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**The violation of child brides' human rights:
the possible solutions to tackle child marriage**

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ABSTRACT

Si definisce matrimonio infantile quello in cui uno dei due sposi ha meno di diciotto anni, ma il problema investe essenzialmente le ragazze. È una pratica ampiamente diffusa in tutto il mondo e si stima che ogni anno circa dodici milioni di ragazze si sposino prima di compiere diciotto anni. La maggior parte di queste ragazze vive in aree spesso caratterizzate da un basso sviluppo economico e da un alto tasso di povertà come nel caso dell'Africa subsahariana e dell'Asia meridionale. In quest'area il tasso di tale pratica è particolarmente alto con il 45% delle donne che dichiarano di essere sposate prima dei 18 anni e tra queste il 17% prima dei 15 anni. È importante tuttavia specificare che spesso i dati riguardanti il matrimonio infantile riflettono solo in parte la realtà poiché molte volte i matrimoni non vengono registrati. Il fenomeno delle spose bambine è quindi molto più diffuso rispetto a quanto suggerito dalle statistiche e può variare da paese a paese ma la caratteristica che accomuna tutte le diverse forme di matrimonio precoce è la grave violazione dei diritti umani che esso implica.

L'obiettivo di questa tesi è quello di analizzare iniziative, strategie, provvedimenti, per mezzo dei quali contrastare il matrimonio infantile. A questo scopo, è innanzitutto necessario fornire un quadro il più completo possibile del problema. La tesi è quindi composta da cinque capitoli.

Il primo capitolo analizza la condizione dei bambini nel mondo che possono essere raggruppati in due macro categorie separate da una soglia, quella della povertà. I bambini che vivono nella "culla occidentale" sono protetti e supportati, quelli nati invece al di fuori di questo contesto raramente hanno accesso ad un'alimentazione equilibrata e sufficiente, all'acqua potabile o a corsi scolastici che possano garantire loro un futuro migliore e spesso sono oggetto di ogni tipo di sfruttamento e abuso.

Il secondo capitolo presenta e analizza le principali convenzioni che si impegnano a proteggere i diritti dei bambini. Si tratta della "Convenzione internazionale sui diritti del fanciullo", della "Convenzione sul consenso al matrimonio, l'età minima per il matrimonio e la registrazione dei matrimoni", della "Convenzione sull'eliminazione di ogni forma di discriminazione contro le donne". Si procede quindi all'analisi delle carte regionali sui diritti umani a cui spesso si farà riferimento nel corso della tesi.

Il terzo capitolo, che rappresenta il fulcro del discorso, analizza le cause che stanno alla base del matrimonio infantile che comporta la violazione di due diritti fondamentali: quello che riguarda l'età minima del matrimonio e quello relativo al libero e pieno consenso degli sposi.

Per quanto riguarda il primo diritto, l'articolo 2 della "Convenzione sul consenso al matrimonio, l'età minima per il matrimonio e la registrazione dei matrimoni" invita gli Stati a stabilire un'età minima per il matrimonio e specifica che qualsiasi unione al di sotto di quella soglia è proibita a meno che una figura competente non decida, per il bene degli sposi, di celebrarla comunque. Anche l'articolo 16(b) della "Convenzione sull'eliminazione di ogni forma di discriminazione contro le donne" richiede di specificare un'età minima per il matrimonio. La violazione può avvenire in due modi: a volte l'età minima viene stabilita dalla legge ma non rispettata mentre in altre situazioni, l'età minima per il matrimonio non viene fissata nonostante la convenzione lo richieda. Il secondo diritto, come già anticipato, riguarda il consenso da parte dei coniugi. Alle ragazze viene negato il diritto di scegliere lo sposo e di esprimere la propria opinione sulla situazione e, a volte, le ragazze sono semplicemente troppo giovani per comprendere ciò che sta accadendo e le conseguenze che ne derivano.

Che cosa c'è alla base del matrimonio infantile? Prima di tutto la povertà. Le donne sono percepite come un peso economico all'interno della famiglia. Raramente contribuiscono al sostentamento e al reddito della casa poiché avere un lavoro, muoversi liberamente ed essere indipendenti viene loro negato. Inoltre, una volta sposate, le donne entreranno a far parte della famiglia del marito. Di conseguenza, investire economicamente sulle donne non è vantaggioso. Quindi, il matrimonio precoce non è altro che una strategia utile a ridurre i costi della famiglia. Un secondo aspetto da considerare è il pagamento della dote. È consuetudine che la famiglia della sposa dia una dote alla famiglia del marito prima del matrimonio. Il suo valore varia a seconda dell'età e dell'istruzione della ragazza: più giovane e meno istruita è la ragazza, più bassa sarà la dote. Se invece la ragazza ha ricevuto una buona educazione e quindi il matrimonio viene posticipato ad un'età adulta, il valore della dote sale.

Anche l'insicurezza gioca un ruolo fondamentale. Nelle zone di guerra, le donne e le ragazze sono più esposte a stupri, violenze sessuali e torture. Il matrimonio precoce è spesso utilizzato come "strumento protettivo": le ragazze sono costrette a sposare uomini dei gruppi armati che in cambio garantiscono sicurezza e protezione a tutta la famiglia.

Un altro fattore che contribuisce ad alimentare la pratica del matrimonio infantile è l'insieme delle norme e pratiche sociali e tradizioni che molto spesso legittimano la disuguaglianza di genere. In

questi casi le donne vengono controllate dagli uomini in ogni aspetto della loro vita per paura che possano recare disonore alla famiglia. Infatti, una relazione o una gravidanza al di fuori del matrimonio hanno il potere di gettare un'ombra su tutta la famiglia. Per questo motivo spesso si ricorre a pratiche devastanti come la mutilazione genitale femminile che svolge sia una funzione di protezione e controllo ma allo stesso tempo segna il passaggio dall'infanzia all'età adulta.

Nella sezione finale del terzo capitolo vengono invece esposte le gravi conseguenze che derivano dal matrimonio infantile. Esse sono molteplici e hanno un forte impatto sulla vita delle spose bambine sia per quanto riguarda gli effetti immediati che quelli a lungo termine. Oltre all'improvvisa interruzione dell'infanzia, tutta una serie di diritti umani è gravemente violata. Il primo è il diritto alla salute; nei paesi in via di sviluppo, le complicazioni della gravidanza e del parto sono le principali cause di morte tra le adolescenti (15-19 anni) dal momento che i loro corpi non sono ancora completamente sviluppati. Inoltre, malattie sessualmente trasmissibili e fistola ostetrica possono influenzare negativamente la vita di queste ragazze. L'altro fondamentale diritto ad essere violato è quello all'educazione. Come già anticipato, molte ragazze sono costrette ad abbandonare gli studi ancora molto giovani; per le ragazze, ricevere un'istruzione è fondamentale sia per socializzare con persone al di fuori del contesto familiare e sviluppare la propria personalità sia per trovare un lavoro che permetta loro di diventare economicamente indipendenti e affrontare con serenità un futuro incerto e difficile, migliorando anche la condizione dei propri figli. Purtroppo le spose bambine sono anche soggette a violenza domestica e spesso cercano di scappare tornando a casa dei genitori senza trovare però supporto. Le conseguenze psicologiche sono quindi numerose e molto pesanti e accompagnano le ragazze per tutta la vita.

Il quarto capitolo analizza il fenomeno delle spose bambine con un caso studio sullo Yemen. La prima sezione del capitolo fornisce una descrizione del paese. Dal 2014 lo Yemen viene descritto regolarmente come stato fallito. Il calcolo della fragilità di un paese è condotto sulla base di indicatori quali il declino economico, la violazione dei diritti umani, la pressione demografica e via dicendo. Il livello di fragilità di un paese viene espresso da un numero che va da 0 a 120. Secondo il "Fragile State Index Data", nel 2014, anno in cui lo Yemen è stato per la prima volta definito come stato fallito, il punteggio è stato di 105,4/120. Nel 2020, il livello dello Yemen è salito a 112,4/120 classificandosi al primo posto nella "Fragile State Index Rank". In un contesto caratterizzato quindi da una profonda instabilità, donne e bambini risultano soggetti estremamente vulnerabili.

