

International exploration on forced marriages

**A study on legal initiatives, policies and public discussions in
Belgium, France, Germany, the United Kingdom and Switzerland**

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Table of Contents

<i>INTRODUCTION</i>	<i>1</i>
<i>CHAPTER ONE</i>	<i>6</i>
Definitions of forced marriage	6
I. Belgium: Forced marriage as a marriage of convenience	6
II. France: Forced marriage as a threat to <i>laïcité</i>	7
III. Germany: Forced marriage as a breach of human rights and a cultural problem	8
IV. United Kingdom: Forced marriage as a complex practice	9
V. Switzerland: Forced marriage as a legal problem	11
Conclusion: A problem of definition	12
<i>CHAPTER TWO</i>	<i>13</i>
Legislation and policy on forced marriage	13
I. Belgium: The criminalisation and migration law approach	14
II. France: The step-by-step approach in civil and migration law	16
III. Germany: The criminalisation approach and migration restrictions	19
IV. United Kingdom: The Forced Marriage Civil Protection Act 2007	22
V. Switzerland: Limited changes in civil and migration law	27
Conclusion: A choice between the criminal, civil and migration law approach	31
<i>CHAPTER THREE</i>	<i>35</i>
The lack of numbers	35
I. Belgium: Experiences of migrant women and familiarity with forced marriage	37
II. France: Questionable extrapolation of known cases	40
III. Germany: Experiences of migrant women and cases registered by NGOs	42
IV. United Kingdom: Cases registered by the government	45
V. Switzerland: Cases registered by NGOs	47
Conclusion: Unclear definitions lead to unclear measurements	47
<i>CHAPTER FOUR</i>	<i>49</i>
Debates on forced marriage	49
I. Belgium: Debate on restricting marriage migration	50
II. France: Debate on cultural practices	52
III. Germany: Debate on integration	53
IV. The United Kingdom: Debate on protecting victims	55
V. Switzerland: Legalistic debates on criminalisation	57
Conclusion: Debates on legal measures and migration issues	60
<i>CONCLUSION</i>	<i>61</i>
<i>BIBLIOGRAPHY / ANNEX</i>	<i>64</i>

Table of Abbreviations

ABVV	<i>Algemeen Belgisch Vakbond</i> (Belgium)
ACVZ	<i>Adviescommissie voor vreemdelingenzaken</i> (Netherlands)
Art.	Artikel
AufenthG	<i>Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet, Aufenthaltsgesetz</i> (Germany)
AuG	<i>Ausländergesetz</i> (Austria)
BAMF	<i>Bundesamt für Migration und Flüchtlinge</i> (Germany)
BGB	<i>Bürgerliches Gesetzbuch</i> (Germany)
BMFSFJ	<i>Bundesministerium für Familie, Senioren, Frauen und Jugend</i> (Germany)
BMI	<i>Bundesministerium des Innern</i> (Germany)
BRat-Drs.	<i>Drucksachen des Deutschen Bundesrates</i> (Germany)
BTag-Drs.	<i>Drucksachen des Deutschen Bundestages</i> (Germany)
CDU/CSU	<i>Christlich Demokratische Union Deutschlands / Christlich-Soziale Union</i> (Germany)
CESEDA	<i>Code de l'entrée et du séjour des étrangers et du droit d'asile</i> (France)
cf.	Confer
CMLR	Common Market Law Review
CoE	<i>Council of Europe</i>
DIMR	<i>Deutsches Institut für Menschenrechte</i> (Germany)
Doc.	Document
EDU	<i>Eidgenössisch-Demokratische Union</i> (Switzerland)
e. g.	<i>exempli gratia</i>
ECRI	<i>European Commission against Racism and Intolerance</i>
Ed.(s.)	Editor(s)
ELRev.	<i>European Law Review</i>
EMN	<i>European Migration Network</i>
et al.	And others
FamPra	<i>Die Praxis des Familienrechts</i> (Switzerland)
FCO	<i>Foreign and Commonwealth Office</i> (United Kingdom)
FDP	<i>Freisinnig-Demokratische Partei der Schweiz</i> (Switzerland)
FMCPA	<i>Forced marriage civil protection act</i> (United Kingdom)
FMPO	<i>Forced marriage protective order</i> (United Kingdom)
FMU	<i>Forced Marriage Unit</i> (United Kingdom)
GAMS	<i>Groupe femmes pour l'Abolition des Mutilations Sexuelles</i> (France)
GG	<i>Grundgesetz</i> (Germany)
HCI	<i>Haut Conseil A l'integration</i> (France)
i.e.	id est
Iaf	<i>Verband binationaler Familien und Partnerschaften e.V.</i> (Germany)
ICLQ	<i>International and Comparative Law Quarterly</i>
J.O.	<i>Journal Officiel</i> (Germany)
KBS	<i>Koning Boudewijn Stichting</i> (Belgium)
lit.	Litera
MNS	<i>Migration News Sheet</i>
MP	<i>Member of Parliament</i> (United Kingdom)
NGO	Non Governmental Organization
NHS	<i>National Health Service</i> (United Kingdom)
NIP	<i>Nationaler Integrationsplan</i> (Germany)
No.	Number
NZZ	<i>Neue Zürcher Zeitung</i> (Switzerland)

p.	Page
Para.	Paragraph
PS	<i>Parti Socialiste</i> (Belgium)
SAMV	<i>Steunpunt voor Allochtone Meisjes</i> (Belgium)
SBS	<i>Southall Black Sisters</i> (United Kingdom)
Sect.	Section
SGB	<i>Sozialgesetzbuch</i> (Germany)
SP	<i>Sozialdemokratische Partei der Schweiz</i> (Switzerland)
Spa	<i>Sociaal Progressief Alternatief</i> (Belgium)
SPD	<i>Sozialdemokratische Partei Deutschlands</i> (Germany)
StGB	<i>Strafgesetzbuch</i> (Germany and Switzerland)
SVV	<i>Socialist Vooruitziende Vrouwen</i> (Belgium)
Taz	<i>Die tageszeitung</i> (Switzerland)
UK	United Kingdom
VLD	<i>Open Vlaamse Liberalen en Democraten</i> (Belgium)
Vol.	Volume
ZGB	<i>Zivilgesetzbuch</i> (Switzerland)

Introduction *

Towards the end of 2008, news audiences in the United Kingdom followed the story of Humayra Abedin, a 33-year-old NHS doctor from East London who was allegedly being held captive in her native Bangladesh by her parents who planned to force her to marry a husband they deemed suitable for her. Abedin sought help, and returned to the United Kingdom on the 16th of December after the *High Court* had issued an injunction ordering the parents of Abedin to free her.¹ This story does not stand alone: most Western European countries know of similar cases. According to Razack, such cases have signalled the beginning of European legal involvement in the area of forced marriages.²

Since the 1990s, forced marriage has become a hot political issue in several European countries. This political discussion, which has recently intensified, has prompted the report at hand as it provides a reaction to the promise made by the Dutch Minister of Justice, Hirsch Ballin, to the *Tweede Kamer* (the Second Chamber of the Dutch Parliament) during a debate on the subject on 3 July, 2007. The minister promised his parliament to state an inquiry both into how forced marriages can be tackled in the Netherlands and what has been done about them in a number of Western European countries.³ This latter commitment forms the direct motivation for the current study. The Ministry of Justice of The Netherlands commissioned its Research and Documentation Centre (*WODC, Wetenschappelijk Onderzoeks – en Documentatie Centrum*) to conduct an international study on policy on forced marriage of which this report is the result.

The research questions

The aim of the study was to create an international and actual overview on the policy on forced marriages in Western Europe. Seeing that the study deals with debates and policy it is necessary to emphasise here that the topic of the study was not so much actual cases of forced marriage as the perception of forced marriage in the different countries. The central question was then to examine what is known about the policy and discussions on forced marriages in Belgium, France, Germany, the United Kingdom and Switzerland. Instead of focusing exclusively on policy, a choice was made for including the societal context in the form of debates on forced marriage in order to have a more complete overview.

The main question was divided into four sub-questions which are each dealt with in their separate chapters. The first question was: How is forced marriage defined in public debates on the subject? For this question, Chapter 1 introduces the different definitions in the various countries and illustrates some of the ways in which forced marriage is defined and perceived in public discussions on the subject. This question is connected to question 4 which focuses on the public debates on the subject.

The second sub-question was: Which policies and legal initiatives exist with regard to forced marriages? Chapter 2 deals with how the perceived problem has been tackled in the different countries by means of policy and law. In answering this sub-question it was useful to utilize a distinction between criminal, civil and migration law all of which have different goals and offer different possibilities. This distinction also structures the discussion in Chapter 2.

* We would particularly like to thank Professor Ashley Terlouw, Dr. Laurence Bakker, Dr. Catrien Notermans, Dr. Marc Spescha (Zürich), Professor Thomas Widlok and Dr. Helena Wray (Middlesex University) for their expertise and useful comments on the draft of this study.

¹ BBC News, 17 Dec. 2008. Freed doctor forced into marriage.

² Razack (2004), p. 150.

³ Brief van de minister van justitie, 27 June 2008.

The third sub-question was: What numbers are available on forced marriages and what can be said about the phenomenon based on these? Chapter 3 discusses some of the scarce figures that are available on forced marriages for the five countries studied here.

The fourth sub-question was: Are there public debates on forced marriages, and if so, what are some of the view points in these debates? Accordingly, Chapter 4 provides an outline of some of the points that have been made in public discussions on forced marriages.

Methods

The materials were collected and the study was written between September 2008 and February 2009. Questions 1 and 4 were answered utilizing the same methods and the same data because the definitions in question 1 were definitions used in debates on forced marriages. Due to time constraints, it was not possible to conduct a fully inductive analysis by taking a sample from newspapers, policy documents or parliamentary notes and then looking at what would arise from this analysis. Therefore, a choice was made for an approach where scientific articles on debates on forced marriage in the different countries formed the point of departure. Subsequently, articles were searched dating from relevant periods in time,⁴ mostly after the year 2000 with search terms such as 'forced marriage' AND 'debate'.

In order to answer research question 2, an analysis was conducted on the existing scientific literature, specific law texts, materials on the internet and the knowledge of legal experts who were consulted. Especially the materials on the internet proved to be very valuable in answering this sub-question. The 2005 study by the Council of Europe on forced marriages also turned out to be a particularly important source and point of reference in studying policy.

Question 3 was answered by making use of the general literature research conducted as a background for the study. Additionally, information from NGO⁵ websites was used to find relevant figures. Many figures also appeared in newspaper articles on the topic. The analysis and evaluation of the figures was conducted by applying general statistical knowledge and common sense. Especially this last element was more crucial than expected. In most cases, the information provided as background was so limited that an evaluation of the figures did not require any statistical knowledge. The fourth research question was answered by utilizing the same methods and materials as for question 1. In the text, we have tried to refer to the names of institutions, organizations and laws in the original language. However, this was not always possible because much of the source material, such as scientific articles, does not utilize the original names.

Definition of the central concepts

This report deals with forced marriages in policy and debates, and doing so it touches upon a number of complicated concepts that require closer definition: marriage (arranged, forced, of convenience), migrant, culture and religion. All of these concepts surface both in debates and in policies on forced marriages.

Marriage, to begin with, is both a socio-cultural institution and a legal arrangement where the cultural and legal dimensions somewhat overlap each other. Socio-culturally, marriage takes many forms in the world which are not easily identifiable as 'forced' or 'non-forced / consented'. Customs such as bride capture and arranged marriage do not necessarily entail lack of consent on the part of the spouses and often involve some form of implicit or explicit consent.⁶ This does not lessen the fact that some forms of marriage do exclude consent. The

⁴ Relevant periods in time refers to only including articles from the period where there has actually been discussion and to specific points in time, such as big parliamentary debates.

⁵ NGO = Non governmental organization.

⁶ Pasternak et.al. (1997), p. 148-153.

dominant ideal of marriage in Western countries is the so-called passionate marriage which involves a marriage based on a prior romantic relationship between a man and a woman where there is an individual choice of spouse. In recent decades, this ideal has become globally popular although it is appropriated differently in different cultural contexts.⁷ This fully individual choice of partner may be more of an ideal than a reality. One may, for example, consider the persisting, even though decreasing, homogamy in partner choice; i.e. the fact that most people continue to marry within their own social class or religion;⁸ and the popularity of different forms of finding a partner, such as dating services and so-called mail-order brides. These examples suggest that also in Western countries partner choice is a social process and not exclusively an individual choice although it is considered to be such.

Legally, marriage can be seen as a contract that involves both the spouses and the state. In all of the Western European countries examined here, marriage is organised similarly in civil law and is, from the legal point of view, a contract in civil law. This understanding of marriage is dominant among the authorities which is why customary marriages, such as the Quranic marriage among Muslims, are not recognised by law even though these marriages are often legally valid in the countries of origin of migrants and their children. If the arrangement of such marriages contains an element of force, there is a danger that they may not be included in the definition of forced marriage because they are not perceived as marriages in the legal sense.

In this study, three marriage-related terms are employed: forced marriage, arranged marriage and marriage of convenience. In the literature, a forced marriage is usually a marriage that is conducted without the full consent of both spouses, with some form of mental and/or physical force being applied. Many of the legal experts contacted for the Council of Europe study (2005) mention “duress” as a defining feature of a forced marriage. Duress or force can, then, mean physical force or mental pressure but who applies it to whom is not always clear. Obviously, the use of force is a matter of perception. Possibly, certain behaviours by parents are perceived as force by their child whereas the parents themselves consider them a part of proper parenting. This perception can also change over time. Forced marriage is not a theoretical or empirical category that refers to a certain type of marriage or breach of marriage contract. As Caestecker points out, forced marriage is not a cultural practice that is claimed by some minority or majority community as their right.⁹ Neither is it a concept with explicit legal content.¹⁰

Arranged marriage is a term that refers to a wide variety of marriages as many peoples in the world have marriage customs where marriage is a collective enterprise.¹¹ In this study, the term arranged marriage refers to marriages of migrants where the choice of partner is mediated by the family. The term ‘arranged’ is not used for marriages of the majority population even though the Council of Europe report quite rightly points out that many Western marriages take place to enhance careers or to forge an alliance between wealthy families and hence could be regarded as ‘arranged’.¹² The motives for such marriages can be similar to some arranged marriages which serve to strengthen kinship bonds. The materials used for this study explain the relationship between forced and arranged marriages differently. Whereas some argue for a clear distinction between forced and arranged marriages,¹³ others prefer considering both forced and arranged marriages as arranged but existing on different points on a

⁷ Wardlow & Hirsch (2006), p. 5.

⁸ Kalmijn (1998).

⁹ Caestecker (2005), p. 65.

¹⁰ CoE (2005), p. 21.

¹¹ Pasternak et. al. (1997), p. 148-149.

¹² CoE (2005), p. 17-18.

¹³ Bielefeldt (2005), p. 22-25.

continuum between consent and coercion.¹⁴ De Koning and Bartels distinguish four forms of marriage ranging from a marriage on own initiative to a fully arranged marriage.¹⁵ Storms and Bartels emphasise that a simplistic distinction between “individual choice” and “no choice” does not suffice because in reality there is usually a large grey area where the different parties employ strategies to permit or prevent a marriage taking place.¹⁶

A marriage of convenience is a marriage that is entered into without the intention of at least one of the spouses to create a permanent common life. The marriage is contracted in order for one of the spouses to obtain a residency permit (and/or nationality).¹⁷ This is mainly a legal – political category because it is primarily a problem for the state and not necessarily for those involved. The term ‘marriage of convenience’ is intrinsically connected to migration policy because only marriages with foreign partners are denoted as such. Any policy against marriages of convenience is therefore also a policy against illegal migration. Just as it is the case with forced and arranged marriage, marriage of convenience is not always as neat a separate category as it seems on paper. As D’hondt and Foblets point out, forced marriages are often annulled as marriages of convenience because proving that force is at play is very difficult.¹⁸ So, when participants in public debates call for making a clear distinction between the different types of marriages, one should keep in mind that such a distinction might not be all that clear in reality.

In all of the countries of this study, forced marriage is seen, to some degree at least, as a migrant issue. Even though any semi-permanent movement between places can be considered migration, the terms migration and migrant refer in this report to international migration. In all of the countries of the study, migration of EU citizens is excluded when talking about migrants and forced marriage. This means that the term ‘migrant’ refers to persons from certain non-European countries, such as Turkey, Morocco, Pakistan or Mali. So, when Chapter 1 defines forced marriage as a migrant issue, mainly migrants from outside of Western Europe are referred to. Saying that migrants come ‘from’ a certain country is slightly confusing because the term migrant is also used for the children of migrants, and possibly even for their grandchildren, all born in Europe. In the materials of the study, it is not clear who is indicated: migrants or their children, even though it seems plausible that both migrants and their children are referred to.

Two concepts connected to migration are family (re)unification and family formation. These terms have mainly a legal content. They refer to certain conditions under which immigration to EU countries from outside of the Union is permitted. In the case of family (re)unification, there is an established relationship, such as a marriage, prior to immigration whereas in the case of family forming the relationship is legally established after the immigration, even though in practice family forming can also concern existing relationships and established marriages. In the current study it is not possible to make a systematic distinction between the two terms everywhere. The study deals, after all, with policy that is relevant to forced marriages and in some countries this means policy on family (re)unification, in others policy on family formation or policy on both. In some countries, for example in Belgium, there is a difference between family (re)unification and family formation with regard to forced marriages. In other countries, for example Germany, the rules that are relevant to forced marriages are the same for family (re)unification and formation. We have chosen to utilize both terms, depending on the terminology in the country concerned. If only the term family (re)unification is used with

¹⁴ An-Na’im (2000), p. 3.

¹⁵ 2005, p. 11.

¹⁶ 2008, p. 11.

¹⁷ Foblets/Vanheule (2006), p. 263-264. The same definition is used both in the Family Reunification Directive of the EU and Belgian legislation.

¹⁸ D’hondt and Foblets (2002).

regard to policy on forced marriages, this report also speaks of family (re)unification. The same applies to family formation.

Another term that often surfaces in connection with forced marriage and migrants is culture. The word generally refers to some kind of framework of meanings and patterns of behaviour that are transmitted across generations.¹⁹ In discussions on forced marriage, the word culture is used in a very distinct way. It refers there to customs and behaviours of migrants (defined as above) which are then juxtaposed to those of the majority population. According to Razack, Europeans have, in their own mind, no culture but rather values whereas it is “the others”, such as migrants, who have a culture and cannot act independently of it.²⁰ An issue that overlaps somewhat with culture is religion, which enters debates on forced marriage only sideways. When there is talk about religion, this usually means Islam which is seen as the religion of migrants.

Having now discussed the background of the study and the central concepts involved, the following chapter will focus on the definitions of forced marriage within the different national contexts.

¹⁹ Kottak (2002).

²⁰ Razack (2004), p. 147-148.

Chapter One

DEFINITIONS OF FORCED MARRIAGE

The Introduction has already touched on some of the problems with regard to defining what a forced marriage is. This chapter shows how the issue of defining forced marriage is dealt with in the different countries. In terms of policy, the term ‘forced marriage’ as such does not have any explicit legal content; it is not a legal term.²¹ Thus it can denote a number of things in social reality. But the legal initiatives undertaken or abandoned do not emerge in a vacuum; they are often preceded by both political and more general societal debates. Before legal action is undertaken, the object of that action is often defined as problematic.

This chapter discusses the ways in which forced marriage is perceived and defined in public (mostly media) discussions on the topic. The central question to be addressed is: What are the definitions given to forced marriage in debates in Belgium, France, Germany, the United Kingdom and Switzerland? Each paragraph focuses on a country and tries to shed light on the discussants and the general themes that forced marriage is connected to. This chapter is based on the same materials as Chapter 4; scientific articles on public debates on forced marriage form the point of departure. Additionally, newspaper articles are used. It needs to be stressed that the result is the impression gained by the researchers based on the materials, but not a full or comprehensive representation of all debates and points of view. These discussions and debates will be further elaborated on in Chapter 4.

I. Belgium: Forced marriage as a marriage of convenience

Forced marriage has been the topic of some public discussion in the media and in politics since the end of the 1990s. The participants in these discussions are mainly politicians, often from the socialist party SPA, and highly educated migrants such as Mimount Bousakla, also a politician from the SPA, and the psychologist Sultan Balli. Frank Caestecker argues that marriage migration often stands as a synonym for both arranged and forced marriages in debates on the subject in Belgium. Such debates implicitly assume that marriage migration is always a case of men in the migrant community coercing or manipulating their daughters to marry someone thereby denying (for example) the possibility that men could also be forced into marriage and that women could also be the party exercising force.²²

What is striking about the Belgian way of perceiving forced marriage is that it is often linked to marriage migration and especially to marriages of convenience, i.e. marriages that take place in order to obtain a residency permit for Belgium. As Belgian policy on forced marriages has mainly focused on migration it is justified to say that in both the public discussions and policy on the topic, forced marriage is defined as a migration problem.

Considering that forced marriages and marriages of convenience are often mentioned in the same sentence, there seems to be a strong link between the two in the minds of those who speak publically on the issue. A clear indication is the policy of establishing administrative units (*Cel schijnhuwelijk*) to tackle the problem at Registry Offices (*burgerlijke stand*) since these units aim to tackle both forced marriages and marriages of convenience. The definition of forced marriage as connected to marriage of convenience is not accepted by everyone. Some participants in public discussions, most remarkably the psychologist Sultan Balli, herself

²¹ CoE (2005), p. 7.

²² Caestecker (2005), p. 86.

of Turkish origin, have criticised the merger of forced and arranged marriages and marriages of convenience and the tendency to tackle the problem with migration measures.²³

Some politicians who argue for the criminalisation²⁴ of forced marriage stress the human rights dimension of the problem because forced marriages are seen to represent a breach of the human rights of the persons forced. Generally forced marriages are, however, looked at through the lens of migration. Thereby, the groups targeted in the definition are migrants, most notably Turkish and Moroccan ones. Marriage migration practised by so-called mail-order brides who come to Belgium to marry a native Belgian, for example, is not mentioned when the issue of marriage migration is discussed.²⁵ By leaving marriage migration by other groups than Moroccan and Turkish migrants out of the debate, both marriage migration and forced marriages are implicitly defined as problems of these two migrant groups.

Since the entire phenomenon of marriage migration has generally been problematised it would seem logical not to make a distinction between arranged and forced marriages considering both are practiced by migrants and both involve the same kind of migration movement. But politicians such as the Minister of Justice Laurette Onkelinx from the socialist party PS have stressed in public that the criminalisation of forced marriages is not meant to tackle arranged marriages which are not inherently problematic.²⁶ This seems to indicate that marriage migration is not seen as problematic in the case of arranged marriages even though some Belgian politicians always regard marriage migration as a problem. In Belgian discussions on forced marriage, the central topic appears to be the prevention of marriage migration which is connected to the broader framework of migration.

II. France: Forced marriage as a threat to *laïcité*

In France, forced marriage is perceived as a gendered problem that affects young girls. The culture and especially the religion of migrants are perceived to be the cause of the problem. In order to understand debates on forced marriage, some background knowledge on the notion of *laïcité* is necessary since this concept plays such an important role in many discussions with regard to Muslim migrants, such as those on forced marriages. The concept of *laïcité* is a typically French term that is difficult, if not impossible, to translate. It comes down to a strict separation between church and state which means that the church is not allowed to exercise political power and the state abstains from the use of religious power. For the individual citizen, the *citoyen*, this means that religious expression belongs to the private sphere and not in the public domain.²⁷ The importance and meaning of the notion of *laïcité* is illustrated by the commotion triggered by girls and women wearing a veil to school, a practice that is perceived to be religious and that the government wants to forbid. According to Olivier Roy, there is a tension between the notion of *laïcité* and all religion and especially with Islam and Muslims. He suggests that this special antipathy has to do with, amongst others, the connection postulated between migrants, Islam and pro-Palestinian and anti-Israel attitudes among migrants and with the association of Islam with dangerous fundamentalism. Islam is seen as a threat to the *laïcité*, and it is associated with migrants and their customs in general, also those customs

²³ De Standaard, 5 June 2004, Importhuwelijken bemoeilijken de integratie van migranten; De Standaard, 8 July 2006, Bang voor de zomervakantie.

²⁴ This report employs the terms “criminalisation” and “to criminalise” because these are logically derived from the term criminal law and because this terminology is often used in British legal texts which are the only legal texts used as a source that are originally in English.

²⁵ Caestecker (2005), p. 85-98.

²⁶ De Standaard, 10 March 2006, Voortaan twee jaar cel voor gedwongen huwelijken?

²⁷ Gunn (2004).

that do not necessarily have anything to do with religion.²⁸ This is also the framework within which the French definitions of forced marriage can best be understood; forced marriages are seen as a Muslim migrant custom and this way they are more or less identified with Islam which is seen as a threat to *laïcité*. Whereas the notion of *laïcité* really only means the expulsion of religion from public life, in debates on Islam and customs that are assumed to be Islamic *laïcité* becomes a concept that exists in tension with cultures other than the French.

