



**KIDS EMPOWERMENT**

**KIDS EMPOWERMENT** presents:  
*Children or Brides? What Is the Legal  
Status for Migrant Child Brides?*

PROCEEDINGS FROM THE  
CONFERENCE HELD ON  
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AT THE  
MAISON DES ASSOCIATIONS

4 RUE AMELIE  
75007 PARIS



# *Children or Brides?*

## *What is the Legal Status for Migrant Child Brides?*

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Maison des associations

4 rue Amélie, 75007 Paris

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## **PRESENTATION OF SPEAKERS**

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**Isabelle GILLETTE-FAYE** has been the director of the national association GAMS (A group for the Abolition of Feminine Sexual Mutilation, forced marriages and other traditional practices that are harmful to the health of women and children) since 1990. She is an expert in sociology and expert for different institutions.

**Christine-Sarah JAMA** is the director of the Voix de Femmes association who created the hotline dedicated to forced marriages, 01 30 31 05 05. A legal practitioner for sociology, she is an expert on this type of violence.

**A. Introduction - Caroline NEWMAN**, Executive President, Kids Empowerment

I would first like to start by thanking our speakers: Voix de Femmes and its President who is here today, the President of G.A.M.S who is present as well, and Marie BUAM who is just coming in from Stuttgart to tell us about what is currently happening in Germany in relation to our question of interest for today. Lastly, I would like to thank the Mayor of the seventh arrondissement, who is providing us with this opportunity during this summer solidarity.

The title reads: “Children or Brides? What is the Legal Status of Migrant Child Brides?” We have tackled this question because Kids Empowerment, which was founded a year ago, has taken on a project of comparative law as our first project. Here, the analysis is intended to compare the different legal cases that apply to migrant minors in reception countries, as well as transit countries. We are currently collecting reports written by various law firms from across the world, and one of the questions asked specifically relates to the legal status given to minors who arrive having been married outside of the country: are they considered alone and therefore unaccompanied, or accompanied since they are with a spouse? Is the marriage recognized, or are the minors considered emancipated? The answers we have received are not always clear. When it comes to law that applies to residents, as well as in European countries where national conventions are respected, things are quite clear. With regards to those migrants who are not residents of a given country, and who arrive in a reception country, the answer is not so clear. With this being a question of private international law, there comes another question of whether or not the form of the marriage should be recognized. In many countries, we learn that the marriage would not be recognized if it is considered contrary to public order; however, this is absolutely not the case when we read the reports. Indeed, we realize that in some countries of central and oriental Europe, these marriages are recognized. Furthermore, if the husband were to have guardianship of his wife, this guardianship would be recognized, even though these are countries where these practices do not exist in local legislation. So, we ask: what is considered contrary to public order, given that things are much clearer in International Law?

In the Convention on the Elimination of All Forms of Discrimination against Women, Article 16 states that engagements and marriages of children will not have any legal effect, that all necessary measures, including legislative dispositions, must be taken to

establish a minimum age for marriage, and that the inscription of the marriage in an official register is to be mandatory. The Istanbul Convention considers forced marriages to constitute as violence towards women, and that, as such, a female victim of forced marriage shall be granted a residence permit in her country of arrival. The Convention on the Rights of the Child is not explicit in regards to the banning of child marriages, but all provisions of this convention are nonetheless made to establish that no child under 18 years of age should be married. Recommendations made to the Committee on the Rights of the Child are all in this same vein. There have recently been recommendations made in junction with the Committee on the Elimination of All Forms of Discrimination against Women that indicate that both committees agree on the point that no marriage is to be contracted before the age of 18. There can be a tolerance for marriages contracted between 16 and 18 years of age, considering that the minor has a certain capacity of discernment; but nonetheless, the question of threatening public order when married at 13 remains. In certain States, this could seemingly be recognized: in the United Kingdom during the sixties, for example, there was a case where a Nigerian had contracted a marriage with a 13-year-old girl. The Supreme Court decided that this marriage could be recognized in the U.K. because of local legislation of the country of origin of these persons. So these questions need to be asked, and countries like Germany are currently drafting laws to directly address the question of whether or not child marriages between migrants should be recognized.

With regards to the title of this conference, as you might notice we speak here of “forced” marriage rather than “early” marriage: this might be slightly provocative, seeing as we sometimes hear the argument that early marriage does not necessarily equate to forced marriage. However, we believe that an early marriage *is* a forced marriage, as a child does not have the capacity of discernment necessary to give such consent. This is why we have chosen this title, and I would now like to give the mic to our experts who have come here today to discuss this complex issue.

## **B. A brief presentation on the geopolitics of the reception of refugees in Europe:**

### **Contrasting realities. Isabelle GILLETTE-FAYE, Federation GAMS**

I am not a legal expert so I will not take a “law-based” approach, but I believe the law ought to better understand how to contextualize things. The law relies on realities, customs, and functions and must be able to understand these customs and functions to understand the law’s consequential application and the manner in which things are organized. So effectively, as Ms. Newman just said, we have a slightly complicated definition in respect to forced marriage and child marriage, because, in general, we use the term child marriage. I am going to focus mainly on child marriage in this presentation because there we have quantitative data.

