

HEARING
“ACCESS TO JUSTICE
FOR WOMEN VICTIMS
OF VIOLENCE”

AUDITION
« L'ACCÈS À LA JUSTICE
POUR LES FEMMES
VICTIMES DE VIOLENCES »

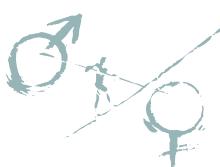
Proceedings / Actes
Paris, 9 December / décembre 2013



HEARING “ACCESS TO JUSTICE FOR WOMEN VICTIMS OF VIOLENCE”

Programme
Paris, 9 December 2013

Organised by the
Gender Equality Commission
of the Council of Europe
with the French Ministry of Women's Rights



Monday, 9 December 2013

8.30 – 9.00 am

Registration of participants

Opening Session

Moderator: Ms Liri Kopaçi – Di Michele (Head of the Gender Equality and Violence against Women Division)

9.00 – 9.40 am

Opening speeches:

- Ms Nathalie Tournyol du Clos (Head of the Women's Rights Department at the Ministry of Women's Rights, France)
- Ms Carlien Scheele (Chairperson of the Council of Europe Gender Equality Commission, the Netherlands)

Session 1

Setting the scene: Women's Access to Justice

Moderator: Mr Alexis Rinckenbach (Head of European and International Affairs, Ministry of Social Affairs and Health / Ministry of Women's Rights, France)

9.40 – 10.00 am

Feasibility study on equal access of women to justice – an overview of observations and proposals.

- Ms Kevät Nousiainen (Turku University, Finland)

Session 2

Access to justice for women victims of violence

Moderator: Ms Antje Wunderlich (Member of the Gender Equality Commission, Germany)

10.00 – 10.20 am

Main standards contained in the Istanbul Convention on access to justice for women victims of violence.

- Ms Marceline Naudi (University of Malta, former member of CAHVIO)

10.20 – 10.40 am

A Civil Society Perspective on equal access of women to justice.

- Ms Gauri van Gulik (Human Rights Watch)

10.40 – 11.00 am

The case-law of the European Court of Human Rights.

- Ms Ramona Toma (Lawyer at the European Court of Human Rights)

11.00 – 11.15 am

Coffee break

Session 3

Socio-economic and cultural barriers to equal access to justice for women victims of violence

Moderator: Ms Karine Lempen (Lawyer, Federal Department of Home Affairs, Switzerland)

11.15 – 11.45 am

Addressing the socio-economic and cultural barriers.

- Ms Rosa Logar (Domestic Abuse Intervention Centre, Vienna)

Testimony:

- Witness accompanied by the Fédération Nationale Solidarité Femme, France

11.45 – 12.30 pm

Practices and examples from member states of the Council of Europe:

- Ms Elisabeth Moiron-Braud (Secretary General of the Inter-Ministerial Mission for the Protection of Women Victims of Violence, France)
- Ms Aurela Anastas (Executive Director of the Centre for Legal Civic Initiatives, Albania)
- Ms Helena Štimac Radin (Head of the Office for Gender Equality, Croatia)

12.30 – 1.00 pm

Discussion

1.00 – 2.00 pm

Lunch

Session 4

Legal and procedural barriers to equal access to justice for women victims of violence

Moderator: Ms Katarzyna Wolska-Wrona (Chief Legal Officer, Office of the Government Plenipotentiary for Equal Treatment, Poland)

2.00 – 3.00 pm

Addressing the legal and procedural barriers for women victims of violence to have access to justice: civil and criminal cases.

- Ms Katie Dawson (Lawyer, Ireland)
- Ms Hilary Fisher (Director of Policy, Voice and Membership, Women's Aid Federation, England)

Testimonies:

- Ms Alexis Bowater (United Kingdom)
- Witness accompanied by La Cimade, France

3.00 – 3.45 pm

Practices and examples from member states of the Council of Europe:

- Mr Nazir Afzal (Chief Crown Prosecutor, United Kingdom)
- Mr Julio García Jiménez (Government-delegation for Gender-based Violence, Spain)
- Ms Sylvie Moisson (Prosecutor, France)

3.45 – 4.00 pm

Coffee break

4.00 – 4.30 pm

Discussion

Closing session

Moderator: Ms Carlien Scheele (Chairperson of the Gender Equality Commission, the Netherlands)

4.30 – 4.45 pm

Conclusions

4.45 – 5.15 pm

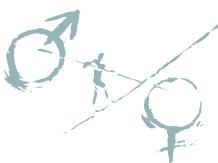
Closing remarks by:

- Ms Sabine Fourcade (Interministerial Delegate for Women's Rights and Gender Equality, Director General of Social Cohesion, France)
- Ms Ursula Plassnik (Ambassador of Austria in Paris, representing the Chairmanship of the Committee of Ministers of the Council of Europe)

AUDITION « L'ACCÈS À LA JUSTICE POUR LES FEMMES VICTIMES DE VIOLENCE »

Programme
Paris, 9 décembre 2013

Organisée par la Commission de l'Egalité
entre les femmes et les hommes
du Conseil de l'Europe avec
le Ministère des Droits des femmes, France



Lundi 9 décembre 2013

8h30 – 9h00

Enregistrement des participants

Séance d'ouverture

Modératrice : M^{me} Liri Kopaçi – Di Michele (Chef de division Egalité entre les femmes et les hommes et violence à l'égard des femmes)

9h00 – 9h40

Discours d'ouverture par :

- M^{me} Nathalie Tournyol du Clos (Cheffe du service des Droits des femmes au Ministère des Droits des femmes, France)
- M^{me} Carlien Scheele (Présidente de la Commission sur l'égalité entre les femmes et les hommes du Conseil de l'Europe, Pays Bas)

Séance n° 1

Présentation du contexte : l'accès des femmes à la justice

Modérateur : M. Alexis Rinckenbach (Chef du bureau des affaires européennes et internationales, Ministère des affaires sociales et de la santé / Ministère des droits des femmes, France)

9h40 – 10h00

Etude de faisabilité « Garantir aux femmes l'égalité d'accès à la justice » – Résumé des observations et propositions.

- M^{me} Kevät Nousiainen (Université de Turku, Finlande)

Séance n° 2

Accès à la justice des femmes victimes de violences

Modératrice : M^{me} Antje Wunderlich (Membre de la Commission sur l'égalité entre les femmes et les hommes, Allemagne)

10h00 – 10h20

Principales normes dans la Convention d'Istanbul concernant l'accès à la justice des femmes victimes de violences.

- M^{me} Marceline Naudi (Université de Malte, ancien membre du CAHVO)

10h20 – 10h40

La perspective de la société civile sur l'égalité d'accès à la justice des femmes.

- M^{me} Gauri van Gulik (Human Rights Watch)

10h40 – 11h00

La jurisprudence de la Cour européenne des droits de l'homme

- M^{me} Ramona Toma (Juriste à la Cour européenne des droits de l'homme)

11h00 – 11h15

Pause café

Séance n° 3

Obstacles socio-économiques et culturels à l'égalité d'accès à la justice des femmes victimes de violences

Modératrice : M^{me} Karine Lempen (Juriste, Département fédéral de l'intérieur, Suisse)

11h15 – 11h45

Aborder les obstacles culturels et socio-économiques.

- M^{me} Rosa Logar (Centre d'intervention contre la violence domestique, Vienne)

Témoignage :

- Témoin accompagnée de Fédération Nationale Solidarité Femme, France

11h45 – 12h30

Pratiques et exemples des Etats membres du Conseil de l'Europe :

- M^{me} Elisabeth Moiron-Braud (Secrétaire générale de la mission interministérielle pour la protection des femmes victimes de violences, France)
- M^{me} Aurela Anastas (Directrice exécutive du Centre des initiatives légales civiques, Albanie)
- M^{me} Helena Štimac Radin (Cheffe du Bureau pour l'égalité entre les femmes et les hommes, Croatie)

Débat

12h30 – 13h00

Déjeuner

Séance n° 4

Obstacles juridiques et procéduraux à l'égalité d'accès à la justice des femmes victimes de violences

Modératrice : M^{me} Katarzyna Wolska-Wrona (Cheffe des affaires juridiques, Bureau du plénipotentiaire du gouvernement pour l'égalité de traitement, Pologne)

14h00 – 15h00

Aborder les obstacles juridiques et procéduraux auxquels se heurtent les femmes victimes de violences pour accéder à la justice : affaires civiles et pénales.

- M^{me} Katie Dawson (Avocate, Irlande)
- M^{me} Hilary Fisher (Directrice des politiques, Fédération «Women's Aid», Angleterre)

Témoignages :

- M^{me} Alexis Bowater (Royaume Uni)
- Témoin accompagnée de La Cimade, France

15h00 – 15h45

Pratiques et exemples des Etats membres du Conseil de l'Europe :

- M. Nazir Afzal (Procureur en chef, Royaume Uni)
- M. Julio García Jiménez (Délégation du gouvernement contre la violence faite aux femmes, Espagne)
- M^{me} Sylvie Moisson (Procureur de la République, France)

15h45 – 16h00

Pause café

16h00 – 16h30

Débat

Séance de clôture

Modérateur: M^{me} Carlien Scheele (Présidente de la Commission sur l'égalité entre les femmes et les hommes, Pays Bas)

16h30 – 16h45

Conclusions

16h45 – 17h15

Allocutions finales par :

- M^{me} Sabine Fourcade (Déléguée interministérielle aux Droits des Femmes et à l'égalité entre les femmes et les hommes, Directrice générale de la cohésion sociale, France)
- M^{me} Ursula Plassnik (Ambassadrice de l'Autriche à Paris, représentant la Présidence du Comité des Ministres du Conseil de l'Europe)

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Séance d'ouverture

Discours d'ouverture par

Mme Nathalie Tournyol du Clos, cheffe du service des Droits des femmes au Ministère des Droits des femmes, France

Madame la Présidente, et mesdames les membres de la Commission sur l'égalité entre les femmes et les hommes,

Mesdames et messieurs,

Très che-èr-es collègues

Je suis très heureuse de pouvoir vous accueillir à Paris ce matin, pour l'ouverture de cette « audition sur l'accès à la justice pour les femmes victimes de violences », que le Conseil de l'Europe a organisé conjointement avec le ministère français des Droits des femmes.

Je tenais avant tout, chère Marja, à vous remercier ; à remercier vos services et les organisateurs de cette journée.

Vous l'avez rappelé, le Conseil de l'Europe joue un rôle central, essentiel, dans la lutte contre les violences faites aux femmes. Et vous le savez, ce sujet est au cœur des préoccupations du gouvernement français et du ministère des droits des femmes.

Nous avions ainsi, le 4 mars dernier à New-York, à l'occasion de la Commission de la condition de la Femme, organisé ensemble aux Nations-Unies un événement parallèle consacré à la Convention d'Istanbul, événement auquel la ministre des droits des femmes Mme Najat Vallaud-Belkacem avait participé.

La ministre l'avait alors rappelé avec force, et il convient de le dire à nouveau, et de le répéter hélas partout et à chaque fois que cela sera encore nécessaire : la violence à l'égard des femmes est l'une des violations les plus flagrantes des droits de l'Homme.

C'est une question qui concerne tous les pays du monde. La violence touche des femmes de tous horizons, quels que soient les contextes culturels, religieux, économique, social ou géographique.

Les exemples de violence contre les femmes sont innombrables, mais la peur ou la honte empêchent souvent les victimes de demander de l'aide. Quant à celles qui parlent et dénoncent, elles ne sont pas toujours entendues.

Avec l'adoption de la Convention d'Istanbul, dont la France a engagé le processus parlementaire pour une ratification début 2014, les 47 Etats membres du Conseil ont fait un pas important vers la reconnaissance de leurs responsabilités pour répondre à ce problème.

Aussi cette audition vient-elle à point nommé, la problématique de l'accès à la justice est en effet central dans la résolution de la question de la violence faite aux femmes. Mettre les victimes en capacité d'être entendue, c'est mettre les femmes à l'abri de la peur, et à l'abri de la violence.

L'engagement constant de mon pays dans ce combat se traduit aussi à l'échelle nationale par de nouvelles mesures, des outils et de nouvelles manières de travailler et de coopérer, entre services de la justice, services sociaux, collectivités et administration.

A côté des exemples de l'Espagne, du Royaume-Uni, de l'Albanie, de la Croatie, et d'autres Etats membres, il vous sera ainsi rendu compte cet après-midi de pratiques françaises. Et je profite de l'occasion pour saluer ici la présence de Mme Elisabeth Moiron-Braud, secrétaire générale de la Mission interministérielle pour la protection des femmes et la lutte contre la traite des être humains. La MIPROF a été créée au début de cette année, c'est l'une des mesures nouvelles voulu par le Gouvernement et un dispositif important pour renforcer la prévention des violences.

A l'occasion de la journée internationale de lutte contre les violences faites aux femmes, le 25 novembre dernier, la ministre a présenté le quatrième plan national d'action dans ce domaine, pour la période 2014-2016. Ce nouveau Plan est construit sur trois axes – dont les intitulés montrent combien il est prioritaire pour nous de s'attaquer aux raisons du silence des victimes, et aux obstacles à leur accès à la justice.

Il convient en effet de réorganiser l'action publique autour du principe qu' « aucune violence déclarée ne doit demeurer sans réponse pénale, sanitaire et sociale ». L'objectif est que les femmes victimes de violences soient prises en charge le plus tôt possible.

Pour citer un exemple parmi d'autres, l'actuel numéro de téléphone d'urgence, le « 3619 », sera transformé à partir du 1er janvier 2014 en un numéro de référence unique pour l'accueil et l'orientation des femmes victimes de violence – c'était l'une des recommandations du Comité CAHVIO.

Deuxième grand axe de ce plan c'est la protection efficace des victimes, avec notamment le déploiement du téléphone d'alerte pour les femmes en grand danger, que Mme la Procureure de la République, Sylvie Moisson, que je salue, présentera cet après-midi en séance. Le projet de loi-cadre relatif à l'égalité entre les femmes et les hommes actuellement en discussion au Parlement, doit préciser les modalités de ce dispositif, testé avec succès l'an passé dans des départements pilotes.

Enfin, le Plan vise aussi à mobiliser l'ensemble de la société, avec en particulier la mise en œuvre, de campagnes de sensibilisation, et de plans de formation dédiée de grande ampleur, en direction des professionnels de santé, des magistrats, des forces de l'ordre, des travailleurs sociaux.

Vous le voyez, notre actualité législative et institutionnelle est aussi riche que notre engagement pour lutter contre les violences faites aux femmes est fort.

Mais nous avons tous encore beaucoup à apprendre, en partageant les bonnes pratiques, en comparant nos politiques nationales, et en nous informant de nos réussites, de nos difficultés aussi. C'est le sens de cette journée, que nous apprenons les uns des autres, et que ce partage nous fait ensemble progresser vers un monde moins violent, plus juste, plus sûr, plus humain pour les femmes.

Merci pour votre attention.

Opening Session

Opening remarks by

Ms Carlien Scheele (Chairperson of the Council of Europe Gender Equality Commission)

Ladies and gentlemen,

- Permettez-moi de commencer par remercier les autorités françaises pour accueillir l'Audition d'aujourd'hui dans ce cadre magnifique du ministère des affaires sociales et de la santé. Nous sommes très heureux d'accueillir de nombreux praticiens du droit, des représentants gouvernementaux, des représentants de la société civile ainsi que des chercheurs. Je voudrais également saluer la présence importante des autorités et représentants français à l'Audition d'aujourd'hui, qui encore une fois, témoigne de l'engagement de la France pour l'élimination de la violence à l'égard des femmes, y compris par la coopération internationale.
- May I start by thanking the French authorities for hosting today's Hearing in this beautiful setting of the Ministry of Social Affairs and Health. We are very pleased to welcome here many legal practitioners, governmental officials, civil society representatives and researchers. I would also like to welcome the important presence of French authorities and representatives in today's Hearing which yet again, testifies to the commitment of France to the elimination of violence against women, including through international cooperation.
- Achieving gender equality, preventing and combating violence against women are priorities of the Council of Europe. They are central to the protection of human rights, the functioning of democracy and respect for the rule of law, economic growth and competitiveness in Europe and beyond.
- The Council of Europe's pioneering work on human rights and gender equality has resulted in a solid legal and policy framework which has greatly contributed to fight inequality and to better protect women's human rights and dignity in its 47 member States.
- And yet, the very fact that we have felt the need to convene a hearing on women's access to justice shows that gender equality standards are far from being a reality for all women across the continent. Even worse: justice seems to be an unreachable ideal for many women and girls victims of violence.
- A 2010 survey of judgments of the European Court of Human Rights looked at applications lodged either by women or by women together with men and showed that the number of applications lodged by women was much lower than the number of complaints lodged by men. The then former Vice-President of the European Court of Human Rights, Judge Françoise Tulkens had already drawn attention to the fact that, of the applications she had studied, only 16% were filed by women.

- The European Women's Lobby "2013 Barometer on Rape in Europe", covering 32 countries, recalls that information on women victims for reported rapes is "non-existent, with few exceptions". The report highlights a consistent and alarmingly high range of prejudicial attitudes against women victims of sexual violence.
- Furthermore, the latest report of the monitoring of the Recommendation of the Committee of Ministers on the protection of women against violence showed that while there is a gradual increase in penalisation of violence against women "on the books", little is known about convictions and sanctions imposed.

Ladies and Gentlemen,

- Persisting inequalities between women and men, gender bias and stereotypes result in unequal access of women and men to justice. Women's limited access to justice is a complex social phenomenon that combines a series of inequalities at the legal, institutional, structural, socio-economic and cultural levels. This lack of access to national justice is also reflected in the international justice system.
- It is in this context that the plan of action "Taking up the challenge of the achievement of de jure and de facto gender equality", adopted by the Ministers responsible for gender equality in 2010, proposed that the Council of Europe develop activities to monitor the equal access to justice of both women and men at national and international levels, prepare an analysis of the data collected and develop, if necessary, awareness raising activities to promote women's access to justice.
- The Council of Europe has addressed this phenomenon through standards and norms, including Recommendations from the Committee of Ministers, Action Plans issued by Ministerial Conferences, technical assistance and co-operation projects. This action culminated in the adoption of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) which opened for signature in May 2011.
- The Istanbul Convention is the first treaty in Europe to offer a legally-binding set of standards to prevent and combat violence against women and the most far-reaching and avant garde treaty in this area which defines violence against women as a violation of human rights and discrimination against women.
- The drafters of the Istanbul Convention paid particular attention to the issue of access to justice. In addition to introducing a set of ground-breaking criminal offences, the Convention also foresees a wide range of practical measures to empower victims during judicial proceedings, protect and support them so that they can recover and seek redress and compensation.
- Two of the five strategic objectives of the Council of Europe Gender Equality Strategy (2014-2017), adopted last month, are directly linked to the theme of today's Hearing: prevent and combat violence against women and guarantee equal access of women to justice. Addressing the issue of women's access to justice is indeed particularly relevant in the current context of economic crisis, where inequalities at all levels of society are on the rise and negatively impact on women's lives.

Ladies and gentlemen,

- Each year, the international human rights NGO Women's Link, working to achieve gender equality around the world, gives out the Gender Justice Uncovered Awards to promote judicial decisions that advance gender equality (the "Gavel Awards") and to denounce judicial decisions that perpetuate and legitimise prejudices and stereotypes surrounding issues of gender, gender roles, sexuality, and reproduction (the "Bludgeon Awards").
- In 2013, the Silver Gavel Award went to a judgment of the European Court of Human Rights which considered that the lack of a legal framework guaranteeing the effective access to safe abortion procedures constituted a human rights violation. The case concerned a 14-year old girl who had been raped and got pregnant .
- On the other hand, the 2013 Silver Bludgeon Award also stayed in Europe, where a Court reduced the time of suspension of an army official who had assaulted his wife because the judge considered that the decision had not taken into account the medals given to him and the fact that he had participated in the peace mission in Afghanistan where the use of force is frequent !!
- Such examples illustrate the importance of the progress made but also alert us about the work that still remains to be done in order to guarantee equal access to justice for women victims of violence. This is a reality which European countries have to face together, through partnerships, exchange of good practices, sharing the pool of expertise and resources and by joining forces across all the sectors and organisations involved in the prevention of violence against women, the protection of victims and the prosecution of perpetrators.
- The stories of millions of victims are kept in a dark place made of taboos, traditions, stereotypes, social codes, fear, shame and ignorance. We are very grateful to Ms Véronique Arbez, Ms Alexis Bowater and Ms Svetlana Aleshnya for having accepted to tell their stories. These are stories about two forms of violence: the inter-personal violence and the institutional violence. These women tell us that we can and should do something about both.
- All of us have an important role to play in improving access to justice and redress for women victims of violence. The French political thinker Charles de Montesquieu has said that "An injustice committed against anyone, is a threat to everyone". So let's listen to the impressive list of speakers, to the real life stories and take home the good practices, lessons learned from bad practices, ideas and experiences from today's meeting and make sure we give new impetus to our efforts and ambitions to remove all possible obstacles to women's access to justice and the threat of injustice.

Session 1 – Setting the scene: Women’s Access to Justice

Feasibility study on equal access of women to justice - an overview of observations and proposals.

Ms Kevät Nousiainen (Turku University, Finland)

Why was a feasibility study needed? While rule of law and fair trial are core human rights principles, legal remedies are not *de facto* available for all. Unfortunately, there is a considerable gender gap between *de facto*, substantive equality and *de jure*, formal equality. Partly the gap seems to be caused by unequal access to justice. There is a gender imbalance even among the persons seeking redress in the European Court of Human Rights, which indicates a gender imbalance in access to justice in the member states of the Council of Europe¹.

The Gender Equality Commission proposed to carry out a feasibility study on women’s access to justice in order to collect information and propose further action. The study was made with tight time limits and consists of case studies, and thus only offers provisional insights into the theme, but important observations and proposals were made in the case studies, and in the executive summary based on these studies.² The feasibility study should thus be considered as a step towards further action.

Access to justice a broader concept than right to fair trial. Access to justice refers to attempts to improve individual persons’ access to courts and to legal representation, but also to measures beyond the court system, such as low threshold decision making, alternative dispute resolution (ADR) such as mediation and conciliation, and participation of interested non-governmental organisations, human rights and equality bodies in the legal processes and policies in order to guarantee better *de facto* access to rights. Equal rights are of little use if they are not equally implemented. The barriers to justice are often economic, but there are even cognitive barriers as people do not always recognize that there is a dispute, or that the dispute has legal nature. There are various social and cultural constraints to taking law cases to court.

As said, *four case studies* were made for the feasibility study. The studies were made by four experts and describe the situation in four states: Austria, Finland, Portugal and Sweden³. Further, the case studies reflect different aspects of women’s access to justice, as they discuss different areas of law. The Austrian study concentrates on criminal law, the Portuguese study on civil law, and family law in particular, the Swedish study on public law which covers important issues such as taxation and social welfare. The Finnish study aimed at a cross-cutting consideration on access to justice in the context of non-discrimination. Thus, the case studies give a relatively broad insight into various problems in women’s (and sometimes men’s) access to justice concerning different types of legal issues, and in different jurisdictions.

It is important to understand that legislation continues to show a *gender bias* to the detriment of women, and that the bias is far from always recognised as *discrimination*. Women’s access to justice involves not only a procedural issue, but even a more substantive aspect. Formal rights often hide a gender imbalance when such rights are applied to different life patterns and experiences of men and

¹ Tulkens, Francoise, Droits de l’homme, droits des femmes. Les requérantes devant la Cour européenne des droits de l’homme 2007, and Report on the cases brought before the European Court of Human Rights by Women, see appendix of the document supra 2.

² For the full text of the study, see GEC 2013(1) Rev, available at the GEC website

³ The experts in question are António Casimiro Ferreira (Portugal), Birgitt Haller (Austria), Sonja Huldén (Sweden) and Kevät Nousiainen (Finland).

women. Gender neutral, formal rights are often formulated on the basis of men's life experience. Anti-discrimination law and positive measures to promote gender equality only cover some aspects of the unequal outcomes of the legal system.

Women are not a homogeneous group of people, and some women are more vulnerable to others due to social, economic, ethnic and other grounds, which often also lead to discrimination. Protection against discrimination has increased during the last decades, both globally, at the European level, and at state level. Yet, the public sphere and working life remain in focus. As gender inequality often has its roots in the private sphere, the benefits arising from anti-discrimination law remain limited especially where gender discrimination is in question.

Since 1970s, the traditional court procedure has been criticized for being unable to restore social and human relations among those involved in a legal dispute. Due to the increasing caseloads and economic costs of traditional court proceedings, there has been a clear change towards 'softer' procedures of alternative dispute resolution, and low threshold procedures characterized by their non-judicial or quasi-judicial nature.

The traditional legal procedure has been seen as gender blind or even detrimental for women. Trials on sexual crimes have been criticized for victimizing the victim a second time. However, there is a considerable lack of sensitivity to the gendered impacts even in the 'softer' procedures that aim at out of the court settlement of disputes. Mediation and conciliation may allow the power imbalance between the parties of family law disputes or between the perpetrator and victim in domestic violence cases continue even to a greater extent than what is the case in traditional court procedure. When claims of abuse are raised in ADR processes, they may be neglected even more than in ordinary court procedure. ADR in criminal law may lead to a re-privatization of the type of crime that the feminist movement worked hard to bring into the public and under criminal law. Now, such crimes are addressed by the Istanbul Convention.

The Istanbul Convention offers a new perspective into many procedural law issues in cases involving violence against women, especially as the Convention does not endorse mandatory conciliation of cases concerning violence against women, and by the requirement that such violence shall be taken into account when making decisions about custody and visiting rights.

There are considerable *information gaps* concerning different aspects of women's access to justice. Gendered unequal outcomes of legal norms and procedures could be detected by gender impact analyses. Such analyses are seldom made, however. There is considerable lack of gender disintegrated data on the workings of the legal procedures. Gender mainstreaming as an equality policy is based on the idea that gender should be taken into account as a factor in all decision making, not only in questions that are defined as gender equality issues. Impact assessment of legislation is an important aspect of gender mainstreaming, but there is a huge lack of impact assessment concerning even major regulatory solutions. Gender impact assessment requires case studies, as well as systematic statistics and collection of sex disintegrated data.