Nonostante l'aspetto apparentemente democratico della Costituzione yemenita che garantisce uguali diritti a tutti gli individui, le donne si ritrovano invece in una posizione subordinata rispetto agli uomini, complice il sistema patriarcale e la Sharia considerata fonte di tutta la legislazione. Per quanto riguarda i bambini, la situazione è ancora più grave dal momento che, tra le varie leggi dello Yemen, non esiste un'univoca e precisa definizione di bambino: la Legge n.45/2002 definisce il bambino come un essere umano al di sotto dei diciotto anni, lo Statuto Personale dello Yemen al di sotto dei dieci anni mentre il Codice Civile stabilisce la maggiore età a quindici anni. Purtroppo, senza una definizione chiara, i bambini non possono essere completamente protetti. Il matrimonio infantile è, quindi un fenomeno molto diffuso nello Yemen. Ciò che peggiora la situazione, è la negligenza del governo yemenita nei confronti delle leggi internazionali che richiedono l'applicazione di un minimo di età per il matrimonio. Nonostante vari tentativi, è emerso che stabilire un'età minima per il matrimonio va contro i principi della Sharia. La sezione finale del quarto capitolo include delle testimonianze dirette da parte di due donne yemenite, Ola Alaghbary e Muna Luqman. Ola è la fondatrice della Sheba Youth Foundation i cui progetti, tra cui "Empowering Young Girls Initiative", mirano ad includere esclusivamente donne e giovani. Muna Luqman, a sua volta, è un'attivista e fondatrice di Food4Humanity da cui si è originata l'iniziativa "Water4Peace" che ambisce a prevenire il matrimonio infantile nello Yemen.

Il quinto e ultimo capitolo è dedicato alle soluzioni che possono contrastare il matrimonio infantile. Sarebbe opportuno stabilire a livello mondiale i diciotto anni come età minima per il matrimonio ed escludere la possibilità di celebrare un matrimonio tra minori anche quando c'è il consenso dei genitori o di un'autorità competente, registrare correttamente le nascite e i matrimoni ma anche sanzionare gli individui coinvolti in situazioni legate al matrimonio infantile e gli stati che non rispettano le convenzioni ratificate. In secondo luogo si potrebbero prevedere ricompense e incentivi per tutti quegli Stati e individui che sono riusciti a raggiungere dei buoni risultati, inducendo gli altri a collaborare e ad impegnarsi. Tuttavia, le soluzioni appena citate non sono certo sufficienti a debellare il fenomeno. La direzione prima è quella dello sviluppo culturale e della formazione. Le ragazze dovrebbero ricevere informazioni adeguate riguardanti i loro diritti e i genitori dovrebbero imparare a riconoscere il valore delle proprie figlie e permettere loro di continuare gli studi. Ovviamente sarebbe opportuno distribuire aiuti economici alle famiglie in modo che queste possano sostenerne i costi.

Anche il ruolo delle ONG è fondamentale. Human Rights Watch, the International Center for Research on Women, UNICEF e Girls Not Brides si impegnano rivolgendosi direttamente ai governi dei vari paesi e alle Nazioni Unite e fornendo loro rapporti annuali che includono specifiche raccomandazioni per porre fine al matrimonio infantile. Anche l'Agenda 2030 è uno strumento fondamentale in quanto si impegna, entro il 2030, ad eliminare la fame, la povertà, l'insicurezza che sono gli elementi alla base del matrimonio infantile e a garantire salute ed istruzione a tutti i bambini offrendo loro un futuro migliore.

Per la realizzazione di questo elaborato sono stati utilizzati diversi strumenti a partire dalle varie Convenzioni internazionali e regionali che si impegnano a salvaguardare i diritti umani, libri di testo e articoli di giornale, rapporti ufficiali di diverse ONG tra cui UNICEF, Save the Children, Girls Not Brides ma anche dati internazionali forniti principalmente dai siti ufficiali di organizzazioni intergovernative come la Banca Mondiale e le Nazioni Unite. In secondo luogo, un prezioso aiuto è stato fornito dal materiale acquisito grazie allo scambio di email, conversazioni e Zoom meetings con attivisti e fondatori di organizzazioni locali volte a contrastare il matrimonio infantile nello Yemen.

INTRODUCTION

Marriage is a fundamental step in an individual's life and it is often associated to a cheerful and lighthearted moment. However, this situation can easily turn into a nightmare. Many girls are forced to marry already at an early age without having the possibility to make choices about their future. The lack of consent and the violation of the minimum age for marriage is at the basis of what is called child marriage. It is a widespread phenomenon that concentrates in those areas characterized by poverty and insecurity but also by a patriarchal system that puts women in a subordinate position. Around 12 million girls marry before 18 years old every year and "over 650 million women alive were married as children"¹.

As a result, young girls' childhood is interrupted and they suddenly become women full of responsibilities that are typical of adulthood. Child marriage has a strong impact on girls' life both at physical and psychological level and a set of human rights is seriously violated.

The object of this research is to provide information and to find possible solutions in order to tackle child marriage. The thesis is composed by five chapters. The first chapter analyzes the children's condition in the world: there are two macro categories separated by a threshold that is poverty. The second chapter gives information about the Conventions protecting children's right that will be used during the analysis. The third chapter is fundamental since it gives detailed information of the aspects of child marriage included the causes and consequences. The fourth one analyzes the phenomenon of child brides through a case study on Yemen. Yemen was chosen for the case study since it ranks first in the Fragile State Index and as a consequence, women and children are extremely vulnerable subjects. The last section of the fourth chapter includes some interviews of Yemeni women collaborating with the Sheba Youth Foundation and Food4Humanity. The last chapter suggests some of the possible solutions that could help tackling the problem. The materials used in this thesis are mostly data and reports submitted by NGOs, United Nations or other bodies that are of paramount importance because of their monitoring activity and initiatives.

Although the way to tackle child marriage is still long and complicated, I hope this research can help, even to a small extent, raising awareness on an extremely important and delicate topic.

¹ About child marriage; Available from: <https://www.girlsnotbrides.org/about-child-marriage/#sources> .

1. GENERAL BACKGROUND

1.1 Children's condition in the world

When looking into children's world, it becomes difficult to make a clear discourse. A fusion of complex and extremely different situations exist just within the concept of family: sometimes incompatible models coexist side by side, other times paradigms spread territorially, culturally or culturally are created. Here, in order to simplify the understanding, two macro categories will be introduced: one called 's' and the other one called 'f' that stand respectively for 'success' and 'failure'. Of course, the two categories are tangent and they are divided by a threshold that, even if it is self-evident to say, is poverty. So, this gives origin to two heterogeneous and opposing groups; in one group the economic wealth is acceptable while in the other one it is not at all. As a consequence, two inclinations immediately emerge: the first one is that of a certain widespread developmental dynamism in which the life of the new generations is protected, tidied up, sanitized and fertilized as in a vegetable garden in order to feed a system that is constantly in progress. Instead, the other one is chaos, the realm of a social and economic as well as psychic paralysis. Children that grow in the 'western cradle' are usually supported, accompanied and addressed to a course study aimed at specializing them and finally introduced them to 'the job's world'. What is more, very few people die also thanks to the health care that should be a right for everyone. It is in this way that the bracket of the population living in these conditions becomes a successful character and its lifestyle a cultural model.

On the other hand, children who are born in the other half of the world, outside NATO's arms can run into much more improbable careers to yearn for the same position of stability granted to their counterparts. They rarely have access to a balanced and sufficient diet, to clean water, to school courses when they are not working and last but not least, they are often the object of every kind of exploitation and abuse by family members as well as strangers, just think of how many simply 'disappear' in the darkest silence because of their precious organs.

Already with this first sketch the crux of the matter emerges: nutrition, education and protection, especially health care. These values are the main indicators of the degree of success of a state in the management of its generations, at least according to our current cultural system. It is noticeable how the thread that connects these points is dyed with the color of money that creates a kind of vicious cycle; a state is poor because its generations have no chance to succeed and so

migrate elsewhere if able and at the same time the state cannot invest on young generations because it has to invest on resources in order to fight poverty.

Whatever, with regard to the emergence of these points, it can be better understood the paresis of these subjects by thinking about how high the coefficient with which people born in a privileged state are able to place themselves within the threshold of wealth before crossing middle age. After all, it is basic mathematics, in a closed and finite system, if the rich increase his wealth, he can do it only by sinking further the poor into the poverty.

The three pillars cited before will be now analyzed more in detail starting from food. Everyone at least once has run into those advertisements aimed at channeling donations and showing images of undernourished and exhausted children. But how many ever wondered how many individuals effectively live in these conditions?

