31/08/2018

**Call by the UN High Commissioner for Human Rights**

**A report on child, early and forced marriage in humanitarian settings**

**I.-Council of Europe Strategy for the Rights of the Child**

The Council of Europe Strategy for the Rights of the Child, adopted by the Committee of Ministers on 3 March 2016, guides the work of the Council of Europe and sets out priority actions for member States in the area of the rights of the child in the period from 2016-2021. Specific actions aimed at addressing and combating early/child/forced marriage are covered under Priority 1 (Equal opportunities for all children) as well as Priority 3 (A life free from violence for all children). In this context, all member States will be encouraged to sign, ratify and implement the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), as this is the key international standard aimed at protecting children against forced and early child marriage. Furthermore, action will be undertaken in particular to evaluate the effective implementation of Roma children’s rights and address the issue of early/child marriage. The Ad hoc Committee for the Rights of the Child (CAHENF) supports and reviews the implementation of the strategy and therefore plays a crucial role in supporting States and the international community in their efforts to meet the priority actions.

**II.-Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention)**

Early/child/forced marriage is not mentioned, as such, neither in the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) nor in its explanatory report, contrary to the Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in its articles 32 and 37.

The Lanzarote Committee, however, took the opportunity to mention the issue in its [Special report on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse”](https://rm.coe.int/special-report-protecting-children-affected-by-the-refugee-crisis-from/16807912a5), adopted on 3 March 2017. In particular, the Lanzarote Committee “invite[d] Parties to pay particular attention to the work of the Council of Europe in relation to the identification of good and promising practices aimed at combating and preventing female genital mutilation and child and forced marriage (R36).”

Even if the Lanzarote Convention does not mention this particular issue, its holistic approach to prevent and respond to sexual violence against children is a valuable contribution to the fight against early/child/forced marriage.

In its above-mentioned Special report, the Lanzarote Committee referred in particular to practices in two Council of Europe member States: (see below the full extract from the Lanzarote Committee Special Report)

* the Norwegian Government was to adopt a new National Action Plan Against Forced Marriage and Female Genital Mutilation (expected early 2017) (see [replies provided by Norway](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ab2de), in particular p.7);
* In Austria, when girls, affected by the refugee crisis arrive accompanied by adult boyfriends/husbands, are below the age for engaging in sexual activities, the Asylum Centers have to notify the public prosecution service (see [replies provided by Austria](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ab2ad), p.14).

In addition, [replies provided by Turkey](https://rm.coe.int/16806ee1ee) refer to trainings provided to Syrian children which, in particular, mention early marriage, its prevention and the fact that, according to legislation, early marriage constitutes sexual abuse of the child, is severely punished and that marriages below the age limit are not valid (see pp.6, 15-17).

**Challenges and suggested practical actions**

This section gathers together challenges and suggested practical actions that would particularly benefit from co-operation between Parties as well as with the countries of origin of the children affected by the refugee crisis.

In this regard, Article 38§4 of the Lanzarote Convention is particularly relevant as it requires Parties to integrate, where appropriate, prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states.

To ensure the success of any awareness-raising and training initiatives involving different countries, the first point to establish is to understand whether there are any differences in the legal systems concerned which need to be clarified as they risk impacting on the duty to protect every child’s human dignity and physical and psychological integrity.

In this respect, **Norway**[[1]](#footnote-2) highlights child and forced marriages, which the Norwegian Government is committed to combatting and preventing in the context of a new National Action Plan Against Forced Marriage and Female Genital Mutilation (expected early 2017).

In this regard, **Germany** also points out that an interdisciplinary working group (with members of the Federal Ministry of the Interior, the Federal Ministry of Foreign Affairs, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Health, the Federal Ministry of Economic Cooperation and Development, the Federal Government Commissioner for Migration, Refugees and Integration, the *Bundesländer,* the German Medical Board and a delegation of NGOs) has been tasked with following current developments, sharing best practices and developing a joint strategy to tackle the problem of female genital mutilation (FGM). Currently the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth finances research on the unreported cases and statistical methods to attain more reliable data on women and girls suffering from FGM and women and girls in danger of FGM living in Germany. At the same time, the project aims at finding out the needs of women and girls within their communities in order to eliminate the practice of FGM.

As per the UN 1951 Convention Relating to the Status of Refugees, Article 33§1, no person should be returned or expelled to a country where they may face persecution or serious human rights violations. It is worth mentioning in this regard that UNICEF[[2]](#footnote-3) has highlighted that this principle of *non-refoulement* means that children should not be returned to a territory if they face risks including torture, detention, forced recruitment, forced marriage, female genital mutilation, trafficking or exploitation.

Concrete problems may also arise when girls affected by the refugee crisis arrive accompanied by adult boyfriends/husbands. When girls are below the age for engaging in sexual activities, **Austria** points out that according to its legislation, the Asylum Centers have to notify the public prosecution service. Generally, the family members of the girl do not understand why they are referred to a victim protection organisation. They in fact do not necessarily qualify the boyfriend/husband’s sexual relationship with the girl as a criminal offence.