We have qualitative data on both forced marriage and child marriage. But in terms of quantitative data, we have data only on child marriage; hence it’s there that I’m going to focus my report. To understand the reality of child marriages around the world, we must understand that before migrants emigrate to Europe or to another country, they must come from their country of origin, and we must understand the realities of these countries because these circumstances and our understandings of them can have effects on migration-- or on refugees-- and on the way in which countries welcome these migrants. I will eventually get to the specific question of the Syrian migrant populations, and will finish by addressing the question of migration committees, which vary from one state to another.

In the 1960s, it was possible for a Nigerian man to marry a girl as young as 13 because, at that time, England recognized local law. When we talk about forced marriages around the world, we refer to approximately 160,000,000 women who were married before the age of 18. It’s a practice that touches mostly sub-Saharan Africa and particularly the African countries Niger and Chad. Asia is also affected, primarily in Bangladesh.

When we hear the words “child marriage,” we assume that the children involved, particularly the girls, do not have a say in the matter-- even though boys can also be affected by child marriage. But boys are affected in a smaller number of countries mostly in Asia where child marriages are prohibited, at least from a legal standpoint.



So when we talk about *forced* marriage, we acknowledge that it can affect boys as well as adults; but *child* marriage impacts mostly girls. Let's look at the example of Niger where 75% of girls are married before the age of 18. Despite the fact that the minimum legal age of marriage for girls is 15, in reality, there are children who get married at 12. By the age of 16 half of Nigerian girls have already had a child. Then there is Chad where 68% of girls are married before they reach the age of maturity; and the percentage is similar in Bangladesh, which as I mentioned is the third most affected country. Finally, other countries on the African continent like Mali, Burkina-Faso, Guinea, and South Sudan closely follow the example of Niger and Chad. To conclude, an examination of Africa shows that 1 out of 3 African women is married before the age of 18. So, as you can see, we are dealing with data of extremely high frequency. According to UNICEF, if we continue at this rate, there will be 320,000,000 little girls who are married before the age of 18 by 2050.

Indeed, the data is just a lot of figures, but it allows us to see that we are talking about a phenomenon that affects more than just a few, specific countries in the Middle East and Africa. In Germany particularly, we see big concerns for children of Syrian descent residing in this European country.

Let's start from the beginning: in Syria, the legal age of marriage is 17 for girls, but there are judicial exemptions that allow them to get married at 13. That is to say, with the authorization of one or both parents, girls can get married when they are as young as 13. This means therefore that young girls can also be legally married off. It is important to note that sometimes we make distinctions between legal marriage and religious marriage, and that there are traditional or religious marriages which can or cannot precede a civil marriage depending on traditions and cultures. France, for example, requires a civil marriage take place before a religious one. But in other countries, it's the exact opposite; it is possible for a religious or traditional marriage ceremony to precede a civil ceremony. In the case of Syria, it is more complicated because marriage is legally—and therefore civilly—authorized from the age of 13 years old. It is also important to note that, in general, when we think of refugees and migration—not economic migration but refugee migration—, refugees migrate to and through regions closer to them before migrating to Europe, the United States, or another industrialized country.

Therefore, the figures we use also concern Jordan and its neighboring countries, given that quantitatively migrants concentrate mainly around Syria before immigrating to Europe. The phenomenon of this migration has been studied and the results published. Two studies I found particularly valuable: the first is called *Too Young to Wed*, which was made by Save the Children in partnership with UNICEF in 2014, concerning the underage marriage of young Syrian girls, and the second more recent study was made by Care on the same subject. I concentrated mostly on the first study by Save the Children, as I found it much more enlightening.

Upon examining the migration situation in Jordan, we see Syrian populations massively overrepresented in the refugee camps at the moment because of the war in Syria, and we see around 18% of marriages in 2012 were underage marriages. This percentage rose to 25% in 2013 and has continued to grow greater in number, thus affecting more and more girls. Before the war, the percent of underage marriages was around 13%. It is evident, therefore, that these figures are rising as a result of the state of exile and the war—we know that natural disasters and situations of war can lead to a rise in underage marriages when they take place in a country where the tradition of underage marriage endures.

Still using the example of Jordan, which has received 600,000 Syrians to date, there were 735 legally registered marriages involving girls less than 18 years old in 2013 according to government statistics. These numbers show a rise of underage marriages in Jordan because in 2011 only 42 marriages were registered where the girl was under 18. To further add to my argument that this mostly affects countries neighboring Syria and not European countries, we see exactly the same statistics in any Syrian refugee camp whether in Erbil, in Iraq, or in Lebanon. This increase in Jordan is also seen in other countries surrounding Syria and in countries slightly further away, like Egypt and Turkey.

As you know, following the decision that Europe took, Turkey and Greece became hotspots, receiving migrants in large numbers before these migrants could go to other European countries like France, Germany, England, the Netherlands and others. We can clearly see forced marriage is a phenomenon linked to a reality in Syria, which was transferred to the refugee camps, then transported to European coastal countries like Turkey, and now brought to mainland Europe. For understanding why the practice has

been able to come to Europe, we must understand that European countries do not have the same policies regarding refugees, nor the same responses to these social issues simply because they are European countries and have agreements between each other.

