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Forum Non Conveniens and Foreign Plaintiffs in the 1990s

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AFRICAN WOMEN IN FRANCE: IMMIGRATION, FAMILY, AND WORK†

*Judy Scales-Trent**

I. INTRODUCTION

In the Fall of 1997, much of the news in France seemed to lead back to Africa—back to reminders of French colonization on that continent, back to the painful memories of those years.

Most of this news centered on Algeria.

It was a time when waves of terrorism were sweeping Algeria. As residents of entire villages were being slaughtered at random, the world began to wonder who those terrorists were: were they fundamentalist insurgents? Or agents of the current government trying to maintain its power? Shock waves from Algeria spread north to France as more and more terrified Algerians moved there for safety. There were bombings and assassinations in French cities; French soldiers in camouflage patrolled metropolitan areas with machine guns.

As they struggled with the impact of terrorism in Algeria, the French were also trying to figure out what to do about their high rate of unemployment, especially among the youth. And for weeks and weeks, the news was full of stories about the 45-day hunger strike of the sons of the “harkis,” those Algerian men who had fought for the French during the Algerian war for independence. After the war, France moved the harkis and their families to special government camps in the French countryside, where they were supposed to live temporarily under military authority. However, the harkis and their families remained isolated in these rural camps from the early 1960’s until the early 1980’s, during which time their sons were given only two hours of schooling a day. It was not surprising, then, that the sons of the harkis were on a hunger strike, because for this group of French-Algerian youth, the unemployment rate was a staggering 80%.¹

And even when the media was reporting on the trial of

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1. See Dalila Kerchouche, *Harkis: le droit à l'Histoire*, L'EXPRESS, Oct. 9, 1997, at 49; ANN ROZE, LA FRANCE ARC-EN-CIEL 343 (Éditions Julliard 1995).

Maurice Papon for war crimes committed against French Jews he had deported to Nazi Germany during World War II, Algeria surfaced once again. For Maurice Papon, Mayor of Bordeaux during World War II, had been head of the Paris police in the early 1960's during Algeria's war for independence. And in October 1997, as Papon's trial began, and as the French Jewish community gathered before the court in Bordeaux to remind France of their loss, representatives of the Algerian community in France demonstrated at their side: they were there to remind France that this man who had signed the deportation orders for French Jews was the same man who, some twenty years later, had encouraged and supported the police as they murdered hundreds of Algerians who were gathering for a peaceful demonstration back in October of 1961.²

At the same time, in the Fall of 1997, one could hear, in a much lower tone, the complaints of some French women protesting inequality between men and women in France. Some protested salary inequities: in 1991, French working women earned only 67% of the salary of French men.³ Others protested the fact that although 56% of French voters were women, only 6% of the deputies elected in 1995 were women. Why should the political parties be allowed to present slates of only male candidates? France was far behind most of the countries in the European Union in this regard. In Sweden, for example, 40.4% of the deputies were women. Some French women were suggesting modifying the Constitution in order to authorize the creation of a form of affirmative action (*discrimination positive*) which would lead to the proportional representation of women in French elective bodies.⁴

And finally, during the month of October 1997, a major research institute at the University of Paris held a two-day conference on African immigrant women and work,⁵ thus ad-

2. See Jean-Luc Einaudi, *Le Papon des ratonnades*, L'EXPRESS, Oct. 2, 1997, at 52-53.

3. Conversations with French graduate students at *Ecole Supérieure de Commerce*, in Paris (Oct. 20, 1997) and at *Faculté de Droit et de Science Politique*, in Aix-en-Provence (Oct. 28, 1997); Rachel Silvera, *Les inégalités de salaires entre hommes et femmes*, in L'ETAT DE LA FRANCE 91 (1997).

4. See Annie Labourie-Racapé, *Oser la parité, pour l'égalité*, in L'ETAT DE LA FRANCE 86, 86 (1997).

5. Interview with Catherine Quiminal, researcher, Group for the Study of Migrations and Society (*Unité de Recherches Migrations et Société*) (URMIS), Université Paris VII, in Paris (Oct. 22, 1997).

addressing both of these questions in tandem—the issues raised by the legacy of France's colonial empire in Africa and gender inequalities in France.

I spent October 1997 in France exploring the intersection of race/ethnicity and gender in that country. My plan was to explore the parameters of a future study of the lives of immigrant African women in France. Certainly it must be very hard to be an African immigrant in France: how much harder would it be if the immigrant were a woman? What social and legal consequences might appear when the issues of gender were added on to the issues posed by ethnicity?

Before traveling to France, I spent several months reading about immigration issues and gender issues in France, as well as about relevant current events. While in France, I interviewed activists, lawyers and researchers who explored ideas with me, put me in touch with others, and recommended much helpful material.⁶ I also spent several days in Paris at the *Agence pour le Développement des Ressources Interculturelles* (ADRI), a private organization that specializes in issues involving immigrant communities in France.⁷ And my overall education was enhanced by general conversations with the French and African workers and students I met during that five week period.

This Article will thus provide a brief overview of some of the issues that face many African women in France. It will address three principal questions:

6. My research was made much easier by the help of Prof. Catherine Raissiguier, Chair of the Department of Women's Studies, University of Cincinnati, who encouraged this work and shared her French contacts with me. I take this opportunity to thank her, and to thank as well the many French scholars, lawyers and activists who were so generous with their time and knowledge: Béatrice Borghino, Anne Lespinat, Catherine Quiminal, Mady Vetter, Claude Zaidman, Liliane Zandel.

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7. Although ADRI is an independent organization, like many other associations in France, it receives public funding. See Letter from Béatrice Borghino, Délégation Régionale Chargée des Droits de la Femme, Marseilles, to Judy Scales-Trent (Mar. 12, 1998) (on file with author).

(1) Who are these women who are stigmatized both by their African origins and their gender?

(2) What do they bring with them from their homeland that might create social and legal problems for them when they arrive in France?

(3) What will they find when they arrive in France that might make their lives difficult?

II. WHO ARE "AFRICAN IMMIGRANT" WOMEN IN FRANCE?

In 1990, there were 56.6 million people living in metropolitan France.⁸ The percentage of foreigners within this group has been particularly stable: in 1982, there were 3.68 million foreigners, and in 1990, there were 3.6 million.⁹ In 1990, the largest group of immigrants from any one particular country was from Portugal, a fellow member of the European Union.¹⁰ One would think therefore that the French would not be particularly troubled about immigration. But they are. Because what has changed in France is both the increasing number of African immigrants, as well as their immigration pattern, for it now appears that these African immigrants are planning to stay in France.

In 1946, the immigrant population in France was composed in the following way: Europeans—88.7%; North Africans—2.3%; other Africans—0.8%. The 1990 census shows a much different picture of who is moving to France: Europeans—40.6%; North Africans—38.7%; other Africans—11.8%.¹¹ Clearly, the increase in both sub-Saharan and North African immigration is marked, as is the 50% decrease in European immigration.

There are several reasons for the increasing number of African immigrants to France—France's recruitment of Afri-

8. See PHILIPPE BERNARD, *L'IMMIGRATION* 44, 47, 60-61 (Le Monde-Éditions 1993).

9. *Id.*

10. *Id.* at 61.

11. See ALEC G. HARGREAVES, *IMMIGRATION, 'RACE' AND ETHNICITY IN CONTEMPORARY FRANCE* 11 (1995).

can soldiers from its colonies during World War I and World War II, France's palpable presence in Africa based on its control of a large part of the African economies since their independence, the continued drought in the Sahel region, and world-wide recession.¹² Another reason is France's recruitment of African workers.

France has historically invited immigrants to its shores when it needed labor, labor which it then exploited in the most devalued sectors of the industrial labor market. Cycles of expansion and of economic crisis have thus provoked corresponding cycles of encouraging immigration, then discouraging immigration and sending foreign workers home. As a general rule, then, France has considered immigrants as transient workers.¹³

During the economic boom after World War II, France encouraged foreign workers—including workers from Africa—to immigrate to France. Even more workers came from Africa and Asia after the period of decolonization in the 1950's and 1960's. During this same period, fewer workers came from Western Europe, as living standards in those countries were increasing.¹⁴ In 1974, as the French economy went into decline, France banned the continued immigration of unskilled foreign workers.¹⁵ However, this ban only included non-European workers, since European workers had right of entry as members of the European Union. As a result, every year since 1974, France has admitted approximately 100,000 European Union nationals, as well as approximately 100,000 others who were not banned from entry: this number includes spouses of French citizens, families of foreign residents, political refugees, and skilled workers.¹⁶ It does not include the many immi-

12. See Christian Poiret, *Le Phénomène Polygamique en France*, 91 *MIGRANTS-FORMATION* 26, 26 (Dec. 1992).

13. See Gérard Noiriel, *Difficulties in French Historical Research on Immigration*, in *IMMIGRANTS IN TWO DEMOCRACIES: FRENCH AND AMERICAN EXPERIENCE* 66, 67-68 (Donald L. Horowitz & Gérard Noiriel eds., 1992) [hereinafter *IMMIGRANTS*].

