

Inter-Agency

DRAFT

INTER-AGENCY GUIDANCE NOTE ON CHILD MARRIAGES

Measures for Prevention and Response

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**Inter-Agency
Coordination
Turkey**

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Introduction

In humanitarian settings, children and adolescents often face a heightened risk of violence. This is caused by multiple factors, including the lack of rule of law, breakdown of family and community protective mechanisms, their limited power in decision-making and their level of dependence on adults. The strain on adults caused by humanitarian crises may also increase risk for children's exposure to violence and exploitation.¹

In cases where traditional practices yield positive outcomes, communities are encouraged to pursue these traditions as a means of preservation of identity and culture. On the other hand, certain traditional practices may be detrimental to children's health, well-being and pediatric development; and hence, be classified as violation of their rights². Child, early and forced marriages are all types of gender based violence and is perceived to hinder progress towards women and girls' empowerment as well as the Sustainable Development Goals.

Child marriages are defined as formal or informal unions, where at least one of the parties are under the age of 18. Although interchangeably used with child marriages, early marriages are a distinct kind of union. This 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 due to other factors, they are not ready to consent to marriage. These factors may include their level of physical, emotional, sexual and psychosocial development, or a lack of information regarding the person's life options. Forced marriages, on the other hand, are defined as 'marriages' that occur without the full and free consent of one or more parties.³ The protection and empowerment of children, including specifically through the prevention of child marriages, are regulated in multiple international legislative frameworks which introduces legally binding responsibilities for signatory countries. Despite these efforts, at least 12 million girls below 18 are exposed to child marriages on an annual basis. Child marriages are most frequently observed in less developed and developing countries.⁴

Especially in the past few years, with the steady rise in the number of asylum seekers and refugees in Turkey, identifications of child marriages have also increased. Although there is no clear definition of child marriages in national legislation, Turkish law defines children as any individual that has not yet completed age eighteen, regardless of whether they have reached full legal age earlier. Furthermore, in circumstances where at least one party of the marriage is below 18, whether formally recognized or not, this is perceived as child marriages.

Comprehensive data or statistics on child marriages in refugee communities across Turkey are not publically available. Nonetheless in December 2017, through leadership of the Istanbul Provincial Child Protection Coordination Board, Istanbul Provincial Directorate of Family, Labor and Social Policies (PDoFLSS) initiated a situation analysis on child marriages in Syrian communities within Istanbul. Consequently, data on identified individual cases of child marriages were retrieved through Istanbul Provincial Directorate of Migration

¹ Inter-Agency Standing Committee [IASC] – Global Protection Cluster « Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action » [2015] Page 73.

² Office of the United Nations High Commissioner for Human Rights [OHCHR] « Fact Sheet No. 23: Harmful Traditional Practices Affecting the Health of Women and Children » [1995] Introduction.

³ Office of the United Nations High Commissioner for Human Rights [OHCHR] « Preventing and Eliminating Child, Early and Forced Marriage » (A/HRC/26/22) [2014] Page 3.

⁴ United Nations Children's Fund [UNICEF] « Child Marriage » [2018] < <https://data.unicef.org/topic/child-protection/child-marriage/> >

Management (PDMM) and Istanbul Security Directorate. Accordingly, it was identified that of 253,457 children who were registered by PDMM, 5,635 children (2.22%) were married. Among the 39,795 children between the ages of 16-18, 3,958 (9.94%) children, including 379 (0.95%) boys and 3,579 (8.99%) girls were registered as married. Among the 28,488 children between the ages of 13-15, a total of 1,677 children were registered as married, of which 737 were boys (2.58%) and 940 were girls (3.30%).

Results of consultations with communities, including through implementation of a participatory assessment approach, indicate causes of child marriages in refugee communities residing in Istanbul as follows: financial destitution and perception of child marriages as relief from burden on families; intention of increasing the child and families quality and standards of life; obstacles in access to education; family and community pressure; and search for partner to address emotional and psychological needs. Consequences of child marriages were indicated as increasing responsibilities and early adulthood; inadequate level of age and maturity to undertake child care; limited access to and/or discontinuity in education; increased risk for domestic and/or sexual violence; increased health risks especially during pregnancy and/or birth; restrictions in participation in social life and negative psychosocial impacts.

As per relevant international and national legal framework, the State of Turkey and its institutions are taking steps for the identification, prevention and response to child marriages, both for Turkish and refugee communities. Complementary to public institutions' efforts, NGOs and civil society institutions remain key actors in supporting public institutions in undertaking necessary response for identified cases, mainly through referral to state services and implementation of preventive activities. It is therefore crucial that efforts undertaken by NGOs are standardized and children identified to be at the same levels of risk receive the same level of protection. It is also essential that preventive and comprehensive empowerment efforts are systematically undertaken for children identified to be at risk of marriage.

Within this regard, this inter-agency guidance note on child marriages has been developed based on the need identified through the Istanbul Child Marriages sub-national Working Group where PDoFLSS, PDMM, UN agencies and NGOs working in the field of refugee response are present. The purpose of the guidance note is to;

- Ensure standard and holistic individual case management response across agencies, under the guidance of the protection sector;
- Clarify obligations arising from available legal framework, also in relation to the 'do no harm' principle;
- Establish a targeted and impactful prevention system for children at risk of marriage.

Legal Framework

Child marriages are regulated in multiple international legislative frameworks, through which signatory states are legally bound to undertake efforts to prevent and respond to child marriages. According to these legal arrangements, a legally valid marriage must be entered into with the full and free consent of the intending spouses⁵. Furthermore, states are under an obligation to take legislative, administrative, social and educational measures to ensure that all children under their jurisdiction are protected against all forms of abuse, neglect, exploitation and violence without discrimination of any kind, irrespective of their race, sex, national, ethnic or social origin, and any other status.⁶ As per the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), states are responsible to take necessary legislative or other measures to ensure marriages concluded under force may be voidable, annulled or dissolved and that the intentional conduct of forcing a child to enter into a marriage is criminalized.⁷ Additionally, states have the responsibility to ensure that the betrothal and marriage of a child will have no legal effect, and all necessary action, including through legislation, will be taken to specify a minimum age for marriage. Accordingly, registration of marriages should be undertaken in an official registry compulsory.⁸

While the provisions providing guidance in cases of child marriages are scattered in the national legislation, the following legislation can be referred to in analysing the issue from a legal perspective: Turkish Civil Code (No. 4721), Turkish Criminal Code (No. 5237) and/or the Child Protection Law (No. 5395). These legal provisions may have legal consequences and responsibilities for intended spouses, families of the children and anyone who holds information related to the marriage. For the aforementioned reasons, it is essential to know the legal consequences of child marriages.

