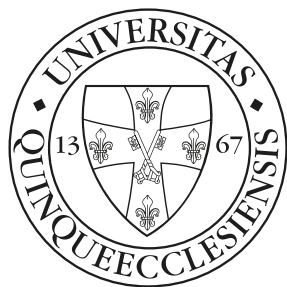


# JURA

A Pécsi Tudományegyetem Állam- és Jogtudományi Karának tudományos lapja



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24. évfolyam  
2018. 2. szám

# JURA

a Pécsi Tudományegyetem Állam- és Jogtudományi Karának  
tudományos lapja

2018. 2. szám

HU-ISSN 1218-0793

**Felelős kiadó:** Dr. Fábián Adrián dékán

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**Helyreigazítás:** A JURA 2018/1. lapszámában Rónay Zoltán írásának címe – tördelési hiba miatt – tévesen jelent meg; a kutatócsoport neve is a címhez került. A helyes cím: „Ob die ethische Führung und die Rechtsstaatlichkeit sich treffen können? Der Eingriffspunkt der Sozialpsychologie und der Rechtswissenschaft im Hochschulwesen”. A Szerző elnézését kéri a szerkesztőség.

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 SZTE ÁJTK

## **Do not steal my childhood – or how to regulate the child marriage phenomenon through international law\***

### **Introduction**

Many cultures handle children in a different way than adults because they are of the opinion that children are less valuable. Under their belief, children deserve fewer rights than adults. I cannot agree with this mindset. Along with many children rights experts, I am convinced that children as human beings deserve the same rights as adults, with the exception that they have additional rights due to their special legal status, which based upon their age, e.g. right of the child to engage in play, right to care etc.

In the past few decades, the phenomenon of child marriage has received more attention because more experts are dealing with this topic and more studies and research have been published.<sup>1</sup> On 19<sup>th</sup> December 2016, the Assembly of the United Nations (hence UN) adopted the 71/175 “Child, early and forced marriage” resolution, in order to call the international community’s attention to the child marriage issue. Despite all of the increased attention, the global numbers of the child marriages do not show any decrease.<sup>2</sup>

Taking into consideration the fact that the “victims” of the child marriage, could be girls and boys as well, still, the girls are most certainly suffering from this phenomenon. Con-

sidering this, and the frame of the study, I will focus on the girl’s child marriage. The aim of my study is to provide a comprehensive overview of the international situation of the child marriage issue, focusing on the practical approach. As an introduction, in order to establish the academic foundation of my study, I will deal with the definition of the child marriage phenomenon, and I will present the connection and the correspondence with the early and forced marriage. The second part of my study deals with the reasons for the child marriage. The international community should take actions against these reasons, for example, gender inequality, poverty, harmful practices, and lack of education, as soon as possible.

Furthermore, I will present the connection between cultural practices, local beliefs, and the phenomenon of child marriage, through cases. As a conclusion, I introduce some proposed recommendations, which were developed with the cooperation of the academic and practical area. Some of the recommendations are functioning as pilot programs in few countries.

The aim of my research is to reveal those tools which could drastically decrease the number of child marriages, and could extinguish the phenomenon in the near future. For that reason, I try to establish a definition of this issue, which could provide a solution to the gap of the present definitional problems. In my opinion, such a complex definition recommendation of this study would be helpful for future legislators and hopefully could decrease the number of child marriages.

### **1. Similarities and differences of the child/early/forced marriage definitions**

At first sight, the expression of child marriage sounds extremely ambivalent, because when we hear the word child, we are thinking about a young person who is playing with a doll or Lego blocks. On the other hand, when we imagine a marriage, we assume it is a connection between two adults, who are in love. This creates the question, why is it acceptable in some cultures that a 12-15 year old girl, who

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\* This research was supported by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.

should play with her friends, is already pregnant with her baby, and keeps a common household with her husband?

Olga Voinarevich showed in her study that child marriage is not a new phenomenon. She used an extraordinarily expressive metaphor, namely a 17<sup>th</sup> century fairy tale, to prove that the child marriage always existed in our society; however, this fairy tale was adapted to a romantic story, which is used by parents as a bedtime story for the kids. The tale is the following: „*a young princess who was raped by a stranger in her sleep and subsequently gave birth to two children while still unconscious. After awakening, the princess realized that she was a mother and a wife-to-be of the man she had never met before and with whom she was destined to end her happily ever after.*”<sup>3</sup> If we focus on the definition of child marriage, we realize, it is a compound word, with both words having their own meaning. Before I discuss the concept of child marriage, first, it is worthwhile to analyze the words child and marriage separately.

First, I focus on the definition of children. The Article 1 of the Convention of the Rights of the Child (hence CRC) defined the word, children. “[C]hild means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”<sup>4</sup> The Convention set up an age limit, eighteen years, and from this age, every human considered as an adult. However, not only that person could be an adult, who is eighteen years old, but also those, who attained majority earlier. For instance, in our country, the Civil Code defined that in some cases, a sixteen year old person with the consent of the guardian authority could enter into marriage, and due to the marriage become an adult in legal sense.

In addition to marriage, CRC deals with other conducts, which are characteristic for the adulthood. The Article 38 of the CRC regulates the recruiting of a child. It provides “*who have not attained the age of fifteen years do not take a direct part of hostilities.*”<sup>5</sup> Consequently, those children who are between 15-18 years could be recruited into armed forces.

Unlike marriage, recruited children would not become adults, as a result of their direct participation in an armed conflict, even if being part in a war, revolution, *prima facie* seems an adulthood conduct. Regarding those persons, who are below the age of eighteen, but considered as an adult, due to the second part of the definition of the child, the provisions of the CRC are not applicable to them, including the particular care to the child. For example, in a country which ratified the CRC, if the family endowed their twelve year old daughter, the provisions of the Convention, which provide special care and protection to the child, are not applicable in this case. In my opinion, this is really inconsistent, because those girls, who need the most help and legal protection, are out of the scope of the CRC. Following the definition of the child, we now focus on the concept of marriage.