14. See HARGREAVES, *supra* note 11, at 10-12.

15. *Id.* at 17.

16. See Patrick Weil, *Pour une nouvelle politique d'immigration*, 220 *ESPRIT* 136, 138 (Apr. 1996). There are also bilateral and multilateral agreements between France and African countries which modify the 1974 ban on the immigration of unskilled foreign workers. See Letter from Mady Vetter, Director, Bureau Régional de Ressources Juridiques Internationales, Marseille, to Judy Scales-Trent (Feb. 25, 1998) (on file with author).

grants who enter France illegally.¹⁷ Thus, even though many African workers were excluded in 1974, the flow of immigrants from Africa has not stopped.

These are some of the reasons for the increased number of Africans among the immigrants to France. But it is important to notice that the proportion of women among those immigrants is also increasing. In 1962 only 15% of the immigrants were women, but by 1990, that percentage had doubled to 30%.¹⁸ In 1990, of the 1,614,250 foreign women in France, 19% were from Portugal; 15.73% and 15.55% were from Algeria and Morocco respectively; 5.26% came from Tunisia; and 4.25% emigrated from sub-Saharan African.¹⁹

The regulatory framework for immigration which the French set up after World War II permitted families to join the workers through the program of *regroupement familial*. However, when France banned further immigration of unskilled foreign workers in 1974, it also banned the immigration of their families. The ban on family reunifications, however, was held unlawful by the *Conseil d'Etat*, France's highest administrative court.²⁰ As a result, even though no more unskilled African men could come to France, wives and children of male African workers already in France could still join them there. This has led not only to the increased percentage of women immigrants, but also to a major structural change in the African population in France.²¹ No longer primarily single male workers thinking of one day returning to their homelands and their families, these immigrant Africans are now families with children who were born in France and who are being educated

17. See HARGREAVES, *supra* note 11, at 52-53.

18. See André Lebon, *La Composante féminine de la population étrangère. Quelques données de cadrage*, 105 MIGRANTS-FORMATION 6, 8 (June 1996).

19. See Annette Goldberg-Salinas, *Femmes en migrations: Une réflexion sur l'état de la question en France*, 105 MIGRANTS-FORMATION 31, 36 (June 1996). Some 12% of the remaining women came from various Asian countries, and 6% came from Turkey. *Id.*

20. See HARGREAVES, *supra* note 11, at 18-19.

21. African women have migrated to France, of course, in other contexts than that of *regroupement familial*. Some have gone alone as students, workers or political refugees; some went legally, and others, illegally. Many migrated to France to gain more personal freedom than they had in their home country. See Goldberg-Salinas, *supra* note 19, at 31, 37; Françoise Gaspard, *De l'invisibilité des migrantes et de leurs filles à leur instrumentalisation*, 105 MIGRANTS-FORMATION 15, 19-20, 25 (June 1996).

in French schools: it appears that they might well stay. And it is this shift that troubles many French, leading to heightened racism and xenophobia.²²

Although my plan here is to discuss issues affecting "African immigrant women" in France, the apparent simplicity of that phrase is misleading. I use the phrase in order to count and think about those women who may face discrimination in France based on their African ethnicity. However, because the French government has not created, and does not use classifications of "race,"²³ scholars and policy makers use immigrant status as a proxy for determining who is likely to face discrimination in France. Immigrant status, however, is a very clumsy proxy.²⁴

For example, the census defines "foreigner" as someone who is a permanent resident in France, and who does not have French nationality, whether that person was born in France or not.²⁵ However, some "Africans" may have immigrated to France, become citizens, and still often may be treated as a "foreigner" in France because of their appearance. Similarly, the children or grandchildren of African immigrants may well be French, but are still often treated as "foreigners."²⁶ Indeed, many in France call the children of immigrants "second generation immigrants."²⁷

IGUIER, BECOMING WOMEN, BECOMING WORKERS: FRENCH VOCATIONAL SCHOOL 133 (1994). See also *'Neo-Racism'?*, in ETIENNE BALIBAR & IMMANUEL WELLS: AMBIGUOUS IDENTITIES 21 (1988) (conceptualized as "the reversal of population movements between metropolises").

statistical data on race, ethnicity, or religion, based on a direct connection with the nation state which defines identity. See Noirielle in IMMIGRANTS, *supra* note 13, at 13; also, *French Immigration Statistics*, in IMMIGRANTS, *supra* note 13, at 13 (discussing ethnic categories diffused throughout French colonial character).

and notion of "race" is, however, no less clumsy. See, also, *THE CASE OF A WHITE BLACK WOMAN: RACE, COLOR, COM-*

note 8, at 43.

note 22, at 50. In very much the same situation, Germany has a similar situation, "Immigration by birth." Alan Cowell, *Like it or Not*, N.Y. TIMES, Nov. 30, 1997, at A3. For an interesting discussion of the notion of citizenship in these two countries, see also, *CITIZENSHIP AND NATIONHOOD IN FRANCE AND GERMANY* (1992).

And finally, some French citizens have been born and raised in France, and never "immigrated" to France, but will still be treated as "foreigners," as "Africans," once they go to the mainland: these are the French citizens of African ancestry who live in French départements of Réunion, Guadeloupe, Martinique and Guyane.²⁸ If it is true, as one commentator has noted, that in France "some foreigners are more foreign than others,"²⁹ then is also sadly true that in France some citizens are more "foreign" than others.³⁰

Nonetheless, although it is not a very precise term for what I am trying to discuss, I use here the term "immigrant", the one that is used in France to both capture and symbolize ethnicity or "race."³¹

III. WHAT CUSTOMS AND TRADITIONS DO "AFRICAN" WOMEN BRING WITH THEM FROM THEIR HOMELAND THAT MIGHT CREATE SOCIAL AND LEGAL PROBLEMS FOR THEM WHEN THEY ARRIVE IN FRANCE?

Immigrants take to their new country the cultural and religious practices of the old one. Because so many of the African immigrants are Moslem, Islam is now the second religion in France.³² Thus, many African immigrant women bring Muslim traditions with them to France.

Several commentators have suggested that Islam often takes on more importance to Muslim immigrants in France than it did in their home country, for it plays an important role in the maintenance of culture, language, and identity.

28. See BERNARD, *supra* note 8, at 143; ROZE, *supra* note 1, at 224, 392, 405. In 1990, these four islands had close to one and a half million inhabitants. See *Les Possessions d'outre-mer*, in L'ÉTAT DE LA FRANCE 633-34 (1997).

29. TAHAR BEN JELLOUN, HOSPITALITÉ FRANÇAISE 131 (Éditions Du Seuil 1997).

30. The right-wing party, *Front National*, counts as "foreigners" all of these groups, thus radically increasing the count of "foreigners" who live in France. See Silberman, *supra* note 23, at 113.

31. See RAISSIGUIER, *supra* note 22, at 49.

32. See Sophie Body-Gendrot, *Pioneering Muslim Women in France*, in MOBILIZING THE COMMUNITY: LOCAL POLITICS IN THE ERA OF THE GLOBAL CITY 276 (Robert Fisher & Joseph Kling eds., 1993). Note, however, that many immigrants are not Muslim. For example, many francophone Africans are Catholic. *Id.* at 275. Also, practically all the French who "immigrate" from the Antilles to the metropole are Catholic. See Claudie Beauvue-Fougeyrollas, *Femmes Antillaises en Métropole*, 84 MIGRANTS-FORMATION 96 (Mar. 1991).

Immigrant parents often exaggerate their attachment to Islam in order to keep their children from straying too far from them, and into an alien European culture. Young women play an important role in maintaining these newly accentuated Muslim traditions, since communities often control group identity by controlling choices with respect to marriage and reproduction. Thus, the control of young Muslim girls and women becomes even more important once their families immigrate to France.³³

This section of the Article explores the problems that arise at the intersection of the African and French religious and cultural practices. How might Koranic and customary rules about women's sexuality and marriage—excision, clitoridectomy, and infibulation;³⁴ style of dress; polygamy; dowry; repudiation—complicate the lives of African women once they immigrate to France? How are these practices interpreted by the French social and legal systems? What happens when these practices collide with French immigration and social welfare laws? What is the effect of bilateral conventions between the home country and France on these practices?

