

Child, early and forced marriage in humanitarian settings

**Contribution of the Portuguese Ombudsman to the Office of the United Nations
High Commissioner for Human Rights' Report pursuant to the resolution 35/16 of
the Human Rights Council**

(September 2018)

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Office of the United Nations High Commissioner for Human Rights for contributing to the report “Child, early and forced marriage in humanitarian settings”, pursuant to the resolution 35/16 of the Human Rights Council. The current mandate holder is Maria Lúcia Amaral.

Foreword

There are no specific studies of child, early and forced marriage among the population in humanitarian settings in Portugal. However, child, early and forced marriage occurs in the Portuguese territory. Moreover, with the growing number of refugees and asylum seekers living in Portugal, this phenomenon may also affect sheltered families. Thus, the Portuguese Ombudsman considers that mapping existent practices and legislation in this regard is very important.

1. Please provide information and data on the prevalence of child, early and forced marriage, in relation to the number of women and girls living in specific humanitarian settings. Kindly provide data disaggregated by sex and age, and in relation to the overall number of women and girls, as well as boys where relevant, in the population.

There is no data on what regards the prevalence of child, early and forced marriages among persons living in specific humanitarian settings (e.g. holders of refugee status or asylum seekers living in Portuguese shelters).

Until 2015 there is absolutely no data on forced marriages in Portugal, since no specific crime of forced marriage was foreseen. Apart from one case, which occurred in 2009 and was reported by the media, no cases of forced marriages were known to have occurred in the country¹. It was hinted that forced marriages might had happen, in residual cases, amongst Roma communities and, possibly, in Hindu and Ishmaelite communities (although, in these last two cases, the reports just mention arranged marriages, celebrated outside Portugal – mainly in the UK – involving Portuguese women and foreign men of Arab origin)².

After 2015, there is still no available data in relation to the number of women and girls *living in specific humanitarian settings*. The only data available concern the *total number of crimes of forced marriage*, which are the following:

Year	Initiated Criminal Procedures	Finished Criminal Procedures	Cases closed	Finished Procedures by other motives
2015	1	-	-	
2016	6	3	1	2
2017	2	2	2	-
2018 (until 31/08/2018)	5	4	4	-

Source: General Public Prosecution Office

There is also no data disaggregated by sex and age. However, according to a study dated of 2011 on early marriage among Roma communities, in Portugal the average age for marriage in such communities is 13-21 for women and 14-21 for men³.

2. What measures were taken to strengthen data gathering, contextual analysis and analysis of social factors contributing to child, early and forced marriage in humanitarian settings?

¹ The perpetrators were condemned for kidnapping, bodily harm and sexual abuse of a minor.

² Rude-Antoine, 'Forced marriages in Council of Europe member states - A comparative study of legislation and political initiatives' for the Council of Europe, Directorate General of Human Rights (2005), p.25.

³ Jorge da Silva Mourão, 'O casamento Cigano – Estudo Sócio-jurídico das normas ciganas sobre uniões conjugais (2011) Universidade Fernando Pessoa, 69-77.

There are no specific measures aimed at strengthening data gathering of child, early and forced marriage in humanitarian settings.

3. What are the specific challenges and gaps in the prevention and eliminating of the practice of child, early and forced in humanitarian settings? How could such challenges and gaps be overcome?

No specific challenges have been identified in humanitarian settings, since no attention has been provided to these contexts. However, generally, the closure of some communities as been pointed out as the main obstacles to identify possible cases of forced marriages and thus to fight against the phenomenon⁴.

Regarding for example Roma community, representatives recognize that arranged marriages and early marriages are frequent, but deny that these might be considered as “forced marriages”⁵. Even that being the case, the persistence of early and forced marriages has been difficult to combat in these communities. More traditional Roma communities have a great sense of protecting and perpetuating their own culture, which may likely limit the freedom of young Roma people when choosing their partner with whom they want to live, and thus, may configure forced marriage. For the same reasons, it is unlikely that a woman or a man that marries accordingly to the agreement fulfilled by their parents will recognise themselves as *victims of forced marriage*. Moreover, in some communities, victims may fear stigmatization where they do not follow their culture and traditions⁶.

