



13. Dezember 2013

Submission on child, early and forced marriage

Preliminary note: Distinction forced marriage/child marriage/early marriage in Germany

In Germany the term forced marriage is being used for all marriages, within at least one of the partners has been forced into a formal or informal (e.g. through a religious or civil ceremony) marriage by acts of physical violence or threats. A refusal was ineffective or the victim did not dare to oppose out of fear. Financial or deportation threats may also lead to a forced marriage.

We also speak of forced marriage when a partner stays in a conjugal relationship against her/his will because of the fear of sanctions from her/his family or environment. A person who is not allowed to break up with her/his partner is in a forced marriage, even if the marriage was originally voluntarily.

Concerning the age of affected or threatened persons we distinguish according to the following categories: underaged (younger than 18 years), young adults (18 to 21 years) and full-aged (older than 21 years). Yet, the terms early marriage and child marriage aren't common in the German discourse.

A) How States are implementing their obligations under international human rights conventions and international human rights treaties on child, early and forced marriage at the national level

Basically, obligations under international law are taken quite seriously in Germany. The duty to respect public international law ("Völkerrechtsfreundlichkeit") has to be strictly performed. Treaties of International law have to be implemented, thereafter they have the same priority as the federal law. Germany is contractual partner of almost every legal text coming from the United Nations.

Ratified conventions and treaties

UDHR, ICCPR, ICESCR

One of those documents is of course the Universal Declaration of Human Rights from 1948. Article 16 II of the declaration states that „marriages shall be entered only with the free and full consent of the intending spouses“. Although the declaration is not legally binding, it has important political weight and the wording of the mentioned article has been adopted by various legally binding treaties on the international level. Such as Article 23 (III) of the International Covenant on Civil and Political Rights and Article 10 (I) of the International



Covenant on Economic, Social and Cultural Rights. Both Covenants have been ratified in 1973.

CONVENTION ON THE CONSENT TO MARRIAGE, MINIMUM AGE FOR MARRIAGE AND REGISTRATION OF MARRIAGES

The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages has entered into force in 1962 and has been ratified by Germany in 1969.

CEDAW

The Federal Republic of Germany has ratified the convention in 1985 and the Optional Protocols in 2002. After having taken steps to exhaust domestic remedies at the national level the Optional Protocols are providing an opportunity for specific redress in individual cases when a State violates women's rights.

Article 16 (Ia) of the Convention states „the same right to enter into marriage“ and „the same right freely to choose a spouse and to enter into marriage only with their free and full consent“. The previous German periodic report of States parties announces: „Diverse recommendations were made regarding legal amendments, while at the same time better preventive measures and aid projects were called for to support the victims. More research on the topic was also called for. The Bundestag will consider these recommendations.“¹ Meanwhile the consideration of forced marriages as criminal offence has been implemented in the German Criminal Code.

Referring to the recommendations of the Committee, Germany did not receive any concrete recommendations on the legal level to amendment. Anyhow there was a complaint about the insufficient financing options for women's refuge.

CONVENTION ON THE RIGHTS OF THE CHILD

The convention was ratified by Germany in 1992 and does not provide any explicit regulation of early and forced marriages. Article 3, 12, 19 and 34 express indirectly that early and forced marriages are not tolerated though. The Third and Fourth State Party Reports of the Federal Republic of Germany declare that Germany is doing its utmost to create an individual complaint procedure. Furthermore it is made clear that Germany views its child and youth policy as a cross-sectional, long-term and future task which influences all fields of policy in the interest of future generations.

CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

On the European level Germany is bound by the Convention for the Protection of Human Rights and Fundamental Freedoms. Article 12 of this convention guarantees the right of freedom of marriage.

¹ Consideration of reports submitted by state parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women; Sixth periodic report of States parties; Federal Republic of Germany; 2007; p. 71 f.



CONCLUSION: On the legal level Germany has fulfilled almost all the guidelines of international public law concerning early and forced marriages. Still there are practical problems (see point b) challenges).

B) Steps taken to prohibit child, early and forced marriage as well as examples of positive experience and challenges encountered at the national level in adopting policies, measures and implementing strategies to address this issue

Since July 2011 forced marriages have been stipulated as a criminal offence with an amount of the penalty incurred from 6 months to 5 years in the German Criminal Code. At the same time criminal liability has been established for the abduction of girls with the purpose of being married abroad and for so called „Holiday Marriages“. Even the attempt is punishable.

