

FORCED MARRIAGE

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About Tamkeen Fields for Aid

Tamkeen Fields for Aid is a non-governmental, independent and neutral organization established 10th October 2007. The organization aims to promote the exercise of fundamental human rights and freedoms for all segments of society, particularly those who are marginalized such as children, women, refugees, workers, people with disabilities and others in accordance with national and international conventions and treaties.

Tamkeen is specialized in promoting the protection of migrants and workers, combatting human trafficking, enhancing social protection and the rule of law.

Tamkeen aims to achieve its objectives through capacity-building for governmental and non-governmental entities and by providing services and consultation to those in need in order to empower them and raise their awareness regarding their rights and duties. It also provides specialized programs in the field of human rights to various segments of society. This is achieved by raising awareness of human rights for all related parties. The centre also works to produce studies regarding topics related to its field of expertise.

In addition, Tamkeen works to strengthen cooperation and coordination between different concerned stakeholders such as national institutions and bodies, civil society organizations and associations in addition to the activists and individuals working in the field of human rights protection. Additionally, the centre works to establish partnerships with organizations in other countries to protect the rights of migrant workers.

Tamkeen Fields for Aid works to provide assistance to combat human trafficking and human rights violations by adopting a three-pronged approach which consists in; protection, prevention and prosecution.

It is possible to ensure protection by educating migrant workers, government officials and the general public on the possible human rights violations in the labour sector. Moreover Tamkeen works to eliminate human rights violations through legal advocacy and policy reform, educating migrants on their rights and duties, conducting educational programs and by producing brochures appealing to the general public.

Executive Summary

This study on “Early and Forced Marriage in Jordan” was conducted by Tamkeen Fields for Aid with the aim of identifying the causes behind the increase in number of girls getting married under the age of 18 in Jordan, whether in the Jordanian or the Syrian communities; examining the current efforts that are being done by various non-governmental and civil society organisations to combat this phenomenon; and examine whether some of the cases could be looked at through the lens of Human Trafficking through the definition of this crime and its element and forced marriage as one of its forms of exploitation.

In this study, an analytical approach was used that combines both quantitative and qualitative tools, as various reports and studies were analysed, as well as the annual reports released by the Higher Judicial Department. Following this in-depth analysis, a series of interviews and focus group discussions were organised with stakeholders working on issues related to EFM; as well as individual interviews with girls who themselves went through this experience and some of their husbands.

According to the interviews and analysis done throughout the study, reasons for EFM vary within the Jordanian and Syrian communities, though the major reasons could be pointed out as: customs and traditions that were inherited from one generation to the next; followed closely by poverty and difficult economic situations leading families to resort to marrying their daughters and receiving a dowry in return as a solution out of their problems; and then reasons related to protection as some families perceive marriage as a way to protect their family’s honour by guaranteeing that the girl is married as soon as possible instead of risking her getting into trouble and thus jeopardising their family’s honour and reputation.

The study made several findings that should be highlighted: first, that the Jordanian Personal Status Law in its current form and despite the series of amendments it underwent, is still not sufficiently restrictive when it comes to decreasing the number of cases of marriages for those under 18. This is clearly shown in the figures issued by both the Higher Judicial Department and the Statistics Department, with both of them indicating in their yearly reports that the number of those marriages has remained at the same level for the past several years despite the continued efforts of governmental institutions and civil society organizations to combat this phenomenon.

Another thing to highlight is that despite the Higher Judicial Department setting clear instructions on who could get the permission to marry under the age of 18 and above of 15, these instructions are not always followed on the ground like the issue of the

age difference between the bride and groom. According to the annual report issued by the Statistical Department, of the 10,434 cases of early marriages registered in Jordan in 2017, in 846 of them the age difference between the bride and groom exceeded 15 years, while in 29 cases the difference was more than 33 years and in 9 more than 50 years. These marriages constitute a clear violation of the above mentioned instructions as it dictates that the age difference in marriages where one of the involved is between the ages of 15 and 17 should not exceed 15 years; while article 11 of the Personal Status Law states that "no marriage contract shall be approved where the fiancé is older than the woman by 20 years or more except after the judge has met the woman and verified her choice and acceptance of this marriage."

In terms of the connection between early and forced marriage with the crime of human trafficking, the study noticed that the current Jordanian Anti- Human Trafficking law does not recognise forced marriage as a form of exploitation and thus is not criminalised by the law. It was also noted that the law has limited the types of exploitation by defining them as a set list and without the ability to make further additions like the international protocol.

The study also found that some of the early marriages currently occurring do constitute Human Trafficking by applying the definition and elements of the crime: Act, Means and the Purpose, on Forced Marriage and then onto those cases. This application reached the conclusion that in cases of early marriage, the primary interests that are met are those of the girl's guardian and husband and not the girl herself and sometimes without her permission or approval being obtained or done so through methods of deceit or false attractions.

Even though the connection between these forms of marriages and Human Trafficking is quite clear, the Jordanian Personal Law still allows for them to be legalised through the exceptions added to it on the one hand and not criminalising Forced Marriage as a form of Human Trafficking on the other; despite Jordan's obligations provided for in the international treaties it has signed such as the Covenant on the Rights of the Child, the Covenant on the Elimination of Discrimination Against Women, among others that criminalize this marriage.

Based on these findings, the study made several recommendations including:

- Amend the Personal Status Law in order to further restrict the exceptions that grant those who are above 15 and under 18 the permission to marry and at the same time aggravate the penalty for those who officiate marriages for persons under the age of 18 outside the court,

- Amend the Prevention of Trafficking in Persons Law, especially Article 3, so it will not limit the forms of exploitation, but list them as examples; thus allowing for the addition of other types, like forced marriage which should be recognised as such.
- Reform the Educational policies in order to include Syrian refugees under the umbrella of compulsory education, as well as the organising and conducting of awareness programs targeting girls who are in the eighth grade and older to talk about the risks of EFM physically, psychologically and socially.
- Design Vocational Training programs targeting boys and girls in the age group between 14 and 18 who could not complete their education.

Introduction

Early and Forced Marriage¹ has rapidly gained international attention over the last decade as it has been recognised as a global problem which cuts across countries, cultures, religious and ethnicities and affects approximately 15 million girls every year². Due to the cross-nature of this crime, as well as the fact that it affects not only individuals but societies as a whole, countries and organisations alike began increasing their efforts to combat this phenomenon and its links to a range of issues from economic difficulties, poverty and education, health, human rights, and social justice.

Early Marriage is defined by UNICEF as "formal marriage, or customary or legal sexual intercourse recognized as any formal marriage made before 18, although this marriage sometimes extends to males as well, Girls covered in this type of marriage far outnumber boys³.

Forced marriage on the other hand relates to Article 16(2) of the United Nations Declaration on Human Rights: "Marriage shall be entered into only with the free and full consent of the intending spouses." The Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Article 16(1) (b), reiterates men and women's "right freely to choose a spouse and to enter into marriage only with their free and full consent." Forced marriage, therefore, is a marriage to which one or both of the spouses did not give their free and full consent⁴.

It should be noted that many organizations have interpreted forced marriage to encompass child marriage⁵, since children inherently lack the ability to consent to marriage. The United Nations Population Fund, for example, says that "children, given their age, are not able to give free, prior and informed consent to their marriage partners or to the timing of their marriage⁶

¹ Child marriage, early marriage, and forced marriage are all interrelated but distinct terms, and they have been combined in every way possible: early and forced marriage; child and forced marriage; early child marriage; and child, early and forced marriage. Often the terms are used interchangeably in the same document, without any explicit definitions.

² Girls Not Brides "Human Rights Council adopts resolution to end child, early and forced marriage" <<http://www.girlsnotbrides.org/human-rights-council-adopts-resolution-to-end-child-early-and-forced-marriage/>> 05 August 2016

³ UNICEF, *A Study on Early Marriage in Jordan 2014*, 2014, Amman, Jordan

⁴ Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian: Thematic report on servile marriage (2012). A/HRC/21/41, para. 20

⁵ The Convention on the Rights of the Child (CRC) defines a child as a "human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." (Convention on the Rights of the Child, Article 1). Since different nations allow their citizens to attain majority at different ages, and some allow majority to be attained upon marriage, this deference to national law is a real and concerning loophole.

⁶ United Nations Population Fund, *MARRYING TOO YOUNG* (2012), p. 11.

Global data indicate that while EFM occurs in virtually every country, the prevalence varies considerably across and within regions and countries, and it is most widespread in developing countries. Worldwide, current figures show that there are now 720 million women alive now who were married before the age of 18, a percentage of 10% of the world's population⁷. In terms of regions, 41% of girls under the age of 18 are married in East and Central Africa, while the percentage of marriages is 29% in Latin America and Caribbean and it is 15% in the Middle East and North Africa according to figures released by the United States Agency for International Development (USAID)⁸.

In the Arab world, attention of this issue has been increasing as several organizations and experts began looking into it to understand its causes and effects, each in their own perspective whether it was cultural, economic or traditions and norms rooted in the region. Despite the growing body of research and studies done on this phenomena, there have been no studies in the region trying to connect between EFM with human trafficking. Instead, the majority of these studies have focused on the social roots of these types of marriages, connecting them to women's position within this culture.

These studies usually begin by providing a review of laws governing women in the Arab world, highlighting how many of them set men as guardians over women in almost all critical issues from inheritance laws, personal status laws, and citizenship laws; even though such laws are considered to be in violations of the Convention on the Elimination of All Forms of Discrimination against Women, which has been signed by the majority of these countries.

The attention on EFM has exponentially following the onset of the Syrian Crisis as various reports indicated its prevalence in refugee communities. These reports pointed out that such an increase during conflict and displacement is not unique to this crisis as prior evidence suggests that vulnerability to early marriage can be exacerbated by armed conflict and natural disasters. However, worrying signs have been appearing to the surface as some of these cases show evidence of exploitation connected to them which in turn signals that some of these cases are in fact trafficking and not just marriages occurring as a result of the war.

In spite of these signs, the main focus of the many events and studies conducted on this subject has been the causes of EFM. One such event was a regional seminar held in Beirut, where one speaker presented a paper focused on how the state of war and

⁷ UNICEF, "Child Marriages: 39,000 Every Day" < http://www.unicef.org/media/media_68114.html > 05 August 2016

⁸ UNFPA, "*The State of World Population 2013: Motherhood in Childhood*", 2013

armed conflicts that the region is experiencing in the period post the Arab Spring revolutions has created a state of growing fear and difficulties among people in general and refugees in particular. The paper continued on saying that as financial reserves become depleted, some families find themselves unable to meet the basic needs of all family members and make the choice to marry adolescent girls earlier than they would have otherwise. Additionally, in conflict settings the risk of sexual violence and harassment is often heightened and some families feel that marriage and a good husband will offer the girl protection over and above that which her father or other male guardians can provide; while in some societies, girls who have experienced sexual violence are considered unsuitable for marriage, which can bring dishonour to her and her family and by arranging early marriages for their girls, some families believe they are reducing or eliminating this risk⁹.

The result of all these circumstances however could be dwindled into one as girls lose the ability to make independent decisions about their lives or what they actually want for their future and instead are forced to give up this power and simply shift its ownership from one authority: her guardian whether he is her father or another male relative to another: her husband whom she did not choose and in many cases does not even want or approve of. Unfortunately, the impact of EFM has by now been widely documented, as these girls face consequences varying from: complications during pregnancy and childbirth, violence, limited education and economic opportunities, as well as little freedom and chance to socialise with children their own age. To make matters worse, many of these marriages are short-term and unregistered, leaving girls with little protection for themselves or their children.

Based on the abovementioned, this study will rely on the available data to conduct a quantitative and qualitative analysis of cases of Early and Forced Marriages in Jordan within both the Jordanian and Syrian communities. The study will first start by looking at the theoretical aspect of such marriages within international law and from a human trafficking perspective as it attempts to assess whether EFM could in fact amount to human trafficking. Following this assessment, the study will conduct a review on the laws governing marriage in Jordan as well as in pre-war Syria before examining the available data on the number of cases within these communities, pre and post the onset of the conflict.

Prior to starting however, it is important to mention some important points:

⁹ Speech in a Regional Seminar entitled: "Early Marriage in light of Democratic Transition and Conflicts", 2015, Beirut, Lebanon

First, while we consider that forced marriage encompass early marriage, since children inherently lack the ability to consent to marriage; we do not consider every case of early marriage as human trafficking unless such marriage includes the elements of the crime: Act, Mean and Purpose.

Such cases might include marriages that were done for economic purpose in order to obtain a high dowry for the girl or for the purpose conducting or confirming a business transaction between two families by marrying the son of one family to the daughter of the other. These marriages constitute clear cases of Forced Marriage as the main benefits of it do not befall the married couple but their guardians.

Second, and as seen in the example above, EFM can happen to anyone regardless of age, gender, race, ethnicity or faith; it should be noted that most of those affected are young women and thus, the study will be mainly focused on them.

Third, although the combination of extreme poverty, civil unrest, and religious fundamentalism that plagues the Middle East and North Africa has created a fertile environment for the sexual exploitation of young girls, including Early and Forced Marriage; these forms of marriages are not in fact constrained to such circumstances, nor are they limited to cases of girls being forced to marry members of warring or terrorist organisations as there are many manifestations of EFM.

Theoretical Aspect on of Human Trafficking and EFM

Definition and elements of the crime of Human Trafficking

Human trafficking first came to the attention of the International community in the late 1980's. By the beginning of the 21st century it had been recognized as a serious global problem that needed global responses. The United Nations responded in 2000 with the publication of the UN Convention against Transnational Organized Crime and its Supplementary Protocols. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) set out the first definition of human trafficking that is still the benchmark for defining human trafficking today.

Article 3 of the Palermo Protocol defines human trafficking:

3 (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

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

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) have been used;

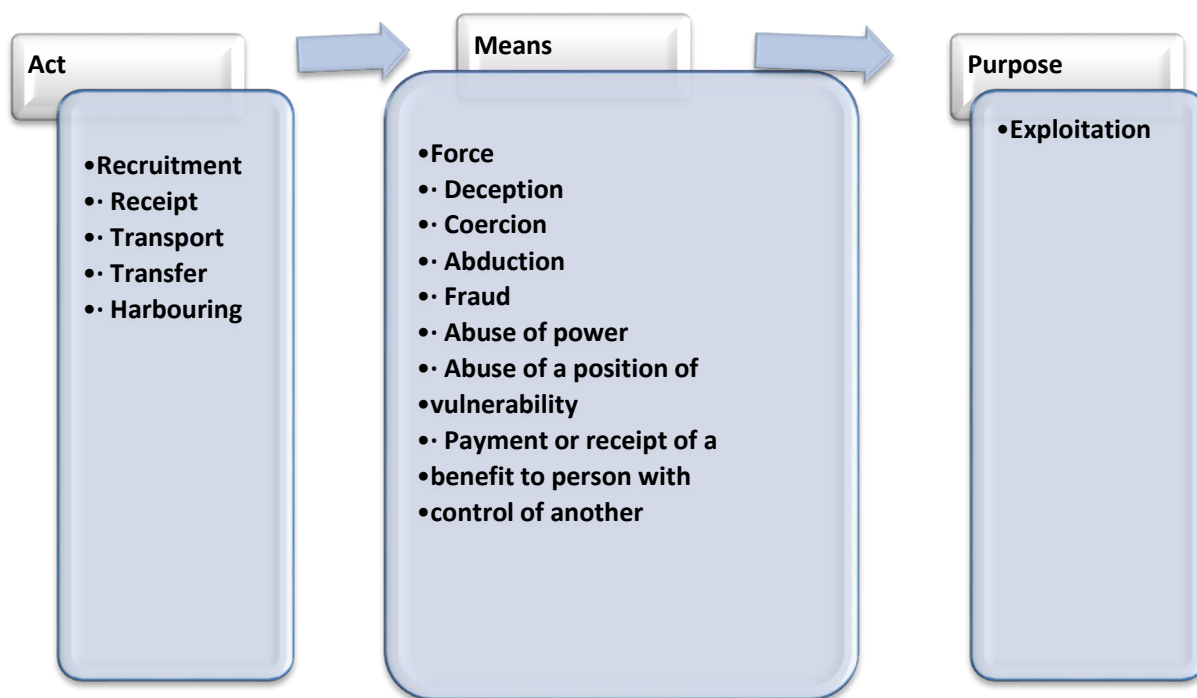
(d) "Child" shall mean any person under 18 years of age¹⁰.