According to the Turkish Civil Code (No.4721), the legal age for marriage is 18⁹. Children who have not yet completed 18 years of age are legally prohibited from marriage. Yet in exceptional circumstances, children who have completed 17 of age may be married with the permission of their legal representatives, and those who have completed 16 years of age may be married in exceptional situations and in the presence of an important cause, through a court order. Without the presence of the mentioned conditions, children cannot get legally married.

The Turkish Criminal Code (No.5237) does not specifically define child marriages as a criminal act, however all kinds of sexual behaviors towards children whether in marriage or not may result in criminal punishment of the perpetrator or child's spouse or family. As per the Turkish Criminal Law, any sexual behavior against children who have not completed age of fifteen, or who have completed age of fifteen but lack the ability to understand the legal consequences of such act, will constitute the crime of child's sexual abuse, whereas sexual intercourse with a child, who have completed the age of fifteen, without using force, threat and fraud will constitute the act of sexual intercourse with under age persons. Investigation and prosecution of the act of sexual intercourse with under age persons are subject to complaint. Furthermore, the sex of the person engaging in sexual behavior or the age difference between the persons does not prevent the criminalization

⁵ United Nations « International Covenant on Civil and Political Rights » [1966] Art. 23; United Nations « International Covenant on Economic, Social and Cultural Rights » [1996] Art. 10.

⁶ United Nations « Convention on the Rights of the Child » [1989].

⁷ Council of Europe « Convention on Preventing and Combating Violence against Women [Istanbul Convention] » [2011] Art. 32 and Art. 37.

⁸ United Nations « Convention on the Elimination of All Forms of Discrimination Against Women » [1979] Art. 16.

⁹ Turkish Civil Code [No. 4721] Art. 124.

of the act. The crimes and respective punishments enlisted in the Turkish Criminal Code are further summarized in *Annex I*.

According to the Turkish Criminal Code, if the marriage has taken place between two children, each individual separately is assumed to have committed the aforementioned acts against one another. Yet in practice, it is observed that male children are more likely to face legal consequences, whilst female children are placed under state protection. Furthermore, the Turkish Criminal Code also includes provisions regarding the legal capacity of a child being responsible for a crime. Accordingly, if the child engaged in criminal act has not completed the age of 12, the child will not be deemed to have any criminal responsibility, however security measures specific to children may be implemented. If the child has completed 12 however has not yet completed 15, his/her ability to comprehend the legal consequence of the act committed is examined. If it is assessed that the child's ability to comprehend is not adequately developed, criminal responsibility will not be sought and security measures specific to children may be implemented. In case the child's ability to comprehend is adequately developed, punishments summarized in Annex I are remitted by half time and in any case, cannot surpass 7 years of imprisonment. If the child has completed 15 years of age, 1/3rd of the punishment summarized in *Annex I* will be reduced and under no circumstance may the imprisonment surpass 12 years.¹⁰ Nonetheless, it is argued that whether male or female, all children should be prevented from marrying as there are negative consequences, both legally and otherwise, for boys and girls.

In offences prosecuted on complaints, if the survivor, parents, caregivers or legal guardian does not file a complaint within the six months that the act or the perpetrator is known/identified, investigation and/or prosecution will not be initiated. If the child files a complaint on the offence once, however later withdraws, the investigation will be ended and if there is an existing lawsuit, public litigation will be eliminated. The person will not be able to file a complaint on the same offense in the future.¹¹

For children in need of protection, the Child Protection Law (No. 5395) aims primarily to protect children within the family environment through provision of protective and supportive measures. According to the law, children in need of protection are defined as those whose physical, mental, moral, social or emotional development and personal safety is in danger, who are neglected or abused, or who are victims of crime. Therefore, children exposed to marriages should be included within the defined scope of children in need of protection. Protective and supportive measures can be taken by the juvenile judge either suo sponte or upon the request of the juvenile's parents, guardian, the person responsible for the care and supervision of the child, Social Services Centers or the Public prosecutor. It is crucial to obtain counseling, education and/or health measures for children exposed to marriages.¹² Refer to *Annex I* for further information on protective and supportive measures.

¹⁰ Turkish Criminal Code [No. 5237] Art. 31.

¹¹ Another important consideration in cases of child marriages is the duration of which a complaint may be filed after the sexual engagement has occurred. The statute of limitation refers to the dismissal of the criminal proceedings upon the lapse of a specified duration of time if a judgment has not been handed down during this period, or if a criminal proceeding has not been initiated during this period. Hence, it is only possible to initiate criminal proceedings within this duration of time. Further information on statutes of limitation are enshrined in Art. 66 of the Turkish Criminal Code.

Another debated topic is whether a criminal proceeding can be initiated if the sexual intercourse has occurred in the child's country of origin. An example of this issue is as follows: a Syrian girl child, who was married off at the age of 13 and got married, later came to Turkey when she was 14 years old and was identified as a child at risk in Turkey. In this scenario, Turkey's obligations concerning protection of children against exploitation arising out of Convention on the Rights of the Child, Art. 90 of the Turkish Constitution and the Child Protection Law must be taken into account.

¹² Child Protection Law [No. 5395] Art. 3, 5 and 7.

