

MATRIFOR

Approaching
forced marriages
as a new form
of trafficking
in human beings
in Europe



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GLOSSARY¹

Forced marriage: a marriage contracted without the consent of one or both partners and therefore against the will of at least one of them.

Arranged marriage: a marriage in which both parties consent to the assistance of their parents or a third party in identifying a spouse. One or both partners may be subjected to cultural pressures which may in fact result in limiting his or her free will to contract marriage.

Sham marriage or marriage of convenience: a marriage contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State.

Child marriage: international law obliges each state to specify in its legislation a minimum age for marriage recommending that this be set at 18 for both boys and girls.

1. Definitions used in the European Union Agency for Fundamental Rights report Addressing Forced Marriage in the EU: Legal Provisions and Promising Practices (2014).

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1. INTRODUCTION

The MATRIFOR project addresses forced marriage as a new form of human trafficking in Europe.

The main objectives of this project are:

- to study the characteristics of forced marriage in the participating countries in order to better understand the factors, the victims' profiles and other issues which might facilitate forced marriage. This would be used to identify cases of forced marriage;
- to study the main obstacles and difficulties faced by victims when seeking legal redress in cases of forced marriage in the participating countries;
- to propose specific legal mechanisms to address forced marriage within the context of European Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and replacing Council Framework Decision 2002/629/JHA;
- to analyse the way in which the participating countries are transposing into their national legislation the obligations

imposed under the above cited EU Directive;

- to develop training and awareness-raising material specifically addressed to target groups and beneficiaries.

The study lasted from 16 November 2012 to 15 November 2015 (36 months).

Three countries were involved in the study: Belgium (project partner), Italy (project partner) and Spain (project coordinator). The institutions involved were: Universitat Autònoma de Barcelona (Barcelona, Spain), International Centre for Reproductive Health – Universiteit Gent (Ghent, Belgium) and Le Onde Onlus (Palermo, Italy).

The study has been financed by the Prevention of and Fight against Crime programme (DG Home Affairs) of the European Commission.

2. COMPARATIVE ANALYSIS OF THE MATRIFOR FIELDWORK

This section presents the analysis of the qualitative research carried out, i.e. interviews with professionals as well as victims or potential victims of forced marriage, performed as part of the multi-national MATRIFOR project, led by the Universitat Autònoma de Barcelona.

The methodology of the project consists of qualitative research combined with in-depth interviews (fieldwork) followed by a legal analysis (desk study). The research was carried out in Belgium (The International Centre for Reproductive Health of Universiteit Gent (ICRH-UGent), Spain (Universitat Autònoma de Barcelona) and Italy (Le Onde Onlus).

Prior to the fieldwork, guidelines were developed to support it in the three countries and to ensure that the methodology in each country was similar. The main objectives of the fieldwork were:

- to study the characteristics of forced marriage in the participating countries in order to better understand the factors, the victims' profiles and other issues which might facilitate forced marriage. This would be used to identify

cases of forced marriage; and

- to study the main obstacles and difficulties faced by victims when seeking legal redress in cases of forced marriage in the participating countries.

Both professionals and (potential) victims of forced marriage were interviewed. The project envisaged that 20 face-to-face interviews with stakeholders (professionals) and ten face-to-face interviews with (potential) victims of forced marriage in the local language of the country should be conducted. The interviews were semi-structured. After conducting the fieldwork, the researchers drafted an analytical report to integrate the information collected during the interviews, following the format of the analytical report that had been agreed upon by all partners. This report comprises the three analytical reports produced by the Belgian, Spanish and Italian research groups.

Stakeholders were selected to include all sectors, as agreed by all partners at the beginning of the project. The professionals to be included were: policy makers, lawyers, judges, prosecutors, members of the Police, the health and social services, school teachers and NGOs specialised in the issue of forced marriage, violence against women and migrant women's associations.

In Spain, 21 stakeholders were interviewed from public administration (health services, social services, immigration agencies, Catalan police force and NGOs working in the fields of migration, gender and violence against women). Due to the limited resources and the existing contacts, all interviews to stakeholders were conducted in Catalonia. Moreover, 11 victims or potential victims of forced marriage were interviewed from Morocco, the Gambia, Pakistan, Senegal, China, the rest of Spain and the Spanish Roma community. The respondents, who were aged between 21 and 65 years old, were interviewed in Catalonia and Madrid and had different educational backgrounds, from primary school education higher diplomas.

In Belgium, recruiting victims proved difficult. The respondents who participated were sought through the stakeholders, by contacting NGOs working in the field via the Honour-Based Violence Platform (Platform of academics, NGOs and policy makers to discuss, coordinate and support work on honour violence, including forced marriage). NGOs and consultants explained that they could not provide any names and/or phone numbers of (potential) victims for ethical reasons (i.e. non-disclosure of identity of clients). This was exacerbated by the fact that several studies have been conducted in the

past on both honour violence and forced marriage and it was assumed that there might be a 'research fatigue' among potential respondents. Given that Belgium consists of two distinct regions (Flanders and Wallonia) with two different realities with regard to policy and service delivery on health and social welfare aspects, the Belgian partner decided to increase the number of interviews of stakeholders to 25 (as opposed to 20). In total, twenty-eight (28) individuals were interviewed by 15 March 2014, of which three were (potential) victims and 25 were stakeholders (policy makers, academics, members of social services, education sector, judicial sector, health sector and NGOs). The interviews with victims were not included due to the insufficient number of respondents.

In Italy, stakeholders were selected to include all sectors, as agreed by all partners at the beginning of the project. The professionals included were: policy makers, lawyers, judges, prosecutors, members of the police, health service officials, social services officials, teachers, migrant women's associations and NGOs working in the milieu of forced marriage and violence against women. The executive representing the government with regard to human trafficking and the president of a national association of women combating forced marriage were also

interviewed. In total, 20 stakeholders were interviewed from social services, the legal system, health services, education, public administration and women's NGOs. Moreover, ten victims or potential victims of forced marriage of different age, ethnicity and culture were also interviewed. The victims or potential victims of forced marriage, who have been (or who are at risk of being) subjected to an arranged marriage come from Bangladesh, Sri Lanka, Mauritius and Eritrea. Their age ranges between 16 and 55 and they were interviewed primarily in the Palermo area, Sicily. Their educational background ranges from those who have completed secondary school to Master's degree graduates (as well as some young women who are still in secondary education).

2.1 Data on forced marriage

There are no official data on the prevalence on forced marriage in Europe nor in any of the participating countries in this project. Consequently, it is not possible to produce an estimation of the total number of victims affected by forced marriage. There are only some quantitative surveys limited to geographical areas where the presence of migrant communities is widespread,

for example in the United Kingdom (Kazimirsi et al., 2009) and Germany (Mirchbach et al., 2011). Other data can be extracted from general statistical surveys on migration and youth, such as the National Board for Youth Affairs report in Sweden (Ungdomsstyrelsen, 2009) or the Institut National d'Études Démographiques in France (INED, 2008). In Italy, the Department of Equal Opportunities of the Presidency of the Council of Ministers carried out some research in 2015 with the aim to uncover the issue of forced marriage, by analysing marriage strategies and traditions in various cultural groups living in Italy².

However, the importance of collecting data has been stressed both in the 2011 EU Directive on Trafficking as well as in the Istanbul Convention, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2011, which entered into force on August 2014 and alluded to forced marriage as a form of violence against women:

2 M.R. Lotti, M.G. Ruggerini, G. Serughetti, M. Misiti, M. Virgilio, Il matrimonio forzato in Italia: conoscere, riflettere, proporre. Come costruire una stima del numero delle donne e bambine vittime in Italia di matrimoni forzati e quali interventi avviare, a cura di Le Onde, Presidenza del Consiglio dei Ministri, Dipartimento per le Pari Opportunità, marzo 2014 <http://www.pariopportunita.gov.it/index.php/archivio-notizie/2473-il-matrimonio-forzato-in-italia-conoscere-riflettere-proporre>.

- Article 28 of the 2011 EU Directive on Trafficking in Human Beings states: 'In order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.'
- Article 11 of the Istanbul Convention states: 'There is a need to collect reliable data on a regular basis to measure prevalence of all forms of violence against women and girls.'

Data collection on forced marriage is needed in order to assess trends over time, to measure progress of interventions, to improve target resources and strategies and to assist in designing effective policies. If data are collected, it is important to disaggregate these data on the different forms of trafficking, including forced marriage. Methods should be explored to estimate the prevalence of child and forced marriage, similar to those developed for female genital mutilation (e.g. the extrapolation method as suggested in EIGE, 2013³ and Leye et al, 2014⁴).

3. EIGE, 2013. Female Genital Mutilation in the European Union and Croatia. Report.

4. Els Leye, Lut Mergaert, Catarina Arnaut, Sioban O'Brien Green. 'Towards a better estimation

Despite this lack of quantitative data, nowadays forced marriage occurs among certain communities of Asia, the Middle East and Africa and among some communities from Central and Eastern Europe. These communities are very numerous in many Member States of the European Union and in particular in the three participating countries of this project, i.e. Spain, Belgium and Italy.

Although it is difficult to link forced marriages to a certain culture, community or country, forced marriage predominantly occurs in ethnic minorities in the three countries researched for this study. Firstly, because this type of forced marriage cannot be extrapolated to a whole community, culture or country and secondly, because the aim, form and characteristics of marriage itself are dynamic and have developed over time in all communities in the three countries.

In the case of Spain, some statistics on forced marriage in Spain have been obtained by the Catalan police force. This is limited to the region of Catalonia, where the Catalan law on gender violence recognises forced marriage as a form of gender

of prevalence of female genital mutilation in the European Union: interpreting existing evidence in all EU Member States'. *Genus, Journal of Population Sciences*, vol. 70, no. 1 (2014).

violence in the community and therefore the police are obliged to record in some detail the cases reported to them ⁵.

There are no representative figures on the prevalence of forced marriage readily available in Belgium, as many of the respondents confirmed. In the past, some attempts were made to grasp the magnitude of the problem of forced marriage in Belgium; however, given that these studies have methodological shortcomings (i.e. different population groups, use of different methods, etc.), no conclusions can be reached, in terms of the total number of victims or potential victims, of forced marriage and consequently trends over time are impossible to assess.

Belgian stakeholders talked about forced marriage among Afghan, Albanese, Algerian, Armenian, Bangladeshi, Belgian, Bulgarian Turks, Chechen, Chinese, Indian, Italian, Kosovar (Roma), Kurdish, Lebanese, Maghrebian, Moroccan, Pakistan, Roma, Russian, Sicilian, Thai, Tunisian, Turkish and Serbian ethnic minorities.

Given that forced marriage has been recognised as a specific

5. In 2013 the Catalan police force recorded 26 cases of forced marriages in Catalonia - 15 of them of girls under 18 and 11 of adult women. In 2014, there were only 10 cases - 6 minors and 4 adults (Source: Catalan Home Affairs Ministry).

crime in the Belgian criminal code since 2007, data on forced marriage in the Justice system must be recorded. However, this has proven to be problematic due to issues related to the definition of forced marriage (making a distinction between forced and arranged marriage seems to be difficult) and the under-reporting of the phenomenon. Despite the lack of national representative data, some NGOs and agencies working in different Belgian cities keep records of the cases of the forced marriages they attend to each year. Many expressed concern that these cases represent the mere tip of the iceberg as (potential) victims are very reluctant to report threats of forced marriage because of loyalty issues and fear of repercussions; professionals who come across these cases sometimes lack the knowledge to detect such cases or the tools to adequately refer such cases. Moreover, respondents stated that many cases of forced marriage are officially recorded as cases of domestic violence, even when it is a situation of forced marriage that may have caused domestic violence.

In Italy there are no representative figures either on the prevalence of forced marriage which are readily available. For methodological reasons, it is difficult (if not impossible) to accurately quantify the phenomenon of forced marriage. Victims

of this form of violence represent a 'hidden population' and belonging to a hidden population often involves the perception of a social stigma which induces reticence in talking about one's private sphere and the refusal to give reliable information. In particular, there is a strong resistance from forced marriage victims to report members of their family or community, which contributes to the continuing invisibility of such phenomenon. The incidence of forced marriage has grown exponentially with the increasing immigration of families coming from the Indian subcontinent and other Arab and African countries, despite the lack on an official census or legislation to take this matter into account.

Data provided by Unicef (2013) on the percentage of children married before 15 and 18 years of age in several countries can be used to estimate the population at risk if combined with the data provided by Istat and the Ministry of Interior on non-EU residents in Italy, which details the population's country of origin, gender and age.

Among the communities most at risk in Italy (as measured by Unicef indicators and empirical research), we have found the following, ordered from most to least at risk:

- South-East Asian countries (Bangladesh, Pakistan, India, Sri Lanka), which are characterised by a small percentage of women compared to men;
- some African countries (Senegal, Ghana, Nigeria, Egypt) which, apart from Nigeria, are also characterised by a low female presence.
- Morocco and Albania are included in the list of countries at risk and represent two of the largest migrant communities, where there is both a high number of females and a high component of second-generation population.

The disaggregation of these data for different regions would allow for specific local insight because although the national overall weight of these communities is not high, some communities are highly concentrated in specific regions or areas.

Other sources of data (European Roma Rights Center, 2011) indicate a high risk of early and forced marriage for Roma girls and women in Italy, 64% of which marry before they are 18 and 30% before they are 16.

2.2 Legal and policy framework on forced marriage in Spain, Belgium and Italy

2.2.1 Civil law

There is no specific mention of forced marriage in **Spanish** civil law. However, there are some rules applicable in cases of forced marriage (e.g. laws on conditions to get married, age of consent, how to declare a marriage null and void if the consent is not valid and regulations on religious/civil marriages).

Spanish law requires the free consent of both prospective spouses to marry and any impediments must be stated in the marriage contract (Articles 45 and 48 of the Spanish Civil Code).

Spouses are also required by law to have a minimum age of 18 to marry, although persons aged between 16 and 18 might be married if they obtain their parents' authorisation. (Recently the possibility for persons aged 14 to 16 to marry with authorisation from a judge has been eliminated.)

Marriage without the free consent of at least one of the prospective spouses can be declared null and void by Article 73 of the Spanish Civil Code. Grounds for lack of consent may be: error, violence, intimidation or intention to commit a

crime (Article 1265 of the Spanish Civil Code). There is a one year period from the time the marriage took place to apply for annulment of marriage.

Marriages that take place in registered religious premises must then be registered in the Civil Register (Article 59 of the Spanish Civil Code).

The Instruction of the General Directorate of Registries and Notaries (Instrucción de la Dirección General de Registros) of 9 January 1995 requires that a file is opened when one of the spouses lives abroad and it includes separate interviews with each spouse. Despite this regulation, the presumption of good faith is normally applied and the right to marry is considered a fundamental right that should not be limited unless there is a reasonable and absolute certainty that there is a lack of consent in the marriage.

Moreover, the Public Prosecutor can always apply for annulment of the marriage by virtue of Article 74 of the Spanish Civil Code).

Only some of the interviewed stakeholders mentioned the recent change to the civil law to increase the minimum age to marry, from 14 to 16 years old, although persons aged 16

to 18 can still be married with their parents' consent (despite the fact that parents are normally the third party who put pressure on or threaten the girls to marry). Consequently, legal provision does not prevent forced marriage at all.

During the interviews there was not one single mention of any other legal provisions within the civil law. Only some stakeholders and some female victims of forced marriage explained the difficulties of obtaining a separation or a divorce during a forced marriage. Divorce continues to have a very negative stigma amongst some communities (e.g. Roma communities or some African communities) and it is only exceptionally accepted in cases of severe violence against women. Forced marriage is not considered a form of violence by these communities.

In **Belgium**, a person must be at least 18 years old⁶ to marry. However, exemptions are possible: in a special procedure in the youth court, where the parents' consent must be

recorded, the minimum age requirement may be reduced if there are 'serious reasons' for doing so.

6. Article 144 of the Belgian Civil Code.

The first regulation on marriages of convenience was established in 1999. The Marriage of Convenience Act of 4 May 1999⁷ forces civil authorities to notify the public prosecution service if there is any doubt about the content or purpose of marriage⁸. Belgian law contains the principle that a marriage contracted by a person who lacks marital capacity is void⁹.

The 12 January 2006 Act provides a new article, 79 *bis*, §1 1st part of Aliens Act¹⁰, stating that every marriage concluded with the intention as defined in Article 146 *bis* of the Civil Code (this provides the definition of marriage of convenience) is liable to be void.

A spouse in a marriage of convenience is hence liable when their purpose is to obtain a residence permit or have a residence permit obtained for their spouse. The Aliens Act considers aggravating circumstances for those who receive a sum of money for concluding such a marriage of convenience or who use threats or violence to force someone to such a marriage.

7. Act of 4 May 1999 amending certain provisions on marriage.

8. At the same time, the new law introduced a legal ground for the annulment of marriages of convenience, Article 146 *bis* of the Belgian Civil Code.

9. Article 502 of the Belgian Civil Code.

10. 2 January 2006 Act, amending the 15 December 1980 Act regarding Access to the Territory, Residence, Settlement and Removal of Foreigners, BS, 21 February 2006.

To attempt such a marriage of convenience is equally penalised by the act.

Within the administration of Civil Affairs departments in larger cities such as Antwerp, Gent and Kortrijk, a specialised unit on forced marriages and marriages of convenience was established to assist in tackling presumed marriages of convenience and forced marriages.

During this research exercise, interviewed stakeholders mentioned that victims consider divorce as an escape route out of a forced marriage and several issues related to divorce were mentioned: e.g. divorce is not accepted by certain ethnic communities as it dishonours a family and reimbursing the price of the bride when divorced is not possible for impoverished families. When someone enters Belgium for reasons of family reunification, the marriage or cohabitation must not end before 3 years, otherwise the temporary residence permit will not become permanent. This means that the marriage must continue, even when the union is violent or unsatisfactory. In abusive marriages, this was considered as problematic.

Another issue with civil law mentioned by the respondents is that civil servants in municipalities are somewhat 'over-sensitised' to

marriages of convenience. This might have led to increasing non-recognition of many recognised inter-ethnic marriages, based on the wrong or false assumptions that the union is suspicious.

In **Italy**, the status of *spouse* derives from the institution of marriage, as it is considered a requirement for legitimate filiation by the Italian Constitution (Art. 29). The Italian legal system does not recognise the status of cohabiting couples as family members (the so-called *de facto couples*), as repeatedly stressed by the Constitutional Court. In fact, in several judgments, the Court specified that Article 19 of the Consolidated Act on Immigration is not unconstitutional insofar as it does not prohibit the expulsion of third-country nationals cohabiting with an Italian citizen (Constitutional Court, order 313/2000; Constitutional Court, order 481/2000). According to Italian law, marriage is a 'juridical act' of negotiable type. It is a complex family-law institution comprising two elements: the first is an exchange of consent between two people of different gender; the second is the declaration by the civil officer. Marriage can be distinguished between:

- civil marriage: this is celebrated by a civil officer in accordance with Article 107 and following of the Civil Code;

- *matrimonio concordatario* (Catholic marriage): this is celebrated by a Catholic minister in accordance with canon law. Italy recognises the civil effects of this type of marriage if it is entered in the records of a Registry Office;
- non-Catholic marriage: this is celebrated by a minister of one of the other religions recognised by Italy and it can have a civil effect in accordance with the law regulating the relationships between that religion and the State.

Italian law also provides for the personal separation of the spouses (Article 150 of the Civil Code), which determines that the cessation of the cohabitation can end with a *de facto reconciliation* (Article 157 of the Civil Code). Most importantly, after 12 months of continuous separation of the spouses, they are allowed to file for divorce¹¹.

In order to marry in Italy, a person must be at least 18 years of age. However, exemptions are possible: via a special procedure in the Tribunale per i Minorenni (Minors Court), a judge's decision can reduce the minimum age requirement if there are 'serious reasons' for doing so.

Marriage which has been validly contracted abroad is recognised in Italy by virtue of the principle of the *favor matrimonii* (Act 218/1995). To this end, the original marriage certificate issued by the local police officer must be translated and legalised. Afterwards, the spouses must submit it to the Italian Consular authority abroad, which will forward it to Italy in order to enter the certificate in the civil register of the relevant municipality. Alternatively, the Italian spouse can present the certificate, translated and legalised, directly to the Italian municipality where the couple lives (as per Article 12 Subsection 11, Decree of the President of the Italian Republic 396/2000). In other words, in Italy the validity of the marriage consent given by the woman in the country of origin is not tested.

A female victim of forced marriage wishing to apply for annulment because of lack of consent must follow the normal legal procedure for the annulment of the marriage. This is a lengthy process and involves high costs; and the victim does not receive adequate protection.

In summary, the three countries researched for this project have similar laws concerning the age of consent to marry and similar marriage exceptions. They also have similar legal

11. 11 May 2015 Act, no. 55, G.U. of 6 May 2015.

provision in the event of marriages of convenience and the possibility to declare a marriage null and void when there was no consent, although this measure is rarely used by victims of forced marriage.

2.2.2. Criminal law applicable in cases of forced marriage

Forced marriage has recently become a crime under the Spanish Criminal Code (due to a reform that entered into force on 1 July 2015). Forced marriage is now included as a form of human trafficking in Article 177 *bis* of the Criminal Code and as an aggravated type of coercion in Article 172 *bis* of the Criminal Code.

This double criminalisation is confusing and we must await the application and interpretation of both articles by the courts. The possible criminalisation of forced marriage under Article 177 as a form of human trafficking has a more severe punishment (5 to 8 years of imprisonment) but it needs to fulfil several conditions to be qualified as human trafficking (i.e. use of violence, intimidation or fraud, taking advantage of a situation of superiority, the victim's needs or vulnerability or existence of payment or profit). The victim of a human trafficking crime can receive special measures of support during and after the trial,

according to the new Spanish Act on the Status of Victims that came into force on 27 October 2015. If forced marriage cannot be criminalised under this act on human trafficking, Article 172 *bis* provides a second option.

A possible explanation for this double criminalisation is the commitment adopted by Spain under international and European legislation. Firstly, Spain had to include in its Criminal Code EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims and replacing the Council Framework Decision 2002/629/JHA (Directive 2011/36/EU) and Article 177 *bis* is one of the consequences. Secondly, Spain had to include a new crime on forced marriage according to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). The Istanbul Convention, ratified by Spain in April 2014, entered into force on 1 August 2014. Article 37.1 of the Istanbul Convention stipulates that Member States must criminalise forced marriage as a form of violence against women.

During the fieldwork conducted for the MATRIFOR research,

these legal provisions did not exist. However, some of the behaviour committed in a situation of forced marriage could fall under other crimes such as: crimes against freedom (e.g. illegal detention, Article 163 of the Spanish Criminal Code); kidnapping (Article 164 and following of the Spanish Criminal Code); threats (Article 169 of the Spanish Criminal Code); coercion (Article 172 of the Spanish Criminal Code); torture and other crimes against moral integrity (article 173 of the Spanish Criminal Code).

Forced marriage can also fall under crimes against sexual freedom and indemnity such as crimes of sexual aggression (Article 178 and following of the Spanish Criminal Code), sexual abuse (Article 181 and following of the Spanish Criminal Code) and rape (Article 179 of the Spanish Criminal Code).

Forced marriage can also constitute a crime of injuries (Articles 147 and 148 of the Spanish Criminal Code) or, in the most severe cases, a crime of homicide (Article 138 of the Spanish Criminal Code) or murder (Article 139 of the Spanish Criminal Code).

None of the stakeholders nor victims interviewed talked about the application of these criminal legal provisions in cases of

forced marriage. It is clearly difficult to identify forced marriage as a series of criminal behaviour incidents. What happens within the family and the marriage seems to be a private matter, even when the victim of a forced marriage is a minor, because the marriage is understood as a family affair where parents and children are involved. If there are no external physical consequences or signs it is hard to perceive it as a crime (this is also the case with many forms of gender violence, such as psychological violence or sexual abuse).

With regard to the possibility of making forced marriage a crime, there are different points of view. Some of the stakeholders, especially those belonging to the police force and the public administration, were in favour of making forced marriage a crime, which would facilitate their work against forced marriage and to prevent it. Some of the stakeholders and female victims interviewed were also in favour of considering forced marriage as such a crime because this would be the only way to make the problem visible; they were also in favour of providing financial support to address the victims. However, other stakeholders, especially those belonging to NGOs and the communities that practise forced marriage were against the criminalisation of forced marriage. They thought that not only this would not

contribute to the eradication of the problem but it would stigmatise and criminalise certain communities and religions.

In **Belgium**, the specific criminal law on forced marriage of 25 April 2007 entered into force on 5 May 2007. The criminal law provision dealing with forced marriage was added as Article 391 sexies of the Criminal Code. The article reads as follows:

He who forces someone by violence or threats to enter into a marriage, shall be punished with imprisonment from one month to two years or with a fine of one hundred to five hundred euro. The attempt is punished with imprisonment from fifteen days to one year or a fine of fifty to two hundred and fifty euro.

According to Belgian Act of 25 April 2007, a forced marriage can be annulled if it was not entered into freely by either of the spouses or if it was contracted under the influence of violence or threat¹². Proceedings can be initiated by one of the two spouses or by the public prosecution service.

In cases of forced marriage, the juridical framework has mechanisms in place. Victims can report it to the police, although respondents mentioned that this is not often the

case. If a case of forced marriage is reported, an official report is made and the Prosecutor is informed. Court cases might be initiated and legal actions might include imprisonment or conditional freedom. However, some of the stakeholders from the judicial sector mentioned that the police are only involved once it is too late, e.g. when the victim might already be abroad, or when their residence papers or ID have been taken away, etc.; this makes police officials feel helpless and frustrated.

With regard to the application of this specific crime, there was one conviction in 2011 and one in 2012¹³. No figures were yet available for 2013.

Since 2009 there has been a specific indictment code for forced marriage in the database of first instance correctional chambers of. According to the figures, 12 cases of forced marriage were recorded by the prosecution services in 2010 and 15 cases in 2011. There is also a specific police code for this offence. Police crime statistics reveal 13 complaints of forced marriage (11 actual cases and 2 attempts) in 2010. More awareness among victims and better detection by professionals will probably

12. Article 146 ter of the Belgian Civil Code.

13. Response of the Department of Criminal Policy, in a personal mail to the Federal Department Justice, Criminal Policy Service, Service Offences against Persons and Property of 27 March 2014.

result in an increasing number of complaints¹⁴.

With regard to recording cases, one respondent mentioned that Police and Prosecutor databases have not recorded many cases of forced marriage since the relevant Act was put in place and reasons for this remain unknown. However, NGOs working in the field that keep records have indicated that forced marriages are highly present in their work. The blurred line between arranged and forced marriage makes it difficult to register a case of forced marriage and forced marriage is also often recorded as 'inter-familial violence'.

Italian legislation does not provide for a crime of forced marriage. The convictions which have considered the family's actions against the victims using psychological and physical violence to oblige them to 'live according to tradition' have recorded the crime as 'family mistreatments' (Article 572 of the Criminal Code). However, the crime of violence could also be used (Article 610 of the Criminal Code, which punishes 'anyone who, through violence or threat, forcing others to do, tolerate

or omit anything') or the crime of threat (Article 612 of the Criminal Code).

Italy ratified the Istanbul Convention on 27 June 2013 (Act no. 77) and the problem of the future regulation and sanction of forced marriage as a crime fits into the wider problem of the regulation of culturally-motivated crimes. In other words, the conduct of a cultural minority member is considered illegal by the legal system of the majority culture but problematically the same conduct may not be considered illegal within the agents' group who, in some circumstances, even encourage it.

Almost all of the stakeholders interviewed considered it useful to include specific regulations with regard to forced marriage in our national legislation. More problematic is judging the scope of such legal action, whether to intervene more decisively under repressive actions (e.g. criminal law acts) or by organic acts which may discourage harmful traditional practices.

In conclusion, Belgium and Spain have specific crimes in their legal system on forced marriage (as a form of human trafficking and as a crime in itself) although the application of such law is still very limited or non-existent (in Spain this is partly due to the recent inclusion of such a crime in the Criminal Code). In

14. Committee on the Elimination of Discrimination against Women. Consideration of Reports submitted by State Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Seventh Periodic Reports of State Parties. Due in 2012. Belgium. [2 October 2012]. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/412/58/PDF/G1341258.pdf?OpenElement>, accessed 24 November 2014

Italy, forced marriage can be prosecuted under other criminal provisions, although this makes it difficult to know whether there are cases of forced marriage being prosecuted under the criminal system.

2.2.3. Migration legislation with regard to forced marriage

Organic Act 4/2000 of 11 January on Rights and Freedom of Foreigners in **Spain** and Their Social Integration establishes the right to family reunification with foreign nationals legally living in Spain for at least one year and with a work and residence permit for one further year (Articles 16, 17 and 18).

The relatives that can be reunified are:

- the foreign national's spouse, if they are not separated (legally or factually) or if their marriage is not fraudulent;
- his/her children under 18 years old;
- his/her parents over 65 years of age and always if their dependency on the foreigner (of care and financially) can be demonstrated.

The conditions for exercising this family reunification right are:

- the foreign national has had a work and residence permit for one year, extended to one further year;
- he/she has accommodation in which to reside and sufficient economic resources to cover his/her needs and those of his/her relatives.

In principle, the reunified relatives obtain the same residence permit (for the same period of time) as the foreign national who has exercised his/her right to reunification. The reunified spouse can obtain his/her own residence permit when he/she can prove to have sufficient financial resources to cover his/her own needs.

If the reunified wife is a victim of gender violence, the above-mentioned condition does not have to be fulfilled: she can obtain an independent work and residence permit once the Public Prosecutor approves a protection order or when the Prosecutor produces a report stating there is evidence of gender violence (Article 19.2)¹⁵.

There are also special legal provisions for victims of human

15. This can be applied to the cases of forced marriage when considered a form of gender violence.

trafficking (Article 59 *bis*). Independent residence and working permit can be obtained if the foreign national is considered a victim of human trafficking.

According to the Spanish Act on Asylum, women who are victims of forced marriage can benefit from Act 12/2009 of 30 October, regulating the right of asylum and subsidiary protection^{16 17}.

Nevertheless, none of the interviewed professionals nor the victims spoke about using these legal provisions. This lack of

applicability is probably due to the difficulties in identifying forced marriage as a form of gender violence, let alone as a form of human trafficking. Consequently, it is difficult for the women forced to marry against their will to accept their condition of victims.

In **Belgium**, migration legislation is described in the Aliens Act of December 1980 and the Royal Decree of 8 October 1981¹⁸. The Aliens Act has been amended several times in recent years with the aim to prevent forced marriages and marriages of convenience, by means of, amongst others, Acts of 15 September 2006¹⁹, 25 April 2007²⁰, July 8 2011²¹ and 2 June 2013²². Most notably, the rules for marriage in migration cases

16. Article 2, Right to Asylum.

The right of asylum is the protection afforded to non-EU nationals or stateless persons for whom refugee status is recognized in the terms defined in Article 3 of this Act and the Convention relating to the Status of Refugees of Geneva' on 28 July 1951 and its Protocol, signed in New York on 31 January 31 1967.

17. Article 6, Acts of Persecution

'1. The acts that are based on the well-founded fear of persecution within the meaning set out in Article 3 of this Act, shall:

a) be sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental rights, in particular rights that can not be derogated from under the second paragraph of Article 15 of the European Convention for the Protection of the Human Rights and Fundamental Freedoms; or

b) be a sufficiently serious accumulation of various measures, including violations of human rights, such as to affect a person similar to that referred to in point a).

2. Acts of persecution as qualified in paragraph one may take, inter alia, the following ways: a) acts of physical or mental violence, including acts of sexual violence;

b) legal, administrative, police or judicial measures which are in themselves discriminatory or applied in a discriminatory manner;

d) denial of judicial redress resulting in a disproportionate or discriminatory punishment arising;

f) acts of a sexual nature involving adults or children.

3. Acts of persecution as defined in this article shall be related to the reasons mentioned in the following article.

18. Act of 15 December 1980 on Access to the Territory, Residence, Settlement and Removal of Aliens (Aliens Act); Royal Decree of 8 October 1981 on Access to the Territory, Residence, Settlement and Expulsion of Aliens.

19. Act of 15 September 2006 amending the Act of 15 December 1980 on Access to the Territory, Residence, Settlement and Removal of Aliens, BS October 6, 2006.

20. Act of 25 April 2007 amending the Act of 15 December 1980 on Access to the Territory, Residence, Settlement and Removal of aliens, BS May 10 2007.

21. Act of 8 July 2011 amending the Act of 15 December 1980 on access to the Territory, Residence, Establishment and Removal of Foreigners with regard to the Conditions for Family Reunification, BS September 12 2011. This act entered into force on 22 September 2011.

22. Act of 2 June 2013 amending the Civil Code, Act of 31 December 1851 regarding the Consulates and Consular Power of Justice, the Criminal Code, the Judiciary Code and the Act of 15 December 1980 regarding Access to the Territory, Residence, Settlement and Removal of Foreigners, regarding the Fight against Marriages of Convenience and Cohabitations of Convenience, BS, 23 September 2013.

have been made stricter, especially by the 2006 acts, which tightened the rules regarding family reunification and family-forming migration.

Raising the minimum age from 18 to 21 for both the sponsor and the spouse entering the country is an important element. Additionally, the control period was extended to three years; therefore, it takes three years to obtain a permanent residence permit (in other words, if one divorces in that period, the temporary residence permit is withdrawn). The 8 July 2011 Act introduced stricter requirements with the aim of preventing future abuse: a minimum income requirement (120% of the minimum subsistence allowance²³), housing requirements (elementary quality conditions with regard to safety, health and living arrangements) and health insurance.

The law provides protection to victims of inter-familial violence. Victims of severe violence, such as rape and intentional injuries (Articles 375, 398-400, 402, 403, 405 of Criminal Code Law) do not have their residence permit terminated. Strong evidence is required but there is no need for the perpetrator to be prosecuted or convicted. When the violence is severe, for

example when there is psychological abuse, the regulations are even stricter, in the sense that more evidence over a longer period is needed than in the situation of physical violence.

The main issues with the civil and criminal law reported by the respondents in Belgium concerned the difficulties in finding evidence to assess the validity of a marriage or to prove that it is a forced marriage, difficulties in reporting, issues related to professional secrecy provisions and the abuse of existing laws.

The entry of foreign nationals in **Italy** is regulated by Title II Dispositions on the Entry, the Residence and the Removal from the Territory of the State, Chapter 1 - Dispositions on the entry and residence - Article 4 of the Consolidated Act on Immigration - Entry in the territory of the State. Foreign citizens can enter Italy for tourism, studies, family reunification and business reasons. Foreign nationals entering for work-related reasons must hold a clearance issued by the competent one-stop shop dealing with work permits with regards to employment, self-employment and seasonal work.

The necessary requirements for a visa (Article 29, Paragraph 3,

23. 1,307 euro/month, September 2013, (www.kruispuntmi.be), accessed 17 July 2014.

Consolidated Act on Immigration²⁴) are:

- availability of accommodation complying with health and sanitary conditions as well as suitable dwelling requirements, as certified by the relevant Technical Office of the Municipality;
- availability of adequate income: a third-country national applying for reunification needs to provide evidence of a minimum annual income deriving from legitimate sources and which is not lower than the annual social allowance, increased by half for each family member to be reunited. For the reunification with two or more children younger than 14, or with two or more family members who have been granted social protection, applicants must give evidence of an income not lower than twice the annual social allowance;

- availability of health insurance, or registration with the National Healthcare System or other suitable cover is required in order to ensure coverage of all risks in the national territory for each relative over 65 years of age.

According to the regulations on family reunification between third-country nationals, the term 'family' only refers to the so-called nuclear family, consisting of the spouse and minor children, i.e. those under 18 (Article 29, Paragraph 1, Letters a) and b) of Legislative Decree No. 286\1998, Consolidated Act on Immigration). The law also provides for family reunification in cases of 'dependent' children over 18 and 'dependent' parents over 65 (Article 29, Paragraph 1, Letters a) and b) of the Consolidated Act on Immigration) only in particular situations of disability or lack of economic means of support²⁵.

The right to seek reunification with third-country family members is recognised, in addition to nationals and EU nationals, to nationals of third countries holding an EC

24. Categories of persons entitled to enter Italy for reunification: Article 29 of the Consolidated Act on Immigration determines that a third-country national may ask for reunification with (a) the spouse not legally separated and no younger than 18 years of age, (b) the minor children, including those of the spouse or born outside of marriage, unmarried, on condition that the other parent, if alive, has given his/her consent (children adopted, fostered, subject to protection plans are also included), (c) the dependent children aged over 18, if for objective reasons they are unable to support themselves because of their health conditions causing total disability, (d) the dependent parents, if they have no other children in their country of origin or provenance, or parents aged over 65, if their other children are unable to support them for serious health reasons.

25. However, with regard to the reunification between a third-country national and an EU citizen who has exercised his/her right to free movement (a 'mobile EU national'), pursuant to Article 2 of Legislative Decree No. 30\2007 which implements Directive 2004\38\EC, there is a slight widening of the above definition of 'family': in addition to the spouse, in fact, direct descendants under the age of 21, children still dependent on parents (including children of the spouse), as well as dependent parents (including parents of the spouse) are also considered 'family members'.

long-term residence permit in Italy or holding a residence permit valid for a period of no less than one year issued for subordinate employment or self-employment, or for asylum, study, religious grounds or family reasons.

Although there are no specific sanctions against the misuse of the reunification law, the request for reunification is refused when it is established that the marriage has taken place for the sole purpose of enabling the person to enter and reside in the Italian territory (this is also the case with adoption). Moreover, the immediate withdrawal of the permit is envisaged if it is ascertained that there is no 'actual cohabitation' after marriage. In both cases, of course, the measure is followed by a report to the competent authorities.

Italian law forbids polygamy; therefore, it does not allow the reunification of the second or third wife in polygamous marriages although they are recognised in the country of origin. However, the reunification of spouses in a polygamous relationship is often allowed, not because of the marriage link but because of their status as 'parent of a minor' (biological or legal). This reunification is granted in the name of the minor's best interests, not because of the right to family unity.

In summary, the three countries researched for this study have similar legal dispositions about family reunifications, including some protective measures for victims of domestic violence and victims of human trafficking (but not exactly for victims of forced marriage). However, the existence of legal dispositions to avoid fraudulent marriages is common, from raising the minimum age for family reunification to establishing more and increasingly stricter economic and accommodation conditions.

2.2.4. Other legal or public policies and regulations at national level

In **Spain**, apart from the national act on gender violence (the Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence) that is limited to domestic violence (despite its general title), there are different acts on violence against women at regional level²⁶).

Catalan Law 5/2008 of 24 April on Women's Right to Eradicate Sexist Violence includes a wide concept of sexist violence covering all types of violence women suffer in any realm: within a couple, within the family, at work, at social and community

26. Spain is divided into 17 regions (Autonomous Communities) and some legal and policy competences are transferred to them. Moreover, some policy fields, such as gender equality of the fight against gender violence can be complemented by the provisions in these regions.

level. Forced marriage is included as a form of sexist violence in the community (Article 5.4.e).

There is also a Catalan Police Protocol on Prevention and Attention on Forced Marriage, June 2009. This protocol is inspired by the model in England and Wales and it aims to avoid the victimisation of women or girls²⁷.

In **Belgium** there are other laws and public policies related to forced marriage. For example, the Royal Decree of 28 February 2014 on Registrations of Marriages of Convenience means that civil servants must register any suspicion of a marriage or cohabitation of convenience in the Population and Foreigners' Registry, making this information available for all professionals that are concerned in cases of such marriages and cohabitations.

On the other hand, the National Security Plan 2012-2015 attempted to create a healthy collaboration between the national and the local police, by establishing strategies for a police policy. The National Security Plan 2012-2015 stipulated

that the following criminal acts, among others, should be prioritised: violence against women, inter-familial violence and human trafficking. However, a recent communication stated that partner violence would no longer be a priority for the Police in the National Security Plan, as it has been integrated in police services in Belgium and is sufficiently addressed, according to the president of the Local Police Permanent Commission²⁸.

Moreover, the National Action Plan on Partner Violence 2010-2014 was reformed to include other forms of violence, such as forced marriage, honour-related violence and female genital mutilation. The upcoming new Action Plan is inspired by the Istanbul Convention and hence it should address all measures related to forced marriage, as mentioned in the Istanbul Convention.

Italian legislation contains no explicit references to 'forced marriage'. However, it allows this offence to be addressed through other legal instruments.

Italy ratified the Istanbul Convention on 27 June 2013 (Act no.

27. http://interior.gencat.cat/web/.content/home/ms_pla_seguretati_atencio_victimees/03_materials_i_dades_sobre_violencia_masclista_i_domestica/documentacio_sobre_violencia_masclista_i_domestica_per_a_professionals/matrimonis_forcats._procediment_datencio_i_prevenio_policial/procediment_datencio_i_prevenio_policial_de_matrimonis_forcats/documents/procedimiento_mf_def_espanol.pdf

28. Partnergeweld geen prioriteit meer voor de politie, De Standaard, 30 April 2015, http://www.standaard.be/cnt/dmf20150429_01656866

77). Moreover, forced marriage is mentioned in the Ministerial Decree regarding a Charter of Values of Citizenship and Integration (2007; Paragraph 18). In regional legislations, there are two references to forced marriage in recent laws on gender-based violence (Molise Regional Law no. 15/2013, Article 1, and Lombardy Regional Law n.11/2012, Article 1).

2.3. Analysis of interviews with stakeholders

2.3.1. Definition of forced marriage

In **Spain** there is generally a clear distinction between forced marriage, arranged marriage and marriage of convenience (a fraudulent marriage in order to obtain legal residence or any other aim which differs from those traditionally expected from marriage).

At first, some of the stakeholders considered that they did not work with or deal with cases of forced marriage in their daily work. This difficulty in identifying forced marriage occurs because many of them only understood forced marriage where physical force is actively used to oblige a person to get married against their will.

