

When Syrian child brides come knocking on Norwegian borders

An analysis of the challenges the increase in Syrian child brides applying for asylum in Norway poses for Norwegian authorities – in the context of the Norwegian law and international human rights obligations.

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*Together we made it.*¹

¹ Busta Rhymes feat. Linkin Park: *We made it* (2008)

Abbreviations

BLD	Ministry of Children and Equality
Bufdir	Norwegian Directorate for Children, Youth and Family Affairs
CARE	CARE International
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRC	Convention on the Rights of the Child
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EMN	European Migration Network
FAC	Swiss Federal Administrative Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JD	Ministry of Justice and Public Security
NGO	Non-governmental organisation
NRK	Norwegian Broadcasting Corporation
OEP	Electronic Public Records
OHCHR	Office of the United Nations High Commissioner for Human Rights
PU	National Police Immigration Service (NPIS)
SDGs	Sustainable Development Goals
UDI	Norwegian Directorate of Immigration
UN	United Nations
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
VCLT	Vienna Convention on the Law of Treaties

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1 Introduction

In 2015 the number of asylum applications to Norway within a year reached an all-time high. A mapping carried out by the Norwegian Directorate of Immigration (UDI) shows that 61 persons under 18 years of age, who applied for asylum in Norway between 1 January 2015 and 1 February 2016, stated to be married or engaged upon arrival in the realm.

This posed several challenges for Norwegian authorities from the fall of 2015 and onwards.² First, the number of married minor applicants was relatively high. Secondly, they arrived together with their alleged spouses. And thirdly, the fact that they are below 18 years of age implies that they are still to be considered children. All in all, Norwegian authorities have to deal with persons in a very vulnerable situation.

My interest for this thesis' research question started when news broke in December 2015 that a 14-year-old girl, together with her 23-year-old husband, had applied for asylum in Norway. They came together with their 18 months old son, and the girl was pregnant with her second child.³ When arriving at Storskog, north in Norway, the girl was registered as accompanying her husband, and Norwegian authorities were not made aware of the situation before an inspection in the camp.⁴

Coming from the field of social sciences and having knowledge about Norway's advocacy against child marriages internationally, I was curious to examine how Norwegian authorities would go about facing these issues domestically. Would our international stand cohere with our asylum practices and immigration policies?

As the topic unfolded in the media, it surprisingly seemed that the increase in child brides posed a *new* challenge to Norwegian authorities. It made me wonder in what ways the situation challenged the authorities? What routines existed, and what policies underlay the routines? What are the obligations of the Norwegian authorities in a situation like this? Based on these questions, I have developed the following research question:

What steps can Norwegian authorities take to ensure that Syrian child brides who ap-

² As expressed by UDI deputy director Birgitte Lange at a seminar on child marriages among asylum seekers in 27 October 2016 in Oslo.

³ nrk.no: *Gravid mor (14) søkte asyl sammen med sin mann (23) – ingen ble varslet* Published 2.12.2015/<https://www.nrk.no/finnmark/gravid-mor-14-sokte-asyl-sammen-med-sin-mann-23--ingen-ble-varslet-1.12682747> (Assessed 29.10.2016)

⁴ Ibid.

ply for asylum in Norway are looked after in accordance with Norwegian law and Norway's international human rights obligations?

1.1 Background

To “eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation” is one of the targets under the Sustainable Development Goals (SDGs), a set of 17 universal goals that United Nations (UN) member states are expected to use to frame their agendas and political policies over the next 15 years.⁵ The Solberg Government’s ambition for Norway’s international efforts against child and forced marriages is to contribute to eliminating the practice within a generation.⁶

In Norwegian laws the minimum age for marriage is 18 years of age. Furthermore, it is prohibited to marry anyone below the age of 16, which is also the age of consent. In addition, Norway has ratified several international conventions such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The latter concludes that child marriage shall have no legal effect.⁷ Both CRC and CEDAW are incorporated in Norwegian law through the Human Rights Act.⁸

Child marriage is a violation of several human rights. The consequences are grave, both for girls – and boys – that are subjected to this practice. Focusing on girls in particular, the United Nations Population Fund (UNFPA) advocates that child marriage «effectively brings a girl’s childhood and adolescence to a premature and unnatural end by imposing adult roles and responsibilities before she is physically, psychologically and emotionally prepared».⁹

Child marriages affect both girls’ health and education: Perhaps most worryingly, complications of pregnancy and childbirth are the main causes of death among adolescent girls be-

⁵ undp.org: *The Sustainable Development Goals* <http://www.undp.org/content/undp/en/home/sustainable-development-goals.html> (Assessed 26.11.2016)

⁶ Utenriksdepartementet (2016): *Frihet, makt og muligheter* Handlingsplan for kvinners rettigheter og likestilling i utenriks- og utviklingspolitikken 2016–2020: 23

⁷ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). December 18, 1979, article 16 (2)

⁸ Human Rights Act: *Lov om styrking av menneskerettighetenes stilling i norsk rett (menneskerettsloven)* (1999) LOV-1999-05-21-30. My translation

⁹ UNFPA (2012): *Marrying too Young. End Child Marriage*. New York, United Nations Population Fund (UNFPA): 11

tween 15 and 19 years of age in developing countries.¹⁰ In their 2012 report *Marrying too young* UNFPA writes that every year nearly 16 million teenage girls in developing countries, between 15 and 19 years of age, give birth. Nine out of ten newly fledged mothers are married according to UNFPA.¹¹ Hence UNFPA suggests preventing child marriages could also «significantly help to reduce early pregnancy, and the associated maternal death or disability».¹²

Furthermore, preventing child marriages could reduce the risk of HIV or other transmitted infections, UNFPA suggests, as it may be difficult for married girls to insist on condom use if they are expected to become pregnant.¹³ Also UNFPA notes that once married many girls may also be separated from family and friends, and for many girls marriage brings an end to any chance of further education.¹⁴ In 2014, the CEDAW Committee and CRC Committee joined forces and issued a joint general recommendation on eliminating harmful practices, in which they also pointed out that in marriages where the husbands are significantly older than the wives, who may have limited education, the girls in general have limited possibilities of making decisions in their own lives.¹⁵

In times of disaster or conflict, social upheavals and gender-based violence increase. Child marriage is often resorted to as a way of protection.¹⁶ Even though child marriages prevail in Syria, and in some rural areas may be considered a custom, the number of Syrian child marriages has increased considerable in the last couple of years.¹⁷ Reports from UN organisations and non-governmental organisations (NGOs) support the notion that the increase is a consequence of the current civil war in Syria.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid

¹⁴ Ibid

¹⁵ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and general comment No. 18 of the Committee on the Rights of the Child on harmful practices CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014), para 22.

In 2014, as CEDAW marked its 35th anniversary and CRC its 25th anniversary, the two Committees joined forces to issue a comprehensive interpretation of the obligations of States to prevent and eliminate harmful practices inflicted on women and girls. It was the first time two UN human rights expert committees have published a joint general recommendation.

¹⁶ Lemmon, Gayle Tzemach (2014): *Fragile States, Fragile Lives. Child Marriage Amid Disaster and Conflict* (Working Paper). New York, Council of Foreign Relations: 5

¹⁷ UNICEF: *A study on early marriage in Jordan 2014*. United Nations Children's Fund (UNICEF), Jordan Country Office: 8

What started as demonstrations and agitations as part of the Arab Spring in 2011 has developed into a full-blown civil war in Syria – going on the sixth year.¹⁸ As a result out of a population of 21 million people more than six millions today are internally displaced within Syria.¹⁹ More than four million Syrians have fled from Syria.²⁰ Most of the Syrian refugees are residing in neighbouring countries.²¹ More than one million applied for asylum in Europe between April 2011 and August 2016.²²

A 2014 study on early marriage in Jordan reveals an increase in the numbers of Syrian nationality marrying below the age of 18.²³ Girls with a Syrian nationality accounted for 0.5 per cent of all registered child marriages in 2001, 1.7 per cent in 2012 and 7.6 per cent in 2013.²⁴ The United Nations Children's Fund (UNICEF) ascribes the sharp rise in early marriages among Syrian girls to the increasing numbers of Syrian refugees in Jordan. More than 120,000 Syrians had registered with the United Nations High Commissioner for Refugees (UNHCR) in Jordan by January 2013. One year later the number had risen to 570,000.²⁵

The number may be even higher as feedback UNICEF received through interviews and focus group discussions exposed that due to lack of knowledge of the Jordanian registration processes for marriages some may fail to register their marriage in accordance with Jordanian law.²⁶ Though child marriage has long been an accepted practice in Syria, the Syrian crisis has exacerbated existing pressures believed to encourage child marriage and has also increased the possibility that girls married early may end up in abusive or exploitative situations, according to the UNICEF report.²⁷

¹⁸ nupi.no: *Syria: på vei mot hva?* Published: 17.02.2013 <http://www.nupi.no/Publikasjoner/Innsikt-og-kommentar/Hvor-hender-det/HHD-2013/Syria-paa-vei-mot-hva> (Assessed 26.11.2016)

¹⁹ Flyktninghjelpen.no: *Syria dashboard June 2016*.
<https://www.flyktninghjelpen.no/globalassets/graphics/infographics/syria-crisis/syria-dashboard-june2016.pdf> (Assessed 16.10.2016)

²⁰ unhcr.org: *Full statistics Syria*. Updated 4 September 2016.
http://data.unhcr.org/syrianrefugees/regional.php#_ga=1.77815380.1135176356.1469452061 (Assessed 16.10.2016)

²¹ 2.1 million Syrians are registered by UNHCR in Egypt, Iraq, Jordan and Lebanon and another 2.7 million Syrians have been registered by the Government of Turkey. In addition, more than 29,000 Syrian refugees are registered in North Africa.

²² unhcr.org: *Full statistics Syria*.

²³ UNICEF: 8

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid: 10

²⁷ Ibid.: 9

Lemmon suggests that Syria “is an example of how armed conflict can harm the lives of family members and young women”.²⁸ An example she presents is that “previously comfortable families” can be moved by conflict into “lower income percentiles”, which may make child marriage an option.²⁹ A research examination of child marriages in fragile states carried out by World Vision lists the following fears which may compel child marriages: fear of a) rape and sexual violence, b) unwanted premarital pregnancies, c) family shame and dishonour, d) homelessness, and e) hunger and starvation.³⁰

The same concerns have been voiced by Syrian refugees in Turkey. Preliminary results of an UNCHR research in December 2014 showed that parents if they had had the financial means would not resort to child marriage.³¹ Yet due to economic issues the refugees faced in Turkey child marriages were contracted as a way to reduce household expenditure, also by families who “would not usually have considered child marriage (or marriage of younger female children)”.³²

The Committee on CEDAW addressed this matter in their General Recommendation No. 30, stating that girls are particularly susceptible to forced marriage during conflict. It is not only a harmful practice that is increasingly used by armed groups, but more important in this regard “families also force girls into marriage as a result of poverty and a misconception that it may protect them against rape”.³³

The joint general recommendation from the Committees on CEDAW and CRC also addresses the context in which forced marriages may occur.³⁴ One cause can be “in the context of migration in order to ensure that a girl marries within the family’s community of origin or to provide extended family members or others with documents to migrate to and/or live in a particular destination country”.³⁵ According to Save the Children some Syrian girls are married to Syrian men before fleeing the country because a Syrian man is “more likely to be able to

²⁸ Lemmon (2014): 8

²⁹ Ibid: 6

³⁰ Ibid.: 5

³¹ CARE (2015): “*To protect her honour*”. *Child marriage in emergencies – the fatal confusion between protecting girls and sexual violence*. Gender and Protection in Humanitarian Contexts: Critical Issues Series #1. Care International UK (2014): 7

³² Ibid.

³³ General recommendation No. 30 (fifty-sixth session, 2013) on women in conflict prevention, conflict and post-conflict situations CEDAW/C/GC/30 (1 November 2013), para. 62

³⁴ General Recommendation No. 31 (CEDAW), No. 18 (CRC), para. 23

³⁵ Ibid.

enter into neighbouring countries if he is married or part of a family”.³⁶ In Jordan, some Syrian girls marry Jordanian men as it might allow the girl and her family to move out of the Za’atari refugee camp.³⁷

Marriages are regulated in Syria’s Personal Status Law (No. 59) of 1953. The general legal age for marriage in Syria is 18 years for males and 17 years for females.³⁸ However, boys may be able to marry at the age of 15, and girls as young as 13 with the permission of a male legal guardian (such as the father or grandfather) and special approval from a judge.³⁹ Equality Now adds that the parties in question have to be “considered willing and “physically mature””.⁴⁰

In general, Syrians must obtain approval from a judge before they may marry.⁴¹ Registration of marriage is a legal requirement under Syrian law. Nevertheless, it is common to postpone the registration for several reasons; until for instance a child is born or starting school, or in order to obtain travel documents.⁴² Interestingly, if a girl below the age of 15 or a boy below the age of 17 attempts to register a marriage, the Personal Status Law stops the documentation process until the parties reach the general legal age for marriage.⁴³

Child marriage is a complex subject. Although child marriage is a violation of human rights, some countries allow child marriage through their legislation. Sometimes customary laws trump formal law, particularly when a state’s reach and influence collapses.⁴⁴ In the case of

³⁶ CARE (2015): 5

³⁷ Save the Children (2014): Too Young to Wed. The growing problem of child marriage among Syrian girls in Jordan. London, The Save the Children Fund: 5

³⁸ UNICEF: 13

³⁹ Syria’s Personal Status Law (No. 59) of 1953, article 44, as presented in UNICEF: *A study on early marriage in Jordan 2014*. United Nations Children’s Fund (UNICEF), Jordan Country Office: 13

⁴⁰ equalitynow.org (2013): *UN CEDAW and CRC Recommendations on Minimum Age of Marriage Laws around the World: Syria*
http://www.equalitynow.org/sites/default/files/UN_Committee_Recommendations_on_Minimum_Age_of_Marriage_Laws.pdf (Assessed 20.11.2016)

Equality Now have reviewed and compiled all recommendations to the individual State Parties to CEDAW and CRC relating to child or forced marriage under law, which have been reported to the Committees.