In addition to differences in European refugee migration policies, there is the fact that a large number of refugees arrived in Europe in a relatively short period of time, affecting migrants of Syrian origin. We call it the “refugee crisis.” To illustrate, there were 1.2 million supplementary demands for refugee status between 2014 and 2015. If we want to identify which countries receive the most refugees, we must focus on Germany, which has granted the highest number of asylum applications with around 41% of positive responses. Germany is therefore the first country in Europe to have received such a large population, and definitely the first to have had a favorable response on the recognition of refugee status. Already this gives you a first indication for why migrants of Syrian origin or of other origins may be tempted to go to Germany. By this measure or by word of mouth, they realize there is a higher probability of being heard and recognized in Germany, thus affecting the decision to go there.

Regarding France’s recognition of the right to asylum, France ranks 25th out of the 32 European countries studied. That’s why I say quantitatively we have far fewer migrants originating from these countries with this issue of underage marriage, and when France does receive these populations, the acceptance rate is much lower than elsewhere. According to the French Office for Refugees and Stateless Persons (FORSP), there is a recognition rate of 27% on the current number of first-time refugee requests, which is approximately a quarter of the requests. It’s a relatively low percentage.

There’s a contrasting reality in Europe; we have just seen it at the level of refugee reception. But even before the reception we also have historical differences, notably different colonial histories. If we look at so-called international economic migration, we find that in France, even though we also host refugees, we have been welcoming mostly economic migrants for a very long time, mainly from our former colonies. France, with England, is one of the countries that had the most colonies. So in a broad sense our former colonials have tended to come to settle in the national territory, but this has remained an essentially economic migration; we did not need to talk about immigration politics. Regarding international immigration, refugees typically prefer going to a

country close to them rather than travel to Europe or elsewhere. This is still a reality even though Europe has started to have a larger influx of refugees.

However, we must take two things into account: first, the politics of acceptance of migrant populations. France's politics are unique compared to those of other European countries because France is more integrationist. France believes populations that come to live in its territory must fit into the French way of life and not the other way around, whereas other European countries are generally more communitarian. England is an example of a more communitarian country, except in regard to the struggle against forced marriage where it serves as a model for combatting the practice.

The second consideration to bear in mind is the politics of tracking and the struggle against forced marriages are very different from one state to another. For instance, the approach to these issues of Germany and the Netherlands differ dramatically. These differences are important to note because the general politics of tracking and the fight against forced marriages center around the ways in which they will be carried out. If a country already has tracking and accompaniment for the general population of young girls who were born, grew up, or arrived at a young age in their European territories, professional practices will only need to be improved to better support refugee girls. But in a country where there is not a long tradition of tracking practices or of accompaniment for young native girls in hazardous situations, we will see their implementation even less for endangered young migrant girls.

Quite honestly, if we distinguish insulate minors from accompanied minors, there are very, very few female insulate minors in France today. And in terms of accompanied female minors, modern reception centers for asylum seekers are absolutely not designed to uncover gender-based violence in a broad sense, including forced or child marriages. But these reception centers are key locations for effectively spotting forced marriages of young girls.

### **C. No to child marriage: an overview to the law putting an end to premature marriage in Germany. Mary BUAM, KE, legal expert**

Thank you for the wonderful presentation. Thank you Madame Caroline Newman and Kids Empowerment in general for the opportunity to speak on the topic of child marriage. We are going to look into Germany's new draft law for putting an end to child marriage. The German Justice Minister, Heiko Maas, had this to say with regards to child marriage: "Children do not belong in a marriage registry office or wedding hall." The Human Rights rapporteur Mrs. Rosmarie Zapfl-Helbling had this to say regarding child marriage. She said, and I quote,

*"...for marriages before 10 years of age, consent is not even a material consideration. Children are not capable of consenting; likewise, in marriages at puberty or shortly afterwards, between the ages of 10 and 14 years, there can be no question of consent, someone so young is not expected to understand what is involved in accepting a life partner. The question of matrimonial consent becomes more complex at the age of 15 or 16 when girls may have reached the statutory age of sexual consent."*

In her view, there should be a line between sexual maturity and matrimonial consent because the fact that a child has reached the age of sexual consent does not mean that he or she is ready for marriage.

So due to the influx of refugees in Germany, child marriage has been on the rise, a practice that affects the well-being and hinders the development of children.

According to the Cologne-based Central Registry of Foreign Nationals, about 1,475 foreign children were listed as officially married, of which 1,152 are girls.

For marriages concluded in Germany, the national law of the parties to be married applies according to Article 13, paragraph 1 [Article 13(1)] of the Introductory Act to the German Civil Code (EGBGB). However, Section 1303, paragraph 1 [§1203 (1)] of the German Civil Code states that marriages should be entered into when both parties have attained an age of majority and with regards to formalities and procedures, validity is assessed under Article 11 of the Introductory Act to the Civil Code (EGBGB).

Article 12 of the Geneva Convention on the Status of Refugees gives priority to the host country. It states, “*The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.*”

Accordingly, foreign law becomes inapplicable if the application is incompatible with the principle of German domestic law. With regard to child marriages, any marriage involving a minor shall not be recognized under German Law because it violates the German “*Ordre Public*” of Article 6 of the Introductory Act to the German Civil Code.