The United Nations Office on Drugs and Crime (UNODC) as the secretariat of the Conference of the Parties to *the United Nations Convention against Transnational Organized Crime* and its protocols, defines three basic elements of trafficking: first, the process; second, the means; and third, the purpose (see Table 1).

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, General Assembly resolution 55/25, annex II, p.32. http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf. Since December 25, 2003 when the Protocol entered into force, 117 countries have signed and 132 countries have ratified the Protocol as of September 10, 2009.

UNODC explains that “the crime of trafficking be defined through a combination of the three constituent elements and not the individual components, though in some cases three individual elements will constitute criminal offences independently.”¹¹

It should also be noted that the individual elements, such as sexual exploitation, forced labour, slavery-like practice, are not further defined in the Protocol, and signatory states are obligated to further define these terms under their domestic legislation.¹²



Source: UNODC

The Palermo Protocol identifies three different types of potential exploitation:

- 1. Sexual Exploitation:** Prostitution or other forms of sexual exploitation. Such as street prostitution, bars, massage parlours, escort services, private houses, brothels, pornography, child pornography, hostess clubs, call girls, and forced marriage.
- 2. Labour Exploitation:** Forced labour or services; slavery or practices similar to slavery; servitude.

Labour Exploitation under the Palermo Protocol potentially covers a vast range of exploitative practices.

- 3. Removal of organs:** The third form of exploitation under the Palermo Protocol is the exploitation of a person for the purpose of removing their organs.

¹¹ UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1, p.4.

¹² The United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25. http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf

Forced Marriage

The term “forced marriage” relates to those individuals who are not necessarily married before the age of 18 but are married against their will due to pressure or abuse. It is important to note that early and child marriages often take place by means of force and coercion and, as such, some marriages can be equally classified as early and as forced¹³.

Although both boys and girls fall victim to child, early and forced marriage, it should be noted that the vast majority of victims are female and the sexual and reproductive health issues arising from child and early marriage have an overwhelmingly disproportionate impact on girls.

Due to the, often, unofficial and undocumented nature of most forced marriages, statistics on EFM vary. The ILO estimates that 37% of those living in forced marriage were children at the time of the marriage, and 44% of those individuals were under the age of 15¹⁴; while according to the UNICEF, 250 million women alive today were married before their 15th birthday¹⁵.

There are three main types of forced marriage: forced marriage of adults, early or child marriage, and trafficking for marriage. There are numerous reasons why forced marriage occurs, including the payment of a bride price, cancellation of debt, or to settle a dispute, abduction by an armed group – as was the case with many of the girls taken by Boko Haram – deception, to offload financial responsibility – often the case after a natural disaster or during migration – and sometimes to secure another individual’s residency in a country, among others¹⁶. While the causes might differ from one case to another, there is one certainty that Forced Marriage of children whatever its cause has negative education, economic, and health impacts on its victims varying from the endurance of rape, domestic servitude, in addition physical and verbal abuse, with the inability to leave and sometimes to even seek help or support.

¹³ Anitha, Sundari and Aisha Gill. 2009. “Coercion, consent and the forced marriage debate in the UK.” *Feminist legal studies* 17: 165-184 and Anitha, Sundari and Aisha Gill. 2011. *Forced marriage: Introducing a social justice and human rights perspective*. Zed Books.

¹⁴ ILO “2016 Global Estimates of Modern Slavery September 2017. The report documents modern-day slavery (forced labor and forced marriage) around the world

¹⁵ UNICEF, “Early Marriage: A Harmful Traditional Practice. A Statistical Exploration”, (New York: 2005)

¹⁶ Child marriages-Joint news release by Every Woman Every Child/Girls Not Brides/PMNCH/United Nations Foundation/UNFPA/UNICEF/UN Women/WHO/World Vision/World YWCA/7 March 2013

Even though forced marriages are usually linked to cases of coercive unions concerning individuals older than 18 years of age, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child stated in a joint recommendation/ comment that any child/early marriage can be potentially regarded as a form of forced marriage, considering that the young age of one or both parties tends to hamper the full and free expression of consent¹⁷. The Human Rights Council also shares that opinion stating “early marriage can refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options¹⁸.”

The UNICEF also has a similar opinion to these two organizations as it pointed out that “the right to ‘free and full’ consent to a marriage is recognised in the Universal Declaration of Human Rights – with the recognition that consent cannot be ‘free and full’ when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.”¹⁹

Due to the magnitude of this phenomena, the UN has concentrated its efforts to tackle child and early marriage by closely tying it to the 2030 Sustainable Development Agenda, adopted in September 2015, which included among its 169 targets, target 5.3 focusing on “eliminating all harmful practices, such as child, early and forced marriage and female genital mutilation’, under Goal 5 ‘Achieve gender equality and empower all women and girls’²⁰.

Terminology Debate: Child Marriage vs Early Marriage

Before continuing any further it is important to note a terminology debate amongst those discussing this issue between the terms early marriage and child. This debate has two sides with some interpreting early marriage as synonymous with child marriage while others believe it is more inclusive than child marriage.

¹⁷ United Nations Committee on the Elimination of Discrimination Against Women and United Nations Committee on the Rights of the Child, “Joint General Recommendation/General Comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on Harmful Practices”, UN Doc. CEDAW/C/GC/31-CRC/C/GC/18, (2014), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%18&Lang=en

¹⁸ OHCHR, Preventing and Eliminating Child, Early and Forced Marriage, UN Doc. A/HRC/26/22, 2 April 2014 § 21. Also: Special Representative of the Secretary-General on Violence against Children and Plan International, Protecting Children from Harmful Practices in Plural Legal System (2012). See also Plan International, A Girl’s Right to Say No to Marriage: Working to End Child Marriage and Keep Girls in School (2013).

¹⁹ UNICEF, “Early Marriage: A Harmful Traditional Practice. A Statistical Exploration”, (New York: 2005)

²⁰ UN General Assembly, “Transforming our world: the 2030 Agenda for Sustainable Development”, UN Doc. A/70/L.1, (2015).

Looking through many United Nations resolutions and reports, it appears that the organisation uses ‘early marriage’ and ‘child marriage’ interchangeably, without any noticeable distinction.

Other organisations, however, use the phrase “early marriage, including child marriage,” implying that early marriage encompasses child marriage but also includes situations that do not qualify as child marriage, such as marriages in which one or both spouses are below the age of 18 but have attained majority under state laws; explaining that although early is not explicitly defined to mean less than 18 years old, it is frequently found in that context²¹.

A prominent example of that is a study referred to in this study conducted by the UNICEF’s entitled “Early Marriage: A Harmful Traditional Practice” which besides looking at the issue from various angles, also measures the “proportion of women aged 20–24 married by the exact age of 18”. In fact, most organizations that collect 3 data on early marriage use the under-18 benchmark²².

Even the Convention on the Rights of the Child in its General Comment 4, as we will further see below, only uses the term ‘early marriage’ and never ‘child marriage,’ noting that:

“In some States parties [sic] married children are legally considered adults, even if they are under 18, depriving them of all the special protection measures they are entitled under the Convention. The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys”²³.

Another point to add is that ‘Early’ does not have to refer solely to age and could encompass other factors that would make a person unready to consent to marriage; including the individual’s level of physical, emotional, sexual and psychosocial development, educational and other aspirations, and lack of information regarding the person’s life options. These factors could then be connected again with Forced Marriage and the focus on the free and full consent and their absence in these cases²⁴.

It is important though to note that some organizations are concerned that the term ‘early marriage’ is less concrete than ‘child marriage’ and could weaken the efforts to

²¹ Serial Rights Initiative, “Analysis of the Language of Child, Early and Forced Marriage”, 2013

²² UNICEF, “Early Marriage: A Harmful Traditional Practice. A Statistical Exploration”, (New York: 2005)

²³ Convention on the Rights of the Child, General Comment 4 (2003),

²⁴ Sexual Rights Initiative & Women for Women’s Human Rights, “*New Ways submission regarding preventing and eliminating child, early and forced marriage*”, 2013

combat it as calling it early marriage would call upon justifications based on social norms and customs²⁵.

Throughout this study, we subscribe to the understanding that forced marriage fully encompasses, but it not limited to, early/child marriage. We also have chosen to use the term early marriage as we believe that while age constitute an important benchmark in determining whether someone readiness to get married, it is not the only factor, as others also are as important including capabilities and full agency, as well as choice and acceptance; and these factors could be absent in cases involving those who are over 18 as established in the definition of Forced Marriage

EFM in Human Rights Mechanism and Conventions

Since EFM is a serious issue, with everlasting consequences on the lives of its victims; Human Rights activists and legislators have tried to tackle it through addressing its different aspects in numerous Human Rights Covenants and mechanisms.

The first to do so was the 1962 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, which in article 2 requires States parties "to take the necessary legislative measures to set a minimum age for marriage"; while Article 23.2 of the International Covenant on Civil and Political Rights stated: "Men and women shall, from the age of marriage, have a recognized right to marry and to found a family"²⁶.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also addressed marriage in article 16. Article 16.1 of CEDAW provides for equality between men and women on the right to enter into marriage, the right to freely choose a spouse and the right to enter into marriage only with free and full consent; while article 16.2 addresses EFM by stating that:

"The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory"²⁷

This Convention was followed by Recommendation No. 21 by the Committee on the Elimination of Discrimination against Women, which stated that "the minimum age

²⁵ Serial Rights Initiative, "Analysis of the Language of Child, Early and Forced Marriage", 2013

²⁶Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (1962) <http://www.ohchr.org/AR/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>

²⁷ Committee on the Elimination of Discrimination Against Women, Article 16

for marriage should be 18 for both men and women, which is the minimum age for marriage that is consistent with the definition of the child provided for in the Convention on the Rights of the Child”²⁸.

However, using the definition of the child as any “human below the age of eighteen” as put in the first article of the Convention on the Rights of the Child (CRC) has not been enough to justify the illegality of this practice as many scholars pointed out that different nations allow their citizens to attain majority at different ages, and some allow majority to be attained upon marriage; adding that this deference within national laws is a real and concerning loophole in this argument.

The CRC in its General Comments 4 and 13 attempted to address this loophole; first in General Comment 4 by strongly recommending “that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.” Reading the above comment, it is clear that the CRC consistently used the term early marriage, instead of “child marriage” perhaps in order to distance itself from Article 1’s definition²⁹.

Meanwhile, General Comment 13 asserts that “the Committee considers that Article 19, focused on protection from all forms of violence, applies also to children under the age of 18 who have attained eligibility or entered adulthood through early marriage and/or forced marriage”³⁰.

While these comments partially address the loophole, they do not close as they single out specific articles in the covenant like Article 19 instead of the whole Convention; and while strongly recommending states to abide by the definition set by the CRC in terms of increasing the minimum age for marriage, it does not have anyway of enforcing this recommendation, just like the other Human Rights mechanisms.

Other UN bodies supported the position of CRC like the United Nations Population Fund, which defines child marriage as any marriage in which one or both of the spouses are below the age of 18, but it recognizes that “social norms and customs may dictate that once a girl is married, she be regarded as a woman, even though she may be barely 12 years old³¹.”

²⁸ Committee on the Elimination of Discrimination Against Women, General Recommendation 21

²⁹ Convention on the Rights of the Child, General Comment 4 (2003)

³⁰ Convention on the Rights of the Child, General Comment 13 (2011)

³¹ United Nations Population Fund, MARRYING TOO YOUNG (2012),

Forced Marriage in the Anti-Slavery Convention

Another instrument that addresses this issue is the United Nations Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (“Anti-Slavery Convention”), with its Articles 1 and 2 connecting between forced marriage and slavery.

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (the Supplementary Convention) continued with this connection, requiring States Parties to take all necessary action to bring about the abolition of, inter alia, “any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group.”

The Supplementary Convention identified three practices classified as slavery-like practices related to women and marriage in Article 1 (c) and (d):

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour³².

Numerous experts have highlighted that the Supplementary Convention, unlike the 1926 convention, explicitly mentioned EFM as a form of slavery. This inclusion occurred after significant debate as to whether servile forms of marriage ought to be included in the definition of slavery. In conclusion, it was decided that whether these

³² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

marriages could be considered slavery depended on the conditions at the time of the marriage and also on whether the individuals connected in the marriage are in full power of their agency or where other powers exercised over one of the spouses as required by the 1926 definition. Hence, the inclusion of the above-mentioned articles on EFM in the Supplementary Convention focus on these forms of marriages happening without the right to refuse or consent where the bride has entered this marriage for money or service, using verbs in the article such as “transferred” or “inherited” which indicates that the prohibition is targeting practices where women are being treated as commodities in the marriage and not as willing or active agents in the relationship³³.

Regarding Jordan, the Kingdom signed the Slavery Convention of 1926 on May 5, 1959; and the Supplementary Convention of 1956 on 27/9/1957. Even prior to its ratification of these two conventions though, the country had already criminalised slavery in its national law through the passing of the Jordanian Anti-Slavery law in 1929. However, that law did not define slavery, but merely mentioned cases and patterns where slavery could be committed under its article (5), criminalizing the following:

1. Anyone who buys or sells or exchanges or gives one person to another or takes a human as a commodity to be treated as a slave.
2. A person who makes or accepts a person as a mortgage or a guarantor of a debt, whether that debt payable or due to be paid or possible that it would happen; and whether the transaction was performed in the name of a mortgage, or in any capacity that would use the person as a slave.
3. Any person who shall come to Jordan with a human in the intention to trade, buy, sell or exchange, or be given to another to be put as a pledge or a debt³⁴.