**III.-Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention**

The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) has a strong focus on women and girls in as far as they experience gender-based violence, including forced marriage. The convention contains a range of measures to prevent gender-based violence against girls, protect girls against such violence and prosecute the perpetrators. In many cases, victims of forced marriage are below the age of 18. Often, they are not married against their will in the country in which they live but are lured or forced to travel to another country where they have been promised to someone. The Istanbul Convention criminalises both: forcing a child to enter into a marriage, as well as luring a child to another country with the intention of marrying the child, boy or girl, against his or her will (Article 37 of the Istanbul Convention). The intention is to make sure that every step towards a forced marriage is criminalised, including using a pretext such as visiting family members to make a child travel abroad, when the real reason is to force the child to marry. It is important to note, however that the convention neither addresses early marriage nor does it deal with the question of marriageable age.

The convention also pays due attention to gender-based violence experienced by migrant, refugee, asylum seeking women and girls. The Convention ensures its provisions are implemented without discrimination on the ground of migrant status, refugee status or other status (Article 4, paragraph 3).

The Council of Europe Violence against Women Division has not, to date, dealt specifically with this topic. However, the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) - the independent expert body responsible for monitoring the implementation of the convention – is taking up the issue during its evaluation visits in countries where there are reports and information about the high rates of early/child/forced marriages.

**IV.- Roma and Travellers**

The phenomenon of early/child/forced marriages still occurs in some traditional Roma communities, although very early marriages (below 15) are considered to be decreasing according to various studies.[[3]](#footnote-4) Early marriage could concern, on average, 25% of Roma children/youth in Europe; the 2017 UNDP/World Bank Regional Roma Survey[[4]](#footnote-5) shows that in the Western Balkans it can affect up to 50% of the Roma population.

For the Roma families/communities concerned, it is perceived neither as child- nor as forced marriage: it is considered an important part of the Romani tradition as it contributes to the preservation of family values (e.g. the girl’s virginity) and Romani identity (by avoiding mixed marriages). It depends on clan/family relations more than on the individuals’ will. It often (but not always) involves a dowry.

Not all early/child marriages are necessarily forced. Sometimes, forced marriages can also be linked to human trafficking, petty crime (to reimburse the dowry), child exploitation and domestic slavery (including taking care of a physically disabled spouse).

Despite the fact that human rights protection should take first priority, many external actors find it challenging to strike the right balance between interfering with cultural traditions (or actions perceived as such) on the one hand, and protecting human rights and the rights and best interest of the child on the other hand.

Consequently, the issue of early/child/forced marriages within Roma communities is still not properly recognized at national level in all member States. However, the **United Kingdom**, where child marriage is regarded as forced marriage, and where forced marriage constitutes a criminal offence, is a (unique) positive example. They have established a governmental agency, the Forced Marriage Unit - FMU which has developed and implemented relevant legal and organizational tools, including overseas interventions.

Data is lacking: on the one hand, authorities and NGOs abstain from interfering with what is too often considered as a Romani tradition; on the other hand, Roma victims are often afraid of breaking the code of silence by fear of being excluded from the community or of being brought to justice.

Early/child/forced marriages largely contribute to the low level of education and high number of school drop-outs of Roma children, especially girls, between 13 and 16, aggravating their limited access to the labour market and increasing their economic dependence on social welfare.

At its 15th plenary meeting (Athens, Greece, 22-25 May 2018), the **Ad hoc Committee of Experts for Roma and Traveller Issues (CAHROM)** agreed that the Council of Europe/CAHROM could initiate guidelines/a broader campaign regarding child/early and forced marriages within Roma and Traveller communities in Europe.

**Appendix**

The Council of Europe has published the following reports related to the issue:

* **Report of the Ad hoc Committee of Experts for Roma and Traveller[[5]](#footnote-6) issues (CAHROM) thematic visit *on gender equality within Roma communities, with a focus on early and/or forced marriages***, Bucharest, Romania, 27-29 April 2015 (hosting country: Romania; partner countries: Italy, Republic of Moldova, the Netherlands, Poland and the United Kingdom) available in English and French

* **Report: *Early and Forced Marriages in Roma and Traveller Communities: case study of France*,** by Diana Kirilova (research carried out for the Council of Europe, published on 14 February 2017), available in English and French

* **Report of the Study visit to the UK Forced Marriage Unit (FMU),** London, 7-8 December 2017 (involving national experts and civil society representatives from Finland, France, Greece, Ireland, Italy, Poland and the United Kingdom), available in English
* **Extract from the Lanzarote Committee** [**Special report on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse”**](https://rm.coe.int/special-report-protecting-children-affected-by-the-refugee-crisis-from/16807912a5)**,** adopted on 3 March 2017

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1. As pointed out above, Norway is not yet a Party to the Lanzarote Convention but it has responded positively to the Lanzarote Committee’s invitation to reply to its focused questionnaire. [↑](#footnote-ref-2)
2. UNICEF, Danger every step of the way: A harrowing journey to Europe for refugee and migrant children, p. 6. [↑](#footnote-ref-3)
3. See below findings from the CAHROM thematic visit and Diana Kirilova’s research. [↑](#footnote-ref-4)
4. <http://www.eurasia.undp.org/content/rbec/en/home/library/roma/regional-roma-survey-2017-country-fact-sheets.html> [↑](#footnote-ref-5)
5. The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers. [↑](#footnote-ref-6)