Unfortunately, even when gender disintegrated data and relevant research on the gendered impacts of legislation is available it is not always taken into account. Austerity measures in Europe may form further barriers to women's access to justice, and unfortunately there has been little attention to the gendered outcomes of economic policies that have been undertaken as emergency measures and lead to cuts in public expenditure. Cuts in public expenditure often cause more drastic changes in the lives of women than men. Many steps towards better access to justice require public funding. Information on access to justice for vulnerable groups of women is especially relevant in this respect.

Women's access to justice in *criminal law* has to be considered from the point of view of the different roles women and men have under criminal law. While there are women among the

perpetrators, most women come into contact with criminal law in the role of victims. Perpetrators tend to be men. While violence among men remains a common pattern, violent encounters in the private sphere typically follow a pattern where men are perpetrators and women victims of violent crimes. The same pattern is evident in sexual crimes. Thus, women are over-represented among victims and men as perpetrators in domestic and sexual violence in particular.

This pattern causes a certain imbalance in the overall structure of criminal law procedures. Fair trial certainly requires safeguards against the state for the protection of persons suspected or accused of crimes. These safeguards (which are of old recognised by human rights) have less to offer for the victims. Therefore, attempts to improve the position of women in criminal law procedures often consist of introducing measures that are victim-friendly. Still, the attrition and conviction rates especially of sexual crimes remain low. There seem to be specific difficulties connected with bringing such cases to court and presenting evidence in them.

Problems of women's access to justice in criminal law are thus often related to procedural rules. However, they also have their ground in substantive criminal law: in legal definitions, criminal law doctrines with gendered assumptions. The Austrian case study offers several examples of biased criminal law provisions and practices. For example, the definition of manslaughter and murder, and the doctrine on self-defence do not reflect the actual situation and power position in typical domestic violence cases. Typical long-lasting male domestic abuse may lead to the other partner's death. The deed is often classified as manslaughter, due to its apparently non-premeditated character. Cases where a woman kills her abusive partner tend to be defined as murder, as they appear to be more premeditated, or more deadly weapons are being used. The defence of self-defence seems to have a gender bias, as the definition of self-defence does not take into account that an abused woman hardly dares to encounter her abuser bare-handed.

In civil law, *family issues* are especially gender sensitive. The Portuguese case study speaks of a privatisation of family law. Privatisation of family law here refers to the increasing private ordering of family matters. European marital law is becoming increasingly based on contracting. Divorce on demand is widely accepted and less often a matter to be decided by the court. The number of court cases thus tends to diminish. The Portuguese report shows that the cases where legal aid was provided decreased even more than the number of court cases. Legal aid is not provided in consensual divorces and similar family law matters that may be decided without court intervention. In Portugal, legal aid and exemption from court fees are applied for through the social security system, but the income thresholds for receiving such aid are so low that they exclude all but the poorest of the society. When family law cases go to court, women more often than men receive legal aid. There are no special provisions concerning migrant, disabled and elderly women or sexual minority women in family law cases. Single, divorced and separated women with children often rely on the public prosecution service for obtaining child maintenance. No special family courts are available.

The gendered roles in caring for children, elderly and disabled family members cause many kinds of gender imbalances in family law (as well as in the labour market position and pay related social security). When family law more and more recognizes the right of individuals to make decisions concerning their position as a partner and a parent, fewer cases are contested in courts. Disputes over child custody are, according to men's movements in Europe, seen as an area where courts prefer mothers over fathers on the basis of stereotype ideas on parenting. On the other hand, claims on abuse and violence presented by women seem to be often neglected by courts. Family law matters are often relegated to ADR. Out-of-court settlements may reflect the gendered power imbalance and be no more sensitive to the different life patterns of men and women than the ordinary courts are.

Public law concerns partly areas where women have made greater progress towards equality than in the private sphere. Gender balance in politics and publicly elected bodies is not perfect, but it seems to be better than in the private sector positions of power. Anti-discrimination law has generally been more focused on gender inequality in the public than in the private area.

The Swedish report notes that the merging of gender equality body and other specialised equality bodies into one body with a mandate to monitor all prohibited discrimination grounds has weakened the attention of the equality bodies to gender equality. As a similar unification of equality bodies is taking place in many parts of Europe, it is important to follow the impact of such mergers. One motivation for unification of bodies (and legislation) has been that single body equality regimes may be more efficient in finding redress for multiple and intersectional discrimination. Thus, the unification may be expected to favour minority women, who often face discrimination on many grounds. Even therefore, a follow-up of the unification policy is needed.

Public law covers areas that are crucial for implementation of economic and social rights. Women's access to justice also seems to be problematic, again for reasons which are related to the skewed outcome of gender neutral legislation. Women are a majority of applicants in social insurance related cases, but only 23 % of applicants in tax law cases are women. As women's unpaid work at home is not recognised as work in the meaning of labour law, the labour-based benefits and recognition of work-based occupational hazards and ensuing damages to women remain lower, or women's applications are refused more often than those made by men.

Studies have shown that in the work of migration officials, decision making based on gender stereotypes and disregard of gender inequalities in the country of origin may be detected. Temporary residence permits pose a specific problem for immigrant women who live in an abusive partnership, as in the worst case the abusive partner may misuse his superior position in the knowledge of the other's vulnerable position. The position of trafficked women is similarly vulnerable, as they also receive a temporary residence permit that allows them to stay in the country merely long enough to assist the police and the court. They may with good cause fear to return to their country of origin after assisting authorities in bringing perpetrators involved in organised crime to court.

Gender balance in the justice sector is now relatively good in Europe, due to the increase of *women in the legal profession*. Women and men do not seem to be evenly distributed in all fields of legal work, however, as family law and commercial law, for example, seem to have very different gender profiles.

The numeric balance between women and men in the legal profession and law enforcement does not necessarily guarantee a qualitative change in the sense that it would help to amend the unequal access of justice, however. The ground for gendered imbalance in law is in many ways subtle and manifested in the outcome rather than in the formally equal procedures as such. In other words, we are dealing with forms of disparate impact (or indirect discrimination) rather than differential treatment (or direct discrimination). As it has been often noted in equality law, indirect discrimination is often difficult to detect. Usually, it must be established by statistical information or other similar means, and can often even not be noticed *prima facie*.

To conclude: Many measures are known to be needed in order to guarantee access to justice. The equality of arms in a fair trial cannot be achieved without ensuring legal assistance to persons without the means to purchase it. The increasing privatisation of law and replacing court procedures with alternative dispute resolution mechanisms needs to be complemented with a policy that guarantees that abuse by one party of the other party does not continue. Special courts for family law matters would give better access to justice to women. More collective legal standing, and participation of interested non-governmental organisations in discrimination procedure would

enhance the access to justice for women. Multiple discrimination and the specific difficulties that minority women face have to be taken into account. Impact assessment and use of gender disaggregated data would lead to more equal policies in the area of justice and fair trial. A very good issue to start more rigorous impact assessment would, on the basis of the feasibility study, be the impact assessment of the implementation of the Istanbul Convention in the states that sign and ratify the Convention.

Powerpoint presentation

<p>Feasibility Study Kevät Nousiainen Paris 9 December 2013</p>	<p>Why feasibility study? There is a gap between de facto and de jure gender equality Feasibility study on women's access to justice is a step towards further action Access to justice is a broader concept than right to fair trial Gender neutral law/gendered life patterns and experiences create gender imbalance when law is applied Data on the gendered impact of legislation and procedures is lacking</p>
<p>Four case studies Case studies on four states were made in 2012 (Austria, Finland, Portugal and Sweden) Focus on different aspects of women's access to justice:<ul style="list-style-type: none">• Criminal law• Civil law (including family law)• Public law (including tax and social welfare)• Protection against discrimination</p>	<p>Gender bias and discrimination De jure gender equality and gender neutral legislation do not guarantee equal access to justice Not all measures with unequal outcomes are defined as discriminatory Protection against discrimination is increasing, yet the public sphere is in focus, while the private sphere is often the source of inequality Lack of sensitivity to the gendered impact is found both in traditional court process and in alternative dispute resolution (ADR) The Istanbul Convention offers a new perspective even to access to justice</p>
<p>Information gaps There is a lack of impact assessment concerning major regulatory solutions Gender disintegrated data is seldom available Relevant research does not available, or taken into account The gendered impact of austerity measures may form further barriers to women's access to</p>	<p>Access to justice: criminal law The gendered roles of criminal law: women are over-represented among victims, men among perpetrators Violence against women: non-victim friendly procedures in sexual and domestic violence Low attrition and conviction rates Problems in substantive criminal law: legal</p>

<p>justice</p> <p>Information on vulnerable groups of women is lacking</p>	<p>definitions, criminal law doctrines are often based on gendered assumptions</p>
<p>Access to justice: Civil and family law</p> <p>Privatisation of family law leads to contracting and consensual procedures</p> <p>Gender stereotypes may lie behind decision making</p> <p>ADR is increasingly used family disputes, but the gender power imbalance is often neglected in out-of court settlements</p> <p>Abuse and violence claims in family law cases may be neglected</p> <p>Right to legal aid diminishes with the turn to ADR</p>	<p>Access to justice: public law</p> <p>Gender disaggregated court statistics are not available</p> <p>There is a labour market nexus in social law (pensions, benefits), and thus unequal access to the labour market is replicated as unequal access to social benefits</p> <p>Gender impact analysis of the single equality body/legislation policy should be undertaken</p> <p>Migration and trafficking: vulnerability through residence permits practices and abuse</p>
<p>Women in the legal profession</p> <p>A gender balance in the law and law enforcement professions, but there are gendered patterns in the various fields of legal work (family law, commercial and tax law are gendered fields)</p> <p>Does quantitative gender equality lead to qualitative change, as it is difficult to detect indirect discrimination</p> <p>There is a need to take gender into account in legal education and training</p>	<p>Conclusions: what is needed</p> <p>Availability of legal aid must be guaranteed</p> <p>Use of ADR requires guarantees against abuse of power imbalances</p> <p>Easier access to courts through special courts, collective action etc. should be provided</p> <p>Multiple discrimination should be taken into account</p> <p>Gender impact assessment of legislation should be undertaken and gender disaggregated data on court and ADR procedures should be made available</p> <p>Impact assessment of measures to implement the Istanbul Convention could be the focus of further work</p>

Session 2 – Access to justice for women victims of violence

Main standards contained in the Istanbul Convention on access to justice for women victims of violence

Ms Marceline Naudi (University of Malta)

Powerpoint presentation

<p>Main standards contained in the Istanbul Convention on access to justice for women victims of violence.</p> <p>Paris, 9th December 2013</p> <p>Dr Marceline Naudi</p>	<p>What is access to justice...?</p> <p>‘The concept of access to justice covers contact with, entry to and use of the legal system.’</p> <p>So is it being able to report injustice and crime? Feeling safe to do so? Finding help and support to enable you?</p> <p>Is it being able to rely on authorities to prosecute? Knowing that judiciary will understand and that penalties will reflect the seriousness of the crime committed? ‘suitable and effective judicial remedies’?</p> <p>Or is it more than that...? Is it being able to exercise the right to live free from violence? Free from violence in the home? At work? In the street?</p> <p>All these and so much more!</p>
<p>Chapter I</p> <ul style="list-style-type: none">• promote and protect the right for everyone, particularly women, to live free from violence in both the public and the private sphere.• condemn all forms of discrimination against women• without discrimination on any ground• include a gender perspective in the implementation of this Convention• to promote and effectively implement policies of equality between women and men and the empowerment of women. <p>All these are basic to access to justice for all!</p>	<p>Chapter II– integrated policies & data collection</p> <p>Article 8 – Financial resources</p> <p>Parties shall allocate appropriate financial and human resources for the adequate implementation of integrated policies, measures and programmes to prevent and combat all forms of violence covered by the scope of this Convention, including those carried out by non-governmental organisations and civil society.</p> <p>How can we have access to justice if we have inadequate resources?</p>

<p>Chapter III- prevention</p> <ul style="list-style-type: none"> promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men. training of professionals in regular contact with victims or perpetrators on the equality between women and men relevant professionals may include professionals in the judiciary, in legal practice and in law-enforcement agencies, as well as in the fields of health care, social work. <p>Now this would help in access to justice for women!</p>	<p>Chapter IV– protection and support</p> <ul style="list-style-type: none"> ensure that victims receive adequate and timely information on available support services and legal measures in a language they understand <p>Once again, this is vital to access to justice!</p> <ul style="list-style-type: none"> ensure that victims have information on and access to applicable regional and international individual/collective complaints mechanisms promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints
<p>Chapter V – substantive law</p> <ul style="list-style-type: none"> adequate civil remedies against the perpetrator. adequate civil remedies against State authorities that have failed in their duty to take the necessary preventive or protective measures within the scope of their powers. ensure that victims have the right to claim compensation from perpetrators Adequate State compensation shall be awarded to those who have sustained serious bodily injury or impairment of health granting of compensation within a reasonable time <p>very relevant to access to justice...</p>	<p>Chapter V - cont.</p> <ul style="list-style-type: none"> to ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Convention are taken into account and that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or children. <p><i>This is something that causes a lot of pain to women – and is just one of the situations that makes them feel that the system is stacked against them and their children, and that they do not get justice...</i></p>

<p>Chapter V cont</p> <ul style="list-style-type: none"> • Criminalises psychological violence, stalking, physical violence, sexual violence including rape, forced marriage, female genital mutilation, forced abortion and forced sterilisation and provides for criminal or other legal sanction for sexual harassment • Emphasises that culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts – in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behaviour • Requires that these crimes are ‘punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness’ • identifies aggravating circumstances • prohibits mandatory alternative dispute resolution processes or sentencing. <p>These articles make women feel more secure about approaching the legal system, thereby increasing their access to justice.</p>	<p>Chapter VI – Investigation, prosecution, procedural law and protective measures</p> <ul style="list-style-type: none"> • ensure that investigations and judicial proceedings are carried out without undue delay while taking into consideration the rights of the victim during all stages of the criminal proceedings. • ensure the effective investigation and prosecution of offences • ensure that the responsible law enforcement agencies respond promptly and appropriately by offering adequate and immediate protection to victims, and in the prevention and protection against all forms of violence • ensure that an assessment of the lethality risk, the seriousness of the situation and the risk of repeated violence is carried out by all relevant authorities in order to manage the risk and if necessary to provide co-ordinated safety and support. • Emergency barring orders; Restraining or protection orders • ensure that, in any civil or criminal proceedings, evidence relating to the sexual history and conduct of the victim shall be permitted only when it is relevant and necessary. • Ex parte and ex officio proceedings • Assistance and/or support for victims during investigations and judicial proceedings • Protection
<p>Chapter VII</p> <p>considers the specific situation of migrants and asylum seekers, recognising that at times a victim’s residence status is dependent on that of the spouse or partner, and such a person is therefore in a particularly vulnerable position in terms of access to justice of any kind. It therefore deals with Residence status, Gender-based asylum claims and the principle of non-refoulement.</p>	<p>Chapters VIII - XII</p> <ul style="list-style-type: none"> • Chapter VIII deals with International co-operation, increasing women’s access to justice across states • Chapter IX talks of the Monitoring mechanism (GREVIO) which will monitor the convention and therefore women’s access to justice. • The final 3 chapters, Chapter X (Relationship with other international instruments), Chapter XI (Amendments to the Convention) and Chapter XIII (Final clauses)

Session 2 – Access to justice for women victims of violence

A Civil Society Perspective on equal access of women to justice.

Ms Gauri van Gulik (Human Rights Watch)

Powerpoint presentation

 <p>ACCESS TO JUSTICE Gauri van Gulik Global Women's Rights Advocate</p>	<p>Barriers to Justice</p> <ul style="list-style-type: none">1. Legal Barriers2. Institutional Barriers3. Disadvantaged and vulnerable groups
<p>1. Legal Barriers (1)</p> <p>Most extreme: when women are treated as perpetual minors, prevented from accessing police, courts. Example: Saudi Arabia</p> 	<p>1. Legal Barriers (2)</p> <p>More common: subgroups of women who are excluded from justice.</p> <p>Example 1: separated women, couples not living together HRW research - Hungary, Turkey</p> <p>Example 2: undocumented women HRW research - Belgium</p>
<p>2. Institutional Barriers (1)</p> <p>Most extreme: punishment or abuse of women who seek help.</p> <p>Example 1: women arrested for violating moral crimes, as in picture previous slide HRW research - Afghanistan</p> <p>Example 2: virginity tests when women seek help HRW research - India, Egypt</p>	<p>2. Institutional Barriers (2)</p> <p>More common: negligent, incorrect, indifferent responses from institutions.</p> <p>Example 1: Police failure to process claims, respond to complaints and reluctance prosecution HRW research - Turkey, Hungary</p> <p>Example 2: Evidence thresholds, low qualification crime HRW research - United States, Hungary</p>

3. Disadvantaged groups (1)

Example 1: Undocumented women

HRW research - Belgium

Example 2: Migrant domestic workers

HRW research - worldwide

3. Disadvantaged groups (2)

Example 3: Women with disabilities

HRW research - Uganda, but also pieces in Turkey, Belgium, Hungary

Example 4: Lesbian, Gay, Bisexual and Transgender people

HRW research - Kuwait, South Africa, but also relevant exclusions categories of protection in Europe

Séance 2: Accès à la justice des femmes victimes de violences

Panorama de la jurisprudence de la Cour européenne des droits de l'homme sur les obstacles à la justice pour les femmes victimes de violence

Mme Ramona Toma (Juriste à la Cour européenne des droits de l'homme)

C'est pour moi un grand honneur de prendre la parole devant vous, et cet honneur ne va pas sans une grande émotion. Je travaille à la Cour européenne des droits de l'homme en tant que juriste depuis près de treize ans et j'ai rédigé plusieurs centaines de décisions dans des affaires relatives aux droits des personnes vulnérables, des détenus, des enfants, des personnes handicapées, et des femmes victimes de violence.

La dernière affaire dont j'ai été chargée me tient tout particulièrement à cœur : elle porte sur les difficultés d'une personne paraplégique d'accéder aux bâtiments publics de sa ville natale en Roumanie, à cause de l'absence de rampes d'accès pour les personnes handicapées. La semaine passée, une chambre de 7 juges de la Cour a exprimé son intention de se dessaisir de cette affaire en faveur de la Grande Chambre. C'est donc une formation de 17 juges qui va statuer sur le fond de cette affaire. Je vous invite cordialement à venir à Strasbourg pour assister à l'audience publique que la Grande Chambre tiendra l'année prochaine, car cette affaire risque d'avoir des répercussions bien au-delà des frontières de la Roumanie !

Il y a à l'heure actuelle environ 125. 000 affaires pendantes devant la Cour européenne tous sujets confondus. Un volume impressionnant si l'on se rappelle que la Cour ne compte que 47 juges et quelques 200 juristes issus des 47 Etats du Conseil de l'Europe. La Cour a fait le choix de ne plus traiter les affaires par ordre chronologique comme auparavant, mais en tenant compte de leur gravité et de leur urgence. Et j'ai le plaisir de vous informer que les affaires qui concernent des violences subies par les femmes ou des risques de violence encourus par les femmes font partie des affaires considérées comme prioritaires. Elles sont traitées par la Cour avant d'autres affaires jugées moins urgentes, qui touchent, par exemple, à un droit de propriété.

Car, Mesdames et Messieurs, avoir un accès à la justice signifie beaucoup plus que de pouvoir porter un litige devant un tribunal : c'est à tous les stades de la procédure que ce droit à la justice doit « être concret et effectif, et non théorique et illusoire », pour citer cette formule classique répétée comme un leitmotiv dans les arrêts de la Cour européenne.

Or si on regarde les affaires portées devant la Cour, on s'aperçoit que l'accès des femmes à la justice a parfois bel et bien été théorique et illusoire. Dans de nombreux États d'Europe, des femmes victimes de violence se sont heurtées à des obstacles certains. De quelle nature sont ces obstacles ? Il y a, tout d'abord, ceux qui concernent la prise de contact avec la justice, autrement dit, l'entrée dans le système judiciaire (I). Ensuite, les obstacles qui concernent l'utilisation de ce système par les femmes (II) et enfin, ceux qui compromettent l'efficacité des procédures judiciaires auxquelles les femmes ont pourtant eu accès (III).

I. Arrêtons-nous, tout d'abord, à la première catégorie d'obstacles, ceux qui empêchent l'entrée dans le système judiciaire

Rien ne doit empêcher une victime de mauvais traitements d'avoir accès à la justice, ni les obstacles de fait, tels, par exemple, l'absence des rampes d'accès aux bâtiments, ni les obstacles de droit, telle que des lacunes législatives ou des barrières procédurales.

- Dans l'affaire X. et Y c. les Pays-Bas, le père d'une fille handicapée internée dans un établissement psychiatrique n'a pu porter plainte contre l'homme qui avait violé sa fille. La loi nationale demandait alors aux femmes âgées de plus de 16 ans voulant se plaindre d'un viol qu'elles signent elles-mêmes leur plainte pénale. Aucune exception n'était prévue dans la loi pour les femmes qui en étaient incapables en raison d'une déficience physique ou mentale. En l'espèce, bien que le père de la victime ait expliqué aux enquêteurs qu'en raison de son handicap, sa fille avait l'âge mental d'une enfant et ne pouvait pas signer la plainte pénale qu'il avait rédigé pour elle, cette plainte a été déclarée irrecevable pour vice de forme. La Cour européenne a estimé que de telles barrières procédurales, rendues possibles par des lacunes dans la loi, étaient contraires à l'article 8 de la Convention.
- Dans d'autres affaires qui concernaient, cette fois-ci, des violences conjugales, la Cour a relevé l'existence, dans plusieurs pays d'Europe, de pratiques discriminatoires qui visaient à barrer l'accès à la justice aux femmes victime de violence.

Dans plusieurs affaires, comme par exemple : Opuz c. Turquie, Mudric c. République de Moldova, Kontrova c. Slovакie, Bevaka c. Bulgarie, la Cour a constaté, que les policiers s'érigaient souvent en médiateurs lorsque les femmes allaient au commissariat pour dénoncer des violences conjugales, afin de les convaincre de rentrer chez elles et de retirer leurs plaintes. Et si l'affaire arrivait malgré tout devant le parquet, les procureurs jugeait qu'elle relevait de l'intimité de la sphère familiale dans laquelle ils ne pouvaient pas intervenir ! La Cour européenne a estimé que des telles pratiques étaient contraires aux articles 3 et 14 combinés de la Convention.

II. Chers auditeurs, nous en arrivons maintenant à la deuxième catégorie d'obstacles à la justice. Cette catégorie est relative à l'utilisation du système judiciaire par les femmes.

Le principe qui se dégage de la jurisprudence de la Cour est que le système judiciaire auquel les femmes ont accès doit être sensible et réactif à leurs besoins et doit évaluer sérieusement les risques qu'elles encourrent afin de pouvoir les protéger. Or, il y a certaines affaires devant la Cour européenne qui montrent que tel n'est pas toujours le cas en Europe.

- Dans l'affaire N. c. la Suède, la Cour a estimé que les autorités suédoises chargées d'examiner une demande d'asile d'une femme d'origine afghane, en décident qu'elle devait retourner en Afghanistan, n'avaient pas suffisamment pris en compte la vulnérabilité particulière de cette femme et les risques sérieux qu'elle encourrait pour sa vie.

Pourtant, il ressortait au vu des éléments fournis par cette femme, résidant en Suède depuis plusieurs années, qu'elle avait essayé, sans succès, de divorcer de son époux afghan. Elle avait eu également une relation avec un suédois. De tels faits n'étant pas tolérés par la société afghane, cette femme risquait, à son retour, d'être persécutée, isolée et marginalisée, voire d'être condamnée à mort.

Il est intéressant de noter que ce qui a fondé le jugement de la Cour européenne est que les femmes Afghanes sont totalement privées d'accès à la justice. 80 % d'entre elles sont victimes de violence conjugales au moins une fois dans leur vie. Pourtant, elles ne peuvent pas s'approcher physiquement des tribunaux et des commissariats de police pour porter plainte. Sans escorte masculine, elles n'ont pas le droit de quitter leur maison.

Aux yeux de la Cour européenne, de tels éléments auraient dû peser dans la décision des autorités suédoises chargées d'examiner la demande d'asile de cette femme afghane. Grâce à l'intervention de la Cour, la requérante a pu rester en Suède.

- La Cour européenne a été récemment saisie par un certain nombre de femmes d'origine africaine (de Guinée et du Niger par exemple) actuellement sur le territoire européen et qui risquent d'être renvoyées à tout moment dans leur pays d'origine.

Ces femmes allèguent, devant la Cour européenne, qu'elles vont subir une mutilation génitale à leur retour dans leur pays d'origine; elles reprochent aux autorités européennes de ne pas s'être livrées à une analyse minutieuse des risques qu'elles encourent en Afrique si elles doivent y retourner.

Pour éviter une situation irréversible, la Cour a ordonné aux Gouvernements concernés (de la France et de la Belgique) de suspendre la procédure d'éloignement de ces femmes jusqu'à ce qu'elle détermine si elles encourent un risque réel et personnel d'être soumises à une mutilation génitale.

Cette décision de la Cour européenne est très attendue et je vous invite à en prendre connaissance dans les mois qui viennent sur le site internet de la Cour.

- Un autre exemple qui illustre bien le fait que les juridictions nationales ne prennent pas toujours en compte la vulnérabilité particulière des femmes victimes de violence, est l'affaire V. c. la Slovaquie. Des femmes slovaques d'origine Rom venues accoucher dans un hôpital public de Slovaquie ont été stérilisées contre leur gré.

Il est important de souligner que la stérilisation ne visait aucun impératif d'ordre médical pour sauver, par exemple, la vie de ces femmes, ou de leurs enfants à naître. Les médecins slovaques ont littéralement « arraché » leur accord à ces femmes Rom au milieu de l'accouchement, sans même leur expliquer ce que le mot « stérilisation » signifie. Pourtant, les juridictions slovaques n'ont trouvé rien d'étonnant dans ces pratiques médicales et ont débouté les demandes d'indemnisation des victimes. La Cour européenne a condamné la Slovaquie à verser 31.000 euros à chacune de ces femmes !

III. Nous en arrivons à la dernière catégorie d'obstacles à la justice, celle qui compromet l'efficacité des procédures judiciaires auxquelles les femmes ont eu accès.

Le formalisme excessif des juridictions internes peut compromettre l'efficacité d'une procédure judiciaire. Cela se traduit souvent par des exigences très strictes ou disproportionnées en matière de preuve, qui sont difficiles, voire impossibles à respecter par une victime de mauvais traitements.