Marriage is a connection, a bond, which was established under the spouses’ free and bilateral consent. The Article 16 of the Universal Declaration of Human Rights discusses marriage. The first paragraph declares that men and women “*entitled to equal rights as to marriage, during marriage and at its dissolution*”, while the second paragraph says that “*marriage shall be entered into only with the free and full consent of the intending spouse.*”<sup>6</sup> This clearly describes that “*marriage is typically associated with joy – a dream come true for two consenting adults who decide to embark on life’s journey together.*”<sup>7</sup>

These free, joyful, and full intentions to marry are missing in most child marriages. Therefore, the crucial question arises, could we even speak about marriage at all, when these significant conditions are missing?

Following these definitions, which are an essential part of this study, I will focus on the conception of child marriage. There are several definitions which deal with this issue. In the interpretation of the UN “*child marriage refers to marriage where at least one of the parties is under the age of eighteen.*”<sup>8</sup> Nwimo and Egwu use the same definition in their study, with the difference that they are referring to the child and early marriage as synonyms to each oth-

er.<sup>9</sup> Another concept, which is similar to the above mentioned one, says “*formal marriage or informal union before age 18.*”<sup>10</sup>

In my understanding, the UN and the authors were reticent about this concept, because they did not pay attention to those cases when the child attained his or her majority earlier. Under the interpretation of those definitions, marriages, which are entered into force with the consent of the guardian authority, like in Hungary, could not be treated as formal marriages.

In Voinarevich’s study, the following definition was introduced „*child marriage is a marital union with a child who has not yet reached the age of majority.*”<sup>11</sup> In her study, she mentioned that „*there is no uniform agreement among the nations as what age constitutes the age of majority*”<sup>12</sup>, so this concept has its deficiencies. Early marriage phenomenon was mentioned above, as a synonymous conception of the child marriage, in some cases, but this legal institution is also necessary to be defined.

In April 2014, Office of the United Nations High Commissioner for Human Rights published a Report with the title „*Preventing and eliminating child, early and forced marriage*”. In the interpretation of the Report “*early marriage is often used interchangeably with “child marriage” and refers to marriages involving a person aged below 18 in countries where the age of majority is attained earlier or upon marriage. Early marriage can also refer to marriages where both spouses are 18 or older but other factors make them unready to consent to marriage, such as their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person’s life options.*”<sup>13</sup> This definition divided the institution of early marriage into two areas. The first strengthens the academic point of view that the child and early marriage are synonymous concepts. It says that early marriage is when the spouse(s) is below eighteen years old or did not reach majority earlier. The second part of the definition focuses on that part of the early marriage, when the spouses are at least eighteen years old, but other factors, e.g. mental deficiency, makes them unable to give consent to marriage, which meets

the conditions demanded by law. For that reason, it is important to pay attention, because in some cases using the child and early marriage as synonyms, could lead to misunderstanding.

At this point, it worth mentioning forced marriage, since most of the child marriages are also forced marriages.<sup>14</sup> “[F]orced marriage is a marriage without free and full consent of the intended spouses.”<sup>15</sup> Kopelman declares in her study that the consent requires three necessary conditions: informed, competent, and voluntary.<sup>16</sup> Furthermore, she defined the definition of lack of consent. Lack of consent to a marriage has two different types. One is when one or both spouse(s) “do not give consent because they object to the marriage”, and the other is when they cannot give consent because they are too young, disabled, or otherwise incapable of giving informed, competent and voluntary authorization to a marriage contract.”<sup>17</sup>

A variety of ways exist to force people to marry. For example, kidnapping, physical violence, death threat, emotional blackmail, where a girl who refuses to marry is told a younger sister must take her place, deception etc.<sup>18</sup> The above-mentioned Report of the Office of the United Nations High Commissioner for Human Rights established an exceptionally complex definition of forced marriage, which is worth mention. This concept deals with the situation when one or both of the spouse(s) are unable to end or leave the marriage. This is the first of the aforementioned definitions which considers as forced marriages not only those marriages where the parties were forced to get married, but also those where they cannot leave or end the marriage voluntarily. In this situation, the marriage cannot be ended because of one of the spouses, the parties’ parents, or other person will not allow them to divorce. The Report’s definition is the following: “*forced marriage is any marriage which occurs without the full and free consent of one or both of the parties and/or where one or both of the parties is/are unable to end or leave the marriage, including as a result of duress or intense social or family pressure.*”<sup>19</sup>

In my point of view, the Report's definition is the more applicable to describe forced marriage, than the other ones, because it handles such cases which have not been mentioned earlier, e.g. unable to end or leave the marriage. The "full and free consent" should exist not only when the parties enter into marriage, but also during the married life and also when one or both spouse(s) decide to end the marriage. We could believe, it is not necessary to emphasize that the "free and full consent" should exist in every part of the marriage, but it is untrue. In my opinion, the legislator's declaration that making someone unable to leave or end the marriage make it clear to the law enforcement, such pressure should be taken as forced marriage.

The first part of my study, which deals with the definitional issue, seems extensive, however, it is necessary to understand the connection, correspondence, and differentiation between these concepts for a comprehensive picture of the child marriage phenomenon. After the academic part of my essay, I focus on the practical side of the child marriage, namely the reasons, the consequences, the proposed recommendations and through cases I illustrate the complexity of this phenomenon.

## 2. The reasons for child marriage

*„According to UNICEF<sup>20</sup> 720 million women alive today were married as children, as compared to 156 million men. Some fifteen million girls are married each year worldwide, and across the developing world, one in three girls is married before the age of 18, and one in nine girls before age 15.”<sup>21</sup>*

On average per year 14,2 million girls marry. If present trends continue, by 2021-2030 the number of child marriages will rise to 151 million.<sup>22</sup> In some cases, these data are based upon presumption, because of the lack of consistent birth records in rural or poor areas which make it difficult, if not impossible, to establish the age of the bride, so it is likely the number of child marriage is over 14,2 million per year.<sup>23</sup> Some parents take advantage of this situation and determine their daughter's age, to reach the minimum age of the mar-

riage. In my opinion, these numbers are inconceivable, but perfectly illustrate the global situation of the child marriage.