According to the last "State of Food Security and Nutrition in the World" conducted in 2020 by the 'Food and Agriculture Organization of the United Nations' (FAO). Food shortage is a problem that in 2019 hit "144.0 millions of children under 5 years of age"². When the numbers exceed the common imagination, they become empty symbols so to make some proportions, the Italian population amount about 60 million inhabitants which means that there are two 'Italies' and a half of children dying of hunger in the world. Within the last year and a half Covid-19 exterminated 3,4 million³ of people and this literally stopped the world since the suffering of such number of people was simply not acceptable. Yet, the starvation of 144 million children can go relatively unnoticed and so in the last year there has been a sharp increase of food insecurity due to

Covid-19 pandemic that has influenced negatively on its production, consume and also distribution to the extent of preventing a significant part of the population to enjoy food and to keep a healthy diet; a fact that is simply dramatic and anything but in resolution.

From the common attitude it seems to come out an obvious awareness on the original distribution of the resources for which luck has been less benevolent with some countries and their land did not have much to offer. But this vision is absolutely misleading: most of these countries are full of resources and are constantly robbed by national government as well as multinational companies that distribute lands and fields or what is more, by local crime groups and last but not least, by the

² FAO (2020): "The State of Food Security and Nutrition in the World"; <http://www.fao.org/3/ca9692en/CA9692EN.pdf> [Accessed 30/04/2021]

³ Ministero della Salute: 'Covid-19: Situazione nel mondo'; <https://www.salute.gov.it/portale/nuovocoronavirus/dettaglioContenutiNuovoCoronavirus.jsp?lingua=italiano&id=5338&area=nuovoCoronavirus&menu=vuoto> [Accessed 30/04/2021]

governments of the most developed countries that treat them as colonies. An emblematic case is represented by Brazil that can count on a relevant production factor, especially in the agribusiness and breeding sector. Indeed, in 2018 Brazil exported one and a half million tons of meat for of about six billion and a half, yet 16 million people are starving and 40 million live with the equivalent of 2 euros per day. In short, there are many cases in which resources exist but leave for other shores, so that it becomes understandable that the problem extends further, because where wealth is unequal there is no difference compared to where there is none at all.

Another fact to be added to the list is climate change. It is characteristic of 'our age' but the first alarms launched by climate scholars can be dated back to the '60s. It is only in recent years that, through the international climate agreements, there was a slow admission of the problem which is catastrophic and completely out of reach.

Floods, violent and sudden hurricanes are becoming more and more common and as expected, the impact of mankind on the environment is leading to extreme climatic events, loss of biodiversity, deforestation and soil degradation. These effects, if associated with the lack of investment in biosecurity practices, will contribute to increase the threat of emerging infectious diseases, capable of crossing the natural boundaries between humans, animals and plants. In 2020, the intensification of cyclones, caused by the alteration of ocean currents, a phenomenon in turn connected with the melting of ice mass and the overheating of the poles, caused widespread damage in many island countries of the South Pacific and in South Asia while the pounding rains in regions usually characterized by a dry and arid climate have favored the genesis of huge swarms of locusts, which have then critically jeopardized crops in East Africa, South Asia and the Gulf countries. Drought flares up as well as spontaneous fires that sum up to the side effects of a disrespectful environmental exploitation. The economic effects on the agricultural sector and on the so-called 'labor' to which fewer wealthy populations are often relegated, are disastrous and dramatic even if elsewhere it is perceived as a slight and constant increase in prices.

With the prolongation and intensification of these phenomena, a considerable crowding of migratory traffic is to be expected, with consequent conflicts for the control of resources, of the territory and incalculable social unrest that could easily lead to civil wars. It slowly emerges how difficult it is to conduct a discourse focused on childhood since the condition of the infant is that of the future adult and the condition of the adult is projected into the child who will descend from it.

The second pillar that has been highlighted is the one on which the dogmas of public health regulation are carved. Among the advanced countries it is a source of great pride to be able to show off an efficient, cutting-edge healthcare, even if obviously within the combination that has been created between public and private health, it is no longer so simple to draw an absolute value, however a ranking does exist and it distributes the merits through a ratio calculation between relative and absolute health costs compared with the average life expectancy.

An extract from the section "Studi e Analisi" of the "Quotidiano Sanità" that is prior to the pandemic shows the ultimate rank 'Bloomberg Health Care Efficiency'. The calculation of the most efficient health care systems was possible thanks to data provided by the World Bank, The World Health Organization, the United Nations and the International Monetary Fund and it analyzes the ratio between costs and life expectancy. The results highlight that the country ranking first is Hong Kong. For what concerns Europe, Spain ranks first immediately followed by Italy in 4th position. The United States ranks 54th placing themselves at the end of the list⁴.

This kind of calculation is insufficient to give a real profile of the quality of the health systems under analysis but it can outline the limits of the overall situation; the states that stand out, among which Italy and Spain, are actually provided with imperfect health systems, full of slips, cases of inefficient health service. This should lead to suppose that even a situation of real ease and power at economic and political level has not guaranteed a good development of public health. For what concerns the rest of the world health care is not even considered as such except for some private clinics.

Beyond a certain threshold, hospitalization can mean an increase in the risk of complications or death. Indeed, some countries has been destroyed by some epidemic even before Covid-19. Africa bears the burden of a quarter of world's diseases but given its average health care conditions, the causes of infant mortality lie in the most trivial diseases (from a West point of view) such as pneumonia and malaria.

The places dealing with very high mortality rates are countries such as India, Nigeria, Democratic Republic of Congo and Pakistan and almost all the sub-Saharan Africa and the way to reach an acceptable health care system is still long and arduous.

In conclusion, the health scenario just outlined configures a double situation in which there is an acceptable health care for those who can pay for it, then there is an excellent one for the exclusive

⁴ Quotidiana sanità: studio e analisi. Available at: http://www.quotidianosanita.it/studi-e-analisi/articolo.php?articolo_id=65817 ; [Accessed 4th May 2021]

use of wealthy people and finally there is the non-health that dominates outside Europe, Australia, United States, Israel and Canada and finally Hong Kong ranking first.

It would also be worth to take a look to what mental health is in places where one in ten newborns does not reach one year; but taking into account contexts of exploitation both inside and outside families, the largely widespread phenomena of abuse and violence, it would be a redundant sequence of obviousness.

Last but not least important pillar, education. Is the right to education really a sacred right? An inalienable right should first of all concern everyone but when talking about education, “today there are still 57 million primary school aged children out of school”⁵ according to Save the Children.

There are several factors that prevent children from accessing to schooling: the way from home to school is very often long and dangerous and sometimes families themselves choose not to send children to school, the buildings used are unable to offer hospitality to all children due to their scarce capacity and to unsafe and inadequate services; another factor can be found in the lack of materials typical of learning and finally, the low quality of teaching and the lack of teachers. But above all, the poorest families cannot bear the costs of school and rather than invest in their education, children are forced to work already at an early age in order to earn some money.

Finally, the diffusion on gender inequalities deserves a separate mention: girls have even less chances to access to schooling because they marry at a young age (the role of girls in current society will be deepened in chapter 2), they often become confined to the household chores and therefore alienated from any possibility of social or even just cultural climbing, being trapped in a vicious cycle.

⁵ Save the children: Education: <https://www.savethechildren.org.nz/what-we-do/the-issues/education/> [Accessed 4th May 2021]

2. INTERNATIONAL AND REGIONAL CONVENTIONS PROTECTING CHILDREN'S RIGHTS

2.1 International Conventions

2.1.1 The United Nations Convention on the Rights of the Child

The process that has led to the approval of the United Nations Convention on the Right of the Child has been subjected to a long evolution.

The first document regarding children's rights can be traced back to the Geneva Declaration of the Rights of the Child. The Declaration of the Rights of the Child is a document drafted in 1923 in Geneva, from which it takes its name, and adopted by the League of Nations in September 1924.

The text of the Declaration is composed by a short introduction that underlines the importance of children to be offered the best that people could give and it is followed by a set of five principles that outlines the basic rights that each child should enjoy. Firstly, a child must have at his disposal all the means needed for his growth 'both materially and spiritually' (Geneva Declaration of the Right of the Child, 1924). Secondly, food, healthcare as well as help must always be assured regardless the child's condition. During difficult times children must be the first ones to receive assistance. Furthermore, exploitation and slavery must be prohibited and children must have the possibility "to earn a livelihood" (Geneva Declaration of the Right of the Child, 1924). And finally, children must grow with the consciousness that their abilities can help their counterparts. It worth noting that what clearly emerges from these five points is that the main aim of the Declaration was protecting children rather than considering them as individuals with the full holding of rights.

