collaboration, which will be pursued and developed further. For assured effectiveness, collaboration should take place both at national level, between the various public bodies and organizations that have contact with victims, and at international level, between all the various actors, be they institutions or non-governmental organizations.

## **3.5. Conclusions and recommendations**

Amnesty International recommends that the French government adopt and implement a comprehensive strategy to combat trafficking in human beings that focuses on protecting and guaranteeing the human rights of victims and seeks to prevent trafficking in human beings, punish the perpetrators and provide reparation for the harm done to victims.

To this end, Amnesty International calls on the State to take the following action.

### ***Identification of victims***

To devise and implement an effective strategy for identifying and protecting victims of trafficking, in particular by ensuring that the relevant individuals and authorities have the necessary awareness, training and skills to be able to identify them.

To view a person as a victim as soon as there are reasonable grounds to believe that that person is, or has been, a victim of trafficking.

---

<sup>209</sup> The five participating organizations are: On the road, Italy; Nadja Foundation, Bulgaria; Dafné Union, Slovakia; Caritas, Romania; and ALC/SPRS, France. The three public institutions at country level are: the Equal Opportunities and Women's Rights Commission, which comes under the Presidency of the Council of Ministers, Portugal; *l'Office central pour la répression de la traite des êtres humains* (OCRTEH), France, and the *Mairie de Paris*, France.

***Providing assistance and protection for victims***

Amnesty International calls on the French authorities:

- to offer assistance and protection to all victims of trafficking present on French soil, regardless of their residence status, in particular by guaranteeing them access to secure, protected accommodation, material help, medical and psychological care and treatment, access to education, vocational guidance and training and access to employment, with all such services being provided on the basis of informed consent so that the dignity and privacy of the individual concerned is respected;
- to ensure that such protection, services and assistance are offered to all victims according to need, regardless of their residence status in the country, and that they are not made conditional on making a denunciation;
- where there is good reason to believe that a person is a victim of trafficking, to provide that person with information on reparation, protection, assistance and other services to which they are entitled, as well as how to access them, in a language they understand;
- to ensure that protective measures are extended, if need be, to members of their family and other individuals, in particular those who cooperate with the courts or the authorities, or who help victims of trafficking.

***A reflection and recovery period***

Amnesty International requests the French authorities to ensure that victims of trafficking:

- have a minimum recovery and reflection period of three months;
- have unconditional entitlement to a renewable residence permit that is valid for at least six months.

***Taking the exploitation and coercion to which they are subjected into consideration***

Amnesty International requests the French authorities to ensure that victims of trafficking are not penalized for acts, in particular, soliciting and illegal residence, which result from the exploitation of which they are victims. The authorities must ensure that all victims of trafficking have access to adequate protection and to opportunities for reintegration and rehabilitation.

***Collection of data***

Amnesty International calls on the French Government to initiate, by whatever means are necessary, the collection and analysis data on the phenomenon of trafficking in women in France for the purpose of sexual exploitation and to make such information publicly available with a view to making a regular assessment of the situation and any measures taken by the authorities to remedy it.

***Council of Europe Convention on Action against Trafficking in Human Beings***  
Amnesty International calls on France to sign, ratify and implement the European Convention on Action against Trafficking in Human Beings without delay.