It is not surprising that the incident to raise the most questions about the place of Islam in France involved three young Muslim schoolgirls who were suspended when they wore the Muslim headscarf to school in September 1989. According to the school principal, the girls were violating fundamental principles of separation of church and state, principles embodied in a regulation which forbade proselytism in French schools. Within several months, however, France's highest administrative court, the *Conseil d'Etat*, ruled that it was not the girls who were at fault, but rather the principal, who had violated their freedom of religion as guaranteed by the French Constitution.³⁵ The girls must be allowed to wear the headscarf.

33. See BEN JELLOUN, *supra* note 29, at 150-56; ROZE, *supra* note 1, at 303.

34. Excision involves removing the hood of the clitoris; clitoridectomy involves removing the clitoris and the labia minora; and in infibulation, the clitoris, labia minora and labia majora are removed. See Gregory A. Kelson, *Gender-based Persecution and Political Asylum: The International Debate for Equality Begins*, 6 TEX. J. WOMEN & L. 181, 185 (1997). In this Article, I will use the term "excision" to refer to all three procedures.

35. See HARGREAVES, *supra* note 11, at 125-26. It was apparently not problematic to the school officials that some Catholic students wore crucifixes, and that some Jewish boys wore yarmulkes. *Id.*

This incident sparked what one commentator calls "a national psychodrama,"³⁶ a debate way out of proportion to the incident itself, for there had always been girls wearing Muslim headscarves to school in France. But the issue provoked a crisis at this moment because of the contemporaneous rise of radical Islam in the international context. Thus, three young girls wearing the headscarf in France immediately became confused with the tchador, ayatollahs, and fundamentalism.³⁷

Another reason that many French were troubled about girls wearing the Muslim headscarf in school is that many had seen these young girls, rather than their brothers, as the principal agents of Muslim integration into French culture:³⁸ if the girls weren't taking on that role, then who would? And finally, the French were more troubled about these young girls than they had ever been about their grandmothers wearing headscarves to go to the market, because scarves in school suggested that Muslim girls were somehow not willing to be completely assimilated even though France was educating them to be "French." Muslim grandmothers were living the old way, and probably hoping to return home; but their granddaughters would likely stay in France, yet still be "different."³⁹ To many French, then, this raised troubling questions about changes in France's national identity.

In 1994, the appearance of numerous headscarves in the schools led the Minister of Education to issue a statement banning "ostentatious" religious symbols in public schools.⁴⁰ His statement led to so many confrontations and refusals to remove headscarves, that the Minister appointed two media-

36. BERNARD, *supra* note 8, at 135.

37. See Gaspard, *supra* note 21, at 21-22.

38. See Jacques Barou, *Sous le Voile*, 102 MIGRANTS-FORMATION 82, 86 (Sept. 1995). This notion is based, in part, on the essentialist notion that facilitating relationships is a female task. See Gaspard, *supra* note 21, at 24. It is also very likely based in part on the fact that many African women are indeed taking on the role of intercultural mediator within their communities. See sources cited *infra* notes 67, 154. Perhaps some think young girls should be even better at this task than their mothers, since these girls are being raised and educated in France.

39. See Barou, *supra* note 38, at 86.

40. The *Conseil d'Etat* had previously ruled that students' free expression rights could be limited in situations where they infringed on the religious freedom of others, or worked to the detriment of the educational program of the schools. See Michel Bouleau, *Port du Foulard Islamique: Remise en Cause de la Jurisprudence du Conseil d'Etat*, 106 LES PETITES AFFICHES 10, 12 (Sept. 3, 1997).

tors, women of North African origin, to intervene in the schools.⁴¹ Through this work, one of the mediators learned that many of the young women were wearing the headscarf to school not because of family pressure, but on their own initiative, as a way to find a positive identity in a hostile country, and as a way to separate from their parents. In her view, then, wearing the headscarf was merely a tool of emancipation: if the girls were left alone, the headscarf would ultimately facilitate their integration into French society, not alienate them.⁴²

The 1989 "national psychodrama" about the headscarves, then, was an important marker of questions in the French population about the role of Islam in France, a marker mediated through the lives of young African women: it put in relief problematic questions of "race," difference, and national identity.⁴³ And the debate continues. In July 1996, the Administrative Court in Paris upheld a rule of the lycée Albert-Schweitzer which forbade all "ostentatious" religious signs, such as the Islamic headscarf. Samira Kherouaa's refusal to remove her headscarf was, therefore, held a valid reason for her permanent removal from the school.⁴⁴ Later that year, in a case involving another school, the *Conseil d'Etat* stated that merely wearing a headscarf was not, in and of itself, an "ostentatious" religious sign, and therefore not necessarily incompatible with the principle of secular schools.⁴⁵ Because of this confusion, some have suggested the enactment of a law on religious neutrality in public schools; others suggest a referendum on this issue, in order to forbid all religious signs in schools. At least one commentator thinks that such acts would be immediately struck down as either unconstitutional or violative of international law.⁴⁶

Other commentators have wondered why the debate over the Islamic headscarf focuses so specifically on the question of

41. See Hanifa Chérifi, *Jeunes Filles Voilées: des Médiatrices au Service de l'Intégration*, 1201 HOMMES ET MIGRATIONS 25 (1996).

42. *Id.* at 27-30.

43. For an explanation of the problematic nature of ethnic communities given France's "unitarist" political framework, see BRUBAKER, *supra* note 27, at 105-06.

44. See *M. et Mme Kherouaa*, 106 LES PETITES AFFICHES 18 (Sept. 3, 1997).

45. *Ligue Islamique du Nord, M. et Mme. Chabou et autres*, 30 LES PETITES AFFICHES 10 (Mar. 10, 1997).

46. See Nguyen Van Tuong, *Note*, 30 LES PETITES AFFICHES 11 (Mar. 10, 1997).

religious freedom, and not on gender equality, since France's Constitution provides for equality between men and women. And why does the *Conseil d'Etat* repeatedly emphasize Article 9 of the European Convention on the Rights of Man which protects the right to express one religion, without mentioning Article 5 of the Convention on the Elimination of All Forms of Discrimination Against Women, which requires signatories to modify cultural patterns of conduct in order to eliminate discrimination?⁴⁷ Although it is clear that the problem raised in France by the Islamic headscarf in schools is one that implicates issues of both religion and gender equality, the gender issue has simply not been addressed as prominently.⁴⁸

Like the custom of covering their heads, other cultural and religious practices which some African immigrant women bring with them to France implicate issues of sexuality, marriage and reproduction. And again, as with discussions over the headscarf, the debate in France over these practices focuses on the extent to which a different culture can be assimilated into the French national identity: questions of patriarchy and equality between men and women remain in the margin.

A. *Genital Excision, Clitoridectomy and Infibulation*

Genital excision, clitoridectomy and infibulation are practiced by various ethnic groups in approximately twenty African countries, in several countries on the Arabian peninsula (especially Yemen and Oman), and by certain Muslim populations in Malaysia, Indonesia, India and Pakistan.⁴⁹ Although it is often believed that these practices are required by Muslim law, the Koran contains no reference to them. In sub-Saharan Africa, Christians, animists and non-believers, as well as Muslims, are affected by these cultural obligations.⁵⁰ Certain Muslim countries practice them, while others do not.⁵¹ According to

47. See Guy Coq, *Foulard Islamique: pour un retour à la loi républicaine*, LIBÉRATION (Nov. 6, 1996).

48. See Gaspard, *supra* note 21, at 23; Edwige Rude-Antoine, *Des Epouses Soumises à des Régimes Particuliers*, 105 HOMMES-MIGRATIONS 45, 46 (1996) [hereinafter *Epouses*].

49. See EFUA DORKENOO & SCILLA ELWORTHY, FEMALE GENITAL MUTILATION: PROPOSALS FOR CHANGE 11 (1992).

50. *Id.* at 13; AWA THIAM, BLACK SISTERS, SPEAK OUT: FEMINISM AND OPPRESSION IN BLACK AFRICA 58, 70 (1978).

51. For example, there are very few reports of excision in Algeria, Tunisia

the World Health Organization, more than 130 million women and girls in Africa and the Near East have undergone female genital mutilation, and 2 million more are at risk each year.⁵²

When immigrants from these countries move to France, many bring this practice with them. One researcher estimates that this practice has the potential of affecting approximately 20,000 women and 7,000 young girls in France, largely immigrants and children of immigrants from sub-Saharan Africa.⁵³

Although many of the parents are hesitant to have their daughters excised in France, some will have it done anyway out of fear that their daughter will not be able to find a spouse if they return to their home country.⁵⁴

However, French criminal law forbids violence which leads to mutilation. If the victim of this mutilation is less than 15 years old, the person who commits the crime may be punished with 15 years in jail; if this crime is committed by the parents or grandparents of the child, the court may sentence them to 20 years in jail.⁵⁵ French law also requires that school or hospital personnel who learn of such violence report it, despite any other requirements of professional privacy.⁵⁶ As a criminal matter, it is no defense to argue that those who commit this crime do it in order to conform with their customs. The French government maintains that any other interpretation would allow the mutilation of African girls, and not the mutilation of girls from other countries, thus permitting discrimination based on national origin, and violating fundamental principles of equality.⁵⁷

Reports of criminal prosecution under these laws are scattered. Although there appear to be few reported cases of prosecution when the child did not die, the government has taken

and Morocco, which are largely Muslim. See DORKENOO & ELWORTHY, *supra* note 49, at 23.