After the Second World War, the scenario started to change; there was a common desire for peace and stability. It was in that context that the United Nations were born. As a consequence, there was also the willingness to improve the protection of human rights included that of children's rights and the 1924 Geneva Declaration of the Rights of the Child started to be revised. In 1947 the Social Commission started to discuss on the preparation of the new document that would have to preserve the set of principles included in the Geneva Declaration as well as to introduce new ones.

The new draft Declaration was adopted in 1950 but the Economic and Social Council required the new document to be checked and evaluated by the Commission on Human Rights. However, it was taken into account only in 1957. After two years, a new draft was examined. The main point of the discussion was whether to approve a declaration or a convention with the first being a non-binding document and the second being a binding one. At the end the Commission decided for a Declaration as long as practical measures would be introduced in order to guarantee the implementation. Finally, the conclusive draft was discussed by the General Assembly and it was approved on 20th November 1959. It is composed by a Preamble that informs that on the basis of the Universal Declaration of Human Rights claiming the equality between people and so conferring everyone the same rights and on the basis of the former Geneva Declaration of the Rights of the Child of 1924, the present Declaration of the Rights of the Child focuses on the figure of the child that due to his vulnerability “needs special safeguards and care, including appropriate legal protection” (Declaration of the Rights of the Child, 1959). So, everyone (people, organizations but also Governments) is required to recognize these rights and to commit for their respect by taking appropriate measures. After the Preamble, a set of ten principles follows. The first principle claims that the rights cited in the Declaration have to be enjoyed by children without any discrimination based on their gender, nationality, origin, creed, opinion, living condition and many other factors. A child has the right to freely develop at physical, mental, moral and spiritual level but when applying these norms, the best interest of the child must be taken into account as suggested in the second principle. Children have the right to acquire a name and a nationality from their birth (third principle) and to grow healthy and to benefit from social security. The rights should be enjoyed both before and after birth. Of course, having access to food, to a house and medical service is of paramount importance (fourth principle). The fifth principle concerns children who are mentally and physically disable: it’s their right to have an adequate treatment and education according to their situation. Furthermore, the sixth principle establishes that children have to be raised by their mother and father in a peaceful context and they should never be separated by the mother unless particular circumstances require it. Then children must be supported by society if they don’t have any family member taking care of them. The seventh principle focus on education. Primary education has to be granted to everyone with the aim of helping children to develop themselves not only by acquiring information, knowledge and culture but also by helping them to develop skills and critical sense as well as making children feeling responsible and integrated within society. In all the situations just explained above, the best interest of the child needs always to be

considered and parents have a paramount role respecting it. Also playing must be considered a fundamental children's right and it needs to be guaranteed. In every kind of situation, children must be the first ones to be helped and protected (eighth principle). Children must not be subjected to any form of exploitation, ill treatment and to any kind of trafficking. What is more, a minimum age is required in order to be employed and job should not interfere with the health, the education or the development at physical or moral level of the children (ninth principle). The tenth and last principle's aim is to protect children from any discrimination based on race, religion or other discriminations of any kind and teach them to respect and help all people. The Declaration for the Rights of the Child of 1959 was followed by the United Nations Convention on the Right of the Child (hereinafter abbreviated as UNCRC) adopted in 1989 and entered into force in 1990. Since the UNCRC includes different kind of human rights such as civil, political, economic, social and cultural rights and it refers to particular groups of children "like refugees, disabled, immigrants and others"⁶, it can be considered as "the most complete Convention on the protection of human rights"⁷. It is composed by 54 articles that have been gathered into the following groups: general measures of implementation (arts. 4, 42, 44(6)), the definition of the child (art. 1), general principles (arts. 2, 3, 6, 12), Civil rights and freedoms (arts. 7, 8, 13 – 17), Violence against children (arts. 19, 24(3), 28(2), 34, 37(a), 39), Family environment and alternative care (arts. 5, 9 – 11, 18(1)(2), 20, 21, 25, 27(4)), Disability, basic health and welfare (arts. 6, 18(3), 23, 24, 26, 27(1)(2)(3), 33), Education, leisure and cultural activities (arts. 28 - 31) and lastly, special protection measures (arts. 22, 30, 32, 33, 35, 36, 37 (b)-(d), 38 - 40).

Four main rights were recognized as general principles⁸ that must always be taken into account when referring to children: the first one is 'non-discrimination' expressed by article 2:

⁶ Children and non-discrimination: interdisciplinary textbook, p.40. Available from: https://resourcecentre.savethechildren.net/node/9528/pdf/crean-english-for_homepage.pdf [Accessed 28th May 2021]

⁷ Ibid.

⁸ Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, 3 March 2015 (CRC/C/58/Rev.3), III (B)(3)

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members “.⁹

As expressed in this article, each child should enjoy the right of non-discrimination and states have the duty to identify and prevent children from being subjected to any form of discrimination¹⁰. Indeed, in order to accomplish the provision's aim and in order to identify such cases of discrimination, data collection is highly recommended by the Convention.

The second right concerns the best interest of the child as declared by article 3 § 1:

“ In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”¹¹.

The convention establishes that the best interest's principle “shall be a primary consideration” that covers all actions and decisions concerning children, both in the public and private sphere. In particular, this principle conceals a threefold nature: it is a substantive right, a fundamental, interpretative legal principle and lastly, a rule of procedure¹². According to the Committee in the General Comment No. 14 (2013), the elements to be taken into account and balanced when

⁹ UNCRC, 1989; Available at: <https://www.ohchr.org/documents/professionalinterest/crc.pdf> ; [Accessed 31 May 2021]

¹⁰ UN Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), (CRC/GC/2003/5), I para. 12. available at: <https://www.refworld.org/docid/4538834f11.html> [Accessed 31 May 2021]

¹¹ UNCRC, 1989; Available at: <https://www.ohchr.org/documents/professionalinterest/crc.pdf> ; [Accessed 31 May 2021]

¹² Committee on the Rights of the Children, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para .1), (CRC/C/GC/14) para. I (A)(6).

evaluating the child's best interests are the following: "1) the child's views, 2) the child's identity, 3) preservation of the family environment and maintaining relations, 4) care, safety and protection of the child, 5) situation of vulnerability, 6) the child's right to health, 7) the child's right of education".¹³ All these aspects should be balanced in order to define correctly the best interests of the child. It worth noting that the best interest principle is a flexible, general concept that can vary from country to country and therefore it has often been criticized for its vague nature. Despite these crucial aspects, this principle is taken into account regularly in official documents regarding children's right.

The Third right is about the right to life, survival and development expressed by article 6:

" 1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child"¹⁴.

According to this article, the right to life is addressed to all children together with the duty of States Parties to guarantee, through adequate measures, the survival and the development of children. Such measures include "increasing life expectancy, diminishing infant and child mortality, combating diseases and rehabilitating health, providing adequate nutritious food and clean drinking water"¹⁵ as well as "prohibiting and preventing death penalty, extra-legal, arbitrary or summary executions or any situation of enforced disappearance".¹⁶

The last right concerns the views of the child as expressed by article 12:

"1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

¹³ (CRC/C/GC/14), para. V (A) (1)

¹⁴ UNCRC, 1989; Available at: <https://www.ohchr.org/documents/professionalinterest/crc.pdf> ; [Accessed 1st June 2021]

¹⁵ United Nations, Manual on human rights reporting under six major international human rights instruments, 1997, p. 425. Available from: <https://www.ohchr.org/Documents/Publications/manualhrren.pdf> [Accessed 1st June 2021]

¹⁶ *Ibid.*, p. 425

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”¹⁷.

This article establishes that children need to acquire their own point of views and to become free to express their opinion. Furthermore, they have the right to be consulted in decisions concerning them. They have also the right to be heard during proceedings both directly and through specific bodies. With this provision, the child is seen as an individual that actively participate in society and “in the promotion, protection and monitoring of his or her rights”¹⁸. Article 12 together with articles 13 to 17 constitute the set of civil and political rights. Also, the UN General Assembly adopted three Optional Protocols with the aim of enhancing the Convention: the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) that both entered into force in 2000. Finally, the 2011 Optional Protocol to the CRC on a Communications Procedure aims at improving the right of children to be heard: complaints from children or their representatives are received and evaluated from the Committee on the Right of the Child.