Another study refers to forced and early marriages experiences amongst the community of migrants from Guinea-Bissau. Interviewed youngsters explained how forced marriage was a natural extension of the patriarchal social system: young women’s lack of voice, the ‘holy’ status of the father’s word. It was also a result of high levels of poverty: the fact that families received material benefits from their daughters marrying, may compel them to organize a marriage⁷.

There are no studies on prevalence of these marriages for example among Hindu, Ishmaelite or Muslim communities living in Portugal, even though some European studies show the existence of this practice in such contexts⁸. Since Portugal has been receiving

⁴ Sónia Pires, *A Segunda Geração de Imigrantes em Portugal e a Diferenciação do Percorso Escolar*, Teses – 23, Alto Comissariado para a Imigração e Diálogo Cultural, (2009), p.61. N. C. Tiesler, ‘Muslim Population in Portugal’, in Jorgen S. Nielsen et al (Eds.), *Yearbook of Muslims in Europe*. (Brill, 2010), p.1.

⁵ See, for example, meeting of the Advisory Group for Roma Communities dated 15/12/2014.

⁶ European Parliament, *Forced Marriages from a Gender Perspective*, 2016, p. 77.

⁷ Create Youth Network, *I Carry the Name of my Parents: Young People’s Reflections on FGM and Forced Marriages*, Results from PEER studies in London, Amsterdam and Lisbon, 2013.

⁸ Rude-Antoine, op. cit.

migrants with these backgrounds, efforts should be made to know the reality and fight against possible practices.

These challenges could be overcome by analyzing the phenomenon and gathering more precise data. This would allow intervention in the specific communities, aimed at raising awareness for the Portuguese law and for empowering women, girls and boys.

4. What are the lessons learned and promising practices identified in preventing and eliminating child, early and forced marriage in such settings?

Concerning humanitarian settings, one must point out that in Portugal unaccompanied children may be especially protected against child, early and forced marriages. That is because the Asylum Law requires them to be received in a special accommodation centre.⁹ Moreover, they shall be protected according to the National Law on Promotion and Protection Children in Danger, and accompanied by protection commissions and family and children courts. According to the recent Law 26/2018 of 5th July, they may also acquire Portuguese Citizenship, being represented, for that purpose, by the Public Prosecutor. These measures may enhance their integration as full members of the society, being fully accompanied and thus preventing them from being victims of early / forced marriages.

In other cases, the creation of a specific “forced marriage” crime in 2015 was broadly applauded in Portugal. One of the possible restraints of fighting against forced marriages through this crime - the fear of complaining and be harmed afterwards by the perpetrator or by the community in which the victim lives - was minimized since the crime of forced marriage is public – meaning no complaint is necessary to start a procedure. Thus, the competent authorities may start investigations *ex officio*, and the Public Prosecutor may accuse a defendant. At the same time, the victim of forced marriage has the right to receive financial support from the state (this protection is ensured by the Commission for the Protection of Victims of Crime¹⁰). Associations that defend women who have been victims of violence are also entitled to represent them in criminal proceedings, provided they have written authorisation by the victim to do it, and may also apply for compensation or support payments from the state on the victim’s behalf¹¹.

Although the creation of a specific crime, one may consider that community work and awareness raising have been proving to be the most efficient ways to deal with the phenomenon. Working on empowerment and education of both girls and boys and

⁹ Article 26, n. 2 and 35-B, n. 6 of the Portuguese Asylum Law.

¹⁰ Law 104/2009 on Remedies granted to Victims of Violent Crimes and Domestic Violence.

¹¹ Law 61/91 for the Protection of Women Victim of Violence.

community leaders have been very effective. These strategies have been developed through programmes explained below. The same applies to the media influence, as it is also a means to integrating, providing more information and thus younger persons more choices and trains of thought.