The *Rapport de la commission de la nationalité*, which presented the findings of *La commission de la nationalité* in 1988, stated that Muslims must respect the secular principles of the Republic and that their cultural practices and ideas, such as polygamy, inequality between men and women and arranged marriages were incompatible with French values.²⁹ This way, the different social phenomena deemed undesirable from the perspective of the state came to be defined as cultural. This definition is also present in the way the government perceives forced marriages. That forced are problematized as a cultural question is illustrated by how the *Haut Conseil A l'integration*, HCI,³⁰ defines these. The HCI defines a forced marriage as one where the spouse is usually a man who is older and chosen by the family because of his religion, family or ethnic background.³¹ Many politicians see forced marriages as a challenge for the Republic and its principles.³²

Since about 2002, the issue of forced marriage has been a topic of public attention in France. This topic is discussed by government officials, intellectuals and NGOs who defend women's rights. The visibility that the issue has gained both in the press and in policy defines forced marriages as an issue that pertains to young migrant girls, mainly from African migrant communities. The HCI says that forced marriage concerns young girls, from 10 to 12 years onwards from migrant communities such as those from Mali and Mauritania, Senegal and North-Africa in general.³³ The term 'concerns' means here that this group of girls are defined as victims of forced marriage and forced marriage is defined in relation to the victims. Clearly, forced marriage is perceived as a gender issue as it is said to affect only girls. This group has also been the focus of French policy (See Chapter 2 for details).

III. Germany: Forced marriage as a breach of human rights and a cultural problem

In Germany, the participants in the public debates on forced marriage are intellectuals (such as philosophers), politicians and women's rights advocates with a Turkish background. In these debates, forced marriage has often been defined a human rights question. Heiner Bielefeldt and Petra Folmar-Otto, both philosophers and dominant in intellectual debates on multicultural society, as well as the Berlin NGO *Papatya* for migrant women stress that forced marriage is a breach of human rights. In addition to human rights, forced marriage is also debated within the broader framework of domestic violence, especially in governmental bodies. This is apparent in the work of the NGOs and government organizations that deal with forced marriages. The

²⁸ Roy (2006), p. 7-19.

²⁹ Long (1988). Part I, p. 24 / Part II, p. 87. The commission was established in order to think about a possible reform of the nationality laws.

³⁰ Translation: The High Council for Integration, this is a government body that deals with migration and migrants.

³¹ Haut Conseil A l'integration (2003), p. 63-64.

³² Le Figaro, 3 October 2003, La barbarie dans la République, Répudiations, mutilations, mariages forcés; Le Figaro, 2 October 2003, Polygamie, mariages forcés, excision: un défi pour la République; Le Figaro, 14 December 2005, Nouvelle dénonciation de la polygamie: where Chantal Brunel, a member of the parliament for the UPM, said: "La polygamie est pour l'épouse un mariage forcé, donc une violence incontestable" (Polygamy is a forced marriage for the bride, and therefore unquestionably an act of violence).

³³ Op cit.

same organizations provide information, advice and assistance for both problems: domestic violence and forced marriages.³⁴ There is no explicit reference to gender or age of the victims.

There is also a clear cultural dimension to discussions on forced marriage. Forced marriage is perceived as an unwanted element in “the” culture of migrants.³⁵ It is then seen predominantly as a problem for the integration of migrants in the society, where integration is at least partially a cultural process and entails migrants leaving this part of their culture behind. The cultural dimension concerns first and foremost the migrants. In German debates on multiculturalism and *Leitkultur*, there is a tension between promoting multiplicity of cultures (multiculturalism) and defining a cultural hierarchy where some notion of German culture is at the top (*Leitkultur*). In this regard, forced marriage is seen as a cultural issue.³⁶ This gives the impression that forced marriage might be a cultural practice, such as veiling, but in the sources used for this report there is no one in Germany or in the other countries studied who would claim that forcing someone to marry is an acceptable cultural practice. In contrast to the general condemnation of forced marriages, there are, then, no members of migrant communities who see forcing someone to marry as a cultural right.

The distinction between forced and arranged marriages has been explicitly tackled by some of the participants in public discussions on the topic. On the one hand, there are women’s rights advocates, such as Necla Kelec, who define both as similar expressions of a patriarchal mentality and the same social system. On the other hand, many people engaged in the debate, such as Gaby Strassburger, a professor of social work whose research focuses on migration issues, argue for a strict division between the two, where arranged marriages are not necessarily a problem.³⁷ All in all, there is a tension and overlap between defining forced marriage as a human rights question, a domestic violence issue or a cultural matter. Even though these three definitions do not exclude each other, they exist in a tense relation to one another because emphasizing the importance of universal human rights goes against cultural specificity and the definition of forced marriage as a cultural matter.

IV. *United Kingdom: Forced marriage as a complex practice*

Politicians and representatives of NGOs participate in public discussions on forced marriage in the United Kingdom. Women’s rights organizations have been very influential but also organizations of the Asian community or Muslims in general have participated in debates on the issue. Considering that many (South) Asian migrants are Muslim, there is some overlap between these organizations. Out of all the countries in the sample, it seems the United Kingdom is the only one where there is a more general understanding of the complexity of forced marriage in the public sphere. Forced marriage is seen as a practice rather than as a single event. In the other countries, the complexity is also present in the diverse perspectives on forced marriage but there is no single perspective attempting to combine these diverse ideas. The *Forced Marriage Unit*, the special joint *Foreign and Commonwealth Office*, FCO and *Home Office* unit established to tackle the problem effectively, simply defines a forced marriage as “a marriage conducted without the valid consent of one or both parties, where duress is a factor”.³⁸ This is a very gender and ethnically neutral understanding of the issue.

Additionally, in British conceptualisation of the issue, forced marriage often has some kind of *overseas dimension* as it frequently includes an outward movement across state borders.³⁹ In

³⁴ Nationaler Integrationsplan (2008), p. 166.

³⁵ Culture seems to be perceived in singular here and as one that only touches migrants.

³⁶ See Carle (2007) and Chapter 4 for a further elaboration on this discussion.

³⁷ Bielefeldt/Folmar-Otto (2007), p. 15-16.

³⁸ FCO and Home Office (2006), p. 1.

³⁹ FCO (2000a).

principle, the term ‘overseas’ stands for any kind of foreign country, but within the specific context of the United Kingdom this term seems to refer to the countries of the Commonwealth. This is probably due to the fact that the majority of migrants come from Commonwealth countries so that in cases of forced marriage these countries are involved. The inclusion of this outward travel is exceptional compared to the other countries in the study, most of which perceive forced marriage as a migration issue. In doing so, these countries emphasise maintaining the state border; the discussion is mostly on limiting immigration. But according to the FCO,⁴⁰ forced marriages require policy outside of the national context. This exceptional attention to the overseas dimension is possibly due to the colonial past of the United Kingdom. Firstly, the administrative structures within the Commonwealth facilitate the establishment of an overseas dimension in policy because these structures are similar in the different countries. Secondly, the Commonwealth countries share the same legal system, English law. How this fact facilitates overseas policy is demonstrated in the recent case of Humayra Abedin, referred to in the Introduction, who was able to return to London after a High Court injunction against her parents ordering that Abedin could not be removed from the United Kingdom against her will. The injunction was taken into consideration by the local court in Bangladesh.⁴¹ Thirdly, both British national identity and foreign policy are based on an active involvement outside the country. Whereas recently popular notions of Englishness stress the locality of nationalism, the more common notion of Britishness is built on Great Britain as a global force committed to civilizing the rest of the world.⁴²

The British focus on the overseas dimension means that forced marriages have become connected to migrants in political discussions and newspaper reporting. The focus on migrants has led to a tendency to perceive forced marriage as a cultural matter. Especially some politicians, most notably the Home Secretary at the time, David Blunkett, have defined forced marriage as a problem that is caused by the lack of British values among migrants.⁴³ Here the idea is that forced marriage will disappear as migrants become more integrated into British society.

Women’s organizations which have been influential in debates around forced marriage such as *Southall Black Sisters* (SBS) have suggested a more gendered understanding of the problem than simply focusing on migration and culture. Hannana Siddiqui, the most famous representative of SBS, has argued for perceiving forced marriage as part of a larger problem which is the existence of patriarchal social systems that everyone should take a stand against.⁴⁴ Rahila Gupta, a famous writer and commentator on the issues of forced and arranged marriages, says that both arranged and forced marriages are based on the same kind of patriarchal logic and are brought forth by the same social structure.⁴⁵ Even though such a social structure is probably associated by most people with migrant communities, this is not a case of simply equating forced marriages with “the other culture”. This gendered understanding of forced marriages is different from the culturalisation of the phenomenon because here the focus lies on the workings of power through gender and not simply on some cultural groups having certain customs. The existence of forced marriages is, then, not explained as part of a certain culture. But the fact remains that due to the complexity of the matter it is difficult to distinguish between arranged and forced marriages. This is why these terms are used by women’s rights organizations almost as synonyms.

⁴⁰ FCO (2000a).

⁴¹ BBC News, 17 Dec. 2008. Freed doctor forced into marriage.

⁴² MacPhee/Poddar (2007).

⁴³ Razack (2004), p. 154.

⁴⁴ Siddiqui (2005).

⁴⁵ The Guardian, 3 Oct. 2003, A veil drawn over brutal crimes: The focus on ‘honour killing’ as a special case outside the boundaries of domestic violence risks promoting a racist agenda.

Representatives of the Asian community and Muslim organizations have actively emphasised that forced marriages are not part of their culture or religion and that Islam is very much against such practices.⁴⁶ This latter view point is shared partly by the majority of journalists and politicians talking about the issue as they stress the difference between arranged and forced marriages where arranged marriages are a legitimate cultural practice and forced marriages the problem.⁴⁷ So there is a tension between defining forced marriage as a symptom of a larger problem, i.e. the gendered vision of women's rights organizations, and as an anomaly, the idea that forced marriages are the exception and not accepted nor condoned. This tension should be seen within the context of a more generalised anti-Muslim feeling in the United Kingdom.

More recently, there has been a shift away from defining forced marriage as a cultural or migrant issue to seeing it as part of a broader spectrum of domestic violence. Especially women's organizations have argued for this perspective because treating forced marriage separately from domestic violence would result in culturalising this practice whereas many families, also non-migrant, suffer from violence and all violence in the domestic sphere should be tackled equally. Rahila Gupta, from the SBS, even argues that treating honour killings or forced marriage separately from domestic violence will only promote a racist agenda where these practices are used to discredit migrants.⁴⁸ British definitions of forced marriage are characterised by their diversity and by the recognition that the issue is very complex.

V. *Switzerland: Forced marriage as a legal problem*

All in all, most public statements on forced marriages in Switzerland have been made either by politicians in parliament or with reference to political proceedings on the subject (see Chapters 2 and 4 for further discussion on the subject). Against this background it is easy to understand that forced marriage is first and foremost defined as a legal problem in discussions in the Swiss context. Because politicians are so prominent in these discussions, it is logical that they would focus on how the government can tackle the problem. Legal measures are a common way for politicians of dealing with problematic issues. Somewhat similar to France, where forced marriage is regarded as a challenge to the existence of the Republic, many Swiss discussions on the subject perceive forced marriages as a problem for government intervention and focus more specifically on what shape that intervention should take. Especially legal experts have argued that law is not the way because the problem lies in identifying the victims, not in tackling the issue in public.⁴⁹ This perception of forced marriage sees it as a secret practice. One might see a parallel here with how domestic violence is often perceived, as something that takes place behind closed doors and is not known to others.

Having said that, legal discussions do not take place in a social vacuum. Before the government can interfere in the lives of citizens, the object of intervention is first defined as a problem. Within the Swiss context this happens through two problem definitions that are connected to each other. Firstly, forced marriage is perceived of as a violation of human rights, such as the right to self-determination and the equality between men and women. Karin Keller-Sutter, *Justizchefin*, says that a forced marriage goes against human rights such as the right to free-

⁴⁶ The Guardian, 4 April 1996, A marriage made in hell; The Independent, 23 July 1998, Letter: Islamic marriage; The Guardian, 5 Aug. 1999, Focus on forced Asian marriages.

⁴⁷ The Independent, 4 Nov. 1996, She thought it was just a holiday; The Independent, 23 July 1998; The Independent, 25 March 2005, Our complacency has led to atrocities; The Guardian Unlimited, 16 March 2006, Syal launches forced marriages campaign.

⁴⁸ The Guardian, 3 Oct. 2003.

⁴⁹ Neue Zürcher Zeitung, 25 Sept. 2005, Zwangsheiraten sind mit Gesetzen nicht zu verhindern.

dom and self-determination as well the equality between men and women.⁵⁰ Secondly, forced marriage is also seen as a cultural problem. Erika Forster, one of the most outspoken proponents of explicit criminalisation, argues that forced marriage goes against our Western values.⁵¹ This means that forced marriage is a “Non-Western” practice, despite the fact that it actually takes place in Western countries. Jacqueline Thibault, president of the French-speaking NGO *Surgir* stresses that forced marriage is not something that only takes place in Muslim families; it is not a religious issue but a cultural practice.⁵² Thibault refers here to the fact that forced marriages also take place among migrants from former Yugoslavia and the former Soviet republics.

In public debates in Switzerland, the dimension of gender does not seem to be very prominent. Among the NGOs on the other hand, most notably the Lausanne-based French-speaking *Surgir*, the issue of forced marriage is embedded within a broader framework of culturally-based violence against women, such as stoning which is used as a punishment for women’s sexual infidelity in some Islamic countries or female circumcision, referred to as female genital mutilation (FGM) by the organization.⁵³ In Switzerland, forced marriage is perceived as a problem that stems from the culture of migrants and that needs to be tackled by means of legal intervention.

Conclusion: A problem of definition

Even though most people seem to have an intuitive idea of what a forced marriage is, defining it in a meaningful way is difficult. The different countries in this study have different, overlapping ways of perceiving the problem. The conceptual lack of clarity in distinguishing forced marriage from other marriages and phenomena, such as migration, is most distinct in the case of Belgium, but also clearly an issue in all the countries where the distinction between arranged and forced marriages is discussed. Conceptually, it is possible to distinguish migration from forced marriages, but the discussions on both subjects are interwoven with each other. Such lack of clarity can mean that discussions about forced marriage are really discussions about something else; the multicultural society, migration or gender relations. And since a link is often made with certain migrants, such as Turkish and Moroccan ones, and never with marriage practices of the majority population, it seems likely that forced marriage is partly debated as a way of problematising the position of migrants. The definition of forced marriage as a migrant issue somewhat overlaps the different ways of connecting forced marriage to culture, a tendency which is present in all the countries. This tendency is potentially problematic because forced marriage is equated with cultural practices such as veiling even though, as far as the materials for this study go, it is not an accepted practice anywhere. The following chapters will demonstrate how these slightly different ways of perceiving forced marriage can also be seen as resulting in different policies, numbers and debates on the subject.

⁵⁰ Tagblatt, 26 May 2006, Das hat Signalwirkung.

⁵¹ Blocher, Asylpolitik auf der harten Linie. Neue Zürcher Zeitung, 8 March 2005.

⁵² Tagblatt, 7 Dec. 2006, Die Spitze eines Eisbergs.

⁵³ http://www.surgir.ch/us/fondation_surgir/ (11 Dec. 2008), Female genital mutilation is also often referred to as female circumcision, a term which is commonly used in scientific texts on the subject.

Chapter Two

LEGISLATION AND POLICY ON FORCED MARRIAGES

This section focuses on national legislation and policy on forced marriages. The issue of forced marriage has not only engendered considerable public attention in the countries studied, but has also challenged politicians and law makers. The aim of this chapter is to give the broadest possible and most up to date overview of legal developments in Belgium, Germany, Switzerland, France and the United Kingdom as well as the context of these developments in the individual countries. Therefore not only will the different legal solutions be described, but their background and other influences will also be compared. In addition the legal measures applied in these five countries will be compared to the respective recommendations of the Council of Europe (CoE) in its 2005 study.⁵⁴

Based on legal and scientific documents the following questions will be answered for each country and a comparison drawn at the end of the chapter.

- Which main legal approach has been chosen? What is the target group? What is the character of the legal instruments: preventive, protective or sanctioning?
- Which definition forms the basis for the criminal law approach or the civil law approach? In which way is the difference between forced marriages, arranged marriages and marriages of convenience relevant?
- Is there any correlation between the approaches of civil, criminal and migration law? Which arguments have been used in favour or against legal proposals? Especially for civil law the question will be how the problems regarding the burden of proof are solved: Who can initiate or oppose proceedings?
- Where information regarding the implementation of these in part very recent laws exists, what are the experiences that have been made with new legal provisions?
- What is the influence of other countries on legislation and policy? With regard to migration law it will be asked if and how the European Directive on family reunification – which also deals with the issue of forced marriages – has been implemented.⁵⁵
- Which parties of interest play a central role in the process of legal developments? What is the influence of private or non-governmental organizations?

International treaties also affect the status of forced marriage. However, international law will not be part of this study, with the exception of one remark. Following the 2005 report of the Council of Europe, all its member states have ratified at least two international agreements that are relevant for tackling forced marriages, and all the countries in this study are members of the Council. The authors of the report argue that the fact that so many countries have ratified relevant agreements shows that it has become a common standpoint in the countries of the Council to disapprove of force with regard to marriage.⁵⁶ Despite this confidence expressed by the Council, it has been observed that international conventions have a limited effectiveness.⁵⁷

⁵⁴ CoE (2005), p. 58.

⁵⁵ The Directive has entered into force on 3 Oct. 2003. Council Directive 2003/86/EC of 22 Sept. 2003 on the right to family reunification, O.J. 2003, L 251/12 of 3 Oct. 2003.

⁵⁶ CoE (2005), p. 35. “Absence of coercion to marry and respect for marital capacity have thus become for the majority of these countries – notably by virtue of their commitment to the principles of international instruments for the protection of human rights and fundamental freedoms – the primary values and criteria for assessing individuals’ behaviour in family relationships.” International civil law or bilateral agreements

I. Belgium: The criminalisation and migration law approach

The nature of Belgian legislation and policy is partly preventive (civil law), but mainly sanctioning (civil, criminal and migration law). Belgian policy targets immigrants. The background is the continuing family immigration which has its roots in the recruitment of workers in the 1950s/1960s especially from Turkey and Morocco and also in family reunification within the framework of freedom of movement for immigrants from Spain and Italy. However, current migration measures pertain to migrants from outside the EU. This also holds for (civil) legislation on marriages of convenience which has been discussed as a measure to combat forced marriages.

Criminal law

Forced marriage was not recognised as a specific offence in Belgian criminal law before 2007.⁵⁸ However, with the Belgian law of 25 April 2007,⁵⁹ a separate article was introduced which now makes forcing someone to marry punishable: Any person who uses violence or threats to force another person into marriage will be punished with imprisonment of one month up to two years or a fine of up to 500 Euros. The attempt to force a person into marriage can also be punished by imprisonment of 14 days up to one year or a fine of 50 to 250 Euros.⁶⁰

Civil law

Belgian civil law contains both measures with regard to the situation before a marriage has been established and to marriages already contracted, i.e. pre-marriage as well as post-marriage measures. In order to marry in Belgium a person must have reached the age of 18 years.⁶¹ However, exemptions are possible: In a special procedure in the youth court, where the consent of the parents has to be recorded, the minimum age requirement may be reduced if there are 'serious reasons' for doing so. If parents refuse to give their consent or fail to appear or if they are not capable of indicating a view, the court may nonetheless authorise the marriage if it considers the refusal to be unreasonable.⁶² The Marriage of Convenience Act of 4 May 1999 forces civil authorities to notify the public prosecution if there is doubt about content or purpose of marriage.⁶³ This law has been criticised because some think that it violates the freedom to marry. Foblets however argues that if the registrar uses the provisions of the Act properly, it can be a means of preventing forced marriages.⁶⁴ As a post-marriage instrument Belgian law contains the principle that a marriage contracted by a person who lacks marital capacity is void.⁶⁵ But with regard to forced marriages, reverential fear of one's father and mother was not, originally, in itself regarded as sufficient grounds for annulment.⁶⁶ This changed in 2007. According to the Belgian law of 25 April 2007 a forced marriage can be annulled if it was not entered into of free will by both spouses or if it was contracted under the

were not included in the current study. See the report of CoE for information on the agreements ratified per country.

⁵⁷ Rude-Antoine (2005), p. 2.

⁵⁸ CoE (2005), p. 71.

⁵⁹ Loi insérant un article 391sexies dans le Code pénal et modifiant certaines dispositions du Code civil en vue d'incriminer et d'élargir les moyens d'annuler le mariage forcé, *Moniteur Belge*, 15 July 2007, p. 32654.

⁶⁰ Art. 391sexies Loi pénale. There is no information about cases available.

⁶¹ Art. 144 of the Belgian Civil Code.

⁶² CoE (2005), p. 68.

⁶³ At the same time a specific reason for the annulment of marriages of convenience was introduced, Art. 146bis of the Belgian Civil Code.

⁶⁴ Cf. CoE (2005), p. 50.

⁶⁵ Art. 502 of the Belgian Civil Code.

⁶⁶ CoE (2005), p. 40.

influence of violence or threat.⁶⁷ Proceedings can be initiated through an application by one of the two spouses or by the public prosecution service.⁶⁸

Migration law

The rules for marriage migration in migration law have been made stricter, especially by the rules of 2006 which pose the following additional requirements for family forming migration of third-country nationals legally residing in Belgium: a minimum age for spouses of 18-21 years, a minimum income and health insurance as well as a waiting period of up to two years. Exceptions are possible.⁶⁹ The control period was extended to three years, only then can the parties receive a final residence permit.⁷⁰ Additionally, the possibilities for official complaints about the procedure have been limited further. This stricter policy on marriage migration has a double aim: to prevent rights of residence on the basis of both forced marriages and marriages of convenience.⁷¹ This restriction does not concern family reunification with Belgians even though the majority of the cases of family reunification involve Belgian nationals. As a result of the liberalisation of Belgian nationality law, 80%⁷² of family migration cases now involve reunification with Belgians. According to the so-called assimilation principle, these family members are treated as EU citizens based on the principle of equal treatment.⁷³ This principle is still valid with one exception which was established in 2007⁷⁴ when the rules were made stricter as extra economic requirements were introduced.⁷⁵ The aim was to prevent certain family members from claiming social benefits during their stay.

The restrictions for third-country nationals (and Belgians) were introduced by making use of the possibilities created by the Family Reunification Directive. The Directive contains several so-called may-clauses such as the age limit of 21 years for spouses or waiting periods. These clauses are not mandatory because they were introduced with regard to the specific national situation of other countries during the negotiations on the Directive. Nevertheless, Belgium implemented these clauses. In that respect there is an indirect influence of other countries such as the Netherlands, Austria or Germany. Also, the arguments given for these measures (integration, restriction of family forming migration, marriages of convenience and forced marriages) resemble those of neighbouring countries.⁷⁶ So far, information is not yet available

⁶⁷ Art. 146ter of the Belgian Civil Code.

⁶⁸ CoE (2005), p. 68. There is no information about cases available.

⁶⁹ Third-country nationals are citizens of other countries than EU member states. Cf. the Implementation Act on the Family Reunification Directive of 15 Sept. 2006. The effects of the Directive in Belgium were not merely restrictive. For example, the implementation of the Directive resulted in the abolishment of the prohibition of family reunification 'en cascade' (*verbod van cascade*). 'Verbod van cascade' is a Flemish term for the Belgian rule which means that persons who themselves have immigrated to Belgium as part of family reunification do not have the right to have members of their family immigrate to Belgium as part of family reunification.

⁷⁰ Heyse et. al. (2007), p. 24.

⁷¹ Yalcin et. al. (2006), p. 18-20.

⁷² For instance, 31, 342 applications for family reunification were filed between May 2005 and May 2006. Of these, 27, 738 were from Belgians and EU citizens, and 6,520 were reunifications to third-country nationals. Cf. the Minister's reply, cited in Vanheule (2007), therein footnote 14.

⁷³ Since 1980 Belgian law (cf. Art. 40 (6) of the VrW of 15 Dec. 1980) has made distinctions with regard to the right to family reunification between third-country nationals legally residing in Belgium on the one hand and Belgians and EU citizens on the other.

⁷⁴ The implementation of the Freedom of Movement Directive 2004/38/EG of 25 April 2007 came into effect on 1 June 2007; Parl. St. Kamer, 2006-07, No. 51-2845/001, p. 44.

⁷⁵ The sponsor must now prove in the same way as third-country nationals for the reunification of family members in the ascending line (parents, grandparents), as well as for disabled children that he has a stable, regular and sufficient income and adequate health insurance, cf. Walter, Reverse Discrimination and Family Reunification, pp. 21 f.

⁷⁶ Cf. Heyse et. al. (2007), pp. 20 f.

with regard to the implementation of the 2007 law introducing a specific offence and the possibility for annulment in case of forced marriage.

II. France: The step-by-step approach in civil and migration law

The issue of forced marriage is the subject of wide debate in France. Both the debates and policies target migrants. This can best be understood in the light of the French history of immigration from the former North African colonies (Algeria, Morocco), alongside immigration from predominantly European countries of recruitment since the 1950s and 1960s. Migrants are also central to defining forced marriages as problematic (see Chapter 1). In addition, young girls, mainly of African origin, are defined as a specific target group of the policy. Over the last few years the French civil law has been changed numerous times in order to prevent forced marriages and to protect the affected individuals. France has also gradually tightened its migration laws, partially in order to combat forced marriages. This legislation and policy are mainly restrictive of nature.