THE COMMITTEE ON THE RIGHTS OF THE CHILD: MONITORING AND REPORTING MECHANISM

The Committee on the Rights of the Child (hereafter abbreviated as CRC) is a body of 18 independent experts from different countries whose assignment last for four years with the possibility of being re-elected. The election is made on the basis of their “high moral standing and recognized competence” as expressed in article 43§2. The aim of the CRC is to monitor the implementation and the respect of the UNCRC and its Optional Protocols by examining periodic reports issued by those States that have ratified the Convention. The initial report has to be submitted by Member States two years after the ratification of the Convention and after that, every five years in compliance with article 44 of the UNCRC. The content and form of periodic reports follow several rules established by the CRC. States should provide data relative to the

¹⁷ UNCRC, 1989; Available at: <https://www.ohchr.org/documents/professionalinterest/crc.pdf> ; [Accessed 1st June 2021]

¹⁸ UN Committee on the Rights of the Child (CRC), *General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5, available at: <https://www.refworld.org/docid/4538834f11.html> [Accessed 1st June 2021]

implementation of the Conventions and the Optional Protocols. Moreover, periodic reviews require to report the developments and progress made as well as the challenges encountered in the implementation of the norms of the Convention and of the Optional Protocols¹⁹. Also, the consultation with non-State actors including children and NGOs (such as UNICEF)²⁰ is highly recommended. This cooperation is fundamental since it provides a more complete overview in case State Parties do not give enough information on a particular issue, resulting an efficient monitoring system. The Committee usually meet in Geneva in order to evaluate whether the obligations imposed by the Convention have been fulfilled. The meetings take place three times per year and last four weeks: the first week is dedicated to pre-sessional working group and the other three weeks of plenary session in which reports are analyzed. However, a serious weak point of this system should be emphasized: the decisions of the CRC are not binding for States Parties and it is thought that due to this kind of reporting process, countries can be considered responsible at international and public level²¹. So, due to the lax measures adopted towards states for what concern the respect of the Convention, the presence of NGOs and other non-state actors might be useful in order to “regularly monitor and assess the implementation of Concluding Observations to ensure that the State is meeting its obligations”.²² This can be done by data collection, collaboration with governments, visits by Committee members and the development of tools that can support the monitoring process.

¹⁹ Committee on the Rights of the Child, Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child, 3 March 2015 (CRC/C/58/Rev.3), (B), (17).

²⁰ UNICEF’s role in promoting and supporting the Convention on the Rights of the Child; Available from: <https://www.unicef.org/child-rights-convention/unicef-role>.

²¹ Save the children: Child Rights Programming; second edition; p.18

²² The Reporting Cycle of the Committee on the Rights of the Child – A guide for NHOs and NHRIs. Available from: https://www.ohchr.org/Documents/HRBodies/CRC/GuideNgoSubmission_en.pdf; p.34.

2.1.2 Convention on the Elimination of All Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination against Women (hereafter abbreviated in CEDAW) is an anti-discrimination treaty adopted by the UN General Assembly in 1979 which entered into force two years after, in 1981. It deals with inequalities and discriminations against women in particular for what concerns poverty, race, sex, health but also the discrimination within home. The aim of the CEDAW is to fight discrimination and to promote equality between men and women by giving the latter the opportunity to access health services, education, employment as well as enjoying equal opportunities as men revoking the basic principles of the United Nations.

The convention starts with a Preamble confirming that although many instruments exist, discrimination against women is still present worldwide, mainly because of to the subordinate position that women cover in society and the situations they have to deal with (for example the lack of food, health, education and employment).

CEDAW is then composed by 30 articles that are divided in six parts that differs one each other for the content. In the first part, the definition of discrimination is provided by article 1 which claims that the expression 'discrimination against women' means making differences, not including or limiting any woman depending on sex, at the extent of making ineffective or eliminating "the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"²³.

Part two (from article 7 to article 9) deals with women's rights in the public sphere. As well as men, women shall have the right to vote in the elections and in any referendum and also have the right to be elected in all bodies²⁴. They should also have "the opportunity to represent their governments at the international level and to participate in the work of international organizations"²⁵.

²³ Convention on the Elimination of All Forms of Discrimination against Women, Article 1; Available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> ; [Accessed 26th July 2021]

²⁴ Convention on the Elimination of All Forms of Discrimination against Women, Article 7; Available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> ; [Accessed 26th July 2021]

²⁵ Convention on the Elimination of All Forms of Discrimination against Women, Article 8; Available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> ; [Accessed 26th July 2021]

Women's economic and social rights are taken into account in part 3 (articles from 10 to 14). In particular, this set of rights prevent women from experiencing discrimination in the field of education (article 10) by having access to the same program and curricula of men but also by reducing the rate of girls leaving school at a very early age, in the field of employment (article 11) for what concerns promotions, equal salaries and safe working conditions and lastly the right to access to a health care service. All these rights are applied also to women in rural areas.

Article 15 and 16 deal with the rights concerning a woman's private life. Women have the same rights of their husbands both within marriage and the administration of property.

Part 5 that includes articles from 17 to 22 is very important because it establishes the Committee on the Elimination of Discrimination against Women and it explains how it works. The Committee is a treaty body composed of 23 experts "of high moral standing and competence" elected by State Parties as declared by article 17§1.

The members of the Committee " shall be elected for a term of four years"²⁶ and their aim is to ensure the implementation of the CEDAW and check state parties' progress as well as the challenges they face for what concerns the realization of equality between men and women and the abrogation of discriminatory laws by giving women equal opportunities in every aspect of their life. On the other side, as required by article 18, State Parties have to submit a report every four years showing the measures taken to fulfil the obligations. After analyzing the States' reports, the Committee, in turn, have to submit to the United Nations General Assembly through the Economic and Social Council an annual report on its activities and the information acquired by analyzing the reports. They are also requested to giving advices and recommendations on the basis of article 21§1.

Lastly, part 6, composed by articles 23 to 30, presents provisions on the responsibilities of state parties as well as some other general information on the Convention.

An Optional Protocol was adopted by United Nations General Assembly in 1999 but the protocol entered into force only in December 2000 due to a low number of ratifications. With this Protocol there is the possibility to appeal in case human rights have been violated. The intervention can occur in two different ways:

-communication procedure: it is used by single women or groups of women that suffered from a violation of the CEDAW provisions and denounce it to the Committee on the Elimination of All

²⁶ Convention on the Elimination of All Forms of Discrimination against Women, Article 17§5; Available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> ; [Accessed 26th July 2021]

Forms of Discrimination. The complaints should meet some specific criteria; for example, all domestic remedies need to be exhausted²⁷ if the complaint wants to be considered admissible.

-inquiry procedure: this procedure allows the Committee to lead inquiries if any reliable information alleging a serious violation of the provisions of the Convention by State Parties is received²⁸.

Of course, these procedures are possible only when states are party both to the Convention and the Protocol.

To sum up, the Convention on the Elimination of All Forms of Discrimination against Women is a very exhaustive treaty which allows to analyze the topic from a wider and more complete perspective since it tries to eradicate the problem from its roots such as trying to influence those cultural norms that often place women in subordinate position. Indeed, the Preamble affirms that modifying the customary roles of men together with the roles of women within the community and family is of paramount importance for the elimination of inequality between men and women²⁹.

²⁷ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; article 4§1; Available at: <https://www.ohchr.org/en/professionalinterest/pages/opcedaw.aspx>; [Accessed 26th July 2021]

²⁸ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; article 8§1; Available at: <https://www.ohchr.org/en/professionalinterest/pages/opcedaw.aspx>; [Accessed 26th July 2021]

²⁹ Convention on the Elimination of All Forms of Discrimination against Women, Preamble; Available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf> ; [Accessed 26th July 2021]

2.1.3 The Convention on Consent on Marriage, Minimum Age for Marriage, and Registration of Marriages

The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages is a convention issued within United Nations. It was drafted by the Commission on the Status of Women in 1962 and it entered into force in 1964.

As expressed in the Preamble, the Convention refers to article 16 of the Universal Declaration of Human Rights stating that:

“ Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution”.

The second part of the article expresses the importance of celebrating a marriage only if both spouses agree.³⁰

The Convention is composed by a Preamble and 10 articles. Its aim is to abolish traditions and customary norms and rules as expressed in the Preamble and to encourage State Parties to take action in order to fight child marriage by granting women the freedom of choosing their husband (expressed by article 1), by establishing a minimum age for marriage (as declared in article 2), ensure appropriate registrations (in compliance with article 3) as well as penalizing when norms are not respected.