5. What impact have exacerbating factors had on child, early and forced marriages in humanitarian settings?

Despite the lack of studies regarding humanitarian sectors as such, the Ombudsman considers that women, children and boys residing in these contexts are more subjected to sexual violence and pressure to engage in marriage. Their condition is extremely vulnerable, since they may not have independence and autonomy: even if asylum seekers, for example, have the right to work, they may face much more difficulties on finding a job, due to their precarious legal status. Moreover, uncertainty due to the strange environment and regarding the future may also work as push-factors. In these contexts, marriage can be seen as a way to secure their future.

This risks may be even higher, in theory, for unaccompanied minors. However, as explained above, in Portugal, they are accommodated in special facilities and subjected to State protection measures.

6. What measures (e.g., legislative, regulatory, policy and programmatic) are in place or have been adopted to address the root causes and exacerbating factors of child, early and forced marriage?

Law 83/2015, of the 5th of August, was the first legal instrument to foresee forced marriages, inserting article 154-B on the Criminal Code, which punishes with imprisonment up to five years whoever constrains another person to contract marriage or other equivalent union (like de facto unions, as those that generally take place within “Roma rules”). On the other hand, Article 154-B makes clear that, for criminal purposes, forced marriages are only those where one or both spouses are coerced into a marriage (or equivalent union) against their will and under duress. This excludes arranged marriages, fictitious, bogus or sham marriages and marriage of convenience. “Preparatory acts” shall be punished with imprisonment of up to one year or penalty fine up to 120 days. These acts expressly include luring the victims to different territory of their residence for the purpose of constraining to contract marriage or union equivalent to marriage. Some aggravation circumstances foreseen in Article 46 of the Istanbul Convention are not foreseen in the criminal provision on

aggravation (Article 155 of the Criminal Code): the cases where the offence was committed by a member of the family or a person cohabiting with the victim, where the offence was preceded or accompanied by extreme levels of violence, or where the offence resulted in severe physical or psychological harm for the victim (although these latter situations may be punished under an autonomous crime of bodily harm, foreseen in Articles 143 and 144 of the Criminal Code).

The Portuguese Civil Code foresees cases of annulment of marriages when the will to celebrate marriage was obtained under coercion or duress, under error, or when one of the spouses is under 18 years old – or, being over 16, no permission from their parents or guardians was granted, nor was that permission exempted by the civil Registrar.

Besides the existent legal norms, special mention must also be done to several State programs, which may have an important effect on preventing and fighting against these practices. In this context, in the recently adopted *National Strategy for Equality and Non-Discrimination*¹², one of the foreseen measures is to prevent and combat harmful traditional practices, including early and forced marriages.

The High Commissioner for Migrations (HCM)¹³ has also been adopting several strategies with direct impact on preventing child, early and forced marriages, especially among Roma communities. The *National Strategy for the Integration of Roma communities (2013-2020)*¹⁴ was designed in order to respond to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU Framework for National Roma Integration Strategies up to 2020. However, such national policy only refers to the need to adapt the Roma family traditions to the values of the Portuguese society. Regarding marriages, it foresees the adoption of sixteen information actions aimed at “raising awareness of the creation of life projects, namely marriage and motherhood”.

Other national measures with impact in this context are several policies aimed at combating violence against women and children, in general, and the abandonment of education by children. For example, the *National Plans for Integration of Migrants* recalls the need to fight against violence against migrant women and also the importance of education of children. The Portuguese Government develops a permanent political program, renewed

¹² Resolution n. 61/2018 of 21st May.

¹³ The High Commission for Migration is a Public Institution, directly dependent of the Presidency of the Ministers Council, which has the mission to enforce and assess the public, transversal and sectorial policies concerning integration of migrants and ethnic groups – in particular, the Roma Communities – in the society.

¹⁴ Council of Ministers' Resolution n. 61/2018 of 21st May.

every two years, which is specifically aimed at fighting against child truancy amongst minority and migrant communities¹⁵.