Criminal law

There is no specific offence of ‘forced marriage’ in the *Code Pénal* (the French Criminal Code) which means that the act of forcing someone to marry is not criminalised as such. Rape and other violent offences that may go together with forced marriages are of course illegal. For example, the spouse can be prosecuted for rape or the parents for complicity to rape or other possible offences.⁷⁷

Civil law

Until 2005, the (old) Art. 144 *Code Civil* of 1803 fixed the minimum age for marriage at 18 years for men and 15 years for women. This situation was criticised as being discriminatory and was accompanied by calls to raise the legal age of marriage for women to 18 years as a pre-marriage measure to prevent forced marriages. The *Code Civil* was amended by the Senate with the law of 4 April 2006⁷⁸ in order to combat forced marriages and violence in marital relationships. The hope was that raising the minimum age would grant greater liberty to young women who could find themselves forced to marry someone chosen by their parents. However, no changes have been made to the possibility of a dispensation (Art. 148 CC) that can be obtained for persons under 18, and minors wishing to marry must have the consent of their father and mother.⁷⁹ Young men and women can still marry if their parents approve of it. This situation can be problematic with regard to forced marriages if the parents are the ones forcing the children to marry.

Some pre-marriage measures have extra-territorial scope: Before a marriage can take place in France, it requires the submission of public notification by the registrar (*publication des bans*).⁸⁰ This notification should be obtained at the French consulate in the country of origin and it serves to declare that the partner(s) are allowed to marry. Such notification was also necessary prior to 2003 for a foreign marriage to take place, but since 2003 (*Loi Sarkozy I*) the registrar must first interview the future spouses, unless such an interview is impossible or deemed unnecessary.⁸¹ Whilst the law was introduced primarily to stop marriages of convenience, this provision can also be used to detect a forced marriage. After the legislative reform

⁷⁷ Art 121-7 Code pénal and Art 222-24 11x Code pénal as amended by the Law of 4 April 2006. For the discussion see Clark/Richards (2008), p. 505; CoE (2005), p. 84.

⁷⁸ Loi no 2006-399 of 4 April 2006.

⁷⁹ CoE (2005), p. 84; with more information Clark/Richards (2008), pp. 507 f.

⁸⁰ Art 63 (1) Code civil.

⁸¹ Loi no 2003-1119 of 26 November 2003; Art 63 (2) Code civil.

of November 2006⁸² (*Loi Sarkozy II*) the interview must take place in the case of minor spouses without the presence of the person's parents, legal guardian or future spouse.⁸³ If a marriage of convenience is suspected, the registrar can suspend the marriage and engage the public prosecutor (*procureur de la République*) who can oppose the marriage.⁸⁴ He or she is able to institute proceedings to have the marriage declared null and void. Obviously, in such cases the notification is not issued. In order to prevent families from circumventing this obligation by having the marriage celebrated abroad, an audition will also be a prerequisite for its transcription. If the diplomatic or consular agent charged with transcribing the foreign marriage certificate onto the French register considers that there are serious indications that the marriage could incur annulment, they have to inform the *procureur* and suspend the transcription.⁸⁵

With regard to protective post-marriage measures prior to the 2006 legislative reform, the *Loi Sarkozy II*, a marriage, which is legally considered a contract, could only be annulled if there was a vitiated consent with regard to marriage, a lack of free consent when it was first conducted or a mistake. If there was no violence or explicit force involved, the French courts could not act because the fear of one's parents was not accepted as a reason for nullity: 'reverential fear' («*crainte révérencielle envers un ascendant*»)⁸⁶ was specifically excluded as a ground of annulment in the general French law of contract. The law of 4 April 2006 altered this situation so that the exercise of constraint on the spouses or on one of them, including 'reverential fear' for example towards a parent or other relative, now constitutes grounds for the annulment of a marriage (Art. 180 CC). As Clark and Richards remark:

“this amendment has a wider impact as reference to this condition is now found in provisions providing for the interviewing of future spouses [...]. Registrars and diplomatic or consular agents should now look, not only for signs of lack of consent, but also whether consent is given freely.”⁸⁷

As a consequence of this, it is now explicitly provided that not only the victim but also the *procureur* may bring an application for annulment where consent has not been given freely (not only in cases of absence of consent). In addition, there used to be a problem with regard to the time limit for the annulment: the application was no longer admissible whenever there had been continuous cohabitation for six months from the moment when the spouse acquired his or her full freedom or discovered the mistake. The reform increased the length of the time period to five years from the date of marriage.⁸⁸

Protective measures for minors

Further protective measures for minors are as follows: If the health, security or morality of a non-emancipated minor is in danger, measures of *assistance éducative* can be ordered by the *juge des enfants*. He or she has extensive powers and can act at the request of one of the par-

⁸² Loi no 2006-1376 of 14 November 2006.

⁸³ Circular of the Minister of Justice relating to the fight against fictitious and arranged marriages of 2 May 2005, CIV/09/05.

⁸⁴ Which has the effect of prohibiting the registrar from celebrating the marriage for a certain period of time. More details about this procedure in Clark/Richards (2008), p. 509-511.

⁸⁵ Most requests for the intervention of the procureur come from the French posts in Morocco and Turkey. Most cases concerned marriages of convenience, but around 20 cases per year involved suspicions of forced marriage. Quoted with additional information by Clark/Richards (2008), p. 522-523.

⁸⁶ This means cases of forced marriage, where only emotional pressure is exercised by the parents, as opposed to physical violence, but the victims do not dare oppose them and it is this pressure which vitiates the consent; see Clark/Richards (2008), p. 520.

⁸⁷ Clark/Richards (2008), p. 520.

⁸⁸ Ferrand (2006), p. 1318.

ents, the minors themselves or the *procureur*. In the case of a suspected forced marriage, he or she can remove children from their parents who are suspected of forcing their child to marry and place them in care. The judge may also order a prohibition against travelling abroad (*interdiction de sortie du territoire*). A person travelling abroad who is afraid of becoming the victim of a forced marriage can alert customs or Air and Border Police to his or her fears. The police have a duty to assist any nationals who state that they do not wish to leave French territory and must protect citizens who believe they will be the victim of a crime. A practical and legal guide for French women who are travelling abroad also exists and covers the question of marriage and provides advice on what to do if a woman suspects she will be the victim of a forced marriage.⁸⁹

Migration law

Family reunification – as one of the predominant paths for immigration – has also been influenced by the recent changes in French migration policy. Since Sarkozy's notorious statements on the necessity of limiting immigration in 2002, a step-by-step turnaround in migration policy was set in process. Whereas France had, according to Sarkozy, been accustomed to 'undergo migration' (*immigration subie*), the time was now ripe for a policy of 'chosen migration' (*immigration choisie*) by which he meant a restrictive immigration policy where France now for example chooses mainly to allow highly educated migrants into the country.⁹⁰ This tendency to choose profitable migrants and exclude non-profitable ones means that an economic logic is overlapping the right-based logic of family reunification. This turnaround in French policy was expressed for the first time in the so-called *Loi Sarkozy I* of 26 November 2003⁹¹, where limitations on getting married were introduced in order to prevent marriages of convenience. The *Loi Sarkozy II* of 2006,⁹² which followed, restricted access to permanent residence permits for family members of third-country nationals and spouses in binational marriages for the same reason. Furthermore, the permit is tied to having undergone "intégration républicaine", i.e. having acquired knowledge of the French language and the principles of the French Republic in France.⁹³ It applies to spouses of third-country nationals and French nationals. In addition, an age limit for spouses of 18 years has been introduced replacing a situation where there was no age limit in family reunification.⁹⁴ The next step, the so-called *Loi Hortefeux* of 20 November 2007,⁹⁵ contained further restrictions in order to tackle forced marriages. A residence permit is now only issued based on proof of having undergone a course of 'republican integration' (*intégration républicaine*) for spouses of French nationals and third-country nationals within the country of origin, which, if necessary, can be obtained by attending courses offered.⁹⁶ Participation is obligatory. If the test is successful, the family member can be exempted from the language courses in France. If the test is not successful, the family member

⁸⁹ Clark/Richards (2008), pp. 511 f.

⁹⁰ Moerland (2008). The word *subie* can also mean "to suffer", giving Sarkozy's choice of words a negative connotation reflecting his negative vision on migration.

⁹¹ Loi no. 2003-1119 du 26 nov. 2003 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité. The law came into effect on 26 Nov. 2003, J. O. 274 of 27 Nov. 2003, p. 20136.

⁹² Loi n° 2006-911 du 24 juillet 2006 relative à l'immigration et à l'intégration.

⁹³ Art. R 311-24 CESEDA (Code de l'entrée et du séjour des étrangers et du droit d'asile); Saas (2006), pp. 142 ff.

⁹⁴ Art. L-411-1 CESEDA. Background is the implementation of the Family Reunification Directive.

⁹⁵ Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile. The law came into effect on 30 Jan. 2008, J.O. n°270 du 21 novembre 2007, p. 18993.

⁹⁶ Art. L 311-9 CESEDA. An additional effect of these policy measures is the so-called "reverse discrimination" which means that French citizens are disadvantaged compared to other Union citizens residing in France since these requirements do not apply to the latter group.

has to sign an ‘integration contract’ (*contrat d’accueil et d’intégration*) in France.⁹⁷ *Ministère des Affaires sociales et le ministère de la parité et de l’égalité professionnelle* (The Ministry for Social Affairs and the Department for Parity and Equality in the Workplace) considers these “integration contracts” to be a way of preventing community-based narrow-mindedness by encouraging vulnerable groups of people, particularly women in certain communities, to commit themselves to a process of integration by means of such a contract.⁹⁸ We have not been able to obtain information on the implementation of these measures.

The influence of other countries

Even though the introduction of this pre-entry integration concept occurred without reference to the Family Reunification Directive, the influence of the policy of other countries *via* European Law is visible. In addition, the arguments given for these restrictions, namely preventing marriages of convenience and forced marriages, resemble those used in the Netherlands and Germany. But unlike these countries, the changes remain within the specifications of the Family Reunification Directive which does not generally foresee that (a lack of) language knowledge hinders family reunification. Furthermore, the impact is likely to be less dramatic for migrants as France offers French courses in the countries of origin. Moreover, the majority of immigrants come from francophone North and West Africa.

The role of the government and private organizations

In 2008 the *Mission Femmes Françaises à l’Etranger* (The Mission of French Women Abroad), *Ministère des Affaires étrangères et européennes* (Ministry for Foreign Affairs) as well as the city of Paris developed guidelines to prevent forced marriages.⁹⁹ Legal information for victims of forced marriage and assistance in applying to the courts for annulment are also provided by the “Maisons de justice” (law centres, run by the regional courts).¹⁰⁰

The role of private organizations in France is central in organising assistance and advice for victims as well as information for both victims and the general public.¹⁰¹ For example the (national) organization *Mouvement Français pour le Planning Familial de l’Hérault* (MFPF),¹⁰² *Voix de Femmes* (Women’s Voice) or GAMS undertake such activities.¹⁰³ An organization very active in the legislative process for migration law in general is GISTI.¹⁰⁴

III. Germany: The criminalisation approach and migration restrictions

In German legislation and policy, forced marriage is predominantly regarded as a human rights problem and debated in the context of violence against women.¹⁰⁵ Recent legislation and/or policy against forced marriages has been mainly sanctioning in the area of criminal and migration law. The use of migration law seems to result from the political debate where forced marriage is seen as a migrant issue and from policy as a whole because this mainly targets mi-

⁹⁷ Art. R 311-30-9 of the Décret n° 2008-1115 du 30 octobre 2008 relatif à la préparation de l’intégration en France des étrangers souhaitant s’y installer durablement, J.O. du 1 Novembre 2008.

⁹⁸ CoE (2005), p. 54. Le Figaro, 27 Jan. 2004, Le Haut Conseil à l’intégration bénit la ‘mobilisation positive’.

⁹⁹ 20 Nov. 2008; online: http://la_pie.club.fr/publications/depliants/mariages_forces.htm.

¹⁰⁰ CoE (2005), p. 53.

¹⁰¹ CoE (2005), p. 87-88; Lazaridis (2004), p. 45-46.

¹⁰² French Family Planning Movement running the website www.mariageforce.fr.

¹⁰³ Women’s Group for the abolition of female genital mutilation and other harmful practices affecting the health of women and children.

¹⁰⁴ Le Groupe d’information et de soutien des immigrés, association indépendante (www.gisti.org).

¹⁰⁵ Deutscher Juristinnenbund (German Association of Female Lawyers), Stellungnahme zur öffentlichen Anhörung des Bundestagsausschusses für Familie, Senioren, Frauen und Jugend am 19. Juni 2006, Bekämpfung von Zwangsverheiratungen.

grants. Different legal proposals aim at enhancing the use of and tightening existing provisions in criminal, civil and migration law. Furthermore, there is a growing awareness that due to the complexity of the problem (and the definition, see Chapter 1) the scope of legal measures will remain limited. In all legal areas there is the common problem that during court proceedings the protection and confidentiality of the affected individuals can be undermined.

Criminal law

Since February 2005, forced marriage has been included in the *Strafgesetzbuch* (criminal code) as a particularly serious case of *Nötigung* (coercion or duress) carrying a prison sentence of at least six months and up to five years.¹⁰⁶ The victim must have been unlawfully and violently coerced to marry. In practice, up until 2007 there were no court cases dealing with such an offence. Furthermore, domestic violence offences are also prosecuted even if the victim does not raise a complaint, but this is not necessarily always the case as sometimes the prosecutor does take the views of the victim into account as well.¹⁰⁷ Since 2005, bills have been introduced in the German parliament (by the *Bundesrat*) proposing to make forced marriage an explicit offence. According to this draft legislation, forced marriage is to be punished with imprisonment of up to 10 years if the victim is coerced into marriage by force, there is a threat of considerable harm or the coercive situation is exploited in connection with a stay in a foreign country.¹⁰⁸ So far these proposals have not been implemented.

Civil law

German civil law does not deal explicitly with the problem of forced marriage. It simply presupposes the right to self-determined marriage. As a pre-marriage provision, the minimum marital age is 18 years (for men and women) but if the parents consent, a marital age of 16 years is possible. A marriage entered into under force is not void, but can be annulled upon application, especially if a spouse has been illegally made to marry under threat. Only the spouse forced into marriage may apply for this post-marriage instrument to be used. On top of that, the application must be made within one year after the situation of force has ended and in the case of the spouse being a minor it cannot be made before he or she reaches the age of legal majority.¹⁰⁹ In practice, the annulment therefore has little relevance because a divorce is much easier to obtain.¹¹⁰ The following proposals to amend the civil code are envisaged: Firstly, the period within which an annulment of marriage can be applied for would be extended to three years. Furthermore, in order to facilitate the annulment of marriage, changes to maintenance and inheritance law are sought, i.e. the (forced) victim would be given more financial protection after the divorce and the surviving (forcing) spouse would be excluded from the right of succession.¹¹¹

Migration law

Most legal activity can be seen in the area of migration law. Since August 2007, three new provisions have been introduced in order to combat forced marriages and to promote integration.¹¹² Firstly, section 27 (1a) (*Aufenthaltsgesetz*) provides that family reunification is not permitted if there are concrete indications that one of the spouses was forced into marriage. In

¹⁰⁶ Sect. 240 (4) clause 2 No. 1 StGB.

¹⁰⁷ CoE (2005), p. 91.

¹⁰⁸ A new section 234 lit. b) including this provision is to be added to the criminal code.

¹⁰⁹ Sect. 1313, 1314 (2) No. 4 BGB and sect. 1316, 1317 BGB.

¹¹⁰ Gernhuber/Coester-Waltjen, *Familienrecht*, München 2006, § 14 para. 27, 28.

¹¹¹ Cf. Bundesrat Printed Matter 546/05. Gesetzentwurf des Bundesrates (15/5951). Art. 2 des Entwurfs eines Gesetzes zur Bekämpfung der Zwangsheirat und zum besseren Schutz der Opfer der Zwangsheirat (Zwangsheirat-Bekämpfungsgesetz), Deutscher Bundestag, Drucksache 16/1035.

¹¹² German Federal Law Gazette I, 1970.

contrast to the provision on marriages of convenience which have to be clearly ‘established’, in the case of forced marriages ‘concrete indications’ are sufficient.¹¹³ Secondly, two additional new entry requirements for spouses of third-country nationals and Germans were introduced: a minimum age of 18 years for both spouses as well as basic knowledge of the language prior to entry.¹¹⁴ The independent or autonomous right of residence in cases of hardship, i.e. the right of residence before the expiry of a two year period since family reunification, can provide certain protection. This means that such a person can leave his or her spouse without fear of deportation. Critics of the most recent changes to the German Residence Act (AufenthG)¹¹⁵ propose a further enhancement of the protective provisions therein: This would include changing the provision according to which the right of residency in a foreign country expires after six months in cases of forced marriage (Sect. 51 AufenthG). This time limit is often too short and would then need to be extended in cases of forced marriage. Moreover, an independent right to return should be established for cases of forced marriage where the right of residence has expired (e.g. after the above mentioned period of time).¹¹⁶ Furthermore, even if it is hardly mentioned in public debate, practice has shown social law to be of great significance, particularly child welfare law. On the basis of this law, access to advice and *ad hoc* protection in shelters can be granted. One potential problem is the lack of independent rights for children and young people to make applications for themselves or the fact that from the perspective of social welfare law, young adults are legally considered to be a member of their parents’ household.¹¹⁷

Although the restrictions on family reunification of spouses are phrased neutrally in the wording of the law and apply to reunification with German nationals as well as foreign nationals, they are meant to avoid the situation where „[...] sich vor allem hier lebende Türken mit traditionellen Vorstellungen sehr junge, von Westeinflüssen unberührte Ehefrauen aus der Heimat nach Deutschland holen”.¹¹⁸ This objective and the focus on Turkish migrants in particular are also present in the explanatory memorandum for third country nationals and the regulation system of the above mentioned family unification rules in the *Aufenthaltsgesetz* where numerous exceptions are made for certain (non-Turkish) nationalities and highly qualified migrants. Accordingly, the restrictions for spouses are directed at certain migrants, regardless of whether they have been naturalised or not. The restrictions are justified with the problematic argument of a certain “Familienbild der betreffenden Kreise” (idea of family within the affected circles). The restrictions are also justified by saying that they promote integration (because migrants are required to learn the language) and that they also help to protect minors against forced marriages. Additionally, the restriction of immigration is believed to help protect the social welfare state and to prevent violations of human rights that are associated with forced marriages.¹¹⁹

¹¹³ Brinkmann (2008), p. 38.

¹¹⁴ Sect. 30 par. 1 Clause 1 No. 1 and No. 2 and Sect. 28 par. 1 Clause 5 AufenthG (German Residence Act). Whereas the explanatory memorandum describes the level of language as “at least rudimentary” knowledge (Bundestag Paper 16/5065, p. 311), in practice language level A 1 of the Common European Framework of Reference for Languages is required.

¹¹⁵ There is dispute with regard to the constitutional conformity of the provisions.

¹¹⁶ See 6. Lagebericht (2005), p. 300. There is however a longer period of time for long-term residents, Art. 9 par. 2 Directive 2003/109/EG (long-term residents).

¹¹⁷ Gerhard, in: BMFSF (2007), pp. 257 ff.

¹¹⁸ Taz, 10 May 2005, Deutsch für „Import-Bräute“, Gegen die Zwangsehe: Niedersachsen will Mindestalter und Sprachtests beim Nachzug ausländischer Ehegatten; Spiegel, 2 May 2005, Gesetz gegen Frauen-Import. Translation of the citation: „particularly Turks with traditional values living here bring very young wives untouched by Western influences from their home country to Germany.”

¹¹⁹ Bundestag Paper 16/5065, p. 307-314.

Influence of other countries

The debate shows a clear influence of policies in other countries: In the legal policy debate on the restrictions on the reunification of spouses, it was pointed out that Denmark and the Netherlands had had “positive experiences” with raising the age threshold for spouses. All three provisions in migration law were implemented with reference to non-compulsory restrictions of the Family Reunification Directive – within the Act on the Implementation of the Directives of the European Union on the Right of Residence and Asylum which came into effect on 28 August 2007.

The new integration regulations cause considerable waiting periods in the family reunification procedure. Since the pre-entry requirements came into effect, the number of visas obtained for spouses has also decreased considerably (by an average of 40%).¹²⁰

The role of private organizations

Forced marriage cases are mainly dealt with by the same organizations that also deal with domestic violence.¹²¹ Representatives of the NGO *Papatya* which specialises in migrant women and the women’s organization *Terre des femmes* often function as experts (see Chapter 4).¹²² A central platform for the implementation of the policy is the “Nationale Integrationsplan” (NIP – National Integration Plan) which was established in 2006 and is currently in its implementation phase. Representatives of the federal government, the federal states and local authorities as well as non-governmental organizations take part in this platform. It has led to an increased awareness of integration issues. Furthermore, the platform aims to improve cooperation between all agencies involved in combating forced marriages. The working group for the topic *Frauen und Mädchen mit Migrationshintergrund* (Women and girls with a migrant background) emphasises the importance of further study in this problem area as well as increasing the availability of advice.¹²³ In the first intermediate report of November 2008, the working group agreed to establish another working group on problems regarding the application of child welfare law (SGB VIII) to support victims of forced marriages. Furthermore, there are commitments of numerous organizations to provide advice, information and training.¹²⁴ An evaluation of the provisions regarding rights of residency is planned by the BMI (*Bundesministerium des Inneren* - Federal Ministry of the Interior).¹²⁵

IV. United Kingdom: The Forced Marriage Civil Protection Act 2007

Since 2000 – and therefore longer than in the other countries included in the study – there has been a specific policy on forced marriages in the United Kingdom. As part of the general policy on domestic violence the *Home Office* and the *Foreign and Commonwealth Office*, FCO,

¹²⁰ Bundestag-Drs. 16-10732 from 29 Oct. 2008.

¹²¹ Kvinnoforum report (2005) contains an extensive list.

¹²² See for example the recently published guideline (Leitfaden) against Forced marriages by *Terre des Femmes* of January 2008. Online: <http://www.frauenrechte.de/tdf/pdf/ehrgehalt/Hilfsleitfaden.pdf>.

¹²³ The edited volume of the DIMR is to be followed by a scientific study on the extent and scope of forced marriage in Germany as well as a legal opinion focusing primarily on legal issues revolving around the protection of victims. The federal government also supports an easily accessible, anonymous online advice for those affected or threatened by forced marriage. The already existing crisis organization, *Papatya*, is the sponsor of this project. Erster Zwischenbericht (First intermediate report), p. 25.

¹²⁴ NIP (2007), pp. 92 ff.

¹²⁵ The fact that issues relating to migration law were largely excluded from work on the NIP was regretted by many members of working group 4 and has been criticised repeatedly by non-governmental participants. Some commented that a national concept for integration would also have to focus particularly on migrants who have been granted a temporary suspension from deportation (“Duldung”) or whose residency in Germany was even illegal, NIP (2007), p. 88.

launched the joint *Forced Marriage Unit* on 26 January 2005.¹²⁶ Against the backdrop of the history of British immigration from former Commonwealth countries (India, Pakistan, Jamaica and Bangladesh), the policy focuses on migrants, especially on South Asian migrants. This implies that the overseas dimension has been dominant in British policy.¹²⁷ The emphasis in the British approach is on forced marriage as a breach of human and children's rights. The approach is influenced by three factors: firstly the debate on criminalisation and its rejection as a solution, secondly the reform of civil law as a more appropriate means of addressing the complexity of forced marriages and thirdly the separate agenda on restricting marriage migration.

Criminal law

Forcing someone to marry is not a specific offence in British criminal law but some of the acts often involved are illegal, such as common assault, cruelty to persons under 16, failure to secure regular attendance at school of a registered pupil, child abduction, rape or kidnapping. For the perpetrator to be prosecuted for those acts that are defined as criminal in the criminal law, no complaint of the victim is needed.¹²⁸ Whilst in 2000 the working group of the Home Office came to the conclusion that no specific criminal offence was necessary to deal with forced marriage, in 2005 the Home Office Working Group revised its initial view. It suggested a new and separate crime of 'forcing someone to marry'. Five reasons were given in support of criminalisation:

- It could change people's views on forced marriage
- Criminalisation could act as a deterrent
- It might empower victims to negotiate with their parents
- It could raise awareness of public sector employees and increase confidence in tackling forced marriage
- It could be easier to prosecute perpetrators.¹²⁹

But there was also opposition against the proposal. Arguments against criminalisation included that victims may not ask for help for fear of their families being prosecuted or that parents may remove children from the country at an earlier age. It was also argued that sufficient offences already existed in criminal law to prosecute those involved, although there might be a need to abolish the territorial limitations on prosecuting suspects for these offences so that acts committed outside the United Kingdom could also be prosecuted.¹³⁰ In June 2006 the Home Office scrapped the plan to introduce a specific offence of 'forcing someone to marry'.

Civil law

The first preventive measures in Civil Law are the provisions regarding marital age. According to British marital law (*Matrimonial Causes Act and the Marriage Act*), once a person reaches the age of 18 he or she can marry without needing to seek further consent. However, minors from 16 years on are allowed to marry provided they have the consent of their parents or legal guardian.¹³¹ This is problematic if the parents are those who force the person in question to marry. A further pre-marriage instrument of the courts is taking over wardship of children threatened with forced marriage. This also holds for vulnerable adults where the inherent

¹²⁶ CoE (2005), p. 130.