³⁰ Universal Declaration of Human Rights (UDHR); art. 16. Available at: https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf; [Accessed 27th July 2021]

2.1.4 The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (also known as ICCPR) is an international treaty adopted by United Nation General Assembly in 1966. It entered into force in 1976 after the thirty-fifth ratification in compliance with article 49 of the Covenant.

The International Covenant on Civil and Political Rights together with the International Covenant on Economic, Social and Cultural Rights (for more information see next paragraph) and the Universal Declaration on Human Rights constitute the International Bill of Human Rights and are considered the three basic and fundamental treaties in the human rights field. The ICCPR's structure is similar to the one of the Universal Declaration of Human Rights and it is therefore composed by a Preamble and fifty-three articles and it is divided into six parts. The goal is to protect individuals' rights by granting the right to life (article 6), the freedom of thought, conscience and religion (article 18), equality before courts and tribunals (article 14) as well as protecting people from torture, inhuman or degrading treatment (article 7) and slavery (article 8). Particular attention is given to the rights of women and children. First of all, women are supposed to enjoy the same civil and political rights as men as expressed by article 3 of the Covenant: " The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant".³¹ Furthermore, a whole article is dedicated to the rights of women within marriage. Article 23§2 emphasizes the fact that women must have a "marriageable age to marry and to found a family" besides the fact that the celebration of any marriage should take place only if both spouses agree and their consent is full and free³². Finally, women as well as men enjoy the same marriage rights including also those about its dissolution. For what concerns children's rights, article 24§2 establishes that every child has the right to receive a birth registration. This would be a fundamental step in fighting child marriage. In order to monitor the implementation of the Covenant, a Human Rights Committee has been established. It is composed by 18 experts that analyze the reports submitted by those countries that have ratified the Covenant. The reports are required within one year from

³¹ International Covenant on Civil and Political Rights; article 3; available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; [Accessed 28th July 2021]

³² International Covenant on Civil and Political Rights; article 23§3; available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; [Accessed 28th July 2021]

the moment the Covenant comes into effect for the country taken into consideration and then every time the Committee demand it.³³

The Covenant includes Two Optional Protocols. The First Optional Protocol allows individuals whose rights were allegedly violated, to send a compliance to the Human Rights Committee. This can happen only if all the accessible measures at domestic level have already been exhausted as expressed by the second provision of the Protocol.³⁴

On the other hand, the Second Optional Protocol was adopted in 1989 and it entered into force after two years, in 1991. It is a protocol concerning the abolition of death penalty though some reservations were allowed.

³³ International Covenant on Civil and Political Rights; article 40§1; available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; [Accessed 28th July 2021]

³⁴ First Optional Protocol to the International Covenant of Civil and Political Rights; article 2; available at: <https://web.archive.org/web/20081220175814/http://www2.ohchr.org/english/law/ccpr-one.htm>; [Accessed 28th July 2021]

2.1.5 The International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (also known as ICESCR) is an international treaty concerning the safeguard of economic, social and cultural rights. As well as the International Covenant on Civil and Political Rights (see paragraph above), the ICESCR was adopted in 1966 and entered into force in 1976. Since it is the third important treaty constituting the International Bill of Human Rights, its structure is very similar to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; it is composed by a Preamble and thirty-one articles divided in five parts. By ratifying the convention State Parties commit themselves to protect individuals from any discrimination concerning ethnicity, skin colour, gender, “language, religion, political or other opinion, national or social origin, property, birth or other status”³⁵ as well as to ensure individuals the right of self-determination (article 1). According to the ICESCR and in particular to article 11§1, it is important for any individual and his family to have an appropriate way of living that means having access to enough food, clothing and a house as well as having the possibility to improve their own conditions. This provision is strictly linked to article 11§2 specifying that none should be subjected to hunger.

Also “primary and compulsory education” (expressed by article 13§2§a) and health and medical services (established by article 12) are two fundamental rights in an individual’s life.

Furthermore, there are several articles of remarkable importance for what concerns women and children. ICESCR places women at the same level of men and, as a consequence, it commits State Parties to safeguard and guarantee them to benefit from the same economic, social and cultural rights as men as article 3 confirms.

Furthermore, a woman has the right to find a job, “gain [her] living by work”³⁶ and so to be economically independent. Particular attention is given to the equal opportunities a woman should enjoy within the working field: women should receive the same salary as men and their job should be as valuable as the one of men. Also, for what concerns the working conditions, women should not be put in a subordinate position (for more information see article 7§a(i)). Moreover, women should have the opportunity to be promoted but only on the basis of their skills and they have the right to enjoy some benefits such as a paid leave during and after pregnancy.

³⁵ International Covenant on Economic, Social and Cultural Rights; article 2; available at: <https://www.ohchr.org/documents/professionalinterest/cescr.pdf> ; [Accessed 30th July 2021]

³⁶ International Covenant on Economic, Social and Cultural Rights; article 6§1; available at: <https://www.ohchr.org/documents/professionalinterest/cescr.pdf> ; [Accessed 30th July 2021]

Article 10§3 is dedicated to the protection of children from exploitation. Every child has the right to be protected and provided with relief in every situation regardless his conditions. Any form of discrimination must be therefore eliminated. Children should not be subjected to unhealthy or unsafe working conditions. Indeed, any undesirable condition interfering negatively with their development and jeopardizing them should be subjected to punishment. Lastly, a minimum age for employment should be established by Governments in order to limit children exploitation.

The ICESCR also includes an Optional Protocol that was adopted in 2008 and opened for signature the following year. It confers the Committee on Economic Social and Cultural Rights the authority of analyzing complaints presented by a single person or by a group of people ³⁷ who recognize that the rights mentioned in the Covenant have been violated. However, a complain has to satisfy some admissibility criteria that are provided by article 3§2. For example, it has to be submitted after the domestic measures have been exhausted but within the time of one year (article 3§2(a)); also, it cannot be anonymous. Once the complaints are analyzed, the Committee addresses its views and recommendations to the concerned State. In turn, the latter will envoy to the Committee a reply containing data and information on the measures implemented in response of the former suggestions ³⁸.

³⁷ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; article 2; available from: <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx> ; [Accessed 30th July 2021]

³⁸ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; article 9§2; available from: <https://www.ohchr.org/en/professionalinterest/pages/opcescr.aspx> ; [Accessed 30th July 2021]

2.2 Regional Conventions

2.2.1 The European Convention on Human Rights

The European Convention on Human Rights (ECHR), also known as ‘the Convention for the Protection of Human Rights and Fundamental Freedoms’ is a treaty between the 47- member states of the Council of Europe, beyond being its first Convention. Its creation was already thought during the Second World War (in the 1940s), in order to stop the violation of human rights and to prevent it to happen again. In 1948, once the war was over, leaders and politicians, included Francois Mitterrand, Winston Churchill and Konrad Adenaur, met in a conference in The Hague. During the meeting, the European Convention on Human Rights started to developed tangibly; in his speech Churchill claimed: “In the center of our movement stands the idea of a Charter of Human Rights, guarded by freedom and sustained by law”³⁹. At the time, the Convention was composed by a set of rights taken from “the Universal Declaration of Human Rights proclaimed by adopted the General Assembly of the United Nations on 10th December 1948”⁴⁰. It was opened for signature in Rome, after the Second World War, on 4 November in 1950, and entered into force in 1953, after being ratified by 10 states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden and United Kingdom. Nowadays, all the member states of the Council of Europe have ratified the Convention. Furthermore, the European Convention on Human Rights has established the European Court of Human Rights which oversees its implementation. The convention is composed by three main sections. The first section contains an individual’s main rights and freedoms which are expressed from Article 2 to Article 18. The rights guaranteed in this section are, for example, the right to life (article 2), the right to respect for private and family life (article 8), freedom of expression (article 10), and freedom of thought, conscience and religion (article 9). The Convention contains also some prohibitions and in particular, the prohibition of torture, inhuman or degrading treatment, or punishment (article 3), the prohibition of slavery and forced labour (article 4) and the prohibition of discrimination (article 14). The second Section, including articles 19 to 51, establishes the Court and its rules, while the third Section (from article 52 to article 59) contains

³⁹ Winston Churchill, The Hague, 7th May 1948; Available at: <http://www.churchill-society-london.org.uk/WCHague.html> ; [Accessed 22nd July 2021]

⁴⁰ Convention for the Protection of Human Rights and Freedoms and Protocol; Available at: https://www.echr.coe.int/Documents/Archives_1950_Convention_ENG.pdf ; [Accessed 22nd July 2021]

several provisions. Few Protocols have been added to the Convention. Protocols make amendments to the original articles and they can be divided in: -protocols that deal with the organization of control mechanisms set by the Convention with the aim of enhancing the effectiveness of the safeguard of human rights ⁴¹ such as Protocol No. 11(which supersedes Protocols No. 2,3,5,8,9 and 10) and protocols that aim at better developing the control system's effectiveness by modifying some regulations included in the convention⁴². such as Protocol No. 14. - protocols amending the rights already assured by the Convention by adding some other essential rights. The protocols covering this point are Protocol No. 1,2,4,6,7,12,13,16. They express the right of property, education, election (respectively article 1,2,3 of Protocol No.1); prohibition of civil imprisonment and expulsion (article 1 and 3 of Protocol No.4); abolition of death penalty provided by article 1 of Protocol No.6.