Une affaire emblématique est l'affaire M.C. c. Bulgarie. Elle a permis à la Cour de mettre le doigt sur des pratiques judiciaires restrictives et inappropriées dans les affaires de viol. La requérante avait seulement 14 ans lorsqu'elle a été violée par deux adultes. Aucun d'entre eux n'a été condamné, au motif qu'aucune preuve n'avait été apportée d'où il ressortirait que la victime s'était débattue et avait résisté physiquement à ses agresseurs.

La Cour européenne a rappelé que des études en matière de psychologie avaient démontré que les femmes violées n'opposaient pas forcement de la résistance physique à leurs agresseurs. Une force paralysante les empêche d'agir. Les juridictions internes doivent prendre en compte ces facteurs psychologiques et en tirer conséquences quant aux preuves nécessaires dans le cadre d'une affaire de viol.

Le simple fait qu'il n'y ait pas de preuves directes attestant que la victime a cherché à résister et à s'opposer à ses agresseurs ne devrait pas conduire les tribunaux à conclure qu'elle avait consenti au rapport sexuel. Une telle approche risquerait de laisser impunis beaucoup d'agresseurs. Aux yeux de la Cour européenne, ceci serait inacceptable.

- Un autre élément qui peut compromettre l'efficacité d'un système judiciaire est l'impossibilité pour une victime d'obtenir une décision dans un délai raisonnable.

Dans l'affaire Ebcin c. Turquie, ce ne fut que six ans après l'attaque de la requérante par trois individus qui lui jetèrent de l'acide sur son visage que les agresseurs présumés ont été arrêtés. 13 ans après, la procédure n'était toujours pas arrivée à son terme.

La Cour a condamné la Turquie à verser 30.000 Euros à la victime pour ne pas avoir respecté l'exigence de célérité et de diligence raisonnables indispensables dans la conduite de l'enquête.

Conclusion

Je vous invite cordialement à consulter sur notre site internet, HUDOC, la base de données de la Cour. Vous y trouverez tous nos arrêts et décisions. Vous y trouverez aussi un guide sur les conditions de recevabilité et une note explicative sur comment introduire une requête auprès de la Cour.

La grande nouveauté est qu'à partir de l'année prochaine, vous pourrez remplir le formulaire de requête en ligne et saisir la Cour européenne d'un simple click !

Je voudrais, pour conclure, m'adresser plus particulièrement aux femmes victimes de violence et aux représentants des ONG ici présents.

On me demande souvent quand je participe à des conférences : comment faire pour choisir « la bonne affaire » à porter devant la Cour ?

Mon expérience m'a montré que la solution la plus efficace n'est pas toujours de choisir un cas parmi d'autres : Pourquoi ne pas regrouper deux, trois, dix, cinquante ou une centaine de cas individuels dans une seule requête et les présenter ainsi, de façon groupée, devant la Cour ?

Réunir plusieurs cas identiques ou similaires permet d'envoyer un signal très fort à la Cour qu'il ne s'agit pas d'une situation isolée, mais d'une pratique systématique dans certains Etats d'Europe.

Et je peux vous garantir qu'un arrêt de la Cour dans une telle affaire aura un impact très fort et donnera une impulsion décisive vers le changement de la loi et des pratiques nationales.

Session 3 – Socio-economic and cultural barriers to equal access to justice for women victims of violence

Addressing the socio-economic and cultural barriers

Ms Rosa Logar (WAVE network and Domestic Abuse Intervention Centre, Vienna)

Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.

Istanbul Convention 2011, Article 12

Before trying to answer the question of what socio-economic and cultural barriers women victims of violence have to overcome when accessing the justice system, let me ask another question: Why should women survivors of violence seek access to justice? Or – to make it more personal (since it is not only “the other woman” who experiences violence, it can be every woman, it can be us) – why should we as survivors turn to the justice system? What can we gain from it? Will justice be done to us in the justice system? Will we be believed, or blamed or even stigmatised? Will we, as so many women express to women’s support services, feel as if WE were the accused, not the actual perpetrator? As if WE have to prove the violence, not the state? What can we gain from the justice system in our countries as victims of domestic violence or rape?

I remember I was shocked when I watched a German talk show in 2010 hosted by Anne Will on the subject of a rape case that had attracted widespread public attention involving a TV presenter who had been reported for rape by his ex-girlfriend. The show was broadcast while the trial was going on and one of the guests, the retired Attorney General Hansjürgen Karge, stated that, if in doubt, he would NOT advise his daughter to report a rape to the police. (The accused man was acquitted later; according to a European study, on average only 14% of the reported rape cases end in a conviction – see UN Women 2011). Many women survivors of rape in Germany do what the retired Attorney General advises them to do if in doubt (i.e., if unsure that they can “prove” the violence or that they will be believed) – they do not report. According to a representative study on violence against women, only 8% of women victims of rape go to the police (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth BMFSF 2004).

What would you advise your daughter, sister, niece, mother, best friend or colleague to do if she had suffered rape? What would you do yourself? Would you report? Would you report if the perpetrator was your husband, your boyfriend, your boss whom you went out with but did not want to have sex with? How would you try to convince a woman who asks you for advice to report to the police?

Low reporting rates are also common in the case of other forms of violence against women, such as domestic violence, and the phenomenon points towards numerous barriers for women victims of violence to access the justice system. Low conviction rates show that, even if women do overcome the barriers to reporting, justice for the victim is often not the outcome.

The tendency to mistrust women survivors of violence in our justice systems is a matter of concern, as is the lack of efforts by the justice system to investigate, prosecute and sanction acts of violence against women, and to protect the victims. That perpetrators of violence against women are rarely held accountable for their acts constitutes a serious problem to our democracies and to security and peace for women in our societies. It abets the criminal in his offences and condones violence against women. I am not arguing that this is a deliberate act, nor that anyone in the justice system willfully supports perpetrators of violence; this would be tantamount to corruption and an abuse of power in the justice system. But even if it is not intentional, if it is “just happening”, it is important to examine the factors behind the low reporting, high attrition and low conviction rates in this area of crime and to change them.

Important measures to guarantee adequate protection according to the principle of due diligence (Istanbul Convention 2011, Article 5) can help to remove barriers to the access of survivors of violence to justice). In recent years, the UN Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) as well as the European Court of Human Rights (ECHR) have applied the due diligence principle to several cases of violence against women and domestic violence and ruled that state authorities have a positive obligation to protect women victims of violence (see for instance CEDAW Gökce and Yilderim v. Austria, ECHR Opuz vs Turkey 2009, Tomasic v. Croatia 2009, in: Logar 2010; Council of Europe 2013).

Blaming the victim – a main barrier for women victims of violence in accessing the justice system

Unfortunately, blaming the victim is still a widespread phenomenon in our society, when it comes to violence against women. It is so deeply rooted that we do not even recognise the severe nature of this discriminatory, stigmatising and inhumane attitude. “She was wearing a miniskirt, no wonder she provoked him” or “She was wearing tight jeans, it cannot have been rape” or “She never had the meal ready, no wonder he lost his cool” are stereotypes which are often reproduced unthinkingly. We hardly call it hate crime, misogyny or sexism (even though we talk of xenophobia, racism, anti-Semitism or homophobia, when it comes to other groups); it rarely elicits an outcry, even if victim-blaming is practised by representatives of the justice system or other authorities, and hardly ever is anybody held accountable for blaming a victim.

Why? What is the reason for the widespread acceptance of violence against women? It is a sign that violence against women is still “a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women” (Istanbul Convention 2011, Preamble).

To address and eliminate victim-blaming as a form of discrimination against women in all areas of society, including in institutions, should be one of the main goals of removing barriers to justice for women victims of violence.

A video-clip against victim-blaming from young women from India: Young artists in India produced and posted on line a satirical video entitled “Rape? It’s your fault”, a parody of the victim-blaming culture. It uses patriarchal explanations of rape, in a clever and funny way, to raise awareness about the harmful and sexist attitudes.⁴

This article does not deal with “classic” legal barriers, such as missing legal aid or court fees women survivors of violence might find it hard to pay. Of course, it is important to identify such barriers as well (see Council of Europe 2013). The focus of my contribution is on socio-economic and cultural

⁴ Watch the video clip “It’s your fault” on You Tube: http://www.youtube.com/watch?v=8hC0Ng_ajpY

barriers which often prevent women from even addressing the justice system. Social barriers are often related solely to individual barriers such as lack of language skills. It seems important to avoid individualisation, to identify barriers at all levels (individual/family, institutional, society as a whole) and to regard the intersections between them. Barriers are different in nature – some such as victim-blaming or gender-stereotyping are attitudes deeply rooted in society, which need long-term measures for awareness-raising and change. Other barriers, such as difficulties in accessing a women's shelter because of a disability or because of a lack of means of transport are, theoretically, easier to address – they can be changed if the necessary resources are provided. Why the necessary resources are not always there when it comes to the prevention of violence against women is a political question. In the arena of politics, where men still dominate, it is often men's interests and rights that decide where the money that has been generated by men *and* women is spent. Power and dominance decide whether tax money will be spent for weapons, the army or sports events such as the Olympic Games, or whether it will be invested in the social area, in care for the elderly, for children or in safety measures for women victims of violence.

As stated, barriers should not be seen as reflecting shortcomings of victims or as a primarily individual problem; often barriers are shortcomings in our societies which hinder women victims of violence and their children from accessing justice. We also have to be aware that the violence women experience itself is a barrier to justice, since it is aimed at hindering victims from seeking help and intimidating them. Threats by perpetrators such as "You'll be sorry if you go to the police", "I'll kill you" or "I'll take away the children and you'll never see them again" are very common. I will start with this issue as a main barrier.

Violence as a barrier (fear)

Individual and family level: Violence or fear of violence is one of the main barriers preventing women victims of violence from leaving the aggressor or taking legal action against him. And their fear is not unfounded – research shows that taking steps towards separation is one of the main risk factors for the escalation of violence, and the majority of femicides or attempted femicides are committed when women try to leave their partner (see WAVE 2012). To report to the police or to testify in court might result in violent acts of retaliation in the case of dangerous perpetrators.

Victims often feel the danger; they know the perpetrator well and they hesitate to do anything that could upset him. Such defensive strategies are often successful, and the victims themselves are the ones who prevent violence; they rarely get praised for it, but are rather accused of subordination; this is another form of victim-blaming and stereotyping. Victims who do not "fight back" are easily despised and stigmatised (as co-dependent, subservient ...). If they fight back too hard, they are monsters. There is little room for error to get it right as a woman victim of violence.

Institutional level: At the institutional level, the dynamics and danger of partner and domestic violence are often not properly understood. Victims are "advised" to leave the partner without safety planning measures; law enforcement and justice personal send application letters about divorce to violent partners while the victims are still living with them, without thinking that this could cause harm. Even if women survivors of violence dare to report and take legal steps, they are often victimised repeatedly, because the authorities do not take the violence seriously; they tend to believe that it's the first time, and their interventions are not adequate to put an end to the violent behaviour. Moreover, agencies are hardly held to account when it comes to repeat violence; they cover themselves by propagating the myth that "the violence could not have been prevented", even if they did little or nothing to prevent further violence, but dropped the case or acquitted the aggressor (see European Court of Humans Rights cases referred to earlier).

Level of society: Also at the societal level there is little understanding of the danger and dynamics of violence, and women are easily blamed, as demonstrated. This reinforces their feeling of being trapped in a situation that receives little understanding, while everybody seems to claim the right to judge the victim. This enormously weakens us as victims and plays into the hands of the perpetrator.

Measures to address the barriers:

- Increase the knowledge about the phenomenon and dynamics of violence against women and their children in the basic training and continuing education of all relevant professionals (police, prosecutors, judges and other relevant personnel in the justice system, social and health workers, psychologists, sociologists, teachers, etc.).
- Establish clear guidelines on how to effectively support women without putting them at a greater risk, and ensure their effective implementation in all institutions and organisations dealing with women victims of violence and their children; implement policies on continuous risk assessment and safety planning.
- Apply a safety and victim centered approach in multi-agency work.
(see WAVE 2012).

Harmful attitudes as barriers

At the individual/family level, women victims of violence often experience victim-blaming by the violent partner. It is one of the forms of psychological violence and aims at undermining the self-esteem of the victim. The victim is not only violated, she is also made responsible for the violence: "You deserved it, you provoked me" is the attitude here. If we hear this accusation often as victims and our self esteem is weakened, we actually start to believe that the violence is our fault; if only we would be or act differently, we would not be abused. Survivors also experience victim-blaming by the family and among their friends, which further weakens them and makes it difficult to stand up against the injustice.

Institutional level: Victim-blaming is unfortunately still widespread among members of institutions who deal with survivors of violence. Behind it, we often find a lack of awareness and lack of knowledge about the phenomenon of violence in relationships and domestic violence. Victim-blaming is not always so up-front that is it easily recognisable. Questions like: Why did you go out with him? Why did you not just leave him? might sound normal, but if we are a survivor of violence, these questions will make us feel guilty and we will feel blamed.

Level of society: Victim-blaming is, as stated, widespread in society as a whole, and we encounter such attitudes easily as survivors of violence. Needless to say, a violent partner feels strengthened by the attitude of victim-blaming; it will reassure him that he is in the right and that his wife/girlfriend is to blame for the violence. Victim-blaming, whether we want it or not, whether we intend it or not, condones the violence and nurtures violent behaviour. It contributes to violence against women and it is a form of discrimination and violence, as stated.

Other harmful attitudes:

- Gender stereotypes and gender bias in institutions and in society as a whole;
- Minimisation and trivialisation of violence against women and their children;
- Tolerance for violence against women and their children;
- Ignorance of the problem;
- Lack of moral courage to intervene and to support victims.

Measures to address the barriers:

- Address the above-mentioned harmful attitudes, especially also the problem of victim-blaming, in widespread public campaigns;
- Address them in the basic training and continuing education of all relevant professionals (police, prosecutors, judges and other relevant personnel in the justice system, social and health workers, psychologists, sociologists, teachers, etc.).
- Build and strengthen the trust of women in the justice system by measures such as creating special units, increasing the number of women in the field, etc. (see Council of Europe 2013; UN Women 2010, 2011).

Discrimination against migrant women and racist attitudes as barriers

Migrant and minority ethnic women and their children often face additional barriers to access to justice. Discriminatory or even racist attitudes have not yet been eradicated from our societies and also still exist in institutions. Undocumented migrant women and their children belong to an especially vulnerable group. They often do not even dare to seek help, to call the police or to turn to the justice system for fear of exclusion or deportation. But also these groups of victims have fundamental rights to life, security and health which have to be respected and guaranteed (see European Agency for Fundamental Rights FRA 2011).

Measures to address the barriers:

- Promote the access of minority ethnic women and migrant women victims of violence, including undocumented women and their children, to services and the justice system;
- Provide culturally sensitive services and train and employ professionals with diverse backgrounds in institutions and support services;
- Remove discriminatory practices which hamper the access of victims to help and support, such as the rule of no recourse to public funds for migrants.
(see PICUM 2012).

Other socio-economic and cultural barriers

More social-economic and cultural barriers, and measures to address them, are described below. (The list does not claim to be exhaustive):

Social barriers

- *Lack of information about the legal system and rights to be protected*

Measures: Regular and widespread information campaigns by governments (using mass media and new information technologies) to inform victims about their rights and the possibility of obtaining support.

- *Lack of support by the family and friends*

Measures: Address families and friends as target groups in information and awareness campaigns.

- *Barriers affecting women and children with disabilities*

Measures: Remove barriers; work with civil society organisations supporting women and children with disabilities.

- *Lack of adequate help and legal protection (missing or inadequate laws or problems in implementation)*

Measures: Evaluate the functioning of the support and protection system and improve the measures implementing the provisions of the Istanbul Convention.

- *Tendency of non-interference of institutions*

In the area of violence against women and children, there is still a tendency for institutions not to interfere (often rooted in the belief that violence against women is a “private matter” and that a man can “do with his wife and children whatever he pleases”). This allows perpetrators to continue the violent behaviour without encountering sanctions and promotes – even if unintentionally – male violence against women and their children.

- *Lack of women’s support services and lack of access to services*

Measures: Implement the Council of Europe provisions on specialised women’s support services in adequate numbers (e.g., minimum standard of one place per 10,000 inhabitants in a women’s shelter); remove all barriers impeding the access of women and their children to shelters; guarantee the right also for undocumented women and children to enjoy protection and to access shelters and justice.

- *Lack of support in the community*

Measures: Promote community work; mainstream the issue of prevention of violence against women and children into all forms of community work.

Economic barriers

- *Lack of means of communication and lack of transport*

Sometimes women victims of violence even lack the means to seek help or to attend a court. They have no phone and/or no means of transport or money to pay for it.

Measures: Women victims of violence and their children must be provided with resources enabling them to access help and justice (free phones, free transport).

- *Poverty of women victims of violence and their children*

Measures: Strengthen measures to combat poverty of women and children; provide access to justice free of charge.

- *Lack of alternatives to violence*

Women and children are often forced to stay in a violent situation because of lack of alternatives.

Measures: Specific housing programmes to enable women and children victims of violence to leave the violent partner; programmes to promote women’s economic independence.

- *Language and cultural barriers*

Measures: Provide culturally sensitive support to victims in their mother tongue.

Conclusions

There are still numerous and varied barriers women victims of violence and their children face when seeking to access justice. They should be comprehensively addressed in state-wide effective, comprehensive and co-ordinated policies (see Council of Europe 2011). Measures to address them, including resources needed, should be part of every national action plan to prevent violence against women and their children. Policies need to put the “rights of victims at the centre” of all measures and to “offer a holistic response to violence against women” (Article 7 of the Istanbul Convention). This implies that any discriminatory, biased, judgemental, blaming, stigmatising, minimising or trivialising attitude towards women survivors of violence need to be eliminated at all levels.

At the end of my intervention, let me address the often heard argument of governments that they do not have the necessary resources to prevent violence against women and their children. It raises the question: Can we afford it? The answer can only be: We have to afford it! Compared to the costs of violence against women, which in Europe amounts to an estimated 16 billion Euros annually⁵, governments' budgets for the prevention of violence against women and their children are meagre. I call upon governments to publish information about the extent of state funding for women's support services and welcome Prof. Sylvia Walby's suggestion that an indicator of the extent of state funding of women's support services should be developed.⁶

Regarding the complaint that the economic crisis does not allow for adequate funding of services, I want to recall the Beijing Platform for Action, Strategic objective E.2., which reads that states should "Undertake to explore new ways of generating new public and private financial resources, inter alia, through the appropriate reduction of excessive military expenditures, including global military expenditures, trade in arms and investment for arms production and acquisition, taking into consideration national security requirements, so as to permit the possible allocation of additional funds for social and economic development, in particular for the advancement of women."

⁵ Psytel, 2006 Daphne Project on the cost of domestic violence in Europe.

⁶ Interview conducted by EIGE: <http://www.eige.europa.eu/content/document/violence-against-women-victim-support-interview-with-sylvia-walby>.

References

- Council of Europe (2008): Task Force to Combat Violence against Women, Including Domestic Violence - Final Activity Report, Strasbourg
[http://www.coe.int/t/dghl/standardsetting/convention-violence/CAHVIO/EG-TFV\(2008\)6_complete%20text.pdf](http://www.coe.int/t/dghl/standardsetting/convention-violence/CAHVIO/EG-TFV(2008)6_complete%20text.pdf)
- Council of Europe (2011): Convention on preventing and combating violence against women and domestic violence, Istanbul
<http://www.coe.int/t/dghl/standardsetting/convention-violence/convention/Convention%202010%20English.pdf> 25 November 2013
- Council of Europe/Gender Equality Commission (GEC) (2013): Feasibility Study Equal Access of Women to Justice, Strasbourg
http://www.coe.int/t/dghl/standardsetting/equality/03themes/access_to_justice/GEC_2013_1_abridged_REV%20title.pdf 30 November 2013
- European Court of Human Rights (2013): Factsheet Violence against Women, Press Unit, July 2013, Strasbourg download. http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf, 30 November 2013
- European Agency for Fundamental Rights FRA (2011): Fundamental rights of migrants in an irregular situation in the European Union, Vienna
<http://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>, 30 November 2013
- Federal Ministry for Family Affairs, Senior Citizens, Women and Youth BMFSF (2004): Health, Well-Being and Personal Safety of Women in Germany. A Representative Study of Violence against Women in Germany- Summary of the central research results, Berlin
- Logar, Rosa (2010): CEDAW as an instrument to address life-threatening gaps in the protection of women from gender-based violence. The Austrian experience, Vienna download:
<http://www.interventionsstelle-wien.at/start.asp?ID=476&b=78> 30 January 2014
- PICUM (Platform for International Cooperation on Undocumented Migrants) (2012): Strategies to End Double Violence Against Undocumented Women.
Protecting Rights and Ensuring Justice, Brussels
<http://picum.org/en/publications/reports/> 06 August 2012
- UN Women (2011): Progress of the Women's World 2011-2012 - Pursuit of Justice, New York
<http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf> 30 November 2013
- UN Women (2012): Handbook for Legislation on Violence against Women, New York
Download in English, French, Spanish, Russian, Arabic and Chinese:
<http://www.unwomen.org/en/digital-library/publications/2012/12/handbook-for-legislation-on-violence-against-women>, 30 November 2013
- WAVE (2012): Capacity Building in Risk Assessment and Safety Management to Protect High Risk Victims, Learning material produced within the PROTECT II project (EU Daphne project), Vienna

Gratis download in German, Spanish, French, English, Bulgarian, Czech, Italian, Estonian, Polish, Swedish, Slovak from the WAVE website: <http://wave-network.org/content/protect-ii-learning-resource-capacity-building-risk-assessment-and-safety-management-protect>, 30 November 2013

Séance n° 3 – Obstacles socio-économiques et culturels à l'égalité d'accès à la justice des femmes victimes de violences

Témoignage d'une personne originaire de la France:

Je viens aujourd'hui devant vous témoigner d'une histoire déroutante et dérangeante de victime survivante.

Victime mais combattante, survivante mais condamnée à livrer un combat perpétuel et vital.

De qui suis-je victime ?

Quel saut dans le vide pour fuir l'enfer ?

Quels filets pour amortir la chute ?

Comment tombe-t-on dans la fosse aux lions lorsque l'on a cru au balancier de la justice ?

Je vous livre le contexte :

J'ai été mariée à un médecin brillant, assoiffé de réussite sociale, professionnelle et financière. J'ai été sur tous les fronts, l'aidant durant 22 ans de vie commune, toujours à ses côtés. Une ascension étincelante. De cette union sont nés deux magnifiques enfants. Deux filles, belles, actives, d'une intelligence hors norme, surdouées, musiciennes et sportives...

Bref : un tableau idéal.

Acte 1 - Le huis clos, violence tapie, morbidité, danger de mort.

Il convient de rappeler le long processus de huis clos afin de comprendre les difficultés auxquelles je vais être confrontée lorsque je serai face au système juridique.

Victime d'un pervers narcissique, le conditionnement et la destruction de ma personnalité devaient tendre soit à mon suicide de victime à bout de forces, soit à mon décès accidentel engendré par d'ultimes épisodes de mises en danger de mort.

Cela commence par des insultes ponctuelles mises aussitôt sur le compte du surmenage (un médecin travaille beaucoup, forcément).

Il fait le vide autour de moi pour mieux m'isoler (nous ne recevons personne à la maison, il refuse quantité d'invitations. Certains en plaisantent : 'Vous cachez votre femme, docteur ?')

Il me coupe de mes amis et détruit méthodiquement toute relation amicale ou sociale.

Savant dosage, il faut faire en sorte que les gens s'excluent d'eux-mêmes.

Il met en place une surveillance accrue pour mieux induire la peur et la perte de liberté. D'une jalousie maladive, il se sert des moindres informations rapportées par des patients pour me localiser ou m'épier. Il dénigre sans cesse, sans répit, jours après jours, c'est le ternissement de mon image.

Il dénigre la femme mais aussi la mère. La morbidité s'installe dans le discours familial : 'Lorsque votre mère sera morte, je mettrai ses cendres dans les chiottes et je tirerai la chasse'.

Les disputes s'enchaînent. Il pousse à bout. Application de la technique de secousse violente par les poignets, puis balayage de judo et mise à terre. ('De toute façon, tu n'auras jamais de certificat médical. Je sais taper sans laisser de traces').

La violence physique s'affirme, toujours sans témoin. La violence conjugale est définitivement familiale. Je suis projetée contre une porte, il maltraite sa fille à l'abri des regards.

Ces situations de violence sont alors verrouillées. Impeccable et charmant en société, cassant et maltraitant en privé, il travaille années après années sur la notion de crédibilité. C'est la phase de destruction du capital confiance en soi qui se poursuit. 'Tu ne seras pas crédible ma pauvre femme. Moi je suis médecin, toi tu n'es rien. Tu vas être ridicule, passer pour folle si tu parles. De toi ou de moi, qui croira-t-on ?' Alors qu'il a réussi à interner ma meilleure amie, il menace de me réserver le même sort et de prendre les enfants.

Le piège se referme. Tout est prêt pour basculer dans l'horreur. On déménage. Il ne reprend plus de clientèle, ne fait plus que des gardes. Achète pour domicile familial une maison délabrée. Pas d'armoire, des vêtements dans des cartons, pas de miroir, plus de clés, pas de refuge possible. Il pose des fils de pêche sur les portes, les tiroirs, refuse de signaler ses allers et venues. On lui parle, il n'est plus là. A tout moment, il réapparaît au détour d'une porte. Il surveille les appels téléphoniques, contrôle notre sommeil, utilise des méthodes de gourous de secte sur moi et les filles. Dormir n'est possible que par épuisement. Que je rie avec les enfants l'insupporte. Brimades, humiliations, harcèlement ininterrompu 24h/24.

L'état d'hyper vigilance s'installe. Grâce à cela, je suis à l'aguet du moindre bruit, ce qui permettra d'échapper à trois reprises à l'asphyxie par le gaz qu'il avait ouvert avant ses départs nocturnes.

L'inconcevable. Après une violente dispute en février 2003, je m'effondre sous ses secousses et reste gisante sur le carrelage et sans soins pendant 24h malgré les demandes des enfants de me faire transporter à l'hôpital. 'Votre mère ne sortira pas de la maison. Le médecin, c'est moi.'

Je ne sens plus le côté gauche de mon corps, j'inverse les sons, les syllabes. La bouche est déformée par la paralysie faciale. Diagnostic : AVC

Survivante!!