⁴¹ A requirement is that the parties need approval from a person of some social standing who knows that couple and can vouch that there is no religious or social reason why they should not get married. For more requirements, see UNICEF: *A study on early marriage in Jordan 2014*: 13.

⁴² UNICEF: 9

⁴³ Syria’s Personal Status Law (No. 59) of 1953, article 82 as presented in UNICEF: *A study on early marriage in Jordan 2014*. United Nations Children’s Fund (UNICEF), Jordan Country Office: 13

⁴⁴ Lemmon (2014): 5

Syria both causes are currently applicable. It is necessary to be aware of the complexity of the situation when assessing how the rights of the married children can best be safeguarded.

1.2 Aim and purpose of thesis

Against this backdrop I wish to see what legal and practical challenges the sudden increase of Syrian child brides poses to Norwegian authorities – in context of Norwegian law and international human rights obligations.

Norway's state policy is to eliminate child marriages. Internationally Norway supports efforts to combat child marriages through development cooperation. Nationally several legal measures have been taken to hinder child marriages involving Norwegian nationals or permanent residents over the last decade. Even so when child brides crossed Norwegian borders in 2015 a heated debate over child marriage and Norwegian values soon followed. A question that quickly arose in the Norwegian media, was whether or not Norway could allow the alleged couples to stay together. The case of the 14-year-old pregnant girl with her second child clearly showcases the complexity: although still a child she is not only a wife, but also someone's mother and caretaker.

The increase in child brides to Norway challenges the authorities both legally and practically. As every human being has rights, the states have obligations to fulfil these rights.⁴⁵ Under CEDAW, article 2, States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality.⁴⁶ Norway has an obligation to identify child marriages in order to ensure the rights of the child.

Norwegian authorities have taken several actions due to the increase of child brides. They have upgraded their actions plans for child marriage, and of even greater importance, they have established a working group dedicated to develop suggestions to guidelines and routines for cooperation between the several government agencies and the local Child Welfare Services. The increase of child brides is definitively taken seriously. A correspondence between the Ministry of Children and Equality and UDI recommends that the legislation, or at least parts of its interpretation, need to be updated to be in accordance with Norwegian law on the subject of marriage.

⁴⁵ See Ruud, Morten, Geir Ulfstein (2004): *Innføring i folkerett*. Oslo, Universitetsforlaget: 78-80

⁴⁶ General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women CEDAW/C/2010/47/GC.2 (19 October 2010), para 9

Hence one purpose of this thesis is to consider whether or not Norwegian law could be improved in order to develop clear practices on how to handle this and possible similar situations – in accordance with Norwegian law and Norway’s human rights obligations.

1.3 Ethical aspects on child marriage

The subject of child marriage is an emotional one. Studying the stories of children who have left school because of marriage, of the children who suddenly are mothers or those who experience sexual abuse, is heart breaking. Their stories both sadden and provoke. They are communicated with the intention of raising awareness on the matter, in order to put the spotlight on the custom of child marriage that still exists to a large extent. According to UNFPA one in three girls in low and middle-income countries – China not included – will marry before the age of 18. One in nine of these girls will marry before the age of 15.⁴⁷ In reports on child marriage you rarely, if ever, read about children who are happy they were married at an early age.

It may be difficult to be objective on the subject of child marriage, but it is necessary to try. For this thesis I have not conducted interviews with any of the girls in question. I do not know their thoughts on their own situation. And even if I did, who’s to say one would be representative for the rest? In an interview with Norwegian Broadcasting Corporation (NRK) a now 16-year-old pregnant girl from Syria is quoted saying “I like my husband. I would rather kill myself than live without him. It is out of the question” as a response to the decision that forced her and her 22-year-old husband to live separately for four months because she was below 16 years of age at the time of arrival in Norway.⁴⁸

Among questions raised in the media following the increase of child brides in Norway were for example whether or not the couples should live separate, marriages should be dissolved and whether the husbands could be punished for marrying young girls outside of Norway? Some suggested to “try to understand that in parts of the world this is a custom»⁴⁹. Others also voiced concerns about separating the girls from the perhaps only person they knew, and sug-

⁴⁷ UNFPA (2012): 10

⁴⁸ nrk.no: *Syrisk barnebrud i Norge: – Vil heller dø enn å adskilles* Published 03.02.2015
https://www.nrk.no/norge/syrisk-barnebrud-i-norge_-vil-heller-do-enn-a-adskilles-1.12785441 (Assessed 30.10.2016)

⁴⁹ nrk.no: *Per Fugelli om barneekteskapene: Vi må prøve å forstå* Published 02.02.2015
https://www.nrk.no/norge/per-fugelli-om-barneekteskapene_-vi-ma-prove-a-forsta-1.12783252 (Assessed 30.10.2016).

gested that in some cases it might be best to keep the parties together.⁵⁰ Both responses raise new dilemmas. Hence I will try to give an as objective review as possible of both the legal perspectives and the practical approaches to the subject of this thesis.

1.4 Demarcations

For the purpose of this thesis I will focus on the Syrian child brides, who applied for asylum in Norway in the period of 1 January 2015 to 1 February 2016. A mapping carried out by UDI shows that 61 persons under 18 years of age stated to be married or engaged upon arrival in Norway in this period.

Although the numbers include persons from Afghanistan and Iraq in addition to Syria, I will focus solely on Syrian child brides as the case of Syrian child marriages have been elevated throughout Europe. It is also targeted in various recent reports from both the UN and NGOs. According to UDI the Syrians account for the majority of the 61 persons. However, UDI does not wish to release the exact number as it might identify anyone of the minors.⁵¹

There are several reasons I choose to focus on girls. On the practical level, only two of the 61 persons in question were boys⁵². The figures underline a statement from UNFPA that the practice of child marriages “affects girls in greater numbers and with graver consequences”.⁵³ Analysis of the laws in different countries shows that there is still a disparity in the gender equality in the law’s treatment of minimum legal age for marriage for men and women.⁵⁴

Norwegian marriage law as regulated in the Norwegian Marriage Act will be the main scope of this thesis. Although touching onto the Immigration Act and Penal Code, legal questions

⁵⁰ vl.no: Unicef: – *Best at barnebruder i Norge blir i ekteskapet* Published: 4.02.2016
<http://www.vl.no/nyhet/unicef-best-at-barnebruder-i-norge-blir-i-ekteskapet-1.682954> (Assessed 29.11.2016)

⁵¹ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, UDI, 25.11.2016

⁵² Since only two boys were identified in the UDI mapping, I have not asked for their nationality as I assumed it could contribute to identify them.

⁵³ UNFPA (2012): 11

⁵⁴ UNFPA (2012): 12. UN figures show that in 2010 the minimum legal age at marriage for women – without parental consent or approval by a pertinent authority – was 18 years or higher in 158 countries worldwide. Among males 18 years is the legal age for marriage without consent among males in 180 countries. The gender equality gap increases when it comes to entering marriage at a younger age. Girls younger than 18 years of age can marry with parental consent younger in 146 countries, only 105 countries permit the same for boys. Further, 52 countries allow girls under age of 15 to marry with parental consent, yet only 23 allow the same for boys.

that arise in relation to this legislation will therefore only be referred to when raising questions of a family law character.

1.5 Definitions

The Convention on the Rights of the Child (CRC) defines a *child* as “every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier”.⁵⁵

Child marriage is “any marriage where at least one of the parties is under 18 years of age”, according to the joint general recommendation from the Committee on CEDAW and the Committee on CRC.⁵⁶ According to UNFPA the term can be used to describe either a legal or customary union.⁵⁷

The joint recommendation from the Committees on CEDAW and CRC opens up for one exception:

*As a matter of respecting the child’s evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition.*⁵⁸

In the joint general recommendation the committees express that “child marriage is considered to be a form of forced marriage”, which is defined as marriages “in which one and/or both parties have not personally expressed full, free and informed consent to the union”.⁵⁹ Although child marriages are a form of forced marriage, forced marriages are not only limited to child marriages as also persons above the age of 18 years of age may be forced to marry. Hence, forced marriages as such is not a topic for this thesis. Child marriage may also be referred to as *early marriage*.⁶⁰ However, in this thesis I will use the term child marriage, which is the best translation of the commonly used Norwegian term *barneekteskap*.

⁵⁵ Convention on the Rights of the Child (CRC) 20. November 1989, article 1

⁵⁶ General Recommendation No. 31 (CEDAW), No. 18 (CRC), para. 20

⁵⁷ UNFPA (2012): 11

⁵⁸ General Recommendation No. 31 (CEDAW), No. 18 (CRC), para. 20

⁵⁹ Ibid.

⁶⁰ Ibid.

Not all relationships in question are marriages contracted in accordance with marriage laws. Some cases are *marriage-like* relationships [in Norwegian: *ekteskapslignende forhold*], where the parties are either religiously married, engaged or in other ways perceived as married or committed by relevant social communities.⁶¹

I will refer to the persons in a child marriage, as *parties* as far as it is understandable. “Parties” is the term referred to in the Norwegian Marriage Act. *Spouses* is a common term, but any use of this term must not be misinterpreted as an acknowledgement of the relationship between the two parties.

UDI define *an unaccompanied minor asylum seeker* as a person below the age of 18, who comes to Norway without his or her parents or others with parental responsibility and apply for protection in Norway.⁶²

UDI also defines an *asylum seeker* as a person who has applied for protection (asylum) in Norway and the application has not yet been finally decided.⁶³

1.6 Reading guide

The *introduction* presented the research question and purpose of this thesis. In the *second chapter* the methodology of the thesis is explained. Here the process of gathering official information, interviews and the interpretation of the legal sources are described. In the *third chapter* the legal perspectives on the acknowledgement of foreign marriages are in focus. In that regard the minimum age for entering into marriage – both in Norwegian legislation and in international conventions – is reviewed. In the *fourth chapter*, I examine what steps Norwegian authorities have taken to handle the situation. How are they considering the best interest of the child in accordance with Norwegian legislation and Norway’s international human rights obligations? In the *fifth chapter*, I present an analysis of a contextual view on the matter of child marriages and highlight three points for further discussion. In the *final chapter*, I revisit the research question and conclude and suggest the next step forward for Norwegian authorities.

⁶¹ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir (16.09.2016): *Tiltak for håndtering av barneekteskap blant asylsøkere*: 3

⁶² udi.no: Definition *Unaccompanied minor asylum seeker* <https://www.udi.no/en/word-definitions/unaccompanied-minor-asylum-seekers/> (Assessed 24.11.2016)

⁶³ udi.no: Definition *Asylum seeker* <https://www.udi.no/en/word-definitions/asylum-seeker/>

2 Methodology

The research has been twofold. As previously mentioned, both legal and practical aspects of the asylum situation is reviewed. As described, a central question when debated in the Norwegian media, was whether or not the parties could stay together after arriving in Norway. The question shows both aspects: A key question concerning the Syrian child brides who arrive in Norway is what status their marriage will have according to Norwegian law. There is a legal and a practical aspect to the answer. While the legal aspect is being examined, there still has to be decided how the persons in question are to be treated while waiting for answer to the legal question. Based on this duality I have chosen a methodological approach of sociology of law. The legal perspective of the question of acknowledgement of the marriage will provide an answer, but the societal and social meaning of the rule of law is left out of the juridical aspect.⁶⁴ The sociology of law seeks to describe conflicts in a correlation in which crossing components are all gathered and where the law is a part of the whole.⁶⁵

As described previously child marriage is not just a personal issue for the children involved. It is also a dilemma for the society. Lemmon argues that child marriage “does not cause fragile states, but it does reinforce poverty, limit girls’ education, stymie economic progress, and as a result, contribute to regional instability”.⁶⁶ Hence I regard this thesis as interdisciplinary, and the research material reflects this decision.

This thesis is carried out as a desktop study, with a few follow-up interviews. Due to limited time I have not pursued nor explored the possibility of interviewing any child brides in Norway. To review the minimal age limits for marriage both in Norway and in a human rights perspective, national laws and international treaties and the interpretation of these are in focus.