It is noted that the Jordanian legislators in article 5 of the Anti –Slavery Act criminalised a group of acts as akin to slavery as they constitute making humans as commodities exchanged for money, debt or services. In the same time, the legislators added the phrase " to be treated as a slave" following the verbs “buys or sells or exchanges or gives” in article 5 paragraph (1) was designed to prevent circumvention of the law, as these acts of purchase, sale or exchange are usually connected with the exchange for money, and not humans.

³³ Annie Bunting, Benjamin N. Lawrance, Richard L. Roberts, *“Marriage by Force?: Contestation over Consent and Coercion in Africa”* 2016, Ohio University Press

³⁴ The Jordanian Anti-Slavery Law Number 110, 1929

Thus, the Jordanian legislator is keen in this phrasing to show that any behaviour or work that treats the person as a commodity and treats it to others will be punishable by law. The Jordanian legislator also criminalizes the placement or acceptance of a person as a replacement or guarantor, or a debt insurer for any types of debt whether or not the debt is payable, required, undue, or probable, or in cases where it is a transaction on behalf of a mortgage.

Despite these commendable efforts by the Jordanian legislators some problems linger within the national law as the definition of slavery stated within the law is incompatible with the definition of slavery contained in the 1926 Geneva Convention on Slavery as the international definition included in the first article of the convention as follows:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves³⁵.

The article as we can see calls for the criminalisation of all acts that would treat humans as exchangeable commodities and did not limit them with those which usually have a monetary aspect to them. This differentiation means that while the International Covenant criminalised any acts or usage of power that results in the treatment of humans as property, whether the power was used in the form of strength, exploitation or use; the Jordanian legislator focused its criminalisation on the exercise of certain acts that exchange any living person, such as buying, selling and mortgaging, but at the same time disregarded the criminalization of acts of exploitation and use that do not involve these particular verbs; not taking into consideration that such practices could amount to slavery, servitude or even potential human trafficking. These acts were defined in Article (7) of the Supplementary Covenant as:

(a) "Slavery" means, as defined in the Slavery Convention of 1926, the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, and "slave" means a person in such condition or status;

³⁵ UNHRC, Slavery Convention, 1926

(b) "A person of servile status" means a person in the condition or status resulting from any of the institutions or practices mentioned in article 1 of this Convention;

(c) "Slave trade" means and includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a person acquired with a view to being sold or exchanged; and, in general, every act of trade or transport in slaves by whatever means of conveyance³⁶.

In light of the definition mentioned above, and by comparison with the acts criminalised by the Jordanian national law, it is clear that the Jordanian did not include in its criminalisation numerous slavery-like practices such as forced marriage, servitude, wife inheritance, and the abandonment of children to be exploited; even though the Supplementary Convention urged States signatory in article 2 to do so as well as find ways to put an end to these practices through interalia: establishing appropriate minimum age for marriage, encouraging states to implement procedures that ensure that both spouses have freely expressed their consent to the marriage prior to signing the marriage contract by having a competent civil or religious authority present; and by encouraging communities and citizens to register their marriages³⁷.

While the Jordanian government partially responded to these points, it left some gaps in terms of implementation. Hence, although the country did the following:

- a. Set a minimum age for marriage in Article (10) a of the Personal Status Law No. 36 of 2010 which sets the requirement of marriage as having two individuals who are of sane mind, mature and are 18 or above
- b. The marriage contract should be done in the presence of two witnesses and with the showing of the consent of both sides as confirmed also by Articles (6, 7, 8) of the same law;
- c. Any marriage contract is regarded as corrupt or invalid if one of the sides is lacking eligibility or if one of the conditions set forth are not met (Article 31)³⁸

Yet, that same law in its Article (10) b, included an exception that allows those who are under eighteen years (18) and over fifteen (15) to get married in accordance with

³⁶ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

³⁷ Mohammad Fawa'ra, *"Slavery in its New Dress: Between the International Prohibition and National Criminality: A Comparative Study"* 2015, Law and Sharia Science Studies (translated into English by Researcher)

³⁸ Jordanian Personal Status Law

special conditions and exceptions that will be looked at and analysed in the upcoming chapter.

Finally, it should be mentioned that the Jordanian legislator did not mention in the law any article that criminalizes one or both parents, or the guardian for handing over a child under the age of 18 to another person without obtaining the child consent and whether the exchange was for monetary or non-monetary returns even in cases where the exchange was conducted with purpose of exploiting that child.

Forced Marriage as form of Human Trafficking

As we mentioned above, The Anti-Human Trafficking Unit of the United Nations Office on Drugs and Crime (UNODC) has found that women constitute 54% of the victims of trafficking worldwide and majority of these women have been trafficked for sexual and/or labour exploitation. However, many are also coerced into marriage and then trafficked for not only sexual and labour exploitation but also for monetary gain and other benefits, including citizenship³⁹.

Although the commonly used definition of forced marriage is not inclusive of human trafficking, in certain circumstances, forced marriage can fit into the human trafficking framework due to the common elements of forced labour, forced sexual acts, fraud and deception. In such cases, forced marriage is used as a means to traffic persons across domestic and international borders.

Looking at forced marriage from this perspective, then EFM becomes a vehicle of movement of women, men and children from one location to another through the formal institution of “marriage” whether locally, nationally or internationally.

By analysing EFM cases through this understanding, it is imperative to focus on the surrounding circumstances that would allow for them not only to happen but to flourish in some environments; whether they could include cultural aspects, conditions of war, or economic difficulties. Additionally some cases might be the result of the guardian wanting to use the marriage as an exchange of favour or settlement of financial debts. In some communities, matrimonial alliances between families are created in order to preserve family wealth and/or status⁴⁰.

³⁹ UNODC (2009), Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 1, p.4.

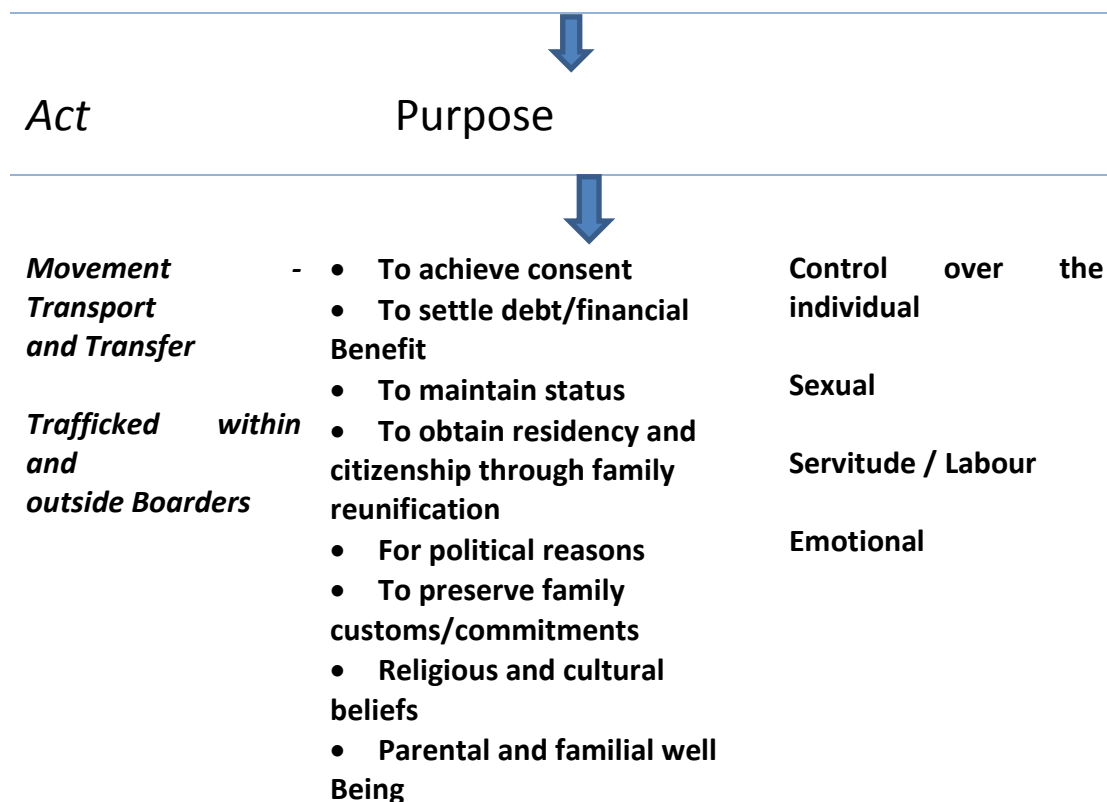
⁴⁰ Bredal, A. (2011). Mellom makt og avmakt (“Between Power and Powerlessness”) (No. 4) (p. 136). Oslo: Institute for Social Research. Retrieved from http://www.socialresearch.no/content/download/31823/630521/file/R_2011_4web.pdf

Methods of coercion also could differ from physical, mental and emotional abuse; to threats about the social consequences of not approving of the marriage for their family member such as being shamed or ostracized from the community or being threatened that their actions will affect their family’s future opportunities, including marriage eligibility of their siblings. These methods could be used combined or individually and usually would lead to the women being emotionally manipulated into marriage. Furthermore, traditions and customs’ or socio-economic positions on women can remove their ability to exercise any real choice, or give free and informed consent.

While many parents might justify these actions as part of their duty as the adults of the family, or as being done towards the benefit of the girl, any justification that can be provided for the duress, no matter how compelling, cannot be considered sufficient enough to justify forcing a person into a marriage.

Thus, the intersections of Forced Marriage with Human Trafficking can be defined simply as cases of forced marriage in which the elements of the crime of trafficking: act, means, and purpose of exploitation are evident; with forced women through the use of any of the methods mentioned above clearly being deprived of their agency and the ability to take charge or decide anything regarding this marriage.

Forced marriage as Human Trafficking



Several points need to be made about the table above:

It is noted that there is no means column even though it is an element of Human Trafficking. While cases of Forced Marriage involving individuals above 18 would need to prove the means column in addition to the elements of act and purpose; cases of early marriage would not as mentioned in the Palermo Protocol. In its Article 3 (c), it recognised that any person under 18 years old who is moved from one location to another by any means for the purpose of exploitation is considered to have been trafficked.

This is the case whether the child has been taken across borders or simply moved to another household in the same city or even area. Even in cases when the child gives consent for the move, the case is still considered child trafficking according to the protocol.

Forced Marriage and the Jordanian Anti-Human Trafficking law

Jordan ratified the International Convention against Transnational Organized Crime of 2000 and its protocol on the prevention and prohibition of trafficking in human beings, especially women and children on 22 May 2009. Later that year, Jordan issued its national law of Anti-Human Trafficking as a requirement of the Protocol. The law defined human trafficking in article 3 as follows:

- i. For the purposes of this Law “Human Trafficking Crimes” shall mean:
 - a) Transporting, moving, lodging, or receiving of people for the purpose of abusing them, whether through using or threatening of use of force, or through any form of coercion, abduction, fraud, deceit, abuse of power, abuse of vulnerability, or through giving or receiving financial gifts or any other privileges to secure the consent of a person who has control over those people; or
 - b) Transporting, moving, lodging, or receiving of people who are under the age of 18 for the purpose of abusing them, whether through using or threatening of use of force, or through any of the means stated in item (1) of this paragraph.
- ii. For the purposes of paragraph (A) of this article, “Abuse” shall mean; abusing people by forcing them to work without charge and under coercion, slavery, servitude, removal of organs, prostitution or any other form of sexual abuse.
- iii. A crime shall be deemed “transnational” in any the following cases:
 - a) Committed in more than one country.

- b) Committed in a country but the preparation, planning and direction take place in another country.
- c) Committed in any country by an organized gang that has criminal activities in more than one country.
- d) Committed in a country and its effect extends to another country⁴¹.

We note that the Jordanian legislators used the same wording in the protocol despite some of these phrases having different meanings and connotations in Public International Law which do not exist at the national level. These gaps have resulted in making the law general, ambiguous and has negatively impacted its use and implementation within Jordanian courts by either lawyers or prosecutors.

Moreover, the Jordanian version of the law specified the types of exploitation, restricting their forms to those numerated in the law without the ability to add any new types when such a need arise; unlike the international protocol which allowed the addition of other forms of exploitation by adding the words "minimum" of its text following the forms of exploitation it included.

As for the children victims of trafficking, it is noticeable that the law did not require that their identity be kept confidential nor stipulate that they should have a special status as the provisions of the law did not make any differentiation between the sex or the age group of its victims when talking about these aspect of the crime. Such omissions were made despite women and children being the largest recoded category to be victims of trafficking in Jordan, as they constituted 51.9% of all victims between 2009 and 2016⁴².

In terms of Forced Marriage, the Jordanian legislators did not include it in their list of forms of exploitation, which as we saw above makes it difficult to recognise this crime as such within the current framework. However, some scholars have pointed out that cases of Forced Marriage could be prosecuted under article (9) of the law as it serves a severe penalty amounting to hard labour for a period not exceeding ten years and a fine of not less than 5 thousand dinars and not more than 20 thousand dinars in specific cases of trafficking that include:

- i) Cases were the victim is female
- ii) The crime is committed through exploitation in prostitution or any other form of sexual exploitation
- iii) If the perpetrator is a spouse of the victim, guardian or male relative⁴³.

⁴¹ Jordanian Anti- Human Trafficking law number 9, 2009

⁴² Tamkeen Fields for Aid, "Analytic Review on Jordanian Legislations related to Anti- Human Trafficking, 2015

⁴³ Jordanian Anti- Human Trafficking law number 9, 2009

However, this article has not been applied frequently in Jordanian courts; and even if it is, it would not realistically cover cases of forced marriage as these cases are generally difficult to prosecute. These difficulties do not stem from applying the elements of human trafficking on them, but rather due to them relying on victims' witness statements, which in such cases is the girl, who due to various reasons, mainly connected to cultural norms and traditions, would usually refuse to testify against her guardian, in many cases her own father or relative, and her husband.

Another code that could be used in such cases is the Jordanian Penal Code, which in its articles 279 and 280 of the section on Crimes against the Family deals with issues of marriage as it determines the punishment of anyone who performed a marriage ceremony that does not comply with the provisions of the Personal Status Law or outside the court. However, the law has not toughened up its penalties in such cases, thus making it difficult to use as a deterrent against these cases which are already happening on the ground.

It is noted from the above that there is a clear connection between cases of EFM that are currently taking place and Human Trafficking. Yet, the Jordanian law remains ineffective in prosecuting these cases as it still allows for such marriages to happen through the exceptions it added to the Personal Status law on one hand; and through the non-criminalization of this type of marriage under the umbrella of its Anti-Human Trafficking law on the other, despite the obligations that the state has agreed upon once it ratified the various Human Rights Mechanisms that were highlighted throughout this chapter

Due to these current circumstances the upcoming chapters of the study will analyse the various aspects of this phenomena, beginning from a review of the current laws applied in Jordan that are related to EFM in Jordan with a focus on its Personal Status law. The following chapter will analyse the issue from a statistical point of view as it looks at the numbers issued by the Supreme Judge Department and the Department of Statistics in the years prior and following the Syrian Refugee Crisis, while the fourth chapter will focus on the social side of EFM, looking at its causes and consequences before finishing with a number of recommendations based on the results of the study.