Another relevant national legislation to take into consideration is the Law to Protect Family and Prevent Violence against Women. This law regulates measures to protect children whom are survivors of violence, those under risk of violence, as well as children who are victims of ex parte persistent stalking as well as measures of preventing violence against those children. Accordingly, persons may apply to the police, Prosecutor, Judge or Administrative Chief for the issuance of protective and preventive measures, for children exposed to marriages. Further information on measures can be found in *Annex I*.

Response

Rationale

The aim of the response section of the guidance note is to clarify case management procedures and factors to be considered throughout. Standardization of case management and referrals across agencies for children exposed to marriages, those at risk of marriages, and/or pregnant children/ child parents as well as their parents, caregivers and legal guardians will be ensured. In this regard, it is crucial that all actions taken throughout case management procedures are in line with child protection guiding principles, including do no harm and best interest. Ensuring the child's safety is also amongst the primary considerations in case management procedures.¹³ The overarching purpose of response and case management is to increase awareness of children, parents, caregivers and/or legal guardians on available protection mechanisms as per the national legal framework, and strengthen their access to available resources and services.

Steps of Case Management and Factors to Take into Consideration

IDENTIFICATION

It is essential to identify children exposed to or at risk of marriage during the first meeting with the child or his/her family. Early identification of children, assessment of present risks and taking required action is critical. Mechanisms to identify whether identified children should be engaged in case management procedures, or if it would be sufficient to undertake swift referrals to service providers without involvement in case management should be established, through due consideration of the child's best interest. Children at risk and/or those with protection needs can be identified by a variety of sources including public institutions, service providers (including NGOs), community members and/or self-referral (child or family).¹⁴

Who can undertake identification?

- Identification of children exposed to marriage or those under risk of marriage, is predominantly undertaken by social workers, psychologists and outreach workers involved in child protection programming.
- Nonetheless, in consideration of the reporting obligations arising from relevant national legislation, public and health officials are obliged to report any case of abuse or offence which is being committed. Information on obligation to report and relevant procedures are indicated in *Annex IV*. Hence, the persons and institutions listed below are also potential sources of identification of children exposed to marriages and those at risk.
- In view of their outreach capacity to refugee communities, it is essential to regularly coordinate and cooperate with the below mentioned institutions with the purpose of strengthening identification practices, implementing prevention efforts as well as establishing referral mechanisms.

¹³ Child Protection Working Group, "Inter-Agency Guidelines for Case Management & Child Protection" Page 16-18.

¹⁴ Child Protection Working Group, "Inter-Agency Guidelines for Case Management & Child Protection"; United Nations Education Fund [UNICEF] / International Rescue Committee [IRC] « Caring for Child Survivors of Sexual Abuse » [2012; United Nations High Commissioner for Refugees [UNHCR] « UNHCR Guidelines on Assessing and Determining the Best Interests of the Child [BIP Guidelines] » [2018] Page 45.

Persons, Institutions and Organizations with Identification Capacity and Obligation to Report

Judicial and Administrative Authorities	Members of the judiciary
	Prosecutor's Office and Courts
	Bar Associations and Lawyers
Law Enforcement	Police
	Gendarmerie
Health Institutions	All private and state health institutions (including migrant, family and public health centers)
	Health personnel (doctors, midwives, nurses; including foreigners)
Education Institutions	Teachers
	Guidance counselors
	Psychological counselors
	School administration
Main Public Institutions responsible for Child Protection	Ministry / Provincial Directorates of Family, Labor and Social Services
	Social Service Centers
	Violence Prevention and Monitoring Centers (ŞÖNİM)
	Child support centers and other care institutions
Other Public Institutions	Directorate General / Provincial Directorates of Migration Management
	Provincial / district muftis
	Provincial / district civil registry offices
Local Authorities	Municipalities / municipal Police
	Village and neighborhood mukhtars
Local Administrative Authorities	Governorate
	District governorate
	Neighborhood wardens
Civil Society Organizations	Community centers
	Outreach and distribution teams
Community	Religious persons (official and informal; including Syrian and Turkish religious leaders)
	Refugee individuals (children exposed to marriage, their relatives and acquaintances, individuals aware of the child marriage), community and opinion leaders.
	Host community members

Factors to be considered upon identification

- Obtaining the concerned child's, parents, caregivers and/or legal guardians' contact information (including foreigners ID number, full address and telephone number), primarily to ensure timely and efficient notifications to authorities and strengthen case follow up. As an initial step, information on the child's family should also be obtained, including who she/he is accompanied by in Turkey and their relevant identity information (names, ages etc.).
- The risk level and urgency of the child's situation must be assessed as early as possible. In this regard and to the extent possible, separate meetings with the child should be undertaken where safety and confidentiality can be ensured.
- In cases identified to be urgent and high risk, safety planning should be undertaken through the participation of the child, in order to prevent further risk and establish a safe environment for self-protection.
- As mentioned in the section on "Implementation of Case Plan", in cases of emergency, alternative referral mechanisms may be applicable throughout case management procedures.
- The child's participation in all decision making processes concerning him/herself should be ensured.
- Prior to taking any action, the child must be informed on available options, relevant processes and potential consequences of referrals. In this regard, informed consent and/or assent must be obtained from the child and parents, caregivers and/or legal guardians.

INFORMED CONSENT / ASSENT¹⁵

Children capable of forming their own views have the right to express them freely in all matters. This right is ensured in due consideration of children's ages and maturity levels.¹⁶ The right of children to express views and participate in any and all decisions concerning themselves are also essential to their empowerment processes as well as strengthening of coping mechanisms. Regardless of whether the child's consent will be sought or not (i.e. in situations falling under obligation to report), it is noted that every child has the right to be informed on all decisions concerning him/herself and participate accordingly.

Informed Consent: This is the voluntary agreement of an individual who has the legal capacity to give consent. To provide informed consent, the individual must know and be able to comprehend available services, have the legal capacity to understand the consequences of any act and maturity to take a decision regarding his/her own situation.¹⁷ In most cases, parents are held responsible to provide informed consent regarding the decision of the child to benefit from services, until he/she becomes of age. However in some circumstances, adolescents may also provide consent on behalf of or complementary to their parents. In order to ensure consent obtained is "informed", case workers should provide detailed account of all available services and options, referrals to be undertaken throughout case management procedures, potential risks and advantages of benefitting from services, purpose of obtaining specific information as well as limits to confidentiality to beneficiaries.