52. See Roland-Pierre Paringaux, *Le Serment de Malicounda*, LE MONDE, Oct. 14, 1997, "Horizons" section. Female genital mutilation affects approximately one-third of the female population in Africa. See MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ, NOUS PROTÉGEONS NOS PETITES FILLES, at 2-3.

53. Chef de Service des Droits des Femmes Pierre Sardou, Remarks at the workshop *Journée Technique d'Information sur les Mutilations Génitales* (Feb. 5, 1996).

54. See ROZE, *supra* note 1, at 396.

55. See MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ, *supra* note 52, at 6.

56. See Sardou, *supra* note 53.

57. See MINISTÈRE DE L'EMPLOI ET DE LA SOLIDARITÉ, *supra* note 52, at 6.

criminal action against parents whom it charged with aiding in the mutilation of their children following the death of a three-year old girl in the early 1980's.⁵⁸

In 1991, a woman from Mali who was hired to perform a circumcision was sentenced to five years in prison;⁵⁹

In 1993, the *Cour d'assises* in Paris sentenced several mothers to five years in prison, with four of those years suspended; and the *Cour d'assises* in Seine-Saint-Denis sentenced a polygamous father to three years in prison, with all but one month suspended, while his two wives were sentenced to four years in prison, all of which was suspended;⁶⁰

In 1995 a court in Compiègne sentenced a father to 15 months in prison for having his daughter excised abroad;⁶¹

In 1996 a mother was sentenced to one year of prison for excising her five daughters;⁶²

In 1997, a Senegalèse father and mother were sentenced to five years in prison for having their two daughters excised,⁶³

Also in 1997, a Gambian mother was sentenced to a three-year suspended sentence for having one daughter excised in France, and another, in Gambia.⁶⁴

What is striking in these cases is that even where there is criminal prosecution, as a general rule the jail sentence was either entirely suspended, or suspended for most of the term. Some suggest that French judges have difficulty judging harshly these parents who are under enormous cultural pressure,

58. See HARGREAVES, *supra* note 11, at 116.

59. *Id.* at 117.

60. See Sardou, *supra* note 53.

61. *Id.*

62. See Barbara Théate, *Sexualité: l'après excision*, ELLE, Nov. 1996, at 76. Four years of the father's sentence was suspended, whereas all five years were suspended for the mother. *Id.*

63. See *Assises: Condamnation pour excision*, LE FIGARO, Feb. 15, 1997.

64. See Sophie Coignard & Christian Jelen, *Excision le procès des lâchetés françaises*, LE POINT, May 26, 1997, at 95-96.

and who consider themselves acting in the best interest of their children.⁶⁵ Theoretically, then, it should be easier for French judges to help a parent protect her child from excision, than to punish the parent after cultural pressure has forced her to have her daughter excised. At least one administrative court has taken this position. In 1996, the court in Lyon nullified a prefectural ruling that would have sent a woman and her two daughters back to Guinea, stating that there was no judicial protection in Guinea for a mother who refused to have her daughters excised.⁶⁶

The threat of prosecution, however, does not mean that young immigrant girls will not be excised. To avoid legal complications, some Africans simply return to their home country for a short visit to have the excision performed there, where it is legal.⁶⁷ However, as noted above, in two recent cases, the government prosecuted parents for having their daughters excised abroad. Thus, perhaps in this way, the threat of prosecution in France remains a real one.

B. Dowry

The Koran requires that the future husband give something to his future wife. Although the dowry is not a fundamental element of Muslim marriage, most Muslims consider it an obligation of that marriage. Algeria, Tunisia and Morocco all require the husband to provide a dowry as a condition of marriage. This wealth belongs to the woman alone. Its purpose is to maintain an economic equilibrium between groups.⁶⁸

Because French law applies to all marriages which take place in France, the dowry cannot be a part of the marriage ceremony.⁶⁹ Nonetheless, it appears to still be an important

65. *Id.*; *La bataille inachevée contre l'excision*, TÉMOIGNAGE CHRÉTIEN, Mar. 10, 1997, at 38.

66. See Mireille Débard, *La menace d'excision bloque l'expulsion*, LIBÉRATION, June 13, 1996, at 12.

67. See Catherine Quiminal et al., *Mobilisation Associative et Dynamique d'Intégration des Femmes d'Afrique subsaharienne en France*, 61 MIGRATIONS ETUDES 1, 7 (Oct.-Dec. 1995).

68. See Edwige Rude-Antoine, *Le Statut Juridique de la Femme Maghrébine Musulmane et son Devenir en France*, 84 MIGRANTS-FORMATION 48, 51, 56 (Mar. 1991) [hereinafter *Statut Juridique*].

69. See Hamba Kati Kati, *La dot dans le mariage: le cas des Zaïrois de France*, MIGRATIONS SOCIÉTÉ 63, 63 (Mar.-Apr. 1996).

part of the marriage process for some Africans in France. In general, the French legal system ignores the question, except to sanction certain cases of abuse, such as when the delivery of the dowry is set forth either as a condition precedent to the families' agreement to the wedding, or as a condition for the agreement of the future wife.⁷⁰ As African families live longer and longer in France, sometimes one can see the dowry being transformed into exchanges more like French ones, such as providing the wife with money for studies, or gifts during the marriage.⁷¹

C. Polygamy

The immigrant women in polygamous marriages in France are generally from sub-Saharan Africa, and to a lesser extent, from Algeria and Morocco.⁷² There is no way to count precisely how many households in France are polygamous: estimates vary from 3,500 to 21,000.⁷³ They are hard to count because, since 1993, France has prohibited the practice of polygamy in French territories.⁷⁴ Thus, there is every incentive to hide polygamous relationships.

Polygamy is also difficult to count because there are so many ways to live a polygamous life in France: the husband might live in France with all his wives in Africa; he could bring only one wife to France; he might remarry or divorce a wife, thus moving from the category of monogamous to polygamous, and vice versa.⁷⁵ Sometimes a polygamous spouse immigrates with one of his wives, then sends her back home and brings another wife for a while.⁷⁶ Other times, a second wife

70. *Id.* at 64.

71. See Rude-Antoine, *Statut Juridique*, *supra* note 68, at 60.

72. See Rude-Antoine, *Epouses*, *supra* note 48, at 45, 47. The immigrant groups with the highest rate of polygamous families are the *Soninkés* and the *Toucouleurs*, who come from the Sudan-Sahel region of Africa. See Jacques Barou, *Familles, Enfants et Scolarité chez les Africains Immigrés en France*, 91 *MIGRANTS-FORMATION* 12, 13 (Dec. 1992).

73. See Rude-Antoine, *Epouses*, *supra* note 48, at 48.

74. See Béatrice de la Chapelle, *Le phénomène polygame en France*, 51 *REVUE FRANÇAISE DES AFFAIRES SOCIALES* 145, 146 (Apr.-June 1997). The 1993 law prohibits the immigration of polygamous families under the policy of *regroupement familial*; it also prohibits renewing the residency permits for foreigners in polygamous situations. *Id.* at 155.