In this sense, most stakeholders emphasised the difficulties in sometimes distinguishing between an arranged and a forced marriage. The influence of culture and traditions, especially in some Asian and African communities and the profound respect towards their parents mean that girls might say ‘Yes, I voluntarily accept to marry this man who my family chose for me’ but it is never really known whether she is really free to make such a decision.

However, some of the stakeholders were very critical about this difficulty in identifying forced marriage. Sometimes they thought this difficulty can be explained because of a lack of specific training but it could also mean a form of institutional racism. The difficulty in identifying forced marriage as gender violence lies in the fact that these stakeholders applied migrant stereotypes, thus hiding this form of violence.

Stakeholders with regular contact with these communities or those who belong to these communities did not criticise arranged marriages. They talked about the different cultural meanings of having choice in marriage, the parents’ role in seeking the best for their children and the latter’s duty to respect their parents’ decision after all the sacrifices they have

made for them.

In **Belgium**, not many respondents had a definition of forced marriage that they could rely on when working with people affected by forced marriage, except those with a legal background, those working in the judicial sector and policy makers, as they referred to the definition as stipulated in the law. Some respondents considered child marriages, where the spouses are under 18 years of age, as forced marriage because a child is involved, whereas others believed that minors can consent to marriage.

However, in daily practice, defining what forced marriage is proves problematic. Making a clear distinction between arranged marriage (not illegal) and forced marriage (illegal) is not always easy and is more complex than what is defined by the law.

People working with persons affected by forced marriage stated that it is the victim who defines the situation as problematic, and this is taken as the point of departure for action. An important element that was mentioned by many respondents was that arranged and forced marriages are situated in a spectrum of differing levels of consent, pressure and room for negotiation.

This continuum can range from absolutely no freedom nor choice whatsoever to an actual refusal of the proposed marriage partner (forced marriage), to different possibilities to negotiate marriage in terms of suggested partners or marriage prospects (strongly arranged marriage), to a marriage where both partners consent to the proposed partner (fully consented arranged marriage). However, such arranged marriages were not necessarily perceived as problematic, as respondents mentioned that often youngsters agree with the choice made by their parents (or others) as they trust their parents' judgment on this.

Another striking finding from the interviews was that the classification of marriage as forced or arranged by the victims can evolve over time, and mostly it will evolve from arranged to forced marriage. An individual may well have agreed to a marriage in order to be able to migrate but, once in Belgium, the marriage is not what he or she expected or the marriage does not turn out to be satisfactory (e.g. due to violence or the threat of violence in that marriage), and there is an altered perception of the grounds on which the marriage was concluded.

2.3.2 Marriage practices encountered in the stakeholders' working environment

Responses differed among respondents when asked if forced marriage should be classified as a form of inter-personal violence or gender-related violence. Some respondents saw it as a form of gender-based violence, while others classified it as inter-personal violence, or believed it was both.

In **Italy**, different services adopted a specific definition or work protocol for forced marriage since there are no regulations or guidelines available. Broadly, forced marriage is considered a type of gender-based violence, i.e. a form of violence against women.

With regard to the actions carried by public and private services for the benefit of the victims (or potential victims) of forced or early marriage, forced marriage is defined as a violation of human rights, particularly of the rights of girls and women, at the core of which is the notion of consent, understood as a lack of freedom of self-determination for girls and women.

Qualitative data (in-depth interviews with stakeholders, victims and potential victims) shows the predominance of requests for help coming from young and very young women raised and educated in Italy. The interviews with experts and operators from public services and civil society organisations have particularly

highlighted the importance of paying attention to girls' needs, avoiding any stigmatisation of criminalisation of customs, traditions or hierarchies of values from their own cultures.

2.3.2. Marriage practices encountered in the stakeholders' working environment

In Spain, the stakeholders interviewed during the fieldwork knew that forced marriage is very common among populations from Morocco, China, Senegal, the Gambia, Pakistan, Bangladesh, India and some Roma groups. These are the most common foreign communities present in Spain.

In some communities, and depending on the geographical area (urban/rural) and characteristics of the family, etc. boys and girls are given a certain margin of choice. Families seek out a husband or wife but their children then have a certain margin to choose between the limited number of candidates their family has found for them.

In Roma and Chinese communities, the definition of arranged marriage is not exactly accurate because families facilitate the meeting of girls and boys belonging to the same community and social class. Nevertheless, the girls and boys are eventually free to choose their marriage

2.3.2 Marriage practices encountered in the stakeholders' working environment

partner, although marrying outside their corresponding communities is normally not accepted²⁹. Boys and girls meet through family meetings or celebrations (such as weddings or religious events) or through blind dates (in the case of the Chinese community).

In these societies, marriage as an institution has a different meaning to that in the western society. Generally speaking, marriage has a collective meaning. Sometimes it is a way of keeping the society and the families together, to preserve the culture, to secure the peace of society, to demonstrate the respect towards the country and culture of origin. Arranged marriage is also a way to 'put one's daughter back on track' if her behaviour has been inappropriate (for instance, if she goes out with or has a European boyfriend). In isolated cases, stakeholders recognised marriage is also a solution for the family when their children showed gay or lesbian tendencies.

Marriage normally takes place when girls reach 18 years of age, even in communities where the marriage has probably been arranged a long time before then. Among African communities, spouses tend to be chosen between cousins or

other relatives. During the research, it was found that a big age gap between husband and wife is no longer so common, especially because this fact is very shocking for the host society.

On the other hand, marriage among the Pakistan and Indian communities tends to be celebrated with people from outside their families but always from the same social class.

In Chinese communities, it is also very important that the spouses are not only from China but preferably from the same town or geographical area of China. For them, it is very important that the husband is two to three years older than his (prospective) wife and more importantly that he earns more than his wife.

Marriage is also the only way to become an adult and be part of the society, especially for women. There is not an acceptable alternative to marriage; this is why pressure starts in some communities when girls and boys reach a certain age although boys in general have some more means to resist or at least to defer such pressure.

Love has a different meaning in these communities. It is

29. This also occurs in host societies.

2.3.2 Marriage practices encountered in the stakeholders' working environment

commonly accepted that an important institution such as marriage cannot be based on a feeling such as love. It is believed in these communities that there are more important factors, such as sharing the same culture and social class, enjoying a good financial position, sharing the same religion, etc. because all this will constitute important pillars on which to build a family and have children. Mutual love and respect will come later.

Sometimes there is a difference between girls who have been born in their countries of origin and those who have been born and educated in Europe because it is more difficult for them to accept forced this way of arranging a marriage as normal.

A common factor among these diverse communities where arranged marriage is very common is that extramarital relations are perceived very negatively by the community in general. Therefore, arranged marriage at an early age is a way of preventing extramarital relations and illegitimate children which would damage the family's honour and good name.

Another common aspect of all these communities is the highly negative perception of divorce. Within the definition of forced marriage, some scholars also include the concept of *unforeseen forced marriage*, that is, a voluntary or arranged marriage that

subsequently becomes a forced marriage because the family and/or the community does not allow either partner to get divorced (as a divorce would represent a huge stigma for the family as a whole and the individual in particular). Marriage is understood to be for life, no matter what happens. Only in very extreme cases of physical violence by the man to the woman, or a flagrant breach of the husband's obligations to maintain and financially look after his wife and children, the wife can return to her family and obtain a divorce. However, this is very exceptional and a divorced person in many communities would also have few or no possibilities to remarry and start a new life.

In some communities, the level of education is an important factor. In Southern Asian communities, women with a higher level of education have more opportunities as they can wait to marry or choose between different candidates. In Chinese communities, education is a stepping stone to higher economic positions; therefore, women and men who study are allowed to wait longer until they marry.

Several stakeholders also mentioned a common aspect belonging to the affected communities: forced marriage is more linked to culture and tradition and has no link with religion. In

fact, Islam, Hinduism and Sikhism forbid forced marriage.

In **Belgium**, stakeholders highlighted the role of the family and particularly the parents as decision-makers. For second and third-generation migrants, the influence of parents as matchmakers has diminished.

However, pressure can come from the whole community, not just from the family. Pressure may also come from the family in the country of origin. The freedom of choice to refuse a marriage candidate can depend on the family's characteristics, i.e. whether the family is *open and modern or rather conservative*. Pressure can be targeted towards individuals but equally towards a family. This pressure is mostly psychological, although it can also be physical and might be expressed by means of controlling a girl, by the community punishing a family (e.g. half of the community not attending the wedding of a child of a particular family who let their daughter marry someone who was not accepted by the community).

One of the reasons for continuing to accept the pressure mentioned above is the fear of being expelled from the community and family and the fact that it is very hard to break away from the safe family environment. Children do not want

to disappoint parents and tar their family's name. Loyalty is a crucial aspect here.

With regard to gender, some professionals mentioned that both boys and girls could be confronted with forced and arranged marriage, while others stated that only girls are forced into marriage. It was however mentioned several times that boys have more opportunities to resist to the pressure of accepting a marriage candidate and that different rules apply for men and women.

With regard to age, one respondent mentioned that sometimes girls are married at 16 or 17 in their countries of origin and then brought to Belgium when they are 18 within the family reunification framework, or with false certificates. Marriage of minors was mentioned among Roma and Afghan communities.

Respondents mentioned a number of reasons for forced and arranged marriage. These reasons can be summarised as follows and are further detailed below: avoiding dishonour, *therapeutic* reasons, material or financial reasons, a desire to obtain residence papers, for protection against exterior influences or to protect their own culture and to care for elders.

2.3.2 Marriage practices encountered in the stakeholders' working environment

Many respondents mentioned the aspect of honour. At a girl's onset of puberty and when the first signs of womanhood appear, a married daughter preserves her own honour and that of the family. Dishonouring the family can also be caused by having an inter-ethnic relation that is not accepted by the parents; by having an attitude which is too westernised; when youngsters go against the family rules; in the case of homosexuality; in the case of *problematic* youngsters (drug abusers, problems at school, criminal history or having had multiple intimate relations prior to marriage). In such cases, a *therapeutic* marriage is proposed or imposed to cure the person and to bring them back on the right track.

Marriages also occur for financial and/or material reasons or to obtain a permanent residence permit. In this respect, marriage is mainly seen as a financial transaction, whereby parents 'sell' girls, as one respondent put it. This kind of marriage to obtain residence permits causes several problems, as respondents pointed out. As it is increasingly difficult to enter Belgium, marriages to obtain residence permits are a reality.

Finally, forced and arranged marriages are imposed to protect the spouses' own culture and values and against foreign

influences. Parents might have concerns that their frame of reference, values and language will not be passed on to future generations.

Interviewed stakeholders pointed out a significant change between first and second or third-generation migrants, in terms of the latter having more room for negotiation, more freedom to choose their marriage partner and more openness to discuss the issue.

In **Italy**, according to the interviewees (men and women), forced marriage is a widespread custom strictly linked to the culture of foreign communities (as well as to Italian Roma and Sinti communities) despite different modalities, reasons and results. There is a widespread custom for families to arrange marriages between a boy and a girl, sometimes both underage, or between a girl and an older man. Forced marriage also happens for women who are 30-35 years old and who risk becoming a burden for the family.

Using social control on the community itself through women is common: forced marriage can guarantee membership to the caste/clan/ethnic group; family reunification can be guaranteed after migration and family financial resources are increased

with the money paid to the women's family. However, in the worst cases, forced marriage is used to recruit victims for human trafficking and hard labour.

Refusal leads to isolation not only from the family but also from the whole community. The probability of a boy or girl refusing their parents' choice depends on how long they have lived in Italy, on the integration level of the community and on their parents' level of education.

Some of the interviewed stakeholders highlighted a difference between arranged marriage and forced marriage. Forced marriage is seen as a deviation from the arranged marriage. An arranged marriage becomes a forced marriage when either of the spouses does not consent to it. According to some respondents, however, there is no difference between forced marriage and arranged marriage: both are forced.

It has recently been observed that there is a sort of short circuit when families migrate and try to reproduce the traditional arranged marriage in the host country. Even when arranged marriage is a practice normally tolerated by the different cultures in the countries of origin, in the second generation (i.e. girls and boys born in Italy), the suggestion of an arranged

marriage is experienced by the offspring as an 'arranged forced marriage'. Simply to have a future spouse suggested to them is now considered coercion, a threat and a form of violence. Sometimes, in the traditional forms of some cultures, early marriage becomes an instrument for immigrant communities to control young women, especially if they seem too *emancipated*. This represents a sort of hiatus or censure towards previous integration processes, which are tolerated as long as they do not call into question parent/child relationships and female sexuality.

This sort of control can be not only physical (which is easier to identify) but it can be also exercised in subtler psychological forms by stigmatising, banning and marginalising the 'non-compliant' member of the family and/or religious community. This custom is a consolidated practice. The distinction between the two practices is significant both in terms of public action and on legal grounds, especially if the victim is a minor.

The findings in the three countries have many things in common. Stakeholders indicated the difficulties in differentiating arranged marriage from forced marriage and mentioned how an arranged marriage can become a forced marriage on many

occasions. The rationale behind forced marriage is the same in the three countries: to preserve the culture, the community's identity, the family's honour and the family's good name. Forced marriage is also used as a therapeutic tool to control daughters with deviated behaviour: over-westernised behaviour; having relationships with boys from outside the community; having problems at school or with the law; being at risk of having pre-marital sexual relation; or to re-direct possible homosexual behaviour or tendencies. Sometimes, although this is not the most important reason, forced marriage is a way of legally entering Europe through family reunification.

2.3.3. Description of stakeholders' work in relation to forced marriage

In **Spain**, most of the interviewed stakeholders do not work directly nor have direct responsibilities towards forced marriage. Only some members of the Police interviewed have skills about and are aware of forced marriage because this crime included in Catalan law as one form of gender violence in Catalonia. The Catalan police force seems to be the only group of stakeholders with a precise protocol on how to intervene in a case of forced marriage, with detailed instructions on what to do at each step of the procedure, both in terms of prevention

and intervention.

The other stakeholders who came across cases of forced marriage acted (or not) depending on their interest, awareness and knowledge about the problem. There is no protocol to coordinate their work and they have not received any specific training. Most of the time they are unaware of how to identify a case of forced marriage or what to do if a woman asks them for help. They try their best within their area of expertise, within their competencies and with the limited resources they have.

Exceptionally there are some stakeholders (working in community services of small towns or cities where there is a large presence of migrant communities, mainly from Sub-Saharan countries and Morocco), who have important links of trust with these communities. These stakeholders are the only ones who work specifically on the issue of forced marriage and they establish good networks of coordination with other agents (police, health service actors, schools, etc.). They mainly work directly with the families, trying to mediate between the families and the girls, never questioning their culture and traditions and focusing on the girls' empowerment and protecting their human rights, especially their freedom of choice.

Even those stakeholders with a specific interest in and awareness of forced marriage highlighted the difficulties in offering any support to the girls and women in case of forced marriage. If the females concerned are minors, the stakeholders first need to inform the judge and the administration department dealing with minors. This means that these girls could end up in children's shelters where there is no knowledge about gender violence or forced marriage. As well as this, knowing of a forced marriage would mean reporting the case to the police, which has consequences for the girls and they do not want to harm the girls' parents, families or communities.

If the victims are adults, these women can be reported to the social services resources for gender violence: women's shelters, legal and psychological counselling and so on. However, these services often struggle to accept victims of forced marriage since they do not recognise their situation as a form of gender violence and even if they do accept them, they do not have the special knowledge, training and resources to help the women in cases of forced marriage.

In **Belgium**, a number of initiatives has been taken on forced marriage. The work on forced marriage can be divided into

prevention, protection, prosecution, provision of services, policy-making and research.

Prevention of forced marriage focuses on several aspects: awareness, skill-building of professionals as well as victims, outreach, provision of advice and referral, mediation, financial measures, social networks and consultation between cities. Awareness is spread through the provision of information by means of posters, flyers, organisation of seminars, provision of websites, broadcasting documentaries and films, theatrical plays, educational suitcase, brochures, etc. Awareness often focuses on target groups in schools, preferably before the school holidays. There is also skill-building, which is targeted towards professionals as well as victims. Outreach, especially to the Roma communities, was mentioned as a way of building trust with this community and with families, which is much needed in order to be able to raise issues related to school absence for Roma children. Mediation is a strategy often used. It is done, for example, by the police, by teachers (Equal Opportunities Teacher) or by cultural mediators, towards parents, or via the family, the imam or a person whom the victim trusts. When victims address the services available, advice, counselling and,

if necessary, further referrals are provided. Information is provided about the victim's rights, the advantages, disadvantages and risks of each step that could be taken when considering to refuse a marriage; and information on referral is also provided.

With regard to protecting the victims of forced and arranged marriage, respondents believed that police, shelters and teachers play a key role. With regard to the reporting of cases of forced and arranged marriage, such reports come from schools, police, social workers, teachers, family and friends, welfare departments, Centres for Pupils' Counselling, care providers and health services. Many respondents agreed that victims seldom report cases of forced marriage. It is difficult for victims because, although they do not agree with their parents, they remain loyal at the same time and this conflicting loyalty makes it very hard for them to report the case and make a complaint against their parents or family.

In cases of forced marriage, there is a juridical framework in place. Victims can report forced marriage to the police, although some respondents mentioned that this is not often the case (see above). With regard to reporting forced marriage,

an official report is made and the Prosecutor is informed. Court cases might be initiated and legal actions might include imprisonment or conditional freedom.

When asked about the services provided, respondents shared insights on their work with victims on shelters, mediation, referrals, reporting, training and awareness. Work with victims ranges from long-term support and follow up, psychological therapy in their own mother tongue and advice and counselling delivered by peers (women who were former victims are now experts who assist victims in making a decision). Mediation was also mentioned, although the interviewed professionals stressed that the use of mediation depended very much on each situation and sometimes it is not recommended at all as it can put the victim in serious danger. Shelters for abused women and their children welcome victims of forced or arranged marriage although the work is the same for all the users of this service, whether they are victims of forced marriage or not. Shelters provide support for a maximum of three months and the services provided include mediation, couples counselling, social and psychological counselling, provision of a security plan for women and children, assistance in reintegration and working with children.

Respondents in Belgium mentioned a number of barriers in the delivery of services with regard to forced marriage, including the difficulties in addressing child marriage among Roma communities, attitudes and feelings of professionals and communities that obstruct an adequate delivery of the services, and the difficulties in developing and implementing laws and policies on forced marriage. Gaps in service delivery that were identified included: inadequate knowledge of professionals on forced marriage; lack of information and tools for professionals who are dealing with forced marriage; lack of shelters for abused women in general; and a lack of specialised and secured shelters for victims of forced marriage. There was also an apparent lack of specific psychotherapy for victims, research on the issue, coordination among several levels, sufficient resources and knowledge in the communities about the legal framework in Belgium and services which are available.

In **Italy**, the situation is more similar to Spain as there are no specific services working in the field of forced marriage. In this research it was found that domestic violence agencies and legal advice services attend to women who arrive in Italy through family reunification and who marry men already living

and working in Palermo and who abuse them. These services offer advice, advocacy and support, job guidance and work placement, individual and group counselling, legal advice and accommodation in shelters. Women's shelters aim to promote individualised empowering processes for individuals wanting to escape forced marriage. To ensure protection, however, material adequate conditions are also needed, above all an adequate number of beds in shelters so as to ensure looking after and effectively protecting women and girls.

The other territorial services basically just refer forced marriage cases to the network of services, both formal and informally. Many services are called upon to cooperate in order to prevent the emergence of cases of forced marriage or risk situations: health and social services, law enforcement agencies and the judiciary.

Cases of abuse are referred to the Domestic Violence Agency, which has a specific protocol and an inter-institutional network, to the Police for reporting and to shelters for safe accommodation.

The work carried out by courts and Police regarding forced marriage is strictly linked to other types of offence.

Several stakeholders highlighted the difficulties of offering the girls and women support in the event of a forced marriage. If the females are minors, the youth court judge needs to be informed as well as the administration department who deals with minors in a vulnerable and risky situation (social services). In this case, these girls could end up in children's shelters where there is no specialisation on gender violence or forced marriage.

The differences among countries are greater under the aspect above. In Belgium there are specific prevention, protection, prosecution and policy-making initiatives addressing forced and arranged marriages; however, stakeholders criticised the lack of training, awareness and coordination of obstacles of these services. In Spain, the specific services to address gender violence are sometimes used to address cases of forced marriage, as in Italy, with the additional factor that forced marriage is not recognised explicitly as a form of gender violence or human trafficking by the legal instruments.

2.3.4. Risk factors

In **Spain**, most stakeholders considered the family's rural or urban origin as a risk factor for several reasons. Firstly, because

some migration movements have been led by people from rural areas; they tend to be more traditional and conservative, and identify forced marriage as a way of preserving their culture. Secondly, because in these rural families, women are generally reunited to form a family, not to study or to enter the labour market. In the social classes of these communities, the men are the only ones who can work and go out in public and it would be dishonourable for them if their wives had to work.

Many of the interviewed stakeholders claimed that a trigger point in suspecting a case of forced marriage is a big age gap between the prospective bride and groom.

The risk factors also vary among communities and some stakeholders said it also depended on the type of relation the community has established between mother and daughter. In many cultures, mothers are responsible for their children's education and a compliant girl will accept the husband proposed by her family. If the daughter refuses to marry the candidate the family has selected for her, this would also be seen as a failure of the mother's role (and sometimes a threat to the mother if she is within a polygamous marriage). Also, the girl's refusal to marry can be interpreted by the community as

a sign that she is not a virgin or has something to hide.

Some of the stakeholders also emphasised that forced marriage has to be understood in the context of cultures where respect for the parents is very important; for instance, for Muslims it is even a religious precept. Therefore, girls consider that if they refuse the marriage arranged by their parents they are bringing dishonour and disgrace to themselves and to the whole family.

Some of the interviewed stakeholders highlighted as a risk factor the fact that a girl was born in the country of origin and later on moved to Spain, as opposed to a girl who was born, raised and educated in Spain, because it is more difficult for the girls born in the country of origin to oppose their families' will. Moreover, girls who have been born and educated in Spain know the language and have more skills and resources to oppose a forced marriage or even to escape from one.

In **Belgium** the risk factors could be classified into factors associated with characteristics of communities and families, individual characteristics and factors associated with service provision and context.

With regard to the characteristics connected to communities

and families, these include: ethnicity (some ethnic communities are more at risk than others); financial difficulties of families (selling women for financial profit or bride price); lack of gender equality in some families and communities, where women and girls are seen as preservers of culture and mothers are held accountable for the continuation of traditions, through the education of their girls; the level of integration of families or communities and the socio-economic status of a family (deprived families being more at risk). At individual level, risk factors include: a girl's youth (especially when a girl is near marrying age or at the age of puberty when the first signs of womanhood are visible); the level of dependency on the family (both emotionally and financially); being homosexual; being naïve; having a lower education and/or learning difficulties; and having no documents.

Finally, risk factors associated with service provision included the high threshold of services for victims and those related to this context included the socio-economic status of migrant communities, in particular issues related to lower performance at school, higher rates of unemployment among migrant communities and strict migration laws in Belgium.

In **Italy** a risk factor is also connected to the role played by migration policies and laws. All interviewees revealed that policies perceived as rejecting immigrants increase the risk of forced marriage. Foreign communities react to these policies by closing themselves into their own traditions and customs as a part of their identity. This would lead to an increased use of forced marriage. At the same time, regulations that considered forced marriage as an offence would not be effective without any awareness or educational activities.

Similarly, all the people interviewed were convinced that the risk of forced marriage can be reduced by implementing inclusion policies based on shared objectives and cultural exchange.

2.3.5. Opinions about laws and policies on forced marriage

Stakeholders in **Spain** generally declared a complete lack of knowledge about existing laws and policies on forced marriage in Spain, basically because they are very rare. Moreover, laws and public policies on gender violence are mostly focused on domestic violence.

The only public authority with a certain knowledge on the subject is the Catalan police force. After the experience of

female genital mutilation issues, it attempted to study the experience of other countries on the issue of forced marriage (for example, England and Wales) and provided some specific training to various units and territories.

With regard to the possibility of making forced marriage a crime, there were different points of view. Some of the stakeholders, especially those belonging to the Police or Public Administration, were in favour of making forced marriage a crime, in order to facilitate their work against this practice and to prevent further forced marriages. They also considered forced marriage should be a crime because it is a form of gender violence and a severe violation of human rights.

On the other hand, other stakeholders, especially those belonging to NGOs and the communities involved, were against the criminalisation of forced marriage. They thought that this will *not* contribute to the eradication of the problem; on the contrary, it will stigmatise and criminalise certain communities and religions.

In **Belgium** a number of respondents were unaware of the existing legislation on forced marriage or the National Action Plan (NAP), while others mentioned that communities might

not know that forced marriage is forbidden in Belgium. Some respondents thought that policies have paid off in Belgium, as more cases of forced marriage have resurfaced, and that the current policies and laws reflect the values and norms of Belgium and show that the Belgian authorities have taken up the issue of forced marriage.

However, there was also some criticism to policies and laws in Belgium. First of all, a lack of control on the implementation of policies and laws was mentioned. Secondly, when comparing it to other countries, such as the Netherlands, there were not many policies. Another respondent reflected on the extreme right-wing policies, i.e. the strict rules regarding marriage migration that are causing an increased number of forced and arranged marriages as well as marriages of convenience.

Some respondents thought that a specific criminal law on forced marriage was not necessary as there are other laws that can encompass this, e.g. marriage concluded among minors or child marriages can be considered as rape and kidnap; they also believed that the law on forced marriage only has a symbolic value as it came into force after some cases related to honour killings following forced marriage was given a wide

media coverage.

With regard to the law on migrating on marriage grounds, respondents mentioned that this law had become stricter (since September 2013). The new migration law stipulates that a partner can only migrate to Belgium when they are 21 years of age, so that child marriages will be even rarer in Belgium, although some stakeholders pointed out that this law is abused by falsifying birth certificates or other documents abroad. The fact that when a person enters Belgium on marriage grounds they cannot divorce in the first three years, gives considerable power to the partner already living in Belgium. Consequently, the partner who is still waiting for a residence permit might have to deal with domestic violence, in order not to lose the residence permit.

In **Italy**, even if there is no specific policy nor law for preventing and combating forced marriage, some professionals highlighted that specific attention to the topic was raised within the application of the Act on Female Genital Mutilation (Act 7/2006).

According to all the people interviewed, an act which considers forced marriage as an offence will not probably solve the issue

but could contribute to send a strong message from the official institutions and become a deterrent. If this is the case, it should be included in a framework law which provides for human and financial resources to fund prevention and counter measures.

To conclude, in the three countries research for this study, the existence of specific laws and public policies on forced marriage are important but they do not have any effect and value if they are not accompanied by prevention, awareness and training measures. Strict migration legislation has been demonstrated to have counter effects on women victims of forced marriage.

2.4. Analysis of interviews with (potential) victims

2.4.1. Demographic background

In **Spain** ten women and one man were interviewed as potential victims or victims of forced marriage.

The composition of the sample aims to be representative in terms of the most important foreign communities in Spain where arranged and forced marriages are common. Therefore, three women from Morocco, two women from Senegal, one woman from the Gambia, one woman and one man from

Pakistan, one Catalan woman, one gypsy woman and one Chinese woman were interviewed.

The three female victims of forced marriage are already divorced and out of the three single women, one of them managed to escape from a forced marriage and the other four have resisted or are resisting pressure from their families to marry or to accept arranged marriages (in the case of the gypsy woman, this means being nearly expelled from her own community or being placed in a very difficult position). The two other women and one man are currently married (the man as a result of an arranged marriage).

Four of them were born in Spain and the others came to Spain to reunite with their families or were brought by their husbands as a result of a forced or arranged marriage.

In **Italy** ten women were interviewed: five from Bangladesh, three from Sri Lanka, one from Mauritius and one from Eritrea. They were between 16 and 55 years of age and they were found and interviewed mainly in Palermo.

The women interviewed are of different age, ethnicity and cultures. Their educational backgrounds range from having

completed secondary education to having a Master's degree (as well as some young women who are still in secondary education).

Two of them were born in Italy and the others went to Italy to reunite with their families or were brought by their husbands as a result of a forced or arranged marriage.

2.4.2. Marriage expectations

Among the women interviewed in **Spain**, there are differences depending on their age and community of origin. For some communities, these marriages mean a way of improving the girl's (and the whole family's) position and standard of life as they have the opportunity to live in Europe. For others, marriage is the only option to prevent pregnancies outside marriage when a girl enters her fertile years.

The interviewees did not always attach a negative connotation to arranged marriages, providing there was sufficient freedom for the bride or the groom to refuse the candidates proposed by the family. The women interviewed who accepted arranged marriages claimed that it is a different way of building a marriage, no worse nor better than the western way, which is based on love. Their cultures consider that the marriage

institution is such an important thing for the future family and for the whole community that it cannot be decided on such an elusive and temporary factor such as *falling in love with someone*. The parents, who want the best for their children, seek the best candidates for their daughters: a good boy from a well-known family, from the same religion, from the same caste or even town, a hard worker and with kind feelings.

Likewise, in some cultures, being married is the only civil status accepted for a woman and the only acceptable way in society. In the Spanish gypsy community, for example, a person is not considered an adult until they have their first child.

With regard to marriage expectations, there is a huge difference whether the girl has been born and educated in Spain or in their country or origin. Girls born in their country of origin generally accept arranged marriage as normal, or with resignation, even if they become a forced marriage. On the other hand, the girls who were born in Spain oppose to an arranged marriage more and they prefer to be alone or to escape, before marrying someone they do not like.

In **Italy**, answers varied from expectations of free choice to concerns about making a choice according to their parents'

wishes. Some of the victims experience or have experienced a love affair with a person chose by them while some others accept or have accepted their parents' choice. For some of them, alongside the need for free choice, there is still the influence of a cultural model whereby deciding for the children's well-being is part of the parental duties and this includes choosing a husband.

2.4.3. Marriage circumstances

In **Spain** some communities conduct the marriages in their country of origin, sometimes because it is cheaper since most of the family still live there (e.g. some Pakistan or Indian communities). Some other communities conduct the marriages in the country of origin if this is the only way to celebrate the marriage or when the girl is too young according to Spanish law (or when it is the second or third wife in cases of polygamy, which is forbidden by Spanish law).

In some cases, arranged or forced marriages between a man or woman living in Spain and a relative of their country of origin is a form of improving the latter's family's status as they may feel that whoever lives in Europe must be rich and powerful.

Some of the women interviewed made the distinction between

arranged marriage (where there is certain freedom of choice for the spouses) and forced marriage (where there is no choice). Arranged marriages are justified as a valid way of finding a husband or wife, respecting the parents' will, respecting their own culture or religion, as boys and girls in their community cannot go out to find someone to marry like western youths do.

In some communities (e.g. Indian, Pakistan, China and some parts of Morocco) arranged marriages are more frequent, and the girl or the boy has a certain leeway to accept or refuse possible candidates chosen by their families (up to a certain number of candidates and up to a certain age). If the prospective spouse becomes too old or refuses too many candidates the pressure to marry becomes very strong and it is then not appropriate to talk about arranged marriage any longer. In some other communities, more often than not, parents or relatives impose a candidate who is generally older than the bride.

Even if both men and women are victims of arranged and forced marriage the frequency and pressure is higher for women and in some communities it is only practised with women. Daughters are perceived as a burden for the family; therefore, a marriage

to a wealthy or a financially stable husband is a good solution and the only possible end to a burdensome situation.

The candidate must be someone from the same social class, religion, culture, race and sometimes even geographical area.

Dowry, although illegal in most legislations of the countries of origin, is still in practice. Its meaning differs among cultures. In most African communities it is a sort of *price* that the groom's family pays to the bride's family for the wife; in South Asian communities, the dowry is the *price* the bride's family pays to the groom's family for the new burden to maintain.

Being a virgin bride is also an important aspect of marriage and if the girl does not bleed during the wedding night she is blamed for having behaved improperly and not maintaining the family's honour.

Divorce is generally considered very negatively in all the communities researched. When a divorce takes place, it is generally the wife who is blamed for the marriage failure and there is a very strong stigma attached to her, making it impossible for her to have another relationship. Only in very exceptional cases and in extreme situations (e.g. when the

husband is openly and clearly violent), divorce is acceptable.

In **Italy**, women who marry in their country of origin normally meet their husbands on the actual wedding day or a couple of weeks earlier. It is also very important in these marriages for both spouses to share ethnical, cultural and religious features.

Two of the interviewed women defined their marriage as a 'free choice' and a 'love marriage', despite one being a forced marriage, and other being arranged marriage.

The women interviewed expressed different points of view on arranged and forced marriage. Some of them believed they were the same thing, others found difficult to distinguish both types of marriage and some others accepted arranged marriages but condemned forced marriages.

With regard to the difference between forced and arranged marriage, there were three main types of answers:

- there is no difference between forced and arranged marriage: arranged marriage already includes force in some way; two of the women interviewed stated that forced marriage only takes into account the country of origin and past generations;

- arranged marriage is the norm (a marriage for financial interests can be included here);
- forced and arranged marriage are only different slightly: the difference lies in whether there is internalised consent of the prospective bride to what parents implicitly want and request.

There are various ways of meeting marriage candidates and this also depends on the culture, religion and the gender of the prospective spouses.

The women interviewed also admitted the impact on gender on forced marriage. There is a lot of concern about finding a good husband for one's daughter as women are considered individuals to be protected. It is also important to avoid a situation where the women can dishonour their family.

Other decisive factors about families' marriage strategies emerged during the interviews: financial factors such as financial support for families and financial settlement.

2.4.4. Risk factors

In **Spain** the women interviewed identified the factors below as

main risk factors.

Firstly, lack of education. From this point of view, the more educated the girl/woman is, the more empowered she is to accept or refuse the candidates proposed by the family. Therefore, education works as a protecting shield to avoid forced marriage, not only because the girl/woman is more empowered but also because families respect the girls' education.

Secondly, the interviewed women pointed out economic dependency. Most women cannot escape from a forced marriage and do not dare to get divorced from an arranged or forced marriage because they do not have the educational and professional tools to be independent, to work, and to support their children on their own. In some cultures, the gendered division of work is a very strong element of gender socialisation, so women themselves expect their husbands to support them financially. In many cultures (e.g. Chinese, Moroccan) men are expected to be the breadwinners and women the caretakers. The threat of being called or considered a prostitute (which is a stigma and the worst insult a woman can endure, both in our and their societies) is present in many of these women's interviews.

Thirdly, women stressed the importance of respecting their parents' decision and the preservation of the family honour.

It is also very important when considering forced marriage to understand the actual fear experienced by the girl's family. They fear that their daughters will lose their culture and their identity, and that they will be assimilated in the host society.

There is pressure from the community, especially from other men who can perceive a divorce initiated by a woman as a threat to other marriages. The ultimate threat is the economic vulnerability of the divorced woman isolated from her community, who will resort to prostitution as the only option to survive.

Some of the interviewed women also identified their rural or urban origin as a risk factor: urban families are generally more open-minded and give their children more opportunities to choose among the candidates. Once again, the women interviewed pointed out the main differences between girls who were born in Spain and those born in their countries of origin.

They also stressed age as a risk factor for forced marriages:

they considered that the younger the women are, the worse the situation is for them.

Interviewed women from some communities reported that polygamy, although legally forbidden in Spain, is still practised.

Some of the interviewed women also pointed out that the lack of references or other role models in their own community act as a risk factor, which facilitates the prevalence of forced marriage.

In **Italy**, the women interviewed said that the factors and reasons leading to forced marriage are cultural, traditional and financial.

The isolation of communities and the need to reaffirm the elements of identity linked to the culture of origin plays an important role.

With regard to factors which decrease the risk of forced marriage, some respondents identified a current and progressive personal and generational change, such as the new attitudes of those who were born and raised in Italy.

Qualitative data shows the predominance of requests for

help coming from young and very young women raised and educated in Italy.

2.4.5. Support received

In **Spain** few of the interviewed women who have tried to avoid/escape from a forced marriage have received any type of support. Only some of them received support from women's NGOs working in the field of gender violence and from university lecturers who established a special contact or link of trust with them.

Some of the victims stayed for short periods of time in women's shelters for victims of domestic violence, not as victims of forced marriage but as victims of other severe forms of physical and sexual abuse by their husbands.

Generally speaking, escaping from a forced marriage or obtaining a divorce from a forced marriage means isolation and lack of a network, regardless of having been born in Spain or having been regrouped in a family.

In the majority of cases the victims did not trust the Police or were unaware that they could seek help from the latter. They are very reluctant to report their husband even in severe cases

of gender violence.

In **Italy** women received support from agencies working in the field of gender violence and health issues: women who turned to the Police, to public health services and to domestic violence agencies found them very helpful. With regard to the possibility of finding support from their own communities, there is apparently little support as members tend to avoid confrontation.

The women stressed the importance of asking for help to influential people: relatives, priests, etc. to know how to ask for help and to raise greater awareness towards cultural models.

With regard to preventive measures, answers revealed the importance of self-determination.

2.4.6. Overall analysis

Forced marriage is a problem in some communities and ethnic minorities living in Spain, Belgium and Italy. It is very difficult to distinguish between an arranged marriage and an actual forced marriage but it is true that many women who would like to obtain a divorce from an arranged marriage receive pressure from their families and communities not

to, so the result is the same as a forced marriage. Women themselves sometimes accept an arranged marriage as a valid way of finding a husband and claim it is different from a forced marriage.

In **Spain** on the whole there is a lack of knowledge in this respect on the part of public authorities and the civil society (except in isolated exception, such as with the Catalan police and some NGOs working very closely with certain communities). Consequently, there is a lack of specific resources, awareness and trained professionals to identify and help a woman before she enters into a forced marriage or when she tries to escape from a forced marriage.

In **Belgium** there are specific laws and public policies on forced marriage; however, this practice is still unknown by many professionals and often forced marriages are treated as a general form of inter-personal violence or seen within the migration conflict.

Despite the fact that forced marriage is a crime, it has more of a symbolic value, and normally when forced marriage is prosecuted it falls under other criminal offences.

In **Italy**, where no specific laws or public policies exist, the situation is more similar to Spain and professionals address forced marriage within the domestic violence agencies and health services.

Increasingly, the families of young women residing legally in Italy take them back to their countries of origin to get them married, aware that the marriage will be acknowledged in Italy. Many men who reside in Italy return to their country of origin to marry or to get reunited with their wives without any control over the woman's consent to marriage. The lack of control makes it difficult to detect forced marriages, to provide protection to women who have suffered it and it encourages impunity for this type of practice. If the woman is a victim of forced marriage and wants to seek its annulment, she encounters numerous problems, including a slow legal system and difficulties in accessing free legal aid. For example, if the woman has a residence permit because of family reunification with her husband and decides to leave home, she loses her residence permit and cannot seek legal aid to request a marriage annulment or custody of her children. This difficulty has been partially overcome with Act 119/2013³⁰.

30. This new act intervenes in cases of domestic violence against foreign women, as a

Women who have been victims or are potential victims of forced marriage reinforced this analysis made by the stakeholders. There are huge differences within the same country, the same community or the same religion. There are also important differences if the girl or woman was born in Europe or in her country of origin. Rural families are generally more prone to practising this kind of marriage. Some communities give a certain margin of choice amongst candidates from the same social class, community, religion, and geographical area, but ultimately marriage within these parameters is never an option, it is an obligation. Even if arranged and forced marriage takes place with both women and men, it is more crucial for women as they have less margin to choose, if any is given, and the social and economic consequences of refusing or escaping from these marriages have a clear gender impact: in other words, it is much worse for women than for men.

A girl's level of education is a preventive and a deterrent tool in forcing her to marry. Education is sometimes perceived by the family as an investment and used by the girl as a strategy to postpone the marriage. Sometimes it is a way of empowering

separate residence permit is granted (independent from that of the husband with whom she has been reunited).

the girl to oppose the marriage or to have the means to escape a forced marriage.

The younger the girl is, the worse it is for her, because she has less opportunities to study and less contacts to a wider network than her family or community. This makes it more difficult to refuse a forced marriage.

Sometimes, albeit with difficulty, forced marriage is identified as a violation of human rights and a specific form of gender violence. When recognised, it generally creates a stigma for the community because it is easy to connect this practice to certain migrant communities or certain religions. However, forced marriage is also linked to tradition and gender inequality. Nevertheless, it is easier for our patriarchal societies to criminalise others (i.e. another community, another culture or another religion) rather than admit it is yet another form of gender violence, as we also have in our society.

Consent is key to understand the existing laws both at international and national level, even if it is not easy to verify it. Indeed, victims and potential victims considered their cultures and communities as a protective environment and interviewees reported their fear of being isolated when losing important

affective relationships and often living without the help they needed in the countries where they moved to. In western culture, the idea of free choice is connected to a main quality of individual conscience. According to women's movements, self-determination is one of the most important values. In forced marriage, the object of choice is referred to social systems such as family and marriage, whose characteristics are established by different cultures that are linked to the idea of *subject* and *community* and to the material and symbolic conditions to which individuals must be submitted. It would be interesting to re-read the nineteenth century literature on this perspective in order to delve deeper into the feminist debate and gender studies. Furthermore, when analysing the idea of free choice, we must consider the gender perspective and the social and historical distinction between female and male representations, as well as the patterns of sexual relationships and the characteristics of the institutions responsible for setting rules and laws on this kind of relationship.

Gender, socially regulated by the sexes, establishes and determines gender differences by prescribing different access to material and symbolic resources and assigning a different hierarchical position to the subjects. Marriage is, in its traditional

form, the most basic institutional form of a gendered social relationship.

In this scenario, MATRIFOR research confirms the need to:

- enquire about different cultures, including ours, by putting into question the idea of 'an absolute cultural discontinuity between the Northern-Western world and the rest-of-the-world' regarding family and marriage strategies;
- analyse all those social and economic factors and ethical and value systems that are important for the expression of consent regarding marriage and the social network it activates, both when marriage is determined by love or free choice or by an agreement to be together, and entering into a contract that is not necessarily based on consent;
- tackle women's access to social and economic resources in different contexts and the profound structural difference between sexes; not only for cultures different from ours (Western) but also for the Western world;
- take into account the difficulties when reporting to the Police or asking for help and support for those women

who feel fragile in the host society, living in precarious conditions with regard to exercising their rights;

- properly train operators working in the field of social protection and education.