¹⁵ United Nations Education Fund [UNICEF] / International Rescue Committee [IRC] « *Caring for Child Survivors of Sexual Abuse* » [2012] Page 16.

¹⁶ United Nations « *Convention on the Rights of the Child* » [1989] Art. 12

¹⁷ Child Protection Working Group – Global Protection Cluster « *Minimum Standards for Child Protection in Humanitarian Action* » [2012] Page. 66.

Informed Assent: Informed assent is the stated willingness to participate in services. Informed assent is sought from children who are unable to provide informed consent due to their age, however those whom are old enough to be able to understand and confirm willingness to participate in services.

Especially in cases that fall under the legal obligation to notify authorities, children and their families should be informed on processes of notification to PDoFLSS and/or other relevant authorities, including the reasons for being obliged to report and potential consequences of this action. Informed consent will not be sought from parents, caregivers and/or legal guardians whereas informed assent will not be sought from children, for cases that fall under obligation to report.

Once informed consent or assent is sought from children with regards to case management procedures, and prior to meeting with family members and trusted adult to discuss the child's situation, consent for communication with the mentioned persons should also be obtained from the child. Nonetheless, this should be sought only in situations where the persons to be communicated with are protective and supportive to the child. Decisions for meeting with family members/adults whom are sources of protection risk and harm for children should be taken on a case-by-case basis.

If involving the responsible adult to the informed consent process is not in the best interest of the child (i.e. if the parents have forced the child to marriage) the case worker should identify whether there are other trusted adult in the child's social circle, who would be able to provide consent. If there are no other trustworthy adults, the case worker should determine the child's decision capacity based on the age and maturity level. When making a decision, case workers are primarily obliged to proceed in accordance with available legal framework.

As indicated in the section on "Legal Framework", children who have not completed the age of 15 will not be eligible legally to consent, which will inherently result in the sexual act being deemed as sexual abuse offense. Hence, this will initiate public prosecution, meaning that it does not require complaint. If the child has turned 15 and has not been affected by threat, coercion or deception, the act will be deemed as sexual intercourse with under age people, which can still be prosecuted upon complaint and if the child (or parents) doesn't lodge a complaint, there won't be a criminal proceeding. For further information on criminal acts and relevant penalties as specified in the Turkish Criminal Code, please refer to *Annex I*.

COUNSELING

Children¹⁸

- Interviews should be conducted in child-friendly spaces or psychologists' rooms, by child protection specialists including psychologists and social workers. Persons conducting interviews should be trained on child protection, interview techniques with child survivors of abuse and relevant subjects.

¹⁸ For further information on child friendly or child-centered case management procedures, refer to Child Protection Working Group – Global Protection Cluster « Minimum Standards for Child Protection in Humanitarian Action » [2012] and United Nations Education Fund [UNICEF] / International Rescue Committee [IRC] « Caring for Child Survivors of Sexual Abuse » [2012] Pages 68-69.

- Child-friendly communication techniques should be utilized.
- A safe environment should be established and the principle of confidentiality (including limitations caused by obligation to notify) should be ensured and mentioned.
- Before initiating the session, the child's consent should be obtained with regards to conducting the interview.
- Prior to delivering counseling, the interviewer should introduce him/herself and the organization, as well as the purpose and context of the interview.
- Content of the interview should include information on the child's rights in accordance with international and national legislation, child marriages and potential consequences, the importance of the child's access to and participation in education, as well as institutions responsible to ensure the child's rights and protection.
- In consideration of the potential of disruptions in further communication with the child subsequent to the first interview, risk and protective factors specific to the individual child should be identified.
- All children should be counselled on the availability of child care institutions operating under PDoFLSS, without regards to obligation to notify authorities. For children who request to be placed under institutional care, information should be provided on conditions of institutions.

Adults (Parents, caregivers and/or legal guardians)

Excluding situations where it is deemed to not be in the best interest of the child, it is essential to obtain informed consent from and provide information to the child's parents, caregivers and/or legal guardians with regards to services to be delivered throughout case management procedures, including relevant referrals. The child's relations with the aforementioned persons, whether they are risk factors for the child, and the child's views on their relations should be obtained without putting the child at risk of harm. In case it is assessed that obtaining consent from the parents, caregivers and/or legal guardians is not in the best interest of the child, the case worker should internally consult with supervisors or child protection specialists to decide whether or not to obtain consent.¹⁹ Further information on consent may be found above.

- Prior to initiating the session, the interviewer should introduce him/herself and the institution, aim and context of the interview.
- A safe environment should be established and the principle of confidentiality (including limitations caused by obligation to notify) should be mentioned.
- Content of the interview should include information on the child's rights in accordance with international and national legislation, child marriages and potential consequences, including risks related to child pregnancy and parenting (especially regarding health, the risk of death in home births), the importance of the child's access to and participation in education, as well as the importance of receiving services from formal health institutions.
- Considering the health risks which is a prominent factor in child marriages, early pregnancy and its harmful effects on female children could be mentioned. These risks could have critical results, including life or

¹⁹ United Nations High Commissioner for Refugees [UNHCR] « Guidelines on Assessing and Determining the Best Interests of the Child [BIP Guidelines] » [2018] Page 60.

death situations. Complications related to pregnancy and child-birth is the primary reason for deaths in 15-19 year old female children. Likewise, the newborn may also suffer from health conditions. In cases where the mother is under the age of 18, the possibility of the newborn dying before turning 1 is at least 60%.²⁰