The thesis builds on reports from different UN organisations, NGOs and relevant scholars to showcase the extent of child marriage worldwide and to describe the effects of child marriage on both persons and societies. These sources have also contributed to a better understanding of the scope of Syrian child marriages in particular. Furthermore, I have used media sources, both Norwegian and European, to get an overview of the number of refugees to Europe. Since the arrival of Syrian child brides is relatively new I have conducted a comprehensive research to get access to relevant information from Norwegian authorities on the matter.

⁶⁴ Mathiesen, Thomas (2011): *En innføring i retts sosiologi*. Oslo, Pax Forlag A/S: 23

⁶⁵ Ibid: 25

⁶⁶ Ibid: 3

The process of gathering official information, interviews and the interpretation of the legal sources are described in the following sections.

2.1 Administrative sources

Beyond a few news articles in the media, little information was available from the Norwegian authorities. Therefore I have searched extensively for information through the Electronic Public Records (OEP), which is a collaborative tool that central government agencies use to publicise their public records online.⁶⁷ Users can search for and locate relevant case documents within this searchable database and submit requests to view these. The requests are sent to the respective agencies responsible for the case documents, and they have to respond to the request within three working days.

Some of the records may contain information that is protected by a statutory duty of confidentiality or that by law can or must be exempted from public disclosure. In such case the entity is obliged to prevent others from gaining access to or knowledge of this information when the records are published.⁶⁸ The access to these documents is regulated in the Norwegian Freedom of Information Act.⁶⁹ The entity is obliged to consider enhanced public access in such cases, and in principle the duty of confidentiality only applies to information and not to whole documents.⁷⁰

I have applied for and have been granted access to information from the Ministry of Children and Equality (BLD), Ministry of Justice and Public Security (JD) and UDI through the OEP. But I have also been denied access to several documents with reference to for instance: section 14 subsection 1 on documents for internal preparatory proceedings, and section 15 subsection 1 section 2 on documents for internal preparatory proceedings between ministries. One of the documents I was denied access to, was a document named *Barneekteskap - Case fra Kirkenes*. The refusal was made with reference to section 13 subsection 1 in the Norwegian Freedom of Information Act, which allows exemption from public disclosure information which is subject to obligation of professional secrecy.⁷¹

⁶⁷ Agency for Public Management and eGovernment (Difi): About OEP <https://www.oep.no/node/37?lang=en> (Assessed 17.11.2016)

⁶⁸ Agency for Public Management and eGovernment (Difi): FAQ <https://www.oep.no/node/43?lang=en> (Assessed 17.11.2016)

⁶⁹ The Norwegian Freedom of Information Act: <https://lovdata.no/dokument/NL/lov/2006-05-19-16> (Assessed 17.11.2016)

⁷⁰ Agency for Public Management and eGovernment (Difi): FAQ

⁷¹ The Norwegian Freedom of Information Act

Based on the information I obtained, I approached first UDI and later BLD with interview requests as I wanted to understand the collected data better and get the full picture. Later, I also asked the County Governor of Oslo and Akershus for an interview. The interviews were all conducted differently. I asked UDI for an interview and sent them some questions as an indication of what questions I wanted to ask them, whereby they chose to answer those questions in writing and decline an interview face to face. The interview with the County Governor was conducted over the phone as agreed upon, whereas BLD chose to respond to my interview request over the phone saying that they had nothing to add to the information I had already collected through OEP. Although not carried out in an ideal manner, the interviews have contributed useful information for this thesis that I possibly would not have found elsewhere.

2.2 Legal sources

I have looked into international and national legal sources to review what is considered a legal minimal age for marriage, and how this practice is upheld in application to Norwegian domestic law.

First, I consider the references to marriage and age in the international sources, as child marriage is not a particular Norwegian problem. The Statutes of the International Court of Justice provide sources of international law.⁷² Article 38 (1) states that the Court shall apply a) international conventions, b) international custom, c) general principles of law recognized by civilized nations and d) juridical decisions and teachings as subsidiary means of the determination of rules of law.⁷³ The Vienna Convention on the Law of Treaties (VCLT) gives a general rule on the interpretation of treaties; that they “shall be interpreted in good faith in accordance with the original meaning [...] and in light of the object and purpose.”⁷⁴

For the purpose of this thesis I will focus on CEDAW and CRC. Both are implemented into Norwegian law through the Norwegian Human Rights Act, and when in conflict the wording of the international conventions is to trump Norwegian legislation.⁷⁵ According to Strand the incorporation in this regard means that a convention with its official wording applies directly

⁷²Rehman, Javaid (2010): *International Human Rights Law*. Edinburgh, Pearson Education Limited: 19

⁷³ Ibid.

⁷⁴ Vienna Convention on the Law of Treaties (VCLT). 23. May 1969, para 31

⁷⁵ Strand, Vibeke Blaker (2012): *Diskrimineringsvern og religionsutøvelse. Hvor langt rekker individvernet?* Oslo, Gyldendal Norsk Forlag: 51

to Norwegian law.⁷⁶ When the Act went into force it included the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The CRC (2003) and CEDAW (2009) were later added to the Act and are today part of the Norwegian legal position.⁷⁷

Section 3 in the Norwegian Human Rights Act states that the provisions in the conventions and protocols mentioned in section 2 in the same Act, shall prevail over provisions in Norwegian law if antinomy.⁷⁸ Strand explains that this means that the conventions incorporated into Norwegian law have been given a particular formal legal position opposite Norwegian law in general if there is a conflict between the two norms.⁷⁹ Strand also quotes Carsten Smith, who has termed the conventions incorporated through the Human Rights Act as “semi constitutional” because they are formally superior to ordinary law. However they are subordinated to the Norwegian Constitution⁸⁰, which now reads:

*The authorities of the State shall respect and ensure human rights as they are expressed in this Constitution and in the treaties concerning human rights that are binding for Norway.*⁸¹

With this amendment in 2014 of the Constitution a catalogue of human rights, such as protection against discrimination and children’s human rights, was incorporated in the Constitution.

2.3 Interpretation of UN Committees’ recommendations

Neither CEDAW or CRC nor other relevant conventions and declarations mention a specific minimum age for marriage in the convention texts per se. Therefore, it is necessary to look into other sources, which are central in interpreting the conventions.

Both within CEDAW and CRC a mechanism to monitor the conventions have been established. These committees deliver general recommendations or comments with the purpose to elaborate on the substantive law of the convention and the obligations of the states parties to

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid: 52

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ The Constitution, as laid down on 17 May 1814 by the Constituent Assembly at Eidsvoll and subsequently amended, most recently in May 2016. Official English translation: para 92

the conventions.⁸² For the sake of simplicity they will be referred to as general recommendations in this paper. Referring to literature on international law Strand writes that the practice of the committees are central when interpreting international human rights conventions.⁸³

Wærstad writes that “in the international human rights regime of today it is quite clear that the interpretation of treaty monitoring bodies constitutes an authoritative source when the content of the provisions are to be determined”.⁸⁴ Based in the VCLT it is argued that since a convention itself is legally binding, “the committee is by the convention given the role to interpret these binding rules”.⁸⁵

In judgement Rt-2015-93 from the Supreme Court of Norway “the best interest of the child” is considered. Here the CRC Committee’s General Comment No. 14 on CRC article 3 is considered a natural starting point when considering the equivalent provision in the Constitution (section 104).⁸⁶ In this case the judges state that a section in the Constitution, in this case section 102 on the right to the respect of their privacy and family life, is to be interpreted in light of the international law paragons. Nevertheless, the judgement emphasises that it is the Supreme Court and not the international monitoring bodies that are responsible for the interpretation, clarification and development of the human rights provisions in the Constitution.⁸⁷

According to Strand the preparatory works of the Norwegian Human Rights Act state that the “decisions or statements [of the monitoring bodies] normally are to be considered sources of law of significant importance”.⁸⁸

3 Legal perspectives

3.1 Introduction

When encountering child marriages, a central question is whether or not the marriage can be acknowledged in Norway. Section 18 a in the Norwegian Marriage Act regulates the formal

⁸² Strand (2012): 79

⁸³ Ibid: 84

⁸⁴ Wærstad, Tone Linn (2015): *Protecting Muslim Minority Women’s Human Rights at Divorce*. Oslo, UiO – University of Oslo: 35

⁸⁵ Wærstad (2015): 35

⁸⁶ HR-2015-206-A – Rt.2015-93 (Norges Høyesterett, 29.01.2015), para 64

⁸⁷ Ibid, para 57

⁸⁸ Strand (2012): 284

requirements for acknowledgement of marriages entered into abroad by foreigners. However, a minimum age for the acknowledgement of these marriages is not defined in the law.

For Norwegian nationals and permanent residents, the minimum legal age to marry is clearly defined and practiced through amendments in the Penal Code (2003) and the Marriage Act (2007). The amendments were added in order to prevent child and/or forced marriages among Norwegian nationals and permanent residents. The provision that prohibits entering into marriage below the age of 16 is in accordance with the latest recommendations on a minimal legal age from the CEDAW and CRC Committees.

So why is Norway still acknowledging marriages entered into abroad by foreigners at the age of 15? This recognition is based on a fact that Norway permitted a few marriages entered into at 15 years of age at the beginning of the 21st century. Although now prohibited for Norwegian nationals and permanent residents, the practice has continued for foreign marriages. Although once based on the *at the time* current law, any recognition today goes against the current law and could be perceived as being discriminatory. This is the theme I will elaborate on in this chapter, starting with a review of the regulations on marriage internationally before going into Norwegian domestic legislation.

3.2 International conventions on marriage

The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages entered into force in 1964. In the convention contracting states are called upon to take appropriate measures to abolish certain customs, ancient laws and practices relating to marriage and family that are inconsistent with the UN Charter and the Universal Declaration of Human Rights.⁸⁹ In doing so the states ensure “inter alia, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded[.]”⁹⁰

15 years later the demand to eliminate child marriages was strengthened through the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 16 (2) concludes that “the betrothal and the marriage of a child shall have no legal effect” and further that “all necessary action, including legislation, shall be taken to specify a

⁸⁹ Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages. 7. November 1962: Preamble Convention

⁹⁰ Ibid.

minimum age for marriage» and finally «to make the registration of marriages in an official registration compulsory».⁹¹

The same actions were set forth in the previously mentioned UN convention on marriage, which concluded in article 2) that “states parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses”. And in article 3) “all marriages shall be registered in an appropriate official register by the competent authority”.⁹²

CEDAW, just as CRC, is one of the core human rights instruments. Both conventions have a committee of experts established to monitor implementation of the treaty provisions by its States parties.⁹³ As pointed out by the Office of the United Nations High Commissioner for Human Rights (OHCHR), “through ratification of international human rights treaties, Governments undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties”.⁹⁴ The monitoring body for CEDAW is established by the convention itself “for the purpose of considering the process made in the implementation of the present Convention, [...]”.⁹⁵ The monitoring body provision is a core difference between the CEDAW and the older convention on marriage, making CEDAW a more meaningful and important convention than the convention on marriage. In addition, but of equivalent importance, is the fact CEDAW has been incorporated into Norwegian legislation through the Norwegian Human Rights Act.⁹⁶

3.3 CEDAW and CRC on a minimum legal age for marriage

In 2014, as CEDAW marked its 35th anniversary and CRC its 25th anniversary, the two committees joined forces to issue a comprehensive interpretation of the obligations of States to prevent and eliminate harmful practices inflicted on women and girls. Among the most prevalent and well documented harmful practices are child and / or forced marriages.⁹⁷

⁹¹ CEDAW article 16 (2)

⁹² Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages.

