

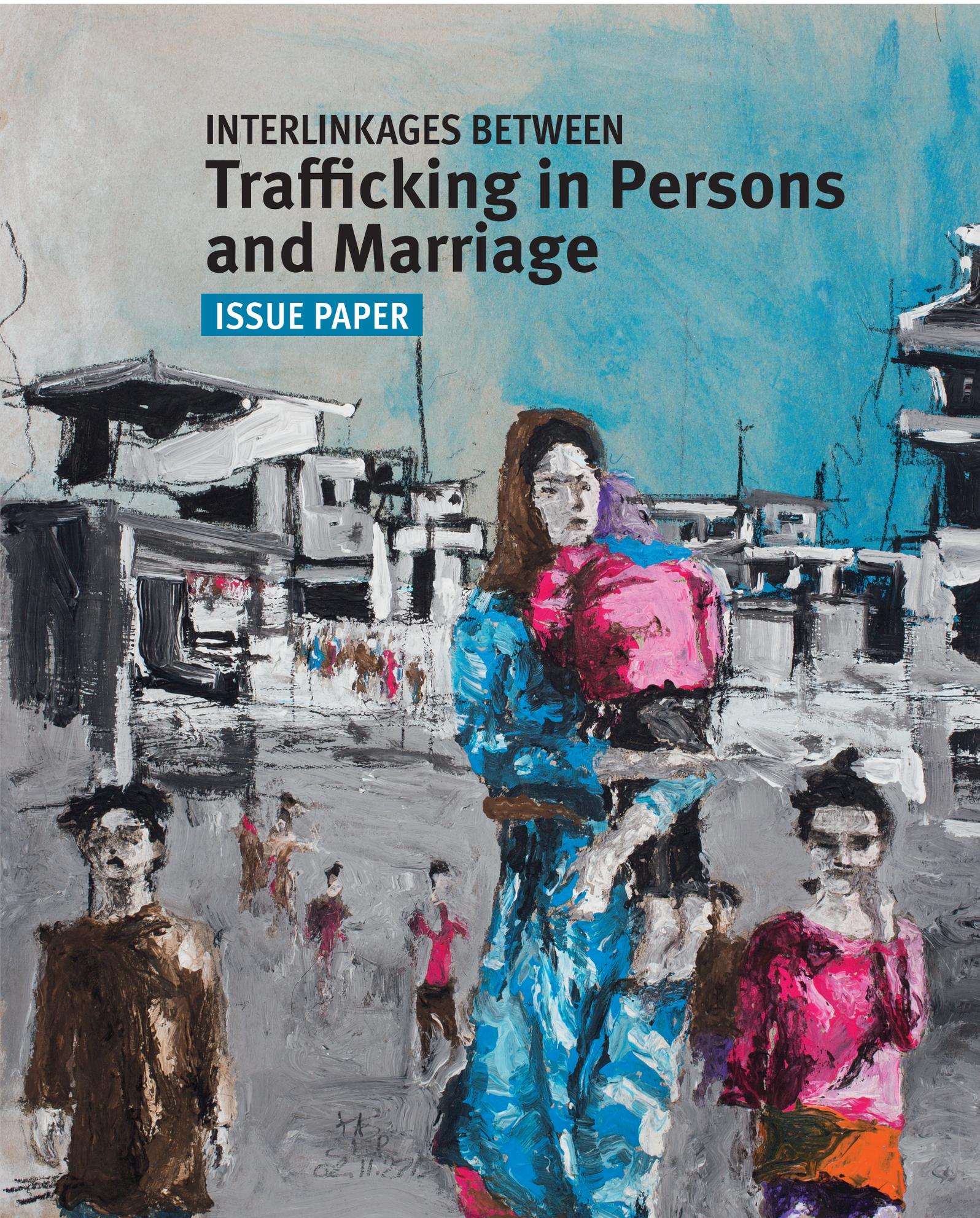


**UNODC**

United Nations Office on Drugs and Crime

# INTERLINKAGES BETWEEN Trafficking in Persons and Marriage

**ISSUE PAPER**





This publication has been prepared with the support of HEUNI.

UNITED NATIONS OFFICE ON DRUGS AND CRIME  
Vienna

# **Interlinkages between Trafficking in Persons and Marriage**

ISSUE PAPER



UNITED NATIONS  
Vienna, 2020

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This publication has not been formally edited.

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Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

## Acknowledgements

The present publication was developed by the Human Trafficking and Migrant Smuggling Section of the United Nations Office on Drugs and Crime (UNODC) under the leadership of Ilias Chatzis and the UNODC Crime Research Section under the leadership of Kristiina Kangaspunta, as well as the substantive guidance of Silke Albert, Tejal Jesrani and Pascale Reinke-Schreiber. The publication was drafted by Minna Viuhko (consultant) and Anniina Jokinen (consultant). Special thanks are extended to Jesper Samson of the Crime Research Section, Natalia Ollus, Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) and Rahel Gershuni (independent expert) for their input and support. Furthermore, we would like to thank our UNODC colleagues from the Justice Section, Claudia Baroni, Anna Giudice and Sven Pfeiffer, for their invaluable insights into and review of this issue paper.

An expert meeting held in Vienna on 19 and 20 November 2018 reviewed a draft of this paper, which brings together the findings and conclusions of expert interviews in the field on interlinkages between trafficking in persons and marriage. During the field missions to nine selected countries, experts from government institutions, ministries and law enforcement authorities, academia, and other international organizations and non-government organizations were interviewed about their experiences, challenges, lessons learned and good practices when responding to cases in which trafficking in persons and components of marriage interlink. Owing to the complexity of the topic under investigation, the multidisciplinary approach and involvement of stakeholders from different areas of expertise were essential for capturing interlinkages effectively. The project has benefited immensely from the different experiences and knowledge of the interviewed experts. Thanks are also due to the Member States who supported the organization of these data collection missions, as well as to the large number of government officials and practitioners who gave generously of their time and expertise in helping with the country case studies.

UNODC expresses its appreciation to the many independent, national and regional experts, as well as representatives from international and regional organizations, who attended the expert group meeting and who provided important follow-up input, including the following: Linda M. Al-Kalash, Sebastian Boll, Claudia Bertram, Rahel Gershuni, Hong Thu Khuat, Nathalie Levman, Samantha Lyneham, Deepa Mattoo, Thuy Thi Bich Nguyen, Thandabantu Nhlapo, Ulan Shamshiev, Zhympargul Turmamatova and Livia Valensise.

The study was made possible through funding received from the Government of the Federal Republic of Germany.



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# Executive summary

The present issue paper explores the extent and circumstances under which different forms of marriage may fall within the scope of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It combines research methodology and legal analysis to arrive at policy recommendations for countries to consider. The primary data collection was based on 75 expert interviews, involving almost 150 participants from nine countries.<sup>1</sup> The interview tool was constructed in a deliberately broad manner to elicit conversations that would capture the reality of these phenomena, which manifested themselves differently in every country, and not to rush to conclusions about whether the conduct fell within the scope of the Trafficking in Persons Protocol.

Out of the almost 150 people who participated in the interviews, the great majority knew about or had direct experience of cases involving certain types of marriage and trafficking in persons. However, others had not made any connections between marriages and trafficking in persons in their line of work or had not encountered any relevant cases. In the cases presented during the interviews, it became apparent that trafficking in persons was most often linked to cases of marriage that showed signs of force, abuse or exploitation. Thus, these characteristics could be recognized as initial indicators for consideration of trafficking in persons. Experts, including from non-governmental organizations, who had interacted with victims noted that there was a low level of reporting of trafficking cases in general, but also of trafficking cases involving elements of marriage.

The countries included in the research have differing criminal provisions on trafficking in persons and criminal conduct within marriage. Some of the provisions within their legislation on trafficking in persons acknowledge some forms of marriage, such as child and forced marriage, as purposes of exploitation. Other countries address these forms of marriage as separate offences outside of the trafficking in persons framework. Thus, in the interviews, when experts were specifically asked to describe examples in which marriage and trafficking in persons intersected, some described constellations of forced, abusive and exploitative marriages, without necessarily qualifying them as trafficking in persons. Accordingly, this paper, in chapter 4, provides insight into different constellations of forced, abusive and exploitative marriages in order to capture the cases discussed, without prematurely classifying them as instances of

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<sup>1</sup>The interviewees were representatives of governmental organizations, law enforcement authorities, academia and various international and non-governmental organizations. The countries covered in the study were Canada, Germany, Jordan, Kyrgyzstan, Malawi, Serbia, South Africa, Thailand and Viet Nam.

trafficking in persons. The discussion is based on the case examples and experiences with such cases as described by the interviewed experts. Chapter 5 then provides a legal analysis of cases that would qualify as instances of trafficking in persons and that could be identified as such, the main points of which are also included in the section below on policy implications.

It became apparent quite early in the drafting of this paper that trafficking in persons in the context of marriage is a particularly complex subject, owing to deeply ingrained cultural, religious and economic factors relating to the institution of marriage as practised and understood in certain parts of the world. Expert interviews and consultations during the expert meetings organized by UNODC helped to shed light on the challenges involved and identify some of the key characteristics of examples of forced, abusive and exploitative marriages that may have links to trafficking in persons.

## **Experts mainly described the victimization of women and girls**

Research presented in this paper shows clearly that women and girls, particularly those who are affected by different forms of gender discrimination and harmful practices, are more vulnerable to being victimized in forced, abusive or exploitative marriages. Factors that contribute to the vulnerability of women and girls include poverty, unemployment, violence and conflicts, circumstances which create situations where marriage is seen as a social obligation or a means for a better life. Experts noted that many of the victims come from disadvantaged family backgrounds and lack access to education. Moreover, harmful practices, covered by tradition, such as the paying of a bride price and bride kidnapping, may help create situations in which forced, abusive and exploitative marriages are more likely to occur.

The types of abuse and exploitation discussed by the experts were varied. Very often, they involved physical and sexual violence, in addition to exploitation taking place inside or outside the household. Examples included women and girls being abused and exploited sexually, in household work and in labour, and in some cases even in begging and criminal activities. In some examples, it seemed that victims had become very dependent on their husbands in multiple ways. In this regard, experts mentioned that underage wives were deemed as preferable because it was easier to “train” them and make them obey the family of the groom in serving them in the shared household. The abuse, violence and exploitation described by the experts was most commonly perpetrated by husbands, but sometimes also by in-laws and other relatives, as well as, in some cases, by the spouses’ acquaintances or other third parties, including clients purchasing sexual services or recruiters or abusive marriage brokers.

## **Crucial role of husbands and family members in the cases described**

In most cases, during different stages of forced, abusive or exploitative marriages, several actors were involved in the violence against and control of victims. This abuse, violence and control can link these marriages to trafficking in persons. More specifically, the influence and expectations of families can be essential in the marriage process, with parents having significant power in selecting spouses and organizing marriages. In some parts of the world, marriages are seen as a matter of importance for the whole family. In addition, sometimes, wedding agencies, brokers or other

middlemen are also involved in the process of uniting the bride and the groom, charging high fees for their services. In some countries, international wedding agencies and marriage brokers facilitate the migration of a marital partner to join the spouse at his or her home or country of residence. In the forced, abusive and exploitative marriages that were discussed by the experts, the husbands often employed various methods of control to limit the freedom of movement and choice of their spouses, using violence, threats and psychological pressure.

## **Few cases detected and even fewer convictions**

According to the 75 interviews, involving almost 150 participants, non-governmental organizations possessed more information on forced, abusive and exploitative marriages, compared with criminal justice authorities. Ultimately, only a small portion of cases were reported to the police. Many barriers to reporting victimization and experiences of exploitation were identified in the data collected in the interviews. Women and girls often found it difficult to seek help and disclose their experiences to authorities because of fear, stigmatization and shame. Furthermore, experts noted that marriage and anything related to it is often considered a private, family matter, which should not be discussed, even when domestic violence and abuse are involved. Victims were also afraid of losing the custody of their children, their residence permits or their homes as a result of their reporting. However, experts reported that victims frequently seek assistance from non-governmental organizations, often under other pretences. It has been reported by law enforcement experts that these cases are very complex, and authorities might therefore find it difficult to investigate and prosecute cases that take place in the context of marriage. Furthermore, the authorities often place the burden on the victims' testimony as the main evidence for the cases, which may be very stressful for the victims and discourage them from cooperating with the authorities.

## **Policy implications**

Owing to the open-ended list of types of exploitation contained in the Trafficking in Persons Protocol and the differences in national legislation, there is no one-size-fits-all approach to most effectively counter cases involving interlinkages between trafficking in persons and marriage. However, concrete policy implications based on the expert consultations and analyses undertaken for this issue paper may be considered with a view to addressing issues of prevention, legislation, investigation and prosecution, and protection and assistance, as well as the need for data collection. These policy implications are also aimed at increasing awareness among practitioners, fostering the application of international legal frameworks and strengthening opportunities to share good practices and lessons learned in victim protection and support.

## **Identifying the three elements of trafficking in persons**

The examples drawn from the data and information collected were analysed in the context of the Trafficking in Persons Protocol to determine if they could be addressed through an anti-trafficking framework. Interlinkages between marriage and trafficking in persons are particularly complex, which makes an analysis of the cases similarly complex.

The forced, abusive and exploitative marriages analysed in the research were found to have links to all three elements of trafficking as defined in the Trafficking in Persons Protocol: act, means and purpose. Firstly, marriage can be linked to recruitment. This is most commonly seen in situations where marriage is used as an instrument to bring a spouse to the destination country where she or he will be exploited either sexually, in domestic servitude or in forced labour. In many of the cases analysed, marriages could be linked to the transportation or transfer of the victim, for example, by the victim's family or third parties, to the spouse and his or her family's home. Furthermore, the spouse and family of the victim could be seen as receiving or harbouring the victim.

Secondly, marriage may be directly linked to certain means as defined in the Trafficking in Persons Protocol, such as abduction, fraud, deception, abuse of a position of vulnerability and the receiving of payments or gifts. Certain arrangements for marriage could themselves be deceptive and could be sought, for instance, only to conceal the intent and purpose of exploitation. In addition, in the marriage cases analysed in the research, various forms of coercion could be observed that were similar to cases of trafficking in persons related to other contexts. Subtle forms of coercion, including psychological pressure or oppression, are often used to ensure that the victims "consent" to the marriage in the first place. Control methods are then used to keep them in a situation of exploitation.

Thirdly, forced, abusive and exploitative marriages can be linked to the exploitative purposes of trafficking in persons. This last element lies at the heart of this paper and has been repeatedly emphasized by experts and practitioners as a major challenge in linking trafficking in persons and certain forms of marriage. More precisely, the question is: to what extent do abuse, violence and similar types of conduct within a marriage qualify as exploitation in the sense of the Trafficking in Persons Protocol? Countries have opted for different approaches in addressing this question. They can be broadly categorized as follows: (a) forced or child marriage<sup>ii</sup> (or similar types of marriages, depending on the national context) are included as explicit examples of exploitation in the national definition of crimes involving trafficking in persons; (b) forced and child marriage are subsumed under the concept of "practices similar to slavery" in the anti-trafficking legislation; and (c) forced and child marriage are understood by the national authorities to be subsumed under additional, broader forms of exploitation defined in anti-trafficking legislation that refer to human dignity being violated. In addition, the following two points may be relevant to consider in cases that involve both trafficking in persons and forced, abusive and exploitative marriages. First, sometimes trafficking in persons can occur in the context of a marriage, however, the marriage itself is not linked to any of the constitutive elements of the crime of trafficking in persons and should be seen as a contextual factor. And second, while some countries consider cases involving forced or child marriage and those involving trafficking in persons in separate national laws, aspects of these crimes may overlap. However, in such situations, a careful examination of the circumstances and of potential exploitation within the marriage should be conducted and might open the door to considerations under legislation on trafficking in persons, in accordance with points (b) and (c) above. There is no single proposed solution for all situations. Cases must be carefully examined and considered in accordance with a human rights-based, victim-centred and age- and gender-responsive approach. In this regard, States parties can make use of the open-ended nature of the forms of exploitation provided in the Protocol, which allows for flexibility in combating additional forms of trafficking as they emerge.

<sup>ii</sup>In this paper, the terms "early marriage" and "child marriage" are used interchangeably to refer to any marriage in which at least one of the parties is under 18 years of age. The terms are international designations that, in the context of this paper, are not dependent on the different domestic laws governing attainment of the age of majority.

## Accurate victim identification and referral to appropriate services

Whether or not certain criminal conduct is considered as trafficking in persons has serious implications for victims. In many countries, victims of trafficking are entitled to special services – often based on obligations deriving from international treaties – that might not be available in the context of other types of crime. It is therefore important for national authorities to ensure that, in cases of forced, abusive or exploitative marriages, consideration is also given to whether such conduct also fits within the framework of their anti-trafficking legislation. Doing so would ensure that victims receive the support and protection they are entitled to. Furthermore, trafficking crimes should imply harsher penalties for the perpetrators, which might contribute to deterrence and an overall approach that clearly sanctions these crimes. Therefore, criminal justice authorities should have the capacity to identify victims correctly to ensure that their rights are respected, without disregarding exploitation in the context of marriage as a private matter or treating the case exclusively as domestic violence when the case could actually be seen as one of trafficking in persons. It is important that the authorities focus on investigating the situation in its entirety and on a case-by-case basis, concentrating on the extent and forms of exploitation, the different control measures imposed on the victim, her dependency on the husband, as well as her real possibilities to leave the marriage, seek assistance and access justice in the face of such controls. Therefore, attention should be paid to all elements that render the person unable to leave the exploitative situation.

## Prevention

Ultimately, multifaceted prevention efforts are needed to address the phenomenon. In accordance with all UNODC responses to trafficking in persons, prevention measures must be human rights-based, gender- and age-responsive, as well as victim-centred. It is essential to collaborate with local communities, community leaders and families, as well as with youth and at-risk groups, including potential victims, as well as perpetrators, to increase awareness, share information and address the phenomenon on a structural and policy level. In particular, cases should not be disregarded as private, family matters. Civil society organizations should be included in a coordinated, multi-stakeholder response that offers protection, assistance and support to victims identified in the cases discussed, as well as in cases involving trafficking in persons more broadly. Finally, victim care organizations should continue to offer low-threshold opportunities for support.



# 1. Introduction

## 1.1 Mandate and international context of the issue paper

The United Nations Office on Drugs and Crime (UNODC) is mandated to assist Member States in countering illicit drugs, crime and terrorism. The work of UNODC is guided by a broad range of international treaties and instruments, which include, among others, the United Nations Convention against Transnational Organized Crime (Organized Crime Convention)<sup>1</sup> and its supplementing protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol), which is specifically relevant to the present issue paper. Additional relevant instruments include those constituting the United Nations standards and norms in crime prevention and criminal justice, in particular the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, and the Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice. In pursuing its objectives, UNODC follows a human rights-based approach and integrates a gender perspective throughout its work, in accordance with the 2030 Agenda for Sustainable Development and its Sustainable Development Goals. The 2030 Agenda emphasizes gender equality and the empowerment of women as cross-cutting in Sustainable Development Goal 5 and target 5.2, which calls on Member States to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. Other Sustainable Development Goals especially relevant in this regard are Goal 8, on decent work and economic growth, with target 8.7 calling for the taking of immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 to end child labour in all its forms; and Goal 16, on peace, justice and strong institutions, with target 16.2<sup>2</sup> calling for the ending of abuse, exploitation, trafficking and all forms of violence against and torture of children.

The work of UNODC on trafficking in persons requires, in particular, continuous research and consideration of emerging trends and practices in order to provide timely and effective policy guidance to Member States and other stakeholders in combating such trafficking. This includes the biennial UNODC *Global Report on Trafficking in Persons*, which is mandated by the General

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<sup>1</sup> General Assembly resolution 55/25.

<sup>2</sup> Indicator 16.2.2 measures the prevalence of trafficking in persons. UNODC is the custodian of this indicator.

Assembly under the United Nations Global Plan of Action to Combat Trafficking in Persons of 2010.<sup>3</sup>

The topic of the relationship between trafficking in persons and aspects of marriage is particularly complex and therefore merits a deeper exploration and discussion, as provided in this paper.

Article 3(a) of Trafficking in Persons Protocol defines trafficking in persons as constituting three elements: (a) an “action”, being the recruitment, transportation, transfer, harbouring or receipt of persons; (b) a “means” by which that action is carried out (the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent of a person having control over another person); and (c) a “purpose” (of the action and/or means): namely, exploitation. Exploitation is not specifically defined in the Protocol but is stipulated to 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. The definition further clarifies in article 3(b), that consent of the victim to the intended exploitation is irrelevant when any of these “means” have been used. All three elements (act, means and purpose) must be present to constitute trafficking in persons as per the Trafficking in Persons Protocol. The only exception is that, when the victim is a child, that is, a person under 18 years of age, the “means” element is not part of the definition.

In 2009, the Working Group on Trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime<sup>4</sup> identified a lack of clarity with respect to the definition of trafficking as an obstacle to the effective implementation of the international legal framework around trafficking in persons and recommended that UNODC prepare a series of issue papers to assist criminal justice officers in penal proceedings on subjects relating to critical concepts of the definition of trafficking in persons.<sup>5</sup> The first paper focused on the concept of “abuse of a position of vulnerability and other means” and was issued in 2012, along with a guidance note for practitioners. The second paper, which dealt with the topic of consent, was issued in 2014, together with a list of key considerations for practitioners. The third paper focused on the concept of exploitation and was published in 2015. In 2018, the findings of these papers were consolidated in an issue paper on the international legal definition of trafficking in persons.<sup>6</sup> The present paper builds on previous findings as outlined above and provides guidance on the possible interlinkages between trafficking in persons and marriage.

## 1.2 Purpose of the issue paper

This paper explores the extent and circumstances under which different forms of marriage may fall within the scope of the Trafficking in Persons Protocol. This is important because qualifying a particular type of conduct as trafficking in persons has extensive consequences for both alleged

<sup>3</sup>General Assembly resolution 64/293, annex.

<sup>4</sup>Article 32 of the Organized Crime Convention establishes a Conference of the Parties to the Convention, to improve the capacity of States parties to combat transnational organized crime and promote and review the implementation of the Convention.

<sup>5</sup>Report on the meeting of the Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, (CTOC/COP/WG.4/2009/2), 21 April 2009, para. 7.

<sup>6</sup>UNODC, “The international legal definition of trafficking in persons: consolidation of research findings and reflection on issues raised – issue paper” (Vienna, 2018).

perpetrators and victims of that crime. For the alleged perpetrator, trafficking in persons constitutes a crime that triggers serious penalties, and alleged victims have particular rights, which include access to specific protection, assistance and support, as required by the Protocol.

Thus, this paper explores how some forms of marriage are connected to trafficking in persons. The research draws on a desk review and primary data collection based on case studies and 75 expert interviews conducted in nine countries. The focus is on examining the ways in which marriage and trafficking intersect, and what types of social and other practices might somehow foster conduct that results in trafficking in persons. The paper also examines issues relating to the identification of victims, as well as assistance to and protection of victims.<sup>7</sup>

In addition, the paper analyses the key characteristics of forced, abusive and exploitative marriages<sup>8</sup> in the context of the Trafficking in Persons Protocol in order to identify the act, means and purpose in cases encountered in the course of the research. This includes a discussion on the extent to which some types of marriages that entail exploitation may constitute a form of trafficking in persons in themselves, and to what extent marriage may be a “facilitator” for trafficking in persons.

Lastly, the paper recommends certain actions that concerned countries can take to detect, investigate and prosecute perpetrators and to identify, support and assist victims of marriage-related trafficking in persons. Overall, the policy implications seek to enhance operational responses to trafficking in persons. It is also expected that the findings and recommendations of this research will contribute to clarifications of concepts and an improved understanding of the provisions of the Trafficking in Persons Protocol, which will, in particular, help to more effectively address the crime and improve victim assistance, protection and support.

### 1.3 Structure of the issue paper

The executive summary outlines the main findings of this issue paper. The issue paper itself is divided into six chapters.

The first part of the issue paper, comprising chapters 1 and 2, provides background information. Chapter 1 provides the broader context, mandate and purpose of this issue paper. Chapter 2 describes the methodology, including the desk review, the country missions and expert interviews, as well as the expert review conducted as part of an international expert group meeting.

In chapter 3, the legal framework for the issue paper is described, outlining relevant international instruments related to trafficking in persons and marriage, as well as their interconnections.

The detailed findings and an analysis of the in-depth expert consultations are presented in chapter 4, focusing on the key characteristics of the cases discussed. It outlines issues related to gender, factors of vulnerability, involved parties and measures of control, as well as responses taken. This chapter serves as the foundation for a broader consideration of issues and aspects of interlinkages between trafficking in persons and marriage in the following chapter.

<sup>7</sup> See the interview tool in annex I.

<sup>8</sup> This issue paper uses the term “forced, abusive and exploitative marriages” to refer to the variety of different characteristics of the marriage cases described by experts, without prematurely defining them as trafficking in persons or another specific type of crime such as forced marriage, domestic violence or other forms of exploitation.

Chapter 5 provides a legal analysis of the potential interlinkages between trafficking in persons and types of marriage. The legal analysis is based on the three elements of trafficking in persons as defined in the Trafficking in Persons Protocol.

Lastly, chapter 6 outlines conclusions drawn from the findings and presents some policy implications. The chapter provides guidance on policy and practice regarding an effective response to trafficking in persons cases that intersect with marriage, including child and forced marriage. This guidance and the resulting policy implications are founded in existing international law, human rights obligations, and relevant resolutions, conventions and recommendations by other United Nations actors.

## 2. Methodology

The methodology undertaken for this issue paper includes the following three components: (a) a desk review; (b) country missions and expert interviews; and (c) an expert review, the validation of findings and the development of policy implications, as part of an international expert group meeting. The methodology was designed to capture interlinkages between trafficking in persons and marriage, identifying challenges, lessons learned and good practices during expert interviews with counterparts mainly from legal, judicial and victim assistance authorities, as well as civil society actors and academic experts, from nine different Member States.

### 2.1 Desk review and preparatory research

The desk review was the first step in the research methodology. The topic was approached broadly; in addition to reviewing known and recorded cases of trafficking for the purpose of forced marriage, the analysis was extended to cases and literature relating to marriages and trafficking to capture wider issues relating to these phenomena, such as gender-based violence and migration strategies. A large variety of sources were used, including relevant UNODC tools and publications such as the existing issue paper on concepts of the trafficking in persons definition,<sup>9</sup> the Human Trafficking Case Law Database on the SHERLOC knowledge management portal, the publication *Evidential Issues in Trafficking in Persons Cases: Case Digest* and the biennial *Global Report on Trafficking in Persons*, as well as reports from national and other international organizations, academic articles and newspaper articles. The previous work of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) on the links between human trafficking and exploitative sham marriages,<sup>10</sup> with a geographic focus on five selected European countries, also provided insights on potential interlinkages between trafficking in persons and marriage.<sup>11</sup> Furthermore, the UNODC *Global*

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<sup>9</sup>UNODC, “The international legal definition of trafficking in persons”.

<sup>10</sup>The term “exploitative sham marriage” refers to sham marriages that involve elements of exploitation. See the definition provided on page 19 of Minna Viuhko, A. Lietonen, A. Jokinen and M. Joutsen, *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*. European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) (Helsinki, 2016). Available at <http://humantraffickingsearch.org/wp-content/uploads/2017/07/ShamMarriagesEU.pdf>.

<sup>11</sup>Ibid.

*Report on Trafficking in Persons 2018*<sup>12</sup> recorded forced marriage as a specific form of exploitation in a dozen countries across all regions. Forced marriage as a purpose of exploitation was particularly evident in conflict situations and subsumed under trafficking in persons for “other” purposes, which was reported to be more difficult to detect than trafficking for the purposes of sexual exploitation or forced labour. The materials were used to form an overview of different and relevant patterns of trafficking in persons in relation to marriage at the global and regional levels. The findings of the review facilitated the further development of the methodology, in particular the development of the questionnaire used in conducting the semi-structured expert interviews. The findings of the desk review were also used to inform destinations for the country missions.

## 2.2 Country missions and expert interviews

Information was collected from experts using a semi-structured interview tool on marriage and trafficking (see annex I). Experts were selected with the assistance of the UNODC field office network and relevant permanent missions in Vienna. The tool included a series of questions on the experience and understanding of the phenomena in general, and more specific questions on child, forced and sham marriages in relation to trafficking in persons, the forms of exploitation taking place in the context of these marriages, the victims, the perpetrators and their *modi operandi*, the organization of marriages, the existing legal frameworks, the detection and investigation of cases, their prosecution and sentencing, access to protection, assistance and support for victims and, lastly, prevention. The interview data was supplemented by reports, case examples and court decisions received from the interviewees, as well as the data from the desk review and input from experts during the expert group meeting.

### 2.2.1 Interview procedure

During the interviews, respondents were asked to present and describe examples of trafficking cases involving an aspect of marriage. Most of the interviews were conducted by 1 or 2 researchers from HEUNI, together with an expert from UNODC.<sup>13</sup> In addition to the members of the research group, a local contact person and/or an interpreter participated in some of the interviews.

The choice of countries visited was informed by the desk review, with the aim of complementing and elaborating information collected during the review. The focus was on countries that were known to have at least some information on forced, sham and/or child marriage, Member States that were already engaged in combating trafficking in persons, countries where HEUNI and/or UNODC had standing partnerships, and where it was expected that it would be possible to identify and gain access to key stakeholders. The aim was to cover countries from different parts of the world, highlighting different interlinkages between and aspects of trafficking in persons and marriage. The States that participated in the process were identified following consultations with Member States with a view to maintaining geographical balance and including experience

<sup>12</sup>UNODC, *Global Report on Trafficking in Persons 2018* (New York, 2018). Available at [www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf).

<sup>13</sup>Some of the interviews (in Canada and by phone) were carried out only by the HEUNI researcher(s), and some (in Germany) by UNODC experts only.

from different regions and legal systems. The project included country missions to Canada, Germany, Jordan, Kyrgyzstan, Malawi, Serbia, South Africa, Thailand and Viet Nam. Respondents were chosen to represent a range of practitioners that might have had exposure to such conduct, including legal and judicial authorities, representatives from non-governmental organizations, experts from other international organizations, as well as academic and independent experts (see annex II for further information on the country missions).

Altogether, 75 interviews, involving almost 150 participants,<sup>14</sup> were carried out. UNODC made use of its field office network and its close relationship with the relevant permanent missions in Vienna in order to identify and request the participation of prospective interviewees in the research. The interviews were conducted in English or through an interpreter. Meetings in Germany were conducted in German. Most of the interviews were recorded, with the informed consent of the interviewees. When no consent was given for audio recordings, written notes were taken. The recorded interviews were transcribed, and the transcriptions and the interview notes from the non-recorded interviews were coded using a qualitative data analysis tool, identifying patterns and themes in the data. In addition, interviewees provided relevant reports, case examples and court decisions.

### 2.2.2 The strengths and weaknesses of the data collected

The data collection was focused on trafficking experts from academia and civil society, and legal and judicial authorities. The data collection focused on experts working in the field of anti-trafficking. In addition, experts who had information on child and/or forced marriages were interviewed to some extent.