Legislations Governing EFM in Jordan

Personal Status Laws in Jordan and Syria

Prior to reviewing the personal status laws in both countries, it is important to note that all Arab countries, including Jordan and Syria, are signatories to the Covenant on the Rights of the Child (CRC) and that they ratified it without lodging any complaint or comment regarding Article (1) of it which defined the child as anybody below the age of 18.

Jordan

Issues related to marriage are governed by the Personal Status Law in Jordan. This law has been amended several times through the years, starting from 1976 when its 5th article stipulated that “the requirements for a person to be eligible for marriage include being sane and for the male to be 16 years of age while the female 15 years”. However, that article was later amended in law No. 36 of 2010 to state in its 10th article:

- a) For a person to be eligible to get married, it is required that both parties are sane, mature and 18 years of age,
- b) Notwithstanding the provisions of paragraph (a) of this article, the judge may authorize in special cases the marriage of those who are 15 years of age, in accordance with instructions issued for this purpose by the Supreme Judge Department and their approval; if such a marriage would serve the best interests of those involved⁴⁴.

The above-mentioned instructions that grant permission to such marriages are issued by the Supreme Judge Department (SJD) and they include:

1. The suitor shall be competent for marriage in accordance with the competencies stipulated in paragraph (a) of Article (21) of the Personal Status Law.
2. The Judge shall ensure that both parties are satisfied and sure of their choice
3. The court shall verify that the necessities of both sides are met whether economically, socially, security or any other needs; and verify that the conditions of the marriage suit both parties and leads to their benefit.
4. The court shall take into account while reviewing the cases that the difference in age between parties is appropriate; that the spouse is not already married prior to this one; and that the marriage does not lead to dropping out of school.

⁴⁴ Jordanian Personal Status Law

5. The marriage contract shall be concluded with the consent of the guardian, subject to the provisions of articles (17), (18) and (20) of the Personal Status Law.
6. The court shall establish an official record of the court's investigation into each case; listing all the justifications and evidence they relied upon to grant the permission for the marriage or to reject it. That file will then be referred to the Supreme Judge Department for review and the making of the appropriate decision.
7. After the approval of the Supreme Judge Department, a valid marriage certificate is then duly recorded⁴⁵.

In July, 2017, however, the Supreme Judge Department issued a new set of instructions to be implemented at the beginning of August, 2007 and revoking the previous one. These instructions include the following:

1. The age difference between the two parties wishing to be married which was previously left to the discretion of the court based on the case. However, in no case shall the male age exceed 33 years as that age is close to the general average age of marriage in Jordan for males.
2. The applicant is required to prove his financial abilities to provide for his wife and cover all expenses related to the marriage including the dowry and the house; providing evidence to the court of that to ensure of his capability to provide the appropriate environment suitable for the sustainability of the marriage.
3. The consent of the guardian must be acquired prior to obtaining the permission to marry as well as his consent during the signing of the contract.
4. The marriage contract should include the amount of the agreed upon dowry, provided that its amount is appropriate.
5. The court shall inform the girl of her right to include any condition she sees fit and in her interest to the marriage contract as long as it is in accordance with the provisions of the law.
6. Both parties are obliged to pass a course on marriage that is organised by the Supreme Judge Department and conducted by the Shariah Judiciary institute and the Family Reconciliation and Rehabilitation Department or another entity approved by the Supreme Judge Department for this purpose.
7. The referral of each case seeking this permission to the Family Reconciliation and Rehabilitation Department to conduct a case study on it, prior to

⁴⁵ http://sid.gov.jo/DetailsPage/SJD_AR/NewsDetailsAr.aspx?ID=315 (translated into English by Researcher)

providing a decision to the court whether a permission shall be provided or rejected. The study is conducted by a number of specialists in the legal, social, psychological, legal and educational fields. Additionally the Supreme Judge Department has established a special directorate for Minors' Affairs, which includes a number of judges who will consider these applications, examine them and analyse the reasons provided for the marriage prior to providing an opinion as well.

8. The court is required to establish a case file for each case that contains the evidence, investigation files, and all related documents to the case that led to the issuance of the decision whether of approval or rejection⁴⁶.

Although it is too early to see whether these amendments will lead to a decrease in the number of early marriages recorded in Jordan, the latest figures released by the SJD regarding 2017 shows that the previous amendments to the same law in 2010 did not lead to any significant decrease in the number of cases as the percentage maintained a constant one of 13% of the total marriages recorded in Jordan⁴⁷.

Following their publication, several questions were raised about these instructions with one of the most prominent questions focusing on the new role of SDD in relation to these marriages. The SJD clarified this concern though during a roundtable discussion, confirming that its role in granting the final decisions about these cases remain the same. Moreover, the SDD clarified the procedure that should be followed by anybody wishing to be granted this permission as follows: first, both parties must visit the court to lodge a file explaining why they wish to be married using the exception, and where all stakeholders need to testify as well as provide all necessary data. Then, the file is referred to the Family Reconciliation and Rehabilitation Department where further interviews and investigations are done prior to them giving a verdict that is later transmitted to the court. Following these visits, the file is returned to court where it is reviewed by a panel of 3 judges and finally it is transferred for the SJD, which in turn conducts a final review before giving the final decision of granting of refusal⁴⁸.

And while this process does look thorough in theory, there in fact remain questions concerning its actual implementation on the ground on one hand and the high number of early marriages that are still being recorded in Jordan. The SJD itself in its annual report for 2017 said that 10434 cases of early marriages in 2017 alone a slight decrease of 500 cases compared to 2016. Such a high number of early marriages

⁴⁶ http://www.sjd.gov.jo/DetailsPage/SJD_AR/NewsDetailsAr.aspx?ID=314

⁴⁷ Higher Population Council "Early Marriage in Jordan", 2017

⁴⁸ The explanation was provided by Dr. Ashraf Al Omari, the Chief Justice Advisor during a Roundtable conducted by Tamkeen Fields for Aid on 26-28 March, 2018

raise one very important question: Did all these cases really need to be granted the exception to marry the girl while still under 18? And if it did, were all the requirements met?

The reality is that it is extremely difficult to receive a precise answer to this question that would cover all of its aspects due to a number of issues; namely that while the SJD does publish an annual report about its work, this report does not include the justifications it based its decision to grant the permission for these marriages, nor does it include the number of rejected cases.

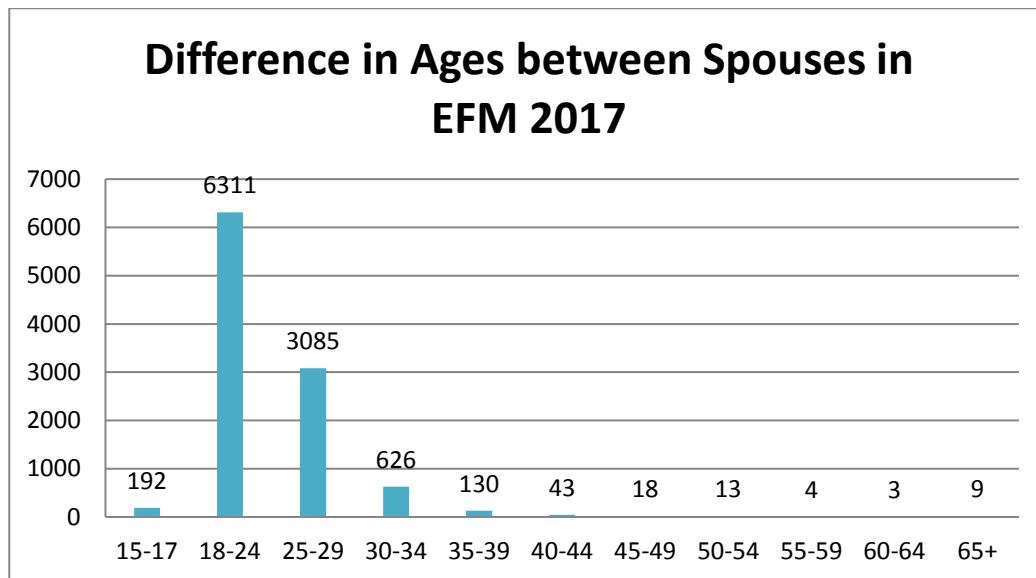
Another department that issues an annual report that also covers issues related to marriage is the Department of Statistics and in their report, some information is in fact included that is not available in the SJD one. One category of this new data indicates that there are in fact violations happening on the ground regarding cases that were registered even though they did not abide by the instructions.

A prominent example of such is the one provided about the age difference between the bride and groom. According to the Department of Statistics, out of the 10434 cases of early marriages registered in 2017, the difference between the age of the groom and underage bride in 846 cases was 15 years or more; of which the differences in 29 cases exceeded 33 years, and in cases 9 it exceeded more than 50 years⁴⁹. Such a huge age difference is a flagrant violation of the instructions included in Article 10, paragraph (b) in the Jordanian Personal Law reviewed above, which clearly stipulates that the age difference between the parties should not exceed 15 years in order for the permission to be granted. Furthermore, the same law in its 11th article states that: “no marriage contract shall be approved of in cases where the age difference between the bride and groom is more than twenty years before the judge meets the bride and ensures that she is sure and satisfied by her choice”⁵⁰.

The same data also show that such violations also occurred in previous years as the data for 2016, for example, shows that out of 10,907 cases of early marriage, in 170 the age difference was more than 22 years, including where the difference was more than 37 years; 2 cases where the difference was 42 years or more and 12 contracts where the difference was exceeding 47 years.

⁴⁹ http://www.dos.gov.jo/dos_home_a/main/vitality/Marriage_and_Divorce/2017/Marriages8.pdf

⁵⁰ Jordanian Personal Status Law



It should be noted that such a difference in age between spouses result in several negative effects that include a lack of understanding or mutual interests; physical and emotional abuse; in addition to issues related to conceiving of children and styles of parenting which ultimately could lead to divorce.

When Abeer was thirteen, she was married to a man eleven years her senior. At the time of her marriage, Abeer did not understand what marriage does entail relating to her new responsibilities, relations with her husband or the changes that will be imposed on her life.

Before marriage, Abeer main concern was the toys she hid under her bed, the sweets she ate, the games she and her friends played outside, and being spoiled by everyone as the youngest in the family. All of this changed after marriage as suddenly she was looked upon as a grown up with duties to do and instead of being taken care of, she had to take care of her husband and watch as her brother in law who was two years her junior got all the attention she was accustomed to back with her family.

At the beginning of her marriage Abeer did not understand what love was, or feeling affectionate or intimate with her husband. Instead her sense of satisfaction was conditional on her husband buying her the food that she wanted or allowed her to visit her family or when her friends from school came to see her.

Because of these circumstances, Abeer's heart was filled with remorse during the first period of marriage and she was extremely unhappy with her new life. What made matters worse is that she did not understand or know how to create a relationship with her husband as her emotional knowledge was limited and did not become aware of her needs until a later on stage in her life, Unfortunately this led in her not receiving the emotional support that she craved.

Despite all of this, Abeer continued with her marriage due to many reasons but mainly because of the arrival of her first child.

Another aspect highlighted by the statistical report was the registration of 192 contracts where both the husband and wife were minors. Such cases are quite unique as neither party is an adult in the eyes of the law in terms of their eligibility to enjoy their civil and political rights from obtaining a driver's license, joining a political party or union; voting or running in any election; opening a bank account or be held accountable for financial decisions as these rights are granted to those who are 18 years or older.

Yet, despite this contradiction these individuals are allowed to get married and start a family even though they cannot even register this marriage, rent or buy a house or car, issue a passport or register their child in case they had one unless with the presence of a guardian; as they are seen as adolescent in the eye of the law but are in the same time eligible in matters related to marriage and divorce.

These cases rise important questions about the capability and maturity level of these individual involved in such marriages to take such an important decision regarding their life partner. How can such individuals who are still not considered adults in the eye of the law allowed to make such a decision that has a huge impact on their lives? Are they actually full agents in this decision or is it forced or imposed on them by one or both of their guardians?

Even though these questions about such cases persist, it should be noted that the SJD when asked said that there is a difference that should be noted between cases which actually do follow the full procedures mentioned earlier and then get the permission to get married or not; and cases where the marriage was already conducted outside of the court as well examine later on in this chapter and simply resorted to the court to register a marriage in order to issue a certificate or register a child.

The SJD pointed out that while cases in the first category are vetted and he different departments that are involved in this matter all ensure that all instructions are met through the rigorous process set for the granting of permission; such a process is not followed in cases seeking registration as the marriage has already occurred and thus they have no power to investigate and check whether they are met or not.

The Compatibility of the Exceptions with Jordanian Legislations and Jordan's Obligations in International Treaties

i. Jordanian Legislation

In accordance with the Jordanian legislative system, the legislative authority is headed by two entities: the King as his capacity as the head of state and the National Assembly as defined by the Constitution in accordance with Article 25 as constituting of the House of Parliaments and the Senate. These entities are tasked with regulative and legislative powers as they draft, review and either pass or reject laws presented to them by the Prime Minister and government as provided for in Article 91 of the Constitution.

This branch of the government plays an integral role in developing laws and legislation that in turn protect human rights. Theoretically, human rights are discussed in the Jordanian Constitution in its second chapter on the Rights and Duties of Jordanians from Article 5 to Article 27 thereof. However, some of the policies currently implemented on the ground detract from these guaranteed rights by placing restrictions on the freedoms set forth in several ways; including the implementation of temporary laws.

With regard to these laws, the Constitution contains three texts that give the executive branch the right to issue temporary laws within pre-set conditions established by the Constitution itself. The most important of these conditions is the legal basis of these laws as they should not contradict constitutional provisions or oppose any laws issued based on them to implement its articles⁵¹.

However, when applying this condition to the instructions on granting marriage permission to those less than 18 but above 15 years old that are issued under paragraph (b) of Article 10 of the Temporary Personal Status Law No. (36) of 2010, then these instructions contradict the original law that they were created to implement as Article (10) clearly stipulates that: "For a person to be eligible to get married, it is required that both parties are sane, mature and 18 years of age". Yet, the instructions that were legislated to implement the law give the judge permission to grant a permission of marriage to those who are 15 years old in cases where the marriage is in the best interest of the involved individuals and in accordance with the provisions of the aforementioned instructions.

⁵¹ Numan Al Khatib, "Temporary Laws in the Jordanian Constitutional System", Legal and Economic Sciences Magazine

ii. Eligibility in Jordanian Law

Decisions concerning matters related to marriage are considered one of the most important decisions that a person would make during their lifetime. Due to the importance of such a decision in connection to the longevity and fabric of the society, legislations and criteria have been put to govern it and ensure that matters related to it are regulated. One such criterion is related to the eligibility requirement for any person wishing to be married as fleshed out in article 10 of the Personal Status that conditions any person who wants to be married to be sane, mature and 18 years or above.

This condition of eligibility is compatible with the eligibility also stipulated upon in the Jordanian Constitution. According to jurists, issues related to marriage are connected with the performance aspect of eligibility, defined by them as the capacity to conclude legal acts or in other words, the human right to exercise own rights and to commit to financial obligations. The particular eligibility is divided into three categories of full, incomplete, and with no eligibility based on the age group that each person belongs to and the level of maturity⁵².