75. See Poirret, *supra* note 12, at 26-27.

76. See Albert Nicollet, *Femmes entre deux mondes. Avec les femmes*

will immigrate illegally as the husband's daughter, as part of the *regroupement familial*.⁷⁷

There are many reasons why restricting the immigration of polygamous families does not mean that the number of polygamous marriages in France will decline. Although the 1993 law states that polygamous families will not have their residency permits renewed, those permits will not be taken away from polygamous foreigners who received the right to reside in France before the passage of the 1993 law.⁷⁸ Also, if a man who is a valid immigrant to France returns to his home country and takes a second wife there lawfully, that marriage will still be deemed lawful in France.⁷⁹ And finally, many co-wives immigrate illegally. If a woman who immigrates illegally gives birth to a child in France, she cannot be deported, even if she is in France unlawfully.⁸⁰

Under French law, one may not legally enter into a second marriage if the first marriage has not been dissolved. However, since international private law controls the personal status of foreigners, they are expected to follow the laws of the country of their citizenship with respect to their personal rights such as marriage.⁸¹ Thus, a "polygamous spouse" can be defined as a man whose simultaneous marriages are authorized by his personal status.⁸²

There is thus a profound conflict between international private law and French law which makes the status of some African women in France even more fragile.⁸³ The second wife in a polygamous union has few rights to social benefits, yet these benefits are very important to polygamous families, many of which are marked by poverty. For example, the second wife cannot receive benefits under her husband's health insurance, including maternity coverage, since those benefits are al-

d'Afrique noire en France, 84 *MIGRANTS-FORMATION* 69, 77 (1991). This is a common practice with the Soninké. *Id.*

77. See ROZE, *supra* note 1, at 393.

78. See de la Chapelle, *supra* note 74, at 155.

79. See Rude-Antoine, *Epouses*, *supra* note 48, at 51.

80. See de la Chapelle, *supra* note 74, at 156.

81. See Poiret, *supra* note 12, at 34. The only exception to this rule is the maintenance of French public order. See Rude-Antoine, *Epouses*, *supra* note 48, at 46.

82. Rude-Antoine, *Epouses*, *supra* note 48, at 47.

83. See Poiret, *supra* note 12, at 33.

ready assigned to the first wife. In order to provide health insurance for her, the husband would have to take out independent insurance.⁸⁴ However, there is no indication that this always takes place. Sometimes the second spouse will use the social benefits card of the covered co-spouse, thus putting them both in danger of prosecution for fraud.⁸⁵ This also puts the one who uses the card at medical risk, if the health provider bases its medical treatment on the information in the co-spouse's medical file.⁸⁶

France has an extensive system of family allowances which are based on the number of children in the family.⁸⁷ For example, there are allowances for families with at least two children, for child home care, for school expenses, for single parents, and for families with more than three children.⁸⁸ Since the father is the beneficiary of these allowances, all his children are counted regardless of whether they are the children of his recognized wife, or of a co-spouse. The mother's status is irrelevant here.⁸⁹ The fact that the mother does not receive the benefits for her children can present problems if one of the wives is forced to leave home with her children. This situation presents itself when, for example, the wife returns home for a visit with the children, and while she is gone, her husband sends for a co-spouse. In such a case, the wife who had lived in France not only loses the right to return to France, but also has no way to get a portion of the family allowance for her support. One political organization has suggested a system whereby the wife in France who is planning a trip to her home country informs the mayor of the French town where she lives of her trip, who would then refuse to deliver a lodging permit to another spouse during her absence. The group also thinks that family benefits should be sent directly to the wife who had lived in France during the period that she is out of the country with her children.⁹⁰

The wife of a polygamous husband is thus not a wife with

84. See Rude-Antoine, *Epouses*, *supra* note 48, at 53.

85. *Id.* at 54.

86. See Poiret, *supra* note 12, at 35.

87. See BRIGITTE HESS-FALLON & ANNE-MARIE SIMON, *DROIT DU TRAVAIL ET LÉGISLATION SOCIALE* 184-89 (1996).

88. *Id.*

89. See Rude-Antoine, *Epouses*, *supra* note 48, at 54.

90. *Id.* at 53.

full spousal rights. Her rights are derivative ones, based on her husband's status as immigrant, husband, and father. One commentator suggests that French law is more indulgent when it comes to the multiple relationships of French men. For example, the French social security system law allows coverage of both the wife from whom a worker is separated, as well as his common-law wife; divorced men are obligated to provide alimony to successive wives; and the legal system recognizes that a common-law wife has an enforceable interest in compensation if her common-law husband dies, even if he was married to someone else at the time. This suggests that while the French are willing to respect the rights of both French and non-French men to exercise their patriarchal rights to several wives, they are not willing to grant to foreign women the same financial protection that is given to French women.⁹¹

D. Repudiation

Repudiation is the system of dissolving a marriage by the unilateral expression of will of the husband. Although it no longer exists in Tunisia, it still is legal in Algeria and Morocco. In sub-Saharan Africa, even where repudiation has been stricken from the law, in certain countries, like Mali, custom dictates that repudiation be considered legal.⁹² If both spouses are domiciled in France, divorce is controlled by French law. However, if both are not domiciled in France, foreign law applies.⁹³ Therefore, an African man may return to his home country long enough to be "domiciled" there, repudiate his wife legally, then return to France where the divorce will be held valid.

The question that is raised in France is whether a divorce which takes place without procedural protection in another country should be recognized in France. The rule appears to be that repudiation will be recognized in France in either of two cases: if the woman accepts the repudiation, or if there were sufficient procedural guarantees protecting the wife, proce-

91. *Id.* at 54.

92. *Id.* at 56.

93. *Id.* Note, however, that France is signatory to bilateral agreements that modify this law with respect to specific countries. See Letter from Mady Vetter, *supra* note 16.

dures such as the opportunity to present her claims and defenses.⁹⁴

Repudiation raises several important problems for African women in France. The first is that if the repudiation takes place in an African country, it is very likely that the wife who is still in France will be awarded less alimony than she would if the divorce took place in France: this in turn will make her life very difficult due to the different living standards in Africa and France. Another consequence is that the father will very likely gain guardianship of the children, due to male privilege in his country's legal system.⁹⁵ And finally, as of the 1993 modification to the French immigration laws, if a woman is divorced by her husband within the first year of obtaining her *titre de séjour*, she is no longer entitled to stay in France. Thus, many women are pressured to stay in marriages where they are abused, and to stay without complaint, in order to keep their husbands from repudiating them, thereby avoiding deportation.⁹⁶ Note, however, that refusing to recognize the repudiation does not always best serve the woman's interests, since she will be unable to leave this marriage, whereas her husband may well be able to take a second wife.⁹⁷

Along with these religious beliefs and social practices which immigrant African women bring with them to France, the majority of them also come with either a poor formal education, or none at all.⁹⁸ During the colonial period, France provided little or no education to most of her subjects.⁹⁹ Although there has been a strong growth rate in school enrollment in Africa over the past forty years, there are still large discrepancies favoring boys.¹⁰⁰ For example, in 1980, 54% of the girls, and 75% of the boys in Algeria, were in school; in Benin, 55% of the boys and 25% the of girls were in school; and in Guinea, 35% of the boys and 16% the of girls were in

94. See Rude-Antoine, *Epouses*, *supra* note 48, at 58-59.

95. *Id.* at 55.

96. See *Les Femmes Issues de l'Immigration sont Victimes des Dispositions Juridiques!*, 149 ALPHA & PROMOTION 6 (Mar. 1995).

97. See Rude-Antoine, *Statut Juridique*, *supra* note 68, at 58-59.

98. See Quiminal et al., *supra* note 67, at 4.

99. See HARGREAVES, *supra* note 11, at 162.

100. See Claire Robertson, *Women's Education and Class Formation in Africa, 1950-1980*, in *WOMEN AND CLASS IN AFRICA* 92, 93-98 (Claire Robertson & Iris Berger eds., 1986); Marie Eliou, *Scolarisation et Promotion féminines en Afrique Francophone*, 19 INT'L REV. EDUC. 30-38 (1973).

school.¹⁰¹ Indeed, many immigrant women from francophone Africa speak no French, and can neither read nor write.¹⁰² These linguistic and educational weaknesses will be powerful barriers to schooling, training and employment in France. They will also limit the extent to which African women can use the French judicial system to protect themselves from abuses within their homes, or by the larger society.

IV. WHAT IS ALREADY IN PLACE IN FRANCE THAT MIGHT MAKE THE LIVES OF IMMIGRANT AFRICAN WOMEN DIFFICULT?

From the first, African women will find racism in France. In a 1990 survey, 90% of the French interviewed said that racism in France was "rather" or "very" widespread. According to 83% of those surveyed, the major targets are the North Africans, followed closely by young French men and women of North African ancestry, then sub-Saharan Africans.¹⁰³ Two years later, 65% of the French surveyed said that there were "too many Arabs" in France;¹⁰⁴ 38% said there were too many black people; and 31% said that there were too many Asians.¹⁰⁵

It is not surprising that North Africans are the chief targets of racism in France, for, as noted earlier, the Algerian war is apparently not yet over for many French. As one commentator has noted: "France doesn't have a problem with immigration. It has a problem with its colonial past in general, and

101. See Robertson, *supra* note 100, at 97.

102. See Nicollet, *supra* note 76, at 72. See also Robertson, *supra* note 100, at 96-98 (noting that 72.8% of African women were illiterate in 1980, compared with 48% of African men); KHALIDA MESSAOUDI, *UNE ALGÉRIENNE DEBOUT* 111 (1995) (noting that 56% of women in Algeria were illiterate in 1995).