The respondents had varied levels of knowledge and awareness of child and forced marriage and their possible links to trafficking in persons. Some experts were very much aware of the phenomena, while others had not made any connections between marriages and trafficking in persons in their line of work, or had not encountered any relevant cases.

Because of the close and sometimes more informal relationships with potential trafficking victims, the representatives of victim assistance organizations and other non-governmental organizations in many of the countries were aware of different cases in which trafficking in persons and marriage had overlapped. This was an important and balancing perspective. It is at least partly explained by the fact that, owing to the sensitive and gendered nature of the phenomenon, many victims (adults and children) are reluctant to disclose their experiences to authorities, which means that relevant cases might not come to the attention of criminal justice professionals in the first place.

It is clear that the data are, to some extent, biased and it is impossible to get a detailed and comprehensive overview of the phenomenon of trafficking in persons and its linkages with marriage merely by conducting nine country missions and a relatively small number of interviews. Given the time and resources available, it was possible to visit 1 to 2 countries per continent, and thus many countries of relevance could not be included in the data collection process. Some of the interviews were conducted through an interpreter. All interviews were recorded either by means of audio recordings or written notes.

<sup>14</sup>Some meetings brought together several stakeholders, and interviews were consequently conducted with several counterparts.

The data collection did not include interviews with victims or perpetrators, owing to resource and ethical issues. Moreover, it should be noted that representatives of different minority groups were not interviewed. These shortcomings have, of course, an impact on the content of the data and some relevant views may thus be lacking.

Nevertheless, the interview data are rich in detail with regard to the topic of forced, sham and child marriage and trafficking in persons in general. Moreover, tens of relevant case examples, as well as promising practices, can be identified by means of the data. Moreover, the reliability of the data is strengthened by the fact that many interviewees in each country described similar issues and features of the phenomena under discussion. The data, however, are not necessarily relevant for concluding anything about the prevalence of marriage and trafficking; however, this was not the aim of the project in the first place. In that regard, the data collected in the current study may inform future research endeavours.

### 2.3 Expert group meeting

An expert group meeting<sup>15</sup> was organized from 19 to 20 November 2018 in Vienna at UNODC headquarters. Participants were selected on the basis of conducted interviews, as well as with the assistance of the UNODC field office network and the relevant permanent missions in Vienna. The participants in the expert group meeting were from different countries, including the countries where the interviews were conducted, and represented different sectors and fields of expertise. Owing to the complicated nature of the topic and the fact that the phenomena had not previously been explored at the global level, a wide range of experts were consulted, including social scientists, criminal lawyers, government officials, staff members of non-governmental organizations and academics. The draft issue paper was submitted to the experts before the meeting for their consideration and review.

The meeting included presentations from various stakeholders and both structured and free-form discussions on specific topics in small groups and plenary sessions. Experts were also asked to prepare in advance case examples to be discussed in the meeting. The expert group meeting also served the purpose of providing additional information and feedback regarding the findings outlined in the draft issue paper. Comments made by the experts and discussions in the expert group meeting informed the final text of the issue paper. Conclusions and good practices were revised in accordance with the findings of the expert group meeting and the feedback received on the draft paper.

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<sup>15</sup>This is part of the standard methodology of UNODC issue papers. The expert group meetings do not follow the format of intergovernmental expert meetings but rather are informal and focused on seeking feedback and further input on the draft issue paper from selected international experts who do not necessarily represent the views of their governments and do not serve in an official capacity.

# 3. International legal and policy framework

This chapter presents the international instruments relevant to this issue paper.<sup>16</sup> The materials discussed relate to trafficking in persons, intersections of marriage and trafficking, as well as marriage conduct that violates human rights, including child and forced marriage. This legal and policy framework provides the foundation for considerations concerning possible intersections of marriage and trafficking in persons, as well as for the legal analysis in chapter 5.

## 3.1 Trafficking in persons in international law

The present section outlines the main international instruments relevant to trafficking in persons, providing the definition of the crime, the legal framework for the international response to it and, in particular, the obligations of States concerning victims' rights.

### ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children***

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, was adopted in 2000 by the General Assembly in its resolution 55/25 and entered into force on 25 December 2003. It was the first international treaty to provide a definition of trafficking in persons. As of October 2018, 173 parties had ratified or acceded to the Protocol.<sup>17</sup> Its purpose is to prevent and combat trafficking in persons, to protect and assist the victims of such crime, and to promote cooperation among States parties in order to meet those objectives (article 2). According to the Protocol:

“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

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<sup>16</sup>References to regional and national instruments and legislation are not included in this chapter.

<sup>17</sup>United Nations, Treaty Collection 2018. Available at [treaties.un.org](https://treaties.un.org)

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.

The crime of trafficking in persons is thus defined as consisting of three elements (the act, the means and the purpose), except for child trafficking, where no means element is required. The Trafficking in Persons Protocol further specifies that a victim's consent to the intended exploitation is irrelevant when any of the means have been used. It does not include an exhaustive list or definition of the forms of exploitation, but instead provides a minimum list of forms of exploitation. Marriage is not specifically mentioned as part of the definition of trafficking or in any other provision of the Protocol. Nevertheless, taking advantage of the flexibility provided by the non-exhaustive list of purposes of exploitation, some countries have chosen to explicitly refer to forced and child marriage as forms of exploitation in their national anti-trafficking legislation. It will be useful to briefly consider the negotiations that were held on the exact terminology in preparing the final text of the Trafficking in Persons Protocol.<sup>18</sup>

### ***Travaux préparatoires***

In particular, the preparatory documentation reveals the issues around particular types of marriage conduct that were discussed during the negotiations for the Protocol. At the second session of the negotiations, two delegations suggested that the term “forced labour” should include cases of “forced marriage” or “marriage of convenience”.<sup>19</sup> At the fourth session of the negotiations, the Special Rapporteur on violence against women, its causes and consequences suggested that the Protocol should include the trafficking of persons into slavery-like conditions, in order to encompass trafficking for domestic work, forced marriages and forced motherhood, which were not traditionally encompassed under the term “forced labour”.<sup>20</sup> Also, at the ninth session, there was a discussion on whether specific forms of exploitation, including forced marriage, should be listed in the Protocol.<sup>21</sup> In the end, it was decided that the Protocol would provide an open-ended list rather than specify all possible forms of exploitation. While the Trafficking in Persons Protocol does not mention marriage or forced and child marriage as forms of exploitation, its open-ended list of forms of exploitation was specifically designed to be inclusive of new forms of trafficking as they arise.

Certain forms of exploitation mentioned in the Trafficking in Persons Protocol, for example, forced labour or services,<sup>22</sup> slavery and practices similar to slavery,<sup>23</sup> have been defined elsewhere in international law.

<sup>18</sup>The *travaux préparatoires* are the official records of the negotiations of the Organized Crime Convention (General Assembly resolution 55/25, annex I) and its three supplementary Protocols, including the Trafficking in Persons Protocol. They outline the progress of the negotiations by States and provide a comprehensive picture of the evolution of the texts, to offer the reader a better understanding of the issues faced by the Ad Hoc Committee and the solutions it found.

<sup>19</sup>UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (New York, 2006), p. 333.

<sup>20</sup>*Ibid.*, p. 334.

<sup>21</sup>*Ibid.*, p. 334.

<sup>22</sup>International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29).

<sup>23</sup>Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

### ***Supplementary Convention on the Abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery of 1956***

Although slavery was first defined in the Slavery Convention of 1926,<sup>24</sup> as well as in the 1953 Protocol amending the Slavery Convention,<sup>25</sup> the Supplementary Convention on the Abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery of 1956<sup>26</sup> defines slavery in a more comprehensive way. Thus, in its article 1, slavery is defined as the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. In this regard, the UNODC Model Law against Trafficking in Persons clarifies that this definition might be rather challenging today, as there can be no rights of ownership for one person over another, and it offers a definition that instead requires that the person is treated like property.<sup>27</sup>

The Supplementary Convention on the Abolition of Slavery furthermore specifies four practices as being similar to slavery, including “servile forms of marriage” as “any institution or practice whereby: (a) 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 (b) 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 (c) a woman on the death of her husband is liable to be inherited by another person”. It also identifies the practice (similar to slavery) of the “sale of children for exploitation” as “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both 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”.

### ***Forced Labour Convention, 1930 (No. 29)***

The Trafficking in Persons Protocol refers to forced labour as one form of exploitation. Forced labour is defined in the International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), which prohibits the illegal exaction of forced or compulsory labour. According to article 2 of the Convention, forced labour or services shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. ILO has listed the following conditions that could point to a forced labour situation:

- Physical or sexual violence or the threat of such violence
- Restriction of movement of the worker, e.g., through confinement or by preventing contact with the host community
- Debt bondage or bonded labour, e.g., arising from the process of recruitment and transportation
- Withholding wages or refusing to pay the worker at all
- Retention of passports and identity documents
- Threat of denunciation to the authorities<sup>28</sup>

<sup>24</sup>League of Nations, Convention to Suppress the Slave Trade and Slavery, 25 September 1926, 60 League of Nations Treaty Series 253, Registered No. 1414.

<sup>25</sup>General Assembly resolution 794(VIII).

<sup>26</sup>Economic and Social Council resolution 608(XXI).

<sup>27</sup>UNODC, *Model Law against Trafficking in Persons* (2009), p. 21.

<sup>28</sup>ILO, *Human Trafficking and Forced Labour Exploitation: Guidelines for Legislation and Law Enforcement* (Geneva, 2005), pp. 20–21.

Many of those situations could also be indicators of trafficking in persons.

Instruments such as the Universal Declaration of Human Rights,<sup>29</sup> the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>30</sup> and the 2030 Agenda for Sustainable Development,<sup>31</sup> which will be outlined in the following sections, also contain provisions relevant to trafficking in persons.

### ***Universal Declaration of Human Rights***

Article 4 of the Universal Declaration of Human Rights establishes that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”. Furthermore, as human rights are universal, victims of trafficking are entitled to the full range of human rights, irrespective of their sex, age, race, ethnic origin, nationality, migratory status or other distinction. International human rights law also recognizes that certain groups, such as women and children, may require additional or special protection. Human rights are also fundamental in addressing the conditions and vulnerabilities that lead to trafficking. A human rights-based approach to trafficking in persons places the victim and his or her rights at the centre of any response. It also considers the root causes that can bring about trafficking, foster impunity for traffickers and deny justice to victims; root causes such as patterns of discrimination, unjust distribution of power, demand for goods and services derived from exploitation, and the complicity of the public sector. The human rights-based approach also acknowledges that States have obligations to protect and promote the rights of all persons within their jurisdiction, including non-citizens.

### ***Convention on the Elimination of All Forms of Discrimination against Women***

Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) calls upon States parties to “take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”. Moreover, the Committee on the Elimination of Discrimination against Women defines trafficking in persons as gender-based violence, as many of the root causes are based in discrimination against women. Gender-based violence is defined in General Recommendations 1932 and 3533 of the Committee. Its elimination is addressed as an overarching goal. Therefore, articles beyond article 6 are relevant for consideration when addressing trafficking in persons as gender-based violence and a human rights violation.

### ***International standards and norms in crime prevention and criminal justice***

Specific provisions on trafficking in persons are also included in the main international instruments concerning crime prevention and criminal justice responses to violence against

<sup>29</sup> General Assembly resolution 3/217.

<sup>30</sup> General Assembly resolution 34/180.

<sup>31</sup> General Assembly resolution 70/1.

<sup>32</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19: Violence against women (1992).

<sup>33</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017).

women and violence against children, adopted by the General Assembly with the consensus of all United Nations Member States. The updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice<sup>34</sup> call on Member States to criminalize trafficking in persons, particularly of women and girls (para. 14(c)(vi)); ensure that all services and legal remedies available to victims of violence against women are also available to trafficked women (para. 18(j)); ensure that criminal justice officials are adequately trained to identify and respond appropriately to the specific needs of women victims of violence, including victims of trafficking (para. 20(c)); refrain from unduly penalizing victims of violence who have been trafficked (para. 18(k)); and provide for the safe, voluntary repatriation and reintegration of women victims of violence who have been trafficked across borders.

The Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice<sup>35</sup> call on Member States to criminalize trafficking in children (para. 11(d)), to prevent the risk of violence associated with trafficking in children and various forms of exploitation by criminal groups (para. 15) and to provide services and specific measures to sever relationships with traffickers for children who are unaccompanied, migrants, refugees or asylum seekers (para. 17).

### 3.2 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development and its Sustainable Development Goals,<sup>36</sup> which are interconnected and must be implemented in a coordinated and complementary way, emphasize under Goal 17 partnerships for sustainable development, including in combating trafficking in persons. Out of the 17 Sustainable Development Goals, trafficking in persons is specifically mentioned under the following three goals: Goal 5 (gender equality), with target 5.2 seeking to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; Goal 8 (decent work and economic growth), with target 8.7 being to take immediate action and effective measures to eradicate forced labour, end modern slavery and human trafficking; and Goal 16 (peace, justice and strong institutions), with target 16.2 being to end abuse, exploitation and all forms of violence against and torture of children. However, many other Sustainable Development Goals and related targets are relevant to addressing trafficking in persons, since they are closely connected to development issues such as poverty, lack of education, child labour, abuse and exploitation, gender inequality and discrimination, migration and the effects of climate change. Furthermore, target 16.4 specifically calls upon Member States to “combat all forms of organized crime” and target 17.9 calls on Member States to “enhance international support for implementing effective and targeted capacity-building”, which are both highly relevant to tackling trafficking in persons.

As outlined above, when trafficking in persons concerns women and girls, it is also considered as violence against women. This has been established in numerous international resolutions, conventions and policy guidance materials.<sup>37</sup> As recognized by the General Assembly, violence against women is often embedded in and supported by social values, cultural patterns and

<sup>34</sup> General Assembly resolution 65/228, annex.

<sup>35</sup> General Assembly resolution 69/194, annex.

<sup>36</sup> General Assembly resolution 70/1.

<sup>37</sup> See, for example, General Assembly resolution 48/104.

practices.<sup>38</sup> It is therefore essential that States comply with international human rights obligations, commitments and principles, including when addressing trafficking in persons.

Forced, early and child marriage<sup>39</sup> are also considered as practices harmful to women. The international legal frameworks and agreements on marriage are outlined in the following section.

### 3.3 International law relating to marriage

Marriage is mainly regulated in national law, including the legal age of marriage, how marriages are officiated and registered, as well as crimes relating to marriage such as forced marriage and sham marriages,<sup>40</sup> which are defined in criminal and procedural law. As outlined above, some national legislation on trafficking in persons may also relate to specific forms of exploitation related to marriage, including child marriage, forced marriage and forced pregnancy (e.g., in Australia, Colombia, Namibia, the Philippines, South Africa, Uganda and the United Republic of Tanzania). However, human rights treaties and obligations are essential when considering marriage and, in particular, human rights violations facilitated by certain forms of marriage such as child or forced marriage. Therefore, the present section refers to relevant human rights treaties and United Nations conventions and resolutions that specify certain types of marriage as forms of violence or crime.

#### *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights<sup>41</sup> provides for the right of women and men of full age to get married and enjoy the same rights during, as well as after, the marriage. It also emphasizes the free will and full consent of the intending spouses and states accordingly in its article 16:

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to 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 spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

<sup>38</sup>General Assembly resolution 65/228.

<sup>39</sup>In this paper, the terms “early marriage” and “child marriage” are used interchangeably to refer to any marriage in which at least one of the parties is under 18 years of age. The terms are international designations that, in the context of this paper, are not dependent on the different domestic laws governing attainment of the age of majority.

<sup>40</sup>There is no internationally agreed definition for sham marriage. However, sham marriage has been defined in national legislation throughout the world as a violation against the State. The definitions vary by jurisdiction. On the basis of existing national legislation (e.g., Home Office of the United Kingdom, 2015), for the purpose of this paper, sham marriage is considered as a legally officiated marriage that has been entered into with no intention of creating a marital relationship and living as spouses. This is usually linked to gaining an advantage based on the legal status of being married, very often linked to immigration. The “sham” part of the definition is thus related to the motivation to enter into the marriage, not the initial legal officiation of the marriage.

<sup>41</sup>General Assembly resolution 217(III).

### ***Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962***

The Convention on Consent to Marriage<sup>42</sup> outlines the obligations of States to ensure the full and free consent of the two parties to a marriage, to determine a legal minimum age for marriage and to regulate the official registration of marriages, establishing civil and criminal law to address any violations or shams.

#### Article 1

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 after due publicity and in the presence of the authority competent to solemnize the marriage and of witnesses, as prescribed by law.
2. Notwithstanding anything in paragraph 1 above, it shall not be necessary for one of the parties to be present when the competent authority is satisfied that the circumstances are exceptional and that the party has, before a competent authority and in such manner as may be prescribed by law, expressed and not withdrawn consent.

#### Article 2

States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. 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 interest of the intending spouses.

#### Article 3

All marriages shall be registered in an appropriate official register by the competent authority.

However, in many cases globally, these prerequisites outlined in the Convention on the Consent to Marriage are not fulfilled and realized. Thus, the following sections examine international treaties, conventions and resolutions that consider marriage when the consent, minimum age and freedom to enter, or not enter, into a marriage are not upheld.

### ***Convention on the Elimination of All Forms of Discrimination against Women***

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>43</sup> requires States parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations, and in particular to ensure, on the basis of the equality of men and women, the same right to enter into marriage and the same right to freely choose a spouse and to enter into marriage only with the free and full consent of the spouse. The Convention also provides that the betrothal and marriage of a child shall have no legal effect and that all necessary action, including legislative action, must be taken to specify

<sup>42</sup>General Assembly resolution 1763(XVII).

<sup>43</sup>General Assembly resolution 34/180.

a minimum age for marriage and to make the registration of marriages in an official registry compulsory. These points are specifically outlined in article 16 of CEDAW.

Furthermore, General Recommendation No. 21 of 1994 of the Committee on the Elimination of Discrimination against Women<sup>44</sup> relates to equality in marriage and family relations. It affirms the equality of human rights for women and men in society, as well as in the family. This is seen as essential to life, dignity and equality as human beings. The General Recommendation further emphasizes that it is a woman's right to choose when, if and whom she will marry, and that this right should be protected and enforced by national law. It is also explained that women are entitled to decide on the number of children they have and the time interval between them. Furthermore, women should have access to information about contraceptive measures and family planning services. The General Recommendation concludes by stating that women's responsibility to have, bear and raise children affects their right of access to education, employment and other activities related to their personal development. In paragraphs 36 to 38 the General Recommendation clearly argues that the minimum age for marriage should be 18 for both men and women. This has also been re-emphasized recently in the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) multi-stakeholder strategy on equality in law for women and girls by 2030.<sup>45</sup>

### ***Convention on the Rights of the Child***

The Convention on the Rights of the Child (CRC)<sup>46</sup> does not specifically mention child marriage, but it does state that all appropriate measures should be taken to “abolish traditional practices prejudicial to the health of children” and references other children's rights that are connected to child marriage, such as the right to freedom of expression and the right to protection from all forms of abuse. According to CRC, a child is anyone under the age of 18, unless, under the law applicable to the child, majority is attained earlier. Thus, individual States have the possibility to prescribe a lower legal age limit as a condition for acquiring adulthood. (As mentioned before, the Trafficking in Persons Protocol states explicitly that, for its purposes, “child” shall mean any person under 18 years of age.)

The Joint CEDAW-CRC General Recommendation No. 31-No. 18<sup>47</sup> on harmful practices asserts that forced marriage necessarily encompasses child marriage, owing to the inability of children to give their free and full consent to marry. It reiterates the importance of issuing and implementing laws establishing 18 years as the minimum age to enter into marriage.

### ***Forced marriage in international law***

There is no international legal definition of forced marriage. However, several resolutions and technical papers by United Nations bodies have considered forced marriage and child marriage as human rights violations.

<sup>44</sup> Available at [www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21](http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom21).

<sup>45</sup> Available at [www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/equality-in-20law-for-women-and-girls-en.pdf?la=en&vs=5600](http://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2019/equality-in-20law-for-women-and-girls-en.pdf?la=en&vs=5600)

<sup>46</sup> General Assembly resolution 44/25.

<sup>47</sup> CEDAW/C/GC/31-CRC/C/GC/18.

The General Assembly of the United Nations has in several resolutions called for action against forced marriage, as well as child and early marriage (e.g., General Assembly resolutions 67/145 of 2012, 68/148 of 2014, 69/194 of 2015 and 73/153 of 2019).<sup>48</sup> In the resolutions on child, early and forced marriage of 2014, 2017 and 2018, the General Assembly declared that forced marriage is a harmful practice that violates, abuses and impairs human rights and is linked to and perpetuates other harmful practices and human rights violations and that such violations have a disproportionately negative impact on women and girls.<sup>49</sup> The resolutions also emphasize that poverty, insecurity and lack of education are among the root causes of child, early and forced marriage, and that child, early and forced marriage remains common in rural areas and among the poorest communities.<sup>50</sup>

The Office of the United Nations High Commissioner for Human Rights (OHCHR) has consistently raised concerns about child, early and forced marriage, as “a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence”. OHCHR explains the reason a child marriage is considered to be a forced marriage:

Definition: Child marriage, or early marriage, is any marriage where at least one of the parties is under 18 years of age. Forced marriages are marriages in which one and/or both parties have not personally expressed their full and free consent to the union. A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent.<sup>51</sup>

Therefore, the Human Rights Council called for strengthened efforts to prevent and eliminate child, early and forced marriage.<sup>52</sup>

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment notes that child and forced marriage is a “form of gender-based violence that could constitute ill-treatment and torture”.<sup>53</sup>

As can be seen from the above discussion, there is a growing recognition that the minimum age for marriage for both parties should be set at 18 years. Some United Nations entities consider child marriage as a form of forced marriage, though forced marriage is broader in scope. Despite international law<sup>54</sup> that allows Member States to choose the legal age for marriage under 18 years of age, recent United Nations recommendations point to considerations of child marriage as a harmful practice that should be abolished.

<sup>48</sup>Most recently, the General Assembly adopted resolution 73/153, on child, early and forced marriage.

<sup>49</sup>General Assembly resolutions 69/156, 71/175 and 73/153.

<sup>50</sup>Ibid.

<sup>51</sup>Office of the United Nations High Commissioner for Human Rights (OHCHR), “Child, early and forced marriage, including in humanitarian settings”. Available at [www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx](http://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx).

52A/HRC/24/L.34/Rev.1.

53A/HRC/31/57.

<sup>54</sup>General Assembly resolution 1763(XVII).

### 3.4 Connections between trafficking in persons and marriage identified by international bodies

This issue paper explores interlinkages between trafficking in persons and forms of marriage. As discussed above, the Trafficking in Persons Protocol does not specifically include forced marriage or child marriage as a form of exploitation. However, some countries have reported on trafficking in persons for forced or child marriage. Furthermore, UNODC research on trafficking in persons in armed conflict has identified the risk for women and girls to be exploited in marriages, also linked to sexual slavery, as a specific form of exploitation. The report of the Secretary-General on trafficking in persons in armed conflict pursuant to Security Council resolution 2388 outlines that trafficking in persons continues to be increasingly identified as a feature of armed conflict.<sup>55</sup> The cycles of violence that animate conflict often enable abuse, exploitation and crime to thrive, enabling the base conditions under which trafficking can flourish. The report explicitly states that instances of forced marriage, sexual slavery and forced prostitution, which have long been a feature of many conflict situations, may at the same time qualify as forms of trafficking in persons.<sup>56</sup>

In addition, Sustainable Development Goal 5 of the 2030 Agenda for Sustainable Development, which calls for gender equality and the empowerment of women, refers to trafficking in persons and child, early and forced marriage as forms of violence against women. In 1995, the Fourth World Conference on Women adopted the Beijing Declaration and Platform for Action,<sup>57</sup> which recommended detailed action to be taken by Member States against violence against women, including trafficking in women, in particular “appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialized sex, forced marriages and forced labour in order to eliminate trafficking in women”, linking considerations on trafficking with forced marriages.

Furthermore, the Trafficking in Persons Protocol mentions “practices similar to slavery” as a form of exploitation. According to the Supplementary Convention on the Abolition of Slavery of 1956,<sup>58</sup> “practices similar to slavery” encompass debt bondage, the sale of children for exploitation, serfdom and servile forms of marriage. These forms of marriages are defined as follows:

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.

<sup>55</sup> Security Council resolution 2388 (2017).

<sup>56</sup> Security Council resolution 1042 (2018).

<sup>57</sup> A/CONF.177/20 (1995).

<sup>58</sup> Economic and Social Council resolution 2889.

This has also been explored in the UNODC issue paper on exploitation.<sup>59</sup> It was noted in the issue paper, however, that this definition of slavery-like practices does not include forced marriage when understood as a union of two persons of whom at least one has not given their full and free consent to the marriage. The paper goes on to explain that in some States the concept of sexual exploitation has been interpreted to include practices such as forced or servile marriage. Furthermore, while the international legal understanding of “practices similar to slavery” includes servile marriage, this is not understood well in most States and many practitioners surveyed expressed unease and uncertainty around the issue of marriage and trafficking in persons. They were generally unaware that servile marriage is presumed to be included in the scope of their anti-trafficking legislation under practices similar to slavery.

Furthermore, the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, describes child marriage as a form of “forced marriage that places children at high risk of child servitude and other slavery-like practices and can in certain cases constitute slavery”.<sup>60</sup>

These international legal and policy frameworks for the consideration of linkages between trafficking in persons and marriage serve as the basis for the legal analysis presented in chapter 5 of this issue paper. The next chapter analyses the case examples discussed with experts, highlighting key characteristics of the cases discussed.

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<sup>59</sup> UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol* (Vienna, 2015). Available at [www.unodc.org/documents/congress/background-information/Human\\_Trafficking/UNODC\\_2015\\_Issue\\_Paper\\_Exploitation.pdf](http://www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf).

60A/HRC/27/53.



## 4. Key characteristics of cases described by experts

The present chapter describes the views of experts in relation to interlinkages between trafficking in persons and marriages explored during expert interviews and the expert group meeting. Characteristics of those examples are analysed<sup>61</sup> to describe the phenomenon as encountered by the experts and to demonstrate the broad context in which it manifests itself around the world. A full legal analysis of this phenomenon in the framework of the Trafficking in Persons Protocol is provided in the following chapter.

The different issues that have emerged and the approaches towards them as described by experts have been grouped under the following main categories: (a) aspects and issues related to gender, including harmful practices and stereotypes; (b) situations and conditions that make people vulnerable to abuse and exploitation; (c) the parties involved and measures of control; (d) abusive, violent and exploitative marriages;<sup>62</sup> and lastly (e) the inadequacy of responses by multiple stakeholders such as criminal justice actors, civil society, family members and community leaders.

In the interviews, experts were specifically asked to describe cases in which marriage and trafficking in persons intersected. The countries included in the data collection had differing criminal provisions in relation to trafficking in persons and illegal forms of marriage. Some of them acknowledged forms of marriage such as child and forced marriage as a purpose of exploitation within their legal framework criminalizing trafficking in persons. Other countries addressed these forms of marriage as separate offences outside of the trafficking in persons framework. Necessarily, these differences in the legal framework determined the responses given. Moreover, particularly in the case of law enforcement authorities of the countries consulted, decisions to investigate and prosecute a case under a certain criminal provision and not under another one proved to be difficult, involving the consideration of many factors concerning practicality, availability of evidence and expediency, among others. These decisions then also affected the narrative of the examples and the way they were recounted in the interview setting.

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<sup>61</sup>When referring to “cases” described or discussed by the experts, this does not necessarily refer to official court cases, but rather situations that experts came across and deemed relevant for the explorations of this study.

<sup>62</sup>The issue paper uses the term of “forced, abusive and exploitative marriages” in order to refer to the number of different characteristics of the marriage cases described by the experts, without prematurely defining them as trafficking in persons or another specific type of crime such as forced marriage, intimate partner violence or other forms of exploitation.

It became apparent quite early in the process of examining these issues that cases relating to trafficking and certain practices around marriage are particularly complex and sensitive owing to deeply ingrained cultural, religious and economic factors. In this context, all experts acknowledged that there are, on the one hand, marriages that are officially performed and formally registered and thus officiated in accordance with a country's legislation, and, on the other hand, marriages that are conducted by religious or community leaders in ceremonies that are not legally valid, such as some forced and child marriages. In some instances, this also dictated the tone of the narrative, whereby criminal justice officials were hesitant to acknowledge certain cases as containing an element of marriage because it was not considered to be a valid marriage under the national legal framework. From the experts' testimonies, it was apparent that the countries taking part in the research had just begun to consider the interlinkages between these instances of trafficking in persons and marriage, and, as a result, very often discussed them in a very undefined way. The following sections present empirical findings from the fieldwork collected in the form of expert interviews. Interview quotations are used to illustrate the conceptual patterns and characteristics discussed.<sup>63</sup> The cases described by the experts clearly involved different types of criminal conduct and therefore references to "victims" and "perpetrators" were made and preserved for ease of discussion.

## 4.1 Gender dimensions

It has become apparent through the expert interviews, consultations and the expert group meeting exploring interlinkages between trafficking in persons and marriage that the majority of victims of forced, abusive and exploitative marriage practices are women and girls, which is also the case in the majority of cases involving trafficking in persons.<sup>64</sup> This is in line with the general view that women and girls are often the victims of forced and child marriage, as well as other harmful practices such as dowry-related violence, marital rape and sexual abuse of children in the household, which may or may not be related to trafficking in persons.<sup>65</sup> These forms of force, abuse and exploitation, often based on gender discrimination, are manifestations of historically unequal power relations; they were explored in analysing the data and are presented in the following section.

### 4.1.1 Victimization of women and girls

Marriage is not only about the partners directly involved, but often also about a social institution that has forged bonds between families, clans, communities and populations in countries and cultures throughout history. At the same time, it seems that for a large part of modern history, marriage and family relations have been to some extent driven by traditional and patriarchal gender roles in many parts of the world, which leads to the perception that women are

<sup>63</sup>In the interview quotations, reference is made to the country in which the interview took place in order to indicate the context of the case description. All other identifiable information has been removed to ensure the anonymity of the interviewed experts. The interview quotations have been lightly edited for language, but the content remains original. In addition, references to specific persons and places have been removed. The included quotations are exemplary of patterns described repeatedly throughout different interviews.

<sup>64</sup>UNODC, *Global Report on Trafficking in Persons* 2018.

<sup>65</sup>Declaration on the Elimination of Violence against Women, 1993, General Assembly resolution 48/104.

dependents of male household members.<sup>66</sup> Despite the progress towards gender equality, traditional marital practices and roles still exist today. In all the countries covered by the fieldwork, young women and girls were found to be more affected than their male counterparts by the discrimination and inequality that facilitated the types of cases described by experts. For example, gender stereotypes and expectations concerning the role and position of women and girls in society enabled perpetrators and/or the families involved to control young women and girls.