Challenges:

Since the establishment of the normative character for families and the empowerment of girls/women defending themselves, TERRE DES FEMMES basically supports the introduction of the criminal offence „Forced Marriage“. In order to benefit from the new law it has to be provided that girls know about the prohibition and are aware of their rights. To ensure that a countrywide campaign has to take place.

Thus the implementation/application of the new law still causes difficulties. Pressing charges against the own family may represent a serious obstacle. Even if it comes to an accusation it is very likely that the file is going to be closed due to a lack of evidence. Affected persons either make use of their right to refuse testify or even cancel their accusation. It is assumed, that the increasing pressure of their families is causing the withdrawal. It is therefore recommended to provide better protection of the victims.

Having problems in determining and testifying the facts, many files are closed by the public prosecutor. Furthermore criminal prosecution is not possible as long as the offenders have foreign citizenships or the act takes place abroad. Even dual citizenships make prosecution impossible.

The minimum age of marriage is 18 according to § 1303 of the German Civil Code. Although under certain conditions it is possible to get married from the age of 16. TERRE DES FEMMES casts a critical eye on this exception, because it simplifies forced marriages.

According to public law only civil marriages and foreign marriages concluded under foreign law are accepted in Germany. In contrast purely religiously concluded marriages are not accepted and make no entry in the public registers.

Hence religious marriages of underaged are not punishable or forbidden. Whether the criminal offence „Forced Marriage“ is including religious marriages or not depends on legal interpretations. A decision of the highest courts concerning this issue hasn't been made yet. It is however probable that the term „marriage“ has to be interpreted restrictively in order to preserve the legal certainty. Then religious marriages would not be included. Actually underaged victims are mostly married in such religious ceremonies and have to deal with the



same consequences (physical and psychological violence, isolation, dropping out of school) as those who were married under civil law.

Persons whose right of residence is linked to the right of residence of their marriage partners have to stay married for at least three years to receive a separate and independent right of residence. Thus victims of forced marriages who fear their deportation have to hold out in a situation of violence for three years. Even though there is an exception for situations of hardship saying that the deadline may be shortened. These cases are hard to testify and Aliens Departments rarely authorise the exception.

The legal provisions of the so-called "Zwangsheirat-Bekämpfungsgesetz" codify the right of return for girls/women, who have been abducted and detained abroad in the context of forced marriage. The law provides them with the (legal) possibility to return to Germany within a period of 10 years. Yet, it is unclear whether affected girls and women do in fact claim this right or whether they are actually able to do so. The German embassy in Ankara/Turkey for instance reports that they have received several calls by affected girls asking for help. However, after having been informed about the fact that a personal appearance at the embassy is required and that the Turkish police is obligated to provide support, these girls never arrived at the embassy.

Measures:

Irrespective of measures concerning the German Criminal Code, the government has taken various measures in order to support victims of forced marriage. In 2013 for example the so-called "Hilfetelefon" (a countrywide support hotline) was established under the auspices of the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth. The hotline is available round the clock and offers initial counselling services.

Furthermore, various online support resources are available for girls and women affected by forced marriage. Collective funding by some states has enabled the crisis shelter Papatya to offer the anonymous online counselling "Sibel". Possibilities for anonymous online counselling are also provided by the girl's shelter Bielefeld and TDF's Counselling Centre "LANA". In addition, four states (Bayern, Berlin, Hamburg and North Rhine-Westphalia) provide funding for the emergency accommodation of 20 victims without the necessity of finding a financial benefactor beforehand. Nevertheless, when taking into account that more than 3.400 girls and women are affected by forced marriage annually this number is extremely low.

Two states, namely Baden-Württemberg and Rhineland-Palatinate, have developed concepts regulating the cooperation between all relevant actors involved in cases of forced marriage (namely the police, prosecution, counselling centres, child protection services, foreigners' registration offices).

Furthermore, in 2012 the ad hoc working group "forced marriage" has drafted a countrywide concept of crisis intervention for cases of forced marriage. The group consisted of representatives of the Conference of Ministers for Youth and Family Affairs, the Conference of Gender Equality and Women's Affairs Ministers, the Conference of Ministers for Integration as well as the Interior Ministers' Conference. The concept includes comprehensive approaches and strategies, in particular for low threshold counselling and



crisis services. It additionally provides practical guidelines for legal issues regarding welfare benefits, the right of residence and data protection.