- It should also be noted that sexual intercourse at an early age may also have negative impact on male children's health and psychological situation.
- If it is in the child's best interest and if the case worker has obtained the child's consent/assent, parents, caregivers and/or legal guardians should be informed on the obligation to report as well as potential legal consequences. Content should include which institutions will be notified and that interviews may be held with the 'spouse' and other family members (to obtain testimony) subsequent to the social assessment undertaken with the child.
- Individuals should be informed that as a result of notification and assessment with the child, MoFLSS and judicial authorities may decide to place the child under PDoFLSS operated child care institutions.
- Subsequent to notification and assessment by PDoFLSS, Courts may also decide to issue measures other than care, including counseling, education and health. Within this regard, information should be provided on the purposes of these measures, the family's legal obligation to abide by conditions of the measures and that close follow-up by PDoFLSS with the family should be expected.
- Services to be provided through internal or external referrals may include Should the family communicate their unwillingness to benefit from services subsequent to the delivery of counseling, and in case the child's situation does not fall under the obligation to report, the case worker should make effort to establish a trust relationship with the family in the medium term, through non-persistent and supportive communication techniques. Other needs within the family should be identified and relevant supportive services should be delivered. This may include legal counseling and referral regarding the family's legal status in Turkey, referral for financial and material support and, provision of interpreter and/or accompaniment in approaching state service providers.
- In case the child's situation does fall under the obligation to report however the family does not provide informed consent to receive case management services, notification should be undertaken in line with the child's assessed risk level, child's best interests and urgency of the case. Further information on limits to confidentiality is indicated below.
- As noted in the 'Identification' section, in consideration of the potential for disruptions in further communication with the child and parents, caregivers and/or legal guardians subsequent to the first interview, address and contact information should be obtained. Prior to ending the interview, the case worker should emphasize that further communication and follow-up should be expected. In case follow-up communication cannot be established, the decision to notify authorities or not should be made, based on information gathered during the first interview.

Although content of the counseling will not change for each identified child (i.e. married, at risk of marriage and pregnant), certain points should be emphasized according to the observed individual needs. For example, counseling for parents, caregivers and/or legal guardians of a child who is pregnant should predominantly

²⁰ Inter Agency « Guidance Note Prevention of and Response to Child Marriage in the Kurdistan Region of Iraq » [2016] Page 60.

emphasize the importance of receiving services from formal health institutions and the potential consequences of not doing so.

Limits to Confidentiality in Fulfilling Legal Liability

Information shared by individuals during counseling and case management procedures should be kept confidential within the institution. However, in situations where the marriage/relationship involving sexual acts towards a child which constitutes a crime as per relevant national legal framework, individuals should be informed on the obligation to report and hence, the limits to confidentiality. In cases where there are limits to confidentiality, informed consent from the parents, caregivers and/or legal guardians, and informed assent from children will not be obtained.

Case workers are obliged to notify relevant authorities!

SAFETY PLANNING

Safety planning is a fundamental tool to utilize for all children at risk. The purpose of safety planning is to prevent the child from exposure to harm and ensure safety. When developing and implementing the safety plan, the case worker should create a comfortable environment where the child is able to participate in the process. The plan should be based on the child's opinions, thoughts and should correspond to the child's realities. Factors to be reflected in the plan should include identified risk and harm factors in the child's surrounding environment, strategies to be developed for the child to feel safe and the identified trusted adult whom the child can seek support from in case of risk.

Especially in cases of children exposed to marriage or those at risk of child marriage, it is crucial that children are informed on and are aware of authorities and organizations to reach out to in case they encounter risks to their protection and safety. As per Art. 6 of the Child Protection Law (No. 5395), upon identification, children in need of protection are to be notified to MoFLSS. Accordingly, responsibility for the identification and assessment of needs for children in need of protection also lies with MoFLSS.²¹

Within this regard, it is important that the safety planning be developed during the initial interviews with the child. A crucial consideration in developing the safety plan is to proceed in a confidential manner, in line with the 'do no harm' principle.

Prior to sharing contact and address information of institutions with the child, the concept of 'security' should be defined and clarified with the child. In order to identify existing risks, the case worker should understand under what circumstances the child feels 'unsafe and insecure'; his/her go-to person and/or organizations when under distress; and under what circumstances he/she would approach the police.

²¹ Law on Social Services [No.2828] Art. 21.

INSTITUTIONS AND REPORTING MODALITIES

Institutions to be included in safety planning could vary based on the child's individual needs and location. Guidance is provided below on institutions to be included in all planning as well as those to be optionally included:

Institutions suggested to be included in all planning:

Ministry of Family, Labor and Social Services

Hotline: 183

Besides the hotline, the address and contact information of District Social Service Center and the Provincial Directorate should be shared.

Directorate General of Migration Management

Communication Center for Foreigners: 157

Besides the hotline, the address and contact information of the Provincial Directorate should be shared.

Provincial Bar Associations

Address and contact information of Legal Aid Bureaus and if available, the Child Rights Center should be shared. The Interpretation Support Line established by UNHCR and Union of Turkey Bar Association (0312 292 59 59) should also be provided. The line is available between Mon – Fri 09:00 – 17:00. Interpretation support is only provided to lawyers and Bar Association staff.

Prosecutor's Office and Courts

Address of the courthouse should be shared.

Security Directorate

Hotline: 155

Besides the hotline, the address and contact information of District Police and District Child Bureau should be shared.

Gendarmerie

Hotline: 156

Besides the hotline, the address and contact information District and Province Gendarmerie Command should be shared.

Health Institutions

If there are Child Monitoring Centers within the province, referral to relevant hospitals should be undertaken.

Other institutions/personnel may include Family Practitioners and Gynecologists.

Schools

The child may approach psychological counseling and guidance teachers at schools.

Civil Society Organizations

Institutions who identify children exposed to marriage or those at risk, should share their office information (address, phone number) in the meeting. In case the office is not in the close proximity of the child's current residential address, referrals to other specialized organizations may be undertaken through the child's informed assent/consent.