¹²⁷ For example, according to *Siddiqui* progress has been made in introducing guidelines for the foreign and commonwealth office and consular services, police and social services which focus on the victims and tackle especially the overseas problem. On the other hand, this is problematic because policy has focused on the overseas dimension and somewhat overlooked the national dimension. Cf. Phillips/Dustin (2004), p. 535, 541; Siddiqui (2005), p. 274-275.

¹²⁸ CoE (2005), pp. 27-130; with legal references in: Clark/Richards (2008), p. 504.

¹²⁹ Consultation Paper of the Home Office, 'Forced Marriage: A Wrong Not a Right', Chapter 2.

¹³⁰ See more in Clark/Richards (2008), p. 505.

¹³¹ Sec. 3 Marriage Act 1949 (MA).

jurisdiction of the court can be used to do so. If a young person or a vulnerable adult is taken overseas on the false pretext of a family holiday or the wedding of a relative but is in fact to be married, an application for wardship can be made by a relative, a friend or the *Child and Family Court Advisory Support Service* (CAFCASS) at the *High Court Family Division* to bring that person back to the United Kingdom.¹³² As far as protective pre-marriage formalities are concerned, there is no formal provision for the interviewing of the parties prior to marriage. Proposals to that extent were made in 1997, but none of these have been implemented.¹³³ A so-called post-marriage measure (protective) and the most obvious remedy is the possibility to bring an action for nullity before the court once a marriage has taken place. In practice, applications for nullity are rare, according to Clark and Richards “largely owing to the ease of divorce”, but also because of the narrow definition of a voidable marriage where there has to be demonstrable duress in the case of a forced marriage. In addition, there are high legal, personal and financial requirements for declaring a marriage null and void.¹³⁴

To combat forced marriages, a special legal framework for the protection of persons affected was recently created in the United Kingdom. This framework can be characterised as being based on an individualistic and human rights perspective. The British *Forced Marriage Civil Protection Act* (FMCPA) – enactment in July 2007 and implemented in the autumn of 2008 – provides the victims of abuse or those assisting them with possibilities to take action against forced marriages by means of civil remedies in family courts.¹³⁵ The definition is broad. Pursuant to Article 63A (6) forcing a person means to “coerce by threats or other psychological means (and related expressions to be read accordingly)”. The FMCPA 2007 provides the possibilities for so-called forced marriage protection orders (FMPOs, including the relevant procedural provisions) which can have both preventive (pre-marriage) as well as protective (post-marriage) character. The courts are given wide powers to include in FMPOs such prohibitions, restrictions, requirements or such other terms as are considered appropriate in each individual case – even beyond the borders of the country. In this case the application depends on the local authorities. These powers have been used at least once, in the notorious case of a 33-year-old NHS doctor who was taken to Bangladesh against her will, a case that was already referred to in the Introduction. Before Christmas 2008, the *High Court* in London served her parents with an injunction, ordering them to free their daughter and return her to the UK which subsequently happened.¹³⁶ The injunction did not have any direct legal power in Bangladesh, but it was taken into consideration by the local court in Bangladesh and as a result, the parents of Abedin were ordered to free their daughter.¹³⁷ An application to the court may be made by the person to be protected, but also by a relevant ‘third party’ which can be a person or an organization. Under certain circumstances, the court may issue an order even though no application has been made. The new legislation does not make forcing a person into marriage a criminal offence, but failure to comply with the terms of an FMPO will constitute “a contempt of court”. Provision was made for powers of arrest (even without a warrant) to be attached to an FMPO if the court considers that the respondent has used or threatened violence against the

¹³² For further public law measures to protect children threatened by forced marriage see Clarks/Richards (2008). Clarks and Richards speak in the case of wardship of making him or her (the child) “a ward of court” and it is not totally clear how this measure compares to other European measures on wardship of children.

¹³³ Clark/Richards (2008), p. 518 holds that with the increasing problem of forced marriage, further legislative reviews of the law on formalities are urgently required in England.

¹³⁴ Clark/Richards are quoting 436 petitions for annulment for all reasons (!) in 2005, source: Department of Constitutional Affairs (2006) *Judicial Statistics TSO*, cf. Clark/Richards (2008), p. 519, footnote 141 therein.

¹³⁵ Clark/Richards (2008), p. 503. The Forced Marriage Act was included as «Part 4A» in the Family Law Act 1996, immediately following the regulations regarding domestic violence.

¹³⁶ BBC News, 17 December, Freed doctor forced into marriage.

¹³⁷ BBC News, 15 December, The fight against forced marriage.

person being protected. Clark and Richards describe the character of this instrument as follows:

“Adopting a ‘victim centred human rights approach’, the Act seeks to promote access to justice in county courts as well as in the High Court. The new law promises to be a skilful attempt to combat forced marriage at its inception. The emphasis is away from criminal law remedies and towards *a type of hybrid* which provides for a warrant of arrest where there is domestic violence but otherwise avoids the penal consequences of the criminal law. Clearly highlighting the importance of victim protection, this legislation is to be commended for neither attempting to criminalise the practice nor making it an immigration issue.”¹³⁸

In terms of its implementation, the FMPO has been used at least six times since it came into force on November 25, 2008.¹³⁹

Migration law

As part of a comprehensive reform of the British immigration system, bi-national and foreign marriages in the United Kingdom have been subject to several new regulations in recent years. Firstly, in 2004 the *Home Office* extended the probationary period for residence permits for overseas spouses from one to two years and raised the age at which an overseas spouse can join his or her British spouse from 16 to 18 years. Both measures were intended to prevent forced marriages and marriages of convenience.¹⁴⁰ Secondly, the age limit was elevated from 18 to 21 years for both spouses, a change which came into force on 27 November 2008.

The new policy is seen as part of the biggest reform of Britain’s immigration and border security system for 45 years which aims at modernizing the existing policy. As part of the modernisation, the changes in the rules for family unification are intended to prevent forced marriages. These rules apply to British citizens and permanent residents.¹⁴¹ The *Home Affairs Select Committee* argued that raising the minimum age for marriage visas from 18 to 21 years could equip victims better to refuse an unwanted marriage.¹⁴² In the consultation process, concerns were expressed that the age limit could be perceived as a form of discrimination based on cultural differences and that this would lead to a risk of young people being kept abroad for sustained periods of time between the date of a marriage and being able to return to the United Kingdom with their spouse or would penalise those with genuine marriage intentions. The decision to introduce the policy is based on the consideration that any negative impact is outweighed by the benefit of preventing forced marriages and delaying forced sponsorship.¹⁴³ The government argues that fears of discrimination are unfounded because the policy will apply to all British citizens and permanent residents.¹⁴⁴ Two provisions on residence are relevant for the protection of victims: The residence permit of persons abroad expires only after two years; immigration law provides the possibility of an autonomous residence permit in the case of a forced marriage. With regard to the implementation, the elevation of the minimum age for

¹³⁸ More detailed information Clark/Richards (2008), p. 513-515; NB: italic highlighting as in original text.

¹³⁹ BBC News, 9 January 2009, Forced marriage law ‘being used’.

¹⁴⁰ Siddiqui (2005), p. 272-273; Phillips/Dustin (2004), p. 543-544.

¹⁴¹ Teil 8 Abs. 277 Immigration Rules. See Marriage visa equality impact assessment, p. 1, 25 Nov. 2008.

¹⁴² Two figures are used in favour. Firstly, in 2006 7% (3,420) of spouses granted leave to enter the United Kingdom and 2.5% (520) of people granted leave to remain in the United Kingdom as a spouse were aged between 18 and 20. Secondly, statistical evidence from the Forced Marriage Unit indicates that the highest number of forced marriage cases in the period 2005-June 2008 involved those aged 18, followed by those aged 17 and 19 and those aged 20.

¹⁴³ Home Office (2008). Marriage visa equality impact assessment, p. 15.

¹⁴⁴ In March 2008 a representative of the Foreign Office declared that people who sponsored an applicant for a visa were not routinely interviewed by officials to weed out cases of forced marriage because of the “sheer volume” of the situation. MNS, April 2008, p. 5. 2007: approx. 450 were rejected due to abuse, most of which under suspicion of forced marriage.

marriage migration in 2004 has had clear consequences. As family reunification rules are highly relevant to the majority of non-European immigrants, the implementation has worked restrictively on immigration causing a steep fall in the number of applications between 2003 and 2005.¹⁴⁵ There has been criticism that the higher age limit can prolong the time young women or girls are left abroad prior to or after marriage. The longer probationary period entraps women in violent relationships for much longer periods and prevents them from leaving home for fear of deportation.¹⁴⁶ Even though the distinction between forced and arranged marriages is described as a very direct one in the policy literature, the practical application of the notion of “duress” that defines forced marriage and “no duress” has been less straightforward.¹⁴⁷

In 2007 and 2008, further proposals to change migration law were discussed. Firstly, the pre-entry English language requirement for spouses was a topic of discussion. Secondly, the requirement was proposed for British citizens and permanent residents seeking to sponsor a spouse to come to the United Kingdom to first declare their intention before leaving the country and marrying abroad. These proposals have been postponed after mainly negative consultation responses. With regard to the language requirement it was recognised that “there is not currently sufficient access to English language classes overseas, especially in rural areas, and to introduce the requirement in a dogmatic way immediately would simply keep British citizens apart from their loved ones, breaking up families.”¹⁴⁸

Influence of other countries

In migration law, a clear influence of policies in other countries is visible. The elevation of the age limit introduced in November 2008 reflects marriage visa rules in other European member states such as the Netherlands (minimum age of 21 years) or Denmark (minimum age of 24 years).¹⁴⁹ The medium term goal is to introduce pre-entry English tests for spouses, in line with language tests in Denmark, the Netherlands and Germany. The justification given for the policy resembles that in the countries mentioned: it would enhance the access of migrants to the labour market, it would promote integration, and it would help to prevent forced marriages and honour killings.¹⁵⁰

The role of private organizations

The role of private organizations in policy making and implementation is a very active one and can be influential as the following three examples show. Firstly, women’s groups, especially the South Asian women’s organization *Southall Black Sisters*, condemned forced marriages and started a campaign against them in 1999 and partially as a result of this the Home Office set up a working group to tackle the issue.¹⁵¹ They were also included in the working group to

¹⁴⁵ With a decreasing number of applications (2004: 22, 061, 2006: 19, 355) and increasing rejections (2004: 2, 450 (12 %), 2006: 3, 704 (19 %)), the majority of family reunifications in the period between 2002 and 2006 involved women (45 %), men (26 %) and children (15 %) from South Asia (India, Pakistan). As a proportion of all grants of settlement, family formation and reunion peaked in 2003 when it made up 47 per cent of the total numbers of grants, after which it dropped to 21 per cent in 2005. This drop can be explained by the change of rules in 2003 (regarding the probationary period for spouses) and the Family ILR exercise. Cf. Wright/Larsen, EMN “Family reunification” Report, Small scale study IV, p. 50.

¹⁴⁶ Siddiqui (2005), p. 273.

¹⁴⁷ Phillips/Dustin (2004), p. 537-538.

¹⁴⁸ Home Office, ‘Marriage visas: the way forward’, July 2008, pp. 8 f. and 18 f. This was also a step-by-step development: in November 2005 the requirement was introduced for those applying for citizenship, in April 2007 it was extended to those applying for permanent residence, in 2008 it was extended for economic migrants.

¹⁴⁹ Marriage visa equality impact assessment, p. 4, published on 25 November 2008.

¹⁵⁰ Home Office, ‘Marriage visas: the way forward’, July 2008, pp. 8 f.

¹⁵¹ Ansari (2002), p. 15.

work towards legislation and policy on forced marriage.¹⁵² Secondly, the proposal to criminalise forced marriages in 2006 was rejected by a forceful opposition of 157 organizations and as a result the proposal was not implemented. Thirdly, the FMCPA 2007 was introduced in January 2007 by Lord Lester QC, a Liberal Democrat member of the *House of Lords*, who drafted the Bill with advice from organizations such as the Southall Black Sisters and a team of family lawyers with practical experience of dealing with forced marriage. The Bill was supported by many groups, including the *Family Law Bar Association and Liberty*.¹⁵³ The support of NGOs for the changes envisaged in migration law, such as the pre-entry English requirement, i.e. the obligation to speak and understand English at a certain level prior to entry, is less strong and more hesitating. Of the 57 organizations consulted, a total of 45 disagreed and merely 12 organizations agreed with this proposal which was nonetheless implemented.¹⁵⁴

V. *Switzerland: Limited changes in civil and migration law*

The nature of Swiss legislation and policy on forced marriages is partly protective (civil law and migration law), partly sanctioning (criminal law and migration law) and partly preventive (new civil law). Swiss policy targets migrant groups (i.e. the Tamil, Kurdish, Turkish and Kosovan communities). Two initiatives to criminalise forced marriages following the example of Germany were rejected. The reason given for this reluctance to criminalise was that the scope of legislation is limited because of the complexity of forced marriages – in most cases the forced marriage takes place in a foreign country.¹⁵⁵ As the most recent immediate measure against forced marriages, a minimum age for the family reunification of spouses was introduced in 2008 and integration policy tightened. Changes in civil law, however, focus primarily on combating marriages of convenience.

Civil law

Swiss civil law contains two central (pre- and post-marriage) points. Firstly, in order to contract a marriage, both spouses must have reached 18 years of age. Whether this measure actually protects people from forced marriage is questionable. The first larger scale study conducted by the NGO *Surgir* came to the conclusion that women of legal majority are as much at risk of being forced to marriage as minors, as the average age of women forced in the cases studied was 19.¹⁵⁶ A person who lacks legal capacity cannot contract a marriage without the consent of his or her legal guardian. If consent is refused, application can be made to a court to set the refusal aside.¹⁵⁷ Secondly, a marriage can be annulled upon application and *ex nunc* if it has come into being as the result of serious coercion or if one of the spouses contracted the marriage under threat of serious and imminent danger to his or her life, health or honour or to the life, health or honour of a family member.¹⁵⁸ An application is only possible within the relative time period of six months after gaining knowledge of the reason for annulment or the threat having ended and within an absolute time period of five years after marriage. However, not every type of threat can lead to the annulment of a marriage. The danger has to be directed

¹⁵² However the government has also been criticized by Siddiqui, leader of the Muslim parliament and one of the leaders of SBS, for not involving women's groups enough in the work and paying too much attention to conservative male community leaders. Phillips/Dustin (2004), p. 534.

¹⁵³ See Clark/Richards (2008), pp. 513 f.

¹⁵⁴ Home Office, 'Marriage visas: the way forward', July 2008, p. 8-11.

¹⁵⁵ *Surgir* (2006), p. 6 f.

¹⁵⁶ *Surgir* (2006), p. 11 and 48. Of 400 cases, 1/3 between 13 and 18; 2/3 between 18 and 30 years of age. In some cases involving under-age women, religious marriages take place (mainly in foreign countries) before civil law marriage is undertaken once they have attained majority.

¹⁵⁷ Art. 94 (2) Swiss Civil Code.

¹⁵⁸ Art. 94 (1) ZGB – Swiss Civil Code – and Art. 104 and 107 (4) ZGB. Cf. CoE (2005), pp. 123 f.

against a person. The threat to disinherit or financially ruin a person if he or she does not marry a certain person is not enough to annul a marriage. As in Germany, nullity of marriage under civil law has hardly any significance in practice.¹⁵⁹ According to experts, it remains difficult to prove and it is often far easier to get a divorce.¹⁶⁰

Criminal law

In the last two years, several proposals were submitted for examination in Switzerland demanding legal reforms to combat forced marriages. In this context, the discussion in Switzerland has focused primarily on criminal law. Forcing someone to marry has not been recognised as an offence yet. However, the various forms of criminal behaviour possibly involved in forcing someone to marry can be seen as offences and punished accordingly. A forced marriage may involve crimes such as assault, kidnapping, sexual abuse, rape or human trafficking. The behaviour of people forcing the victim into a marriage can be punished as a form of *Nötigung* (coercion) by up to 3 years imprisonment or a fine. The coercion to enter into marriage – usually abroad and organised by the family¹⁶¹ – can be exercised by the spouse, but also by family members (parents, siblings) or other people. The signal effect of a prohibition under criminal law, i.e. giving out a clear sign that forced marriages are unacceptable, is undisputed. There is, however, disagreement as to the conclusions that can be drawn from the statement that the offence of forcing someone to marry has little practical relevance. So far, there have been no cases where the offence of coercion led to court proceedings.¹⁶²

Nationalrat (the second chamber of the Swiss parliament) member Boris Banga started a first initiative in 2004 in the Nationalrat to criminalise forced marriage as such, hoping that Switzerland would follow the example of Germany (see above). Experts were sceptical about this.¹⁶³ The Swiss *Bundesrat* (government) found that there were not enough grounds because forced marriage could also be punished within the existing civil and criminal legislation. In addition, the *Bundesrat* argued that too little was known about forced marriages in order to say that criminal legislation would help. It recognised that the law would have a symbolic effect but held that there was no reason to expect that it would lead to more punishments in cases of forced marriage. In addition, the *Bundesrat* found the comparison with Germany to lack accuracy; in Switzerland the minimum marriage age is 18 whereas in Germany it is 16 making young girls more vulnerable.¹⁶⁴ In 2005, the FDP member Erika Forster-Vannini took a second initiative during the debate on the new Alien Act (*Ausländergesetz* – AuG): In March 2005 the *Ständerat* (first chamber of parliament) accepted the initiative to criminalise forced marriages and to punish these with imprisonment of 6 months up to 5 years.¹⁶⁵ But in the autumn of 2005

¹⁵⁹ A Swiss essay makes reference to a source (Botschaft, BBl. 2002, 375) which says that according to previous law (aArt. 120 ZGB) an average of 20 annulments (for any reasons) were recorded, Frankhauser/Wüscher (2008), Fn. 7.

¹⁶⁰ See also Bericht des Bundesrats (Bundesrat report) as well as family law expert Thomas Geiser who says that the problem of proof disappears then because after two years of separation there is an absolute right to divorce. NZZ (2005).

¹⁶¹ Article 181 StGB; see also CoE (2005), p. 124 as well as Bericht des Bundesrats (Bundesrat report).

¹⁶² Grace Schild Trappe, deputy head of the criminal law section at the Federal Office of Justice, Switzerland said in 2005 that she does not know of any cases where criminal courts would have dealt with a forced marriage.

¹⁶³ Parents wishing to marry off their children against their will are not going to be deterred by stricter punishments, according to Marcel Niggli, Professor for Civil Law in Freiburg. In the spring session of parliament, justice minister Blocher expressed his fear that stricter penalties may even stop victims from reporting perpetrators to the police.

¹⁶⁴ Boris Banga, 04.1181 Anfrage 17/12/04: Bekämpfung von Zwangsheiraten und besserer Schutz der Opfer von Zwangsheiraten (Combating forced marriages and enhanced protection of victims of forced marriage).

¹⁶⁵ Antrag Forster, AmtlBull. SR 2005, 319 ff. Regarding the proposal, see also ACVZ (2005), p. 47, NZZ (2005).

the *Nationalrat* (second chamber of parliament) did not take up the initiative: It first wanted to see an analysis of possible judicial measures and their effectiveness.¹⁶⁶ The *Nationalrat* found that the *Ständerat* had exceeded its mandate because the problems of forced marriage were too complex for the mandate of the first chamber of the parliament. The *Staatspolitische Kommission*, a governing body of both *Nationalrat* and *Ständerat*, gave the assignment (*Postulat*) to the *Bundesrat* to examine how forced marriages could be sanctioned by criminal and civil law.¹⁶⁷ Analysing the legal situation and the implementation, the *Bundesrat* concluded in its report *Strafbarkeit von Zwangsheiraten und arrangierten Heiraten* of 14 November 2007 that the existing legal provisions of criminal, civil and migration law (including the new Alien Act (AuG 2008), for more information on this see the following sections) are to a large extent sufficient to protect people from forced marriages, but have to be applied more systematically. It went on to say that only in civil law a new provision may be desirable: it should be possible to declare void any marriage contracted under force within an unlimited period of time.¹⁶⁸ The *Bundesrat* reasserted this opinion in November 2008 when it proposed further changes in civil and international civil law.¹⁶⁹

Migration law

The most recent changes to help prevent forced marriages were made to migration law and civil law. The new Alien Act¹⁷⁰ (*Ausländergesetz*) of 1 Jan. 2008 provides that in the case of a forced marriage family reunification will not be granted.¹⁷¹ The fact that a marriage was contracted by force is, however, difficult to prove for the relevant authorities because without statements from the persons involved, third parties cannot normally easily identify if the couple or one of the partners was forced. As an immediate measure to prevent forced marriages the rule was introduced no longer to allow family reunification for spouses under the age of 18. A further elevation of the minimum age for spouses to 24 years was, on the other hand, rejected by the *Bundesrat* in September 2008.¹⁷²

An important protection measure is the right of continued abode (*Verbleiberecht*) for victims of forced marriage. After the dissolution of marriage or of the family unit the spouse retains his or her right to a residence permit and its extension if the marriage lasted a minimum of three years and integration has been successful or if significant personal reasons make a continued stay in Switzerland necessary. Significant personal reasons can be that the spouse has been the victim of domestic violence within the marriage or that his or her social reintegration in the country of origin appears to be under severe threat.¹⁷³ These preconditions can also be fulfilled in cases of forced marriage insofar as forced marriage is regarded as domestic violence. Examples of what can be regarded as significant personal reasons can be found in a guide published early in July 2007 in the Canton St. Gallen entitled *Häusliche Gewalt im*

¹⁶⁶ Zwangsheirat (2008).

¹⁶⁷ Staatspolitische Kommission NR (02.024), Postulat 05.3477 „Strafbarkeit von Zwangsheiraten und arrangierten Heiraten“ (Punishability of forced and arranged marriages) of 09/09/05.

¹⁶⁸ Bericht des Bundesrats (Bundesrat report) „Strafbarkeit von Zwangsheiraten und arrangierten Heiraten“ (Punishability of forced and arranged marriages) fulfilling the Postulat (assignment) 05.3477 of the Staatspolitische Kommission of the Nationalrat of 9 September 2005. Also Büchler (2007), p. 244.

¹⁶⁹ Proposals are: that the registrar could interview the couple in order to detect forced marriages; to introduce in the Civil law a specific reason for annulment of a forced marriage. See, Bundesrat eröffnet Vernehmlassung, 5. Nov. 2008, <http://www.ejpd.admin.ch/ejpd/de/home/dokumentation/mi/2008/2008-11-05.html>.

¹⁷⁰ So far forced marriage has mainly been regarded as a reason for women to seek refuge within the context of asylum law in Switzerland. In a fundamental decision the cantonal appeal authority (Rekursbehörde) recognised for the first time that forced marriage can constitute grounds for asylum. Up until now however only in very few cases has refugee status been granted on these grounds (source: Bundesrat report).

¹⁷¹ SR 142.20.

¹⁷² Segmüller, Pius, 08.3394 Motion of 12/06/08.

¹⁷³ Art. 50 para. 1 and 2 AuG (Alien Act).

Rahmen der Migrationsproblematik (Domestic violence in the context of migration issues). According to this guide, victims of domestic violence and of forced marriage whose residence permit in Switzerland would normally expire with the end of their marriage retain their right to stay in the country. The extension of the yearly residence permit can be linked to certain requirements such as attending German language lessons or making an effort to find a job.¹⁷⁴ A similar problem as in Germany occurs when leaving the country due to a forced marriage. According to the new Art. 61 Abs. 2 AuG, the residence and settlement permit expires six months after leaving the country, if the foreign national leaves Switzerland without notification. Therefore, some critics demand that it should be made easier for such persons to return safely.¹⁷⁵

Civil law

Together with the new Alien Act, new civil law provisions also came into force under the auspice of combating marriages of convenience (called *Ausländerrechtsehen* or *unions de complaisance*).¹⁷⁶ Registrars can oppose or invalidate marriages (without time limit) and the paternity for children born in the course of the marriage. As part of the reform of migrant legislation, the new provisions are also intended to prevent forced marriages.¹⁷⁷ Information on the implementation of this new policy is not yet available.

Integration policy

A further instrument for preventing forced marriages is the policy for the promotion of integration and language skills of migrants. This purpose is served by the newly introduced integration agreements (*Integrationsvereinbarung*). These are especially intended to promote a better knowledge of the national language spoken in the place of residence and to improving migrants' knowledge on the social conditions, values and norms and the legal system in Switzerland. These agreements are applied in the case of family reunification with third-country nationals (not Swiss nationals).¹⁷⁸ It is hoped that victims of forced marriages will be able to make better use of their rights if they have language skills.

Influence of other countries

In legal developments in Switzerland a clear influence of foreign policy is visible in criminal and migration law. Banga's and Forster's initiatives on banning forced marriages were initially inspired by the German example – but ultimately rejected. On top of that, the proposals to increase the minimum age for marriage migration to 24 years as a preventive measure against forced marriage reflect similar developments in Denmark, the Netherlands and Germany, although Switzerland, in the end, introduced an age limit of 18 years.

The role of private organizations

The role of private organizations is not very strong in these legal developments. The scientific and advocacy project *zwangsheirat.ch*, an initiative mainly staffed by migrant women and men themselves, says explicitly that it can provide expert assistance in government proceedings or for organizations. Also *Surgir* gives some legal recommendations concerning how to tackle forced marriages. Private organizations work predominantly by providing information, advice

¹⁷⁴ Spescha, in: Spescha/Thür/Zünd/Bolzli (Eds.), *Migrationsrecht, Kommentar* (2008), Art. 50, para. 10.