3. COMPARATIVE ANALYSIS OF TRANSPOSITION OF EU DIRECTIVE.

MATRIFOR PROJECT

3.1. Introduction

This section aims to study how the three participating countries in the MATRIFOR project (Spain, Belgium and Italy) have transposed EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims and replacing Council Framework Decision 2002/629/JHA (Directive 2011/36/EU)³¹.

EU Directive 2011/36/EU has been taken into consideration as well as EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

31. This comparative report is based on the three national reports carried out by the International Centre for Reproductive Health (ICRH), Universiteit Gent for Belgium, Le Onde Onlus for Italy and Universitat Autònoma de Barcelona for Spain.

For the purpose of this document, we use the definition of trafficking in human beings contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations (Palermo Convention), contained in Article 3:

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.

3.2. How EU Directive on Trafficking in Human Beings has been transposed to Spanish, Belgian and Italian legislation

EU Directive on Trafficking on Human Beings explicitly recognises forced marriage as a new form of trafficking of

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human beings. The Directive recognises a broader concept of human trafficking than the previous directive as it includes additional forms of exploitation but it only explicitly recognises forced marriage as a form of trafficking in human beings in the Preamble, Point 11. It considers forced marriage a crime if all the elements of the human trafficking as defined in Article 2 are fulfilled.

Preamble 11. Mentions ‘...forced marriages in so far as they fulfil the constitutive elements of trafficking in human beings...’ The preambles of the Acts do not have binding effects but they play an important role in understanding and applying the articles of the Act with binding effects.

According to Article 2, for a marriage to be considered a forced marriage it should include the following behaviour:

The recruitment, the transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons³², by means of the threat or use of force or other forms of coercion, of abduction, of

32. Forced marriage needs at least one of these actions, not only when the girl or woman is forced to travel to another country to get married, or is brought to the territory to get married, but also even if she already lives in the country and she is being forced to marry someone already living in it, as the control over her is passed from her parents or relatives to the husband.

fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits³³ to achieve the consent of a person having control over another person, for the purpose of exploitation³⁴.

Article 2.A states that ‘A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.’

In **Spain** forced marriage has been sometimes considered as a form of gender violence (see for example Article 5. *Quart e*) of Catalan Act 5/2008, of 24 April, on Women’s Right to eradicate sexist violence).

Forced marriage has recently become a crime under the Spanish Criminal Code (due to a reform that entered into effect on 1 July 2015). Forced marriage is now included as a form of trafficking in human beings in Article 177 *bis* of the Criminal Code and as an aggravated type of coercion in Article 172 *bis* of the Criminal Code.

33. Forced marriage always needs some of these elements, or some of them to occur at the same time. The definition of a situation of vulnerability in Section 2 of the Article is important; many women who are forced to marry against their will finally consent to do so because they are in a situation of vulnerability where they have no other alternative.

34. A forced marriage is clearly a form of exploitation. Women are obliged to take care of their husband, their children and even their in-laws. Moreover, this type of marriage implies the woman to have a sexual relationship with someone she does not want.

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This double criminalisation is confusing and we must wait for the application and interpretation of both articles by the courts. The possible criminalisation of forced marriage under Article 177 as a form of trafficking in human beings has a more severe punishment (from five to eight years of imprisonment) but it needs to fulfil certain conditions to be qualified as trafficking in human beings (i.e. use of violence, intimidation or fraud, taking advantage of a situation of superiority, the victim's needs or vulnerability or the existence of a payment or profit). The victim of a crime of trafficking in human beings can receive special measures of support during and after the trial, according to the new Spanish law on the Status of Victims that entered into effect on 27 October 2015.

The EU Directive also states that the crime of trafficking in human beings should have a punishment of up to five years of imprisonment, and in aggravated cases, such as when the victim is someone especially vulnerable (e.g. minors), when committed within the framework of a criminal organisation, when endangering the victim's life, when using serious violence or when serious harm has been caused to the victim, imprisonment can be up to ten years.

If forced marriage cannot be criminalised under Article 177 of trafficking in human beings, there is the second option of Article 172 *bis*. A possible explanation for this double criminalisation is the commitment adopted by Spain under international and European legislation. Firstly, Spain had to include (in its criminal code) EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision 2002/629/JHA (Directive 2011/36/EU) and Article 177 *bis* is one of the consequences.

Secondly, Spain had to create a new crime on forced marriage according to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). In April 2014, Spain ratified the Istanbul Convention, which came into effect on 1 August 2014. Article 37.1 of the Istanbul Convention obliges Member States to criminalise forced marriage as a form of violence against women.

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In **Belgium**³⁵, trafficking in human beings has been a criminal offence since 2005, as stipulated in Articles 433 *quinquies* to 433 *novies* of the Criminal Code. As such, Belgium did take the necessary measures to ensure that human trafficking was punishable, as stipulated in Article 2 of the EU Directive on Trafficking in Human Beings.

In 2013, the new Act on Human Trafficking (of 29 April 2013) was adopted to change Article 433 *quinquies* of the Belgian Criminal Code, criminalising human trafficking. This act should be framed within the transposition of Directive 2011/36/EU on Human Trafficking. This new act changed the sentences in terms of the amount of the fines (to be multiplied by the number of victims). This principle does not only apply to human trafficking³⁶ but also to smuggling of human beings³⁷, exploitation through begging³⁸ and prostitution³⁹.

35. Information for this paragraph on Belgium comes from: Jaarrapport Mensenhandel 2013 (Annual Report on Human Trafficking, 2013), <http://www.diversitybelgium.be/annual-report-human-trafficking-2013>.

36. Therefore, Articles 433 *quinquies* to octies of Criminal Code have been adapted

37. Alteration of Articles 77 bis to *quinquies* of the Act of 15 December 1980 regarding Access to the Territory, Residence, Settlement and Removal of Foreigners.

38. Alteration of Articles 433 *ter* and *quarter* of the Criminal Code.

39. Alteration of Article 380 of the Criminal Code.

Human trafficking, punished by Article 433 *quinquies* of the Criminal Code is defined thus:

Trafficking in human beings is constituted by the act of recruiting, transporting, transferring, harbouring or receiving a person, or taking or transferring control exercised over that person:

- *for the purpose of exploitation for prostitution or other forms of sexual exploitation;*
- *for the purpose of exploitation for begging;*
- *for the purpose of work or services in conditions contrary to human dignity;*
- *for the purpose of organ removal in violation of the act of 13 June 1986 regarding the removal and transplantation of organs, or removal of tissues or human corporal material in violation of the act of 19 December 2008 regarding the procurement and use of human corporal material on the removal and transplantation of organs for medical or scientific research purposes; or*
- *for the purpose of making that person commit a crime or misdemeanour against his/her will.*

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These legal changes concern both material and moral elements of the offence:

- material elements of the offence: taking control over a person has been added as an element of human trafficking and replaces the former terminology that referred to 'change' of control. Previously, the transfer of control related to the selling of a person and not to situations whereby the control over a person was taken with the purpose of exploitation. The term 'taking control' also makes it possible to target more clearly actions such as buying, illegal adoption or the control over a person in the framework of a forced marriage⁴⁰.
- moral elements of the offence: the finalities of exploitation have been expanded or clarified, i.e. sexual exploitation has been expanded to include sexual slavery; there is a specific reference to services regarding exploitation through labour and the action was completed by adding to the removal and transplantation of organs, the action regarding the removal of human material.

In **Italy** trafficking in human beings is a criminal offence included in the Criminal Code in the chapter entitled 'Crimes against The Person', sub-chapter 'Crimes against Individual Personality', together with slavery and sexual offences against minors.

The definition of trafficking in human beings in Italian law is provided in Article 601 of the Criminal Code entitled 'Trafficking in Persons', following the entry into effect of the Italian Legislative Decree of 4 March 2014 No. 24/2014, and it reads as follows:

A term of imprisonment from eight to twenty years shall be applied to whoever recruits, introduces into the territory of the State, transfers even outside said territory, transports, yields authority over a person to another person, offers lodging to one or more persons who are in the conditions specified in Article 600, or performs the said conducts against one or more persons by deceit, violence, threats, abuse of authority or taking advantage of a situation of vulnerability, or of a weaker physical or psychological condition or a condition of need, or by promising or giving money or of any other advantage to the person having control over that person, for the purpose of inducing or forcing him/her to perform work, sex or to beg or, in any case, to perform unlawful activities entailing his/her exploitation or removal of organs. The same penalty shall apply to whoever, even without using the means provided for in the first paragraph, performs conducts set forth therein against a minor.

40. Amendment to the Bill to change Article 433 quinquies of the Criminal Code with the aim to clarify and expand the definition of human trafficking for sexual exploitation, Parl. St., Kamer, Doc 53-2607/002, p. 4.

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This Legislative Decree No. 24/2014 transposing Directive 2011/36/EU has amended the criminal law provisions on trafficking and slavery and has allowed for the adoption of a national anti-trafficking action plan and the setting up of an Italian compensation fund for victims of trafficking.

The amendment of Article 12 of Act 228/2003 Measures against Trafficking in Persons introduced this last possibility. This article allows for the setting up of a 'anti-trafficking measures fund' to finance support and social integration programmes for victims of trafficking in human beings and shall henceforth also be used for the compensation of victims. The compensation is limited to 1,500 euros per victim. The request for compensation has to be submitted within five years of a sentence recognising the right to compensation. When applying for this compensation, the victim needs to prove that they have not received any compensation from the offender. If the perpetrator of the crime is unknown, the victim can make the request within one year from the ruling of closing the relevant criminal procedure.

Like many European countries, Italy has been concerned for almost twenty years in the phenomenon of human trafficking. The Department for Equal Opportunities, a central

administration responsible for the coordination of preventing and combating trafficking in human beings and for the assistance to and social integration of victims, has carried out many activities in this field, both at national and transnational level.

Until now, Italy has not adopted any national plan against human trafficking. The Italian authorities are in the process of drafting the first national action plan, as required by Legislative Decree No. 24/2014, with the aim of identifying long-term strategies for the prevention and intervention to combat human trafficking, as well as actions aimed at raising awareness, social prevention, preventing the emergence of the phenomenon and helping to the social integration of victims⁴¹.

Currently in Italy there are no active information campaigns on trafficking in human beings but there is a continued information campaign via a hotline available for victims.

Procedures operating in Italy are guaranteed by the legislation in force through projects of assistance to the (alleged) victims of trafficking for a minimum period of three to six months. People

41. <http://www.pariopportunita.gov.it/index.php/component/content/Article/70-traffico-di-esseri-umani-2295-control-la-tratta-di-persone>

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cared by public or private social organisations have the right to adequate conditions of accommodation, food, health care and legal assistance (Article 13 of Act 228/2003). Likewise, Article 18 of Legislative Decree 286/98 offers assistance programmes for victims for 12 months, and the opportunity of accessing a range of services and activities, following an individualised care plan developed based on their personal needs: accommodation, psychological counselling, legal aid, linguistic and cultural mediation, accompaniment to social and health services, vocational training, support in finding employment and work placements.

Under the new decree, greater attention will be paid to identifying victims of trafficking of unaccompanied minors, women, illegal migrants and asylum seekers.

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In **Spain** Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 Establishing Standards on The Rights, Support and Protection of Victims of Crime and

replacing Council Framework Decision 2001/220/HJA (Directive 2012/29/EU) has mainly been transposed via the recently approved Act 4/2015 of 27 April on the Status of Victims of Crime (this entered into force on 27 October 2015).

Directive 2012/29/EU recognises forced marriage as a form of gender violence in Section 17 of the Preamble:

...Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crime'.

Here, forced marriage appears as a different form of gender-based violence from trafficking in human beings. Again, forced marriage only appears in the Preamble, and not at any other point in the Directive.

In the transposition of EU Directive 2012/29/EU to Spanish national law, there is no mention of victims of forced marriage, although since then forced marriage has been finally included as a specific crime in the Spanish Criminal Code. The wide

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definition of victim used in the Act on the Status of Victims will allow the inclusion of victims of any crime, of Spanish or any other nationality, living in Spain, their partners, children and direct relatives (Article 1 of Act 4/2015).

The Act on the Status of Victims of Crime recognises:

- the right to understand and be understood (Article 4);
- the right to receive information from the first contact with a competent authority (Article 5);
- the victims' rights when making a complaint (Article 6);
- the victims' rights to receive information about their case (Article 7) with specific mention of the victims of gender violence, although according to Spanish legislation the only victims of gender violence can be women in close relationship (see Article 1 of the Organic Act 1/2004 of 28 December of Measures for an Integral Protection against Gender Violence). Therefore, victims of forced marriage are not included here.
- the right to interpretation and translation (Article 9);

- the right to access victim support services (Article 10) where women victims of gender violence and domestic violence and their children are specifically mentioned to be granted access to all support services connected to the victim's protection (Articles 19-26). Once again, forced marriage is not included in the legal definition of gender violence or domestic violence according to Spanish law; it is interesting to note that in the EU Directive, 'victims of sexual violence', 'victims of gender-based violence' and 'victims of violence in close relationships' are mentioned. These concepts are much wider than the ones used in Spanish law;
- the right to actively participate in criminal proceedings (Article 11);
- the right, in the event of a decision, not to prosecute (Article 12);
- the right to participate in the implementation of sentences, including a specific mention for the victims of trafficking in human beings (since the Criminal Code includes forced marriage as a form of trafficking in human beings);

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- the right to restorative justice services (Article 15) including mediation except in those cases forbidden by law. According to Spanish legislation, mediation is forbidden in cases of gender violence but if forced marriage is not considered a form of gender violence and only appears in the Spanish Criminal Code as a separate crime or as a form of trafficking in human beings, mediation could be provided in cases of forced marriage;
- the right to legal aid (Article 16); access to free legal aid according to Spanish legislation requires applying for it and proving the individual does not have sufficient resources to pay for a lawyer. Free and immediate legal aid is given to victims of gender violence, terrorism and trafficking in human beings once they have made a legal complaint⁴². Since forced marriage is not included in the legal definition of gender violence according to Spanish legislation, only when forced marriage has been prosecuted as a form of trafficking in human beings, victims can benefit from legal assistance;

- the right to reimbursement of expenses (Article 18);
- the right to the return of property (Article 18);
- the rights of victims who are resident in another Member State (Article 17);
- the right to protection (Article 19);
- the right to avoid contact between the victim and offender (Article 20);
- the right to protection for the victim during the criminal investigations (Article 21);
- the right to the protection of privacy (Article 22);
- the right to individual assessment of victims to identify specific protection needs (Article 23). Directive 2012/29/EU states that 'Particular attention shall be paid to victims of (...) human trafficking, gender-based violence, violence in a close relationship, sexual violence...';

Spanish law gives special attention to victims in the following cases:

42. See Article 2 of Royal Decree Act 3/2013 of 22 February, modifying the tax regime in the field of the Administration of Justice and the free legal aid system, modifying Act 1/1996, of 10 January, on Free Legal Aid.

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- » Article 23.2.a. 2nd: when the victim is a minor, or in need of special protection or vulnerability (that could be the case of victims of forced marriage);
- » Article 23.2.b. 3rd: when the crime is committed by a spouse or a person in an intimate relationship, regardless whether there is cohabitation or not, or towards children, parents or siblings;
- » Article 23.2.b. 4th: crimes against sexual freedom and indemnity;
- » Article 23.2.b. 5th: crimes of trafficking in human beings.

Once again, victims of forced marriage could be included here if forced marriage has been considered a form of trafficking in human beings.

- the right to protection of victims with specific protection needs during criminal proceedings (Article 25);

EU Directive 2012/29/EU stipulates in Article 23.2.d) that 'All

interviews with victims of sexual violence, gender-based violence or violence in an intimate relationship, unless conducted by a prosecutor or a judge, will be conducted by a person of the same sex as the victim, if the victim so wishes'.

However, Spanish law only pays special attention to victims of crimes committed by the spouse or a person in an intimate relationship, regardless whether there is cohabitation or not, or towards children, parents or siblings and crimes against sexual freedom and indemnity (not including victims of trafficking in human beings or victims of forced marriage).

- the right to protection of children victims during criminal proceedings (Article 26);
- the right to Special Offices to attend to Victims (Article 27);
- specific training on victim protection (Article 30) for judges, public attorneys, legal secretaries, police forces, forensics, staff of the administration of justice, staff of the victims' offices and lawyers.

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In **Belgium** a ‘victim of an offence’ is defined as any person who has suffered damage (pecuniary, non-pecuniary or bodily injury) resulting from a criminal offence. Victims of trafficking are afforded certain rights (a period of reflection, assistance and/or a residence permit) triggered by their identification and resulting from the Act on Entry to the Territory, Stay, Settlement and Removal of foreigners, and Circular of 26 September 2008 on the Implementation of Multidisciplinary Co-operation Concerning Victims of Human Trafficking.

Aid and support for victims of human trafficking is regulated by Royal Decree of 18 April 2013, which recognises specialised centres for the reception and guidance of victims of human trafficking⁴³. The Decree recognises three centres in Belgium⁴⁴. These centres take in all victims of trafficking, irrespective of gender or type of exploitation.

The GRETA Report mentions Belgian authorities, stating that Article 433 *quinquies* of the Criminal Code makes it possible, inter alia, to deal with cases of trafficking for the purpose of

43. Royal Decree of 18 April 2013 on the Status of Specialised Reception Centres for Victims of Trafficking in Human Beings and of certain aggravated forms of smuggling of migrants and the authorisation to bring legal action; BS, 22 May 2013.

44. Annual Report on Human Trafficking, 2013.

drug trafficking or theft. The removal of tissues and human body tissue as well as the removal of organs is also mentioned. On the other hand, the working group set up within the Federal Public Department of Justice (as part of the revision of the definition of the crime of human trafficking) concluded that forced marriage (and illegal adoption) could be taken into account as an action transferring control and that it was not necessary to change the terms of criminalisation to cover trafficking for the purposes of these forms of exploitation⁴⁵.

Addressing trafficking in human beings as a form of violence against women or the consideration of specific forms of exploitation as gender specific, such as forced marriage, does not seem to be pertinent to Belgium.

In **Italy**, the Department for Equal Opportunities (DEO), which is subordinate to the Presidency of the Council of Ministers, is the governmental body responsible for co-ordinating and implementing anti-trafficking policies, with the exception of law enforcement and prosecution activities. The DEO manages the annual call for tenders through which NGOs are selected to

45. GRETA, 2013. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium, First Evaluation Round, September 2013.

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implement projects for the provision of assistance to victims of trafficking, in co-operation with regional and local authorities. Two types of projects are funded, under Article 13 of Act No. 228/2003 on Measures against Trafficking in Persons, and under Article 18 of the Consolidated Immigration Act (the so-called 'Article 13' and 'Article 18'). Moreover, the DEO is responsible for the collection of data on victims assisted through social protection projects, which is entered into a computerised system named SIRIT (Information System for the Collection of Data on Trafficking in Human Beings) by NGOs and other bodies implementing social protection projects. The DEO also finances the national free anti-trafficking helpline (800 290 290) which is run by the municipality of Venice. The DEO was put in charge of anti-trafficking action at a time when the focus was on trafficking in human beings for sexual exploitation.

The Italian system of assistance to victims of trafficking is to a large extent based on the work of NGOs and many religious organisations that are usually set up in the form of non-profit organisations (ONLUS, in Italian) such as associations and social cooperatives. Most operate at local or regional level but are connected via inter-regional and national networks which make it possible to refer victims of trafficking in human beings

identified in one region to another.

Legislative Decree 24 of 4 March 2014 entitled Implementation of EU Directive 2011/36EU on Preventing and Combating Trafficking in Human Beings and Protecting Victims, replacing Framework Decision 2002/629 /JHA, published in the Official Gazette no. 60 of 13 March 2014, came into force on 28 March 2014. The Decree introduced some new features, including some relating to the victims. The legislative decree amending the Code of Criminal Procedure includes examination, existing protection provided for victims (those under age and of legal age who are infirm of mind) to all victims regardless of age in a particularly vulnerable situation. Article 1 of this decree specifies the persons who may be considered vulnerable: minors and unaccompanied minors, the elderly, the disabled, women (especially pregnant women), single parents with underage children, people with mental disorders, as well as those who have suffered rape or any other serious forms of physical, psychological, sexual or gender abuse. To strengthen the protection of victims, the decree establishes the obligation to supply the victims with adequate information about their rights, especially to unaccompanied children who are victims of trafficking. It also establishes the provision of specific training

modules required on issues related to human trafficking for the relevant public officials, to be included within the training courses carried out by the competent administrations. It recognises the victims' right to receive compensation for crimes committed against them.

With regard to EU Directive 2012/29/EU, with the implementation of Decree Act 93/2013, this became Act 119 of 15 October 2013, concerning the need to provide victims with the right information. For this to be fully implemented, an implementation decree (which is pending approval) has been prepared.

3.4. Specific legislation on forced marriage in Spain, Belgium and Italy with binding effects

There is no such a law with binding effects in Spain. A specific law on trafficking in human beings, apart from the applicable crimes of the Criminal Law, does not exist.

In **Belgium**, forced marriage is a criminal offence under Article 391 *sexies* of the Criminal Code, inserted by Act of 25 April 2007 before the EU Directive on Trafficking in Human Beings. This

article provides for the punishment of persons who, using violence or threat, coerce someone or attempt to coerce someone to enter into a marriage. In addition, under Article 146 *ter* of the Civil Code inserted in the same Act, a marriage concluded without the free consent of both spouses and for which the consent of at least one of the spouses was obtained by violence or under threat is considered null and void. The purpose of this new Act is to protect the right of victims to enter freely into a marriage, and to protect their freedom, dignity and physical integrity. Lastly, an article inserted in 2006 in the Act of 15 December 1980 on the Admission of Aliens into the Territory, Residence, Settlement and Removal stipulates a more severe penalty for persons who have used violence or threat to coerce someone into a marriage of convenience.

There is no such legislation in **Italy**.

3.5 Collection of statistics on trafficking in human beings, and in particular, on forced marriage

Spain collects statistics of trafficking in human beings but since forced marriage was not considered as a form of human trafficking until very recently there are no such statistics at national level.

3.5. Collection of statistics on trafficking in human beings, and in particular, on forced marriage

There are only statistics on forced marriage for the Catalonia region because the Catalan law on sexist violence explicitly recognises forced marriage as a form of community violence. Therefore, the Catalan police force is obliged to collect statistics on this issue.

The Report of the Spanish Ombudsman 2012 *Trafficking in Human Beings in Spain. Invisible Victims* acknowledges that the most documented form of human trafficking is that for sexual exploitation because legally there are more reported cases. The other forms of trafficking in human beings are not sufficiently present in official statistics: forced labour or servitude, domestic servitude, forced marriage, removal of body organs or exploitation for begging and war.

Belgium complies with Article 19 of the EU Directive. The Inter-Departmental Coordination Unit for Action against Trafficking in Human Beings⁴⁶, together with the Federal Migration Centre, is assigned the duty to report on behalf of the government to the

Anti-Trafficking Coordinator (ATC) and others, on matters related to human trafficking. The requirements of the Directive 2011 have long been applied (according to Act 1/9/2014), but the new Act of 1 September 2014 formalises the transposition of Article 19.

On 15 March 2014, a new federal Centre for the Analysis of Migration Flows, the Protection of the Fundamental Rights of Foreigners and the Fight against Human Trafficking, was created. The Act of 1 September 2014 officially appointed this Centre as the independent body of the equivalent mechanism carried out by the National Rapporteur on Human Trafficking. The other component is the Inter-Departmental Coordination Unit (which develops national action plans on human trafficking), reports on implementation of law (FOD Justice, as part of this Unit, evaluates and is the official contacting point on behalf of the government).

The structure of the 2013 annual report of the Independent Rapporteur on Human Trafficking in Belgium follows the template of the European Commission, as the EC had to report to the European Parliament and the European Council by 6 April 2015 in which ways the Member States had taken the necessary measures to transpose Directive 2011/36/EU. The ATC of the

46. This inter-departmental unit brings together all relevant ministries and public bodies, supervises the implementation of the national anti-trafficking policy and implements the Second Action Plan against Trafficking in Human Beings 2012-2014 (GRETA, 2013. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Belgium. First evaluation round, Strasbourg, 13 September 2013, GRETA (2013) 14, page 7).

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EU prepared a template to assist Member States in providing the necessary information. As such, Belgium complies with Article 20 of the Directive, stipulating that information should be transmitted to the anti-trafficking coordinator of the EU.

With regard to human trafficking, data can be obtained from six stakeholders in Belgium: Police, the labour inspectorate services, the Bench of General Prosecutors General, Foreigners' Office, specialised reception centres for victims, and the Crime Policy Department. However, the data in the Annual Report mentioned above, do not specifically mention 'forced marriage' but refers to the following categories of human trafficking⁴⁷:

- for the federal police: sexual exploitation, child pornography, economic exploitation, begging, criminality and the trade of body organs;
- for the labour inspectorate services: economic exploitation;
- for the Bench of Prosecutors General: sexual exploitation, exploitation for begging, exploitation for labour, illegal removal of organs and forcing people to commit crimes;

- for the Foreigners' Office: sexual exploitation, economic exploitation and 'other';
- for the Specialised Reception Centres for victims: sexual exploitation, begging and economic exploitation;
- for the Crime Policy Department: sexual exploitation, economic exploitation, more than one category of exploitation and 'not mentioned'.

No data on forced marriage were mentioned in this report, with the exception of the court case in Verviers. The change in the Act on Human Trafficking of 29 April 2013 was the basis for an arrest at the Verviers court on 30 January 2014⁴⁸. In this case of forced marriage between two minors, whereby the girl was under sixteen, the court convicted the minors' parents for human trafficking with the aim of sexual exploitation, rape and violation of integrity by means of threats and violence. The court ruled that there was most certainly a transfer of control over the minor, so that rape and assault of her integrity (*eerbaarheid* = chastity, modesty, honour) with violence and threats towards her, was possible. In this case, the court convicted two Roma

47. Annual Report on Human Trafficking (2013: 82-101).

48. Corr. Verviers, 30 January 2014, 11 de Kamer (definitief), in: Annual Report on Human Trafficking (2013).

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couples for having forced their children aged 13 to have sex. The punishment was five years' imprisonment with partial suspension.

During the court sessions, the parents minimised the accusations. According to the boy's parents, they acted simply according to the traditions of their culture; they simply wished to foster a loving relationship between their children and the boy's parents paid some money to the girl's parents. From the declaration of the girl's father, it is believed that the boy's parents paid them 5,000 euro. The amount depends on whether the girl is a virgin or not, according to their traditions. A party was organised, after which the minors had sexual intercourse at the boy's parents' home. The girl also moved in with her in-laws and had to perform household chores, which made her miss school frequently. The court considered the rape and the violation of integrity as well-founded, even though the parents did not commit the crime themselves and they were not present during the act. By providing the opportunity and facilitating it, they did everything to ensure that the girl's integrity and virginity were violated⁴⁹. The mothers were sentenced to 30 months of

effective imprisonment and their husbands to 40 months⁵⁰.

Apart from the specific statistics on trafficking in human beings and the above case where forced marriage was prosecuted as a form of trafficking in human beings, since 2009 there has been a specific indictment code for forced marriage in the databank of correctional chambers of first instance courts. According to the figures, 12 cases of forced marriage were recorded with the prosecution services in 2010 and 15 cases in 2011. There is also a specific Police code for this offence. Police crime statistics show 13 complaints of forced marriage (11 actual cases and two attempts) in 2010. Better awareness on the part of victims and better detection by professionals will probably have the effect of increasing the number of complaints.

According to the GRETA Report, Belgium is primarily a destination country for victims of trafficking in human beings but it is also a transit country owing to its geographical location. The vast majority of the victims identified during the 2009-2012 period were foreigners and one third of them came from EU countries. The main countries of origin of victims of trafficking

49. Annual Report on Human Trafficking (2013).

50. Source: www.standaard.be/cnt/dmf20140130_00954930 (accessed 16 July 2014).

in 2011 were, in order of importance: Morocco (25 out of a total of 133 victims), Romania (22), Bulgaria (11) and India (10). In 2012, the main countries of origin were Romania (24 out of a total of 143 victims), Morocco (19), Nigeria (17), China (11) and Bulgaria (10). In addition, four Belgian victims of internal trafficking were identified in 2011 and three in 2012.

Italy is a country of destination and transit for victims of trafficking in human beings. There are no data on the total number of victims of trafficking in human beings identified every year due to the lack of a uniform identification system but the Department of Equal Opportunities gathers statistics on the number of victims of trafficking in human beings who benefit annually from assistance and social integration projects.

According to these statistics, there were 1,955 victims in 2011, 1,650 in 2012 and 925 in 2013. The majority of them were women (1,417 in 2011, 1,094 in 2012 and 650 in 2013); there were 446 male victims in 2011, 420 in 2012 and 230 in 2013. As for child victims, there were 63 affected children in 2011, 114 in 2012 and 45 in 2013. The remaining victims were transgender adults. The prevalent form of exploitation of the victims who received assistance was sexual exploitation (1,359

victims in 2011, 1,067 in 2012, 570 in 2013), followed by labour exploitation (377 victims in 2011, 296 in 2012, 163 in 2013). The number of victims of forced begging and forced criminality was 127 in 2011, 116 in 2012, and 72 in 2013. Furthermore, there were 31 victims of trafficking in human beings for domestic servitude in 2011 and 25 in 2012, as well as three identified cases of trafficking for the purpose of organ removal in 2011 and another three in 2012. These statistics do not detect the cases of forced marriages.

3.6. Cases of forced marriage reaching the courts

In **Spain**, there are no cases of forced marriage as such, because until 1 July 2015, when the Criminal Code reform came into force, forced marriage did not constitute a crime. If any case of forced marriage reached the Spanish courts, it was considered as a crime of illegal detention, kidnapping, physical or sexual violence. Therefore, it is impossible to know the exact number of cases reaching the judicial system.

In **Belgium** there has been a specific indictment code since 2009 for forced marriage in the databank of correctional chambers of first instance courts as mentioned above. In January 2014,

3.7. GRETA evaluation reports on treatment of forced marriage as a form of trafficking of human beings

the first prosecution of a forced marriage took place under the reformed crime of trafficking in human beings (the Verviers case) as explained above.

In **Italy** only one case of forced marriage has reached the courts: Civil Cassation Court Section VI, 18 November 2013 no. 25873.

To force a woman to enter a forced marriage constitutes a serious violation of her dignity, and therefore a degrading treatment (under Article 14, letter b), Legislative Decree number 251 of 2007), constituting serious harm and granting subsidiary protection. The threat of serious damage, justifying this protection, does not necessarily come from the State, because it can also originate, among others, from 'non-State actors' if the State authorities or organisations controlling the State or a substantial part of its territory 'cannot or will not provide protection' that is adequate under Article 6, Paragraph 2, of the Legislative Decree mentioned.

3.7. GRETA evaluation reports on treatment of forced marriage as a form of trafficking of human beings

The report presented by the Experts Group on the Fight Against Trafficking in Human Beings⁵¹ (GRETA) in relation to the Council of Europe Convention against Trafficking in Human Beings recommends that Spain improves its policies to prevent this crime and demands an integral Act on Trafficking in Human Beings which includes all forms of exploitation from a human rights, gender and minors' perspective. The report also recommends taking the needs of international citizens into account (e.g. to protect the victims, they could be granted refugee status instead of being deported to their countries of origin).

The report highlights that the advancements against trafficking in human beings in Spain have been directly linked to trafficking in human beings for sexual exploitation, leaving out other forms of trafficking, such as forced marriage.

In **Belgium**, according to the GRETA report, and based on

51. Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Spain (27 September 2013).

3.7. GRETA evaluation reports on treatment of forced marriage as a form of trafficking of human beings

information provided by the Belgian authorities, an average of 130 human trafficking victims were identified every year between 2009 and 2012. Victims of trafficking for the purpose of sexual exploitation constituted around 40% of human trafficking victims.

When describing how Belgium has integrated the core concepts and definitions contained in the Council of Europe Convention on Action against Trafficking in Human Beings in its national legislation, the GRETA report mentions that the Federal Public Department of Justice concluded that the use of forced marriage (or illegal adoption) could be considered as an action transferring control and that it was not necessary to change the terms of criminalisation to cover trafficking for the purposes of these forms of exploitation. Further to the report, no reference was made to forced marriage as a form of trafficking in human beings.

The 2013 GRETA report also mentions that a vertical and horizontal coordination between all the players concerned should be set up in Belgium, in order to guarantee a comprehensive and coherent approach to action against trafficking. It also states that a comprehensive and coherent

system of statistics on trafficking in human beings must be devised and brought into operation as there is currently no practice of collecting centralised and standardised data on trafficking in human beings.

In **Italy**, the GRETA reports notes that the existing figures on trafficking in human beings do not reveal the real scale of the phenomenon of human trafficking in Italy as there are shortcomings in the identification of victims of trafficking and data collection, lack of awareness about the problem of trafficking in human beings among the general public and certain public officials, and insufficient attention to trafficking for purposes other than sexual exploitation. Due to its geographical situation and long coastline, Italy is particularly vulnerable to migrant smuggling and trafficking. Some reports suggest that trafficking in human beings for the purpose of labour exploitation, in particular of illegal migrants, is of worrying proportions in Italy but it is not addressed adequately. Furthermore, trafficking of children for the purpose of sexual exploitation, forced begging and forced criminal activities are reportedly on the rise.

The Italian GRETA report does not mention forced marriage

and does not make any recommendations to Italy on this aspect.

3.8. Assessment of Palermo Protocol commitments with regard to forced marriage

Spain signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Palermo Protocol) on 13 December 2000 and ratified it on 1 May 2002. The Palermo Protocol came into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on human trafficking. The intention behind this definition is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international cooperation in investigating and prosecuting human trafficking. An additional objective of the Protocol is to protect and assist the victims of human trafficking with full respect for their human rights.

The definition of trafficking stated in Article 3 of this Protocol is exactly the one used in EU Directive 2011/36/EU. Therefore,

Spain has fulfilled these commitments with the recent reform of the Spanish Criminal Code and a new Act on the Status of Victims of Crime.

Belgium signed the Palermo Protocol on 12 December 2000 and ratified it on 11 August 2004. No reservations were made upon signature. The French, Flemish and German-speaking communities and the regions of Wallonia, Flanders and Brussels-Capital are bound by this signature.

Italy signed and ratified the Palermo Protocol by Act of 16 March 2006, number 146, Ratification and Implementation of the Convention and Protocols of the United Nations Convention against Transnational Organised Crime, adopted by the General Assembly on 15 November 2000 and 31 May 2001, but has not introduced specific rules.

3.9. CEDAW reports references to the legal treatment of forced marriage

The **Spanish** reports make two recommendations of the CEDAW convention (Number 12 and 19). The Committee demanded the Member States to collect statistics on the different forms

of gender violence and for this Committee forced marriage constitutes a form of gender violence.

The latest CEDAW report in Spain was published on 15 April 2003⁵². It is mainly focused on Spain's developments in the field of trafficking in human beings for sexual exploitation and gender violence, limited to domestic violence and sexual harassment. A shadow report was published on 4 June 2014 made by a group of women's organisations, NGOs on the field of development and other organisations of the civil society.

These reports highlighted the lack of an integral approach in the field of trafficking in human beings, having only isolated and disconnected legal provisions on the subject. Moreover, they emphasised the lack of transposition of EU Directive 2011/36/UE before 13 April 2013.

The only existing approach on the field of trafficking in human beings has been through the approval of migrant and security policies. There is no integral approach of trafficking in human beings that takes into account the different specific issues.

52. Considerations of reports submitted by Member States under Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women. Fifth periodic report of State Parties. Spain (15 April 2003).

Belgium signed the CEDAW convention on 17 July 1980 and ratified it on 10 July 1985. The last report was submitted on 2 October 2012 and was published in March 2014.

This report mentions, under Article 3 in its section on combating violence against women, mechanisms to combat violence against women with a National Action plan to combat partner violence and other forms of domestic violence 2010-2014. It states:

In November 2010, Belgium adopted a new National Action Plan to combat partner violence and other forms of domestic violence (NAP 2010–2014). This plan builds on the previous National Action Plan 2008–2009, which concerned only partner violence. Its field of action now also includes forced marriages, honour-related violence and female genital mutilation (FGM). Through this new plan linking together the federal State, the Communities and the Regions, Belgium has undertaken to implement more than 120 new measures to combat these various forms of violence.

In the section on Gender Dimension in Asylum Policies, the report states: 'The Belgian authorities take into account the specific needs and vulnerability of certain specific migrant groups such as women or persons who have fled their countries because of gender-related persecution (forced

3.9. CEDAW reports references to the legal treatment of forced marriage

marriage, female genital mutilation, honour-related violence, etc.).

In the report, under Article 5.a. on the Elimination of Customary Practices, forced marriage is mentioned as follows: 'It may be recalled that the National Action Plan 2010–2014 was expanded to take in such phenomena as forced marriage, female genital mutilation and honour-related violence, thereby demonstrating Belgium's determination to step up its efforts to combat these phenomena.'

In the section called Policy for the Elimination of Female Genital Mutilation, it states:

Under the National Action Plan, the Walloon Region has given priority to the development of assistance for women victims of genital mutilation who are often also victims of forced marriage. For two years, the Walloon Region has been supporting a family planning centre, which provides such persons with psychological, legal and social assistance. More recently, employment aid has been granted to three not-for-profit organisations to develop more extensive assistance for victims of genital mutilation.

With regard to the section 'Prevention of Forced Marriage', the report states: 'Belgian legislation sets several conditions for

marriage. The main ones are a minimum age of 18 years, barring exceptions on serious grounds, consent of the prospective spouses, absence of kinship ties and the prohibition of bigamy.'

In **Italy**, the latest Shadow CEDAW Report⁵³ devotes a chapter to forced marriage. It analyses and highlights the weaknesses of Italian law, especially:

Under Italian law to contract marriage in Italy the consent of both spouses must be secured. If the marriage took place in another country their consent shall be governed by the national law of the country of origin of the spouses, and it is registered, if required, in the Italian civil registers, without the need to check, starting with the circular no. 27 of 13 October 2011, the requirement of consent of the spouses. Automatic recognition of acts of marriages celebrated abroad may expose women to serious violence. In fact, seizures by the family of young women residing legally in Italy to take them to marry in the countries of origin are increasing, aware that the marriage will be acknowledged in Italy. It has also been verified that many men who reside in Italy return to their country of origin to marry and they get reunited with their wives without any control over the woman's consent

53. The platform 'Work in Running: 30 Years CEDAW' (made up of different civil society groups and women's organisations) participated in the evaluation session and presented to the CEDAW Committee Shadow Report which highlighted the main problems raised in the government report (both reports are available in English on the website UN official: <http://www2.ohchr.org/english/bodies/cedaw/cedaws49.htm> and the Shadow Report is available in Italian Blog Platform: lavorincorsa30annicedaw.blogspot.com)

to marriage. The lack of control makes it difficult to detect forced marriages and to provide protection to women who have suffered, and it encourages impunity for this type of practice.

If the woman is a victim of forced marriage and wants to seek its annulment, she encounters numerous problems, including a slow legal system and the difficulties in accessing to free legal aid. For example, if the woman has a residence permit for family reunification with her husband and decides to leave home, she loses her residence permit and cannot seek legal aid to request a marriage annulment or custody of children.

This difficulty has been partially superseded by Act 119 of 2013.

3.10. Conclusions

The three countries where the research has taken place identify a crime on trafficking in human beings according to the requirements on the EU Directive, although not all of them specifically mention forced marriage. Only in Spain and Belgium there is a specific crime on forced marriage.

With regard to soft law, there are clear differences between the three researched countries: in Spain and Italy there are

no public policies or national action plans on trafficking in human beings or forced marriage; however, in Belgium, forced marriage is included in the National Plan to combat Domestic Violence and in the National Action Plan to Prevent and Fight Trafficking in Human beings.

4. POLICY AND LEGAL RECOMMENDATIONS

As a result of the research and debate carried out during the MATRIFOR project, the following are the main policy and legal recommendations.

European level

1. Collecting statistics on forced marriage at European and Member State level is crucial.

Data collection on forced marriage is needed in order to assess trends over time, to measure progress of interventions, to better target resources and strategies, and to assist in designing effective policies. If data are collected, it is important to disaggregate these data on the different forms of trafficking, including forced marriage. Methods should be explored to estimate the prevalence of child and forced marriage, similar to those developed for female genital mutilation (see for instance the extrapolation method as suggested in EIGE, 2013⁵⁴ and Leye et al, 2014⁵⁵).

54. EIGE, 2013. Female genital mutilation in the European Union and Croatia. Report.

55. Els Leye, Lut Mergaert, Catarina Arnaut, Sioban O'Brien Green. 'Towards a better estimation of prevalence of female genital mutilation in the European Union: interpreting existing evidence in all EU Member States'. *Genus, Journal of Population Sciences*, vol. 70, no.1, 2014.

Article 28⁵⁶ of EU Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and replacing Council Framework Decision 2002/629/JHA (Directive 2011/36/EU on Trafficking in Human Beings) and Article 11⁵⁷ of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) establishes the legal obligations to collect these statistics.

2. Monitoring the effective transposition of EU Directive 2011/36/EU on Trafficking on Human Beings and EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Directive 2012/29/EU on Protection of Victims of Crime) into the legislation of the Member States.

56. In order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.

57. There is a need to collect reliable data on a regular basis to measure prevalence of all forms of violence against women and girls.

Both directives oblige Member States to include a specific crime on Trafficking in Human Beings in their national Criminal Codes and to ensure special protection measures for victims of trafficking in human beings and gender-based violence. Forced marriage should be clearly integrated as a form of trafficking in human beings and gender-based violence then, and victims of forced marriage can benefit from the special protection measures as victims of trafficking in human beings or gender-based violence (if the national legislation has also recognised forced marriage as a form of gender-based violence).

Member States do not always clearly include forced marriage as a form of trafficking in human beings and as a form of gender-based violence when transposing both EU Directives in their legislation.