The international community has dealt with this topic for a long time, and many conventions expressly or implicitly forbid this phenomenon, but despite that child marriage exists and the numbers do not show any decrease.

The reasons for child marriage are diverse, however, most of the reasons are closely related to each other. In the following, I present these correlations between these reasons. I developed a flow sheet in order to illustrate the connection between the reasons and the consequences of child marriage. Also, I identified eleven circumstances that could lead to child marriage and I introduce those reasons below.

Taking into account that most of the child marriages are the „toxic product”<sup>24</sup> of poverty and gender inequality, I start with *poverty*, as the most referenced cause of the phenomenon. Nevertheless, the Millennium Development Goals (hence MDGs) set out the aim of reducing extreme poverty, and most of the assessment reports of MDGs present positive picture of its results, because the number of people living in extreme poverty has declined more than half, still the Sustainable Development Goals (hence SDGs) mention between its goals the eradication of poverty. The reason for this is the fact that nowadays still 836 million people struggle for the most basic human needs.<sup>25</sup>

Because of poverty, many families endow their daughters. On one hand, they release themselves from a significant burden, because they have to endure fewer children, on the other hand, from the bride-price, which was given by the grooms' family, the girls' family could pay off their debts, and educate their sons. Dan Stewart interviewed a south-Sudan girl, Nyadak, and her family. She said that her family arranged her marriage when she was sixteen years old because the husband's family paid thirty cows for her, which covered her brothers' education.<sup>26</sup> In my point of view, the saddest thing about her and other similar

girls' stories is that they believe they have to sacrifice themselves for their brothers or families. This practice contradicts the provision of the Universal Declaration of Human Rights, which declares "[a]ll human beings are born free and equal in dignity and rights."<sup>27</sup>

The question arises, does it suit the spirit of brotherhood when the family makes priority rank between their children? Related to this, the next circumstance which causes child marriage is *gender inequality*. Both the MDGs and SDGs declare between their goals to promote gender equality, end all forms of discrimination against women and girls, and to empower them. The above-mentioned case and the number of girls' child marriages comparing to boys' child marriages (girls are four times more likely to get married before age eighteen) prove that gender inequality still exists in the 21<sup>st</sup> century. For families, it is not worthwhile to invest in their daughters' education, because they will leave the family home when they are married and thus cannot be expected to contribute to the family's income. Therefore, the families would rather invest in their sons' education, who will provide support for their parents as they grow old.<sup>28</sup> The families' desire to control their daughters' sexuality is strongly connected to gender inequality. Girls who are making love without being married, or getting pregnant before marriage bring terrible shame for the family, so for that reason, families endow their daughters as soon as possible to protect the family's good name and social status and also the virginity of their daughters.<sup>29</sup>

The situation for girls is getting worse due to the fact that most of the marriages are pre-arranged, thus they do not have any influence to whom and when will they marry.

Due to their marriage, most of the girls are unable to continue their studies, which reduce their opportunity to find a job and have their own income.

The lack of education is, on one hand, the reason, and on the other hand, the consequence of child marriage, as I mentioned above. Studies have demonstrated that "[g]irls with no education are three times more likely to

marry before 18 compared to girls with a secondary or higher education."<sup>30</sup> If the families let their daughters study, they would be trained enough to get a higher income, which could be economically useful not only for their families, but also to their community. "According to a recent study in India, if the country eradicated child marriage and employed men and women equally, the country's gross domestic product would increase by 25 percent."<sup>31</sup>

However, making education available to girls would not abolish the phenomenon of child marriage, but it initiates the process which first could reduce the number of child marriages and eventually eradicate the child marriage issue.

*Rural life* is the fourth circumstance which is strongly connected to the above-mentioned three reasons. The results of the UNFPA research show that girls living in rural areas are three times more likely to be married before they reach the age of majority, in contrast to those who are living in urban areas.<sup>32</sup> The reason for this is the fact that the village life is connected with greater poverty and lower educational standards. On the other hand, most of the initiatives which are dealing with the eradication of gender inequality, cause an effect in the rural area.

*The lack of birth and marriage certificates* is strongly connected to the rural lifestyle, and also the *high importance* and crucial role of *traditions and customs* serve as further reasons for the child marriage phenomenon. Even though the international and national legislative efforts regarding birth and marriage registration are significant, in particular in the rural areas, the full registration of these seems an unreachable mirage to most of the developing countries. Misusing the lack of birth registration, families pretend their children older than their actual age, thus ensuring the validity of their marriage. Another problematic issue is, who has the legal power to preside over the marriage ceremony, because only marriages that occurred in front of that person are legally acknowledged. In those areas, where the community is more loyal to the tribal chief than to the leaders of the country,

and child marriage has a long-lasting historical tradition, this phenomenon is widespread. In some communities, girls become women at the time of the first menstrual cycle, thus the family has the social pressure to endow the girl.<sup>33</sup> Such mindset is strengthened by those local beliefs and superstitions, which assume that having an intercourse with a virgin heals a variety of venereal diseases.<sup>34</sup> In order to protect the good reputation of the family and the strong connection to the community, parents marry their daughters at a young age, so they avoid the social stigma of having an adult, unmarried daughter.<sup>35</sup> Consequently, it is clearly visible that poverty, gender discrimination, lack of education, local traditions, beliefs, and the lack of birth and marriage registration results in a vicious circle. Therefore, addressing one single reason cannot solve the issue, so any intervention must focus on all of these reasons at the same time.

Another motive of child marriages is that husbands want to marry an „obedient” girl, who will not question the family roles. A younger wife means less developed personality and self-consciousness, thus she is depending on the adult members of the family. Therefore, such a girl has no possibility to decide about her own life, because after the father’s authority, she will be controlled directly by her new husband.