Women, girls, are treated still as persons that are less valuable, and whose conduct is managed and controlled, and by marrying her off the family can obtain some benefits, some security. (Serbian expert)

From the data provided by the interviewed experts, it is evident that the forced, abusive and exploitative marriages discussed during the interviews mainly concerned girls and women, who had to bear the negative consequences of such marriages, for example, the negative impact on their health, education and personal freedom. Women may be forced, pressured or deceived into marrying spouses for cultural or other reasons, to observe traditions, or to secure another person's entry into the destination country. According to the interviews, young women and girls were more likely to be forced to marry and were more vulnerable to exploitation within a marriage.

Interviewees acknowledged the possibility that men could also face forced marriages. These cases would either be arranged marriages without consent, for instance, to control unwanted sexual orientation such as homosexuality, or in abusive situations where men from abroad were brought into a foreign country and then, for example, sexually exploited within the marriage. However, these cases were not comparable in number to the cases involving female victims.

#### 4.1.2 Harmful practices

The majority of experts consulted for this issue paper identified certain harmful practices<sup>67</sup> and concepts that were inherent to the cases they described. These practices and concepts consisted of both legal and illegal conduct in the countries visited and included forced and child marriage, regulation of virginity and pre-marital sexual relations to protect the reputation of the family and the value of a woman, the paying of a bride price or dowry and bride kidnapping. Such harmful practices create situations of vulnerability for women and girls in which they are more likely to be coerced into a forced, abusive or exploitative marriage, since marriage is the main setting in which the behaviour and social roles of girls and women can be controlled.

<sup>66</sup> OHCHR, *A Practitioner's Toolkit on Women's Access to Justice Programming – Module 2: Marriage, Family and Property Rights* (2018). Available at [www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J\\_Module2.pdf](http://www.ohchr.org/Documents/Publications/PractitionerToolkit/WA2J_Module2.pdf).

<sup>67</sup> "Harmful practices" are defined as practices involving women and girls that are grounded in discrimination based on sex, gender, age or other grounds and that have often been justified by invoking sociocultural and religious customs and values, as well as misconceptions related to some disadvantaged groups of women and girls. See, for example, OHCHR, "Harmful practices", *Information Series on Sexual and Reproductive Health and Rights*, available at [www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO\\_Harm\\_Pract\\_WEB.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/SexualHealth/INFO_Harm_Pract_WEB.pdf); and the Joint CEDAW-CRC General Recommendation/Comment on Harmful Practices, available at [www.ohchr.org/EN/HRBodies/CEDAW/Pages/JointCEDAWandCRCGRRecommendation.aspx](http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/JointCEDAWandCRCGRRecommendation.aspx). Child, young and forced marriage are also considered harmful practices in General Assembly resolution 73/153, on child, early and forced marriage, adopted by the Assembly on 17 December 2018.

## **Forced marriage**

As discussed in chapter 3, there is no internationally agreed definition of forced marriage. However, forced marriage has been identified as a harmful practice that disproportionately affects women and girls. This has, for instance, been acknowledged by OHCHR. During the interviews, experts repeatedly described cases in which one spouse, usually the woman, had not consented to the marriage. This could often be seen as an indicator that further abuse, violence or exploitation was taking place within that marriage. The following sections describe other harmful practices that are all closely related to forced marriage because they could be considered as specific forms of forced marriage (e.g., child marriage or bride kidnapping) or because the consent of one spouse, usually the woman's consent, is not equally considered (e.g., owing to questions of honour or bride price).

## **Child and early marriage<sup>68</sup>**

In all of the visited countries, interviewed stakeholders identified cases involving children who had been forced to marry. Child marriages often take place among certain populations and/or in certain areas; for example, in some of the countries in which child marriages are common, they take place mainly in rural areas. Existing research points out that child marriage is a harmful practice with multiple negative consequences, especially for girls, including for their reproductive health and access to schooling, including secondary education.<sup>69</sup>

Although child marriages are often formally criminalized, they take place under customary laws and as a part of traditional practices. For example, in Serbia, thousands of child marriages are recorded annually, regardless of the fact that it has been criminalized. Experts in Serbia mentioned that these marriages primarily affect girls and are most commonly identified among the Roma community, noting that child marriages among the Roma population is a habit, a rule and a custom or tradition from the past.<sup>70</sup>

Furthermore, it was mentioned in Malawi and Jordan that once girls are married, they have significant challenges in continuing their education, regardless of the opinions of their new family members. Respondents stated that schools are reluctant to allow married girls to continue their schooling, as it is considered to pose the risk that they might discuss sexual relations and similar topics with their peers. Serbian interviewees pointed out that this particular effect of child marriages, that is, the premature termination of education, has negative consequences for the community and society at large as well. These experts pointed out that the number of young people lacking education and prospects for their future, such as secure employment, impacts the occurrence and severity of different social problems.

In some child marriages, there are particularly large age differences between the husband and the wife. Experts pointed out cases in which the girl wife was less than 15 years old, whereas the husband was in his sixties. There are several motives for men to marry a young girl, according to

<sup>68</sup>In this paper, the terms “early marriage” and “child marriage” are used interchangeably to refer to any marriage in which at least one of the parties is under 18 years of age. The terms are international designations that, in the context of this paper, are not dependent on the different domestic laws governing attainment of the age of majority.

<sup>69</sup>United Nations Children's Fund (UNICEF), *Ending Child Marriage: Progress and Prospects* (New York, 2013).

<sup>70</sup>However, it must also be acknowledged that these issues are sometimes much more complex and are the result of several contributing factors. One relevant factor is, for instance, the marginalization of Roma communities, as outlined in the UNICEF report *Child Marriage in the Roma Population* (7 December 2017). Available at [www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-04/Child\\_marriage\\_among\\_the\\_Roma\\_population\\_in\\_Serbia.pdf](http://www.unicef.org/serbia/sites/unicef.org.serbia/files/2018-04/Child_marriage_among_the_Roma_population_in_Serbia.pdf).

the interviewed stakeholders. In comparison with adult women, men might find young girls easier to control, including sexually; they may not resist and are more likely to obey the rules set by the husband. Furthermore, the family would be expedited.

We also had meetings with husbands, [...] who married girls who were between the ages of 15 and 18 [...] Because of the early marriage, they were able to control their wife and also because of her young age [...], able to start their families much sooner. (Jordanian experts)

### ***Virginity, so-called family honour and the value of women***

It was discussed by the experts that child marriage may present a way for parents and families to control the sexuality of their daughters, protect what was referred to as family honour and to ensure that female children do not lose their virginity or “purity” outside of marriage. In Kyrgyzstan, the control of women’s sexuality has been identified as one of the key underlying factors of the local bride kidnapping tradition. The idea of the purity of a wife does not only relate to virginity, but in some cases, also to any previous relationship status. Men in these cases seem to hold an ideal of both a physically and mentally “pure” wife, someone who is not “touched” or has not been in any way previously affected by other men. Older brides may not be virgins and may be considered both “spoiled” and “more demanding”, which means that they might talk back or not agree with certain treatment.

We talked to young men and what they say is, “I want a wife who has not had any other relationship before”. So, the younger she is, the [greater] chance that they find a girl who hasn’t had any relationship. (Kyrgyz expert)

The interviewed experts noted that, for women, the loss of virginity can also negatively affect prospects for marriage. This can also have consequences for other family members, especially younger sisters, who are expected to marry afterwards. As a result of premarital sexual activity, female children and their parents can face increased pressure to submit to outside influences regarding matrimonial choices.

Respondent 1: So, parents are really afraid that girls would start having relationship[s] with boys and so on, so they also see marriage as a way ...

Respondent 2: To protect their honour.

Respondent 1: Yeah, protect the family and reduce risk of a relationship outside of marriage. (Jordanian expert)

For example, in Serbia, virginity is a relevant aspect of child marriage. Respondents noted that for women and girls it is very important to be a virgin when marrying. It is a question of pride and identity, and also of ensuring the honour of the family.

Going one step further, becoming pregnant or having a child outside of marriage is taboo or considered unwelcome in several of the countries visited for this study. This means that marriage is sometimes used as a solution to avoid the stigma of, and to deal with, a situation of an unwed woman or girl becoming pregnant. How the pregnancy came about, for example, whether it was a result of a consensual sexual relationship or rape, is perceived as far less relevant than the concern of a child being born outside of marriage. In South Africa, it was mentioned that parents may force their child to get married because of pregnancy. In Jordan, it was explained

that a marriage might become officially registered when a pregnancy occurs after an early, traditional marriage. The types of marriages that result from such unplanned and unsanctioned pregnancies could be entered into non-consensually because of the delicate circumstances and may be forced, abusive or exploitative in nature.

### ***Bride price or dowry***

Paying a bride price or a dowry is an integral part of marriage contracts in some parts of the world. The term “bride price” refers to money, property or gifts paid by a groom or his family to the family of the girl or woman he is marrying, while the term “dowry” usually refers to the money or gifts paid to the groom or the property that the bride takes with her to help establish a new household.<sup>71</sup> Of the countries visited during the data collection, bride prices play a particularly important role in Jordan, Kyrgyzstan, Malawi and South Africa, meaning that the husband or his family must pay money or offer gifts such as property or livestock to the bride’s family. This tradition may, in certain circumstances, increase the vulnerability of women and girls to forced and child marriage.

Sometimes abusive and even illegal practices to obtain a wife are used to save money. For example, in Kyrgyzstan, arguments have been made that bride kidnapping is cheaper for the husband’s family than an arranged marriage because of the bride price, which is also reflected in some responses.<sup>72</sup>

But I also can see some feedbacks from the men saying, “Yeah but it’s very expensive now to just get normally married. Of course, bride kidnapping is the cheapest way.”  
(Kyrgyz expert)

It was noted by Kyrgyz experts that the bargaining position of the family of the kidnapped bride is lower than that of a non-kidnapped bride-to-be, which may result in a lower bride price. There is no information on whether the age of the bride affects the bride price. Bride kidnapping is discussed in more detail in the next section.

### ***Bride kidnapping***

In the countries in which interviews were conducted for this paper, experts reported that women and girls were kidnapped for marriages in Kyrgyzstan, South Africa and Viet Nam. Bride kidnapping and the dynamics created by it (explained below) generate situations of vulnerability that can result in abusive, forced or exploitative marriages, as well as trafficking in persons. The phenomenon can take place across international borders or be an internal or interregional phenomenon. There was some reference to Vietnamese women and girls being kidnapped for marriages in neighbouring countries.

<sup>71</sup>United Nations Economic Commission for Africa, “Good practices in legislation on ‘harmful practices’ against women – report of the expert group meeting by the United Nations Division for the Advancement of Women” (Addis Ababa, 2009). Available at: [https://www.un.org/womenwatch/daw/egm/vaw\\_legislation\\_2009/Report%20EGM%20harmful%20practices.pdf](https://www.un.org/womenwatch/daw/egm/vaw_legislation_2009/Report%20EGM%20harmful%20practices.pdf)

<sup>72</sup>Becker, C. M., Steiner, S. and Zhao, L. (2018), “Forced marriage: models of ala-kachuu”. For presentation at the sessions of the Association for Comparative Economic Studies, Allied Social Science Associations Annual Meeting, Philadelphia, Pennsylvania, United State, January 4–7, 2018.

In Kyrgyzstan, experts described that the “cultural tradition” of bride kidnapping is used to initiate forced marriages as well as consensual ones. Each year, a considerable number of women and girls enter into marriage by means of so-called bride kidnapping (*ala kachuu*). Estimations of the prevalence of the phenomenon vary, but on average, one in five women in Kyrgyzstan has been abducted for marriage.<sup>73</sup>

While bride kidnapping can also be consensual in rare cases, for instance, when the couple decide to elope together, its non-consensual form is a significant human rights issue and a crime in Kyrgyzstan. The process described by the experts entails the prospective husband and his friends kidnapping a young woman or a girl, taking her to his home, where he and his family use coercive methods to force the girl to marry. The marriage is normally officiated by a local clergyman (typically a *moldo* or imam) in a *nikah*, a Muslim marriage ceremony. The interviewed experts had somewhat conflicting views on whether this “tradition” is used mainly to kidnap brides who are over or under 18 years of age. However, it was noted by several interviewed experts that the awareness of child marriage being a criminal offence has grown significantly among the Kyrgyz population, which may have resulted in men being more careful when selecting a bride to be kidnapped.

Usually the kidnapped girl or young woman is expected by her parents and the local community to accept her situation and the marriage. The experts interviewed during the country mission noted that the social norms regarding this situation are very strong, and the bride-to-be would be shamed and bring stigma to her family, including any younger, unmarried sisters, should she refuse. During the first night, the bride may be subjected to rape or other sexual assault, and even if nothing happens, she might lose her “purity” in the eyes of her community and could have a hard time finding another husband.

In some of the cases, families or parents just, they agree on ... They usually make their own decision in those cases because, especially in the rural areas, in the remotest areas where the traditions are very strict, there is this mentality that it is a shame because a girl has spent already a night at that family and “What would our neighbours, what would the community say about that?”. So for those reasons, most of the time they just find some agreement. (Kyrgyz expert)

As noted above, non-consensual bride kidnapping occurs mainly in the rural areas of Kyrgyzstan and is rarer in big cities such as Bishkek and Osh. Usually both the groom and bride are young but not necessarily under 18, and there is usually not a sizeable age gap between them.

<sup>73</sup>UN-Women, Gender in Society Perception Study. Pillar Research Report: Violence against Women and Girls (Bishkek, 2017); Becker, C. M., Mirkasimov, B. and Steiner, S., “Forced marriage and birth outcomes”, *Demography*, vol. 54 (2017), pp. 1401–1423. See also Kleinbach, R., Ablezova, M. and Aitieva, M., “Kidnapping for marriage (*ala kachuu*) in a Kyrgyz village”, *Central Asian Survey*, vol. 24, No. 2 (2004), pp. 191–202.

**Box 1. Ukuthwala**

Experts in South Africa described several cases of *ukuthwala* when asked about interlinkages between marriage and trafficking in persons. Similar to the cultural tradition of *ala kachuu* in Kyrgyzstan, *ukuthwala* is a strategy of kidnapping girls for engagement among certain cultures in Southern Africa. As with *ala kachuu*, the dynamics created by it generate situations of vulnerability that can result in abusive, forced or exploitative marriages, as well as trafficking in persons. Experts explained that, originally, the function of *ukuthwala* was to provide an avenue for young lovers to make their parents start marriage negotiations. Traditionally, there were various reasons for using this practice. For example, the parents of the bride had already promised – or planned to promise – their daughter to another groom, or the parents were not willing to comply with their daughter's choice of groom, or the girl or woman was pregnant.

According to the interviews, the definition of *ukuthwala* varies from a situation of marriage negotiations or negotiations of bridal price (a so-called lobola) to a situation of kidnapping for forced marriage and exploitation. In the former cases, it involves a man and his friends or peers who set out to compel the family of a girl or young woman to endorse marriage negotiations. In cases where the tradition is used for nefarious purposes, abducted girls may be given drugs or alcohol and then be raped by the abductor, after which he asks the girl's family for her hand in marriage. Due to the stigma related to pre-marital sexual conduct and rape, the family is often susceptible to agreeing to the proposed marriage. In the worst cases, this cultural practice may also be misused by perpetrators to justify rape and sexual exploitation of children. South African authorities have identified many "hot spots" where *ukuthwala* is practised; mainly in the most rural and poor areas of South Africa, such as in KwaZulu-Natal and the Eastern Cape.

So, the actual process is an engagement process, it's not a marriage process. It's a process to almost force the hand of the parents into this marriage. But what happened in South Africa is that a very distorted practice emerged which people called *ukuthwala*, which is not the same cultural practice. What people were doing is they were just abducting women; if they decided they liked this person, irrespective of her wishes, she would be abducted. And raped. And then the families would become almost obliged to now commence with negotiations, so it was a – it's actually abduction and rape. (South African expert)

Interviewed governmental representatives noted that marriages concluded under the guise of *ukuthwala* are not legally valid marriages, unless they are concluded according to the genuine *ukuthwala* practice and conform to the statutory requirements.

### 4.1.3 Male victimization

Most interviewed experts in the nine countries had not encountered cases of male victims of forced marriage. However, in Germany and Canada, the interviewed representatives of non-governmental organizations mentioned that they had encountered a handful of cases concerning young men who had been forced by their families to marry a woman. Literature shows that such experiences have been identified among lesbian, gay, bisexual, transsexual, queer and asexual individuals, who might face pressures to marry to conform to perceived gender norms.<sup>74</sup> The Canadian respondents also noted that some heterosexual men have been forced by their parents to marry rather than being allowed to choose their spouse themselves.

<sup>74</sup>See, for example, Psaila, E., Leigh, V., Verbari, M., Fiorentini, S., Pozza, V. D. and Gomez, A., "Forced marriage from a gender perspective: study for the European Parliament Committee on Women's Rights and Gender", Policy Department: Citizens' Rights and Constitutional Affairs (2016); Anis, M., Konanur, S. and Mattoo, D., "Who/if/when to marry: the incidence of forced marriage in Ontario" (Toronto: South Asian Legal Clinic of Ontario; Home Office of the United Kingdom, "Forced Marriage Unit statistics 2017" (16 March 2018). Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/730155/2017\\_FMU\\_statistics\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/730155/2017_FMU_statistics_FINAL.pdf).

Some interviewed experts speculated that it might be difficult for male victims to speak about their experiences to anyone, owing to a multitude of reasons such as shame, fear and gendered ideas of masculinity.

The anecdotal references to male victims did not specify physical or sexual exploitation. The majority of described cases of such exploitation involved women and girls.

## 4.2 Factors of vulnerability

The following sections present different factors of vulnerability (in addition and obviously connected to the harmful gender norms discussed above) that have been described by experts as playing a role in the forced, abusive and exploitative marriages discussed. Several different aspects were discussed in the interviews, of which some were structural and some related to individual factors. According to the interviewed experts, for example, inequality between men and women, gender discrimination and social norms regarding the role of women and girls in society, including access to the formal labour market, perpetuate the problem. These factors also limit the possibilities of the victims to exercise their right to refuse a marriage.

### 4.2.1 Poverty

Poverty was among the factors of vulnerability most frequently mentioned by the interviewed experts in the context of the cases discussed. According to the experts, it created situations of vulnerability and hardship in which potential victims and their families might put their trust in marriage offers to improve their situation or even migrate in search of a better economic, social and personal opportunities. According to the experts, families facing economic difficulties may be particularly influenced by offers of money or other financial benefits such as free rent in exchange for their daughter's hand in marriage.

In Malawi, in particular, it was mentioned by the interviewed stakeholders that extreme poverty and high unemployment render girls and young women vulnerable to accepting promises of better lives, opportunities and attractive marriage offers abroad, which may lead them into situations of exploitation in the destination countries.

Financial motives can play a critical role for families who are involved in forced marriages. Interviewed experts referred to cases in which parents or extended family members, such as aunts or uncles, had sold children or young women into marriages in exchange for money, gifts or other benefits such as rent or property, or had used the income from a marriage to settle their debts. In addition to gaining money or gifts in exchange for their daughter's hand in marriage, the family of the bride may also see the marriage as an opportunity for their child to have a better future and for them to reduce their economic burden in having one less mouth to feed.

Similarly, interviewed stakeholders mentioned some cases in which parents had taken their daughters out of school and sold them in exchange for money. The experts mentioned that these cases often involved adverse family circumstances or events.

We have a lot of orphaned and vulnerable children, so we have a lot of child-headed households. So, you'll find a lot of children living with extended family, extended relatives, and obviously they financially burden the families. So, a lot of these marriages are done either through force, where the victim has no say in the matter whatsoever, or there's a lot of coercion, in the sense of lots of gifts, financial coercion, if I can say that. (South African expert)

Female-headed households were also mentioned as a potential risk group for child and forced marriage in Jordan, especially among Syrian refugees. It was reported that single mothers were discriminated against and faced very limited choices and additional hardship when trying to take care of their family, which could lead to decisions to marry the daughters very early.

#### 4.2.2 Disability

Some of the interviewed experts noted that persons with mental or physical disabilities might be even more vulnerable, because their family might see a forced marriage as the only option for the person to marry at all.

The situation might actually push your family to arrange the marriage and force you to marry because otherwise you won't be married. (Jordanian expert)

In addition, the Serbian experts mentioned that persons with mental disabilities in particular are very much at risk of being exploited because they may be easily manipulated and misled by the perpetrators.

We had a case of a woman, she's an adult, who met a guy through the agency for marriage. [...] The agency got money from her because she wanted a husband, but they also got money from the guy. But the thing is, after several years when they could not have children, they got divorced. So, the agency sold her to another guy and to another guy and to another guy. So, in this case what happened is that when we got in contact with her, she was mentally challenged. [...] So, she ended up in a shelter here in [XX], at the end. (Serbian expert)

In Europe, such young women, for example, those with learning disabilities, have also been recruited for sham marriages with links to human trafficking.<sup>75</sup>

#### 4.2.3 Discrimination against minorities

Experts further noted that forced or child marriages may occur more often among certain minority groups or tribes than among the general population. Experts noted that this may be related to culture, but it might also have to do with the fact that such groups may face serious discrimination, which hinders, for example, the possibilities of women and girls to educate themselves and find suitable employment, meaning that marrying young is their only option.

<sup>75</sup>Viuhko, M., Lietonen, A. and Jokinen, A., "Happily Ever After? From Sham Marriages to Human Trafficking", *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, Viuhko, M., Lietonen, A., Jokinen, A. and Joutsen, M. eds., HEUNI Report Series 82 (Helsinki, 2016).

#### 4.2.4 Forced displacement and irregular migration status

The UNODC *Global Report on Trafficking in Persons 2018* has identified several interlinkages between trafficking and marriage in situations of armed conflict, including the sexual enslavement of women and children, and their forced marriage to armed combatants.<sup>76</sup>

Despite the particular attention given to marriage in the context of conflict in the Middle East, several of the interviewed experts noted, for example, that child marriage was a cultural tradition in the rural areas of Eastern Syria and might not only be related to the ongoing conflict in that country. They expressed the opinion that early and child marriage among Syrian refugees was not necessarily only a consequence of their precarious situation as refugees forced to flee from their homes, but also something they had been exercising also before the war. Interviewed experts also pointed out that owing to the war, competition among the girls and their parents in the “wedding market” was getting tougher, as more men or prospective husbands were killed in the war. Therefore, it might be a survival strategy or coping mechanism to arrange marriages of eligible children at a younger age, thereby ensuring that they have their own children as soon as possible.

But if I think about this, a young Syrian refugee girl, they also feel there is a lot of competition in the wedding markets, so if they can get married early, they also kind of win the competition. They're still virgin, you are in fertile age. If you get married at 30 you don't have a lot of years in front of you to give birth or to be fertile than if you get married at 15. (Jordanian expert)

Outside of conflict areas, interviewed stakeholders also mentioned that some women and girls end up fleeing their home countries in order to escape forced marriages, thereby becoming displaced persons as the result of an attempted forced marriage. This displacement may thus render women and girls vulnerable to exploitation and trafficking, as they may accept risky offers to migrate owing to their desperation.

She was being forced into a marriage by her family. This is another face of forced marriage which is not as much explored: when women are being forced into marriages they want to escape and when trying to escape from that situation they get entrapped into something else. So, she actually left Canada to go to the Netherlands to be with this guy, but then found herself trafficked there. (Canadian expert)

Interviewed stakeholders in some countries noted that irregular migrants and migrant workers may be vulnerable to marriage-related exploitation, as they may try to regularize their status through marriage.

So undocumented workers and migrant workers have so much vulnerability because of the precarious immigration stays. I've seen cases where they've gone into non-consensual marriage as a way to regularize status. But the reality then is that if they do that, then they will never come out and frame their relationships as forced marriage or trafficking because what will happen is that it will automatically open them up to removal for seeking false status. (Canadian expert)

<sup>76</sup>UNODC, *Global Report on Trafficking in Persons 2018*. See also UNODC, *Countering Trafficking in Persons in Conflict Situations: Thematic Paper* (Vienna, 2018).

As pointed out by the interviewed experts, such deals may lead to experiences of exploitation and very limited options for migrants with spousal visas to seek justice without the risk of losing their residence permit status. In many countries, migrants whose legal residence is based on their marriage with a citizen or a legal resident of that country would lose their visa status if they separated or divorced from their spouse. Often, spouses would only be eligible to switch from a spousal visa to another type of visa that is not dependent on the marriage if they had maintained the marriage for a minimum period of time, usually a couple of years. Accordingly, German experts explained that women might thus decide to “endure” violence and abuse within a marriage in order to maintain the marriage long enough to eventually become entitled to apply for a residence permit that would be independent of their marriage status and thus their husband. German experts emphasized that the spousal visa and lack of other, regulated paths to migration create these dependencies, in particular among female spouses. Women who are in such a position fear losing their residence permits if they report domestic violence or seek a divorce. Marriages with these dynamics may create situations of vulnerability in which abuse, violence and exploitation can occur and may lead to the level of exploitation as enumerated in the Trafficking in Persons Protocol. Furthermore, the husband may use the immigrant status and his wife’s dependency as a control measure, threatening and demanding compliance. In Malawi, interviewed stakeholders mentioned that girls and women seeking to migrate to South Africa for marriage purposes are often sexually abused by their smugglers, for example, in exchange for food and shelter.

A reversal of the vulnerability situation exists in the following case, which is mentioned for the sake of comprehensiveness, even though it is not the irregular residence status of the victim but rather of the perpetrator that is the issue here: experts also described cases in relation to migration in which non-national males sought to utilize marriage as a way of obtaining a residence permit in their preferred destination country. In these cases, the men lured women into sham marriages by promising them money or other benefits for a certain period of time. Sometimes the sham marriages turned abusive towards the women, since they were already in vulnerable situations when they entered into the marriages, owing to their personal circumstances.

**Box 2. Related topic: marriage as a modus operandi for the smuggling of migrants<sup>a</sup>**

The Protocol against the Smuggling of Migrants by Land, Sea and Air criminalizes the procurement of the illegal entry of a person into a State party of which the person is not a national or a permanent resident, in order to obtain, directly or indirectly, a financial or other material benefit. Article 6, paragraph 1(c) also requires States parties to criminalize the act of enabling a person who is not a national or permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State, when pursued in order to obtain a financial or other material benefit. This provision was included in order to address various forms of smuggling, including those that make use of legal channels of migration and legal residency schemes, even when the entry into the territory was legal. In this context, migrant smuggling can take the form of sham marriages facilitated by a third party (or directly, in certain circumstances) for a financial or other material benefit, in order to secure the entry and/or residence of a migrant in a country.

In South Africa, interviewed stakeholders had encountered some cases in which immigration lawyers or other specialists had facilitated the illegal entry of one of the partners through a sham marriage. It was mentioned that such immigration specialists may charge high fees of up to 30,000 rand (approximately 2,000 United States dollars) for their services. The facilitator may be of a migrant background himself/herself, or otherwise have specialized access to clients from another country.

In order for a sham marriage to be considered as a component of the smuggling of migrants crime, the three elements outlined in article 3 of the Smuggling of Migrants Protocol need to be present: (a) facilitation of illegal border crossing or residence of the person involved in the sham marriage; (b) that this person would not otherwise comply with the legal requirements for entry and stay; and (c) the facilitator pursued a financial or material gain.

For the prosecution of migrant smuggling cases, however, the sham marriage spouse should not become liable to criminal prosecution for having been the object of migrant smuggling; prosecution should focus on the facilitator and/or smuggler.

It is important to note that cases involving marriage as a modus operandi for smuggling should be considered carefully, and indications of such things as exploitation, particular vulnerabilities, and the use of means such as deception and coercion should be red flags for potential aggravated smuggling or trafficking in persons. In these cases, the potential interlinkages with trafficking in persons or forced, abusive or exploitative marriages would need to be assessed. See chapter 5 for a full legal analysis of cases in which exploitation was present in a marriage context.

<sup>a</sup>See also the case study in the "Issue paper: a short introduction to migrant smuggling", pp. 19–20; available at [https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_A\\_short\\_introduction\\_to\\_migrant\\_smuggling.pdf](https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_A_short_introduction_to_migrant_smuggling.pdf).

### 4.3 Involved parties

In many of the cases discussed, several actors were involved during different stages of conduct such as the arrangement of the marriage, the experience of abuse and violence, and the control of the victims. Several actors who have or may have a role in enabling or organizing the types of marriages discussed for this paper can be identified from the data. In addition to the bride and the groom, or wife and husband, parents and other relatives, in-laws and community members may have a role in the marriage arrangements and exploitation taking place in the context of marriage. Furthermore, the parents of the bride – and the groom as well – often play a large role in forced marriages and they may directly benefit from the exploitation that takes place. The

relationships between the different actors are often complicated and multifaceted. These aspects are further discussed in the sections below. The perpetrators were various family members of the bride and/or the groom, the groom himself, or different kinds of organizers or facilitators.

### 4.3.1 Husbands

Experts noted that sometimes the perpetrator was known to the victim, whereas in other cases, the perpetrator was a third party known neither to the bride/wife nor to the groom/husband. In some of the examples discussed, spouses had not met before the wedding or before the “marriage negotiations” had started. This can happen in the context of international marriage migration in particular, where the marriage necessitates that one of the parties, usually the bride, must relocate to a new country. Vietnamese stakeholders mentioned that men from neighbouring countries travel to Viet Nam to buy wives. There are also some examples in the data in which the husband’s family arranged the marriage or “bought” their son a wife because he was not likely to be successful in the normal marriage market, for example, owing to mental health issues or other handicaps. In such cases, the bride is also required to assume the role of caretaker in the household.

Respondent : Local women migrate to the city and poor men are unable to get married to the local women. So, they are willing to pay some money to get married. They might be able to get married to those who voluntarily cross the border or then they marry a victim of trafficking. [...] But what we learnt is that the family of the men have to save money because getting married is very important. Especially for the men because they have to continue their family line, they have to keep their ancestors, being the man is very important to get married so the family, regardless of rich or poor, they have to save money for the men to buy a wife. (Vietnamese expert)

These types of marriages, and the context under which they were entered into, can create situations of vulnerability that can lead to abusive, forced or exploitative marriages and sometimes even trafficking in persons. Many interviewees also presented examples of very severe and cruel methods of abuse, violence and control that husbands had directed towards wives. This ranged from isolation, threats and psychological control to severe physical and sexual violence (for details, see section 4.4, on control methods). However, even in cases in which the conduct clearly fell within the criminal provisions on trafficking in persons and because of the involvement of many actors in a sham marriage, it was not necessarily evident who should be prosecuted as the trafficker: the husband, the family member(s) of the wife and/or the family members of the husband or a potential mediator/facilitator.

### 4.3.2 Families and close relatives

It is apparent from the data that parents and other family members play a crucial role in arranging marriages in many parts of the world. Experts noted that parents have a lot of power in selecting spouses and organizing marriages and that marriages are seen as a matter of importance for the whole family.

