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“SYRIAN REFUGEE WOMEN AND GIRLS
FORCED INTO MARRIAGE IN TURKEY”

Existing National and International Law Instruments and Their Effectiveness

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ABSTRACT

Millions of Syrians have been forced to leave their country after the Syrian War, the most horrific humanitarian plight of recent years. More than 5 million Syrians had to flee to neighboring countries due to lack of life safety and over 6 million people were internally displaced. Approximately 3.5 million of Syrians, living in Turkey and %90 of them living outside the camps. Like all disasters, women and children were the ones to get affected the most due to these circumstances since the start of this crisis.

In this study, I have pointed out the severity and seriousness of the silent and tragic lives of Syrian women and girls in forced marriages by illustrating it with the life story of 3 victims, which will become the voice of thousands of victims in the field, and the terrifying news of the forced marriage victims covered on national and international press.

I have analyzed why these women and girls are not effectively protected in Turkey by laws and the existing legal protection mechanisms fighting against this problem in Turkey and investigated their functionality. I have particularly reported the international protection programs and the international obligations of Turkey.

In conclusion, by discussing the reasons for the issue recommendations are clearly identified for Turkey to take precautions immediately in order to protect the Syrian refugee women and girls subject to forced marriages and to stop their further victimization, and carry out the required works and collaboration for the feasibility of the available protection programs as well as acknowledging the importance of the forced marriage issue taking place on the top, and that not only does Turkey have to ensure the basic requirements of the refugees with the international actors but also collaborate for the practicality of the necessary protection precautions.

INDEX WORDS: forced marriage, Syrian refugee women and girls, protection, temporary protection regulation, person with special needs, violence against women, international protection, CEDAW, İstanbul Convention, violation of human rights, religious marriage, refugee crisis

ABBREVIATIONS

CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women 1979
CRC	The Convention on the Rights of the Child
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ECHR	The European Convention on Human Rights
UDHR	Universal Declaration of Human Rights 1948
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNFPA	The United Nations Population Fund
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights 1966
EU	European Union
COE	Council of Europe
NGO	Non-Governmental Organization
AFAD	Provincial Disaster and Emergency Directorate
MAZLUM-DER	The Association for Human Rights and Solidarity for the Oppressed
SAMER	The Police Academy Crime Investigations and Criminology Research Centre
ECPAT	The End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purpose
TPR	Temporary Protection Regulation
e.g.	For example (exempli gratia)
i.e.	That is (id est)

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1. Introduction

1.1. Thesis structure and aim

In my thesis, I consider mainly from a legal aspect, certain matters regarding forced marriage among the Syrian population in Turkey, because they constitute the country's largest refugee population, and are also the group at the greatest risk of being victims of forced marriage.

It is not an easy task to clearly define forced marriages since little attention has been given to the precise boundary between illegal compulsion from one perspective and legally-permitted persuasion from the other, neither in national theory nor in international human rights dialogue. I believe that there are two reasons for this; firstly, contradictory opinions as to how compulsion is defined regarding marriage; and secondly, the centrality of the victim's subjective factor.

Although my thesis has a legal emphasis, it has been necessary for me to extend my thoughts beyond rules and laws. It is of major importance to consider the universality of the human rights debate and the concept of relativism in combination with the search for multiculturalism for placing the practice of forced-marriages into context. Since forced marriages are a cultural phenomenon, it is necessary to possess a certain level of knowledge regarding the relevant cultural mechanisms for deciding which actions to take to contend against this. I also believe that rules and laws do not have a unique ability to terminate this practice since a variety of mechanisms enable it to continue.

This thesis's objective is to present a short review of international instruments regarding forced marriages, to consider the significant number of obligations which can be deduced from these instruments, and to indicate how these may bring about some advice in the difficulty of contending against forced marriages within Turkey.

Following this, I shall review the legal requirements regarding forced marriages in Turkey and attempt to affirm, to some degree, the content of the expression "forced marriage" in association with legislation.

1.2. Significance of the research

This thesis has been written to analyse Syrian women and girls, who became refugees in Turkey because of the Syrian war and have been exposed to forced marriage. The work has been prepared for assessing the reasons of why Syrian women and girls in Turkey suffer from forced marriage, why Syrian families have to choose to marry off their daughters as a method of protection and the instruments of legal and social protections within national and international law, and the effectiveness of these instruments.

An analysis on the Syrian women living in urban Turkey has been elaborated within this framework. This work has arisen from the need of an in-depth research on the impact of Syrian civil war towards women, aimed at analysing the problems faced by the Syrian women in their social life, particularly on the prevention of forced marriages and the effectiveness of such programs, along with the measures applied to decrease violence against these women from a human rights perspective. The report is prepared with the purpose of suggesting alternative solutions for these problems. The types of research utilized for this thesis include exploratory research, literature reviews, consultations with the experts, a case-study, along with international and national media analysis. This is a preliminary research in nature in order to be a reference for future studies, with larger content that may be undertaken in Turkey.

Considering the reports on immigrants published by the United Nations, it has been observed that 70 % of the immigrants' population consist of women and children. It has also been noticed that most of these women suffer from sexual violence, economic inequalities and are faced with human right violations.¹ In addition to the loss of their social support mechanisms in the countries where they seek refuge, their living conditions have also become too hard since they are unfamiliar with the social structures

¹ United Nations High Commissioner for Refugees, (UNHCR), (October 2017), 'Report on Syrian Refugees in Turkey', available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCRTurkeyFactSheet-October2017.pdf>

such as the language, cultural differences, and the legal systems of the country to which they have immigrated.²

After immigration these women have been alienated substantially because of social isolation, language barriers, loneliness, cultural differences,³ and have been exposed to different experiences due to their gender compared to what men may face and in a majority of the cases, they are exposed to more severe problems and abuses than what men may encounter. In other words, not only do Syrian women suffer from the lack of certain citizenship and social rights due their status of “both being a woman and a refugee”, but they are also facing barriers in accessing existing resources and entering into the labour market.⁴ It has been a crucial matter to protect refugee women and young girls against all kinds of discrimination, inequality and abuse.

In this context, the number of women refugees has increased due to the severity of violence, war and negligence of some states to protect women rights; threat of violence against women commences right from the beginning when they leave their homes and continues until their resettlement to their home country. Within this framework, the United Nations High Commissioner for Refugees (UNHCR) has classified social gender-based persecution practices in terms of the tragic events experienced by these women at various times.

This ongoing problem has made marriage become a tool for protection for women and girls` from any expected sexual threats. In addition to this, Syrian families opt to keep them at home, isolated them from the potential “dangers” of sexual violence found in society, and instead marry off their daughters for protection or in fear for the girl’s “honor”. Also, their own children are used as a financial gain to look after the rest of the family. There are serious problems and difficulties in early identification of victims, especially for the ones who need urgent care, guidance, and protection.

² Doç. Dr. Reyhan Atasü Topcuoğlu, ‘The Journal of Migration Studies Göç’ (2015) Cilt/Volume:1., Ministry of Turkey, Ankaray, Turkey

³ Ayla Tuzcu and Ayşegül Ilgaz, ‘Göçün Kadın Ruh Sağlığı Üzerine Etkileri’, (2015), 7 Psikiyatride Güncel 56.

⁴ Saniye Dedeoğlu and Çisel Ekiz Gökmen, (2011), ‘Göç ve Sosyal Dışlanma Türkiye’de Yabancı Göçmen Kadınlar’, Efil Yayınevi, Ankara, Türkiye

Furthermore, due to extreme poverty experienced in Turkey, Syrian women and girls are forced to marry Turkish men.⁵ Child and forced marriages as well as polygamous marriages are common in all provinces in Turkey. According to many NGO reports; Syrian women and girls that are aged as young as 12, are forced into marriages as second or third wives to Turkish men and most of these marriages are arranged by the families of the victims as payment for the rental of their house. According to a report published by the Turkish Statistical Institute in 2015, among foreign brides in Turkey, Syrian women took first place.⁶ In Turkey, the studies showed that before the Syrian influx, child and forced marriages were seen as a major problem. However, this phenomenon has increased dramatically with the arrival of Syrian refugees. Hundreds of Syrian women in many cities, in particular border cities in Turkey, are forced to get married as second or third wives. The exact number of Syrian women and girls that have been exposed to forced marriages in Turkey is unknown.⁷

At the same time, most of these women hesitate to make complaints due to cultural and taboo reasons. These marriages have negative effects on their socialisation, education and integration to the society.

Only recently has some research began to emerge on these issues, the cases in Turkey, despite possessing a very serious history and culture on immigration. If one is to consider the situation of the refugees in Turkey in terms of women, it appears that the situation may get even worse. There is little, if any, information or research or work on how much Syrian women and young girls suffer from forced marriages, how effectively the protection programs are applied or whether there are the existing of statistical data on these issues. Most of the studies only contain data elaborating on social and legal statuses of these refugee women.

⁵ Zeynep Kıvılcım, 'Legal Violence Against Syrian Female Refugees in Turkey', (2016), *Feminist Legal Studies* 193.

⁶ Türkiye İstatistik Kurumu, Nüfus ve Vatandaşlık İşleri Müdürlüğü, Yabancı evlilikler üzerine rapor 'Yabancı gelinler arasında Suriyeli gelinler ilk sırada yer aldı' (02.03.2017), Türkiye İstatistik Kurumu Yabancı Evlenme ve Boşanma Oranları, sayı: 24642, available at <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=24642>

⁷ Zeynep Kıvılcım, 'Legal Violence Against Syrian Female Refugees in Turkey' (2016) 24 *Feminist Legal Studies* 193.

In 2014, the Act on Foreigners and International Protection made a change by adding “temporary protection” a new instrument with respect to Syrians affected by the war. While its beneficiaries are granted certain rights, such as the right to temporary stay and right to work, their legal statuses are not equal to that of refugees in those states which ratifies without reservations of the 1951 Geneva Convention and the 1967 Protocol relating to the Status of Refugees. Depending on the Convention which Turkey is part of, it has been authorized to accept people from European countries as refugees while asylum seekers from outside of Europe of immigrants.

I also wish to emphasise the matter of answering the question as to whether Syrians residing in Turkey may claim the same legal protection that Turkey would offer to people accepted as refugees according to the Geneva Convention. This is a relevant matter, since by the signing of an agreement with Turkey regarding returning refugees, the European Union authentically accepted Turkey to be a safe third state. However, international institutions (for example, the Council of Europe and the United Nations) as well as human rights organisations approved this deal, on the grounds that refugees accepted can be deported from EU to Turkey if their rights of demanding international protection are denied.⁸

2. General overview on forced marriage as a common issue among Syrian population in Turkey

2.1. Syria crisis and its impact on the condition of Syrian women and girls in Turkey: the reality of forced marriage

The Syrian Civil War is one of the most catastrophic human disasters since World War II. As of January 2017, an average of 5 million Syrian refugees had to flee to other countries due to lack of safety and over 6 million people were internally displaced.⁹

⁸ Justyna Szalańska, ‘Legal Protection of Syrian Refugees in Turkey against the Background of International Legal Determinants’, (2017), The Polish Quarterly of International Affairs, 73.

⁹ Susan Andrea Bartels and others, ‘Making Sense of Child, Early and Forced Marriage among Syrian Refugee Girls: A Mixed Methods Study in Lebanon’, (2018), 3 BMJ Global Health, available at: <<http://gh.bmj.com/content/3/1/e000509.abstract>>.

The number of registered Syrian Refugees in Turkey had reached 3.2 million, with only 10% of them living in official accommodation centres. (i.e. refugee camps).¹⁰

Turkey Internal Affairs Directorate of Immigration Administration reported that the 70% of population of Syrian refugees are women and children.

In addition to the 3 million Syrian refugees in Turkey, there are also people from various African, Middle Eastern countries such as Afghanistan, Iran, Iraq, Somalia. The total number of these asylum-seekers are approximately 300.000. The total number of refugees in Turkey has reached some 3.9 million, making Turkey the country with the highest number of refugees in the world.¹¹ In addition to this number, there are a lot of undocumented and unregistered immigrants. Especially in big cities and together with these numbers, the total number of refugees may reach to almost four million.¹²

After fleeing the war, Syrians escaped to neighboring countries; Lebanon, Turkey and Jordan, and their new settlements are refugee camps in these countries. Because of the new status and the fear of financial and protection issues, Syrian women and girls are forced to marry both by their families and relatives. Unlike Jordan and Lebanon, %90 of Syrians who came to Turkey live outside the camps, in which, life is more difficult, and these struggles help smugglers and traffickers to turn it in their favor. Not only sex traders or human traffickers, but also local male citizens are taking advantage of their vulnerable status and seeing them as easy-to-reach spouses by using excuses such as protecting, helping, and providing financial support for Syrian women to. In Jordan, Lebanon and Saudi Arabia, local male citizens use similar exploitation scenarios and methods to take advantage of the vulnerable status of Syrian asylum seekers.¹³

While all Syrians have been affected by violence and conflict in Syria and their lives has been uprooted, the groups most affected by the ongoing war are women and children.¹⁴ Prior to the war and conflict, women and children were already regarded as a

¹⁰ United Nations High Commissioner for Refugees, (UNHCR), Turkey Facsheet, (N.1)

¹¹ European Commission, 'European Civil Protection and Humanitarian Aid Operations factsheets on Turkey', 14/06/2018, available at: https://ec.europa.eu/echo/files/aid/countries/factsheets/turkey_syrian_crisis_en.pdf

¹² Ibid.

¹³ Lee Harper, 'Syrian Women in Jordan at Risk of Sexual Exploitation at Refugee Camps', (24.01.2014), Global Development, The Guardian, available at: <<https://www.theguardian.com/global-development/2014/jan/24/syrian-women-refugees-risk-sexual-exploitation>>

¹⁴ Nicholas Van Dam, 'The Struggle for Power in Syria: Politics and Society under Asad and the Ba'ath Party', (2011), London: I.B. Tauris

disadvantaged group in modern Syria. The war has added new forms of precariousness and insecurity to their lives. However, the extremes of either “happiness” for being saved or “poverty” as an endemic condition of their new lives do not reveal much about the future for Syrian refugee and migrant women. In general, in Turkey, Syrian women face more gender-related problems than Turkish women when attempting to participate in economic, political, and social life because of their precarious status. Despite their disadvantages, many Syrian refugees and migrant women have become leaders for their families and have come into prominence as significant actors in the shaping of the economic and social life of Syrian communities in Turkey.

Although there is not enough detailed information and data about the problems faced by Syrian women and girls after the collection of the victims’ stories, it is clearly understood that the girls and women living outside the camps face severe problems in meeting their basic needs as well as having other problems such as adapting to social life and being accepted by the people in the region.

In 2015 Turkey submitted a state report to CEDAW Committee. In this report, which is the only activity reported by Turkey related to” Syrian Women”, it is stated that meetings have been held with Syrian women to exchange information on early and forced marriages and build solidarity among women and around 400,000 of information brochures in Arabic and Turkish were distributed.”¹⁵

After the state report, The CEDAW Committee prepared a report on the of issues and questions in relation to the seventh periodic report of Turkey. In this report question number 18, The Committee asked Turkey “to provide recent statistical data, disaggregated by sex and geographical location, on refugee and asylum-seeking persons and on the number of facilities available to them and information on the quality of those facilities.” ¹⁶ However, Turkey failed to provide sufficient information on giving statistical data disaggregated sex and geographical location on refugee and asylums, and provided only general information on the regulation of health and temporary protection

¹⁵ Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention, Seventh periodic report of States parties due in 2014, Turkey, 09.12.2014, UN Doc No: CEDAW/C/TUR/7, available at: <http://www.un.org.tr/humanrights/attachments/article/9/N1468143.pdf>

¹⁶ Committee on the Elimination of Discrimination against Women Sixty-fourth session, List of issues and questions in relation to the seventh periodic report of Turkey, UN Doc No: CEDAW/C/TUR/Q/7, available at: <http://www.un.org.tr/humanrights/attachments/article/9/N1539253.pdf>

information services provided for Syrian Refugees which could be seen in the reply of Turkey report in 24.03.2016.¹⁷ As it is stated in the report with page 19/22 answer 18, Turkey provided only general information on the refugee and migrant women;

“Law No. 6458 on Foreigners and International Protection describes the person with special need as “out of those applicants and international protection beneficiaries, an un-accompanied minor; a disabled person; an elderly person; a pregnant woman; a single mother or a single father with an accompanying child; or a person who has been subjected to torture, rape or other serious psychological, physical or sexual violence”.