In the course of history, marriages provided a *peaceful solution* for disputes between families or tribes, because marrying a girl to the enemy meant the first step in the process.<sup>36</sup>

Unfortunately, the *wars and conflicts* in these days do not provide a favorable environment for the abolition of the child marriage phenomenon. Menz, in her article, analyzed the connection between statelessness and child marriage. The study begins with a story about a girl, who lives in Kahtu, Burma as Rohingya. Taking the ethnic tension into consideration, (Rohingyas cannot have Myanmar citizenship; therefore they considered stateless people, having no identification documents, so their children cannot participate in the education and are not entitled to any health care services etc.) parents assume that

the only chance for their children to obtain a better life is if they pay for migrant smuggling services to bring them to Malaysia.<sup>37</sup> The girl in Menz’s study was married after only three days in Malaysia. Even if her family wanted the best to her, saving her from a childhood in an area of armed conflict, she still became the „victim” of the child marriage phenomenon. Due to the refugee crisis, caused by wars and conflicts, many families are forced to live in refugee camps. As a result of the Syrian crisis, a new practice has emerged in a Jordanian refugee camp, where families marry their daughters, who are under 14, to Jordanian men, in order to protect them from the sexual abuse in the camp.<sup>38</sup> Many aid service employees reported that a so-called “pleasure marriage” exists in a Syrian refugee camp, which lasts only for a few days or few hours. Men from Saudi-Arabia and other countries offer bride-price to the families and guarantee financial support to them during their life in the camp. Since these men represent the last hope to these families, they let them marry their daughters, but such men leave after the wedding night.<sup>39</sup> However, these men not only deceive the families, but deprive these girls the possibility of a future marriage. In addition, the family’s reputation is also destroyed, since the virginity of their daughter is one of the biggest values of a family.

The following reason, which shall be mentioned, is the *protection against sexual predators*.<sup>40</sup> The rape of unmarried girls is not limited to times of conflict or territories touched by conflict, but girls living under those circumstances are the most frequent victims. In order to protect the girls’ virginity, families marry them to a man who will provide a safe haven against sexual abuse. Those girls, who were victims of sexual abuse, have less chance to get married because their value is connected to their virginity, as I mentioned above.

Last, but not least, the termination of this phenomenon becomes extremely difficult due to the *lack of enforcement of already existing laws and no liability for wrongdoings*. Even though a specified Act prohibits child marriage in India, 47% of the girls getting married have not

attained the age of 18. Consequently, the prohibition of child marriage by legal documents could not affect the issue, if these laws are not enforced. Several other circumstances could be mentioned here, which maintain the issue of child marriage, but addressing the above-mentioned eleven reasons would significantly decrease the number of child marriages worldwide. In summary, eliminating one or a few “motives” would not be enough to end this issue, as I illustrated above since all of these reasons are strongly connected to each other. Therefore, a united and coordinated intervention is required against all of these motives, which could abolish an ongoing human right violation, and would provide a chance for many girls to develop their own personality and independent lives.

### 3. Case-study, or marriage instead of playing

The aims of the present chapter are twofold. On one hand, introducing some cases, which raise awareness of human rights violations, strongly connected to the child marriage, for example, right to life, self-determination, health care, education. On the other hand, highlighting the consequences of the child marriage phenomenon.

Although no explicit child marriage case has been adjudicated by any international court, the Special Court for Sierra Leone (hence SCSL) was the first case which proceeded in a forced marriage criminal case,<sup>41</sup> because thousands of girls and women were forced to get married and living with their captors during the Sierra Leone war, and be loyal and faithful to their „husbands”.<sup>42</sup> Article 2 of the Statute of SCSL, which deals with crimes against humanity,<sup>43</sup> does not expressly discuss forced marriage, but the prosecutors charged the perpetrators with other inhumane acts and sexual slavery under the same Article, in multiple cases.<sup>44</sup> In the AFRC case, the prosecutor accused the defendants under Article 2. i) „other inhumane acts” for forced marriages. However, the panel did not find evidence of forced marriage, presented by the prosecutor, well-established, and thus exempted the defendants.<sup>45</sup> Nonetheless, the

Appeals Chamber acknowledged that forced marriage is a separate crime, which seems similar to sexual slavery, but not identical to it, due to several distinctive elements. The RUF case was the first one in the SCSL history, where forced marriage as an „other inhumane act”, so a crime against humanity, was declared by the court, and found the defendants guilty on that count.<sup>46</sup> Aptel emphasized in her article that forced marriage includes several practices, such as sexual abuse, forced labor, forced marriage community, but these should be handled separately, as separate counts, not the part of slavery as a crime against humanity.<sup>47</sup>

In 2010, a huge outrage emerged in the international press, when the ex-senator of the Nigerian West-Zamfara territory, Ahmad Sani Yarima married a 13 year old Egyptian girl.<sup>48</sup> In his defense, he relied on his Muslim religion, and emphasized that he did not care about age, and had not violated any Muslim religious rule. He also highlighted that Muhammad the Prophet married a young girl as well, so having a minor as a wife does not violate any religious rule. Such case clearly delineates the discrepancies between international/national and religious rules. In 2003, Nigeria adopted the Child’s Rights Act on the federal level,<sup>49</sup> but it has been promulgated only in 24 states out of 36 and the capital district, to date. Such Act provides that no one can lawfully marry under the age of 18, but Islamic law connects the validity of marriage to the puberty. „*The marriage of a senator, Yarima, to a 13 year-old Egyptian girl raised the question whether the right to freedom of religion trumps the CRA.*”<sup>50</sup> As a consequence, a husband „could argue, as in the Yarima incident, that this legislation does not reach the threshold to limit the right to freedom of religion as well as the right to private and family life.”<sup>51</sup>

In the course of my research, I have not found any child marriage case decided by an international court, so I highlight the legal proceeding on a hypothetical case. In this case study, I will introduce the relevant international agreements and violations, which could be declared in a court procedure. In this arti-

cle, the debate over the freedom of religion will be omitted, thus the right to choose any religion, following any religious rules, as reasons to child marriage will not be mentioned in the current case study.