Recently the German legislature drafted a new rule to ban child marriages in Germany. The drafts set the age for marriage at 18 and invalidate foreign marriages involving minors under 16. Family courts can annul marriages involving minors between the ages of 16 and 17. Exceptions will be made for children already existing in marriage and adults that want to stay in a marriage. The law will not apply in cases of hardship like severe and life-threatening illnesses or contemplation of suicide. The draft prevents disadvantages in the asylum and residences of minors in the case of the annulment of marriages.

The law will tighten marriage laws, particularly marriages contracted out of Germany. Under the new draft, welfare workers have been given the right to take unaccompanied minors, including married minors, into state care, and if necessary, separate them from their spouses. The new draft imposes fines in order to prevent parents from giving their children into early marriages by means of a contractual, traditional, or religious connection, which is adequate according to their ideas.

We are now going to concentrate on the present legal situation of child marriage in Germany. Section 1303 of the German Civil Code sets the age of marriage at 18, or 16 with permission from the family court; but one of the parties must have attained the age of maturity, which is 16. A number of issues led to this new legislation annulling child marriages in Germany. The first is the influence of refugees in Germany. By the end of July 2016, almost 1,475 minors of non-German background were registered as married, which led to the German Justice Minister calling for stricter laws on child marriages. The largest group of these married minors came from Syria, followed by Afghanistan, Iraq, Bulgaria, Poland, Romania, and Greece. It is estimated that 994 of the children were between the ages of 16 and 18 years, 120 children between the ages of 14 and 16, and 361 children under the age of 14.

The second issue is the ruling of the Appeals Court in Bamberg, which led to an outcry for the banning of child marriage in May 2016. A regional court in Bamberg, Germany decided to officially recognize a marriage between two Syrian refugees, a 15-year-old girl who was married to her 21-year-old cousin in Syria according to the Sharia Islamic Law. In this case, the court argued that according to the Sharia law, the marriage is valid, has been consummated, and the Youth Welfare Office had no legal authority to separate the couple.

To prevent another ruling like that of the Appeals Court in Bamberg, the German government is in the process of drafting a new bill to ban child marriages. The draft is compatible with the law of the European Union and the International Treaties to which the Republic of Germany subscribes. The first improvement is the amendment to the German Civil Code. Section 1303 of the German Civil Code states the age of marriage. It says that marriage cannot be entered into before the age of majority, which is 18, and family courts can annul those involving 16- or 17-year-olds. Exceptions are possible if both parties were married as minors at the time of the marriage, but both are now adults and want to stay married. The authorities will also consider not applying the law in special cases of hardship such as severe and life-threatening illnesses. Since a minor can no longer enter into a marriage contract, the German Civil Code provisions related to married minors are no longer necessary and have been repealed.

Section 1310 of the Civil Code states that the civil registrar shall preside over marriages if all the necessary conditions of marriage are fulfilled. However, the civil registrar must refuse to cooperate if it is obvious that the marriage could be annulled under Section 1314 on grounds of annulment, or under Article 30 section 3 of the Introductory Act of the German Civil Code, which states that the intended marriage should be ineffective.

Section 1314 of Grounds of Annulment indicates that a marriage can be annulled if one of the parties of the marriage was 16 years old at the time of the marriage or the marriage was concluded contrary to sections 1301, 1306, 1307, or 1311.

But there is an exclusion to the grounds for annulment. In the event that Section 1303 is violated, a marriage with a minor may not be annulled if their spouse was a minor at the time of the marriage but wishes to continue the marriage after reaching the age of majority, or because of exceptional circumstances the annulment of the marriage would constitute a serious hardship for the minor spouse such as a life-threatening illness or contemplation of suicide.

Now we look at Section 1316 on Entitlement to Petition: who can petition? In the event that Section 1303 is breached, a spouse who was a minor at the time of the marriage but has reached the age of maturity may submit an application. He or she does not require the consent of the legal representative. However, in the event of a breach of Section 1303 where the spouse is still a minor, the competent authority must submit the application. But a competent authority is not under this same obligation if the minor spouse has become of full age and in the meantime has indicated that he or she wishes to continue in the marriage.

Next, we will consider the amendment to the Introduction to the German Civil Code. Article 13 states that if one of the parties to be married is a foreigner, German law governs the marriage. If one of the parties has not reached the age of 16 at the time of the marriage, the marriage will be rendered null and void. If one of the parties has reached the age of 16 and not reached the age of majority, which is 18, the marriage will be annulled or cancelled.

Concerning jurisdiction and status, any German registry office is competent to preside over a marriage. Any religious or traditional act intended to establish a permanent bond between two persons, one of which is a minor, is prohibited. The same applies to the conclusion of a contract. These prohibitions are directed to the following persons: a clergyman who undertakes such an action, a custodian who gives his or her consent, an adult who consents to a contract which establishes a permanent bond comparable to marriage, or a witness who witnesses such an action insofar as the participation of the witness validates the act.

Section 70 is on administrative offenses. It states that a person who commits an act or enters into a contract as referred to above violates Section 11. It also states that such offenses may be punishable by a fine of up to 5000 Euros, and for other causes, a fine of up to 1000 Euros.

Now we move to the amendment to the Social Security Code. In future, a foreign child is to be regarded as unaccompanied when the child is not accompanied by an adult entitled to care. This is in line with the previously agreed legal framework and the current administrative practice. For example, the Youth Office examines proof of the person's care and if it is in the best interest of the child being accompanied. In this respect, the basic criterion is always the child's well-being and the need for protection of the foreign child.