Eté 2003. Il assène aux enfants. Je m'y prend mal avec votre mère, je vais demander conseil à Noir Désir. L'actrice Marie Trintignant vient de décéder sous les coups de son compagnon. Il me dit : 'Viens voir, c'est ta copine que l'on met au trou.'

Il continue son travail de sape et de destruction psychologique et le cible de plus en plus sur la plus jeune de mes filles, A., qui s'interpose systématiquement ou détourne ses foudres.

B., en derrière ligne, assiste impuissante à son machiavélisme.

Il faut partir, mais partir à trois, ensemble, pour échapper à une mort programmée. Fuir un mari médecin, hors normes dans sa dangerosité, son jeu d'attribution de vie ou de mort.

Acte 2 - L'échappée belle ou le saut dans le vide.

Je fuis en octobre 2003, laissant tout derrière moi (maison, affaires, et même le chien), à 700km, après avoir déclaré au commissariat mon départ. J'ai peu d'argent liquide, pas de métier, aucun compte bancaire à mon nom, pas de CB, pas de portable.

A Lyon, je rencontre en tapant aux portes des permanences des mairies, une femme exceptionnelle de l'association FIL (Femmes Info Liaison) qui aide les femmes victimes de violences. S'ensuit un hébergement en logement géré par la DASS. La femme de médecin se retrouve à la CMU.

Acte 3 - Le filet pour amortir la chute et rebondir : FIL

Comment aurais-je pu m'en sortir sans cette rencontre providentielle en mairie ? Pousser la porte d'une association de femmes victimes de violences, combien de femmes de classes sociales favorisées le feraient ou le font ?

C'est le premier verrou à faire sauter. Libération de la parole, prise en compte par des professionnels de terrain de mon parcours mais surtout de mon statut de victime. Ouf ! Cette expertise de FIL est la pierre angulaire de la résistance.

Car la menace pèse toujours et le départ a décuplé chez mon mari sa volonté obsessionnelle de destruction, dont le nouveau vecteur va être la justice.

Acte 4 - La fosse aux lions : La justice comme parcours du combattant.

Nous sommes dans l'arène, totalement déracinées. Sur les gradins, avocats, procureurs, policiers, magistrats, juges, TGI, cour d'appel, sauvegarde de l'enfance, éducateurs qu'il faudra affronter. La vérité dérange. Vous êtes victime mais obligée de devenir combattante face à la justice. Je perturbe. Je n'ai pas le look habituel de la victime et je ne mets pas en cause seulement un mari mais un mari médecin, peut-être le bon docteur qui vient à votre chevet lorsque vous êtes malade et soigne vos enfants, un représentant d'une institution vénérable.

Face aux agissements de celui qui a prêté le serment d'Hypocrate, que d'hypocrisie, de visages embarrassés, d'inertie, de suspicion, d'hostilité.

Voilà un verrou socio-économique : une pauvre mère au foyer totalement démunie contre un médecin bien établi.

Les avocats ne sont guère motivés. L'un d'entre eux me demande 'Avez-vous un bien à vendre pour me payer ?' Harcèlement, violence psychologique, morale et des années de terreur passent à la trappe. Problème de la preuve. Une parole contre une autre et la mienne ne vaut rien. Pas de fractures ? Pas de certificat médical ? Le dossier ne vaut pas qu'on se batte. Même le dépôt de plainte pour non-assistance à personne à danger lors de l'AVC n'est pas jugé crédible par la justice, car trop tardif aux yeux des juges.

Craignant pour leur avenir, les filles prennent les choses en main. Elles ont une maturité embarrassante et loin d'être effondrées, elles résistent. Pas de cris, pas de pleurs, pas de somatisation. Elles savent gérer l'ingérable. Et pour leur malheur, ne correspondent pas à l'image d'enfants ayant subis cela. B. a 13 ans, elle est en 1ère. A. a 11 ans, elle est en 3ème.

Elles écrivent au procureur de la république et vont s'expliquer dans les bureaux de la protection de l'enfance. Parlent, expliquent, alertent, rien ne bouge.

L'ordonnance de non conciliation tombe. Aberration !

La JAF, sans enquête sociale, sans expertise médicale et sans entendre mes filles qu'elle se permet de déclarer manipulées, produit un véritable réquisitoire et me retire la garde des enfants pour les livrer à mon mari.

Oui, cela se passe bien en France, à Lyon, et non dans une république bananière du bout du monde. En France, pays qui prône les droits de l'enfant.

Les filles contactent les numéros verts d'associations de défense de l'enfant qui se retranchent derrière la décision de la JAF, décision de justice au profit du père médecin. Donc pas d'écoute, pas d'entretien. La loi, c'est la loi.

Nous choisissons une région neutre et nous nous présentons de nous-même devant un chef de service d'un hôpital psychiatrique. Il atteste que je ne fabule pas, que je ne manipule pas les enfants. Il prévient par fax le parquet, en urgence, du danger que représente la décision de la JAF.

Le parquet des mineurs bougera-t-il ? Non.

Je prends un 4è avocat. Les filles ont pris l'avocate pour enfants la plus côté sur Lyon qui leur dira : 'Vous aurez doubles cadeaux à Noël et aux anniversaires, vous trouverez les bons côtés en faisant un effort. Si votre mère est restée, c'est qu'elle devait aimer ça.'

Une précédente avocate avait transmis le message suivant : 'On ne se bat pas contre le corps médical.'

Départ des enfants chez le père. Violences, séquestrations, manipulations, conditions épouvantables.

J'ai commis l'erreur impardonnable à ne pas m'opposer à la justice.

Le système scolaire reste stoïque. Les filles sèchent les cours ou écrivent sur les copies qu'elles sont là contre leur gré. L'infirmière et l'assistante sociale ferment les écoutilles. Face à un médecin avec la loi pour lui, on ne bouge pas.

Les filles se déplacent au commissariat de police le plus proche puisque B. a subi des violences pour s'entendre dire : 'Un médecin, ça ne frappe pas ses enfants.' On les remet au père, excédé par tant de résistances.

Elles écrivent au juge de ce nouveau département où elles vivent désormais. Les lettres des enfants sont renvoyées au père. Oui, vous avez bien entendu. Une nouvelle fois, la justice met les enfants en danger.

Puis c'est la fugue. La troisième tentative est la bonne. Déscolarisées, A. est en seconde, B. doit passer son bac. Rien ne les fera repartir chez leur père, leur peau vaut bien plus qu'une décision de Madame la JAF.

En attendant, c'est à moi de trouver l'argent pour payer les cours par correspondance, me battre pour que le CNED les accepte puisque le père refuse de les radier de leur lycée et que le juge m'accuse en me rappelant l'obligation de scolarisation.

Puis c'est le grand jour. Pour la première fois, elles rencontrent un juge, celui des enfants, qui tolère, contrainte et forcé, leur vie à Lyon car même la menace de placement en foyer ne les a pas fait plier.

Selon ses dires, la priorité, c'est le père. Alors, week-ends, vacances, oust ! chez lui et à mes frais pour le transport. C'était pourtant facile d'imaginer les représailles qu'elles allaient subir.

Oui mais pas pour Monsieur le juge.

Impuissante, je commet à nouveau l'erreur plus qu'impardonnable de ne pas me rebeller contre cette nouvelle décision. Cette culpabilité me poursuit encore aujourd'hui.

En moins de 2 mois, je récupère A. avec déviation de cloison nasale, oedèmes, choc psychologique. Comme il l'avait annoncé, il l'a cassé sous les yeux de sa soeur. A. a actuellement 21 ans. Elle a repris

9 ans de procédure en justice pour tenter de terminer cette plainte pour coups et blessures par ascendant. Qui plus est, un père médecin.

Attesté par expertise médicale, sa mâchoire est irrémédiablement endommagée et elle gardera cet handicap à vie.

Le père médecin écope gentiment d'un mois de prison avec sursis, non noté sur son b2.

La sauvegarde de l'enfance a été d'une inefficacité redoutable. Dépassée par la personnalité et le machiavélisme du père, par la précocité et la lucidité d'analyse des filles. A la question 'pourquoi parlez-vous de violences lors des visites médiatisées ?', il faut voir le père qui souffre', elles répondirent lassées 'adoptez le si vous fait tant de peine'.

La décision finale du TGI pour le divorce : les torts exclusifs sont donnés à Madame.

Après avoir signalé les motifs de mon départ au commissariat, après avoir bataillé un an en appel pour retrouver la garde légale de mes filles, après avoir bataillé un an pour faire ressortir la plainte enterrée pour coups et blessures, après avoir remué ciel et terre pour éviter un drame que les juges ont tout de même programmé en toute légalité, après avoir eu cette affreuse confirmation de la volonté froide de cet homme de détruire même ses propres enfants, la décision des torts exclusifs qui me sont attribués est aberrante.

Alors j'ai décidé de demander de l'aide à un collectif-femmes qui ont signé une pétition en ma faveur. Oui, j'ai fait entrer le politique, l'engagement d'une commune et de son maire pour peser sur la justice en agitant l'épouvantail d'un remous médiatique.

En appel, j'ai obtenu les torts partagés car j'avais tout de même abandonné le domicile conjugal. La procédure ira jusqu'en cour de cassation à la demande de mon mari mais sera abandonnée en chemin.

Aujourd'hui, fort de son non-lieu pour la plainte de non assistance à personne en danger lors de mon AVC, alors qu'une expertise avait souligné sa lourde faute, fort de son petit mois de sursis pour avoir handicapé sa fille, il bénéficie d'une nouvelle décision de justice en sa faveur dans le cadre de la liquidation de biens. Le TGI a décidé de prendre une décision violentant les fondements du droit de propriété pour me surendetter à vie. Je suis actuellement en appel.

Que croyez-vous qu'il faille faire ?

Être toujours et encore une victime survivante ? Victime d'un homme qui nous avait pourtant fait le cadeau d'une belle confession écrite à ses filles quelques jours après notre départ, une lettre qui ne sera jamais prise en compte.

Extraits : « Je vous ai souvent imposé des situations difficiles avec un caractère parfois irascible : colères, sautes d'humeurs (...) J'ai fait preuve d'une négligence et d'un laxisme sans borne en me mettant souvent dans des situations à problèmes consciemment (...) absence de prise en charge immédiate du problème de Maman (...) Pourquoi ce comportement destructeur et cette fuite en avant ? Pourquoi cette rébellion et cet acharnement à entretenir des tensions par mes réflexions et mon cynisme ? »

Victime de cet homme, mais aussi victime des acteurs de la machine juridique et judiciaire sans en avoir le statut. Combattante, toujours et encore, du fait de cet engrenage qui étrangle psychiquement, physiquement, financièrement, juridiquement, etc.

La société n'est pas prête à condamner fermement les violences conjugales et familiales perpétrées par un médecin. Cela remet en cause l'aura du notable entre les mains duquel chacun d'entre nous remet sa vie.

Est-ce une question de philosophie ? De réseaux d'influence ? D'incompétence ? De manque de courage ? Peut être tout à la fois.

Le docteur Reynaldo Perrone, psychiatre, spécialisé dans la problématique de la violence et des abus sexuels dans la famille, m'a dit que j'avais dû, au cours de ces longues années de souffrance, développer un 'système immunitaire psychologique' hors norme pour résister et survivre. Survivante, oui. Mais trouvez-vous normal, vous qui êtes devant moi, que je doive utiliser cette capacité pour me battre contre tous ces obstacles que la justice a dressé devant moi, devant B. ici présente, et devant A. ?

Alors travaillez, travaillez et travaillez encore. Allez sonder votre conscience. Nous avons besoin d'avocats, de magistrats, d'experts non seulement compétents en matière de violences conjugales et familiales mais aussi intègres et efficaces. Car pour trois victimes comme nous encore debout, combien sont tombées ?

Séance n° 3 - Obstacles socio-économiques et culturels à l'égalité d'accès à la justice des femmes victimes de violences

Pratiques et exemples des Etats membres du Conseil de l'Europe

Mme Elisabeth Moiron-Braud (Secrétaire générale de la mission interministérielle pour la protection des femmes victimes de violences, France)

Depuis la proclamation par le préambule de la constitution de 1946 qui stipule que « la loi garantit à la femme dans tous les domaines, des droits égaux à ceux des hommes», de nombreux textes internationaux sont venus affirmer l'égalité des droits entre les femmes et les hommes et ont apporté une définition aux violences faites aux femmes. La Déclaration sur l'élimination de la violence à l'égard des femmes de l'ONU du 20 décembre 1993 dont le 20 ème anniversaire sera célébré dans quelques jours affirme "...La violence à l'égard des femmes va à l'encontre de l'instauration de l'égalité..., [elle] constitue une violation des droits de la personne humaine et des libertés fondamentales, ... [elle] traduit des rapports de force historiquement inégaux entre hommes et femmes, lesquels ont abouti à la domination et à la discrimination exercées par les premiers..."

La Convention sur la prévention et la lutte contre la violence à l'égard des femmes et la violence domestique du 7 avril 2011 reprend les mêmes termes :

« Les femmes et les filles sont souvent exposées à des formes graves de violence (...) lesquelles constituent une violation grave des droits humains des femmes et des filles et un obstacle majeur à la réalisation de l'égalité entre les femmes et les hommes » ;

La prise de conscience internationale de l'ampleur et de la gravité des violences faites aux femmes a emmené les états à se mobiliser

En France, la première enquête sur les violences faites aux femmes publiée en 2000 a révélé l'ampleur du phénomène notamment dans le cadre familial.

C'est ainsi que progressivement une politique publique de lutte contre ces violences s'est mise en place dont l'objectif a été de renforcer la répression à l'égard des auteurs, renforcer la prévention et renforcer les droits des victimes.

Elle s'est traduite par l'adoption de plusieurs lois :

La loi du 12 décembre 2005, complétée par la loi du 4 avril 2006, permet, à tous les stades de la procédure, à l'autorité judiciaire d'imposer à l'auteur des faits de résider hors du domicile du couple, et, de ne pas paraître au domicile ou aux abords immédiats.

La loi du 4 avril 2006 retient comme circonstances aggravantes le fait qu'un crime ou un délit soit commis au sein du couple, notamment en ce qui concerne le viol et les autres agressions sexuelles

La loi du 9 juillet 2010 relatives aux violences faites spécifiquement aux femmes, aux violences au sein du couple et aux incidences de ces dernières sur les enfants crée l'ordonnance de protection et introduit dans le code pénal les violences psychologiques exercées au sein du couple.

La loi du 6 aout 2012 relative au harcèlement sexuel propose une définition plus large et plus protectrice pour les victimes.

La loi du 5 aout 2013 portant diverses dispositions d'adaptation dans le domaine de la justice en application du droit de l'Union européenne et des engagements internationaux de la France, a transposé la convention du Conseil de l'Europe sur la prévention et la lutte contre les violences à l'égard des femmes et la violence domestique, dite Convention d'Istanbul signée le 11 mai 2011, en cours de ratification par la France.

De nouveaux droits accordés aux victimes, au fil des lois, pour qu'elles soient mieux protégées, pour qu'elles soient mieux accompagnées et enfin qu'elles puissent non seulement se voir accorder des droits mais également qu'elles puissent les faire valoir devant le juge. Et pourtant un constat : Le nombre de plaintes déposées et de condamnation ne représentent qu'une faible proportion du nombre d'acte de violences déclarés dans les enquêtes.

l'enquête ENVEFF(2000) a établi que 10 % des femmes étaient victimes de violences conjugales, qu'elles soient physiques, sexuelles, verbales ou psychologiques. .

Chaque année, 200 000 femmes déclarent être victimes de violences physiques et sexuelles de la part d'un conjoint ou ex-conjoint. Parmi elles, seulement 16% déclarent avoir déposé plainte. Moins d'un tiers des victimes se rend au commissariat ou à la gendarmerie. Les autres n'y vont pas, par manque d'informations ou par crainte des représailles. Beaucoup de femmes n'ont même jamais évoqué avec quiconque les violences qu'elles subissent.

En 2012, 166 femmes ont été tuées par leur partenaire ou ex-partenaire et au moins 25 enfants ont été tués dans le contexte de violences conjugales.

Chaque année, 83 000 femmes déclarent avoir subi des viols ou des tentatives de viols. Seulement 11% ont déposé plainte.

En 2013, l'OMS a conduit une étude visant à mesurer les violences subies par les femmes et leurs impacts sur la santé (7) à partir d'enquêtes produites dans plusieurs pays.

Il en ressort que les femmes victimes de violences de la part de leur partenaire intime ont une probabilité:

- deux fois plus élevée de connaître des problèmes de consommation d'alcool, de dépressions et d'avorter
- quatre fois et demi plus élevée de commettre un suicide.

Ces chiffres sont révélateurs des obstacles que les femmes ont encore à franchir pour libérer leur paroles et ainsi exercer leurs droits dont elles bénéficient en tant que victimes.

⁷ Global and regional estimates of violence against women: prevalence and health effects of intimate partner violence and non-partner sexual violence, OMS, 2013.

Nous savons combien ce parcours est long et difficile. En effet, la femme victime de violences dans le cadre familial a peur de révéler les faits pour des multiples causes : la honte et la culpabilité, peur de ne pas être entendue, peur d'être séparée de ses enfants, peur d'être obligée de quitter le domicile, peur de perdre son travail Le plus souvent, elle ne se reconnaît pas la qualité de victime et pense que si son partenaire est violent, c'est de son fait. Cette peur est entretenue jour après jour par le compagnon violent, ce qui lui permet de mettre en place toute une stratégie pour exercer son emprise sur sa compagne.

C'est dans ce contexte que le gouvernement a décidé d'apporter une réponse forte pour lutter contre les violences faites aux femmes en donnant une nouvelle impulsion à la politique publique mise en place pour qu'elle gagne en efficacité et change le regard de la société sur ces violences qui mettent en cause l'égalité entre les femmes et les hommes.

Cette volonté du Gouvernement s'est traduite dès le 3 janvier 2013 par la création de la mission interministériel pour la protection des femmes contre les violences et la lutte contre la traite des êtres humains (MIPROF) auprès de la ministre des droits des femmes Najat Vallaud-Belkacem, par le projet de loi pour l'égalité entre les femmes et les hommes porté par la Ministre des droits des femmes et enfin par l'adoption du 4^{ème} plan d'actions national de lutte contre les violences faites aux femmes (2014-2016).

La formation spécifique des professionnels et des personnels qui peuvent être amenés à détecter les situations de violences est un axe fort de la politique public de lutte contre les violences.

En effet, une telle formation permettra de lever les principaux obstacles qu'elles rencontrent pour accéder à leurs droits et à la Justice. C'est parce qu'elles seront repérées, accueillies et prises en charge qu'elles pourront connaître et exercer ces droits.

Le phénomène des violences et notamment de l'emprise psychologique a été longtemps méconnu par les professionnels. Même si aujourd'hui des progrès sont faits en matière de formation, encore trop de femmes ne sont ni repérées ni identifiées comme victimes de tels actes.

La formation est une priorité centrale du nouveau plan récemment présenté par la Ministre des droits des femmes,,

C'est ainsi que la MIPROF s'est vu confiée l'élaboration, en lien avec les professions concernées, du cahier des charges d'un plan de formation. Après avoir dressé un état des lieux en recensant les outils utilisés, ce plan vise à élargir et harmoniser les formations en direction des professionnels en lien avec les femmes victimes de violences. La MIPROF a commencé ce travail avec les médecins. Dans ce cadre, des outils de formation ont été créés. Un film de 15 mn a été réalisé ; il comprend trois parties :-le phénomène des violences et de l'emprise -le repérage -la prise en charge et l'orientation des femmes victimes de violences. La première partie sera reprise au sein d'autres modules de formation. Il est en effet essentiel que les professionnels, quelque soit leur domaine d'intervention, dispose d'un corpus commun de connaissances ce qui favorisera un meilleur partage entre les professions .La victime sera ainsi mieux détectée, mieux prise en charge et mieux orientée vers les autres professionnels et associations pouvant l'accompagner dans ses démarches.

Cette priorité se retrouve également dans le projet de loi égalité entre les femmes et les hommes adopté au Sénat en première lecture dont l'article 15 bis prévoit « La formation initiale et continue des médecins, des personnels médicaux et paramédicaux, des travailleurs sociaux, des magistrats, des avocats, des personnels enseignants et d'éducation, des agents de l'état civil, des personnels d'animation sportive, culturelle et de loisirs, des personnels de la police nationale, des polices municipales et de la gendarmerie nationale, des personnels de préfecture chargés de la délivrance des titres de séjour, des personnels de l'Office français de protection des réfugiés et apatrides, et des agents des services pénitentiaires comporte une formation sur les violences intrafamiliales, les violences faites aux femmes ainsi que sur les mécanismes d'emprise psychologique ».

Au-delà de la formation, le nouveau plan s'attache à rendre effectif l'accès des victimes à leurs droits. A cet effet, les victimes doivent être aidées, informées et accompagnées ; c'est à cette condition qu'elles retrouveront leur autonomie. C'est le rôle principal des associations avec lesquelles le gouvernement travaille étroitement. Les victimes doivent pouvoir trouver des réponses à toutes les étapes de leur parcours. **C'est le premier axe du plan, « aucune violence déclarée ne doit rester sans réponses ».**

Le 4ème plan s'est donc attaché à apporter des réponses aux victimes :

Pour rompre l'isolement et renforcer l'accueil des victimes

- La création d'un service d'accueil téléphonique en continu à compter du 1^{er} janvier 2014 l'actuel 3919 assuré par la fédération nationale solidarité femmes(n° de référence d'accueil téléphonique et d'orientation des femmes victimes de violence) qui sera ouvert 7 jours sur 7 et une nouvelle plate-forme internet à l'accessibilité facilitée sera créée pour répondre aux besoins des personnes souffrant d'un handicap sensoriel ;
- Le dépôt de plainte en cas de violences est la règle, le recours aux « mains courantes » doit demeurer une exception limitée aux seuls cas de refus explicite et éclairé de la victime. Il sera proposé à la victime d'être accompagnée par un intervenant social, une association, un psychologue. La victime sera systématiquement informée sur ses droits et les procédures à engager pour les faire valoir.
- Le doublement du nombre d'intervenants sociaux en commissariat et brigade de gendarmerie soit 370 intervenants en 2017;
- Le renforcement de l'accueil de jour, structure de proximité qui accueille les victimes dans la journée les informe et les oriente , ce qui favorise une prise en charge précoce et permet d'anticiper les solutions de départ et de relogement , de travail et les emmener ainsi à rompre avec le cycle des violences et retrouver leur autonomie.

Pour faire face à l'urgence en cas de viols ou violences sexuelles:

- L'expérimentation d'un kit de constatation en urgence proposé aux SAMU, sera lancée dans plusieurs régions pour permettre une prise en charge des victimes qui soit de nature à leur

apporter les soins nécessaires et à préserver toutes les preuves utiles dans le cadre d'une procédure judiciaire.

Pour lever les obstacles à l'accès au logement :

- La garantie d'un accès à un hébergement d'urgence dédié et adapté au besoin des femmes victimes de violences (1650 solutions d'hébergement supplémentaires d'ici 2017).
- Faciliter l'accès au logement social en réduisant les formalités à accomplir par la victime qui doit justifier de ses ressources.
- Partant du constant que bien que prévu dans les textes, l'éviction du conjoint violent reste rare, le projet de loi pour l'égalité des femmes et des hommes prévoit le principe de l'éviction du conjoint du logement du couple et du maintien de la victime dans le logement si elle le sollicite.

Pour lever certains obstacles économiques :

- L'exonération des femmes étrangères victimes de violences et de traite des êtres humains des taxes sur les titres de séjour.

La loi du 9 juillet 2010 avait pris en compte la situation particulière de certaines catégories de victime fragilisées telles que les femmes étrangères en leur offrant la délivrance d'une carte de séjour temporaire portant la mention « vie privée et familiale » lorsqu'elles bénéficient d'une ordonnance de protection. Tant le plan que le projet de loi vont plus loin encore et prévoient que toutes les victimes de violences conjugales et de traite des êtres humains sont dispensées de taxes et droits de timbre liés au séjour.

Les victimes doivent être protégées des situations de violence. C'est le deuxième axe du 4^{ème} plan de prévention et de lutte contre les violences ; le projet de loi égalité des femmes et des hommes consacre le chapitre premier du titre I à la protection des femmes contre les violences.

Pour protéger efficacement les victimes et prévenir la récidive des auteurs il est prévu :

- le renforcement de l'ordonnance de protection.
Il est rappelé que le prononcé de l'ordonnance doit intervenir dans un délai compatible avec la situation de danger. Le projet de loi prévoit d'une part que l'ordonnance doit être rendue dans les meilleurs délais et d'autre part que sa durée soit portée de 4 mois à 6 mois
- La généralisation du téléphone d'alerte pour les femmes en très grand danger.
En France, plusieurs juridictions dans cinq départements (Seine Saint Denis, Val d'Oise, Guadeloupe, Paris, Eure) se sont dotées d'un dispositif de télé protection pour des femmes en très grand danger (TGD) victimes de violences de la part de leur partenaire ou ex partenaire. Le téléphone est mis à leur disposition par le procureur pour leur permettre d'accéder aux services de police ou gendarmerie par un circuit court et de bénéficier d'interventions prioritaires.

Ce téléphone très grand danger ayant fait ses preuves lors de ces expérimentations locales, le projet de loi prévoit sa généralisation sur l'ensemble du territoire.

Il s'agit de mieux protéger les femmes victimes de violences et de prévenir les risques de récidive du conjoint violent.

- Le développement de stages de responsabilisation des auteurs.

Le projet de loi prévoit un nouveau stage applicable aux infractions commises en raison du sexe de la victime. Cette disposition entend ainsi renforcer la protection des victimes de violences et lutter contre le risque de récidive par le biais d'une réponse pénale adaptée, éducative et spécifique à cette problématique.

- l'activation de mesures de désolidarisation des comptes et des dettes en cas de violences conjugales.

Le regard que la société porte sur les femmes doit changer. C'est le troisième axe du plan de prévention et de lutte contre les violences faites aux femmes « mobiliser l'ensemble de la société ».

A cet effet, des mesures du plan prévoient des actions pour prévenir comportements sexistes et les violences en milieu scolaire, universitaire, dans le sport, au travail, assurer le respect du droit des femmes dans le champ des médias et d'internet...

Le plan prévoit également des mesures pour lutter contre les mariages forcés et les mutilations sexuelles féminines.