Assume that a 13-year-old Chadian girl was endowed by her family to an adult man, against her will, due to the bad financial situation of the family and to avoid any sexual abuse. The consideration by the future husband is \$500 to the family. After the wedding ceremony, the husband prohibits this girl from going to school, since she has to take care of the household. On 2<sup>nd</sup> of October 1990, Chad ratified the CRC without any reservation, which does not expressly prohibit child marriage, but many provisions are strictly connected to such phenomenon. Unfortunately, those girls who were married before they attained the age of adulthood, are no longer under the scope of CRC due to the fact of their marriage, but they need the CRC protection the most. Therefore, the provisions regarding the right to education and protection against sexual abuse are no longer applicable to them. In my opinion, two Articles may be invoked against the parents and the state: Article 3., which deals with the best interest of the child principle, and Article 24. 3., declaring the elimination of those traditions and customs, which are harmful to the child.

CEDAW is another international agreement, which was ratified by Chad without any reservation on 9<sup>th</sup> of June 1995, could be referred to in our case. Article 16. 2. provides that „[t]he betrothal and the marriage of a child shall have no legal effect”,<sup>52</sup> which could be applied to the case at hand. However, the question may arise, whether when declaring such marriage invalid, do we provide any solution for the future of these girls? As this case study suggests, the vast majority of child marriages are forced marriages, thus further international agreements could be invoked. For instance, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (hence Convention) adopted in 1956, which defines forced marriage as similar practice to slavery

as following: „[a]ny institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”<sup>53</sup> In my point of view, this definition prohibits child marriage, as a practice similar to slavery, so our case at hand could be decided under this Convention as well.

Last but not least, like the Statute of the SCSL, forced marriage could be deemed an other inhumane act. Furthermore, as the UN-FPA research findings suggest, less than 20% of the girls living in Chad are allowed to use contraceptives,<sup>54</sup> so forced pregnancy is a common practice.

Our simple case study clearly describes that several international agreements could be invoked, if such cases would be adjudicated by courts, and many human rights violations and crimes are committed in these countries. Obviously, national legislation is also required against the child marriage phenomenon, which was done again recently in India.

Particularly welcomed is the new standard of the Supreme Court of India, which declared that sexual abuse is committed by a husband who has intercourse with his under 18-year-old wife. Even though the child protection rules of India already prohibited the sexual relationship with a person under 18, the criminal code provided an „escape clause”, since such sexual abuse was not a crime, if it was committed between spouses.<sup>55,56</sup> Such legal controversy strengthened the practice of child marriage, since it provided a safe haven for those who were having an intercourse with a person under 18. Although, the Indian rule is very new since it was adopted in October 2017, it can be projected that the enforcement will not be easy in the country because India already had a specified Act concerning the prohibition of child marriage, but still remained one of the most touched countries by this phenomenon. However, I suppose such legislative and judicial attitude shall be an example for those countries, where the child marriage issue is present in the everyday life.



#### 4. The consequences of child marriage

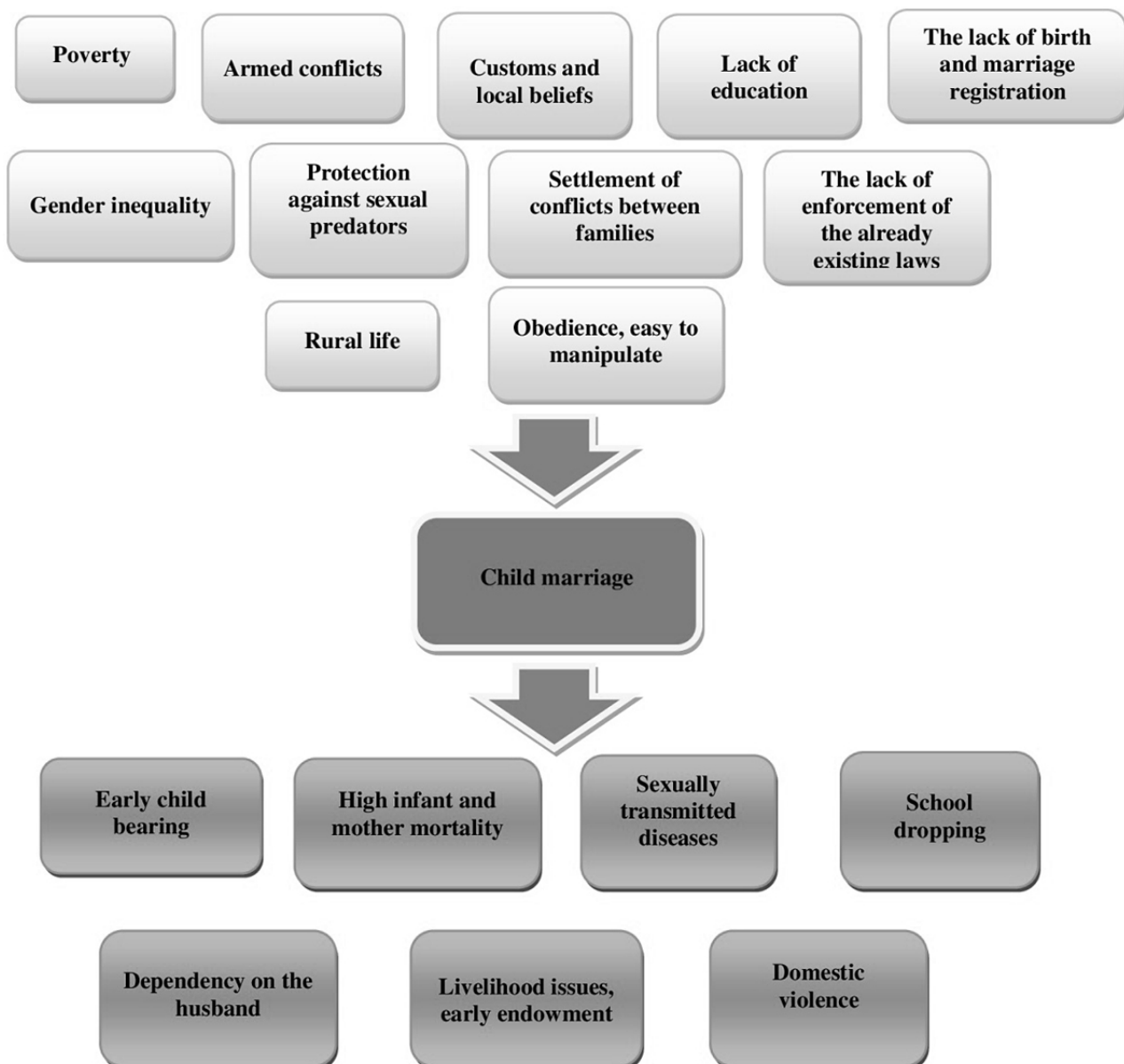
In the present chapter, I introduce some of the effects and consequences collected during my research.