In the case of married foreign minors, it is important to pay attention to the type of relationship and the personal care of the person accompanying them. The draft states that these minors are to be taken into custody temporarily by the Youth Welfare office for lack of supervision by a person who is entitled to care.

We are going to look at the criticisms of this new draft law. Critics say there is a loss of contractual claims in terms of pension, inheritance and maintenance. According to the draft law, if one of the parties was below the age of 16 at the time of the marriage, the marriage will be regarded as null and void in Germany, leading to loss of contractual claims for pension, inheritance and maintenance.

Also, annulment of marriage would only be valid in Germany but not in the minor's country of origin. This could lead to negative consequences, especially if she returns to her country of origin with her spouse where she might be accused of committing adultery and potentially face the death sentence.

Thirdly, the German authorities could be breaking up families, especially in times of conflict when minors intentionally opt for marriages so that they could be protected from sexual harassment and exploitation. Such unions create stronger bonds and trust between the parties such that separating them will only incur hardship on the minor.

It is also the case that some children might not inform the competent authorities that they are married. As a result of the new ban, families and spouses could threaten married children with death, which could lead them to not inform the relevant authorities that they are married. Thus, they could not be protected from an abusive relationship.

The new draft also violates Articles 3 and 12 of the United Nations Convention on the Rights of the Child. It states that for a state to ensure the best interest of a child, the child's view has to be taken into consideration in the assessment process.

To conclude, the draft law is composed of two main regulations, which are preventative and protective. As a preventive mechanism, it increases the age of marriage from 16 years to 18 years, thereby preventing minors from entering into early marriages. As a protective tool, it regulates the acknowledgement of existing foreign marriages under German law. The question remains if the new law will put an end to child marriage in Germany in a practical manner; the situation is a complex one, especially for minor brides who have children. However, even if the new draft law does not practically put an end to child marriage, it reduces the number of child marriages and sets a pace for other countries. Thank you.

## **D. Child Marriage: rights and politics in the Netherlands. Elsbeth FABER, NIDOS**

Good afternoon everyone. My name is Elsbeth Faber. I am head of the legal department at Nidos. Nidos is the guardianship organization for unaccompanied minors seeking asylum. Nidos, as an organization, is appointed as a guardian at the juvenile court. The actual guardianship task is performed by social workers employed by Nidos, so they are professionals. Each social worker has a caseload of approximately 20 minors. The social worker is a kind of case manager, which means that he or she arranges everything for a minor: adequate reception, education, legal assistance in the asylum procedure, and medical care. All of these things are supervised by the social worker.

At this moment, Nidos has about 5,000 minors in its care under appointed guardianship. Most of them are 16- or 17-year-olds from Syria, Eritrea, and Afghanistan.

I will first give you some numbers. Before 2015, we only had a couple of what we call child brides per year. In the period from January 2015 to February 2016, this number increased. However, the number of asylum seekers coming to Europe increased at this time as well, which likely accounts for the rise in child brides. After 2016, there were about 20 child brides coming to the Netherlands. The age difference between the girl and her husband is very little, only two to three years in most cases, and the girls primarily come from Syria.

The reasons that they are married is that, in almost every case, the marriage is arranged by the parents to protect the girl on the journey to Europe. Sometimes it's to protect the girls from other men in refugee camps; and sometimes it's just a couple in love, usually a young couple, and marriage is the only way that they can be together.

On December 5, 2015 a new law was adopted in the Netherlands. Under the old laws, children of 16 years or older could marry in the Netherlands with permission of their parents. They could be even younger in cases of pregnancy. Also, a foreign marriage could be acknowledged if it was considered to be legal in the country of origin, if the marriage wasn't against the will of the spouses, if the marriage wasn't in conflict with the public policy, and if it wasn't considered to be in conflict with the public policy when the girl was under the age of 15.

Now the new law has made it no longer possible for children under 18 to get married in the Netherlands. Also, legal marriages from other countries where a spouse is a minor are no longer acknowledged or legalized. The consequence of this new law is that in all cases that there is a minor, married or not, he or she must have a legal guardian. Before December 5, 2015, when a foreign marriage was acknowledged the minor was considered to be an adult, so no guardian was needed.

Now I will discuss the policy of Nidos. When a girl is under 18, a guardian is appointed. She may be married, but she is a minor, so she gets a guardian anyway. Lots of girls say, “Well I’m married, I don’t need anyone looking after me, I’m an adult.” So when a girl does not agree to the guardianship of Nidos, Nidos will go to the Child Protection Board and ask them to give advice to the juvenile court. In most cases this leads to a guardianship under Nidos.

When a girl is under 16, the starting point of Nidos is separate housing for the girl and her husband. This is based on Dutch law that sexual contact between an adult and a minor under the age of 16 is a criminal offense. When the girl wants to live with her husband and there are no direct signs of force, then we will try to find a solution, so they can be separated in a way that is acceptable to the family, the minor, and the husband. For example, they can live together with the family of the girl or with family of the husband, or she can be placed with a foster family.

When a girl is 16 years old or older and she wants to live with her husband and there are no signs of force, then they can be placed together. We do a risk assessment in these cases, and if needed, we ask the advice of the special police department on honor-related violence.