Enfin , pour rendre plus efficace la lutte contre les violences faites aux femmes, le plan rappelle les objectifs de l'observatoire national des violences faites aux femmes, fonction remplie par la MIPROF : rendre visibles et mieux compréhensibles les violences faites aux femmes et améliorer les réponses qui y sont apportées notamment à travers l'identification, l'évaluation et la modélisation des bonnes pratiques issues d'initiatives locales afin de les étendre sur tout le territoire national.

- Pour assurer le succès de ce plan, le gouvernement a décidé de doubler les moyens spécifiquement consacrés à la lutte contre les violences faites aux femmes, soit 66 millions d'euros sur 3 ans.

Session 3 - Socio-economic and cultural barriers to equal access to justice for women victims of violence

Practices and examples from Member States of the Council of Europe:

Ms Aurela Anastas (Executive Director of the Centre for Legal Civic Initiatives, Albania)

Thank you for the opportunity you give me to present some ideas and reflections on the accesses of women to the justice system in Albania. I would like to stress that my presentation will focus on the equality and non-discrimination area, because it directly related to the experience of the Centre for Legal and Civic Initiatives, which is an Albanian NGO that provides free legal services to women and girls in need.

During the last 10 years, the initiatives of the civil society, mainly in cooperation with the Parliament and the Government, and supported by several partners, have enabled important legislation changes. I'd like to highlight the approval of a legal package of laws that complement each-other in this area, such as the Law "On gender equality in society" (2004 and 2008), the Law "On measures against the violence in family relations" (of 2006, as amended), the Law "On Protection from discrimination" (2010), the Law "On legal Aid" (2009). The Parliament has also approved several amendments to the Criminal Code, regarding protection from domestic violence (2012-2013). These laws were subject to large consultations with groups of interest and justice system professionals. Moreover, the law "On the measures against the violence in the family relations" is the only law in Albania, proposed by the popular initiative of 20 thousand voters, which is an important opportunity of direct democracy foreseen in the Albanian Constitution.

During the drafting proceeding, there was skepticism about their possibility to be implemented. Such doubts existed due to the fact that these laws were considered as imposed to the Albanian society in the framework of the approximation of the legislation with the international standards. Of course, we cannot deny the need to fulfill the standards, but we should say that the Albanian society really needs these laws.

I would like to highlight some important issues which we consider as new contributions brought by them to the access to justice:

Firstly, Thanks to the new legislation, access to justice was to be expanded; specialized and independent agencies have been created, for ex. the Commissioner against discrimination. New tools to address the court and other justice rendering institutions have been introduced, such as: measures against domestic violence, the public claim, direct and indirect discrimination, reasonable accommodation, open list of the protected grounds for non-discrimination. However, none of the above mentioned laws allows the reverse of the burden of proof.

Until the adoption of these laws, such concepts were simply known in the legal doctrine, but were not applied in practice. However, it is not difficult to apply them nowadays, if the judges know the international courts case law, especially of European Court for Human Rights and the European Court of Justice.

Secondly, new commitments for the cooperation between the central and local government and the non-government organizations have been foreseen. The latter were recognized as entities with legitimate interests and have the legal means to bring proceedings to the courts, to the quasi-judicial organs and the public administration.

Thirdly, for the first time in the law “On measures against violence in family relations” there are provisions on financial facilities as well as free of charge court and execution services, which considerably increase access to justice.

Based in this law, there was an evident increase in the number of complaints and requests for the execution of the protection order and immediate protection order. As we see in the graph below, only in 2012, the Albanian Police, all the country received 2526 complaints, versus 2181 complaints in 2011, and the court released protection orders in 1562 cases, versus 1345 cases in 2011. We should recall that in 2008, one year after the law’s entry into force, police received 822 complaints and the court issued 377 protection orders .

With regard to the access to justice, the other two laws against discrimination do not seem to have the same impact. There have been very few court cases in the last two years based on these laws. There are several reasons for this, but the main reason is related to financial inability. Regarding the application of the law on gender equality and non-discrimination, access to justice is linked with the compensation claims. In this situation the obstacles are created by the high court fees, although they are not the only reason. A serious contradiction exists as long as one side the Albanian Government is really committed to fulfill the obligations deriving from the international acts, but on the other side the latest sub legal acts have unreasonably increased the court fees, especially those regarding the compensation claims.

The legislation foresees a fee of 3 % of the requested amount for those damage compensation claims in which the claim object is over 100,000 Lek (700 Euros) and 1%, when the object of the claim is up to 700 Euros. The fact, that all these fees should be paid in advance, otherwise the claimant has no access in the examination of the claim, is also a problem .

Besides the above, lack of information and free legal assistance is another obstacle. For ex., cases of victims claiming compensation for damages inflicted by criminal offences in general, and trafficking in particular, are still very few. This is because the victims of trafficking need more support and safety. They are often afraid to exercise their right to compensation, or any other rights. Certain gaps in the Albanian legislation prevent them from being informed about the right to compensation, or their right to free legal advice. Therefore, the Albanian law needs to be amended in order to include such rights, and in order to clearly specify which of the Albanian state bodies is responsible for informing the victims of such rights. In this context, it is also necessary for the Albanian legislation to enshrine the right to free legal assistance, and to allow such assistance to extend to victims' representation. This would increase the chances of victims to claim and receive compensation for damages suffered. Moreover, it is still necessary to know the new norms that are introduced by these laws and to increase the professional level of the lawyers and judges. The gender discrimination problems exist, but the citizens are not aware on their possibility to file complaints and request compensation. The mentality is also an obstacle for the access to justice. An Albanian proverb saying “Life and honor cannot be bought”, can illustrate this. Of course, there are other social reasons, such fear from threats or prosecution of the plaintiff. Unfortunately, there is still a wrong concept among law professionals about justice being made in turn. They think that they should first deal with, and punish the perpetrators, and only then think about compensating the victims.

Some obstacles in the access to justice are related to lack of belief to justice organs and the procedural issues, which often, take unreasonable term. For the judges, the implementation of these laws could be associated with more procedure-related problems rather than substance-related. For example, the sanctions foreseen by both laws with regard to the compensation claims refer to the Civil Code provisions, therefore making the court proceeding difficult. Some of justice professionals argue that the compensation claim should be separated from the main claim and tried in a separate

trial, to civil court. So, we have had our experiences very long procedure and further, unable to execute the final decision of the court.

In some cases, the breakdown of communication between institutions has caused problems. For example, the law against discrimination gives priority to the Commissioner's opinion. In theory, this is the best formula, but in practice it still does not work well. Our Centre received a case on sexual harassment in work place, which was the first case in Albania. At the Court, we had to postpone two court sessions until the Commissioner's opinion was received. The Commissioner's opinion was to dismiss the case, so our claim was partially rejected. In front of such a situation, our client refused to appeal the court decision because she lost confidence.

Finally, let me present some conclusions:

1. In our opinion the economic barriers are the biggest obstacles to accesses to justice, followed by lack of belief to the justice system.
2. The Albanian legislation in relation to the court administration fees must be changed.
3. Further trainings are needed for judges, the commissioner's staff, the public administration responsible agencies, as well as the civil society organizations, so that they know how to use the legal means.
4. Defense lawyers and specialists must be trained so that they can present cases at the court.
5. The civil society has to continue efforts to increase the level of community's awareness and legal education and has to continue the free legal assistance in such cases.
6. It is very important for civil society organizations to better recognize the constitutional and legal tool which recognizes Albanian legislation to protect the rights of women and increase the effectiveness of their use.

Session 3 - Socio-economic and cultural barriers to equal access to justice for women victims of violence

Practices and examples from Member States of the Council of Europe:

Ms Helena Štimac Radin, Head of the Office for Gender Equality, Croatia)

Ladies and gentlemen, respected participants and representatives, it is my great pleasure to speak today on behalf of the Croatian Governmental Office for Gender Equality at this important Hearing.

In January this year Croatia signed the Council of Europe Convention for Preventing and Eliminating Violence against Women including Domestic Violence. Activities for reconsideration of its ratification are currently underway. Office for Gender Equality plans to print and disseminate Croatian translation of the Istanbul Convention under the project „My Voice against Violence“, approved for financing by European Commission under the Community PROGRESS Programme.

There is no doubt that violence against women is the hardest form of women's rights violation, and we still unfortunately face a large number of challenges in order to eliminate them. In the same time, inequalities of women in labour market are evident, gender pay gap persist in favour of men, women are at greater risk of poverty, often are a subject of gender stereotypes and violence, and are less on the positions of power than men. They usually have to take care on the dependent family members and do most of the housing work. Women with disabilities, women national minorities, rural women and elderly women often suffer from multiple discrimination.

I would like to point out here that access to justice and level of women's poverty are very connected. Existing discriminatory values discourage them to seek justice and start proceedings. Special problem is non-reporting of violence because of the worry for their children and economic dependency. Women often face fear, shame and are less aware of the official procedures. Results from our researches indicate that majority of citizens don't know that gender discrimination is punishable by law. Secondary discrimination in official procedures is especially visible in cases of sexual violence. Victims of sexual violence are discouraged to report crime also because surroundings often judges such cases negatively. Professionals who work with victims have to be continuously educated, trained and sensitized.

On the issue of women's access to justice in post conflict countries was also discussed on the Regional Conference “Women in Peace Building: Women's Access to Justice in Post Conflict Countries”, organized in Zagreb in 2012 by Regional Women's Lobby for Peace, Security and Justice in Southeast Europe.

According to this hearing women refuse to access justice because rape is considered as an attack on “family honour”, there is a lack of family and women-for-women support, insufficient psychosocial support and lack of financial assistance. In prosecution procedures survivors are re-traumatised and investigation requires painful details from the survivors.

What kind of justice do survivors of rape need? Psychosocial support, legal aid, medical care and implementation of economic empowerment programmes are key parts of restorative justice alternatives. They also need gender sensitive and trauma familiar judges involved, simplification of the prosecution process with no need for a second witness. The campaigns should address messages to families, communities and institutions.

The special and very tough issues are women victims, survivors of wartime rape. After more than 20 years of waiting in vain for justice, Croatian survivors of sexual violence have joined together to seek the recognition and support. When we speak about the role of the International Criminal Tribunal for Former Yugoslavia we can say that not even this Tribunal recognised women as victims of war in a satisfactory manner. There were cases when rape was treated as a separate crime, but there were also, unfortunately, many cases of mass rape that remained outside the cases prosecuted before that Tribunal. And this has also been the case with domestic courts.

One of the recent important initiatives of Ministry of War Veterans in order to address needs of victims of sexual violence in Homeland War is drafting of the Proposition of the Act on the Rights of Victims who Survived Sexual Violence in Homeland War. The Act will be adopted next year and will regulate the rights and status of victims including the provision of proper compensation.

I have to mention that in the last 10 years a strong and comprehensive legal and strategic framework for promotion of gender equality and protection for the victims of gender based violence has been developed.

Our second Act on the Protection against Domestic Violence was adopted in 2009. Among other the Act extends the definition of domestic violence and introduces the new term "economic violence". A new Gender Equality Act, adopted in 2008 among other prescribes prohibition of harassment and sexual harassment. Victims of violence are protected also through the Law on Free Legal Aid, the Anti-Discrimination Act, the Criminal Code, the Criminal Procedure Act, the Law on Compensation for Victims of Crime, and other.

Croatian Government adopted two protocols - Rules of Procedure in Cases of Family Violence and Rules of Procedure in Cases of Sexual Violence. They both prescribe the obligations of professionals, including judiciary and police, in order to standardize procedures.

In 2011 Croatian Government adopted the third National Strategy of Protection against Family Violence for the period 2011 to 2016, which contains a set of goals, measures and activities aimed to eliminate family violence. In the same year our Parliament adopted the forth National Policy for Gender Equality, for the period 2011 to 2015 which contains separate chapter aimed to eliminate all other forms of violence against women.

By the end of the 2013 a National Strategy for Development of Support System to Victims and Witnesses will be made, which will include drafting of a Protocol to Conduct towards Victims and Witnesses. In order to improve the system, an Independent Sector to Support Victims and Witnesses under the Ministry of Justice is established. In seven county courts in Croatia Units for Organization and Provision of Support to Witnesses and Victims were set up. In 2013 a free of charge National Call Center for Victims of Crime and Misdemeanor started with its work.

Collection and processing of statistical data disaggregated by sex regarding gender based violence is well developed . State administration bodies systematically fund the projects of NGOs who run shelters and are engaged in combating all forms of violence. Recently, three year contracts were signed to ensure continuous co-financing of shelters ran by NGO's between them and Ministry of Social Policy and Youth, which is in charge on the issues regarding domestic violence. Important role in providing counselling and help to women victims of violence play numerous NGO's, Ombudswoman for Gender Equality and Ombudswoman for Persons with Disabilities. Different awareness raising activities of key stakeholders are regularly conducted. This includes campaigns, round tables, seminars, conferences and a lot of other events. From 2004 a National Day for Combating Violence against Women is regularly marked.

Having in mind that optimal access to justice is of fundamental value for women victims of violence, we strongly support the recommendations which emphasize the need to: harmonize the models of

judicial action for discrimination claims, strengthen equality bodies, prioritize training and education of legal professionals and improve systems to collect statistical data.

Session 4 – Legal and procedural barriers to equal access to justice for women victims of violence

Addressing the legal and procedural barriers for women victims of violence to have access to justice: civil and criminal cases.

Ms Katie Dawson (Lawyer, Ireland)

People often describe violence in the home as “just a domestic”. Regularly dismissed by neighbours and friends as “a row”, as a society we can be reluctant to interfere in other people’s ‘private’ relationships. If the incidents which occur within the family home were to take place on any public street in Europe, and the victim was a stranger, the violence would be considered a crime and the perpetrator would face criminal charges. If it happens in your own home, in the place where you should feel most safe and secure, it is still considered by many to be a “private family” matter. Victims indicate that even in 2013, police are often reluctant to intervene. The perpetrator takes this as a tacit permission to continue.

The very first thing that needs to be acknowledged in considering the legal and procedural barriers that women victims of violence face in accessing justice is that domestic violence is not and never was a “private family matter”. It is a fundamental human rights issue and we need to recognise it as thus. Unlike other violent crimes, domestic violence has a very high rate of repeat offending. Individual States, their courts and their law enforcement agencies have a responsibility to not only prevent and combat incidents of domestic violence but to further recognise the real link between incidents of domestic violence and those of serious sexual assault and homicide.

In Ireland, and I fear the statistics are similar across Europe, Women are more likely to be killed in their own homes than any other location. Between 1996 and 2013, 194 women were murdered in Ireland - 61% in their own homes and 54% by their current or former partner. 89% of women killed in Ireland since 1996 were killed by someone known to them. In all of the resolved cases, 99% of perpetrators were male and 1% was female.

I say this at the outset because it is very important we don’t lose sight of the fact that this is not an academic legal exercise. As a practitioner I deal with real life cases involving real people who need real protections from our courts. It should not be overstating the obvious here to say that all women should be able to access to any/all necessary legal protections to protect their safety and well being. Even in 2013, some of my clients cannot. There are many barriers to access to justice for vulnerable women; lack of access to information and support services; inadequate police intervention; lack of available shelter places; in case of migrant women additional language barriers in access service; and of course legal barriers to justice.

I am a barrister practising in the Irish Courts, so it is my intention to focus on the legal barriers which still exist and when I address these legal barriers to female victims of violence accessing justice it is as a legal practitioner and on the basis of my own personal experience of how domestic violence legislation operates in Ireland. The primary domestic violence legislation in operation in Ireland is the Domestic Violence Act 1996. It allows for people in specified married or cohabiting relationships to obtain a Barring, Safety and/or Protection Orders.

A Barring / Interim Barring Order is an order;

- i) directing the respondent, if residing at a place where the applicant or that dependent person resides, to leave such place, and
- ii) whether the respondent is or is not residing at a place where the applicant or that dependent person resides, prohibiting that respondent from entering such place until further order of the court or until such other time as the court shall specify

A Safety / Protection order is an order that an individual:

- (a) shall not use or threaten to use violence against, molest or put in fear the applicant or that dependent person, and
- (b) if he or she is residing at a place other than the place where the applicant or that dependent person resides, shall not watch or beset the place where the applicant or that dependent person resides

As a result of subsequent amendments, the 1996 Act now also permit parents to seek a safety order against their child's other parent, irrespective of the current relationship between the parents; and extends protections offered by the legislation to same sex couples.

As a barrister I routinely represent women who seek barring, safety and protection orders. For those who can successfully obtain these orders, Irish legislation can provide them with practical and meaningful protections. However there are still very significant shortcomings in Irish legislation which impact upon women's ability to access legislative protections they may require. I propose to address three of the most serious shortcomings that I routinely encounter and which I believe act as legal barriers to female victims of violence face in accessing justice, namely:

- 1) Legal Restrictions on access to Safety/ Protection Orders
- 2) Non-Availability of Emergency Barring Order
- 3) Lack of legal redress for victims of Stalking/ Harassment

However, before I move on to discuss same I would like to make two further short observations. Firstly, In Ireland, cases dealing with applications for Domestic Violence orders are held in camera (in private). This is to protect the privacy of the applicants and the parties to the proceedings. However this also means that domestic violence cases are cases which are not in the public sphere, they remain private and to a degree hidden from the level of public scrutiny that might apply to matters heard in the Criminal Courts.

Secondly, if we are addressing access to justice for female victims of violence then we must also consider the effect of recent Legal Aid changes in Ireland. As of September 2013, the minimum financial contribution a client must play to obtain a lawyer under the Legal Aid Scheme rose from €50 to over €130. This is already impacting upon those on low incomes or subject to financial control or abuse. For a lot of vulnerable women this rise will result in them being unable to afford to access a lawyer when seeking domestic violence orders. Access to justice should not be dependent on a woman's financial circumstances. For those who wish to have legal representation, it should be available to them in seeking to access the legal protections they require.

- 1) Legal Restrictions on access to Safety/ Protection Orders

Article 53 of Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) contains an explicit provision that protection orders should be available to victims of all the forms of violence covered by the scope of the Istanbul Convention.

Article 53 – Restraining or protection orders

1 Parties shall take the necessary legislative or other measures to ensure that appropriate restraining or protection orders are available to victims of all forms of violence covered by the scope of this Convention.

2 Parties shall take the necessary legislative or other measures to ensure that the restraining or protection orders referred to in paragraph 1 are:

- available for immediate protection and without undue financial or administrative burdens placed on the victim;
- issued for a specified period or until modified or discharged;
- where necessary, issued on an ex parte basis which has immediate effect;
- available irrespective of, or in addition to, other legal proceedings;
- allowed to be introduced in subsequent legal proceedings.

3 Parties shall take the necessary legislative or other measures to ensure that breaches of restraining or protection orders issued pursuant to paragraph 1 shall be subject to effective, proportionate and dissuasive criminal or other legal sanctions.

Regrettably, and for reasons I will discuss later in my paper, Ireland has neither signed nor ratified the Istanbul Convention. Under existing Irish law, a woman can only access a safety (protection) order if she can demonstrate to a court that she is currently living with, or has cohabited with the person against whom she is seeking protection prior to the application for a safety order, unless she has a child with that person.

Let us consider this for a moment in the context of preventing and combating violence against women. A woman may be in an intimate relationship with somebody, and suffer serious violence at the hands of that person, but because they are not cohabiting, she cannot go before a court and seek a safety (protection) order. Some might argue that she doesn't need any such a remedy because if she is attacked she can call the police; but it won't be anybody with any experience of dealing with realities of domestic violence. For example, as I often encounter, what if her partner hasn't actually attacked her yet; he's only made a number of serious threats to hurt or kill her? The police are aware of these threats and they advise her that she should seek the protection of the court. On paper, it is exactly the sort of case where a safety order should be sought, but my client cannot seek one. She cannot access necessary legal protections to safeguard her immediate safety and well being because she it is not a relationship where the parties have cohabited.

Worse still, this is a restriction which impacts disproportionately on younger women, who may be particularly vulnerable, teenage girls in intimate relationships who are suffering abuse but are not living with their partner. According to Women's Aid almost 60% of women who had experienced severe abuse in intimate relationships experienced the abuse for the first time under the age of 25 . If we are serious about preventing domestic violence and protecting women from violence then access to legal protection from domestic violence cannot and should not be contingent on co-habitation. Any woman who is in, or has been in an intimate relationship should be able to access the protection of the courts.

2) Non-Availability of Emergency Barring Order

A lot of my clients arrive in court as a directly result of being advised by Gardaí/ police to seek a barring/ safety/ protection order. The police will have formed a view that my client is at very real risk of harm and they will have advised her she should seek a barring order for her safety and/or the safety of her child. The police will recommend that they obtain a court order because it will allow them to act to remove an individual who breaches and order and even initiate a criminal

prosecution. While my client may be advised to seek a barring order, such advice is of little practical benefit to my client if it's 8pm on the Friday evening of a bank holiday weekend because she isn't going to be able to apply to a court until the following Tuesday morning.

So where does this leave her? Well unless, and until a crime has taken place then, regardless of the threat or danger to my client, the Gardaí/ police cannot compel her partner to leave the family home. Even if they can convince him to leave they cannot prevent him from returning to the family home at any point over the next few days. They cannot arrest her partner or force his removal from the family home unless and until he commits a criminal offence, by which time my client might already be seriously injured. It is exactly the sort of case where a barring order should be sought, but it's 8pm on a Friday evening so my client cannot seek one.

One of the most serious shortcomings of the 1996 Domestic Violence Act is that it does not provide for Emergency Orders. As you are all I'm sure aware, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) contains an explicit provision (Art 52) addressing emergency barring orders.

Article 52 – Emergency barring orders

"Parties shall take the necessary legislative or other measures to ensure that the competent authorities are granted the power to order, in situations of immediate danger, a perpetrator of domestic violence to vacate the residence of the victim or person at risk for a sufficient period of time and to prohibit the perpetrator from entering the residence of or contacting the victim or person at risk. Measures taken pursuant to this article shall give priority to the safety of victims or persons at risk."

However, to date, Ireland has neither signed nor ratified the Istanbul Convention. Of further concern is the fact that the primary reason repeatedly offered by my government for being unable to ratify the Istanbul Convention is that Art 52 is/may be incompatible with Art 43 of the Irish Constitution. It is asserted that an Emergency Barring Order would constitute an interference with a person's property rights under Art 43.

In correspondence with Jacqueline Healy of Women's Council of Ireland in April 2013 it was stated on behalf of Minister of Justice;

"A particular difficulty to be addressed in Ireland's consideration of the Convention relates to reconciling property rights under the Irish constitution with the requirement under Article 52 of the Convention – the availability of emergency barring orders. The Minister proposes to consult again with the Attorney General's Office in relation to the legal difficulty relating to Article 51 and other issues on completion of discussions with the state and voluntary services addressing domestic, sexual and gender-based violence".

It was further indicated by Minister for Justice, following the publication of Women's Aid 2012 Report (see Dail Debates on the 12th June last) that;

"I am an enthusiast for the European Convention on Preventing and Combating Violence against Women and Domestic Violence and would very much like Ireland to be a party to it. There is an issue, however, surrounding it. Where an individual is the sole and only owner of a home, an issue arises of whether that individual can be barred from the home under our Constitution. Successive Attorneys General have advised the Government that this is the only barrier to our signing the convention. I am not happy about this. Instead, I would very much like to be in a position to enact legislation that prescribes that where someone is the victim of domestic violence and resides with the perpetrator, then the perpetrator, even if he or she is the sole owner of the home, can at least be temporarily"

barred from it. There are difficulties, however, arising under Article 43 of the Constitution in this regard and I cannot ignore the advices on this.”

With all due respect to the Irish Government it is not in any way clear to me what difficulties arise under Irish law that would make it impossible for us to sign and ratify the Istanbul Convention and comply with Art 52 of the Convention.

While I would accept that any barring order involves an interference with an individual's property rights, no constitutional right is absolute and the courts must often balance competing constitutional rights. Our domestic violence legislation already allows our Courts to grant both Interim and permanent barring orders and there is no question but that this legislation has been deemed to be constitutional .

So why therefore would an emergency barring order be in breach of Art 43 when an existing Interim Barring Order is not? The only difference between the two orders is that an Emergency Barring Order could be obtained, on application to a Judge, outside ordinary court hours. The same procedural safeguards could be put in place as exist for an Interim Barring Order. A Judge would have to be satisfied that there were grounds to grant a barring order under the current test set out in the Domestic Violence Act 1996. If Judge was not satisfied that grounds existed for an Emergency Barring Order with consideration to the 1996 Act, it would at least be open to that Judge to grant a Protection Order instead. The ability of an on call judge to grant a Protection order in lieu of an Emergency Barring Order would offer very real emergency protections to those categories of persons who may be incapable of demonstrating they have any proprietary interest in a property such as might bring them within the categories of persons capable of obtaining a Barring Order.

Ireland's Supreme Court has held that both Barring orders and Interim Barring orders are constitutional, provided there are legal safeguards in place. In the seminal case of DK v Judge Crowley .

The Supreme Court held:

“the procedures prescribed by s. 4(1), (2) and (3) of the Act of 1996, in failing to prescribe a fixed period of relatively short duration during which an interim barring order made ex parte was to continue in force, deprived the respondents to such applications of the protection of the principle of audi alteram partem in a manner and to an extent which was disproportionate, unreasonable and unnecessary.....”

The Supreme Court further held that;

“While the Oireachtas, in upholding the constitutional right of spouses and dependent children to be protected against physical violence, was entitled to abridge the constitutional right to due process of other persons, the extent of that abridgement was required to be proportionate and no more than was reasonably required in order to secure that the constitutional right in question was vindicated”

And further;

*“The issue in this case is not as to whether the Oireachtas was entitled to abridge, even in a relatively drastic fashion, the right of the applicant to be heard, in order to protect spouses and dependant children from domestic violence. **That the legislature was entitled to effect such an abridgement of the rights of individual citizens in order to deal with the social evil of domestic violence is beyond dispute.** The question for resolution in this case is as to whether the manner in which the abridgement of the right to be heard has been effected is proportionate in the sense already indicated.”*

It is therefore clear that our Supreme Court has held that even though a Barring Order would infringe an individual's property rights under Art 43, it was 'beyond dispute' that the legislature was entitled to effect such an abridgement of the rights of individual citizens in order to deal with the 'social evil of domestic violence'.

The issue therefore is not whether an Emergency Barring Order might infringe an individual's property rights under the constitution; all Barring Orders infringe an individual's property rights as it bars them from their own home. The issue is only whether any proposed legislative provisions enacted are, in the words of the Supreme Court, proportionate and no more than was reasonably required in order to secure that the constitutional right in question was vindicated. That is the applicable test in law.