3. Including 'Forced marriage' at the very least within Article 2 of the Directive on Trafficking in Human Beings (related to offences concerning trafficking in human beings) as at the moment it is only mentioned in the Preamble, Point 11.

4. Reinforcing the consideration of forced marriage as a form of gender-based violence, as it is internationally recognised by the Council of Europe Convention on Preventing

and Combating Violence Against Women and Domestic Violence (Istanbul Convention). As a result, apart from being included in the European Union policy on Trafficking in Human Beings, it should be clearly included in the EU policies on violence against women and girls, EU policies on fundamental rights and EU policies on children's rights.

Article 8 of the TFEU⁵⁸ stipulates that 'in all its activities, the Union shall aim to eliminate inequalities, and to promote equality between men and women'. In addition, Declaration No.19 on Article 8 TFEU⁵⁹ specifically states that 'In its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The EU Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims⁶⁰.

This will prevent people to consider the phenomenon of forced

58. Consolidated Version of the Treaty establishing the European Community.

59. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union, Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007. Declaration on Article 8 of the Treaty on the Functioning of the European Union.

60. Declaration on Article 8 of the Treaty on European Union.

marriage as a migrant, religious and cultural problem instead of a consequence of patriarchal societies. Its diagnosis as a migrant, religious or cultural problem leads to mistaken and isolated national intervention through migration policies and restrictive legislations.

National level

More specific considerations refer to the collection of statistical data on forced marriage, for which the following is recommended:

1. To make available information systematically on forced marriage at national level.
2. To disaggregate and elaborate data and information routinely collected by the national statistical agencies (gender, ethnicity, age, type of violence, needs, interventions carried out, etc.).
3. To introduce specific indicators for data collection in educational centres, women's shelters, public and private agencies and services working with immigrants and refugees, health centres, child protection agencies, policies, courts and in the national gender-violence helplines.

4. To launch an ad hoc survey to evaluate this phenomenon on the entire national territory, to obtain data on the prevalence on forced marriage, child marriage, characteristics, risk factors and existing legal and policy measures.

Concerning the law, the main recommendations emerging from the research are the following:

1. To apply the Istanbul Convention (Articles 32, 37 and 59).
2. To properly transpose Directive 2011/36/EU on Trafficking in Human Beings, clearly including forced marriage as a form of trafficking in human beings.
3. To properly transpose Directive 2012/29/EU on Protection of Victims of Crime, recognising victims of forced marriage as victims of trafficking in human beings and/or gender-based violence, in order to access the special protection measures contained in the EU Directive.
4. To reform migration laws in order to protect victims of forced marriage by:
 - a) granting the victim a residence permit which is

independent from their spouse's, regardless of events concerning their marriage (annulment, divorce etc.);

b) not deporting the victims of forced marriage;

c) granting victims a renewable residence permit on humanitarian or judicial grounds;

d) favouring a voluntary resettlement in their state of origin;

e) recognising a clearly forced marriage as a reason for applying for refugee and asylum status in the host country;

5. To reform civil protection orders with the purpose of protecting victims from further unlawful pressure.

6. To secure the extra-national prosecution of this crime and preventive actions, taking into account that forced marriage is commonly carried out by forcing the victim to travel abroad or preventing that person from returning to the host country. Legal measures should be accompanied by specific training to embassies, consulates and public officers working abroad and dealing with potential

victims or victims of forced marriage.

In order to improve the local and national *response* to forced marriage, a series of actions is needed:

1. Training for professionals working in the protection system, law-enforcement agencies and the judiciary, Police forces, in social and health services, in education, children and minors' care agencies, as well as in NGOs and non-profit organisations in the field of women's rights, gender violence, migrants and children.

This training should at least include understanding the definitions of forced marriage, arranged marriage and fraudulent marriage; the prevalence and the most common communities where it is practised; the key motives for a forced marriage and additional risk factors (taking into account the lack of a prototype of victim of forced marriage) and potential warning signs or indicators to assess the risk of forced marriage; the contact details of agencies to which victims can go to; and methodologies and tools to work with victims and potential victims.

2. Specific legal training for all those involved on the legal changes and the consideration of forced marriage as a form of trafficking in human beings, a form of gender-based violence and, when applicable, as a separate crime of aggravated coercion.

3. Specific legal training for all those involved on the specific problems and difficulties when the victim of a forced marriage is a minor, in particular public institutions in relation to safeguarding and promoting the welfare of children. Such persons and bodies include local authorities, police authorities and chief officers of Police and youth offending teams, Children and Family Courts and support services and children's shelters, and any third parties exercising public functions on behalf of those persons or bodies (NGOs and other public administrations).

Training should ensure that those involved understand that in cases of forced marriage it is important that agencies do not initiate, encourage or facilitate family counselling, mediation, arbitration or reconciliation. There are real risks that individuals could be murdered

by their families during mediation. Mediation can also place the individual at risk of further emotional and physical abuse.

4. Prevention in schools by increasing the awareness of teachers and informing students as well as their families; it is important that prevention activities are designed in collaboration with organisations working with (potential) victims and affected communities.

5. Strengthening of local networks for action against gender-based violence, extending their field of intervention to forced and early marriages.

6. Provide sufficient economic resources to allow the inclusion of the prevention of forced marriage into the national and local networks of NGOs and agencies working in the field of gender violence.

7. Increase the number of women's shelters for victims of gender-based violence, adapting resources to victims of forced marriage. Special centres should be created for the cases of minor victims of forced marriages.

8. Ensuring that the prevention and intervention approach

of forced marriage by the local networks includes legal counselling, psychological support, coverage of housing and economic needs, secure education (primary, secondary or higher education if the victim is already at university), health needs, childcare and assistance to victims abroad.

9. Elaboration of protocols of prevention, protection, prosecution and intervention on forced marriage to effectively coordinate a multidisciplinary approach towards forced marriage by the Police, the judiciary, educational, health and community services, NGOs and gender-violence agencies. These protocols or guidelines should be elaborated at local and national level and be sufficiently coordinated to avoid unnecessary duplication. These protocols must include arrangements for sharing information, division of roles and responsibilities among the different stakeholders and arrangements for making referrals including, where appropriate, the Police, social care services, health and the courts.

Those involved must understand the difference between breaking confidence (involving the family without the

individual's consent) and sharing information with other professionals to protect the individual from significant harm. These protocols should also include clear instructions on when disclosure should be necessary to safeguard or to prevent a serious crime. Protocols should equally provide guidance on how to assess the level of risk for a (potential) victim and provide appropriate guidance on actions to be taken according to each level of risk that is identified.

10. Information and awareness-raising campaigns targeting victims and potential victims, based on an intercultural approach that avoids stereotypes and any ethnicization of violence.

11. Compiling a forced marriage handbook or guidelines available on the Internet, via social networks and free hard copies, including information and advice for victims or potential victims of forced marriage about legal possibilities (criminal, civil, foreign law, and different forms of violence against women), existing housing facilities; economic resources and benefits available, education support services available, health support and assistance available abroad.

12. Conferences and seminars on forced marriage, to be organised at national, regional and local level in partnership with women's organisations, women's shelters and migrant women organisations, to stimulate exchange of expertise and knowledge and to exchange advocacy and training tools between countries.

5. REPORT ON THE EVALUATION OF THE PILOT EXPERIENCE

The general objectives of the MATRIFOR Project were prevention and fight against forced marriage as a form of trafficking in human beings. Among the specific objectives was the development of training and awareness-raising materials specifically addressed to target groups and beneficiaries.

We carried out training and awareness-raising experiences with professionals and students in each partner country.

We organised 12 training sessions with professionals:

- Three sessions in Palermo (organised by Le Onde Onlus - Italy)
- Five sessions in Barcelona (organised by UAB - Spain)
- Four sessions in Flanders (organised by ICRH - Belgium)

We defined a common working method and chose, together with the project personnel, the content to be presented during the training sessions.

During each training session, a short introduction was given to

present the MATRIFOR project and participants were asked to introduce themselves.

This was followed by the presentation of the UE Directive, the Istanbul Convention and the national policies with regard to early and forced marriage and the presentation of national reports and research on forced marriage (produced within the MATRIFOR Project). We also focused on the definition of forced marriage as a form of violence against women.

In the second part of the training sessions, a case study was presented to the participants. The story of Malaika (Annex 1) was read and then discussed in smaller working groups. Each small group, according to its specific skills, was given the task to predict an end of the story and propose a solution in order to solve the problem of violence.

The training was concluded with a plenary debate with feedback from the working groups and final remarks.

A total of 206 professionals were trained, among whom the majority were female (181 female and 25 male).

The split per countries was as follows:

- 53 professionals in Palermo (83% female, 17% male);
- 92 professionals in Barcelona (89% female, 11% male);
- 61 professionals in Flanders (90% female, 10% male).

In the three countries the professionals involved in the training programme belonged to different categories.

In Spain the professionals were consultants on gender issues, lawyers, doctors, educators, inter-cultural mediators, journalists, researchers, teachers, policemen and women, psychologists, social workers, immigration professionals, sociologists, students, equality professionals, social service professionals, social policy professionals and gender-based violence experts.

In Italy the participants were social workers, psychologists, psychotherapists, women's shelter employees and local police officers.

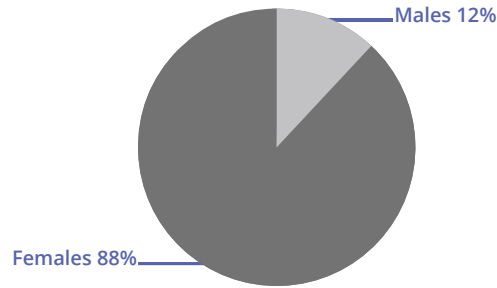
In Flanders the professional groups comprised social workers, policemen and policewomen, intercultural mediators, integration and citizenship department officers, students,

youth care support team workers, youth welfare workers, migrant support team workers, women's shelter workers and youth workers.

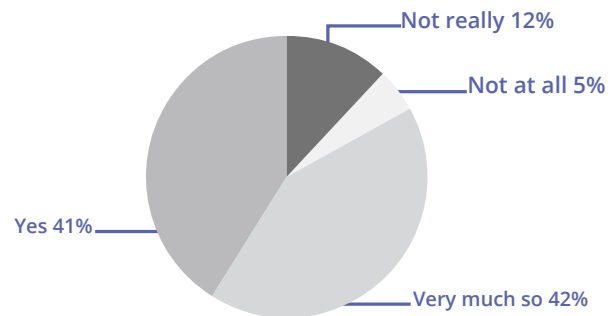
In each training session, an evaluation questionnaire was handed out. Not all of the questions were answered by the participants and not all of the forms were returned. However, the majority of participants returned the questionnaires after each training session and replied to nearly all the questions.

Professionals involved in the training had little previous information on the issue of forced marriage. The question 'What did you expect to gain from the training?' showed lack of knowledge in dealing with situations involving women victims of forced marriage. Many trainees expected to receive some kind of information about early and forced marriage, services supporting women victims of violence, intervention guidelines and new research findings.

At the end of the training we asked, 'How do you evaluate the overall training module?' Overall, the participants rated the training sessions as 'very good'. Most of the professionals involved considered the training as 'very good' or 'good'. Only two participants scored it as 'not very good'.

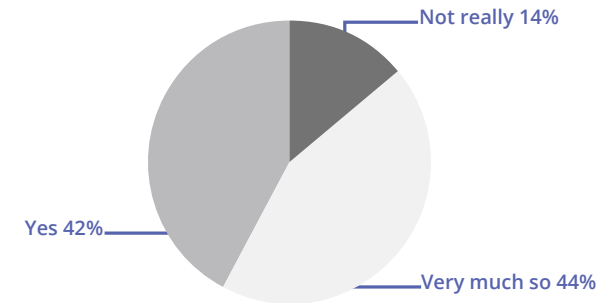


In order to assess the effectiveness of the method we used, we handed out a post-evaluation questionnaire on some aspects of the training programme. The overall participants evaluated positively our methodology, especially with regard to the analysis of the case study and working groups. In particular, we asked whether they considered the content interesting. Only 19 people answered 'not at all'.

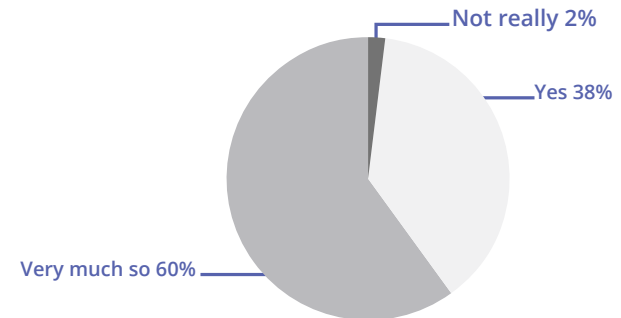


We also asked whether they considered the training programme

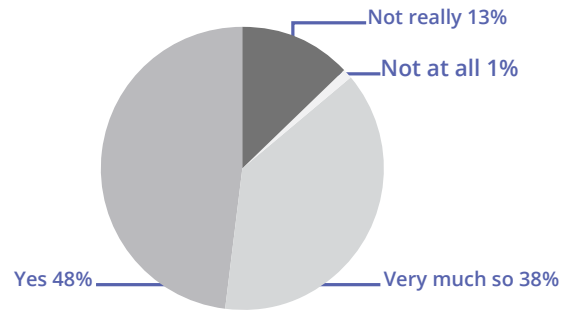
interesting for their practice. A total of 86% answered that training about forced or early marriage was relevant for their day-to-day work.



Almost all the participants (98%) thought that the presentation of the topics was easy to understand and that the training was well structured.



Most professionals thought there was sufficient time to address the issue.



At the end of the methodological assessment the participants were asked which of the topics or activities in the training were less important and which were more interesting for them.

The use of case studies or real case simulation was considered the most effective tool for effective learning, while the theoretical lessons, in which we also reflected on the aspects regarding the relationship between men and women and the female role in different cultures, were less appreciated.

The information on EU directives and national legislations provided in the training programme were recognised as useful in their daily work. At the same time, legal insights and information about services involved in case of forced marriage were needed. Professionals required practical tools and instruments on how to deal with forced marriage, such as guidelines, risk

indicators, referral procedure, etc. They experienced difficulties in recognising what their role or their service should be in these situations. As a matter of fact, during the training activities in Catalonia and in Belgium (i.e. countries where procedures and/or national action plans do exist) the operators' attitudes were similar to the participants in Italy, where there is a total lack of legislation and specific intervention on this subject.

Many of the participants highlighted the importance of prevention and the role of the support services. Everybody agreed on the importance of preventive actions to be carried out in schools with boys and girls and the importance of working together with migrant communities.

The project partners shared the objectives and topics of the awareness-raising meetings. Each partner then assessed the target to address, depending on their own expertise and local network.

Meetings were organised to raise awareness on forced marriage with professionals from different fields such as: international NGOs (European Women's Lobby, Amnesty International), NGOs on women's rights, federal authorities working on justice, equal opportunities, asylum, migration and regional

authorities, officers from city municipalities, police officers, politicians, academics, students, mediators working with local communities, psychologists and teachers.

The awareness-raising module focused on child and forced marriage, stereotypes related to gender and immigration, profile of potential victims and the results from the fieldwork of the MATRIFOR Project.

In Belgium, ICRH organised a large awareness-raising session with 163 participants. The seminar was very successful as proven by the media attention it received: radio, television, online news sites and newspapers. This media attention was also positive to highlight the results of the fieldwork of the MATRIFOR Project.

In Palermo Le Onde Onlus carried out awareness meetings for school teachers and students (aged 14 to 17) as it was considered important for the school personnel to be well informed about forced marriage in order to be able to help students who are victims or potential victims of forced marriage. Students should trust that the school would take their worries seriously.

At the school meetings, in addition to the issue of forced marriage, there was also talk about other topics, such as stereotypes related to gender and immigration, deconstruction of gender stereotypes, transformation of roles and gender patterns, and also about gender-based violence.

All the participants in the school (53 students aged 14-17, of which 27 were male and 26 female) appreciated the activities very much and thought that participating in awareness meetings on this issue at school was very useful. Above all, it was the girls who said they were happy because if they ever had to deal with situations of violence, they would know what to do and whom to ask for help.

The suggestions made by the operators in training were a positive response to this preventive action carried out in schools.

The hypothesis of the project, i.e. to work on two substantive actions, operator training and preventive measures with boys and girls as well as associations of migrants, was confirmed.

Annex 1

Case Study - Life story of Malaika

Malaika is 23 years old and was born in Barcelona, where she now lives. Her parents' country of origin is the Gambia. She has four siblings: a 26-year old brother and three sisters aged 16, 13 and 3. Before becoming a victim of a forced marriage, she suffered other forms of violence, such as female genital mutilation as well as psychological, physical and financial violence. She was the victim of female genital mutilation during a trip to the Gambia but nobody knew what happened.

Her parents tried to get her married when she was 13 years old but eventually they did not do it. She described her experiences as follows:

The custom is that when a girl starts menstruating she is ready to get married and her parents are the ones who choose the man for her. They normally try to choose someone within the family - a relative, such as a cousin, to strengthen the family ties somehow. So, when they find someone they prepare the dowry and things which the husband has to give to the bride's parents: goats, money, jewellery and so on (...). My father took me to his bedroom and said to me, 'You must marry this man'. He asked me, 'Do you want him?' and I replied, 'No'. This time he said rudely, 'Grandmother likes this man a lot, you have

to marry him', and I said, 'Yes' and he replied, 'Very well'. He left the room and the conversation was finished. If I had said no again, who knows what could have happened to me. And everything was happening behind my mother's back and this saved me. Afterwards, she asked me, 'Did your father tell you everything?' and I answered, 'Yes' and she went to talk to him and eventually I did not marry (...). They wanted me to get married when I was 13 but they realised I was too young to get married here in Spain, and I wanted to study, and miraculously it was cancelled (...). When I was 19-20 years old, they returned because I was getting old (...). Since I was studying, things got a little bit delayed, but it came to a point where I was too old and they told me, 'Your husband will decide if you continue studying or not', because a daughter is a burden and being married also produces benefits for them... I mean that in the end you are worth as much as a goat in all this!

Malaika's parents tried again to make her marry when she was 19 years old. This is how she told us about it:

This man came every Sunday. He was perhaps 20 or more years older than me! (I was 19 years old at that time). We were sitting down with my parents. This man came with two friends and they stayed for dinner. I was supposed to serve water or whatever he asked me for and I had to sit beside him. There was zero communication, we did not talk at all! Only at the beginning, there was a 'Hello, how are you?', 'Fine', and that was it. Then, he brought me some presents, you see, rubbish I did not want. He made me sick! He came over for three Sundays and on the third one he gave me a fruit called 'gurú', there is no

equivalent here, it is a dried fruit that you chew. Then you have to share it to show that you have accepted it. Then the man leaves, he has to give the dowry, whatever the men have agreed on. And that's it! So they agree on the date of the wedding, then it takes place. And you have nothing to say or decide with a man who has sat beside you three times in silence and that's it.

In both cases, at 13 and 19, her parents wanted to marry her to a black Muslim man, she was not allowed to marry a Catalan white man. Also, he was about 20 years older than she was and also a relative of hers:

He was in his 40s..., old, with wrinkles, white hair... I was shocked! I was horrified! I said: I can't, I can't (...) In this case this man was my cousin, so it was a good marriage. They also look for this. If there is a chance to have two cousins of the same age and both young they want to strengthen the family ties.

Her parents did not ask either about her opinion or wishes. On the contrary, they told her to be nicer to him and to stop 'pouting'. They even beat her up once because of that:

I was impertinent even when I knew that this was going to cause me problems afterwards, but I didn't care. I thought, 'Let's see if I disgust this man and he desists' ... (...) I also suffered other things when I was a child and when I turned 18 and I could

leave the house, they said, 'No, now you have to stay here and marry the man we want for you'. Before, your parents used to decide for you, from now on, your husband will decide for you. So what kind of life shall I live if there is always someone giving me orders simply because I am a woman?'

In her view, Gambian families continue to get their daughters married even if they live in Catalonia because they follow their original traditions, since the opinion of others are very important for them. Furthermore, their communities put the girls under pressure. Malaika states that many of her friends who are minors are forced to get married, even if they cannot register their marriages until they become 18 years of age. Some of her 20-year old friends already have two or three children.

With regard to divorce within her community, Malaika says, 'Marriage is forever. Men can marry three or four women, though (...) If they beat you, you must have done something bad and you must be guilty somehow because you are a woman'.

Malaika defines forced marriage as follows:

For me it is a violation of human rights because a marriage should be a happy event and not an extension of suffering, a deprivation of freedom, leaving you with no option for the future (...) A crime. A crime, and it is a pity that people tolerate

it and women are not able to escape from it, because there are no ways of escaping from it.

Besides suffering two attempts of forced marriage, she was controlled on a daily level in all areas of her life:

There is a total lack of freedom. When I was a child, all I was allowed to do was to go from school to home and from home to school. They never gave me a mobile phone or access to the Internet.

Moreover, there was an unequal treatment between brothers and sisters.

My bedroom was next to my brother's, and he had a mobile phone and Internet, but only in his bedroom. If I had to prepare some homework and I needed to use the Internet I had to go to my brother's bedroom, and my brother would look after me to verify I was really using the Internet for school. And in doing so, they prevent you from becoming mature, because I didn't know how to write on a computer until I went to the university. Really bad! Yes, they try to isolate you to prevent you being aware of what was going on, but you are already here!

When she was 19 years old, she was attending her first year at the university and she asked the help of a lecturer who talked about female genital mutilation during class. She thought she

could help her to escape and that was indeed the case. That lecturer helped her to apply for social services payments, a place to live and to look for a job to achieve financial autonomy, although she did not receive any specific support for victims of gender violence.

Leaving her family and community had consequences for her:

I am an outcast, I'm like the bad girl in a film. It is difficult for me to say what I am going through because of the emotional bonds with my family. For me, saying that my father has done this to me is something really bad, to betray him is something very serious. It is anti-natural to do it, and if you finally do it, you'd better not come back.

She sent a specific message about what she went through to other girls suffering from a similar situation:

(They need) all the strength of the world, they have one life ahead, they only have one life and they must enjoy it... They must fight, not be buried alive. Don't be dominated by fear! It is true there are not many resources. I found a social programme to live with an old lady and then I was really lucky to find a job, but how many of these girls study? How many of them get to attend the university? (...) We have to send them a message about the fact that there is a way out from where they are living, because when I left my home I thought I was going to be alone and live under a bridge'.

When we asked Malaika whether she would have done the same again, she answered:

Yes, over and over again! It isn't possible, it is like dying alive. You have to be with a man who rapes you, because at the end of the day he rapes you, you have children, and these children are the product of a rape, who knows how you will treat them because if you don't love them... Then the story repeats itself. Did my parents treat me this way, especially my mother, because they did the same to her? I will never know.

In relation to the pending trial against her aggressors (her mother and father) she says:

I would like to add that I asked for a screen to protect me when making a statement because I didn't want to see my parents' face and the judge said that he wanted to see the victim's face while looking at her aggressors, and I told him, 'What do you want to see? My face full of horror? Traumatise me again? I am telling you, I am terrified of seeing them again! I can't believe it. (...) I don't know whether they will be finally convicted or not. Many things happened to me: broken legs, torture... things like that.

Malaika had medical reports of the physical violence she had suffered but she was always accompanied by her parents when going to the doctor's or to the hospital. Her parents used to tell

the doctors that their daughter had fallen down or had had an accident. The medical staff never paid attention, they were not interested in it.

Malaika cut off any relationship with her parents and submitted a legal complaint to the police in order to make her sisters leave the house. Her two sisters, 13 and 16 years old, live under the responsibility of a guardian in a minors' centre. Malaika is financially independent and continues to study at the university and works full time. She is a happy woman.

During the trial, her lawyer recommended she only charged her parents for the two crimes she had evidence of: physical beating that had caused two injuries. Both parents were accused of that.

The lawyer also claimed that both sisters were at risk of suffering female genital mutilation (they proved Malaika suffered it as a child, therefore there was a high risk for her sisters of going through it).

All the others forms of gender violence she suffered were not admitted because there was no evidence. The female genital mutilation had taken place a long time before and the crime

had lapsed and there was no evidence for the attempt of forced marriage.

The final sentence was a result of an agreement between lawyers. The trial never took place because Malaika did not want to see her parents again and the judge refused her request to have a screen into the courtroom to avoid visual contact with them. Her father has a restraining order until 2019 and her mother has a restraining order until 2017. Malaika is extremely disappointed with the justice system in general.

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RESUMEN PROYECTO MATRIFOR ESPAÑA

“Los matrimonios forzados como una nueva forma de trata de seres humanos”

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1. Introducción

El proyecto MATRIFOR ha estudiado el fenómeno de los matrimonios forzados en los tres países participantes en la investigación: España, Bélgica e Italia. El objetivo era analizar los matrimonios como una nueva forma de trata de seres humanos.

Para ello se han estudiado las características de los matrimonios forzados en los países participantes para poder entender mejor los factores que intervienen; los perfiles de víctimas y en la medida de lo posible indicadores de que permitan identificar los casos de matrimonios forzados. También ha sido objeto de la investigación la identificación de los principales obstáculos y dificultades en la utilización de instrumentos legales en la prevención y actuación frente a los matrimonios forzados.

Igualmente se ha analizado la trasposición en relación a los matrimonios forzados de la Directiva europea 2011/36/EU Parlamento Europeo y del Consejo, de 5 de abril de 2011, relativa a la prevención y lucha contra la trata de seres humanos y a la protección de las víctimas y por la que se sustituye la Decisión marco 2002/629/JAI.

Y también se han propuesto mecanismos legales y políticos específicos para conseguir la transposición de la anterior

Directiva europea; y materiales de formación y sensibilización sobre los matrimonios forzados especialmente dirigidos a la población implicada y a los profesionales involucrados.

Además de la información que se recoge en la publicación final del proyecto, que analiza de forma comparativa los resultados de la investigación llevada a cabo en los 3 países participantes, el presente resumen, pretende señalar los aspectos más importantes de la investigación en España.

2. Marco legal sobre los matrimonios forzados en España

Los matrimonios forzados recientemente se han convertido en un delito en el ordenamiento jurídico español gracias a una reforma del Código Penal que ha entrado en vigor el 1 de Julio del 2015. Los matrimonios forzados están tipificados actualmente como una forma de trata de personas en el artículo 177 Bis del Código Penal y como una forma agravada de coacción en el artículo 172 Bis del Código Penal.

Esta doble criminalización resulta confusa y será necesario esperar a cuál es la aplicación de estos dos artículos por parte

de jueces y tribunales. Una posible explicación de esta doble tipificación es que responde por un lado, a las obligaciones del Estado español en la transposición de la Directiva [2011/36/UE](#) del Parlamento Europeo y del Consejo, de 5 de abril de 2011, relativa a la prevención y lucha contra la trata de seres humanos y a la protección de las víctimas y por la que se sustituye la Decisión marco 2002/629/JAI. Y por otro lado, a los compromisos adquiridos bajo el Convenio del Consejo de Europa sobre prevención y lucha contra la violencia contra las mujeres y la violencia doméstica (Convenio de Estambul) que fue ratificado por España en 2014, y cuyo artículo 37.1 obliga a tipificar los matrimonios forzados como una forma de violencia contra las mujeres.

La tipificación como forma de trata de seres humanos conlleva unas sanciones más graves (de 5 a 8 años de pena privativa de libertad) pero exige que se den los requisitos de la trata: la utilización de violencia, intimidación, fraude o abuso de una situación de superioridad o de necesidad o de vulnerabilidad de la víctima; y la entrega o recepción de pagos o beneficios.

Además si la víctima de matrimonios forzados es reconocida como víctima de trata, podrá recibir especial protección durante el juicio, según el nuevo Estatuto de la Víctima.

Durante la investigación llevada a cabo durante el proyecto MATRIFOR, no existía la tipificación penal de los matrimonios forzados en España. Aun así, si que existían otros delitos que podrían aplicarse a algunos de los comportamientos comunes en los matrimonios forzados: delito de detención ilegal (artículo 163 del Código Penal); secuestro (artículo 164 y siguientes del CP); amenazas (artículo 169 del CP); coacciones (artículo 172 del CP); el delito de tortura u otros delitos contra la integridad moral (artículo 173 del CP).

Igualmente algunos comportamientos inherentes a los matrimonios forzados podrían constituir un delito de agresión sexual (artículo 178 y siguientes del CP); abusos sexuales (artículo 181 y siguientes del Código Penal) o un delito de violación (artículo 179 del CP).

También podrían considerarse un delito de injurias (artículos 147 y 148 del CP), o en los casos más graves, un delito de homicidio (artículo 138 del CP) o asesinato (artículo 139 del CP).

Más allá de la legislación penal, existen otras disposiciones legales aplicables en los casos de matrimonios forzados. En primer lugar la legislación sobre extranjería establece la posibilidad de reagrupar a los familiares, entre ellos al cónyuge

que viva en terceros países. La Ley Orgánica 4/2000, de 11 de enero, sobre derechos y libertades de los extranjeros en España y su integración social, establece ese derecho de reagrupación familiar para los extranjeros que residan legalmente en España con un permiso de residencia y trabajo de al menos 1 año más de duración (artículos 16, 17 y 18).

En principio, los familiares reagrupados obtienen el mismo permiso de residencia (y por el mismo tiempo) que el extranjero que les ha reagrupado. El cónyuge reagrupado podrá obtener su propio permiso de residencia cuando ella/él pueda probar que cuenta con recursos económicos suficientes para mantenerse.

En el caso que una esposa reagrupada sea reconocida como víctima de violencia de género, no es necesario que acredite dicho requisito económico. Podrá obtener un permiso de residencia y trabajo independiente cuando el Ministerio Fiscal aprueba una orden de protección o elabore un informe que acredite suficientes evidencias de violencia de género. A pesar de ello, esto no puede aplicarse a las víctimas de matrimonios forzados, porque la legislación estatal sólo reconoce como violencia de género, la que tiene lugar en el ámbito de la pareja (Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género).

También existe la posibilidad de obtener un permiso de residencia y trabajo independiente para las víctimas de trata (artículo 59 bis). En este caso, las víctimas de matrimonios si que podrían beneficiarse si han sido reconocidas como víctimas de trata según el nuevo artículo 177 Bis del Código Penal.

Igualmente de acuerdo a la legislación española sobre asilo, las mujeres víctimas de matrimonios forzados podrían beneficiarse de la Ley 12/2009, de 30 de Octubre que regula el derecho al asilo y protección subsidiaria.

3. Características de los matrimonios forzados en España

Del trabajo de campo realizado en España durante el proyecto MATRIFOR¹, podemos extraer algunas conclusiones sobre las características de los matrimonios forzados en España.

1. Se han entrevistado a 20 profesionales del ámbito de la administración pública y de la sociedad civil, con responsabilidades sobre matrimonios forzados o contacto directo con las comunidades implicadas. También se han entrevistado a 11 víctimas de matrimonios forzados.

3.1. Significados de la institución matrimonial

La institución matrimonial tiene diferentes significados para las personas entrevistadas, según la comunidad de origen, y la edad de la persona implicada. Para algunas comunidades el matrimonio significa una forma de mejorar de las condiciones de vida y posición económica para la joven (y para toda su familia), tal y como describe esta mujer marroquí:

“Mis padres tenían una imagen que yo iba a mejorar, por los papeles. Cuando él me pidió el casamiento y yo dije que no. Me dijeron gritando: <<¿por qué no quieres este chico? ¿Tienes otro?>> Sentía rabia, porque no confiaban en mi. Me enfadé y lloré. Nos hicimos novios, pero le dije <<no me gusta>>” (W1- mujer marroquí)

Para otras comunidades, el matrimonio es la única opción cuando una niña es fértil, como describe esta mujer Gambiana:

“Allá existe la costumbre cuando una niña tiene la primera regla que ya estás apta para casarte y entonces son los padres quienes eligen con quien. Normalmente para hacerlo bien eligen a algún familiar, primos, para fortalecer la familia de alguna manera. Entonces cuando se encuentra a alguien se hace la dote que es cuando el marido tiene que pagar algo a los padres, ya sean cabras, dinero, vestidos o joyas. Me querían casar a los 13 pero vieron que era joven para aquí, y yo quería

estudiar, y milagrosamente se anuló. Cuando cumplí los 19-30 años volvieron a retomar el tema porque yo ya era “vieja”” (W3- mujer gambiana)

La institución matrimonial además tiene un sentido más colectivo que individual. Y las razones por las que se celebran los matrimonios pactados o forzados son diversas: para preservar la identidad cultural, para reforzar la cohesión social de la comunidad, para crear lazos de solidaridad entre familias, para preservar el honor familiar, la religión, etc.

“El concepto de matrimonio para nosotros es que es la unión entre dos familias, no la unión de dos individuos” (A13 – mediador sij)

“Son diversos los motivos por los que estas familias deciden hacer estos matrimonios. A veces es un pacto de alianza entre grupos, a veces si es el caso de familias que han emigrado es como la reafirmación de pertenencia a una cultura aunque estén lejos, es como que te estás justificando diciendo a los otros: no, estoy lejos pero todavía estoy preservando la tradición como se ha hecho siempre en la familia. A veces también puede ser que cuando ven a su hija, por ejemplo, que tiene un novio europeo o de otro origen, es como que: uy! Se me escapa! Se me escapa la niña!, y entonces el matrimonio es como retornarla al mejor camino y evitar el deshonor en la familia, porque no se tiene que olvidar que a veces en la

cultura africana existe esta idea de pertenencia de los hijos: los hijos te pertenecen, y entonces yo puedo decidir sobre su futuro y sobre su destino, no? (...) Y después está lo que antes te decía, aunque son casos muy raros, que cuando ven que un chico puede ser homosexual y entonces: uy, uy, uy, esto no puede ser! Y entonces los casan, pero no se hace con malicia. Lo hacen por respetar la tradición, la cultura, y a veces, es por miedo” (A20 – mediadora senegalesa).

Algunas de las mujeres entrevistadas, especialmente aquellas nacidas en sus países de origen ni siquiera pensaron en un matrimonio diferente a los matrimonios pactados. Los matrimonios pactados son parte de su cultura, de su identidad y de la tradición.

“Porqué de pequeñas se nos ha educado de esta manera. Que las chicas no tienen derecho de hablar. Decisiones importantes de su vida, las tienen que tomar los padres. Entonces, como de pequeña te meten en la cabeza: tú no, tú no, tú no; entonces a la hora del matrimonio a ella le da igual. Dicen vale, mis padres dicen que me tengo que casar con... pues me tengo que casar y punto.” (W5 – mujer pakistaní)

Para algunas de ellas los matrimonios pactados no tienen una connotación negativa, siempre y cuando exista una cierta libertad del novio o la novia para rechazar candidatos buscados

por la familia. Aunque incluso en estos casos, reconocen que existe un cierto límite, no se pueden rechazar candidatos ilimitadamente e incluso en las familias más abiertas, tras 5-6 candidatos tienes que aceptar uno de ellos.

“Lo hablo con mi madre que es la portavoz y ella se lo comunica a mi padre. Mi madre, por ejemplo, cuando, tenemos las discusiones, yo a lo mejor se lo ablando un poco [...] <<oye, que no me voy a casar con un chino>> porqué esto les sienta como una patada y ya empiezan a gritar. Entonces para que se queden un poco más tranquilos, aunque seguramente no vaya a pasar, siempre les digo que: “hay un 50% de posibilidad que me vaya a casar con alguien que sea chino y otro que no”. Pero no aceptan ese 50, aunque para mí se a un 99,9 que no me vaya a casar con un chino. [...] <<al final no me voy a casar. Prefiero no estar casada que estar casada con alguien que no quiero!>>. Y eso es peor aun.” (W10-mujer china)

“Puede que haya padres que si tu dices “no quiero, no quiero” entonces no se celebre...pero quizás te traigan un segundo, o un tercero, pero si tu dices a todos que no....(...) Exacto. Siempre te acabarás casando con alguno, no puedes quedarte sola, soltera, no puedes elegir con quien te casarás, no es un derecho para ellos. Y lo es” (W3-mujer gambiana)

Quienes consideran los matrimonios pactados lícitos defienden que es una forma diferente, pero no peor, ni mejor de construir

un matrimonio. Sus culturas consideran que la institución matrimonial es tan importante para la familia como para la comunidad, y que por tanto no puede dejarse en manos de un factor tan impredecible y voluble como enamorarse de alguien. Los padres que quieren lo mejor para sus hijos, buscan el mejor candidato para su hija: un buen chico de una familia conocida, con la misma religión, trabajador y de buenos sentimientos. Esto asegurará un matrimonio feliz y exitoso, una buena relación entre las familias y mayor cohesión social. Cuando son los padres quienes buscan una buena novia para su hijo, también buscan una buena chica, de una buena familia, alguien que sepa cocinar, cuidar de la casa, que esté sana y que seguramente pueda tener muchos hijos.

“Desde pequeño te han educado así porque tu madre o tu hermana te dicen: “cuando seas grande, yo te buscaré una novia”. Y tu te vas mentalizando que no es una cosa tuya, que es cosa de tu familia buscarte una esposa ideal: tienen que ver si sabe cocinar bien, si sabe estar, si sabe hablar y comunicarse, si tiene o no estudios (...) si es de buena familia... de estas cosas se encarga tu familia. Así que la familia juega un papel importante a la hora de escoger el chico y el chico desde pequeño acepta este rol, y es consciente del sacrificio, de las competencias que tiene cada familia y entonces acaba aceptándolo” (M8- hombre pakistaní).

“En Pakistán, es un modelo que está bastante generalizado en todo el territorio de Pakistán (zonas urbanas) [...] los chicos/as jóvenes lo que hacen es delegar su capacidad de escoger un chico/a a su familia, son ellos los que te buscan la persona y te van diciendo “este te gusta? Este no te gusta?” y tú eres quien tienes la decisión final (...) En Pakistán nos casamos mucho con primos directos...por factores económicos, sociales y otros... [...] Yo no lo veo como un matrimonio forzado, un matrimonio que va en contra de tu voluntad [...] el rol de la familia es muy importante, tú has visto que tus padres han hecho muchos sacrificios por ti, muchísimos. En el caso de mi padre se va a jugar la vida por mí. Todos los chicos de Pakistán que conozco que ahora estamos aquí, todos sus padres han hecho grandes sacrificios y la madre los ha cuidado también muchísimo y llega el momento de escoger la novia o la esposa y tu lo que no puedes decir es “ esta es mi vida, aquí sólo yo tomo decisiones, y vosotros no tenéis ningún tipo de autoridad para intervenir en mis decisiones personales, sólo estoy yo y yo solo decidiré”, eso está muy mal visto, además es una falta de respeto hacia la familia, hacia tu entorno, hacia tu cultura, y también un poco una negación de los sacrificios que han hecho tus padres. Además tiene sus consecuencias también.... [...] Así que tú te vas mentalizando que no es una cosa tuya, que buscarte una esposa ideal es cosa de la familia: tienen que ver si sabe cocinar bien, si sabe estar bien, si sabe hablar y comunicar bien, si tiene o no estudios” (A14 - mediador)

“Todo el tema del enamoramiento y el amor en África es un poco diferente. Enamorarse es una cosa pasajera y esto no puede ser el motivo para formar una pareja y casarse, si es

una cosa pasajera, con esta base no puedes formar una cosa que es muy seria. Se trabaja desde otro punto de vista, que el amor lo puedes construir. Si yo y otra persona decidimos formar una familia, con el tiempo, nuestras cosas, nuestros hijos, y con el tiempo nos acabaremos queriendo, respetando y cuidando el uno del otro y esto si que es amor” (A2-técnica de inmigración).

En algunas culturas, el estar casada es el único estado civil permitido a una mujer, la única forma de estar en sociedad. Incluso en algunas comunidades, como la gitana, no eres plenamente adulta hasta que no tienes tu primer hijo/a.

“En el tema del matrimonio dentro de la comunidad gitana, no se te considera una persona adulta hasta que no tienes tu primer hijo. A raíz de ahí la importancia que tiene el matrimonio, es brutal, es un peso que tienes que ser una persona muy madura para llevarlo bien.” (A5 – ONG gitana)

3.2. Las celebraciones matrimoniales

Algunas comunidades celebran los matrimonios en sus países de origen porque resulta más barato ya que todos los familiares están ya allí (por ejemplo las comunidades pakistaníes o indias). Otras veces lo hacen porque es una forma de consumir un

matrimonio forzado, porque la novia es demasiado joven de acuerdo a la legislación española o porque se trata de la segunda o tercera mujer y la poligamia está prohibida en España.

Algunas de las mujeres entrevistadas distinguen de nuevo entre los matrimonios pactados y los matrimonios forzados. Los matrimonios pactados es una forma legítima de encontrar un marido o esposa, respetando los deseos de los padres, la propia cultura o religión, ya que los chicos y chicas no puede salir como la juventud occidental para conocer a alguien para casarse.

“Las mujeres, los chicos y las chicas, no se pueden conocer de cualquier otra manera, entonces, muchas veces ¿qué pasa?, que si que es verdad que los padres dicen: ¡mira!, yo tengo una hija que es muy mona, que no sé que, que no sé cuantos. Y el otro: ¡ah!, ¡pues yo también tengo un! hijo, ¿por qué no los presentamos y a ver si se gustan y se casan? Hasta eso es una cosa, y que el matrimonio se haga en contra de la voluntad de la persona es otra cosa.” (W2 – mujer marroquí)

Ya se ha visto que en algunas comunidades, o dentro de una misma comunidad, en ciertas familias, se concede un cierto margen de elección de la novia/o, que puede llegar a rechazar algún candidato que la familia propone. Pero en otras

comunidades, es más frecuente que los padres o los familiares impongan un candidato, generalmente más mayor que la novia.