103. See Stéphane Rozès, *La France est-elle raciste?*, in *L'ÉTAT DE LA FRANCE* 44 (1997); U.N. COMM. ON HUMAN RIGHTS, REPORT OF THE SPECIAL RAPPORTEUR ON HIS MISSION TO FRANCE FROM 29 SEPTEMBER—9 OCTOBER 1995 7, 8 (1996) [hereinafter REPORT].

104. In conversations, discussions and texts on immigration in France, there is much slippage between the term "North African" and "Arab." There are, of course, ethnic groups in North Africa which are not Arabic, such as the Berbers, the indigenous people of North Africa. In Algeria, for example, Berbers comprise approximately 25% of the population. See *Une marée humaine à l'enterrement du chanteur Lounès Matoub* (visited June 28, 1998) <<http://www.yahoo.fr/actualité/980628/culture/899057760-yahoo138.html>>.

105. See BERNARD, *supra* note 8, at 140. Some 22% also thought there were too many Jews. *Id.*

with its Algerian past in particular."¹⁰⁶

France's control over Algeria began in 1830 and lasted 130 years. In 1947 France made Algeria an integral part of the country. As a result, anyone born in Algeria after 1947 was automatically a French national.¹⁰⁷

The beginning of the Algerian war of independence in December 1954 was a powerful blow to France: only four months earlier, it had lost its colonies in Indochina after an eight-year war.¹⁰⁸ And Algeria was unique in France's empire: only 500 miles south of Marseilles, Algeria was France's closest and largest trading partner, as well as the French colony with the largest European settler community. It had unique political ties to France, and had proven its strategic value during World War II.¹⁰⁹ The loss of Algeria would be thus an important economic, political and symbolic loss. Finally, after eight years of war, with atrocities and 400,000 deaths on each side, Algeria gained its independence in 1962.¹¹⁰

In 1994, some 30 years after the peace accord was signed, there was still a large group of the French population—over five million people, who had been directly affected by the war: three million of them had been soldiers; one million were European settlers who left Algeria after the war; and another one million were Algerians who had moved to France.¹¹¹ Even without counting the families of the three million soldiers, this is over 10% of the people in France directly implicated in the war. Thus, there are many French who remember the war and their losses, and fix their memories and rage on anyone who might be Algerian. And unfortunately for the Tunisians and Moroccans, they often are considered "Algerian" by the French.¹¹²

106. BEN JELLOUN, *supra* note 29, at 21; *see also* Body-Gendrot, *supra* note 32, at 274-75 (observing that the Algerian war is still one of greatest influences upon racial attitudes in metropolitan France).

107. *See* HARGREAVES, *supra* note 11, at 166. "Nationality" was not the same as "citizenship," which authorizes full political rights. France granted French citizenship to only a small elite of its colonial subjects. *Id.* at 162, 165.

108. *See* TONY SMITH, *THE FRENCH STAKE IN ALGERIA, 1945-1962*, at 31 (1978).

109. *Id.* at 22.

110. *See* BERNARD, *supra* note 8, at 140-41.

111. *See* Yvan Gastaut, *Le Racisme Anti-Maghrébin et les Séquelles de la Guerre d'Algérie*, 1174 *HOMMES-MIGRATION* 35, 36 (1994).

112. *Id.* Tunisia and Morocco were protectorates of France. *See* ROZE, *supra* note 1, at 282. The French presence in these two countries was less intimate, and

Racism in France is reflected in many ways, including violence. Racist violence rose sharply in France in the 1980's.¹¹³ And between 1990 and 1991, threats against North Africans increased by 25%.¹¹⁴ It is reflected in housing discrimination in both public and private sectors.¹¹⁵ Racism is also reflected in the national debates on immigration and citizenship bills, as well as the rise of the extreme right-wing party, *le Front National*, which campaigns on an anti-immigrant platform.¹¹⁶

Racism coalesces with other factors in French society to make it often very difficult for African immigrant women to get a job. One of those factors is a sluggish economy.

The period from 1955 through 1975 was a period of great economic expansion in France, an expansion which led France to invite worker immigrants, especially from Algeria. In 1975, one-quarter of all workers in construction and car industry were immigrants.¹¹⁷ Since 1975, however, France has been beset by a profound reorganization of its economy, including the increasing use of robots, and subcontracting work. Work is disappearing most in those areas where foreigners were heavily employed, such as industry and construction. The gains made in the economy have been in precarious areas such as textile and clothing manufacture, food preparation, cafes and restaurants.¹¹⁸

The sluggish economy has led to a high unemployment rate, which doubled between 1980 and 1990.¹¹⁹ If one factors in the hostility towards Africans noted earlier, it is not surprising that African immigrants have a higher rate of unemployment than the French. And because both France and the sending African countries value women less than men,¹²⁰ it is also

less violent; thus, decolonization took place with less resentment. See BEN JELLOUN, *supra* note 29, at 27.

113. See HARGREAVES, *supra* note 11, at 157. For a powerful chronology of attacks on, and murders of Algerians in France during a 17-month period in the early 1980's, see BEN JELLOUN, *supra* note 29, at 71-76.

114. See BERNARD, *supra* note 8, at 143.

115. See HARGREAVES, *supra* note 11, at 68, 72.

116. *Id.* at 151.

117. See BERNARD, *supra* note 8, at 95.

118. *Id.* at 97.

119. *Id.* at 98.

120. See Véronique De Rudder et al., *La Prévention du Racisme dans l'Entreprise en France*, UNITÉ DE RECHERCHE MIGRATIONS ET SOCIÉTÉ, JUSSIEU

not a surprise that the unemployment rate for African women is even higher than that of African men.

TABLE 1 UNEMPLOYMENT RATES IN FRANCE IN 1990¹²¹

	Men	Women
French	7.5%	14.1%
Algerian	23.1%	42.3%
Moroccan	20.7%	42.5%
Tunisian	22%	41.7%

For sub-Saharan women, the unemployment rate was a staggering 45%—50% for Senegalese women, 46% for women from Mali, 46.7% for women from the Ivory Coast, and 36% for Camerounian women.¹²²

There is no doubt that a significant part of the reason for the high unemployment rate for African women is because many of them immigrate to France with little formal education, an inability to speak French, or both. However, this is not the whole answer to the high unemployment rate, for employment discrimination against Africans is rampant in France.¹²³ One study showed, for example, that even controlling for all relevant variables, the risk of unemployment was 80 times higher for immigrants from North Africa than for the French.¹²⁴ Thus, African women who apply for jobs for which

VII 12, 39 (1996) (observing that discrimination against women in France is so widespread as to be considered social norm). For studies on how traditional African culture, plus Arab and French colonization have made the lives of African women difficult, see generally, BARBARA CALLAWAY & LUCY CREEVEY, *THE HERITAGE OF ISLAM: WOMEN, RELIGION, AND POLITICS IN WEST AFRICA* (1994), and NANCY J. HAFKIN & EDNA G. BAY, *WOMEN IN AFRICA: STUDIES IN SOCIAL AND ECONOMIC CHANGE* (1976).

121. See HARGREAVES, *supra* note 11, at 41.

122. See Quiminal et al., *supra* note 67, at 133.

123. See generally, REPORT, *supra* note 103, at 5-7; De Rudder et al., *supra* note 120; HARGREAVES, *supra* note 11 at 65-66; Zebeida Chergui, *Emploi des jeunes issus de l'immigration*, 79 *ECARTS D'IDENTITÉ* 8, 9-10. Employers in France use familiar explanations to justify their discrimination against qualified African job applicants—an inability to “control” them; the racism of other workers; the refusal of the French to patronize a business with African workers. See De Rudder et al., *supra* note 120, at 36.

124. See De Rudder et al., *supra* note 120, at 11. Also, the French press pub-

they are well qualified, are often rejected.¹²⁵

Indeed, in a stunning example of the irrelevance of "qualifications," a study of a company which places cleaning women in businesses showed that their customers refused to accept African women. Instead, they asked the company to send them French women to clean their offices. Indeed, some customers insisted that both the first and last name of the cleaning woman be French, so that they could be sure that they were not hiring by mistake an African woman who might have acquired a French last name through marriage.¹²⁶ Similarly, the French are more likely to hire Spanish and Portuguese immigrant women to clean their homes than they are to hire African immigrant women.¹²⁷

One would think that this situation would improve for the children of these immigrants. Unfortunately, it appears that this is not true for this group of youth, which has markedly less likelihood of upward mobility than do French nationals of the same age and class. And the problem is exacerbated for girls in this group, who face discrimination as women, as migrants, and as youth, yet often receive educational "training" in areas such as sewing, which give them little preparation for

lishes blatantly discriminatory employment announcements such as "White woman wanted to care for elderly lady," and "No persons of colour." REPORT, *supra* note 103, at 6.