Those with special needs are prioritized in formal rights and procedures in the international protection area. People subjected to torture, sexual assault or other psychological, physical or sexual violence are provided with adequate treatment. Deportation is not ruled for those with travel risk for serious health problems, age or pregnancy....”, “Healthcare services for foreigners under temporary protection are delivered pursuant to Regulation No. 9648 and dated 4 November 2015, on Principles of Healthcare Services for Foreigners under Temporary Protection, issued by the Ministry of Health.”¹⁸

One of the greatest human rights violations faced by Syrian women and girls in Turkey is the problem of forced marriage. The bitter life struggle and the financial problems which the families face is the greatest reason to marry off their daughters. As this is reported in the CEDAW Concluding Observations on the seventh periodic report of Turkey, Committee is concerned on “Forced marriages of refugee women and girls to Syrian and Turkish men, often in polygamous marriages, for socioeconomic reasons or protection purposes”.¹⁹

The Committee is also concerned, however, about the precarious and insecure living conditions of female refugees, both inside and outside the refugee camps, who are often deprived of basic services and essential goods, education, economic opportunities, health

¹⁷ Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the seventh periodic report of Turkey, Replies of Turkey, 24.03.2016, UN Doc No: CEDAW/C/TUR/Q/7/Add.1, available at: <http://www.un.org.tr/humanrights/attachments/article/9/N1608390.pdf>

¹⁸ Ibid.

¹⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey’, (25.07.2016), UN Doc No: CEDAW/C/TUR/CO/7, available at: <<http://www.un.org.tr/humanrights/attachments/article/9/CEDAW-concluding-observations.pdf>>

care, clothing, food, heating and hygiene articles, and are at heightened risk of sexual and other forms of violence.

The Committee is furthermore concerned about:

(a) The significant increase of prostitution in areas with high concentrations of Syrian refugees, particularly among girls and young women between 15 and 20 years of age, who often resort to prostitution to be able to gain access to food and other essential goods for themselves and their children;

(b) The pervasive underreporting of gender-based violence against refugee women, including sexual violence, and the limited availability of specialized services;

As it is stated in the same report, there is higher concern about dangerous and insecure life conditions suffered by refugee women and girls who are deprived of basic utility services, education, economic opportunities, healthcare services, clothing, food, heating and hygienic products as well as being under risk of sexual violence and other types of violence in and out of refugee camps.²⁰

There are only few reports published about Syrian refugees. One of them is provided by United Nations High Commissioner for Refugees (UNHCR) on the general numbers of Syrian refugees, but statistical data and more details information about specific issues or situation of the Syrian women and girls still remain unknown. So according to UNHCR, Turkey's data²¹, "there are 229,161 asylum seekers and 40,290 refugees in Turkey, totaling 269,451 people (who migrated from Iraq, Afghanistan, Iran, Somali and others) as of late May 2016. The number includes 51,375 women and 34,968 girls under the age of 18. However, these figures do not include Syrian refugees. Noted by UNHCR, that since Syrian refugees reside in Turkey under temporary protection, their demographics are not reflected in general statistics. As of May 19, 2016, there are 2,744,915 registered Syrian refugees in Turkey of which, 49.2% of them are women. Only 259,896 refugees reside in the 26 camps; while a significant majority reside outside the camps and do not receive humanitarian support." So, when we look at the numbers, Syrian women constitute almost half of the Syrian refugee population in Turkey, and the five-to-eighteen

²⁰ Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey', (25.07.2016), UN Doc No: CEDAW/C/TUR/CO/7, available at: <<http://www.un.org.tr/humanrights/attachments/article/9/CEDAW-concluding-observations.pdf>>

²¹ United Nations High Commissioner for Refugees, (UNHCR), Turkey Facsheet, (N.1)

and nineteen-to-thirty-four age groups constitute most Syrian women settled in the country. The youngest age group, those less than five years old, includes close to quarter of a million girls. This indicates that the fertility of Syrian women has remained higher than the Turkish or regional average, despite the problems such as living in a foreign country, having an unstable life, and an uncertain future.

In making policies to address the issues facing them, the Turkish authorities are keen to give priority to the traditions, culture, and habits of Syrian women. Many of these traditions, however, are markedly patriarchal and tend to treat women as brides and mothers only, thus limiting their livelihoods to household labour and marriage. A basic mistake made in policy development is the assumption that Syrian women have the same needs and vulnerabilities as women in Turkish society, since both groups are predominantly Muslim, and they come from neighboring countries. Not only does Syria have a distinct culture, lifestyle, and customs, but the war in Syria and the displacement and dispossession that followed has created unforeseen social practices that affect the lives of those trying to settle in Turkey. Syrian refugee women increasingly find themselves far outnumbering men, as they have gone to join rebel groups, have been killed or captured in combat, or migrated outside of the country separately.

Furthermore, it is almost impossible for women, who have lost their husbands in war to be accepted in both Syrian and Turkish society. At the same time, local people are worried about losing their husbands to Syrian women. Besides, these women are seen as a “danger” even by Syrian married couples and are excluded from the neighborhoods as it is stated in many sources. Moreover, due to the acceptance of polygamy in Syria, Turkish married men see lonely or childless women who have lost their husbands as easily accessible wives and even harass them to get married. Therefore, lonely and women with children who have lost their husbands feel vulnerable because they are alienated and are seen by men as "stray or defenceless". Moreover, these women are unable to work because they take care of their children, and therefore they are forced to enter in unwanted marriages because of their economic and social acceptance as well as their view of marriage as a means of protection against other men.

There has been a serious problem of exploitation against women due to problems caused by gender. These problems mentioned above are for all women, but the problems that

Syrian women and girls face in particular are sexual harassment, early age, multiple marriages, labour exploitation and forced marriages.

It is also very important to underline the other issue which is the fact that sexual harassment is a taboo subject that is not talked about in undeveloped and in patriarchal societies. Syrian women are victims of sexual harassment and abuse and are more prone in countries where they have sought refuge. As stated by The Association for Human Rights and Solidarity for the Oppressed (Mazlum-Der)'s report ²² on Syrian Women Living Outside of Camps, women cannot easily answer questions related to this topic. 72 females interviewed within this report, only six reported sexual abuse in various forms. Sexual harassment has turned into a trade, as gangs that force women to prostitution have been formed. The Mazlum-Der report also states that women who are convinced into marriage or a forced marriage find themselves in prostitution and are subject to violence from the moment they refuse. ²³

In the Turkish National Medical Chamber Report, it is stated that Syrian refugee women are faced with polygamous marriages, forced child marriage and forced sex trade. In the Turkish National Medical Chamber Report, it was also stated that premature pregnancies, ²⁴which resulted from early marriage of women living outside of camps, are one of the biggest problems. Child marriage, forced marriages and polygamy are among the biggest problems women face. These kinds of cases are very common both in and outside camps. As noted in the Provincial Disaster and Emergency Directorate's (AFAD) report, polygamous marriages from Syria in Turkey is quite high. ²⁵

Forced marriages were prevalent in Syria even before the war, especially in the rural areas, but have increased with the Syrian crisis. Although this problem was based mainly on economic reasons Syrian women and girls were also forced to marry because

²² The Association for Human Rights and Solidarity for the Oppressed, (Mazlum Der) Report on 'Syrian Women in Turkey', (May 2014), available at: <[http://istanbul.mazlumder.org/webimage/files/The%20Report%20on%20Syrian%20Women%20Refugees\(1\).pdf](http://istanbul.mazlumder.org/webimage/files/The%20Report%20on%20Syrian%20Women%20Refugees(1).pdf)>

²³ Ibid.

²⁴ TTB Sağlık ve Politika Çalışma Grubu, Mehmet Zencir ve Aslı Davas, 'Suriyeli sığınmacılar ve sağlık hizmetleri raporu', (Ocak 2014), Ankara, Türk Tabipleri Birliği Yayınları, available at: <<https://www.ttb.org.tr/kutuphane/siginmacirpr.pdf>>

²⁵ AFAD, (Provincial Disaster and Emergency Directorate), Türkiye Raporu, 'Türkiye'deki Suriyeli Kadınlar', (Mayıs 2014), available at: <https://www.afad.gov.tr/upload/Node/17934/xfiles/turkiye_deki-suriyeli-kadınlar_-2014_2_.pdf>

of family structure, social, cultural and religious reasons. When viewed from the outside, forced marriage is either explicit or hidden forced marriage. While there is no clear consensus on the marriage of a couple, forced marriage creates an expectation for both sides, but usually forced marriage of young girls and sometimes adult women is a form of marriage that depends on custom, culture, family structure, tradition, marriages made by those who are not even in a position to challenge the rules of the community and who have to accept the situation, those who question the situation usually end up in suicide or serious marital violence. In such marriages, opposing a decision made by the authorities often ends up in violence or worse death, and that such marriages are expressed many years after. However, because such marriages cannot be intervened in time and the victims cannot be protected, the victim, who is often traumatized, has an unhappy life or faces domestic violence throughout her life.

2.2. Considerations about the media representation of Syrian women and girls involved in forced marriage in Turkey

News about Syrian refugees have been expressed in the both national and international media almost every day. However, these reports are generally confined to the economic life struggles faced by Syrian refugees in daily life. It is not possible to say the same about the reflections of Syrian refugee women's problems in the national media. We can even say that the national media has a deep silence about this issue. Looking at the themes of 8 journalists analyzed in the report titled "Syrian Refugees in the Turkish Press", only 28 of the 1678 reports draw attention to the problems of women and the assistance provided for these problems. 6 of them are news about Syrian second/third wives. The 9th of the news about early marriages of Syrian girls is published in the Journal called "Evrensel".

²⁶ Despite all these limited reports, the forced marriage of women and girls in Syria has become such a big problem that they have repeatedly been on the agenda of national and international press.

When I searched the subject on internet, I used some groups of words and both in Turkish and in English. "Zorla evlendirme ve taciz, Suriyeli Mülteciler Türkiye, Suriyeli kadınlar

²⁶ Müzeyyen Pandır, İbrahim Efe and Alaaddin F Paksoy, 'Türk basınında Suriyeli sığınmacı temsili üzerine bir içerik analizi', (2015), available at: <<http://dspace.marmara.edu.tr/handle/11424/5343>>

ve kızlar, Suriyeli kızlar satılıyor, Forced Marriage and sexual violence, Syrian refugees in Turkey, Syrian women and girls, Syrian girls are being sold” are my research words.

I used 25 news articles from various national and international sources. These news articles are from social media, TV and news websites and from various other news sources, 15 in Turkish and 10 in English have been found to express the importance of the issue.

When I examine the news that marked the year 2018, it shows that this situation is much more serious than our fears. 115 pregnant children were uncovered by a hospital worker in Istanbul in January 2018, although it should have been reported and was hidden, the agenda was the list of Turkey's shames and caused a debate in parliament. Out of 115 pregnant and sexual abuse victims of these children, 39 were Syrian. This is the number of children who came to one hospital in only 5 months. According to the law, the police, the hospital employees or the medical doctors are obliged to inform the prosecutor of cases of sexual abuse under 18 years of age. Following this incident, investigations have started on the civil servants who failed to fulfil the duty of notifying them.²⁷

The symposium organized last year by the Police Academy Crime Investigations and Criminology Research Centre (SAMER) which focused on the topic of "Syrian refugee girls exposed to sexual exploitation in Turkey". It reported that Syrian women and children living outside and inside the camps fall in to the hands of traffickers, the widespread use of the Syrian girls for imam marriage (religious marriage) and the age limit has been reduced to 11-12. In addition, prostitution under the appearance of a wedding, child-woman trade, and the average age of these girls forced to work could be reduced to 12 years. Likewise, Mazlum-Der results of field research on the Syrians in Turkey, "Syrian children are forced to early marriage, resulting in the pregnancy of 13-14-year-old children." The same news reports that for the purpose of accelerating the process, by giving hormonal drugs to children who have not entered the menstruation period yet, excessive sexual intercourse bleeding, in case of unwanted pregnancy and miscarriage illegal health practices takes place. While interventions made by non-specialist workers in non-sterile environments and the health of women and children are

²⁷ Dinçer Gökçe, "Utanc listesi" ile ilgili savcılıktan flaş açıklama', Hürriyet, (17.01.2018), available at: <<http://www.hurriyet.com.tr/gundem/utanc-listesi-ile-ilgili-savciliktan-flas-aciklama-40714483>>

put at risk, according to the Turkish Criminal Law, the man who committed the crime of "exploiting the child" is also protected by the "illegal medical service practices".²⁸

There is an increase in the number of Syrian female asylum seekers, who take refuge in the border cities of the Southeast, and are married as "second spouses" with the Turks. Particularly in Mardin and Urfa, Syrian post-war has drawn attention to the notion of having additional wives. The (Kuma) second wife can be placed in the same house as their second wife, or they can be placed in separate houses and are kept alone. Al Jazeera Turk reported that interviews with women's centres and specialists in Mardin and Urfa, the problem of Kuma was discussed and it is seen that the most common place of Kuma took place in the Kızıltepe District of Mardin. The sociologist of the NUDA Women's Center Emine Konak, who conducted studies on victimized women in Kızıltepe, stated that only 25 women applied to the centre as Kuma and asked for help in the previous year. However, they said that the actual number was much higher and that about 200 post-war Syrian women were found to be Kuma only in this region.²⁹

According to the Sputnik Türkiye, Syrians fled from Syria and took refuge, children and young girls have been sold as second wives in exchange for 5-6 thousand liras (1000 Euros). In the news, the elderly Turks were quoted saying that they bought under 18-year-old Syrian girls' as Kuma's from their families.³⁰ According to Times newspaper, Syrians who do matchmaking receive orders to buy girls for 'White-skinned, tall, not over 17 years, with green eyes'. According to Callaghan "Most of men who buy Syrian youth as their second wife are bored after a few months," opt to divorce. The report stated that there were 3 million Syrian immigrants, 'Women's brokers' and so-called matchmakers. A broker named Abu Cafer stated: "If the girl is nice looking, you could find a buyer for up to 11 thousand liras. The youngest bride I know was 13 years old. " The report noted that after the ban and emphasis on polygamy in Turkey, these marriages are done in secret. Abu Cafer says 50 percent of the children's brides are subject to domestic violence.