C) Policies, projects and measures undertaken at national and sub-national levels, including by United Nations agencies, funds and programmes, civil society and other relevant stakeholders to promote the elimination of child, early and forced marriage specifically including action taken to address the issue in practicing communities, and to address or mitigate its impact, making specific reference to the outcomes of such policies, projects and measure

German States

In 2010, the federal state Saarland has initiated the campaign "No to forced marriage". This campaign entailed the establishment of an internet platform and a crisis hotline as well as the development and distribution of postcards and an information leaflet.

In November of 2006, North Rhine-Westphalia started the campaign "her freedom - his honour", which the Ministry of Integration has developed in cooperation with several migrants' organisations. The core of this campaign was a postcard initiative that was combined with theatre visits, panel discussions and conferences. Initiating a public debate, raising awareness and educating the public about the topic of forced marriage were considered as the main objectives of this campaign.

On the initiative of the Federal Commissioner for Migration, Refugees and Integration a "Bund-Länder" task force was established in 2009 in order to develop guidelines as to how schools should deal with the subject of forced marriage.

Civil society

As early as 2002 TERRE DES FEMMES carried out the campaign "Stop forced marriage". The campaign made a crucial contribution towards raising awareness on this particular human rights violation. Next to public relations activities the campaign focused on developing prevention programmes for schools (the development of teaching material and workshops for teachers and school social workers). Moreover, the 2004-2006 TERRE DES FEMMES campaign "No to violence in the name of honour" was mainly directed at an expert audience, thus helping to promote the development of prevention measures at the national and international level.

Several networks exist on the federal and state level, in which state and non-state actors cooperate in order to reach consensus on certain topics and in order to formulate specific demands promoting the interests of affected girls and women.

Besides, since 2006 the "Bundesfachkonferenz Zwangsheirat" (an annual expert meeting on forced marriage) brings together numerous crisis- and counselling centres, hence allowing them to network as well as to exchange knowledge and expertise. Placing the topic on the political agenda, for example by means of working on collective positions and demands, is another important aim of this symposium.



Moreover, there are several counselling centres, which support girls and young women threatened by forced marriage as well as victims, who want to break free from a forced marriage. Next to that several emergency shelters and accommodation projects exist for young women (below the age of 21), who are threatened by their families, thus sometimes even have to fear for their life.

Funds and programs

In 2008, the Berlin based project "HEROES - against oppression in the name of honour" has been founded. In general, the project aim is to foster gender equality. The specific target groups are young men with a Turkish or Arabic background, since the concept of honour often plays an important role in these cultures. By educating them to become "HEROES" the project introduces these young men to topics and issues revolving around honour, equality, sexuality/sexism and human rights. Subsequently, the HEROES can effectively use the acquired knowledge to promote a change of mindset of the other adolescents in their communities. Currently, HEROES groups also exist in six other cities. The project is financed partly by private funds (World Childhood Foundation), but mainly through state funding.

As part of the Daphne III Program of the European Union, the crisis institution PAPTAYA functioned as project execution body for the two-year project "Sheroes-empowering girls with migration background to lead self-determined lives" (May 2011- April 2013). While directly involving girls and young women, the project tested various strategies aimed at empowering girls and at enabling them to better defend themselves against violence.

Since 2008 TERRE DES FEMMES, supported for example by the European Integration Fund, successfully organized several projects with the objective of improving the protection and support system for victims of forced marriage. This implied establishing an online platform for experts in the field, which provides information, material as well as an overview of counselling centres in Germany and a selection of qualified experts on forced marriage for lectures and workshops. In Baden-Württemberg special trainings courses have been provided for the staff of various public authorities. Additionally, teachers and social workers at schools in Berlin and Hesse participated in professional trainings. Finally, in 2012 TERRE DES FEMMES, in cooperation with the World Childhood Foundation, launched the youth online platform "zwangsheirat.de". For the first time "survivors" of forced marriage can share their experiences in a blog and counsellors also offer advice to other affected girls and women via a live chat. A comprehensive overview of counselling centres in Germany is provided, as well.