⁹³ ohchr.org: *The Core International Human Rights Instruments and their monitoring bodies*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (Assessed 21.11.2016),
CEDAW article 17, CRC article 43

⁹⁴ ohchr.org: *International Human Rights Law*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> (Assessed 21.11.2016),

⁹⁵ CEDAW, article 17 (1)

⁹⁶ Norwegian Human Rights Act

⁹⁷ General Recommendation No. 31 (CEDAW), No. 18 (CRC), para. 7

It was the first time two UN human rights expert committees have published a joint general recommendation, providing “authoritative guidance on legislative, policy and other appropriate measures that must be taken to ensure full compliance with [the States parties] obligations under the Conventions to eliminate harmful practices”.⁹⁸

In the joint general recommendation, the committees recommend explicitly that “a minimum legal age of marriage for girls and boys, with or without parental consent, is established at 18 years”, as mentioned in the introductory chapter.⁹⁹ Further, the committees emphasise the following exception:

*When a marriage at an earlier age is allowed in exceptional circumstances, the absolute minimum age must not be below 16 years, the grounds for obtaining permission must be legitimate and strictly defined by law and the marriage must be permitted only by a court of law upon the full, free and informed consent of the child or both children, who must appear in person before the court[;].*¹⁰⁰

The Convention of the Rights of the Child (CRC) is also considered to prohibit child marriage through a contextual interpretation of the convention. This applies both to the four general requirements of the CRC which are considered general requirements for all rights within the convention; protection from discrimination (art. 2), ensuring the best interest of the child (art. 3 (1)), upholding the right to life, survival and development (art. 6) and the right of the child to be heard (art. 12), as well as several articles under the CRC such as; art. 24 (3) to abolish traditional practices prejudicial to the health of children, art. 19 on children’s right to be protected from all forms of violence and art. 37 (a) to ensure that no child is subjected to torture or other cruel, inhumane or degrading punishment.¹⁰¹

The joint general recommendation from 2014 is not the first recommendation to set a minimum age for marriage. The Committee on CEDAW released a general recommendation on equality in marriage and family relations 20 years earlier, in which the Committee “considers that the minimum age for marriage should be 18 years for both man and woman”.¹⁰² This age was considered appropriate due to the responsibilities that come with marriage. Hence the

⁹⁸ Ibid, para 2

⁹⁹ Ibid, para 55F

¹⁰⁰ Ibid, para 55F

¹⁰¹ Ibid, para 32

¹⁰² CEDAW General Recommendation No. 21 on Equality in marriage and family relations. Thirteenth session (1994) Contained in document A/49/38: Article 36

Committee pronounced “marriage should not be permitted before they have attained full maturity and capacity to act”.¹⁰³

In the same general recommendation, the Committee addressed the fact that some countries allow for different ages for marriage for men and women.¹⁰⁴ The Committee called for the abolishment of provisions like these, as they incorrectly assume that “women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial”.¹⁰⁵

Although not specified in any of the conventions themselves a minimum legal age for marriage is apparent through the recommendations from the Committees on CEDAW and CRC, both mutually and separately. As deduced from the chapter on methodology the recommendations from the Committees on CEDAW and CRC are to be considered sources of law of significant importance, and in that regard guiding for Norwegian legislation on marriage and minimum legal age.

3.4 Norwegian legislation on marriage

The Norwegian Marriage Act regulates Norwegian marriages, whether they are entered into in Norway or entered into abroad by a Norwegian national or a permanent Norwegian resident. The Marriage Act also addresses marriages contracted outside of Norway between persons of foreign nationalities. The latter is the subject of analysis of this thesis. However, it is useful to establish which age limits have been established for Norwegian nationals and permanent residents as these currently do not necessarily cohere with the age limits accepted for marriages entered into abroad by foreigners. There exists no legal argument as to why there exist two different minimum age limits as far as I can see.

The minimum age for marriage in Norway is 18 years. According to the Marriage Act “no person under 18 year of age may contract a marriage without the consent of the persons or person having parental responsibility, and the permission of the county governor”.¹⁰⁶

The law does restrain the county governor’s possibilities to give permission to occasions when there are strong reasons for contracting a marriage.¹⁰⁷ Further, the law states clearly that “the county governor may not grant permission if the applicant is under 16 years of age”.¹⁰⁸

¹⁰³ Ibid, para 36

¹⁰⁴ Ibid, para 38

¹⁰⁵ General Recommendation No. 21, para 38

¹⁰⁶ Marriage Act: Act 1991-07-04 NO. 47: *The Marriage Act*. Official English translation , section 1 a.

The reason given for the age limit in the preparatory works is that persons younger than 18 years lack the maturity or skills needed for independent consideration of the consequences of entering into a marriage and to adapt to a stable life together.¹⁰⁹ These arguments voice some of the same concerns as the Committee on CEDAW in the General Recommendation No. 21 on equality in marriage and family relations.¹¹⁰

The subject of marital age in Norway was revisited when the Marriage Act was amended in 2007. In the amendment, 16 years of age was established as the absolute lower age limit for marriages in Norway. The provision is compatible with the Penal Code's provisions on punishment for someone who enters into marriage with children below 16 years of age and the age of consent.¹¹¹

The Norwegian Penal Code regulates violations of the Norwegian Marriage Act. Paragraph 262 second section in the Penal Code states that it is a criminal offence to enter into marriage with someone below 16 years of age.¹¹² In addition, paragraph 304 of the Penal Code incriminates persons who commit a sexual act with children below 16 years of age.¹¹³ A violation of the law may be punishable with up to three years in prison.¹¹⁴

The preparatory works for this 2003 amendment in the Penal Code discussed whether or not 16 years of age is the appropriate age limit. In doing so the preparatory works looked to the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1964. In a recommendation on this convention from 1965 the UN General Assembly specifies that the minimum age for marriage «in any case shall not be less than fifteen years of age».¹¹⁵ Further, the principle reads «no marriage shall be legally entered into by any

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ot.prp. nr. 100 (2005-2006): *Om lov om endringer i ekteskapsloven og straffeprosessloven mv. (tiltak for å forhindre tvangsekteskap mv.):* 8

¹¹⁰ CEDAW General Recommendation No. 21

¹¹¹ Ot.prp. nr. 100 (2005-2006): 37

¹¹² Ot.prp. nr. 51 (2002-2003): *Om lov om endringer i straffelova mv. (styrka innsats mot tvangsekteskap mv.):* 29

¹¹³ Child Welfare Act: *Lov om barneverntjenester (barnevernloven)*. LOV-1992-07-17-100. My translation

¹¹⁴ Child Welfare Act

¹¹⁵ Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, General Assembly resolution 2018 (XX) of 1 November 1965.

person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses».¹¹⁶

Even so, in the preparatory works to the 2003 amendment of the Penal Code it was suggested to set the age limit at 16 years of age, unless any instances would view the fact that the UN convention accepted a minimal legal age for marriage to be 15 years of age as crucial.¹¹⁷ Consequently, the Norwegian Ministry of Foreign Affairs (MFA) advocated for 16 years as the age limit, stating that the UN Convention ought not to be decisive when deciding upon whether or not a national age limit could be set higher.¹¹⁸ The MFA rather found that 16 years as the age limit would go together with related Norwegian provisions, such as the age of consent.¹¹⁹

As mentioned previously, the county governor may grant permission for youths to marry before reaching 18 years of age. According to the preparatory works on the Marriage Act it has been relatively easy to get dispensation if the applicant is older than 17 years and six months, and especially if the woman is pregnant. Beyond this the dispensation has been and still is practiced rather restrictively. At the time of the work with the amendment on the Marriage Act, dispensations were virtually never granted if any of the parties were below the age of 17, and it is stated that as a rule exemptions will not be given if one or both parties are below 17 years of age.¹²⁰

According to the preparatory works on the Marriage Act, there are examples of a few exceptions where dispensations have been given to youths aged 15 and 16.¹²¹ This practice ended with the amendment in the Penal Code of 2003. Even so, these exceptions are still heavily emphasised in the consideration of marriages entered into abroad by foreigners. The matter will be further explored in the next sections.

3.5 Recognition of marriages entered into outside of Norway

The legislative amendment of 2007 to the Marriage Act was the legal establishment of the non-statutory general rule in Norwegian private international law, stating that a marriage con-

¹¹⁶ *ibid*

¹¹⁷ Ot.prp nr. 51 (2002-2003): 30

¹¹⁸ Ot.prp nr. 51 (2002-2003): 33

¹¹⁹ *Ibid*.

¹²⁰ *Ibid*: 37-38

¹²¹ Ot.prp. nr. 100 (2005-2016): 9

tracted outside Norway as a general rule is recognised in the realm if the marriage has been validly contracted in the country of marriage.¹²²

The reason for the amendments was to protect children from child marriages, to reduce the risk of forced marriages, and to help persons leave forced marriages.¹²³ With the amendment section 18 a was established. The section regulates the recognition of a marriage contracted outside Norway:

A marriage that is contracted outside Norway shall be recognised in the realm if the marriage has been validly contracted in the country of marriage.¹²⁴ [...] However, a marriage shall not be recognised if this would obviously be offensive to Norwegian public policy (ordre public).¹²⁵

This rule has two scopes of applications, depending on whether or not one of the parties in the marriage is a Norwegian national or permanent resident in the realm at the time of marriage. If at least one of the parties has such a connection to Norway prior to the entering of a marriage, it shall not be recognised in the realm if;

a) the marriage was contracted without the presence of both parties at the marriage ceremony, b) one of the parties was under 18 years of age, or c) one of the parties was already married.¹²⁶

If one of the parties was under 18 years of age at the time the marriage was entered into, it will affect any application on family reunification negatively. In a directive about the additional amendments in the Marriage Act from 1 June 2007, the Ministry of Children and Equality elaborates on the interpretation of the law and section 18a in particular. In the matter of family reunification – where one of the parties is a Norwegian national or permanent resident – it is the age of the parties when the marriage is contracted that matters. This means that it is not possible to apply for family reunification in Norway if one of the parties was below 18 years of age when the marriage was entered into – even though both parties have turned 18 years at the time of the application.¹²⁷

¹²² Rundskriv om endringer i ekteskapsloven mv. fra 1. juni 2007 og informasjon om ordningen med refusjon av utgifter til hjemsendelse til Norge der ungdom har blitt eller forsøkt tvangsgiftet. Rundskriv Q-18/2007: Part 3: Anerkjennelse av ekteskap inngått i utlandet

¹²³ Rundskriv Q-18/2007: Part 1: Innledning

¹²⁴ The Marriage Act, section 18 a.

¹²⁵ Ibid.

¹²⁶ Ibid, section 18 a (2)

¹²⁷ Rundskriv Q-18/2007: Part 3: Anerkjennelse av ekteskap inngått i utlandet

The other scope of application relates to marriages entered into outside Norway by parties who at that time did not have any connection to Norway. These marriages are of particular interest in this thesis. Although the first scope is not applicable to the marriages focused upon in this thesis, the provision shows how differently the age limit for marriages entered into abroad by foreigners are in comparison to marriages involving Norwegian nationals or permanent nationals currently.

Since the law strictly limits the possibilities for Norwegian nationals and permanent residents to marry below the age of 18, it is important to examine why the same principles are not applied when acknowledging marriages contracted outside of Norway by foreigners.

3.6 Private international law

As a starting point, in Norway marriages entered into by foreigners abroad are acknowledged.¹²⁸ This rule was as mentioned amended through section 18 a in 2007. The assessment of the validity of a foreign marriage is only relevant if the married parties have any connection to Norway and the validity of the marriage will have some sort of juridical signification in Norway.¹²⁹ The main rule in Norwegian international private law is that the material conditions for a valid marriage are decided by the native country of the parties, Thue asserts.¹³⁰ However, this is not an absolute rule.¹³¹

Usually, juridical decisions made by a state's administrative or judicial authorities are expressions of state sovereignty, which in principle have no effect outside the state's own boundaries.¹³² An exception however, are foreign status acts such as the contracting of a marriage. These acts are acknowledged, if the marriage is validly entered into pursuant to the laws of the country in which the parties were married.¹³³

Most states set forth certain formal requirements to marriage, and a minimum requirement is that the marriage is registered in a public register.¹³⁴ The reason why the recognition of for-

¹²⁸ Thue, Helge J. (2002): *Internasjonal privatrett. Personrett, familierett og arverett. Alminnelige prinsipper og de enkelte reguleringer*. Oslo, Gyldendal Akademisk: 335

¹²⁹ Ibid: 327

¹³⁰ Thue, Helge J. (2003): *Anerkjennelse av ekteskap stiftet i utlandet*, Tidsskrift for Familierett, arverett og barnevernrettslige spørsmål, 2003, nr. 1: 8

¹³¹ Thue (2002): 335

¹³² Ibid: 328

¹³³ Ibid: 329

¹³⁴ Ibid: 332

oreign marriages is limited to the formalities as the only validity criterion is that this is the only fact that a state can control.¹³⁵ If the marriage is not validly entered into pursuant to the laws of the country in which the parties married, then there is no marriage to acknowledge.¹³⁶

3.7 Ordre public in Norway

As stated in the second subsection of section 18 a in the Norwegian Marriage Act a marriage will not be recognized if the marriage is offensive to Norwegian public policy (*ordre public*).¹³⁷

This acknowledgement consideration is crucial when assessing a marriage in connection with establishing a marriage's validity, the dissolution of a marriage, the entering into a new marriage or a consideration of a marriage as the basis for family reunification.¹³⁸ It can also be considered if necessary to decide on other rights, such as inheritance, fatherhood, welfare rights or the right to a name.¹³⁹

Examples of marriages that may be offensive to Norwegian law are marriages that are entered into by unlawful coercion, without consent, or marriages where the parties are very young.¹⁴⁰ Of the examples mentioned, age will be the focal point for further examination of *ordre public*.