²⁸ Hale Gönültaş 'Mülteci çocuklara merdiven altı kürtaj!', Gazete Duvar, (10.07.2017), available at: <<https://www.gazeteduvar.com.tr/gundem/2017/07/10/multeci-kadinlara-merdiven-alti-kurtaj/>>

²⁹ Al Jazeera Türk, interviews and reports, (30.07.2014), available at: <http://www.sozgazetesi.org/index.php/sosyal-yasam/1546-savastan-kacan-suriyeli-kad-nlar-tuerk-erkeklerine-sat-l-yor> accessed 12 June 2018

³⁰ Valeriy Melnikov, 'Suriyeli çocuk ve genç kızlar Türkiye'de 5-6 bin lirasay satılıyor' iddiası, Sputnik Türkiye, 11.09.2017, available at: <https://tr.sputniknews.com/turkiye/201709111030079436-suriye-cocuk-genc-kiz-turkiye-satiliyor-iddia/> accessed 04 July 2018

Callaghan spoke to a Syrian NGO worker that stated; "After a few months of use," dismissed, ashamed and embarrassed to return to their homes, these women end up working in the nightclubs in big cities, and their lives become ruined.³¹

According to Al Jazeera Turk, a secret camera showed how they bought little girls from the Syrian families by the middleman in Gaziantep and Kilis, and sold them to men who are 30-40 years older than girls. The price for girls varied between 2 thousand TL and 50 thousand TL (400 Euro – 10.000 Euro). The brokers are also getting commission for every deal they make.³²

According to Independent reports, the ongoing war in Syria has made young refugee women easy preys for some rich Arabs, especially the Saudis.³³

The British newspaper also expressed concerns about the sexual exploitation of Syrian girls in Jordan. In the news, Syrian families were forced to marry their young daughters to national or foreign men, who are much older than them for a few thousand dollars. In the news, early marriages or forced marriages are mainly caused by financial obligations and these marriages have been carried out illegally. Most of the marriages are short-lived, resulting with the girls getting disposed. From the shared examples, 17-year-old Navar and her 16-year-old sister Suza were married to much older Saudi Arabian men, but after 20 days both men disappeared. Amira Muhammed, an Anti-Trafficking Officer at the International Organization for Migration (IOM) in Amman, reported many stories about how girls from the Syrian communities are taken for matchmaking and marriage with local men or those from abroad. Marriages are very short, sometimes for only 24 hours. Thus, revealing how the legal cover-up for sexual exploitation is being created. "³⁴

³¹ Louise Callaghan, '£1,200: The Cost of a Syrian Refugee Bride in Turkey', The Sunday Times, (10.09.2017), available at: <<https://www.thetimes.co.uk/article/1-200-the-cost-of-a-syrian-refugee-bride-in-turkey-tgpbgx9m6>> accessed 18 June 2018

-Fariba Nawa and Özge Sebzeci, 'Syrian Influx in Turkey Prompts Upsurge in Polygamy', Radio International (25.07.2017), Public, available at: <<https://www.pri.org/stories/2016-07-25/syrian-influx-turkey-prompts-upsurge-polygamy>> accessed 28 June 2018

³² Başak Çubukçu, 'Suriyeli Kızlar Yaşamak İçin Evlendiriliyor', Al Jazeera Turk, (27.01.2014), available at: <<https://www.youtube.com/watch?v=l28RpV701cE>> accessed 02 June 2018

³³ F. Micheal Maloof, 'War Casualties: Girls Bought by Perverted Saudis', Wnd News, (08.06.2013), Wnd News, available at: <<http://www.wnd.com/2013/06/war-casualties-girls-bought-by-perverted-saudis/>>

³⁴ Akşam, Doğan Haber Ajansının haberine göre, 'Şeyhler Suriyeli Kızların Peşinde!', Akşam Gazetesi (10.03.2014), available at: <<https://www.aksam.com.tr/dunya/seyhler-suriyeli-kizlarin-pesinde/haber-290869>> accessed 4 June 2018

According to Turkish newspaper Hurriyet's report, it was revealed that D.H., a Syrian 16-year-old who claimed to have committed suicide because she was forced to marry in Kilis, was thrown out of the balcony by his brother because she refused the marriage. D.H., whose treatment was completed, the 16-year-old girl was discharged from hospital and taken under state protection. The brother was arrested via the complaints made by neighbours.³⁵

A report prepared in January 2015 by Bezmiâlem University of migration research related to the Syrian refugees and Syrian children abused in Turkey has found that all of the sexual abuse are not exploitation but a 'culture'. In the proposed section to prevent their exclusion from cultural differences for asylum seekers, for girls who are married at a young age, the fact that they may be a cultural item and every young age marriage should not be perceived as exploitation. It is argued that children's marriages are a part of the culture and that this should be respected.³⁶

It is stated in Monitor a Syrian broker said that the Syrian women and girls were classified as; "Girls between the ages of 12 and 16 are called to as 'pistachios', 17 to 20 are called 'cherries', 20 to 22 are 'apples', anyone older is a 'watermelon',"³⁷

Independent also underlines that the number of marriages involving someone below the age of 18 in Syria stood at 13% before the war.³⁸

Karin Laub, 'Spike in Number of Syrian Teens Marrying as Child Brides in Jordan', The Independent, (07.08.2017), available at: <<https://www.independent.co.uk/news/world/middle-east/child-brides-jordan-syrian-teenage-refugees-a7880831.html>> accessed 12 June 2018

F. Micheal Maloof, 'War Casualties', (N.32) accessed 4 June 2018

³⁵ Reşit Çelebioğlu, 'Zorla Evlendirilmek İstenen Suriyeli Kızı Ağabeyi Aşağıya Atmış', Hürriyet TV, (08.08.2017), available at: <<http://www.hurriyet.com.tr/video/zorla-evlendirilmek-istenen-suriyeli-kizi-agabeyi-asagiya-atmis-40544320>> accessed 10 June 2018

³⁶ Sol Haber Portalı, Küçük Yaşta Evlilikler Üzerine Bezmialem Üniversitesi'nden Rapor, 'Böyle olur Bezmialem Tıp'ın raporu: Her küçük yaşta evlilik sömürü değil', Sol Haber Dergisi, (25 April 2017), available at: <<http://haber.sol.org.tr/toplum/boyle-olur-bezmialem-tipin-raporu-her-kucuk-yasta-evlilik-somuru-degil-194228>> accessed 10 June 2018

³⁷ Dominique Soguel, 'In Turkey, Syrian Women and Girls Increasingly Vulnerable to Exploitation', Monitor, (26.10.2014), available at: <<https://www.csmonitor.com/World/Middle-East/2014/1026/In-Turkey-Syrian-women-and-girls-increasingly-vulnerable-to-exploitation>>accessed 2 June 2018

³⁸ Charlie Atkin, 'Syrian Girl Campaigns against Child Marriage from Her Refugee Camp in Jordan' The Independent, (19. 04.2016), available at: <<https://www.independent.co.uk/news/world/middle-east/child-marriage-refugee-camp-za-atari-jordan-syria-a6991426.html>> accessed 12 June 2018

According to a 2014 report by Save the Children, one in every four marriages in the Syrian refugee population in refugee camps now involves a girl under the age of 18.³⁹

Some news in order to evaluate the child and forced brides particularly in cities which locate Syrian borders and have refugee camps. Marriage with Syrian women is treated like a merchant activity. Particularly, in Hatay, Urfa and Kilis, Syrian women prefer to accept being second and sometimes even third wife.⁴⁰

According to Deutsche Welle, the second partner sites continue to exist with similar addresses, after the access to the internet site, which is under the slogan of "seeking second wife", has been blocked. "Suriyeli Kadınlar" internet site are only two amongst many others online like " Syrian Women ", " Syrian Women Wanting to Marry ", " What are Syrian Women Like? ", " How do Syrian Women Dress ", etc. Forced to emigrate from Syria to Turkey because of the war under this heading various sexist prejudices follow the women as can be seen through the rest of the articles:

Syrian women are delicate beings like our women. The increase in the number of young people who want to marry Syrian women in our country and married men also increased the desire to be with Syrian women. Moreover, since Syrian women do not request official marriage conditions, men set some separate homes to live with them.⁴¹

According to Habertürk, Y.Y., a Syrian asylum seeker who came to Antep 5 years ago was forced to marry 5 months later, has ended her life by committing suicide. 15 years old Y.Y., who came to Antep, was married to F.A., 21 years old, 5 months ago. Late at night Y.Y brother repeatedly called his sisters phone, she could not answer the phone he

³⁹ Save the Children Report on Early and Forced Marriage, (17.07.2014), available at: <https://www.ecoi.net/en/file/local/1248371/1930_1406107999_too-young-to-wed-report-0714-0.pdf> accessed 12 June 2018

⁴⁰ Haberlerde Ayla Akat Ada'ya göre 'Suriyeli Mülteci Kadınlar Evlilik Tuzaklarına Düşüyor Raporu', Haberler, (30.01.2014), <<https://www.haberler.com/suriyeli-multeci-kadinlar-evlilik-tuzaklarina-5606436-haberi/>> accessed 1 July 2018

⁴¹ Burcu Karakaş, 'Kadınlar İkinci Eş Bulma Sitelerine Karşı İsyanda', Deutsche Welle, (21.12.2017), available at: <<https://www.dw.com/tr/kad%C4%B1nlar-ikinci-e%C5%9F-bulma-sitelerine-kar%C5%9F%C4%B1-isyanda/a-41878832>> accessed 2 July 2018

was suspicious and went to her house. When he walked in with the spare key he had received from the landlord, he was encountered with his sister's dead body.⁴²

According to the Habertürk News, the United Nations Population Fund Representative of Turkey, Meltem Ağduk, in Turkey there are faced with early marriage under the age of 18 and who becomes mothers soon after marriage and yet these mothers are children themselves who get pregnant end up dying and unfortunately these babies who lose their mothers die soon after before the child becomes 1 year old. This is very tragic and in Turkey we are combatting this. Girls forced to marry in childhood are deprived of educational opportunities. These children cannot enter social and work lives. Most importantly, children in this age are exposed to intense domestic violence. We are calling on the families. Let the children make their own choices by themselves. Do not marry them early. In Turkey, child and forced marriage is acceptable but more than a warning and discourse about it should be done.⁴³

According to Alexa Keefe's news, "Girls as young as 13 are getting married in unofficial ceremonies. Sometimes these unions don't last, leaving the girls divorced at 15 with children to raise, facing barriers to the education and opportunities that would pave the way for success in their new country. Divorce is easy because all the husband has to do is to just say, 'I will divorce you' three times," in Sunni Islam law.⁴⁴

As mentioned above, due to the Syrian refugees' economic problems, women and girls are sold into child and forced marriage. As it is mentioned in German der Stern Journal, Turkish men who get married with them think that they protect vulnerable girls and women from prostitution.⁴⁵

⁴² Yusuf Kılıç, '15 yaşında zorla evlendirilen Suriyeli kız intihar etti', Habertürk, (07.12.2017), available at: <<http://www.haberturk.com/gaziantep-te-15-yasinda-evlendirilen-suriyeli-kiz-canina-kiydi-1745220>> accessed 20 June 2018

⁴³ Murat Zorluoğlu, Birleşmiş Milletler, 'BM Türkiye Temsilcisi: Zorla Evlendirilen Kız Çocuklarının Sonu Ölüm Oluyor', Habertürk, (27.11.2017), available at: <https://www.haberler.com/bm-turkiye-temsilcisi-zorla-evlendirilen-kiz-10286119-haberi/>, accessed 20 June 2018

⁴⁴ Alexa Keefe and Özge Sebzeci, 'Pictures Reveal the Prevalence of Child Marriage—and Divorce', National Geographic, (18.01.2018), available at: <<https://www.nationalgeographic.com/photography/proof/2018/01/child-marriage-divorce-syrian-refugees-turkey/>> accessed 1 July 2018

⁴⁵ Can Mery, 'Türkei: Syrerinnen Sind Als Zweitfrauen Zur Ware Geworden', Stern News, (07.04.2015), available at: <<https://www.stern.de/politik/ausland/tuerkei--syrerinnen-sind-als-zweitfrauen-zur-ware-geworden-5928702.html>> accessed 1 July 2018

According to Turkish Law, a person cannot get married to another person when he/she is already married. As a result of these regulations, people prefer religious marriages over official marriages. Turkish Criminal Code in Article 230 regulates the crimes about multiple or fraudulent marriage. Article 230 (6) stated that any person who conducts a religious marriage ceremony without proof of certificate of marriage is punished with imprisonment from two to six months. But this regulation is cancelled in 2015 by the Turkey's Constitutional Court. This is no longer mandatory for couples to register as official marriage before conducting a religious ceremony.⁴⁶

In this regard, as it is getting harder to identify forced marriages with this regulation, the Presidency of Religious Affairs should raise awareness among Imams (religious officials) and inform them on child, early and forced marriages.

As a part of tradition, in south-eastern Anatolia, more than one marriage is quite normal in daily life. However, a man who wants to get married with a woman as a second wife has to pay more than 200,000 Turkish Liras for her family. Mardin Women Cooperation Association member Hülya Çelebioğlu Aydın states that men give around 5,000 Turkish Liras for marriage with Syrian women. This way is much lower than marriage with Turkish women who accept being second wife.^{47 48}

As it could be seen clearly, Turkey does not devote enough attention to the forced marriage issue. There is only a small step taken by Former Family and Social Policies Minister Ayşenur İslam stating that within the scope of psychological and social support for Syrian refugees, the Ministry has begun to inform women and girls against child and forced marriage.⁴⁹ Despite this effort, this problem still remains today.

⁴⁶ Yneia Gostoli, 'The Mufti Marriage Law and Child Brides in Turkey', The New Arab, (22.01.2017), available at: <https://www.alaraby.co.uk/english/indepth/2017/11/22/the-mufti-marriage-law-and-child-brides-in-turkey>, accessed 20 June 2018

⁴⁷ Gizem Coşkunarda, 'Dişlerimi Yaptıracağı için Kumayı Kabul Ettim', (10.04.2016), Milliyet, available at: <http://www.milliyet.com.tr/-dislerimi-yaptiracagi-icin/pazar/haberdetay/10.04.2016/2224326/default.htm> accessed 18 June 2018

⁴⁸ Mehveş Evin, 'Suriyelilerle Evlilik Ticarete Dönüştü', Milliyet, (27.01.2014), available at: <http://www.milliyet.com.tr/suriyelilerle-evlilik-ticarete/gundem/detay/1827612/default.htm> accessed 3 June 2018

⁴⁹ Aile ve Sosyal Politikalar Bakanlığı, 'Bakan İslam: Suriyeli kadınlar erken yaşta evlilik ve zorla evliliğe karşı bilgilendiriliyor', T.C. Aile ve Sosyal Politikalar Bakanlığı, (02.02.2014), available at: <https://www.aile.gov.tr/haberler/bakan-islam-suriyeli-kadinlar-erken-yasta-evlilik-ve-zorla-evlilik-egarsi-bilgilendiriliyor>, accessed 16 June 2018

2.3. Research methodology

My research is based on literature reviews, interviews with experts, to collect individual stories, international and national multimedia news. My aim in this research is to obtain more of a preliminary data for further in-depth qualitative research. The current work has employed qualitative and exploratory research methods.

Generally exploratory research is preferred when there is no clear, systematic and experimental analysis about the group, process, activity, data or the situation about which will be analysed or when there's very little research on that matter or in cases where the elaborated subject has not been analysed with an intensive description or when there are only some studies based on assumptions with strict controls regarding the subject matter⁵⁰.

Before starting the research, the problem with the exploratory research method is that it cannot be fixed in a certain manner since there was no previous detailed information about the subject matter. For this reason, the type of such research requires qualitative methods, case-studies, news, and NGO findings.

As mentioned above, collecting reliable detailed scientific data regarding Syrian refugee women is one of the major challenges. There are only few reports on general figures of Syrian women and girls in Turkey. The first report is on the general numbers of refugees and asylum seekers in Turkey provided by United Nations High Commissioner for Refugees (UNHCR), it is stated in the report that “there are 229,161 asylum seekers and 40,290 refugees in Turkey, totaling 269,451 people (who migrated from Iraq, Afghanistan, Iran, Somali and others) as of May 2016. The number includes 51,375 women and 34,968 girls under 18. In these figures Syrian refugees are not included. Noted by UNHCR that since Syrian refugees reside in Turkey under temporary protection, their demographics are not reflected in general statistics. As of May 19, 2016 there are 2,744,915 registered Syrian refugees in Turkey and 49.2% of them are

⁵⁰ Robert A Stebbins, 'Exploratory Research in the Social Sciences', (2001), Sage Publications

women. Only 259,896 refugees reside in the 26 camps; while a significant majority reside outside the camps and do not receive humanitarian support.”⁵¹

A second report was published again on the general number of the Syrian population in Turkey provided by Provincial Disaster and Emergency Directorate (AFAD)⁵² showing the number of Syrian Refugees living inside and outside the camps in 2013. The report based on house visits with 1,420 households living inside the camps and 1,160 households living in urban areas. The reports show “the conditions of our female Syrian ‘guests’ living in urban and rural areas are not very good. Only 9 percent of Syrian female expressed their wish to live inside a camp” This raises questions about the conditions in the camps. Recent news disclosed that 35 children were exposed to sexual exploitation in Provincial Disaster and Emergency Directorate’s (AFAD) Nizip and Islahiye camps (30 were by a cleaner in the first camp and 5 were by an elderly relative in the latter).⁵³

As it is already mentioned above, another report prepared by an NGO called The Association for Human Rights and Solidarity for the Oppressed (Mazlum-Der)⁵⁴, conducted interviews with 72 Syrian refugee women living in urban areas and meetings with NGOs and authorities. The report states a ratio of 8-9% for sexual abuse among the women, but stresses the factors hindering women’s disclosure of their abuse stories. According to the narratives, especially girls under 18 have been forced to marry as second or third wives. The report mentions commissioners arranging these marriages mostly in border cities. As for smuggling, trafficking and sexual slavery of women, it is pointed out that war conditions in Syria contributed to an increase in these crimes. Particularly, girls between the ages of 15-18 and/or their families in Syria have been deceived by women trafficking gangs with dowries, promises of a marriage and better life in Turkey and then been forced into sexual exploitation.

⁵¹ United Nations High Commissioner for Refugees, (UNHCR), Turkey Facsheet, (N.1)

⁵² AFAD (Provincial Disaster and Emergency Directorate) Report on Syrian Women in Turkey, ‘Syrian Women in Turkey.’ (2014), available at: <https://www.afad.gov.tr/Dokuman/TR/147-2015020217734-14-afad-suriye-kdn_eng.pdf>

⁵³ Sendika, ‘AFAD’ın mülteci kamplarında çocuk istismarı: Nizip’ten sonra İslahiye’de’, (23.05.2016), Sendika, available at: <<http://sendika10.org/2016/05/afadin-multeci-kamplarinda-cocuk-istismari-nizipten-sonra-islahiyyede/>>

⁵⁴ Mazlum Der, Report on ‘Syrian Women in Turkey’, (N.21)

As per the nature of the subject matter, as an example of representative of the issue; the lives of 3 Syrian women being forced to marry have been described in detail and their stories and recent national and international news in the media have been used in detail. The aim of media collective was to show the serious gap between the reality and the imagery shown by Turkey.