It has been repeatedly suggested that Ireland cannot ratify the Istanbul Council because Article 52 of the Convention because it may infringe upon an individual's property rights under Art 43. I must respectfully submit that with proper procedural safeguards in place, an Emergency Barring Order would constitute no more serious an interference with a person's constitutional rights than an Interim Barring Order.

A person's right to access to necessary legal protections to protect their safety and well being cannot and should not be dependant upon the risk to them occurring during normal court sitting hours and Art 43 of the Irish Constitution is simply not an adequate nor justifiable reason for the Irish State to fail to make such emergency orders available to those who might urgently require same.

3) Lack of legal redress for victims of Stalking/ Harassment

There is no specific offence of Stalking in Irish Law. It is not a criminal offence. Irish law does not permit women to seek a non-harassment or restraining order against somebody that may be staking or harassing them. Furthermore, stalking and/or harassment are not distinct, recognisable grounds upon which a woman can seek a safety or protection order.

Again, the Istanbul Convention addresses the need for restraining and/or protection orders under Art 53. Again, as Ireland has neither signed nor ratified the Convention, these very valuable protections are not accessible to Irish Women.

As a family law practitioner I frequently come across cases where a woman reports being stalked or harassed by an ex-partner. For the women I represent, this is a very real and serious problem, one for which they need to be able to access legal redress. I had a case recently where my client, a Turkish national, had endured serious harassment at the hands of her ex-husband, who after the marriage broke down left his family home and moved into an apartment on the very same street as my client. He had then repeatedly shown up at her home, at her workplace, at social events she was attending and sent hundreds of harassing texts and messages of Facebook. It had come to the stage where my client was afraid to walk down the street for fear of being approached by her ex-husband who simply refused to accept that their relationship was at an end.

Regrettably, her experiences are far from unique. According to the Metropolitan Police in the UK, stalking was a feature in 40% of domestic murders of women. It has also been especially identified as a shared feature of murders where there have not been previously recorded incidents of violence. If we are serious about preventing serious violence against women then we must protect women from stalking and harassment.

In my view, it is not that Irish Judges don't recognise the problem, or are unwilling to protect victims, my day to day experience is that they do see harassment as a serious problem and they are prepared, in so far as they can, to try to offer women protection. I have seen Judges try to circumvent the lack of legal recourse by asking perpetrators to give sworn undertakings to the court

to stay away from a victim's house, or place of work and to desist from contacting or communicating with them. Indeed, I have even seen creative Judges use undertakings to effectively bar a perpetrator from entire suburb of Dublin where their victim lives or works. However, undertakings are not court orders and they do not offer victims the legal protections that a non-harassment or restraining order can provide.

A specific offence of staking needs to be introduced in Irish law modeled perhaps on the Stalking offence set out under Scottish Law. Stalking should be explicitly recognised as a ground upon which somebody can seek a safety order and it should be open to anybody to come before the court and seek a restraining or non harassment order.

Domestic violence is not a 'private' issue. Violence perpetrated against women and children are not 'private' issues. Such violence is a very serious human rights issue. Preventing and combating violence against women and domestic violence can not only save lives, it can also protect vulnerable children and help families to survive and overcome violence and abuse. Every member state has a responsibility to take every practicable step they can to prevent violence against women and domestic violence. Law enforcement agencies need to take reports of domestic violence seriously and take proactive steps to protect victims. Each member state needs to ensure that our domestic laws reflect the gravity of the situation and offer real & substantive protection to all those categories of persons who are at risk.

The Istanbul Convention is groundbreaking in addressing the issues surrounding gender based violence, violence against women and domestic violence. Its ratification by all member states of the Council of Europe is a matter of urgent priority. If we are serious about preventing and combating silence against women and children then we must look to the Istanbul Convention as the template for what can and should be implemented.

Domestic Violence is not just a "domestic". It never was.

Session 4 – Legal and procedural barriers to equal access to justice for women victims of violence

Addressing the legal and procedural barriers for women victims of violence to have access to justice: civil and criminal cases.

Ms Hilary Fisher (Director of Policy, Voice and Membership, Women's Aid England)

Justice for Women: From reporting to sentencing: Evidence

"When a woman is abused it is rarely one off, she will generally have suffered for years and will be terrified of her abuser. This should inform everything that the court system does.

Standing up and facing him in a family court is not like two parents who just fell out of love or have found a new partner, he will continue to intimidate her even with just a look and all the threats he has ever said will still be in her head.

She needs protecting today even though the abuse was years ago."⁸

Evidence submitted to the APPG Inquiry.

Introduction

Women's Aid is the national domestic violence charity that supports a network of around 300 local services working to end domestic violence against women and children in England. Our member services are integrated domestic violence service providers delivering a range of holistic services for women experiencing domestic violence and their children. Keeping the voices of survivors at the heart of its work, Women's Aid campaigns for better support for women and children, provides training and resources for professionals and delivers a package of vital 24 hour lifeline services through publications, websites and the National Domestic Violence Helpline, run in partnership with Refuge.

During 2011/12 Women's Aid member services provided an estimated 158,610 women and 38,585 children and young people with direct support following domestic and/or sexual violence. This includes 19,510 women and 19,440 children being provided with refuge accommodation, and the remainder with other forms of outreach, advocacy, counselling and support.

Women's Aid provides the secretariat and supports the All Party Parliamentary Group (APPG) on Domestic and Sexual Violence

The purpose of the APPG inquiry into access for justice for women was to:

- Raise awareness of issues around women's access to justice in terms of experiences of criminal justice system and barriers women face to disclosing domestic violence
- Create an opportunity for discussion and exploration of key issues affecting women experiencing domestic violence and their opportunities to escape, cope and rebuild their lives

The inquiry was launched in October 2013 with a call for written evidence and two oral evidence sessions were held in Parliament on the morning of the 25th and 27th of November 2013. A panel of Members of Parliament who are members of the APPG attended the oral evidence sessions and heard evidence from over 20 witnesses including the Minister for Crime Prevention, Norman Baker MP.

We received over 140 submissions of written evidence from a range of organisations and individuals, including around 40 survivors, the police and the Crown Prosecution Service, the Independent Police

⁸ Written evidence submitted to the APPG on Domestic and Sexual Violence Inquiry, November 2013

and Crime Commission, the Faculty of Forensic and Legal Medicine of Royal College of Physicians and the Shadow Minister for Victims, Dan Jarvis MP.

This presentation is on evidence provided to the inquiry. The evidence will be analysed and a report with recommendations will be drafted and launched by the APPG in March 2014⁹.

Evidence from the Government

In his oral evidence to the APPG the Minister for Crime Prevention, Norman Baker MP outlined the government's commitment to addressing violence against women, referred to the Government's Action Plan on Violence against women and girls and noted the actions they were taking. Actions being taken included:

- The rolling out of Domestic Violence Protection Orders and the Domestic Violence Disclosure Scheme (Clare's Law).
- Her Majesty's Inspectorate of Constabulary (HMIC) review of police responses to domestic violence. The review is focusing on two main questions:
 - What is the effectiveness of the police approach to domestic violence and abuse, focusing on the outcomes for victims?
 - Are risks to victims of domestic violence and abuse being adequately managed?
- Conducting a review of Out of Court Disposals, including the use of police cautions.
- Increasing training of police.
- Better multi agency working, and in particular Multi Agency Support Hubs (MASH). These hubs bring professionals from a range of agencies including police, probation, fire, ambulance, health, education and social care to share information to ensure early identification of potential significant harm, and trigger interventions to prevent further harm.
- Specialist domestic violence Courts.
- £40 million in funding for Independent domestic violence Advocates (IDVA) and ISVAs, national helplines and for specialist local domestic violence and sexual violence support services and rape crisis centres.

Barriers to reporting

Respondents were asked if there were barriers to women disclosing domestic violence and the majority said there. The reasons given were:

- Fear of not being believed or are will be blamed for the abuse
- Shame
- The stigma attached to being a victim of domestic violence
- Felt isolated and alone
- Threats made by the perpetrator(s) to ensure their silence
- Threat of harm to their children by the perpetrator
- Fearing of losing their children – a threat used by perpetrators
- Fear of repercussions/reprisals from perpetrator(s) to them and their family
- Did not feel they would get justice

⁹ Anyone interested in receiving a copy of the report should contact Sian Hawkins at Women's Aid, appg@womensaid.org.uk or go to www.womensaid.org.uk from March 2014.

- Concern at being required to pursue the case through the criminal justice system if they reported the violence to police
- Low conviction rates for sexual offences that make it to trial.
- A lack of trust in the Police and other agencies, such as their doctor
- Women who have mental health issues, or substance abuse frequently prevented
- The majority said there were barriers to women disclosing
- lack of understanding and compassion from the police, with regard to sexual violence concern was expressed that the myths of what “real rape” looks like influence the response of police and judicial offices
- lack of training and understanding of violence against women in the criminal justice system

A substantial number of responses expressed concern at the lack of access to specialist sexual or domestic violence services that play a major role in supporting access to justice by women victims of violence.

It was also noted by several respondents that some women face additional barriers to reporting because they would not be believed, including women with mental health or substance abuse issues, or women in prostitution.

Police responses

Both positive and negative responses were received regarding the response of the police

Negative responses included:

- A lack of understanding of the nature of coercive control, the police tend to focus on incidences of crime, not the pattern of coercive control which is included in the UK Government definition of domestic violence. One respondent noted that coercive control is a good predictor of murder.
- The police do not understand dynamics of abuse or the different types of intimate partner violence and end up failing to identify intimate partner terrorism which women are far more likely to be the victims of.
- Women three times more likely to be arrested by the police than men for more serious offences. In response to ongoing violence women are violent back and can use a weapon which is a more serious crime. The police do not consider the ongoing violence only the incident they are addressing at the time. Research by Professor Marianne Hester who gave evidence at the oral sessions, highlights this.
- Some respondents felt the police were not listening, not taking incidents seriously and investigations took too long
- Concerns that when the domestic violence takes the form of sexual violence some officers fail to equate such abuse as rape.

In my experience they [the police] have made the whole experience difficult and have been slow and useless in gathering evidence. The Police need more training in handling domestic abuse cases, perpetrators and victims AND there needs to be a meaningful way in which they can be made accountable in their mishandling of cases.”¹⁰

“I was told by a police man that unless I was beaten up four times, I had no need to be fearful of my husband”¹¹

¹⁰ Opcit, APPG Inquiry November 2013

¹¹ Ibid, APPG Inquiry

Positive responses included:

- The use by the police of the Domestic Violence Protection Orders which create a space for women which gives them time to act, though it was noted that support from dedicated specialist services was essential for the women.
- Where there are dedicated specially trained officer supports women
- When multi-agency support is provided
- Where there are MARACs for high risk victims, though only if victim's voice was included.
- The effectiveness of the use of body video for evidence gathering and removing the reliance on the victims witness statement in court.

Legal aid reforms

90% of respondents were concerned about the impact of legal aid reforms on women's access to justice. Legal aid reforms in England and Wales have restricted access to free legal aid, victims of domestic violence were made an exception and can have access to legal aid if they can prove they have experienced it. Many respondents noted that women had difficulties in providing evidence of domestic violence to qualify for legal aid. Concern was expressed that the evidence required is geared towards physical violence and therefore can be difficult for many women to prove. Women victims did not feel they had anywhere to go for information or advice so just stayed in the violence situation.

A number of respondents expressed concern about the impact of legal aid on civil matters, citing the fact that child contact and property rights are known tools of abuse and noting that many perpetrators use the civil courts to further abuse and exercise coercive control.

"It's taken two months to get legal aid to get an enforcement order to get my daughter back and its only for £1,350. My solicitor is afraid this won't be enough and I have to do most of the work myself to save on the cost for going to court."

The Criminal Justice System

Many of the respondents who were survivors said the approaches of criminal justice system victimised them a second time and that they would be unwilling to report again. Concern was expressed on a range of issues including:

- That almost a third of police cases include sexual violence, but the number of convictions for sexual violence in intimate partner violence is very low. The Crown Prosecution Service (CPS) is working to improve conviction rates.
- That throughout the court process, women are offered minimal emotional specialist support, with this role falling to already overstretched Independent Sexual Violence Advocates (ISVAs), where available
- That the court process can take up to two years and women are left without adequate support in dealing with the impact of trauma
- Women's past sexual behaviour and experiences are questioned
- That the reliance on the victim's testimony puts undue pressure on the victim and more needs to be done to obtain other evidence so that trials can occur without victims testimony
- The lack of joined up working between different parts of the justice system and concern was expressed that this leads to poor outcomes for children in domestic violence cases
- Oral evidence provided by the CPS noted that:

- Domestic violence is a priority for the CPs, last year 70,000 offences were charged and there was a 75% conviction rate
- Director of Public Prosecution conducts a six monthly domestic violence performance review of the CPS
- The PCPS has developed an evidential checklist, working with police, to improve information to enable victimless prosecutions
- The guidelines for prosecutors are robust, though further training is needed

One police submission expressed concern that:

“the Court does not take into account the risk of the Victim, we have evidence where they have not even consulted IDVA’s with regards safety to a victim. I feel that over the last two years we have moved further away from a joined up approach to domestic violence, this is possibly down to the cuts in provision and safeguarding.”¹²

“The approaches of the criminal justice agencies does not sufficiently take into account those perpetrators who are using children to abuse the children’s mothers. Child contact is often set up without fully understanding the complexity of domestic violence.”¹³

Alternative forms of Justice

Information was also received about the use of alternative forms of justice in the UK. Concern was expressed that black, minority ethnic women (BME) who already face family pressure not to use the justice system are being pushed to use alternative dispute resolutions, such as Sharia Courts. Evidence provided in the oral sessions noted that the alternative justice system is arbitrary, unaccountable and not transparent. One witness stated that it is quick justice run according to dominant community. Concern was also expressed that cuts to BME dedicated specialist support run by and for BME women impacted on the access to justice of BME women victims of violence. It was felt that robust accountability measures were needed and the Government should ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic violence, (the Istanbul Convention).

Sentencing

Many respondents noted that sentences for violence against women were too lenient in their experience. It was felt that the sentencing guidelines were good but they are only guidelines and are not always implemented effectively. One expert witness noted that sentencing needed to be two years for a perpetrator programme to be effective. Concerns raised included that:

- Perpetrators received very minimal sentences, with no support to prevent reoffending on their release
- Women frequently report their abusers being given a longer sentence for assaulting strangers than them, this results in them feeling worthless and the perpetrator with the message that domestic violence is a lesser crime
- There is no national data on justice statistics available, including no national data on sentencing. As a result is that the system is not accountable, it is not possible to measure success or develop evidence based policy making

Recommendations given in submissions and oral evidence

¹² Ibid, APPG Inquiry

¹³ Ibid, APPG Inquiry

Witnesses at the oral sessions were asked by the Panel members of the APPG to give a recommendation of one thing that would improve women's access to justice. Recommendations included:

- That the training of police is essential and such training needs to take account of prejudices police already have and not start from zero, but minus zero. It was also noted that there needs to be training on the myths and reality of sexual violence for all court staff, including lawyers and judges
- The need for one trained dedicated officer dealing with the victim throughout the investigation
- That specialised domestic violence Police Units are essential
- That the court needs to develop a system that enable women to give evidence from a video link from a safe women only space so they did not have to attend court
- That every survivor should have access to an Independent Domestic Violence Advocate (IDVAs) and a support worker regardless of risk they face
- That it was important to make the connection between different kinds of violence women face
- The need for a greater focus on prevention work and looking at root causes of domestic violence
- That the criminal justice system needs to consider the impact of domestic violence on children in child contact or any other justice proceedings
- That the funding of dedicated specialist provision including advocacy and support needed to be safeguarded.

Conclusion

The evidence submitted to the APPG highlights some key areas for improvement, particularly in the understanding of domestic violence and sexual violence in intimate partner relationships and the importance of the sensitive treatment of women survivors by the police and other criminal justice agencies. The evidence provided showcases some examples of good practice already, for example where risk assessments do work if they are carried out by specialist and trained staff and where women have felt supported by specialist police officers and ISVAs.

All the evidence submitted to the APPG will be analysed and a report will be produced with recommendations will be produced and launched in March 2014.⁷

"It [the criminal justice system] has come a long way but there is still a way to go to protect our future generations from thinking it's ok to bully, hit, rape, and torment as long as they can run circles round the justice system."

Session 4 – Legal and procedural barriers to equal access to justice for women victims of violence

Addressing the legal and procedural barriers for women victims of violence to have access to justice: civil and criminal cases - Testimonies

Ms Alexis Bowater (United Kingdom)

Good afternoon and thank you for asking me to speak here today. My name is Alexis Bowater and I am the former Chief Executive of Network for Surviving Stalking, an UK charity which helps to represent stalking victims and work with the professionals trying to help them.

During my career as a journalist I was stalked three times over a period of 15 years. Each time worse than the last, until, finally, the last episode terminated with the imprisonment of the perpetrator, for four years.

In my own personal experience - and this was a 'good practice' experience - my employers, the police, the crown prosecution service and the judge could not have been better.

But when I looked at the national picture it soon became clear that whether you were treated well as a stalking victim in the UK wasn't so much a postcode lottery as postcode pot luck.

Despite anti-stalking legislation being in place in the form of the 1997 Protection from Harassment Act, only a tiny proportion of the 1.2 million women and 900,000 men stalked each year were either firstly coming forward, and secondly getting the access to justice they deserved.

The two major barriers to this were that 77 per cent of stalking victims were waiting until they had had more than 100 incidents of unwanted behaviour before they told anyone about it. And secondly, when they did, nearly sixty per cent of them were told that they were 'overreacting' or being 'paranoid'. One sixth of them were told they were 'lucky to receive the attention'.

Stalking is a red-flag scenario. It can lead on to crimes such as rape and murder. An American study showed that in 76 per cent of ex partner murders it is a lead up to that tragic event. They call that 'murder in slow motion'.

So what's going wrong, why is it not being taken seriously enough, and what can be done to change things?

In my experience, and that of the professionals I have worked with, there are ten key areas that need tackling in order to ensure access to justice for women victims of stalking.

In the past four years awareness about stalking and treatment of victims and perpetrators has changed radically in the UK. These are some of the lessons learned which I share with you in order for them to be helpful to **us all**.

1. Firstly, **ALL** countries need laws which deal specifically with stalking. It is not enough to try to deal with stalking cases piecemeal using existing legislation and there needs to be a degree of harmonisation between different countries in Europe in terms of the shape of legislation, specifically the type of conduct which constitutes the offence.

- Within this the legal code needs to use the word '**STALKING**', or its local equivalent, in order that the stalking is taken seriously. In England and Wales, the original legislation was named the Protection from Harassment Act. But the word stalking was not mentioned. The

government recognised the failing in the legislation and it has now been changed so that there is a specific offence of stalking.

2. But having a law against stalking is only of value if the police are committed to enforcing it. In the United Kingdom, as I mentioned earlier, when a stalking victim goes to the police, it is a lottery as to whether they are taken seriously or not. It depends on which police stations they go to and which police officers are on duty at the time. The police need to be **trained** to understand the seriousness of stalking.

- That is because stalking is less easy for police to appreciate in terms of seriousness than physical violence. With physical violence, the damage is visible. With psychological violence, it is not, although the damage may be just as serious - and it may be a portent of physical violence to come.
- The Modena Group on stalking has published research showing the police understanding of the seriousness of stalking varies between countries within Europe – yet a common approach is needed **internationally**.
- It is also necessary to distinguish stalking from domestic violence. The risk factors involved are different. Yet, within the United Kingdom, for instance, stalking and domestic violence tend to be dealt with as if they were the same.

3. Police need to be trained in recognising which stalking cases are the most serious and to recognise cases where there is an imminent risk of violence. The **Stalking Assessment** Screen is a one-sided decision-making aid for police, which is the state of the art. It is currently available in English and Swedish. It should be **translated** into all other European languages in order that it can be widely adopted. There need to be cross-national training and research initiatives to support practice in this area.

4. Police are, of course, busy and their resources over-stretched: police forces have to prioritise the crimes that they concentrate their resources upon. So in order that they give sufficient attention to stalking, it needs to be determined as a **priority issue** for police forces by central governments, with police forces required to gather good data on cases reported and to meet specific targets for handling stalking complaints.

5. It is important that prosecutors understand the seriousness of stalking, so that stalkers are subject to the full force of the law. There is little point in having legislation, unless the offence is aggressively prosecuted. An example of good practice in England and Wales is the Crown Prosecutions Service's document '**Guidelines on Prosecuting Stalking and Harassment**', which clearly explains issues for prosecutors.

6. The issue of stalking also needs to be incorporated into the training of judges, so that appropriate decisions are made.

* There have been cases in England and Wales where an inadvisable decision to give bail to a person accused of stalking has been followed by a murder. There have been many cases of over-lenient sentencing, which have left stalking victims at risk.

* Courts need to have available to them expert assessments of the risks that stalkers pose. This means training clinicians and probation officers in the structured assessment of risk in stalking cases. The leading manual for assessing risk, the **Stalking Risk Profile**, is now available in Dutch and English and will be available next year in German. Hundreds of personnel across Europe have been trained in its use, but such training needs to become more widespread.

7. There needs to be **help and advice** available to people who are actively being stalked, in terms of how to protect themselves, where to get psychological support and how to navigate the criminal

justice system. An example of good practice in the United Kingdom is the **National Stalking Helpline**, a telephone advice service set up with the support of the Interior Ministry (Home Office.)

8. **Treatment** may be needed for victims to overcome the psychological consequences of stalking. In addition, stalkers may need to have treatment mandated by courts as a condition of a community sentence or a condition of parole, in order to prevent them engaging in further stalking behaviour. In the United Kingdom, we have the **National Stalking Clinic** which is part of the National Health Service and treats both stalkers and their victims. Another example of good practice is the **Stop-Stalking Clinic** in Berlin.

9. Stalkers make use of technological advance to persecute their victims, and the growth of the Internet and of social media, such as Twitter and Facebook, present a growing challenge to legislators, police and prosecutors. An example of good practice in the United Kingdom is the Crown Prosecution Service's '**Guidelines on prosecuting cases involving communications sent via social media.**'

10. Finally, stalking is often a cross-jurisdictional issue. The stalker may be operating from a different country from that in which the victim is living. Legal codes need to be set up in such a way that the stalker can be prosecuted in his country of operation, even if the victim lives in a different jurisdiction.

Four years ago I received an email from a young woman who could not get anyone to help her or to take her seriously. Her stalker was threatening to kill her. He was threatening to kill her family. He made her look at the gun he said he was going to kill her with. He made sexual threats. He followed her wherever she went, day and night. He made her pretend to be his girlfriend. He tried to destroy her reputation and career. She was crying out for help. And everywhere she turned, everyone she spoke to, said the same thing: it's not our problem. It's not our jurisdiction.

And why? Well she was being cyber stalked – it was all online. The internet is a world without borders but our own terrestrial boundaries were more effective than handcuffs in keeping her from accessing justice. No police service would take responsibility. They knew who the perpetrator was. They knew where he was. But no one would help her. After a worldwide fight and the help of kind experts all over the world he was eventually trapped. And five days ago Colin Mak Yeo Loong admitted to 31 counts of criminal intimidation in Singapore. On Friday (13th December, 2013) he will be sentenced. Leandra Ramm, a young American opera singer, will be free again.

Nothing I have experienced can illustrate more clearly the need for cross-border co-operation when it comes to this crime than Leandra's heart-breaking story. We need now, we all need, to think big, to think beyond our boundaries, if we wish to combat this crime and help victims.

These ten points need to be embedded – and they can be, with co-operation, collaboration and comprehensive cross-border adoption of best practice.

But most important of all is communication, communication, communication - and co-operation: raising awareness and adopting best practice.

These are the minimum standards which must be met to save lives and to protect against stalkers – and to provide women with the access to justice that they need and deserve.

Séance n° 4 – Obstacles juridiques et procéduraux à l'égalité d'accès à la justice des femmes victimes de violences

Aborder les obstacles juridiques et procéduraux auxquels se heurtent les femmes victimes de violences pour accéder à la justice : affaires civiles et pénales

Témoignage d'une personne originaire de la Fédération de Russie:

Mes démarches pour obtenir l'asile et la protection subsidiaire, ont duré 6 ans.

Ma première demande a été rejetée en 3 ans puis j'ai fait une demande de réexamen en février 2011 grâce à un élément nouveau.

Lors de cette deuxième procédure on ne m'a pas accordé d'entretien devant l'OFPRA.

Comme j'étais en réexamen, je n'ai pas eu accès à l'aide juridictionnelle et j'ai dû me battre pour trouver 1000 euros pour payer un avocat pour la Cour nationale du droit d'asile. Cette procédure a duré deux ans, de février 2011 à février 2013, deux années durant lesquelles je n'avais pas de récépissé de demande d'asile car j'étais en réexamen.

Au milieu de mes démarches pour demande l'asile, je me suis mariée avec un homme de nationalité française en 2009. J'ai donc voulu obtenir un titre de séjour sur ce fondement. Durant un an, deux services préfectoraux se renvoient systématiquement mon dossier, on refusait que je dépose une demande de titre de séjour en tant que conjoint de français car j'étais déjà demandeuse d'asile. Or je n'avais pas de récépissé pour l'asile car j'étais en réexamen. Je me suis rendue 17 fois à la Préfecture durant cette période sans rien obtenir.

Par ailleurs, j'ai subi de graves violences de la part de mon conjoint français à partir d'avril 2011 jusqu'à septembre 2012, y compris durant les quatre mois sous ordonnance de protection.

J'ai porté plainte et j'ai eu 8 jours d'interruption temporaire de travail à l'Unité médico judiciaire. Je n'ai jamais pu récupérer mes certificats médicaux des UMJ, ce qui semble être la règle malheureusement. J'ai alors fait une demande d'ordonnance de protection. En attendant le résultat de la demande, je logeais dans un foyer pour femmes. Un mois après, j'ai obtenu l'ordonnance interdisant à mon mari d'entrer en contact avec moi et me donnant la jouissance de notre logement, avec mes filles.

Malgré tout cela, ma plainte a été classée sans suite 14 mois plus tard ce qui m'empêche d'obtenir le divorce pour faute et une réparation financière.