Child marriage is incredibly harmful to the girls' health because, on one hand, the numbers of unwanted pregnancies are high. On the other hand, because of the age of the girls, their bodies are not prepared for having a baby, thus the number of the obstetric complications are very high. Third, the possibility of multiple sexually transmitted diseases, e.g. HIV infection, is high, as a result of marrying older men who are already infected.<sup>57</sup> Unfor-

tunately *"complications in pregnancy and child birth are the leading cause of death in girls aged fifteen-nineteen globally..."*<sup>58</sup>

Those young girls who enter into marriage later and have babies after puberty have a better chance to live in a healthier environment, get a better education, and can provide better life circumstances for their children. But those girls who got married too young, are likely to have more children, which cause another *"vicious circle"* having more children in the family means more expenditures, which could create livelihood problems. In order to solve these difficulties, the families endow their oldest daughter, so that the mother, who

Figure 1: *The dynamic of child marriage issue*



(Source: Independent research of the author)

married before age eighteen, endows her daughter also under the age of eighteen.

Studies show that child brides are more likely to suffer abuse and accept domestic violence than those who married older.<sup>59</sup> Child marriages are not only harmful to the child brides' health, but also deprive them of independence, education and the enjoyment and exercise of their fundamental rights. Ban-Ki-Moon, former Secretary-General of the UN said: "[e]ducation for girls is one of the best strategies for protecting girls against child marriage."<sup>60</sup> In some countries, pregnant child brides are not allowed to go to school, in other countries it is not forbidden, but the community stigmatizes them, so they are afraid and ashamed to go to school. In South-Africa, where the number of child marriages is extraordinary high, only one from three girls returns into school after childbirth. Those child brides who did not study, or have a low level of education find it very difficult, if not impossible, to find a job, so they are dependent upon their husbands. In my point of view, the chapters, which deal with the causes and the consequences of child marriage, definitely illustrate that in order to eliminate the phenomenon of child marriage, we need sectoral cooperation.

Hereunder, I try to highlight the dynamics of the child marriage issue, focusing on the reasons for and consequences of the phenomenon, with a flow sheet.

A couple of sectors are connected to the child marriage phenomenon, but I will present only three of them. The first one is health care. It is important to mention that under health care I not only mean the development of hospitals, physical approachability and the improvement of medical care, but also sex education in smaller villages, which are isolated from towns. During sex education, the presenter should talk about contraception, the consequences of early childbearing, sexually transmitted diseases, and the possible protection against these diseases. Furthermore, under the scope of health care, it is important to organize presentations to child mothers about the nutrition and the care of infants and children, because for a fourteen-fifteen year old

mother this information is not evident. In addition to health care, the other relevant sector is education. The importance of education shall be addressed to parents and local leaders. If they accept that education is a long-term investment, which could cause significant changes not only in the families microenvironment, but also in the communities' economic life, they would promote the access to education. The children's knowledge could result in economic growth in the local village life.

The third territory which should be mentioned is law enforcement. As I described above through a couple of cases, several documents, laws exist, which *expressis verbis* prohibit and sanction child marriage, still, more than fourteen million children getting married under the age of eighteen. For an effective intervention against child marriage, it is not enough to simply adopt laws, we must also enforce them. For instance, India is one of most touched and involved country concerning child marriage, even though a specified act prohibits the child marriage phenomenon and punishes those who are involved in such conduct.

In the following, I will present a couple of recommendations, which were introduced as pilot programs in some countries, and according to the first feedbacks, they seem effective.

### 5. Recommendations to end child marriage

As an introduction, I briefly present a European solution from the United Kingdom (hence UK). "In 2005 U.K. created the Forced Marriage Unit which provides easily accessed and comprehensive services designed to help victims or those at risk of forced marriage."<sup>61</sup> "In 2014 the U.K.'s Home Office reported that the Forced Marriage Unit helped 1.267 victims; 22% were minors with 11% under 16 years old and 11% 16 or 17 years old."<sup>62</sup>

Not only those people could apply for the Unit, who are victims of forced marriage, but also who are at risk of forced marriage, including those, whose parents plan to marry their child. In my reading, this initiative is great, because not only those could apply for

such protection to the Unit who are victims or at risk of forced marriage, but third parties, e.g. teachers, health care providers, relatives, friends, police etc. as well.<sup>63</sup>

In some countries, like in Malawi, they place the emphasis on education, because as long as a girl studies, she has a greater chance to enter into marriage at an older age. The government tries to encourage families to keep their daughters in school with a scholarship and financial support e.g. with direct cash incentives. Also, the government introduced the Zomba cash transfer programme, which was successful. After one year, girls in the programme who received conditional cash transfers were 40 percent less likely to get married than girls who did not receive any financial support.<sup>64</sup> This money replaces the bride-price, so families are no longer forced to endow their daughter at her young age. However, after one year, the Zomba programme seems successful, but the question is, what will happen when it runs out of support? Unfortunately, financial support alone could not solve the reasons for the child marriage issue. As I mentioned above, poverty is the most referred cause of the phenomenon, so in my opinion, it would be more effective if governments establish such workplaces which align with the local needs, and would employ only girls endangered by child marriage. If the governments would invest such financial support in young girls' start-ups, the money could be used to employ more young girls. Therefore, it would not only abolish the reason for this phenomenon, but also would help the economic development of the region.