D) Surveys, assessments and studies carried out at national and sub-national level on the prevalence of child, early and forced marriage and/or its impact on the human rights of women and girls and other affected groups

In 2011, the Ministry of Family Affairs, Senior Citizens, Women and Youth commissioned the first study investigating the prevalence of forced marriage in Germany. For the first time countrywide statistics on the issue, based on data collected in 2008, have been presented. The following key findings of this study are especially significant: In 2008 3.443 girls and young women sought counselling, 60% of which were threatened by forced marriage and 40% of which have already been forced into marriage. 70% of the victims were below the



age of 21 and 30% even below the age of 18. More than 50% of affected girls and women have been or may be taken abroad in order to perform a forced marriage. 62% of affected girls and women explicitly stated that they have experienced violence while growing up.

Prior to 2008 data documenting the magnitude and prevalence of forced marriages has been collected in several states, namely Baden-Württemberg, Berlin and Hamburg. In 2007, Berlin for example documented 378 cases of girls and young women seeking support.

The counselling centre of TERRE DES FEMMES publishes annual data on the number of counselling services related to each of its focus areas. In 2012 a total of 118 girls or young women have been provided with advice regarding forced marriage. 82 cases concerned the threat of forced marriage and 36 cases dealt with girls who had already been forced into marriage, respectively.

Recently, a working group consisting of various ministers from different federal states was assigned the duty to write a report analysing and evaluating the situation of emergency shelters and accommodation possibilities in Germany. Although the report should have been completed in October 2013, it has not yet been published.

The Federal Ministry of Family Affairs, Senior Citizens, Women and Youth developed various publications on the subject matter of forced marriage. One example is the toolkit "fight forced marriage - providing effective protection for affected girls and women" designed as practical guidelines for children's welfare services. It contains recommendations and best courses of action that are not only relevant and interesting for youth welfare services, but also for other experts and institutions working in this particular field. Besides, in 2007 the book "forced marriage in Germany" was published and for the first time provided an extensive and comprehensive analysis of this complex topic. A representative study investigating the "living conditions, security and health of women in Germany" from 2004 concluded that women of Turkish origin face special difficulties with respect to the issue of forced marriage.

E) Recommendations on or examples of good practices regarding possible appropriate measures and strategies to prevent and eliminate child, early and forced marriage

Some measures/projects have been initiated in order to effectively support victims of forced marriage. Several toolkits and practical guidelines (published by governmental and non-governmental agencies) provided assistance in form of information and recommendations for action to all kinds of specialists of this field in their daily work.

Concepts for cooperation (on the federal level) and agreements about how to take action (on the communal level) regulate the cooperation of the diverse actors involved. Round tables on forced marriage allow for the exchange between specialist units and help to improve support structures on the communal and federal level. Workshops, trainings and conferences can ensure a certain level of knowledge as long as they are held on a regular basis. It would also be important to address the subject of forced marriages in the education and training of specific professional groups, such as teachers, pedagogues/educators.

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As already mentioned, the various „HEROEs-Teams“ encourage male adolescents to rethink their gender role expectations. Moreover, it would be desirable to establish „Change Agents“ in every community in order to promote a change of mindset. These Change Agents can act as role models by demonstrating a certain way of living as well as by creating dialogue and organizing events etc.

At the moment an exemplary project is conducted in the field of FGM within the framework of the DAPHNE-project: CHANGE – Promoting Behaviour Change towards the Eradication of Female Genital Mutilation (FMG) in Practising Communities across the EU. Project manager is TERRE DES FEMMES. See also the webpage: www.change-agent.eu.

In the field of honour crimes/forced marriages TERRE DES FEMMES has submitted a project application at the European Commission/DAPHNE-programme called Mentoring Programme – Prevent and combat all types of VHP (i.e. violence linked to harmful practices) by mentoring girls at risk and capacity building for professionals.

At the legal level we see a specific need for action in four areas. The minimum legal age should be upheld without exceptions. Women should have the right of residence from the time of their marriage independent of the continuance of their marriage. For both the evidence of hardship (see point b) and the evidence of the existence of forced marriages in connection with residence permit questions we recommend to accept an affirmation in lieu of an oath.

Finally, we recommend incorporating § 237 of the German Criminal Code into the principle of universal jurisdiction (§ 6 Nr. 4 German Criminal Code) in order to permit the criminal prosecution of forced marriages abroad.