According to the third paragraph of article 118 of the Jordanian Civil Law, these categories are:

- i. A person who has not yet turned 7 years old is illegible and cannot conclude any transaction since he is considered as lacking any maturity to make such decisions and if he did, then these decisions are null and void pursuant to Article (117) of the Jordanian Civil Law⁵³, which stipulates that "a non-illegible individual shall not have the right to dispose or independently act in relation to their property or finances and any such actions shall be null and void."
- ii. A person is considered with incomplete eligibility is the one who is between the ages of 7 and 18 as stipulated by article 118 of the Jordanian Civil Code:
 - a. The actions of persons who are in the incomplete eligibility criteria are valid when they are beneficial to that individual and null when they are harmful.

⁵²

<http://www.lawjo.net/vb/showthread.php?28423%D8%A7%D9%84%D8%A7%D9%87%D9%84%D9%8A%D8%A9>

⁵³ Note that Article (3) of the Jordanian Civil Code provides that the text of the law must be interpreted, and implemented according to the rules of Islamic jurisprudence, under the Hanafi doctrine, as it is the legal umbrella in Jordan

- b. The behaviours which are in between is held in suspension until the approval of the guardian within the limits in which he may act or suspended until the person reaches the age of adulthood "
- iii. The person becomes fully eligible in the eyes of the law when s/he turns 18 as stipulated by article 43 of the Civil Code: "every person who turns 18 and has full mental capabilities and no causes depriving him/her from their rights shall be fully entitled to exercise his civil rights⁵⁴

As seen clearly above, the Jordanian legislators have divided the categories of eligibility based on the maturity level of the person; taking into consideration that in some cases, people might have to make important life decisions even before they become adults in the eye of the law. However, they also highlighted the role of the guardian in such cases, relying on him to help in making the right decisions as individuals who are in that sensitive category might make rash or uncalculated decisions that will have a lasting impact on their lives.

However, when it comes to cases of early and forced marriage it is important to note that in some cases, it is the guardian who takes the decision to marry off his daughter in order to make a personal gain, whether economic or social, and without consulting or taking the approval from the daughter. In such cases, the object in which the law was legislated is actually used in a reversed way, as it is not the best interests of the minor that is protected but the interests of the guardian.

The other thing to note is the legal perspective on individuals in the second category of eligibility as they are considered not capable to enjoy their full rights in terms of voting, driving, holding a job or a public office, opening bank account or owning property. Yet, in the same time those same individuals are granted through the instructions that provide marriage permission for this category to be married, start a family and have a children whom they are fully responsible to take care and raise them even though they themselves are not held to adults in front of the law nor accountable for any decision except those related to marriage and divorce as granted to them through the exception!

⁵⁴ Jordanian Civil Law

iv. International Treaties

International treaties play a prominent role as they are considered a pivotal instrument in protecting of human rights. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

In order to ensure that each state meets its obligations, the States held an international conference in Vienna in 1969 for the signing of a special treaty concerned with interpreting these treaties in what has become to be known as the Vienna Convention on the Law of Treaties (VCLT)⁵⁵. The Convention clarifies several matters, namely setting out the law and procedure for the making, operation, and termination of a treaty; it also clarifies the manner in which treaties are implemented and the legal force to implement them, as well as the legal status of international treaties in the domestic legal systems of States.

The VCLT also confirmed that through ratification of treaties, including international human rights treaties, governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Additionally, these treaties should be published in media so that the public could know the articles of these treaties⁵⁶.

However, international law and the VCLT left the method in which each state will follow to reflect and implement its obligations under the treaty in its domestic legislation. At the same time, the VCLT did equivocally rule through international courts the supremacy of international treaties over national law; with these rulings affirming that a State may not invoke a national law as a justification withdraw from its international obligations⁵⁷.

Regarding Jordan, the kingdom has ratified several international treaties including human rights instruments. The problem arises though regarding these treaties due to the fact that Jordanian legislators did not specifically rank the position or relationship

⁵⁵ Vienna Convention on the Law of Treaties (with annex). Concluded at Vienna on 23 May 1969

⁵⁶ <https://treaties.un.org/doc/publication/unt/volume%201155/volume-1155-i-18232-english.pdf>

⁵⁷ Mohammad Alwan, "International Law and Public Law", 2007, Amman

between national laws and those stemming from international treaties within the Jordanian legal system. The only mention regarding this issue is Article (33) of the Jordanian constitution of 1952, which placed a condition saying that any treaty affecting the public or private rights of Jordanians cannot enter into force prior to being voted on and approved by the National Assembly⁵⁸.

Conversely, the Jordanian judiciary did deal with this issue through the Court of Cassation, which issued a resolution of the supremacy of international law on national laws, meaning that in the case of conflict between an international treaty and an internal law, the judiciary should take whatever is stipulated upon in the international treaty. While this decision should grant an upper rank to international treaties within the Jordanian legal system; this position is in fact interchangeable at any legal or practical moment as the Court could retract its position at any time. Furthermore, the Jordanian legal system is not based on judicial precedents, resulting in Jordanian courts not being bound to follow the Court's position in this regard⁵⁹.

A careful reading of the judicial decisions⁶⁰ makes this quite evident as they show that in practice courts tend to confer a higher rank for an international treaty compared to domestic laws, but at the same time maintains that its rank remain below any constitutional laws, in keeping with the doctrine of the Supremacy of the Constitution⁶¹. This doctrine confers the highest authority in a legal system on the constitution.

As a result of following this doctrine, the Jordanian legislator has gone against the principle of legality in terms of legal order that provides for the incorporation of legal rules so that they do not violate other rules or laws that might be looked upon as lower in rank; while in the same time higher ranking rules do have the legal force to repeal or amend the lower ranked rules⁶². International courts have taken a clear position regarding this matter as well as the status of international and domestic laws, pointing out in several verdicts the supremacy of international law over domestic law in order to maintain the stability of relations between States. Similar provision is included in the VCLT in its 27th article states that it is not permissible to states to adhere to its domestic laws in order not to implement the articles of international treaties.

⁵⁸ Jordanian Constitution, 1952

⁵⁹ Omar Saleh Ali Al-Akor, Mamdouh Hassan Mana Al-Adwan and Maysaa Baydoun "The Order of the International Treaty in the National Legislation and the Jordanian Constitution", Shariah and Law Sciences, Volume 40, No. 12013

⁶⁰ The Jordanian Court of Cassation, Decision No. 29/1986 of 1 January 1986 and Decision No. 936 \ 1993 of 13 November 1993

<http://www.cojss.com/article.php?a=171> International Treaties in the Jordanian Internal Legal System

⁶¹ Mohamed Khalil Al-Mousa, "The Implementation of Human Rights Treaties in the Jordanian Judiciary: Th Current Reality and Available Means", 2009

⁶² Makhamadah, "Implementation of the International Convention by the National Judges; focusing on Jordanian Judges", Studies Journal, Volume 27 Issue 12

Returning the focus back into EFM, we notice that the main convention that discusses this issue is the Convention on the Rights of the Child (CRC), which was ratified by the Hashemite Kingdom of Jordan on 24 May 1991. The CRC defines the child in its 1st article as any person under the age of 18. It also contains many provisions dealing with the protection of the child and their interest such as article 3 that states:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration⁶³.”

Contrasting that with the effects of EFM on girls, we find that the best interest is not always the motive behind such marriages; in addition to them being conducted in some cases in violation of the provisions of the Convention itself, as well as instructions issued to implement this exception as we noted earlier.

Syrian Personal Status Law

Similar to Jordan, matters related to marriage are also dealt with in the Syrian Personal Law. Article (15) of the law stipulates that maturity and sanity as key in the eligibility to get married; while article (16) set the age of marriage as 18 for the male and 17 for the female. Though and just like in Jordan, it later added an exception, adding in article (18) that allowed the judge to marry males at the age of fifteen and the girl at the age of thirteen in cases where the judges decides that there intention is pure and that they are physically capable to handle the physical responsibilities related to marriage; though the law did add a number of conditions regarding these special cases that include:

1. The girl has reached her physical coming of age (maturity)
2. The contract can be done only in the presence of her guardian: whether that is the father or in case his absence, the grandfather or a male relative. In cases where the girl does not have a guardian, then the judge can put himself as her guardian as the guardian of those who do not have one.
3. A physical evaluation might be done on the girl to determine whether her body is suitable for marriage
4. The ages of the couple shall be appropriate in terms of age difference⁶⁴

⁶³ Covenant on the Rights of thee Child (CRC)

⁶⁴ Syrian Personal Status Law

It is worth highlighting that the Syrian Personal Status Law, issued in 1940, did not undergo any drastic amendments; even after multiple rights activists and entities from within and outside Syria asking for it and especially after Syria's ratification of a number of human rights instruments.

These instruments include the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 2002, though it made several reservations like article (16) paragraph 1 (c), of the convention that grant women equal rights to marriage, divorce, guardianship, custody, as well as her right to choose in matters related to profession, employment, family name, minimum age for marriage. It also placed reservations on article (2) that states:

“States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women⁶⁵.”

⁶⁵ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

However, the country removed its reservation against the article in 2017, though it added a phrase to the article: "as long as it is not inconsistent with the provisions of Islamic Sharia."⁶⁶

With regard to the penalties for violating these laws, they were mentioned in article 469 of the Syrian Penal Code and stipulated that anyone who does not register their marriage in an official manner inside a court should be fined no more than 250 Syrian pounds.

Marriage Contract and Registration

Marriage contract are legally defined in the Personal Status Law as "a contract between a man and a woman to be legally married for the purpose of establishing a family and create offspring that will ensure the continuation of society." The law also stated a number of conditions for this contract to be lawful; namely: the approval of the couple to be married with this approval stated verbally in the presence of the guardian and two witnesses who are both adults and sane⁶⁷.

The law also clarified in articles 37 and 38 that both parties have the power to enclose conditions within the contract that in their opinion will safeguard some aspects of the relationship that in their opinion should be protected as long as it falls under the law and are incompatible with the purpose of marriage. These conditions could be concerned with place of residing after marriage, the allowance of the female to continue her education or work, among other things.

Such conditions could play an important role in cases of early marriage as they could ensure the protection of the rights of the girl and safeguard her options and choices even after being married like her continuation of education or preserving of her independency through work. A point though is raised about the girl's ability to state such conditions or to follow up on them; especially in cases where the guardian is the one who is forcing her to marry and is done neither with her consent nor full agency.

A point of concern regarding these conditions is that they are in fact rarely used or stated even in marriage contracts involving two adults as a study by the SJD concluded. The study found that very few contracts do contain such conditions and that their number increase in two types of contracts only: those done in the court

⁶⁶ Decree 230/2017, which includes the cancellation of the reservation of the Syrian Arab Republic to article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified by virtue of Decree No. 330 dated 25/9/2002.

⁶⁷ Jordanian Personal Status Law

itself and in contracts involving individuals marrying for the second time. Such findings raise more concerns about the ability of those involved in early marriage to use this legal method to protect their rights even though it is available and guaranteed to them by law⁶⁸.

In regards to Syrians in Jordan, they are governed by the same laws related to marriage and its registration process as they need to go to the courts, have their application reviewed and follow the same process in order to get the approval to get married and then register the marriage contract. Differences in this process only arise depending on the point of entry for Syrians as explained below:

- a. Syrians who have entered the country legally, whether those residing in UNHCR camps or in Jordanian cities, can register their marriage by bringing with them the Ministry of Interior issued Magnetic ID and a copy of their Syrian identity papers, if they have any with them.
- b. If one of the parties have entered the country through the Border Crossings or the airport. In such cases and in addition to the above, it is required that they receive the approval of the Ministry of the Interior, as in these cases Syrians are treated as a non-Jordanian conducting their marriage contracts in the Jordanian courts. After obtaining the consent, the marriage is concluded⁶⁹.

While this process seems straightforward, a very dangerous problem has been noted among the Syrian community related to not registering their marriages and instead doing through a "Sheikh". A 2016 survey of Syrian refugees in neighbouring countries found that more than half of them did not have legal documentation of their marriage, either because they had lost documents when fleeing Syria or because they married without going through the official registration process; thus choosing to marry through a Sheikh as that was normal in Syria with many couples marrying this way before the onset of the war⁷⁰.

Many couples who were asked why they were married this way simply answered by saying that they did not understand the importance of registering their marriages; while others said that they wanted to but found the legal requirements in Jordan to be too difficult or expensive, especially those who had lost other documents when they fled Syria.

As mentioned above, registering a marriage requires couples to get permission from the Ministry of the Interior and to pay court fees ranging from 25 to 110 Jordanian

⁶⁸ As said by Dr. Ashraf Al Omari, the Chief Justice Advisor during a Roundtable conducted by Tamkeen Fields for Aid on 26-28 March, 2018

⁶⁹ <https://fanack.com/refugees/unregistered-marriages-among-syrian-refugees/>

⁷⁰ <https://www.nrc.no/resources/briefing-notes/syrian-refugees-right-to-legal-identity-implications-for-return/>

dinars. However, these conditions could be even more difficult for couples who had left formal refugee camps without receiving official permission; as well as couples trying to legalise their informal marriages; which in their case involves them facing a fine that could reach 1,000 JOD⁷¹.

Whatever the reason for failing to register the marriage, it can have serious consequences for couples and their children. For one thing, having official documentation of a marriage gives some legal protection to both partners, and especially to women, in the event of a divorce or property issues if the husband dies or decides to leave. There are also issues relate to the registration of children as they are looked upon as children born out of wedlock in cases where the parents have no proof of marriage; with a much dangerous problem also arising from this situation as these kids are also looked upon as Stateless as they do not hold any official document from any state.

In relation to EFM, such undocumented marriages become particularly risky, as girls married this way are extremely vulnerable to being victims of gender-based violence, verbal and physical abuse or even being abandoned. Furthermore, these girls would face difficulties seeking medical help in cases of risky pregnancies or medical issues; or any type of psycho-social support due to threats of being left without any proof of her marriage, leaving her and her children an easy prey for numerous issues.

In order to limit the effects of this dangerous social issue, the Supreme Judge Department carried out two campaigns of Exemption from the Fines that have to be paid by those wanting to register contracted marriages that were not documented in court. The two campaigns were carried out with the participation of a number of government departments including the SJD, the Ministry of the Interior, the Directorate of Refugee Affairs of Syria and the Office of the United Nations High Commissioner for Refugees and with the approval of the Prime Minister.