“Los domingos venía este señor, que debía llevarme unos 20 años! (eso a mis 19 años). Nos sentábamos allá con mis padres, venía este señor con dos amigos suyos y se quedaban a comer, por ejemplo. Entonces yo tenía que servir el agua, o cualquier cosa que me mandaran y tenía que sentarme a su lado. Comunicación cero, no hablábamos de nada! Sólo al principio “Hola, ¿cómo estás?” y “Bien” y ya está. Él me traía regalos. Ya ves, una mierda, yo no los quería! Me daba asco! Vino tres domingos. Y en el último, el tercero, se da un fruto seco que se mastica...y se reparte para mostrar que se ha aceptado. Y ya esta! Entonces se decide la fecha y ya te casan. Entonces él se va, tiene que dar la dote, lo que hayan pactado los hombres. Y tu ni pinchas ni cortas con un señor que has estado 3 veces así (quieta a su lado) y ya está. – Tus padres no te van a preguntar si te gustaba?- Todo lo contrario ; “¿Porqué no has estado más simpática?” o “Quita esa cara de perro!”. Hasta me pegaron una vez. Yo me puse super chula aunque luego sabía que me iba a caer la del pulpo, pero no me daba la gana. Pensaba “ a ver si le doy asco a este hombre, a ver...y marcha” (W3 – mujer gambiana).

“No me voy a casar queriendo. Me dijeron que venía a estudiar, para seguir los estudios aquí y cuando llegué no fue así. Me tenían preparado un matrimonio y yo intenté decir que no, de todas las maneras posibles pero fue imposible y me casaron. (...) Con un hombre de otra familia que ya estaba aquí. Él tenía

33 años y yo 14 (...) yo llevaba aquí solo una semana y solo conocía a mi primo. Mi primo vivía con una familia y la mujer de esta familia era prima lejana de mi familia. Vivíamos con ellos. Cuando llegamos aquí me tenían preparado un matrimonio, pero al final con un hombre que no va a ser (...) El chico con el que habían preparado para casarme al final no me casé con él porque justo antes de venir yo aquí le dijeron que tenía que pagar mi billete de avión y él dijo que no tenía dinero. Yo ya estaba a punto de venir, me trajeron con los papeles de otra chica, no en una patera, pero casi igual (...) como no quería pagar le pidieron a otro, y este otro sería mi futuro marido. Este sí que va a dar una parte del importe del billete y dijo que cuando yo llegara y me casara con él pagaría el resto del dinero. Y claro, cuando yo llegué me quedé sorprendida, yo además quería estudiar, y mis padres me habían dicho que venía a estudiar y cuando me lo dijeron les dije que no quería casarme. No me quería casar porque: 1. No conocía a esta persona y 2. Él era mayor y yo tenía 14 años. Pero sobre todo era porque yo no lo conocía! Y mi primo me dijo que sí, que él no tenía dinero para mantenerme porque yo le dije que quería estudiar y él me dijo que no. Y yo le dije que no quería casarme y estuvimos así 3 semanas. Durante estas 3 semanas enviaron a hombres para hablar conmigo, también a la mujer que vivía con nosotros diciendo que sí, que sí, y yo que no, que no. Y al final me amenazaron diciéndome: “pues ya puedes hacer las maletas que te llevaremos a Senegal” (W6 – mujer senegalesa).

A pesar de que los matrimonios pactados y los matrimonios forzados se practican tanto con mujeres como con hombres, la

prevalencia y la presión es mayor con respecto a las mujeres, y en algunas comunidades, solo se practica con mujeres. Las hijas representan una carga para la familia, así que un matrimonio con un marido rico o bien situado es una buena solución y la única alternativa.

“Al padre no le interesa tener a su hija toda la vida en su casa. Porque lo que le interesa al padre es que su hija se case y esté con una persona que gane dinero, sabes? (...) el hombre que trabaje y traiga dinero al padre, y la mujer no trae dinero a casa. I claro, qué hacen los padres? Pues casarla, porque así estará con un hombre que traiga dinero a casa” (W4 – mujer marroquí).

“Porque yo iba a verla porque era una posible candidata para mi hermano. Y mi hermano se negó, dijo que no le gustaba esta chica. Y como nuestra familia ya había dado su palabra, y a nosotros sí que nos gustaba, y claro, no podíamos decir que no (...) Y mi madre un día me llama y me dice: “Sabes que tu hermano no acepta la propuesta” (...) “Y tú que eres el hijo pequeño qué te parece? Estás dispuesto a casarte con ella?” A mí personalmente esta chica me gustaba y la dije que sí. Otra vez está este concepto de que mis padres han hecho muchos sacrificios, mi vida no es mía totalmente, y mis decisiones tampoco son mías porque dependen de muchos otros factores, y en este sentido dije “si madre, lo que tú quieras”. Si no me hubiera gustado la hubiera dicho que no (...) Y después cuando mi madre me dijo esto, lo primero que hice fue enviarla un

mensaje (conocía su facebook) y la dije: “mira están pensando hacer esto y sinceramente, si tú no estás de acuerdo, no te gusta, pues dímelo y yo diré a mi familia que no me gusta y seré yo el malo”. A mí como chico me afecta pero a un nivel. Además yo era el pequeño y todavía no me tocaba. Yo todavía podía negarme, pero si ella se niega, es mucho peor para ella. Y ella me dijo “Ni antes ni ahora yo escojo. Yo acepto la voluntad de mis padres, mis padres saben lo que es mejor para mí y yo lo acepté antes y lo continuaré aceptando ahora”. Y así fue. Nos casamos y estamos muy contentos y felices” (M8- hombre pakistani).

El candidato tiene que ser alguien de la misma clase social, religión, cultura, raza e incluso área geográfica.

“No de origen chino, ellos no quieren que me busque a alguien de Pekín, por ejemplo, ni de Shangai, tiene que ser del pueblo [...] Porque ellos están tan arraigados, al ser China tan grande, luego al final aunque seas chino, hay mucha diferencia cultural.” (W10 – mujer china)

Aunque la dote es ilegal en la mayoría de los ordenamientos jurídicos de sus países de origen, todavía se practica. Tiene significados diferentes según las culturas. Mientras que para las comunidades africanas representa un “pago” que la familia del novio paga a la familia de la novia por una esposa, en las comunidades del sudeste asiático, es el precio que la familia

de la novia paga a la familia del novio por la nueva carga que mantener.

“Es verdad que todas las mujeres musulmanas que se casan reciben un regalo del marido, normalmente económico.” (W2 – mujer marroquí)

“Hombre, ya por ley está prohibido, pero se siguen haciendo. Te dan todos los muebles de casa, electrodomésticos, todo lo que puede necesitar su hija.” (W5 – mujer pakistani)

Llegar virgen al matrimonio es un aspecto fundamental de la institución matrimonial de casi todas las comunidades implicadas. Si la novia no sangra en la noche nupcial, es acusada de no haberse comportado adecuadamente y de no proteger el honor de la familia.

“Y pobre de ti como no salga bien! Me da mucha rabia, porque mira que son cuadrículados que el himen no siempre sangra y si te toca la putada de que no sangra, pues ya está, ya has hecho algo y eres una puta. No confían nunca en tu palabra. Tienes que sangrar por cojones según ellos, y sino has hecho algo!” (W3 – mujer gambiana).

“Y el tema de la virginidad es un problema muy grave porque hay mucha gente que no es consciente de que el himen se puede

romper en cualquier momento, o sea, es una cosa natural, sabes? Pero claro, como los hombres no son conscientes de eso porque claro, ellos no tienen vagina, y como no pueden sufrirlo, pues la culpa es de la mujer. Tenía que haberse cuidado, tenía que lo otro....” (W4 – mujer marroquí)

En la mayoría de estas comunidades la mujer pertenece una vez se casa a la familia del marido, y en muchas ocasiones vive con ellos. Está obligada a obedecer a su marido, y también a su suegra. Difícilmente pueden visitar o volver a sus familias a no ser que sus maridos las autoricen.

“Yo cuando me casé, viví 3-4 años con la familia de él aquí en España. Teníamos una hipoteca. Ellos eran muchos hermanos en casa, siete hermanos, es mucho, imagínate en la casa.” (W1 – mujer marroquí)

“Te quedas en casa porque tienes que estar en casa, tienes que cuidar de los suegros, si hay hermanos pequeños del novio, también tienes que cuidar. Tienes que hacer todas las faenas de casa, porqué antes no eras de la familia (...) Si se van a casa de ella, ella puede ir unos días, pero el chico no. Entonces él va y la deja a ella, pues un día allí, y luego cuando ella quiera volver él irá a buscarla y ya está.” (W5 – mujer pakistani)

El divorcio tiene una consideración muy negativa en todas las comunidades implicadas. Cuando se produce un divorcio, es a la mujer normalmente a quien se la culpa del fracaso del matrimonio, y ella tendrá un estigma que hace imposible que vuelva a tener otra relación. El divorcio se acepta muy excepcionalmente por la comunidad, y solo en situaciones muy extremas, como por ejemplo, cuando es el marido el que de manera abierta y clara el causante del divorcio.

“De verdad, tienes que respetar mi decisión y ya está. Y mi madre: ¡ai! Y que dirán los de nuestra familia, ninguna sabe que te divorciarás, no sé qué. Y mi madre enferma casi un mes, un mes. Y yo la dije un día: mira mamá esto va en serio, si tu continuas diciéndome aguanta, aguanta, aguanta, sabes qué veras? Tu única hija en un ataúd y a Senegal. Y te dirán: aquí está el cadáver de tu hija. Y uy! Me dijo: qué? Ah si? Haz lo que quieras! (...) si, yo iba en serio, yo no iba a suicidarme ni nada, estas cosas no entran en mis pensamientos” (W7 – mujer senegalesa)

“Tienen que ser razones muy gordas para que se admiten y esté bien vista una separación. [...] Tiene que ser algo muy justificado, que se muy violento para mucha gente para que se bien visto una separación. Pues que tu marido te abandone para otra relación, por otro matrimonio, serian cosas por este tipo.” (W10 – mujer gitana)

“Si el hombre la repugna, él sí que se puede separar, entonces ella se va con los hijos. Si ella se quiere ir, el marido le puede pedir todas las dotes y él se queda con los hijos. Y la familia el divorcio lo ven muy mal y no te ayudan ni te apoyan. Ella sola tiene que pagar la dote que tiene que devolver.” (A6 – ONG subsahariana)

3.3 Factores de riesgo

Entre las personas entrevistadas, destacan como factor de riesgo la falta de educación. Cuando mayor nivel educativo tenga la niña/ mujer, mayor empoderamiento para aceptar o no los candidatos propuestos por la familia.

“También quería contarte que antes de que me quisieran casar estudiaba mucho porque claro tenía la amenaza de que si no era una buena estudiante me casaba ya! Y claro, me jugaba la vida!” (W3-mujer gambiana)

Otro factor de riesgo que se destaca en las entrevistas es la dependencia económica. Muchas mujeres no pueden escapar de un matrimonio forzado, o ni siquiera se atreven a divorciarse de un matrimonio pactado o forzado porque

no tienen herramientas profesionales o educativas que les permita ser independientes económicamente y mantener a sus hijos. En muchas culturas, la división sexual del trabajo es un elemento muy importante de la socialización de género, de forma que las mujeres esperan que sus maridos las mantengan económicamente y se espera que ellas sean las cuidadoras.

“Porque pensaba: <<¿dónde me voy? No tengo a nadie>>. Cuando yo le decía que me iba, me decía que dónde iba a ir, que no tenía nada, que iba a hacer de puta. Yo pensaba que me iría directamente a mi país con mi familia.” (W1-mujer marroquí)

También un factor de riesgo importante es el papel del honor familiar. Aceptar un matrimonio impuesto por tus padres es una forma de respeto a la voluntad de tus padres y una forma de preservar el honor de la familia.

“Pero si dices que no, te sientes culpable porque eres el deshonor de la familia, eres la vergüenza de la familia. Por eso muchas veces cuando te dicen: queremos casarte con un primo de allá; tu todavía en un primer momento puedes decir: ay, mamá, que no me gusta, que no lo conozco. Y bueno, te dirás: ya lo conocerás, no sé qué. Si no lo acepta dirán: ah! Quizás porque no es virgen! Entonces la virginidad de la niña es super importante, porque la niña es como el honor de la

familia, no? Todo eso de la educación que ha hecho la madre hasta los 16 o 17 años se concretará con el matrimonio y se sabrá si la han educado bien o no, y si es virgen o no. Por eso, el hecho de que tú digas que no: ah! Quizás es que estás escondiendo alguna cosa (...) Quizás tienes un novio y por eso no quieres (...) Si digo que no seré el deshonor de la familia, seré la vergüenza de la familia, ninguno me ayudará, ningún tal; bueno, pues lo acepto porque sino lo que se me viene encima...”(A20 – mediadora senegalesa).

El miedo a que las hijas vayan a perder su cultura, su identidad y que se vayan a diluir en la sociedad de acogida, está detrás de muchos de estos matrimonios.

“Ella no quería que su hijo tuviera una novia española, unos hijos españoles, que no formaran parte de su religión, de su cultura [...] pero es este tema de que se te van a ir de tu cultura, entonces el tema de que no vayan a ser educados o no vayan a elegir el camino que tú quieres que elijan.” (W2 – mujer marroquí)

La comunidad percibe el divorcio iniciado por la mujer como una amenaza para otros matrimonios y hombres, por lo que que ejerce una gran oposición. Por eso es común que se amenace utilizando la vulnerabilidad económica de la mujer que queda aislada de la comunidad, que tendrá la prostitución como única forma de sobrevivir.

“Y claro, cuando una mujer se separa, todos los hombres presionan, por mucho que sea la mujer de otro, todos los hombres presionando para que eso no pase porque puede suponer un peligro (...) Pero si que me hicieron sufrir mucho. En alguna reunión se sentaban allá 7-8 hombres diciéndome... son de esas cosas que nunca olvidaré...me decían de todo, uno me dijo << tienes que volver con tu marido porque si te separas serás una puta como todas las mujeres separadas >>. Yo recuerdo que se me caían las lágrimas. Y dije << si tengo que ser puta para alimentar y educar a mis hijos, lo seré. Pero si tengo otras posibilidades, no lo haré >>. Y se van a quedar...y les dije << basta, se ha acabado! >>. Y me fui.” (W6 – mujer senegalesa)

Otro factor que influye es la procedencia rural o urbana, ya que las familias que proceden de un entorno urbano son generalmente más abiertas, y dan mayores oportunidades a sus hijos para elegir candidatos. Igualmente las personas entrevistadas subrayaban las diferencias entre las chicas que habían nacido en sus países de origen y las que ya habían nacido en territorio español.

“Hay que diferenciar mucho si has nacido aquí o no. Es necesario plantear que hay dos tipos de matrimonios forzados, las nacidas aquí y las que no porque es totalmente diferente. Las que han nacido allá lo tienen totalmente integrado, aceptado, asimilado o lo que sea. Quizás alguna no está tampoco a favor

pero lo hará. Las que están aquí quizás lo creen, pero hay muchísimas que no lo quieren, aunque se acaben resignando!” (W3 – mujer gambiana)

Igualmente la edad supone un factor determinante: cuanto más joven sea la chica, peor es la situación. Igualmente más difícil se hace la atención por parte de la sociedad de acogida, ya que entonces estas niñas no pueden acudir a las entidades para atención a mujeres en situación de violencia de género.

“Si fuera una menor está claro, desde mi servicio no podría atenderla y tendría que ser un caso de la DGAIA y después seguramente pasaría a Infancia. Una mayor de edad las opciones sería...desde mi servicio podría ofrecerle una atención psicológica para reforzar su idea de no casarse, ofrecerle recursos de acogida...Si entendemos el matrimonio forzado como parte del concepto de violencia machista, de forma amplia, entonces la podríamos derivar a una casa de acogida para mujeres maltratadas. Pero seguramente nos podrían inconvenientes desde la secretaría de la Familia porque no es un caso al uso de violencia” (A7 - abogado)

A veces estas niñas utilizan estrategias para evitar estos matrimonios forzados, como embarazos muy jóvenes, que las colocan en situaciones aun más vulnerables.

“Por ejemplo, en Olot hubo como un repunte muy importante de embarazos de adolescentes entre los 14 y 18 años y lo que había detrás no era un deseo de embarazo, sino un deseo de no embarazarse con las persona que se planteaba, y entonces se acababan quedando embarazadas del novio que si que las gustaba, y así aquel matrimonio no se celebraba. Es una mala estrategia porque continuas estando mal vista, te cargas con un hijo y te cierras todas las posibilidades de futuro” (A1 - pediatra).

En algunas comunidades la poligamia todavía se practica aunque esté prohibida en España. Esta realidad contribuye a los matrimonios forzados de chicas jóvenes, y coloca a las mujeres en situaciones de gran vulnerabilidad.

“Siempre buscan que la mujer sea joven. Por eso hay tantos hombres que tienen cuatro esposas, se casan con una y cuando ya la consideran vieja, van por otra, y cuando ya la consideran vieja van a por otra...y así. También lo que se hace mucho es por ejemplo, que un hombre está aquí en España y una de sus esposas está un año aquí, después vuelve y se trae a otra, después la devuelve y van haciendo así. Asqueroso! Y encima las esposas se pelean entre ellas...” (W3- mujer gambiana).

3.4 Soporte recibido

Las mujeres entrevistadas que han intentado evitar o escapar de un matrimonio forzado rara vez reciben algún tipo de ayuda. Sólo algunas de ellas recibieron alguna ayuda de asociaciones de mujeres trabajando en el área de la violencia de género, algunas profesoras universitarias con las que establecieron especiales vínculos de confianza y poco más.

“Yo fui a hablar con XXX, porque me acuerdo que un día en clase va a empezar a hablar de la ablación y todo eso y pensé: <<mira, quizás esta mujer sabe un poco más de estos temas (...) Fui a preguntarla por encima, en una tutoría y ya activamos todo para ver qué podíamos hacer. Miramos ayudas, también descubrimos que como ya era mayor de edad no había ayudas. Tuvimos que rebuscar, rebuscar y rebuscar y porque la tenía a ella, porque si llego a estar sola, si no llego a tener alguien, si no llego a estar en la universidad, qué? Qué hago? Aquí está el problema” (W3 – mujer gambiana)

Algunas de estas mujeres estuvieron periodos cortos de tiempo en casas de acogida para víctimas de violencia en el ámbito de la pareja, pero no por su condición de víctimas de matrimonios forzados, sino por ser víctimas de abusos físicos y sexuales por parte de sus maridos.

“Antes estábamos en una casa, ahora estamos en un piso y estoy buscando un piso. Estuve cuatro meses en la casa de acogida y la psicóloga me ayudó muchísimo, me contó por qué estaba mal, por qué lloraba, por qué no tenía ganas de nada, por qué estaba cansada.” (W1 – mujer marroquí)

En general escapar de un matrimonio forzado o intentar divorciarse de un matrimonio forzado significa aislamiento, y una falta de red social independientemente si has nacido aquí o has venidos reagrupada. Muy pocas mujeres reciben apoyo espontáneo de sus comunidades, e incluso la presión de sus familias las llega hacer perder la ayuda inicial que pudieron conseguir.

“Sabía castellano, lo entendía (...) pero conocía a muy pocas personas en el pueblo. Había muchos proyectos de integración en el pueblo y conocía alguno pero tenía muy poca red. Estaba muy perdida, y por tanto, no tenía casi nada” (W5 – mujer pakistani)

“Si, encontré trabajo con unas monjas que me cuidaron mucho. También un piso. Cuando me fui del piso de mi ex me fui a un piso que me dejaba una familia africana y el hombre de esta familia era el único hombre que nunca me dijo nada y siempre me respetó. Me dijo que me quedara en el piso y que él hablaría con el propietario para que me lo alquilara. Habló con el propietario y en un principio el propietario dijo que sí,

pero después la comunidad fue donde el propietario y le van a decir de todo” (W6 – mujer senegalesa).

La mayoría de las veces no confían o no saben que pueden buscar ayuda en la policía. Son muy reacias a poner una denuncia penal contra sus maridos, incluso en los casos más graves de violencia de género. Alguna de ellas es incluso muy crítica con el trato dispensado por el sistema judicial cuando denunció a sus propios padres para salvar a sus hermanas de un futuro matrimonio forzado.

“Él siempre ha pensado que yo no podía hacer nada porque yo nunca fui a la policía. [...] Nunca, durante 6 años. Siempre venía la policía a picar en casa...(…) Entonces esta vez los vecinos llamaron a la policía y vinieron y me decían <<¿qué es esto?>> y yo <<nada, me he caído en el lavabo>> por el miedo dices esto (...) La policía lo cogió, le dije al juez que no quería denunciarlo... y las chicas <<mossas>> se enfadaron, que por qué lo protegía. Yo solo quería divorciarme y ya está” (W1 – mujer marroquí)

“Ahora hay la denuncia, y de aquí poco tendré el juicio. Y ahora a ver qué pasa. Tuve que poner la denuncia para que mis hermanas pudieran salir de casa. Para que pudieran marchar y ya está. Porque claro, si marchó y las dejó allá? Pagarían por lo que yo he hecho (...) Ellas están en un CRAE y yo vivo en Barcelona. Super lejos, pero bueno, mira... (...) Si, tenían 9 y

11 años (...) Cuando libro los fines de semana vienen conmigo. Poco a poco... (...) Y me dicen: <<Muchas gracias porque nos has salvado la vida!>> (W3 – mujer gambiana)

3.5 Soporte deseado

Las mujeres entrevistadas que fueron víctimas de un matrimonio forzado, o estuvieron a punto de ser víctimas de un matrimonio forzado hablan de medidas preventivas o de sensibilización por parte de los poderes públicos. Consideran que estas medidas preventivas deberían estar dirigidas a los profesionales para que fueran capaces de identificar casos de matrimonios forzados sin necesidad de esperar a una denuncia penal y a las niñas y mujeres de estas comunidades para empoderarlas.

“Tienen que hablarlo, tienen que ser ellas mismas mediadoras, deben tener la capacidad de comunicarse. Si no pueden comunicarse con los padres que busquen siempre una persona, puede ser el tutor de la escuela, el pediatra, una persona de confianza de la familia; pero siempre hablar: mira mamá no quiero eso. Y entonces te explicas y das tus razones. Seguramente una madre que escucha a su hija, y que ve que este matrimonio la hará sufrir mucho, mucho, mucho, mucho. Seguramente la madre será la primera en decir: paremos esto.

Pero muchas veces las niñas no dicen nada, no hay diálogo ni nada. Entonces aguantan y después, los problemas surgen después” (W7- mujer senegalesa)

Algunas de las mujeres entrevistadas son especialmente críticas con el racismo institucional, los servicios sociales, las escuelas o los hospitales que se encuentran con casos de matrimonios forzados y no hacen nada (por ejemplo casos de niñas africanas embarazadas y madre en edades muy tempranas, niñas que de repente desaparecen del colegio después de las vacaciones de verano y nadie sabe donde están...)

“En los hospitales sí que lo saben; Cuántas nenas de 13 años han ido a parir? Lo ven pero no hacen nada. Eso se sabe, pero nadie hace nada. De los hospitales también me sorprende, que tengan niños, que las negras tengan niños lo ven normal (<<como las negras tienen hijas muy jóvenes y tienen muchos, pues ya está>>) y no miran más allá, y más allá puede haber una historia...(…) Seguro, seguro. Y lo tienen que ver! Lo que no entiendo es que no se sorprenda, que no se active nada” (W3 – mujer gambiana)

Algunas de las mujeres entrevistadas son muy críticas con la eficacia de las leyes y las políticas públicas cuando se enfrentan a mujeres que sufren diferentes formas de violencia de género desde que han nacido.

4. Propuestas legales y políticas sobre la prevención y actuación acerca de los matrimonios forzados en España

“Soy muy crítica con el tema de las leyes que protegen a las mujeres porque lo que no puede ser es que una mujer que está en una situación de violencia desde que era pequeña, porque muchas mujeres padecen violencia desde que son pequeñas hasta que tienen 40 años, que la digan que si no pone una denuncia no puede conseguir ayuda (..) Y creo que es papel mojado esto de la ley, porque en muchos casos funciona, pero para los casos de las mujeres, en este caso te hablo de africanas, creo que no, el protocolo, la ley creo que no son suficientes (...) Y cuando hablan los políticos del protocolo y quien sea....venga ya! Quizás la que está sentada en la mesa cuando salga de ahí la meten cuatro ostias” (W6 – mujer senegalesa).

Casi todas las mujeres entrevistadas que fueron víctimas de un matrimonio forzado o lograron evitarlo describen una completa falta de conocimiento sobre el tipo de ayuda que podían recibir. Temían encontrarse completamente solas, sin trabajo o lugar para vivir, ellas y sus hijos.

“Alguna cosa que te anime, porque no hay nada! Yo porque tenía a mis hermanas y pensaba: <<o salgo o me mato>>, pero si marchaba, quien las ayuda a ellas? Y al final pensé <<salto a la piscina y lo que sea!>>. Pero claro, imagínate que no tienes a ninguno, que estás tú sola? Qué haces? Callas y te casas.” (W3- mujer gambiana)

“Sólo podía tirar hacia delante si tenía trabajo y comida para alimentar a mis hijos y darles una educación” (W6 – mujer senegalesa)

4. Propuestas legales y políticas sobre la prevención y actuación acerca de los matrimonios forzados en España

Las propuestas e políticas públicas y legales en relación a los matrimonios forzados en España podrían dividirse en:

Propuestas para una mejor **elaboración y recogida de información estadística** sobre la prevalencia y características de los matrimonios forzados en el territorio español. Como muchos otros problemas sociales, hasta que no pueden ser identificados y cuantificados, difícilmente podrán elaborarse medidas de políticas públicas y legales para su prevención, erradicación y atención a las personas implicadas.

- Por eso es necesario la elaboración y recogida de datos estadísticos desagregados a nivel estatal y autonómico.
- Elaboración de estudios cuantitativos y cualitativos en todo el territorio español sobre la prevalencia de los matrimonios forzados, comunidades donde se practica, y características.

Respecto a las posibles **medidas legales**, sería destacable el reconocimiento de los matrimonios forzados como una

4. Propuestas legales y políticas sobre la prevención y actuación acerca de los matrimonios forzados en España

forma de violencia de género, tal y como queda reflejado en los Convenios internacionales suscritos por el Estado español. Esto tendría consecuencias en la atención de las víctimas de matrimonios forzados en los dispositivos comunitarios de atención a víctimas de violencia de género.

Los matrimonios forzados han sido recientemente introducidos como delitos en el Código Penal español, por un lado como una posible forma de trata de seres humanos en el artículo 177 Bis y también como una forma de coacción agravada en el artículo 172 Bis. Pero sería necesaria formación a los operadores jurídicos (jueces, abogados/as, fiscales), a los servicios sociales, comunitarios y de la sociedad civil que puedan encontrarse frente a un caso de matrimonios forzados, para saber entender, asesorar y aplicar las reformas penales.

Igualmente, no tiene sentido la criminalización de los matrimonios forzados si no se elaboran y aplican **políticas públicas de prevención, formación, sensibilización y actuación frente a los matrimonios forzados.**

Por ello sería necesario la formación de los profesionales que trabajan en el sistema judicial, en los cuerpos de seguridad, en los servicios sociales, en los servicios sanitarios, en los

servicios educativos, en centros de menores, así como ONGs y asociaciones de la sociedad civil que trabajan en el área de los derechos de las mujeres, violencia de género, inmigración e infancia.

Esta formación debería incluir como mínimo la definición de matrimonios forzados, matrimonios pactados y matrimonios fraudulentos; las razones y las comunidades donde se practican mayoritariamente; los posibles indicadores de riesgo; datos sobre las entidades donde poder a estas mujeres víctimas o potenciales víctimas.

Igualmente sería deseable una formación específica para todos aquellos profesionales que trabajan en instituciones con competencias con menores, teniendo en cuenta que un porcentaje significativo de las víctimas o potenciales víctimas de los matrimonios forzados son menores de edad.

Más allá de las políticas de formación y sensibilización serían necesaria la **elaboración o modificación de las políticas públicas de violencia de género**, para la inclusión de los matrimonios forzados dentro de las competencias de actuación de toda la red de atención a víctimas de violencia de género (servicios de urgencia, casas de acogida, dispositivos de

4. Propuestas legales y políticas sobre la prevención y actuación acerca de los matrimonios forzados en España

asesoramiento legal, recursos económicos, etc.).

Igualmente sería deseable la elaboración de **protocolos de prevención, protección e intervención en los casos de matrimonios forzados** para coordinar de manera efectiva y multidisciplinar la respuesta a los casos de matrimonios forzados, incluyendo a la policía, servicios judiciales, sanitarios, educativos y sociales, sociedad civil y entidades especializadas en menores y en violencia de género.

También sería necesario la elaboración de **guías específicas disponibles en internet y en papel**, que incluyera información y asesoramiento para víctimas o potenciales víctimas de matrimonios forzados informando de los recursos legales y asistenciales disponibles en el territorio español.

Y finalmente, sería recomendable el diseño y difusión **de campañas de sensibilización** a las víctimas o potenciales víctimas de los matrimonios forzados, a sus familias y comunidades, a la sociedad en general y a los medios de comunicación, facilitando un abordaje intercultural del problema, evitando estereotipos y una criminalización de estas comunidades.

HUWELIJKSDWANG IN BELGIE

Een analyse van de huidige situatie

Samenvatting

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Inleiding

Het fenomeen gedwongen huwelijken wordt algemeen erkend als een inbreuk op de mensenrechten, en aangezien proportioneel meer vrouwen dan mannen erdoor worden getroffen, wordt het gezien als een vorm van geweld tegen vrouwen. In de preambule bij de Overeenkomst van Istanbul worden gedwongen huwelijken beschouwd als een ernstige vorm van geweld waaraan vrouwen en meisjes worden blootgesteld. Hoewel het niet eenvoudig is om de definitie van gedwongen huwelijken vast te leggen, omschrijven strafwetten tegen gedwongen huwelijken het als volgt: een gedwongen huwelijk is een huwelijk waarbij een of beide echtgenoten gedwongen werden de verbintenis aan te gaan, tegen hun vrije wil in.

Deze samenvatting geeft de belangrijkste bevindingen weer van een project – genaamd MATRIFOR -- dat werd gefinancierd door programma van de Europese Commissie 'Preventie en bestrijding van misdaad. De studie werd uitgevoerd in België (Universiteit Gent, ICRH), Spanje (Universidad Autónoma Barcelona, Antígona Group) en Italië (Le Onde Onlus, Palermo) en liep van 2012 tot 2015. De belangrijkste doelstelling van het project was te analyseren hoe EU-richtlijn 2011/36/EU over Mensenhandel omgezet werd in nationale wetgeving, met

bijzondere aandacht voor gedwongen huwelijken als een vorm van mensenhandel.

Methodologie

De methodologie van het project bestond uit kwalitatief onderzoek, en combineerde diepte interviews (veldwerk) met een juridische analyse (bureaustudie). De juridische analyse beoordeelde het huidige juridische kader rond gedwongen huwelijken en mensenhandel (strafrecht, burgerlijk recht, migratiewetgeving), terwijl het veldwerk de eigenschappen van gedwongen huwelijken in België bestudeerde, en ook de belangrijkste obstakels en moeilijkheden bij het omgaan met gedwongen huwelijken en de zoektocht naar juridische bescherming in gevallen van gedwongen huwelijken. Hiervoor werden 25 interviews gehouden met vaklui uit verschillende sectoren (sociale sector, onderwijs, gerecht, gezondheidszorg, NGO's, beleidsmakers). De respondenten werden geselecteerd met behulp van doelgerichte steekproeven (sneeuwbaltechniek). Alle interviews werden op band opgenomen en woordelijk getranscribeerd. De transcripties werden manueel gecodeerd. Ethische goedkeuring werd verkregen van het ethisch comité bij de faculteit geneeskunde van de Universiteit Gent.

Omvang van het fenomeen gedwongen huwelijken in België

Er bestaan geen nationale, representatieve cijfers om de omvang van het probleem van gedwongen huwelijken in België in te schatten. Gegevensbanken van politie en aanklagers hebben niet veel gevallen van gedwongen huwelijken geregistreerd sinds de invoering van de specifieke wet rond gedwongen huwelijken in 2007; de redenen hiervoor zijn onbekend. In het verleden werden een aantal studies verricht en werden wat gegevens verzameld, maar dit bleef beperkt tot specifieke geografische gebieden en/of specifieke etnische gemeenschappen. NGO's en andere dienstverleners die wel cijfers bijhouden hebben opgemerkt dat gedwongen huwelijken (sterk) aanwezig zijn in hun werkgebieden. Ze merkten echter op dat de vage grens tussen gearrangeerde en gedwongen huwelijken het moeilijk maakt om casussen als gedwongen huwelijk te registreren. Bovendien worden gedwongen huwelijken vaak geregistreerd als "intrafamiliaal geweld", eerder dan als gedwongen huwelijken, ook al ligt het gedwongen huwelijk misschien aan de oorzaak van dit geweld. De onderrapportage van het fenomeen zowel door vaklui als door (potentiële) slachtoffers werd ook aangehaald door de

respondenten, en velen uitten hun bezorgdheid dat de gekende gevallen van gedwongen huwelijken slechts het topje van de ijsberg zijn. (Potentiële) slachtoffers aarzelen sterk om de dreiging van een gedwongen huwelijk te melden omwille van loyaliteitsproblemen of de angst voor represailles. Vaklui die zulke gevallen tegenkomen hebben soms onvoldoende kennis om die gevallen als dusdanig te herkennen, of onvoldoende middelen om gevallen naar de juiste instanties door te verwijzen.

Belgisch juridisch kader voor gedwongen huwelijken

Burgerlijk recht

Om in België te kunnen huwen, moet een procedure worden gevolgd die bestaat uit twee stappen¹: de melding van het huwelijk aan de ambtenaar van de burgerlijke stand en het eigenlijke afsluiten van het huwelijk². Een huwelijk moet in overeenstemming zijn met een aantal basisprincipes uit het

1. Art 63 en 64 Burgerlijk Wetboek; Art 165-167 Burgerlijk Wetboek.

2. Migratie. Jaarverslag 2013. Federaal Centrum voor de analyse van de migratiestromen, de bescherming van de grondrechten van de vreemdelingen en de strijd tegen mensenhandel.

contractenrecht, en met een aantal basisvoorwaarden, en het mag niet ingaan tegen de principes van de openbare orde³. Een gedwongen huwelijk kan nooit op een geldige manier worden voltrokken, aangezien niet wordt voldaan aan de basisvereiste van de vrije en volwaardige instemming van de huwende partijen⁴. Art 146ter van het Burgerlijk Wetboek: *“Er is geen huwelijk wanneer het wordt aangegaan zonder de vrije toestemming van beide echtgenoten of de toestemming van minstens een van de echtgenoten werd gegeven onder geweld of bedreiging”*.⁵

Bovendien moet iedereen die in België wil huwen de leeftijd van 18 jaar hebben bereikt⁶.

Uitzonderingen zijn echter mogelijk: bij een speciale procedure in de jeugdrechtbank, met de uitdrukkelijke goedkeuring van de ouders, mag de minimumleeftijd worden verlaagd wanneer er ‘ernstige redenen’ zijn om dit te doen. Wanneer ouders weigeren hun goedkeuring te geven of nalaten te verschijnen, of wanneer zij niet in staat zijn hun mening uit te drukken,

3. Art. 1108 Burgerlijk Wetboek; Art. 144F164 Burgerlijk Wetboek.

4. De Brabander A. De strafrechtelijke en criminologische dimensie van het gedwongen huwelijk. Masterproef van de opleiding ‘Master in de rechten’, UGent, 2012, p 59.

5. De wet van 2 juni verving het woord ‘en’ met ‘of’ in Art 146ter Burgerlijk Wetboek.

6. Art. 144 Burgerlijk Wetboek.

mag de rechtbank alsnog het huwelijk toestaan wanneer ze vindt dat de weigering onredelijk is⁷.

Schijnhuwelijken, gesloten enkel en alleen om een visum of verblijfsvergunning voor een van de partijen te verkrijgen, zijn nauw verbonden met gedwongen huwelijken in de Belgische publieke en politieke arena.⁸ Het juridische kader omvat een aantal maatregelen om deze schijnhuwelijken aan te pakken. De eerste regelgeving werd ingevoerd in 1999. De Wet tot Bestrijding van Schijnhuwelijken van 4 mei 1999⁹ verplicht burgerlijke instanties ertoe de openbare aanklager te verwittigen wanneer er twijfel bestaat over de inhoud of het doel van het huwelijk¹⁰. De Belgische wetgeving omvat het principe dat een huwelijk gesloten door een persoon zonder huwelijksbekwaamheid ongeldig is¹¹. De term ‘schijnhuwelijk’ is gedefinieerd in art. 146bis van het Burgerlijk Wetboek: *“Er is geen*

7. RudeF Antoine E. 2005. Forced marriages in Council of Europe member states: a comparative study of legislation and political initiatives, comparison of law and political actions, Strasbourg, Council of Europe, Directorate General of Human Rights, p 68.

8. Ratia E, Walter A. International exploration on forced marriages. A study on legal initiatives, policies and public discussions in Belgium, France, Greece, UK and Switzerland. 2009.

9. Wet van 4 Mei 1999 die bepaalde voorzieningen met betrekking tot het huwelijk veranderde.

10. Terzelfdertijd introduceerde de nieuwe wet een wettelijke basis voor de nietigverklaring van schijnhuwelijken, Art 146 bis Burgerlijk Wetboek.

11. Art. 502 Burgerlijk Wetboek.

huwelijk wanneer, ondanks de gegeven formele toestemmingen tot het huwelijk, uit een geheel van omstandigheden blijkt dat de intentie van minstens één van de echtgenoten kennelijk niet is gericht op het tot stand brengen van een duurzame verbintenis, maar enkel op het bekomen van een verblijfsvergunning”.

De wet voorziet verzwarende omstandigheden voor diegenen die een geldsom verkrijgen voor het sluiten van een dergelijk schijnhuwelijk of die bedreigingen of geweld gebruiken om iemand te dwingen tot een dergelijk huwelijk. Iemand proberen dwingen om een schijnhuwelijk aan te gaan wordt ook aangepakt door de wet.

De wet van 2 juni 2013 rond schijnhuwelijken voerde de concepten “gedwongen wettelijke samenwoning” en “schijnsamenwoning” in, respectievelijk in Art. 1476ter en Art. 1476bis van het Burgerlijk Wetboek¹²: *“Er is geen wettelijke samenwoning wanneer deze wordt aangegaan zonder de vrije*

toestemming van beide wettelijk samenwonenden of wanneer de toestemming van minstens een van de wettelijk samenwonenden werd gegeven onder geweld of bedreiging.” “Er is geen wettelijke samenwoning wanneer, ondanks de geuite wil van beide partijen om wettelijk samen te wonen, uit een geheel van omstandigheden blijkt dat de intentie van minstens een van beide partijen kennelijk enkel gericht is op het bekomen van een verblijfsvergunning.”.

Om te bepalen of de bedoelde samenwoning voldoet aan deze definities, werd ook een onderzoeksprocedure ingevoerd in het Burgerlijk Wetboek voor de ambtenaar van het registratiekantoor¹³. De nieuwe wet van juni 2013 regelt ook de uitwisseling van informatie door een gegevensbank op te richten voor schijnhuwelijken en schijnsamenwoningen; dit laat de uitwisseling van relevante gegevens toe tussen verschillende instellingen. Deze gegevensbank werd in april 2014 opgericht.

12. Wet van 2 juni 2013 tot wijziging van het Burgerlijk Wetboek, de Wet van 31 December 1851 met betrekking tot de consulaire en de consulaire rechtsmacht, het Strafwetboek, het Gerechtelijk Wetboek en de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, met het oog op de strijd tegen de schijnhuwelijken en de schijnwettelijke samenwoningen (BS 23/09/2013); Omzendbrief van 6 September 2013 inzake de wet van 2 juni 2013; Omzendbrief van 17 September 2013 betreffende de gegevensuitwisseling tussen de ambtenaren van de burgerlijke stand en de DVZ ter gelegenheid van een huwelijksaangifte of een verklaring van een wettelijke samenwoning van een vreemdeling in illegal of precair verblijf.

13. Migratie. Jaarverslag 2013. Federaal Centrum voor de analyse van de migratiestromen, de bescherming van de grondrechten van de vreemdelingen en de strijd tegen mensenhandel, p 107

Strafrecht¹⁴

Iemand dwingen te huwen is een strafrechtelijk misdrijf sinds 25 april 2007. De specifieke Belgische strafwet rond gedwongen huwelijken werd van kracht op 5 mei 2007. Deze is toegevoegd aan het Burgerlijk Wetboek als Art. 391sexies. Het artikel luidt als volgt: *“Hij die iemand door geweld of bedreiging dwingt een huwelijk aan te gaan, wordt gestraft met een gevangenisstraf van een maand tot twee jaar of met een geldboete van honderd euro tot vijfhonderd euro. De poging wordt gestraft met een gevangenisstraf van vijftien dagen tot een jaar of met een geldboete van vijftig euro tot tweehonderd vijftig euro”*.

Artikel 391 sexies geeft geen definitie van gedwongen huwelijk. De voorbereidende werkzaamheden van het parlement geven aan dat een huwelijk een gedwongen huwelijk is wanneer een of beide partners gedwongen wordt/worden om toe te stemmen in een huwelijk door familie of door derden¹⁵. Volgens de Belgische wet van 25 april 2007 kan

een gedwongen huwelijk nietig worden verklaard wanneer het niet vrij is aangegaan door een van de echtgenoten of wanneer het werd aangegaan onder de invloed van geweld of bedreiging¹⁶. Gerechtelijke procedures kunnen worden ingesteld door een van de twee echtgenoten of door de openbare aanklager¹⁷.

De wet van 2 juni 2013, eerder vermeld, wijzigde ook het strafwetboek door de straffen te verhogen voor gedwongen huwelijken en schijnhuwelijken/schijnsamenwoningen. Bovendien wijzigde deze wet de rol van de strafrechter: vanaf nu heeft de rechter de bevoegdheid om het schijnhuwelijk of de schijnsamenwoning nietig te verklaren¹⁸.