ASAM – UNHCR Counselling Line: 444 48 68

UNHCR Email: turan@unhcr.org

UNHCR Help: website containing information on refugee rights, responsibilities and available services. Arabic, Farsi, Turkish and English versions are available. <http://help.unhcr.org/turkey/>

Services Advisor: website containing mapping of services accessible to refugees. Arabic, Farsi, Kurdish, Pashto and English versions are available. <https://turkey.servicesadvisor.org/>

Institutions which may be included according to choice/need:

Municipalities:

If the case worker is informed that social workers are present in the district municipality, and especially in the case of an existing protocol between the district municipality and the social service center, plans may also include the municipality.²² It is recommended to share address and contact information in such circumstances.

²² For further information on child protection responsibilities of municipalities, refer to the Municipal Law [No.5393] Art. 14, 69 and 77.

ASSESSMENT AND DEVELOPMENT OF CASE PLAN

In consideration that children have varying and particular needs, assessments should be undertaken on an individual basis and be founded on the principle of the best interest of the child.

Assessment interviews should abide by the confidentiality framework and be undertaken by case workers or psychologists with child protection and/or SGBV specialization. Interviews should be limited to the children only, but should also include relevant persons accompanying the child in Turkey or those who remain in the country of origin (via telephone). These persons include 'spouses', biological and in-law family members, who should be interviewed separately from the child.

Considerations to be included in assessments are indicated in *Annex II*. In general, the child's views proportional to his/her age and maturity level; views of the child's family and those close to him/her; safe environment; the child's identity and development needs; the child's right to family unity as well as the observations and opinions of the case worker should be integrated in the assessments. It is also crucial to identify both risk and protective factors, including access to rights, supportive networks/relations and available resources.

Within the scope of conducted assessments, in order to effectively determine the child's situation related to safety and security, a comprehensive mapping of the social networks and resources accessible to the child should be undertaken. In this regard, through the child's participation, the case worker should identify family members or close acquaintances with whom the child feels comfortable communicating about the marriage. In the same vein, community and religious leaders with whom the child/family members are in contact with should also be identified and if the child provides consent, these persons should be engaged throughout case management processes where relevant.

Assessment outcomes should be viewed in light of the risk assessment/prioritization criteria as well as relevant response timeframes included within *Annex VI*.

Cases that are referred to the Provincial Directorate of Family and Social Services are to undergo a social assessment through house visits conducted by Social Service Center social workers. Subsequently, a social assessment report is prepared with recommendations for the individual child and parents, caregivers and/or legal guardians. With this consideration, as well as the high number of identifications in the field and that many NGOs do not utilize UNHCR's best interest tools (BIA/BID), an assessment tool has been developed to ensure timely and effective assessments. The tool can be found in Annex V. Throughout the years, UNHCR developed global procedures in order to ensure that all actions taken are based on the child's identified individual best interest. The overarching goal of developing these procedures was to strengthen national child protection systems in line with their international responsibilities to view the best interest of the child as primary consideration in all action concerning children. Accordingly, best interest assessments are conducted prior to taking action regarding and affecting children, whereas best interest determinations are undertaken before making a decision that is life-changing for the child. These decisions include separation from the family and in cases where custody of the child is contentious.²³

²³ Further information on UNHCR's best interest procedures may be found in UNHCR « Guidelines on Assessing and Determining the Best Interests of the Child [BIP Guidelines] » [2018]

As stated above, the 'Best Interest Assessment Tool for Child Marriage Cases' found in Annex V was developed to ensure that actions taken for child marriage cases is done so based on this primary principle and in a holistic manner. The tool should be prioritized for medium and high risk cases. Assessments should be carried out by psychologists or case workers experienced and trained in the area of child protection. Sharing reports prepared for high risk cases with UNHCR is advised for strategic intervention purposes.²⁴

Once the assessment is finalized, case plans should be developed for each individual child. These plans should be prepared in a holistic manner and should address the child's identified physical, psychological, social, legal and development needs. Actions to be taken should be in line with the objectives set for the individual child. These objectives should be specific, measurable and time-bound, according to the protection needs and urgency of the situation. For example, if the objective is to ensure a female child's access to education, provision of counseling to the child and family members and subsequent referrals should be undertaken on the activity level. Regular follow-up should be ensured on a monthly basis.

IMPLEMENTATION OF CASE PLAN

Referral Mechanisms

As previously mentioned, response to child marriages is primarily under the responsibility of States. Accordingly, the Turkish Government undertakes various efforts to respond to child marriages on the individual as well as community levels. Children identified to be exposed to marriage as well as those under risk should be referred to PDoFLSS and/or social service centers according to outcomes of the assessments based on the tool provided in Annex V. Further information on the obligation to notify and referrals to relevant institutions are indicated in Annex IV. In addition to the obligation to notify, in order to achieve the objective of comprehensive case management, further information may be found on potential actions / referrals for children exposed to marriages, those at risk as well as pregnant children/child parents in Annex VII.

Note for Urgent Cases

Some identified child marriage cases may require urgent response by the identifying organization. Reference should be made to the Risk Assessment/Prioritization Matrix available in Annex VI. In addition to the urgency criteria indicated in the matrix, the foresight of potential disruptions in communication with the child and family subsequent to the first interview would also require urgent response. In such high risk cases, if the case worker deems notification to relevant institutions appropriate (in consultation with supervisors), urgent referral to authorities - especially of cases that legally require notification - should be undertaken accordingly. In some cases, especially where families refuse to approach authorities and/or if there are signs of serious harm for the child, case workers/NGOs should directly communicate with relevant authorities. If a serious risk is identified during initial counseling and interviews, the steps of assessment and

²⁴ Examples for cases requiring UNHCR strategic intervention with public institutions may include : 12 year old engaged child to be married forcefully within the coming days ; 17 year old child forcefully married and exposed to domestic violence and abuse.

development of a case plan may be skipped, however these case management steps should be revisited subsequent to notification.

For further information on duty of notification and authorities to notify, please refer to *Annex 4*. To ensure holistic case management, please refer to *Annex 7* for information on referral mechanisms for children at risk of marriage and children who have already been married / pregnant children / child parents.

FOLLOW-UP AND MONITORING

With the consideration that children and their families' needs may change on a regular basis and to ensure that the case plan effectively addresses their needs, follow-up within relevant time-frames should be designated on a case-by-case basis. Annex VI indicates ideal follow-up and monitoring timeframes.