125. Interview with Anne Lespinat, Centre d'Information sur les Droits des Femmes, in Aix-en-Provence (Oct. 6, 1997); RAISSIGUIER, *supra* note 22, at 40; Michel David, *Les Femmes de l'Immigration*, in LES FEMMES DE L'IMMIGRATION AU QUOTIDIEN 120-22 (1997).

126. See *La Rayonnante*, 226 CFDT MAGAZINE 36-37 (Mar. 1997). Some businesses apparently use the phrase "BBR" (*Bleu-Blanc-Rouge*) ("Blue, White, Red" is a synonym for the French flag) as a code for "French only." *Id.*; De Rudder et al., *supra* note 120, at 36. They also use other covert ways to discriminate—by requiring job applicants to provide pictures of themselves, by hiring only the children of current workers, and by refusing to hire workers from neighborhoods which are heavily immigrant. *Id.*

Some French immigrants have apparently carried this prejudice with them to the United States. A random glance at the Help Wanted notices in the weekly French-American newspaper FRANCE-AMÉRIQUE shows that although fully half of the requests for positions as baby-sitter were from women from North Africa, West Africa or Haiti, three of the five requests for a baby-sitter requested "French women." FRANCE-AMÉRIQUE, Oct. 11-17, 1997, at 34. Refusing to hire a job applicant because of her ethnicity is, of course, a violation of both Title VII of the 1964 Civil Rights Act, 42 U.S.C. § 2000e *et seq.* (1981), and the Immigration and Reform Control Act of 1986, 8 U.S.C. § 1324(a) *et seq.* (Supp. 1996).

127. See HARGREAVES, *supra* note 11, at 76-77.

the workforce.¹²⁸

African women immigrating to France will also find that although French law prohibits employment discrimination, enforcement of that law is almost nonexistent. France's Criminal Code makes it unlawful to refuse to hire, to punish, or to fire a person—or to subordinate a job offer to a discriminatory condition, because of that person's origin, or the fact that he belongs to, or doesn't belong to a particular ethnic group, country, race, or religion.¹²⁹ A violation of this law carries a penalty of up to two years in prison and a fine of 200,000 francs. If the violation is committed by someone in the public sector, the punishment is increased to three years in prison, and 300,000 francs.¹³⁰ France's Labor Code also prohibits an employer from adopting internal policies that would penalize employees based on their nationality, or religion.¹³¹ However, the laws are rarely enforced because, according to the French, such discrimination is almost impossible to prove, as employers can escape liability simply by denying any racist motivations.¹³² Some victims of discrimination are too ashamed or frightened to file a lawsuit; some find it difficult to find witnesses who will testify on their behalf.¹³³ Still others know that if they lose the lawsuit, they could be sued for defamation.¹³⁴

Immigrant African women will also discover that French citizenship requirements will make it difficult for them to find jobs. Many public sector jobs which women might be interested in—teaching in a public school, clerical jobs with the government—are generally open only to French citizens.¹³⁵ This is especially problematic in France where approximately one-

128. See RAISSIGUIER, *supra* note 22, at 40.

129. See MINISTÈRE DE LA JUSTICE, GUIDE DES LOIS ANTIRACISTES 16 (1994) [hereinafter GUIDE DES LOIS ANTIRACISTES].

130. *Id.* At the time of this writing, 200,000 francs is the approximate equivalent of \$33,245.00.

131. See Danièle Lochak, *Discrimination against Foreigners under French Law*, in IMMIGRANTS, *supra* note 13, at 392.

132. See Zouhair Aboudahab, *Face à la discrimination; le droit et ses limites*, 79 ECARTS D'IDENTITÉ 2, 3 (Dec. 1996); Lochak, *supra* note 131, at 393; Lespinat, *supra* note 125; Conversation with class of lawyers at *Ecole Supérieure de Commerce* in Paris (Oct. 20, 1997).

133. See Aboudahab, *supra* note 132.

134. See De Rudder et al., *supra* note 120, at 41.

135. See Gaspard, *supra* note 21, at 27.

third of all jobs are in the public sector or in private sector jobs with some public authority.¹³⁶ It is important to note, however, that since French nationals from France's *départements* in the Caribbean, South America and Indian Ocean (Martinique, Guadeloupe, French Guyana and Reunion) are entitled to hold the jobs of citizens, many jobs in the public sector in metropolitan France are filled by French citizens with brown or black skin. Indeed, the majority of those who move to the metropole from the Antilles work in the public sector.¹³⁷

Finally, immigration issues can also make it difficult for African women to find work. Women who are entitled to come to France to join their husbands under the system of family regroupment (*regroupement familial*) don't have their own independent immigration status: they take the same status as their husbands. Because their rights are derivative, if the husband has no right to work, neither does the wife.¹³⁸ And it is often difficult to obtain a work authorization permit in France.¹³⁹

V. CONCLUSION

France has put many resources into incorporating migrants into the French community. The major state agency with this responsibility is the *Fonds d'Action Social pour les Travailleurs Immigrés et leurs Familles* (FAS), which manages the money allocated for state and private programs which

136. See Lochak, *supra* note 131, at 401-04. These include jobs with France's electric company, gas company, railway system, the Paris transportation system, and Air France. Except under certain international agreements, foreigners are not allowed to run tobacco shops or liquor stores, manage an entertainment business or a private technical school. Certain jobs in insurance, business and the stock market are closed to them. With respect to professions, one must be French to be an architect, lawyer, surveyor, accountant, pharmacist, dentist, doctor, or veterinarian. *Id.*

Thus, one can remove whole categories of jobs from the reach of immigrants simply by nationalizing them. For example, in 1976 the Paris city government stopped recruiting foreigners to sweep the streets, as "temporary auxiliaries." As a result, the proportion of foreigners in that job classification dropped from 72% in 1975 to 32% in 1985. At the same time, the city upgraded those jobs with respect to both pay and working conditions. See HARGREAVES, *supra* note 11, at 50.

137. See Beauvue-Fougeyrollas, *supra* note 32, at 96.

138. See Poiret, *supra* note 12, at 33; Mady Vetter, *Situation juridique et sociale des femmes âgées étrangères* (1997) (paper on file with author).

139. See Gaspard, *supra* note 21, at 27.

facilitate the integration of migrants.¹⁴⁰ In 1989, 43.3% of the FAS budget went to housing, 27.6% went to education, and 26.8% went to social and cultural activities.¹⁴¹ France's Ministry of Work and Solidarity develops government policy on immigrants; and the International Migration Office tries to facilitate the reception of migrants in France. The Association of Social Assistance for Migrants uses its local offices to deliver social services to them.¹⁴²

Before 1981, non-citizens did not have the right to organize associations in France. As a result, French nationals created the associations designed to fight racism and improve the lives of immigrants.¹⁴³ Three of the most important are *le Mouvement contre le racisme et pour l'amitié entre les peuples* (MRAP), *le Groupe d'information et de solidarité auprès des travailleurs immigrés* (GISTI), and *SOS-Racisme*. They are also authorized to file suit in cases of discrimination, thus playing a role similar to that of American public interest law firms.¹⁴⁴

Since 1981, the number of associations created by non-citizens has skyrocketed. By the mid-1980's there were over 4,000 such groups, mostly concentrated in Paris. These groups tend to mobilize around specific political issues, through activities such as demonstrations, expositions and marches.¹⁴⁵

The government has also put resources into improving the lives of women in France. One of the most important is the *Service des Droits des Femmes*, a bureau within the Ministry of Work and Social Affairs, which has 27 offices throughout France, including several in its overseas *départements*. Its goals are to help women to get better trained for jobs, and to get businesses to open up more jobs for women; to promote

140. See YASEMIN NUHOĞLU SOYSAL, *LIMITS OF CITIZENSHIP: MIGRANTS AND POSTNATIONAL MEMBERSHIP IN EUROPE* 76 (1994).

141. *Id.* at 60.

142. *Id.* at 75-76. Like ADRI, this latter organization is an *association* which has been delegated a public function. See Letter from Béatrice Borghino, *supra* note 7.

ADRI is also charged with improving communication between the French and foreigners. One of its tasks is to develop training programs for police, judges, teachers, and social workers in order to make them more sensitive to the diverse populations they serve. See De Rudder et al., *supra* note 120, at 41.