The reason why I have collected the news is that “it is explained clearly above” due to not finding enough documents, information, records, data on this issue provided by the Turkish authorities. This situation is either ignored or not considered enough. Therefore, it seems that there is no problem with this issue. My aim is to show the serious difference between the reality and what is trying to be portrayed.

2.4. Research questions

In my thesis I would like to draw serious attention to the urgency of the issue of forced marriages among Syrian population in Turkey and focus on finding an answer as to why Syrian women and girls living in Turkey cannot be protected adequately and legally from forced marriages and discussing how international and national legal mechanisms interact with the issue.

3. Definition, contexts

3.1. Defining forced marriage

“No marriages 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.” (*Min Age for Marriage and Registration of Marriage Act 1964, Article 1 (1)*).⁵⁵

⁵⁵ ‘OHCHR | Convention on Consent to Marriage, Minimum Age for Marriage’, Article 1 (1), Adoption Date: 1964 available at: <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>>

Forced marriage is described as a marriage where there is no official promise from neither the bride nor the groom. Usually these marriages are a marriage which is planned by the families of the parties.⁵⁶

Generally, girls that are forced to marry remain mostly they are silent because forced marriages are generally portrayed to be part of their culture or they are convinced that the marriage needs to be in this way. In particular countries, it is almost impossible for the girls to reject the marriage. So mostly because of the fear of objection they had to agree on the decision.

There are girls who do not even know that they are forced to marry because they cannot be identified for this cause. Forced marriage occurs in the form of an agreement between two parents, the parties are not asked, and the partners are forced to comply. Many forced marriages include child marriages that are considered a violation of many international law and human rights instruments in the areas of child rights and protection. However, different instruments employ different definitions of the 'forced marriage'. The 2005 Council of Europe, Committee on Equal Opportunities for Women and Men uses a very broad explanation in the report on forced marriages and child marriages⁵⁷, so that forced marriage can be classified as "an umbrella term covering, marriage as slavery, arranged marriage, traditional marriage, marriage for reasons of custom, expediency or perceived respectability, child marriage, early marriage, fictitious, shame marriage, marriage of convenience, unconsummated marriage, putative marriage, marriage to acquire nationality and undesirable marriage, in all which the concept of consent to marriage is at issue."⁵⁸ There is no official data on the forced marriage neither in Turkey nor in Europe.⁵⁹ There is a report considering forced marriage written in 2001 in Turkey⁶⁰ but there is no data among the refugee society.

⁵⁶ Dildar F Zebari, 'Forced Marriage and International Human Rights', (2013), International Journal of Humanities and Management Sciences (IJHMS)

⁵⁷ Council of Europe, Parliamentary Assembly, Committee on Equal Opportunities for Women and Men, Report on Forced Marriages and Child Marriages, (20.06.2005), Doc No: 10590 available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=10969>

⁵⁸ Ibid.

⁵⁹ Aisha Gill and Sundari Anitha, (2012), 'Forced Marriage: Introducing a Social Justice and Human Rights Perspective', , Zed Books Ltd, London and Newyork

⁶⁰ United Nations High Commissioner for Refugees, (UNHCR), 'Refworld, Turkey: Forced Marriage in Turkey; Outcome When a Woman Refuses to Marry the Designated Man; Outcome When a Woman Elopes with Another Man; Attitude of State and Availability of State Protection', (July 2001- September 2004), Refworld, available at: <<http://www.refworld.org/docid/42df61a92f.html>>

Especially in some countries where forced marriage has been punished, it is possible to reach some data because of the fact that the cases are passed to the judiciary. However, this situation also differs from country to country.⁶¹ NGOs in Turkey conducted by the research, is more common in which a portion of immigrant communities and individuals are forcing including other forms generally of violence based on gender as marriage cases.

3.2. Countries involved and the criminalisation of forced marriage

The most common places are Yemen, Nigeria, Afghanistan, Pakistan, India, Bangladesh and Somalia.⁶² Migrants from these countries also brought their marriage practices when they move to Europe, it has resulted from establishing a new law of prohibition of forced marriage. Forced marriage cases are most frequently reported in Bangladesh, India, Pakistan, Somalia, Turkey, Iraq, Syria, Yemen, Bangladesh and come from countries such as China. In Afghanistan, sub-Saharan Africa, Iraq and rural China, the families who have economic problems have led their daughters to "forced to marriage" at very young age for the bride-price, and many women groups in these countries are working hard to determine the legal minimum age for marriage.⁶³

Thus, many protests and action calls on this subject are focused on forced marriages involving mainly children and adults. In Algeria, Bangladesh, Jordan, Iraq, Malaysia of Morocco, Turkey and France, the minimum age for marriage among the countries have increased to 18 years old.⁶⁴

In rural Southeast Asia and West Africa victims of rape are under pressure and even forced to marry rapists.⁶⁵

Although there are many international treaties prohibiting forced marriage, most EU Member States do not have a specific crime of forcing someone into marriage. There are only seven EU countries forced marriage is a separate crime. These countries are Malta,

⁶¹ Aisha Gill and Sundari Anitha, (2012), (N.60)

⁶² Dildar F Zebari, 'Forced Marriage and International Human Rights', (N.57)

⁶³ Gill Hague, Ravi Thiara and Atuki Turner, 'Bride-Price and Its Links to Domestic Violence and Poverty in Uganda: A Participatory Action Research Study', (2011), vol 34, Bristol, London

⁶⁴ Ibid.

⁶⁵ Okin Susan Moller, (1999), 'Is Multiculturalism Bad for Women? ', Princeton University Press, USA

Belgium, Denmark, Austria Cyprus and Germany. Norway has also criminalized the practice of forced marriage although it is not in EU.⁶⁶

Since July 2006, Austrian law requires serious penalties for forced marriage. In Germany, both criminal and civil laws were changed to organize a separate crime. Forced marriage has also been organized as a special crime in some non-EU member states, including Norway, Serbia and Albania. However, there is no deliberate special provision for forced marriage in Algeria, Guatemala, Israel, Italy, Lithuania, Mauritius, Moldova and the United Kingdom, but they are being tried for crimes of trafficking, sexual violence, prostitution and rape.⁶⁷

Many countries in /outside of Europe have also passed laws which enforce a criminal penalty for forcing someone to marry. For example, in Australia, an innovative approach has been adopted; even though forced marriage is usually focused on children as a victim, Australia has defined forced marriage as one of the existing trafficking crimes.⁶⁸ In February 2013, the Australian Parliament passed the Slavery Act, which amended the Commonwealth Criminal Code Act 1995 (Criminal Code) to recognise forced marriage as a serious form of exploitation and a slavery-like practice and to ensure that Australia meets its international legal obligations to prevent forced marriage and to protect and support victims. (Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2013)⁶⁹

3.3. The scope of girls involved

The United Nations Population Fund (UNFPA) estimates that each year over 14 million forced marriages of minors occur in 107 low-income countries alone.⁷⁰

⁶⁶ Charlotte Rachael Proudma, 'The criminalisation of forced marriage across Europe', (2012)

⁶⁷ Report of the Special Rapporteur on the 'Human rights aspects of the victims of trafficking in persons, especially women and children', (15 March 2006) Implementation Of General Assembly Resolution 60/251, Entitled "Human Rights Council" (30.05.2007), Report Doc No: A/HRC/4/23/Add.1, available at: <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/128/36/PDF/G0712836.pdf?OpenElement>>

⁶⁸ Aisha Gill and Sundari Anitha, (2012), (N. 60)

⁶⁹ OHCHR, 'Preventing and Eliminating Child, Early and Forced Marriage', (2 April 2014), UN Doc. A/HRC/26/22, OHCHR Session 26 Reports' Legislative Measures N: 27, available at: <<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session26/pages/listreports.aspx>>

⁷⁰ United Nations Population Fund, 'Marrying Too Young: End Child Marriage', 2012, available at: <<http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>>

Forced marriage is linked with “domestic violence, kidnapping, isolation, unintentional pregnancy, rape, death threats, false imprisonment, emotional abuse, sexual abuse, and economic exploitation. In addition, forced marriage causes deep emotional distress by separation from their family and friends and preventing them from doing their future plans like education, personal development, friendships and job choices as they wish.”⁷¹

Forced marriages ignore the point of view and decision-making capacities of what is meant by the interests of children and young people. They are confronted not only by the disappearance of such hopes and plans, but also by the high risks of young pregnancies and domestic violence; forced marriages are also closely related to psychiatric disorders such as self-harm, intolerance, violence, and suicide.⁷²

Studies show that Syrian children who escaped to foreign countries generally do not have enough awareness of the issue and are targeted for being vulnerable and needy. “These children are then sold in the international sex trade and became a victim of human trafficking.”⁷³ Victims of sex trafficking are often dismissed from their own country and are likely to be placed in countries where they cannot speak the language, and they don’t have any information on where and whom to go for help. Victims are also psychologically or physically isolated from the world.⁷⁴

According to Human Rights Watch and Amnesty International, human rights violations in recent years in Turkey has been raised seriously and many violations of international law has been issued for refugees who need international protection.⁷⁵ It is also documented in the United Nations High Commissioner for Refugees’ (UNHCR) reports that the traces left by the crisis on children are physical injuries, psychological trauma, life without parents, loss of family members, inability to reach education and lack of basic health services, etc.⁷⁶ Among the Syrian children the situation of the girls is

⁷¹Loretta M Kopelman, ‘The Forced Marriage of Minors: A Neglected Form of Child Abuse’ (2016), *The Journal of Law, Medicine & Ethics* 173.

⁷² *Ibid.*

⁷³ Bassem Mroue, ‘Lebanon Shocked over Sex Trafficking of Young Syrian Women’ AP News, (13.04.2016), available at: <<https://apnews.com/72253307caef4863858d659ce6686808/lebanon-shocked-over-sex-trafficking-young-syrian-women>> accessed 2 June 2018

⁷⁴ *Ibid.*

⁷⁵ Human Rights Watch, Report on ‘EU/Turkey: Mass, Fast-Track Returns Threaten Rights’, (8 March 2016) available at: <<https://www.hrw.org/news/2016/03/08/eu/turkey-mass-fast-track-returns-threaten-rights>> accessed 1 July 2018

⁷⁶United Nations High Commissioner of Refugees, (UNHCR), ‘The Future of Syria: Refugee Children in Crisis’, (2013), available at: <http://www.refworld.org/pdfid/529c3b4d4.pdf> accessed 3 July 2018

different than the boys, in addition all these problems they are facing sexual harassment and sexual violence. According to the latest report in this issue showed that the percentage of married Syrian girls under 18 years old was 13 % in 2006 before the war⁷⁷ and compare to this rate with the current situation, it is clearly seen that the difference is doubled to 35% after war.

The ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purpose) is an organization which is actively working to help the Syrian Children who have been victims of sexual exploitation and forced marriage published a report on the condition of Syrian Minors who have been exposed to sex trafficking and forced marriage in Turkey.⁷⁸ The report urges Turkey to be aware of International human rights standards, especially advises to the rights of refugees from Syria.⁷⁹ “ECPAT specifically references Article 5 (5) of the Council of Europe Convention on Action Against the Trafficking in Human Beings, which requires Turkey and other parties to “take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.”⁸⁰

3.4. Forced marriage as a form of violence against women

Forced marriage can be described as a menacing use of control and power against women and girls which dominates women and their sexuality, and frequently also their offspring; for example, rape, partner abuse and other kinds of sexual assault. The origin of this type of violence (women’s inequality) will remain unaltered if forced marriage is not regarded as a type of violence against women, the treatment of women and their status in society, neither will it be solved.

Violence against women is described by the UN as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to

⁷⁷ United Nations Population Fund, Report on 'Marrying Too Young: End Child Marriage', (2012), Unfpa Publications, available at: <<http://www.unfpa.org/webdav/site/global/shared/documents/publications/2012/MarryingTooYoung.pdf>>

⁷⁸ ECPAT International (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purpose), 'Turkey Report on Syrian Minors, Sex Trafficking and Forced Marriage', (2015), available at: <http://www.ecpat.org/wp-content/uploads/legacy/A4A_V2_EU_Turkey_FINAL.pdf>

⁷⁹ Ibid.

⁸⁰ Ibid.

women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.⁸¹

“In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence against Women (A/RES/48/104). The Declaration defines violence against women as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life’.”

This definition comprises violence within the following three aspects: (a) the family level; such as domestic and sexual violence, “traditional” types of violence like female genital mutilation and dowry-related violence; (b) the community level; such as trafficking, sexual harassment and rape; and (c) the state level as described by the UN Declaration on the Elimination of Violence Against Women 1993 (Article 1 and Article 2).

There are two reasons why forced marriage may be perceived as a kind of gender-based violence as it is implied by current data that forced marriage is encountered by women and girls rather than by men and boys.

Since the UN’s definition on violence against women considers the gender-based attribute of such violence, it could be an effective method of conceptualising forced marriage; nevertheless, this definition contains certain possible restrictions.

Firstly, it distinguishes between “traditional” types of violence like dowry-based violence and female genital mutilation and other types of violence; however, tradition is exclusively linked with practices in some nations and communities, consequently leading to the normal binary and thus to hierarchy between “traditional” and “modern” cultures. Secondly, this definition, similar to the aforementioned definition of domestic violence, is incident-based and gives no consideration to the pattern of control and power which is intrinsic in forced marriage.

Furthermore, forced marriage may be regarded as a section of a gender-based violence continuum which was first introduced by Liz Kelly in order to extend comprehension of sexual violence. She warned of the difference between expanding definitions to “reflect the complexity of experiences and collapsing a number of forms of sexual violence into

⁸¹ *Declaration on the Elimination of Violence against Women*, (1993) (A/RES/48/104), available at: <http://www.un.org/womenwatch/daw/vaw/reports.htm#declaration>

one category”. Nevertheless, she emphasised the significance of identifying that “forms of sexual violence shade into one another at certain points” and also how women’s experience of sexual violence “varies, both between women and over time for any individual woman”.⁸²

Kelly’s continuum concept locates daily violation acts within structural violence directed towards women.⁸³ Furthermore, this continuum concept has been recognised by the UN Secretary General’s Report on Violence against Women (2006,36) which says that violence based upon gender is “a continuum of multiple, interrelated and sometimes recurring forms...physical, sexual and psychological/emotional violence and economic abuse and exploitation, experienced in a range of settings, from private to public, and in today’s globalised world, transcending national boundaries”.⁸⁴

This is the resounding characteristic for experiences within forced marriage which may comprise a continuum of abusive and violent behaviour inclusive of abduction, battering, emotional pressure, sexual violence, rape, threatening behaviour, when (1) entering marriage, (2) during marriage and (3) when trying to end a marital relationship.⁸⁵

4. Stories, analysis and key findings

4.1. Stories of women and girls who have been exposed to forced marriages

4.1.1 Introduction

This chapter aims to keep the forced marriage victims’ stories pure and to keep them as close to the original as possible. In between May-August 2017 together with a trained translator/interviewer I collected self-interpreted stories in Hatay/Turkey through house visits. Interviews based on story sharing, information collection and discussion on the protection and complaint mechanism in Turkey. Each participant shared their story after the Syrian war and shared their experiences in Turkey especially being as a Syrian refugee woman. All names have been changed to protect the identities of those involved in the

⁸² Kelly, L. (1988), ‘What’s in a Name? Defining Child Sexual Abuse’ 28 Feminist Review 65, Oxford

⁸³ Kelly, L., (1988b), ‘Surviving Sexual Violence’, Feminist Perspectives, Oxford

⁸⁴ United Nations, Secretary General In dept Study on All Forms of Violence Against Women, (06.07.2006), A/61/122/Add.1 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/419/74/PDF/N0641974.pdf?OpenElement>

⁸⁵ Aisha Gill and Sundari Anitha, (2012), (N.60)

stories. Each interview lasted almost 2 hours with each participant. Each participant was living in the rural areas of Hatay province on the Turkish-Syrian border.

The reason I choose to interview with women in these areas is that the situation and living condition and protection in the rural areas for Syrian female refugees is very hard and sensitive as it is illustrated.