And, in marriages in most cultures in South Africa, consent of the parents is a critical component to a marriage. So, you need the blessing of the parents. (South African expert)

In some cases, experts noted that this view of marriage as being a family affair may also apply to cases in which abuse, violence or other challenges are involved, so that, as a consequence, incidents of domestic violence are dealt with inside the family, without involving external law enforcement or community support structures. Furthermore, experts noted that family members beyond the husband such as parents-in-law, brothers or previous wives might be involved in abuse, violence or exploitation of women and girls. Many interviewed experts brought up the tendency of some families or parents to treat their daughters as chattel or objects that can be exchanged in order to settle a debt or to gain or increase social capital of the family. There is also a long history of practices in which marriage has been used as a strategic tool for achieving economic, political and/or cultural goals or to gain social capital and elevate the status of certain families. Thus, by marrying off their daughters, the families can obtain some benefits and (financial) security. The settling of a debt can be understood as the settling of a financial debt or a debt of gratitude.

However, many interviewed experts emphasized that many times the families of both the bride and the groom are involved in the negotiations and are in a way complicit in organizing forced and child marriages between the two families.

Often, the families of the bride and groom negotiate the marriage arrangements, such as paying the bride price. Girls or young women often do not have a role in these situations. Women and girls do not necessarily even know that they have any other alternatives but to consent to the marriage in the first place. They also often cannot terminate the marriage, get a divorce and escape the situation without support from their families. This was explained by experts, as in the example below.

If I leave this marriage where do I go to? If the arrangement was made with my parents. Some do, but the sad part is, if they leave, they can't go back home. So, either they go to the streets – there are cases where, you find girls in the streets, who ran away from those marriages, and ran away from home. Because they can't, this man has already paid the family, and the family cannot pay him back. So, you're bound to sit there, or go to the streets. (South African expert)

The interviewed experts also noted that it might be very difficult to end the marriage without the approval of the family, especially if the wife's family is reluctant or cannot afford to return the bride price to the husband or his family.

### 4.3.3 Facilitators

Different facilitators, brokers and third parties may also be involved in organizing and arranging different types of marriages, including forced, sham and child marriages. They may be used by the families involved or directly by the persons in search of a spouse. In some countries, international wedding agencies and marriage brokers facilitate the migration of a marital partner to join the spouse at his or her home or residence country. Such agencies are relevant in the marriage market, in particular in Asia, according to data collected in Thailand, Viet Nam and Kyrgyzstan.

In the cases in which forced, abusive and exploitative marriages were linked to migration, it was clear that informal brokers had been used for arranging the marriage more often than formal agencies. Informal brokers may be the family members or neighbours of the prospective wife or

husband, or resident in the same village as the prospective wife. Interviewed stakeholders mentioned that such brokers may be both male and female, who for different reasons have contacts in the home countries of the prospective husbands.

In Jordan, there were examples described in which Egyptian female intermediaries had been used to find suitable spouses. Interviewed representatives of non-governmental organizations emphasized that such mediators or brokers may also be acting in good faith and be misled by nefarious husbands who provide false information.

She knows everybody in the region and these people come to her to find them. Maybe they give her \$100 or they give her \$50. So, she tries to find the girl. But she doesn't know what he is going to do. These are not, for me they are not traffickers. Because they don't lie to the girl or to her family. (Jordanian expert)

#### 4.3.4 Role of religious and traditional leaders

According to the data collected for this paper, another group of actors relevant in the cases discussed for this paper includes religious leaders, village elders or other actors who officiate marriages. Experts emphasized that such marriages are often informal and thus are not, in legal terms, valid, registered marriages. Often, the officiators of such marriages do not represent the State, civil registry office, official church or Sharia court, and may sometimes be paid to look the other way, for example, when it is clear that the bride is a child or has been kidnapped or forced into the marriage. For example, in Jordan it was reported that official marriages are officiated by representatives of the Sharia court, who have multiple safeguards in place to ensure that marriages in which the bride is 15–17 years of age are accepted only after a thorough evaluation process has been conducted. This is to ensure that the marriage does not affect the bride's education prospects negatively and that the age difference between the bride and the groom is not greater than 15 years. However, in Jordan, it has been noted that informal religious leaders have been used to officiate child marriages, in particular with girls under the age of 15. Similarly, in Kyrgyzstan, where forced and child marriages are often the result of bride kidnapping, it was mentioned that such marriages were officiated by persons who were not tied to state institutions or official registration procedures and thus were not obliged to verify the age of the bride and ensure she has consented. It was however mentioned by experts that, after amendments to the law, such persons are now criminally liable if the marriage is found to have involved a child.

## 4.4 Control methods

In addition to being subjected to violence and abuse, experts noted that women and girls in forced and child marriages are often subjected to controlling behaviours and conduct that limits their freedom. The groom's family may be involved in controlling and abusing the girls and women using violence, threats and psychological abuse and manipulation. Women and girls are often also extremely dependent on their spouses in terms of finances, accommodation, food, clothing and residence permits, as well as in gaining access to health-care services.

Moreover, it is often the role of mothers-in-law to monitor and guide the girl, and they may also abuse her both physically and psychologically to ensure she behaves according to expected

standards. Women may also be kept under control in ways that relate to the future of their children.

And I remember some cases where women had small children. And the promise was that their children would have a good life, as well together with their mothers. And that was the mechanism to keep them in the forced marriage ... So, threats against the life and health of children. (Serbian expert)

Sometimes, if victims resist the marriage or attempt to flee, they can also be subject to abuse, violence and ostracism by members of their families, including their own mothers and fathers. Psychological abuse, control and manipulation is commonly used to ensure that the victim behaves in an honourable manner and does not shame her family by being a “bad” wife or complaining about the circumstances.

Notwithstanding the well-known lover-boy phenomenon, which refers to a recruitment method for trafficking and can, in very limited cases, involve marriage, some cases discussed during the interviews also contained elements of romantic relationships. In South Africa, interviewees noted that many (female) victims marry their trafficker. In these cases, women are not willing to report exploitation to the police and press charges against the husband or boyfriend. The perpetrators build trust by pretending to be a friend or a boyfriend of the victim, but once they are married, their attitude changes, as exemplified in the statement, “I’m your husband now, so I can tell you what to do,” as was described by a South African expert.

As pointed out by the Vietnamese stakeholders, children delivered during the marriage may also be used in order to control the women and ensure that they do not leave the marriage and seek help from outsiders.

After buying a woman from a mediator or trafficker, they want to marry and to get her pregnant as soon as possible. Why? [...] When they have children, it will be difficult for them to run away. If you run away from the home, it can be difficult for them to take the baby with them. (Vietnamese expert)

## 4.5 Violence and abusive and exploitative practices

Experts in all countries described cases involving marriages that were abusive and that included physical and sexual violence, in addition to exploitation taking place inside or outside the household.

Indeed, several interviewed experts noted that abuse in forced marriages is rather common.

It’s fairly rare to see a forced marriage where that exploitation doesn’t happen, because the reality is, the whole set-up of the marriage is exploitation, right? (Canadian expert)

Violence and exploitation in the context of forced and child marriage was frequently discussed with the stakeholders in the nine countries. Women and girls in forced and child marriages often face psychological, physical and sexual abuse, violence and threats, emotional manipulation, isolation, and restrictions on their freedom of movement, for example, by being prevented from seeing their families or visiting friends and relatives. The forms of violence, abuse and exploitation discussed in the context of this paper were most commonly perpetrated by husbands, sometimes

also by in-laws and other relatives, as well as, in some cases, by the spouses' acquaintances or other third parties, including clients purchasing sexual services or recruiters or abusive marriage brokers.

In addition, interviewed Serbian stakeholders mentioned the harmful impact of child marriages relating to the future of the girls whose other prospects are seriously limited as a result of the marriage and who will most likely face domestic violence and abuse as part of their married lives.

Because a girl of 13 years of age, her prospects are being destroyed. These are high-risk marriages, at the age of 13. They are not physically or psychologically capable of being a parent. And no education. They leave, they drop out and no qualifications. So, what are her prospects? To raise children? And then send these children to beg? She cannot work, because she has no school. She often faces domestic violence, abuse. She's the youngest, abused by other family members. She's a newcomer. It's like domestic servitude. Elements of slavery. And, she's exploited in every possible way. (Serbian expert)

#### 4.5.1 Sexual violence, abuse and exploitation

During the fieldwork, the most commonly mentioned form of exploitation in connection with marriages linked to human trafficking was sexual exploitation, which encompasses a multitude of different kind of behaviours that in many ways limit women's and girls' rights to sexual self-determination, reproduction and bodily integrity. This included rape, sexual abuse and harassment, as well as sexual exploitation and related conduct. For example, Vietnamese experts mentioned that they had identified many cases of trafficking for forced marriage in which Vietnamese women had been repeatedly raped and subjected to sexual abuse.

Moreover, many women and girls in forced and child marriages face different forms of reproductive violence. They may be forced to bear children and have little control over family planning. Their access to birth control may be restricted or denied. For example, in Jordan and Kyrgyzstan, new brides are expected to become pregnant as soon as possible and they experience immense pressure to conform to this expectation. In Jordan, child brides face the particular pressure to produce children as fast as possible to prove their fertility.

The Health Ministry even issued a report saying the highest percentage of girls dying through childbirth is actually girls who are impregnated between the ages of 15 and 18. And even if they don't die, they have a lot of other risks, for example, they have bleeding risks, losing the baby, other issues, complications in childbirth. (Jordanian expert)

Interviewed stakeholders also noted that women and girls may be denied the right to health care, or be obligated to request permission from their husband and/or mother-in-law to visit a doctor even during complicated pregnancies.

Non-governmental organizations in some of the destination countries visited have also identified cases in which women were originally brought into the country via marriage to work in the sex industry, or they married their pimps, who then continued to procure and exploit their wives. An interviewed representative of a non-governmental organization mentioned that such marriages could have been consensual in the beginning but later on became coercive and abusive.

A lot of sex trafficking we have seen are cases where women are actually brought in through marriage, so now the definition of forced marriage ... it is a marriage where you don't have full informed consent .... The problem is that in some cases ... women are consenting to the marriage, but they are not consenting to the marriage it becomes. (Canadian expert)

### Box 3. Temporary marriages facilitating sexual exploitation

Already in the early 2000s, studies<sup>a</sup> identified a particular form of sexual exploitation linked to marriages in which men from Saudi Arabia travelled to the Syrian Arab Republic to enter into forced marriages with Syrian and Iraqi refugee girls through *zawaj al-mishyar* (tourist marriage) or *mut'ah* (temporary marriage), an illegal form of marriage that is used to sexually exploit and that ends when the men leave the country. Because of the prohibition on sex outside of marriage, men use this form of marriage to have sexual relations during a period away from home.

Such cases were identified by the interviewed stakeholders in Jordan, who emphasized that the phenomenon was more common in the first years of the Syrian crisis but is now marginal in Jordan. A handful of cases were identified concerning refugee camps where refugee girls were sold by their families to other nationalities, mainly from the Gulf States, for summer marriages resulting in sexual exploitation. Law enforcement representatives also mentioned an investigated case in which a married foreign man proposed a temporary marriage to a girl's father because his wife was unable to have children, and he wanted the girl to become his temporary wife in order to have a child. The father agreed and got compensated financially for the arrangement. The girl was returned to her father after the child was born.

They [service providers] see more cases of girls that get married multiple times. And so, these kind of serial marriages, multiple marriages, they [girls] get married very young, and then their husbands – they divorce or move on, or for any other reason are not there anymore, and then they get married again, also because of the big stigma that they have to be a single woman or a divorced woman in this society. (Jordanian expert)

According to the interviewed stakeholder, at least some of the women and girls had been misled about the temporary nature of such marriage, which had then put them in a very vulnerable and low position in society after the marriage ended. Such a temporary marriage is not an officially valid, registered marriage recognized by the Kingdom of Jordan but rather an unofficial one, officiated through an informal process.

<sup>a</sup> See, for example, International Centre for Migration Policy Development (ICMPD), Targeting Vulnerabilities. The Impact of the Syrian War and Refugee Situation on Trafficking in Persons. A Study of Syria, Turkey, Lebanon, Jordan and Iraq (Vienna, 2015); and International Organization for Migration, Pilot study: Tourist Marriage in Yemen (2014).

## 4.5.2 Household work

Generally, as explained in previous chapters, abuse and violence in the context of marriage is often kept within the family and seen as “a family issue”. This concerns exploitation in the context of household work and/or domestic servitude in particular. Household chores are inherent to most marriages and particularly in accordance with gender roles for women, including the raising of children and sometimes the caretaking of other family members, and in most cases do not constitute abuse or exploitation. The concept of servitude in marriage is a very difficult issue to address, according to the stakeholders interviewed. This is something that many communities are not ready to discuss openly, owing to, among other reasons, cultural practices.

A woman who is being exploited for labour in the household and being asked to cook food for people to run a catering business out of a house, or pack clothes in a basement of a store all day long [...], she wouldn't necessarily have the language to think about it as trafficking. She doesn't think she's been trafficked. (Canadian expert)

Indeed, many of the tasks performed in marriage are understood as part of the arrangement, such as the provision of care for children, in-laws or other, often elderly, relatives, cooking, cleaning and washing, as well as helping with the family farm or other business ventures, in addition to the sexual relationship. When this type of unpaid labour rises to the level of exploitation within the marriage, it can be an indicator of trafficking in persons.

It is expected that girls and women are to provide such labour and services every day of the year. In some parts of the world, this entails hard physical labour, especially if there is a lack of access to running water and appliances. The interviewed stakeholders had also encountered cases in which the main motivation of a man to marry was to obtain free labour in the household.

Some men want to have a wife who can provide care for his old parents, his sick parents or for himself if he is disabled or he is sick. (Vietnamese expert)

Also, in Kyrgyzstan, the need for additional “cheap” domestic labour to help with household chores and other domestic tasks was mentioned as one of the reasons why the groom would be expected by his family to kidnap a bride (*kelin*). Several interviewees from Jordan and Kyrgyzstan noted that young wives (often children) may be preferable because it is easier to “train” them and make them obey the family of the groom in serving them in the shared household:

For the parents, the mother-in-law, it's the girl being more obedient and trainable, and less independent in terms of ... Basically, what the family of the groom wants is free labour to do the household work and the care work in the house. (Kyrgyz expert)

In South Africa, it was mentioned that child wives are not only exploited sexually but are also expected to clean and take care of the house. Their freedom of movement may be limited, or they may be moved to a more discreet location so that the neighbours are not able to detect what is going on. Several interviewed stakeholders in different countries mentioned that it would be very difficult for the new bride to refuse to do the household chores expected of her or to complain about her heavy workload. “She's not in the power position to say anything like ‘this is not my task’”, as explained by an interviewed Jordanian stakeholder.

### 4.5.3 Labour exploitation

Some interviewed experts also observed different indicators of labour exploitation in the context of the marriages discussed for this paper but noted that it is not necessarily very easy to differentiate between labour exploitation and the exploitation in household work as described in the section above. Labour exploitation can take place in the context of the family, a family business or outside employment. Victims of labour exploitation are not usually able to access their wages or use their earnings for their own benefit, as their husbands are in charge of the family finances and use that power to exercise control over their wives.

Respondent: They work in the farm, factories, but husband take all their wages and they follow them all the time.

Interviewer: The husband takes the wage?

Respondent: Yeah, because money is their chance to run away. (Vietnamese expert)

In some cases reported by the interviewees, husbands or their extended families may also take out loans or incur debts in the name of the spouse or utilize them otherwise in income generation.

In the case *R v. Kovacs* in Australia, a married couple recruited a Filipina woman to work at their takeaway store and home in Queensland and brought her into the country by arranging a sham marriage for her. The woman worked long hours at the store, followed by 4–5 hours of domestic work at the couple’s house, where she cared for three small children and did household duties. The couple was sentenced for slavery offences and arrangement of sham marriage in the Supreme Court of Queensland in 2010.<sup>77</sup> In cases such as these, the financial gain and the free or cheap labour that the family can extract from the person is clearly at least part of the motivation for the marriage.

In Malawi, some of the interviewed stakeholders also connected child labour to marriages. For example, in polygamous marriages, which might be legal in principle, the youngest wife, a child at the time of the marriage, is forced to do all the work in the household, being a servant not only to her husband, but also to the other wives. Married children may also be forced to work in the agricultural sector, in addition to doing household work.

#### 4.5.4 Other forms of exploitation

Experts noted that the cases discussed for this paper may also involve forced criminality or begging, even though such practices do not seem to be very common. In Serbia, the interviewed stakeholders mentioned some case examples in which victims had been exploited in combination with a forced marriage.

I’ve had one case of a girl who was sold by her parents. She was exploited in Italy and in Germany. It was a legal marriage, but she was forced to beg and to commit crimes. She did not want her marriage. It was a forced marriage. (Serbian expert)

Similarly, a Jordanian non-governmental organization had, in the past, identified a phenomenon in which Jordanian minorities would marry Egyptian women and force them into begging in the streets. In South Africa, some of the interviewed experts noted that a woman who had agreed to a sham marriage, which was supposed to be annulled afterwards, was forced to smuggle drugs by her spouse.

This person in particular I’m talking about paid her to marry him. [...] She went on the plane, taking some stuff for him, drugs. She was even caught and put into prison and things like that. But it’s the temptation of that money. So, they use some of the women that are maybe homeless or maybe really have poverty in their homes and stuff like that. (South African expert)

<sup>77</sup>Schloenhardt, A. and Jolly, J., “Honeymoon from hell: human trafficking and domestic servitude in Australia”, *Sydney Law Review*, vol. 32 (2010), pp. 671–672.

One interviewee also mentioned a case in which a victim of forced marriage had been forced by her husband to recruit other women. Interviewed experts explained that this may be a way for exploited women and girls to improve their status within the marriage; they may be used to recruit peers from their home villages, for example, to enter the same types of marriages.

## 4.6 Responses

This section outlines the responses of States and other actors to the cases encountered and discussed by experts. It must be reiterated that these cases present particular challenges for the authorities, owing to the private nature of home and family matters. This has direct impact on the many aspects concerning responses to the surrounding phenomena, including the identification and investigation of relevant cases. But the private nature of marriage, as well as social rules, also influence the responses of other actors.

### 4.6.1 Barriers to reporting and identification

In many of the cases discussed with the experts, it was very difficult for victims to seek help and disclose their situation to anyone, including to the authorities. Based on the fieldwork, non-governmental organizations possessed more information on forced, abusive and exploitative marriages than criminal justice authorities. This is because, ultimately, only a small portion of cases are reported to the police.

There are cases of bride kidnapping, but people, women and their girls and relatives and, I don't know, neighbours, they do not really report. Because they don't see this as an abduction of people, whatever, right? They see it as normal things. Second, even if you as a girl, if you are bride kidnapped, for many of them it's still shame to report. And it is still perceived as a shame to take this bride back home. Again, this is a perception in society we have. That's why many cases are not reported. (Kyrgyz expert)

As previously stated, the role of the parents and family is central in marriage arrangements in many countries around the world. For many victims, this has a significant impact on the ways in which they can seek help. In many countries, the victims are reluctant to approach the authorities, owing to a multitude of different reasons such as fear and lack of information on their rights; instead they may utilize low-threshold services offered by non-governmental organizations, crisis centres or health-care services. For example, in Canada, where forced marriage is criminalized as a separate offence, it was suggested that victims may be reluctant to disclose their experiences to the police because this might implicate their own parents, might provoke an attack by their husband or undermine the reputation of their family.

Indeed, many women are fearful of the reactions within their community if their experience were to become public knowledge. This could lead to ostracism and stigmatization of the woman, her children and her extended family. Seeking help can be very difficult for women who have migrated to another country on a spousal visa because they are dependent on their husbands for their residence permit and have poor knowledge of the local language and the services available. Non-governmental organizations and community-based organizations play a key role in reaching out and providing information to such persons. These women may be afraid of going to the police, for example, owing to the fear of deportation.

In addition, migrant women's families in the home countries may be threatened by the husbands or perpetrators both directly and indirectly to ensure that they do not disclose their experiences to outsiders and seek help. Moreover, the women may be afraid of what could happen to their children if help is sought and the case is brought to the attention of the authorities.

Also, survivors will have children. They are often really afraid if they file a complaint, they might be temporarily placed somewhere and their children might not ... They might not be able to stay with their children. There is so many different reasons for survivors, so I think that that also contributes to the fact that all the things will be very much underreported. (Jordanian expert)

Interviewed representatives of non-governmental organizations noted that some victims of forced marriages may ultimately wish that they could still make the marriage work and that the abuse would stop, instead of getting a divorce.

Our clients told us that they're not likely to seek mainstream support or even police interaction if they think that their own families and siblings, their own friends could be charged criminally. What's been one of the most interesting pieces for me is that oftentimes people in forced marriage situations want your help to get away from the situation in the short term, but their long-term goal is some sort of reconciliation with people who they still love. And so that criminal piece really would hinder that. (Canadian expert)

Indeed, relevant cases might only in rare circumstances come to the attention of the police. Instead, the victim might simply decide to persevere and accept violence and exploitation as part of the marriage.

Marriage is about perseverance, so these people have to persevere simply because they are married; now that is a problem because normally the law enforcers are kept out of the family arrangement. It will be taken that these situations are supposed to be, that's how life is. (Malawian expert)

There were, however, some references in the data from Malawi to situations in which parents would seek help from the village elders or other important community figures when their child was exploited in a marriage, or when parents tried to prevent other people from selling their child for marriage. However, it was also mentioned that some victims are so dependent on their spouses in terms of finances and other factors that it is simply not a viable option for them to disclose their experiences and contact the authorities to access justice.

Respondent: There's also a cultural aspect attached to these types of cases where it's not easily reported. It is kept in the family unit, people don't speak out about it, even community members, because it's seen almost in a cultural context. And also, almost in a survival, as a means of surviving, for the victims.

Interviewer: What do you mean?

Respondent: Because they have no other means of, income, they're very poor. So, without this marriage or without it they have no other, real means of survival. (South African expert)

Indeed, the lack of options may ultimately silence the victims and keep this form of criminal and harmful conduct hidden from the criminal justice authorities, whose role is discussed in more detail below.

## 4.6.2 Investigation

Many of the cases discussed for this issue paper show signs of criminal conduct, such as forced or child marriage, bride kidnapping, rape and sexual assault, deprivation of liberty, exploitation, or even trafficking in persons – signs that would warrant some kind of initial or preliminary evaluation. As outlined in the previous section, it is quite clear that only a small portion of the relevant cases are reported to the police. For example, in Kyrgyzstan, where 12,000 women and girls are kidnapped for marriage annually<sup>78</sup> and where experts explained that the criminal law had been amended in 2013 to include harsher penalties for perpetrators (up to 10 years of imprisonment for bride kidnapping), still very few cases are reported to the police and proceed to court. Interviewed experts noted that a kidnapped bride is expected to accept her situation, meaning that only in rare circumstances would she or her family members file a police report.

However, even if a case involving a forced marriage is reported to the police, many of the interviewed law enforcement representatives mentioned that it is very difficult to investigate because family life is considered private and it is challenging to collect evidence to determine exploitation in such a setting. Indeed, an interviewed police representative in Malawi doubted whether the victim would even qualify her experiences as a crime.

So, for someone to come and report the crime, they have to have an understanding that this is a crime, they have been victimized, and they have to be sure of [the arrangement], but since this is a family arrangement, then the victims would normally [resign] to their fate and say, “this is how things are supposed to be”. For the police, it becomes really very difficult for you really to know whether the people who have migrated for purposes of marriage have been exploited, or the people who have been trafficked for purposes of marriage, so for law enforcers, what you normally get is, people have migrated for the purpose of marriage, then because these people have not come out in the open, the aspect of trafficking is hidden from the law enforcers’ eyes. (Malawian expert)

For example, in Canada, the interviewed law enforcement representatives and other authorities had not investigated any cases of forced marriage and were not aware of any investigations concerning trafficking in persons in which marriage had played a role. The interviewed Serbian criminal justice actors noted that the problem of qualifying forced marriage cases as trafficking in persons normally boils down to the question of intent to exploit and the purpose of the exploitation.

Sometimes it’s difficult for prosecutors to prove that forced marriage is a form of human trafficking because you have to prove intent or actual exploitation. Because for a criminal offence, it’s enough to prove the intent of exploitation. (Serbian expert)

In general, many of the police officers interviewed in the nine countries emphasized the victim’s testimony as the most essential piece of evidence. This should ideally be supplemented by corroborating evidence such as witness testimonies, photos of injuries caused, mobile phone records, financial records, surveillance materials, etc. In some countries, such as Canada, police interviews with victims are recorded on video, which can be used as evidence in court, thus avoiding a situation in which the victim has to tell her story several times. The trauma the victim has gone through as a result of exploitation may have a deep impact on her memory and state of

<sup>78</sup>Taylor, L., “One in five girls and women kidnapped for marriage in Kyrgyzstan: a study” (2 August 2017). Available at [www.reuters.com/article/us-kyrgyzstan-women-bride-kidnapping/one-in-five-girls-and-women-kidnapped-for-marriage-in-kyrgyzstan-study-idUSKBN1AH5GI](http://www.reuters.com/article/us-kyrgyzstan-women-bride-kidnapping/one-in-five-girls-and-women-kidnapped-for-marriage-in-kyrgyzstan-study-idUSKBN1AH5GI). Accessed on 20 December 2018.

mind, resulting in a lack of details, memory lapses and inconsistencies in the testimony. In addition, interviewed experts noted that language problems and a lack of trust in the authorities further complicate the securing of evidence.

Look, the primary source of information is always going to be our victim. We would then go and look for any kind of – it could be a person who might be a witness like a neighbour, or we would look for all sources of corroboration. If there's any medical evidence, we would want that. If we can prove the financial transactions if there were transactions, we would want to do that, through bank accounts, possibly subpoenaing them. And, we would also try and show communication between the families if we were looking at prosecuting the family. We would look for things like cell phone evidence. I suppose we would look for all kinds of sources of corroboration, but our primary person is going to be the victim at the end of the day. (South African expert)

Many interviewed police officers and prosecutors mentioned instances in which the victim or her family had withdrawn their statement, resulting in the termination of the investigation. For example, in Kyrgyzstan, according to the interviewed law enforcement representatives, many of the reported bride kidnapping cases are suspended because the families agree on a solution among themselves and thus withdraw the case. Sometimes, the victims or their families may also be threatened by the perpetrators and/or their families in order to force them to withdraw their claim or to change their story. Canadian police officers frequently mentioned that when the victim and the trafficker have been in a relationship, the trauma bond between them is so deep that the victim may decide to return to the trafficker rather than pursue the case.

In Kyrgyzstan, many interviewees mentioned the bride kidnapping case of Burulai, a woman who was murdered at the police station owing to mistakes by the local police, who had allowed the perpetrator to have an unsupervised meeting with the victim. The case received significant media attention and resulted in a public outcry,<sup>79</sup> including a statement from the United Nations office in Kyrgyzstan.<sup>80</sup> The Committee on the Elimination of Discrimination against Women also condemned the practice of bride kidnapping overall as a serious crime and a human rights violation.<sup>81</sup>

In addition, some non-governmental organizations noted that the police or prosecutors often pursue cases that non-governmental organizations consider as constituting trafficking in persons as some other offence, such as pimping, rape or assault. For the police and prosecutors, it may be easier to prove an alternative charge. Certainly, it was repeatedly mentioned that the offence of trafficking in persons is complex in nature, requiring specific skills to look for, find and properly interpret evidence of the crime in order to take the case further for prosecution. In this context, it was mentioned in some countries that the police may lack the skills and training to properly investigate trafficking crimes. Moreover, owing to the complex nature of the crime of trafficking, individual investigations may take up a significant amount of resources and time. Interviewed stakeholders noted the need for a more proactive approach in investigating cases of

<sup>79</sup>United Nations Development Programme (UNDP) in Kyrgyzstan, “In memory of Burulai” (23 November 2018). Available at [www.kg.undp.org/content/kyrgyzstan/en/home/presscenter/articles/2018/110/in-a-memory-of-burulai.html](http://www.kg.undp.org/content/kyrgyzstan/en/home/presscenter/articles/2018/110/in-a-memory-of-burulai.html).

<sup>80</sup>UNICEF, “United Nations statement on bride kidnapping and child marriage” (31 May 2018). Available at [www.unicef.org/kyrgyzstan/press-releases/un-statement-bride-kidnapping-and-child-marriage](http://www.unicef.org/kyrgyzstan/press-releases/un-statement-bride-kidnapping-and-child-marriage).

<sup>81</sup>OHCHR, “Culture of abduction, rape and forced marriage violates women’s rights in Kyrgyzstan, UN experts find” (18 September 2018). Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23583&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23583&LangID=E).

trafficking and forced marriages, because of their hidden nature. Also, working with communities was seen as an important tool for the police in uncovering more marriage-related cases.

With trafficking cases, because of the nature of these kinds of cases, you actually need to follow the proactive approach. The intelligence-driven approach. So that the dedicated capacity needs to be the people going to, find, these cases, if that makes sense [...]. Now you're asking people to go and find more cases. But unfortunately, because this is, I mean the forced marriage is behind closed doors, in communities. You need people going out there, looking, talking to the community, understanding the nature of a community. (South African expert)

Overall, it seems that some progress has been made in many of the countries visited. Training courses have been provided to police officers and prosecutors on how to investigate trafficking in persons, and information has been disseminated and shared with regard to examples and case law from various countries around the world.

### 4.6.3 Prosecution

In the data, there are some examples of convictions for trafficking for forced marriage, mainly from Viet Nam and South Africa. However, overall it seems that cases of forced marriage or trafficking for forced marriages rarely reach the court. It is clear that, in the cases that do reach the court, the victim's testimony is invaluable. However, at the same time, the interviewed criminal justice authorities mentioned that the court process can be extremely long, re-traumatizing and stressful for the victim, especially if they need to testify in front of the accused and encounter family members who are implicated in the case. This concern was very much echoed by victim support providers.

I have one client right now whose family has not been charged with the forced marriage crimes but with other crimes like assaults. She's actively seeking to convince our Crown attorney to drop the case and she does not want to go ahead with it. She's the only one who's even engaged the criminal justice system. Actually, the mental health impacts of having to deal with that have been significant for her. Almost as significant as the abuse she faced. (Canadian expert.)

Moreover, representatives of Serbian non-governmental organizations pointed out that it puts a lot of pressure on the victim if her testimony is the main piece of evidence in the trial. For child victims, the experience can be even more stressful. The Canadian experts mentioned that they have had good experiences in using video testimonies. This has been found to be particularly useful in cases in which the victim has already returned to her or his home country.

Some countries, such as Thailand, have developed ways to respect the wishes of those trafficking victims who want to return to their home countries. Legislation allows victims to testify via teleconference or video link if they are no longer in Thailand when the court process has begun.

The Supreme Court Chief Justice advised the judges to use the teleconference and to encourage pretrial hearing. So that once we find the victim, and if they want to go home as soon as possible, the police or the prosecutor can bring them to the court and request for pretrial, immediately, and they can go home, if they want to. [...] I mean, before the investigation is done and before the case is filed to the court. (Thai expert)

Another issue mentioned by the interviewed stakeholders was the victim's safety during the trial. The victim and the witnesses might have to face the perpetrator or their families in court and might be threatened to change their testimonies.

However, interviewed law enforcement representatives in many countries mentioned that they have special procedures in place if there are safety concerns related to the case, which include, for example, escorting the victim to court and back and advising them on the safety procedures. Another challenge pointed out by the interviewed stakeholders is the judges' lack of awareness of trafficking in persons and its complexities; they may have a hard time understanding the dynamic between the perpetrator and the victim.