In Nepal, which is one of the poorest countries in the world, a resource center was set up by local women's cooperation in order to deliver lectures to children and adolescents. "[M]ore than 5.000 adolescent girls in 18 districts participated in two months of training in reproductive health, focusing also life skills.<sup>65</sup> Furthermore, the girls learn about the changes taking place in their bodies, enhance their self-confidence and self-reliance, and consider their options in regard to education, work, legal rights, marriage, childbearing etc."<sup>66</sup>

During the training of „Choose your Future“, the girls spoke out against child marriage and tried to convince the parents to stop planned weddings.<sup>67</sup> In my point of view, involving older local women in the training as helpers is an excellent idea, since they have established a confidential union with the child brides, who could ask for help if they feel themselves in danger.

All of the above-mentioned recommendations have such an element, which could be part of a compound program, however, for me, it is obvious that these kind of recommendations are unable to eliminate the child marriage phenomenon. As long as there is a lack of a widely accepted definition, which could properly define the child marriage, countries are able to interpret the existing concept in their favor. In brief, I offer a comprehensive definition of the child marriage, in order to try to solve the existing deficiencies and contradictions.

*Child marriage is such a formal marriage or informal, marital union, where at least one of the parties or both of them are under the age of eighteen, or did not attain majority earlier under the law applicable to the child, which could not be less than the age of sixteen. Every kind of betrothal, marriage, informal, or marital union has to be considered invalid, which meet the requirements of the above-mentioned definition.*

In the following, I will explain some of the main elements of the definition. First, it is important to prohibit not only the formal marriage, but also every kind of ceremony, including e.g. betrothal or other types of ordinances, which were lead by a local, tribal leader. The result of these kinds of ceremonies is that the parties enter into family community and in the future, the society considers them as husband and wife.

If the non-formal, marital union is not prohibited, then the families consider that such ceremonies are permitted, so they will apply these instead of formal marriages.

The other element of the idea, which should be underlined, is that not just one, but also both of the parties could be minors, so not only those marriages, betrothals should be

considered invalid, where one of the parties is major, but also those, where none of the parties are adults. An exact number of age should not miss under any circumstances from a useful definition. The countries could express that age of eighteen means the end of the childhood, and “under the law applicable to the child” part of the definition could be used in such marriages, where the parties are between sixteen and eighteen years old and the parents, the legal guardian, the guardian authority etc. consent to the marriage.

This phrasing still provides regulatory freedom to the states, because they could define those cases when they allow marriage the age below eighteen. In my reading, it is really important to define that under the age of sixteen, it is illegal to enter into marriage, because some national laws only use the term “attain of puberty or major”. Such definition is too vague and could lead to abuse. Nevertheless, my definition represents a merger of the already existing conceptions, however, it could result a more concrete and effective law enforcement, if each international and national documents, laws would apply this definition.

## 6. Conclusions

The aim of this study is to provide a comprehensive overview of the international situation of the child marriage phenomenon. The first chapter, which dealt with the analysis of the conceptions, illustrated the similarities and differences between the child, early and forced marriage. In my opinion, in order to eliminate the child marriage, the first step should be a globally accepted standard definition, like my study's *de lege ferenda* recommendation suggests. This concept contains strict age determinations regarding majority and in the cases of those marriages, betrothals, informal, marital unions where the consent was given. Furthermore, this definition deals not only with those marriages where one of the parties is minor, but also those where both of them are still children.

The practice-oriented part of this study described the process of the phenomenon. As a

starting point, the reasons for the child marriage were analyzed. In the course of the research, I collected eleven motives, which are in tight connection with each other.

In my opinion, it is not enough to try to abolish some of the reasons; the international community should stand up against all of the circumstances. In addition to the reasons, through cases and one hypothetical case, I presented how international courts should adjudicate such cases. Last but not least, the consequences of the child marriage were introduced. In order to ease the understanding of this phenomenon, I created a flow sheet, which illustrates properly that the reasons and the consequences of the child marriage issue compose a vicious circle and only sectoral cooperation could eliminate this issue.

My study also suggested a few recommendations, some of which have already been introduced as pilot programs in several countries. Even though more than 14 million girls are getting married annually, and the current armed conflicts are also increasing this number, as I mentioned at the Syrian refugee camp practice, it still provides a reason for optimism that the fight against child marriage stands in the focal point of the international community. Vincent Tremeau photographer made a photo series for Valentine's Day, called „This Valentine's Day, I don't want flowers. I want a future.”<sup>68</sup> These pictures were of Nepali and Iraqi girls who married as children, thus the possibility to have such profession or job they wanted was taken from them. Moreover, I suppose that not only those girls need protection, who are under the jeopardy of child marriage, but also those, who asked for help and already had a divorce. Furthermore, we shall provide help for the girls, who are still living in a child marriage, having babies, but would like to go to school or work, and replenish their personality.