I will address the story of the life of the Syrian women and girls who are forced marriage victims to represent many other forced marriage victims. The ages of the victims are 13, 28 and 42 years old. All of them fled to Turkey with their families after the civil war in Syria in 2011. One of the victims is from Aleppo and the other two came from Hama. There was no interview with the 13-year-old girl but I had interviewed her mother. During the interview, although they were observed to respond to the questions with hesitancy, they generally stated that they wanted to express this victimization to be useful to others.

All victims live in the villages of Reyhanlı town which stated exactly on the Syrian-Turkish border. The main source of the income for the victims and their families was humanitarian aid from the various organizations.

Why I would like to give extra information on these villages is that they have special situation. Because of its geographical position it is the first destination for most of the Syrian refugees. Generally, households are extremely poor and because of that they couldn't move further to other cities or even the center of Reyhanlı town. Generally, the victims of forced marriage live in very poor conditions such as makeshift tents and unfinished buildings. There is no hospital in the villages and there is no proper school for the Syrian kids.

Finding a job is harder than it is in the city center. In order to make some money, many of the Syrian males leave their families alone in the villages. They go to other cities or even back to Syria to search for a job. This also another big problem for the Syrian female refugees to stay without their husbands/fathers/brothers which puts them in a high risk of sexual exploitation. As we mentioned above households' situation generally is very poor as well as they also live in very crowded small houses. Many times, they have difficulty in paying the rent. This economic situation resulted in most of the parents marrying off their daughters for the rental payments.

Another main economic activity for the rural areas for Syrian female refugees is agriculture. Most of the Syrian kids, young girls and women work in the agriculture fields. They leave around 5 in the morning with other Turkish or Syrian men in one very unsafe-crowded truck, travel for almost 1 hour, work for 12 hours with those men and reach home in the late evening. This situation also opens young girls and women to exploitation.

Accessing protection, education, health services, medication is almost impossible in these rural areas. Female Syrian refugees end up in high risk of sexual exploitation and forced marriage due to the above-mentioned reasons.

4.1.2. Story of Nour

Nour, interviewed in Hatay and at the age of 22, says that she was married in Syria, but got divorced because she was subjected to violence intensively. She tells that she is an embarrassment to her father because she is divorced and says that she is subjected to violence by her father, and her father repeatedly told her that he is ashamed of her because she got divorced. Nour states that it is almost impossible for her to go out of the house, she can only go out with her brother; and that she wants to participate in handcrafts courses opened for women by the relief agencies, and one friend of hers convinced her and took her to this course while her father was at work, however when her father became aware of this, he beat her to death, and blamed her for becoming a prostitute and preventing her family to go out in public. At the same time, Nour has also stated that she has only one friend among the Syrian women, this friend is single and her family forbade her to be friends with Nour, and she has to communicate with her only in social media or by means of telephone messages. When asked the reason why they forbade her friend to associate with her, Nour expresses that a divorced woman is considered as a bad woman and accepted as a streetwalker and a woman who seduces men; her father also says the same things for other divorced women, thus others think about her like this. And she points out that her father is ashamed of her because of these reasons, commits violence frequently and she can only go out with her brother. Nour tells that after a while, she was forcibly married off by her father as the second wife of a married man at the age of 48 in return for 5 thousand TL. She tells that her husband used violence and raped her in the first night. Nour lives together with the first wife of her husband and says that she cannot think of going against first wife's orders, and she is also subjected to the violence of the

first wife inside the house. “Everything is in the hands of the first wife. Everything has to be as she wishes.”

After a while, Nour has a daughter, but her husband who has already 3 daughters, does not like this situation; and says that he started to commit violence more severely, and threatened her to send her back to her home if the second child is not a boy. Nour hears from her single friend K that a relief agency of which she attended its courses helps women and provides all kinds of support. When they asked whether or not she asked for help or made a complaint to any institution because of violence; Nour says that she couldn't dare to go to a relief organization; she is an imperfect, defective person because she got divorced, and she has to bow to the inevitable. She says; “If my father hears about it, he will kill me. I am somewhere between life and death”. Nour adds that she sometimes dreams and in this dream she and her daughter are living alone in another city by themselves where there are no relatives. When it is asked to Nour whether or not she knows her rights or there is any authority in this country she can shelter in she tells that she does not have the courage to do this even though she knows her rights or there is an authority; however she says she heard from her Turkish neighbors that a Syrian girl at the age of 14 in their district ran away from home because she was forcibly going to be married off and told this situation to the police with the support of a non-governmental organization, but when dropped the charge, the police gave the girl to her family and did nothing. And one week later the girl was married off forcibly. Thus, she adds “how and whom can I trust?”

4.1.3. Story of Sumeyya

Sumeyya, at the age of 28, who came to Kilis with her family because of the war when she was receiving education in the university in the faculty of literature, states that they went to Antep because they couldn't find a job, and returned to Kilis again because they couldn't find a place to stay. There they didn't have any money, their neighbors gave them blankets and beds, and they make their living with the aids they receive from relief agencies. She says that after a while, her brother found a one-day job in a cropland and they tried to live on with the income they earn from these temporary works. Sumeyya states that she had to accept to marry a Turkish man as his second wife while she was dreaming about acquiring a profession by completing her education in her own country and adds:

“We never asked for help from nobody in our lives. This was very difficult for us. All my family felt uneasy when we had to empty the house we stayed, because we couldn’t pay the rent.”

She says that she was very upset when her father and mother told her she had to marry, but later on her mother convinced her that this was the best solution, and Sumeyye believed this, and held herself responsible when she saw her father and mother always sad, and felt guilty with each passing day; thus, she decided to marry within 1 month when marriage was planned 3 months later. She took this decision because of the difficulties she experienced, and for not to be a burden for her family. She tells that she accepted to be the second wife of a Turkish person who has two-floor house, when they got married, they started to live together in the 2nd floor with the other wife. And her husband’s son from his first marriage lives with his wife and three children in the first floor. And Sumeyya has to do all housework mostly by herself, and even she has to baby-sit grand children of her husband who are living downstairs.

4.1.4. Story of Hiam

Hiam (her name is changed because of confidentiality) at the age of 13, who is living in one of the frontier villages of Hatay and is a daughter of a very poor family, engaged attention of H.G., an employee of a non-governmental organization that was conducting a field research about access of children to education, because she was 6-month pregnant. As it is understood from the conversation made with the mother, Hiam was forcibly married off with the son of the homeowner by her father in return for rent so that they can stay in their present house (in the barn). Just after marriage she was pregnant, and at the end of the 5th month, her husband sent her back by saying “she doesn’t know anything, she is very cool towards me, she cannot cook, she cannot do housework”. H.G. didn’t find it appropriate to interview with Hiam, since she is just a child, however he/she negotiated with the related authorities in order for her to be protected, however she received replies such as “we cannot do anything, if she is staying with her family, child should come and complain herself”. H.G. adds that in a negotiation realized with a staff of a protection mechanism, he/she learned that no activity concerning Syrians is realized for now, and even though there are activities concerning protection of destitute children, he/she met with the reaction that there is no need for protection since girl stays with her family.

4.2. Analysis of the stories

As it can be clearly understood from the stories of Syrian women and girls (children) who are forced marriage victims, the biggest problem Syrian women and girls experience is that they are forced or obliged to realize polygamist early marriages at a young age as second or third wife. The biggest reason they are forced to these marriages is the pressure in the family. And when they are forcibly married, they also believe that this is necessary since “man, father” authority has a significant place in the Syrian culture and these women and girls grow with dictations such as “what father says should be done”, and “father decides for their sake, and you cannot object to this decision”. In the fear that much bigger problems shall be encountered in case of an objection, most of them wouldn’t dream of it. On the other hand, even though Sumeyya seems like she didn’t marry because of pressure applied by his father, she indicated that she decided to marry to provide financial security for her family; thus, the fact that “family member who has to remedy the financial status” has to be the daughter “who is convinced that marriage is the solution” instead of her father or brother, is the clear indication of father authority and pressure again.

As it is understood from these three stories, women forcibly married or experiencing polygamist marriages and subjected to violence in marriage didn’t even try to complain to the police or to another authority. In contradiction, they are worried that problem will be more serious if they make a complaint. It is also expressed during the interviews that women do not have sufficient information about their rights or protection programs or mechanisms, and many women are subjected to domestic violence in the local community they live in.

In the story of Hiam, even though staff of the relief agency is conscious, and informed the related authorities, he/she couldn’t receive a result; thus, it is obvious that victim woman, girl or child in a remote corner at the border “who doesn’t have the opportunity to go from one village to another” wouldn’t be able to obtain a result for this situation she is subjected to. As a result, problem of protection of Syrian women, girls, children grow like a black hole and pulls more victims in.

In an interview performed with Turkish women in a district of Hatay, Reyhanlı County; their relationship with Syrian women was asked and they replied that Syrian women are

white-skinned and blond, they like dressing, personal care and makeup very much, and they are mostly preferred by Turkish men, because they can easily get married, and they are afraid that their own husband may marry to a Syrian one day. These women interviewees expressed that most marriages in Turkey are monogamist and civil marriages. Long before Syrians came, imam marriage (religious marriage) was prevalent, and today everybody has civil marriage, however this situation rose again together with the Syrians. For this reason, most of the Turkish women they never want to be the second woman or accept their husband to marry to another person; they even know several persons in this situation, and they heard that one woman left her home when her husband brought a Syrian woman as his second wife. However, her husband broke up with Syrian woman after he pleased himself (it is very easy to get divorced since they have imam marriage (religious marriage), and he wanted his first wife back. They repeated insistently that Syrian women undermined the morale of Turkey or Turkish men.

In fact, it is seen that there was a tradition especially in the border provinces to marry Syrian women before the crisis in Syria. Long-established commercial relations, and plural marriages being a cultural norm in Syria have caused reflection of this culture in the border provinces. However, this situation was restricted only to certain provinces, and it is understood that the number was very small in comparison to the polygamy observed today. Together with the migration experienced after Syria Crisis, this phenomenon increased in number by taking on different dimensions and turned into a sort of exploitation.

According to the information obtained from district representatives, victims and local community, men who want to make unofficial marriages with the Syrian refugee women, and brokers among the refugees have appeared, and this situation gains by leaps and bounds. These marriages turned into a sector where certain prices are requested. These marriages are most frequently observed in provinces such as Gaziantep, Kilis, Hatay, Şanlıurfa, Batman and Mardin, where refugees are densely found. It is heard that marriages with Syrian women are made by means of brokers at a charge varying between 2 thousand and 10 thousand TL. There are also exceptional examples where higher prices are talked about especially for girls at a smaller age.

They mention that especially women between ages 15-20 are preferred and age, physical characteristics, marital status and health condition of the woman are determinative in pricing.⁸⁶

Brokers, who commercialized this situation, determine especially poor families that have sick, old parents in need of care and live outside the camp. They convince them to marry their daughters in return for regular food or medicine aid or for rent. Brokers are taking commission between 250-500 TL for this service. And bride price between 2 thousand and 5 thousand TL is given to the families. Afterwards, food, medicine or rent aid is provided by the person who got married. It is reported that purchasers are mostly from Kilis, Antep, Hatay and nearby cities, however those from all over Turkey who want to marry Syrian women reach brokers and make marriages. One person interviewed in Hatay, one of his relatives wanted to marry a Syrian woman and got married by means of a broker. He states that he reached this broker by “Syrian women who want to get married” group in Facebook/social media. He says that at first broker showed a girl at age of 13 for a price of 10 thousand TL, and they agreed for another Syrian woman at age of 18 for 5 thousand TL, because he wanted to marry with an older woman. After an agreement is reached between the broker and the person who wants to get married, the broker reaches an agreement with the father of the girl, and the father forces the girl to marry.

According to the information obtained from victim women, most of these marriages last for a short time, there are men who marry with and divorce from more than one refugee woman. Refugee women who are forced into marriage or have to get married are mostly treated as a helper in the house. Or agreement is made with Syrian/Turkish men who don't have a son for giving birth to a male child as a second or third wife and thus pricing of girls is higher for such marriages.

Batman Bar Association expresses in The Association for Human Rights and Solidarity for the Oppressed's (Mazlum Der) report that Syrian girls at a young age are mostly abused by means of commercialized imam marriages for which brokers mediated according to the information given by Commission of Women's Rights; and according to the information obtained from judicial cases and unverified information from the

⁸⁶ Mazlum Der, Report on 'Syrian Women in Turkey', (May 2014), (N.21)

Association states that it is prevalent to marry off children in return for money by means of brokers, especially children are frequently married off against payment under the name of bride price. Some brokers mediate between Syria and Turkey, and photos of women are shown to the purchasers from the catalog in the mobile phones or over social media.⁸⁷

It is expressed that young women or their families led on by promising better living conditions and a small amount of money or gold, and mostly children between ages 15 and 18 are preferred. It is emphasized that girls at a young age come to Turkey without realizing that they are sent for marriage, they have to get married with much older men in exchange of bride price their family received; and that child or young woman is used as a slave both by the man and other wife in this informal marriage realized as a second wife.

These marriages realized against payment and completely turned into woman trafficking, are tried to be legitimized by asserting various socio-cultural acceptances. Women from local community attribute this situation to the fact that Syrian women do not request anything for marriage aside from a small amount given to the broker and family, and opportunity of marrying young women makes these marriages attractive from the viewpoint of men; on the other hand, some of the male interviewee claim that these marriages are realized exactly with the aim of protection. Opinion is formed that determinations of female interviewee reflect the truth more since age range preferred is between 15 and 20, and physical characteristics are determinative in the marriages realized, and mostly middle-aged men and men over middle age realize these marriages.

Halime, a protection aid worker in a non-governmental organization that provides a protection program for Syrian women, states that women coming from Syria get married at young age such as 14-15 and becomes a mother; besides Turkish men can marry without expense, since Syrians do not demand any furniture or jewelry. So, these marriages became prevalent since men know that financial support provided to their family is a facilitator factor, men in cash and out of cash can easily get married, and even men who have wives get married in this way with their second and third wives. Halime tells that the son of his/her neighbor got married in this way his first wife came, cried to him/her and poured her grief, however she cannot argue against this situation because of

⁸⁷ The Association for Human Rights and Solidarity for the Oppressed,(Mazlum Der) Report on 'Syrian Women in Turkey', (May 2014), (N.21)

financial impossibilities and because she has no place to go. She told her mother about the situation, but her mother said to her: “don’t talk, he is your husband, how will you survive if you come to your father’s house, we cannot raise your children, if he doesn’t beat you and leave you hungry, he is your husband, don’t utter a word, and also don’t let your father hear it, he will kill you”; thus, she has to endure.

In an article series in *Milliyet* newspaper ⁸⁸ in which the issue of abuse of Syrian refugee women and forcing them to marry is addressed; an interview realized with a schoolmaster who married to a Syrian woman as his second wife is also featured. This interview is a typical example of socio-cultural acceptances related with such marriages:

“First wife of Mister S., who is a manager of an institution providing education for Syrian children, is from Hatay and his second wife is from Syria. When we asked him about the opinion of his first wife, Mister S. brought the issue to the “immorality of Westerners”: “I took my second wife from Syria 5 years before. She is now 43 years old. She was a theology teacher in the university. She settled here after the war. Now she lives in the top floor, and my first wife lives in the ground floor. West claims to be respectful to the woman. Who uses woman in the advertising of an article? And they criticize Islam, because it permits more than one marriage. Let’s produce statistics in the west, who is seeing only the woman he is married to? You cannot find even one percent! If a man introduces an illness to his wife because of illicit connection, isn’t this the biggest sin? What is this? Each man in Europe has a girlfriend other than their wives. Instead of these, I think it is more correct to marry a second wife on moral grounds. There are Syrian girls who think that they found a job but are trapped afterwards. Heartless people take advantage of victimization of others, and they are abusing them.” ⁸⁹

Not only the second, third wives are affected adversely as a result of these marriages realized, ‘First wife’ also experiences this process traumatically and tries to overcome this uneasiness that she lives through generally by obtaining a separate status. F. at age of 56 and interviewed in Hatay states her feelings as follows when her husband marries for the second time:

⁸⁸ Mehveş Evin, ‘Suriyelilerle Evlilik Ticarete Dönüştü, (N.47)

⁸⁹ Ibid.

“At first, I was very much upset, I was going out to take a breath when I got bored. Then I got used to it. My husband does not treat differently to her. Since I am older, I have a voice in the house. Fortunately, she (the second wife) listens to me.”

As it is understood from the studies and interviews realized, Syrian female refugees are abused in different ways and experience more difficult occasions in comparison to men. Supports provided, and various measures taken are far from redressing grievances of women. It is required to overcome prejudices especially about women in the local community.