When a girl indicates that she does not want to live with her husband, we will try to find a solution which minimizes the risk of honor-related violence. We separate them directly, so the girl is most likely going to be placed in a protected shelter for her own safety. The special police department on honor-related violence will be informed.

It is important to say that all decisions made about separate housing and living together are considered key decisions meaning that behavioral scientists, psychologists, and legal

advisors of Nidos have to be involved in the decision. The decision is finalized by the social worker.

I will now talk about two situations of child marriages. The first is Amani, a 15-year-old Syrian girl, and the other is Zara, a 16-year-old Syrian girl. I'll start with Amani. Amani is married to Asim. He is 19 years old and Syrian as well. At the reception center, Nidos spoke with the couple about guardianship and, with their consent, applied for guardianship for Amani and made an assessment of Amani's situation. Amani stated that she did not want to be separated from her husband.

The legal framework was explained to both of them so that they knew their marriage wasn't legal in the Netherlands and that if Amani would live with her husband Asim he could face criminal charges. Nidos followed the policy not to separate the couple immediately because there was a substantial risk for Amani that she could violate her own honor, or that of her husband and her family if she separated from her husband.

The guardian from Nidos visited the couple on a regular basis to get a better view of the situation. They evaluated the relationship as a relationship based on equality. Amani could express her own opinions and contradicted her husband on a few occasions. She also went to school. But from Amani's answers, it became clear that her family arranged the marriage in order for her to be able to flee from Syria. It would have been impossible to undertake such a dangerous journey on her own.

Arranged marriages were a family tradition, but Amani's wedding took place a few years sooner than planned due to the war. If Amani was separated from her husband, it would not have been accepted by either family. The guardian spoke with Amani and Asim together, as well as with the parents by telephone. The guardian explained the legal framework to the couple and to the parents. Nidos also asked the guardian to speak with Amani, Asim, and Asim's parents about finding a solution acceptable for both families and fitting within the legal framework in the Netherlands.

The families eventually came up with the idea to place Amani with Asim's aunt, who also happened to live in the Netherlands. Nidos agreed to do a screening on the aunt and her family. We found it acceptable and Amani moved in with her aunt. She will

continue to live there until she reaches the age of 16. Then she will be reunited with Asim, and they can live together again if she wants to do so.

I guess you could say this was an easy case. I will now move on to the case of Zara, which is more difficult and was more frustrating for Nidos. Zara is almost 16 years old and from Syria. She arrived in the Netherlands with her husband, Mohammad, who is 35 years old and has his four children with him. This is a significant age difference of course. In the application center, the youth care worker of Nidos talked with both of them separately. He asked Zara if the marriage was voluntary and told her that if it is not, she didn't have to stay with her husband. She wanted to leave her husband immediately because the marriage was against her will and arranged by her parents. She also told the social worker that her husband was abusive.

Mohammad got very angry and didn't want a separation. Nidos then decided to place Zara in a protected shelter primarily for victims of trafficking. The behavioral scientists and legal advisors of Nidos were involved in this decision. The special department of the police specializing in honor revenge was consulted as well. Zara stayed in the protected shelter for about a year. Her brothers were also in the Netherlands and were threatening her, as they did not agree with the separation. Mohammad threatened her as well. He said he would harm Zara's adult sister who still lives in Syria.

After a year, Zara's parents arrived in the Netherlands. Nidos arranged a meeting with the parents, the police, and Zara to discuss her situation and see what kind of reception was the most adequate. The hope was that Zara could live with her parents again. The parents supported the decision of having Zara live apart from Mohammed. The conclusion at this point was that the situation was safe, and Zara could live with her parents. Again, the behavioral scientists of Nidos and the legal advisors were consulted.

After a couple of months, Nidos decided to request that the court ceased guardianship by Nidos and restore the parental responsibility to Zara's parents. Shortly after this, Mohammad again sought contact with Zara, and he even picked her up at her parents. Then Zara went back to living with Mohammad again. We now understand that Zara's brother had a crucial role in this development. He thought that Zara's honor was violated by the separation. But at this point Nidos wasn't a guardian any more and couldn't do anything. Nidos had contact with the police and the Child Protection Board

but they couldn't do anything either because Zara told them it was her own choice to live with Mohammad, that it was out of free will. She said that it wasn't forced. Zara didn't want to have contact with Nidos anymore because we caused the separation. After a couple of weeks, we were informed by the police that she was pregnant. And then in April of 2017, Nidos got information from the police that Zara was again living with her parents.

We have reached the end of my presentation and I would like to thank you for your kind attention.

**E. What is the effectiveness of French legislation in relation to the reality of forced marriages of minors in France? Christine-Sarah JAMA, Voix de Femmes**

To be clear, I am absolutely not a specialist on the question of migrant minors arriving in France in a forced marriage situation, because we received only a small number of such cases from the association. Voix des Femmes is not an international NGO, it's a "little-big" French association that initially—when it was created—was for the vocation of legal accompaniment, psychologically, and also on accommodation searches for young French girls under threat of forced marriages in France. That being said, we are increasingly challenged to follow-up on requests from young girls who have just arrived in France. The minors are extremely rare. It has happened to us twice; one instance occurred a decade ago for a 12-year-old girl who arrived in Bangladesh and who was the first wife of the man she had married. We have a habit of using the terms that the victims use to name the individual that they are forcibly married to, but I will remain polite. The insults they call them can go from the word "rapist" to "the other," and I'll spare you the swear words. We normally use the word "individual" because even though legally they could say husband, we add large quotation marks, especially if they are minors.