Even though the Norwegian Marriage Act is clear on the minimum marriage age for marriages entered into by Norwegian nationals or permanent residents, it does not stipulate what is considered an accepted minimum age for marriages contracted outside Norway. According to the legislative history of the Marriage Act it is not determined how young one or both parties must be before their marriage contracted abroad will not be recognised. Yet, the preparatory works state that marriages where the parties were 11 to 12 years old when the marriage was entered into will definitively not be recognised in Norway.¹⁴¹

However, there exist examples of a few exceptions. Some Norwegian nationals or permanent residents aged 15 and 16 were given dispensations to enter into marriage at this age, accord-

¹³⁵ Thue (2003): 7

¹³⁶ Thue (2002): 331

¹³⁷ Marriage Act (2007), section 18 a

¹³⁸ Thue (2002): 337-338

¹³⁹ Ibid: 338

¹⁴⁰ Barne, ungdoms- og familiedirektoratet (10/2016): *Årsrapport 2015 Kompetansesenteret for mot tvangsekteskap og kjønnslemlestelse*: 35

¹⁴¹ Ot.prp. nr. 100 (2005-2006): 12

ing to the preparatory works.¹⁴² Based on the fact that marriages previously have been granted to Norwegian 15 and 16 year olds it is perceived that marriages entered into where at least one of the parties is *below* 15 years of age will not be in accordance with Norwegian ordre public.¹⁴³ Opposite, Norway could acknowledge marriages entered into abroad by foreigners if both parties have turned 15 years of age at the time, presupposed the marriage is considered valid in the country where it was entered into.

In the following sections I argue that there have been legal and societal developments that indicate that the Norwegian ordre public age ought to be raised. Naturally, the content of the ordre public rule is not definite.¹⁴⁴ It may change as moral perception changes. As a result, what once was rejected may later be accepted as the sense of justice alters. Lundgaard stresses the fact that the perception of what goes against decency or fundamental ethical and social principles do not only alter over time, but also from country to country.¹⁴⁵

3.8 15 years of age – a deviation from Norwegian rules

The ordre public age limit is in discordance with other Norwegian legislation, both the Marriage Act, Penal Code and Immigration Act. First of all, the minimum age for marriage in Norway is 18 years of age. Norwegian nationals or permanent residents are not allowed to marry below the age of 16. This does not – however – imply that they can easily marry below the age of 18.

This deviation is also apparent in the Norwegian Immigration Act. In family reunion cases involving Norwegian nationals or permanent residents who entered into marriage abroad, the law clearly states that time cannot repair violations of the law. This means that a marriage will not be acknowledged if one of the parties was below 18 years of age when the marriage was entered into.¹⁴⁶ As the only possible exception from this rule the marriage may be recognised at *the request of both parties* “if there are strong reasons for doing so”.¹⁴⁷ Since 2016 the County Governor of Oslo and Akershus has had the responsibility for this provision.¹⁴⁸ In an interview conducted for this thesis it was confirmed that the praxis is strict. But even though

¹⁴² Ibid: 9

¹⁴³ Ibid: 12

¹⁴⁴ See for instance Lundgaard (2000): 109

¹⁴⁵ Lundgaard, Hans Petter (2000): *Gaarders innføring I internasjonal privatrett*. Oslo, Universitetsforlaget: 109

¹⁴⁶ Marriage Act (2007): Section 18 a (3)

¹⁴⁷ Ibid.

¹⁴⁸ vl.no: *Fylkesmannen kan anerkjenne ekteskap dersom den ene parten er gift fra før*. Published 4.06.2106 <http://www.vl.no/nyhet/fylkesmannen-kan-ankjenne-ekteskap-dersom-den-ene-parten-er-gift-fra-for-1.734837> (Assessed 21.11.2016)

children are involved there is no desire from the authorities to repair marriages entered into by very young persons and that may have been entered into by force. However, it was added that the county governor has to evaluate every case individually and carries out thorough investigations.¹⁴⁹

In cases regarding other family reunifications, however, the Norwegian Immigration Act sets as a clear condition that both parties must be older than 18 years of age at the time when they apply for family reunification and that none of the parties were below 15 years of age at the time when the marriage was entered into and that it is in accordance with the legislation in the country it was contracted.¹⁵⁰ A possible way to make a derogation from this provision is to use paragraph 49 in the Immigration Act, which may be a way to evade the age limits listed in the Marriage Act (paragraph 18a) and the Immigration Act (paragraph 40).¹⁵¹

3.8.1 Outdated data

It is a fact that 15-year-olds have been granted permission to marry in Norway previously. The preparatory works do not give any explanation nor any reason as to why or when the exceptions were granted. However, every exemption was given ahead of the 2003 amendment of the Penal Code and the 2007 amendment of the Marriage Act.

Statistics from the Statistics Norway for the period 1996-2004 gathered ahead of the amendment, show that 683 persons below the age of 18 entered into marriage during this time peri-

¹⁴⁹ County Governor in Oslo and Akershus (2016): Personal phone conversation with Hege Skaanes Nyhus, fungerende underdirektør, juridisk avdeling, 18.10.2016

¹⁵⁰ Immigration Act: *Act of 15 May 2008 on the entry of foreign nationals into The Kingdom of Norway and their stay in the realm* (Immigration Act). Official English translation, section 40 (2)

¹⁵¹ Barne, ungdoms- og familiedirektoratet (10/2016): *Årsrapport 2015 Kompetansesenteret for mot tvangsekteskap og kjønnslemlestelse*: 36.

Kompetanseteamet mot tvangsekteskap og kjønnslemlestelse describes cases where male asylum seekers apply for family reunification with wife and common children once they have been granted residence permit in Norway: In a few of the marriages, the wife was below 18 years of age at the time the marriage was entered into, varying from 12 till 17 years. Even though they were all 18 and had common children at the time of the application, their application would be turned down if the marriage was entered into when the wife was below the age of 15 due to *ordre public*. Further the Kompetanseteamet states that since paragraph 40 in the Immigration Act cannot be used in these cases, the Norwegian authorities could consider if the couples fulfil the conditions in paragraph 49 in the same act, which states that “[I]f strong humanitarian considerations so indicate, a residence permit may also be granted to family members other than those mentioned in sections 40 to 53, and exemptions may be granted from conditions related to the status of the sponsor”. Further, the paragraph reads that “[I]n cases affecting children, the best interests of the child shall be a fundamental consideration”. Hence, the use paragraph 49 in the Immigration Act may be a way to evade the age limits listed in the Marriage Act (paragraph 18a) and the Immigration Act (paragraph 40).

od.¹⁵² Out of these registered marriages 36 persons were below 16 years of age at the time the marriages were entered into in the period 1999-2002.¹⁵³ According to the statistics as many as 15 persons married below the age of 16 in 1999, followed by four persons both in 2000 and 2001, and five persons in 2002. Everyone marrying below the age of 16 years had parents who had immigrated to Norway.¹⁵⁴

From 1996 to 2004 there was a steady number of marriages entered into where at least one of the parties was 16 or 17 years of age at the time. The fact that no marriages were entered into by persons below the age of 16 from 2003 and 2004, is due to an amendment to the Penal Code in 2003, which made it unlawful to marry anybody below the age of 16 as explained above.¹⁵⁵

The suggested amendment was set forth by what is now The Ministry of Justice and Public Security, which asserted that entering into a marriage below the age of 16 was in itself a violation against the child, and that there was a strong suspicion that these marriages are forced marriages.¹⁵⁶

3.8.2 Updated international recommendations

Even though it was made punishable to marry anybody below the age of 16 in 2003, the age considered to go against *ordre public* a few years later is (still) below 15 years of age. Apparently, there is not much discussion concerning this age in the preparatory works. Since some 15-year-olds previously have been granted permission to marry at this age, it is derived that this could be accepted also for marriages entered into abroad by foreigners. In this matter the preparatory works for the amendment for the Marriage Act refer to Thue. Thue simply states that “also in Norway 15-year-olds are allowed to marry”.¹⁵⁷ He bases this notion on information from Statistics Norway dated December 1999, saying that in 1998 one 15-year-old girl and 11 persons aged 16 were allowed to marry that year.¹⁵⁸ However, the 15-year-old is not shown in the 1996-2004 statistics that Statistics Norway gathered for the preparatory works

¹⁵² Ot.prp. nr. 100 (2005-2006): 24. The overview shows persons entering into marriage in the periode of 1996-2004, below the age of 18 at the time the marriage was entered into, and where at least one of the parties was registered living in Norway at the contracting of the marriage.

¹⁵³ Ibid:25

¹⁵⁴ Ibid.

¹⁵⁵ Penal Code: *Lov om straff* (straffeloven). LOV-2005-05-20-28. My translation, section 262 (1)

¹⁵⁶ Ot. prp nr. 51: 29

¹⁵⁷ Thue (2002): 319

¹⁵⁸ Ibid.

ahead of the amendment in the Marriage Act. Thue also refers to a case “a few years back” when a 14-year-old was granted permission. The reference to this case apparently dates back to 1978.¹⁵⁹

Thue is seemingly a central source in the preparatory works when evaluating what age limit would go against Norwegian *ordre public*. I would argue that Thue’s argument is poorly founded. Further, I am of the opinion that the argument is outdated.

I would argue that both Thue and Lundgaard’s contributions to this matter today are less relevant as sources when reconsidering what age that would go against the *ordre public*. I base this notion on the fact that both Thue and Lundgaard published their work at the beginning of the 21 century, before relevant legal developments such as the amendments in the Penal Code and the Marriage Act.

Published after this development on the matter of age limits in domestic law Cordes, Stenseng and Lenda deduce that as Norwegian legislation since 2007 does not allow the contracting of a marriage where at least one of the parties is below 16 years of age, this age limit has to be crossed in order for a marriage to go against the Norwegian *ordre public*.¹⁶⁰ However, Cordes, Stenseng and Lenda do not establish a definitive age limit, they merely refer to Thue’s examples of marriages entered into by 14- and 15-year-olds.¹⁶¹

A final argument against the acknowledgement of marriages entered into by persons 15 years of age is that it also diffracts from the joint general recommendation from the Committees on CEDAW and CRC, which states that 16 years of age is an absolute minimum. As pointed out previously in the thesis the general recommendations from the CEDAW and CRC Committees are to be considered authoritative sources.

3.8.3 The development of the *ordre public* reservation

The arguments presented above for why Norway could – and should – raise the *ordre public* age limit from 15 to at least 16 years of age have also resonated with some parts of Norwegian authorities who see the possible need for updating the notion of *ordre public*. UDI has sent a letter to the Ministry for Children and Equality requesting the ministry to consider how the rules on the minimum age when acknowledging marriages contracted outside Norway

¹⁵⁹ Ibid.

¹⁶⁰ Jørg Cordes, Laila Stenseng og Peter Lenda (2010): *Hovedlinjer i internasjonal privatrett*. Oslo, Cappelen Akademisk Forlag: 244

¹⁶¹ Ibid.

should be interpreted.¹⁶² Describing their current practice on the matters, UDI asked for the ministry's comments on their interpretation of the preparatory works for the 2007 amendments in the Marriage Act.¹⁶³

In their reply the Ministry writes that it does not have the authority to review the validity of marriages entered into abroad. Further, the Ministry concludes that it is the authority handling a concrete case that has to review the issue for preliminary ruling [in Norwegian: *prejudisielt*] if a marriage entered into abroad is to be considered valid in Norway.¹⁶⁴ This is in accordance with the legislative history of the Marriage Act, which concludes that there is no legal authority in Norway that is especially designated to acknowledge marriages contracted outside the realm. In addition, the Ministry gives a general comment on marriage and age, issues that already have been revised in this thesis.

The Ministry stresses that the *ordre public* is a norm, developed in non-statutory private international law. The norm is dynamic in the sense that it is affected by the development of other norms in our legal system.¹⁶⁵

According to the Ministry, the legislative amendment of 2007 and the previous change of practice might affect the *ordre public* norm, in the sense that the age limit considered appropriate at the time when the preparatory works were prepared, not necessarily is an expression of the current law. This view is apparently supported by statements from legal academics, according to the Ministry.¹⁶⁶ They refer to Lundgaard, who emphasises that if a marriage entered into abroad is in conflict with Norwegian terms, which cannot be exempted, it will be natural to say that an acknowledgement of the marriage go against *ordre public*. The Ministry goes on to say that this matter must be further studied.

Therefore, the Ministry of Children and Equality will cooperate with the Ministry of Justice and Public Security to initiate efforts to go through the legislation and *ordre public* to see if it needs to be updated.¹⁶⁷ When asked for an interview to elaborate on the matter for this thesis,

¹⁶² UDI in a letter to BLD of 17.02.2016: *Ekteskap inngått i utlandet og vurdering av ordre public, jf. Ekteskapsloven § 18 a første ledd, siste setning: 1-2*

¹⁶³ Ibid.

¹⁶⁴ BLD in a letter to UDI of 28.04.2016: *Ekteskap inngått i utlandet og vurdering av ordre public, jf. Ekteskapsloven § 18 a første ledd, siste setning: 1*

¹⁶⁵ Ibid: 2, quoting Gaarder: Lundgaard (2000), page 104 flg.

¹⁶⁶ Ibid: 3

¹⁶⁷ Ibid.

the Ministry alleged that their opinion was covered in the letter to UDI and refrained from further elaboration upon the matter.¹⁶⁸

3.9 Summary

As explained in this chapter, some marriages are considered offensive to Norwegian public policy and will therefore not be recognised. The *ordre public* is an expression of the fundamental rights within Norwegian legislation, but as argued above the current age practice is based on outdated facts and expired policy, and furthermore it also goes against current national law and international obligations.