However, as with the police and prosecutors, there has also been an increase in the awareness of trafficking in persons among judges in recent years. Several interviewed stakeholders in the nine countries mentioned positive progress in terms of securing human trafficking judgements. However, awareness of forced marriages and marriage-related trafficking may still be relatively low among judges.

#### 4.6.4 Counselling and other support

In many countries, the victims of forced, abusive or exploitative marriages and trafficking in persons are more likely to seek assistance from non-governmental organizations or other civil society actors, including religious organizations, crisis centres, women's organizations and migrant organizations, if they have the means to do so. They may also seek medical assistance from different kinds of health-care providers and clinics. As outlined above, victims may have been subjected to serious exploitation and abuse in the context of marriage, including sexual exploitation, rape or forced pregnancy, as well as domestic servitude, forced begging or forced criminality. Such experiences may have serious long-term effects on trafficked persons. They may result in severe trauma, anxiety and mental health issues, including self-harm, lack of self-esteem, shame, guilt, memory loss, post-traumatic stress disorder, sleep disturbances and depression, as well as physical problems such as chronic pain, fatigue, deterioration of pre-existing conditions, injuries, sexually transmitted diseases and reproductive or sexual health complications.<sup>82</sup>

It is therefore evident that victims have a multitude of issues that must be taken into account when providing them with support and assistance. Many women and girls may come forward as victims of domestic or gender-based violence or seek assistance on an immigration issue, rather than seek help as victims of trafficking or in relation to their marriage specifically.

The interviewed representatives of non-governmental organizations mentioned that the information on available services is often communicated informally, by word-of-mouth or through social media. Furthermore, the German experts explained that, often, the first contact with a victim could be to discuss a topic not related to marriage or trafficking. It is thus important to have low-threshold counselling offers and contact opportunities to establish trust. Some organizations also run hotlines or other phone or online-based services, which may also be utilized by victims from remote locations. Often, the availability and type of services varies between urban and rural areas.

<sup>82</sup> See also Zimmerman C, Hossain M, Watts C., "Human trafficking and health: a conceptual model to inform policy, intervention and research", *Social Science & Medicine*, vol. 73, No. 2 (2011), pp. 327–335.

Many of the interviewed experts in the nine countries noted that it is important for non-governmental organizations to be able to provide assistance in multiple languages and low-threshold services to women and girls who may be very hesitant to disclose the true extent of their experiences. For many, it might take a long time before they are ready to talk to the counsellors, so it is beneficial if counsellors have cultural knowledge and understanding of the victims' circumstances. For migrant victims, it may be very important to provide the services anonymously and without fuelling the fear that their irregular migration status will be reported to the immigration authorities.

The framework is that grassroots organizations, helping organizations – be it hospitals, even the police, or domestic violence organizations – they need to have access without fear policies, meaning people can come and figure out what they need, find safety, maybe support, without worrying that their information is going to be shared with immigration. (Canadian expert.)

Many non-governmental organizations also cooperate with the authorities, and inform victims of their rights and encourage them to report their cases to the police. Interviewed experts emphasized that the final decision regarding the possible cooperation with the authorities must be left to the victim. It was noted by experts that victims of marriage-related exploitation rarely want to report to the police, even if the exploitation has been very severe.

Several countries have procedures in place concerning the provision of assistance to child victims following a determination of the child's best interest. Such procedures are always individual and are based on a needs assessment to determine the circumstances and specialized needs of the child in question. For example, in Malawi, child marriages are dissolved by the authorities, and the children are offered counselling and encouraged to continue their studies.

Most of them are too young for marriage. Efforts are always made to make sure that the girls go back to school. That's something that some have to do through counselling, because some of them may not be willing to go back to school. Through counselling with their parents, with the girls themselves, they are encouraged to go back to school. (Malawian expert)

Experts explained that, if the child does not have parents or a legal guardian, or if the parents are implicated in the case, she may be placed in an orphanage or other care facility or she may be given to an extended family rather than being returned home to her parents.

For both adults and children, psychosocial counselling is one of the key areas of services provided by non-governmental organizations. Depending on the country, non-governmental organizations may be specialized in offering counselling services for victims of gender-based violence, child victims, migrant workers, victims of trafficking in persons or victims of forced and child marriages, for example. Interviewed experts indicated that services should always be tailored to the victim and be based on their individual needs. Often, the need for services may change over time with the phases of recovery. At first, the victims might need intensive crisis assistance and counselling, which would then be followed by more long-term solutions.

Victims may benefit from mentoring and empowerment programmes as a way for them to have control over their own lives and to move on from their traumatic experiences. The interviewees stressed that it is essential to avoid victim-blaming attitudes, especially when working with young people.

Whenever we are meeting with our young people, it has to be as interactive as possible, so it's not about us judging whatever happened to them or whatever they've done, whatever choices they have made, but at least work on their strength. So, we know, okay, this girl is capable of doing this, how best can we help her. So, in whatever stories they bring in to us, we always look what is the best part of her, and then we work on the best part of oneself. (Malawian expert)

Many of the interviewed representatives of non-governmental organizations also emphasized the importance of trust and time when providing assistance to victims. It may be very difficult for a person who has been exploited and abused in the context of marriage to trust outsiders and to be able to deal with fragmentary services offered by different authorities and organizations. Therefore, hands-on assistance in particular may be needed.

Funding of adequate services is a challenge in many countries, especially when it comes to long-term assistance and offering shelter placements for victims, particularly if they have children with them. Victims of forced or otherwise abusive marriages may also have problems accessing specialized shelters intended for officially identified victims of trafficking. Such services may only be accessed if the case is reported to the police and qualified as trafficking in persons by the criminal justice authorities. Similarly, victims of forced marriages may lack access to residence permits, which may be given to victims of trafficking on the grounds of, among others, an ongoing criminal justice process.

As for the health-care services, the interviewed experts highlighted that it is important for the health-care providers to be able to identify cases involving forced and child marriages, as well as trafficking in persons, to have in place standard operating procedures and to refer potential victims to further services. This should not, however, be mandatory, but should respect the right of the victim to decide what to do. Indeed, introduction of different mandatory reporting policies among health-care providers were considered counterproductive by the interviewees. Such policies may in fact hinder victims from seeking medical assistance in the first place and put them at a higher risk of acquiring permanent injuries or other health risks as a result.

Ultimately, assistance to victims of trafficking is often restricted only to the most obvious cases. In many parts of the world, assistance to victims of trafficking is tied to the criminal justice process at least to a certain degree, which may jeopardize the victim's rights in cases where the case is difficult or impossible for the police to investigate in the first place.

#### 4.6.5 Legal aid and legal assistance

One essential aspect of victim assistance is access to legal aid and assistance.<sup>83</sup> Such services may be offered by specialized non-governmental organizations, legal professionals – who also consult clients pro bono – as well as public legal aid offices. Experts outlined that the systems vary greatly, but for many women and girls, the problem is to secure a good and knowledgeable lawyer who is familiar with issues related to criminal, family and immigration laws, as required.

Legal assistance is very important, particularly for migrant victims, who might have issues with their residence permits, especially if the residence permit has been granted on the basis of

<sup>83</sup> OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking – Commentary* (Geneva, 2010).

marriage or if they are irregular migrants. This may prevent such victims from contacting authorities, owing to fear of deportation or lack of information on their options to claim continued residence in the destination country. While victims of trafficking are often entitled to temporary residence permits, victims of gender-based violence or forced marriage may have significantly fewer options to ensure continued residence in the country of destination. They may be threatened with deportation if they wish to end the marriage.

In terms of legal intervention, it's really a question of what the client wants. So, a large majority of our cases are around ensuring that if the client wants to leave, their immigration status isn't taken away from them, because the automatic default when someone leaves is for the family to call and make an immigration complaint and have them deported. This is a classic line. (Canadian expert)

In addition, legal assistance is very relevant when it comes to divorce, especially in relation to alimony, the custody of the children and child support. This is further complicated by both the stigma of divorce and the fact that divorce may be difficult for the women to acquire, especially if they do not have the support of their families. It was also mentioned by experts in Jordan and Kyrgyzstan that women and girls who have been married only in a religious ceremony without having a legally valid marriage face great problems in the event of a legal separation or divorce, as they have no rights to the property they shared with their husband, or to spousal support, alimony or shared property. This in particular relates to situations of polygamous marriages in countries in which polygamy is criminalized. In these countries, only the first marriage is considered as a legally valid marriage.

Because with alimonies it's a big issue. I mean like 70 per cent of kids, they do not receive alimonies from their fathers. So, it comes to men having the second wife, the third wife, the fourth wife, because they are free of paying anything to the kids. It's easy, you go marry one more and then one more and then one more. (Kyrgyz expert)

Similarly, it was noted by Vietnamese experts that the forced marriages between Vietnamese women and men in neighbouring countries are often not legally valid because often the women are in the country irregularly. Therefore, they cannot file for divorce or gain custody of their children. For many women, this presents a major obstacle to accessing their rights.

In relation to the dissolution of forced and/or child marriages, some of the interviewed experts also discussed the annulment of marriages. This may be particularly relevant for women who come from cultures that consider divorce shameful, but sometimes the motivation to pursue an annulment can go beyond that.

However, getting an annulment is often very complicated, and it is rarely granted in many of the countries visited during the data collection. The situation may be different when it comes to child marriages, but there is a lack of information in the data concerning the procedures in place to dissolve or annul child marriages.

#### 4.6.6 Return and repatriation

For some of the victims of forced, abusive and exploitative marriages who have been exploited abroad, returning home may be very complicated. While some victims wish to return, others

want to remain in the destination country and continue building a life there. To some degree, this seems to depend on the profile of the country concerned.

For instance, interviewed representatives of Canadian non-governmental organizations noted that victims of forced marriages often do not wish to return to their home countries because of conflicts or poverty, or because of the poor standing of women in society. They would rather stay in the destination country than face their families and the stigma back home, and they would rather try to build new lives and careers in the new country.

A lot of times they want to stay here. The reasoning generally is that, number one: sometimes their families were also part of the forced marriage. So, they have safety concerns around going home. Number two: there's a stigma attached if you've been married and suddenly reappearing and not being married. I think their life outcomes and their choices are oftentimes going to be better here than in their home country. So, they will choose to stay here alone, isolated from the community and others. But I have to say that the resilience of the clients I've worked with is always surprising (Canadian expert)

In many countries, the victims of trafficking or migrants who are otherwise deemed vulnerable may be repatriated with assistance from country offices of the International Organization for Migration. Sometimes, embassies are also involved in trying to ensure the safe return of their citizens who have ended up in a situation of exploitation abroad. There are some examples in the data in which embassy staff identified relevant cases and referred them to the authorities or non-governmental organizations they cooperate with either in the country of origin or destination.

Those are situations that we recognize most often when our embassies or our consular offices contact us, from a foreign country, related to the repatriation of this person. And in that country, very often they are not recognized as human trafficking victims. They don't get appropriate support or help, and after this person comes back, we do an identification here. So, there are different indicators, different factors depending on the situation. (Serbian expert)

#### 4.6.7 Prevention

Prevention is an important component of the work against exploitative and abusive marriage, yet it remains one of the most challenging and complex areas of intervention. For example, a lot has been done to address child marriage. A study of over 20 programmes in different regions found that most programmes deployed a variety of strategies but that the strongest, most consistent results in reducing child marriage were produced by programmes promoting information, skills and networks for girls in combination with community mobilization.<sup>84</sup> Evidence-based strategies to prevent early and forced marriages include changing norms and values, as well as income and economic strengthening interventions, while child marriages can be prevented by education and life skills programmes, as presented in the publication *INSPIRE – Seven Strategies for Ending Violence Against Children*, developed in 2016 by the World Health Organization, together with UNODC, the United Nations Children's Fund and others.

<sup>84</sup> Malhotra, A., and others, "Solutions to end child marriage: what the evidence shows" (Washington, D.C.: International Center for Research on Women).

According to the interviewed stakeholders in the nine countries, engaging in prevention is a key to addressing such complex and structurally manifold issues in the long run. Many different kinds of programmes, projects, initiatives and practices have been developed in response to forced and child marriage, trafficking in persons and gender-based violence in general. The present section shortly outlines some of the key points and suggestions made by the interviewed experts.

Most interviewed stakeholders noted that, in order to prevent forced, abusive and exploitative marriages, it is important to raise awareness of these types of marriages and trafficking in persons, not only among criminal justice actors and non-governmental organizations, but also among a variety of professionals such as health-care providers, teachers and social workers.

Health-care workers, emergency workers, teachers, government employees, bus drivers, nurse practitioners and doctors need to be trained. They're on the front lines, they see this all the time. (Canadian expert)

Experts outlined that it is equally important to raise awareness of the rights of citizens relating to marriage, property rights, human rights and equality, especially in rural areas, and to further develop legislation and policies to address forced and child marriage. In some countries, such as Thailand, the authorities have developed guidelines advising women how to avoid becoming a victim of forced marriage. Also, different online tools, including social media, and hotline services were seen as relevant by some of the interviewed experts, as they could be used to reach out to persons at risk, and they would also enable victims to reach out and seek help.

Moreover, awareness-raising campaigns, outreach work and the education of young people, parents and persons who have power in communities, with a focus on the harmful consequences of child and forced marriage, were described as extremely important. For example, interviewed Serbian experts noted that parents simply might not know how child marriage could concretely impact their daughter and her future.

You have to work on ensuring that society recognizes how detrimental it is for children. We had [a] father who sold the daughter into forced marriage, and when we explained to him that she can have a problem because of early pregnancy at the age of 14, that she can have a problem because of not completing education and if 10 years her husband beats her, she will have to stay with him because she can't earn a living. And when explained to people, what his daughter can come up against, then his reaction is, "Oh my God, I never thought of that, I had no idea!" (Serbian expert)

Many interviewed stakeholders pointed out that women and girls (but also men and boys) lack information on their basic rights with regard to marriage, gender-based violence and boundaries, as well as healthy relationships in general, so a variety of awareness-raising and educational measures are needed in order to address the gaps. Such topics should be taught in schools and local communities, reaching out especially to young people and children.

We talk about the response, but prevention is key to ending this and very little is done in a systematic way on prevention. So, we think that a really great entry point is to get into schools and talk to kids and talk to them about healthy relationships and boundaries and consent and all of those things that traffickers exploit. (Canadian expert)

In many of the countries visited during the data collection, marriages are concluded at a rather young age, and there are many rules concerning pre-marital sex and dating that emphasize the

role of marriage as a way of controlling the sexuality of women and girls. Inequality between women and men and gender-based violence must also be factored in, as they create conditions in which forced, abusive and exploitative marriages thrive. Thus, gender-specific measures and policies are very much needed. Moreover, the interviewed experts in Kyrgyzstan noted the lack of socializing between girls and boys as a main driver for bride kidnapping. This lack has left some young men with a reluctance to approach girls, resulting in the view that bride kidnapping is a viable option to secure a wife.

Respondent: For the bride kidnapping, I would say it's the lack of ... I think it's the restrictions around socializing of boys and girls. So, a lot of boys are afraid to approach a girl and start a relationship, so what they do is just go and grab a girl. And then girls aren't allowed to socialize with boys. That's seen as ... bringing rumours to the family. So, the parents will put a lot of control on the mobility of the girls as soon as they reach adolescence, in terms of where she can go, and how much time she can spend outside, and not allowing her to meet boys of her age and so on. (Kyrgyz expert)

Furthermore, experts interviewed in Jordan and Kyrgyzstan noted that young people also need more information on sexuality, family planning and reproductive health issues to be able to make informed choices about their lives.

#### **Box 4. Pre-marriage courses in Jordan**

During the interviews, a promising practice was described in Jordan. The Family Reconciliation and Habitation Department has developed pre-marriage courses, which are offered to the families of brides- and grooms-to-be to address early and child marriage. The authorities have tried to find ways for the couples to delay the marriage if it is happening for economic or other reasons. The authorities may also offer targeted assistance to families with social issues.

As discussed above, the role of families and local communities is also very important when it comes to approving and arranging marriages between their daughters and sons. Family honour often seems to be tied to the reputation and conduct of the children, and marriage is used not only to impose control over that honour but also to forge ties between families and to gain social capital or even material benefits. Such practices are often part of important cultural traditions that are embedded in the society and local communities through many different ties. These local communities must therefore be included in the efforts to end child and forced marriages and bride kidnapping. Many interviewed experts noted the importance of working together with the local communities, including with men, women and families, in order to change their value systems and end child or forced marriage. As one Malawian government representative noted, "If you don't talk to the communities and engage them on decisions, these things will still happen on the ground."

One preventive measure mentioned by the South African stakeholders was the education of traditional leaders or other local chiefs or people who have power in their communities. Their role in preventing such marriages and malpractice was also seen by the criminal justice authorities as essential.

Traditionally, we need to now start having workshops in the deep rural areas, the counsellors, with the chiefs, we need to start having workshops with them and tell them and listen: "Is there any way that we can prevent this from happening or can we change the

laws in terms of your custom?" I think the chief or the counsellor of that particular area will play a vital role in trying to eradicate the issues that we are currently experiencing. (South African expert)

#### **Box 5. Educating village leaders in Malawi**

In Malawi, there has been much success in educating village leaders and using their influence to prevent child marriages. In addition, special by-laws have been drafted to address the problem of child marriage at the local level and to empower chiefs to act if child marriages are detected.

Respondent: The Government has also encouraged communities to make by-laws to make sure that they also take a role and issue such help. For example, if a girl gets married in a village, community leaders are also empowered to dissolve such kinds of marriage. And maybe penalize the perpetrators. So that is becoming popular nowadays.

Interviewer: So, can you give me an example of such a by-law? How it concretely can work?

Respondent: Yeah, for example the chief might say: "I want all children in my village to go to school." If any parent marries [off] his or her child, they will be penalized by paying a fee to the chief. (Malawian expert)

Such by-laws must then be respected by the community and carry weight owing to the social standing of the chief and his or her influence.

Moreover, working with religious leaders was deemed to be very relevant by interviewed stakeholders, especially in countering child marriage. For example, such work has been carried out in Jordan and Kyrgyzstan with promising results.

We are trying to engage with religious leaders, because usually all these closed communities are very religious, and then we develop several educational materials. In the format, for example, of Islamic calendars, where we have taken different surahs from Islam that talk about ill-effects of early marriage and that it's not actually allowed in Islam, for example. And then we are also doing all these posters that we put on the transportation, on different medical institutions, in the kindergartens. To raise awareness that this is actually a crime. So that they know that it's a crime. (Kyrgyz expert)

In addition, to curb child marriages in Kyrgyzstan, after recent legislative amendments, the officiators of Islamic marriages are criminally liable if they perform a marriage involving a girl who is under 18. They have a duty to check the identity documents of the bride and the groom before they officiate the marriage.

While there is much to be done to change attitudes, more concrete suggestions were also made. For example, Jordanian experts suggested that the use of monetary incentives to discourage child marriage may be the only truly effective way to influence the families who struggle with financial issues and who may otherwise resort to marrying off their daughters as a coping strategy. The interviewed experts noted similar issues related to poverty, which may simply force Malawian parents to sell their children if there is literally nothing to feed their families with, or may force Vietnamese women into accepting risky migration offers because they have no options to sustain themselves or their families in their home villages.

And another intervention could be to strengthen sustainable livelihood in localities where the poverty rate is high, because they have to go because they are poor. And they have no income activities at home. So, if we can create something for them to do at home to earn money, at least enough for them to live in the home town, so that they don't decide to leave. (Vietnamese expert)

Ultimately, addressing the root causes such as poverty may be the only sensible solution in the longer run, in accordance with the Sustainable Development Goals, such as Goal 1, on ending poverty, and Goal 5, on achieving gender equality and empowering all women and girls. In addition, target 5.3 of the Goals is specifically aimed at preventing, responding to and eliminating child, early and forced marriage. Also, structural vulnerabilities must be addressed, such as discrimination towards certain minorities. An interviewed Serbian stakeholder noted that the families of minorities who are truly part of the society and have regular jobs and a basic education are less likely to arrange the marriage of their underage daughters.

Some non-governmental and other organizations are also implementing outreach programmes to target those who are the most vulnerable to trafficking and exploitation. This is another way of reaching out to potential risk groups and communities (see also box 6). In Serbia, it has been deemed very useful for non-governmental organizations to work directly with street children and to offer low-threshold services, not only to provide direct assistance to potential victims but also to create and maintain relationships with the local communities and groups at risk.

The criminal justice response itself should be seen as part of a holistic approach to prevention. In addition to the measures outlined above, all legal provisions and regulations concerning marriage, such as marriage registration, minimum age requirements and other formal procedures, as well as those concerning trafficking in persons, serve to prevent forced, abusive and exploitative marriages.

#### **Box 6. Community-based education in Malawi**

In Malawi, an international non-governmental organization is implementing a promising community-based programme to inform and educate girls about the risk of sexual abuse, trafficking, child marriage and slavery. Weekly workshops and a variety of different activities are organized to reach the girls and their families to raise awareness of the risks and empower the girls to protect themselves. In addition, individual counselling and referrals are offered to victims of trafficking and sexual exploitation.

It's for trafficked girls, girls involved in child prostitution, involved in, or maybe being abused in home, who've been trafficked, involved in slavery, being kept out of school. The primary focus is getting girls out of sex work, and that's our primary focus. And just to give a bit of background, we were approached by the community to start this project, they were having concerns about the level of child prostitution, also there were several rapes and assaults and they didn't really know how to deal with those. (Malawian expert)

## 4.7 Conclusions

It is quite clear from the collected empirical data that it is mainly women and girls who were the victims of the forced, abusive and exploitative marriages discussed during the field work. While cases involving male victims were also mentioned by some experts, they were not as prevalent and were not discussed in the same detail.

Many different factors contribute to women and girls being in situations that make them more targeted by and vulnerable to harmful practices and the kind of forced, abusive and exploitative marriages that the experts discussed. Poverty, unemployment, violence, belonging to a minority, conflicts and displacement push victims into situations where they and their families feel that they must comply with the requirements of tradition, recruiters, brokers or traffickers. Many of the victims come from disadvantaged family backgrounds and lack access to education. It was reported that some victims were targeted because of their disabilities. In addition, harmful practices, covered by tradition, such as the paying of bride price and bride kidnapping may help create situations in which types of conduct such as forced, abusive and exploitative marriage are more likely to occur.

The data demonstrates that the exploiters and victims often have a similar background. Personal, romantic relationships may be used by perpetrators as a pretence when approaching the victims and/or their families in order to build a sense of trust, which is then exploited by the perpetrators. However, particularly in cases of child and forced marriage, trust-building is not needed, as girl's and women's views are not included in the negotiation or consent-giving process.

Experts emphasized repeatedly the roles and expectations of families in the marriage process in all of the countries included in the research. Sometimes, wedding agencies, brokers or other middlemen are also involved in the process of uniting the bride and the groom, charging high fees for their services. The perpetrators, often the husbands, employ various methods of control to limit the freedom of movement and choice of their spouses, using violence, threats and psychological pressure. Women and girls are abused and exploited sexually, in household work and in labour, and in some cases, even in begging and criminal activities, and they are extremely dependent on their husbands in multiple ways.

Many different barriers to reporting such experiences were identified in the data. Women and girls often find it difficult to seek help and disclose their experiences to authorities because of fear, stigmatization and shame. Victims are also afraid of losing the custody of their children, their residence permits and their places of residence as a result of reporting. Therefore, victims mainly seek assistance from non-governmental organizations. The authorities may lack information on forced, abusive and exploitative marriages and find it difficult to investigate and prosecute cases that take place in the context of marriage, often placing the burden on the victims' testimony, which may be very stressful for the victims and discourage them from cooperating with the authorities.

Ultimately, multifaceted prevention efforts are needed to address the phenomenon. It is essential to collaborate with local communities, leaders and families, as well as with youth and at-risk groups, to increase awareness, share information and address the phenomenon on the structural and policy levels. A number of promising practices and suggestions were made on how this should be done concretely.

In terms of identifying and countering the cases presented above as constituting trafficking, several factors were taken into consideration. Undoubtedly, the characteristics of some of the

cases outlined in this chapter already share common elements with cases constituting trafficking in persons. In particular, victims of trafficking may enter into a situation of exploitation owing to similar vulnerability factors and constellations, may face similar methods of control, violence and abuse, and may be exploited in different ways. As in cases involving trafficking in persons, the majority of detected victims are women and girls. Barriers to reporting are also encountered in trafficking-related cases and one of the main tasks for law enforcement officials is to build rapport with victims and collect corroborating evidence.

However, making the leap between conceptualizing a set of circumstances and qualifying conduct as trafficking, and a concerted effort on the part of the criminal justice system to counter that conduct as trafficking are two very different things. Indeed, experts noted that one problem of qualifying forced, abusive and exploitative marriage cases as trafficking in persons normally boils down to the question of the intent and purpose of the exploitation. Chapter 5 considers the cases discussed in the context of this paper through the lens of the three elements of the crime of trafficking in persons, in order to provide concrete guidance on the ways in which States can take such complicated cases into account in their anti-trafficking response, if applicable. In other words, chapter 5 provides a legal analysis of aspects that support an assessment of the cases outlined as either constituting trafficking in persons or not.



## 5. Analysis of the linkages between trafficking in persons and types of marriage

The examples described by the experts, outlined in the previous chapter, showed several elements typically seen in cases of trafficking in persons. These included, among others, sexual and labour exploitation; force, fraud and coercion; taking advantage of the vulnerabilities of victims and families; and various control methods meant to keep victims in situations of exploitation. The aim of this chapter is to examine these interlinkages more closely and apply the internationally agreed definition of the crime of trafficking in persons contained in the Trafficking in Persons Protocol. The chapter will provide a legal analysis of cases that entail aspects of marriage and that might be considered cases of trafficking, based on the presence of the three elements of act, means and purpose of exploitation (act and purpose of exploitation, in the case of children), in accordance with the Trafficking in Persons Protocol. The legal analysis and recommendations draw from the available international legal and regulatory framework relevant to trafficking and marriage (see chapter 3 for details). Furthermore, some examples of national legislation are provided in order to illustrate specific considerations, challenges and solutions.

As became apparent in the description of key characteristics in chapter 4, the cases that show interlinkages between marriage and trafficking in persons are particularly complex, which makes a legal analysis of the cases similarly complex. Particular challenges are, for instance, that marriage is seen as a private family matter in which criminal justice authorities or community support structures have no role. Furthermore, the concept of marriage is accompanied by cultural and traditional connotations and values that can differ between communities. Finally, especially challenging for the purpose of this analysis is the differentiation between violent and abusive marriages and marriages that match the elements of trafficking in persons (act, means (in the case of adults), and purpose of exploitation). Marriages worldwide include the allocation of domestic tasks and sexual relations, and in some areas of the world and some cultures, a wife is expected to perform difficult domestic duties.

According to the UNODC *Global Report on Trafficking in Persons 2016*, trafficking for marriage as a specific form of exploitation was reported by 15 countries during the period 2012–2014. Trafficking for forced or sham marriages accounted for about 1.4 per cent of the total number of detected victims.<sup>85</sup> In the *Global Report* for 2018, trafficking cases for forced marriage were reported in 12 countries.<sup>86</sup> Forced marriage was also particularly prevalent in cases of trafficking in persons in conflict situations, often together with sexual slavery. Furthermore, 94 per cent of

<sup>85</sup> UNODC, *Global Report on Trafficking in Persons 2016* (Vienna, 2016).

<sup>86</sup> UNODC, *Global Report on Trafficking in Persons 2018*.

detected victims of trafficking for the purposes of sexual exploitation in the world are female.<sup>87</sup> Also, according to the latest European Union statistics, women and girls represented the vast majority (95 per cent) of the victims of trafficking for sexual exploitation in the 28 European Union member States in the period 2015–2016 (96 per cent in 2015 and 94 per cent in 2016). In the period 2015–2016, women and girls represented two thirds (68 per cent) of the victims of trafficking for other forms of exploitation (71 per cent in 2015 and 65 per cent in 2016), which include, for example, forced marriage, forced criminality and begging. The member States of the European Union have in fact reported a growing number of identified cases of trafficked persons entering into sham or forced marriages. Such victims are also subjected to sexual exploitation, forced child-bearing and/or labour exploitation, or they are forced into marrying non-European Union citizens who want to regularize their stay in the European Union.<sup>88</sup>

The desk review and the expert group meeting, as well as the interviews with stakeholders in the nine countries, all identified close conceptual linkages between child marriage, forced marriage and trafficking in persons, even noting that it is often difficult to differentiate between them. However, experts admitted that these conceptual linkages very rarely translated into the criminal justice system countering this conduct under the framework of their anti-trafficking response, even when forced marriage was a specific form of exploitation in the legislation on trafficking in persons.

As already discussed in chapter 3, the definition of trafficking in persons contained in the Trafficking in Persons Protocol includes three constitutive elements: an act, a means and a purpose. The means element is considered unnecessary when the trafficking involves a child. Therefore, in order for the examples of forced, abusive and exploitative marriages discussed in this paper to be included in the national anti-trafficking response and, more importantly, for the victims to have the necessary assistance and protection accorded to them under the Protocol, these elements must be present. In other words, there must be an act of recruitment, transportation, transfer, harbouring or receipt of persons (an act), 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 (a means), for the purpose of exploitation (a purpose of exploitation).

Any of the above elements can be related to marriage or arranging a marriage. Most frequently, States identified the exploitation element of the definition as decisive in linking trafficking in persons to marriage, although the other elements also play a role in some of the cases. According to the Protocol, 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. As the list of forms of exploitation is not exhaustive, States are free to add other forms of exploitation as appropriate to their national circumstances and existing legislation.

Broadly speaking, the following approaches were identified in which Member States address linkages between forced, abusive or exploitative marriages and trafficking in persons: (a) forced or child marriage (or similar types of marriages, depending on the national context) are included as explicit examples of exploitation in the national definitions of crimes of trafficking in persons;

<sup>87</sup> Ibid.

<sup>88</sup> European Commission, *Data Collection on Trafficking in Human Beings in the EU*. (Brussels, 2018). See also European Commission, *Study on Gender Dimension of Trafficking in Human Beings: Final Report* (Luxembourg, 2018).

(b) forced and child marriage are subsumed under the concept of “practices similar to slavery” in the anti-trafficking legislation; (c) forced and child marriage are understood by the national authorities to be subsumed in additional broader forms of exploitation that refer to human dignity being violated in anti-trafficking legislation.

In addition, the two following points may be relevant to consider in cases that involve both trafficking in persons and forced, abusive and exploitative marriages. First, sometimes trafficking in persons takes place in the context of a marriage, without the marriage being linked to any of the constitutive elements of the crime. In other words, trafficking simply happens within a marriage and the latter has no influence on the crime; it could happen outside the marriage as well. And secondly, while some countries consider cases of forced or child marriage and trafficking in persons in separate national legislation, aspects of these crimes may overlap. In these situations, a careful examination of the circumstances and potential exploitation within the marriage should, however, take place and might open the door to considerations under trafficking in persons legislation in accordance with points two and three above. There is no single proposed solution for all situations.