Sinds 2009 is er een specifieke aanklachtcode voor gedwongen huwelijken in de gegevensbank van de correctionele kamers van rechtbanken van eerste aanleg. Volgens de cijfers werden 12 gevallen van gedwongen huwelijk geregistreerd door de

14. Dit stuk is gebaseerd op: Ratia E, Walter A. International exploration on forced marriages. A study on legal initiatives, policies and public discussions in Belgium, France, Greece, UK and Switzerland. 2009.

15. De Brabander A. De strafrechtelijke en criminologische dimensie van het gedwongen huwelijk. Masterproef van de opleiding 'Master in de rechten'. UGent, 2012.

16. Art. 146ter Burgerlijk Wetboek

17. Rude-Antoine E. 2005. Forced marriages in Council of Europe member states: a comparative study of legislation and political initiatives, comparison of law and political actions, Strasbourg, Council of Europe, Directorate General of Human Rights, p. 68.

18. Migratie. Jaarverslag 2013. Federaal Centrum voor de analyse van de migratiestromen, de bescherming van de grondrechten van de vreemdelingen en de strijd tegen mensenhandel, p. 108

aanklager in 2010, en 15 gevallen in 2011. Er is ook een specifieke politiecode voor dit misdrijf. Misdaadstatistieken van de politie tonen 13 klachten voor gedwongen huwelijk (11 voltrokken gevallen en 2 pogingen) in 2010. Verhoogde bewustwording onder de slachtoffers en betere opsporing door vaklui zullen waarschijnlijk dit aantal klachten doen stijgen.¹⁹

De EU-richtlijn 2011/36/EU rond het voorkomen en bestrijden van mensenhandel en het beschermen van slachtoffers van mensenhandel hanteert een brede interpretatie van mensenhandel om rekening te houden met recente ontwikkelingen. De definitie omvat nu ook mensenhandel met als doel, onder meer, gedwongen huwelijken voor zover in overeenstemming met de wezenlijke elementen van mensenhandel²⁰. In 2005 al voerde België een

specifieke strafwet in rond mensenhandel²¹, wat België in overeenstemming bracht met art. 2 van de EU-Richtlijn 2011/36/EU rond mensenhandel. In 2013 werd Art. 433 quinquies van de wet van 29 april gewijzigd naar octies, met een verhoging van de straf voor mensenhandel door het bedrag van de boetes te vermenigvuldigen met het aantal slachtoffers²². De nieuwe wet van 2013 wijzigde de terminologie van Art. 433 quinquies door de toevoeging van de bewoording 'het nemen van de controle' over een persoon. Dit laat toe om doelgericht handelingen aan te pakken zoals het kopen en illegaal adopteren van, of de controle over een persoon in het kader van een gedwongen huwelijk²³. De doelstellingen van uitbuiting werden ook uitgebreid of verduidelijkt; namelijk seksuele uitbuiting omvat nu seksuele slavernij, er is een specifieke verwijzing naar diensten met betrekking tot uitbuiting door het verrichten van werk, en de wet werd aangevuld door toevoeging van de wet op het wegnemen van menselijk

19. Committee on the Elimination of Discrimination against Women Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women. Seventh periodic reports of States parties due in 2012 Belgium. [2 October 2012]. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/412/58/PDF/G1341258.pdf?OpenElement>, accessed November 24, 2014.

20. DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN>.

21. Hoofdstuk III ter : Art. 433 quinquies tot Art. 433 novies Strafwet

22. Wet van 24 Juni 2013, houdende bestraffing van de exploitatie van bedelarij en van prostitutie, mensenhandel en mensensmokkel in verhouding tot het aantal slachtoffers, B.S., 23 Juli 2013.

23. Zie Wetsontwerp tot wijziging van Art 433 quinquies van het Strafwetboek, met het oog op het verduidelijken en het uitbreiden van de definitie van mensenhandel, Parl. St., Kamer, Doc 53--2607/002, p. 4.

lichaamsmateriaal aan de paragraaf over het wegnemen en transplanteren van organen²⁴.

De wijziging van de wet op mensenhandel van 29 april 2013 vormde de basis voor een arrest door het hof van Verviers van 30 januari over gedwongen huwelijken²⁵. In dit geval van gedwongen huwelijk tussen twee minderjarigen (13 jaar oud) veroordeelde het hof de ouders van de minderjarigen voor mensenhandel met als doel seksuele uitbuiting, verkrachting en schending van integriteit door middel van bedreigingen en geweld. Tijdens de zittingen van het hof minimaliseerden de ouders de beschuldigingen. Volgens de ouders van de jongen handelden zij volgens de tradities van hun cultuur. Zij wilden gewoon een liefdesrelatie onder hun kinderen omkaderen, en de ouders van de jongen betaalden een som geld aan de ouders van het meisje. Volgens de verklaringen van de vader van het meisje betaalden de ouders van de jongen 5.000 Euro aan de andere ouders. Het bedrag varieert afhankelijk van het feit of het meisje maagd is of niet, volgens hun tradities. Een feest werd georganiseerd, en nadien hadden de minderjarigen

geslachtsgemeenschap in het huis van de ouders van de jongen. Het meisje trok in bij haar schoonouders en moest huishoudelijke taken verrichten, waardoor ze vaak van school wegbleef. Het hof beschouwde de verkrachting en schending van integriteit als degelijk onderbouwd, ook al pleegden zij niet zelf de misdaad en waren zij niet aanwezig tijdens de daad. Door de gelegenheid te bieden en te vergemakkelijken, hebben zij er alles aan gedaan om ervoor te zorgen dat de integriteit en de maagdelijkheid van het meisje werden geschonden²⁶. De moeders werden veroordeeld tot 30 maanden effectieve gevangenisstraf, hun echtgenoten tot 40 maanden²⁷.

Migratiewetgeving²⁸

De Belgische migratiewetgeving staat beschreven in de Vreemdelingenwet van december 1980 en het Koninklijk Besluit van 8 oktober 1981²⁹. De Vreemdelingenwet is de laatste jaren

24. Jaarrapport Mensenhandel 2013, p. 38--39.

25. Corr. Verviers, 30 Januari 2014, 11de Kamer (definitief), in : Jaarrapport Mensenhandel 2013.

26. Jaarrapport Mensenhandel, 2013.

27. www.standaard.be/cnt/dmf20140130_00954930 (accessed July 16 2014).

28. De Brabander A. op cit., p. 77--89

29. Wet van 15 December 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Vreemdelingenwet); Koninklijk Besluit van 8 Oktober 1981 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen.

verscheidene keren gewijzigd, ook om gedwongen huwelijken en schijnhuwelijken te voorkomen³⁰. Deze wijzigingen waren nodig om “de evolutie van de migratiepolitiek te volgen, en de Belgische wetgeving aan te passen om te voldoen aan de richtlijnen van de Europese Unie en verschillende internationaal bindende verdragen (Schengen, Dublin, ...)”³¹.

Voornamelijk de regels voor huwelijksmigratie werden strenger, vooral door de wet van 15 september 2006. België werd door bijvoorbeeld Richtlijn 2003/86/EG³² aangespoord en werd ook onrechtstreeks beïnvloed door verschillende andere lidstaten

(in het bijzonder Nederland, Oostenrijk en Duitsland)³³. De regels rond migratie voor gezinshereniging³⁴ en gezinsvorming³⁵ werden strenger. De verhoging van de minimumleeftijd van 18 naar 21 jaar voor zowel een gezinshereniger als een echtgenoot/echtgenote die het land binnenkomt is een belangrijk detail. Bovendien werd de controleperiode verhoogd tot 3 jaar (het duurt 3 jaar eer een definitieve verblijfsvergunning wordt bekomen). Dit betekent dat wanneer een scheiding plaatsheeft binnen deze periode, de tijdelijke verblijfsvergunning wordt ingetrokken.

De wet van 8 juli 2011 voerde strengere vereisten in met als doel het voorkomen van misbruik in de toekomst: een minimale inkomstenvereiste (120% van de minimale

30. Wet van 15 September 2006 tot wijziging van de wet van 15 December 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, BS 6 Oktober, 2006; Wet 25 April 2007 tot wijziging van de wet van 15 December 1980, betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen (Vreemdelingenwet), BS 10 mei, 2007; Wet van 8 juli 2011 betreffende de wijziging van wet van 15 december 1980, betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen betreffende de voorwaarden voor familiehereniging. Deze wet werd van kracht op 22 September 2013. Wet van 2 Juni 2013 tot wijziging van het Burgerlijk Wetboek, de Wet van 31 December 1851 met betrekking tot de consulaat en de consulaire rechtsmacht, het Strafwetboek, het Gerechtelijk Wetboek en de wet van 15 december 1980 betreffende de toegang tot het grondgebied, het verblijf, de vestiging en de verwijdering van vreemdelingen, met het oog op de strijd tegen de schijnhuwelijken en de schijnwettelijke samenwoningen (BS 23/09/2013);

31. Activiteitenverslag 2013. Dienst Vreemdelingenzaken. FOD Binnenlandse Zaken,

32. Richtlijn 2003/86/EG van de Raad, inzake het recht op gezinshereniging. De Richtlijn vermeldt expliciet de mogelijkheid om maatregelen aan te nemen die het recht op gezinshereniging beperken.

33. Ratia and Walter, op cit., p. 14

34. In de context van huwelijksmigratie, wordt het bestaan van een partnerschap verondersteld. Gebaseerd op dit partnerschap kan de niet--residentiële partner een verblijfsvergunning krijgen in België via de procedure voor gezinshereniging (Desmet, G., Leys, D., and Ronsijn, W. (2011), Partnarmigratie van derdelanders naar Vlaanderen en Brussel. Een kwantitatieve en kwalitatieve studie. Vlaamse Overheid en Europees Integratie Fonds, p. 35)

35. Wanneer een vreemdeling naar België komt met het doel te huwen of om een wettelijk partnerschap aan te gaan, dan wordt het begrip “gezinsvorming” gebruikt. Er is tot nu toe echter geen formele link tussen de twee personen. Op dat ogenblik zullen de migratiediensten nagaan of er indicaties zijn dat de vereniging al of niet gedwongen is of dat het om een schijnhuwelijk gaat. Nadat het huwelijk werd geconsumeerd of nadat de samenwoning wettelijk is aangegaan, zal het herenigingsproces starten. De reguleringen met betrekking tot gezinshereniging zijn dan eveneens van toepassing op de casus van ‘gezinsvorming’ (Desmet et al., op cit., p. 35)

bestaansuitkering³⁶), vereisten rond huisvesting (elementaire kwaliteitsvoorwaarden met betrekking tot veiligheid, gezondheid en leefomstandigheden) en ziekteverzekering³⁷. De regels verschillen lichtjes afhankelijk van het feit of de persoon die aanspraak maakt op gezinshereniging een Belg is, een EU-onderdaan of een onderdaan van een derde land. Sinds de wijzigingen van de wet zijn ingevoerd is het aantal weigeringen van verblijfsvergunningen in het kader van gezinshereniging sterk gedaald. In haar Jaarverslag voor 2013 legt het Ministerie voor Buitenlandse Zaken de daling van het aantal weigeringen als volgt uit: "Dit

heeft te maken met de nieuwe vereiste voor de persoon die het gezin wil herenigen: hij/zij moet bewijzen dat hij/zij een stabiele, regelmatige en voldoende bron van inkomsten heeft. Veel van deze 'gezinsherenigers' hebben werk dat niet stabiel is, hebben onvoldoende inkomsten of ontvangen een minimumvergoeding of werkloosheidsvergoeding, zonder dat ze actief naar een baan zoeken".

Het Ministerie merkte ook op dat misbruik werd gemaakt van

de wet. Voorbeelden van dit misbruik zijn het verstrekken van valse loonbriefjes, valse aangiften van vaderschap, of toestanden waarbij de buitenlander een aanzienlijk inkomen heeft, maar de gezinshereniger in een sociale woning verblijft, of scenario's waarbij de echtgenote sociale bijstand krijgt terwijl de echtgenoot een inkomen blijkt te hebben uit een winkel in het buitenland, ...³⁸

De wet verstrekt bescherming voor slachtoffers van intrafamiliaal geweld. Als u het slachtoffer bent van ernstig geweld, bijvoorbeeld verkrachting of opzettelijke verwonding³⁹, dan wordt uw verblijfsvergunning niet beëindigd. Ernstig geweld is vereist, maar de dader hoeft niet te worden vervolgd of veroordeeld. In het geval van ernstig psychologisch geweld is de regelgeving nog strenger: meer bewijs is nodig over een langere tijdsduur dan in het geval van louter fysiek geweld. Dezelfde voorwaarden zijn van toepassing als bij de driejarige controleperiode (vereiste rond werk of minimuminkomen, huisvesting, ziekteverzekering).

36. 1.307 euro/maand, dd September 2013, (www.kruispuntmi.be), accessed July 17 2014

37. De Brabander A, op cit, p 81--82

38. Activiteitenrapport 2013. Dienst vreemdelingenzaken. FOD Binnenlandse Zaken. https://dofi.ibz.be/sites/dvzoe/NL/documents/2013_NL.pdf

39. Art 375, 398--400, 402, 403, 405 Criminal Code.

Bovendien zijn er een aantal bilaterale tewerkstellingsovereenkomsten met Marokko, Algerije, Tunesië, Turkije en landen van het voormalige Joegoslavië. Deze overeenkomsten zijn rechtstreeks van toepassing, en daaruit volgen bepaalde verplichtingen. Een standaardartikel uit deze overeenkomsten bepaalt het volgende: "De werknemers die worden tewerkgesteld en die verblijven in België, mogen hun gezinnen laten overkomen eens zij drie maanden hebben gewerkt, op voorwaarde dat zij degelijke huisvesting hebben voor hun gezinnen (echtgenoot/echtgenote en ten laste zijnde minderjarige kinderen)". Echtgenoten uit deze staten hoeven niet de leeftijd van 18 jaar te hebben bereikt. Sinds 2010 echter negeren de Immigratiediensten stelselmatig deze bilaterale overeenkomsten, bijvoorbeeld door strengere minimumleeftijdsvoorwaarden te hanteren. De immigratiediensten rechtvaardigden dit door te verwijzen naar rechtspraak van de 'Raad voor Vreemdelingenbetwistingen'. De wet van 8 juli 2011 bevestigde deze praktijk, en bood hiermee een juridische grondslag voor de procedures van de Immigratiediensten.

Nationaal beleid rond gedwongen huwelijken

Het regeerakkoord van 2008 breidde het Nationale Actieplan Partnergeweld uit naar andere vormen van geweld, zoals gedwongen huwelijken, eengerelateerd geweld en vrouwenbesnijdenis. Het Nationale Actieplan 2010--2014 bevatte 120 voorstellen voor actie, waarvan 23 rond gedwongen huwelijken. Het meest recente, vijfde Actieplan ter bestrijding van alle vormen van gendergerelateerd geweld 2015--2019 werd opgesteld conform de Istanbul Conventie (Conventie van de Raad van Europa ter preventie van geweld tegen vrouwen en huiselijk geweld). Dit Plan focust op partnergeweld, vrouwelijke genitale verminking, huwelijksdwang, (zogenaamd) eengerelateerd geweld en seksueel geweld. Dit Actieplan heeft zes prioritaire doelstellingen:

- » Een geïntegreerd beleid voor de strijd tegen gendergerelateerd geweld voeren en kwantitatieve en kwalitatieve gegevens verzamelen over alle vormen van geweld;
- » Geweld voorkomen;
- » De slachtoffers beschermen en ondersteunen;

- » Beschermingsmaatregelen onderzoeken voortzetten en aannemen;
- » Rekening houden met de genderdimensie in het asiel- en migratiebeleid;
- » Strijden tegen geweld op internationaal vlak.

In totaal worden 235 nieuwe en concrete maatregelen genomen ter bestrijding van gendergerelateerd geweld⁴⁰.

Meningen van professionelen over gedwongen huwelijken in België

Problemen bij het definiëren van gedwongen huwelijken

Weinig respondenten hadden een definitie van gedwongen huwelijk waarop zij kunnen vertrouwen wanneer ze werken met mensen in het kader van een gedwongen huwelijk, met uitzondering van degenen met een juridische achtergrond, en beleidsmakers, wanneer zij verwijzen naar de definitie

zoals in de wet bepaald. Sommige respondenten beschouwen kindhuwelijken, aangegaan onder de leeftijd van 18, als gedwongen omdat het om een kind gaat, terwijl anderen geloven dat minderjarigen hun toestemming daarvoor kunnen geven.

In de dagelijkse praktijk is het definiëren van gedwongen huwelijken problematisch. Een duidelijk onderscheid maken tussen gearrangeerde huwelijken (niet illegaal) en gedwongen huwelijken (illegaal) is niet altijd eenvoudig en is complexer dan wat gedefinieerd wordt door de wet. Zij die werken met personen die getroffen zijn door een gedwongen huwelijk stellen dat het slachtoffer bepaalt of de situatie problematisch is, en dit wordt beschouwd als het uitgangspunt voor actie. Een belangrijk element dat veel respondenten aanhaalden was dat gearrangeerde en gedwongen huwelijken zich bevinden binnen een spectrum van verschillende niveaus van toestemming, druk en onderhandelingsruimte. Dit continuüm kan variëren van een absoluut gebrek aan vrijheid of keuze om de voorgestelde huwelijkspartner te weigeren (gedwongen), tot verschillende mogelijkheden voor onderhandeling rond voorgestelde partners of huwelijkskandidaten ((sterk) gearrangeerd),

40. Stop Geweld. Nationaal Actieplan ter bestrijding van alle vormen van gendergerelateerd geweld 2015--2019. https://www.n--va.be/sites/default/files/documents/PDF/persdossier_nationaal_actieplan_ter_bestrijding_van_alle_vormen_van_gendergerelateerd_geweld.pdf

tot een huwelijk waarbij beide partners instemmen met de voorgestelde partner (gearrangeerd huwelijk met volledige toestemming).

Zulke gearrangeerde huwelijken worden echter niet noodzakelijk gezien als problematisch, aangezien respondenten meldden dat jongeren vaak akkoord gaan met de keuze die hun ouders (of anderen) maken en vertrouwen op het oordeel van de ouders.

Nog een opvallende bevinding op basis van de interviews is dat de klassering van een huwelijk als zijnde gedwongen of gearrangeerd door de slachtoffers na verloop van tijd kan evolueren (van gearrangeerd naar gedwongen). Het kan zijn dat een individu akkoord ging met een huwelijk om te kunnen migreren, maar dat eens in België het huwelijk niet was wat ze ervan verwachtten of dat het geen goed huwelijk blijkt te zijn (bijvoorbeeld omwille van geweld of de dreiging van geweld binnen dat huwelijk), en de beleving van de basis waarop het huwelijk werd aangegaan, verandert.

Kenmerken van gedwongen huwelijk

Onze respondenten gaven een brede waaier van etnische achtergronden aan die te maken krijgen met gedwongen huwelijken, zoals mensen uit Afghanistan, Albanië, Algerije, Armenië, Bangladesh, België, Bulgarije (Turkse gemeenschap), Tsjetsjenië, China, Indië, Italië, Kosovo (Roma Gemeenschap), Koerdische gemeenschap, Libanon, Marokko, Pakistan, Rusland, Thailand, Tunesië, Turkije en Servië.

De belanghebbenden onderstreepten de rol van het gezin als beslissers met betrekking tot huwelijken, en in het bijzonder de ouders. Onder de migranten van de tweede en derde generatie is de invloed van de ouders als koppelaars afgenomen. De druk kan echter komen van de hele gemeenschap, niet enkel van het gezin, en/of van de familie in het land van herkomst. De keuzevrijheid om een huwelijkskandidaat te weigeren kan afhangen van de eigenschappen van een familie; of de familie "open en modern" is of eerder "behoudsgezind". Druk kan worden uitgeoefend op individuen, maar evengoed op een gezin. De uitgeoefende druk is meestal psychologisch, maar ook fysiek, en de controle over een meisje kan worden

verkregen wanneer de gemeenschap een gezin straft (bijvoorbeeld wanneer de halve gemeenschap niet komt opdagen op een huwelijk van een van de kinderen van een bepaald gezin waarvan de dochter trouwt met iemand die de gemeenschap niet aanvaardt). Een van de redenen voor het behoud/aanvaarden van de voormelde druk was de vrees uit de gemeenschap en het gezin te worden verstoten en het feit dat het zeer moeilijk is om te breken met de veilige omgeving van het gezin. Mensen willen ook hun ouders niet teleurstellen en de familiereputatie schenden. Het aspect loyaliteit is hier een doorslaggevend element.

Wanneer we kijken naar het geslacht, meldden vaklui dat zowel jongens als meisjes te maken kunnen krijgen met gedwongen en gearrangeerde huwelijken, terwijl anderen zeiden dat enkel meisjes gedwongen worden te huwen. Het werd wel verschillende keren vermeld dat jongens meer kansen krijgen om te weerstaan aan de druk een huwelijkskandidate te aanvaarden, en dat voor mannen andere regels gelden dan voor vrouwen.

Op het gebied van leeftijd meldde een respondent dat meisjes soms op de leeftijd van 16 of 17 trouwen in de landen van

herkomst, en dat ze in het kader van gezinshereniging naar België worden gebracht eens ze 18 zijn, of nadat de nodige papieren zijn vervalst. Huwelijken van minderjarigen zijn gemeld in RomaF en Afghaanse gemeenschappen.

De respondenten meldden een aantal redenen voor gedwongen of gearrangeerde huwelijken. Veel respondenten vermeldden het aspect eer. Wanneer een meisje aan het begin van de puberteit staat en de eerste tekenen van vrouwelijkheid duidelijk worden, wordt door een huwelijk de eer van dat meisje en van de familie behouden. Wat de eer van de familie ook kan schaden, is een interetnische relatie die niet door de ouders wordt aanvaard, het vertonen van een te westerse levensstijl, wanneer jongeren ingaan tegen de regels van de familie, in geval van homoseksualiteit, of in geval van “problematische” jongeren (druggebruikers, problemen op school, crimineel verleden, een of meerdere relaties hebben voor het huwelijk). In zulke gevallen wordt een “therapeutisch” huwelijk voorgesteld of opgelegd om de persoon te “genezen”, en om hem of haar terug op het rechte pad te krijgen. Huwelijken worden evengoed afgesloten omwille van financiële en/of materiële redenen, of voor verblijfspapieren. Dit verwijst voornamelijk naar een

huwelijk dat wordt beschouwd als een financiële transactie, waarbij ouders meisjes “verkopen”, zoals een respondent het verwoordde. Huwelijken worden ook aangegaan om verblijfsvergunningen te verkrijgen, en dit zorgt voor verschillende problemen, zoals respondenten aanhaalden. Het wordt steeds moeilijker om België binnen te komen, dus zijn huwelijken voor het verkrijgen van verblijfsvergunningen een realiteit. Huwelijken worden ook opgelegd om de eigen waarden te beschermen tegen buitenlandse invloeden. Gedwongen en gearrangeerde huwelijken binnen dezelfde etnische gemeenschappen worden aangegaan om de eigen cultuur en waarden te beschermen. Ouders maken zich misschien zorgen dat hun levensvisie, waarden en taal niet zullen worden overgedragen op de volgende generaties. En ten slotte worden huwelijken opgelegd om voor ouderen te zorgen, aangezien bejaarde migranten niet naar verzorgingstehuizen gaan, zoals gebruikelijk is in België.

De respondenten wezen op een duidelijke verandering tussen migranten van de eerste en de tweede/derde generatie: de jongere generaties hebben meer onderhandelingsruimte, meer vrijheid om de huwelijkspartner te kiezen en grotere openheid om over het onderwerp te praten.

Er werden talrijke gevolgen aangehaald van gedwongen huwelijken, onder meer psychologische problemen, vroege zwangerschap, jongens en meisjes die de school verlaten, financiële gevolgen (bruidsprijs als dwingende factor bij het aanvaarden en/of het behoud van het huwelijk), problemen met integratie in het geval van een migratiehuwelijk (huwelijk tussen een partner die al in België woont en een partner die uit een ander land komt), geweld (partnergeweld, afwijzing door de gemeenschap wanneer het huwelijk wordt geweigerd) en extreme afzondering.

Voorbeelden van manieren om met gedwongen huwelijken en de gevolgen ervan om te gaan, en/of om aan (de dreiging van) een gedwongen huwelijk te ontsnappen, zoals aangegeven door onze respondenten, zijn het neerleggen van een klacht bij de politie (wat echter zeldzaam is), scheiding (hoewel de vereiste om 3 jaar lang getrouwd te blijven voor huwelijksmigratie problematisch kan zijn voor zij die willen scheiden), weigering om op vakantie te gaan naar de landen van herkomst om de druk te ontlopen om huwelijkskandidaten te aanvaarden, verlenging van scholing (bijvoorbeeld door opzettelijk voor examens te zakken), en psychotherapie. Opnieuw werd herhaald dat mechanismen

om te ontsnappen aan of om te gaan met gedwongen huwelijken gunstiger zijn voor mannen dan voor vrouwen, aangezien het aanvaardbaar is voor mannen om een andere relatie te hebben met een partner van hun keuze naast het officiële huwelijk.

Meningen over huidige dienstverlening met betrekking tot gedwongen huwelijken

De respondenten haalden aan dat een aantal initiatieven zijn ondernomen rond gedwongen huwelijken. De inspanningen rond gedwongen huwelijken kunnen worden onderverdeeld in preventie, bescherming, vervolging, dienstverlening, beleidsvorming en onderzoek.

De preventie van gedwongen huwelijken spitst zich toe op verschillende aspecten: sensibilisering, capaciteitsopbouw voor zowel vaklui als slachtoffers, 'outreach', verstrekking van advies en doorverwijzing, bemiddeling, financiële maatregelen, sociale netwerken, en overleg tussen steden. Sensibilisering wordt gerealiseerd door het verstrekken van informatie via posters, folders, de organisatie van colloquia, websites, het uitzenden van documentaires en

films, theaterstukken, opleidingspakketten, brochures, enz. Sensibilisering richt zich vaak tot doelgroepen in scholen, bij voorkeur vóór schoolvakanties. Capaciteitsopbouw gericht op zowel vaklui als slachtoffers bestaat ook. 'Outreach', vooral naar de RomaFgemeenschappen, werd vermeld als een manier om een vertrouwensband op te bouwen met deze gemeenschap of families, wat noodzakelijk is om problemen aan te kaarten met betrekking tot de schoolaanwezigheid van RomaFkinderen. Bemiddeling is een vaak gebruikte strategie, en wordt bijvoorbeeld toegepast door de politie, door leraren (gelijkekansenleraar) of door culturele bemiddelaars, met als doelgroep de ouders, het gezin, de imam of een vertrouwenspersoon van het slachtoffer. Wanneer slachtoffers diensten aanspreken, wordt advies, begeleiding en zo nodig doorverwijzing verstrekt. Er wordt informatie gegeven rond de rechten van het slachtoffer, de nadelen/voordelen en de risico's van elke stap die kan worden genomen bij de overweging een huwelijk te weigeren. Ook wordt informatie verstrekt rond doorverwijzing.

Met betrekking tot de bescherming van slachtoffers van gedwongen en gearrangeerde huwelijken, waren de respondenten van mening dat politie, opvangplaatsen en

leraren een sleutelrol spelen. De door de respondenten aangegeven signalen van gedwongen en garrangeerde huwelijken komen van scholen, politie, maatschappelijke werkers, leraren, familie en vrienden, sociale diensten, Centra voor Leerlingenbegeleiding, zorgverstrekkers en gezondheidsdiensten. Veel respondenten waren het er echter over eens dat slachtoffers zelden gevallen van gedwongen huwelijken aangeven. Dit is moeilijk voor slachtoffers omdat zij, hoewel zij niet akkoord gaan met de ouders, toch loyaal willen blijven tegenover hen. Dit loyaliteitsconflict zorgt ervoor dat het erg moeilijk is voor hen om dit aan te kaarten en een klacht in te dienen tegen hun ouders of hun familie.

Bij gevallen van gedwongen huwelijk kan het juridische kader in gang worden gezet. Slachtoffers kunnen aangifte doen bij de politie, hoewel respondenten opmerkten dat dit niet vaak het geval is (zie hierboven). In het geval van aangifte van gedwongen huwelijk wordt een proces-verbaal opgesteld en wordt de aanklager op de hoogte gebracht. Rechtszaken kunnen worden ingesteld, en juridische maatregelen zijn dan bijvoorbeeld gevangenisstraffen of vrijlating onder voorwaarden.

Het werken met (potentiële) slachtoffers gaat van het bieden van ondersteuning en opvolging op lange termijn, psychotherapie in de eigen moedertaal tot het verstrekken van advies en begeleiding door lotgenoten (vrouwen die ooit slachtoffer zijn geweest zijn nu ervaringsdeskundigen die slachtoffers bijstaan in het beslissingsproces). Met betrekking tot bemiddeling benadrukten de geïnterviewden dat het gebruik van bemiddeling sterk afhangt van elke situatie, en dat het soms helemaal niet is aanbevolen, omdat het slachtoffer hierdoor in ernstig gevaar kan worden gebracht. Opvangcentra voor vrouwen en kinderen die slachtoffer zijn van huiselijk geweld, ontvangen eveneens slachtoffers van gedwongen en garrangeerde huwelijken, hoewel hun activiteiten geen specifieke focus hebben op huwelijksdwang. Opvangcentra bieden hulp voor maximum 3 maanden, en hun diensten omvatten bemiddeling, counseling van koppels, socio-psychologische counseling, aanbieden van een veiligheidsplan voor vrouwen en kinderen, hulp bij reïntegratie en werken met kinderen.

Problemen met dienstverlening omtrent huwelijksdwang

De lijst met obstakels en leemtes omtrent dienstverlening, zoals geïdentificeerd door de respondenten, was helaas zeer uitgebreid. Het volgende deel geeft hiervan een overzicht, meer bepaald over het gebrek aan diensten en andere strategieën om huwelijksdwang adequaat aan te pakken in België.

Een heel specifieke bezorgdheid die werd gedeeld was huwelijksdwang bij Roma in België, en de problemen dat dit met zich meebrengt voor de professionelen die er mee geconfronteerd worden. Eén van de opvallende resultaten van dit onderzoek was dat diensten niet echt adequaat ageren wanneer het probleem van huwelijksdwang bij Roma zich stelt. Volgens een respondent die met Roma gemeenschappen werkt, hebben de meeste diensten wel weet van het probleem van kindhuwelijken bij Roma en erkennen ze dat ook, maar ageren ze niet (meer). Daarenboven werd ook de slechte economische situatie en de hoge werkloosheidsgraad van Roma gemeenschappen in de landen van herkomst als een probleem gezien betreffende

de aanpak van kindhuwelijken. Wat ook niet helpt bij de aanpak van het probleem zijn ten slotte de attitudes van deze gemeenschappen met betrekking tot het huwelijk, alsook de gebrekkige kennis van mogelijke diensten. Respondenten gaven aan dat Roma wantrouwig zijn ten opzichte van diensten, en meestal ook niet weten waar naartoe. Bijvoorbeeld, voor tienermoeders die nog schoolplichtig zijn, is dagopvang voor hun kind(eren) geen optie, omdat dit systeem van dagopvang als zeer eigenaardig wordt ervaren, en tegengesteld aan het gebruikelijke opvoeden van kinderen in de familie. Daarenboven hebben nogal wat Roma geen weet van het feit dat het vinden van een plaats in zo'n dagopvang reeds vroeg tijdens de zwangerschap dient te gebeuren. Taalbarrières, zeker in het geval van kindbruiden die uit het buitenland komen, vormen een extra obstakel bij de dienstverlening. Een bijkomend probleem is dat de vertrouwensrelatie die hulpverleners hebben met Roma gemeenschappen, in gevaar wordt gebracht wanneer die hulpverlener bekend staat als iemand die hielp bij een geval van huwelijksdwang. Gearrangeerde huwelijken worden als de norm gezien, en het onderwerp 'huwelijk' ligt gevoelig en moeilijk ter discussie te stellen. Dezelfde moeilijkheden manifesteren zich wanneer men probeert de toekomst

perspectieven en kansen van een meisje centraal te stellen, wanneer dat meisje de school verlaat vanwege een huwelijk. Respondenten gaven aan dat het tijd zal kosten om deze attitudes en gedragingen te veranderen. Een ander obstakel dat werd aangehaald waren de klasdiscussies omtrent het menselijk lichaam en seksualiteit, waaraan sommige kinderen van Roma niet mogen deelnemen.

Veel respondenten beschouwden bemiddeling als complex en problematisch. Vaak gebeurt dit met de beste bedoelingen, bijvoorbeeld door leraren die een gedwongen huwelijk bespreken met de ouders. Nochtans wordt bemiddeling niet vaak gezien als de oorzaak van ernstige problemen voor het slachtoffer. Elk geval moet apart worden bekeken, en het hele familiale systeem en het veiligheidsplan moeten zorgvuldig worden geëvalueerd. Een respondent meldde dat bemiddeling in gevallen van een gearrangeerd of gedwongen huwelijk niet kan gebeuren op basis van dezelfde strategie als bij het aanpakken van problemen op school. Bemiddeling ligt moeilijk bij de ouders, die veel belang hechten aan tradities en sociale verplichtingen binnen hun gemeenschap, aangezien de positie binnen een gemeenschap zeer waardevol is en noodzakelijk om te

overleven. Bemiddeling kan bijgevolg zeer bedreigend zijn. Een respondent meldde dat men soms zijn toevlucht neemt tot parallelle bemiddeling, bijvoorbeeld zowel door diensten als door familieleden, om het probleem op te lossen. En wanneer het slachtoffer er uiteindelijk voor kiest om terug te keren naar de familie, kan dit frustrerend zijn voor de dienstverleners. Het aanduiden van de juiste persoon om te bemiddelen is eveneens moeilijk. Het gebruik van tolken, imams of familieleden werd erkend als zijnde problematisch. Familieleden, imams of leden van de gemeenschap kunnen slachtoffers afschrikken om naar voor te treden. Bovendien hebben zij ook loyaliteiten ten opzichte van hun families en/of gemeenschappen. Tegelijk werd erkend dat familieleden misschien ook de enigen zijn naar wie families willen luisteren en met wie ze willen spreken.

Veel respondenten deelden hun bezorgdheid omtrent de dienstverlening die momenteel voorhanden is. Deze bezorgdheid slaat voornamelijk op de attitudes en gevoelens van professionelen, de attitudes en gevoelens van de gemeenschappen en op de strategieën en activiteiten van de diensten zelf. Gevoelens en attitudes van gemeenschappen die een adequate dienstverlening in de weg staan hebben

voornamelijk te maken met angst bij de gemeenschappen om naar opvangplaatsen en diensten te gaan, maar ook met het verschil in waarden en normen rond gedwongen en gearrangeerde huwelijken. De respondenten gaven aan dat de angst om met familiale problemen naar buiten te komen en de familie nog meer verantwoordelijk te stellen een obstakel vormt om hulp te gaan zoeken bij diensten, hetgeen erop wijst dat veel te weinig gebruik wordt gemaakt van die diensten. Het mag ook niet onderschat worden dat de stap zetten naar hulpverlening in een opvangplaats bijzonder moeilijk is voor slachtoffers, en zeker voor minderjarigen, die nooit buiten een familie of gemeenschap hebben geleefd. De drempel om naar dienstverleners of naar de politie te gaan werd als hoog beschouwd. Een respondent geloofde dat dit misschien makkelijker was voor de 2de en de 3de generatie van Turkse en Marokkaanse gemeenschappen omdat zij de diensten beter kennen, dan voor andere gemeenschappen zoals de Pakistaanse, waar het fenomeen gedwongen huwelijken nog altijd een groot taboe is. Tot slot meldde een respondent dat de gemeenschappen niet altijd een juiste perceptie hebben van de bestaande diensten, ten gevolge van vooroordelen of onvoldoende kennis.

De respondenten uitten een aantal bezorgdheden met betrekking tot de gevoelens, attitudes en vaardigheden van professionelen. De angst om gemeenschappen te stigmatiseren, stereotypes over andere etnische gemeenschappen, cultureel relativisme en communicatieproblemen ten gevolge van taalbarrières en/of verschillende waardensystemen werden aangehaald als zaken die een adequate dienstverlening in de weg staan. Zo meldde een respondent bijvoorbeeld dat zij moeilijkheden ondervonden bij het sensibiliseren van magistraten. Ontoereikende competenties bij professionelen werden eveneens vermeld. Een respondent wees op de moeilijkheden bij het evalueren van het gevaarniveau voor een persoon, het vaststellen van de situatie en het nemen van gepaste acties. Bovendien, zo meende een respondent, staan in de opleidingen van professionelen geen instructies over hoe ze moeten omgaan met de toenemende diversiteit in onze huidige maatschappij. In dat opzicht vermeldde een andere respondent dat studieprogramma's, van leraren of van maatschappelijke werkers bijvoorbeeld, geen up-to-date en realistische theorieën voorzien, zoals de benadering van de intersectionaliteit, en dat traditionele theorieën nog altijd heel gewoon zijn (bijv. het culturele perspectief). Daardoor beschikken professionelen niet over de tools om op gepaste

wijze te handelen in alle situaties.

Andere problemen in verband met de activiteiten en strategieën van diensten zijn: de lange wachtlijsten voor diensten, de trage responssnelheid, problemen met opvangplaatsen, echtscheiding die naar voor wordt geschoven als oplossing voor een gedwongen huwelijk, het feit dat men geen of weinig mannen en jongens bereikt, dat er geen diensten zijn voor geïsoleerde bevolkingsgroepen en dat men de doelgroepen niet kan bereiken voor sensibiliseringsinspanningen. Sommige respondenten maakten melding van het feit dat bepaalde sensibiliseringsactiviteiten, zoals brochures of campagnes, niet goed aangepast waren aan de doelgroepen, en dat dit soort activiteiten geen bevolkingsgroepen mag stigmatiseren. Sommige respondenten bekritiseerden de huidige benadering van de diensten als zijnde eenzijdig.

Opvangplaatsen vormen een belangrijk aspect van dienstverlening aan slachtoffers, maar toch meldde een respondent dat de voorziening van opvangplaatsen “een ramp” was, en dat de situatie nog erger is voor migranten zonder papieren. Er zijn niet genoeg opvangplaatsen, en ze zijn niet in staat om op gepaste wijze om te gaan

met de gevoelens van isolement en eenzaamheid van de slachtoffers van een gedwongen huwelijk. Begeleiding vormt een probleem wanneer er een taalbarrière is (want dan moet een beroep worden gedaan op een tolk). Bovendien, aangezien opvangplaatsen maar een kortetermijnoplossing bieden, wordt geen opvolging op lange termijn geboden en blijft de reïntegratie van slachtoffers problematisch. Door het gebrek aan opvangplaatsen, en vooral door het gebrek aan specifieke zorg voor slachtoffers van een gedwongen huwelijk, worden slachtoffers geplaatst “daar waar er een plaats vrij is, hetgeen kan leiden tot bijzonder verontrustende toestanden”, aldus een respondent.

Een specifieke bezorgdheid die door veel respondenten werd aangehaald houdt verband met bevolkingsgroepen die geïsoleerd zijn en bijgevolg moeilijk te bereiken. Tot deze groepen behoren onder andere mensen zonder papieren, en nieuwkomers. Nieuwkomers die in België aankomen via gezinshereniging zijn soms helemaal alleen, zonder sociale contacten, beheersen het Nederlands of Frans niet, en/of worden mishandeld door hun partner. Volgens de wet inzake verblijfsrecht moeten ze 3 jaar bij hun echtgenoot blijven om hun verblijfsvergunning niet te verliezen. Dit wordt als

problematisch beschouwd wanneer de relatie gewelddadig is. Geïsoleerde slachtoffers zijn volledig afhankelijk van hun partner en daardoor vinden ze niet makkelijk de weg naar dienstverleners. Toegang krijgen tot deze personen en tot de “gesloten” gemeenschappen, en hen voldoende oplossingen aanreiken is bijzonder delicaat en moeilijk, aldus een respondent. Echtscheiding als een uitweg uit een gedwongen of gewelddadig huwelijk dat gearrangeerd werd, kan daardoor extra problematisch zijn.

En tot slot werden veel bezorgdheden naar voren gebracht in verband met de ontwikkeling en de implementatie van beleidslijnen en wetten rond gedwongen huwelijken. Respondenten vonden het problematisch dat er zo veel definities van gedwongen huwelijk circuleren. Bovendien was het moeilijk een onderscheid te maken tussen een gedwongen en een gearrangeerd huwelijk wanneer beleidslijnen en wetten werden toegepast in de praktijk. Dit leidt tot een verwarring van soorten huwelijken, of het leidt tot moeilijkheden bij het bewijzen dat een gearrangeerd huwelijk geëvolueerd is naar een gedwongen huwelijk. Een andere respondent merkte op dat de niet-erkenning van de complexiteit van het probleem een belemmering vormde

voor de dienstverlening. Nog een andere respondent stelde dat alle huwelijksvormen bij migranten over één kam worden geschoren, waarbij de voornaamste bezorgdheid is om de migratiestroom te stoppen. Een respondent erkende ook dat wanneer er geen beleid is dat wordt gesteund door een visie omtrent diversiteit, dit de zorgverstrekking zal kenmerken, ongeacht of die preventief of curatief is, en dat dit een rechtstreekse impact heeft op de steun die wordt geboden aan een slachtoffer. Een andere respondent vermeldde het uiterst rechtse migratiebeleid als een invloedrijke factor, aangezien de strengere regels inzake huwelijksmigratie de weg vrijmaken voor gedwongen en gearrangeerde huwelijken en zouden kunnen leiden tot een toename van dergelijke huwelijken.

Gemeenschappen betrekken bij de ontwikkeling van een beleid werd gezien als een complexe zaak, omdat gemeenschappen waar gedwongen huwelijken plaatsvinden, zulk een beleid als stigmatiserend kunnen beschouwen. De implementatie van het beleid wordt evenzeer belemmerd door de ontoereikende uitwisseling van ervaringen en communicatie tussen de belanghebbenden. Daarnaast wordt migratie aangepakt op regionaal bestuursniveau,

gemeenten kunnen vrij beslissen hoe strikt ze zijn op het vlak van huwelijksmigratie, waardoor mensen gaan 'shoppen' tussen steden om toch maar te kunnen trouwen; dit werd als problematisch ervaren door de respondenten.