The Norwegian Marriage Act clearly does not allow for Norwegian nationals and permanent residents to enter into marriages if at least one of the parties is below the age of 16. Hence there is no reason for Norwegian authorities to acknowledge marriages entered into abroad below the age of 16. The analysis also demonstrates that any acknowledgement of marriages entered into below the age of 16 is not in accordance with the latest recommendations on a minimal legal age from the CEDAW and CRC Committees.

4 A review of practical approaches to Syrian child brides to Norway

4.1 Introduction

So far I have reviewed legal aspects of the concept of marriage. My main scope is the Norwegian marriage law as regulated in the Marriage Act. In this thesis I set out to examine what steps Norwegian authorities can take in order to respond to the situation, both legally and practically. The validity of a marriage is a legal question, of great significance for the parties affected. Still, a consideration of the validity of a marriage is not the first priority of Norwegian authorities when approached by asylum seekers arriving in Norway. Instead, focus is on the registration that shall secure that every applicant is offered adequate housing in line with their needs of protection. Although of a practical kind, these efforts have to be executed within the frames of the law. Hence I find it useful to start this chapter on the practical challenges as described above with a legal perspective.

¹⁶⁸ Ministry of Children and Equality (2016). Personal phone conversation with Christian Heimdal, rådgiver, BLD, 20.10.2016

4.2 The obligations of a State

Since asylum seekers in general have legal rights, the States have an obligation to fulfil these rights. In the case of child brides, Norwegian authorities are bound to take actions in the best interest of the child, which is anchored in the Constitution, as described in the previous chapter.

The Norwegian Child Welfare Act applies to every child who reside in Norway, including children that have applied for asylum in Norway and children whose asylum applications have been refused.¹⁶⁹ When children are married or living in *marriage-like* relationships [in Norwegian: *ekteskapslignende forhold*], the Child Welfare Service in Norway has a duty to investigate the circumstances.¹⁷⁰ In the cases where the parties in question have children together, Norwegian authorities are to attend to the care of both the underage parent(s) and the(ir) common child(ren).¹⁷¹

This responsibility is rooted in human rights obligations and guidelines for national action plans – in order to counter exploitation and violence in close relationships.¹⁷² The identification of child marriages are not only important to secure the rights of the child, it may also prevent that other parties from unknowingly incriminating themselves by continuing the cohabitation as previously practiced. Norwegian authorities are obliged to prevent a felony.

The States' responsibility to ensure the human rights of the asylum seekers means that the authorities have to deal with the situations that accrue and find good solutions, which are in accordance with Norwegian law, from the moment the asylum seekers arrive in Norway regardless of the future outcome of their asylum applications. For the time being, no one will be returned to Syria because of the current situation in the country, according to UDI's information memorandum on asylum seekers from Syria for 2015. Further, UDI also expresses that they will not make resolutions in asylum cases that entail a return to Syria.¹⁷³ According to UDI everyone from Syria initially meets the criteria in the Convention Relation to the Status

¹⁶⁹ *Årsrapport 2015* Kompetansesenteret for mot tvangsekteskap og kjønnslemlestelse: 34

¹⁷⁰ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 7:15

¹⁷¹ Ibid: 4:15

¹⁷² (UDI): Revidert rundskriv med nytt tiltakskort om barneekteskap (Revidering av RS 2015-007) / Tiltakskort for barneekteskap / Rs 2014-07 Krav om identifisering og oppfølging av beboere i mottak som kan være utsatt for menneskehandel, vold i nære relasjoner eller barneekteskap: Subsection 2.1

¹⁷³ udi.no: *Informasjonsnotat om asylsøkere fra Syria (2015)* <https://www.udi.no/statistikk-og-analyse/statistikknotater/informasjonsnotat-om-asylsokere-fra-syria-2015/> (Assessed 20.10.2016)

of Refugees (28. July 1951) and is granted a permission in accordance with the Immigration Act § 28 a.¹⁷⁴

A minor asylum seeker who is engaged or married with a person who seeks asylum in Norway or has been granted residence in Norway, shall be registered as an unaccompanied minor.¹⁷⁵ The status as an unaccompanied minor is given in order for the Norwegian authorities to protect the child pending of a mapping of his or her situation.¹⁷⁶ As an unaccompanied asylum seeker the child's asylum case will be considered separately from the spouse.

The review of the relevant Norwegian legislation uncovers a range of practical challenges that the Norwegian authorities need to handle. Even though a marriage may be considered valid as both parties were above 15 years of age at the time the marriage was entered into, Norway cannot accept any relationship between two parties residing in Norway where one of the parties is below the age of 16 as it goes against the age of consent which was explored in the previous chapter.

I find that Norwegian authorities have initiated several steps to enhance their ability to handle the increase of Syrian child brides arriving in Norway, which is elaborated on later in this chapter. Their routines are apparently sharpened after failing to register all child brides as required in the first period when the number of asylum seekers to Norway increased heavily. However, this was not only the case in Norway alone, but throughout all of Europe. Therefore, I find it relevant to start the next section with a short review of how the Syrian child bride situation was unveiled in Europe, before looking more thoroughly into the specific numbers for Norway. Then I turn to the steps undertaken by Norwegian authorities and compare these with a recent – and so far only – judgement from the European Court of Human Rights (ECtHR) on the special relevance on the topic of child marriage in order to assess whether or not the measures could be considered appropriate in order to ensure the rights of the child.

4.3 A European challenge

During the fall of 2015 a record number of persons arrived and applied for asylum in Norway. A large number of the asylum seekers came from the war-torn Syria. The staggering number put Norwegian asylum authorities and UDI in particular through a demanding situation as the

¹⁷⁴ Ibid.

¹⁷⁵ Revidert rundskriv med nytt tiltakskort om barneekteskap (Revidering av RS 2015-007)

¹⁷⁶ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, 29.09.2016

organisation was not equipped to handle such a high number asylum seekers.¹⁷⁷ Norway was not the only European country that encountered this challenge.

In the beginning of February 2015 the Netherlands posed a question through the European Migration Network (EMN), asking whether or not the other member countries knew of Syrian girls aged 14-17 entering into marriages in refugee camps with men who are ten to twenty years their age. In addition, the Netherlands asked if there were any routines for case handling and sheltering of the underage and married asylum seekers.¹⁷⁸

In July 2014 the Netherlands had identified two cases of Syrian child marriages. Nine months onwards the number of cases identified had increased to 55 cases. The cases involved girls aged 14-17 years old, who were all married with parental consent. According to a report from EMN, most marriages took place outside Syria, in refugee shelters in countries such as Jordan, Lebanon or Turkey.¹⁷⁹ In the report from March 2015, countries such as France, Luxembourg, Hungary and Portugal replied that they had not experienced similar cases.¹⁸⁰ Both Germany and United Kingdom stated that there was no statistics on Syrian child brides.¹⁸¹ However, the British authorities wrote that “[T]he UK would not accommodate a “couple” where the bride was underage”.¹⁸² Belgium answered that they had not been confronted with this phenomenon, hence they had no policy or guidelines on the matter.¹⁸³

According to the Swedish Migrationsverket, Sweden was the only country out of the 29 countries responding, that had experience with Syrian child marriages among asylum seekers. In 2014 five to ten young married girls were identified in Sweden, although they had no information on whether or not they had married in a refugee camp.¹⁸⁴

Since the report was collected from March 2015 until the end of the year, the Swedish authorities had identified 132 married children without guardians. Most of the children, who are from Syria, Afghanistan and Iraq, arrived in Sweden after 1 August 2015. 97 percent were girls.¹⁸⁵ The statistics support the notion that the increase in child brides was sudden, and

¹⁷⁷ UDI (2016): *Beredskap høsten 2015*. Rapport fra egnevalueringen: 5

¹⁷⁸ EMN (2015): *Ad-Hoc Query on Syrian child brides in the asylum procedure*: 3

¹⁷⁹ Ibid: 1

¹⁸⁰ Ibid: 2-7

¹⁸¹ Ibid: 4-7

¹⁸² Ibid: 7

¹⁸³ Ibid.: 2

¹⁸⁴ Migrasjonsverket (2016): *Är du gift? Utredning av handläggning av barn som är gifta när de söker skydd i Sverige*: 3

¹⁸⁵ Ibid: 2

caught European countries off guard, posing several challenges on them. The same applies to Norway, which I will elaborate on in the following sections.

4.4 The Norwegian approach

When Norwegian authorities shared their experiences on Syrian child brides in the asylum procedure with the EMN in March 2015, they only knew of one marriage involving a Syrian girl below the age of 18. However, they underlined that they did not have any information implying that the marriage was entered into as a result of the war as the couple had not lived in a refugee camp. When asked about her young age and the age gap between the parties, the asylum applicants referred to traditional practices, UDI explained.¹⁸⁶

As previously shown in this thesis, Norwegian authorities soon learned of several cases of Syrian child brides. A mapping carried out by UDI to identify child brides among the applicants who applied for asylum in Norway between 1 January 2015 and 1 February 2016, shows that 61 persons under 18 years of age stated to be married or engaged upon arrival in Norway in this period. They either arrived together with their partner, or the partner had arrived in the country earlier. Out of 61 only two boys were identified.

51 persons were 16 or 17 years of age at the time of the application. Out of the 51 16 had children or were pregnant. Ten girls were below 16 years of age, four of them were mothers or expecting.¹⁸⁷ According to numbers from The Norwegian Directorate for Children, Youth and Family Affairs (Bufdir), reported by Norwegian media, the youngest was 11 years old.¹⁸⁸

According to UDI it is difficult to achieve a complete overview, as the registrations of the asylum applicants are carried out manually and there might be misclassifications.¹⁸⁹ However, in an interview for this thesis, UDI writes that most of them have informed the authorities themselves that they are married upon arrival.¹⁹⁰

¹⁸⁶ Ibid: 8

¹⁸⁷ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, 29.09.2016

¹⁸⁸ nrk.no: *11-årig asylsøker var gift da hun kom til Norge*. Published 02.02.2015 <https://www.nrk.no/norge/11-arig-asylsoker-var-gift-da-hun-kom-til-norge-1.12781471> (Assessed 30.10.2016)

¹⁸⁹ Answer from UDI when questioned if it is possible to get a complete overview of the cases revealed.

¹⁹⁰ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, 29.09.2016

As mentioned above married children are to be registered as unaccompanied minors by the authorities. Norway has in fact never received as many unaccompanied minors in a year as in 2015, when 5300 persons claimed to be unaccompanied minors.¹⁹¹ The unaccompanied minors accounted for 17 percent of the total number asylum seekers to Norway in 2015. For the Syrian applicants, unaccompanied minors accounted for five percent of the total number Syrian asylum applicants that year.¹⁹² According to the same statistics, out of these 537 Syrians who were registered as unaccompanied minors, only 80 were girls.¹⁹³ Since girls of Syrian nationality account for the majority of the child brides identified in Norway, it is presumed that the child brides make up a considerable percentage of the 80 minor girls registered in 2015.

4.5 First steps taken by Norwegian authorities

One of the first steps taken by Norwegian authorities was to update their action plan that aims to provide thorough guidelines and tools to identify and follow up residents that are victims of human trafficking, violence in close relationships (including forced marriage and female genital mutilation) or child marriages at reception centres for asylum seekers.¹⁹⁴ The responsibility to identify and follow up on vulnerable residents was placed with the reception centres.

In March 2016 an interdisciplinary working group was established. Representatives from UDI, Bufdir, the National Police Immigration Service (PU/NPIS) were to develop suggestions to guidelines and routines for cooperation between the mentioned government agencies and the local Child Welfare Services.¹⁹⁵ The establishment of the working group is a clear indication that the current action plans were insufficient to deal with the challenges that arose in this special situation. As previously mentioned, it is known UDI failed to register a married and pregnant 14-year-old when she arrived in Norway. In their own evaluation of the extraordinary situation in the fall of 2015 UDI admits to failing to sufficiently systematically identify and follow up on unaccompanied asylum seekers arriving in Norway.¹⁹⁶ Hence the working group was established because “it was necessary to establish clear routines”, in regard to how to handle the cases, but also for the cooperation between the agencies.¹⁹⁷

¹⁹¹ udi.no: *Hvem kom som enslige mindreårige asylsøkere?* Faktaskriv 2015 <https://www.udi.no/statistikk-og-analyse/arsrapporter/tall-og-fakta-2015/faktaskriv-2015/hvem-kom-som-enslige-mindrearige-asylsokere/> (Assessed 29.10.2016)

¹⁹² Ibid.

¹⁹³ Ibid.