They included the exemption of both spouses and witnesses of the undocumented marriage from the financial penalty with the first campaign conducted in the last two months of 2014 benefiting about 2000 families, and the second campaign helping 1300 families when implemented in 2015⁷²

⁷¹ <https://reliefweb.int/sites/reliefweb.int/files/resources/securing-status%5B1%5D.pdf>

⁷² <http://www.alghad.com/articles/881797-1300-%D8%B9%D8%A7%D8%A6%D9%84%D8%A9-%D8%B3%D9%88%D8%B1%D9%8A%D8%A9-%D8%AA%D8%B3%D8%AA%D9%81%D9%8A%D8%AF-%D9%85%D9%86-%D8%A5%D8%B9%D9%81%D8%A7%D8%A1-%D8%BA%D8%B1%D8%A7%D9%85%D8%A7%D8%AA-%D8%B9%D8%AF%D9%85-%D8%AA%D8%AB%D8%A8%D9%8A%D8%AA-%D8%B9%D9%82%D9%88%D8%AF-%D8%A7%D9%84%D8%B2%D9%88%D8%A7%D8%AC>

Statistical Aspect of EFM

EFM Figures pre- Syrian Crisis

➤ Jordan

According to a study by the United Nations Population Fund (UNFPA) entitled "Childhood Maternity: Meeting the Challenge of Teenage Pregnancy" that was published in 2013; the percentage of marriages among minors has ranged from 8% to 14% in Jordan between 2005 and 2012⁷³.

In another study by the UNICEF, the number of early marriages that was registered in the kingdom between 2008 and 2013 was reviewed. The data showed that while there was a decline of such cases in 2009, the percentage rose again in the following years, reaching 12.6% in 2011 and 2012 before rising again to reach 13.2% in 2013. The report also included the number of marriages recorded in each year as follows⁷⁴:

Year	Total Number of Marriages	Number of Early Marriages
2005	58.932	8.198
2006	62.612	8.471
2007	65.027	8.426
2008	66.581	9.014
2009	64.738	5.349
2010	61.770	8.042
2011	64.257	8.093

➤ Syria:

Available data on EFM in pre-crisis Syria is considered scarce as neither the Ministry of Justice nor the Department of Statistics issuing annual reports about its numbers or about marriages in general.

However, some studies and reports have been published that were prepared by international or national human rights organisations. One such study is the UNICEF cluster survey in 2008, which showcased the status of early marriage in Syria. The

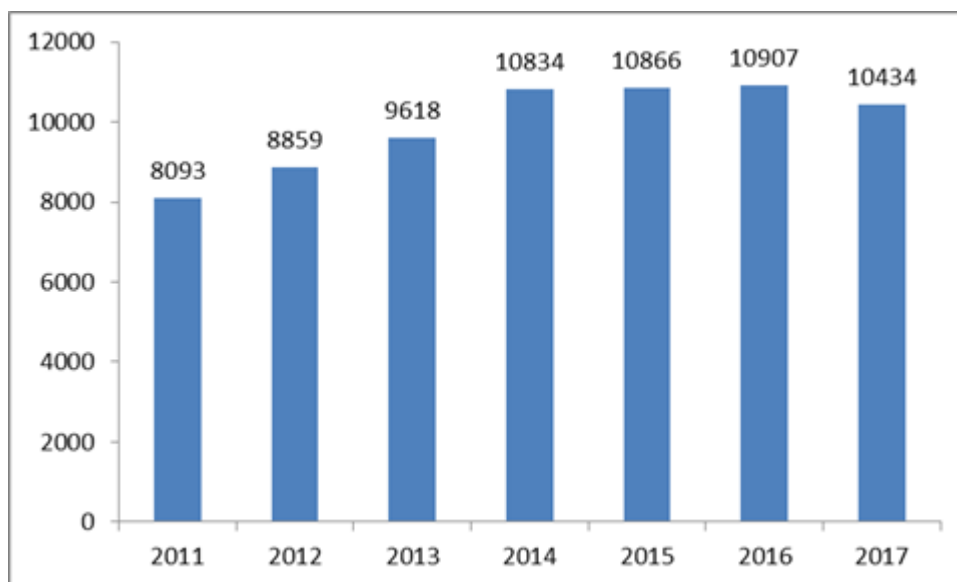
⁷³ United Nations Population Fund (UNFPA) entitled "Childhood Maternity: Meeting the Challenge of Teenage Pregnancy", 2013

⁷⁴ UNICEF, "Early Marriage in Jordan" 2014 (it should be noted that these figures are based on the annual reports issued by the SJD)

study revealed that 3.4% of women in Syria marry at an early age either at 15 or sometimes even before. The data showed that the highest percentage of such marriages was in Daraa in the southern region of the country, while its lowest was in Tartus. It also showed that the various reasons leading to such stark differences between the governorates from education, to cultural aspects related to differences between the countryside and the city, and the economic and social level of the family⁷⁵. In another report by the same organization on the state of the world's children, it mentioned that 13% of Syrian girls got married under the age of 18 before the outbreak of the crisis in 2011⁷⁶.

Another study that touched upon the issue was the one published by the Syrian Centre for Studies and Legal Research. Based on the data it included, the pre-crisis percentage of 7% in Syria has been gradually increasing until it hit 30% in 2015; adding that this percentage could actually be higher the further you get away from Damascus and particularly in rural areas where the fighting has been intensifying, with estimates that 60% of unregistered marriages happening in these areas involve a minor⁷⁷.

Post 2011 Figures in Jordan within the two communities:



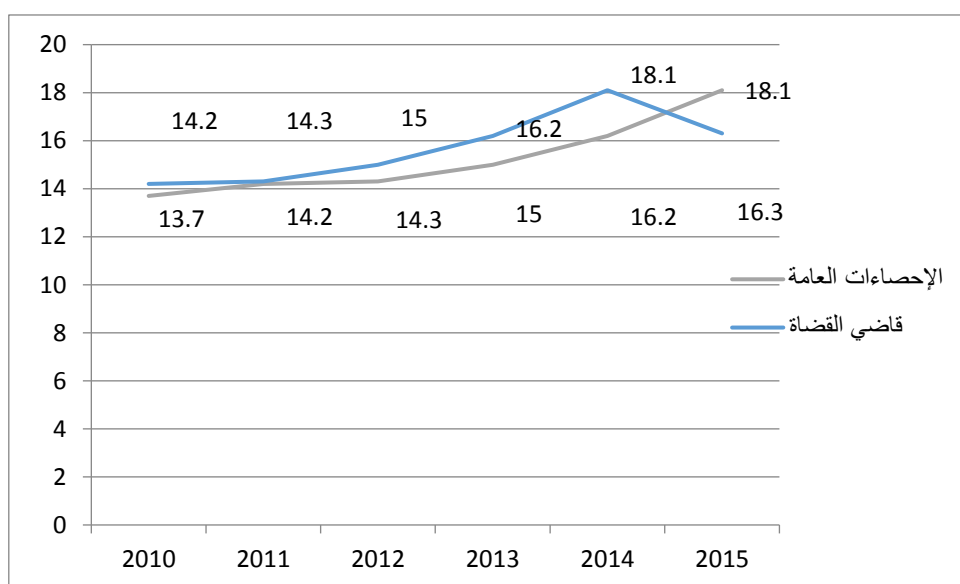
⁷⁵ UNICEF Central Bureau of Statistics, Multi Indicator Cluster Survey 2008

⁷⁶ UNICEF, "The State of the World's Children", 2013

⁷⁷ <http://www.sl-center.org/news/78?language=arabic>

Since the outbreak of the Syrian Crisis, several reports have been published tackling it from various perspectives and with varying points of view. However, when it comes to the status of EFM in Jordan, the most reliable of these publications are the yearly reports released by the Supreme Judge Department and the Department for General Statistics. Thus, in this section these numbers will be focus on these figures to create an overview of the status of EFM since the onset of the crisis in 2011 till now.

Prior to this however we should note that there is a distinct difference in the percentages issued by the Supreme Judge Department and those by the General Statistics Department for the period between 2011 and 2015. In 2015, for example, the Supreme Judge Department reported that the percentage of early marriage was 13.4%, while the Statistical Department said it was 19.7% for the same year. The departments explained that this difference was the result of the difference in the division of the age groups implemented by each department. The Supreme Judge Department in their division considers the age group between 15 and 18 to include girls who have reached the age of 17 and are in their first days of their 18th year. Accordingly, the numbers of cases they registered of early marriages is 10866, with a per cent of 13.4% in 2015. Meanwhile in the division of the Department of Statistics, a girl is not considered 18 until she actually reaches 18 and begins her first day in her 19th year, resulting in the registering of 16,019 contracts with 19.7%⁷⁸.



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⁷⁸ This explanation was provided by Dr. Ashraf Al Omari

⁷⁹ The difference in Percentages between the Annual reports by the SJD and the DoS (2010-2015)

Data collected in the 2015 Housing Census⁸⁰

The data collected by the census show that the total population of the Kingdom has increased by more than 10 times during the past 22 years, with the largest increase recorded during the last decade, and especially since 2011 following the Syrian Refugees Crisis.

According to the census, the total population of the Kingdom was 9,531,712 in 2015, while the proportion of Jordanians to non- Jordanians was 69.4% and non-Jordanian constituting 30%, of whom approximately 1.3 million were Syrians.

In terms of EFM, the data showed that of those included in the census 414,358 women were married under the age of 18, of which 253,155 were Jordanian, 113,370 were Syrians and 47,833 were holders of other nationalities. Furthermore, the overall percentage of married women under the age of 18 at the national level was 21%, and disseminated by nationality the percentage was 17.6% for Jordanians, 39.5% for Syrians and 19.2% for the other nationalities.

Regarding governorates, the percentage of early marriages in each one is included in the table below:

Governorate	2010	2011	2012	2013	2014	2015
Amman	12.6	13.0	12.5	12.9	13.4	16.2
Balqa	10.5	12.4	10.5	13	11.9	14.6
Zarqa	17.5	18.4	19.1	17.7	19.4	21
Madaba	10.1	8.8	11.5	10.7	13.2	12.5
Irbid	16.5	16.4	16.6	17.3	19.2	20.8
Mafrq	19.4	19.7	21.4	26.4	29.2	31.1
Jerash	9.7	11.6	13.1	13.1	15.9	14.4
Ajloun	8.6	8.5	8.4	10.3	10.6	13.5
Karak	6.1	8	8.4	8.2	8.1	8.6
Tafielah	3.7	2.8	5.9	6.4	6.3	9.8
Maan	6.4	4.8	7.7	9.4	11.9	9.7
Aqaba	8.2	9.6	12.2	12.1	10.4	9.5
Jordan	13.7	14.2	14.3	15	16.2	18.1

Another aspect that the census showed was the divorce rates among girls who were married under the age of 18, with that demography having the highest divorce rate

⁸⁰ Department of Statistics "General Population and Housing Census" 2015

at 13.9% between 2010 and 2015. Additionally, the data highlighted a significant increase in divorce rates among Syrian women, as two in every five divorced Syrian woman were married under the age of 18, adding that the percentage rate among this demography is 40% of the total divorce cases between Syrians.

Focusing on the Jordanian community, the census showed that 196136 girls between the ages of 15-18 were married in the period between 2010 and 2015; with a percentage 5.5%, meaning that out of every 1,000 girl in that demography 55 girls are married.

In terms of education, 66.7% of the married girls have finished their primary and secondary education, 18.9% finished their Tawjihi and 5.4% of them were illiterate. Moreover, the majority of these girls, around 92% of them, did not seek or wanted to work, while only 1.8% of them were employed and 3% were looking for work.

The data concerning the Syrian community, on the other hand, showed a significant increase in the percentage of marriages of girls between 15 and 18 in the post-war period, with the percentage increasing threefold in the period 2011-2015. This increase led to an increase in the percentage from 12% of the total number of marriages recorded in 2011 among Syrians, to 18.4% in 2012, 25% in 2013 and 32.3% in 2014 before ultimately hitting 34.6% in 2015 and 2016.

The data also showed that 69.3% of the married girls in this demography held primary and secondary degrees in education, while the percentage of those who graduated from high school was 5.3% and 9.8% of them were illiterate. Also, and quite similar to their Jordanian counterparts, the vast majority of these girls (94.6%) do not work nor they are looking for any; and only 4.1% were looking for work and 1.3% were employed.

The Annual Reports of the Supreme Judge Department⁸¹

The data provided by the annual reports published by the Supreme Judge Department show that there was a significant increase in the number of early marriages registered in courts in the period between 2011 -2017 as 8,093 cases occurred in 2011, then rose in the next two years until it reached 10,834 marriages in 2014 and 10,866 in 2015, an increase of 34.3% between 2011 and 2015. These numbers continued their increase in the following year with 10,907 cases recorded in 2016, though the number slightly dipped in 2017 as 10434 cases were registered in Shariia courts in Jordan.

⁸¹ <http://www.sjd.gov.jo/Pages/viewpage.aspx?pageID=206>

In terms of governorates, the data provided by the report matched those included in the 2015 Census in terms of percentages of early marriages in each one. However, as percentages do not provide the full picture about this form of marriages in Jordan, the yearly reports also provide the number of cases registered in each governorate through the period from 2011 and 2017 and they are disaggregated as follows:

Governorate	2011	2012	2013	2014	2015	2016	2017
Amman	2067	3326	3555	3698	3439	3318	3075
Balqa	467	525	524	652	594	536	471
Zarqa	1636	1674	2039	1881	2049	2083	2197
Madaba	167	187	186	231	255	231	235
Irbid	1463	1590	1800	2295	2150	2265	2041
Mafraq	387	482	577	1108	1310	1318	1227
Jerash	307	408	268	256	285	297	343
Ajloun	141	143	134	211	244	223	226
Karak	154	130	165	151	160	257	218
Tafielah	55	61	66	63	55	51	49
Maan	88	134	133	150	131	151	159
Aqaba	161	199	171	138	194	177	268
Jordan	8093	8859	9618	10834	10866	10907	10434

Another thing to highlight regarding these data is the number of marriages registered in Jordan for girls who are under the age of 18 compared to the overall number of marriages registered in each year as displayed in the table below:

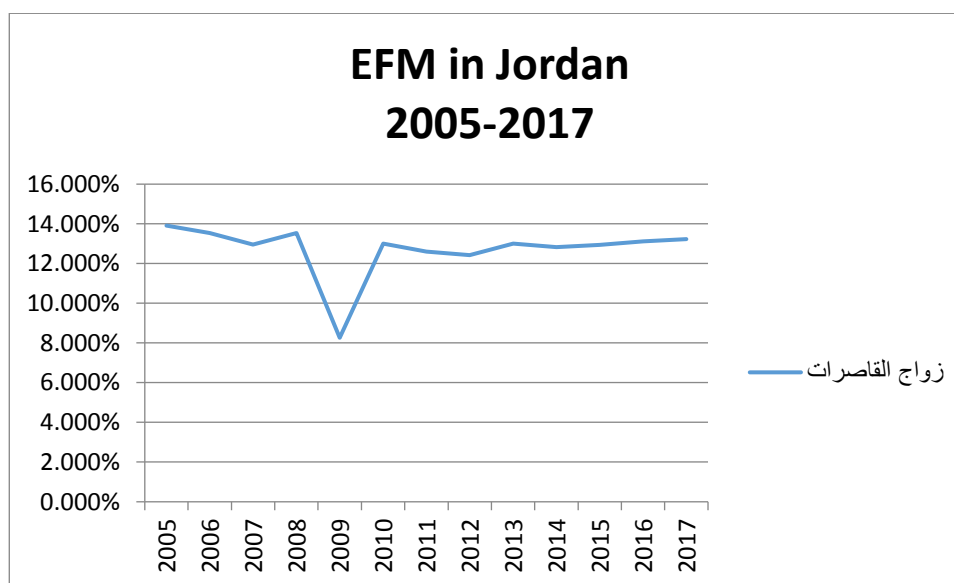
Year	Population ⁸²	Number of Marriages	Number of Marriages for Girls Under 18	Percentage of EFM
2011	7574943	64257	8093	14.2
2012	7992573	70400	8859	14.3
2013	8413464	72860	9618	15
2014	8809306	81209	10834	16.2
2015	9159302	81373	10866	18.1
2016	9455802	81343	10907	16.3
2017	9702353	77700	10434	13.43

⁸² <http://www.worldometers.info/world-population/jordan-population/>

Paying a closer look at the numbers included in both tables a number of things become quite clear:

- First, while the number of early marriages has shown signs of fluctuating in recent years, these numbers are generally increasing despite the collective efforts by various organisations and initiatives to combat it.
- Second, looking at the numbers comparing between the number of marriages registered in the Kingdom as a whole versus those for girls under the age of 18, a distinct connection seem to be made between them that could not be visibly seen when looking at the percentage: that while the percentages seem low as the government keeps maintaining, comparing the actual number shows that they are in fact they are quite high.
- Third and most importantly, this increase in the number of early marriages is in correlation with the increase in the population of the kingdom that was referred to in the previous section of this chapter.