Upon being informed on individual cases, PDoFLSS undertakes social assessments following which social workers are designated for each case to ensure regular follow-up. These social workers are responsible to follow up on implementation of the case plan, delivery of support to children and their families, as well as conduct house visits. They are expected to provide progress reports to Courts once every three months on their observations. However, in consideration of the limited capacity to respond to the high number of identifications, regular follow-up may not be effectively implemented by social workers. Therefore, it is advised for NGOs to coordinate with social service centers, especially in case there are changes or additional needs in the case.

If legal procedures have been initiated based on the obligation to notify authorities, a legal representative will be appointed for the child. In this case, regular communication should be maintained with the representative, social service centers, as well as the child and family members to closely follow-up on the procedures and ensure families are well informed on developments.

If a care measure is deemed appropriate by Courts as per the Child Protection Law, it is crucial to ensure regular follow-up (at least once a week) and support to children in child care institutions, addressing their identified needs. It will also be essential to refer these children for empowerment activities.

CASE CLOSURE

Circumstances resulting in the closure of a child marriage case are as follows;

- Individual child protection cases are followed-up until objectives set for the child and family during the development of the case plan are achieved. Upon mitigation of the specific risk resulting in initiating case management procedures, the case will be closed. However, even if the risks resulting in the child's exposure to marriage are eliminated, in case other protection needs are identified, services should be delivered to address these needs. Furthermore, in consideration that there may be risks related to marriage or other protection concerns, even if the child marriage case is closed, regular follow-up should be ensured to the extent possible. This is applicable to all scenarios listed below.
- Elimination of the risk of marriage.
- When the child receives care and support services appropriate to his/her age group and needs.

- If communication is not established, after attempts to contact three times every other week (for a total of 6 weeks). If the telephone is turned on however communication cannot be established, the case should not be closed and regular attempts should be undertaken.
- When the child becomes of age, the case initiated for the risk of child marriages is closed, however in case other risks and needs exist, protection case management is continued.
- In case of the child's death.
- If the responsibility to manage the child's case is transferred to another organization (i.e. if the identifying organization does not have capacity to undertake case management, or if the child needs to receive specialized services), the identifying institution can close the case. Nonetheless, communication and coordination should be ensured with the receiving institution to secure that the transfer has been completed.
- In case the child voluntarily repatriates to his/her country of origin. If the child reports his/her own or the family's will to return to their country of origin, counseling should be delivered on voluntary repatriation and potential consequences. UNHCR carries a monitoring role with regards to voluntary repatriations in accordance with international standards to ensure that returns are undertaken in a safe and dignified manner. If these circumstances are not present, UNHCR does not support or encourage returns. For returns that take place in a safe and dignified manner, the voluntary nature must be confirmed. Especially regarding children, UNHCR does not support return in case these conditions are not fulfilled. Furthermore, as there additional actions to be taken in case of children's voluntary repatriation to their countries of origin, communication with UNHCR Turkey's central or field offices should be established immediately.
- Case closure should be sought on an individual basis and through the participation of the child and family members.

Even if the case is to be closed, the child and family should be counseled on services and providers in case of future need. Furthermore, even if the child becomes of age, if he/she is in need of protection, necessary internal and external referrals must be made within the institution.

Prevention

Rationale

Preventive activities aim to target children and their parents, caregivers and/or legal guardians immediately after identification to eliminate the risk of marriage and to delay the marriage and/or pregnancy until the child becomes of age. Despite the legislative regulations in place, the state of insecurity in humanitarian settings, increasing sexual and gender based violence, the perception that marriage will protect children from insecurities, the financial destitution experienced by parents, caregivers and/or legal guardians, the limited access to livelihoods opportunities and breakdown of social networks result in the development of child marriages as a negative coping mechanism.²⁵ Therefore, comprehending and identifying these factors will be crucial in addressing the needs of children at risk.

A list of preventive activities are listed below and was developed with the purpose of providing a pool of activities to be implemented by child protection specialists involved in programming. The activities target children identified to be at risk of marriage and their families, mainly to delay marriages and/or pregnancies. Activities should be implemented immediately after identification of risk, in consideration of the individual child's circumstances, the level of risk and timeframe. Regular follow-up with the child and family throughout these activities are essential.

Complementary to measures to be immediately taken upon identification, various activities which aim to address the root causes of child marriages in the longer term should also be incorporated in preventive systems. Children whom are not yet exposed to marriage as well as those for which substantial risk is not identified should nonetheless be incorporated in activities targeting longer-term prevention. This will be important in supporting refugees in raising awareness on their rights as well as the empowerment of children.

Who are Children at Risk?

Identification of children at risk of marriage is primarily based on the observations (including on signs of risk) of case workers who establish initial contact with children and their families. Therefore, in order to standardize identification practices, it is important to define various risk factors resulting in child marriages. In case one or more of the factors listed below are identified, it may be assumed that the child is at risk of marriage hence should be referred for case management services. However, even if these risk factors are not observed, the children should be followed-up on a regular basis and be encouraged to participate in empowerment and social cohesion activities.

²⁵ Office of the United Nations High Commissioner for Human Rights [OHCHR] «Child, Early and Forced Marriage, Including in Humanitarian Settings » <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>

Risk Factors ^{26,27,28}

FAMILY

- Child marriage history within the family
- Siblings exposed to forced marriage
- Large family size
- If the child is residing with his/her relatives and is separated from parents
- If single parents are present within the family
- Socio-economic hardships experienced by family
- Limited access to livelihoods opportunities
- If neglect against children is identified within the family
- If the child is prevented from participating in social activities
- If the child is confined within the home and/or restricted in similar manners
- If the child/family are not registered / do not have legal status with the Government
- Domestic violence (history and/or in country of asylum)

CHILD

- If the child is not participating in education, has never been registered in school, is frequently absent, expresses unwillingness to participate in the medium-long term or has dropped-out
- If the child is exposed to peer pressure and discrimination
- If there are unexpected behavioral changes in the child and school performance is deteriorating
- If the child will be sent back to his/her country of origin without the accompaniment of parents, or if the child will visit the country of origin and does not plan to return to Turkey
- If the child has a tendency for self-harm, suicide, eating disorder, behavioral and emotional problems (aggression, withdrawal from social relations, sleeping disorders), and signs of depression are observed
- If the child has a disability and is neglected by family
- If the child is unaccompanied in Turkey
- If the child is engaged in labor (including worst forms and hazardous labor)

²⁶ For further information on risk factors present for children at risk of marriage, refer to United Nations Education Fund [UNICEF] « Implementation Guidelines for Service Providers on Prevention of Child Marriages » [2018] Page 49.