The analysis is based on the empirical data collected during the project, as well as on the discussions held during the expert group meeting. Case examples illustrating the patterns identified above are introduced throughout the chapter. It should be noted that the subject area is very complex, thus many different interpretations can be made. In fact, many of the practitioners surveyed for the UNODC issue paper on the concept of exploitation in the Trafficking in Persons Protocol expressed unease and uncertainty around the issue of marriage and trafficking in persons.<sup>89</sup> Accordingly, the aim of the present paper is to highlight possible connections and interlinkages and to raise awareness of substantive and evidential issues. It does not offer sharply distinct solutions but rather carefully explores the grey areas that are important in identifying victims and providing protection and support. In order to analyse the different constellations outlined above in more detail, the following sections will carefully consider the act, means and purpose of the exploitation, the issue of consent, and evidential issues inherent to the cases described.

## 5.1 The act

The act in trafficking in persons, according to the Trafficking in Persons Protocol, refers to the recruitment, transportation, transfer, harbouring or receipt of persons.

### 5.1.1 Recruitment

Previous research has noted that marriage can be linked to the act of recruitment in trafficking cases and that it can be used as a recruitment method.<sup>90</sup> This includes situations in which marriage is used as a tool to bring the bride to the destination country where she will be

<sup>89</sup>UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 11.

<sup>90</sup>See Lyneham, S., “Forced and servile marriage in the context of human trafficking”, Research in Practice Series No.32 (Canberra: Australian Institute of Criminology, 2013); Lyneham, S. and Richards, K., “Trafficking in persons involving marriage and partner migration to Australia”, Research and Public Policy Series (Canberra: Australian Institute of Criminology, 2014).

exploited sexually, in domestic servitude or in forced labour. Interestingly, some countries address recruitment into marriage directly in their trafficking laws and have established specific trafficking crimes relating to recruitment for marriage. For example, the Philippines has introduced trafficking legislation under its Act No. 10364,<sup>91</sup> which includes matchmaking and offering or contracting a marriage for the purpose of exploitation:

Section 4. Acts of Trafficking in Persons: It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

[...]

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labour or slavery, involuntary servitude or debt bondage;

According to the data, the brokers, recruiters or husbands involved in the recruitment may portray marriage as a way to find a better life and opportunities in the destination country. For example, some of the interviewed stakeholders, mainly representatives of non-governmental organizations, had encountered cases in which marriage had been used to facilitate the trafficking of a woman across international borders in order to place her in a situation of exploitation.

The Canadian non-governmental organizations that were consulted mentioned some cases in which persons had been recruited as nannies but had been brought into the country by means of marrying one of the family members. The persons were subsequently exploited in their work. The same non-governmental organizations had also identified some cases in which brides had been brought over to be used in “labour to run a business”. Such cases would often be qualified as sham marriages, as they facilitated immigration and/or the acquisition of residence permits on false premises. However, where these cases very clearly included the existence of exploitation, it would be indicated to take a closer look to inquire whether other elements of trafficking were present. Potentially, marriage could be seen as the recruitment strategy here, in accordance with the act as outlined in the Trafficking in Persons Protocol.

The German experts identified several cases involving sham marriages that could be directly linked to trafficking for sexual exploitation. One such case presented in the expert group meeting is described in box 7 below.

<sup>91</sup> Available at [www.lawphil.net/statutes/repacts/ra2013/ra\\_10364\\_2013.html](http://www.lawphil.net/statutes/repacts/ra2013/ra_10364_2013.html).

**Box 7. Case example from Germany**

A woman from Thailand, with six years of formal education and owing many debts, was recruited by the female owner of a bar in [City A], Thailand, to migrate to Germany and to sell sexual services in a brothel. She was told she would conclude a sham marriage with a German man in order to be granted a residence status. The plan was to divorce the man after the three years required to receive a permanent residence permit in Germany. This deal included a debt of 20,000 euros to the recruiter. When the woman arrived in Germany, she met the husband briefly in [City B] and was told what to say to him and to the immigration authorities. She was then taken to a brothel, where she worked long hours under constant monitoring and was not permitted to leave or refuse clients. She was required to give all the money earned to the recruiter. She wrote down the hours when she worked in order to record how much of her debt she had repaid, but the recruiter tore up her records. She made a first attempt to leave but returned to the brothel out of fear and was threatened with being returned to Thailand or being subjected to violence by the recruiter or her husband in Germany. The second time, she managed to escape. She then sought help from a non-governmental organization, which sent her to [City C].

An analysis of the case described in box 7 above confirms that the acts set out in the Protocol were present (recruiting, transferring, transporting, harbouring and receiving); the means included deception, as the woman was not told of the true conditions under which she would work, as well as the abuse of a position of vulnerability, psychological coercion and threats of force; and the purpose of the exploitation was sexual exploitation. Even though the woman consented to go to Germany to sell sexual services and thus knew what she would be doing and the debt she would incur, such consent was irrelevant, as the means were used, as established in article 3(b) of the Protocol.

Recruitment methods, such as deception, coercion, fraud and abusing a position of vulnerability are very often closely linked to the means element of the trafficking crime (see section 5.2 for details). Therefore, the act and means elements of trafficking, particularly in cases where marriage is concerned, are usually not considered separately but are examined together.

### 5.1.2 Transportation, transfer and harbouring

Forced, abusive and exploitative marriages can also have links to the trafficking acts of transportation and transfer, not as a method to transport and transfer, but as a kind of pretext. As previously noted, marriage has been used as a tool, a disguise, to facilitate, among other things, moving persons across international borders, for example, to be eventually exploited in prostitution in the destination country (see, for example, box 7). Transport and transfer through irregular crossing of borders has also, for example, taken place in Viet Nam, where women have been recruited and transported across borders for (forced) marriages. With regard to forced or child marriages, however, it does not seem that transportation is of much relevance in many of the cases, though it could be argued that in many cases there is transportation and transfer in the sense that brides usually move from their homes and families to a marital home with the husband, and often also with the parents-in-law. In cases where international borders are crossed for the purpose, or as a result, of marriage – for example, when one spouse must move to the home country of the other spouse – the travel is often arranged between families without hiring an agency to do it or persons to escort the victims into the country of destination. In addition, in some cases, recruiters or brokers may organize the travel, as in the case described below in box 8.

**Box 8. Case example from Slovakia**

A woman met a man from a nearby village, who, after some time, offered her a better life in the United Kingdom through a marriage to a rich man. The recruiter took advantage of her unstable accommodation situation, as well as the fact that she was illiterate. He paid for her travel ticket and she travelled to the United Kingdom. After her arrival, she was sold to a Pakistani national that she was supposed to marry. The marriage was not concluded, but she was raped by the man several times and had to take care of his household. Her documents were taken away, her freedom of movement was controlled and she was threatened. After some time, she managed to run away. She was found on the street by the police, who reported her to an organization assisting victims, which then contacted Slovak agencies. She was returned to Slovakia but decided not to cooperate with the Slovak police and left the assistance programme.<sup>a</sup>

<sup>a</sup> Baloghová, L., and others, "Forced Marriages and sham marriages in the Slovak Republic," *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, Viuhko, M., and others, eds., HEUNI Report Series 82 (Helsinki: HEUNI, 2016), pp. 349–350.

There are few cases in the data in which migrants resorted to the use of the services of smugglers to cross borders for the purpose of marriage. If a broker or an agency has been involved in organizing the marriage (see section 4.3.3 for more details), they may also arrange the transportation of the bride-to-be into the country of destination. In Malawi, it was mentioned that women and girls wishing to migrate to South Africa for marriage or job purposes would quite often utilize the services of transporters and smugglers, who might exploit them sexually in exchange for food or a place to sleep, transferring them from one person to another. Similarly, marriages have been related to the transport of women to Canada for the purposes of sexual exploitation or forced labour and servitude.

As for “receiving” and “harbouring”, during the expert group meeting it was pointed out by some of the experts that in cases in which there may be doubts about the initial intention of the husband or his relatives to exploit the wife, their subsequent actions after “receiving” or while “harbouring” the wife may suffice to prove the act. This means that the intent to exploit does not need to be identified at the outset of the marriage but could be seen as a development at a later stage, that is, while receiving or harbouring the spouse. These additional acts may thus allow the criminal justice authorities to detect and apprehend more people involved in the trafficking chain and help solve the problems concerning the proof of intent.

## 5.2 The means

According to the Trafficking in Persons Protocol, the means used in a trafficking offence include “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”. In general, a combination of more than one means is often employed.

As outlined in chapter 4, there is evidence that, in the cases discussed with experts in which forced, child and sham marriages were interlinked with trafficking in persons, means such as abduction, kidnapping, fraud, deception, the abuse of a position of vulnerability and the receiving payments or gifts were used in order to place women and girls in a situation of exploitation. For instance, the issue of the bride price or the dowry is related to the means element and is very relevant in some parts of the world, such as in Jordan, Kyrgyzstan, Malawi

and South Africa, because money or gifts are exchanged in the context of marriage arrangements by family members, who, in turn, may use their position of power to coerce their children to marry. The different means identified are analysed in separate sections below.

### 5.2.1 Deception and fraud

Deception and fraud are often used to place the victim in a situation of exploitation. Deception or fraud can be related to the nature of work or services or, in the context of the marriage, to the conditions under which the person will be forced to perform work or services, including household and care work (for instance, where the person is forced to work extremely long hours, is deprived of his or her travel or identity documents, or has no freedom of movement) or both.<sup>92</sup> The cases discussed by the interviewed experts and at the expert group meeting contain several examples of victims being deceived into marriage with promises of a better life abroad. In Viet Nam, the interviewed stakeholders mentioned that women are sometimes lured to neighbouring countries with promises of high-paying jobs or business opportunities, but, after crossing the border, are then sold for the purpose of forced marriage.

In the case in Germany described in box 7, the Thai victim entered a sham marriage willingly in order to migrate to Germany to work in a brothel. While she knew that she would be selling sexual services, she was deceived about the earnings and circumstances of the work in question. Experts in Jordan described how some girls and women (and possibly their families) had been deceived about the nature of their marriages, which were temporary and were concluded to allow their husbands to exploit them sexually for limited periods of time.

### 5.2.2 Abuse of a position of vulnerability

According to the UNODC issue paper on the abuse of a position of vulnerability and other means within the definition of trafficking in persons, the concept of abuse of a position of vulnerability is ambiguous: none of the means cited in the Protocol definition are themselves defined.<sup>93</sup> As per the interpretative notes on article 3 of the Trafficking in Persons Protocol, approved by the Ad Hoc Committee and contained in its report on the work of its first to eleventh sessions,<sup>94</sup> the “abuse of a position of vulnerability” is to be understood as referring to “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved”. However, according to UNODC analysis, this circular definition continues to cause confusion among practitioners, as it is unclear what “real and acceptable alternative” actually means or how it is to be applied in practice.<sup>95</sup>

According to UNODC, the survey of the relevant legislation and case law has considered the abuse of a position of vulnerability in different contexts. For example, in the context of forced marriage, the “abuse of authority” has been interpreted in Egypt as requiring the existence of a “real authority”, which may refer to an ascendant, descendant, custodian or guardian of the

<sup>92</sup>UNODC, *Model Law against Trafficking in Persons*.

<sup>93</sup>UNODC, *Issue Paper: Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons* (Vienna, 2012).

<sup>94</sup>See A/55/383/Add.1, paras. 63–68.

<sup>95</sup>UNODC, *Issue Paper: Abuse of a Position of Vulnerability and Other “Means” Within the Definition of Trafficking in Persons*, p. 25.

victim or a person who may otherwise have authority over the victim or be responsible for his or her supervision or care.<sup>96</sup> The data outlines that, in many parts of the world, girls and young women cannot decide for themselves but are under the control of their parents or other guardians, who determine when and whom they should marry.

As previously described in chapter 4, the victims in the cases described in which trafficking in persons is interlinked with forced, abusive and exploitative marriage, as well as child marriage, are often in a vulnerable position owing to economic, social or even medical reasons such as mental health issues, or owing to their age, particularly in child marriages. Migrant women in particular are often extremely dependent on their spouses during marriage. Tyldum has noted that this dependency of migrant women creates opportunities for exploitation and trafficking in persons.<sup>97</sup> People may be placed in exploitative situations by traffickers taking advantage of vulnerability factors such as age, poverty, illiteracy, unemployment or displacement. This position of vulnerability is abused not only by their own families, husbands and in-laws but sometimes also by brokers, facilitators or other third parties who may benefit from organizing the marriage. Especially in cases involving child victims, the position of vulnerability of the family is also often abused. In countries with significant levels of conflict, women and girls can also be abducted by armed groups and forced to marry soldiers, enduring different forms of exploitation. Armed conflicts are a known push factor for trafficking in persons and create new opportunities for traffickers to take advantage of the position of vulnerability of not only the girls and women, but also their families.<sup>98</sup>

In addition, traffickers can hold a considerable position of power over their victims. According to one interviewed Vietnamese stakeholder, the traffickers may sell women for marriages when they are too old or not pretty enough to work in brothels anymore. In one Vietnamese case, the trafficker made the victim choose between forced marriage and working in a brothel. Most women in such circumstances choose to get married. During the data collection, one relevant case example was collected in Jordan. The case described in box 9 has also been analysed in the report by the non-governmental organization Tamkeen as an example of marriage-related trafficking.<sup>99</sup>

#### Box 9. Case example from Jordan

Two young women, sisters, were referred to the Jordanian non-governmental organization Tamkeen after being arrested by the police for having been involved in selling sexual services. The non-governmental organization discovered that one of the women had served a prison sentence after having been convicted of perjury. While in prison, she met a woman who helped her, and after her release, both sisters married the sons of that woman and moved into her house, where they were forced to sell sexual services. Based on a psychological evaluation, the sisters were deemed to be mentally vulnerable, and easily led and controlled, having low levels of understanding of concepts and perception and unable to make good judgments. The case was referred to the trafficking unit and then to court, where the prosecutor decided to prosecute the perpetrators with a charge of trafficking in persons for sexual exploitation. In late 2018, the case was still under review.

<sup>96</sup>Ibid., p. 27.

<sup>97</sup>Tyldum, Guri, “Dependence and human trafficking in the context of transnational marriage”, *International Migration* vol. 51, No. 4 (2013), pp. 103–115.

<sup>98</sup>See, for example, International Organization for Migration, *Addressing Human Trafficking and Exploitation in Times of Crisis: Evidence and Recommendations for Further Action to Protect Vulnerable and Mobile Populations* (Geneva, 2015); ICMPD, *Targeting Vulnerabilities. The Impact of the Syrian War and Refugee Situation on Trafficking in Persons. A Study of Syria, Turkey, Lebanon, Jordan and Iraq* (Vienna, 2015); ICMPD, *Trafficking along Migration Routes to Europe: Bridging the Gap between Migration, Asylum and Anti-Trafficking* (Vienna, 2018).

<sup>99</sup>Tamkeen Fields for Aid, *Forced Marriage: between Tradition, Culture and Human Trafficking* (Amman, 2018). Available at [http://tamkeen-jo.org/upload/EFM\\_Study%20%281%29.pdf](http://tamkeen-jo.org/upload/EFM_Study%20%281%29.pdf). Accessed on 20 December 2018.

The victims in the case described in box 9 above were allegedly recruited into the marriages by the woman, who abused their position of vulnerability resulting from their status as released prisoners with mental disabilities. She presumably transported the two women into the house of the perpetrators, where they were received and harboured and consequently forced to sell sexual services. Tamkeen correctly argues that the 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 their sexual exploitation resulting from the marriage.<sup>100</sup> When analysing the case, it is possible to identify the act of the woman in recruiting, transporting and harbouring the sisters, the means of deception and the abuse of power or of a position of vulnerability, and the purpose of sexual exploitation (the two women were subjected to sexual exploitation). Because Jordanian law does not recognize forced marriage as a form of exploitation in trafficking in persons, the case has been qualified as trafficking for the purpose of sexual exploitation by the criminal justice authorities. Furthermore, and in accordance with the categorization outlined in the beginning of the chapter, this case could be classified as trafficking in persons regardless of the marriage, since there was exploitation of the prostitution of others. The marriage is thus a contextual factor, one that is important to consider because of the means employed, as well as the abuse that took place within the marriage.

### 5.2.3 Abduction

As seen in the examples described in the previous chapter, abduction is a means that can be relevant in cases of marriage linked to trafficking in persons. UNODC has also noted that certain terrorist groups use the means of kidnapping and abduction to traffic women for the purposes of sexual exploitation, including forced marriage or sexual slavery.<sup>101</sup>

As described in section 4.1.1, among the countries visited during the data collection, bride kidnapping is practised to a certain degree in Kyrgyzstan, South Africa and Viet Nam. For example, the interviewed Kyrgyz experts had noted some links between bride kidnapping and/or forced marriage and trafficking in persons but noted that cases are difficult to investigate when so few victims report them to the authorities. Kyrgyzstan has criminalized forced and child marriage, in particular in the form of bride kidnapping, but these are not specified as purposes of exploitation in the national trafficking legislation. Moreover, there has been seemingly little focus on what happens to the bride after the wedding in terms of violence and exploitation, among other things. There were a very small number of cases in which there had been an additional charge, for example charges of rape or assault, in cases that had been prosecuted under the provisions against bride kidnapping in the criminal code. However, interviewed experts from non-governmental organizations and international organizations explained that sometimes the kidnapped brides are exploited sexually and for domestic servitude, meaning that they are forced to take care of their in-laws or other members of their extended families and to handle all domestic chores, without choice or reasonable conditions similar to domestic servitude. Their freedom of movement may be limited, in particular during the early stages of marriage, and it would not be socially acceptable for the brides to visit their families or friends. Also, domestic, economic violence and sexual abuse may occur in such marriages.

<sup>100</sup> Ibid., p. 44.

<sup>101</sup> UNODC, *Countering Trafficking in Persons in Conflict Situations: Thematic Paper*, p. 12.

### 5.2.4 Giving and receiving payments or benefits to achieve the consent of a person having control over another person

The giving and receiving of payments or benefits are means associated with some of the cases of marriage linked to trafficking in persons. For example, interviewed experts from Serbia had identified cases in which parents had sold their daughters into child marriage knowing that they would be exploited, for example, in forced begging. Similarly, in Jordan, the interviewed experts had identified cases in which girls and young women had been sold for (temporary) marriages in exchange for money and/or accommodation. Moreover, men from neighbouring countries may pay extremely high fees to wedding agencies or brokers in exchange for a Vietnamese bride, who may have been forced, deceived or even kidnapped into the marriage.<sup>102</sup> During the expert group meeting held to develop this paper, the participants noted that such behaviours can fulfil the means element of trafficking, as defined in the Trafficking in Persons Protocol. It should be noted that, in many countries, marriage traditions dictate that money and/or benefits are exchanged between the families of the spouses in the form of a bride price or a dowry (see section 4.1.1 for details). This might complicate the identification of payments and benefits in the sense of the Trafficking in Persons Protocol.

A study by the International Centre for Migration Policy Development (ICMPD)<sup>103</sup> also found some incidents involving Jordanians paying for the release<sup>104</sup> of Syrian refugee families from the refugee camps in exchange for being given one or more Syrian daughters in marriage. Humanitarian assistance providers also reported that there was enough evidence to identify certain cases of early marriage of Syrian refugee girls as forms of child trafficking for the purpose of forced marriage. One of the cases reported in the ICMPD study involved a Syrian girl aged 15 who had already been married twice when she approached an international organization for protection. Her father had married her off two times, first to a Syrian man and then to a Jordanian man in his late forties, who paid for her release from the camp. The second husband subjected her to sexual exploitation by others, in addition to raping her himself.<sup>105</sup>

### 5.2.5 Threat or use of force or other forms of coercion

Threats and various means of force and coercion are often used to compel the victims of trafficking in persons into situations of exploitation. In the Trafficking in Persons Protocol, these are referred to as “other forms of coercion”. This term is broader than “force” and includes subtler forms of pressure. It is instructive to note that in the discussions which preceded the adoption of the Protocol, the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*<sup>106</sup> refer to “coercion” as a broader term than

<sup>102</sup> See also Hackney (2015); United Nations Action for Cooperation against Trafficking in Persons (UN-ACT), *Human Trafficking Vulnerabilities in Asia: a Study on Forced Marriage between Cambodia and China* (Bangkok: UNDP, 2016).

<sup>103</sup> ICMPD, *Targeting Vulnerabilities. The Impact of the Syrian War and Refugee Situation on Trafficking in Persons. A Study of Syria, Turkey, Lebanon, Jordan and Iraq* (Vienna, 2015).

<sup>104</sup> See *ibid.*, pp. 99–100: “In 2012, the Jordanian authorities also put in place a sponsorship procedure that regulated the exit of refugees from Zaatari Camp and their settlement in host communities. This required a refugee to find a Jordanian sponsor to take legal responsibility for the refugee’s residence and activities on Jordanian territory. The fees for the sponsorship amounted to 15 JOD per person (around US\$21). Until July 2013, any person could bail out Syrians from the refugee camp and some Jordanians made a profit by asking the Syrians to pay large amounts of money for this.”

<sup>105</sup> ICMPD, *Targeting Vulnerabilities*.

<sup>106</sup> UNODC, *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*.

force. Furthermore, various national trafficking laws emphasize the understanding of coercion as a subtle force that includes psychological pressure or oppression. The Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children has argued that “[a] marriage imposed on a woman not by explicit force, but by subjecting her to relentless pressure and/or manipulation, often by telling her that her refusal of a suitor will harm her family’s standing in the community, can also be understood as forced”.<sup>107</sup>

For example, in the Criminal Code of Australia,<sup>108</sup> the following means are included in the definition of forced marriage: “a marriage is a forced marriage if, because of the use of coercion, threat or deception, one party to the marriage (the victim) entered into the marriage without freely and fully consenting”. Experts have described such means in the cases discussed, often used after the conclusion of marriage as well, as a control method. As described in section 4.4, similar methods are used to ensure that the women and girls remain in abusive marriages and do not “shame” their families by separating or divorcing from the spouse despite being subjected to serious and continued violence, control and abuse in the context of marriage.

Moreover, force or the threat thereof may be employed to ensure that the victims “agree” to the marriage in the first place and will continue living in a situation of exploitation. According to interviewed experts, victims may, for example, be threatened with notification to the immigration authorities and eventual deportation, losing the custody of their children, or the withholding of money or other forms of support. Some women may also face threats targeting their families in the home country or that their “poor behaviour” would be disclosed to the community, ruining the reputation of the whole family, including their own children. Tyldum and Tveit noted that the element of force in marriages becomes evident in the form of (forced) dependency when a migrating spouse has no networks, no language skills and no idea where to seek help in the destination country, which results in the spouse being in a vulnerable position.<sup>109</sup>

It should be noted that, of course, the above means elements are not by themselves indicative of trafficking in persons, even when present in a case involving marriage. As stated previously, all three elements, but only the act and purpose in cases involving children, of the crime of trafficking must be present in order to prove the offence.

### 5.3 The issue of consent

According to the Trafficking in Persons Protocol, consent to the intended exploitation is irrelevant if any of the means mentioned in the Protocol have been used. This is clearly defined in article 3(b) of the Protocol. The irrelevance of consent in child trafficking cases, regardless of the establishment of the means, is further stipulated in article 3(c). Although the Protocol deals with the issue of consent quite clearly, it often remains a challenging issue in practice. It is, however, an essential part of the definition of trafficking in most countries and acknowledged by experts and practitioners globally. The UNODC issue paper on the role of consent in the Trafficking in Persons Protocol provides further guidance and analysis of different challenges and good practices in addressing consent in national trafficking legislation.<sup>110</sup>

<sup>107</sup> United Nations, Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, Sigma Huda (A/HRC/4/23), p.10.

<sup>108</sup> Division 270.7A.

<sup>109</sup> Tyldum, G. and Tveit M., *Someone Who Cares: a Study of Vulnerability and Risk in Marriage Migration from Russia and Thailand to Norway*. FAFO Report (Oslo: FAFO, 2008).

<sup>110</sup> UNODC, *Issue Paper: The Role of Consent in the Trafficking in Persons Protocol* (Vienna, 2014).

In the context of the linkages between trafficking and marriage, the issue of consent is particularly complex, as consent relates to the marriage itself and, as regards trafficking in persons, also to the intended exploitation. What makes consent in the case of marriage also particularly complex is that the relevance of consent often depends in practice on the type of exploitation and the means that have been used. The situation might be similar when considering cases involving trafficking for labour exploitation. The term “forced labour” already includes the means of force – as is the case with the term “forced marriage”. Therefore, experts explained that, in cases involving trafficking for labour exploitation, evidence of the use of means may need to be supplemented by evidence of the severity of the means applied, as well as severe exploitation. This might also relate to the most challenging question when considering interlinkages between trafficking in persons and marriage: the question of what constitutes exploitation in such cases.

### 5.3.1 Consent to marriage

The issue of consent to the marriage itself is relevant in determining if a marriage was forced. In States where forced marriage is an enumerated purpose of exploitation under the legal framework proscribing trafficking in persons, consent to the marriage should be carefully examined in trafficking cases because it might render a situation of abuse or domestic violence into one of trafficking in persons. In line with several international and regional agreements, such as the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Convention on the Rights of the Child, child marriage or marriage without the free and full consent of both spouses is a human rights violation. CEDAW obligates States to ensure, on the basis of equality between men and women, the right to freely choose a spouse and enter into marriage only with free and full consent.

Research in Finland indicates that a person may simply be unable to refuse the marriage, as refusal to marry may lead to anger and rejection by the whole community. The idea of free will and consent to marry is a somewhat abstract concept, as they are, in these cases, often rooted in traditions.<sup>111</sup> An arranged marriage can initially be entered into willingly, but if one of the spouses is unable to break away from the marriage owing to pressure from their families in the form of threats, coercion or force, then the arrangement might become that of a forced marriage.

Many of the interviewed stakeholders noted that the exertion of physical force is not needed to identify cases as trafficking in persons or to qualify a marriage as forced. Consent is indeed a key issue in differentiating forced marriages from other forms. However, it is not easy to verify consent, as it is linked to social systems of family and marriage that are determined by symbolic and cultural characteristics, which vary among different cultures.<sup>112</sup>

The UNODC issue paper on the role of consent notes that forced marriage embodies consent-vitiating or consent-compromising means. Far from rendering consent irrelevant, in legal practice, considerations of consent are inevitable in such cases, because the underlying action of marriage is not unlawful per se – only if it is non-consensual. The paper notes that, in practice, the result will depend on the extent to which means are approached as a distinct element of the offence in the national legislation.<sup>113</sup>

<sup>111</sup>Viuhko, M., Lietonen, A. and Jokinen, A., “Happily Ever After?”.

<sup>112</sup>Ibid.

<sup>113</sup>UNODC, *Issue Paper: The Role of Consent in the Trafficking in Persons Protocol*, p. 86.

### 5.3.2 Consent to exploitation

In terms of consenting to the intended exploitation, it was agreed among the interviewed experts that it is impossible for a victim to consent to their own exploitation, and that consent is irrelevant, especially with regard to the issue of child marriage. This is similar to trafficking in persons cases generally, because a child cannot consent to be married in the first place. There are exceptions to this rule, however. The internationally recognized definition of a child, as per the Convention on the Rights of the Child, is “every human being below the age of 18 years”. This is also the legal definition used in most parts of the world. But in some countries, adulthood, or the “age of majority” may be reached before the age of 18, and the Convention on the Rights of the Child allows for national laws to recognize an earlier age of majority. Some countries and cultures consider adulthood a state achieved upon marriage and any married woman is presumed to be of full age.<sup>114</sup>

As regards sham marriage, it has been noted that, while some women may, at first, be willing to enter into a marriage in exchange for a fee or residence status, there are, however, instances in which the initial conditions change. Women may be lured into concluding the marriage under false pretences and consequently the victims are sexually exploited.<sup>115</sup> According to Viuhko et al., some of the cases they studied involved force already at the outset of the activities (e.g., during recruitment), and thus could have amounted to forced marriages, because the women were ultimately forced to conclude the (sham) marriage after arriving in the destination country.<sup>116</sup> In this regard, it is also important to carefully consider the principle of non-criminalization of victims of trafficking in persons.

In the case from Egypt described in box 10 below, the victims seemingly knew they would be called upon to engage in sexual relations with men from the Gulf States as part of temporary marriage. Even if they were initially deceived and thought they would be married, when this happened a few times, with little time elapsing between the marriages (as testified by one of the victims), they could seemingly be viewed as consenting to their sexual exploitation. In its decision, the court refers to Egyptian law, which states that the consent of the victim to exploitation in any of the forms of trafficking in persons shall be irrelevant as long as any of the means stipulated in article 2 of the law have been used and, in regard to minors, consent is irrelevant even if no means have been used. As to the others, the trial court, in convicting the defendants, may have relied on the means of “deception”, or “exploitation of a position of vulnerability or need”. Such a position of vulnerability might be the victims’ poverty, their youth or even the complicity of their parents in the trafficking.<sup>117</sup>

<sup>114</sup>United Nations Population Fund, “Child marriage – Frequently asked questions” (February 2018). Available at [www.unfpa.org/child-marriage-frequently-asked-questions](http://www.unfpa.org/child-marriage-frequently-asked-questions)

<sup>115</sup>European Union Agency for Law Enforcement Cooperation (Europol), “Situation report: trafficking in human beings in the EU” (The Hague, 2016).

<sup>116</sup>Viuhko, M., Lietonen, A. and Jokinen, A., “Happily Ever After?”.

<sup>117</sup>UNODC, *Evidential Issues in Trafficking in Persons Cases: Case Digest* (Vienna, 2017), pp. 163–164.

**Box 10. Case example from Egypt (Case No. 8959 (2012))**

False marriages were organized between young girls, some of whom were children, and men from the Gulf States, so that the men could sexually exploit the girls under the cover of false marriage contracts. The parents of the girls were also accused of trafficking. The first-level court apparently accepted the parents' claim that they did not know the real nature of the marriages. The court may have also considered the parents' own financial vulnerability in that situation. In addition, it was assumed that as parents, they would want their daughters to be married through legitimate channels and would not intentionally conspire to engage their children in prostitution. The second-level court, however, ordered a retrial, reversing this assumption and expressing a doubt about the parents' innocence because the victims were exploited several times.

UNODC has provided clear guidance that, in trafficking in persons, consent is irrelevant where means are used, regardless of the type of exploitation intended.<sup>118</sup> Failure to understand and treat consent in these cases as irrelevant will lead to cases not being accurately identified and prosecuted. Furthermore, the acknowledgement of this principle also strengthens legal protection for victims from their trafficker, further exploitation or secondary victimization.

## 5.4 Purpose of exploitation

According to the Trafficking in Persons Protocol, 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”. The list of the forms of exploitation in the Protocol does not explicitly include child and forced marriage. However, the list is intended to be non-exhaustive and open-ended. It is important to note that not all forms of exploitation equate to trafficking in persons, but rather, as stated previously, all three constitutive elements of the crime of trafficking must be present. Similarly, forced, abusive or exploitative marriages do not necessarily fit the criteria for trafficking in persons. Marriage may be related to one of those elements, or it may be an independent, contextual factor of the trafficking situation. In addition, there may be other offences or types of conduct present instead, such as domestic violence, assault, rape, sexual exploitation, deprivation of liberty or kidnapping, all of which can take place in the context of marriage. Furthermore, the type of marriage, such as forced or child marriage, might be criminalized itself outside of the legislation on trafficking in persons.