¹⁹⁴ Revidert rundskriv med nytt tiltakskort om barneekteskap (Revidering av RS 2015-007)

¹⁹⁵Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 2:15

¹⁹⁶ UDI (2016): *Beredskap høsten 2015. Rapport fra egevalueringen*: 6

¹⁹⁷ UDI (2016): Mandat for arbeidsgruppe – Håndtering av barneekteskap blant asylsøkere: 1

The working group was mandated to improve the guidelines and routines regarding registration (through the computer system for registration), improved notification to relevant partners and cooperation on management and follow-up, in addition to information to the applicants.¹⁹⁸ Their focus was on measures within the immigration administration, such as application for protection, follow-up from the local Child Welfare Services and offered housing. However, their mandate was restricted to criminal and integration related questions.¹⁹⁹ Although not mentioned specially in the original mandate, this delimitation is established in the final report.

The report from the working group was published mid-September 2016. The proposed guidelines and actions suggested in the report are very concrete. They focus primarily on the arrival of the asylum seekers, how to register married children and what living arrangements to offer them. The report does to a much smaller extent discuss legal questions, such as the asylum application and a possible acknowledgement of the marriage. As of 25 November 2016, UDI is implementing the measures set forth in the report.²⁰⁰

4.6 Development of new guidelines and routines

The measures most relevant for this thesis, are the rules regarding housing and the registration of the marriage. In the report, the working group makes an important distinction between the married children based on age. Below and above 16 years of age is the critical division, especially in the initial phase of arrival when the children are to be registered and placed in the correct accommodation facilities.

If a child arrives without a parent or a guardian, he or she is to be registered as an unaccompanied minor.²⁰¹ This is to ensure that his or her rights are taken care of.²⁰² As an unaccompanied minor the child will have a representative appointed to take care of his or hers legal interests. If the child arrives with a spouse, the child is still to be registered as an unaccompanied minor. If the spouse is above 18 years of age and considered an adult, he (or she) cannot

¹⁹⁸ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 2:15

¹⁹⁹ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 3:15

²⁰⁰ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, 25.11.2016

²⁰¹ Married children accompanied by their parent(s) or guardian are to be registered as an accompanying child. Their marital status is to be listed in the asylum registration system. According the new routines, all marriages are to be registered no matter how old parties were when the marriage was entered into and even though «their age go against the ordre public.

²⁰² Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 5:15

be considered a representative of the unaccompanied child.²⁰³ Unaccompanied children are also entitled to receive economic benefits separately from the spouse.²⁰⁴

According to new routines everybody below 18 years of age is to be offered a separate place of residence to the spouse.²⁰⁵ *Separate place of residence* is to be understood as different reception centres for asylum seekers. Married children below 16 years of age shall under no circumstances be allowed to reside together with an adult spouse. The same goes for cases where the police suspects that married children above 16 years of age have been forced to marry, are being taken advantage of or exposed to abuse of some kind.²⁰⁶

The group of unaccompanied children is divided into three subgroups; below 15, below 16 and above 16 years of age when deciding what living arrangements to offer them. The routines apparently have a clear mission, first and foremost to prevent any violation of the Penal code and age of sexual consent.

The Child Welfare Service is responsible for unaccompanied children below 15 years of age.²⁰⁷ If the married child is below 16 years of age, the parties are to live at separate reception centres. If the married child wishes for the spouse to be close by, UDI is instructed to strive for them to be placed at centres located close to each other.²⁰⁸ If the married couple have common children, both parents can be considered main caretaker. The child may live with the (adult) father, and the (minor) mother may have visitation rights, or the child may live with the minor mother and get his or her own guardian appointed. A third option is for the common child to live with a foster family.²⁰⁹

As married children below 16 years of age will be offered residence in reception centres for unaccompanied children and under no circumstance are to live at the same centre as their spouse, the routines for married children above 16 years are less strict. As mentioned, everyone below 18 years of age is to be offered a separate place of residence to the spouse.²¹⁰ Yet a married child above 16 years of age may live together – share room – with their spouse, if

²⁰³ Ibid.

²⁰⁴ Ibid: 9:15

²⁰⁵ Ibid: 5:15

²⁰⁶ Ibid: 7:15

²⁰⁷ Child Welfare Act, section 5A-1

²⁰⁸ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir (16.09.2016): *Tiltak for håndtering av barneekteskap blant asylsøkere*: 9:15

²⁰⁹ As expressed by UDI deputy director Birgitte Lange at a seminar on child marriages among asylum seekers in 27 October 2016 in Oslo.

²¹⁰ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 5:15

they oppose to be separated from the spouse. If so, their representative must comply to the wish to live together and the Child Welfare Service must have concluded that there is no need for taking action in accordance with the Child Welfare Act after a conversation with the child.²¹¹ However, the reception centre is responsible for the daily care of the married child. An adult spouse shall not be considered caretaker for the minor spouse.²¹²

The routines follow up the answer minister Solveig Horne gave to the parliament earlier this year as a response to a question from a parliamentarian. In her reply, minister Horne wrote that at the reception centres, children that are married or are parents themselves shall first and foremost be treated as children – equally to the other children at the centre. At the same time, these children shall receive close and customised follow-up, such as adapted information about Norwegian law and how the legislative system affects them. She also pointed out that there is thorough consideration of the best of the child regarding meetings with the spouse. There are clear rules and procedures for the meeting between spouses, and they are always supervised.²¹³

Married children registered as an accompanying child to their parents go to the same reception centres as their parents. If the child is below 16 years of age, the spouse will not be allowed to live at the same centre. If the child is above 16 years of age, the spouse may stay at the same centre if the parents of the married child approve.²¹⁴ Here the guidelines do not specify if the spouses may live in the same room.

Clear routines for housing are important. By setting an absolute rule that no married children below the age of 16 are allowed to live together with their spouse, Norwegian authorities act in coherence with Norwegian legislation. Although 15-year-olds have rights as a party²¹⁵, the clear divide between 15- and 16-year-olds secure the children in question the right to be children. By allowing persons above 16 years of age to voice their wishes in the matter of housing, the children's rights to be heard are fulfilled.²¹⁶ At the same time, it is important that the authorities approve of the possibility for the parties to live together, in order to ensure that the child's best interest is provided for.

²¹¹ Ibid: 9:15

²¹² Ibid.

²¹³ stortinget.no: Spørsmål i Stortinget: Skriftlig spørsmål fra Karin Andersen (SV) til barne- og likestillingsministeren Reply 11.02.2016 <https://stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=64601> (Assessed 26.08.2016)

²¹⁴ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 10:15

²¹⁵ Child Welfare Act, section 6-3

²¹⁶ CRC para 12 (2)

4.7 An ECtHR judgement of special relevance

The matter of adjusted housing was addressed in a concurring opinion of a judge in a case involving an early marriage held before the European Court of Human Rights. In the case, a married Afghan couple alleged that the Swiss Government had violated their rights to a family life under the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The plaintiffs, who were cousins, contracted a religious marriage while residing illegally in Iran. At the time they married, he was 18 years old while she was 14 years of age. One year later they registered as asylum seekers in Switzerland. Initially, Swiss authorities did not acknowledge the marriage between the parties. The Swiss Federal Administrative Court (FAC) “considered that the applicants’ religious marriage was invalid under Afghan law and in any case was incompatible with Swiss *ordre public* due to the first applicant’s young age”.²¹⁷ However, in their allegation to the ECtHR, the plaintiffs alleged that the removal of the second applicant to Italy, where the parties had registered before going to Switzerland, was a violation of their respect for their family life under article 8 of the Convention.²¹⁸ In the judgement the court unanimously ruled that there had been no violation of the article.²¹⁹

In the concurring opinion of ECtHR judge Nicalaou, he points out that although the Swiss local authorities were responsible for accommodating the applicants, they did not separate the parties. In fact, they installed the applicants in a single room, with a single bed.²²⁰ A smaller remark from the judge is the fact that the applicants are repeatedly referred to as husband and wife in the documents from the Swiss Federal Office of Migration. As judge Nicolaou writes, it may be a “convenient way of referring to them but that does not, in my view, detract from how the applicants were being perceived by those who dealt with them and who were best placed to form a reliable view regarding their relationship”.²²¹ Judge Nicalaou says it is not irrelevant that the authorities did not provide separate accommodation for the applicants, and also questions the fact that there were no charges against the second applicant for unlawful sexual intercourse with a minor.²²²

The concurring opinion of judge Nicalaou highlights the importance of upholding the law through actions. Norwegian authorities have done a lot in order to improve their reception of

²¹⁷ Case of Z. H. and R. H. v. Switzerland – Application no 60119/12 (ECtHR, Strasbourg 8.12.2015), para 43-44

²¹⁸ Ibid, para 38

²¹⁹ Ibid, para 43-44

²²⁰ Case of Z. H. and R. H. v. Switzerland – Application no 60119/12 (ECtHR, Strasbourg 8.12.2015), (Concurring opinion of Judge Nicolaou): 12

²²¹ Ibid. (Concurring opinion of Judge Nicolaou): 13

²²² Ibid. (Concurring opinion of Judge Nicolaou): 15

the asylum seekers. As explained, the routines were not in place as the arrivals of both asylum applicants and child brides suddenly increased in the second half of 2015. The distinction between children below and above 16 years of age is also important as it does not undermine the Norwegian age of consent. As seen above, Swiss authorities are criticised for stating that a marriage is not valid, although they did nothing to prevent the relationship from continuing. This takes us back to Norway, and how the registration of the child marriage here can be of significance.

4.8 Registration vs acknowledgement of a marriage

The updated guidelines give limited answers to the question of acknowledgement of child marriages in Norway. They sketch out three reasons to separate married couples where at least one is minor. First, you have the couples where at least one person is below the age of consent, that is below 16 years of age. Secondly, you have married children below 18 years of age, who accept the offer to live separately from the spouse, and finally, there are the cases where the Children Welfare Service in Norway decides to separate the couple, in accordance with the Child Welfare Act.

The guidelines address the fact that marital status shall be registered, but leave it up to the National Registry authorities, which is the Norwegian Tax Administration, to assess which marital status to be registered.²²³ UDI is responsible to make visible for the National Registry that the marriage in question is a child marriage “which demands a closer assessment from their side”.²²⁴ How this practically will be dealt with, is left to be clarified in the follow-up of the different measures.²²⁵

According to UDI, the marital status of an asylum seeker does basically not have any significance in their consideration of the need for protection, hence UDI does not consider the validity of the marriage.²²⁶ To the question of whom in Norway will consider the acknowledgement of a marriage contracted abroad, UDI replies that they will consider whether or not a marriage can be acknowledged in Norway in cases where the applicant’s marital status is of consideration for the residence permit. Further, they specify that this first and foremost applies for family reunification applications.²²⁷

²²³ Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir: 12:15

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg*, Seniorrådgiver, Analyse- og utviklingsavdelingen, 29.09.2016

²²⁷ Ibid.

I find it important to point out, that unaccompanied children are to get their applications considered separately from the spouses. We might at some point reach a situation, where only one of the spouses get their application granted and the other one not. This could lead to an application on family reunification, which actually would require UDI to revisit the question of whether or not the marriage could be acknowledged. However, I will not go into the possible outcome of such an application as there are many factors that would affect the final outcome such as age, whether or not the marriage was forced, on what grounds one of applications were granted and the other not and so on. It is beyond this thesis to go into these. I simply wanted to point out that at some point the question of acknowledgement of the marriage will re-emerge. An assessment of the matter is presented in chapter five.

4.9 Summary

A consistent finding throughout this thesis is that responsibility to act to a large extent is intertwined between different government agencies, and therefore the need for cooperation and common guidelines and routines are crucial.

It is well illustrated with the example of UDI and the question of considering the acknowledgement of a marriage. UDI might not need to consider the marriage in order to reach a decide on an application. However, unless the application is rejected, Norwegian authorities will at some point have to consider whether or not a marriage can be acknowledged in Norway. Hence, the interdisciplinary cooperation initiated through the working group is an important step forward as Norwegian authorities try to handle the increase in child brides.

5 An analysis of future challenges regarding child marriages

5.1 Introduction

While reviewing the legislation, considering the efforts to eliminate child marriages and gathering information on Syrian child brides, the complexity of the custom of child marriages and efforts to eliminate these becomes evident. Looking into the legislation it is easy to deduce a legal answer whether or not a child marriage can be acknowledged. But to what extent is the problem solved? What happens to the child from this point on if a marriage is not acknowledged?

I have so far explored the responses to Syrian child brides applying for asylum in Norway from two different angles. As the study has demonstrated there are certain challenges that arise both with regard to the legal acknowledgement procedure of the marriage, and with re-

gard to practical issues such as housing and care-taking for the girls once they have arrived in Norway. As pointed out in chapter 4 the actions taken so far by Norwegian authorities are concrete, executed to solve a problem here and now. In the final chapter of this thesis I find it necessary to look ahead.

From the findings of this thesis arise three different aspects that appear particularly relevant for a more thorough discussion and to which I now turn. The three points illustrate the complexity of child marriage, and the need for coordinated approaches. First, I demonstrate how child marriages do not only exist within a legal framework, and the need for a contextual view when considering an acknowledgement or rejection of a child marriage. Secondly, I display the need for consistent laws and policies based on examples that are both of legal and practical character. Finally, I demonstrate the possible international effects of the Norwegian domestic law on the matter of child marriage, which I find is a strong argument for updating Norwegian legislation to the latest international recommendations on minimum legal age for marriage.