All relief agencies, AFAD (Provincial Disaster and Emergency Directorate) being in the first place, agree that problems women are experiencing should be handled more sensitively. Well then, why are precautions not taken? Why is the number of complaining women not known? Is it because “women’s” problems are not considered important in Turkey? Or is it because both national and international organizations that consider the solution to the problems of Syrian refugees as “feeding on” do not regard women abuse as a “case that requires immediate action”? Or is it because national complaints mechanism does not work because both local and Syrian people are not informed properly? It is almost impossible to know whether “there is a complaint or not, or complainant is sent back, or she doesn’t come at all”, since no inspection is made on the subject of whether or not complaints organizations implement the provisions of law in a healthy manner. Turkey and all complaints and protection mechanisms should back down from the approach of saying “their culture is like this, it is legal in their country” for the status of Syrian women victimized by “child marriages, early marriages, polygamy, forced marriages”; and complaints mechanisms should be strengthened and also both local community and Syrian families, women, girls should be informed by means of detailed protection projects and campaigns to be organized with the other actors, and catch-up work should be performed to enable victims to make their complaint and to guarantee protection following the complaint. Another important issue is to analyze well in which areas women are experiencing what kind of problems. Interviews should be realized with the women in an environment where they feel themselves confident. Problems of the women should be handled with common sense and female employees should be employed in the local administrations, relief agencies and places where health and security services are given. First and foremost decision makers, politicians and

executives should approach refugee women sensitively, and awareness should also be created about the social gender.

Non-governmental organizations should not be restricted only to aids like food and clothes, they should be encouraged for activities to raise awareness of women. Vocational courses should also be organized for women and their adaptation to business life should be facilitated. Opportunity of education should be given to those who are illiterate. In the same way, they should also be encouraged to learn Turkish. Safety measures should be improved especially in places like bus terminals, border gates. Researches give clues that people who force women to prostitute are certain people in certain places. Sensitivity should be displayed about the subject and should put on the abuse of these women by taking the required security precautions. On the other hand, all related official institutions and NGO's should come together and work in coordination to avoid systematic abuse of refugee women by these marriages they conceded because of victimhood.

Rehabilitation of women, who lost their relatives in the clash environment, or anyhow subjected or witnessed to violence, harassment and / or abuse, should be ensured, and psycho-social support systems should be established that are required to assist them to overcome difficulties arising from immigration and this service should be made available also for the refugee women living outside the camp.

Easy access to all health services, especially reproductive health, should be provided. Women should be educated specifically about gynecological diseases and informed about contraception methods. Women who are observed to be somewhat closed to this subject, need support of specialist woman in respect thereof. When the speeches and statements in the media are considered, it is seen that discriminatory, exclusivist, accusatory perception is tried to be created. Adverse effects arising from this situation are seen in the daily life. In the news about women, news that are focused on one problem being polygamy, and Syrian women being second and third wives of Turks and holding Syrians responsible have coverage such as Turkish women losing their husbands to Syrian women. Media should give more coverage to problems of women. News that may provoke women of two communities against each other should be avoided. Additionally, the number of academic researches which raise concern about language used in the media

that creates a distinction on the basis of gender, should be increased and awareness should be raised about the adverse effects of this situation especially on the refugee women.

5 Legislative analysis

5.1 The legal categorisation of forced marriage

Two legal aspects are involved in this matter: human rights violations and slavery-like practice (otherwise human trafficking). In view of this, comprehensive evaluation of this matter commences with the human rights' issue and continues with the appropriate practices of the matter regarding transnational crime terminology, indicating that this matter is not restricted to just one international instrument. The Universal Declaration of Human Rights (UDHR) (Article 16.2) which says, "Marriage shall be entered into only with the free and full consent of the intending spouses". This article may be regarded as the primary measure in managing marriage leading to the reservations of the 1956 Supplementary Convention on the Abolition of Slavery, the slave trade, and institutions and practices which have a similarity to slavery in early marriage, the prohibition of forced marriage in the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

No particular reference to the minimum age for marriage or to child marriage existed prior to 1979. The requirements for a legal marriage are stipulated in the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, and Article 1⁹⁰ which requires that a legal marriage should involve the free and total consent of both parties which should be expressed in person. Nevertheless, Article 2 states the authority to stipulate the minimum age, provided it is not less than 15 years (8). The International Covenant on Civil and Political Rights (ICCPR) accentuates the factors of marriage as "Requiring free and full consent for marriage between men and women of marriageable age, leaving the question of minimum age limitations to each of the parties to the Covenant".⁹¹

The Convention on the Rights of the Child (CRC) makes an important advance regarding children's rights in its improved protection of such rights. This convention is important

⁹⁰ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, adopted 07.11.1962, (entered into force 09.12.1964)

⁹¹ International Covenant on Civil and Political Rights, adopted 16.12.1966, (entered into force 23.03.1976)

because it clarifies the term “minimum age” which it defines as a child under 18 years of age.⁹² When a child is under the care of parents, guardians or other persons, he/she loses the entitlement to be protected for all types of mental or physical violence, abuse, harm, exploitation or mistreatment, inclusive of sexual abuse.⁹³ The convention stresses in Article 30 that children who belong to an indigenous minority shall be entitled to enjoy their own religion and culture. In recent years, attention has been increasingly drawn to forced and early marriage due to number of contributions which include noteworthy civil society worldwide innovations; for example, “Girls not Brides”.⁹⁴

The report of the High Commissioner for Human Rights (OHCHR) published in 2014 and the UN Special Representative of the Secretary-General on Violence against Children stressed that early, forced and child marriage, with its various facts, has an impact upon girls which involves economic, psychological, physical and sexual violence, as well as limitations of their movement.⁹⁵ Child marriage contravenes the rights of victims and destroys their future expectations due to the previously mentioned results of this inhumane practice; for example, early childbearing and termination of education.

There is an important link between slavery and child marriage. Corresponding to this approach and because of the General Assembly and Rights Council resolutions and panel discussions seeking additional consideration of child marriage, the General Assembly passed a resolution on Child, Early and Forced Marriage.⁹⁶

This resolution, which is the primary move against child, forced and early marriage accepts that: “the elimination of child, early and forced marriage should be considered in the discussion of the post-2015 development agenda”.⁹⁷

⁹² Convention on the Rights of the Child, adopted on 20.11.1989, (entered into force 02.09.1990), Article 1

⁹³ Convention on the Rights of the Child, (adopted on 20.11.1989), (entered into force 02.09.1990), Article 19 (1)

⁹⁴ Yıldız, Furkan, ‘The Dark Side of Syrian Refugee Crisis; Childs Early and Forced Marriage in the case of Turkey’, (2017), E-Journal Law

⁹⁵ OHCHR, ‘Preventing and Eliminating Child, Early and Forced Marriage’, (2 April 2014), UN Doc. A/HRC/26/22, OHCHR Session 26 Reports’, available at: <<https://www.ohchr.org/en/hrbodies/hrc/regularsessions/session26/pages/listreports.aspx>>

⁹⁶ Summary report on the panel discussion on preventing and eliminating child, early and forced marriage, Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR), (18.07.2014), UN Doc No: A/HRC/27/34

⁹⁷ Summary report on the panel discussion on preventing and eliminating child, early and forced marriage, Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR), (18.07.2014), UN Doc No: A/HRC/27/34, Concluding Remarks No:23

It was observed by the previous Special Rapporteur thematic report on Contemporary Forms of Slavery published in 2012 that “over the years, however, the idea that forced and early marriages are forms of slavery and, therefore, servile marriage has been lost”, indicating that the association between slavery and child marriage is not stressed by any important application.⁹⁸ Aptel contends that “in most cases, children forced into marriage are subjected to a level of ownership and control that meets the general definition of slavery under the 1926 Slavery Convention”. Slavery and practices associated with it may be regarded as forms of human trafficking as well as relevant international instruments.⁹⁹

Furthermore, forced marriage is among the exploitive areas of human trafficking. Human trafficking was defined by the 2000 United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices like slavery, servitude or the removal of organs.” This generally accepted definition is effectively an agreement on a foundation for counter-trafficking endeavours; for example, the efforts which the European Union and the Council of Europe and many international institutions, both governmental and non-governmental, attempted.¹⁰⁰

Furthermore, because of the requirements enforced by the UN Trafficking Protocol as well as other European and international legal instruments to criminalise human trafficking, this definition has been broadly applied in domestic penal codes.¹⁰¹

The following three component factors of human trafficking are provided by this definition “The Acts” comprises three principal factors; namely criminal, economic and

⁹⁸ Gulnara Shahinian, Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Report on Servile Marriage, (10.07.2012), UN Doc no: A/HRC/21/41

⁹⁹ Cecile Aptel, ‘Journal of International Criminal Justice’, (01.05.2016), Pages 305–325, Volume 14

¹⁰⁰ Roth, V., ‘Defining human trafficking and identifying its victims: A study on the impact and future challenges of international, European and Finnish legal responses to prostitution-related trafficking in human beings.’, (2011), Martinus Nijhoff Publishers.

¹⁰¹ Ibid.

social. “The Means” of trafficking indicates the techniques applied by traffickers to control their victims throughout the procedure from the start to the target. “The Purposes” of trafficking can be described from three different aspects: slavery, exploitation or like practices, and removing organs. Regarding this, I wish to stress that the term “exploitation” does not exclusively involve sexual exploitation, but also includes domestic servitude, forced marriage, bonded or forced labour as well as the exploitation of children for warfare, the sex trade and begging.¹⁰² The concept of “consent” may, at this point, be utilised to recognise the associations between these factors. Furthermore, this concept supplies a method of distinguishing human trafficking from migrant smuggling.

It is useful that the principal topic of differentiation supplied a focus upon the significance of the concept of “consent”. In the case of a child victim of trafficking, the consent is irrelevant, irrespective of whether or not “the means” have been applied.¹⁰³ According to this, there is no indication in the Trafficking in Persons Protocol that the application of “the means” is required to damage or invalidate consent, and summarily, the absence of consent is not a crime factor in human trafficking. Initially, it remains an accepted practice in societies as part of a system or tradition of obtaining financial reward, in which women and girls, against their consent, are forced into marriage by traffickers, some of whom are their own relatives. During the Syrian Refugee Crisis, which is critically examined later in this study, the victims’ fathers sold their daughters into marriage with older but wealthier men. Secondly, no legal instrument exists regarding this matter, which leads to various practices and preventative plans against forced and child marriage between one nation and another. Thirdly, but very significantly, nations, non- governmental and international institutions are unable to inaugurate a powerful connection to examine, criticise, assess and avert this matter and its harmful consequences.¹⁰⁴

Furthermore theoretically, it would be possible to include forced marriage in the Rome Statute as being a distinct crime against humanity. The Rome Statute was the first instance of sexual slavery and other forms of sexual violence being codified as a crime against humanity. However, such an inclusion would need Article 7 of the said statute to be

¹⁰² Ibid.

¹⁰³ United Nations, The Role of ‘Consent’ in the the Trafficking in Persons Protocol, (2014), available at: https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf

¹⁰⁴ Yıldız, Furkan, (N.92)

amended by the Assembly of States Parties. If no consensus is obtained to any proposed amendment by a member state, it is necessary for a vote to produce a two-thirds majority in favour of the amendment.¹⁰⁵

Nevertheless, from a practical viewpoint, in recent years tensions have arisen among state parties, partially because of several African nations seceding from the court or planning to do so. Moreover, because of the nature of forced marriage, it would not be an easy task to attain any consensus on the factors of the crime for incorporation into the ICC Elements of Crimes.¹⁰⁶ Furthermore, the similarity of forced marriage to the arranged marriages which occur in peacetime is relevant since there is a long-established tradition of arranged marriages in several non-European countries.¹⁰⁷ Therefore, it is extremely unlikely that forced marriage can be criminalised due to its similarity to an established and accepted practice.

The fact that difficulties emerge involving forced marriage due to such crime converging with other international crimes is clear. Such crimes stated in Rome Statue include: enslavement, forced labour and torture, as well as sexual crimes such as sexual slavery, rape, forced pregnancy or other forms of sexual violence.

The opinion that forced marriage should be categorised as “another inhumane act” has been challenged by certain legal scholars; for instance, Palmer emphasised ¹⁰⁸that total acceptance of forced marriage will “prevent future tragedies, properly recognise the suffering of the victims and facilitate an examination of the tradition marital union within different cultures across the world” ¹⁰⁹

Consequently, several people have expressed concern regarding the inclusion of forced marriage within the residual clause because it is inadequate and fails to show the multi-layered aspect of the crime.

¹⁰⁵ Rome Statute of the International Criminal Court, (entered in to force on 01.07.2002), Article 7, available at: https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁰⁶ Tanja E.A. Czelusniak, ‘Forced Marriage as a Crime Against Humanity’, (2017), Pluri Courts Research Paper no:17-02

¹⁰⁷ Human Rights Watch, ‘World Report Ending Child Marriage’, (2016) available at: https://www.hrw.org/sites/default/files/world_report_download/wr2016_web.pdf

¹⁰⁸ Palmer, A, ‘An Evolutionary Analysis of Gender-Based War Crimes and the Continued Tolerance of ‘Forced Marriage’, (2009), *Northwestern Journal of International Human Rights*. 7 (1). pp.133-159.

¹⁰⁹ Yıldız, Furkan, (N.92)

5.2 Forced marriage as a human rights issue

It has been proposed that forced marriage constitutes a violation of several principles and morals of international human rights. From the viewpoint of human rights, “Marriage shall be entered upon only with the free and full consent of the intending spouses”¹¹⁰ This implies that where there is no full or free consent to a marriage, it is regarded as a human rights violation.

Article 23 of the International Covenant on Civil and Political Rights (ICCPR) makes an identical statement, as does Article 10 of the International Covenant on Economic, Social and Cultural Rights, and Article 16 of Elimination of all forms of Discrimination against Women and others. It is not only the right of freedom which forced marriage violates, since freedom is denied to women to choose their own partner and to live according to their will. In view of this, it could also be inferred that other associated violations of human rights are connected to marital life dynamics.

Firstly, women are forced into compliance, maybe in a violent way, which according to Article 5 of the declaration contravenes body integrity.¹¹¹ Secondly, women are denied their right to live their lives according to their own desires, particularly when they are children, which means that when they are denied the right to receive both autonomy and education, they are protected by Article 26 of the declaration. Thirdly, if a woman married her husband against her will, it is a reasonable assumption that she has no wish to sleep with him, therefore forced marriages frequently become types of sexual slavery.

¹¹²

Therefore, from many different aspects forced marriage ought to be considered as a violation of human rights. Currently, international law operates on a rudimentary principle-culture basis but ought not to be applied to justify practices regarded as being harmful to persons. It is unsurprising that this working dilemma has been the object of formidable criticism by cultural relativists who, in certain situations, advocate that

¹¹⁰ UDHR, Universal Declaration of Human Rights’, Article 16, (6 October 2015)
<<http://www.un.org/en/universal-declaration-human-rights/index.html>>

¹¹¹ Kaja Moe Winther, ‘Forced Marriages: In a Human Rights and Women’s Rights Perspective, Exemplified through Norwegian and Pakistani Legislation’, (2003), Master Thesis, Norway available at: <<https://www.duo.uio.no/handle/10852/19481>>

¹¹² ‘OHCHR, ‘International Covenant on Civil and Political Rights’ Article 23, available at: <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>

economic and conventional contexts may legitimise practices to the extent that they would certainly appear to contend against people's self-identity within the context where their entitlements are denied. In terms of explaining forced marriages from a religious perspective, there has certainly been intense discussion regarding whether such marriages conform to religious dilemmas and several critics deduced, maybe too quickly, that forced marriage is inconsistent with any religion.¹¹³

5.3 International law instruments on battle against forced marriage

Many principal international institutions accept that the choice of whether or not to marry, or whom to marry, which is so closely linked to self-determination, is a basic human right. Article 16(2)¹¹⁴ of the 1948 Universal Declaration of Human Rights (UDHR) instituted the first requirement that marriage should be undertaken only with both parties' "free and full consent". Soon afterwards this was repeated in many documents having the authority to bind states directly as indicated below:

Article 1(1) of the 1962 Convention on Consent to Marriage, and Article 23 (3) of the 1966 International Covenant on Civil and Political Rights (ICCPR).