## Jegyzetek

1 Elizabeth Warner: Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls, *Journal of Gender, Social Policy and the Law*, vol. 12., no. 2. (2004), 233-272., United Nations Population Fund: *Marrying too young - end child marriage*, 2012 (hence UNFPA 2012), Olga Voinarevich: *A Fairy Tale Interrupted: The Long-Term Impacts of Child Marriage in*

- Yemen and the Necessart Adjustments to Both Local and International Laws to Stap Practice and to Protect Voiceless Child Brides, *Rutgers Race and the Law Review*, vol. 16. (2015) 203-218., Loretta M. Kopelman: The Forced Marriage of Minors: A Neglected Form of Child Abuse, *The Journal of Law, Medicine & Ethics*. vol. 44. (2016), 173-181.
- 2 Joar Svanemyr-Venkatraman Chandra-Mouli-Anita Raj-Ellen Travers-Lakshmi Sundaram: Research priorities on ending child marriage and supporting married girls, *Reproductive Health*, vol. 12., no. 80. (2015), 1.
- 3 Voinarevich op. cit. 203.
- 4 Convention on the Rights of the Child Article 1. (hence CRC)
- 5 CRC Article 38 2.
- 6 Universal Declaration of Human Rights Article 16.
- 7 Camellia Burris: Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis od India's and the United States' Legal Approaches to the Institution of Child Marriage, *Tulane Journal of International and Comparative Law* vol. 23. (2014), 151.
- 8 Burris op. cit. 152.
- 9 Ignatius O. Nwimo-Sarah O. Egwu: Girls Child Marriage: Implications for Community Intervention Programmes, *Journal of Law, Policy and Globalization*, vol. 37. (2015), 142.
- 10 UNICEF: Child protection from violence, exploitation, abuse, [https://www.unicef.org/protection/57929\\_58008.html](https://www.unicef.org/protection/57929_58008.html) (10.05.2018)
- 11 Voinarevich op. cit. 204.
- 12 Ibid
- 13 OHCHR: Preventing and Eliminating Child, Early and Forced Marriage, UN Doc. A/HRC/26/22, 2 April 2014. (hence OHCHR)
- 14 Geetanjali Gangoli-Melanie McCarry-Amina Razak: Child Marriage or Forced Marriage? South Asian Communities in North East England, *Children & Society*, vol. 23. (2009), 427.
- 15 Kopelman op. cit. 174.
- 16 Ibid. 174.
- 17 Ibid. 174.
- 18 Ibid. 175.
- 19 OHCHR
- 20 United Nations Children's Fund, special institute of the UN, devoted to improve the health, nutrition education and welfare of children.
- 21 Girls not brides-International Center for Research on Women: Taking action to address child marriage – An overview, <https://www.girlsnotbrides.org/wp-content/uploads/2016/03/1.-Overview-Addressing-child-marriage-role-of-diff-sectors.pdf>, 3. (továbbiakban: Girls not brides) (18.05.2018)
- 22 UNFPA 2012 p. 6.
- 23 Warner op. cit. 244.
- 24 UNFPA: Child marriage, <http://www.unfpa.org/child-marriage> (04.06.2018)
- 25 United Nations Information Service: Millenniumi Fejlesztési Célok, <http://www.unis.unvienna.org/unis/ku/topics/2013/mdg.html> (04.06.2018)
- 26 Dan Stewart: South Sudan: „I sacrificed my future for theirs”, <https://www.savethechildren.net/article/south-sudan-%E2%80%9Ci-sacrificed-my-future-theirs%E2%80%9D> (04.06.2018)
- 27 Universal Declaration of Human Rights Article 1
- 28 Warner op. cit. 241.
- 29 Nwimo-Egwu op. cit. 143.
- 30 Girls not brides: Ending child marriage will help us achieve the Sustainable Development Goals. Here's how, <https://www.girlsnotbrides.org/ending-child-marriage-will-help-us-achieve-the-global-goals-heres-how/> (10.06.2018)
- 31 Menz op. cit. 515.
- 32 UNFPA 2012 36.
- 33 Girls not brides: Why does child marriage happen?, <https://www.girlsnotbrides.org/why-does-it-happen/> (10.06.2018)
- 34 Warner op. cit. 242.
- 35 Anyogu op. cit. 84.
- 36 Warner op. cit. 243.
- 37 Menz op. cit. 499.
- 38 Ibid. 529.
- 39 Ibid.
- 40 Warner op. cit. 242.
- 41 Aptel op. cit. 319.
- 42 Ibid.
- 43 The United Nations and the Government of Sierra Leone pursuant to Security Council resolution 1315 (2000) of 14 August 2000, the Special Court for Sierra Leone, Article 2.
- 44 Aptel op. cit. 319.
- 45 Special Court for Sierra Leone: APCR Trial, <http://www.rscsl.org/AFRC.html> (20.05.2018)
- 46 Special Court for Sierra Leone: RUF Trial, <http://www.rscsl.org/RUF.html> (20.05.2018)
- 47 Aptel op. cit. 321-322.
- 48 BBC: Nigerian senator Sani denies marrying girl of 13, <http://news.bbc.co.uk/2/hi/africa/8651043.stm> (25.05.2018)
- 49 Nigéria: Act No. 26 of 2003, Child's Rights Act
- 50 Nwauche op. cit. 429.
- 51 Nwauche op. cit. 429.
- 52 CEDAW Article 16. 2.
- 53 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery Article 1. d)
- 54 UNFPA 2012 41.
- 55 Michael Safi: Sex with underage wife is rape, India supreme court rules, <https://www.theguardian.com/world/2017/oct/11/sex-with-underage-wife-is-indian-supreme-court-rules> (08.06.2018)
- 56 Eli Meixler: India's Supreme Court Rules Sex With Child Brides Is Rape, <http://time.com/4979039/india-child-bride-rape-court/> (14.06.2018)
- 57 Alissa Koski- Shelley Clark- Arijit Nandi: Has Child Marriage Declined in sub-Saharan Africa? An Analysis of Trends in 31 Countries, *Population and Development Review*, vol. 43., no. 1. (2017), 7.
- 58 Girls not brides: What is the impact of child marriage, <https://www.girlsnotbrides.org/themes/health/> (12.06.2018)
- 59 Anyogu op. cit. 84.
- 60 United Nations News Centre: On world's first International Day of the Girl Child, UN calls for end to child marriage, <http://www.un.org/apps/news/story.asp?NewsID=43259#>. Wg2JgIbiZdg (14.06.2018)
- 61 Kopelman op. cit. 176.
- 62 Ibid
- 63 Ibid.
- 64 UNFPA 2012 52.
- 65 Ibid 54.
- 66 Ibid 54.
- 67 Ibid. 54.
- 68 UNFPA: On Valentine's Day, say #IDONT, <http://www.unfpa.org/news/valentines-day-say-idont> (11.06.2018)