J'avais porté plainte pour violence physique, psychologique et économique, mais j'ai refusé de porter plainte pour violences sexuelles. Je sais que ce que mon mari a fait est un viol, mais selon ma religion chrétienne, le viol conjugal n'existe pas. Comme j'ai refusé de porter plainte pour ces faits, la police ne voulait plus enquêter sur mon dossier et ils ont refusé d'enregistrer au moins quatre mains courantes que je voulais déposer. Mon mari continuait de me harceler et venait au domicile. J'appelais les policiers qui se contentaient de lui demander de sortir alors même que l'ordonnance de protection était toujours valable.

En décembre 2011, j'ai déposé une demande de titre de séjour qui selon la loi aurait dû m'être délivrée de plein droit et dans les plus brefs délais. Au lieu de cela, la préfecture ne m'a délivré qu'un récépissé, uniquement deux mois et demi après ma demande. Durant un an et deux mois je suis

restée sous récépissé, le titre de séjour ne m'a été délivré que grâce aux pressions des associations à la préfecture.

J'ai voulu demander le divorce et être assistée d'un avocat. On m'a dit que je n'y avais pas droit car je n'avais pas de papiers. Donc, quand j'ai voulu faire renouveler l'ordonnance de protection, cette demande a été refusée car je n'avais pas entamé les démarches pour le divorce. Mon mari a donc pu rentrer au domicile et les violences ont été pires, et en plus dirigée contre mes filles.

Pour moi, le fait que mon mari retrouve le droit de revenir au domicile et de nous maltrater a été le pire moment de ma vie, j'ai vraiment voulu en finir avec ma vie.

Mme Céline Roche (La Cimade, France)

Je suis Céline Roche, juriste en droit des étrangers, responsable de l'action personnes étrangères victimes de violences à La Cimade Ile-de-France. J'interviens ici pour compléter le témoignage précédent et apporter des éléments de constats et d'analyse au nom de La Cimade, qui est par ailleurs membre de la Plate-forme pour la Coopération Internationale sur les Sans-papiers, PICUM.

La Cimade est une association née en 1939 dont l'objet principal consiste à accueillir, orienter et accompagner administrativement et juridiquement sur tout le territoire les personnes étrangères confrontées à des difficultés liées au séjour, à l'éloignement ou à l'asile.

Fin 2004, la Cimade Ile-de-France a mis en place une permanence dédiée spécifiquement aux personnes étrangères ayant subi ou subissant des violences en France ou dans leur pays d'origine. Nous recevons à 99% des femmes, ainsi sur 1800 personnes conseillées en 2012, seuls 6 étaient des hommes.

Il peut s'agir de migrantes qui, du fait de violences conjugales subies en France, perdent leur titre de séjour ou se voient refuser l'obtention ou le renouvellement de ce titre. Il peut également s'agir de demandeuses d'asile qui fuient ou ne peuvent retourner dans leur pays d'origine pour échapper à des violences spécifiques liées au genre.

L'objet de cette permanence est de permettre à ces femmes de connaître, faire valoir et défendre leurs droits.

Elles sont toutes victimes de ce que l'on appelle la double violence : une première violence physique, psychologique ou sexuelle subie en tant que femmes, puis une seconde violence administrative subie en tant qu'étrangère.

La violence administrative comprend tous les obstacles juridiques et administratifs qui se dressent contre les femmes lorsqu'elles veulent faire appliquer le droit supposé les protéger et leur permettre de sortir de la première violence. Ces obstacles les condamnent souvent à rester bloquées dans la première situation de violences qu'elles cherchent à fuir.

Il faut souligner qu'il y a eu des améliorations ces dernières années. Citons par exemple la mise en place de l'ordonnance de protection par la loi de 2010. Le fait que cette mesure puisse être prise par le juge pour des personnes concubines et pacsées et pas seulement pour des personnes mariées est très positif.

Nous constatons également une amélioration des conditions d'accueil des femmes étrangères venant porter plainte au commissariat pour violences conjugales. Selon notre expérience, il y a par exemple de moins en moins d'interpellation au commissariat de ces femmes lorsqu'elles sont sans titre de séjour.

Cependant, de graves problèmes persistent et sont causés par des dispositions législatives peu protectrices, des vides juridiques et des pratiques illégales des préfectures refusant d'appliquer le droit. Ces obstacles empêchent les femmes de sortir de la violence, de faire valoir leurs droits et d'avoir ainsi accès à la justice.

Nous constatons tout d'abord des obstacles directs affectant l'accès des femmes étrangères victimes de violences à la justice :

Lorsque ces femmes quittent le domicile conjugal en raison des violences, elles se retrouvent très souvent en situation irrégulière. Ne pouvant plus justifier d'une vie commune avec le conjoint violent, elles perdent leur titre de séjour.

En situation irrégulière, l'aide juridictionnelle permettant d'être assisté gratuitement d'un avocat, n'est pas accordée. La personne qui n'a pas les moyens de payer un avocat ne pourra pas engager de procédure de divorce, faire statuer sur la garde des enfants, être défendue pour la procédure pénale concernant les violences ou obtenir réparation du préjudice.

L'absence de titre de séjour est également un obstacle pour porter plainte : certains commissariats pensent encore qu'une personne sans titre de séjour ne peut pas porter plainte. Lorsque les femmes se présentent, les policiers les dissuadent de le faire ou leur font faire une simple main courante et dans de rares cas aujourd'hui, les arrêtent.

En second lieu, je voudrais souligner des obstacles indirects à l'accès à la justice pour les femmes étrangères pour lesquelles les violences ont des conséquences graves sur leur situation administrative en France. En effet, avant de pouvoir avoir accès à la justice, les femmes étrangères doivent pouvoir faire valoir leurs droits en tant qu'étrangères :

Ainsi par exemple :

- Leur accès à la justice est conditionné au fait qu'elles puissent tout d'abord pouvoir se maintenir sur le territoire Français. Des dispositions législatives leur permettent de se voir délivrer ou renouveler un titre de séjour lorsqu'elles l'ont perdu en quittant le domicile conjugal en raison des violences. Mais ces dispositions ne concernent que les femmes mariées à un français ou à un étranger en situation régulière en France. Les concubins et les pacsés sont exclus de ce dispositif. Par ailleurs, une trop grande place est faite au pouvoir discrétionnaire du Préfet dans l'octroi de ces titres. Ainsi nous faisons face à des pratiques illégales des préfectures extrêmement répandues : parmi les exigences illégales de pièces nous pouvons citer par exemple : la condamnation pénale du conjoint violent ou la production d'une ordonnance de protection (ordonnance délivrée uniquement en cas de très grand danger et d'urgence).
- S'agissant de ce dispositif très positif de l'ordonnance de protection : lorsqu'une femme étrangère obtient une telle ordonnance elle doit se voir délivrer automatiquement et très rapidement un titre de séjour par la Préfecture. Or aujourd'hui, lorsqu'elles vont demander ce titre, on ne délivre aux femmes qu'un récépissé de demande de titre au mieux et au pire, elles repartent sans documents et sont reconvoquées à une date postérieure à la fin de l'ordonnance.
- La pérennité du séjour en France est donc une condition essentielle pour ces femmes à l'accès à la justice. La vulnérabilité tant matérielle que psychologique dans laquelle elles se trouvent du fait des violences et de l'irrégularité de leur séjour ne leur permet pas de faire valoir leur droit et d'avoir accès à la justice

- Faire respecter ses droits suppose également un bon niveau d'information : on le voit avec le témoignage précédent, à aucun moment les institutions ne l'ont orienté vers un service aide aux victimes. Elles doivent également pouvoir être mises à l'abri et hébergées pour être en sécurité et agir. Or, lorsque la personne est en situation irrégulière suite aux violences, les foyers spécialisés ne leur sont pas ouverts.
- Aussi, les violences psychologiques sont très peu prises en compte. Les autorités policières et préfectorales ayant tendance à les minimiser et à exiger des preuves de manière abusive.
- Par ailleurs, les enquêtes sont très souvent classées sans suite au motif que les preuves sont insuffisantes. S'agissant des violences sexuelles, il est très difficile d'apporter la preuve de l'absence de consentement, et les commissariats sont toujours peu réceptifs aux violences sexuelles à l'intérieur du couple.

Enfin, s'agissant de la réparation, encore une fois, il est très rare que les femmes étrangères parviennent à cette étape car elles ont dû en franchir des dizaines d'autres auparavant au niveau administratif et préfectoral pour avoir accès à la justice. A l'issu du processus, elles sont soit exténuées, soit toujours en situation irrégulière et ne pensent pas pouvoir avoir accès à cette réparation.

Nous constatons qu'au-delà des obstacles administratifs que rencontrent ces femmes pour faire valoir leurs droits et avoir accès à la justice, il existe dans la société française une suspicion permanente à leur encontre. La population mais aussi les institutions soupçonnent les femmes étrangères de se mettre dans des situations de violences conjugales volontairement afin de se voir délivrer un titre sur ce fondement. Les préfectures parlent de titre de séjour « compassionnels ».

Ces préjugés ignorent bien sûr que ces titres de séjour sont très difficilement accessibles, ils ignorent également que les violences conjugales sont un fléau universel. Elles touchent tout le monde, quelque soit l'origine sociale ou nationale des auteurs et des victimes.

Session 4 – Legal and procedural barriers to equal access to justice for women victims of violence

Practices and examples from Member States of the Council of Europe

Mr Nazir Afzal (Chief Crown Prosecutor, United Kingdom)

Introduction

Just ten years ago less than half the domestic violence cases that the Crown Prosecution Service (CPS) prosecuted resulted in convictions.

Today almost three out of four prosecutions for domestic violence result in conviction.

This a 14 percentage point increase, reaching the highest recorded conviction rate and there has been real progress on a range of other issues such as forced marriage and honour-based violence.

Today I will outline the definitions of Violence Against Women and Girls, what the Government's action plan is and how the CPS fits into the Criminal Justice System in England and Wales. I will then detail the work the CPS has done in regards to Violence Against Women and Girls – from the building blocks of developing policy, through to the strategic approach adopted, to focusing on continuous improvement and delivering results, to current work to better understand the vulnerability and credibility of victims.

First, it is important to recognise that the safety of the victim is paramount and the work of professionals and groups such as Independent Domestic Violence Advisers and specialist women's organisations is crucial.

It is also important to note that we all know there is more that can be done while one in four women suffer domestic violence at some point in their lives. In addition, while the CPS approaches domestic violence as a gendered crime to ensure an effective response, it recognises that men can also be victims of violence and all of our policies are applied fairly and neutrally.

National Perspective

Violence against women and girls is a gender-based crime which requires a focused and robust cross-government approach. It is for this reason that all UK Government Departments have adopted the United Nations Declaration (1993) on the elimination of violence against women to guide our work across all government departments: 'Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.

Domestic violence is any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse: psychological; physical; sexual; financial; emotional.

Other forms of gender based violence include: rape, child sexual abuse, sexual offences, forced marriage, honour-based violence, human trafficking and female genital mutilation.

The Facts

Violence against women and girls is prevalent in England and Wales:

- 1 in 4 women will suffer domestic abuse in their lifetime¹⁴
- In 2011/12, over 60,000 women were raped and over 400,000 women were sexually assaulted¹⁰
- The majority of defendants in domestic abuse cases are men, at 93% in 2012/13. From records available, the proportion of women victims was 84%¹⁵

Cross-Government Action Plan to End Violence Against Women and Girls – 4 Key Themes:

1 Preventing Violence

- A greater proportion of society believes violence against women and girls is unacceptable and is empowered to challenge violent behaviour;
- Fewer victims of sexual and domestic violence each year;
- Frontline professionals (e.g. teachers, doctors, police and prosecutors) are better able to identify and deal with violence against women and girls;
- More employers recognise and support victims of domestic and sexual violence.

2 Provision of Services

- Violence against women and girls victims receive a good and consistent level of service across England and Wales;
- Statutory, voluntary and community sector get the response right the first time;
- High quality commissioning and service provision at a local level.

3 Partnership Working

- Better support available for victims and their families with statutory, voluntary and community sectors working together to share information and agree practical action;
- Improved the life chances of victims of violence against women and girls overseas, with this issue an international priority for the UK.

4 Justice Outcomes and Risk Reduction

- Increased confidence of women and girls to encourage access to the Criminal Justice System;
- Improved criminal justice outcomes for victims of violence against women and girls, including the rate of convictions;
- Increased rate of rehabilitation among offenders;
- Reduced multiple incidents of violence by using the appropriate risk management tools.

Criminal Justice System: England and Wales and Introduction to the CPS

The CPS is the Government Department responsible for prosecuting criminal cases investigated by the police and other investigating bodies in England and Wales.

As the principal prosecuting authority in England and Wales, it is responsible for:

- advising the police on cases for possible prosecution;
- reviewing cases submitted by the police;
- determining any charges in more serious or complex cases;

¹⁴ Figures from the Crime Survey in England and Wales 2011/12

¹⁵ CPS Violence Against Women and Girls Annual Report 2012/13

- preparing cases for court;
- presenting cases at court.

Established as an independent body in 1986 to prosecute criminal cases, we work closely with the police and other investigators to advise on lines of inquiry and decide on appropriate charges or other outcomes, in accordance with the Code for Crown Prosecutors.

The Director of Public Prosecutions (DPP) is the head of the CPS and operates independently, under the superintendence of the Attorney General. As a government minister, the Attorney is accountable to Parliament for the work of the CPS.

The Building Blocks

- The first phase of the CPS's work to improve the prosecution of violence against women and girls started in around 2001 when the first domestic violence policy and guidance were published.
- In 2003, an External Consultation Group was set up to provide expert advice to the CPS and domestic violence coordinators were also appointed in CPS areas providing strategic leadership locally.
- This was followed by setting up mechanisms to enable the CPS to monitor performance.
- These were all positive developments – but it really just putting the building blocks in place in place.

Specialist Domestic Violence Court (SDVC) System

The Specialist Domestic Violence Court (SDVC) programme promotes a multi-agency approach to tackling domestic violence by the police, prosecutors, magistrates, court staff, the probation service and specialist support services for victims, such as Independent Domestic Violence Advisers (IDVAs).

Agencies work together to identify, track and risk assess domestic violence cases, support victims of domestic violence and share information better so that more offenders are brought to justice.

Specialist Domestic Violence Court (SDVC) System

12 components of a SDVC system:

- 1) Multi-Agency Partnerships with Protocols
- 2) Multi-agency Risk Assessment and Risk Management Procedures for Victims, Perpetrators and Children
- 3) Identification of Cases e.g. through flagging
- 4) Specialist Domestic Violence Support Services for the victim
- 5) Trained and Dedicated Criminal Justice Staff
- 6) Court Listing Considerations
- 7) Equality and Diversity Issues
- 8) Data Collection and Monitoring
- 9) Court Facilities e.g. separate waiting areas
- 10) Children's Services
- 11) Managing Perpetrators
- 12) Other Services

The Strategic Approach

- 2003 saw the establishment of specialist CPS domestic violence project and by 2005 the first specialist domestic violence courts had been established.

- In 2008 the CPS was the first government department to develop a strategy for tackling Violence Against Women – there is now a cross-government strategy to tackle VAW, which the CPS supports through a range of actions to improve the safety of victims and bring offenders to justice.
- The CPS also introduced a whole range of changes including:
 - Further development of policies and guidance on domestic violence and rape – making clear how prosecutors should deal with these cases.
 - Recognising that these types of cases are different, and that CPS prosecutors might need more support to deal with them. All 3,000 prosecutors were trained on domestic violence.
 - The CPS also began to improve its understanding of a wider range of issues – it trained specialist prosecutors in rape, honour based violence and forced marriage and introduced training or issued guidance on key issues including stalking and female genital mutilation.
 - The CPS also widened the network of domestic violence coordinators to establish a network of Violence Against Women and Girls coordinators across the whole of England and Wales, to bring together the different strands of our work. The coordinators' work is crucial in ensuring that tackling violence against women and girls remains a priority for the CPS Areas, that the CPS engages with communities on the issues and that it consistently implements policies and guidance.

Continuous Improvement

- The CPS went on to focus on quality - allowing it to build on good practice, to tackle poor performance effectively and to improve consistency. The Director of Public Prosecutions personally oversees a robust assurance system, with Areas reporting to him on their performance and plans every six months. This approach has paid real dividends and has been crucial in securing continuous improvement in convictions and quality of prosecutions of VAWG crimes.
- In addition a number of steps have been taken to further improve performance:
 - Research commissioned by the CPS indicated that the IDVA service leads to improvements in safety with 72% of victims reporting a cessation of abuse where there was a decision to charge.
 - More recent research carried out in one CPS Areas where victims withdrew from domestic violence cases indicated that using evidence other than that of the victim proved most effective in ensuring a successful conviction, following any victim withdrawal.
 - This finding reflects the emphasis placed in the joint CPS and police domestic violence checklist for use when gathering evidence to inform charging. Feedback from CPS Areas on the implementation of the checklist is very encouraging and indicates a positive impact on effective case building and a move towards a uniform approach.
 - The CPS has also put a new focus on tackling Female Genital Mutilation (FGM) – holding a roundtable discussion led by the Director of Public Prosecutions with key stakeholders in this area. An action plan followed focusing on how we can ensure justice for victims of FGM.

Delivering Results

- Before I go on to talk about issues related to the vulnerability and credibility of victims, it is worth taking stock of what we have achieved so far.
- In July 2013 the CPS published an annual VAWG crime report.

- It shows that year on year the CPS has improved prosecutions of violence against women and girls with 2012-13 reaching the best ever conviction rates.
- Three out of four of these prosecutions now result in a conviction.
- Domestic violence, rape and sexual offence prosecutions have reached their highest conviction rate to date, for the second year running. And conviction rates have improved in every other area of recorded violence against women and girls prosecutions.
- The proportion of domestic violence and rape prosecutions which are discontinued is at its lowest ever level.
- And on domestic violence the proportion of guilty pleas continues to rise. This spares victims from facing court – and also indicates that we are building stronger cases.
- And we have also seen significant improvements in other areas such as honour-based violence and forced marriage. The number of cases is still small but in one year the conviction rate for offences related to honour-based violence rose from 50% to 63% while on forced marriage it rose from 55% to 91%.

Vulnerability & Credibility

- The CPS's overall approach has not only led to improved performance but has been a driver for a cultural shift on how we understand these cases particularly in approaching issues of vulnerability and credibility.
- The traditional approach to prosecutions for domestic violence or rape would not take forward a case where the victim was not 'credible' by traditional standards. It would give up if a victim withdrew their statement. And it would perpetuate myths by saying we can't take forward a case because the jury's prejudices will mean it won't be believed.
- The CPS' focus over the last few years has been honed to understand the vulnerability of victims – to better understand the control, coercion and intimidation and its impact on victims' safety.
- Starting with domestic violence, the CPS developed ways to prosecute cases even when victims retract their statements - understanding the pressures on victims and the need for their support. The CPS has championed specialist Domestic Violence courts and support services such IDVAs and more recently the CPS has implemented the joint CPS/police domestic abuse checklist.
- The Director of Public Prosecutions also held a National Scrutiny Panel on teenage relationship abuse which led to the development of an action plan on this issue looking at dispelling the myths in the criminal justice system, to ensure victims are supported and cases dealt with justly.
- In addition, in March 2013, the CPS published a study of cases involving allegedly false rape and domestic violence allegations which found that false allegations in these situations are rare. Although not a perfect science, during the 17 month period covered by the report, there were around 5,650 prosecutions for rape but only 35 for making false allegations of rape and there were around 112,000 prosecutions for domestic violence but only six for making false allegations of domestic violence. There were a further three people charged with making false allegations of both rape and domestic violence.
- However, recent experiences of 'grooming' cases and the investigation into Jimmy Savile showed that more work was needed to extend this understanding of vulnerability and credibility to cases of child sexual abuse.
- Together with the Association of Chief Police Officers and the College of Policing the Director of Public Prosecutions held a number of roundtables in March and April to explore the issues and challenges around how the Criminal Justice System dealt with these cases. The roundtables included victims groups, police, judiciary, lawyers, social services, specialist support services, and statutory agencies, and we met over 200 people in the course of the meetings. This has informed the new approach.

- Following a full consultation, legal guidance on Child Sexual Abuse was published in October 2013 by the Director of Public Prosecutions.
- The guidelines make it clear that the ‘model victim’ is a fiction and, all too often, a young victim of sexual abuse is vulnerable, confused and in need of support and understanding from agencies concerned after the trauma they have been subjected to. By shifting the emphasis away from the credibility of the victim to the overall allegation including that of the defendant, we will ensure that victims are believed, treated fairly and delivered justice.
- The guidelines are supported by:
 - a joint protocol for information sharing to ensure that all relevant evidence is gathered and that juries consider the strongest possible case;
 - the roll out of dedicated Rape and Serious Sexual Offence units across the CPS;
 - the establishment of a network of specialist child sexual abuse prosecutors led by me as the national lead;
 - the VAWG assurance system to oversee and encourage continuous improvement in the handling of child sexual abuse cases.

Conclusion

- This work represents the latest step in our journey to ensure we are doing everything possible to deliver justice for the victims of these abhorrent crimes.
- The changes made to the prosecution of violence against women and girls over the last ten years send a very powerful message - to victims and to perpetrators. And they have made a real difference to the lives of thousands of women.
- We know there is still more to do - but tackling violence against women and girls remains a top priority for the CPS and we are determined to continue building on these achievements

Session 4 – Legal and procedural barriers to equal access to justice for women victims of violence

Practices and examples from Member States of the Council of Europe

Mr Julio García Jiménez (Government-delegation for Gender-based Violence, Spain)

Beyond the specific actions taken to eliminate this form of violence, all the policies on equality and combating gender-based discrimination, as provided in articles 9.2 and 14 of the Spanish Constitution, the Treaty and the Charter of Fundamental Rights of the European Union, constitute the fundamental basis for bringing about change in the cultural model, attitudes and values; the elimination of stereotypes; social development; and the achievement of freedom, equality, the full enjoyment of the fundamental rights by women and the eradication of all forms of violence against women.

For this purpose, the “National Strategy for the Eradication of Violence against Women 2013-2016” is the backbone of the actions taken by the public authorities to put an end to the violence suffered by women simply because they are women. It is one of the fundamental cornerstones of the Government’s political project to combat this social scourge and a stable action plan stretching to 2016.

The second general objective of the Strategy is to improve the institutional response provided by the different Administrations and public and private bodies in their respective areas of competence. This second general objective unfolds two specific objectives. First one is improve the response of the Justice System and the Security Forces in the exercise of their functions, offering maximum quality in judicial assistance and in the security and protection mechanisms.

FACTS AND FIGURES

Between January 2007 and 31 December 2012, a total of 800,542 complaints were filed. Of these, 126,293 were filed in 2007, 142,125 in 2008, 135,540 in 2009, 134,105 in 2010, 134,002 in 2011 and 128,477 in 2012.

Of the total number of complaints registered to 31 December 2012 (800,542), 586,949 were filed directly by the victim in court or the security forces, making up 73.3% of the total number of complaints filed; whilst 111,810 complaints (14%) were filed through police reports as a result of intervention by the police, assistance services or third parties. A total of 90,644 complaints (11.3%) were filed through injury reports and 11,139 complaints (1.4%) by relatives of the victim in court or the security forces.

From these figures we must conclude that the complaints filed directly by the victims in court or the security forces make up the highest percentage and this has remained stable over the years. On the other hand, the number of police reports resulting from complaints filed by relatives of the victims is significantly low.

Although the vast majority of the women know where they should go to file a complaint (82.6%), only one fourth of the women who said they felt abused had done so (27.4 %), according to the 2011 Macro-survey on Gender-based Violence.

Nearly 100,000 women have active police assistance, i.e. they appear in the GbV System with police risk assessment (none, low, medium, high or extreme). These women numbered 95,601 on 31 December 2010, 97,320 on 31 December 2011 and 99,021 on 31 December 2012.

Among the judicial measures to provide protection and security to victims, article 64.3 of Organic Law 1/2004 includes the measure consisting in prohibiting the accused from making contact with the person being protected and the possibility of using adequate technological instruments to monitor the fulfilment of this restraining measure by the accused. The data on the Electronic Monitoring of Restraining Measures System in the area of Gender-based Violence shows a gradual increase in the number of electronic devices since the introduction of the system in 2009, and a certain tendency to level off in the past year. Between the date the system was introduced and 31 December 2012, a total of 1,772 devices were installed and 1,016 uninstalled, therefore on 31 December 2012 the number of active electronic monitoring devices in the area of gender-based violence was 756.

The number of inmates serving prison sentences for gender-based violence offences has increased from 2009 to the present date. On 31 December 2012, there were 6,120 inmates serving sentences for gender-based violence and other offences; 2,435 serving sentences for gender-based violence offences only; and 202 serving sentences for main offences of homicide or murder.

In 2012, the Legal Advice Department of the 016 Helpline answered 10,109 calls concerning cases of gender-based violence, representing 18.11% of the total number of pertinent calls.

THE RESPONSE OF THE JUSTICE SYSTEM

Specialised Courts:

Since the entry into force of Organic Law 1/2004 of 28 December, on comprehensive protection measures against gender-based violence, all the judicial districts have at least one court specialised in violence against women. At present, there are 461 courts with competence in gender-based violence, of which 106 have exclusive competence and 355 are compatible.

Protection Orders:

The Protection Order for victims of domestic violence brings together different mechanisms for the protection and tutorship of those who are victims of such crimes and infractions. Its purpose is that of obtaining an all-encompassing protection that combines and coordinates precautionary measures of both a civil and criminal law nature, through quick and simple court proceedings brought before the courts of first instance. 61.5% of the protection orders assessed (34.556) are granted.

The current protection Order application form, which gives preference over any other relevant information the guarantee that the victims of this specific violence are informed that they have the right to legal assistance.

Free legal Aid:

Recently, the Royal Decree-Law 3/2013 of 22 February, amending the fees system in the area of the Justice Administration and the legal aid system, which recognises the right to legal aid, irrespective of economic means, to all victims of gender-based violence and human trafficking.

Two are the essential characteristics of the legal assistance which must be provided to a woman victim of gender violence: immediacy and specialisation according to Protocol of action and coordination of the security forces and bodies of the state and lawyers concerning the gender violence regulated in the organic law 1/2004, on comprehensive protection measures against gender violence.

SPECIFIC ACTIONS INCLUDED IN THE NATIONAL STRATEGY FOR THE ERADICATION OF VIOLENCE AGAINST WOMEN 2013-2016

On Legal Aid:

- Guarantee the right to legal aid to victims of gender-based violence and human trafficking from the moment immediately prior to filing the complaint.
- Promote the improvement of the information given in police stations on the content and scope of the right of women's victims of gender-based violence to receive legal aid.