The aim of the European Convention on Human Rights is to guarantee the protection and the promotion of the rights and freedoms of any individual as well as prohibiting torture, slavery, inhuman or degrading treatment or punishment and death penalty. Although the European Convention on Human Rights does not have its own definition of 'child', it covers the rights of every individual, children included and it can be modified according to the needs during the proceedings if the victim is a child. Indeed, article 1 clearly claims that the States that have ratified the Convention have the responsibility to protect and respect the rights of 'everyone' under their jurisdiction.

THE EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights, based in Strasbourg, was founded in 1959 on the basis of article 19 of the European Convention on Human Rights that recognizes to the Court the task of observing the implementation of the Convention. Also, its aim is to protect the European Convention on Human Rights, giving the possibility to people, who think their rights have been denied, to be heard. Indeed, an individual can apply to the European Court of Human Rights when all the domestic remedies have been exhausted, which means that the case has been presented to all juridical system in the country and has not been accepted although the applicant was a victim.

⁴¹ Protocol No.11, European Convention on Human Rights; Available at: https://www.echr.coe.int/Documents/Library_Collection_P11_ETS155E_ENG.pdf; [Accessed 22nd July 2021]

⁴² Protocol No, 14, European Convention on Human Rights; Available at: https://www.echr.coe.int/Documents/Library_Collection_P14_ETS194E_ENG.pdf; [Accessed 22nd July 2021]

If the European Court decides that there has been a violation of any kind of human right, the country involved is expected to provide justice to the individual and also to take some measures to make sure that the same situation will not happen again.

2.2.2 The American Convention on Human Rights

The American Convention on Human Rights is a regional human rights treaty. It was adopted in 1969 and it entered into force in 1978. It is composed by a Preamble explaining that the aim of the Convention is “to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man”⁴³. It is then composed by ten chapters: chapter one gives general information about the convention; chapter two recalls the International Covenant on Civil and Political Rights. Twenty-three articles deal with a set of civil and political rights that need to be protected such as the right to life, the right to personal freedom and security (article 7§1), the right of thought and expression (article 13) as well as the prohibition to be subjected to human or degrading treatment (article 5) or slavery (article 6). Article 17 deals with the right of the family: as underlined in the ICCPR (see paragraph 1.1.4) women are required to have a marriageable to marry (article 17§2) but only if there is the “full and free consent” (article 17§3). What is more, the spouses enjoy the same right within marriage (article 17§4).

On the other hand, chapter three evokes the International Covenant on Economic, Social and Cultural Rights with an Additional Protocol to the American Convention on Human Rights in the Area Economic, Social and Cultural Rights also known as the Protocol of San Salvador that was introduced in order to make chapter three more complete. It provides a list of twenty-two rights: the right of work (article 6), the right to a fair, equal and appropriate working environment (article 7), the right to health (article 10) and to a healthy environment (article 11), the right to education (article 13) and to the benefits of culture (article 14). In this Protocol a whole article is dedicated to children. Every child, regardless his condition has the right to be protected by his relatives, society and the Government. Parents are responsible for the growth and the protection of their children. Minors should never be separated from their mother except for particular situations where separation is required. Moreover, it is a children’s right to have access to primary education with the possibility to proceed their educational path and reaching higher levels of education.⁴⁴

⁴³ American Convention on Human Rights; Preamble; available at: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf ; [Accessed 2nd August 2021]

⁴⁴ Additional Protocol to the American Convention on Human Rights in the Area Economic, Social and Cultural Rights; article 16; Available from: <http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf> ; [Accessed 3rd August 2021]

The Convention continues with chapter four that gives a list of rights that could be suspended in certain situations (except for some rights such as the right to life, freedom from slavery, right to human treatment and other rights that have always been granted). Chapter five reminds individuals that they have also duties and responsibilities and not only rights. The other chapter establishes the two monitoring bodies: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The Inter-American Commission on Human Rights is a body composed of seven experts on the basis of article 34. Its main task is to encourage the safeguard and the observance of human rights⁴⁵ by raising awareness, making reports and suggestions. Also, the Commission receives complaints from individuals who think their rights have been violated. Once the complaint is declared admissible, the Commission proceeds by analyzing the case and confirming the data (article 48§1(d)) by requiring the parties involved further information if needed. If a 'friendly settlement' is reached, the case is considered closed. On the contrary, if the two parties do not reach any agreement, a report containing advice is submitted to the states concerned. If the case is not presented to the Court by the Commission or the State concerned within the period of three months, the Commission "may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration"⁴⁶. So, as it can be understood from the sentence above, the second monitoring body (the Court) can receive the complaints only from the Commission and State Parties. This is one main difference with the European Convention on Human Rights that, in turn, can receive complaints directly from individuals. If a right has been violated, the Court commits to guarantee and safeguard the rights violated as well as give a compensation.

Finally, a Second Additional Protocol was adopted in 1990. It is composed of four articles and its aim is to create an agreement intended to prevent governments in the Americas to apply the death penalty⁴⁷.

⁴⁵ American Convention on Human Rights; Article 41; available at: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf ; [Accessed 2nd August 2021]

⁴⁶ American Convention on Human Rights; Article 51§1; available at: https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights.pdf ; [Accessed 2nd August 2021]

⁴⁷ Protocol to the American Convention on Human Rights to Abolish the Death Penalty; Preamble; Available at: <https://www.refworld.org/docid/3de4b4884.html> ; [Accessed 2nd August 2021]

2.2.3 The African Charter on Human and People's Rights

The African Charter on Human and People's Rights is a regional instrument that aims at protecting human rights. It entered into force in 1986. It is based both on the European Convention on Human Rights and the American Convention on Human Rights. It is composed by a Preamble and sixty-eight articles. Chapter one that consists of articles 1 to article 26 provides a list of rights that have to be protected. It includes civil and political rights such as the right to life (article 4), right to equality (article 3) but also freedom of conscience and religion and many others. It then guarantees economic, social and cultural rights such as the right to work in an equal, fair and appropriate environment (article 15) and the right to health both physical and mental. Particular attention is given to the status of women and children. These two categories should not be subjected to any discrimination or right's violations and State Parties commit to respect and safeguard the international agreements.⁴⁸

What is totally different from other international conventions is that the African Charter on Human and People's Rights dedicates some articles to collective rights or, as defined in the Charter, to "peoples" rights. The articles concerned (from article 19 to 24) confer peoples the right to equality (article 19), the right existence and non-discrimination (article 20) and also the right to benefit from natural resources⁴⁹ as well as to benefit from "a general satisfactory environment favourable to their development" (article 24).

Chapter two is dedicated to the duties that each individual has. Following this chapter, Part two of the Convention establishes the African Commission on Human and Peoples' Rights. It is composed by eleven members and its aim is to promote and safeguard human and peoples' rights' but also to monitor the implementation of the Charter. The Additional Protocol to The African Charter on Human and Peoples' Rights has established the African Court on Human and Peoples' Rights in order to strengthen the Commission's role⁵⁰.