Conclusion



In this chapter, a statistical overview was conducted on the status of EFM in Jordan in the pre and post periods of the Syrian Refugee Crisis. This overview while highlighted the increase in the number of cases of early marriages as displayed in the graph above; it also concluded through inspecting and analysing the numbers that the increase in these cases is actually consistent with the increase in the population of the Kingdom. Furthermore, this increase is occurring in both Jordanian and Syrian communities in almost the same

rhythm it was prior to the war. Thus, eliminating any attempt at justifying the current numbers in relation to the Syrian Crisis as this phenomenon existed in the Jordanian society prior to it and is simply continuing its natural flow.

Social Perspective on EFM

Causes of EFM

The leading cause of EFM is gender inequality, whereby girls and women are perceived to be commodities unable to make proper decisions about who and when to marry. This culturally-justified patriarchy, while universal in scope, manifests in different practices and beliefs according to local context.

In many patriarchal societies, the concept of family “honour” is connected with women’s behaviour and morality, with the proper and improper manifestation of either carrying effects on the men’s reputation within the larger community. As such, men always operate to control women’s freedoms and choices through various methods from imposing restrictions on her movement, dress, social interactions, education, and in some cases marriage.

Marriage is seen to offer the ultimate “protective” measure against any fear of jeopardising familial honour. Early marriage ensures that a girl is placed firmly under male control, that she is submissive to her husband and works hard for her in-laws’ household; and that she is able to have more children than an older bride could⁸³.

Furthermore, marriage in such cases is also often seen as a bond between family units, not just individuals; as it could be a tool to build or strengthen family alliances, inter-familial economic partnerships, land holdings, and political power. In such scenarios, marriage and most importantly the women are seen as an instrument to ensure that such connections are kept and remain intact, regardless of the her acceptance or later status within that marriage⁸⁴.

While the abovementioned reasons have been common factors in the prevalence of EFM across societies and time, new factors have begun to emerge recently that are pushing this phenomena to be even more widespread.

⁸³ Sen, Purna. 2005. “‘Crimes Of honour’, value and meaning.” In Welchman, Lynn and Sarah Hossein (ed.)

“Honour”: Crimes, paradigms, and violence against women. Zed Books; Coomaraswamy, Radhika. 2005.

“Preface: Violence against women and ‘crimes of honour.’” In Welchman, Lynn and Sarah Hossein (ed.)

“Honour”: Crimes, paradigms, and violence against women. Zed Books

⁸⁴ Working Group on Forced Marriage. 2000. “A Choice By Right: The Report of the Working Group on Forced Marriage.” Home Office Communications Directorate, June 2000.

Poverty is one of these major new factors. Where poverty is acute, a young girl may be regarded as an economic burden on her family⁸⁵. In such cases, marriage is seen as a way to lessen the pressure on the family, particularly in cases where it is quite extended in numbers on one hand and are facing economic difficulties as well. As these pressures mount, some parents come under significant pressure from their relatives to get their children married, even if force is required to relieve some of that pressure.

Conflicts and political instability is another factor that could lead to an increase in early and forced marriages within the country that is in the grip of on-going conflict or war. Researchers have pointed out that as conflicts expand and continue for extended periods of time, so do the chances of getting abducted and/or forcefully recruited to terrorist groups; incidence of rape, trafficking, domestic violence, sexual servitude and child abduction. Such threats lead to families viewing marriage as a protection or coping technique to protect their girls from such risks; thus increasing the number of EFM cases in that country or region⁸⁶

Effects of EFM: Human Rights

Early and forced marriage impacts various human rights of young women and girls, including their sexual and reproductive rights, as well as their rights to health, equality and non-discrimination, education, live free from all forms of violence and participate in public and political life.

Right to Health

Early and forced marriages entail violations of young people's, particularly young women and girls, right to the highest attainable standard of health. Violations of the right to health occur as a result of high rates of sexual violence that take place during the marriage; complications arising from early pregnancy and childbirth; barriers to accessing comprehensive health services and information, including sexual and reproductive health information and services, among others.

According to the WHO and the International Centre for Research for Women, married girls are twice as likely to experience sexual violence, encounter unwanted pregnancies and seek out unsafe abortions⁸⁷ and an estimated 90% of adolescents

⁸⁵UNICEF. 2005. *Early marriage: A harmful traditional practice*. Available at: http://www.unicef.org/publications/files/Early_Marriage_12.lo.pdf

⁸⁶ UN Women, End VAW Now. "Prevention of forced and child marriages." Available at: <http://www.endvawnow.org/en/articles/639-prevention-of-forced-and-child-marriages.html?next=640> ; Office of the Special Representative of the Secretary on Violence against Children. 2012. "Protecting Children from Harmful Practices in Plural Legal Systems." Available at: http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/SRSG_Plan_harmful_practices_report_final.pdf

⁸⁷ <http://www.who.int/mediacentre/factsheets/fs364/en/> and <http://www.icrw.org/child-marriage-facts-and-figures>

who give birth are married.⁸⁸ In low and middle income countries, complications from pregnancy and childbirth are the leading cause of death among girls aged 15-19.⁸⁹

International development frameworks and the human rights system clearly recognize young women and girls right to health, including their sexual and reproductive health. The Convention the Elimination of All Forms of Discrimination Against Women recognizes women's right to decide freely and responsibly on the number and spacing of their children and to have access to information, education and means to enable them to access these rights. Similarly, the CRC provides for the protection of the right to health of young people under the age of 18. General Comment No. 14 of the Committee on Economic, Social and Cultural Rights discusses the issue of reproductive health, noting that "women and men have the freedom to decide if and when to reproduce and the right to be informed and to have access to family planning and appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth."⁹⁰

Right to live free from violence

Around 70% of women experience physical or sexual violence in their lifetimes, including rape; with married girls being twice as likely to experience sexual violence.⁹¹

Married young women and girls are also at risk of experience forms of sexual and reproductive coercion, as a form of violence. These types of coercion include forced pregnancies via pressure from the husband and the extended family or frequently getting pregnant despite the health risks related to this to appease the in laws and in some cases ensure that a male heir is produced⁹².

According to the figures of the 2012 Population and Family Health Survey issued by the Department of Statistics in Jordan, girls between the ages of 15 and 19 were the demography which showed the highest level of acceptance or justified experiencing violence at the hands of their husbands. The survey results is also the most vulnerable to violence, whether physical, psychological or social by their current or former husbands, with 12.9% of them saying that they were already subjected to violence before in their lives.⁹³

The data also showed that 7.9% of girls aged between 15 and 19 experienced some form of violence during their pregnancy; with the available data displaying a strong correlation between the number of children in the household and the rate of physical violence experienced by pregnant women.

⁸⁸ http://www.who.int/maternal_child_adolescent/documents/mpsnnotes_2_lr.pdf.

⁸⁹ <http://www.who.int/mediacentre/factsheets/fs364/en/>

⁹⁰ E/C.12/2000/4, footnote 12.

⁹¹ <http://www.who.int/mediacentre/factsheets/fs364/en/> and <http://www.icrw.org/child-marriage-facts-and-figures>

⁹² http://www.plannedparenthood.org/images/IPV_and_Reproductive_Coercion_Fact_Sheet_2012_FINAL.pdf

⁹³ http://www.dos.gov.jo/dos_home_a/main/Analasis_Reports/pop_health/2012.pdf

Right to education

Married young women and girls are often unable to complete their studies. Discriminatory policies and stigma related barriers often prevent young women and girls who get married, or become pregnant from continuing their studies. Forcing girls to leave school often places them at greater risk of experiencing stigma or discrimination, on behalf of their peers, community members and families.

Laws and policies that prevent married young women and girls from staying in school and accessing higher levels of education directly violate their right to education, and can lead to social exclusion and reductions in their ability to operate as fully independent individuals in society as they become fully dependent on their husbands.

In Jordan and despite the instructions that grant permission to get married for those under 18 that the marriage will not be the cause of the girl's interruption or withdrawal from education; the reality indicates that there are guarantees protecting this essential right. In fact, the data released by Department of Statistics in an analytical paper entitled "Marital Status in Jordan", there is actually a strong connection between EFM and school drop outs.

Throughout our work on the study, various reasons were pointed out that lead to this including the high cost of education; bullying and school violence; distance to schools; difficult economic conditions which has led many children either to join the labour market due to necessity in addition to a belief that education will not guarantee them a job later on, or to be married off in case they are girls as families resort to various methods to lessen their economic burdens.

In terms of Syrians, the most recent numbers by the UNHCR indicate that the number of registered refugees in Jordan currently stands at 659,000⁹⁴, of those registered refugees; half of them are under the age of 18, including 226,000 in school-age (between 5 and 17). While the Jordanian government has tried to incorporate these children within its public school system through different policies like allowing schools to operate in two shifts in 2013, the drop -out rates among Syrians is still high, reaching 68% according to 2017 estimates by the UNICEF.

⁹⁴ The Jordanian Government in its own assessment indicate that there are additional 643,000 Syrian refugees who are not registered with the agency

Case Studies

Case Study 1

Two young women were referred to Tamkeen after being caught by the police due to working in prostitution. Following investigations conducted by Tamkeen and the help of social and psychological experts in Dar al Karama, it was established the one of the girls was serving a prison sentence in Juweida Women Prison after being convicted of false testimony. While in prison, she met a lady who helped her get out. After her release, both the girl and her sister married the sons of the woman and moved into her house where they were forced to dress provocatively and then sexually exploited by visiting men for payments collected by the woman.

Following the arrest of the women, the girls and their husbands, the girls were psychologically evaluated where it was discovered that the first status is as follows:

- Mental age: 9-10 years
- Low understanding of concepts and perception
- Easily controlled and led
- Undetected and minor Mental Disability
- Incapable of producing good judgments
- Low skills in dealing with figures and calculations.
- Inability to maintain a job or work

While the results of psychological evaluation of her sister were as follows:

- Weakness in the issuance of good judgments
- Weak levels of concentration and calculation skills
- Need guidance and advice
- Easily led and controlled
- Weak understanding of concepts and perception

Meanwhile, the investigation with the woman and her sons revealed that both sons were married multiple times before this incident and that they divorce

their wives and then marry other girls; though this information was not mentioned to the girls nor mentioned in the marriage contracts.

Based on these information, Tamkeen lodged a lawsuit where the girls were successfully divorced and referred to Queen Nour Al Hussein Foundation for social support and counselling; while the case was referred to the Anti-Human Trafficking Unit and then to court where the prosecutor decided to charge them with a charge of human trafficking in the form of sexual exploitation where it is still under review.

Case Analysis:

Referring to the previous chapters of the study, and by having a closer look at the case study, we can make the following points:

1. While both girls are above the age of 18 in biological terms, their tests results confirm that they are in fact mentally much younger than that with low levels of understanding and analysis. Yet, despite the Jordanian Personal Status Law stating in Article 10 that one of the requirements of marriage is that both individuals are mature and of mature mind, which clearly the girls did not fully possess; both were allowed to get married and to men who were previously married multiple times before this current marriage and without the girls being informed of this fact.
2. Furthermore, the testing provided for the girls proved that in addition to having a low level of understanding of conditions and being easily led and controlled. Such results would imply that both sisters did not have the ability to fully approve or consent to the marriage in the first place and that they did not have any physical or mental capacity to be able to resist being sexually exploited later on by their mother-in-law.
3. By applying these facts on the definition and elements of Human Trafficking, this is what we get:

Act	Means	Purpose
Transfer, Reception and Harboring of the Girls	Deception as the girls were deceived into prostitutions by means of Marriage Abuse of vulnerability as they were easily led and controlled by the Mother in Law and her sons	Exploitation in Prostitution

This application proves that the girls were victims of Human Trafficking through Forced Marriage as in this particular case marriage was used as a vehicle to enter girls into prostitution. Yet, due to the Jordanian law not recognising FM as a form of Human Trafficking as we have noted in previous chapters, the case instead was put into trail as Human Trafficking for the purpose of sexual exploitation.

Case of Abir

“My mother forced me to marry when I was 15 years old back when we were in Syria for numerous reasons ranging from economic to her fear that if I delay my marriage to when I am older I will end up like her married to man who is already married and has children. Even though I did not want to be married, my mother used many persuasion techniques and I ended up saying yes out of guilt.

When the war happened and we were forced to seek refuge in Jordan from Dar’a where we lived, I already had given birth to my first child and was pregnant with the second. Due to prevailing customs in her region, the young age I was in when I got married and the addition of the difficult circumstances we experienced during the war, I became so obedient to my husband that I accepted all the ways he used to abuse including vicious beatings that left my body bruised.

Yet, I sought excuses for him after each incident; justifying it to the difficult conditions in which we lived in the Zaatari Refugee Camp and the trauma of escaping the war. As time passed, I began suffering from psychological effects because of the violence I was enduring to the degree that I would suffer from a panic attack the moment that my husband returns home or find him looking at me. Despite all of this, I endured my life for my kids and because of the certainty that my mother will not allow me to return to her as a divorced woman. One day however things changed after a particularly vicious beating from him led me to be hospitalized and in a coma. Following this incident, I did get a divorce and moved in with my mother where I hoped I would get the chance to regain my strength and start a new life.

Unfortunately, my fears regarding my mother were true as I was treated as an unwelcome person and kept hearing lectures and talks about the dishonour I caused my family because I got a divorce and how bad of a mother I am because I caused my children to live in a broken home. Ultimately, my mother decided to take matters into her own hands and marry me off again, saying that this might decrease the levels of disgrace I have caused my family.

Despite my objections, I was married off again and unfortunately my experience with the second marriage is also negative but I do not dare say anything because I know the consequences of doing so.”