On Training of legal professionals

- Carry out training and awareness-raising actions on gender-based violence aimed at the justice administration personnel.
- Carry out training and awareness-raising actions on gender-based violence aimed at members of the Judiciary and the Crown Prosecution Service.
- Promote training and awareness-raising for the legal professionals working on the Specialised Gender-based Violence Shift, in collaboration with the General Bar Association.

Closing Session

Conclusions

Ms Carlien Scheele (Chairperson of the Council of Europe Gender Equality Commission, The Netherlands)

Dear colleagues,

We came to today's Hearing with a lot of expectations. I believe the informative and interesting presentations and the rich discussions have certainly given us a lot of food for thought and action. We had the opportunity to hear and share good practices, we have heard about lessons learned through failure, we heard the voices of victims who've been let down by the system. Their courage is an inspiration and a call for action. We had the opportunity to network, meet with colleagues and experts, build new alliances and partnerships and step up our efforts and work to advance the gender equality agenda and ensure equal access to justice for women victims of violence.

We heard about the socio-economic and cultural barriers to equal access to justice for women victims of violence: fear and shame, lack of awareness about official procedures and assistance available, economic dependence and concern for children and the gendered impact of austerity measures.

We discussed the need to break taboos and make it clear that violence against women and domestic violence are not a "private" or "family" matter. With the Istanbul Convention, preventing and combatting such violence is no longer a matter of goodwill but a legally binding obligation.

We heard that legal and procedural barriers to equal access to justice for women victims of violence lead to victims' reduced or complete lack of trust in the justice system. Lengthy criminal proceedings, high attrition, corruption and low conviction rates and discriminatory practices constitute serious barriers in efforts to get justice for women victims of violence. The advisability of bringing collective actions to the European Court of Human Rights in cases of violence against women was put forward. The need for child-friendly justice in the case of girls as victims or witnesses of violence was also highlighted.

We have learnt about good practices that we can take back home, including:

- Specialised courts and fast-track procedures
- Specialised prosecutors
- Dedicated police units
- Access to free legal aid for women victims of violence
- Access to justice and redress for women victims of violence in armed conflict
- Legal standing for NGOs to bring proceedings in cases of violence against women
- Protection orders, emergency orders, eviction orders, bans for perpetrators to contact and get close to victims

Last but not least, there is common agreement about the need for continued work to:

- Eliminate all forms of violence against women
- Challenge attitudes that condone violence against women and engage with young people about respect and equality
- Address the issues of vulnerability and credibility of women victims of all types of violence

- Facilitate access to justice through specialised law enforcement and other professionals, specialised courts and collective action
- Address the need for information and free legal assistance for victims of violence
- Provide information on access to justice for vulnerable groups of women, including support services, and in a language that they can understand; take account of multiple grounds for discrimination (migrant women, disabled women, Roma women, LGBT, poorer women, older women and women in detention)
- Provide access to emergency accommodation and other services, as well as social housing in case of separation
- Provide access to residence permits to victims of violence with irregular status and undocumented
- Provide initial education and continuous training for judges, prosecutors, lawyers, police officers, social workers, health and educational professionals
- Tackle obstacles created by high court fees , including in compensation claims and the length of judicial proceedings
- Remove the requirement of co-habitation for providing legal protection for domestic violence: all women victims of violence who are, or have been, in an intimate relationship with the perpetrator should be able to access the protection of the courts
- Apply the Council of Europe guidelines on child-friendly justice
- Address the specific needs of children as witnesses and victims of domestic violence and the risk of them being victims or perpetrators in the next generation
- Take account of domestic violence when deciding over custody and visitation rights involving the children that suffered or witnessed the violence
- Collect data and carry out research: record information on sex, age, relationship; disaggregate data on all offences against a person; integrate these data and publish reports
- Sign, ratify and implement the Istanbul Convention!

Séance de clôture

Conclusions

Mme Carlien Scheele (Présidente de la Commission sur l'égalité entre les femmes et les hommes)

Nous sommes venus ici en attendant beaucoup de l'Audition d'aujourd'hui. Je pense que les exposés informatifs et intéressants ainsi que les discussions fructueuses que nous avons eues constituent une bonne base de réflexion et d'action. L'occasion nous a été donnée de prendre connaissance des bonnes pratiques et de les mettre en commun ; nous avons été informés des enseignements tirés des échecs subis ; nous avons entendu les témoignages des victimes qui ont été abandonnées par le système. Leur courage est une source d'inspiration et une incitation à agir. Nous avons eu la possibilité d'établir des contacts, de rencontrer des collègues et des experts, de former des alliances et des partenariats nouveaux et de donner une ampleur accrue aux efforts et aux travaux destinés à promouvoir les objectifs d'égalité et à garantir l'égalité d'accès à la justice des femmes victimes de violences. .

Nous avons été informés des obstacles socioéconomiques et culturels à l'égalité d'accès à la justice des femmes victimes de violences : la peur et la honte, l'ignorance des procédures officielles et des aides disponibles, la dépendance économique, l'inquiétude au sujet du sort des enfants et les effets différenciés des mesures d'austérité selon le sexe.

Nous avons discuté de la nécessité de briser les tabous et de bien faire comprendre que la violence faite aux femmes et la violence domestique ne sont pas une question d'ordre « privé » ou « familial ». Grâce à la Convention d'Istanbul, prévenir et combattre ces violences n'est plus une question de bonne volonté mais une obligation juridiquement contraignante.

Nous avons appris que les obstacles juridiques et procéduraux à l'égalité d'accès à la justice des femmes victimes de violences amènent les victimes à manquer totalement de confiance ou à n'avoir plus qu'une confiance limitée dans le système judiciaire. La lenteur des procédures pénales, le renoncement fréquent des victimes à porter plainte, la corruption et les faibles taux de condamnation ainsi que les pratiques discriminatoires constituent de sérieux obstacles aux efforts déployés pour rendre justice aux femmes victimes de violences. La question de l'opportunité d'intenter des actions collectives devant la Cour européenne des droits de l'homme dans les cas de violences à l'égard des femmes a été soulevée. En outre, les participants ont souligné la nécessité d'une justice adaptée aux enfants dans le cas des filles victimes ou témoins de violences.

Nous avons pris connaissance des bonnes pratiques que nous pouvons mettre en œuvre une fois de retour dans nos pays respectifs, notamment :

- des tribunaux spécialisés et des procédures accélérées
- des procureurs spécialisés
- des unités de police spéciales
- l'accès à une aide judiciaire gratuite pour les femmes victimes de violences

- l'accès à la justice et à une réparation pour les femmes victimes de violences dans les conflits armés
- l'octroi aux ONG du droit d'ester en justice dans les cas de violences à l'égard des femmes
- des ordonnances de protection, des mesures d'urgence, des ordonnances d'expulsion, l'interdiction pour les auteurs de violences de contacter les victimes ou de s'en approcher

Dernier point mais non le moindre, il faut, de l'avis général, continuer à agir pour :

- éliminer toutes les formes de violence à l'égard des femmes
- s'élever contre les attitudes qui tolèrent la violence à l'égard des femmes et nouer le dialogue avec les jeunes au sujet du respect et de l'égalité
- traiter les questions de vulnérabilité et de crédibilité des femmes victimes de toute forme de violence
- faciliter l'accès à la justice grâce aux personnels spécialisés des institutions judiciaires et policières et à d'autres professionnels, à des tribunaux spécialisés et à des actions collectives en justice
- satisfaire le besoin d'informations et d'assistance judiciaire gratuite des victimes de violences
- fournir aux groupes de femmes vulnérables des informations sur l'accès à la justice, y compris sur les services d'aide, dans une langue qu'elles comprennent ; prendre en compte les multiples motifs de discrimination (femmes immigrées, handicapées, ROMs, LGBT, femmes pauvres, femmes âgées et femmes en prison)
- assurer l'accès à des hébergements d'urgence et à d'autres services ainsi qu'à des logements sociaux en cas de séparation
- octroyer des permis de séjour aux victimes de violences en situation irrégulière et sans papiers
- dispenser une formation initiale et continue aux juges, procureurs, avocats, policiers, travailleurs sociaux, professionnels de santé et d'éducation
- éliminer les obstacles dus à des frais de justice élevés, notamment dans les cas de demande d'indemnisation et de durée excessive des procédures judiciaires
- supprimer l'obligation de cohabitation pour l'octroi d'une protection juridique en cas de violence domestique : toutes les femmes victimes de violences qui ont, ou ont eu, des relations très étroites avec l'auteur des violences devraient pouvoir bénéficier de la protection des tribunaux
- appliquer les lignes directrices du Conseil de l'Europe sur une justice adaptée aux enfants
- satisfaire les besoins spécifiques des enfants témoins ou victimes de violences domestiques et parer au risque qu'eux-mêmes, à leur tour, deviennent des victimes ou des auteurs de violences
- tenir compte des cas de violence domestique lors de la prise de décisions relatives aux droits de garde et de visite concernant des enfants victimes ou témoins de violences
- recueillir des données et mener des recherches : collecter des informations sur le sexe, l'âge, les relations des personnes concernées ; désagréger les données concernant toutes les atteintes à la personne ; rassembler ces données et publier des rapports
- signer, ratifier et appliquer la Convention d'Istanbul !

Séance de cloture

Allocutions finales

Mme Sabine Fourcade, déléguée interministérielle aux Droits des Femmes et à l'égalité entre les femmes et les hommes, directrice générale de la cohésion sociale

Madame l'Ambassadrice [représentant la Présidence du Comité des ministres],

Madame la Présidente,
et mesdames les membres de la Commission sur l'égalité entre les femmes et les hommes,

Mesdames et messieurs,

Très che-èr-es collègues

Au terme d'une journée qui a été riche en échanges et en débat, permettez-moi tout d'abord de remercier à nouveau le Conseil de l'Europe, avec lequel nous avons pu organiser à Paris cette audition. Mes remerciements vont également aux intervenants, dont les présentations, bientôt mises en ligne, serviront de références par la suite, et aux participants nombreux qui ont permis de nourrir tout au long de la journée nos échanges.

Il est important que sur un sujet aussi grave que celui de la violence faite aux femmes, nous puissions mettre en commun nos ressources. C'est peut-être là la première leçon de cette audition consacrée à l'accès des femmes victimes de violence à la Justice. Le phénomène de la violence est difficile à combattre, lorsqu'il reste tu et caché, lorsque on ne peut en faire état, et que les analyses, les rapports, les chiffres manquent, qui permettraient de mieux le connaître pour mieux le combattre.

Nous avons aussi besoin d'entendre les voix de ces femmes qui sont victimes de violence – et nous avons reçu aujourd'hui des témoignages particulièrement éclairants.

Il est de la responsabilité des autorités publiques, en lien avec les associations et la société civile, de donner aux femmes les moyens de se faire entendre, et, aux services chargés d'accueillir et de protéger les victimes, les moyens d'écouter, de mieux recueillir les témoignages et de mieux évaluer les situations personnelles.

La prévention de la violence, la protection de ses victimes, et la poursuite en justice des auteurs sont des éléments fondamentaux. C'est le sens de notre action, en France – et vous avez pu prendre connaissance des moyens et des outils nouveaux que nous mettons en œuvre, et dont le déploiement va s'accentuer avec l'adoption début 2014 de la loi-cadre sur l'égalité entre les femmes et les hommes et la mise en œuvre du 4ième Plan de lutte contre les violences 2014-2016.

Nous avons aussi beaucoup appris aujourd'hui des actions mises en place un peu partout en Europe, ce qui prouve qu'il y a tout de même de sérieux motifs d'espoir, car la prise de conscience de l'ampleur du phénomène est générale.

Le Conseil de l'Europe et la Convention d'Istanbul ont sans doute permis qu'une prise de conscience politique se soit faite. 8 Etats ont aujourd'hui ratifié ce nouvel instrument, il en faut deux de plus pour qu'il entre en vigueur. La France le ratifiera début 2014. Je me joins donc à ceux qui ont souligné l'importance de ce texte, pour appeler à militer pour que d'autres Etats membres du Conseil le ratifient avec nous. De fait, la Convention d'Istanbul a été rédigée en Europe, mais elle est aussi destinée à s'étendre au-delà de l'Europe, puisque tout Etat peut y adhérer ou s'y référer.

Pour autant, vous le savez, et c'est sans doute, la seconde conclusion que l'on pourrait tirer de cette journée : il existe un écart patent entre les droits reconnus aux femmes et leur mise en œuvre effective. La Convention des Nations-unies sur l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW), dont la France fête cette semaine le trentième anniversaire de la ratification, a été adoptée par la plupart des pays. Puisqu'elle oblige les Etats parties à garantir l'accès des femmes à la Justice, elle a sans doute permis des progrès dans ce domaine, mais beaucoup reste à faire.

Dans beaucoup de pays en effet l'accès des femmes à la Justice se heurte encore à un manque de volonté politique. Il faut du courage à une femme victime de violence pour dénoncer ses auteurs, lorsque le droit ne la protège pas. Il faudra aussi sans doute plus de courage politique aux dirigeants du monde pour entrer dans une lutte que l'on sait longue et difficile, contre un phénomène dont les racines, parfois, sont profondes.

La violence est multiforme, omniprésente, ses auteurs difficiles à connaître à l'avance. Il n'y a pas de profil type de l'homme violent, pas plus qu'il n'y a de profil type de la femme victime de violence.

Mais les procédures judiciaires, les protocoles de mise en œuvre de la loi, et les mesures d'accompagnement doivent être claires, identiques pour tous, transparentes et accessible à chacune. Les femmes doivent être informées et être pleinement averties de leurs droits. Les services doivent être formés spécialement, et doivent coopérer, pour une action intégrée.

Les femmes elles-mêmes doivent être mieux représentées dans les institutions judiciaires et de police. Il est avéré que les victimes de violence sexuelle sont souvent plus à l'aise pour faire part de leur cas ou dénoncer leur auteur lorsqu'elles s'adressent à des femmes policières.

Les femmes doivent aussi sans doute être plus nombreuses dans les parlements et les institutions qui votent les lois. Les solutions existent, vous l'avez montré aujourd'hui, un pragmatisme volontaire et déterminé peut faire la différence, si une vraie volonté politique appuie ces initiatives.

Peut-être une dernière conclusion à tirer de notre audition, c'est aussi que les Etats doivent s'engager à faire bouger les mentalités, à lutter contre les stéréotypes, qui rendent la violence acceptable. Le Secrétaire général du Conseil, l'a récemment rappelé avec force, lors de la Journée internationale pour l'élimination des violences faites aux femmes, nous ne pouvons pas tolérer la moindre excuse culturelle aux violences justifiées par la tradition, la coutume, ou l'honneur. Il n'y a pas de violence acceptable.

C'est à la justice, rendue plus accessible, de rappeler ce fait, pour qu'en lien avec l'ensemble des acteurs concernés, les femmes soient à l'abri de la peur, à l'abri de la violence.

Merci de votre attention/

Closing session

Closing remarks

Ms Ursula Plassnik, Ambassador of Austria in Paris, representing the Chairmanship of the Committee of Ministers of the Council of Europe

Tout d'abord, je tiens à remercier les organisateurs de cet événement qui nous réunit aujourd'hui: le Conseil de l'Europe et les autorités françaises, notamment Madame la Ministre Najat Vallaud-Belkacem. Cette année, c'est déjà la quatrième conférence de haut niveau sur les femmes à Paris (le Premier Forum mondial des femmes francophones en mars dernier, la 4ème conférence ministérielle de l'Union pour la Méditerranée sur le renforcement du rôle des femmes et vendredi dernier la Conférence de mobilisation contre les violences sexuelles faites aux femmes dans les conflits dans le cadre du Sommet de l'Elysée).

Mon intérêt particulier pour la question des femmes est devenu un engagement professionnel dans le cadre de mes anciennes fonctions de Ministre des Affaires européennes et internationales et plus tard de Chargée de mission pour les questions internationales des femmes au Ministère des Affaires européennes et internationales. J'ai eu le privilège de rencontrer des femmes, mais aussi des hommes qui luttent chaque jour, à tous les niveaux, pour la cause des femmes.

Nous avons échangés aujourd'hui sur l'accès à la justice. Selon mon expérience, la question est liée à celle d'ordre plus général d'accès à des systèmes encore largement dominés par les hommes où l'accès des femmes est difficile, dont la justice. Partant de ce constat, j'aimerais évoquer trois préoccupations sur lesquels, à mon avis, il faut que nous nous attelions pour permettre l'accès des femmes à la justice :

- 1) La corruption entrave l'accès à la justice: la réalité de nombreuses femmes ne correspond pas à l'image théorique que nous nous faisons derrières nos bureaux ; la pratique nous montre que les femmes font, encore aujourd'hui, de mauvaises expériences avec l'Etat de droit.
- 2) Le droit à l'information sur les droits: pour accéder à la justice, il faut d'abord connaître ses droits. Nous sommes tous tenus, également au niveau des Etats, d'informer. Il ne faut pas laisser la société civile assumer cette responsabilité toute seule ; les gouvernements doivent eux aussi s'impliquer.
- 3) Les femmes ne sont pas suffisamment prises au sérieux quand elles dénoncent une violence. Il faut voir que les violences faites aux femmes ne sont pas de peccadilles.

Quoi faire pour répondre à ces trois préoccupations ?

Pour briser le silence, il faut établir la confiance des femmes dans le système et les encourager.

Notre constat :

Il est admis que l'accès limité des femmes à la justice est un phénomène social complexe, qui résulte d'une série d'inégalités aux niveaux juridique, institutionnel, structurel, socioéconomique et culturel. Garantir l'accès à la justice implique que les femmes de tous les milieux puissent obtenir un recours effectif, dans des conditions équitables, abordables financièrement et vérifiables, de manière à pouvoir jouir des mêmes droits que les hommes et bénéficier des mêmes possibilités de les faire valoir.

Nous avons discuté et établi que, pour les femmes victimes de violences, la notion d'accès à la justice ne recouvre pas simplement le fait de garantir l'efficacité des systèmes judiciaires. Il faut également veiller à ce que ces systèmes judiciaires soient sensibles et réactifs aux besoins des femmes et à leur situation concrète, et qu'ils leur donnent les moyens d'agir à tous les stades du processus judiciaire. La réduction de l'impact des obstacles rencontrés par les femmes non seulement facilite l'accessibilité, mais constitue aussi une étape majeure vers l'instauration d'une égalité de fait entre les femmes et les hommes.

Nous avons entendu et sommes convenus qu'il est particulièrement utile de s'intéresser à la question de l'accès des femmes à la justice dans le contexte actuel de crise financière et économique, marqué à tous les échelons de la société par une aggravation des inégalités ayant souvent un impact négatif sur la vie des femmes.

Nous avons également établi qu'on ignore globalement quel est le degré d'accès des femmes victimes de violences à la justice dans les Etats membres du Conseil de l'Europe. Cela est dû en grande partie à l'absence de collecte systématique de données sur cette question, et il est donc nécessaire de continuer à oeuvrer dans ce domaine pour concevoir et promouvoir les outils nécessaires et soutenir les Etats membres dans leurs efforts pour combler les lacunes dans la collecte et la recherche de données.

L'audition a clairement souligné l'obligation pour les Etats membres du Conseil de l'Europe d'agir avec la diligence voulue afin de prévenir, d'enquêter sur, et de punir les actes de violence à l'encontre des femmes, et d'accorder une réparation à ces dernières. Les femmes victimes de violence doivent pouvoir se tourner vers leur système judiciaire national pour mettre en œuvre des recours adéquats contre les auteurs de ces violences. Les forces de l'ordre doivent réagir à toutes les formes de violence à l'égard des femmes en assurant rapidement aux victimes une protection adéquate. Pour cela, il faudra également sensibiliser les forces de l'ordre sur place et les autorités de justice ainsi que le personnel médical. On peut également renforcer la mise en place des lignes directes (numéros gratuits) pour les femmes victimes de violence et des centres d'accueil pour femmes violées.

Les droits des femmes victimes de violences, dont l'égalité d'accès à la justice, devraient être placés au cœur des mesures à prendre et coordonnées grâce à une coopération effective entre les organismes gouvernementaux, les juristes et les associations de la société civile concernés et tous ceux, qui mettent en œuvre les mesures juridiques au quotidien, notamment la police.

Mon pays, l'Autriche, accorde une attention particulière aux questions liées à la promotion et la protection des droits des femmes et à l'autonomisation (« empowerment ») des femmes. C'est pourquoi nous avons donné la priorité à la ratification de la Convention d'Istanbul, qui a eu lieu le 14 novembre 2013. La promotion des mesures en faveur d'une entrée en vigueur de cette convention dans les meilleurs délais est l'une des priorités de la présidence autrichienne du Comité des Ministres du Conseil de l'Europe. Nous sommes très heureux que le rythme des ratifications de la Convention d'Istanbul se soit accéléré, que leur nombre ait ainsi rapidement

augmenté. Nous espérons que son entrée en vigueur aura lieu avant mai 2014 au cours de notre présidence du Comité des Ministres.

A l'échelle nationale, l'Autriche a adopté une approche intégrée en faveur des éléments suivants : la protection contre la violence domestique, la poursuite des délinquants, une meilleure protection des droits des victimes, la promotion de l'accès à la justice et des mesures de prévention et de sensibilisation. Partant d'un cadre législatif substantiel, nous sommes en train d'élaborer un plan d'action national pour protéger les femmes des actes de violence, tenant en compte l'ensemble des dispositifs de la Convention d'Istanbul.

L'audition d'aujourd'hui s'était fixé quelques objectifs très ambitieux. J'espère partager vos points de vue en affirmant que, grâce aux interventions très intéressantes et aux discours et allocutions, discussions animées et contributions de chacun des participants, l'audition a atteint ses objectifs:

Nos actions à venir :

- La sensibilisation aux obstacles que rencontrent les femmes victimes de violences pour accéder à la justice et en discutant des défis que représentent ces obstacles dans l'accès à la justice ;
- Le rassemblement des informations sur la situation dans les Etats membres et l'échange des bonnes pratiques pour promouvoir l'égalité d'accès des femmes victimes de violences à la justice en écoutant également les femmes ;
- La discussion de la nécessité d'encourager un soutien vis-à-vis des femmes victimes de violences chez les juristes et tous les agents de la force publique ;
- Défendre les normes existantes pour garantir l'accès à la justice des femmes victimes de violences, en particulier la Convention d'Istanbul du Conseil de l'Europe, qui, espérons-le, devrait entrer en vigueur début 2014 ;
- Promouvoir et encourager les partenariats et les réseaux entre les fonctionnaires gouvernementaux à tous les niveaux, les juristes et la société civile.

L'égalité d'accès à la justice est l'un des cinq objectifs de la stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes (2014-2017) récemment adoptée. Cela garantira de nouveaux travaux et activités dans ce domaine, plus particulièrement en vue de combler les lacunes dans la recherche et la collecte des données ventilées par sexe en matière d'accès des femmes à la justice, et en vue de lutter contre les obstacles persistants à l'égalité d'accès des femmes à la justice. Je suis convaincue que tous les travaux, idées, conclusions et recommandations qui résulteront de ces travaux et activités contribueront à renforcer et à mettre en oeuvre les normes du Conseil de l'Europe et à soutenir les Etats membres dans leurs efforts constants pour promouvoir, protéger et garantir le respect des droits des femmes.

Je vous invite donc à rester en contact et à surveiller le site de la stratégie du Conseil de l'Europe pour l'égalité entre les femmes et les hommes afin d'être informés des événements et des activités intéressants à venir !

Je vous remercie d'avoir rendu cet événement si intéressant et fructueux !

List of Participants

NATIONAL FOCAL POINTS ON GENDER EQUALITY GENDER EQUALITY COMMISSION MEMBERS GOVERNMENT NOMINATED EXPERTS

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Ministry of Social Welfare and Youth

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The Administration of the Prime Minister

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Ms Petra Smutny
Judge, Court of Appeal, Vienna

Azerbaijan/Azerbaïdjan

Ms Aygun Bashirova
Ministry of Justice

Belgium / Belgique

M. Freddy Gazan
Service fédéral Justice

Bosnia and Herzegovina / Bosnie-Herzegovine

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Gender Equality Agency, Ministry for Human Rights and Refugees

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Ministry of Labour and Social Policy

Czech Republic / République Tchèque

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Ministry of Labour and Social Affairs

Ms Helena Lišuchová
Ministry of Justice

Finland / Finlande

Ms Marjatta Hiekka
Ministry for Foreign Affairs

Ms Pia Holm
National Police Board

France / France

Mme Geneviève Zdrojewski
Ministère des Droits des femmes
Ministère des affaires sociales et de la santé

Georgia / Géorgie

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Federal Ministry for Family Affairs
Senior Citizens, Women and Youth

Ms Gesa Schirrmacher
Federal Ministry for Family Affairs
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General Secretary of Equality
Ministry of the Interior

Ms Eleni Tatsi
General Secretariat for Gender Equality

Iceland / Islande

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Mme Lucetta Galasso
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Ministry of Welfare

Liechtenstein / Liechtenstein

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Lithuania / Lituanie

Ms Lina Pivoraite
Ministry of Social Security and Labour

Malta / Malte

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Police Inspector, Commission on
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**Republic of Moldova / République de
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Ministry of Labour, Social Protection and
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M. Victor Lapusneanu
Permanent Representation of the
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Europe

Monaco / Monaco

Ms Daphné Le Son
Ambassade de Monaco en France

Montenegro / Montenegro

Ms Enesa Hasanagic
Ministry of Justice

Ms Nina Vujović
Cabinet of Deputy Prime Minister for
Political Systems

Netherlands / Pays-Bas

Ms Carlien Scheele
Ministry of Education Culture and
Science

Ms Esther Van Dijk
Ministry of Security and Justice

Norway / Norvege

Ms Torunn Salomonsen
Ministry of Justice and Public Security

Poland / Pologne

Ms Katarzyna Wolska-Wrona
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Portugal / Portugal

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Commission for Citizenship and Gender
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Ms Isabel Romão
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Mme Andrea Binder
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Le Conseil de l'Europe est la principale organisation de défense des droits de l'homme du continent. Il compte 47 États membres, dont 28 sont également membres de l'Union européenne. Tous les Etats membres du Conseil de l'Europe ont signé la Convention européenne des droits de l'homme, un traité visant à protéger les droits de l'homme, la démocratie et l'État de droit. La Cour européenne des droits de l'homme contrôle la mise en œuvre de la Convention dans les États membres.