Het ontbreken van een welbepaalde richtlijn voor aanklagers omtrent gedwongen huwelijken leidt ertoe dat men in bepaalde politiezones ervan uitgaat dat gedwongen huwelijken geen probleem vormen in hun gebied. De respondenten maakten melding van een reeks problemen en uitdagingen in verband met de voorhanden zijnde wetten en het juridisch kader.

- Rapportering: Een respondent maakte melding van de discrepantie in aantal tussen de geregistreerde gevallen door een gespecialiseerde politie Eenheid in Brussel, en hetgeen mensen die werken binnen dit gebied, opmerken en ervaren. Een andere respondent stelde dat veel gevallen worden gecategoriseerd onder de noemer intrafamiliaal geweld of schijnhuwelijken, want "dat is nu eenmaal het makkelijkst". Tot slot werd opgemerkt dat het uiterst problematisch is voor een slachtoffer om een klacht neer te leggen wanneer de

meisjes nadien geen degelijke zorg kunnen krijgen.

- Bewijs leveren: De moeilijkheid van het leveren van bewijs is de reden waarom gedwongen huwelijken zelden behandeld worden door rechtbanken. Zo werd bijvoorbeeld vermeld dat het moeilijk is het bewijs te leveren van het ontbreken van toestemming of van het bestaan van dreigementen, of van het feit dat een huwelijk enkel en alleen gesloten werd om verblijfspapieren te krijgen. Getuigen vinden die willen getuigen tegen de gemeenschap of de familie is een even grote uitdaging. Respondenten meldden dat dit heel vaak leidt tot het opbouwen van zaken gebaseerd op andere misdrijven, zoals mishandeling of intimidatie, waarbij het gedwongen huwelijk slechts bijzaak is.
- Misbruiken van het juridisch kader werden eveneens vernoemd, zoals het geval is met schijnhuwelijken en de vervalsing van documenten (bijv. geboorteaktes). Meer nog, bepalingen inzake professionele geheimhouding belemmeren de uitwisseling van essentiële informatie tussen professionelen in gevallen van gedwongen huwelijken. Soms werken verschillende diensten met

een familie, maar ze weten dit niet of ze kunnen geen informatie uitwisselen doordat ze gebonden zijn aan het beroepsgeheim.

Respondenten evalueerden verschillende lacunes die een negatieve impact hebben op de adequate voorziening van diensten voor diegenen die getroffen worden door een gedwongen huwelijk. Ze worden in detail besproken in deze paragraaf.

De kennis bij vaklui werd beschouwd als onvoldoende, in het bijzonder op het vlak van gedwongen huwelijken, en op het vlak van interculturele competenties in het algemeen. Dit gebrek aan kennis komt voor bij een grote groep professionelen, waaronder politieagenten, maatschappelijke organisaties, jeugdzorgdiensten, leraren, maatschappelijke werkers, aanklagers en magistraten. Dat leidt tot gevoelens van twijfel bij professionelen, tot het niet registreren van gevallen van gedwongen huwelijk, en het uiteindelijke resultaat is “amateuristisch werk”, het feit dat “niemand nog echt weet wat er moet gebeuren” en dat “iedereen op dezelfde basis wordt behandeld, wat de zaak niet vooruithelpt in een intercultureel kader”. Samengevat leidt het tot onaangepaste

acties of wordt er helemaal geen actie ondernomen.

Een respondent meldde dat organisaties voor jeugdzorg bang zijn om deze kwestie aan te kaarten bij jongeren en ouders omdat *“ze geen problemen willen creëren en zich dus maar tevreden stellen met de huidige manier van werken. Federaties van maatschappelijke organisaties pakken de kwestie ook niet aan hoewel zij zouden kunnen fungeren als de schakel tussen dienstverleners en gemeenschappen”*.

Het gebrek aan informatie en tools voor professionals is misschien één van de belangrijkste redenen voor dit gebrek aan kennis, en bijgevolg voor de tekorten op het vlak van dienstverlening. Volgens de respondenten was er in het bijzonder een gebrek aan informatie omtrent het (h)erkennen van gedwongen huwelijken, omtrent interventieprotocollen (rond bemiddeling, mogelijkheden om actie te ondernemen, hoe het probleem aan te pakken of naar waar door te verwijzen in geval van levensbedreigende situaties), omtrent het juridisch kader en de rechten van de slachtoffers. Vakmensen hebben ook niet de juiste vaardigheden om om te gaan met interculturele kwesties en diversiteit. Volgens een van de respondenten was dit te wijten aan een gebrek

aan scholing en opleiding over diversiteit. Het gebrek aan opvolgen en evaluatie van de acties van dienstverleners werd vermeld als een probleem voor een gepaste dienstverlening net als het niet registreren van gevallen van gedwongen huwelijken (bijvoorbeeld door het gebrek aan regels).

Respondenten zagen verschillende lacunes bij de diensten. Sommige respondenten wezen op het gebrek aan opvangplaatsen in het algemeen en het gebrek aan gespecialiseerde en beveiligde opvangplaatsen die geschikte accommodatie bieden aan minderjarigen. Mainstream opvangplaatsen, met vrouwen die slachtoffer zijn van intiem partnergeweld of intrafamiliaal geweld, zijn niet altijd de meest geschikte plaats voor jonge meisjes. Het gebrek aan opvangplaatsen is problematisch: wanneer een slachtoffer bijvoorbeeld weigert om naar een specifieke opvangplaats te worden gebracht omdat deze te dicht bij haar eigen woonplaats is, komt ze helemaal onderaan de wachtlijst te staan. Het gebrek aan initiatieven voor de opvolging en de reïntegratie van slachtoffers op lange termijn is, volgens een van de respondenten, eveneens een kwestie die moet worden aangepakt.

Het gebrek aan actie om kindhuwelijken bij de Roma aan te pakken was behoorlijk verontrustend.

Een andere lacune in de dienstverlening is het gebrek aan specifieke psychotherapie voor slachtoffers. Het merendeel van hen krijgt dezelfde therapie als slachtoffers van intrafamiliaal geweld.

Dienstverlening voor zij die "onzichtbaar" zijn is er ook niet. Zoals een respondent zei, komen de meest ernstige gevallen niet onder de aandacht van de dienstverlener, tzt. zij die opgesloten worden, die gebruikt worden als huislavinnen, of die verkeren in ernstige gewelddadige situaties. Dienstverleners richten zich te veel op Belgische slachtoffers aangezien die verankerd zijn in het systeem (school, sociale netwerken, enz).

Sommige respondenten zeiden dat het gebrek aan onderzoek moet worden aangepakt. Zo is het bijvoorbeeld nodig dat de doeltreffendheid van interventies van verenigingen wordt gemeten en dat een schatting wordt gemaakt van de mate waarin het fenomeen gedwongen huwelijken zich voordoet. Het niet voorhanden zijn van cijfers kan te wijten zijn aan het niet registreren van gedwongen huwelijken, aan de

complexiteit van het probleem, en aan het feit dat er een aantal “niet geregistreerde gevallen” is dat zeer moeilijk in te schatten is.

Ook werd gewezen op het gebrek aan coördinatie op verschillende niveaus. Dit werd opgemerkt tussen Vlaanderen en Wallonië, die verschillende visies hebben over gedwongen huwelijken, verschillende manieren van werken en die verschillende instrumenten hanteren. Nochtans stelde een respondent dat beide regio's zouden kunnen leren van elkaar aangezien beide manieren van werken complementair zijn. Er is meer coördinatie nodig met betrekking tot de voorziening van opvangplaatsen. Diensten en vakmensen stemmen hun werk ook niet op elkaar af. Zo wordt bijvoorbeeld geen feedback gegeven wanneer verschillende vaklui werken aan één zaak, en er is een gebrek aan coördinatie tussen de diverse betrokken diensten, onder meer in verband met de opvolging van slachtoffers of families.

Een lacune in de dienstverlening die vaak werd aangehaald was het gebrek aan voldoende middelen om een adequate dienstverlening te garanderen. Hiernaar werd verwezen in verband met de opvolging van slachtoffers zowel op lange termijn als op korte termijn (bijv. de behoefte aan voldoende

personeel om te bemiddelen, want dat vraagt tijd). Het feit dat respondenten aangaven dat opvangplaatsen “vol” zitten of “lange wachtlijsten hebben” wijst erop dat er inderdaad een gebrek aan middelen is om zorg te bieden aan slachtoffers. Een van de respondenten haalde aan dat de financiële crisis het werk van de politie en de gemeenten in verband met gedwongen huwelijken belemmerde.

Tot slot werd er ook op gewezen dat er onvoldoende kennis is bij de gemeenschappen. Het gebrek aan kennis over wetten inzake migratie, huwelijk en gedwongen huwelijken bij mensen die België binnenkomen, werd ter sprake gebracht. Gemeenschappen hebben ook niet voldoende kennis van de diensten. Zo weten ze bijvoorbeeld niet hoe ze geweld moeten aangeven, of waar ze zich moeten wenden voor gezondheidszorg, of ze zijn niet voldoende op de hoogte van opvangplaatsen, enz. Jongeren hebben vaak geen weet van alternatieve opties wanneer hen een gedwongen huwelijk te wachten staat.

Aanbevelingen ter verbetering van preventie, bescherming, vervolging en de voorziening van diensten

De respondenten gaven een brede waaier aan aanbevelingen ter verbetering van preventie, bescherming, vervolging, de voorziening van diensten, coördinatie, enz.

Een aanbeveling die herhaaldelijk werd vernoemd is de nood om diversiteit te integreren in diensten, en in de “hoofden” van dienstverleners en van het publiek in het algemeen. Vooral respondenten die werken met getroffen gemeenschappen riepen op tot het opbouwen van competenties om om te gaan met diversiteit, met inbegrip van diverse waarden en normen, imagebuilding van andere culturen, interculturele communicatievaardigheden, de context en de achtergrond van migratie, enz. Een van de respondenten meldde dat er nood is aan interculturele competenties in elk onderwijsprogramma, en dat diversiteit zou moeten worden opgenomen als een transversaal thema. Niet alleen Vlaamse professionals maar ook maatschappelijke organisaties en federaties moeten uit hun comfortzone stappen en interculturele kwesties onder ogen durven zien en de problemen erkennen die daardoor worden veroorzaakt. Elke

dienst (jeugdrechtbanken, integrale ondersteuning van de jeugd, alle sectoren en diensten) zouden coaching en opleiding moeten krijgen over hoe ze moeten omgaan met diversiteit. Een andere suggestie die werd gedaan is de ontwikkeling van een handleiding of kwaliteitscriterium om een dienst te subsidiëren, op basis van diversiteit: diensten moeten aantonen dat ze rekening houden met diversiteitskwesties en hoe ze daarmee omgaan, want er is nood aan een “dwingend kader” en “ een minister die zich engageert om druk uit te oefenen zodat diversiteit in elke dienst zou worden geïntegreerd”. Er is nood aan een kader waarvoor een autoriteit verantwoordelijk kan worden gesteld, en waarin wordt bepaald dat diversiteit geen optie is.

In verband met beleidsvorming meldden de respondenten dat er nood is aan duidelijke richtlijnen voor magistraten. In dat opzicht werd een specifieke COL over gedwongen huwelijken aanbevolen, hetzij een specifieke, hetzij een aanvullende op de COL3 (omtrent intrafamiliaal geweld), die uitlegt wat een gedwongen huwelijk is, welke de achterliggende mechanismen ervan zijn, wat de verschillende gedragingen van daders en slachtoffers zijn, wat de waarschuwingssignalen zijn, de straffen, enz. Op die

manier zullen gedwongen huwelijken zichtbaar worden: het fenomeen kan worden gecentraliseerd, er zullen statistieken beschikbaar zijn, en heel het grondgebied van België zal opgenomen worden. Een respondent suggereerde dat we op nationaal niveau een richtlijn of protocol nodig hebben op het beleidsniveau zelf, vergelijkbaar met die in Nederland.

In verband met de wet omtrent gedwongen huwelijken zei een respondent dat een wet alleen deze praktijk niet zal kunnen stoppen. Een andere respondent sloot zich daarbij aan en benadrukte dat juridische acties gepaard zouden moeten gaan met respectvolle interventies in families en gemeenschappen. Een van de respondenten zei dat de wet omtrent gedwongen huwelijken zou kunnen verbeterd worden door een bepaling die de bewijslast bij de dader legt zodat deze moet bewijzen dat hij/zij geen druk heeft uitgeoefend op het slachtoffer of geen geweld heeft gebruikt. Met betrekking tot kindhuwelijken zei een van de respondenten dat kindhuwelijken altijd moeten vervolgd worden, zelfs als ze in het buitenland worden gesloten, en dat deze kinderen aan het ouderlijk gezag moeten onttrokken worden.

Er werden heel wat aanbevelingen gedaan voor het verbeteren van het onthaal van (potentiële) slachtoffers. De respondenten erkenden dat het belangrijk is om gepaste ondersteuning en toekomstperspectieven te bieden aan slachtoffers. Het probleem van de opvang van slachtoffers werd erkend en de respondenten zeiden dat ofwel gespecialiseerde opvangplaatsen kunnen gecreëerd worden of dat de bestaande structuren kunnen worden aangepast, zolang de slachtoffers maar een degelijke accommodatie en ondersteuning krijgen. Zo zouden bijvoorbeeld wat extra bedden beschikbaar kunnen gemaakt worden voor deze jonge slachtoffers. Maatschappelijke werkers hebben reeds een ruime ervaring die kan uitgebreid worden naar ervaring met gedwongen huwelijken. De respondenten suggereerden ook dat we naar het buitenland moeten kijken om te zien hoe men daar met gedwongen huwelijken omspringt, en om af te wegen of dit eventueel in de Belgische context kan worden ingepast. Een andere respondent zei dat degenen die hun familie achterlaten om te ontsnappen aan een gedwongen huwelijk moeten leren hoe om te gaan met autonomie en vrijheid. Een van de respondenten vatte het als volgt samen: “om slachtoffers te reïntegreren moeten we structuren ontwikkelen, zoals gespecialiseerde centra,

of opvangfamilies, of referentiepersonen, of appartementen onder toezicht, maar er moet ook ruimte blijven voor het ontwikkelen van initiatieven die aangepast zijn aan de plaatselijke context”.

Wat sensibilisering, capaciteitsopbouw en opleiding betreft, werd verschillende keren melding gemaakt van de noodzaak om professionelen waarvan mag aangenomen worden dat ze in aanraking kunnen komen met het fenomeen gedwongen huwelijk, te informeren en op te leiden. Het fenomeen gedwongen huwelijk dient opgenomen te worden in de studieprogramma's en opleidingen, alsook het thema diversiteit. Er moet begeleiding worden voorzien voor leraren en zorgverstrekkers om het risico in te schatten, om in te schatten of er ruimte is voor onderhandeling, en om te bepalen welke personen kunnen helpen bij de bemiddeling. Ook de sensibilisering van gemeenschappen werd erkend als een belangrijk element. Sensibilisering kan ook gebeuren via scholen, door gespecialiseerde organisaties, en dient zich toe te spitsen op normen en waarden, zoals een van de respondenten zei. Een andere respondent haalde aan dat informatie over gedwongen huwelijken ook zou kunnen worden getoond in spreekkamers van artsen en bij verschillende organisaties.

Wat het werken met gemeenschappen en slachtoffers betreft, zei een van de respondenten dat slachtoffers eerst moeten worden geïdentificeerd en beschermd, en dat we eens moeten nadenken over hoe we dit zo goed mogelijk kunnen doen, met welk budget en in welke gevallen actie vereist is. In die context is het belangrijk dat de suggestie om te werken vanuit een intersectionele benadering in overweging wordt genomen.

De respondenten gaven herhaaldelijk aan elk geval afzonderlijk moet worden geanalyseerd. Er is geen routine procedure in gevallen van gedwongen huwelijk. Elke situatie vereist een gedetailleerde analyse. Een van de respondenten zei dat zelfs wanneer gewerkt wordt aan het wijzigen van de attitudes over het naar school sturen van minderjarige meisjes bij de Roma, het belangrijk is om elk geval apart te bekijken en niet te veralgemenen, aangezien niet alle Roma hun kinderen dwingen om te trouwen.

Een respondent benadrukte dat bij het werken met slachtoffers het noodzakelijk is om capaciteiten op te bouwen naar meer autonomie, het opnemen van verantwoordelijkheid en het niet vertrouwen op andere

mensen. (Potentiële) slachtoffers moeten worden gewezen op alle mogelijke opties. Een andere respondent meende dat het belangrijk kan zijn om individuele personen te machtigen om op te treden in het belang van een individu in plaats van in het belang van een groep, zoals vaak het geval is bij de Turkse en Marokkaanse gemeenschappen.

Ook de Koran werd gesuggereerd als een middel om argumenten te vinden tegen het gedwongen huwelijk, en volgens een van de respondenten zou naar de Islam kunnen worden verwezen als een kanaal waar ouders die proberen onder een gedwongen huwelijk uit te komen, hulp kunnen vinden.

Aan ouders moet macht gegeven worden, moeders moeten bijvoorbeeld de mogelijkheid krijgen om op te komen voor hun dochters, en mannen om de verantwoordelijkheid voor de opvoeding van hun kinderen te delen. Ouders moeten ook in staat gesteld worden om aan hun kinderen alle aspecten uit te leggen die komen kijken bij het kiezen van een partner uit een land van herkomst.

Een andere respondent suggereerde dat kleinschalige initiatieven, met een lage drempel, kunnen worden

opgezet, zoals praatgroepen met ouders, met leden van de gemeenschappen, over hoe ze moeten omgaan met de verwachtingen en de druk van de omgeving met betrekking tot het huwelijk, waar ze persoonlijke gevoelens omtrent het huwelijk kunnen delen, waar interetnische huwelijken kunnen worden gedeproblematiseerd, enz. Een respondent suggereerde dat ouders moeten beseffen en aanvaarden dat ze hun kinderen nooit volledig onder controle kunnen houden, want hun persoonlijkheid wordt ook ten dele gevormd door school, vrienden, de omgeving, enz.

Veel respondenten gaven uiting aan de noodzaak om bij het werken met slachtoffers langetermijnoplossingen te vinden. Zo kunnen in Roma gemeenschappen tradities worden gewijzigd maar dat vraagt tijd, zoals een van de respondenten zei. Een andere respondent beweerde dat een gedragswijziging pas bereikt wordt over verschillende generaties, vandaar de noodzaak van langetermijnstrategieën. De ondersteuning, het toezicht op en de opvolging van slachtoffers vereist een benadering op lange termijn. Vandaar dat ook herhaaldelijk werd gewezen op de noodzaak om meer middelen in te zetten om een einde te maken aan het fenomeen gedwongen huwelijk en om gepaste zorg te bieden aan slachtoffers.

Er werd gesuggereerd dat bemiddeling, als strategie om met slachtoffers te werken, op maat zou moeten zijn en niet enkel in crisismomenten zou moeten worden toegepast, maar op regelmatige basis. Tevens werd gesuggereerd dat interculturele bemiddelaars erbij zouden moeten worden gehaald van bij het begin, wanneer het probleem wordt geëvalueerd. Als deze bemiddelaars dienstverleners zouden kunnen helpen bij het doorverwijzen, zou de hulpverlening veel efficiënter zijn. Ook werden criteria voor bemiddelaars voorgesteld, zoals onder meer: een respectvolle houding tegenover gemeenschappen, respect krijgen van gemeenschappen, bekend zijn bij de gemeenschappen, beschikken over een breed netwerk in de gemeenschap, enz.

Er werd eveneens uiting gegeven aan de noodzaak van een betere coördinatie. Dit zou kunnen worden bereikt ofwel door nieuwe initiatieven te ontwikkelen ofwel door voort te bouwen op bestaande structuren, zoals een van de respondenten zei. Er werden voorbeelden gegeven van een referentiepersoon en een speciaal coördinatiemechanisme. Een referentiepersoon zou een zaak kunnen opvolgen van a tot z en als schakel fungeren tussen alle betrokken partijen. Een respondent haalde aan dat er nood is aan

een betere coördinatie tussen Vlaanderen en Wallonië en dat campagnes dezelfde zouden moeten zijn in beide landsdelen.

Volgens sommige respondenten zouden meer inspanningen moeten gedaan worden om gevallen van gedwongen huwelijken op te sporen en te rapporteren. Er werden suggesties gedaan voor het creëren van lagedrempelinitiatieven om gevallen te rapporteren.

Vaak werd melding gemaakt van een veroordelende houding bij professionelen en vrijwilligers wanneer ze te maken krijgen met gevallen van gedwongen huwelijk. Om dit probleem aan te pakken stelde een respondent voor om te werken aan vooroordelen omtrent huwelijksmigratie, door de diepere betekenissen van dit complexe probleem uit te leggen zodat vooroordelen een adequate en vroegtijdige zorgverlening niet in de weg staan.

Volgens twee respondenten is verder onderzoek nodig voor de evaluatie van mechanismen die worden opgezet, zoals bijvoorbeeld de speciale politie-eenheden, en voor het beschikbaar stellen van cijfers. Deze cijfers zullen leiden tot een beter begrip van de risicofactoren en zullen

bewijs leveren om te onderhandelen met beleidsmakers en financiers. Maar onderzoek is ook nodig om een algemeen beeld te krijgen van het fenomeen gedwongen huwelijk en om kennis te verwerven over de resultaten van acties rond de evolutie van het fenomeen gedwongen huwelijk.

Een respondent zei dat socio-economische factoren essentieel zijn voor emancipatie en integratie. Daarom is het belangrijk, zoals werd benadrukt door een aantal respondenten, dat meer aandacht wordt besteed aan onderwijs en perspectieven op de arbeidsmarkt voor migranten om drastische maatregelen te vermijden (zoals slachtoffers die naar opvangplaatsen moeten vluchten, of kinderen die aan het ouderlijk gezag worden onttrokken). In het geval van Roma gemeenschappen werd gesuggereerd dat alternatieven moeten worden bekeken om minderjarige moeders naar school te sturen. Tegelijkertijd, zo benadrukten sommige respondenten, moet het probleem van jongeren die de school niet afmaken bij de Roma strenger worden aangepakt en moeten de wetten worden toegepast.

Verschillende deskundigen vermeldden dat het belangrijk is kennis en expertise te delen, niet alleen in België, maar ook met de buurlanden.

En tot slot zei een van de respondenten dat het probleem gedwongen huwelijk dient te worden aangepakt vanuit het perspectief mensenrechten, want elk individu heeft het recht zijn of haar partner vrij te kiezen.

Conclusie

Nationale data voor het inschatten van de omvang van het probleem van gedwongen huwelijken zijn niet voorhanden. Toch is het fenomeen aanwezig, zoals wordt aangetoond door de interviews met professionelen. In België heeft men tot op zekere hoogte het fenomeen van gedwongen huwelijken aangepakt op wetgevend en op beleidsniveau. De standpunten van de respondenten geven echter duidelijk aan dat er nog veel moet gebeuren om op gepaste wijze ondersteuning, bescherming en zorg te bieden aan (potentiële) slachtoffers van deze praktijk, en om gedwongen huwelijken (en kindhuwelijken) in België in de toekomst te vermijden. Verder onderzoek naar de visie van (potentiële) slachtoffers is dringend nodig en zou moeten leiden tot een beter inzicht in deze materie, wat een hulp kan zijn bij het ontwerpen van beleidslijnen en interventies.

Matrimonio Forzato in Italia

Una ricerca qualitativa

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Il lavoro che qui presentiamo è la sintesi di un insieme di studi, indagini e riflessioni interdisciplinari su un tema di grande complessità per le numerose variabili implicate, che si può riassumere nella definizione di Matrimonio Forzato¹. E' questa una ulteriore tappa di un percorso avviato dall'associazione Le Onde Onlus in cui si riprendono, arricchendoli tramite apporti specifici, da un lato i risultati di ricerche sul campo condotte nell'ambito del Progetto europeo MATRIFOR², compresa la pubblicazione del volume italiano che amplia tali indagini, dall'altro l'approfondimento dei temi affrontati nello studio condotto per il Dipartimento Pari Opportunità³.

Il Matrimonio Forzato è definito come una violazione dei diritti umani, in particolare dei diritti delle donne e delle ragazze, al centro dei quali vi è il concetto di consenso, mentre il Matrimonio

Forzato nega la libertà di autodeterminazione per le donne e le ragazze.

Affrontare il tema del Matrimonio Forzato (o imposto) comporta fare i conti con una limitazione della libertà degli individui (delle individue) determinata da usi, costumi, sistemi di valori collettivi, dinamiche relazionali che investono donne e uomini, mettendone in secondo piano le soggettività. Inoltre, se la lettura avviene in una prospettiva di genere, emerge la radicale differenza che anche in questo caso caratterizza i destini delle donne, trattandosi di un fenomeno profondamente segnato da culture patriarcali e da dinamiche di potere basate su uno squilibrio tra i due sessi, in cui l'ultima parola sui matrimoni spetta ancora al *pater familias* là dove le relazioni parentali e comunitarie sovrastano bisogni, desideri e scelte delle persone, in primis di quelle di sesso femminile. La differenza sessuale segna l'esistenza delle donne ed in questo caso ne delinea il ciclo di vita sin dalla nascita, in un'ottica di appartenenza alla famiglia, alla comunità, all'uomo a cui si è promesse.

Si è partite dal presupposto che il Matrimonio Forzato oggi riguarda nel nostro paese essenzialmente alcune popolazioni straniere (ma anche popolazioni rom e sinti in diversi casi di

1. Le autrici delle pubblicazioni realizzate grazie alle indagini del progetto sono: Anna Alessi, Maria Rosa Lotti, Natalia Milan, Maura Misiti, Monica Palazzo, Maria Grazia Patronaggio, Maria Grazia Ruggerini, Elvira Rotigliano, Maria Virgilio

2. "MATRIFOR - Approaching forced marriages as a new form of trafficking in humans beings in Europe", azione finanziata dalla Commissione Europea DG Home Affairs, Directorate A Internal security - nell'ambito del Programma Prevention of and Fight against Crime. www.matrifor.eu

3. Presidenza del Consiglio dei Ministri, Dipartimento per le Pari Opportunità, Il matrimonio forzato in Italia: conoscere, riflettere, proporre. *Come costruire una stima del numero delle donne e bambine vittime in Italia di matrimoni forzati e quali interventi avviare*, a cura di Le Onde, marzo 2014, <http://www.pariopportunita.gov.it/index.php/archivio-notizie/2473-il-matrimonio-forzato-in-italia-conoscere-riflettere-proporre>

nazionalità italiana), ricostruendo il quadro dei flussi migratori in Italia, focalizzando l'attenzione in maniera particolare sul territorio siciliano, soffermandosi anche sulla comunità rom⁴. Al di là di alcuni indispensabili elementi di ordine generale, diversi aspetti della ricerca sono stati dunque approfonditi con riferimento territoriale all'area siciliana; focalizzazione su un territorio – in cui è stata condotta la ricerca sul campo – che riteniamo significativo per l'intreccio di culture determinato anche dai percorsi migratori, sia nel passato che nel presente. Non solo, la Sicilia rappresenta, anche per la popolazione autoctona, un'area di incrocio spazio temporale in cui permangono al contempo tradizione e modernità in particolare rispetto alle pratiche matrimoniali, basti pensare alla “fuitina”: un antico retaggio e pur tuttavia non assente tra le giovani generazioni.

Per queste ragioni le interviste condotte con metodologia qualitativa sono state raccolte prevalentemente nell'area palermitana, dando la parola a testimoni che spesso hanno portato la loro diretta esperienza su storie di Matrimonio Forzato e sui gravi complessi problemi che al fenomeno si collegano.

4. Per l'approfondimento vedi A. Alessi, M. Misiti, M. R. Lotti, M. G. Ruggerini, M. Virgilio Relazioni (senza) libertà. I matrimoni forzati in Italia, E-book women, 2015.

Inoltre, si è delineato il profilo giuridico normativo del matrimonio forzato così da collocare la situazione italiana nel quadro internazionale.

Lo scopo del progetto MATRIFOR era quello di analizzare le pratiche matrimoniali, con particolare attenzione ai matrimoni forzati. Le indagini erano concepite per conoscere i contesti normativi dei tre paesi coinvolti⁵ e per intervistare rappresentanti delle organizzazioni pubbliche e private che operano con le comunità (assistenti sociali, insegnanti, rappresentanti del governo, autorità locali, ecc.) ed esponenti delle stesse. La metodologia utilizzata ha previsto la ricerca sul campo, attraverso interviste in profondità con testimoni privilegiati (insegnanti, operatori sanitari, assistenti sociali, ONG, polizia, giudici, avvocati, associazioni di migranti, responsabili politici) e con vittime o potenziali vittime di matrimoni forzati. Il risultato delle diverse metodologie adottate è la raccolta di informazioni sul lavoro dalle organizzazioni che operano in ambito

5. In MATRIFOR convergono le esperienze di Spagna, Belgio, Italia, mettendo in sinergia competenze accademiche in materie giuridiche, violenza di genere (UAB, Università Autonoma di Barcellona, capofila) e salute (ICRH, Università di Gent), con i saperi e le esperienze di una ONG (Le Onde, Palermo) che da molto tempo lavora nel campo della violenza di genere a partire dalle culture e dalle pratiche politiche del movimento delle donne e agendo in stretta collaborazione con i servizi del territorio e le comunità locali.

sociale, sanitario, dell'educazione e della giustizia, ma anche informazioni sulla percezione e il vissuto di chi ha sperimentato un matrimonio forzato o ne può essere una potenziale vittima. Aree dell'indagine sono state: la comprensione concettuale del Matrimonio Forzato, la individuazione delle comunità in cui si ritiene che questa pratica matrimoniale sia più attiva, i fattori che aumentano o diminuiscono i rischi di matrimoni forzati, le difficoltà che si incontrano nel lavoro con le vittime, l'efficacia della legislazione e delle politiche governative, ecc.

È stata questa soprattutto l'occasione per dare voce alle vittime (talvolta potenziali vittime) di matrimonio forzato, tramite interviste in profondità in cui le protagoniste narrano la propria storia, le violenze subite, esprimono percezioni e vissuti di quella (tragica) esperienza, senza tacere le ambivalenze e le ambiguità che si possono creare là dove la sopraffazione della volontà, il sopruso, la violenza si intrecciano con forti legami affettivi familiari e comunitari non semplici da recidere, se non al prezzo di isolamento, solitudine, emarginazione.

Il risultato è stato la raccolta di informazioni e la loro sistematizzazione in Rapporti dedicati a: ricostruire il quadro normativo, soprattutto dei tre paesi coinvolti; fornire una analisi

delle interviste sulla base di un set di indicatori condivisi tra i partner, così da illustrare la conoscenza del fenomeno (come l'assenza della stessa) da parte di chi opera in ambito sociale, sanitario, dell'educazione e della giustizia, ma anche il vissuto di chi ha sperimentato un matrimonio forzato o anche "solo" forti pressioni per spingere verso un matrimonio non scelto, magari in giovanissima età. Con la comparazione transnazionale dei diversi segmenti delle indagini si vuole produrre una prima elaborazione di proposte su come affrontare il matrimonio forzato nel contesto della UE e ottenere una panoramica della situazione nei paesi partecipanti, tenendo conto degli studi esistenti, della ricerca e dell'esperienza di altri Stati dell'Unione Europea, nonché dei risultati emersi dalle indagini realizzate con l'iniziativa e dalle azioni pilota condotte nella fase finale del progetto⁶.

Le attività del progetto MATRIFOR sono volte ad acquisire strumenti utili per individuare i casi di matrimonio forzato, il profilo più comune delle vittime, conoscere i fattori sociali e culturali che lo influenzano e i più significativi impatti da un punto di vista sociale, nonché gli ostacoli che si frappongono

6. Rapporti disponibili in www.matrifor.eu/ www.leonde.org/index.php?page=matrifor/progetto;

allo sviluppo di interventi efficaci per affrontare il problema. Con lo scopo di individuare contenuti e modalità per mettere a punto strumenti volti a sensibilizzare e formare i diversi soggetti che possono operare, tramite la propria professione, nelle istituzioni e nella società civile al fine di contrastare questa, talvolta più sottile, forma di violenza contro le donne rappresentata dal matrimonio forzato.

I diversi segmenti della ricerca sul campo, condotti con metodologia qualitativa, rivolti sia a testimoni privilegiati sia alle vittime sono stati realizzati in un'ottica che pone la differenza sessuale quale base di riflessione sui sistemi sociali e culturali in cui viviamo e da quell'ottica analizza, tentando di decostruire stereotipi e preconcetti, le strategie e le tradizioni matrimoniali delle varie culture presenti nell'area palermitana, portate (o "riattualizzate") dai flussi migratori ed interagenti con usi e costumi autoctoni. Un insieme di fattori che aumenta la complessità dell'analisi, contenendo in sé la necessità di considerare l'articolazione delle dinamiche migratorie e di vedere come queste si intreccino con le strategie matrimoniali. Non solo. Sappiamo quanto ogni universo culturale rappresenti a sua volta un cosmo in movimento, dove compattezza e staticità sono rappresentazioni astrattamente stereotipate, incapaci di cogliere le dinamiche in atto, i processi di trasformazione interni

alle stesse comunità e le differenze fra i soggetti, quando invece la cultura d'origine deve fare i conti - interagendo - con il livello di istruzione, la condizione economica, insomma quell'intersecarsi di variabili che ogni soggetto sperimenta nel corso della propria vita⁷.

Siamo consapevoli di quanto sia delicato parlare di culture "altre" cercando di situarsi al di fuori dei rigidi codici propri di una prospettiva "eurocentrica" per guardare con rispetto e interesse (anche per l'apporto che ne può derivare) ad altre storie, saperi, tradizioni, ma tenendo fermi da un lato quei diritti umani fondamentali che garantiscono alle donne di esserci e poter agire come libere cittadine sia nel proprio paese sia in quello di accoglienza. D'altro canto tutto ciò si intreccia con il riconoscimento della differenza sessuale, in quanto valore simbolico fondante, e dello squilibrio di potere connesso alla rappresentazione sociale e culturale dei sessi, da cui consegue il portato della libertà femminile nelle relazioni di intimità e nelle comunità in cui si vive.

7. Si fa qui riferimento al fatto che ogni persona ha più diversità che la distinguono, oltre alla cultura e al genere c'è la classe, la religione, la lingua, ecc.. Intorno a questa tematica è sorta la teoria della "intersezionalità" che vede la diversità come "relazione basata simultaneamente su punti di somiglianza e punti di differenziazione". Cfr. S. Marchetti, *Intersezionalità*, in *Le etiche della diversità culturale*, a cura di C. Botti, Firenze, Le Lettere, 2013, dove è presente una vasta analisi della letteratura internazionale sul tema.

La consapevolezza che ha guidato i diversi segmenti dell'indagine era vincolata alla necessità di

- interrogare le diverse culture, a partire da quella italiana, mettendo in discussione l'ipotesi di "una radicale discontinuità culturale tra mondi nord-occidentali e resto-del-mondo"⁸, in materia di famiglie e strategie matrimoniali; ma anche di tutti quei fattori socio economici - senza ignorare il sistema etico valoriale - che costituiscono elementi importanti per l'espressione del consenso riguardo al matrimonio ed al reticolo sociale che attiva, sia esso determinato da amore e libera scelta, o comunque da accordo ad un'unione, oppure da un contratto che non di necessità si identifica con il consenso⁹;

8. Si veda a questo proposito quanto afferma, rifacendosi anche ad altri autori, Franca Bimbi nel saggio "Onore-e-Vergogna. Il ritorno di un paradigma mediterraneo nel dibattito europeo", in *Violenza di genere e percorsi mediterranei*, a cura di Ignazia Bartholini, Varese, Guerini e Associati, 2015.

9. Si può ricordare a questo proposito Carole Pateman là dove sottolinea la distinzione fra contratto e consenso: "Quando una giovane donna acconsente (o rifiuta) di sottoscrivere un matrimonio combinato, acconsente (o rifiuta) di intraprendere questa forma di istituto matrimoniale. Prendere parte a un contratto matrimoniale crea una nuova relazione coniugale. Questo è un esempio della differenza tra contratto e consenso, di cui ho trattato nel mio studio sull'obbligazione politica (ho finito per scrivere più sul contratto che sul consenso). Quando si acconsente, l'oggetto del consenso è preesistente, si acconsente a qualcosa. Il contratto porta in essere nuove relazioni - replicando così il contratto originario che crea, o si dice che crei, lo stato moderno e le sue istituzioni; il contratto relativo alla "proprietà sulla persona" (Pateman "Selfownership and Property in the Person. Democratization and a Tale of two Concept", *Journal of Political Philosophy*, 10, 2002) è il

- affrontare l'accesso delle donne ai beni sociali ed economici nei diversi contesti e la profonda, strutturale differenza tra i sessi, non solo per le culture "altre da noi", ma anche per il mondo occidentale;
- tenere conto della difficoltà nel prendere la parola per denunciare e ancor più chiedere aiuto e sostegno da parte di chi si vive come "fragile" nella società ospite, in una precaria condizione di esercizio dei propri diritti.

Alcune categorie di riferimento

"Le Parti adottano le misure legislative o di altro tipo necessarie per garantire che i matrimoni contratti con la forza possano essere invalidabili, annullati o sciolti senza rappresentare un onere finanziario o amministrativo eccessivo per la vittima". Con queste parole il problema viene affrontato all'articolo 32 (nonché agli artt. 37 e 59) della *Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti*

veicolo tramite cui vengono riprodotti i rapporti di subordinazione nelle principali istituzioni della società moderna" C. Pateman, *Il contratto sessuale venticinque anni dopo. Democrazia, lavoro, reddito di base, tratto da The Illusion of Consent*, 2007, riportato in: *Come un paesaggio. Pensieri e pratiche tra lavoro e non lavoro*, Iacobellieditore, Roma, 2013, p. 25-26.

delle donne e la violenza domestica, più nota come *Convenzione di Istanbul*, sottoscritta nel 2011, in seguito ratificata dall'Italia nel 2013; trattasi del primo strumento europeo vincolante sul piano giuridico per prevenire e contrastare la violenza contro le donne e la violenza domestica. La Convenzione, entrata in vigore il 1 agosto 2014, inquadra fin dal preambolo il Matrimonio Forzato come una delle forme di violenza contro le donne là dove afferma: "le donne e le ragazze sono spesso esposte a gravi forme di violenza, tra cui la violenza domestica, le molestie sessuali, lo stupro, il matrimonio forzato, i delitti commessi in nome del cosiddetto "onore" e le mutilazioni genitali femminili, che costituiscono una grave violazione dei diritti umani delle donne e delle ragazze e il principale ostacolo al raggiungimento della parità tra i sessi"¹⁰.

La forza fisica non è l'elemento fondamentale che porta ad un matrimonio forzato; la pressione psicologica, sessuale o emozionale possono essere determinanti, così come la paura, l'intimidazione, le aspettative sociali e familiari, o la capacità economica e di autonomia. Il punto nodale di questa

definizione, che include anche i matrimoni combinati, è quello del consenso.

Inoltre, si è accolta l'indicazione di considerare i matrimoni precoci come strettamente correlati al Matrimonio Forzato, ponendo l'età matrimoniale a 18 anni, secondo le indicazioni più recenti dell'ONU. Ambedue i fenomeni riguardano il controllo della libertà femminile, della sessualità e della procreazione, ma il Matrimonio Forzato tocca fasce di età diversificate e non necessariamente porta all'immediata filiazione, coniugandosi anche con forme di schiavitù domestica, come descritto in alcune indagini realizzate per esempio nel sub-continente indiano o in taluni paesi in cui sono in vigore leggi musulmane¹¹. In tal senso, pur essendo forte la correlazione e il simbolico connesso ai due fenomeni, non riteniamo di uniformarli (anche se negli studi quantitativi c'è spesso una connessione statistica per derivare un'incidenza del fenomeno nelle popolazioni e individuare il rischio di costrizione al matrimonio).

10. Preambolo alla *Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica*, Istanbul (2011), Disponibile alla pagina web <http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ITA&NT=210>.

11. *Women Living Under Muslim Laws, Child, Early and Forced Marriage: A Multi-Country Study*, -Submission to the UN Office of the High Commissioner on Human Rights (OCHCR), December 2013.

Questa definizione intende il matrimonio forzato come una questione di diritti umani, ponendo al centro la mancanza di consenso. Riteniamo importante accogliere i suggerimenti che vengono dalla ricerca realizzata da Women Living Under Muslim Laws, cioè di problematizzare questa dimensione in considerazione sia della necessaria analisi degli elementi che costituiscono il consenso e la sua misura (attitudini culturali storicamente situate), sia degli aspetti di genere che lo contraddistinguono.

All'origine del matrimonio forzato si trovano, pertanto, un insieme di fattori che riguardano:

- le gerarchie di valori e le norme sociali in un paese o in una comunità;
- le strutture economiche e familiari;
- il “modello familiare” ed i relativi valori che in esso sono riconosciuti dalle società e dagli stati, ivi compresi quelli occidentali, quali oggetti di tutela;
- la configurazione delle relazioni tra i sessi e la disparità che assegna alle donne un ruolo inferiore rispetto agli uomini, decurtando i loro diritti dentro la famiglia e nei più ampi sistemi sociali e culturali in cui vivono.

È da queste condizioni che discendono le numerose forme di controllo patriarcale sulla sessualità e sulla vita riproduttiva delle donne a cui per molti aspetti vanno ricondotte anche le pratiche matrimoniali che violano la libertà femminile e costituiscono un impedimento importante agli sforzi di costruzione femminile di civiltà a partire da approcci diversificati, come attesta il confronto e il dibattito presente nei movimenti delle donne italiane e a livello globale.