In 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 10 (1) applied the more restricted language of "free consent". Marriage rights were considered in more detail (such as status equality in marriage, property rights and rights involving to children) in 1979 by the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in acceptance of the situation in which marriage has been historically a principal site of the social subordination and inferior legal status of women. The language of consent was extended by Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 16 (1) (b) in order to include, "The same right freely to choose a spouse and to enter into marriage only with their free and full consent".¹¹⁵ It would be expected that the forced marriage matter would be a direct part of refugee law structure when one considers how marriage

¹¹³ 'OHCHR, 'International Covenant on Economic, Social and Cultural Rights' available at: <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>

¹¹⁴ UDHR, 'Universal Declaration of Human Rights', Article 16, available at: <<http://www.un.org/en/universal-declaration-human-rights/index.html>>

¹¹⁵ 'CEDAW (Convention on the Elimination of All Forms of Discrimination against Women), Art 16/1 (b), 29th Session 30 June to 25 July 2003' available at: <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>>

has been comprehended within human rights law, A refugee, according to international law, is a person who has a justifiable fear of persecution due to his/her nationality, religion, race, membership of a specific group or of a particular political opinion, resides outside his/her native country. This also applies when a person is unable (or as a result of this fear) or unprepared to receive the protection of that nation; or who being stateless, resides outside his/her former habitual residence due to such a situation is unable or because of such fear, is unwilling to return to it.¹¹⁶

Consequently, 'surrogate' protection is given by international refugee law for persons whose native country is unable or unwilling to protect them from some kinds of harm. The principles make it clear that countries will not be required to adhere to the standards of protecting their citizens from every contravention of international human rights law; furthermore, certain violations involve persecution while others do not. Refugee law and international human rights law differ in the protection they offer; therefore, such protection ought to be connected to and understandable in international human rights' standards.

Both first and second level rights can be defined as those articulated in the UDHR, and their inclusion in the ICESCR and the ICCPR make them binding. The following non-derogable rights are included in the first level: the right to be recognised as a person in law, freedom of thought, conscience and religion, protection from torture and cruel, inhuman and degrading treatment, freedom from slavery and freedom from arbitrary deprivation of life. The second level, which concerns us in this paper, involves derogable rights which apply only in situations of national emergency; for example, rights to marriage, family life, privacy and freedom from arbitrary arrest or detention. Any violation of the first level and non-emergency or prejudiced violations of the second would usually be considered to involve persecution. Therefore, agreement with forced marriage ought to be distinctly comprehended as harm as a result of persecution. Furthermore, forced marriage (in a situation of abduction by military personnel in

¹¹⁶United Nations High Commissioner for Refugees, (UNHCR) 'Refugee Protection: A Guide to International Refugee Law (Handbook for Parliamentarians)', (2017), No:27, available at: <<http://www.unhcr.org/publications/legal/3d4aba564/refugee-protection-guide-international-refugee-law-handbook-parliamentarians.html>>

wartime) has recently been accepted in international humanitarian law as being an “inhuman act” which is independent of sexual slavery and sexual assault.¹¹⁷

The national interpretations of different nations regarding whether forced marriage is regarded as persecution, typically differs. However, the minimum international human rights standards are clarified by several treaties, agreements and international reports, and any breach thereof would be considered as a serious human rights violation and therefore, in accordance with the 1951 Convention as persecution.¹¹⁸

Furthermore, international human rights instruments stipulate that forced marriage is prohibited as similar stated in the UNHCR (United Nations High Commissioner for Refugees,) general guidance.

Two of the initial twentieth-century universal multilateral human rights documents are the Universal Declaration of Human Rights (*UDHR*), together with its partial codification in the binding International Covenant on Civil and Political Rights (ICCPR) specifically accept that the right to undertake marriage is only with the complete and free agreement of both parties (UDHR ART 16 (2), ICCPR art 23[3]).¹¹⁹

In 1979, the UN General Assembly adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the aim of which was to unite several international women’s rights recommendations and conventions into one international document. This convention supplied an international bill of rights for women which endorses the principles of the Universal Declaration of Human Rights.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly provides that both men and women shall have “the same right freely to choose a spouse and to enter into marriage only with free and full consent”.

According to NGO Shadow Report about situation of the violence against women in Turkey to CEDAW Committee on July 2016¹²⁰ “one of the greatest issues, which deepens

¹¹⁷IRIN, Sierra Leone: “Forced marriage”, (26.02.2009), conviction a first, Refworld, available at: <http://www.refworld.org/docid/49ab9a121a.html>

¹¹⁸ Heaven Crawley, T Lester, ‘Comparative analysis of gender-related persecution in national asylum legislation and practice in Europe’, (2004), UNHCR, Evaluation and Policy Analysis Unit

¹¹⁹UDHR, Universal Declaration of Human Rights, Art 16, available at: <http://www.un.org/en/universal-declaration-human-rights/index.html>

¹²⁰ Ngo Shadow Turkey Report on 7th Periodic Review, (N.50)

the education and health problems of rural women, is early and/or forced marriages. In 2014, a total of 17,031 families have filed for “permission for marriage” cases for children under the age of 18 to get married. According to the Turkish Statistics Institution, 3,364 girls have given birth before the age of 15 between the years 2009-2014 and 151,727 have been recorded as giving birth between the ages of 15-17.”¹²¹

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee considered the seventh periodic report of Turkey (CEDAW/C/TUR/7) on 13 July 2016.¹²² Issues on law, education, political life and decision-making mechanisms, employment, health, violence against women and women refugees are addressed individually in this report. Accordingly, developments in legal reforms including Turkey’s position of being hosting country for Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) adopted by the Council of Europe in Istanbul in April 2011 and of signing said convention as well as adopting of Law to Protect Family and Prevent Violence Against Women Law No. 6284 in 2012 are all welcomed. It is said that Law to Protect Family and Prevent Violence against Women Law No. 6284 has been adopted in 2012 however it is also stated with higher concern that this law does not consider domestic violence as a crime and no provision is included in this law regarding taking legal action against domestic violence offenders and punishing these offenders. It is also observed that there are higher concerns about many women being killed by their spouses or ex-spouses or husbands or other family members.¹²³

Protection orders are rarely applied and followed improperly, as a result gender-based violence against women mostly escalates or women are killed in such cases.

Violence incidents being rarely reported due to fear of stigmatization and retaliation, economic dependency to offender, lack of knowledge about legal rights, language barriers and/or feeling of insecurity before law enforcements.

¹²¹ Türkiye Nüfus ve Vatandaşlık İşleri Genel Müdürlüğü, ‘Türkiye İstatistik Kurumu, Doğum İstatistikleri, 2014’ (12.04.2015), TİK, sayı:18621
<<http://www.tuik.gov.tr/PreHaberBultenleri.do?id=18621>>

¹²² Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey’, (25.07.2016), UN Doc No: CEDAW/C/TUR/CO/7, available at: <<http://www.un.org.tr/humanrights/attachments/article/9/CEDAW-concluding-observations.pdf>>

¹²³ Ibid.

There is inadequate number of women's shelters with a poor geographical distribution. Searches are carried out at these shelters violating women's rights; women's cell phones are confiscated; entrance and exit hours are limited and victims are usually sent back to their abusive husbands or forced to leave their children and lack of assistance and solution finding ways offered to women who want to escape from their abusive relationships.

Sexual violence offenders including those convicted of raping minors are generally let off and these offenders often get time off for "good behavior" during hearings.¹²⁴

5.3.1. Considerations and recommendations about refugee and migrant women in Turkey by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee

It is highlighted that Turkey has allocated substantial amount of resources to host and meet needs of more than 2.5 million refugees, mainly from Syria. Nevertheless, there is higher concern about dangerous and insecure life conditions suffered by refugee women and girls who are deprived of basic utility services, education, economic opportunities, healthcare services, clothing, food, heating and hygienic products as well as being under risk of sexual violence and other types of violence in and out of refugee camps.¹²⁵

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee underlined that Syrian girls between 15 to 20 ages and young Syrian women face prostitution to meet food and other fundamental needs of their own and of their children. Prostitution increases substantially within regions where Syrian refugee population is high.

Whereas gender-based harassment against refugee women including sexual violence is rarely reported and specialized services are very limited, it is stated that there are higher concerns about refugee women and girls are forced to marry Syrian and Turkish men - most cases involving polygamy - for socioeconomic reasons or for protection purposes.

¹²⁶

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee advised State party to ensure that refugee and migrant women and

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

girl can access to education, healthcare and basic utility services in order to improve safety of refugee and migrant women and girls, increase refugee women and children's accessibility to fundamental services and needs including food, clothing and hygienic products, ensure that they do not experience any sexual or labour exploitation.¹²⁷

Serious advices are given to law enforcement agencies that they should raise awareness of refugees and migrants especially women how sexual harassment and sexual violence victims can access to national application and justice mechanisms to report these crimes by organizing capacity development programs to ensure that national laws including international conventions to which Turkey is a party apply strictly to sexual violence crimes including sexual violence experienced by refugee and migrant women and girls.

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Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee is concerned about permanent barriers against women to access justice in general and not knowing their rights, language barriers against women, rights of minorities, especially Kurdish women and refugee women.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee advises improvement of capacity development and raising awareness programs for all justice personnel in order to eliminate gender roles and include gender perspective to all aspects of justice system in Turkey.¹²⁹

Other issues that the Committee is concerned about are marrying girls by force to end blood revenges in rural and farther areas and continuing traditions such as paying "bride price" for brides in specific regions, reported incidents regarding girls forced to marry their rapist to protect "honor" of their families, significant number of child brides in especially poor rural areas, wider acceptance of these incidents in society and inadequate efforts of Turkey to prevent these incidents and to punish offenders properly. Committee advised State party to take following actions in these cases:¹³⁰

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

To ensure that sales and exchange of women and girls should be deemed as crime, investigated, prosecuted properly and offenders should be sentenced justly in order to settle disputes;

To take required actions to ensure that no abuse or rape victims are married by force including studies on raising awareness and legal acts; to apply child marriage restrictions effectively and to improve studies on raising awareness on harmful effects of child marriage on girls' health and development. ¹³¹

The European Convention on Human Rights (ECHR); was drafted in 1950 and is regarded by many as the “most effective international instrument for the protection” of individual human rights. The European Convention has been ratified by fourthly seven European States and it is generally implemented and respected by those states. Article 3 of the Convention comes closest to addressing a claim of protection for certain classes of persecuted aliens. ¹³²

The article prohibits states from returning anyone to a place where they would be at risk of torture or inhuman or degrading treatment or punishment.

Furthermore, the convention inaugurated the European Court of Human Rights (ECtHR) which it gave jurisdiction over “all matters” regarding the clarification of the convention and its protocols. This organisation has, by means of its case law, considered that forced marriage is a contravention of human rights. In the case of *A.A & Others v. Sweden*, the court conducted a particularly fact-based examination of five forced marriages. ¹³³

It is apparently implied by the decision that if no abuse, physical or otherwise, can be proved then a forced marriage cannot be regarded as persecution, neither does it qualify as a contravention of the European Convention (Article 3) which forbids torture and “inhuman or degrading treatment or punishment”.¹³⁴

The CRC; (1989) is the main international instrument for the protection of children's rights, including all forms of abuse, violence, neglect and exploitation. The CRC obliges

¹³¹ Ibid.

¹³² Martin, Schnably, Wilson, Simon, and Tushnet, (2006), ‘International Human Rights and Humanitarian Law: Treaties, Cases, Analysis’, Cambridge University Press

¹³³ Aisha Gill and Sundari Anitha, (2012), (N.60)

¹³⁴ Catherine Dauvergne and Jenni Millbank, ‘Forced Marriage as a Harm in Domestic and International Law’ 73 *The Modern Law Review* 57.

States to take “all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form” (Article 35) and to “promote physical and psychological recovery and reintegration of a child victim” (Article 39).¹³⁵

5.4. National law instruments and their effectiveness

5.4.1. Turkey’s international obligations of violence against women

The United National Convention concerning the Status of Refugees and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (İstanbul Convention) decides Turkey’s international obligations concerning the rights of asylum seekers and refugees.¹³⁶

Asylum seekers could be given international protection according to their status as refugees or conditional refugees, provided that they satisfy all the appropriate requirements. This is in accordance with Turkey’s geographical restriction regarding the UN Convention depending on whether events in Europe or elsewhere lead to persecution. Turkey’s international legal obligations under the UN Refugee Convention conflicts with the provisional Article 1 of the Temporary Protection Regulation (this Regulation is prepared on the basis of Article 91 of the Law No. 6458 on Foreigners and International Protection of 4/4/2013) which absolutely forbids all Syrians from applying for indefinite international protection, since Turkey’s constitution states that “the fundamental rights and freedoms in respect to aliens may be restricted by law compatible with international law”.

According to Article 1 of the Temporary Protection Regulation:

“The objective of this Regulation is to determine the procedures and principles pertaining to temporary protection proceedings that may be provided to foreigners who were forced to leave their countries and are unable to return to the countries they left and arrived at or crossed our borders in masses to seek urgent and temporary protection and whose international protection requests cannot be taken under individual assessment ; to determine proceedings to be carried out related to their reception to Turkey, their stay in

¹³⁵ Dildar F Zebari, (n 57).

¹³⁶ Council of Europe Convention on preventing and combating violence against women and domestic violence, ‘İstanbul Convention’, CETS No:210, entered into force 1 August 2014, available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210>

Turkey, their rights and obligations and their exits from Turkey, to regulate the measures to be taken against mass movements and the provisions related to the cooperation between national and international organizations under Article 91 of the Law No. 6458 on Foreigners and International Protection of 4/4/2013.”

Provisional Article 1 is inserted by Article 1 of the Temporary Protection Regulation of January 2016 which underlines that;

“The citizens of the Syrian Arab Republic, stateless persons and refugees who have arrived at or crossed our borders coming from Syrian Arab Republic as part of a mass influx or individually for temporary protection purposes due...”

More clearly Provisional Article 1 of Temporary Protection Regulation contains a phrasing which in practice is interpreted by border officials as a requirement for prospective beneficiaries to arrive “directly from Syria”, as opposed to travelling to Turkey from or via a third country.¹³⁷

The provision shows that persons who “arrive in our borders” or “have crossed our borders”, whether “individually” or “as part of a mass movement of people”. As such, it actually does not articulate a clear requirement of arriving directly from Syria at all. A person taking a plane from a third country and landing in a Turkish airport may be perfectly understood to have “arrived in our borders” “individually”. Since 8 January 2016, however, Turkey no longer operates a visa-free regime for Syrians who enter by sea or air. The imposition of visa requirements for persons coming by sea or air has been combined with strict enforcement of Provisional Article 1 Temporary Protection Regulation. Accordingly, Directorate General of Migration Management (DGMM) only admits into the temporary protection regime Syrians who arrive “directly from Syria.”¹³⁸

Furthermore, according to Article 16 of the Turkish Constitution;

“The fundamental rights and freedoms in respect to aliens may be restricted by law compatible with international law.”

There ought to be debate on the constitution of the provisional Article 1 of the Temporary Protection Regulation regarding the principle of Article 16 for the purpose of determining

¹³⁷ Refugee Rights Turkey, ‘Country Report: Turkey’, (Dec 2015), by: European Council on Refugees and Exiles (ECRE)

¹³⁸ Ibid.

if this limitation is consistent with international law and if it can be regarded as a limitation legally enacted, since it occurs in a regulation.

In the course of assessing the compatibility of provisional Article 1 with Turkey's responsibilities according to the Council of Europe Istanbul Convention, the principal concentration ought to be on Article 60 of the Convention which states that parties "take necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection." Furthermore, it stipulates that parties ought to guarantee the provision of a gender-sensitive interpretation to each of the reasons summarised in the 1951 Geneva Convention and "that where it is established that the persecution feared is for one or more applicable relevant instruments".

Nevertheless, according to provisional Article 1 of the Temporary Protection Regulation, Syrian refugees are absolutely forbidden to apply for international protection without any previous assessment as to whether they encounter gender-based violence, which is interpreted by the 1951 Convention as persecution. This is clearly a violation of Article 16 of Turkey's Constitution and of Article 60 of Istanbul Convention.

According to the Article 60 of the Istanbul Convention:

"1. Parties shall take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of Article 1, A (2), of the 1951 Convention relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection.

2. Parties shall ensure that a gender-sensitive interpretation is given to each of the Convention grounds and that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments.

3. Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum seekers as well as gender guidelines and gender-sensitive asylum procedures, including refugee status determination and application for international protection." (Istanbul Convention, Article 60, Council of Europe, 12.04.2011)

The basic freedoms and entitlements regarding aliens may, in accordance with Article 16 of the Constitution, be restricted only by law. It is contended by commentators that the expression “law” ought to be understood broadly as being inclusive of secondary legislative rules and direction as produced by the executive, but exclusively in situations where secondary legislation discovers distinct support within primary legislation.¹³⁹ In accordance with this, the executive’s discretionary power for governing the rights of foreign persons in Turkey is restricted to the implementation of the Foreigners and International Protection Law. All foreigners who meet the requirements as stipulated in the relevant provisions are permitted by this law to exercise the right to apply for international protection. However, persons who arrive from Syria after a specified date are forbidden by provisional Article 1 of the Temporary Regulation to have this right. Since this imposes a limitation not based upon the Law on Foreigners and International Protection, it violates Article 16 of the Constitution.