Case Analysis

Referring to the previous chapters of the study, and by having a closer look at the case study, we can make the following points:

1. It is clear from Abir’s description of how she got married, that she did not make that decision willingly or with her full consent. Instead, she was emotionally manipulated by her mother.
2. We note that the economic reasoning played a vital role in the mother’s motivation behind marrying her 15 year old daughter, something we noted when discussing the shift in motives behind cases of EFM.
3. As clearly described in the events told by Abir, the consequences of EFM are rarely positive as she went a series of mental and physical abuse that rendered her powerless in front of her husband and unable to leave him despite all of the violence she endured. Furthermore, the cultural perspective that looks down on divorced women prevented her from seeking any support or even telling her mother until she ultimately went into a coma as a result of the violence her husband was subjecting her to.
4. Unfortunately, Abir’s suffering did not end there as she was forced to marry again by her mother where she re-entered the same vicious cycle of negative circumstances that she was in in her first marriage.
5. By applying these facts on the definition and elements of Human Trafficking, this is what we get:

Act	Means	Purpose
Transfer, Reception and Harboring of Abir	Emotional Manipulation Abuse of Power by Abir Mother	Exploitation of Abir Economic Exploitation as the mother gained money through the marriage

This application proves that Abir was a victim of human trafficking through Forced Marriage. In the case of her first marriage it was both Early and Forced Marriage as she clearly was not a full agent in making the decision regarding the marriage but was forced into it through means of emotional manipulation and motivated by economic reasons. Her second marriage was also a case of Forced Marriage through means of cultural pressure and guilt regarding her situation and the possible dishonour she would bring to her family.

It should be noted that we added the Means column to the table above even though it could have been omitted in the case of her first marriage as Abir was underage at the time and as explained in the previous chapters, a crime could constitute human trafficking in cases where the victim is a child even without the means element of the crime.

Case Study of Shadia:

Shadia was 15 years old when her father decided to marry her off to a man much her senior from another Arab country. Due to the economic difficulties the family was going through, Shadia father accepted the groom's offer instantly once he said he will pay \$8 thousand USD as a dowry for Shadia and the same sum in case a divorce happens later on.

Shadia was pressured to agree to the marriage; with her father using all kinds of persuasion before ultimately informing her that she has no choice of the matter as the man would also rent her and her family a new house to live in.

After the marriage, the man visited Shadia twice each month throughout the summer where he would spend time with her before leaving again. During this time, Shadia discovered that the man already has two wives back in his

country. And while she want not pleased nor content with her relationship, she could not refuse him any requests due to the pressures practiced by her family and her husband reminding her that he is taking care of her family and the reason why they were able to get through their difficult times.

After a period of time, the man stopped visiting Shadia as well as the payments for the house rent, leading Shadia and her family back into the difficult situation they were originally in. Following this bad experience, Shadia met a new friend who convinced to begin working as a dancer to generate an income and help her family.

Subsequently, Shadia began dancing in private parties hosted by men of various nationalities in private homes. She was dancing at one of those parties when the police raided the premises and Shadia was transferred to the Anti-Human Trafficking Unit for questioning and investigations.

Case Analysis

Referring to the previous chapters of the study, and by having a closer look at the case study, we can make the following points:

1. Again and the same as in Abir case, economic reasons where the main motivation behind why Shadia father was eager to marry her off without consulting her and regardless of her position on the matter.
2. Also, similar to Abir, Shadia father manipulated her emotionally and made her feel guilty to accept the marriage as means to save her family from the difficulties they were experiencing at the time; before ultimately forcing her to marry.
3. Throughout the marriage, Shadia was forced to comply with whatever her husband asked of her as he exploited her position of weakness and his position of power in terms of the financial support he was providing her family with.
4. Following the man fulfilling his desires, he left Shadia without warning her and resulting in her family again struggling again financially. These struggles consequently led her to dancing and ultimately to be caught by the police and treated as Human Trafficking case.
5. By applying these facts on the definition and elements of Human Trafficking, this is what we get:

Act	Means	Purpose
Harbouring and Receiving of Shadia in the new house rented by the Husband	Emotional Manipulation by Shadia Father Abuse of Power by the Husband as we he manipulated the family's difficult economic situation	Exploitation of Shadia Economic Exploitation as Shadia's father and family gained money and a new house through the marriage

Results and Recommendations

Results

Through working on this study, some main results were found that ought to be highlighted:

First:

In terms of terminology, early marriage can be considered a subset of forced marriage, while forced marriage also encompasses adult unions. Furthermore some cases of EFM that are currently occurring on the ground should be recognised as cases of Human Trafficking based on the legal definition of the crime and its elements.

Second:

Legally, the Jordanian Personal Status Law in its current form, and despite recent amendments, is still not sufficiently strong enough to restrict the number of EFM cases happening in Jordan. This is clearly demonstrated by the figures issued by the Supreme Judge Department and the Department of Statistics, with both of them showing that the percentage EFM cases has been steady for several years despite the efforts of government institutions and civil society organizations to combat this phenomenon.

Third:

As shown in the data analysis and cases, there are still gaps on the ground in terms of the application of the exception to approve marriages to those above 15 and below 18. These loopholes are strongly connected with the Instructions issued by the SJD to regulate these permissions; as evident when considering the issue of age difference between the spouses as displayed in the data released by the Department of Statistics.

The data shows that in 2017, of the 10434 EFM cases registered, the difference in age between the couples in 846 cases was 15 years or more; of which the differences in 29 cases exceeded 33 years, and in cases 9 it exceeded more than 50 years⁹⁵. Such a huge age difference is a flagrant violation of the instructions included in Article 10, paragraph (b) in the Jordanian Personal Law reviewed above, which clearly stipulates that the age difference between the parties should not exceed 15 years in order for

⁹⁵ http://www.dos.gov.jo/dos_home_a/main/vitality/Marriage_and_Divorce/2017/Marriages8.pdf

the permission to be granted. Furthermore, the same law in its 11th article states that: “no marriage contract shall be approved of in cases where the age difference between the bride and groom is more than twenty years before the judge meets the bride and ensures that she is sure and satisfied by her choice”.

Fourth:

Statistical data indicate that the increase in the number of EFM cases is in fact consistent with the increase in the population of the Kingdom. Furthermore, this increase is occurring in both Jordanian and Syrian communities in almost the same rhythm it was prior to the war and thus, the current geopolitical changes have not contributed to it as some have tried to explain.

Recommendations:

- Amend the Anti- Human Trafficking law as to not limit the types of exploitation but enumerate them as examples so that other types of exploitation could be added.
- The inclusion of Forced Marriage as a form of exploitation prosecuted by the Anti- Human Trafficking law.
- Amend the Personal Status Law to further restrict the exceptions granted regarding permissions to marry those under the age of 18 and older than 15 years old.
- Reform the Educational policies in order to include Syrian refugees under the umbrella of compulsory education, as well as the organising and conducting of awareness programs targeting girls who are in the eighth grade and older to talk about the risks of EFM physically, psychologically and socially.
- Ensure that the Instructions included within the exceptions to permit school girls to be married are met and that they are able to pursue their education or to find work after marriage.
- Encouraging students who do not wish to complete their academic education to enrol in vocational training programs or other non-academic opportunities and to activate vocational training programs targeting the age group of girls and boys between the ages of 14 and 18.
- Ensure that each governorate has a Family Reconciliation and Rehabilitation Office so that applicants who want to get married cant benefit from the services it provide including the awareness raising

programs regarding the rights and duties as well as needs of both partners; as well as evaluations for each case that apply for the exception to check the reasons behind this marriage and refer cases where such marriages could be delayed or even stopped if the reasons are economic in nature.

- Increase the quantity and quality of psycho-social support services offered, as well as establish mental rehabilitation centres, as well as shelter for those seeking protection and counselling for trauma whether it is physical or psychological; any type of sexual violence or matters concerning sexual health and reproductive rights.
- The inclusion of sex education programs in schools starting from Secondary school that are compatible to each age group in order to protect children from cases of sexual harassment and to educate them about their bodies and health

Annex I: Forced Marriage in International Human Rights Standards and Mechanisms

A number of international and regional human rights instruments lay down norms to be applied to marriage, covering issues of age, consent, equality within marriage, and the personal and property rights of women. This annex details those instruments and is divided into three sections.

- Section 1. International treaties
- Section 2. Regional treaties and mechanisms
- Section 3. Reports by international treaty bodies

Excerpts included are not exhaustive, but a sample of some of the most relevant articles, reports and recommendations that can be used in advocacy to end forced marriage.

Section 1. Articles in International Human Rights Treaties

Universal Declaration of Human Rights (UDHR, 1948)

- Article 16 states: (1) Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties.
- Similar provisions are included in the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)

- The Supplementary Slavery Convention prohibits any institution or practice whereby a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; the husband of a woman, his family or his clan, has the right to transfer her to another person for value received or otherwise; or a woman on the death of her husband is liable to be inherited by another person.
- Article 1(c) describes institutions and practices similar to slavery as: Any institution or practice whereby: (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family ...
- Article 1(d) implicitly prohibits forced child marriage: States parties are required to abolish any institution or practice whereby a child or young

person under the age of 18 years is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964)

- Article (1): No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person ... as prescribed by law.
- Article (2): States Parties to the present Convention shall ... specify a minimum age for marriage (“not less than 15 years” according to the nonbinding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses ...
- Article (3): All marriages shall be registered ... by the competent authority.

International Covenant on Civil and Political Rights (ICCPR, 1966)

- Article 23 (2) of the International Covenant on Civil and Political Rights provides for the right of men and women of a marriageable age to marry and to found a family.
- Article 23 (3) provides that no marriage is to be entered into without the free and full consent of the intending spouses.

International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)

- Article 10.1: The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)

- Article 16.1 prescribes equally for men and women:
 - (a) The same right to enter into marriage;
 - (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; ...
- Article 16.2 states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.

Convention on the Rights of the Child (CRC, 1989)

- Article 1: A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
- Article 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.
- Article 3: In all actions concerning children ... the best interests of the child shall be a primary consideration.
- Article 6: Maximum support for survival and development.
- Article 12: The right to express his or her views freely in all matters affecting the child, in accordance with age and maturity.
- Article 19: The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person.
- Article 24: The right to health, and to access to health services; and to be protected from harmful traditional practices.
- Articles 28 and 29: The right to education on the basis of equal opportunity.
- Article 34: The right to protection from all forms of sexual exploitation and sexual abuse.
- Article 35: The right to protection from abduction, sale or trafficking.
- Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

Section 2: Regional Human Rights Treaties and Mechanisms

American Convention on Human Rights (1969)

- Article 17 (2) guarantees the right of men and women of marriageable age to marry and to raise a family, and requires that no marriage is to be entered into without the free and full consent of the intending spouses.
- Under article 17 (3), the States parties are to take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution.

African Charter on the Rights and Welfare of the Child (1990)

- Article 21 (2) states: Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994)

- Article 3 safeguards a woman's right to be free from violence in both the public and private spheres.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)

- Article 6 states that no marriage is to take place without the free and full consent of both parties, and requires States to enact appropriate national legislative measures to guarantee that the minimum age of marriage for women is to be 18 years.

Council of Europe Resolution 1468 on Forced Marriages and Child Marriage (2005)

- In resolution 1468, the Parliamentary Assembly of the Council of Europe defined forced marriage as "the union of two persons at least one of whom has not given their full consent to the marriage".

- It defined child marriage as “the union of two persons at least one of whom is under 18 years of age”.
- Among other things, it urged the national parliaments of the Council of Europe member States to fix at or raise to 18 years the minimum statutory age of marriage for women and men, to make it compulsory for every marriage to be declared and entered by the competent authority in an official register, and to consider the independent criminal offence.
- In 2008, the **Appeals Chamber of the Special Court for Sierra Leone (SCSL)** became the first international criminal tribunal to recognize "forced marriage" as a crime against humanity⁹⁶.

Section 3: Reports and Recommendations by International Treaty Bodies

CEDAW Committee

- In its general recommendation No. 24, the Committee specifically recommends that States parties enact and effectively enforce laws that prohibit the marriage of girls.
- In its general recommendation No. 21, the Committee considers that the minimum age for marriage should be 18 years for both men and women.
- This age limit, which is in line with the definition of the child provided in the Convention on the Rights of the Child, is also reflected in article 21 of the African Charter on the Rights and Welfare of the Child.
- In its general recommendation No. 21, the Committee recognizes that forced marriage may exist as a result of cultural or religious beliefs, but maintains that a woman’s right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being and that this must be protected and enforced by law.

Committee on the Rights of the Child

⁹⁶ Judgment, Brima, Kamara, and Kanu (SCSL-04-16-T), Appeals Chamber, 22 February 2008 (hereinafter AFRC Appeals Judgment). Discussed in Jain 2008.

- In its general comment No. 4, the Committee strongly urges States parties to develop and implement legislation aimed at changing prevailing attitudes, and address gender roles and stereotypes that contribute to harmful traditional practices.
- It also calls upon States parties to protect adolescents from all harmful traditional practices, such as early marriage, and recommends that they review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent for marriages for those who are under 18 years old

UNSR on Violence Against Women, Its Causes and Consequences.

- In her report on her mission to Somalia, the UNSRVAW concluded that although servile marriages occurred, especially in rural areas, the lack of data made it impossible to ascertain the extent of the practice of rape and early and/or forced marriages (A/HRC/20/16/Add.3, para. 24).

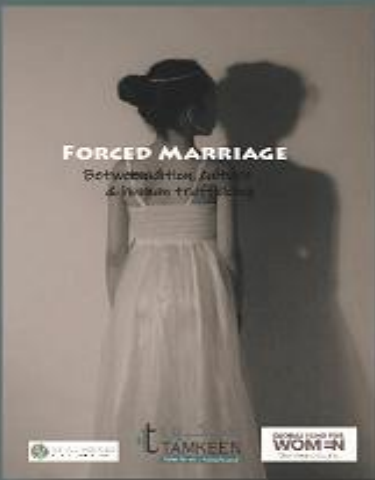
UNSR on Traditional Practices Affect in the Health of Women and the Girl Child

- According to the Special Rapporteur on traditional practices affecting the health of women and the girl child, the practice of forced marriage deserved the close scrutiny of the international community, as it would not be eradicated until women were considered full and equal participants in the social, economic, cultural and political life of their communities (E/CN.4/Sub.2/2005/36, para. 82).

UNSR on the Human Rights Aspects of the Victims of Trafficking in Persons, especially in Women and Children

- The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially in women and children, concluded that there was a clear

recognition in United Nations and regional agreements, as well as in national legislation, that many women and girls around the world lived under conditions where, owing to harmful patriarchal, traditional, customary and/or religious practices, they could not fully exercise their human rights to marry or refuse marriage; to full sexual autonomy; to refuse childbearing; to leave partners, including abusive partners, while retaining custody of their children, and to do so safely and without legal, economic, social, political and cultural repercussions (A/HRC/4/23, para. 38.)



FORCED MARRIAGE

Betweddung, Zithar
& andere Trübsal



TAMKEEN

GLOBAL LEAD FOR WOMEN