Il profilo delle vittime che emerge dagli studi sul tema in Europa individua il problema in particolare all'interno delle comunità migranti, spesso concentrando il focus sulle seconde e terze generazioni. Il quadro che ne deriva è da leggere in relazione alle nazionalità presenti sui vari territori, alla storia migratoria di ognuno di questi gruppi, al tipo di relazioni che intrattengono con il paese d'origine (influenzate anche dalle politiche sull'immigrazione in vigore nel paese di accoglienza/residenza). I dati risultano molto variegati. Tuttavia, alcuni tratti appaiono prevalenti:

- la provenienza da paesi (o regioni) in cui è diffuso l'uso dei matrimoni combinati e precoci,
- l'appartenenza a culture in cui la decisione delle famiglie tende a prevalere sulla scelta individuale,

- l'esistenza di comunità che danno sostegno a questo costume,
- i casi in cui le donne si ritrovano forzate a rimanere in un matrimonio perché è impedito loro, con varie forme di costrizione, di separarsi.

Le vittime di matrimonio forzato spesso soffrono ulteriori forme di violenza domestica come conseguenza del matrimonio indesiderato e della relazione che si instaura fra i coniugi.

Il quadro normativo

Attualmente, i testi principali di riferimento sono la Convenzione Istanbul 2011 (art. 32, Conseguenze civili dei matrimoni forzati; art. 37, Matrimonio forzato; art. 59, Status di residente) e il testo ONU, 6 dicembre 2013, *"Child, early and forced marriage"*, proposto dalla Terza Commissione dell'Assemblea Generale, promosso dall'Italia e altri 9 paesi, approvato dalla Assemblea generale il 18 dicembre 2013. Vale la pena leggere i due testi, perché sintetizzano nel modo più autentico e attuale i vari piani culturali e normativi su cui viene a collocarsi la questione giuridica: annullamento del matrimonio forzato; penalizzazione della costrizione e/o del trasferimento nello stato; status di residente.

Nella legislazione statale italiana non compaiono riferimenti espressi al "matrimonio forzato". Gli unici due riferimenti esistenti sono uno indiretto e uno esplicito.

Il riferimento indiretto passa attraverso la legge di ratifica della Convenzione di Istanbul: LEGGE 27 giugno 2013 n. 77 (in Gazz. Uff., 1° luglio 2013, n. 152) *"Ratifica ed esecuzione della Convenzione del Consiglio d'Europa sulla prevenzione e la lotta contro la violenza nei confronti delle donne e la violenza domestica, fatta a Istanbul l'11 maggio 2011"* (vedi nel precedente riquadro gli specifici artt. 32, 37 e 59).

Il riferimento diretto lo troviamo invece in un decreto del Ministero degli Interni 23 aprile 2007, che contiene la "Carta dei valori della cittadinanza e dell'integrazione"

"18. L'ordinamento italiano proibisce ogni forma di coercizione e di violenza dentro e fuori la famiglia, e tutela la dignità della donna in tutte le sue manifestazioni e in ogni momento della vita associativa. 26. Base dell'unione coniugale è la libertà matrimoniale che spetta ai giovani, e comporta il divieto di coercizioni e di matrimoni forzati, o tra bambini".

L'assenza di riferimenti legislativi espressi sposta necessariamente l'indagine dalle fonti normative al sistema giuridico italiano nella sua effettività.

Le analisi realizzate hanno dovuto rivolgersi ai vari tipi di normative: penali, quella civili nonché quelle amministrative in tema di diritti dello straniero (ricongiungimenti, protezione internazionale, ecc.); infine occorre considerare le legislazioni regionali¹².

Lo status di coniuge deriva dalla istituzione del "matrimonio", unico strumento giuridico riconosciuto dal sistema giuridico italiano per il rapporto di una coppia formata da un uomo e una donna, che è considerato dalla Costituzione italiana (Art. 29) requisito per una legittima filiazione. Il sistema giuridico italiano non riconosce lo status di "coniuge" o "familiare" per le "coppie di fatto", conviventi more uxorio, come più volte sottolineato dalla Corte Costituzionale (sentenza 6441\2009, Prima sezione civile) anche quando il matrimonio è registrato e riconosciuto nel paese in cui è stato contratto.

Il matrimonio celebrato in Italia (che può essere civile o

concordatario o acattolico) richiede il concorso di determinati requisiti e l'assenza di impedimenti (artt. 85, 86, 87, 88, 89 c.c.). Uno di questi requisiti è essere maggiorenni, cioè oggi aver superato i 18 anni. Tuttavia è possibile contrarre matrimonio anche prima, dopo i 16 anni. (Art. 84 Codice civile: "Età. I minori di età non possono contrarre matrimonio. Il tribunale, su istanza dell'interessato, accertata la sua maturità psico-fisica e la fondatezza delle ragioni addotte, sentito il pubblico ministero, i genitori o il tutore, può con decreto emesso in camera di consiglio ammettere per gravi motivi al matrimonio chi abbia compiuto i sedici anni ...").

Nel caso in cui il soggetto che vuole contrarre matrimonio in Italia sia straniero, ai sensi dell'art. 27 della Legge 218/1995 (Riforma del sistema italiano di diritto internazionale privato), la capacità matrimoniale e le altre condizioni per contrarre matrimonio sono regolate dalla legge nazionale di ciascun nubendo al momento del matrimonio. Resta salvo lo stato libero che uno dei nubendi abbia acquistato per effetto di un giudicato italiano o riconosciuto in Italia.

L'art. 1 comma 15 della legge n. 94/2009 (Disposizioni in materia di sicurezza pubblica) aveva modificato l'art. 116 del

12. Per approfondimento vedesi M. Virgilio in A. Alessi, M. Misiti, M. R. Lotti, M. G. Ruggerini, M. Virgilio *Relazioni (senza) libertà. I matrimoni forzati in Italia*, e-book women, 2015.

c.c. prevedendo che il matrimonio dello straniero fosse altresì subordinato alla condizione della sua regolarità di soggiorno sul territorio nazionale, che doveva sussistere tanto al momento della pubblicazione quanto della celebrazione del matrimonio. Trattasi di una norma non compatibile con il diritto comunitario, né con gli obblighi costituzionali inerenti al rispetto della libertà matrimoniale quale diritto umano fondamentale, e tantomeno con gli obblighi derivanti dal sistema internazionale ed europeo dei diritti umani. Infatti la disposizione è stata poi dichiarata costituzionalmente illegittima dalla Corte Costituzionale con sentenza n. 245 del 25/7/2011.

Se il consenso prestato dal coniuge al matrimonio celebrato in Italia è viziato (perché estorto con violenza o determinato da timore di eccezionale gravità derivante da cause esterne), può essere chiesto l'annullamento del matrimonio (art. 122 Codice Civile: "Violenza ed errore. Il matrimonio può essere impugnato da quello dei coniugi il cui consenso è stato estorto con violenza o determinato da timore di eccezionale gravità derivante da cause esterne allo sposo").

Il coniuge che in Italia ha celebrato e subito un matrimonio forzato potrà pertanto utilizzare tutti gli strumenti previsti

dal nostro ordinamento per recidere il vincolo in via generale (separazione e divorzio) e specificatamente potrà anche chiedere l'annullamento del matrimonio per vizio del consenso.

Per quanto riguarda il matrimonio celebrato all'estero, si devono distinguere due casi:

I) matrimonio celebrato all'estero tra due cittadini italiani ovvero tra un cittadino italiano e uno straniero.

II) matrimonio celebrato all'estero tra stranieri.¹³

È rilevante e interessante la recente - e finora unica - applicazione giurisprudenziale in tema di matrimonio forzato. Trattasi della sentenza della Cassazione Civile, Sez. VI, 18/11/2013 n. 25873 che ha accolto il ricorso di una cittadina nigeriana contro la Commissione territoriale per la protezione internazionale che aveva negato il riconoscimento sia dello status di rifugiato politico sia della protezione sussidiaria. Tale pronuncia afferma che, ai fini del riconoscimento della protezione sussidiaria, la costrizione di una donna a un matrimonio forzato costituisce

13. Per approfondimento vedesi M. Virgilio nel citato Relazioni *(senza) libertà. I matrimoni forzati in Italia*.

grave violazione della sua dignità, e dunque trattamento degradante ai sensi dell'art. 14, lett. b), d.lg. n. 251 del 2007 che configura a sua volta un danno grave; inoltre, la minaccia del grave danno giustificante tale protezione non è necessario che provenga dallo Stato, ben potendo provenire anche - tra gli altri - da "soggetti non statuali"¹⁴.

Alcuni dati sul Matrimonio Forzato in Italia, il caso Palermo¹⁵

La crescente consapevolezza globale verso il fenomeno del Matrimonio Forzato ha determinato un notevole aumento di studi, pubblicazioni, interventi e anche provvedimenti normativi a livello internazionale. La maggior parte di queste iniziative si basa su studi e indagini qualitative, infatti i rari dati quantitativi sono riferibili soprattutto a rilevazioni di

dati connessi all'erogazione di un servizio specifico, come è il caso del Forced Marriage Unit in Gran Bretagna. Si tratta di esperienze difficilmente esportabili in quanto ritagliate su realtà, definizioni e categorie rispondenti alle necessità di quello specifico servizio e/o di quella realtà nazionale.

La produzione di studi e riflessioni sul ruolo delle donne nelle migrazioni e poi più specificatamente nell'ambito delle strategie matrimoniali nelle società occidentali si è recentemente sviluppata nei paesi di più lunga tradizione di accoglienza ed insediamento. Si tratta di un settore di studi relativamente "nuovo", in quanto il tema delle migrazioni legate alla famiglia (e al matrimonio) è rimasto ai margini degli studi migratori benché il ricongiungimento familiare sia stato il più importante mezzo legale di entrata nei paesi europei negli ultimi vent'anni. I motivi di questo ritardo vanno ricondotti all'approccio (prevalente) focalizzato sull'individuo, sul lavoro e gli aspetti economici connessi alle migrazioni alla categoria dicotomica maschio produttore/donna riproduttrice¹⁶.

In Italia non esistono statistiche sui matrimoni forzati. Per diverse ragioni, non solo di natura metodologica, è difficile

14. Cassazione civile sez. VI 18 novembre 2013 n. 25873. La costrizione di una donna a un matrimonio forzato costituisce grave violazione della sua dignità, e dunque trattamento degradante ai sensi dell'art.14, lett. b), d.lg. n. 251 del 2007, che configura a sua volta danno grave ai fini del riconoscimento della protezione sussidiaria. La minaccia di grave danno giustificante tale protezione, inoltre, non è necessario che provenga dallo Stato, ben potendo provenire anche - tra gli altri - da "soggetti non statuali" se le autorità statali o le organizzazioni che controllano lo Stato o una parte consistente del suo territorio "non possono o non vogliono fornire protezione" adeguata ai sensi dell'art. 6, comma 2, d.lg. citato.

15. Per analisi italiana e approfondimento si rimanda a M. Misiti nel citato *Relazioni (senza) libertà. I matrimoni forzati in Italia*, 2015

16. E. Kofman, *Gendered global migrations*. International Feminist Journal of Politics, 6 (4), 2004. pp. 642-664.

se non addirittura impossibile quantificare con precisione il fenomeno dei matrimoni forzati a causa della concomitanza di alcuni fattori quali la stima soggettiva del grado di coercizione e di conseguenza del consenso, il problema della sotto dichiarazione, la carenza di basi di rilevamento e quindi mancanza di rappresentatività statistica, e soprattutto il fatto che le persone coinvolte costituiscono una “hidden population”¹⁷. L'appartenenza a una “hidden population” spesso implica comportamenti stigmatizzati socialmente o percepiti dalle vittime come imbarazzanti e appartenenti alla sfera privata, portando gli individui al rifiuto di cooperare, o a dare informazioni inattendibili al fine di proteggere la propria privacy¹⁸. In particolare per il matrimonio forzato la resistenza delle vittime a denunciare membri della famiglia o della comunità pone un ulteriore ostacolo alla raccolta di informazioni attendibili, così come l'assenza di un certificato di nascita implica che la vittima stessa abbia difficoltà a provare di essere coinvolta in un matrimonio precoce¹⁹.

17. Gruppo di individui di cui la dimensione e i confini sono sconosciuti e per i quali non esiste un universo di riferimento, utile per esempio per definire un campione rappresentativo.

18. Heckathorn, D. D. 1997, *Respondent-Driven Sampling: A New Approach to the Study of Hidden Population*, Social Problems. Vol.44, n.2.

19. C. Thomas, 2009, UN Expert Group Meeting on good practices in legislation to address

Nel Comune di Palermo la popolazione straniera rappresenta il 15% del totale degli stranieri residenti in Sicilia e il 3,6 % della popolazione residente²⁰, leggermente superiore alla quota relativa alla popolazione regionale (3,2%). Nel Comune la graduatoria delle comunità residenti appare diversa da quella regionale. Al primo posto infatti troviamo la comunità bengalese con il 18% delle presenze, seguita da quella srilankese (17%) pari al 23% dell'intera isola, e solo al terzo posto la rumena che si attesta intorno all'11%, con un forte ridimensionamento rispetto alla media regionale. È significativa anche la presenza della comunità ghanese (10%) che precede in termini quantitativi sia quella filippina che quelle tunisina e marocchina (2° e 3° posto in regione). Si segnalano la comunità mauriziana e quella della Costa d'Avorio che si concentrano nell'area palermitana.

Si sono incrociati questi dati con quelli forniti da Unicef del

harmful practices against women Report.

20. Questi dati sono riferiti alla popolazione italiana e straniera residente nel Comune di Palermo, fornita dall'Istat sul sito Geo demo (<http://demo.istat.it/>) che al 1 gennaio 2014 registra 678492 cittadini residenti) che coincide con quella fornita dal Comune di Palermo nel volume Panormus 2014 (http://www.comune.palermo.it/noticext.php?cat=5&id=6225#_Vj6Vjf8D80). Per quanto riguarda i cittadini stranieri residenti si rileva una difformità fra le due fonti: per il comune “Gli stranieri iscritti in anagrafe alla fine del 2013 hanno superato quota 30 mila, attestandosi a 30.652, con un incremento di 956 unità (+3,2%) rispetto al 2012. L'incidenza degli stranieri sul totale della popolazione è pari al 4,5%”. Mentre per l'Istat è il 3,6. Le differenze riguardano anche la numerosità delle diverse comunità.

2014 possiamo disporre di un quadro informativo costruito attraverso l'uso dei database globali dell'Unicef costituiti anche da stime effettuate da diverse agenzie delle UN e da indagini sulle famiglie, rappresentative a livello nazionale come la Multiple Indicator Cluster Surveys (MICS) e la Demographic and Health Surveys (DHS). I dati fanno riferimento a quanto disponibile fino ad agosto 2013²¹. Da questa analisi si rileva che nel comune di Palermo sono molte le comunità che, pur con intensità diverse, provengono da paesi in cui il matrimonio precoce è praticato, dall'Asia, all'Africa all'Europa, con l'eccezione delle isole Mauritius dove il fenomeno non è segnalato dai dati Unicef.

Il Bangladesh e la Costa d'Avorio sono paesi in cui il fenomeno presenta livelli molto elevati. Nel primo, nel periodo compreso tra il 2005 e il 2012, quasi una donna di 20-24 anni su tre si è sposata prima dei 15 anni, e ben 7 donne su 10 prima dei 18 anni. Si tratta di uno dei paesi con la più alta incidenza di matrimoni precoci del mondo (secondo i dati Unicef è il 4° dopo Niger, Repubblica Centrafricana e Chad). Si tratta della comunità più numerosa in città, insediata soprattutto nell'area

centrale. L'altro indicatore, quello degli adolescenti in coppia, dimostra la natura di genere del fenomeno che coinvolge in maniera sproporzionata le ragazze: quasi una su due risulta infatti coniugata rispetto al solo 2% dei coetanei; tale dato conferma anche la differenza di età tra gli sposi, un'altra delle caratteristiche del matrimonio precoce, dove le donne sono più giovani del coniuge. Anche in questo caso sono valori tra i più alti al mondo. È probabile che il rischio di matrimoni precoci possa risultare più elevato in questa comunità rispetto alle altre, considerando la grande diffusione della pratica nel paese di origine.

Per quanto riguarda la Costa d'Avorio il fenomeno è molto significativo, ma meno drammatico del Bangladesh. Qui una donna (20-24 anni) su quattro si è sposata prima dei 15 e dei 18 anni, mentre la percentuale di adolescenti coniugate è pari al 21% (una su 5) a fronte dell'1% dei coetanei.

Anche per il Ghana i dati Unicef restituiscono una situazione severa: le donne coniugate prima dei 15 anni rappresentano il 5% delle donne tra i 20 e i 24 anni, e quelle prima dei 18 sono il 21% (1 su 5); e il 7% delle ragazze adolescenti risulta vivere in coppia.

21. Unicef, *The State of the World's Children 2014 In Numbers: Every Child Counts Revealing disparities, advancing children's right*, 2014.

Nei paesi del nord del Mediterraneo originari di due importanti comunità residenti in città, come la Tunisia ed il Marocco (ma in particolare in quest'ultimo), vi sono evidenze di costumi matrimoniali che coinvolgono giovanissime e giovani ragazze, qui le percentuali non superano il 10%, ma indicano tuttavia una presenza del matrimonio precoce.

Tra gli altri paesi di origine delle comunità insediate a Palermo vanno citate le Filippine dove gli indicatori Unicef rivelano un tasso di diffusione del matrimonio precoce pari al 14% di donne sposate prima dei 18 anni, al 2% prima di 15 e di 10% di adolescenti in coppia. Si tratta di un fenomeno localizzato soprattutto nelle aree rurali e nella Regione autonoma del Mindanao Musulmano (ARMM) dove l'età minima al matrimonio è a 15 anni per ragazzi e ragazze, con possibilità di deroga fino a 12 anni²².

La Romania e la Cina sembrano essere poco coinvolte nel fenomeno del matrimonio precoce, presentando indicatori con valori molto bassi benché positivi.

22. PHILIPPINES: *Early marriage puts girls at risk*, IRIN 2010 <http://www.irinnews.org/report/87873/philippines-early-marriage-puts-girls-at-risk>.

L'indagine sul campo in Italia – Interviste a Palermo

Una delle questioni centrali affrontate nel dibattito internazionale (femminista, istituzionale, legale, dei ricercatori) in tema di Matrimonio Forzato è quella del consenso, cioè della libera scelta di un matrimonio. In caso di Matrimonio Forzato è di facile e immediata identificazione di coercizione l'uso della violenza o della minaccia e la costrizione in relazione all'età della sposa. Non altrettanto agevole è determinare il grado di libertà al cui interno si forma l'eventuale consenso, cioè se la scelta matrimoniale sia libera e consapevole, o indotta attraverso costrizione, declinata in varie forme o violenza, o ancora se oggetto di un accordo. La violenza fisica è uno degli aspetti che caratterizza il Matrimonio Forzato, ma altrettanto importanti sono la pressione psicologica, emozionale, così come le aspettative sociali e familiari, la capacità economica e di autonomia, la scolarizzazione.

Nella cultura occidentale l'idea di scelta rinvia a una prerogativa propria della coscienza individuale. Per i movimenti delle donne l'autodeterminazione è uno dei valori più importanti. Ma in questo caso l'oggetto della scelta si riferisce a sistemi sociali quali la famiglia e il matrimonio, con le caratteristiche loro

assegnate dalle diverse culture, correlate allo status di “soggetto” e di “comunità” e alle condizioni materiali e simboliche cui gli individui (le individue) sono sottoposti. Dovremmo rileggere la letteratura ottocentesca in questa chiave e entrare più a fondo nel ricco dibattito femminista e dei gender studies in materia. Inoltre, nell’analisi del concetto di libera scelta, vanno considerate come fondamentali le distinte rappresentazioni del maschile e femminile, i modelli di relazionalità sessuata, così come le attribuzioni assegnate alle istituzioni volte a normare e regolare tali relazioni²³.

Il genere, espressione normata socialmente dei sessi, stabilisce e articola le differenze, prescrivendo un diverso accesso ai beni materiali e simbolici e una diversa posizione gerarchica dei soggetti. Il matrimonio è, nella sua forma tradizionale, la forma istituzionale più elementare di rapporto sociale di genere. L’agibilità “politica” di opzioni alternative nel tracciare percorsi esistenziali, soprattutto per le donne, è una variabile rilevante per qualificare la possibilità di scelta da parte di queste ultime. Variabile di difficile declinazione in ambito giuridico o di interventi sociali.

L’interrogativo è dunque: quando e come si può definire libera e consapevole una scelta di matrimonio per una donna o una ragazza che vive in una cultura in cui l’accordo tra famiglie è l’elemento fondamentale nella pratica matrimoniale?

Il matrimonio, nelle forme tradizionali di alcune culture, diviene a volte uno strumento sancito dalla comunità (immigrata) per affermare il controllo sulle giovani donne, in particolare se “troppo emancipate”: una sorta di cesura/censura rispetto ai progressi processi di integrazione, tollerati sino a quando non è in questione l’esercizio della funzione affiliativa e della sessualità femminile. In questo senso il matrimonio precoce è tra le pratiche tradizionali dannose che portano al Matrimonio Forzato. Ambedue i fenomeni riguardano il controllo della libertà femminile, della sessualità e della procreazione, ma il Matrimonio Forzato tocca fasce di età diversificate e non necessariamente porta all’immediata filiazione, coniugandosi anche con forme di schiavitù domestica, come descritto in alcune indagini realizzate per esempio nel sub-continente indiano o in taluni paesi in cui sono in vigore leggi musulmane (Unicef). E’ importante accogliere i suggerimenti che vengono dalla già citata ricerca realizzata da Women Living Under Muslim Laws, cioè di problematizzare questa dimensione in considerazione

23. Per un’analisi esaustiva e approfondimento si rimanda a A. Alessi nel citato *Relazioni (senza) libertà. I matrimoni forzati in Italia*, 2015.

sia della necessaria analisi degli elementi che costituiscono il consenso e la sua misura (attitudini culturali storicamente situate), sia degli aspetti di genere che lo contraddistinguono. Il consenso è la chiave di volta delle normative esistenti sia sul piano internazionale che nazionale, ma non è semplice verificarlo. Consideriamo che le vittime e le potenziali vittime vivono la loro cultura e le loro comunità come protettive e rischiano l'isolamento e la perdita di relazioni affettive importanti, non trovando spesso l'auto di cui necessitano nei paesi che ospitano, come emerge chiaramente dalle interviste realizzate a Palermo.

Sulla base dello schema di indagine deciso a livello transnazionale, anche in Italia i/le testimoni intervistati/e sono stati/e di due tipologie: stakeholders e donne vittime o potenziali vittime. Nel primo caso le interviste sono state somministrate sia a donne che a uomini, nel secondo il collettivo di riferimento è esclusivamente femminile.

Gli *stakeholder* intervistati a Palermo lavorano nei servizi sociali, nei servizi sanitari, nelle scuole, polizia e tribunali. Tra gli altri sono stati intervistati: la responsabile del centro per le donne vittime di violenza, un'avvocata, assistenti sociali, psicologi/

psicologhe, mediatori/mediatrici culturali e insegnanti, l'Assessora del Comune di Palermo con delega per la scuola, un pubblico ministero della Procura di Palermo, un giudice del Tribunale per i minorenni e un Vicequestore aggiunto della Polizia di Palermo. Infine, per uno sguardo a livello nazionale, sono state intervistate Tiziana Zannini del Dipartimento per le Pari Opportunità della Presidenza del Consiglio dei Ministri e Tiziana Dal Pra, Presidente di Trama di Terre, associazione specializzata nell'accoglienza e ospitalità di ragazze e donne vittime di matrimoni forzati.

Le donne intervistate sono di diversa età, etnia e cultura. Esse sono vittime o potenziali vittime di matrimoni forzati, sono nella condizione di essere sottoposte a un matrimonio combinato, provengono da Bangladesh, Sri Lanka, Mauritius, Eritrea, hanno un'età compresa tra 16 e 55 anni e sono state intercettate e intervistate prevalentemente nell'area palermitana. I loro titoli di studio sono diplomi superiori o laurea (tranne che per le giovani donne che ancora studiano per il diploma)²⁴.

24. Analisi interviste a cura di N. Milan e M. G. Patronaggio in *Matrimonio Forzato in Italia: una ricerca qualitativa - Forced Marriage in Italy: a qualitative research*, Le Onde Onlus – Aprile 2014.

Le interviste sono state calibrate sui/sulle testimoni e sulle vittime; gli strumenti (un questionario semistrutturato accompagnato da consenso informato, presentazione del progetto, ecc.) sono stati tradotti e adattati alle specificità della realtà italiana. Per quanto riguarda le vittime e le potenziali vittime, sono state inserite ed utilizzate ulteriori domande rispetto al questionario transnazionale e, in alcuni casi, l'intervista è diventata uno spazio di narrazione, di racconto di una storia di vita, ottenendo una tranche de vie.

Va premesso pur tuttavia che il campione non ha consentito di differenziare, così come sarebbe opportuno, tra le diverse popolazioni immigrate in termini di usi e costumi: di fatto le strategie matrimoniali, l'età, le ritualità, se non per alcune caratteristiche generali sulle quali ci siamo soffermate, variano tra le popolazioni o etnie, anche considerevolmente. Dunque si è aperto uno spazio di conoscenza sul fenomeno, complesso e variegato, cogliendone alcuni aspetti generali tra le pieghe delle diverse e sfaccettate culture intercettate dal lavoro di ricerca.

Consapevoli di questi limiti, abbiamo chiesto agli/alle intervistate di fornirci una definizione di Matrimonio Forzato: è emersa una diffusa difficoltà (dettata anche dal numero esiguo di casi

trattati) nel fornire una enunciazione rigorosa di cosa possa dirsi Matrimonio Forzato, ed al contempo una polarizzazione tra gli/le operatori/trici che hanno trattato casi espliciti e chi ne ha solo presunta la sussistenza. Sebbene si concordi nell'identificare come forzati tutti i matrimoni in cui l'assenso venga estorto con la violenza *la differenza tra combinato e forzato sta nella volontà... sono tutti combinati, il forzato si ha quando manca completamente il consenso di uno dei due e viene costretto* (Assistente Sociale, Settore sociale, F)²⁵, un sottogruppo sottolinea quanto siano problematiche le condizioni del consenso. In sostanza si rileva, a causa di condizioni deficitarie di promozione sociale per le giovani donne, l'insussistenza di alternative al matrimonio, o nel caso di esplicita volontà contraria, l'assenza di risorse sufficienti al rifiuto, combinate alla forza delle pressioni psicologiche e sociali cui sono sottoposte.

L'eco della forza simbolica della "tradizione" la rintracciamo nell'immaginario di queste giovani donne, fiduciose nella scelta dei genitori e sugli esiti di tali pratiche *Io ho sposato così perché da noi è un'altra cultura, sono i genitori che decidono chi devi*

25. Al fine di garantire l'anonimato delle/gli intervistate/i si è adottato un codice di identificazione articolato in: qualifica e ruolo professionale (assistente sociale, psicologo etc.) servizio e settore d'intervento, sesso. Nel caso delle vittime, nome fittizio e paese di origine.

sposare ... mi aspettavo che la mia vita doveva cambiare ... sognavo di cambiare paese e trovare una vita ricca e bella, e ancora Tutti i padri vogliono alla fine che la propria figlia rimanga felice, anche per il suo bene fanno così ... (Gabriella, Vittima, Bangladesh).

Le interviste con queste giovani donne immigrate, mostrano uno spaccato della diffusione della pratica nella cultura di riferimento, almeno nella loro percezione, e il suo grado d'interiorizzazione, di cui si fa tramite la famiglia. D'altronde non va dimenticato che la "relazione familiare" è tale sia nel senso del *legame (re-ligo)*, che di *riferimento di senso (re-fero)* imperniato sulla storia familiare e di comunità *Nel mio paese tutti i matrimoni si fanno così* (Nicoletta, Vittima, Eritrea).

Il carattere di confine tra libera scelta e coercizione si fa più evidente, assumendo forme esplicitamente violente, laddove, anche in ragione dell'assimilazione dei modelli del paese ospitante, le ragazze provano a esprimere dissenso o resistenza al matrimonio combinato dalle famiglie. Alcune delle donne intervistate, così come alcuni operatori, rimarkano come tali pratiche comincino a essere meno diffuse nei propri paesi d'origine (peraltro all'oggi vietate in alcuni di codesti paesi) e come i processi d'immigrazione possano determinare degli effetti "paradosso" nella persistenza di tali pratiche

Una prima evidenza riguarda l'effetto, da molti segnalato, delle politiche in materia di immigrazione dei paesi ospitanti e le strategie volte all'ottenimento dei permessi di soggiorno. A giudizio delle intervistate e degli intervistati, politiche particolarmente restrittive hanno di fatto rivitalizzato le forme combinate di matrimonio, quale strategia funzionale a ottenere un permesso di soggiorno attraverso il ricongiungimento familiare, disponendo peraltro di un bene "spendibile" nella definizione del contratto maritale.

Per altro verso l'impatto con una diversa cultura, in particolare laddove la comunità immigrata sia più numerosa e capace di operare un ferreo controllo sociale, rende preminente la necessità di rinsaldare l'identità di gruppo comunitaria attraverso l'adozione delle pratiche tradizionali.

Uno sguardo psicologico sociale ci consegna uno scenario che mostra come le famiglie immigrate debbano affrontare (*coping*) trasformazioni assai traumatiche attraverso il proprio specifico stile iterativo (inteso quale modo condiviso di percepire e interpretare il mondo interno ed esterno) sospinto tendenzialmente nel verso della coesione piuttosto che della flessibilità. In sostanza, se da un lato il fenomeno

dell'immigrazione può sospingere verso una maggiore apertura interculturale, dall'altro può sollecitare la definizione di un'identità sistemica sostenuta dall'attaccamento a un sistema rigido di norme impermeabile alla diversità. Fenomeno peraltro che osserviamo anche sul versante delle società ospitanti.

Il fenomeno migratorio, infine, propone in termini più drammatici la questione dei legami transgenerazionali; la frizione insita nei passaggi tra una generazione e l'altra, in qualche modo funzionale, nel caso delle neo-costituite comunità immigrate, assume toni più acuti influenzata com'è da "discontinuità" derivanti dalle diverse esperienze educative e sociali delle ultime generazioni, e determinando una forte criticità nei processi di differenziazione sul piano affettivo e di legittimazione etica di nuovi atteggiamenti.

Il matrimonio, secondo le forme tradizionali, diviene dunque uno strumento sancito dalla comunità, attraverso cui affermare il controllo sulle giovani donne in particolare se "troppo emancipate": una sorta di cesura/censura rispetto ai pregressi processi di integrazione, tollerati sino a quando non è in questione l'esercizio della funzione affiliativa e della sessualità femminile *Nella mia comunità ci si sposa presto, a volte prima dei*

18 anni, perché i genitori pensano che se no, poi la ragazza se ne va a mala strada ... quindi scelgono il fidanzato e la sposano (Gabriella, Vittima, Bangladesh). *Il fatto che si combinino i matrimoni è una sorta di garanzia ... un uomo delle prime generazioni di immigrati che ha una figlia di 18 anni prima che perda il controllo la affida a un'altra casa sposandola... ovviamente con un connazionale* (Mediatore culturale, Settore Privato Sociale, M).

Un discorso a sé meritano i matrimoni precoci. Si tratta di matrimoni combinati tra bambine, sovente al di sotto dei 16 anni, e uomini adulti. A nostro giudizio in questo caso le categorie sinora utilizzate non possono trovare compiuta applicazione, non essendo nemmeno presumibile alcuna forma di consenso da parte delle bambine che ne sono vittime. Indiscutibilmente si tratta di una gravissima violazione dei diritti dell'infanzia, causa di pesanti danni fisici, psicologici ed emotivi per le bambine che la subiscono.

Possiamo solo ipotizzare che tale violazione non si realizzi frequentemente all'interno delle comunità straniere residenti nei paesi occidentali, ma piuttosto possa accadere che anche in età precocissima le famiglie promettano in sposa figlie minori, rinviando solo alla maggiore età lo sposalizio, che

diversamente avrebbe chiari profili di illegittimità o addirittura penali. Emergono dalle interviste realizzate a operatori dell'educazione di aver fatto esperienza di situazioni in cui bambine che avevano raggiunto il menarca siano uscite dal circuito scolastico. L'abbandono scolastico, in particolare delle bambine, è certamente legato a doppio filo con la questione del Matrimonio Forzato; ne è certamente in alcuni casi conseguenza diretta, ma in altri ne può divenire potenziale precursore, nella misura in cui alle bambine venga negata la possibilità di portare a termine il percorso scolastico quale strumento di crescita culturale e soprattutto di promozione sociale. Lì dove il problema appare più evidente è all'interno dei "campi" Rom dove, a detta degli operatori che ne hanno esperienze, i matrimoni di giovanissime donne o bambine è una consuetudine.

Va ricordato che in Sicilia la pratica del matrimonio precoce non è del tutto sconosciuta, giungendo ancora oggi all'attenzione degli operatori casi di giovanissime ragazze che si sposano dopo la "fuitina", cominciando a convivere col partner, abitualmente più grande di età, anche a 14-16 anni. Se in passato la "fuitina" si sostanzialmente in una strategia atta ad interrompere il contrasto tra due famiglie in merito alla scelta del partner, utilizzando

strumentalmente il meccanismo del matrimonio riparatore, oggi appare affondare maggiormente in dinamiche di disagio sociale e nella carenza di efficaci meccanismi di crescita personale, con esiti il più delle volte di riproduzione del medesimo disagio.

Coloro che sono state/i intervistate/i hanno una buona conoscenza delle comunità residenti nel territorio e delle diversità che intercorrono tra queste. Se prendiamo in considerazione i servizi pubblici e privati sociali o socio-sanitari, il supporto che offrono alla loro utenza è essenzialmente l'assistenza e l'accompagnamento alla fruizione dei propri diritti e al conseguente disbrigo di pratiche burocratiche a questi legati: ottenimento o rinnovo del permesso di soggiorno, iscrizione all'anagrafe sanitaria, residenza, iscrizione dei figli/e a scuola, accesso ad altri servizi del territorio. Esistono in Italia strumenti giuridici che tutelano gli stranieri maggiormente in difficoltà e il compito di operatori/trici si sostanzia nell'aiutare costoro ad accedere a servizi e prestazioni.

Da tutte le interviste emerge che nessuno di questi servizi adotta una definizione specifica o ha un protocollo di lavoro nei casi di Matrimonio Forzato/combinato e che non essendoci Leggi o linee guida specifiche si fa riferimento ai racconti delle donne

e alla percezione che ne hanno gli operatori e le operatrici. Per le operatrici delle forze dell'ordine e della giustizia la risposta è ancora più chiara e precisa. Le forze dell'ordine e la magistratura si occupano di fattispecie di reato con compiti e funzioni diverse. Il matrimonio forzato o combinato per la legge italiana non è un reato.

Ciò che accomuna gli operatori intervistati è ritenere indispensabile, che a eventuali provvedimenti repressivi, si accompagnino comunque azioni di prevenzione e promozione sociale, riducendo i fattori di rischio che in precedenza abbiamo citato. Le donne intervistate vittime di tali pratiche, si esprimono, forse anche inaspettatamente, in termini di maggiore nettezza sulla necessità di norme repressive. Ci sembra che questa nettezza, al di là dell'efficacia diretta delle norme repressive (stemperate dalla scarsa propensione delle vittime alla denuncia), possa essere determinata anche dalla necessità delle vittime di una chiara legittimazione di comportamenti alternativi a quelli tradizionali proveniente da una "autorità" sostitutiva a quella della propria comunità di origine.

A Palermo dalle interviste emerge che le difficoltà messe in luce da chi opera nei servizi sono molteplici. I professionisti

della mediazione culturale lavorano solo con contratti precari, la loro presenza viene ritenuta preziosa ma in mancanza di risorse non vi è continuità nel loro supporto. L'assenza di un protocollo operativo rappresenta un'altra difficoltà enorme. I casi vengono risolti cercando soluzioni estemporanee che non riescono ad essere ricondotte ad una cornice unica. Non sono presenti forme e misure di protezione e di messa in sicurezza specifiche. Si vorrebbero campagne di informazione e sensibilizzazione nelle lingue delle varie comunità per facilitare l'accesso ai servizi da parte delle donne straniere.

Sarebbe necessaria una formazione specifica di operatori e operatrici che lavorano nei servizi ad alta utenza straniera, ma anche di poliziotti/e e carabinieri per fare emergere il fenomeno, per la valutazione del rischio e per individuare le misure di protezione disponibili.

Al fine di diminuire il rischio di Matrimonio Forzato andrebbero anche sostenuti economicamente la rete di servizi ed istituzioni direttamente in contatto con l'utenza straniera, servizi sociali, centri anti violenza, scuole, presidi ospedalieri. Tali servizi vengono identificati quali nodi fondamentali di una struttura permanente di osservazione del fenomeno: la

scuola (attraverso il monitoraggio della dispersione scolastica delle bambine straniere nelle scuole medie inferiori) o i presidi ospedalieri (dove le ragazze e le donne si rivolgono se sono vittime di violenze ma anche quale punto di accesso a volte pressoché esclusivo da parte delle donne straniere). Grande rilevanza viene attribuita ai servizi di aiuto alle ragazze o donne vittime quale luoghi di sostegno dei percorsi di autonomia, indispensabili all'uscita dalla coercizione e violenza: Centri e Servizi Antiviolenza che questa funzione svolgono anche per le italiane. Emerge la preoccupazione degli/le intervistati/e, in tempi di crisi economica, inerenti la drammatica carenza di risorse economiche pubbliche, inadeguate a finanziare le attività ritenute indispensabili per favorire integrazione, fruizione dei diritti di cittadinanza, informazione, sensibilizzazione, così come a sostenere i servizi dedicati alla tutela e accompagnamento delle vittime.

Sebbene le/gli operatrici/tori si dicano convinte/i della diffusione del Matrimonio Forzato tra alcune delle popolazioni straniere cui entrano in contatto, ben pochi dichiarano di aver trattato casi pervenuti ai servizi con una chiara richiesta di aiuto sul tema. Anche il numero assoluto di situazioni prese in carico è esiguo.

D'altronde è recentissima, almeno nel nostro paese, l'attenzione al fenomeno: ciò probabilmente in ragione della difficoltà a identificarlo chiaramente, alla tendenza a sottacere le pratiche al di fuori delle comunità, ma anche a causa della scarsità di accessi delle donne ai servizi, in specie provenienti da quelle comunità (spesso citate le donne dello Sri Lanka) in cui si possa presumere una maggiore diffusione del fenomeno. Donne che vivono quasi esclusivamente all'interno della propria famiglia o comunità, e che spesso non parlano italiano.

Su questo scenario le indagini di MATRIFOR confermano la necessità di

- interrogare le diverse culture, anche le nostre, mettendo in discussione l'ipotesi di "una radicale discontinuità culturale tra mondi nord-occidentali e resto-del-mondo", in materia di famiglie, strategie matrimoniali;
- analizzare tutti quei fattori socio economici e il sistema etico valoriale che costituiscono elementi importanti per l'espressione del consenso riguardo al matrimonio ed al reticolo sociale che attiva, sia esso determinato da amore e libera scelta, o comunque da accordo ad un'unione, oppure da un contratto che non di necessità si identifica con il consenso

- affrontare l'accesso delle donne ai beni sociali ed economici nei diversi contesti e la profonda, strutturale differenza tra i sessi, non solo per le culture "altre da noi", ma anche per il mondo occidentale;
- tenere conto della difficoltà nel prendere la parola per denunciare e ancor più chiedere aiuto e sostegno da parte di chi si vive come "fragile" nella società ospite, in una precaria condizione di esercizio dei propri diritti;
- formare adeguatamente chi lavora nel sistema di protezione sociale e dell'educazione.

Alcune indicazioni

In Italia non esistono ricerche statistiche dedicate in grado di fornire informazioni sui matrimoni forzati; tuttavia, anche se si tratta di un fenomeno difficile da rilevare per le sue caratteristiche complesse e "liquide", è importante

- » sistematizzare le informazioni che saranno disponibili a breve e medio termine;
- » strutturare un'indagine ad hoc per la stima del fenomeno

e la conoscenza sull'intero territorio nazionale delle caratteristiche e della prevalenza a livello regionale.

In Italia non esiste una legge che faccia riferimento al problema dei Matrimoni Forzati. Tuttavia, l'Italia dovrà dotarsi di specifiche norme basate sull'entrata in vigore della Convenzione di Istanbul il 1° agosto 2014; e l'Italia dovrà apportare le modifiche necessarie alla sua legislazione nazionale per applicarla nella sua interezza.

In Italia è importante sviluppare un sistema di interventi volti a:

- » Armonizzare le misure e gli interventi in favore delle vittime di violenza di genere contro donne italiane e straniere nelle sue varie declinazioni, ivi compresa la tratta a scopo di sfruttamento sessuale. In questo quadro andrebbe inserito il Matrimonio Forzato, correlandolo anche al matrimonio precoce (che vede un focus specifico nelle politiche e nelle misure di protezione dei minori di età) e al matrimonio di convenienza. Ulteriore correlazione sarà con le politiche e le misure in favore degli immigrati e d'altro canto con la verifica del fenomeno dei matrimoni e delle gravidanze precoci in Italia (anche per le italiane in questo caso).

- » Mantenere il focus di ogni misura e di ogni intervento fortemente gender oriented e declinato su un piano interculturale che veda gli stessi soggetti migranti come protagonisti, esigendo una programmazione adeguata in materia a livello regionale, ivi compresa quella delle regioni obiettivo convergenza.
- » Sviluppare un insieme di azioni per migliorare il sistema che rendano maggiormente sensibile al tema e migliorino le competenze professionali di chi interviene nell'aiuto alle vittime di violenza di genere ed agli organismi che si occupano di migranti.
- » Strutturare interventi di sensibilizzazione, prevenzione e coinvolgimento delle giovani generazioni, ma anche delle famiglie e delle comunità straniere, per l'avvio di un percorso interculturale in grado di creare fiducia nelle istituzioni e in particolare nei servizi rivolti all'accoglienza nel paese ospitante. Rafforzare l'empowerment delle donne, soprattutto delle giovani generazioni, offrendo loro occasioni di scambio e di arricchimento in grado di mettere in luce le opportunità plurime di scelta nei percorsi di vita.