²⁷ Since identification related to the child's psychosocial well-being (i.e. depression, suicide, tendency for self-harm) cannot be undertaken by case workers, in case it is observed that the child is in need of psychosocial support, urgent referrals to psychologists should be ensured. In case there are no in-house psychologists, through the consent of the child and family, inter-agency referrals may also be processed.

²⁸ Further information on psycho-social well-being may be found in Inter-Agency Standing Committee [IASC] « Guidelines on Mental Health and Psychosocial Support in Emergency Settings » [2007].

Preventive Activities

Target groups for preventive activities include children, families and communities. The list below includes activities that could be implemented for these target groups. Further information on the activities are found in *Annex VIII*. In addition to implementation of these activities, children identified to be at risk of marriage should be referred for case management services, which should include the delivery of counseling and referral to relevant services.

CHILD

- Counseling
- Identification and assessment of risk level
- Referral to education
- Informative seminars

FAMILY

- Counseling
- Engagement and mobilization of influential/decision-making family members
- Referral to education (counseling, court measures)
- Access to livelihoods
- Provision of financial support **solely** for the purposes of strengthening access to education

COMMUNITY

Refugee Communities

- Referral to education
- Referral to livelihoods and self-reliance opportunities
- Informative seminars (women's health, reproductive health, child health, new-born monitoring)
 - ◆ Informative seminars should not only target children and their immediate family members, but women, men, youth, elderly and other groups within the community
- Training of trainers
 - ◆ Identification of refugee community leaders with access to various refugee groups. Subsequent to finalization of training of trainers, to ensure their facilitation of informative seminars to community groups. Leaders may include refugee doctors, religious persons/imams.
- Establishment of solidarity groups
- Informative materials
- Working with refugee doctors, teachers and other community leaders to identify causes and potential solutions for child marriages

Local Community

- Preventive activities and relevant support targeting refugee communities should also include local communities

NGOs and UN Agencies

- Strengthening coordination and cooperation between NGOs and Government interlocutors
- Establishment of referral mechanisms specific to child marriages with relevant public institutions. To continuously ensure mechanisms are utilized in an efficient manner.
- Support Government capacity in implementation of preventive activities.
- Sharing of good practices for prevention of child marriages through inter-agency platforms.
- Development of standardized key messaging, raising awareness modules and informative materials through inter-agency coordination platforms and in consultation with community groups.
- Advocacy
 - ◆ Inclusion of key messaging on child protection and child marriages in khutbas (hutbe), sermons (vaaz), individual and group counseling sessions as well as spiritual guidance sessions (irşad) delivered by imams.²⁹
 - ◆ Utilization of state-operated information dissemination platforms and modalities (i.e. public service announcements, SMS, social media, TRT Arabic etc.) to ensure child marriages are included in key messaging on larger-scale mediums.
 - ◆ Strengthened outreach to municipal child and youth centers, for the provision of informative seminars as well as social and cultural activities for children and their families.
- Engagement of refugees in existing child and adolescent specific representation and participation platforms; establishment of refugee only platforms
- Establishment of child and women friendly spaces
- Establishment of community support mechanisms for children and adolescents; facilitation of social cohesion activities

STATE

Central and Local Level Institutions

- Implementation of relevant legal framework
- Provision of technical, HR and logistic capacity development support
 - ◆ MoFLSS, SSCs and 183 Hotline
 - ◆ DGMM and 157 Hotline
 - ◆ MoNE, Public schools, Temporary Education Centers

²⁹ Religious Affairs « Circular on Asylum Seekers » [2015] Art. A/3, A/6 and C/1.

- ◆ MoH, Health Institutions, Migrant Polyclinics, Family Health Centers, Community Mental Health Centers, Child Monitoring Centers, health personnel
 - ◆ MoJ, Judges, Prosecutors, Bar Associations
 - ◆ Security Directorate, Child Bureau
 - ◆ Imams, religious personnel
- Strengthening mechanisms of individual best interest assessment and establishment of formalized individual best interest determination procedures with the involvement of relevant stakeholders
 - Standardization of risk assessment and prioritization criteria amongst public institutions
 - Support strengthening of coordination, cooperation and referral mechanisms between public institutions, including through the Child Marriage Coordination Platform established by the Child Protection Coordination Board in Istanbul
 - Support implementation of Strategy and Action Plan on Response to Early and Forced Marriage prepared in leadership of MoFLSS
 - Sharing of good practices on preventive activities and outreach to refugees amongst municipalities
 - Ensuring implementation of measures issued by Child Courts for children in need of protection and support effective implementation and follow-up; establishment of monitoring mechanisms
 - Provision of support to protection desks established in PDMMs
 - Establishment of vocational and skills-building courses in municipalities for families experiencing financial difficulties
 - Ensuring wider implementation of raising awareness and information dissemination activities for community groups
 - Supporting refugees' engagement in training of trainers efforts
 - Dissemination of informative materials
 - Engagement with and mobilization of school-family unions (okul-aile birliđi) to implement empowerment and prevention activities; monitoring children's participation in schools through these unions
 - Facilitation of informative seminars and trainings on violence against women and gender equality to pre-school, primary and secondary school students
 - Establishment of child and women friendly spaces
 - Establishment of psychosocial support mechanisms for children and adolescents; facilitation of social cohesion activities.