5.2 Acknowledgement of Syrian child marriages?

For the first point I go back to one of the main questions for this thesis: Can the marriages of the Syrian child brides be acknowledged in Norway? The short answer is yes, if the parties were above 15 years of age at the time the marriage was entered into, and the marriage is considered valid in the country in which it was contracted. To what extent the marriages of the Syrian child brides in Norway have been entered into in accordance with these requirements, is more or less impossible to validate without having personal information about the parties and the marriage. I will rather direct the spotlight to some factors that may be of relevance for considering an acknowledgement of the marriages based on information collected for this thesis.

A central question is whether or not the marriages are in accordance with Syrian law? We know that the general legal age for marriage in Syria is 18 years for boys and 17 years for girls. The UDI statistics show that several of the married children arriving in Norway are younger than that. Although it is possible to get married at 15 years of age for boys and 13 years of age for girls, information shared through media suggests that some are even younger, such as the 14-year-old that was pregnant with her second child. There have even been reports that the youngest married child was only 11 years of age. We do not know whether or not the marriages were entered into in Syria or in neighbouring countries, although the information from the Netherlands suggested that many got married outside of Syria. Furthermore, we do

not know whether or not the marriage is entered into based on civil or religiously norms, and to what extent they are registered with the right authorities.

Another important question is whether or not the marriage was entered into with free consent. The statistics provided by UN organisations and NGOs in this thesis support the notion that the number of child marriages involving Syrians has increased due to the civil war in the country. Even though every child marriage is a forced marriage per se, there is reason to presume that many of the Syrian child marriages are forced marriages in the sense that the families have no other alternatives. Interviews conducted by organisations reveal that many marriages are entered into as a consequence of poverty and a wish to protect daughters.

There are many factors that might suggest that some of the marriages will not be considered valid in Syria, or in neighbouring countries if entered into there. This is one of the requirements under section 18 a in the Norwegian Marriage Act for acknowledging a marriage entered into abroad by foreigners. Further, some of the marriages will definitively go against the Norwegian ordre public since at least one of the parties will have been below the age of 15 at the time the marriage was entered into.

Regardless of the validity of the marriage Norwegian authorities still have to find good solutions to support the child brides as they embark on yet another life-changing chapter in their relatively young lives, this time in Norway. This leads me to the second point on consistent legislation.

5.3 Consistent legislation, consistent policies

With so much uncertainty as demonstrated in the previous section, to base life-changing decisions on, it is crucial that the legislation the policies are based on are consistent in order for the policies to be consistent. An example of the opposite, is evident in the previously mentioned case from ECtHR.

In the case of the Afghani parties towards Switzerland the Swiss authorities stated that the religious marriage could not be validly recognised in Switzerland due to the young age of the woman at the time the marriage was entered into, since her age went against both the Afghan Civil Code and was incompatible with Swiss ordre public.²²⁸ However, at some point in the application process, when the youngest applicant was 16 years and 11 months old, the Court of the First Canton of Geneva “recognised the validity of the applicants’ religious marriage

²²⁸ Case of Z. H. and R. H. v. Switzerland – Application no 60119/12 (ECtHR, Strasbourg 8.12.2015): para. 10

contracted in Iran”.²²⁹ The review of their case by the European Court of Human Rights does not list any information regarding this decision or the considerations leading up to the decision. In his concurring opinion, judge Nicalaou goes as far as to say “I have no idea how that came about” referring to the decision of the Swiss court, before describing the case as disturbing.²³⁰

The case shows that it is important for authorities to be consistent in their approaches. How can the executive officers approve or reject a marriage, or asylum applications for that matter if they are uncertain of the policies they base their decision on? In chapter 3 is described a similar challenge that was raised by UDI in their letter to the Ministry where they asked if there were any new interpretations of the Norwegian ordre public age.

Another example of inconsistent policies comes from Denmark, where the Minister for Immigration, Integration and Housing, Inger Støjberg decided to abandon the policy of separating the parties in a marriage if the child was below the age of 15 after being made aware of the increase of child brides to Denmark. Her decision to separate every couple where at least one of the parties was below the age of 18, has later been reversed as the *Udlændingestyrelsen* found that a separation of every couple could go against CRC and ECHR (art. 8). Instead an assessment of every couple is conducted before deciding whether or not they can live together.²³¹

A solid legislation is of importance to avoid situations like the ones described above. It will make it easier to derive clear policies that, attend to both Norwegian legislation and the best interest of the child. Even though their mandate was restricted to criminal and integration related questions, these are the exact topics the working group recommends be further looked into by Norwegian authorities.

The working group points out the need for a thorough review of the legal regulations for acknowledgement of marriages contracted abroad – by persons without a connection to Norway – which go against the Norwegian Marriage Act and possibly the Penal Code.²³² Among the topics included in this suggested enquiry is the question of how the National Registry authorities are to register the marital status in the National Registry. Furthermore, they encourage an examination of the possibility to assess the validity of undocumented marriages before

²²⁹ Ibid: para. 15, 19

²³⁰ Ibid, (Concurring opinion of Judge Nicolaou): 14

²³¹ mx.dk: *Støjberg gik for vidt: Barnebrude må igen bo med ægtemænd på asylcentre*. Published 28.09.16 <http://www.mx.dk/nyheder/danmark/story/25962184> (Assessed 28.11.2016)

²³² Rapport fra tverrfaglig arbejdsgruppe i UDI, PU og Bufdir: 13:15

they are registered in the National Registry and what possibilities the parties have for an annulment of forced marriages.²³³

They also recommend an examination of *ordre public* in the Marriage Act.²³⁴ The recommendations from the working group have been lifted by UDI, PU and Bufdir in their cover letter when the working group's report was dispatched to the Ministry of Justice and Public Security and the Ministry of Children and Equality – encouraging the ministries to look further into the these topics.²³⁵ As previously mentioned, the Ministry of Children and Equality refrained from elaborating on a possible work on this matter.

5.4 Societal effects of Norwegian policy

So far this thesis has had a domestic focus on the sudden increase of Syrian child brides to Norway. How are Norwegian authorities to cope with the situation? Can the marriages be acknowledged in Norway? Perhaps not that much debated is how the Norwegian actions are perceived internationally.

As the Norwegian government works to eliminate child marriages internationally, how will it be perceived if Norway acknowledges marriages entered into by children who were 15 years of age? If Norway chooses not to follow the recommendations from the CEDAW and CRC Committees, why should other countries? Even worse, the acquiescence might interrupt other countries efforts to eliminate child marriage.

The latter issue is raised in an e-mail exchange between UDI and the Royal Norwegian Embassy in Addis Abeba regarding the possible granting of a family reunification to Norway where the bride in question was 15 years at the time the marriage was entered into.

According to federal Ethiopian law, *Revised Family Code 2000*, the minimum age for marriage in Ethiopia is 18 years. According to the embassy, the federal Ethiopian authorities have defined child marriage as a “harmful traditional practice”, and further the goal of the authorities is to eradicate child marriage within 2025.²³⁶ However, as the embassy adds, every region and the two city-states in the country have developed their own *Family Code*, where some

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Cover letter of 19 September 2016 on the report: Rapport fra tverrfaglig arbeidsgruppe i UDI, PU og Bufdir (16.09.2016): *Tiltak for håndtering av barneekteskap blant asylsøkere*

²³⁶ E-mail from ambassador Andreas Gaarder to UDI, sent 21.01.2016.

regions do not follow the federal law regarding the minimum age of 18 years, but have maintained a minimum age of 15 and/or 16 years.

The embassy problematises the fact that Norwegian immigration authorities contemplate acknowledging marriages entered into in Ethiopia between one or two minor parties. The embassy questions whether or not this practice from the immigration authorities is “within the moral and ethical guidelines that shall and should be absorbed in the Norwegian regulations”.²³⁷ In addition to the ethical aspects, the embassy finds it politically problematic that Norway undermines Ethiopian authorities’ federal legislation.

UDI has replied that they are considering the particular case in light of the Marriage Act, and that they, based on information from Landinfo, have considered that the marriage in question is considered valid in Ethiopia and that it does not go against Norwegian sense of justice as the bride was 15 years at the time the marriage was entered into. UDI adds that the evaluation of this particular application is not finished.²³⁸

This final example with the Ethiopian bride, who was 15 years at the time she married, shows how a decision like acknowledging this marriage may weaken Norwegian efforts on eliminating child marriage internationally. If the marriage is eventually recognised by UDI, their decision will be based on article 18 a in the Marriage Act, which acknowledges marriages entered into abroad by foreigners if the marriage is considered valid in the country in which it was contracted and it does not go against the Norwegian ordre public, which is still considered to be below 15 years of age.

The example is an important reminder that Norway’s national and international policies should be consistent. If they are inconsistent with each other, the effects may be a weakening of the goal to combat child marriages both in Norway and abroad.

5.5 Summary

In this analysis I have highlighted three different yet corresponding points that are especially relevant for a more thorough discussion. The points illustrate how some efforts have a spill over effect on other measures taken to handle child marriages. The spill over effect can have both a positive and negative character. The findings in this chapter suggest that if the authorities coordinate their various efforts in relation to each other, this will enhance the effect of the

²³⁷ Ibid..

²³⁸ E-mail from Nikos Rippis, fagsjef, Oppholdsavdelingen, UDI to ambassador Andreas Gaarder, sent 12.02.2016.

measures. If they are inconsistent with each other, the efforts are weakened and both may fail to reach their targets, as noted above with the final example with the Ethiopian bride.

The points showcase the value of applying a contextual perspective on matter of child marriage and consolidate efforts in order to enhance the outcomes and hopefully the impact of the steps taken.

6 Conclusion

Within 13 months from the beginning of January 2015 Norwegian authorities had identified 61 asylum seekers below the age of 18, who stated to be married or engaged upon arrival in the realm.

In this thesis I set out to find out what steps Norwegian authorities can take to ensure that Syrian child brides who apply for asylum in Norway are looked after in accordance with Norwegian law and Norway's international human rights obligations.

My purpose was to consider whether or not Norwegian law could be improved in order to develop clearer practices on how to handle this and possible similar situations in the future. Consequently, I have concentrated on two main points of legal and practical challenges.

The study shows how Norway has sharpened Norwegian law previously in order to prevent child or/and forced marriages among Norwegian nationals and permanent residents. One important, and possibly the most effective way to eventually eliminate child marriages internationally is to sharpen legislations, setting out a legal minimum age in accordance with the international human rights. The CEDAW and CRC Committees recommend 18 years of age as the minimum age, with 16 years of age as the absolute lowest exception. Norwegian legislation regarding the minimum age for Norwegian nationals and permanent residents is in accordance with their recommendations.

However, based on outdated legislation and data Norway may still acknowledge marriages entered into abroad by foreigners who were 15 years of age at the time of marriage. This notion is a clear deviation both for current Norwegian legislation, which was amended in the Penal Code in 2003 and the Marriage Act in 2007, and international recommendations. The findings suggest that the age limit considered in accordance with Norwegian *ordre public* should be raised from 15 years of age to at least 16 years of age. This correction would comply with both current Norwegian legislation and Norway's international human rights obligations, and it would be in line with Norway's international efforts to eliminate the custom of child marriage.

I find that the Norwegian authorities have taken the challenges imposed by the increase of Syrian child brides seriously. After initially failing to register all child brides, routines were improved and better cooperation was initiated between the government agencies involved. An interdisciplinary working group was mandated to improve guidelines, which are currently being implemented.²³⁹

The new routines focusing primarily on the first-line services of accurate registration and thereto housing. The guidelines are limited in dealing with any acknowledgement of the marriages. Although not part of the initial mandate the working group has nevertheless recommended Norwegian authorities to examine this matter further. Also, the guidelines are primarily focused on advocating improved routines and measures, whereas there is little discussion about the wellbeing of the children affected by child marriage.

An important finding is the divide in the treatment of children below and above the age of 16 years of age. Children younger than this age, are not allowed to live with their parties under any circumstances. Above this age it may be allowed if all necessary considerations approve of it. The age limit also highlights a great dilemma in dealing with child marriages. Within the law alone, there are limited measures to stop child marriages when crossing borders. A marriage may not be acknowledged in Norway, but this does not necessarily put an end to the relationship as long as the parties involved are above 16 years of age.

Recognising this complexity, I have applied a contextual perspective on the matter and highlighted three different, yet corresponding points that are especially relevant for a more thorough discussion. The points illustrate how some efforts have a spillover effect on other measures taken to deal with child marriages. The spillover effect have both a positive and negative character. The findings in this thesis suggest that if the authorities coordinate their various efforts in relation to each other, the overall effect of the measures will be enhanced. For Norwegian authorities the next evident – and necessary – step forward, will be to review and update the Norwegian ordre public reservation applied in the assessment of the acknowledgment of foreign marriages.

²³⁹ Norwegian Immigration Directorate (UDI) (2016). *Personal e-mail communication with Solgunn Flatebø Solberg, Seniorrådgiver, Analyse- og utviklingsavdelingen, 25.11.2016*

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