¹⁷⁵ Büchler (2007), p. 749.

¹⁷⁶ Aif, Issue 7/2007, p. 16.

¹⁷⁷ President Menétrey of the platform for *Sans-Papiers* has expressed doubt regarding the constitutionality of these new regulations and their conformity with international law and criticised them as being excessive, discriminating and inefficient.

¹⁷⁸ See the Federation's recommendations (Jan. 2008): http://www.ejpd.admin.ch/ejpd/de/home/documentation/mi/2008/ref_2008-01-22.html.

and education which have so far been scarce. Experts on integration and young migrants all agree that after years of avoiding the issue there is a “tremendous need to catch up”.¹⁷⁹ *Surgir* states that there is no structure for assistance in place in Switzerland although the potential dangers for victims are grave (ranging from honour killings to being banned from the family). For this reason, the focus of NGO activity is on informing the public by means of reports and other information as well as on advice for those affected. The experts of *zwangsheirat.ch* recommend possible measures in their 2008 report *zwangsheirat.ch - ein Programm verankert Menschenrechte* supported by the *Eidgenössische Kommission für Migrationsfragen* (former *Eidgenössische Ausländerkommission*).¹⁸⁰ The Swiss organization *terre des femmes Schweiz* has taken up the subject of forced marriage as part of the campaign *Verbrechen im Namen der Ehre* (Crimes in the name of honour). In doing so it relies on materials and work previously carried out by its German sister organization *terre des femmes Deutschland*. *Zwangsheirat.ch* regards as one of its aims to inform both the public and those involved about the problem. Since autumn 2007, online access to free anonymous advice has been available, if required also over the telephone.¹⁸¹

Conclusion: A choice between the criminal, civil and migration law approach

In all of the five countries reviewed, legislature has taken the issue of forced marriage on board. In all public debates the issue is mainly connected with migrants, but from different regions of origin. Additionally, on top of the complexity of this phenomenon, the issue of forced marriage touches upon numerous areas of law. The legal approaches are diverse, but two general observations can be made. Firstly, since the 2005 Council of Europe report came to the conclusion that few countries treat forced marriage as a specific offence,¹⁸² specific criminal law has been introduced in Germany (2005) and Belgium (2007). Furthermore, a specific civil law on forced marriages now exists in France (2003/2005) and the United Kingdom (2007) and some provisions were introduced in Belgium (2007). Secondly, there is a certain correlation between the debate on the introduction of a specific offence and its rejection as a solution on the one hand, and the reform of civil law as a more appropriate means of addressing the issue (France, the United Kingdom and Switzerland) on the other hand. Whereas the choices for legal measures in criminal and civil law are often connected to each other, it seems that the agenda behind restricting marriage migration is separate from these in all five countries in the study.

Even though forcing someone to marry is punishable under ordinary criminal law in all five countries, in 2005 the CoE study recommended including a specific offence of forced marriage in the criminal law provisions, with penalties reflecting the aggravating circumstances.¹⁸³ The existing specific offences differ in terms of their penalties. In Germany “forcing somebody into marriage” represents a special case of coercion. On top of this, a proposal to introduce a specific offence with a higher punishment has been the topic of discussion for several years. In Switzerland, however, a proposal for a similar provision was rejected after several years of debate. In Belgium, forcing a person into marriage by violence or threat was made punishable in 2007. Between the provisions proposed or in force possible sentences vary con-

¹⁷⁹ Stauffer, Beat, *Zwangsheirat: Vorbehalte, Berührungängste und ein grosser Nachholbedarf*, NZZ dated 28 Feb. 2007, p. 17. or online: www.zwangsheirat.ch.

¹⁸⁰ http://www.zwangsheirat.ch/pdf/zwangsheirat_massnahmen_d.pdf.

¹⁸¹ Another example of concrete assistance for those affected is the website of the shelter for girls in Zurich (www.maedchenhaus.ch/): It gives information for caregivers and experts as well as a telephone number that people can ring for anonymous advice.

¹⁸² CoE (2005), p. 9.

¹⁸³ CoE (2005), pp. 11 and 42.

siderably from a fine (500 Euros) or up to two years imprisonment in Belgium to a maximum of five years imprisonment in Germany or the toughest proposed sentence in Germany of up to ten years imprisonment. Whilst the debate in Belgium, Germany and Switzerland has focused on making it a crime to force someone to marry, this approach has, in the end, not found enough support in France, the United Kingdom and Switzerland, even though it has been a topic of discussion. The debate there invariably focuses on the scope of civil law, especially in the United Kingdom with a specific law which reflects the complexity of forced marriages. The British approach is then quite comprehensive – as it addresses this phenomenon with a combination of measures on different levels. The existing measures in civil law were tightened up and new protective mechanisms were introduced, also in civil law, including economic support and accommodation for victims of domestic violence. Additionally, there are policies for increased collaboration between social services, consular sections, the police and housing authorities.¹⁸⁴

Although the 2005 report of the Council of Europe makes no such recommendation, most national activity over the last three years has been seen in migration law. Against the background of a mainly restrictive immigration policy in all five countries, the introduction of several instruments has been supported by using the argument that they would combat forced marriages. It is not clear whether this is the only argument given. These instruments include firstly the elevation or introduction of a minimum age of 21 years for the reunification of spouses in Belgium (2006) and the United Kingdom (2008) and of 18 years in France (2007), Germany (2007) and Switzerland (2008). Secondly, pre-entry language criteria were introduced in Germany (2007) and language or integration lessons after immigration were made obligatory in France (2007) and Switzerland (2008).

Looking at forced marriage as a process, it is clear that the various legal measures are applied at different points in time to achieve a preventive, protective or sanctioning effect. With regard to provisions in civil law, law makers have set themselves different targets. In all legal systems studied, there is the preventive instrument of a minimum marriage age, now set at a uniform 18 years or higher. This corresponds with the recommendation of the Council of Europe according to which treaties that ignore the constitutional principle of male-female equality should be denounced and 18 years should be the minimum marriage age.¹⁸⁵ The French system has focused more on the use of officials to detect forced marriage in interviews than for example the United Kingdom. In 2008 the same idea was under discussion in Switzerland. The possibility of dissolving a forced marriage as a post-marriage instrument plays a large role in the plans to tackle forced marriages. This usually requires an application made by a spouse as well as proof that force has been applied. In France and Belgium, applications can also be made by the *Procureur* or in Switzerland by the registrar. In France a new reason for annulment was introduced: the fear of one's parents, the so-called 'reverential fear' (*crainte révérencielle envers un ascendant*). In Belgium, it has been possible since 2007 to annul a marriage contracted under force or threat. In Germany and Switzerland, the burden of proof causes considerable problems so that, in comparison to divorce, annulment is a less attractive option. Also, time limits for annulment vary significantly. Even the 2005 CoE study recommended that limitation periods should be reviewed for the commencement of civil (and criminal) proceedings. In France and Switzerland, applications can be made up to 5 years after the date of marriage. In Germany, the limitation to one year is considered a problem. Nonetheless, proposals to extend the application deadline have so far not been successful; instead the focus has been on sanctioning measures. In contrast to mainly sanctioning measures, the British *Forced Marriage Civil Protection Act 2007* is complex in structure because it includes preventive, protective

¹⁸⁴ Clark/Richards (2008), p. 503 and 507.

¹⁸⁵ The minimum marriage age has for a long time been a point of inequality, because many European countries have set the minimum age lower for women than for men.

and sanctioning measures before, during and after contracting marriage.¹⁸⁶ These civil law remedies are potentially able to protect and empower victims of forced marriage, and importantly, unlike criminal sanctions, allow them to initiate and cease proceedings themselves. With criminal sanctions, it is possible for the victim to report the crime but under the new British legislation also people other than the victim can initiate proceedings and those involved have more possibilities at more points in time to do so, rather than simply reporting the crime after it has occurred. There are also protective instruments available for victims abroad or on their way abroad as is the case in France. There is, however, disagreement as to the character of migration law measures: It is hoped that a minimum age required of spouses wishing to immigrate within the framework of family reunification will have a preventive effect. The argument goes that if there is no chance of reunification of under-age spouses there will not be much point to forced marriages, especially since there is not sufficient space for the spouse or the family to exercise control over the person being forced. Critics regard this measure as problematic because it applies to everyone, i.e. it violates the right to family life of those who contracted marriage of their own free will. They prefer the right of continued abode or the right to return as legal measures because these are protective in nature.

The CoE study emphasises that ‘forced marriage’ is not a term which has explicit legal content. The problem of definition is not only dealt with differently in these five countries, the definition of forced marriage is also different for the criminal or civil law approach. Contrary to the need for a narrow definition of a criminal offence, the British FMCPA is based on a broad definition. But even here, individual cases will pose the question where the line between arranged and forced marriage is drawn. This would not be a matter for the criminal judges but could lead to different types of *protection orders* by family judges. Also in France and Belgium, there are problems in defining forced marriages because there is some overlap in the policy against forced marriages and marriages of convenience. In France pre-marriage interviews, a longer probationary period or the specific grounds for annulment are instruments which were originally introduced to combat marriages of convenience.

There is only little information regarding the implementation of these partially very recent laws. On the one hand the Council of Europe’s 2005 report claims that (criminal) legislation is highly ineffective.¹⁸⁷ With regard to criminal law the Council’s statement is true: Little use has been made of the specific offence so far. The difficulties to define and to prove a forced marriage as well as the barriers to initiate proceedings against family members are given as reasons for this practical irrelevance; a good example is the case of Germany where so far no cases have been reported.¹⁸⁸ In Switzerland this has even been used as an argument against criminalisation. Nevertheless, the possibility of annulment has also been used very little in Germany or Switzerland. Therefore, only time can tell whether the civil law approaches of France and the United Kingdom will be more successful.¹⁸⁹ On the other hand, the age limit and language requirements introduced in German migration law have led to a clear decrease in applications for the reunification of spouses and the same can be said about the restrictive measures in the United Kingdom. There is considerable dispute as to whether these migration measures have actually prevented forced marriages. Critics of the ‘Danish model’, i.e. the 24-

¹⁸⁶ Clark/Richards (2008), p. 507.

¹⁸⁷ CoE (2005), p. 9.

¹⁸⁸ This is also the case in Austria where barely any forced marriages have been reported to the police. Forced marriage is since 1st of July 2006 officially a crime in Austria. Before this legislative change, since 1975 seven persons were convicted for forcing someone to marry, <http://www.zwangsheirat.ch/aktuell/news.php>.

¹⁸⁹ Clark/Richards (2008), p. 528.

year rule, claim that this does not prevent forced marriages but prevents spouses from (re)uniting.¹⁹⁰

There is a large influence of other countries on legislation and policy in the field of criminal law. The question of a specific offence has been debated in Switzerland with reference to the German model. The most obvious case of copying other countries' measures is, however, visible in migration law. In particular, Denmark's minimum age of 24 years served as an argument for the introduction of the 21-year-threshold in the Netherlands (2003), as well as in Germany and France in 2007 (18 years), in Belgium in 2007 (21 years) and in the United Kingdom in 2008 (21 years). Also, the implementation of the Family Reunification Directive played an important role in Germany and Belgium. The United Kingdom, on the other hand, is not bound to this directive (because of 'opting-out'¹⁹¹), but its policy is in line with these developments. As Switzerland is not a member of the EU the directive does not apply to Switzerland either and the elevation of the age limit was rejected there. The same holds for language requirements which have to be fulfilled before immigration: Germany followed the Dutch example as well as France (in a slightly weaker form), and the United Kingdom is planning to follow suit. Switzerland, however, has rejected such proposals.

¹⁹⁰ Migration News Sheet 2005, p. 2. Similarly even in 2001 the European Commission against Racism and Intolerance (ECRI) stated with regard to Denmark "that such criteria [age limit] in the area of family reunification may impact in a discriminatory fashion on certain minority groups, such as Muslims [...]", cf. Second Report of the European Commission of the European Council against Racism and Intolerance on Denmark, CRI (2001) 4, adopted on 16 June 2000, made public on 3 April 2001, p. 11. Five years later it turned out that according to research this age threshold which is meant to prevent forced marriage only applies to a small group of people. Only 4% of marriages reviewed occurred as a result of the individual decision of the parents, see Third Report of the European Commission of the European Council against Racism and Intolerance on Denmark, CRI 2006 (18), adopted on 16. December 2005, made public on 16 May 2006, p. 17.

¹⁹¹ In contrast to Denmark, which has decided to opt out of Title IV of the Treaty establishing the European Community, the United Kingdom and Ireland decide on their involvement on a case-by-case basis (possibility of an 'opt-in'). In the case of this directive on family reunification, the United Kingdom and Ireland did not opt in. See recitals 17 and 18 Directive 2003/86/EC.

Chapter Three

THE LACK OF NUMBERS

This chapter focuses on the numbers on forced marriages available for the countries in this study. The central question is: Which numbers are available on forced marriages in the various countries and what can be said about the scope and nature of the phenomenon based on these numbers? Just as in Chapter 1, the problem of definition is central here as it is difficult to describe what exactly constitutes a forced marriage. Whereas the first chapter provided an Introduction to the problem of definition, the current chapter illustrates how this problem influences the numerical knowledge on forced marriages. Equally important as what can be said is the issue of what cannot be said based on these numbers. It is difficult to obtain figures on the topic, and when obtained these often lack a detailed description of how they were generated. This is why the interpretation frequently leads to the conclusion that very little is known about forced marriages on the basis of numbers available. Sometimes the numbers mentioned in discussions on the topic turn out to be little more than guesswork.

The lack of reliable numbers is, however, not merely due to difficulties in obtaining and interpreting them, but rather inherent to forced marriages as a social phenomenon. Much like domestic violence, forced marriages are believed to go underreported and any figures of them are considered to represent merely a fraction of all cases, except in the case of sky-high estimates.¹⁹²

The fascination with or interest in numbers on forced marriages requires elaboration since numbers are not merely numbers. As James Scott points out, the birth of the state as an intervening party in the matters of its citizens has required the standardisation of measurement of all those things that are to be controlled by that state.¹⁹³ As early as in 1676, the English economist William Petty called statistics “political arithmetic” to highlight the link between the state and the numbers.¹⁹⁴ It does not come as a surprise then that political and policy discussions on forced marriages often revolve around numbers, considering these are essential for any decision on possible state interventions. And as Husbands points out numbers may assume a subjective reality or a life of their own.¹⁹⁵

Many social problems, however, confront state actors with the problem that they lack numbers, as in the case of forced marriages. As Groenendijk and Böcker point out, policy makers do not usually simply settle for uncertainty. Much like the all-intervening state in Scott’s work, policy discussions depend on numbers. Groenendijk and Böcker examine the example of discussions on the social problem of illegal migrants and they argue that estimates on the so-called “dark figure”, e.g. for crime or illegal migrants (or forced marriages for that matter), may say more about the estimator than about that which is being estimated. Due to their uncontrollability, estimates on the number of illegal migrants constitute a convenient point of departure for political commentary. High estimates can indicate that the speaker considers the existence of illegal migrants a social problem.¹⁹⁶ Similar logic can be seen at work in the use of figures on forced marriages: it seems to be important to cite some kind of figure (even if well off) instead of simply stating that one does not know what the scale of the problem is. An example in the paragraph on Germany illustrates this attitude where the researchers first state

¹⁹² Samad/Eade (2004), p. 54.

¹⁹³ Scott (1998), p. 24.

¹⁹⁴ Braadbaart/Zevalkink (2005), p. 127.

¹⁹⁵ Husbands (1994), p. 199.

¹⁹⁶ Groenendijk/Böcker (1995), p. 119-120.

that their numbers do not allow for conclusions on the total number of forced marriages in the country and yet they conclude that probably around 10% of Turkish migrant women in Germany live in a marriage that they did not choose for themselves.

The choice regarding the figures in this chapter was made based on the information available. The figures that were merely percentages in a newspaper article and that were impossible to verify were not included because due to the lack of information it would have been impossible to evaluate them in any meaningful way. The amount of information available per study and per country differed greatly, hence the variation in the amount of text per country. For the current study, it was possible to obtain three kinds of numbers for the five countries. Each of them presents a particular set of problems. The problems with each type of figures are summarised in Table 3.1.

The first category of numbers is found in survey research where women, usually from ethnic minorities, are asked whether they themselves were forced to marry. The numbers in the second category are also generated by the survey method, but instead of asking about personal experiences, respondents are inquired about cases of forced marriage they have heard of or know of. The third category consists of cases of forced marriage reported or recorded by different organizations that deal with the phenomenon, such as women's shelters. This last category of data is most frequently found in materials on forced marriage.

Data	Type of data	Central problems
Survey on individuals Knowledge of cases of forced marriage	Estimate based on a sample Absolute number, sometimes extrapolated ¹⁹⁷ and made into an estimate	Unclear what is being measured Many people can report the same case making it impossible to say how many unique cases there are It is unknown whether all of the cases actually relate to forced marriages
Reported cases at NGOs and other organizations	Absolute number, sometimes extrapolated and made into an estimate	Many people can report the same case making it impossible to say how many unique cases there are It is unknown whether all of the cases actually relate to forced marriages

Table 3.1. The categories of numbers.

The following pages present and discuss the various numbers available on forced marriages in the countries included in the sample of this study. The focus of the discussion is to answer the question what these numbers say about the scale and nature of the phenomenon “forced marriage”. Considering there are five countries included in this study, it would be ideal to compare the numbers cross-nationally. Unfortunately, the figures are in most cases not comparable because they do not use the same definition of forced marriage, because they refer only to absolute numbers which can vary greatly depending on the size of migrant population in a country or because they measure the phenomenon among one specific migrant group only. It is yet another question whether it is feasible to measure forced marriage only among migrants,

¹⁹⁷ Extrapolation means that a study draws conclusions on a broader range of values than is included in the sample and the relevant parameters of these values are not known. For example, based on the number of forced marriages reported in Berlin, an estimate is made of the total number of cases in the whole of Germany even though only information on Berlin is available and there is little reason to expect that the whole of Germany would resemble Berlin in this respect.

and an answer to this question is not provided in the materials. This is why the comparison focuses on the types of problems the different figures present.

I. Belgium: Experiences of migrant women and familiarity with forced marriage

Two sets of numbers for Belgium are discussed in this section. Belgium differs from the other countries in the sample in that there are lot of numbers from surveys available since the topic was included in questionnaires as early as in 1991.

Migrant women's experiences of forced marriage

One of the earliest sets of numbers on forced marriages for Belgium is originally from a survey on family forming and value patterns among Turkish women in Flanders (*Vlaanderen*) and Brussels which was conducted in 1991.¹⁹⁸ Admittedly, these figures do not say much about the current situation as they are almost twenty years old, but it was not possible to obtain more recent survey data. These statistics are nonetheless included here because they come from a data set that has been widely discussed in the literature and highlight some of the problems in measuring forced marriages.

Of all the women who have ever been married in the sample 18% had been forced to marry against their will. This seems a rather large percentage, but when it is specified per age and mode of migration it is clear that it is especially the older women (40 to 49) and the marriage migrants who raise the percentage.

	Age (%)			Total sample (N)
	17-29	30-39	40-49	
Forced to marry: 18 %				
Not born in Turkey	4%			43
Migrated with / after parents	12%	14%	17%	284
Migrated with / after husband	16%	21%	30%	422
			Total:	749

Table 3.2. Percentage of Turkish migrant women who were forced to marry a husband against their will. This is a further elaboration of the 18% of women who were forced to marry.¹⁹⁹

The study that these numbers are based upon was conducted in 1991.²⁰⁰ A sample of 850 Turkish women was interviewed for this purpose. Even though survey research often utilizes samples of around 1,000 persons, the suitable sample size depends on what one aims to measure (which calculations) and how great an accuracy is required.²⁰¹ More important than the size of the sample is the requirement of random sampling which means that every person has an equal chance of being selected from the database that the sample is drawn from. A sample of several thousands of persons is not worth much if it is not randomly selected, at least with regard to key variables.

The question of what exactly constitutes a “Turkish” person is not explicitly discussed. Considering that Lesthaege mentions first, second and third generation Turkish migrants being included, it seems that a Turkish person is defined by some combination of birth place, parents’ birth place and some other variable that can be used to identify third generation migrants whose parents might also have been born in Belgium as Turkish. Being Turkish is clearly not defined by one’s nationality but rather by a combination of ethnicity and migrant status.

¹⁹⁸ *Gezinsvorming en waardenpatronen bij Turkse vrouwen in Vlaanderen en Brussel 1991.*

¹⁹⁹ Lesthaege (1993).

²⁰⁰ The discussion is based on: Lesthaege (1996).

²⁰¹ See McClave/Sincich (2003) for how to calculate this.

The sample was stratified, meaning that a number of municipalities (*gemeentes*) was first chosen based on whether there were more than 100 Turkish persons resident²⁰² and within these municipalities a random sample of Turkish persons was taken from the municipal “alien register” (*vreemdelingenregister*) where migrants are registered.²⁰³ It is unclear how this register would help find third generation migrants. The representativity of the sample for the whole of Belgium may have suffered due to the choice of Turkish migrants in Flanders and Brussels only. Whether there were reasons to exclude the Walloon provinces is not made explicit by Lesthaeghe.

It has to be noted here, however, that representativity is always a question of ‘representative for what’. A sample can be representative in terms of age and socio-economic position for example, but in this case it is not known which dimensions of the population are considered important to include. Also, not having any numbers on the general population the sample is supposed to represent, it is difficult to judge the sample. It is plausible that Belgium-born women of Turkish origin are underrepresented with 43 respondents (5% of the total sample).

What these figures say about the scale and nature of forced marriages is a question of interpretation. That 18% of all Turkish women who have ever been married, however defined, would have been forced to marry does seem like a large number. But it is not self-evident what this figure says about the overall occurrence of forced marriages. Three main problems are evident here and will be discussed below: the choice of respondents, the moment and the place of the forced marriages.

The choice of respondents is problematic here for two reasons. Firstly, only Turkish migrants were included in the study, which was later also replicated on Moroccan migrants. This means that other migrant groups or native Belgians are not included as potential victims of forced marriage, a focus that is also implicit in the definition of the problem, as discussed in Chapter 1. Forced marriages are generally seen as a migrant issue and a women’s issue, and this assumption is also reflected in the choice of women in the sample.²⁰⁴ Therefore, the possibility of men or other groups in the population being forced to marry is left outside the study. As only a part of the potential population is included in the sample, probably not all possible forced marriages are measured.

Considering that the survey focuses on the experiences of Turkish women during their whole life time, these figures do not say anything about the occurrence of forced marriages at the time of the survey. After all, a forced marriage of someone who is 48 years old probably took place some thirty years ago, even though, again, it is not even possible to estimate when all these marriages took place. Additionally, there seems to be a large difference between the various age groups and paths of migration. Older women and women who migrated with their partners are clearly the ones most frequently forced to marry.

The third problem, the one regarding the place, is a problem in all data that includes information on events during the individual lifetime of a first generation migrant. Considering that many forced marriages probably take place outside of Europe, it might not even be feasible to try measuring them per country. But in these numbers, no distinction is made between marriages abroad and marriages in Belgium, which blurs the situation somewhat. This set of numbers does, then, not say much about the total number of forced marriages in Belgium or

²⁰² Special attention was given to including agglomerations of different sizes in the sample in order to avoid bias in choosing municipalities.

²⁰³ This method of sampling has the advantage of including only relevant units (here municipalities with Turkish inhabitants) for further sampling.

²⁰⁴ It must be noted here that forced marriages are merely one part of the study, so that the sample was not chosen simply in order to study this particular topic. But considering the survey focuses on questions around family formation, marriage is framed here as a women’s issue.

abroad. What these figures say about forced marriages is that a rather large proportion of Turkish migrant women who have ever been married (18%) residing in Belgium have experienced a forced marriage during their lifetime. When different migration paths are distinguished, it seems that especially many women (16 to 30%, see Table 3.2.) who have migrated to Belgium because of their partner have been forced to marry, whereas for younger women the trend seems to be the younger the women, the fewer forced marriages there are. This latter fact would seem to suggest that at least in 1991 the phenomenon was actually decreasing.

Familiarity with forced marriages among young people

In 2004 researchers at the Catholic University of Louvain conducted a study on high school (*lycée*) pupils' aspirations and attitudes towards marriage where the respondents were also asked about their familiarity with forced marriages both within their own social environment and in general.²⁰⁵ Familiarity in general means that the pupils were requested to indicate whether they thought forced marriages occurred at all and more specifically, whether they knew of any cases. Most respondents (74%) thought that forced marriages occurred and a minority of 7% even knew of cases within their own family, whereas 16% knew of cases outside the family (see Table 3.3. for details).

Knowledge of forced marriages	Percentage (%) of pupils 15-18 years
Thinks forced marriages occur	74 %
Knows of cases	16 %
Knows of cases in his/her own family	7 %
Total:	100 %

Table 3.3. Belgian high school students' familiarity with forced marriage (N=1200).

The study was conducted among 1,200 pupils between 15 and 18 years of age in schools of different educational tracks.²⁰⁶ The schools were located in Brussels and around, and the pupils were all French-speaking. The sample was stratified so that a choice was made for regions with ethnically and socio-economically diverse populations, to be precise Brussels, Liège and Charleroi, and ethnically diverse schools within these regions.²⁰⁷ Diversity in background, i.e. ethnicity and socio-economic position, of the students was desirable because the aim was to create a sample that would reflect the diversity of Belgium as a country, or at least the French-speaking parts of it.