Since Turkey is involved in the Syrian conflict, it ought to be regarded as a political strategy of the Turkish Government that Syrian refugees are being indefinitely retained in the temporary protection regime. Syrian refugees who are detained in this temporary protection regime are compelled to accept the conditions since their residence period in Turkey is entirely dependent upon the government. It is manifestly demonstrated by the Temporary Protection Regulation that the Council of Ministers has the discretion to operate the temporary protection regime. Article 9 of the Temporary Protection Regulation stipulates that “The temporary protection decision shall be taken by the Council of Ministers upon the Ministry’s proposal.”

According to the Article 9 of Temporary Protection Regulation; “Temporary protection decision shall be taken by the Council of Minister upon the Ministry's proposal.”

The Council of Ministers has the sole power to determine: who will be provided with temporary protection; the effective date and duration of such protection if regarded as being necessary; the requirements for the broadening and termination of this protection; and if it will be introduced throughout the country or in a particular locality. The

¹³⁹ Çelikel, A., & Gelgel, G., (March 2011), ‘Law of foreigners’ İstanbul

Temporary Protection Regulation gives the Council of Ministers much discretionary authority, a situation of which Turkish commentators are critical.¹⁴⁰

As many as 70 percent of Syrian refugees residing in Turkey (UNHCR-United Nations High Commissioner for Refugees, 2017) trapped in the temporary protection regime are women and children. The Temporary Protection Regulation and the Foreigners and International Protection Law guarantee that as well as acknowledging the dependency of women, such dependency is legally enforceable. A woman is regarded by these two legislative instruments as being a dependent person as a “mother” or a “wife” or as being victimised or vulnerable, and placed in a specific classification such as “persons with special needs”, “pregnant”, “alone with children” or a victim of sexual or physical violence.¹⁴¹

From another perspective, although women are considered by legal principles as being a vulnerable group, such a gender-based classification indicates that the law is failing to produce frameworks which will satisfactorily reduce or avert abuse. Law and regulation give priority to certain “vulnerable” women in the “persons with special needs” category by giving them access to several rights. Nevertheless, such “vulnerability” gives only restrictive benefits’ regime, and it remains impossible for these “victimised” women to cross this regime’s borders to receive international protection.

It is specified by the Foreigners and International Protection Law (Law No. 6458, Date of Adoption, 04.04.2013) (Article 67) that there be provision of satisfactory treatment for victims of sexual assault, torture or other forms of sexual or physical violence for the purpose of removing the harm which such actions cause.

According to Article 67 of the Foreigners and International Protection Law (Law No. 6458, Date of Adoption, 04.04.2013)

“Persons with special needs;

(1) Persons with special needs shall be given priority with respect to the rights and actions referred to in this Part.

¹⁴⁰ ‘Kibar, E. D., (2013), ‘An overview and discussion of the New Turkish law on foreigners and international protection’, Perceptions, ProQuest

¹⁴¹ United Nations High Commissioner for Refugees, ‘Refworld, Turkey: Temporary Protection Regulation’ (Adop. Date: 22.10.2014), Rel Doc.Turkey: Law No. 6458 of 2013 on Foreigners and International Protection, available at: <<http://www.refworld.org/docid/56572fd74.html>>

(2) Adequate treatment shall be provided to victims of torture, sexual assault or, other serious psychological, physical or sexual violence, in order to eliminate the damage caused by such actions.”

Furthermore, the Temporary Protection Regulation, (Article 48 [3]) states that “Preventive and protective measures shall be immediately taken for foreigners who are identified to be victims of violence pursuant to Law No. 6284 on Protection of the Family and Prevention of Violence Against Women.” Law 6284 stipulates that the international agreements, particularly the Council of Europe Istanbul Convention (Article 1 [2]) to which Turkey has consented, shall prevail as the basic criteria required to be observed within its enforcement. Therefore, Article 48(3) of the Temporary Protection Regulation inserted into the light of the specific reference in Law 6284 to the Istanbul Convention introduced the requirement for the Turkish authorities to apply the aforementioned Convention Article 69, which holds a single paragraph and explains that where needed, GREVIO will adopt general recommendations towards the implementation of the Convention.

As it is mentioned above it is stated in the Temporary Protection Regulation Article 48 (3);

“(3) Preventive and protective measures shall be immediately taken for foreigners who are identified to be victims of violence pursuant to Law No. 6284 on Protection of the Family and Prevention of Violence Against Women dated 8/3/2012.” And according to the Article 1 (2) of the Istanbul Convention;

“1(2) In order to ensure effective implementation of its provisions by the Parties, this Convention establishes a specific monitoring mechanism.”

5.4.2. The Law and its effectiveness on forced marriage in Turkish legal system

Firstly, an explanation is given of the basic summary of the Temporary Protection which defines Syrian refugees’ (in Turkey) status; secondly, whether the Temporary Protection Regulation contains any plan to protect forced marriage of Syrian women and girls will be addressed. Thirdly, consideration will be made regarding which laws in the Turkish legal system address these matters.

Since the residence of refugees in Turkey is at the exclusive discretion of the Turkish Government, Syrian refugees who are detained in the temporary protection regime are

compelled to accept the conditions. It is distinctly shown by the Temporary Protection Regulation which is prepared on the basis of Article 91 of the Law No. 6458 on Foreigners and International Protection of 4/4/2013 and is operated by the Council of Ministers autocratically.

As it is mentioned above, Article 9 of the Temporary Protection Regulation emphasises that “The temporary protection decision shall be taken by the Council of Ministers upon the Ministry’s proposal.”

Furthermore, Article 10 stipulates that the Council of Ministers possesses exclusive authority to decide: whom the temporary protection will cover; the effective date and duration of the temporary protection if required; the conditions for the extension and conclusion of the temporary protection; also, if the temporary protection will be introduced in a particular area or nationwide.

As mentioned before, the Temporary Protection Regulation and the Foreigners and International Protection Law (Law No. 6458, Date of Adoption, 04.04.2013) guarantee that as well as acknowledging the dependency of women, such dependency is legally enforceable. A woman is regarded by these two legislative instruments as being a dependent person as a “mother” or a “wife” or as being victimised or vulnerable, and placed in a specific classification such as “persons with special needs”, “pregnant”, “alone with children” or a victim of sexual or physical violence.¹⁴² From other perspective, although women are considered by legal principles as being a vulnerable group, such a gender-based classification indicates the law is failing to produce frameworks which will satisfactorily reduce or avert abuse. Law and regulation give priority to certain “vulnerable” women in the “persons with special needs” by giving them access to several rights. Nevertheless, such “vulnerability” gives only restrictive benefits’ regime, and it remains impossible for these “victimised” women to cross this regime’s borders to receive international protection.

Turkey’s legal structure has no general definition of the issue of child marriage. The “child bride” definition varies according to several laws.

¹⁴² Temporary Protection Regulation, (Date of Adoption 22.10.2014), related with Foreigners and International Protection Law (Law No. 6458, Date of Adoption, 04.04.2013), available at: <http://www.refworld.org/docid/56572fd74.html>

However, Article 11 of the Turkish Civil Code (Law No. 4721 date of acceptance 22.11.2001) stipulates the lawful age is 18, which is the age of majority.¹⁴³

The legal age for marriage has been increased to 17 by Article 124 of the Civil Code (Law No. 4721, Date of acceptance 22.11.2001) for both men and women; nevertheless, this article permits marriage at the age of 16 when a court gives consent in “exceptional circumstances”.

According to the Article 124 of the Turkish Civil Code:

“The provision on the legal age of marriage, which was 17 for men and 15 for women, has been replaced with 17 years of age for both men and women.”

Article 104 of the Turkish Criminal Code (Law No. 5237, passed on 26.09.2004) stipulates that “any person who has sexual intercourse with a child, who has reached the age of 15, without applying fraud, threat or force is sentenced to a prison term of between six months and two years upon filing a complaint.”¹⁴⁴

Article 104 of the Turkish Criminal Code is; (Law No. 5237, passed on 26.09.2004);

“(1) Any person who is in sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud is sentenced to imprisonment from six months to two years upon filing of a complaint.

(2) If the offender is older than the victim more than five years, the punishment to be imposed is doubled without seeking raise of a complaint”

In addition to these, according to the Juvenile Protection Law (Law No. 5395, adoption date 03.07.2005), child is anyone under the age of 18.¹⁴⁵ Minors are considered as being those incapable of completing their emotional, moral, physiological, psychological and sociological development, and are at risk of abuse and violation. Various difficulties can arise as a result of the different legal practices; for example, provided that there is no

¹⁴³ Turkish Civil Code, (Law No. 4721. Text updated Law No. 4963, Date of Adoption 22.11.2001), available at: http://www.tusev.org.tr/usrfiles/files/Turkish_Civil_Code.pdf

¹⁴⁴ Turkish Criminal Code, (Law No. 5237. Date of Adoption 26. 09.2004), available at: <http://www.wipo.int/edocs/lexdocs/laws/en/tr/tr171en.pdf>

¹⁴⁵ Juvenile Protection Law (Date of Adoption 03.07.2005), Law No. 5395, available at: <http://www.lawsturkey.com/law/juvenile-protection-law-5395>

coercion or force, a girl may marry sociologically (but not legally) and the spouse incurs no penalty where is no complaint.¹⁴⁶

The age-related contradictions in the aforementioned laws ought to be resolved by Turkey, since it is known that these matters concern not only legal controversies, since traditional and legal facts can have greater influence than legal norms.¹⁴⁷ Regarding forced marriage, Turkish Civil Code (Law No. 4721, Date of acceptance 22.11.2001) Article 149 stipulates that a person is entitled to apply to a court to end the marriage; however, Article 152 states that the application must be made in specific time:

Article 152, "Right of filing an action for annulment, expires by being elapsed six months commencing from the date of discovery of ground of annulment or the date on which influence of fear vanished and in any case five years from getting married"

There are no specific rules regarding forced marriages, except for the two legislative regulations.¹⁴⁸

6. Conclusion

Forced marriages, child marriages, polygamy marriages, religious marriages, domestic violence, gender-based violence continues to be Turkey's most important problem for many years and continues to increase.

Syrian women living in Turkey in particularly women and girls who are forced to marry, the root of the problem arises from Turkey's general perspective towards women and deficiencies and inadequacies in legal arrangements. This has caused many Syrian women and girls to become victims. Another reason is "protection of refugee women" which Turkey has not placed the problem amongs the priorities of refugee crisis. Over the past 7 years Turkey's direction of the overall solution of the problems experienced by the victims of a crisis has been to "eliminate the basic needs".

Ignorance of law makers and practitioners, and there are serious problems in accessing judicial mechanisms and protection mechanisms are among the most important reasons

¹⁴⁶ Flying Broom, 'Early Marriages Policy Note, Flying Broom', (15.11.2012), Local Periodical Publication, Ankara, p.8.

¹⁴⁷ Kadın ve Demokrasi Derneği, 'Erken Yaşta ve Zorla Evliliklere Karşı Mücadele Çalıştay Raporu', (18.03.2014), KADEM, available at: <<http://kadem.org.tr/erken-yasta-ve-zorla-evliliklere-karsi-mucadele-calistay-raporu/>>

¹⁴⁸ Ibid.

for not being effectively Syrian refugee women being protected. In particular, Syrian women have serious problems with respect to accessing justice system. These includes, language, discrimination, unable to report the situation, effective protection and reaching legal aid. The language problem is especially vital for the asylum-seeking woman to be able to describe the problem to the relevant security units. Solutions offered by the security units to the family members for problems of Syrian women and girls' in domestic situations are for the family members to resolve the situation and to send both parties back home without offering the legal/justice system and this causing great obstacle.

I have contended in my thesis that by the Turkish legislation female Syrian refugees are targeted by many and mutually increasing types of violence. Regarding this I have demonstrated that such 'legal violence' exercised in the temporary protection regime, occurs because this set of rules place the Syrian refugees as outlaws in a sector in which the Turkish Government has suspended legal guarantees. Even the Turkish constitution, which could protect female Syrian refugees who in many situations encounter violent abuse by various perpetrators, is ineffective as a result of legal inaction. Indeed, no action has been taken by prosecutors, who do not investigate the extensive criminal activity consisting of 'selling' Syrian girls and women, nor their exploitation in sexual and other labour sectors. Governmental inaction encourages and supports the stance of the prosecutors, in that it takes no steps to manage these matters.

It is only when refugees refuse to work under the aforementioned conditions and turn to begging that the public authorities intervene, compelling them to go to the camps. In the temporary protection regime, which appears to be inconsistently administered by executive actors, the regulations are established in conformity with the requirements of the Turkish Government's varying policy regarding Syria. In addition, they follow to the requirements of the Turkish market that requests a more adaptable labour force. The future of Syrian refugees in Turkey is largely influenced by the domestic political disruption: their length of stay is entirely dependent upon the government's preference. Despite what the EU-Turkey Agreement assumes, Turkey is not a 'safe' country for Syrian female refugees.

This is also underlined in the concluding observations by the CEDAW Committee on the 7th Periodic Report of Turkey.¹⁴⁹ The Committee recommended Turkey to take an urgent action on the refugee women issues and assure that projects in this field do not focus only on the basic needs of women, but also on protection measures to ckle sexual and labour exploitation and early and/or forced marriages etc.). Empowerment of Syrian refugee women should be one of the fundamental principles in order to ensure a smooth integration processes, better life quality as well as voluntary returns to Syria. Work focusing on education, employment and psycho-social support would be very helpful. Fast/efficient investigation and prosecution of crimes (women trafficking, underage marriages, children's sexual exploitation etc.) against Syrian women refugees is urgently needed.

In addition to the CEDAW Committee recommendations, Turkey, which has the largest refugee population should take into consideration some other points.

The government should accept and acknowledge the violations of human rights. To protect the potential victims, it needs to establish legal and policy tools. The government should support such policies with public awareness campaigns for Turkish and Syrian communities alike. The government should benefit from the field experience of the NGOs to help, protect and rehabilitate the forced marriage victims.

Efforts should be made to remove the difficulties of victims in reaching the justice system. Besides, practical and useful information should be given, especially to refugee women and girls, in order to ensure that personnel from institutions such as police, local governments, immigration staff, especially from institutions which are necessary to reach the judiciary, receive training. Institutions dealing refugee women's rights should also be regularly and closely supervised by international monitoring mechanisms and requested to prepare regular reports on the subject from member states and stakeholders.

Under the heading of women protection, working groups should be formed especially in the fight against forced marriage; the problem should be correctly contextualised and solutions should be produced.

¹⁴⁹ Committee on the Elimination of Discrimination against Women, Concluding observations on the seventh periodic report of Turkey', (25.07.2016), Un Doc No: CEDAW/C/TUR/CO/7, available at: <http://www.un.org/humanrights/attachments/article/9/CEDAW-concluding-observations.pdf>

As regards the Syrian crisis, Turkey and the EU should work jointly to extend the necessary funding to ensure the accessibility of civil and social rights in Turkey. It is important to note that some of the funds that facilitate access to these basic rights should be employed in the fight against forced marriage: public awareness campaigns, women's protection houses, interpreters in the relevant complaint centres, and women trained in this area, especially refugees and immigrants. Seminars and brochures should be prepared so that the support of the local administrations and the Syrian women living in all corners of the country are informed in detail in order to not be of forced marriage victims.

Whether it is an early marriage or a child marriage or forced marriage, the wedding is performed by religious officers and religious men because official marriages cannot take place. The religious officers who have a significant say in both Turkish and Syrian societies, should especially work on this issue and should inform the public about this problem and advise that it is a crime; they must be informed of the fact that the families involved and their marriage partners are committing a crime. The preachers who witness such marriages, and do not fulfil their obligation to report the facts should be charged according to the criminal law. In these regards, Turkey needs to consider further steps to prevent this crime and to protect minor and forced victims. In addition to these measures, Turkey should highlight the moral sides of the issue.

Law enforcement officials' perception and public perception with the Government's training programs for government agencies and awareness raising campaigns for society may reduce the number of victims.

Last but probably the most important is that the Government has to admit that forced marriage is a crime and a slavery-like practice that ruins the dreams, expectations and honours of not only adult female victims but also children.

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