143. See SOYSAL, *supra* note 140, at 104.

144. See De Rudder et al., *supra* note 120, at 29, 31.

145. See SOYSAL, *supra* note 140, at 104-06.

women's rights, including health and reproductive freedom; and, especially for foreign women, to facilitate their access to citizenship and their protection against abuses of authority. One of its specific goals is to fight against the various forms of exclusion which face women who have several "handicaps," such as long-term unemployment, isolation, inadequate training, and poor mastery of French.¹⁴⁶ This national bureau thus recognizes the issues of immigrant African women, and is putting some resources towards solving their problems.

One of the ways that it carries out its mission is by supporting other groups such as *Planning Familial* and the *Centre d'Information sur les Droits des Femmes* (CIDF). With offices throughout the country, CIDF networks between individual women who come to its offices for help, and support groups within the community, providing women with information and advice on a wide range of issues, such as divorce, retirement, alimony, housing, finding work, training, and health.¹⁴⁷ The Marseilles office of CIDF now houses a regional office (*Bureau Régional de Ressources Juridiques Internationales*) (B.R.R.J.I.) which provides advice on those complex questions of international law which affect immigrant women and their children.¹⁴⁸ Between June 1996, when the office began operation, and June 1997, the B.R.R.J.I. staff researched and answered 190 legal questions. Many of the questions concerned issues noted earlier in this article, issues such as the effect of repudiation on a wife and children, and the problem of who gets a widow's pension where there are several widows.¹⁴⁹ B.R.R.J.I. provides this advice to other associations, and works as well with attorneys, judges, the Ministry of Justice, and private groups, such as a group of mothers of abducted children.¹⁵⁰

146. See *Service des Droits des Femmes*, UNE ADMINISTRATION AU SERVICE DES FEMMES (1993) (pamphlet on file with author).

147. Interview with Anne Lespinat, *supra* note 125; *Information Femmes-C.I.D.F.*, in *INFORMATIONS FEMMES AIX* (Dec. 1995) (pamphlet on file with author).

148. See Mady Vetter, *Le B.R.R.J.I., un nouvel outil pour les droits des femmes étrangères*, 79/80 *FEMMES INFO* 20-21 (Summer/Fall 1997). B.R.R.J.I. serves a support function for the Regional Delegation on the Rights of Women. See Letter from Mady Vetter, Director, Bureau Régional de Ressources Juridiques Internationales, Marseille, to Judy Scales-Trent (Feb. 25, 1998) (on file with author).

149. See Mady Vetter, *l'Action du B.R.R.J.I. Juin 1996-Juin 1997: un an d'activité* 5 (June 1997) (report on file with author).

150. *Id.* at 7.

France also has several university research centers which focus on women's issues—centers such as the *Centre d'Enseignement, de Documentation et de Recherche des Etudes Féministes*, an important research center for the past 25 years; and it has other university research centers such as *URMIS*, which sometimes addresses women's issues in tandem with its major focus.¹⁵¹

And finally, there are a plethora of African women's organizations in France. Those with a feminist orientation generally work in association with other international groups of African women to increase their autonomy by ending, for example, female circumcision and polygamy.¹⁵² Then there is the much larger group of African women's organizations, most of which were created to help new immigrant women to adjust to the social and legal systems in France, to facilitate the daily life between the immigrant woman and her family, and to help French institutions such as hospitals and schools, better understand the African population there.¹⁵³

Indeed, some localities find the assistance of women in these groups so helpful that they have formalized the role of "intercultural mediator" or *femme relais*: these are women from North or West Africa who work out of, for example, a school, hospital or social services office, to facilitate communication between African immigrant women newly arrived in France, and French social workers, medical staff, and teachers.¹⁵⁴

Many of these African women's groups are also trying to change the system of derivative rights, which limits their autonomy. As noted earlier, both immigration and citizenship rights, as well as rights to social benefits, go directly to the husband, then indirectly, to the wife. There has been some action on this issue at the international level. Groups have asked the European Parliament to ensure that immigrant women in Europe be given legal status independent of their

151. See, e.g., Quiminal, *supra* note 5.

152. See Quiminal et al., *supra* note 67, at 7; Barou, *Familles*, *supra* note 72, at 17.

153. See Quiminal et al., *supra* note 67, at 8.

154. See generally, Catherine Delcroix, *Médiatrices Socioculturelles, Citoyennes Innovantes!*, in *LES FEMMES DE L'IMMIGRATION AU QUOTIDIEN* 41 (1997); Aicha Sissoko, *La Médiation Interculturelle et les Femmes Relais*, 84 *ECHANGES SANTÉ-SOCIAL* 58 (Dec. 1996); Margalit Cohen-Emerique, *La Médiation assurée par les Femmes-Relais*, 193 *ACCUEILLIR* 12 (Nov.-Dec. 1993).

spouse after a two-year stay in the European country. Specifically, they have asked that these women be given work and residence permits in their own name, which would make them much less vulnerable in cases of divorce or spousal abuse. In a report issued in 1993-94, the European Parliament took note of this problematic situation of immigrant women.¹⁵⁵

However, even if these rights were granted tomorrow, this would improve the lives of African women with respect to issues of sexism and patriarchy, but not with respect to the racism that they face every day. What good would it do a new immigrant from Mali to have her own work papers if employers refuse to hire anyone from Africa? In order to make her life substantially better, France must substantially reduce both sexism and racism within its borders.

France has created many tools to eliminate racism and sexism, not the least of which is a centralized education system: the power to decide what each child in the country learns on any particular day about history and about people from different parts of the world, is not negligible. France also has legal tools. There are laws which make it a criminal offense to discriminate in employment, or in furnishing goods or services, such as housing: sanctions include a fine, jail, and/or closing down the establishment in question. French law also proscribes hate speech.¹⁵⁶ The only question is how aggressive the French will be in using these tools to meet their own goals of civil equality.

I spent October 1997 in France, and now, at the end of June 1998, I am finishing this article. The news from France these days sounds familiar.

A court in Aix-en-Provence has just given a 15-year prison sentence to a Frenchman who killed Ibrahim Ali, a young man from Comoros, off the east coast of Africa. The attorney for the murderer, a billposter for the right-wing Front National, said that his client was defending himself from attack: the prosecutor pointed out that young Ali was shot in the back.¹⁵⁷

155. See Vetter, *Situation*, *supra* note 138, at 12, 13.

156. See GUIDE DES LOIS ANTI-RACISTES, *supra* note 129. French law also makes it unlawful to deny the existence of crimes against humanity, or to wear uniforms or insignia which resemble those of the groups which committed those crimes. *Id.*

157. *Fifteen Years in Prison for National Front Murderer*, AGENCE FRANCE PRESSE, June 22, 1998, available in LEXIS, News Library, curnws File.

There are demonstrations in France and riots in Algeria because of the assassination of Lounès Matoub, a popular Berber Algerian singer who took a strong stance against Islamic fundamentalism.¹⁵⁸ Matoub had moved with his family to France after having been kidnapped by the *Groupe Islamique Armée* in 1994: upon his return to Algeria last week for a visit, that same group assassinated him on a country road as he was driving home.¹⁵⁹ In the last weeks of June, terrorists killed 260 people in Algeria.¹⁶⁰

The *Assemblée Nationale* has just adopted by a vote of 94—0, a constitutional amendment which establishes parity between men and women on the candidates' lists for regional office.¹⁶¹ This amendment must now be approved either by the Parliament (National Assembly and Senate together), or by referendum.¹⁶²

There is nothing in the news about African women, except for television pictures of grieving mothers and wives and sisters. But, as we have seen in this article, African women are very present in France. They are making their way as students, as *femmes relais*, as workers, wives and mothers. Some go to France because they have no choice but to follow their husband, but most go to make their lives better. Many take with them cultural and religious traditions, educational weaknesses, that will make their lives complicated in France; and when they arrive in France these women will find problems with racism and sexism, as well as a high rate of unemployment. But still they go to France, because, even under these conditions, they expect that life there will be better. As we have seen, the French government and private associations have created a plethora of programs to improve their lot.

We in America know only too well how hard it can be to eliminate deeply entrenched biases, as well as those structural weaknesses in the economy that can limit so severely the op-

158. See Craig R. Whitney, *Lounès Matoub, 42, is Killed; Sang to Promote Berber Cause*, N.Y. TIMES, June 27, 1998, at B8.

159. *Id.*

160. See *Des manifestations dégénèrent à Tizi-Ouzou—Un mort*, AGENCE FRANCE PRESSE, June 27, 1998.

161. See *Scrutin région-l'Assemblée établit la parité hommes-femmes*, AGENCE FRANCE PRESSE, June 24, 1998.

162. See *Parité hommes-femmes: Lionel Jospin renvoie la balle dans le camp de Jacques Chirac*, AGENCE FRANCE PRESSE, June 24, 1998.

portunities for women harmed by both racism and sexism. Hopefully, those in France who are working on these issues, will make progress there that will inspire our own.