Whereas a sample of 1,200 respondents, if randomly selected, would not seem too small, the crucial point is however the choice of units. Only including French-speaking regions could damage the representativity if the migrant populations are different in different language areas. Additionally, oversampling for ethnically diverse pupils and therefore for pupils with a migrant background means that the results probably overstate the familiarity of young people with forced marriages if compared to areas with fewer migrants. This emphasis for migrant presence in the sample is nevertheless understandable considering that the study focuses on forced marriages which are typically seen as a migrant issue in Belgium.

For further evaluation of what these figures say about the scale of the problem, it is vital to consider what the study actually measures. The familiarity of pupils with forced marriages does not necessarily say much about the actual occurrence of such marriages. The fact that

²⁰⁵ Garcia/Dumont/Melan/Monshe (2004).

²⁰⁶ The Belgian school system consists of both vocational and academic tracks that pupils can follow on the intermediate level.

²⁰⁷ In total 221 schools were contacted, 30 of which (13.5% of the total) expressed an interest in participation. Of these, 20 schools were selected in the final sample for participation based on how well they fulfilled the aim of gaining a diverse sample.

74% of the pupils thinks that forced marriages sometimes occur suggests that they are familiar with the phenomenon, but this could be due to them being familiar with actual cases or to media publicity or to discussions with parents or other people. The latter alternatives seem more plausible considering the large difference between the 74% that think forced marriages take place and the 16% that actually know of cases and the 7% that personally know of such cases. The fact that 16% of the pupils personally know of cases of forced marriage and 7% even of cases within their own family suggests that forced marriages actually occur, but it does not say much about the scale of the problem. More students can know the same case or even come from the same family, especially when the schools are located relatively close to each other as is the case in this sample. So, it is impossible to come to the conclusion that a certain percentage of the population is forced to marry on the basis of these data.

But the difference between those who know of cases and those who know of cases within their own family suggests that more people than the immediate family are aware of forced marriages taking place. This indicates that the secrecy that is supposed to surround these marriages does not seem to be absolute, at least not among young people.

II. France: Questionable extrapolation of known cases

The section on France discusses three different sources of data. The French numbers are particularly difficult to get a grip on. They seem to be the highest ones, both in absolute and relative terms, of all the countries in the sample and yet they are also least reliable figures.

Many young people are affected by forced marriages

The French NGO GAMS (*Groupe femmes pour l'Abolition des Mutilations Sexuelles*) states on its website that 700,000 of 10-to-18-year-olds were affected by forced marriage in 2002 in France. It is not clear whether this number refers to one year or all years up to 2002. This figure is an extrapolation of the number of forced marriages that take place in the regions (*départements*) where the most cases of female circumcision or female genital mutilation (FGM),²⁰⁸ as it is called in this context, take place. Female circumcision is mentioned by the GAMS in this respect because the organization focuses on eradicating this practice. The exact nature of the link between female circumcision and forced marriage is not clear. One could guess that both are seen as symbols or expressions of a patriarchal social system. The connection between the two practices is, however, salient in French discussions on the topic of forced marriages. Measuring forced marriages in areas where female circumcision is most prevalent presents a problem because, if there is indeed an intimate link between the two phenomena, these areas are bound to be the places where forced marriages are also most prevalent. Therefore, any number found in such areas is unlikely to be representative for the rest of the country.

The grounds for this extrapolation are not made explicit, but any extrapolation is an uncertain undertaking. It means taking the cases one knows of and projecting what these cases tell us upon a range of cases where the parameters are unknown. Here this means that the numbers measured in regions with a high prevalence rate for both female circumcision and forced marriages are projected onto regions where there are not many cases of female circumcision, even though the correlation between the two practices is presented as a crucial one. If this connection is indeed such a critical one, it does not seem justifiable to conclude that forced marriages would occur in non-female circumcision regions at a similar rate.

²⁰⁸ Female genital mutilation is a synonym for female circumcision.

The figure of 700,000 is rather high, especially compared to the other countries in this study, and would therefore seem to suggest that forced marriages are more prevalent in France than in other countries. However, it is not clear what is meant by “affected by” in this case; affected in what way? This could refer to the total number of actual forced marriages and threats of forced marriage, or it could include both partners in the marriage, to name a few options. If more persons than one are included as being affected by a forced marriage, it is understandable that the number is rather high. But in the end, there are more suggestions than actual facts included in any discussion on this number which is why 700,000 seems to be an unfounded estimate and not the result of a systematic investigation.

In terms of the nature of the phenomenon, the number of 700,000 suggests that forced marriages are very widespread and probably not very culturally specific because migrants from many different groups would have to be involved for this number to be anywhere near the actual number. Christine Jama from the women’s organization *Voix de Femmes* says that forced marriages are not, indeed, only prevalent among migrants. She says that there are also cases of forced marriage known among families of diplomats and in the region of Brittany (*Bretagne*) in general.²⁰⁹

Young people affected by forced marriages

The *Haut Conseil A l’intégration* (High Council of Integration), hereafter called HCI, also provides a number on forced marriages. The HCI approached a number of organizations (the number is not specified) which deal with forced marriages and came to the conclusion that 70,000 young people between 10 and 18 years of age, mainly girls, are affected by forced marriages, but does not state what time frame this number refers to.²¹⁰ These are again cases in the 14 regions (*départements*) where most female circumcisions take place. Elsewhere in the report (on page 51) it is stated that the number originally came from GAMS, the organization discussed above, which would seem rather strange considering that the GAMS figure for 2002 is 10 times larger than the HCI figure.

The issues surrounding the terminology of being “affected by” are equally problematic here as above. In addition, since this number is based on how many people approach NGOs for help in cases of forced marriage, it is not clear whether this is an absolute number based on measurement or an estimate. In both cases, the problem is that we do not know how the number of cases that come to the knowledge of NGOs is related to the total number of cases.

Cases of forced marriage among school-going youth

The French *Les Services de l’Education Nationale* (Ministry of Education) also records cases of forced marriage in different municipalities (*départements*). This registration is again connected to the occurrence of female circumcision. So the number recorded by the ministry is based on those municipalities where the most cases of female circumcision occur. The number of cases (of forced marriage) ranges in these regions from 15 cases annually in Val-d’Oise to more than 30 in Seine-Saint-Denis. The numbers are originally based on data from schools in these areas but it is not clear what exactly is registered by schools as forced marriage; teenagers not being present at school, suspicions of or corroborated cases of forced marriage?²¹¹

In terms of the scale of the phenomenon, it is of course quite difficult to say something on the basis of such small numbers, especially since it was not possible to obtain numbers on school-going youth in these municipalities to compare these numbers to.

²⁰⁹ Bême (2005). L’enfer tabou des mariages forcés. *Doctissimo*, 12 April 2005.

²¹⁰ Haut Conseil A l’integration (2003), p. 63-67.

²¹¹ Lazaridis (2004).

As the numbers are from the Ministry of Education and hence schools, they only say something about marriages among a certain age group, the school-going youth. It has, however, not been demonstrated that this age group would be the only one affected by forced marriages. But the focus on this age cohort is logical within the French context where forced marriage is defined as a problem for young girls (See Chapter 1).

In terms of the nature of the phenomenon, these figures suggest that forced marriages prevent young people from going to school. Apparently, families are able to break any rules that might be in place to prohibit underage children from dropping out of school. Additionally, the gender neutral formulation of the numbers (youths or adolescents, in French: *adolescentes*) would suggest that forced marriages affect boys and girls to the same extent. Taking the definition in the French discussion on forced marriages into account (See Chapter 1), it would seem that the term “youths” actually refers to girls here.

III. Germany: Experiences of migrant women and cases registered by NGOs

For Germany there are essentially three sources of figures: one national study and two local ones.

Turkish migrant women’s experiences of forced marriage

The most recent source of data is the 2005 study by the *Bundesministerium für Familie, Senioren, Frauen und Jugend* (German Ministry of Family Affairs, Senior Citizens, Women and Youth).²¹² This study deals with women’s wellbeing in Germany in general and not specifically with forced marriages. In order to include the experiences of non-German women, a number of migrant women were included in the sample. Migrant women (and men) are often excluded from surveys on account of their lack of language skills, but in this survey the respondents were offered the possibility to take part in their own language. Those with a Turkish background were asked, in addition to the standard questions, about their potential experiences with arranged and forced marriage.

The total sample of 397 Turkish women consisted of women of Turkish nationality or whose parents were born in Turkey.²¹³ The researchers do not explicitly say that the sampling was done randomly, but the otherwise extensive discussion on sampling and methods does suggest that standard procedures, i.e. randomisation, were applied. Only those women who were or had been married to a Turkish man were asked about their choice of partner. Just as is the case with most studies on migrants, here too a clear definition on who is and who is not Turkish is lacking. Whether this is a question of nationality, ethnicity, identity, or a combination thereof, remains unclear. Half of these 143 women had had their partner chosen for them by others, most often by family members. Of this group, 17% thought at the time that they had been forced into the marriage. A larger group (25%) had the feeling that their opinion about the marriage had not been asked (see Table 3.4. for details).

	Percentage (%)	N
Of the total whose partner was chosen for them:		
Agreed with the choice of others	75 %	53
Would have preferred to choose themselves	23 %	16
Unknown	2 %	2
Total:	100 %	71

²¹² BMFSFJ (2005).

²¹³ The sample was chosen from the population register but because German people with Turkish parents are not registered as Turkish in the register, an additional random sample of women was chosen. In this latter sample, it was up to the researchers to decide who would qualify as Turkish, i.e. whose parents were from Turkey.

Of the total whose partner was chosen for them:		
Had the feeling their opinion had not been asked	25 %	18
Thought at the time they had been forced to marry	17 %	12
Total:	42 %	30
Total (N) Turkish women married to a Turkish man		143
Chose partner themselves	50 %	72
Had partner chosen for them	50 %	71

Table 3.4. Opinions on the choice of partner among Turkish migrant women whose marriage partner was chosen for them.

Representativity of the sample is a key issue in deciding what these figures say about the scale of the phenomenon of forced marriage. The 397 Turkish respondents do not form a very large sample, but then again it is not known how big the total population of Turkish migrant women is. Additionally, it is not known whether randomisation was attempted. Possibly, the authors are not explicit on this; the aim was to have a sample that would be representative for all non-German women together. Additionally, only 143 (36%) of the Turkish respondents were or had ever been married to a Turkish man and were then considered to have been at risk of being forced to marry. It is not clear why only Turkish partners would present the threat of a forced marriage. The authors also note that the numbers are too small to draw conclusions on the whole population of Turkish migrants.

A logical conclusion would be then to state that these results cannot be projected onto the rest of Germany, but the authors of the report choose a more speculative path in stating that the results suggest that around 10% of Turkish migrant women in Germany live in marriages they did not themselves choose or that they were forced into.²¹⁴ Based on such a low number of cases, this conclusion is not justified, however tempting it might be.

One more reason not to conclude these numbers to be indicative of the scale of forced marriages in Germany is the fact that women of different ages were interviewed and the results are presented without information about age. The 17% for women who felt they had been forced to marry indicates the percentage of women who have at some point in their life experienced a forced marriage. It does not say how many women were forced for example in the last 5 years, making it possible that all of these women were forced to marry 30 or 40 years ago. Hypothetically, this might even be a likely scenario because young women who were recently forced into a marriage might not want to or dare to participate in a survey on violence. This is expected to happen more generally in surveys on domestic violence – the people with the worst or most current experiences of violence are not likely to participate in a survey on the subject. And even if they were, their violent partners might object.²¹⁵

The last problem in measuring the scale of the problem is the most obvious; only Turkish women were interviewed, and not men, or women and men from other migrant communities, or the German majority population. Even though most experts would say that the majority of the victims are women, nonetheless there are also men who are victims of forced marriage. And Turkish migrants are not the only group in which forced marriages sometimes take place. The experiences of Turkish women are not necessarily representative for other potential risk groups. In German debates on forced marriage, this is mainly defined as a problem of mi-

²¹⁴ This 10% is probably the average derived from the 18 women whose opinion was not asked and the 12 who were forced. Taking these numbers as a percentage of the total sample (143) we arrive at 13% and 8% respectively, the average of which is 10%.

²¹⁵ Van Dijk/Flight/Oppenhuis/Duesmann (1997).

grants of Turkish origin, possibly because this is a sizeable group of migrants and because the presence of Turkish migrants in Germany is perceived by many to be problematic.

In terms of the nature of the phenomenon, the distinction between one's opinion not being asked and being forced produces certain outcomes. More women say that their opinion was not asked than that they were forced which suggests that this is an important distinction. If the only question had been about being forced to marry, the resulting numbers would have been considerably lower. So it seems that there is a distinction between the two. This is important to understand when devising any interventions. And yet, this distinction also poses a problem because both in terms of understanding the magnitude of the phenomenon and devising policy, it is not clear whether the answers of both groups of women are equally important.

Cases of forced marriages reported to NGOs in Hamburg

One of the two local studies for Germany was carried out in 2006 by the *Lawaetz-Stiftung* in Hamburg.²¹⁶ The *Lawaetz-Stiftung* is a charitable organization which provides "assistance for self-assistance" meaning that socially and economically disadvantaged people are enabled to gain access to the housing, training and labour market through innovative methods of mobilisation to self-help.²¹⁷ This study is a survey that was conducted among organizations that offer consultation, advice or assistance to victims of forced marriage in Hamburg. As the debate on forced marriages started to gain momentum in politics, the local government organ for social matters (*Behörde für Soziales, Familie, Gesundheit und Verbraucherschutz*, BSG) asked the *Lawaetz-Stiftung* to carry out a study on the size and symptoms of the problem and the assistance provided by making an inventory of the local organizations dealing with the topic and their experiences with forced marriages.

As a result, the *Lawaetz-Stiftung* reports that there were 210 cases in 2005 where one of these organizations was approached to offer consultation, assistance or advice. These 210 cases were reported by the 26 institutions that had actually done consultations and also kept a record of them. One institution did not keep records but offered counselling and another 5 institutions offered counselling but did not have any cases in 2005. Those asking for assistance were mainly women (95%) with only a minority (5%) of men. Of the total, 169 cases (81%) involved women who were themselves either threatened to be forced to marry or already in a forced marriage. The rest were consultations for friends, relatives and other people in the social environment of the person being forced to marry.

Bearing all this in mind, the aim here is to evaluate what these numbers say about the scale of forced marriages. The total of 210 contacts that local organizations had with victims and persons close to victims of forced marriage obviously indicates that forced marriages take place or that there is a risk that they will take place. But this number cannot be taken to equal the total of forced marriage cases in the Hamburg area in 2005 due to two reasons. Firstly, the same persons can seek assistance and advice from different organizations and several persons can be involved in the same case. Therefore, the total is not necessarily the actual number of unique cases contacting organizations. Secondly, it is impossible to say anything about the relationship between the cases where organizations are contacted and those in which they are not. It seems justified to expect that there are also cases that do not become known to the social environment of the victims or the organizations, but we cannot really say anything about the number of these cases. So based on the number 210 it is impossible to say anything about the total number of cases in Hamburg, let alone in the rest of the country.

²¹⁶ Lawaetz-Stiftung (2006), p. 13-15.

²¹⁷ <http://www.lawaetz.de/>

Leaving the possibility of generalisation aside, it is, however, interesting that the organizations in this study have recorded who actually seeks help. In the majority of cases these are (potential) victims, amongst whom women form the majority.

IV. *United Kingdom: Cases registered by the government*

As the discussion on forced marriages has been active in the United Kingdom for quite a number of years, there are a lot of figures available on the issue. And yet, this does not mean that these figures are more well-defined or clear than in the other countries, only that there are more of them.

Forced Marriage Unit figures

Contrary to the other countries in the sample, the United Kingdom has a separate government office that deals with forced marriages, the *Forced Marriage Unit* (FMU) which is a joint unit of the *Foreign and Commonwealth Office* (FCO) and the *Home Office*. The numbers of the Forced Marriage Unit circulate widely in the discussions on forced marriages. Generally, the unit deals with 250 to 300 cases per year. Approximately 15% of these involve male victims.²¹⁸

The officials of the FMU do, however, say that the recording of cases has not been very accurate so far. In 2008 (up until October) 388 cases of forced marriage had come to the knowledge of the FMU, 192 of these concerning giving assistance to victims (171 times overseas, 21 in the United Kingdom), and 196 dealt with immigration.²¹⁹ In these latter cases, the FMU helped to prevent migration in a case of forced marriage so that the partner from abroad was not allowed to immigrate into the United Kingdom. In addition to these cases, the advice of the FMU was asked approximately 1,000 times in 2008, again up until October, by different organizations and individuals in the United Kingdom.

The advantage of these numbers is that, due to being centrally organised by the FMU, they certainly refer to unique cases. Therefore it is justified to conclude that there were at least 388 cases of forced marriage or threat of forced marriage in the United Kingdom or involving UK citizens abroad. Considering that there had been almost 400 cases in 2008 before October, it would seem that the number of cases coming to the knowledge of FMU is rising. The number in previous years has fluctuated between 200 and 350 for the whole year. It seems plausible that this increase is due to the increased activity on the part of the government or to increased awareness or changing perceptions of the victims.

It is not clear what the relationship is between the 388 cases in the first two-thirds of 2008 with the cases that go unnoticed. If the total number of known and unknown cases stays stable, the increase in the number of cases coming to the attention of the FMU would suggest that a greater part of the total is becoming known. But whether this is the current state of affairs, remains guess work at the moment.

The numbers do give some clues as to the nature of forced marriage. Firstly, the great number of cases involving immigration or assistance abroad indicates that much of the problem takes place outside of the United Kingdom. This dimension of forced marriages is not as clearly indicated in the numbers for the other countries in this study, although what is being measured is affected by who does the measuring. The FMU also does domestic work, but is most renowned for its services outside the United Kingdom. Logically, persons abroad are more likely to get into contact with the FMU. Additionally, the FMU figures explicitly include men as victims. Even though in the minority, the fact that men account for 15% of the cases in the

²¹⁸ Khanum (2004), p. 14.

²¹⁹ Personal communications with the FMU, November 2008.

FMU figures, does suggest that a considerable number of men are victims of forced marriages.

Luton study

Nazia Khanum's 2004 study on forced marriages in Luton also provides an estimate on the scale of the problem. In her inquiry on community organizations dealing with forced marriages, she found that altogether around 526 enquiries were made to the six organizations in the year of the study in Luton alone. Khanum estimates that more than 1,000 people in Luton are annually concerned with forced marriage. The estimate of 1,000 cases by Khanum is lower than the 10% estimate would lead us to expect (526 cases would be 10% of 5260 cases) because she suspects that the same people go to many organizations and are concerned about the same wedding. The estimate of 10% is based on an analogy with rape which is generally estimated to be registered in 10% of the actual cases.²²⁰ Within the current study, it was not possible to obtain any proof suggesting that this 10% would be based on empirical evidence. It seems most likely that the 10% is a random low figure that is meant to indicate that many or most cases of rape go unnoticed.

Khanum quite rightly expresses her doubts about the strength of the evidence provided by these 526 cases. In addition, it must be remarked that the method of extrapolation to the total of 1,000 cases seems to be a rhetoric way of stating that this is a serious problem rather than the result of any calculation.

Bradford City Council Statistics

Bradford, a city with a considerable South Asian migrant population where forced marriages are thought to be frequent, has made a link between the number of pupils absent from school and forced marriages. The City Council was alarmed about the more than 200 teenage girls that seemed to disappear per year who were feared to be forced to marry abroad. In the end, the City Council identified 205 children in the city who were not at school. Of these, 172 were tracked to an alternative location or known to be enrolled at a different school. Out of the total population of 89,000 school children in the city, 33 children have been out of school for more than 2 months.²²¹

It is not totally fair to set the 33 missing pupils against the whole school population since there is little reason to expect that the whole population would be at an equal risk of being forced to marry. It seems that girls from South Asian communities are more often forced into marriage than children from other groups. But then again, the 33 pupils were not necessarily forced to marry. Running away from home or dropping out from school are also possible reasons for teenagers not to be at school. The greatest problem with relying on school attendance numbers is that the relationship between such numbers and forced marriages is not clearly established. At the same time, such numbers can be indicative of forced marriages existing even though they do not say much about the scale of the phenomenon. Additionally, measuring forced marriages based on school numbers leaves persons above school age outside of the statistics. Neither is it clear whether some persons forced to marry continue to go to school when married, which would mean that the number of pupils missing does not give an indication of the size of the problem.

The 1,000 cases in the media

In addition to the numbers discussed above, the British media and actors involved in the debate on forced marriages often cite a figure of 1,000 cases per year. One scholarly source,

²²⁰ Khanum, op cit, p. 43.

²²¹ Kamguian (2008).

Na'im, also mentions this figure.²²² He says that even conservative estimates on forced marriage state that there are 1,000 cases per year and that the organization *Southall Black Sisters* thinks this is an underestimate. According to Na'im the figure 1,000 comes from a child abduction charity called Reunite, but they have not published this estimate anywhere. The same number is also often mentioned by the media.

These 1,000 cases would seem to be guess work since they are not substantiated anywhere or by anyone. Rather, the number is referred to as an estimate. A round number such as 1,000 is of course catchy and easy to name, but not necessarily true.

V. *Switzerland: Cases registered by NGOs*

For Switzerland there is only one study available which includes numbers. It was conducted in 2005 by the Lausanne-based NGO *Surgir*. Swiss organizations dealing with forced marriage were surveyed about the number of cases they had seen and registered in the last 5 years. By "cases" *Surgir* means victims of forced marriage, probably people who are forced to marry, even though the organization does not explicitly define the terms "case" and "victim". This was the first survey ever to be conducted on the topic of forced marriages in Switzerland. *Surgir* reports that there were 400 registered cases in the last 5 years, 140 of which took place after the 1st of January 2005. The organization does not know whether all the organizations register all the cases. The authors quite rightly point out that it is impossible to calculate the total number on the basis of these figures because it is not possible to say anything about the relationship between registered and unregistered cases.

So, just as is the case with the other figures on the number of cases registered by NGOs, caution should be exercised in drawing conclusions on the total number of forced marriages based on these figures.

Conclusion: Unclear definitions lead to unclear measurements

This chapter set out to answer the question of what numbers are available and what can be said about the issue based on these numbers. The above discussion shows that very little can be said about the actual magnitude of the problem based on the numbers available. The criticism of the figures demonstrates several problems inherent in trying to measure the total number of forced marriages. The fact that study after study encounters the same problems shows two things. On the one hand, it illustrates how difficult it is to measure the number of forced marriages because these are difficult to define due to the complexity of the phenomenon. On the other hand, the repetition of the same of problems demonstrates the necessity both the government and NGOs seem to feel to generate numbers. This necessity means that a choice is made to try to measure forced marriages instead of first trying to tackle the problems identified in previous research. The problems can be illustrated by two questions which are left unanswered: what is being measured and which time frame do these measurements refer to?

Six factors contribute to blurring exactly what it is that is being measured. Firstly, the definition of the object of study is crucial. As the German survey suggests, where fewer women agreed to having been forced than to having married against their will, the boundaries between forced and arranged marriages might be fluid for many respondents. The role that third parties play in bringing about a marriage is, then, probably not easily definable as forcing or arranging, where free will would be lacking in the first case and be fully present in the second. Not taking this into account makes it difficult to say in the end whether one is measuring

²²² An-Na'im (2000).

forced, arranged or some other kind of marriages. Secondly, the choice of population is partly responsible for the numbers a study provides. The Belgian and German studies examine forced marriages among a population of Turkish women; thereby beforehand excluding Turkish men as well as men and women from other ethnic groups. Additionally, it is often not clear at all what exactly is meant by the term “Turkish”. Such a study can therefore only say something about forced marriages among this unclearly defined subpopulation. Thirdly, some studies (Switzerland, Germany, France and the United Kingdom) focus on measuring ‘cases’ of forced marriage, but it is not always clear what constitutes a case and how one can measure these. Most notably, it is impossible to say, except in the case of the British FMU, that all cases are unique and that the same case has not been reported by several people. Fourth, some studies infer the number of forced marriages from figures on another subject. This is the case with the British numbers on school attendance. Doing so introduces an element of insecurity into the statistics because there is no way of knowing whether these cases are actually related to forced marriages. Fifth, many numbers, most notably the French ones, choose to extrapolate the number of forced marriages found in one population to another population. Numbers found in one area are projected to other areas without providing good arguments for doing so. It does not seem plausible that forced marriages would be equally prevalent everywhere. And finally, neither absolute numbers nor estimates provide a clear idea of the magnitude of the problem without some demographic information. Many European countries have migration populations where the second and third generations have reached marriage age in the period since the 1990s. Thus 10 forced marriages among a population with few young people is a different figure than the same number among a population consisting mainly of young people. Not only is the object of the study blurred, but also the time frame is often unclear, so that one does not know which time period the numbers refer to. The clearest example of this problem can be seen in surveys where respondents are asked about their life time experiences of forced marriage. The result is a number that does not say anything about the total number of forced marriages at any given point in time, except if the number is linked to the age at the time of the survey and age at the time of the marriage, but such measures were not undertaken in any of the studies discussed here. Additionally, it is possible that a marriage is initially not perceived to be a forced one, but only comes to be defined as such with hindsight. In the end, the only conclusion that can be made without hesitation is that most likely forced marriages occur in all the countries of the study.