In France there are also marriages of French bi-national minors—because we receive young women of all origins—and so I do not think I deceive myself in saying that in chic districts, there are rallies organized by very well-off families to meet people in good situations. That way they can be certain that the girls do not marry someone in a bad situation. Just a little report of French civil code: matrimonial consent is an obligation. It's truly what differentiates a forced marriage from a non-consensual one, which is important to highlight. Also, the legal age of marriage in France was raised to 18 as recently as 2006. But since we are still governed by the Napoleonic code--Napoleon was not a great feminist, but I am not teaching you anything--one can get married at 15 in France. I quote you the civil code: "It is at the leisure of the Prosecutor of the Republic to grant exemptions of age for serious reasons." What is a serious reason? I do not have jurisprudence in the matter because in the case of forced marriages it is not the minor who asks to be married by force, it is the parents who organize the forced union.

Article 148 of the Civil Code says that if ever one parent is in agreement and the other is not, the Prosecutor is obligated to follow the parent that is in agreement; but here I am talking about consenting marriage—it is extremely rare for minors to want to get married in France. The minors that we follow, by definition, are not in agreement, so they don't call us to say they want to marry; and for those minors who do wish to marry (we have received young girls who are approaching 18 years), we realize that they have a significant other who they want to marry very, very quickly to avoid a forced marriage with the man their family presented them with. Often, it is their own way of self-protection because they are not used to being autonomous; but believe me that if this young woman amused herself by calling the Prosecutor to make a request for marriage with this boy, neither of her parents would be in agreement. Maybe if he was in the same community the parents might eventually agree, but it is still unlikely. If this is not the case, it is sure the parents would never agree to the marriage. And even if the young man be of the same origin and in the same community, you would be frightened for the reasons parents oppose consensual unions.

The positive side of the fight against forced marriage is the promotion of the freedom to love. Often when I explain what I do, people say: “but it's awful, you only receive rape victims and victims of domestic violence.” I respond that since 75% of the girls and boys that I receive are not married, it means that I also receive many youth who have chosen, or not chosen, to marry; and when they do choose to get married or to be in a relationship with the boyfriend or girlfriend that they want, I have to assist many couples who are of the same origin but have differences unfavorable to the parents. For instance, the young lady is Sunnite, the young man is Shiite, so the parents see the person of interest outside of their endogamy criteria. It is also important to be aware that the primary reason invoked for forcing people into child marriage, outside of reasons related to ecological catastrophe or wars, is still generally to control the sexuality of young women as well as boys.

For the boys that we follow who were forcibly married, there are two principal motives: either they are gay or they are handicapped, which, logically, is not a problem. But it is a problem for the one forced to marry them to return them to heterosexuality or to put them in the hands of a maid or sex slave as a function of the degree of handicap. A young man I met who is mentally handicapped had all of his mind to say: “I do not want to be married to a girl I do not want.” But his parents use his handicap to impose



their own desires, even though this young man does not want to get married. We can also see how an organized forced marriage can hide the risk of rape. For example, in a family where there is a rapist father or uncle, and therefore a risk of interfamilial rape, the family may have the strange idea to forceably marry their daughter off, and therefore have her violated in a more institutional way by someone else. It's protecting her from rape through another rape, and completely crazy when you think about it.

Another important thing, you must not underestimate the legislations that authorize the reparation of dishonor consequent of a rape by forced marriage with the rapist. Without going into the details of countries who do it and others who do not, even if the legislation of a country does not authorize such things, that is not to say that in a customary, gregarious, or familial manner, the family members who want to marry their children traditionally or religiously will not do so. It is necessary to distinguish between what the law does and does not authorize, and what parents do. It is the case that some parents are having minors, and so bi-national youth, get married customarily through forced child marriages in France on French territory, and then those children regularize the practice when they have matrimonial majority.

I also wanted to talk about a very important difference: there is the law, and then there is its efficacy. Even though we have child protection, a judicial framework which allows us to protect minors in cases of forced marriage, it is still necessary that the minors' call for help can be heard. In France, when a minor denounces the danger of a forced marriage, or a forced marriage is confirmed by a school social worker or school nurse, the nurse is not going to gather whether it's a customary or civil marriage or if it's true or not because the nurse goes off the principle that the child is not lying. It's still the word of the child that is important: what is the point for a young girl whose first comment is often "I don't want to get married but I still want to stay in my family" because they are in a conflict of loyalty with their families. It is not obvious to leave one's family, nor is it at all pleasant to end up in a child protection home or in a host family, of which there are still some malicious, sexist, and racist families--do not underestimate it in France. What is in the interest of a young girl to say such things when she calls for help because she's in danger of a forced marriage in France. I know only two young girls who lied, that's all, and I've been doing this job for 18 years. The first told a story of forced marriage because in reality she had been the victim of incest since she was young, and the second lied because she was convinced she could find a

studio apartment for her and her boyfriend who were both 16 years of age at the time. But it's not possible to live as a couple at 16 in a home allocated by child protection. So you see, these are two extreme examples.