The HCM has also been developing several activities aimed at providing training on early and forced marriages to its personnel. These trainings have been conducted by an NGO (Association for Planned Parenthood) who has been developing field activities among local Roma communities. The EU *Roadmap for Referral Pathways on Early/Forced Marriage for frontline professionals* was also presented.

7. What measures are/have been undertaken to enhance the agency and autonomy of girls and women in humanitarian settings, including in relation to their participation and consultation in the design, implementation and evaluation of measures and initiatives that affect the enjoyment of their rights?

There are currently no specific measures for enhancing the agency and autonomy of potential victims in humanitarian sectors. However, refugees and asylum seekers have been accommodated in apartments, rented in the housing market, according to the size of the household to be housed, and integrated in local communities, thus avoiding the creation of *ghettos* or closed environments. Asylum seekers may be received in institutions (for example, the Portuguese Refugee Council or Santa Casa da Misericórdia), who are equipped with especially trained personnel, providing a social and psychological personalised monitoring. Moreover, these shelters are opened to the civil society and NGOs. Victim's, women's, and children's rights associations may help guaranteeing that victims of violence to know their rights and that, in case of need, victims can reach for their support and help¹⁶.

All asylum seekers have the right to education and to work, although finding a job might be difficult, especially for women with very traditional background. They also have the right to education and vocational training, including Portuguese language courses, which are very important tools to empower potential victims in the new community.

We may also point out some measures that have been developed amongst Roma communities in neighbourhoods with special needs, and that can be used as an example for future good practices. The HCM is currently funding two projects aimed at promoting positive parenthood amongst these communities (one in Lisbon – project “*Grow up in the family*” – and one in Matosinhos - project “*100 Prejudice?*”). These projects are especially focused on empowering Roma communities, namely by presenting success educational and

¹⁵ Programme «Choices».

¹⁶ Association of Portuguese Women Lawyers, Opinion on the Legal Consequences of the Instabul Convention, (March 2015).

professional success cases, by providing personal care and advice and promoting a positive parenthood. Similar measures could be also adopted to other communities, as it is the case of migrants from Guinea-Bissau, as explained above.

8. What measures are/have been taken to effectively engage family members, community and religious leaders in raising awareness about, and countering child, early and forced marriage in humanitarian contexts?

No measures have been taken in this regard specifically for humanitarian contexts.

However, the already mentioned *National Strategy for the Integration of Roma communities* has created a Consulting Group for the Integration of Roma Communities with the aim to monitor the development of this strategy. It is composed by members of relevant governmental departments (e.g., education, healthcare, justice), by the HCM and by members of the Roma community, amongst other entities. Also the above mentioned projects funded by HCM (7.) are also aimed at engaging family members and local communities. Thus, regarding child, early and forced marriages among the Roma community, several efforts have been done to involve the communities. These efforts could also be adapted to other contexts.

9. What concrete actions are/have been taken to provide appropriate protection and accountability mechanisms for women and girls at risk and also to victims or survivors of child, early and forced marriage, including those living in isolated and remote areas?

Concrete actions addressing specifically women and children at risk encompass mainly education and awareness raising, especially in more problematic areas. In this context, the Priority Intervention Education Territories Programme provides additional resources, including psychologists, mediators, social workers and teachers to 136 school clusters located in disadvantaged areas, in order to provide a closer follow-up of students and their families, according to specific needs. Development of vocational training programmes also contribute to empowerment of women and children.

Victims or survivors of child, early and forced marriage benefit from the rights and protection granted to any victim of violent crimes or domestic violence, including, if needed, image concealment, special protection measures or programmes, identity revealing restrictions, legal aid, publicity restrictions of trials. And if the victim is especially vulnerable (like a child), they also have the right to be assisted by especially qualified professionals and

accompanied by social services specialists during hearings and/or trials¹⁷. In cases where victims are children, they may be protected under the Law on Protection of Children in Danger.

10. What efforts were taken to enhance coordination of programmes in humanitarian contexts towards the prevention and elimination of child, early and forced marriage?

No measures have been taken in this regard.

¹⁷ Law 93/99 on 'Witness Protection'.