In the Anti-Trafficking Act of South Africa, under the element of exploitation, “forced marriage means a marriage concluded without the consent of each of the parties to the marriage”.<sup>119</sup> In some countries, such as Australia,<sup>120</sup> Cambodia,<sup>121</sup> Namibia<sup>122</sup> and Uganda,<sup>123</sup> forced marriage has been specifically qualified in the national trafficking legislation as a form of exploitation. In

<sup>118</sup> UNODC, “The international legal definition of trafficking in persons”.

<sup>119</sup> Prevention and Combating of Trafficking in Persons Act 7 of 2013, chapter 1.

<sup>120</sup> Criminal Code Act 1995, division 271.

<sup>121</sup> Law on Suppression of Human Trafficking and Sexual Exploitation 2008.

<sup>122</sup> Combating of Trafficking in Persons Act 1 of 2018.

<sup>123</sup> Prevention of Trafficking in Persons Act 2009.

other countries, for instance, in Canada,<sup>124</sup> Germany,<sup>125</sup> Norway,<sup>126</sup> Sweden<sup>127</sup> and the United Kingdom,<sup>128</sup> forced marriage has been criminalized as a separate offence. For many of the interviewed stakeholders, the purpose of exploitation was essential when it came to qualifying a case as trafficking. Behaviour that was inherent to marriage could also be, under certain circumstances, exploitative, including abusive sexual relations, household chores that could be similar to domestic servitude and having children as a result of rape and/or forced pregnancies within a family.

In the context of marriage, different situations, as described in chapter 4, may be defined as exploitative. They may take many different forms, which can occur simultaneously. Victims may thus be exploited sexually, for forced labour or servitude, or for forced criminality or begging. They may also be forced to bear children. Moreover, victims may be subjected to different forms of coercion and control during the marriage, for example, their freedom of movement may be limited, and they may be isolated from their family and friends and be dependent on their husband for housing, food and other necessities, without any real opportunity to leave the marriage. Importantly, while in other forms of trafficking, the exploitation is directly connected to a “vehicle” such as a job offer, in the cases discussed for this paper, the connection between the marriage and the exploitation was not always as clear-cut. The marriage can be incidental, or not a direct prerequisite, to the exploitation. In some cases, the marriage is just a pretext for other criminal conduct that might have happened anyway.

A study by United Nations Action for Cooperation Against Trafficking in Persons (UN-ACT) conceptualizes a marriage that has taken place by means of deception or coercion as a form of trafficking in persons irrespective of whether further evidence of sexual or labour exploitation is found, because “a forced marriage in and of itself amounts to a case of exploitation”.<sup>129</sup> The UN-ACT study argues that the key to determining if a victim of forced marriage has been trafficked is the means by which the marriage has taken place and is maintained, making the actions of brokers central for detecting deceptive or coercive recruitment practices. The involvement of brokers describes typical constellations in many regions. Additionally, the husbands – and at times their families – should be evaluated for possible coercive conduct and for their capability of maintaining a marriage situation against the will of the victim.<sup>130</sup> If used in practice, this conceptualization of trafficking for forced marriage could simplify the prosecution of cases. In other words, the UN-ACT study argues that, if deceptive or coercive recruitment practices and control methods are present, the means element is satisfied and no further evidence of intent to exploit or actual exploitation is needed to prosecute the case as trafficking in persons. However, this simplification is aimed at circumventing the trafficking definition as provided in the Trafficking in Persons Protocol and would also render the distinction between forced marriage and trafficking for forced marriage confusing and illusory.

Moreover, as noted by UNODC, practitioners have varied views regarding when a case of forced marriage should be considered within the trafficking framework and whether it is necessary to establish exploitative intent in order to elevate the forced marriage to a situation of trafficking.<sup>131</sup> States parties should carefully consider the impact of other forms of illegal marriage such as child

<sup>124</sup> Criminal Code – R.S.C., 1985, c. C-46, sect. 293.1.

<sup>125</sup> German Criminal Code, art. 237.

<sup>126</sup> The General Civil Penal Code 1902, chap. 21, sect. 222.

<sup>127</sup> The Swedish Penal Code (1962:700), chap. 4, arts. 4c and 4d.

<sup>128</sup> The Anti-social Behaviour, Crime and Policing Act 2014, part 10, art. 120–122.

<sup>129</sup> UN-ACT, *Human Trafficking Vulnerabilities in Asia*.

<sup>130</sup> *Ibid.*

<sup>131</sup> UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 113–115.

or temporary marriages in the context of exploitative purposes within the trafficking framework. Several different aspects of exploitation are analysed below in separate sections.

#### 5.4.1 Exploitation of the prostitution of others or other forms of sexual exploitation and forced labour or services

It seems that, in many of the cases discussed, the victims were exploited for many different purposes rather than just for one main purpose.

The term “exploitation of the prostitution of others” is generally understood to refer to profiting from the prostitution of another person. While international law takes no particular stance on prostitution per se, profiting from the prostitution of another person may give rise to human rights and criminal law concerns.

Sexual exploitation has no agreed definition in international law and is not part of human rights law except in the context of children. Sexual exploitation of children, as defined in the Convention on the Rights of the Child, means: (a) the inducement or coercion of a child to engage in any unlawful sexual activity; (b) the exploitative use of children in prostitution or other unlawful sexual practices; and (c) the exploitative use of children in pornographic performances and materials.

Forced labour is a form of exploitation specified in the Trafficking in Persons Protocol, and it is defined in the Forced Labour Convention, 1930 (No. 29),<sup>132</sup> as all work or service which is extracted from any person under the menace of penalty and for which the person has not offered herself or himself voluntarily.

According to the interviewed experts, victims of forced, child and sham marriages are most often subjected to sexual abuse and exploitation, as well as violence, including in the context of prostitution. As described in section 4.3.2, interviewed stakeholders reported numerous instances of women and girls being sold into brothels, forced marriages, child marriages or temporary marriages by their parents or other relatives, and being subjected to sexual abuse and violence in this context. Women or girls may also be forced into prostitution by their “husbands”, traffickers or brokers, as described in the case example from Canada presented in box 11 below.

##### Box 11. Case example from Canada

Zayna was an 18-year-old high school graduate in Pakistan when a family friend introduced her parents to a 47-year old from Vancouver involved in the retail business. Her parents agreed to the match, and it was understood that her husband would sponsor her entry into Canada under a visitor’s visa. When Zayna landed in Vancouver, her passport and other legal documents were confiscated by her husband. She was beaten and over the next few days was forced to take drugs and was repeatedly raped by her husband. On the fifth day, he took her to one of his stores, where she discovered that the restaurant was being used as a front for a prostitution ring and that she was expected to work there. She was exploited in prostitution for 13 months, during which time she discovered that several of the women had been brought to Canada on the understanding that they were coming to meet or live with their husbands. Soon after, Zayna tried to escape, but she was caught, beaten unconscious and told that, if she tried to leave again, compromising pictures of her would be sent to her family back in Pakistan.<sup>a</sup>

<sup>a</sup> South Asian Women’s Centre, *Forced Marriage as a Form of Human Trafficking* (Toronto, 2014).

<sup>132</sup> United Nations, *Treaty Series*, vol. 39, p. 55; ILO Forced Labour Convention, 1930 (No. 29).

Victims are often also subjected to forced labour or services, especially in the form of unpaid household work, which could also be defined as servitude in certain situations. Women and girls may also be exploited in the family business or farm or in outside employment where they have no access to their wages.

It is clear that, in countries which include a purpose of exploitation of “forced or child marriage” in their trafficking legislation, it is enough to prove that the marriage was forced or involved a child in order to qualify the cases as trafficking in persons. There would thus be no need for any further proof of the purpose of exploitation such as sexual exploitation. In this sense, forced or child marriages can be seen as “entry offences”, for which it is enough to prove the type or the method by which the marriage was executed. The question of exploitation in the context of marriage is, however, more difficult in countries that have not specified it in their legislation as a separate, specific purpose of exploitation, for example, under the label of forced or child marriage. Therefore, relevant cases involving a marriage may be and are, according to the interviewed experts, processed and qualified, for instance, as trafficking for sexual exploitation.

Thus, if the victim was forced into prostitution in the context of marriage, the case could be taken to court under the charge of trafficking for sexual exploitation. In such cases, the elements of trafficking may be fulfilled even if the marriage itself were to be removed from the case. For example, the case example from Germany (involving the Thai victim) described in box 7, as well as the cases described in boxes 11 and 12, could have been defined as trafficking even without the element of marriage. Even though in such cases marriage is not relevant for the determination of the trafficking case, it may be an important contextual factor relevant for the investigation of the case and for protecting and assisting the victim.

During the expert group meeting, it was also discussed that, since marriage generally includes sexual relations and divisions of labour, the question arises as to how to distinguish between sexual relations and domestic labour and the behaviour that may be connected to sexual or labour exploitation or domestic servitude. The problem emerges especially in situations in which women are expected to do arduous physical labour in the context of marriage and in the extended household. The issue is further complicated by the fact that the interpretation of the definition of “forced labour” in the Forced Labour Convention, 1930 (No. 29) is not limited to physical force but includes psychological pressure. This analogy between forced labour and forced marriage is all the more powerful because the reality of forced marriage, like that of forced labour, encompasses an array of pressures, many of which are psychological rather than physical. These psychological factors may also render the victim *de facto* unable to leave the marriage – that is, the situation of exploitation – for example, because of the many dependencies relating to, among other things, housing, livelihood and the custody of the children.

Moreover, for example in the Canadian context, distinctions must be made between extraction of labour or services for financial gain – as per Canada’s understanding of exploitation in the context of trafficking in persons – and abuse, which speaks of specific acts of physical or sexual violence that are carried out by the perpetrator for his own gratification. Thus, a case of forced marriage in Canada involving only sexual abuse but not involving the extraction of labour or services, for example, sexual exploitation or forced labour, could not be qualified as trafficking in persons, even if other elements of trafficking could be identified. Indeed, some countries do not treat forced marriage as an exploitative purpose but rather see it as one of the means by which to bring the victim into a situation of exploitation.

**Box 12. Sham marriage as a purpose of exploitation?**

Links between trafficking in persons and sham marriages have been observed recently, in particular in Europe. The European Union Agency for Law Enforcement Cooperation (Europol), in its 2016 report, includes “trafficking for forced sham marriages to mainly obtain residence, social and work benefits”<sup>a</sup> as part of “other forms of trafficking in human beings” identified in the European Union. The increased recognition of trafficking for forced sham marriages as a type of exploitation is also demonstrated by the fact that Europol issued an Early Warning Notification that noted an increase in contributions linking marriages of convenience to trafficking in human beings.<sup>b</sup> As described by Europol, sham marriages often involve third-country nationals, usually men, buying their spouses from a broker who recruits women from the European Union in poor circumstances to marry them. While in some cases, the victims are recruited with a promise of money to conclude a sham marriage, in other cases, the victims may be recruited with the promise of a job or even kidnapped and brought to the country of destination against their will. In the destination country, the traffickers take away the women’s documents and limit their freedom of movement. The victims may also be abused by their new husbands or forced into prostitution, other criminal activities or begging.

The project entitled “Preventing human trafficking and sham marriages: a multidisciplinary solution” (HESTIA) focused on researching sham marriages related to trafficking in Ireland, Estonia, Latvia, Lithuania and Slovakia. The project identified links between sham marriages and trafficking in human beings between non-European Union nationals and European Union citizens. The project conceived the term “exploitative sham marriage” to describe the phenomenon in which a person, in this case a European Union citizen, is exploited in the context of sham marriage arrangements involving a non-European Union citizen seeking to obtain a residence permit. This concept highlights the circumstances of exploitation that prevent the person from leaving the situation and the subtle forms of control of movement and elements that show a dependency of the victims on the husbands, recruiters or organizers of the sham marriages. In all five countries studied, different forms of exploitation in the context of sham marriages were identified, some of which, together with other elements of trafficking in persons, could theoretically amount to human trafficking.<sup>c</sup>

It is noteworthy that, in such cases, the status of the bride shifts from that of a co-perpetrator of a sham marriage for the purpose of financial or other material benefit – a (minor) offence or fraud against the State – to that of a victim of exploitation, or in some cases, of trafficking in persons. The situation of a woman entering into such a marriage may also change over time: she may be truly willing at first, but then the conditions change, or the woman may be deceived under false pretences (for example, by a promise of a well-paying job) and then be forced into a marriage.<sup>d</sup> The evidence of exploitation in exploitative sham marriages often becomes visible only over a longer period of time, since the women involved in such conduct typically seek assistance when they want to end the marriage.<sup>e</sup> This leaves open a particular issue with regard to the intention to exploit, which is required under the definition of trafficking in the Protocol, and the time frame relevant to the development of this intention (see also the discussion on transportation, transfer and harbouring in section 5.1).

<sup>a</sup> Europol does not further define what it means by forced sham marriage. It should be noted that not every sham marriage amounts to forced sham marriage. See Europol, “Situation report: trafficking in human beings in the EU” (The Hague, 2016).

<sup>b</sup> Europol, “Early Warning Notification: Marriages of Convenience: a Link between Facilitation of Illegal Migration and THB” (The Hague, 2014).

<sup>c</sup> Viuhko, M., Lietonen, A. and Jokinen, A., “Happily Ever After? From Sham Marriages to Human Trafficking”, *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, Viuhko, M., Lietonen, A., Jokinen, A. and Joutsen, M. eds., HEUNI Report Series 82 (Helsinki: HEUNI, 2016).

<sup>d</sup> Ibid.; see also Donovan, A., and others, “TRACE Deliverable D6.2: future trends in human trafficking in Europe” (TRACE Project, 2015).

<sup>e</sup> Cosgrave, C., O’Connor, M. and Yonkova, N., “Exploitative sham marriages and human trafficking in Ireland”, *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, Viuhko, M., Lietonen, A., Jokinen, A. and Joutsen, M., eds., HEUNI Report Series 82 (Helsinki: HEUNI, 2016).

### 5.4.2 Slavery or practices similar to slavery

The Trafficking in Persons Protocol outlines slavery and “practices similar to slavery” as possible purposes of exploitation. The Slavery Convention of 1926 defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”. This means that slavery is identified by the way the perpetrator views and treats the victim, rather than by the conditions of the situation. A person who is enslaved may live in acceptable conditions but have no power to make decisions about his or her life, which may include his or her name, religion or sexual or marital partners, participation in education or employment, and sexual freedom, including family planning and sexual relationships. Slavery in relation to a specific marriage practice has been considered in relation to the case *Mani v. Niger* in the Community Court of Justice of the Economic Community of West African States, described in box 13 below.

#### Box 13. Case example from the Niger

A landmark decision on the practice of *wahaya*, the practice relating to the fifth wife that has been linked to trafficking in persons, occurred in the case *Mani v. Niger* in the Community Court of Justice of the Economic Community of West African States (ECOWAS) on 27 October 2008. The case served as the first regional court decision to be heard on the issue of slavery in Africa. The case concerned Hadijatou Mani Koraou, who was 12 years old in 1996 and had been born into slavery in a Tuareg community. Mani was sold for \$400 to 46-year-old El Hadj Souleymane Naroua as his fifth wife under the *wahaya* custom. The *wahaya* practice enables a man to buy a fifth wife, usually a very young girl from a lower class, who does not enjoy the same legal rights as the other four wives and is used as a domestic and sexual slave.<sup>a</sup> Mani gave birth to four children during more than nine years of violence and forced sexual relations. She filed charges against Naroua for slavery and followed this with a petition to the ECOWAS court on December 14, 2007, asking it to find the Republic of the Niger in violation of articles 1, 2, 3, 5, 6 and 18(3) of the African Charter on Human and Peoples’ rights. The ECOWAS court found that Mani had clearly been a slave and that the Republic of the Niger had been responsible for not doing enough to protect her, as a citizen, against slavery. The court awarded Mani \$21,500 in damages and interpreted the term “slavery” in a modern context, highlighting the use of powers associated with ownership and elements of control over a person. The court concluded that Mani’s case constituted slavery beyond any doubt and that Mani had been abused in slavery conditions for nearly a decade.<sup>b</sup>

<sup>a</sup> Msuya, N. H., “Tradition and culture in Africa: practices that facilitate trafficking of women and children”, *Dignity: A Journal on Sexual Exploitation and Violence*, vol. 2, No. 1 (2017).

<sup>b</sup> *Ibid.*, pp. 10–11.

According to the Supplementary Convention on the Abolition of Slavery, the Slave trade and Institutions and Practices Similar to Slavery of 1956, the term “practices similar to slavery” refers to debt bondage, serfdom, servile forms of marriage and the exploitation of children and adolescents. The Convention additionally enumerates a number of situations that amount to practices similar to slavery in the context of marriage relations and that include an element of coercion, also covering practices in which 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 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”.

Additionally, UNODC, in its Model Law against Trafficking in Persons, outlines that “practices similar to slavery shall mean the economic exploitation of another person on the basis of an

actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights, and shall include debt bondage, serfdom, forced or servile marriages and the exploitation of children and adolescents”.<sup>133</sup>

The question remains whether and when forced and child marriage themselves could constitute exploitation, and if so, what kind of circumstances or behaviour this would entail. While the international legal understanding of “practices similar to slavery” includes servile marriage, this is not understood well in most States, according to UNODC.<sup>134</sup>

During the expert group meeting, most participants agreed that, in countries that have included “practices similar to slavery” in their trafficking legislation, proving the non-consensual nature of the marriage could theoretically be a way to qualify the case as trafficking in persons. In some countries, marriages with an element of coercion could also be interpreted as servile marriages and/or indicators of slavery or slavery-like conditions.

#### Box 14. Sexual slavery

Forced marriage could arguably be seen – at least in certain circumstances – as a form of sexual slavery. OHCHR notes that there does not have to be any financial gain in sexual slavery; “it is merely the imposition of absolute control or power of one person over another”.<sup>a</sup> OHCHR refers to this concept as sexual exploitation of individuals through the use or threat of force, which often occurs in times of armed conflict.

The Special Court for Sierra Leone has considered whether forced marriages could be qualified as a form of sexual slavery in the case *Prosecutor v. Brima*.<sup>b</sup> According to the deliberations of the Court, while forced marriage shares certain elements with sexual slavery such as non-consensual sex and deprivation of liberty, there are also distinguishing factors. The Court emphasizes that, firstly, “forced marriage involves a perpetrator compelling a person by force or threat of force, through the words or conduct of the perpetrator or those associated with him, into a forced conjugal association with another person resulting in great suffering, or serious physical or mental injury on the part of the victim”. Secondly, unlike sexual slavery, forced marriage implies “a relationship of exclusivity between the “husband” and “wife” which could lead to disciplinary consequences for breach of this exclusive arrangement”. The Court then concluded that forced marriage is not predominantly a sexual crime.<sup>c</sup> Thus, the Appeals Chamber made legal history by deciding that forced marriage is in fact a distinct and unique crime against humanity.<sup>d</sup>

The same case was taken to the Appeals Chamber of the Special Court for Sierra Leone. The Appeals Chamber noted that forced marriage possessed elements distinguishable from sexual slavery. The Appeals Chamber defined forced marriage as “a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim”. Such conduct in fact constitutes an “other inhumane act” according to the Appeals Chamber. Furthermore, the Appeals Chamber emphasized in particular the patriarchal and coercive nature of forced marriage, as well as its physical and psychological toll.<sup>e</sup>

<sup>a</sup> Weissbrodt, David, and Anti-Slavery International, *Abolishing Slavery and Its Contemporary Forms* (OHCHR HR/PUB/02/4) (Geneva: OHCHR, 2002), p. 33.

<sup>b</sup> Special Court for Sierra Leone, *Prosecutor v. Brima* (Case No. SCSL-2004-16-A) (2008). Available at [http://hrlibrary.umn.edu/instreet/SCSL/SCSL-04-16\\_Files/SCSL-04-16-A-675.htm](http://hrlibrary.umn.edu/instreet/SCSL/SCSL-04-16_Files/SCSL-04-16-A-675.htm). Accessed on 20 December 2018.

<sup>c</sup> [http://hrlibrary.umn.edu/instreet/SCSL/SCSL-04-16\\_Files/SCSL-04-16-A-675.htm](http://hrlibrary.umn.edu/instreet/SCSL/SCSL-04-16_Files/SCSL-04-16-A-675.htm)

<sup>d</sup> Haenen, I., “The parameters of enslavement and the act of forced marriage”, *International Criminal Law Review*, vol. 13, No. 4 (2013), p. 896.

<sup>e</sup> [www.asil.org/insights/volume/12/issue/10/prosecutor-v-brima-kamara-and-kanu-first-judgment-appeals-chamber](http://www.asil.org/insights/volume/12/issue/10/prosecutor-v-brima-kamara-and-kanu-first-judgment-appeals-chamber).

<sup>133</sup> UNODC, *Model Law against Trafficking in Persons*, p. 17.

<sup>134</sup> UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 11.

Ultimately, it depends on the national trafficking legislation: if forced or child marriage are not specifically mentioned as purposes of exploitation, it is up to the criminal justice authorities to interpret whether forced or coerced marriage could be defined, for example, as putting a person in slavery-like conditions or into circumstances contradictory to human dignity, or to define the marriage as slavery-like conduct. The national interpretations of this may, however, vary greatly, as was demonstrated in the expert group meeting. In conclusion, national legislation normally leaves many options for the criminal justice authorities to build a case of trafficking. However, it is clear that case law is lacking with regard to the interpretation of slavery-like practices in the context of marriage, and thus more efforts are needed in order to bring clarity to this application of the definition and eventually secure convictions for trafficking in persons in relation to such cases.

### 5.4.3 Additional purposes of exploitation

In addition to the purposes of exploitation explicitly mentioned in the Trafficking in Persons Protocol, some additional purposes of exploitation can be identified from the data and the discussions at the expert group meeting. These relate to issues of human dignity, reproductive rights, forced pregnancy and what was referred to as the “exploitation of the personhood” of the victims. These topics are discussed below in more detail.

#### *Forced pregnancy*

An additional layer of exploitation relates to reproductive coercion or violence as part of the marriage. As described in section 4.5.4, there are indications in the data concerning cases in which the wife is forced to bear children. Moreover, preventing the wife from using contraception and limiting her right to sexual self-determination were mentioned as indicators of exploitation. This phenomenon has also been observed in connection with sham marriages in Europe when third-country nationals take specific measures to pressure women to have children with them, since a common child ensures the possibility of claiming a permit for residence in the European Union, even if the marriage ends in divorce.<sup>135</sup>

According to Quek, the reproductive exploitation of women in marriage is a distinct combination of forms of exploitation and does demonstrate well the (often lifelong) harm that occurs in this form of human rights abuse.<sup>136</sup> Also, the interviewed stakeholders noted the negative consequences for the victims’ health as a result of such pregnancies at a young age.

It was pointed out in the expert group meeting that a number of States include instances of forced pregnancies in their trafficking laws. For example, the trafficking legislation of Namibia refers to “the impregnation of a female person against her will for the purpose of selling the child when the child is born”. A similar form of exploitation appears in the legislation of Israel as well, and it does not require explicitly that the impregnation be against the person’s will; neither does it require the sale of the child, but rather makes do with the child’s removal, thus: “giving birth to a child and taking the child away”. However, these forms of exploitation may have nothing to do with marriage per se. As noted previously, in such cases, marriage may be

<sup>135</sup> Supule, I. , “Human trafficking and sham marriages in Latvia”, *Exploitative Sham Marriages: Exploring the Links between Human Trafficking and Sham Marriages in Estonia, Ireland, Latvia, Lithuania and Slovakia*, Viuhko, M., Lietonen, A., Jokinen, A. and Joutsen, M. eds., HEUNI Report Series 82 (Helsinki: HEUNI, 2016).

<sup>136</sup> Quek, K, *Marriage Trafficking: Women in Forced Wedlock* (London: Routledge, 2018).

involved in order to get the woman into a particular situation, but it is incidental and merely contextual to the constitutive elements of trafficking.<sup>137</sup>

### ***Exploitation of the personhood of the victim***

Lyneham and Richards have argued that exploitation in connection with marriage could be viewed as a separate category from sexual exploitation and labour exploitation, namely the “exploitation of the very personhood of the victim”, and they suggest that this “distinct form of human trafficking involves the exploitation of the victim’s:

- Labour (in the form of domestic servitude, forced labour outside the home, or both)
- Body (in the form of sexual servitude to their intimate partner and/or lack of control over childbearing), or
- Self (in the form of loss of freedom and psychological bondage)<sup>138</sup>

This concept was also discussed during the expert group meeting, in which many participants viewed it as relevant and interesting in light of the links to slavery and practices similar to slavery. Another similar concept was mentioned when considering living circumstances in relation to dignity in a concept such as “the imposition of living or working conditions inconsistent with human dignity”, as in the trafficking in persons law of France (art. 225-4-1 of the penal code).

It could be argued that marriage as a social and cultural institution is all-encompassing, and so the exploitation within that context and which may have been organized by the victim’s own family could be viewed as more personal and intimate than exploitation in the context of employment, for example. The focus on the exploitation of personhood brings forth the nature of this crime, emphasizing the links to intimate partner violence and the lack of personal physical and psychological freedoms in the context of such abusive marriages.

According to Quek, the phenomenon of what she calls “marriage trafficking” constitutes an underrecognized and especially harmful abuse of human rights, which encompasses sexual and domestic labour and the reproductive exploitation of women all at the same time.<sup>139</sup> However, as pointed out previously, also in relation to other forms of trafficking, it is quite common for victims to be exploited for multiple purposes; for example, a victim of sexual exploitation may also be exploited for labour.

<sup>137</sup>It was suggested during the expert group meeting that perhaps a new form of exploitation based on these models could be recommended, one that could be limited to forced pregnancy without requiring the removal of the baby. There are numerous examples of husbands’ reproductive violence in the data, but the incidents where the baby has been taken away from the mother after birth are very few. It seems that in these cases the aim of the husband has not been to make money by selling children or to remove the children from their mother, but to have children – whether or not the wife is willing. In Finland, a case in which a young woman belonging to a Finnish Romani minority was kept imprisoned for four years and gave birth to several children was qualified as aggravated trafficking in human beings by the Turku court of appeal in 2016. The woman was recruited and harboured by a Romani man and his daughter, who deceived her, abused her position of vulnerability and dependency, controlled her in the context of a common law marriage, subjected her to violence and sexual exploitation and forced her to bear children under supervision (Turku Court of Appeal, 23.5.2016, R15/783).

<sup>138</sup>Lyneham, S. and Richards, K., *Trafficking in Persons Involving Marriage and Partner Migration to Australia*, Research and Public Policy Series (Canberra: Australian Institute of Criminology, 2014).

<sup>139</sup>Quek, K., *Marriage Trafficking: Women in Forced Wedlock*, p. 266.

## 5.5 Question of the intention to exploit

According to the definition of trafficking contained in the Trafficking in Persons Protocol, the purpose of trafficking in persons is the exploitation of the victim. The purpose element of the offence speaks of the criminal intention (or *mens rea*) of a given crime. In cases in which criminal intention to exploit can be established, evidence of actual exploitation need not be proven. In the context of marriage related to trafficking, the intentions of the husband and the in-laws often come into question. For example, the National Rapporteur of the Netherlands has analysed the links between child marriage and trafficking in persons, asking whether arranging a child marriage is in itself a form of trafficking in persons. According to the Rapporteur, for that to be the case, there must be an intention to exploit the child by arranging the marriage. It might, for example, be possible to infer the intention from the fact that the girl's parents had received a bride price for the "transfer" of the girl. However, it is questionable whether the actual intention in such cases is exploitation *per se*.<sup>140</sup> It could be argued, however, that the sexual abuse of children will occur as part of any of these marriages.

Indeed, there is some evidence in the data on the intention of using marriage as a way to get free or cheap household labour. Several of the cases described above also show instances in which sham and temporary marriages have been used to subject the victims to sexual exploitation and prostitution. According to the interviewed experts, in such cases it is possible to demonstrate from the outset that the intention of the marriage was exploitation or that the marriage was simply used, essentially as a cover-up or a control method, to place the person into a situation of sexual or labour exploitation from which it would be more difficult for them to escape.

Another issue relates, in many cases, to whether the bride's parents knew or should have known that their child would be placed in a situation of exploitation as a result of the marriage. For example, Serbian interviewees mentioned cases in which the parents of a child had sold her for marriage, knowing that she would be put in a situation of exploitation. This argument raises the question of whether the parents could be considered co-perpetrators of trafficking in persons or facilitating child marriage.

In these cases, it is particularly difficult to determine if the family should be held responsible when they participate in the trafficking process, since, according to the participants in the expert group meeting, they may also be considered victims whose vulnerabilities are being exploited. One might also ask if the family intended to exploit or whether they were simply negligent. They may also be guilty of the act of transporting or transferring the victim into the hands of the husband, who, by receiving and harbouring the victim, may also have taken part in the act of trafficking. The intention of the parents is analysed in the Egyptian case outlined in box 10.

As described in chapter 4, various other actors, such as recruiters, wedding agencies, brokers or other persons, may also be involved in facilitating child, forced, abusive and exploitative or other marriages connected to trafficking in persons. Viet Nam has, according to the interviewed stakeholders, prosecuted and convicted brokers of forced marriage for trafficking in persons. It has been observed that traffickers or brokers may also sell women for forced marriages after they start to generate less profit through the selling of sexual services in brothels. It is possible that such brokers may have deceived the parents when recruiting their daughters for marriages; the parents may simply have not known what would happen to their children afterwards, but the

<sup>140</sup>Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, *Vulnerability up Close: an Exploratory Study into the Vulnerability of Children to Human Trafficking*, (The Hague, 2016), pp. 76–79.

act of selling these women and girls for forced marriage and the brokers' actions are arguably intentional and result in serious exploitation in the context of marriage.

Ultimately, it must be noted that these situations and circumstances may be interpreted differently in different jurisdictions and understood in a variety of ways, depending on the relevant cultural context. The UNODC issue paper on the concept of exploitation found that different marriage customs may be viewed differently by the courts, depending on the ethnic background of the perpetrators; for example, if the parents come from a minority group that is seen to be practising child marriage as a cultural tradition. In some countries, “the concept of forced and servile marriage is inimical to the national culture and tradition” and thus extreme circumstances might be required to initiate an investigation under the label of trafficking.<sup>141</sup> Such customary marriage traditions have been considered in relation to trafficking in persons in South Africa in the context of the *ukuthwala* tradition, as outlined in box 15 below.