Chapter Four

DEBATES ON FORCED MARRIAGES

This chapter aims at highlighting some of the points made in debates on forced marriage in the different countries. Chapter 1 dealt with the definitions of forced marriage and here it is the debates that these definitions originate in that are in the focus. The central question is: Are there public debates on forced marriages, and if so, what do these debates look like? The term ‘public’ refers here first and foremost to the views politicians voice in the media, mostly the printed press, and in political organs such as the national parliaments. In addition to the views of politicians, also the role of NGOs in the debates is discussed. This chapter does not provide a comprehensive view of all public debates on the subject, but merely outlines some of the contours of these in the period since the 1990s. A choice is made here for the plural use of ‘debate’ instead of singular because the aim is not to present ‘the’ entire debate, but merely some aspects of some debates. The discussion is based on a combination of newspaper articles and scientific articles where the scientific texts on debates, when available, structure the discussion (see Bibliography, VIII Media, for the materials used). And yet, the analysis presented here should not be dismissed as being totally separate from reality. As Wester argues, media materials make use of the same frameworks of meaning as the rest of society and thus say something about the socio-cultural reality they were produced in.²²³

One should also bear in mind that there are some points of view that are not likely to end up in papers. In some countries, NGO representatives are constantly asked for their reaction on any developments concerning forced marriages whereas in other countries mostly legal experts are featured in the press. The titles of the country paragraphs are meant to give the reader an impression of some of the dominant themes in the debates and not to suggest that these are the only or most important topics of discussion.

Much of the media publicity forced marriages receive concerns individual cases of forced marriage, sometimes in combination with an honour killing where a person, usually a girl, is killed after escaping the threat of a forced marriage. These can be survival stories such as the 2002 case of a Belgian Moroccan woman who managed to escape from a car in Spain as she was being transported to Morocco for marriage.²²⁴ But stories on forced marriage can also be tragedies where the refusal to marry finally results in the bride- or groom-to-be being killed, as was the case in the 1999 killing of Rukshana Naz in the United Kingdom.²²⁵ However important such stories might be in generating media publicity for forced marriages,²²⁶ they are not explicitly analysed here because that would require studying the meanings embedded in them and such an undertaking is beyond the scope of this study. Individual cases are included in the discussion when they have been generally influential in debates on forced marriage. On the whole, it is justified to say that these stories serve to trigger moral outrage and public attention on the issue of forced marriage.

The following discussion is organised around issues in the debates and consequently does not provide a chronological overview. This may make the debates seem static and unchangeable but the purpose of the analysis here is to inventarise some of the points of view on forced marriages.

²²³ Wester, (2006), p. 2.

²²⁴ De Standaard, 11 April 2002, Belgische ontsnapt aan gedwongen Marokkaans huwelijk.

²²⁵ Siddiqui (2005), p. 269-270.

²²⁶ Razack (2004, p. 150) even argues that these cases are the reason why European countries have started to design policy to tackle forced marriages.

In many countries, some form of criminalisation has been the topic of intense debate. What is meant in this chapter by criminalisation is less precise than in Chapter 2 on policy and legal measures. In public debates, the ideas on what exactly it is that should be criminalised and how this should be done are very diverse and by no means clear to all.

I. Belgium: Debate on restricting marriage migration

The following discussion on Belgian debates on forced marriage is mainly based on materials from the Flemish-speaking part of Belgium, *Vlaanderen* (Flanders).²²⁷ This preference for *Vlaanderen* implies a possible bias in the type of debates and points of view expressed that are included in this study. Gily Coene and Chia Longman think that, due to the federal structure, there is not one single easily identifiable debate on forced marriages in Belgium. The French-speaking provinces (together referred to as *Wallonie*) have imitated the French approach of assimilation and integration in their approach to migration and multicultural issues, whereas the Flemish speaking provinces have been more drawn to the Dutch and Anglo-Saxon approaches of multiculturalism where ethnic minority policies are dominant.²²⁸

Belgian scientists, journalists and politicians have, at least since 2002, often raised the issue of marriage migration in public. It is frequently defined as a social problem because it is assumed that migrants will not integrate into Belgian society if they continue to marry partners from outside. The link between marriage migration and forced marriage consists of the general assumption that forced marriages form an inherent part of marriage migration, and marriage migration, and with it forced marriage, is perceived as incompatible with the principles of Western liberal democracies.²²⁹ Marriage migration is considered unacceptable amongst others because it is assumed that it is always connected to forced marriage. Bart Somers, from the liberal party VLD, has criticised marriage migration and his comments seem to be based on the idea that every case of marriage migration constitutes a forced marriage.²³⁰ Since the connection between marriage migration and forced marriages is mentioned often, debates on marriage migration are partially about forced marriages.

It is somewhat surprising that in the Belgian (Flemish) context especially socialist politicians, members of the *SPA* (*Sociaal Progressief Alternatief*), have criticised marriage migration and the existence of forced marriages. Traditionally, in many West European countries it has been the parties on the right side of the political spectrum that have taken up a critical position towards migrants (for example Jean-Marie Le Pen and his *Front National* in France). Robert Voorhamme, the chairman of SPA in Antwerp at the time, states that the practice of marriage migration conflicts with universal values, such as that of equality, and hinders integration. Marriage migration would, then, disadvantage women because they are always forced to marry when they take part in this type of migration. Mimount Bousakla, another SPA politician, argues that marriage migration reverses the process of integration. Migrants have to constantly start the process of integration all over again because the partner who has immigrated does not speak any Flemish and may be poorly educated. Bart Somers sees the high number of migrants seeking partners abroad simply as unacceptable.²³¹

In addition to linking forced marriage with marriage migration in general, many public opinions and statements on the topic name marriages of convenience and forced marriages together, thereby implicitly suggesting that these are linked. The publicity around the Registry

²²⁷ This bias is due to the difficult electronic access to Belgian newspapers from the Netherlands.

²²⁸ Coene/Longman (2008), p. 308-309.

²²⁹ Coene (2005), p. 61 and 65.

²³⁰ Loobuyck (2004).

²³¹ Ibid. & De Standaard, 2 Oct. 2002, Interview. Mimount Bousakla, SP.A-districtschepen in Antwerpen: "Maak gedwongen huwelijken strafbaar".

Office units against marriages of convenience (*Cel schijnhuwelijken*) often describes these as units against both forced marriages and marriages of convenience.²³² The initial 2004 initiative of Mimount Bousakla and Ludwig Vandenhove to criminalise forced marriages was also aimed at tackling both forced marriages and marriages of convenience.²³³

Many Belgian debates have revolved around the criminalisation which finally occurred in 2008 when forcing someone to marry became a specific criminal offence. In 2004, MP Mimount Bousakla took the first initiative in that direction. Both the initiative and Bousakla's person as a migrant whose parents also wanted her to marry someone else have received a lot of media attention since 2002 when she began appealing for criminalisation.²³⁴ Her motivation for this initiative was to give a clear signal that forced marriage is unacceptable.²³⁵ Additionally, Bousakla says that another reason not to accept forced marriages is that they serve purposes that are not meant to be served by a marriage as many forced marriages take place in order to gain a residence permit.²³⁶ The PS member Jean-Baptiste De Créé, the alderman (*schepen*) responsible for the Registry Office (*burgerlijke stand*) in Brussels, stresses the need for criminalisation because a forced marriage might, according to him, result in an honour killing.²³⁷

Others do not agree with Bousakla's initiative. Sultan Balli, a psychologist from the NGO *Steunpunt voor allochtone meisjes* (Support Centre for migrant girls), thinks it is impossible for outsiders to detect force being used in marriage matters. Many things are confused in debates on criminalisation so that all arranged marriages are defined as problematic, even though this is not necessarily the case.²³⁸ Additionally, within the migrant community, forced marriages are in the minority. Balli admits that every case is of course one case too many, but forced marriages are still the exception, and not the rule.²³⁹

Whereas NGOs have not contributed significantly to debates on forced marriages, they have done a lot in terms of giving publicity to it and integrating opposition to forced marriage into their activities. In 2008 the *Koning Boudewijn Stichting, KBS* (King Baudouin Foundation) initiated a campaign to inform migrant youth about the potential dangers of marriages in Morocco and Turkey. The campaign consists of workshops in schools and the distribution of a brochure at schools, organizations and by professionals who have contact with young people.²⁴⁰ The SAMV (*Steunpunt Allochtone Meisjes en Vrouwen* Support Centre for migrant girls and women) has attempted to give attention to the problems revolving around marriage migration and forced marriages, especially among migrant girls, by publishing information brochures on relationships and what to do in an undesired situation.²⁴¹ Both the socialist trade union ABVV (*Algemeen Belgisch Vakverbond*) and the socialist women's organization SVV (*Socialistische Vooruitziende Vrouwen*) have argued for including gender based violence, such as forced marriage, as grounds for quick naturalisation.²⁴²

²³² De Standaard, 27 Oct. 2004, Lokeren wil meldpunt schijnhuwelijken.

²³³ Coene (2005). Als de schijn bedriegt? Culturele, juridische en politieke normativiteit inzake huwelijks-migratie. In: Caestecker (ed.), *Huwelijksmigratie, een zaak voor de overheid?*, p. 65.

²³⁴ De Standaard, 2 Oct. 2002.

²³⁵ De Standaard, 1 April 2004, Elk slachtoffer is er een teveel.

²³⁶ Ibid.

²³⁷ De Standaard, 10 May 2005, Brussel begint campagne tegen gedwongen huwelijken.

²³⁸ De Standaard, 5 June 2004, Importhuwelijken bemoeilijken de integratie van migranten.

²³⁹ De Standaard, 8 July 2006, Bang voor de zomervakantie.

²⁴⁰ Gazet van Antwerpen, 14 May 2008, Campagne moet jongeren wapenen tegen gedwongen huwelijk. To download the brochure: [http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05\)_Pictures,_documents_and_external_sites/09\)_Publications/PUB2008_1793_VakantieHuwelijk.pdf](http://www.kbs-frb.be/uploadedFiles/KBS-FRB/05)_Pictures,_documents_and_external_sites/09)_Publications/PUB2008_1793_VakantieHuwelijk.pdf)

²⁴¹ Fermont (2006).

²⁴² Perrin/Stockmans (2008), p. 59 and 65.

II. France: Debate on cultural practices

The intense debates of forced marriages began in 2002. The presidential election of 2002 was followed by a political turnaround to a more restrictive immigration policy (see Chapter 2). At the same time, the death of Sohane, a 17 year old daughter of Algerian parents, in Vitry-sur-Seine led to campaigning against migrants where women were often the central topic.²⁴³ An example of such campaigning is the widespread resistance against veiling.²⁴⁴ Veena Meetoo and Heidi Safia Mirza point out that women and their bodies occupy a key position in debates on cultural differences where women are seen as the symbol of the threat of the cultural other.²⁴⁵ Certain gender specific types of violence, such as female circumcision, usually referred to as *mutilations sexuelles féminines* (female genital mutilation) by the organizations and domestic violence are thus defined as migrant problems.²⁴⁶ Central points and problems in the debates on forced marriages are the integration of migrants and cultural diversity within the French Republic. Also, numbers on forced marriages and gender specific violence play a special role here. So far, the debate has mainly led to policy outcomes and has resulted in the reform of the civil and migration law, but not in criminalisation. The members of Parliament consider the existing criminal law sufficient and view the introduction of a specific offence as counterproductive.²⁴⁷

The French debates on forced marriages can best be understood within the context of a more general societal debate on cultural practices. France has a long tradition debating its republican values, such as the earlier mentioned notion of *laïcité*, the strict separation between the church and the state. These values have come under pressure as a result of recent developments, such as the debates on the meaning and use of the veil by Muslim women. This custom is often interpreted as an act of bringing religious symbols into the public space where they do not belong. Whereas veiling was not yet a major issue in the 1980s, back then there was a heated intellectual debate on the possibilities of reconciling traditional republican principles with ethnic and cultural diversity, especially with regard to North-African migrant communities. Even though France has long been an immigration country due to its colonial past, it were the social and economic problems and the heightened European Integration of the 1980s that made the French society conscious of the presence of migrants because they were blamed for causing these problems. Especially the presence, practices and culture of Muslim migrants from North Africa are highly problematised.²⁴⁸

Two poles, as it were, define the area of debate. On one side, immigrants are expected to become full citizens where there is no room for the practice of religion in the public sphere because this disturbs the fundamental separation of church and state (*laïcité*). The practices and customs of Muslims are often perceived to be religious, regardless of whether they really are that. Cultural and religious specificity therefore fall together and both of them are perceived as a problem for *laïcité*, even when Muslims are not involved.²⁴⁹ What takes place in the private sphere in terms of cultural or religious practices is not a matter for the state, according to this view. On the other side, behaviours that are perceived as violence against women - such as polygamy, forced marriage and female circumcision - are increasingly considered a chal-

²⁴³ Le Figaro, 2 oct. 2003, Polygamie, mariages forcés, excision: un défi pour la République.

²⁴⁴ Sohane's death sparked off the establishment of the women's rights organization *Ni Putes Ni Soumises* (Not whores nor prostitutes).

²⁴⁵ Meetoo/Safia Mirza, (2007).

²⁴⁶ Da Silva (Oct. 2004). France: outsider women. *Le Monde Diplomatique* (magazine), Oct. 2004.

²⁴⁷ Le Figaro, 14 Dec. 2005, Mariages forcés: il faut oser dire non!; Le Figaro, 24 Nov. 2005, Droit de la famille. La mission famille s'attaque aux mariages forcés. Des parlementaires proposent de renforcer les possibilités d'action des parquets contre les mariages forcés.

²⁴⁸ Jennings (2000), p. 575-598.

²⁴⁹ Martiniello (1998), p. 911-916.

lenge for the Republic because they are expressions of cultural specificity and go against the equality between men and women.²⁵⁰

The shift towards paying more attention to forced marriages and seeing these, together with other forms of violence directed at women, as problematic is also illustrated in the position of the philosopher Blandine Kriegel, the president of the High Council of Integration (*Haut Conseil à l'intégration*) who thinks that France has privileged cultural diversity too much.²⁵¹ As a consequence, the question of forced marriage has been connected to the debates on integration *à la Française*. The necessity of governmental intervention has been argued for and justified with high numbers that are based on problematic extrapolation (see Chapter 3). Alfred Dittgen, Emeritus professor at the university of Paris-I (*Professeur émérite université Paris-I*), emphasises how problematic this is in his article “Bonnes causes, mauvais chiffres” (Good causes, bad numbers) where he expresses his scepticism about the common use of the alarming figure of 70,000 (potentially affected) victims brought forth by the HCI: “Pour faire avancer une cause, il faut la présenter avec un chiffre”.²⁵²

The perspective of the migrant women themselves is the focus of sociologist Smain Laacher. She points out that the reality of domestic violence against migrant women is concealed by the polemic debates about the Islam and *laïcité*.²⁵³ The network of NGOs *Réseau Agir avec elles*²⁵⁴ founded in 2005 aims at informing the public and gaining more weight in the public debate – and approaching forced marriages separately from their cultural dimension. The slogan of the network is very informative in this respect: “With or without a veil: young Muslims emancipate themselves. Alliance against forced marriage”.²⁵⁵ The Republic, *laïcité*, culture and violence against women take centre stage in French debates on forced marriages.

III. Germany: Debate on integration

In Germany, NGOs, such as *Papatya* which focuses on migrant women, have played an important role in the general discussions on forced marriages that have emerged as a result of the 48 honour killings that have occurred since 1996.²⁵⁶ Following a 2003 campaign by the women’s organization *terre des femmes* called *Zwangsheirat ist keine Ehrensache*,²⁵⁷ the issue of forced marriages was debated in parliament (*Bundestag*). The 2005 case of Hatun Sürücü, a Kurdish girl from Berlin, who was forced to marry, escaped and became the victim of an honour killing, received a lot of attention in the media. This led to a public debate on forced marriages, patriarchal ideas on gender and authoritarian family structures which were perceived to be especially prevalent among migrants.²⁵⁸ The popularity of autobiographical books or of famous women from the Turkish community, such as the sociologist Necla Kelek

²⁵⁰ Le Figaro, 3 oct. 2003, La barbarie dans la République, Répudiations, mutilations, mariages forcés. Le Figaro, 2 oct. 2003, Polygamie, mariages forcés, excision : un défi pour la République; Le Figaro, 14 dec. 2005, Nouvelle dénonciation de la polygamie: where MP’s Chantal Brunel (UPM) stated: « La polygamie est pour l’épouse un mariage forcé, donc une violence incontestable ».

²⁵¹ Le Figaro, 2 oct 2003. On a trop privilégié la diversité culturelle.

²⁵² Alfred Dittgen, Bonnes causes, mauvais chiffres, June 2008, <http://www.gisti.org:80/spip.php?article1253>. Translation: “To advance a cause, one has to present it with a number”.

²⁵³ La Croix, 22 Sept. 2008, Ce que des femmes de l’immigration disent des violences familiales.

²⁵⁴ Several associations like the 2003 established movement ‘Ni putes ni soumises’ and ‘l’AfeF’ (Association Fatoumata pour l’émancipation des femmes) as well as the NGO’s like GAMS (Groupe pour l’abolition des mutilations sexuelles), Voix de femmes and Elélé (consarée à la communauté turque) are participating in this network.

²⁵⁵ La Croix, 3 June 2008. Dossier. Voilées ou non, les jeunes musulmanes s’émancipent.

²⁵⁶ *Papatya* cites this number. The killings are partly the result of women fleeing from forced marriages.

²⁵⁷ Translation: “Forced marriage is not an honourable cause”.

²⁵⁸ Bielefeldt (2005), p. 4; Frankfurter Rundschau, 17 July 2003, Der Griff in die Mottenkiste. Patriarchale Traditionen sind in der Fremde zu Hause.

or the women's rights lawyer Seyran Ates, has also been very influential in debates on forced marriages.²⁵⁹ According to Heiner Bielefeldt and Petra Folmar-Otto, researchers at *Deutsches Institut der Menschenrechte* (the German Institute for Human Rights, DIMR), the discussions on forced marriages generally concern multiculturalism so that the same participants play a key role in the intellectual debates on both subjects.

First and foremost, forced marriage is considered a human rights issue (see Chapter 1) and debated in the context of violence against women. In this context, a study published by the *Bundesministerium für Familie, Senioren, Frauen und Jugend* (German Ministry of Family Affairs, Senior Citizens, Women and Youth) states that 42% of all women in Germany have been victims of domestic violence (see Chapter 3 for numbers on migrant women).²⁶⁰

Public discussions focus mainly on possible criminalisation measures where the necessity of such measures is argued by defining forced marriages as a violation of human rights.²⁶¹ On the one side, especially Kelek and Ates have voiced support for the need to criminalise this practice. They emphasise that a forced marriage is essentially the same as an arranged marriage in that both are products of the same patriarchal logic.²⁶² Political parties, such as the SPD and the CDU/CSU, also argued for a prohibition on forced marriages in their election programmes for the *Bundestag* elections of 2005.²⁶³ On the other hand, criminalisation has been criticised for being a part of symbol politics that does not do anything to help the victims. One can consider the introduction of forcing someone to marry as a specific offence in 2005 as a first outcome of the debate. Since then, debates have mostly focussed on how to prevent forced marriages. Mainly three types of measures are discussed: changes in migration law, tightening criminal law and changes in civil law.²⁶⁴ The platform of the *Nationale Integrationsplan* (NIP; see Chapter 2) has come to the conclusion that creating a specific offence will not solve the problems of the people affected and cannot replace the necessary prevention and crisis intervention measures.²⁶⁵ According to NGOs, a part of the problem is that appropriate police structures are missing and specialised shelters – not just women's shelters – are not available to guarantee confidentiality and psychological assistance. Regular women's shelters are not sufficient for this purpose. Therefore, the development and extension of prevention and intervention measures are of crucial importance. In addition, *Terre des Femmes* calls for protection for victims abroad: an independent right to return should be established for cases of forced marriage where the right of residence has expired after six months abroad.²⁶⁶

Political debates on forced marriage have partly focused on the multicultural society and the question how this concept can be combined with the existence of phenomena such as forced marriage. The debate takes place between two points of view that can best be characterised by the terms 'multiculturalism' and the so-called *Leitkultur*.²⁶⁷ The latter term was suggested by the spokesman of the CDU in parliament as the one element that should bind all Germans to-

²⁵⁹ Frankfurter Rundschau, 17 July 2003, Das Portrait: Mutig, Serap Cileli. About the author of the book "Wir sind Eure Töchter, nicht Eure Ehre".

²⁶⁰ BMFSFJ (2008).

²⁶¹ Bielefeldt/Follmar-Otto (2007), p. 17-18.

²⁶² Taz, die tageszeitung, 18 July 2003, Grünen-Fraktion gegen Heirat wider Willen. taz, die tageszeitung, 2 Oct. 2004, Bei Hochzeit Knast. Baden-Württemberg stellt einen Gesetzentwurf gegen Zwangsheirat vor. Die Welt, 26 Feb. 2005, Necla Kelek: Eure Toleranz bringt uns in Gefahr.

²⁶³ Frankfurter Rundschau, 16 Oct. 2004, Wenn das Jawort nicht freiwillig kam: SPD und Grüne wollen die lang ignorierte Zwangsheirat als Straftatbestand ins Gesetzbuch aufnehmen.

²⁶⁴ Bielefeldt/Follmar-Otto (2007), p. 15 f.; Stuttgarter Zeitung, 15 Oct. 2003, Das Recht hinkt hinterher; Die Welt, 15 March 2005, Koalition und Grüne sagen Zwangsehen den Kampf an.

²⁶⁵ NIP (2007), p. 89.

²⁶⁶ Frankfurter Rundschau, 20 Feb. 2006, Kritik an Bundesratsplänen zu Zwangsheirat, SPD bemängelt „Symbolpolitik“ / Grüne verlangen längere Frist beim Rückkehrrecht.

²⁶⁷ Taz, die tageszeitung, 3 Dec. 2004, Das Leid mit der Leitkultur.

gether and stand above other cultures.²⁶⁸ Multiculturalism, the notion that a society with more cultural communities than one is possible, is mostly criticised in these debates. The issues of forced marriage and honour crimes are then used as examples of the problems that are inherent to such co-existence of cultures. The philosopher Heiner Bielefeldt points out that ‘cultural tolerance’ should not go as far as to condone violence.²⁶⁹ Necla Kelek has voiced severe resistance to the concept of a multicultural society because it seems to facilitate forced marriages. According to her, the solution lies in making migrants understand the values and principles of a democracy.²⁷⁰

On the one hand, integration and the lack thereof is perceived by some as the general problem that causes forced marriages; but on the other hand, forced marriages are also seen as hindering integration.²⁷¹ The academics Yasemin Karasaksoglu and Ursula Boos-Nünning, editors of the 2004 study “Viele Welten leben. Lebensrealitäten von Mädchen mit Migrationshintergrund jenseits von Zwangsverheiratung und Ehrenmorden” criticise the portrayal of honour killings and forced marriages mainly as integration problems of Turkish women.²⁷² They point out that increased domestic violence against Turkish women is caused by their social position.²⁷³ According to them forced marriages (as far as they become public) are mainly an expression of a traditional patriarchal, often even tribal understanding of family which does not grant daughters and sometimes even sons any right to self-determination.²⁷⁴ According to NGOs, in practice forced marriages seem predominantly to take place in vulnerable families with social problems, a disturbed parent-child relationship or insecure right of residence, where domestic violence is also an issue. Organizations such as *Papatya* in Berlin and *El ELE* – a centre for migration – see forced marriage as an issue connected to violence and thus to power.²⁷⁵

IV. United Kingdom: Debate on protecting victims

Debates on forced marriages began following a number of public cases of honour killings, particularly the death of Rukshana Naz in 1999. There was a public outcry about this and other high-profile cases.²⁷⁶ Most notably, the migrant women’s organization *Southall Black Sisters* (SBS) asked for public attention for the problem and demanded an inquiry. This led to the establishment of the *Home Office Working Group on Forced Marriage* in 1999. The role of NGOs has been important not only in initiating the debate. More generally, organizations of Asians and of Muslims are often asked for their opinion in cases of forced marriage in the media. Additionally, it seems that women’s organizations have exerted a lot of actual influence on the government. The fact that the government backed down on its policy of criminalisation in 2006 and chose to support the FMCPA 2007 is a case in point (see Chapter 2 for details).²⁷⁷

The central issues in debates on forced marriages have to do with the definition of the problem and the policy that should be taken up to tackle it. British debates seem to be shifting from considering forced marriage a cultural practice to seeing it as a form of domestic vio-

²⁶⁸ For more on the Leitkultur debate, see: Hartwig (2005), p. 39-52. Carle (2007), p. 147-154.

²⁶⁹ Bielefeldt (2005), p. 4 ff.

²⁷⁰ Kelek, „Die fremde Braut. Ein Bericht aus dem Inneren des türkischen Lebens in Deutschland“ 2005.

²⁷¹ Stuttgarter Zeitung, 31 Oct. 2005, “Viele Schandmorde werden als Freitod getarnt.”

²⁷² Frankfurter Rundschau, 10 March 2005, Debatte: Musliminnen in Medien; Stuttgarter Zeitung, 23 Oct. 2006, Nadeem Elyas: Der Islam vertritt moderne Menschenrechte.

²⁷³ See Karasaksoglu (2006), p. 22.

²⁷⁴ Toprak (2005).