The framework that the French legislation offers in matters of child protection is an educational aid in an open environment, which means an educative follow-up of the young person who stays in the family, and this educative follow-up is combined with a ban on leaving the country. It cannot be ignored that in France three-fourths of forced marriages take place abroad, so the ban on leaving the country is a major measure of protection. For those who want to be away from the family, they can be placed with a trustworthy third party or a home. Currently, I am assisting a young Pakistani woman who is protected at her brother's house, since her brother has been separated from the family for about 25 years. Her brother was banned from the home because he married a young Moroccan girl rather than a Pakistani girl. The Justice therefore considered that this man was trustworthy to protect his sister: the parents have neither their son's address nor general knowledge of where he is living because they haven't talked to him for 25 years due to his wife's origin.

These are the things that can be put in place, but one other important thing: the temporary ban on leaving the country can be decided by the children's judge, the judge of familial affairs, without the agreement of the two parents, with a registration of the young woman to the wanted persons file to avoid her crossing the border. We would like there to be a file of protected persons, but that does not exist. Another important thing: it is easier to protect a child who is in France than to protect a child who is overseas as France's means to repatriate are very limited. We've had a law since 2010 that permits the return of persons in danger of forced marriage, but in these cases it's rarely France that will prevent the minor from coming back. It's mostly the country of origin that will prevent him or her from leaving because when one is underage and under the authority of their parents, there are different legal ages of majorities between countries; for example, the legal age of majority in Algeria is 19 but in Mali it is 21. So even though the minor is 18 years old, often she does not know her rights and says, "it's not bad, I will give in to the marriage and come back to France when I turn 18." Except she does not return--she has to wait to reach the age of legal majority in her country of origin, and that is very important.

Another important thing, and this was mentioned a little today: the question of matrimonial majority and whether one can consent to marriage when one is a minor. We must be careful of any cultural relativism, because though we come from a so-called different culture, we have the same universal needs as teenagers from every corner of the planet. Two years ago, I accompanied a young Franco-Guinean woman who was a victim of serious violence in her family, which was followed up by the educational service of her neighborhood. They never made a report when she suffered serious violence for the first time in Guinea where she was to meet the man the family wanted her to marry while still a minor. When I asked the question “Did you ask her if she had experienced any violence in the family,” they responded to me “Oh no, no, no, that’s what she told you. We don’t ask those types of questions.” Welcome to the world of make-believe where families are never violent. They also did not bother to ask--against French law--if the young girl consented to her marriage and if this was a young woman who wanted to marry her lover at seventeen and a half years contrary to the views of her parents. We have an incredible number of cases where a young woman wants to be helped or at least accompanied until a little after 18 to see how it goes, but often those who could help her do not get involved. They say, “Yes, but you have to understand the parents.” But this is the wrong view because if the parents do not want their daughters to marry someone different, then as one of the girls said, “Why didn’t they leave me in the village in this case? I arrive in France and go to school with boys of many different origins therefore making it very probable that I will fall in love with a boy who is not of the same origin as me!”

Mixed marriage is still a slightly taboo topic, but when a girl is a minor we don’t pose questions of consent because it’s illegal to get married in France when younger than 18, therefore making consent immaterial. In addition, if she is a minor and it’s a forced marriage, posing the question of consent would be doing the exact same thing as the parents: it is necessary for the parents to believe it’s good for their daughter to marry, so in the beginning the parents pose the question of consent. Many young girls say, “Well I ended up saying yes because I wanted to be left in peace.” There is a young woman who recounted to us that she had been working on her midterms at 4:00 in the morning when the family council met in the living room to discuss the marriage. Everyone was shouting over her, so she eventually just said yes as it was 4:00 in the morning and she merely wanted to study for her midterms and get some sleep; she wanted to move into her second year of law school. You see, it is all about the context

in which one extorts the consent of the young minor--or adult, as one is at 18. Finally, the women's pool is mostly formed at 20 years old, so the matrimonial majority have children. It makes me laugh, as does the concept of puberty: as soon as a girl reaches puberty she is as ready to marry as she is capable of consenting... Where are we going? It's a slippery slope, and I want marriage to become a protected constitutional right so that when young girls do not consent to marriage, it would be right to listen to the word of the child.

I will end with an important concept: the question of mediation. We have texts of law that strictly frame the protection of the child and can to a certain degree facilitate young women's' return to France. We have a new law from 2013 called the Dolosive Maneuver Offense (Délit de Manoeuvre Dolosive), which is the result of transposing the Istanbul Convention into French law. This law governs what we'll call the offence of deception: it's when parents say to their daughters or sons, "Your grandmother is sick," or even, "Your cousin is getting married so it would be nice if you came to the country with us," when in reality a forced marriage is going to take place. This is sanctioned, and we were able to bring a young girl back to French territory in this context with the help of a policeman. The policeman summoned the father based on the evidence we had against him, and the police said, "It's simple sir, either you repatriate your daughter, or we stop you." While in custody, the father reflected on this and then brought his daughter back within 24 hours. But you should know that mediation generally makes things worse. We have already been contacted by imams who have received death threats because they wanted to do some sort of mediation to prevent a forced marriage or to advocate for a young woman to be able to marry who she wants. When parents decide to forcibly marry their daughters off, they threaten those they want to threaten. So mediation is not a good idea because it precipitates the marriage and endangers the mediator, the young woman, and indeed the couple.

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