#### Box 15. Case example from South Africa

In February 2014, a 28-year-old man, originally from the Eastern Cape in South Africa and living near Cape Town, was sentenced to 22 years of imprisonment for trafficking in persons, rape, assault with the intent to cause grievous bodily harm and common assault. According to the court's judgment,<sup>a</sup> around the end of 2009, the man travelled from his residence near Cape Town to his home village “with the specific intention of finding a girl or a young woman there in order to conclude a marriage in accordance with his custom”.<sup>b</sup> He wanted to find a wife who was under the age of 18 years and a virgin. By accident, he saw a 14-year-old girl, who he did not know at all, and asked his family to start marriage negotiations with the girl's family. The two families concluded the negotiations and the girl was informed that she was to be married in the neighbouring village. Her uncle instructed her to take off her school uniform and she was removed from her home. Only until she was on her way to another house was she introduced to her future husband and informed that she would be his bride. At her future husband's house, she had to participate in various traditional ceremonies and certain household duties. During the ceremonies, under customary law, she became a wife of the man, who paid 8,000 rand to her family.

The girl was very unhappy and after a few days she tried to escape. She went into hiding but her male family members found her and took her back to the husband's house. Soon after that, the husband informed the girl that they would move to Cape Town. They lived there with the husband's brother and his wife. The girl had to take care of household duties and was locked in the house and forbidden to attend school. The husband forced the girl to have sexual intercourse with him and raped her several times, also assaulting her in other ways. Finally, the girl escaped from her husband and reported the events to the police.<sup>c</sup>

<sup>a</sup> High Court of South Africa (Western Cape Division, Cape Town) (2014). High Court Case No. A 127/2014.

<sup>b</sup> *Ibid.*, p. 3.

<sup>c</sup> *Ibid.*

There are several elements of trafficking to be found in the case. The girl child was forced into a marriage against her will by her own family members, who transferred her to the household of her husband in exchange for money. She was harboured and received by the husband and his family members, who limited her freedom of movement, denied her access to education and subjected her to violence and abuse. The forms of abuse were psychological, physical and sexual. The intention of the husband was to find an underage wife who was a virgin and to exploit her as part of the marriage. In addition, the means used were, among others, coercion and force, including in getting the girl to “conclude a marriage”, to live with the husband and in forcing

<sup>141</sup> UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 115.

her to serve her husband as a wife (including by engaging in sexual intercourse and other “duties of a wife”). Such means are, in this case, only additional indications of the severity, as the victim was a child and thus the means used are irrelevant.

## 5.6 Developing indicators of interlinkages between trafficking in persons and marriage

Differentiating between cases of child and forced marriage and trafficking in persons is neither easy nor clear-cut. In line with previous UNODC work, the interviewed stakeholders noted a multitude of different cultural and religious considerations that relate to, among other things, marriage negotiations between families, the paying of a bride price, the officiation of marriage as well as the roles and duties of spouses as part of the institution of marriage. These factors often make the cases discussed particularly complex. All these factors can be relevant in deciding whether a case involving a forced marriage could amount to trafficking.<sup>142</sup> Developing relevant and context-specific indicators will be helpful in identifying cases in which trafficking in persons and marriage interlink.

For example, ICMPD has noted that not all early or child marriages necessarily constitute child trafficking, and thus incidents need to be examined on a case-by-case basis to determine if the elements of trafficking are present.<sup>143</sup> According to the interviewed stakeholders, indicators for child trafficking in child marriage cases may include a considerable age gap between the bride and the groom, and an exchange of considerable sums of money or services in return for the child bride, as well as indications that the child has been placed in a situation of exploitation such as sexual exploitation or domestic servitude and is being kept under the control of the perpetrator using a variety of control mechanisms. Similar indicators were mentioned in connection with forced marriage cases. It is therefore of utmost importance to look at the circumstances and elements of the cases in more detail and not to disregard cases that include aspects of marriage as private matters or incidents of domestic violence.

Moreover, the ILO list of indicators that point to a situation of forced labour are also instructive in situations of forced marriage, as demonstrated in section 4.4 above. These include physical or sexual violence, restriction of movement, debt bondage or bonded labour, the refusal to provide compensation for work, the confiscation of passports and identity documents, and the threat of denunciation to the authorities.<sup>144</sup> These aspects are common in all kinds of trafficking cases, also in the context of marriage. The force in relation to forced labour also includes subtler elements of control and an emphasis on the totality of the situation of the victim. It is noteworthy that many of these elements overlap with the means of the crime of trafficking, most notably the abuse of power or of a position of vulnerability. UNODC has developed a list of indicators on different forms of trafficking<sup>145</sup> and has noted that indicators are most effective when they are tailored to particular situations and updated on the basis of new information.

Ultimately, as pointed out in the UNODC issue paper on the concept of exploitation, cultural and national contexts are relevant in determining exploitation, especially in relation to forced

<sup>142</sup> See also UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 59.

<sup>143</sup> ICMPD, *Targeting Vulnerabilities*.

<sup>144</sup> ILO, *Human Trafficking and Forced Labour Exploitation*.

<sup>145</sup> UNODC, *Countering Trafficking in Persons in Conflict Situations: Thematic Paper*, pp. 75–79.

and servile marriage. Cultural and other context-specific factors can play a role in shaping perceptions of what constitutes exploitative conduct for the purposes of establishing that trafficking has occurred.<sup>146</sup> Therefore, it is difficult to establish a clear list of specific indicators beyond what is described here, as these kinds of tools should be adapted to and interpreted in the local context and follow the definitions and specifics of the national legislation. However, experts have described some overarching indicators that might point towards exploitation in the cases discussed, as outlined above. These include a series of multiple marriages one after the other; a considerable age gap between the spouses; vulnerable victims, for example, those with mental disabilities; polygamous marriage arrangements; a violent outset of the marriage such as kidnapping or rape; and the exchange of considerable benefits, including property, money or other material benefits between the family of the groom and the bride's family that resemble a business arrangement in which a person is sold.

## 5.7 Conclusions

As outlined in this chapter, there are forced, abusive and exploitative marriages that can be classified under the Trafficking in Persons Protocol. Indeed, the analysis in this chapter has raised a number of questions, some of which cannot be answered on the basis of the available empirical data. Box 16 outlines a list of issues that were discussed during the expert group meeting and that may be relevant for law enforcement to consider.

### Box 16. Concentrated list of problems

- How to determine if household tasks amount to labour exploitation or domestic servitude for the purposes of the Trafficking in Persons Protocol
- How to determine if sexual relations in a marriage constitute exploitation
- How to prove that the intent and purpose of one spouse was to exploit the other, where marriage is a complex relationship that includes an array of mutual rights and obligations
- How to prove the intent to exploit at the moment that the act of trafficking is committed; alternatively, how to prove the development of such intent over time
- How to examine the notion that marriage, being a deeply embedded cultural institution, can be used as a control method to keep victims in positions of exploitation
- How to understand the vulnerability that marriage creates for one spouse which makes her or him reluctant to complain (emotional vulnerability)

It has been argued that forced marriage should be considered as *prima facie* trafficking in persons, without having to prove an exploitative purpose or slavery, or practices similar to slavery.

It should be noted, however, that in States where forced marriage is specifically mentioned as a purpose of exploitation under the legal framework proscribing trafficking in persons, the act and means elements must be substantiated in order to elevate these types of marriage to the level of trafficking in persons and to be able to afford the victims the maximum level of protection and assistance accorded to them under the Trafficking in Persons Protocol.

<sup>146</sup>UNODC, *Issue Paper: The Concept of Exploitation in the Trafficking in Persons Protocol*, p. 12.

In the case of child trafficking, according to the Trafficking in Persons Protocol, only the act and purpose of exploitation must be fulfilled in order to qualify cases as trafficking. Such conditions may be met if the parents have knowingly sold or transferred their child into a marriage and where it is evident that the child has been put into a situation of exploitation as a result of that marriage, for example, by the husband or his family, who received and harboured the child.

Experts argued that all forced and child marriages are exploitative in nature, because they lack the consent of the person being forced into marrying. Especially in the case of children, it can be argued that children cannot consent to a marriage, and thereby child marriages qualify as forced marriages.

Certainly, there is evidence in the data to suggest the use of marriage to facilitate the exploitation and trafficking of women and girls, at least in some parts of the world, in certain communities and in connection with certain practices or traditions, such as bride kidnapping in Kyrgyzstan and *ukuthwala* in South Africa. Such practices may also create situations in which the trafficking and exploitation of women and children thrive or are accepted as part of certain “traditions”.

Regardless of such “traditions”, most countries have criminalized child marriages. Exceptions exist to allow for marriages under the age of 18, with the minimum age depending on the country.

Also, in the cases of forced, child and sham marriages, certain types of conduct or offences other than trafficking (such as assault, rape, sexual exploitation or deprivation of liberty) can be utilized when it comes to criminal justice responses. Indeed, the boundaries between different offences and different forms of exploitation, as well as between different forms of marriages, are not always clear. It was noted during the expert group meeting that decisions to investigate and charge under certain criminal provisions are often based on evidentiary considerations rather than the victims’ needs for support and protection. From the point of view of victim protection, however, in many countries, victims of trafficking are entitled to special protection, assistance and support services – often based on obligations deriving from international treaties – which might not be available for the victims of forced or child marriages or the victims of domestic violence. It would be, therefore, important for authorities to identify and process marriage-related cases involving elements of trafficking as cases of trafficking in persons in order to ensure that the victims receive the support and protection they are entitled to.



# 6. Conclusions and policy recommendations

## 6.1 Conclusions

This paper has presented the experiences of a variety of experts from different disciplines, including criminal justice, trafficking in persons, gender equality and human rights, concerning cases in which trafficking in persons and marriage converged. The interlinkages between trafficking in persons, a crime that often requires a constellation of circumstances, and marriage, which is governed by various cultural, social and religious norms and considered a private or family affair, are, unsurprisingly, not always obvious. This complexity demands careful consideration of, among other things, social and cultural surroundings, and gender perspectives, as well as, naturally, the scope and limits of the Trafficking in Persons Protocol.

The case examples provided, and the constellations of factors described, were examined through the lens of the Trafficking in Persons Protocol. During the related discussions, it became clear that even though marriage could be often linked to all three elements of trafficking in persons (for example, deception through marriage or transfer to another family by way of marriage), it could also just be a contextual factor.

It was observed that marriage could be linked to each of the listed acts in the definition of trafficking, that is, recruitment, transportation, transfer, harbouring and receipt. More specifically, the act of recruitment in relation to marriage cases is often connected with deceptive means. Marriage can also be linked to the transportation or transfer of the victim, for example, by her family or third parties to the husband and his family, who then receive and harbour her. Marriage may also be used as a way to facilitate the transportation of a person to the country of destination, for example, in order to put the person into a situation of exploitation.

Marriage was also observed to be connected to several different means listed in the Trafficking in Persons Protocol. It may be directly linked to kidnapping, fraud, deception, the abuse of a position of vulnerability and the receiving of payments or gifts. These means can be used to force persons, in particular women and girls, into various marriage scenarios that could constitute or lead to exploitation. Marriage can be used as a means of deception, for instance, when a marriage is sought only to cover the intent and purpose of the exploitation. In addition, various other forms of coercion have been observed, including violence and abuse, but also psychological pressure or oppression, to ensure that the victim “consents” to the marriage in the first place or as control methods during the marriage.

Finally, marriage can be linked to the purpose of exploitation as established in the Trafficking in Persons Protocol. The circumstances of the marriage itself, as well as the abuse, violence or labour experienced in some marriages, should be examined to determine if they amount to exploitation in the sense of the Trafficking in Persons Protocol. The most important measure for a country to take is to provide guidance on the phenomenon as a whole, based on an analysis of patterns and constellations, and to ensure that criminal justice authorities have the capacity to identify the corresponding crime. In so doing, countries should ensure that the rights of victims are respected, without turning a blind eye to exploitation in the context of marriage by considering it a private matter or treating the case exclusively as intimate partner violence when the case could be trafficking-related. It is important that the authorities focus on investigating the situation in its entirety and on a case-by-case basis, examining, among other things, the extent and forms of exploitation, different control measures imposed on the victim, and the victim's dependency on her spouse, as well as her real possibilities to leave the marriage, seek assistance and access justice. Therefore, attention should be paid to all constituent elements that render the person unable to leave the exploitative situation.

Several approaches to address marriage-related trafficking in persons have been identified from analysing the interview data and the discussions in the expert group meeting. Some countries explicitly include forced or child marriage as exploitative purposes in their national anti-trafficking legislation. This means that these forms of marriage are seen as inherently exploitative. In countries in which the national anti-trafficking legislation does not include forced or child marriage as specific forms of exploitation, "practices similar to slavery", a form of exploitation explicitly mentioned in the Trafficking in Persons Protocol, can be interpreted as including forced and child marriage and other forms of servile marriage. Another option identified is that forced and child marriage are understood by the national authorities to comprise broader forms of exploitation in anti-trafficking legislation that refer to human dignity being violated. All three approaches consider child and forced marriage as inherently exploitative, whether explicitly or implicitly. Given that, in these examples, the forced or child marriage would be inherently exploitative, it would suffice in order to qualify the case as trafficking in persons (if an act and a means are present or, in the case of children only, an act is present).

When countries consider cases involving forced or child marriage and trafficking in persons in separate national laws, a careful examination of the circumstances of each case and potential exploitation within the marriage should be undertaken, which might open the door to considerations of overlap between these crimes. Countries should then consider which crime to pursue, with due consideration to victims' rights, as outlined below.

Throughout the paper and the cases discussed, it became apparent that there are certain root causes when marriage intersects with trafficking in persons. These include poverty, lack of options, conflicts, debt, unemployment and limited access to formal labour, lack of basic livelihood, and violence against women. Victims may not come forward or seek help for multiple reasons, for example, owing to threats, fear and mistrust of authorities, a lack of language skills or an understanding of their rights. Moreover, victims may, for example, be identified in connection with incidents of intimate partner violence, or in some other context. As demonstrated in this paper, the connection to trafficking in persons is not always apparent at the onset or acknowledged by authorities. This is a problem, as proper identification of victims is crucial for accessing the support and assistance measures provided for in the Protocol, particularly during the criminal justice process, regarding support mechanisms and access to services offered and options for remaining in the country or applying for refugee status. In line with international obligations, victims of trafficking may often be entitled to more rights and assistance than victims of other crimes and gender-based violence.

This paper has outlined the complexities and challenges in considering and addressing cases of trafficking in persons in the context of marriage.

Owing to the open-ended list of types of exploitation and the differences in national legislation, there is no one-size-fits-all approach or recommendation as to how to treat these cases. However, concrete policy implications based on the expert consultations and analyses for this issue paper are outlined below in order to address issues of prevention, legislation, investigation and prosecution, and protection and assistance, as well as the need for data collection. These policy implications are also aimed at increasing awareness among practitioners and strengthening the consideration of international human rights agreements, frameworks and definitions and the opportunities to share good practices and lessons learned in victim protection and support.

## 6.2 Policy implications

The following policy implications are grounded in the existing trafficking in persons and human rights legal framework. This includes existing international human rights law, agreements and recommendations, including from the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child, as well as the Working Group on Trafficking in Persons of the Conference of the Parties to the Organized Crime Convention. States are therefore called upon to comply with such obligations, commitments and principles. In particular, and especially since women and girls are primarily affected by the cases analysed for this paper, the recommendations should also be applied as guidelines in a manner consistent with the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice and the Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice. Overall, the recommendations are guided by the principle that effective crime prevention and criminal justice responses to trafficking in persons and violence against women are human rights-based, age-responsive, manage risk and promote victim safety and empowerment while ensuring offender accountability. All persons should enjoy the same rights and principles with regard to equality, security, liberty, integrity and dignity.

### 6.2.1 Prevention

It has been pointed out throughout this paper that several societal and structural factors, including poverty, discrimination, gender inequality and violence against women, facilitate or enable the exploitation and trafficking of women and girls in the context of marriage and beyond. In accordance with the 2030 Agenda for Sustainable Development and its Sustainable Development Goals, it is important to address these root causes.

Furthermore, the findings of the paper highlight the importance of raising awareness of the harm of forced and child marriage among the general public, within local communities and in schools.

- States should implement evidence-based strategies to prevent early and forced marriages and other forms of violence against women and children, such as *INSPIRE – Seven Strategies for Ending Violence Against Children* and “RESPECT women: preventing violence against women”.<sup>147</sup>

<sup>147</sup>WHO, “RESPECT women: preventing violence against women”; available at [apps.who.int/iris/bitstream/handle/10665/312261/WHO-RHR-18.19-eng.pdf?ua=1](https://apps.who.int/iris/bitstream/handle/10665/312261/WHO-RHR-18.19-eng.pdf?ua=1).

- As part of broader education and life skills programmes, school curricula should include lessons informing youth about their rights, as well as issues concerning sexual health, reproductive rights, intimate partner violence and trafficking in persons.
- Parents should be educated on the rights of children and should be informed about the legal age for marriage and about sanctions for breaking the relevant laws. In addition, the risks of early marriage should also be discussed, including birth risks, as well as the advantages of a completed education.
- It is important for the police and other actors, including social and health-care providers and non-governmental organizations, to work closely with community partners, such as local leaders and village chiefs, in order to build trust and reinforce the message that trafficking in persons cases that are interlinked with child and forced marriage can be prevented. Prevention work should include a focus on potential offenders and on raising awareness about the criminal justice responses to trafficking in persons as part of efforts aimed at deterrence.
- It would also be useful for States to consider ways and mechanisms to monitor marriage brokers and agencies.
- States should consider legislation, regulations or guidelines to amend the conditions for giving residence status to foreign spouses on the basis of their marriage to a citizen of the State, in order to address situations of abuse or exploitation within the marriage.

## 6.2.2 Legislative considerations

The links between marriage and trafficking are complex and manifold and there might be more than one way to address these in national trafficking legislation. It might be useful to make explicit mention of child and forced marriage as forms of exploitation in trafficking in persons and to include some forms of abusive and exploitative marriage explicitly in the trafficking-related frameworks. This approach would enable assistance and legal remedies to be made available to victims who may currently lack access to such services.

- States should carefully consider whether their current legislation sufficiently covers marriage-related trafficking. If a decision is made that forced and/or child marriage are not to be included specifically as forms of exploitation in the trafficking offence, it could be examined whether such types of marriages could be covered under “practices similar to slavery” or otherwise.
- States should review and, where appropriate, revise, amend or abolish any laws, regulations, policies, practices or customs that discriminate against women and girls and that might make them more vulnerable to marriage-related trafficking in persons, such as laws that exclude marital rape from the definition of rape and laws that allow the perpetrator of rape to avoid criminal responsibility by marrying the victim.
- States should ensure that customs, traditions or religious considerations cannot serve as mitigating factors or legal defence in cases of trafficking in persons.
- In accordance with international law and human rights obligations, forced and child marriage should be criminalized in some form in national legislation. Countries should ensure that criminal justice and law enforcement practitioners are aware that victims of these forms of abuse might be reluctant to report their cases to the authorities for fear of implicating their own family members.

- In particular, cases of child marriage have to be carefully considered and investigated in relation to child sexual exploitation and the obligations to respect and uphold children's rights. States should urgently consider increasing the minimum age for marriage to 18 years for both men and women.
- It might also be useful to consider legislation or sentencing guidelines regarding proper sentences in cases involving trafficking in a marriage context. These could include what circumstances should not be recognized in mitigation (such as returning the bride who has been forced into marriage).
- It might be useful to establish a collection of rights, including to legal aid in family law matters, in order to provide support for the victims and address their concerns regarding divorce, annulment and custody of children.

### 6.2.3 Investigation and prosecution

The findings of this paper show that criminal justice authorities may lack information on the links between trafficking in persons cases and forced and child marriage, which may result in problems in the identification, investigation and prosecution of relevant cases.

- States should develop indicators for trafficking in the context of marriage. The findings and analysis presented in chapters 4 and 5 of this paper may help in doing so. It is key that the indicators also reflect identified patterns, including as they relate to recruitment and overt (e.g., kidnapping) as well as subtle means used (e.g., close monitoring, control and domination despite apparent independence; or the partner withholding identity documents of the foreign spouse); as well as forms and signs of exploitation (e.g., arduous household and caretaking duties, beyond what is socially accepted and expected).
- States should assign specialized investigators and prosecutors who have more in-depth knowledge of the complexities of trafficking in persons cases and who can build trust with victims, encourage them to tell their stories and aid them in their access to justice using a victim-centred approach. This would be particularly helpful in cases of marriage-related trafficking, where experts might be more versed in recognizing relevant cases.
- Proactive investigations should be encouraged, especially in contexts, communities and circumstances in which problems have been experienced in the past. States may want to develop guidelines or standard operating procedures for carrying out proactive investigations of marriage-related trafficking in persons.
- States that have specific laws, procedures and institutions for forced or child marriage or related forms of violence should promote coordination and collaboration with institutions and personnel specialized in trafficking in persons.
- As the forceful or deceptive recruitment and possible transfer of the person, as well as the exploitation through and in marriage, can take place in different countries, States should have in place tools and procedures for international cooperation. They should also ensure that practitioners are well trained to apply them efficiently. This will increase the successful identification and protection of victims, as well as the prosecution and conviction of offenders, across country borders.
- States should offer capacity-building and guidance to criminal justice and legal practitioners in the form of legislative materials, policy guidance or other such

preparatory work on how marriage-related trafficking is to be defined and understood in the national context and processed in the framework of the national legislation criminalizing trafficking in persons.

- States should, in particular, consider prosecution guidelines on trafficking in the context of marriage. These might include a typology of marriages that may be problematic in terms of trafficking, various indicators to assist practitioners, the substantive and evidential difficulties that may arise and how they should be addressed. Such guidelines could also include typical defence claims that may arise and how to counter them.
- As regards capacity-building, it would be useful to include the topic of trafficking in the context of marriage in the training of investigators, prosecutors and judges. While it is not suggested that such training should focus only on trafficking in the context of marriage, raising the issue would be of importance. Topics to be considered could include a list of possible indicators, a typology of cases that might constitute trafficking, evidential and substantive problems that can arise, delivered in a training format in which analysis is encouraged through the use of interactive tools such as case studies based on actual cases.
- Moreover, States may wish to consider addressing, in workshops for criminal justice practitioners, typical defence claims or typical responses of law enforcement practitioners to possible cases of trafficking within a marriage context. Such workshops could include consideration of typical claims by the accused that his actions accord with the normative approach to marriage in his culture, the private sphere of marriage, etc.

#### 6.2.4 Victim identification, protection and assistance

Victims of marriage-related trafficking in persons, including in the context of forced and child marriage, are often unable or reluctant to seek assistance from authorities. This is due to many different reasons; for example, they may not realize they are being victimized; or they may fear deportation, losing the custody of their children, or being stigmatized or excluded from their families and communities; or they may lack information on their rights, have poor language skills or be facing trauma. In addition, the lack of awareness among first responders, for instance among law enforcement officials, as well as among social and health-care providers, may hinder the identification of relevant cases. Furthermore, victims of forced or child marriage may not be entitled to the same assistance and protections as victims of trafficking.

- States should ensure that criminal justice authorities receive training on the possible linkages between marriages and trafficking, and the possible circumstances and constellations, including red flags, to enable the improved identification and investigation of relevant cases. Training on recognizing signs of trafficking and assisting the victim should also be extended to consular staff and staff who register and officiate marriages at the national level.
- Social and health-care providers might come across women who might presumably experience force, abuse and exploitation or be otherwise in a very vulnerable position in their marriage. States should ensure that social and health-care providers receive training on trafficking in persons, as well as its interlinkages with forced and child marriages. In the same way, these practitioners should be given an opportunity to

impart the knowledge and experience gained to relevant State authorities dealing with trafficking in persons, so that patterns and risks can be recognized and addressed, while protecting the privacy of the victims.

- States should not only ensure that they have in place national coordination and referral systems for victims of trafficking, but also that these systems allow for the identification and referral of cases that arise in the context of marriage.
- States should ensure that victim assistance is not tied to the criminal justice process and its outcome. Furthermore, non-criminalization of victims should be ensured when their criminal activity is directly linked to their victimization in trafficking in persons and, for instance, part of their exploitation (e.g., violation of prostitution laws or labour regulations).
- States should consider extending at least some of the assistance measures offered to victims of trafficking to victims of forced and child marriage, for example, in terms of residence permits or having access to specialized shelters not tied to detention or other limitations on freedom of movement.
- Spouses that are in forced, abusive or exploitative marriages tend to seek help and advice, if at all, from non-governmental rather than from State institutions. States should ensure that non-governmental organizations have sufficient resources to offer low-threshold services to victims who are not willing to seek assistance from the authorities. Non-governmental organizations should also be able to conduct outreach work among at-risk populations.
- States should pay special attention to policies or practices that may ostracize child brides or exclude or prevent them from attending school, particularly as these practices may further preclude the identification of victims of child marriage.

### 6.2.5 Research, assessment and evaluation

This issue paper has outlined some of the complexities in the manifestations of and linkages between trafficking in persons and forced and child marriage. Further research and reliable data on the context and dynamics of these cases is needed in order to support evidence-based policy decisions, as well as to monitor States' responses to and the impact on efforts to tackle trafficking in persons.

- The systematic collection of data on forms of marriage-related trafficking in persons will help monitor trends and patterns and assess the evaluation of policies, as well as foster a better understanding of the existing cases.
- Further research is needed, in particular with regard to the roles, profiles, motivations and, in relevant cases, *modi operandi* of the different actors involved, most importantly the recruiters, brokers and organizers of forced, child and sham marriages. Such information could also be used in targeted prevention efforts.
- Finally, information on the experiences of the victims is urgently needed, especially in terms of the different forms of exploitation that have occurred in connection with marriage and trafficking. Feedback provided by those affected by responses and measures will improve the overall response and serve the empowerment of victims.



# Annex I. Interview tool

## Interview framework for experts

### Information on respondent

Name: .....

Title: .....

Organization branch: .....

Email: .....

Phone number: .....

Date/time of interview: .....

### I. Background of the interviewee

- [Open interview; provide context; introduce team and ask about the general background of the interviewee, including position, function and experience having worked with trafficking]

### II. The phenomenon in general

- What kind of trafficking cases do you work with? Could you describe these?  
[**Probe:** explore cases of sexual exploitation, domestic servitude, child trafficking and child marriages to determine if there is a marriage-related aspect]
- Through your work, have you encountered any trafficking cases with an aspect of marriage in any way? In your opinion, is child marriage human trafficking?

### III. More specifically about trafficking in persons cases with aspects of marriage

#### *Victims*

- In general, who are the victims in these cases?  
[**Probe:** age, gender, nationality, background, motivations, residence and/or migration status]

#### *Perpetrators*

- In general, who are the organizers and how do they operate?  
[**Probe:** perpetrator's age; gender; nationality; background; marriage process; role of the husband; recruitment of women into marriage; how many persons are involved; other aspects related to modus operandi, including the role of the community, own family, as well as in-laws, organized crime involvement, purpose of exploitation]

#### *The marriage*

- Could you describe the marriage?  
[**Probe:** How is the marriage organized?; exploitation, including domestic violence; What kind of work do the victims do?; How and where is the marriage process organized and sanctified?; measures of control over victims such as isolation, confiscation of documents, limiting the freedom of movement, threats, other]

#### *Detection and investigation*

- How do you become aware of cases?  
[**Probe:** Are you tipped off? Why are cases initiated in the first place?; Are cases reported?; When do you find the cases substantive enough to act? Do you encounter cases which are too weak to investigate but still suspicious?]
- What kind of evidence is the most useful?  
[**Probe:** character of (supportive) evidence, paperwork (e.g., marriage certificate), wiretapping, surveillance, etc.]

#### *Prosecution and sentencing*

- What kind of legislation do you have in place with relevance to trafficking in persons and marriage?  
[**Probe:** definitional issues if marriage is an exploitative purpose, legal age for marriage, forced marriage, child and early marriage, sham/fraudulent marriage, smuggling, other]
- Have there been any cases prosecuted in court?  
[**Probe:** character of cases; number; length of sentence; Were there acquittals, and if so, why?]

### ***Assistance for victims***

- Are there any means for assisting victims and how are they organized?  
[**Probe:** Who pays for victim assistance?; Who runs shelters?; How are persons referred there?; Do victims actively ask for assistance?; If not, why?; other]

### ***Legal framework***

- Does the legal framework contain a prohibition on forced/sham/child marriages? If so, are there any references to human trafficking and/or smuggling of migrants?
- Are there any weaknesses in the legal framework?  
[**Probe:** Inquire about marriage as a form of exploitation, including child marriage]
- [Ask for a copy of the legal provisions (in English if possible)]

### ***Prevention***

- What should be done to prevent the crime?
- [**Probe:** interventions at local and national level, expectations of success, different forms of prevention such as social programmes and legislation, addressing root causes]

### ***Case examples (can be requested and/or introduced throughout the interview or at the end)***

[Stress the importance of case examples for the study and ask if the counterparts would be willing and able to provide short summaries of cases or share case material such as court documents if available.]

### ***Closure of the interview***

- Thank them for their time.
- Ask if they have any questions or if they would like to add anything.
- Provide contact details.



# Annex II. List of experts consulted

## Interviews, Marriage Trafficking Project

### Canada

- Int. 1 Non-governmental organization (NGO)
- Int. 2 Academia
- Int. 3 NGO
- Int. 4 NGO
- Int. 5 NGO
- Int. 6 NGO
- Int. 7 Law enforcement
- Int. 8 Law enforcement
- Int. 9 Government and law enforcement

### Germany

#### ***Ministry round table***

- Int. 1 Law enforcement
- Int. 2 NGO
- Int. 3 NGO
- Int. 4 NGO
- Int. 5 NGO
- Int. 6 NGO

### Jordan

- Int. 1 Government
- Int. 2 Law enforcement
- Int. 3 NGO
- Int. 4 NGO
- Int. 5 Law enforcement
- Int. 6 International organization
- Int. 7 Law enforcement
- Int. 8 International organization
- Int. 9 International organization
- Int. 10 Individual expert

## Kyrgyzstan

- Int. 1 NGOs
- Int. 2 Academia
- Int. 3 NGO
- Int. 4 Government
- Int. 5 Law enforcement
- Int. 6 NGO
- Int. 7 International organization
- Int. 8 International organization
- Int. 9 International organization
- Int. 10 International organization
- Int. 11 International organization
- Int. 12 Law enforcement
- Int. 13 Law enforcement
- Int. 14 Government

## Malawi

- Int. 1 NGOs
- Int. 2 Government
- Int. 3 Law enforcement
- Int. 4 Government
- Int. 5 Law enforcement
- Int. 6 Law enforcement
- Int. 7 International organization
- Int. 8 International organization
- Int. 9 NGO

## Serbia

- Int. 1 Government
- Int. 2 NGO
- Int. 3 International organization
- Int. 4 NGO
- Int. 5 Government
- Int. 6 Law enforcement

## South Africa

- Int. 1 Law enforcement
- Int. 2 Law enforcement

Int. 3 NGO  
Int. 4 Government  
Int. 5 Individual expert  
Int. 6 Law enforcement  
Int. 7 Law enforcement  
Int. 8 NGO  
Int. 9 NGO

### Thailand

Int. 1 Law enforcement  
Int. 2 Law enforcement  
Int. 3 Law enforcement  
Int. 4 Law enforcement  
Int. 5 NGO

### Viet Nam

Int. 1 Government  
Int. 2 Government  
Int. 3 NGO  
Int. 4 International organization  
Int. 5 NGO



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