²⁷⁵ See also the 6. Lagebericht (2005), p. 296.

²⁷⁶ Siddiqui (2005), p. 269-270.

²⁷⁷ Forced Marriages Civil Protection Act.

lence.²⁷⁸ The issues of criminalisation and – recently – of restricting migration rules have been reserved a central position in the debates.

The *Home Office* perceives forced marriages as a “violation of internationally recognised human rights standards and a form of domestic violence” and distinguishes it from arranged marriages (see Chapter 1).²⁷⁹ This way forced marriages are linked to human rights and domestic violence. The problem of the definition and distinguishing between forced and arranged is emphasised by Rahila Gupta, a member of *Southall Black Sisters*, when she urges “to question the very concept of marriage in our communities, and acknowledge not just that there is a fine line between arranged and forced marriage but that the underlying logic of the first opens the door to the second.”²⁸⁰ According to her, it is difficult to distinguish between forced and arranged marriages because these are intrinsically connected. Representatives of the Asian and Muslim communities on the other hand stress that forced marriage is not a Muslim practice and that Islam does not condone it, contrary to arranged marriages.²⁸¹ In addition, some representatives of especially religious groups have said that the focus in public debate, media and government policy on forced marriage and honour killings is motivated by British racism towards the Asian community.²⁸² Migrant women’s organizations define the problem rather as one that has to do with patriarchal gender relations and stand generally for a more pro-victim viewpoint whereas as MPs and government organizations consider community leaders, such as representatives of religious groups, to be important discussion partners.²⁸³ David Blunkett, the *Home Secretary* at the time, characterised the problem of forced marriages as an issue of integration and culture.²⁸⁴ He argued that minority youth should find a partner in Britain to enhance their integration.²⁸⁵ In 2003 he supported the views of some labour MPs (such as Ann Cryer from Keighley)²⁸⁶ who called for more immigration controls to tackle issues such as forced marriage. Blunkett’s views on integration and his definition of the lack of British values being the central problem causing forced marriages have been fiercely criticised. According to Blunkett, forced marriages will probably disappear as ethnic minorities “accommodate” themselves to life in modern Britain, a process which includes accepting the broader values of British society. Especially the fact that he compared forced marriage to practices in Medieval England that would disappear with development, has been much criticised.²⁸⁷

Most political parties agree that forced marriages should be abolished. Some MPs consider forced marriages an obstacle on the way to integration for migrants, which is why they should be abolished by law. In these debates, explicit references are often made to colonial practices, such as the widow burning *sati*, and to how the United Kingdom as a colonial power also managed to abolish disreputable practices elsewhere.²⁸⁸ The *Minister of State* in the *Home Of-*

²⁷⁸ Siddiqui (2005); Gupta (2006). The Guardian, 20 June 2006, Pressure and appeasement: No one defends forced marriage, but then those who practice it don't recognise the label.

²⁷⁹ Home Office (2006), p. 7.

²⁸⁰ Gupta (2006).

²⁸¹ The Guardian, 4 April 1996, A marriage made in hell; Abdulwahid, H., The Independent, 23 July 1998, Letter: Islamic marriage; The Guardian, 5 Aug. 1999, Focus on forced Asian marriages.

²⁸² The Guardian, 13 Nov. 2002, Forced marriages increase in Asian community; The Mirror, 10 Dec. 2001, Blunkett’s baseless views will harm race relations.

²⁸³ SBS criticised the commission for not prioritising the survivors and victims and for stressing the importance of contact with religious and community leaders instead. Siddiqui (2005), p. 269-270.

²⁸⁴ Razack (2004), p. 154.

²⁸⁵ Siddiqui (2005), p. 272-273.

²⁸⁶ Keighley is an election district close to Bradford, a city with a sizeable Asian migrant community.

²⁸⁷ The Guardian, 1 June 2002, Blunkett backs rightwinger on integration; Independent on Sunday, 10 Feb. 2002, Never marry for love.

²⁸⁸ Wilson (2007), p. 31.

fice, Baroness Scotland, said that specific legislation could harm victims who might avoid seeking help for fear of their parents being jailed.²⁸⁹ At the beginning of 2006, the government introduced a proposal for a law to specifically criminalise forced marriages.²⁹⁰ This proposal was met with fierce criticism from women's organizations who stated that such a law would probably prevent women from reporting and that in any case no one would report a case of forced marriage. Furthermore, a new criminal law would not have any added value: all the provisions of a criminal law are already included in existing legislation. SBS argued that rather more money would be needed for shelters and guaranteeing the safety of victims. As a result, the government backed down in the end.²⁹¹

In the discussion on the *Forced Marriage Protection Act 2007* (The Lester Bill) *Justice Minister* Prentice said that the law was "a powerful tool" and would guarantee that no one would be forced into marriage. Shaminder Ubhi, director of *Ashiana Network* which supports migrant women experiencing domestic violence, welcomed the act. He acknowledged that not all people would want to seek legal help, but said that at least the act would send a clear message that forced marriage would not be tolerated and perpetrators would be held accountable. The conservatives, however, thought the act did not go far enough and would criminalise forced marriages if they were in power. *Shadow minister for community cohesion*²⁹² Warsi said she knew victims who said that in those circumstances seeking a court order is the last thing on their minds, meaning that more powerful measures are needed than those available in the FMCPA 2007.²⁹³

In the recent debate on the reform of the migration law, the issue of forced marriage is only one part of the approach. The NGOs mentioned have a different influence on different measures. For example, the age limit of 21 years was introduced even if concerns about discriminatory effects were raised in the consultation process. On the other hand, the proposals for language requirements were postponed after mainly negative consultation responses from the NGOs (see Chapter 2).

V. *Switzerland: legalistic debates on criminalisation*

Judging by the materials used here, Swiss debates on forced marriages have mostly taken place in the parliament and have focused mainly on criminalisation. This means that most articles dealing with forced marriage are descriptions of what has been discussed in parliament regarding legal restrictions on forced marriages. In addition to news coverage of individual cases of forced marriage, much of the publicity for the issue consists of descriptions of debates in parliament. Just as is the case in the sphere of legal developments (see Chapter 2), many Swiss debates seem to have been influenced by German ones and German speakers such as Necla Kelek are much wanted guests in Switzerland, as is clear from the media coverage given to her appearances.²⁹⁴ This impression may also be caused by the fact that the Swiss experts themselves constantly compare their debates and the media coverage of forced marriages with Germany.²⁹⁵ In the materials analysed here, two issues are the focus of debate: the criminalisation of forced marriages and the problems of a multicultural society, of which forced marriage is an example.

²⁸⁹ The Guardian, 8 June 2006, Law on forced marriage could harm victims.

²⁹⁰ To be clear, this is a different legislative proposal than the so-called Lester Bill of 2007 that proposed a civil law approach to tackling forced marriages,

²⁹¹ Wilson (2007), p. 34.

²⁹² The minister for 'community cohesion' in the shadow cabinet of the opposition.

²⁹³ BBC, 25 Nov. 2008. News laws against forced marriages.

²⁹⁴ Neue Zürcher Zeitung, 19 Aug. 2006, Nicht auf die Opferrolle festgeschrieben.

²⁹⁵ Zwangsheirat: Was tun andere. http://www.zwangsheirat.ch/was_tun_andere/schweiz.php (18 Dec. 2008).

Some members of parliament, especially from the right wing *Freisinnig-Demokratische Partei der Schweiz*, FDP,²⁹⁶ have spoken out in favour of criminalising forced marriages. Erika Forster, a member of the *Ständerat* (the first chamber of parliament) for the FDP, was also the first politician to take the initiative to move towards criminalisation. According to her, criminalisation is a matter of giving a signal to migrant communities that forced marriage is not allowed in “unserem Kulturkreis” (our culture).²⁹⁷ Helga Klee, also from the FDP, supports criminalisation because a marriage that is entered without full consent is a serious violation of a person’s personal freedom.²⁹⁸ Yet another FDP member, Trix Heberlein, also a member of the *Ständerat*, said in 2008 that a criminal law on forced marriage is necessary because a forced marriage robs its victims of their right to decide over themselves and of their basic value as humans. Forced marriages are, then, not an expression of a right to be different which is why they should be forbidden by criminal law.²⁹⁹

But not all people speaking publically about forced marriages are in favour of criminalisation. Rifa’at Lenzin, a scientific expert on Islam, stresses that sending out a signal to migrant communities is not a good argument for criminalisation because migrants do know that forced marriage is neither allowed nor accepted in Switzerland. She concludes that the solution lies in a better integration of migrants into Swiss society because when better integrated, migrants will not deem it necessary anymore to arrange their children’s marriages.³⁰⁰ Lenzin says here, in essence, that all parental involvement in a marriage is problematic, not only the aspect of forcing. Legal experts in particular have opposed criminalisation in public debates. Stefan Trechsel, emeritus professor in criminal law at Zurich University, commented in 2005 on plans for criminalisation that this was purely a case of political activism and would lead to an unnecessary increase in the number of laws that was already extremely high.³⁰¹ He added that criminalisation would be useless because the existing laws offered enough possibilities for punishment. For Trechsel, the real problem is finding the actual forced marriages since victims do not dare to come forward.³⁰² Marcel Niggli, professor of criminal law in Freiburg, thinks parents will not let themselves be scared off by higher punishments which would result from criminalisation. Minister of Justice Blocher says that criminalisation might even stop some victims coming forward because they would not want to let their family be punished. Grace Schild Trappe from the *Bundesamt für Justiz* (Ministry of Justice) assumes that criminal law would not take away the fears of victims and concludes that, instead of criminalisation, more needs to be done to help the victims.³⁰³ So far, debates on criminalisation have not led to changes in criminal law.

In some public debates, forced marriage is included as one of the perceived problems of a multicultural society. In the above mentioned discussion on criminalisation and many times after it, Erika Forster has emphasised that forced marriage is not only unacceptable, but also goes against our Western values which migrants should adopt as their own.³⁰⁴ In 2007, Christian Waber, a Member of the Parliament for the EDU³⁰⁵, a Christian rightwing party, criticised Islam in public for being an inhumane religion with its forced marriages and encouragement

²⁹⁶ In French: *Parti radical-démocratique suisse* (PRD); In Italian: *Partito liberale radicale svizzero* (PLR); In Romansh: *Partida liberaldemocrata svizra* (PLD).

²⁹⁷ Neue Zürcher Zeitung, 25 Sept. 2005, Zwangsheiraten sind mit Gesetzen nicht zu verhindern.

²⁹⁸ Klee, H. Endlich: Bundesrat will gegen Zwangsheirat vorgehen. Tagblatt, 17 Nov. 2007.

²⁹⁹ Tagblatt, 10 June 2008. “Arrangiert” heißt nicht “mit Zwang”.

³⁰⁰ Neue Zürcher Zeitung, 25 Sept. 2005.

³⁰¹ The original statement was: “Reiner politischer Aktivismus und unnötige Erhöhung der Gesetzesflut”.

³⁰² Neue Zürcher Zeitung, 25 Sept. 2005.

³⁰³ Neue Zürcher Zeitung, 25 Sept. 2005.

³⁰⁴ Blocher, C. Asypolitik auf der harten Linie. Neue Zürcher Zeitung, 8 March 2005.

³⁰⁵ *Eidgenössisch-Demokratische Union* (Federal Democratic Union Party).

of children and youngsters to take up suicide attacks.³⁰⁶ Here forced marriage is lumped together with all things negative to come out of Islam, from Waber's point of view. One of the few persons with a migrant background in the materials analysed here, Lathan Suntharalingam, a Tamil member of the SP,³⁰⁷ turns against what he calls "die verbreitete Schönfarberei", the widespread whitewashing in contacts with migrants who are treated too kindly by the government. Many Tamils are unaware of forced marriages being prohibited which is why they need to be mentioned explicitly in the law; many people think they are simply acting in the best interest of their children.³⁰⁸ The fact that Tamils are often mentioned in connection with forced marriages means that the link between migrants, Islam, and forced marriages is not inevitable in Switzerland. Tamils, often portrayed negatively in the media, are Hindus, Muslims and Christians. A slightly different point of view is represented by Rifa'at Lenzin, the Islam specialist referred to above. According to her, it is vital to include mediators or middle persons who are familiar with the specific background of migrants in tackling forced marriages. Respected persons, such as imams, should take up a mediating role in tackling the problem.³⁰⁹ In all of these commentaries, forced marriages are perceived of as a problem that has to do with a certain culture or migrant group.

NGOs as such have not played a remarkable role in the debates on forced marriage analysed here. Some representatives of NGOs have, however, had their say. The director of *Terre des Femmes*, Regina Probst, claimed that 50% of all Muslim girls in Switzerland married someone they have not totally freely chosen, a statement that turned out not to have any basis in reality. Some employees of women's shelters have also spoken out on the topic. For example, Talitha Widmer from the women's shelter in Zurich (*Mädchenhaus Zürich*) argued that forced marriage is a social and cultural, but not a religious phenomenon.³¹⁰

NGOs have, however, done a lot to give publicity to forced marriages. The NGO *Terre des femmes* included forced marriage as a part of its campaign against "Crimes in the name of honour" and organised a petition to support the criminalisation of forced marriages.³¹¹ The multicultural forum for migrants (*Verein Polit- Forum Zentralschweiz*) established in 2005 has taken up the theme of forced marriages and dedicated a project to it.³¹² Another NGO, the forum for a moderate Islam (*Das Forum für einen fortschrittlichen Islam*) was established in 2005 and is to work, amongst other things, on providing counselling for Muslims who struggle with problems having to do with their traditional families, such as forced marriages.³¹³

Surgir, the Lausanne-based NGO, not only conducted the first ever quantitative study on forced marriages in Switzerland (2006), but also started an awareness campaign by means of posters in Geneva, Fribourg, Vaud and Neuchatel (French areas of Switzerland) to inform the victims about possibilities for seeking help, possibilities such as the *Surgir* help line.³¹⁴ In addition to *Surgir*, the Zurich-based project *zwangsheirat.ch* also helps victims of forced marriages while also working on a better scientific understanding of the problem of forced marriage.

³⁰⁶ Neue Zürcher Zeitung, 20 May 2007, Heilsarmee distanziert sich von EDU-Nationalrat Christian Waber.

³⁰⁷ Sozialdemokratische Partei der Schweiz (Social Democratic Party of Switzerland).

³⁰⁸ Tagblatt, 15 Nov. 2007, Eltern glauben, sie täten Gutes.

³⁰⁹ Neue Zürcher Zeitung, 25 Sept. 2008.

³¹⁰ Zwangsheirat (2008).

³¹¹ http://www.terre-des-femmes.ch/pro_zwangsheirat.asp.

³¹² Neue Zürcher Zeitung, 23 June 2006, Zwangsheiraten – falsch verstandene Toleranz; www.polit-forum.org

³¹³ Neue Zürcher Zeitung, 14 Dec. 2005, Modern denkende Muslime ermutigen: Das Forum für einen fortschrittlichen Islam wird aktiv; The website of the forum: <http://forum-islam.ch/>.

³¹⁴ See: http://www.surgir.ch/us/mariage_force/

Conclusion: Debates on legal measures and migration issues

Just as was the case with the definitions of forced marriage, discussed in Chapter 1, the debates on the issue of forced marriage differ considerably between the countries even though the basic subject is similar. In all of the countries in the study, politicians have taken up a prominent role in debates on forced marriage, but the countries differ considerably with regard to the media participation of non-governmental persons involved, such as representatives of NGOs. Even when migration or culture are given publicity in this respect, the way this happens and the amount of publicity still differ a lot. In all of the countries, some general connection with migration and migrants is made, probably in part simply because all or most known cases concern migrants or children of migrants. The issue of migration and especially of marriage migration has only become one of the central topics in debates on forced marriages in Belgium.

In addition to migration, in most countries forced marriage is discussed at least partially within broader debates on multiculturalism. The notion of multiple cultures is generally taken as a given: the presence of migrants from other countries implies that there are multiple cultures present in a country. The idea that this would be an acceptable state of affairs is then problematised by saying for example that migrants should adapt to the values in their country of residence. France is the only country where the discussions on multiculturalism and forced marriages directly problematise the state in its notions of the French Republic and *laïcité*. In other countries, it is not directly the state that is problematised but rather some notion of dominant culture that forced marriage goes against.

Gender has been especially dominant in French and British debates, even though somewhat differently. French discussions seem to be including gender, in terms of defining victims as young girls, mostly as a way of arguing that this is a crime against helpless victims. British debates on the other hand have zoomed in on this issue mainly because of the dominant influence of women's organizations that argue for tackling patriarchal structures in general. Even though gender might have been less prominent in the materials studied for the other countries, it can still be an important subtext in debates on problematic phenomena that are perceived as cultural, such as forced marriages.

Conclusion

This study set out to examine policy and discussions on forced marriages in Belgium, France, Germany, the United Kingdom and Switzerland. These were studied with the help of scientific literature, policy documents, law texts, newspaper articles and internet sources. With regard to research questions on definitions of forced marriage and public debates, it was in two ways problematic to arrive at statements on “the public debate”. Firstly, there was only very limited time available making a large-scale analysis of newspaper articles and other materials impossible. Secondly, it was difficult to define what exactly public debate is and where this is carried out, partly because some opinions and statements never reach the media. With regard to the analysis of laws and policies, the foremost problem was that many initiatives are so recent that hardly anything is known about their implementation. In the case of the numbers, it was difficult to obtain information on how the numbers had been generated, which made any evaluation of their value problematic. The conclusion begins with a concise characterisation of the individual countries in the study based on their approach to forced marriages. The main research question was: What is known about policy and discussions on forced marriages in Belgium, France, Germany, the United Kingdom and Switzerland? This question was divided into four sub-questions and the answers to these will be discussed after the conclusions on the individual countries. Finally, general conclusions will be drawn.

Approach to forced marriages in the countries of the study

Belgium has chosen a migration and criminalisation approach in its policy. The Belgian case is characterised by an all-pervasive concern about migration and the presence of migrants in the country.

France debated criminalisation, but has ultimately opted for a civil law approach. Forced marriage is conceptualised as a gendered cultural problem for the state and the nation. It is difficult to distinguish between these two dimensions of gender and culture because they are interwoven. The French approach could perhaps be characterised as pragmatic because civil law seems to offer more possibilities than criminal law even though the symbolic value of criminalisation is greater. It seems as if the civil law approach is especially dominant in countries where the gender dimension of forced marriage is explicit in discussions (France and the United Kingdom). This could mean that the concern for the well-being of female victims is dominant and that civil law is considered a better protection.

Germany has chosen a criminalisation and migration approach after debating forced marriage as a cultural and human rights problem. It is possible that the emphasis on human rights has led to criminalisation because the issue is defined in such strong terms when it is seen through the lens of human rights. Possibly, the necessity of criminalisation has been perceived as particularly urgent.

The United Kingdom has, in the end, opted for a comprehensive civil law approach. This can be characterised as a pragmatic approach that allows for approaching forced marriages from the viewpoint of the victims. This comprehensiveness is also evident in British discussions on the issue which are plentiful and in which many different parties and individuals take part.

Switzerland has, after long political discussion, opted for limited changes, mainly within migration law. As the discussions on forced marriage have mainly taken place in parliament, there has been little general societal debate. Possibly, the limited policy outcomes are partially due to the limited discussion on the issue.

The research questions answered

The first question focused on the definition of forced marriages: *What are the definitions of forced marriage in the different countries?* Based on scientific articles and an analysis of newspaper materials, it can be said that forced marriage is defined in various ways and that

some definitions are scientific, some legal and some social in nature. Usually, forced marriage is conceptualised within one or more themes, i.e. gender, culture, migration or human rights. These themes are present in the terminology and how this is used to talk about forced marriages. Especially the intimate link that is made between the terms 'marriage of convenience' and 'forced marriage' functions as a connection between forced marriage and migration. The fact that not everybody means the same when talking about forced marriage blurs discussions on the topic to a certain extent. Additionally, it seems that often discussions on forced marriage are not so much about forced marriage as they are about problematising the presence of migrants in a country. In most cases, it is possible to draw a line from the definitions to the actual policy. Belgium is an illustrative example of this. There, forced marriage is mainly defined as a migrant issue and much of the policy activity has also taken place in the field of migration measures. All definitions of forced marriage that are featured in the report are problematic because forced marriages are not perceived anywhere as a phenomenon separate from other social problems. Forced marriage is always connected to other social questions which means that one does not get any further in the discussion on forced marriages as such. After all, the debate is about something else.

The second question concerned legal measures and policy: *Which legal measures or policies exist in the countries with regard to forced marriages, and what are the experiences with their implementation?* In general, three main areas of legal action exist: criminal, migration and civil law. In the last three years, both specific criminal laws as well as specific civil laws have been introduced as measures on forced marriages. Criminalisation has been a topic of discussion in all of the countries examined, but only Belgium and Germany have opted for this alternative in the end. The most prominent argument in favour of criminalisation is the symbolic effect that is assumed, i.e. criminalisation shows that forced marriages are unacceptable and may even work as a deterrent. The most popular arguments against criminalisation are its lack of added value since forcing someone to marry is usually already a criminal offence under other legislation and that criminalisation will act as a deterrent for the victims who will refrain from reporting the situation for fear of retribution for parents or other family members. Both of these arguments were used in the countries where criminalisation was abandoned as a policy alternative, but especially in the United Kingdom the protection of the victims has been the dominant argument for not criminalising forcing someone into marriage. Often the civil law approach has been chosen with the purpose of protecting the victims. Most changes have, however, taken place within migration law. A stricter migration law has, in many cases, been defended as a measure to combat forced marriages even though there is no evidence to suggest that a stricter migration law could actually prevent forced marriages. Both the low number of measures to protect the victims and the popularity of migration measures seem somewhat curious in the light of the 2005 recommendations by the Council of Europe which focused on the need of measures to protect the victims and to inform the public. Restrictions on migration were not recommended by the Council. This conclusion corroborates the finding that forced marriage discussions are often about problematising the presence of migrants in a country.

All in all, it is difficult to say much about the effectiveness of legal measures because little information is available on their implementation. Additionally, many of the measures discussed in this report have only been devised within the last couple of years so that there has not been much time for experiences to accumulate on their implementation. Despite this, a consensus is emerging that a coordinated approach with measures on different levels is required to tackle the issue.

The third question centred on the numbers: *Which numbers are available for the different countries and what can be said about the phenomenon based on these numbers?* Whereas many numbers surface in debates on forced marriage, these are often of little value for deter-

mining the scale of the phenomenon. Numbers are, however, used often in political and other public statements on the subject. It is difficult to say anything else about the size of the phenomenon, except that forced marriages most certainly exist. Due to different conceptual problems it is unclear what it is that the numbers measure and to which time frame they refer, i.e. when the forced marriages took place. The numbers do illustrate the gender dimension of the definition problem: in most countries men are excluded from any numbers on forced marriages.

The fourth question referred to the debates on forced marriage: *Are there public debates on forced marriages, and if so, what do these debates look like?* In all of the countries, the issue of forced marriage is discussed within the broader framework of multicultural society but with different accents. Migration and migrants are usually included in one way or another, but problematised in different ways. In Germany and the United Kingdom, forced marriage is perceived to be a hindrance to the integration of migrants in the society, a process which is considered desirable, whereas in Belgium the whole presence of migrants in the country is problematised. In addition to migration, culture is usually perceived to be the problem in that forced marriage is seen as a cultural minority practice that goes against the dominant culture. In most countries there is a clear connection between dominant themes in the discussions on forced marriages and the subsequent measures that have been introduced.

Coming back to the *main question* on what is known about policy and discussions on forced marriage, a reference can be made to the previous pages which provide an overview of the findings. It can be said that all the countries in the sample have taken steps in policy to tackle forced marriages with an emphasis on restricting migration in addition to specific offenses that have been introduced. In all of the countries, the general lack of knowledge on the phenomenon of forced marriage and actual cases of forced marriage is a problem for the development of policy. Since little is known about the implementation of the policies, little can be said about their effectiveness. Generally, there are no cases or few cases where a specific legal instrument has been employed; a fact which suggests limited effectiveness. It is not plausible that the assumed deterring effect of criminalisation would be so strong as to prevent forced marriages from happening. Whether the more general migration measures actually prevent forced marriages is difficult, if not impossible, to determine. The discussions on forced marriages have different accents which are, in most cases, apparent in the policy outcomes.

The key problem of definition

With regard to each research question, it is clear that the definition of forced marriage is a key problem. Different terms, such as forced marriage, marriage of convenience and arranged marriage are used interchangeably so that a discussion focused only on forced marriages becomes impossible. In public discussions, this means that forced marriage is associated with a number of themes such as migrants, culture, gender inequality and human rights. In the case of gender inequality, the assumption is usually that women are victims and that men are not forced into marriage. This way, discussions and the resulting policies fail to address the actual issue of forced marriage and to design measures against it. In policy, the problem of definition is evident in two ways. Firstly, the choice of policy instrument is connected to the definition of forced marriage. Obviously, the popularity of migration measures in dealing with forced marriages is connected to defining forced marriage as a migrant issue. Marriage is usually perceived as a legal contract, a definition which excludes customary marriages. Secondly, the inherent obscurity of the phenomenon of forced marriage makes it difficult to provide those narrow and specific definitions which are apparently crucial to any legal or other measures. Thirdly, implementing policy requires knowing precisely when the policy needs to be implemented and when not. And finally, policy lacks reliable numbers because definitional problems are also at the core of measurement.

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