⁴⁸ African Charter on Human and People's Rights; article 18§3; Available at: <https://www.achpr.org/legalinstruments/detail?id=49> ; [Accessed 4th August 2021]

⁴⁹ African Charter on Human and People's Rights; article 21§1; Available at: <https://www.achpr.org/legalinstruments/detail?id=49> ; [Accessed 4th August 2021]

⁵⁰ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; article 2; Available at: https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf ; [Accessed 5th August 2021]

Furthermore, a whole protocol is dedicated to the rights of women. It is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa known also as the Maputo Protocol. It was adopted in 2003 and entered into force in 2005. It is composed by thirty-two articles that aim at protecting women rights such as the right to dignity (article 3), the right to life (article 4), the right to access justice (article 8) as well as the right to participation in the political and decision-making process (article 9) and many other. Particular attention should be given to article 6 concerning marriage that claims that any marriage should be celebrated only with "the free and full consent of both parties" (article 6§a) and that 18 years old should be established as the minimum age for getting married (article 6§b).

2.2.4 The Arab Charter on Human Rights

The Arab Charter on Human Rights is an instrument that works at regional level. The first version of the Arab Charter can be dated back to 1994. It was composed by a Preamble and forty-three articles but no state ratified it and so it never came into effect. Then, a revision of the Charter was conducted by the League of Arab States. It was approved during a Summit in Tunis in 2004. The new version reflected rights and principles that were in accordance both with Arab views and the international laws. The Charter entered into force in 2008, after the seventh State had deposited the ratification as expressed by article 49§2⁵¹.

The 2004 Charter is composed by a Preamble that recalls the principles of the Universal Declaration of Human Rights, the Charter of the United Nations, the regulations of the International Covenant on Civil and Political Rights and those of the International Covenant on Economic, Social and Cultural Rights⁵². Furthermore, the Charter includes 53 articles. The articles concern the protection of traditional human rights such as the right to life (article 5), the right to freedom and security (article 8), equality before law (article 9), the right to private life (article 17), freedom of thought and opinion (article 26) and so on. However, the Arab Charter received several critics due to the fact that the standards set for the Charter were well below the international standards. In 2008, Louise Arbour (UN High Commissioner for Human Rights) highlighted the discordance between the Arab Charter and the United Nations' perception of human rights in particular for what concerns women's and children's rights⁵³. The articles are often unclear with very few details provided. Moreover, when analyzing the Charter, the recurring expression "except through what is prescribed by law" is often met. This expression suggests that, in certain circumstances, national law is taken into account and it can sometimes prevail over the international one jeopardizing the protection of fundamental rights. This situation can be observed within article 7 that claims that it is forbidden to impose death penalty to any person that is less than 18 years old, "unless otherwise stipulated in the laws in force at the time of the commission of the crime"⁵⁴; this means that children are not fully protected from death penalty.

⁵¹ League of Arab States, *Arab Charter on Human Rights*, May 22, 2004. Available at: <http://hrlibrary.umn.edu/instreet/loas2005.html> ; [Accessed 9th August 2021]

⁵² Ibid.

⁵³ United Nations News, 2008: *Arab rights charter deviates from international standards, says UN official*; Available at: <https://news.un.org/en/story/2008/01/247292-arab-rights-charter-deviates-international-standards-says-un-official>; [Accessed 9th August 2021]

⁵⁴ League of Arab States, *Arab Charter on Human Rights*, May 22, 2004. Available at: <http://hrlibrary.umn.edu/instreet/loas2005.html> ; [Accessed 9th August 2021]

Article 45 of the Charter provides the establishment of a Committee composed by seven members that receives and analyzes reports containing information on the actions taken in order to implement the content of the Charter. After analyzing the reports, the Committee gives State Parties its suggestions and considerations.

In 2014 Arab States created the Statute of the Arab Court of Human Rights with the purpose of strengthen the implementation of the Charter and the function of the Committee. The Court is composed by seven judges who analyze cases of human rights' violation. The monitoring system is very similar to those of other regional conventions such as the American Convention on Human Rights and the African one.

3 CHILD MARRIAGE

3.1 An introduction to the theme

Child marriage is defined as “any marriage or informal union where at least one of the parties is under 18 years old”⁵⁵ even if it concerns girls at most. It is a widespread phenomenon worldwide without any distinction between developed and underdeveloped countries. According to the association ‘Girls Not Brides’, 12 million girls marry before 18 years old every year and more than 650 million women married when they were just little girls⁵⁶. Consulting the atlas provided by Girls Not Brides it clearly emerges that most of these girls live in areas often characterized by a low economic development and a high rate of poverty such as in the case of the Sub Saharan Africa and South Asia. The latter is the country in which the rate of this practice is at its highest with 45 % of women declaring of being married before 18 years old and 17 % of which was married before the age of 15⁵⁷. It must be said that often the information provided about early marriage does not reflect reality since many times marriages are not registered. Therefore, child bride’s phenomenon is much more widespread than what data reveal. However, this practice is not exclusively typical of poor areas and it can also be found in the most unimaginable places such as United States and in particular in New York State. Indeed, although the law establishes 18 years old as the minimum age to get married, in the period time from 2001 to 2010 “3,850 children under 18 married in New York State”⁵⁸. This happens because there are several circumstances that enable a 14- or 15-year-old to get married such as the authorization by a judge and parents. What emerges is that the practice of child marriage can vary from country to country but the constant characteristic that all several forms of early marriage have in common is the serious violation of human rights that derives from it. The first major violation concerns the minimum marriage age. Article 2 of the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages claims that the Parties ratifying the convention are required to act in order to establish a minimum age for marriage. The celebration of any marriage in which one of the two spouses is under that threshold is forbidden unless an authorization is made by a judge or any relevant authority or by parents taking into account the best interest of the child.

⁵⁵ The law and child marriage; Available from: <https://www.girlsnotbrides.org/about-child-marriage/law-and-child-marriage/>

⁵⁶ About child marriage; Available from: <https://www.girlsnotbrides.org/about-child-marriage/#sources>

⁵⁷ UNICEF: Child marriage; Available at: <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>

⁵⁸ US: New York governor Signs Anti-Child Marriage Law; Available from: <https://www.hrw.org/news/2017/06/20/us-new-york-governor-signs-anti-child-marriage-law>

Also, article 16(b) of the Convention on the Elimination of All Forms of Discrimination against Women (see chapter 2) requires “to specify a minimum age for marriage”.

The violation of these articles occurs in two different ways. On one hand, the minimum age is specified by law but not respected. Indeed, according to the report ‘Marrying to Young- End child marriage’ published by United Nation Population Fund

“In 2010, 158 countries reported that 18 years was the minimum legal age for marriage for women without parental consent or approval by a pertinent authority. However, in 146 countries, state or customary law allows girls younger than 18 to marry with the consent of parents or other authorities; in 52 countries, girls under age 15 can marry with parental consent”.

So, even if in the majority of countries the minimum age is set at 18 years old, marriage is often allowed even under the age established when there is the consensus of parents or a judge’s authorization as well as when customary or religious laws prevails over national laws. On the other hand, some countries (including Yemen) do not even set the minimum age as required in article 2. This serious violation has catastrophic consequences and girl’s security is even more jeopardized. The second violation concerns the consent of the bride and the groom. Although already in Roman times “the right to exercise that choice was recognized as a principle of law”⁵⁹, nowadays one of the factors that lays at the basis of child marriage is the lack of consent that automatically makes early marriage falling under a form of forced marriage. Many girls are denied the right to choose and express their opinion regarding the situation or often they are simply too young and naïve and have little understanding of what they are going to be exposed to. In doing so, they undergo a rapid change that transforms them into women even if at a very early age. Many documents such as the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and the Universal Declaration of Human Rights of 1948 (UDHR) dedicate few articles to this issue. Art. 16§2 clearly states that any marriage has to be celebrated only if both the bride and the groom agree and are consensual, recognizing the importance of exercising the right to choose. When these basic rights are violated, childhood is suddenly interrupted in order to leave space to an adult life full of responsibilities. Of course, a set of consequences hides behind child marriage: these negative effects have repercussion on girls at physical, emotional and psychological level increasing girls’ vulnerability as well as having impact in fundamental opportunities such as

⁵⁹ Early Marriage, child spouses; Available from: <https://www.unicef-irc.org/publications/pdf/digest7e.pdf>

education. These consequences should not be ignored since the influence that they have on girls will affect their whole life.

3.2 Causes of Child Marriage

The phenomenon of child marriage has its roots in several causes that are strictly interlinked to each other. From poverty through gender inequality to social norms and practices, all of them play a crucial role that leads to the celebration of marriage between children and elder men. The first major cause is poverty. Women are perceived as an economic burden within the family. They rarely are the breadwinner and barely contribute to the sustenance and income of the house since having a job, moving freely and being independent is denied to them. What is more, once married women will join the family of the husband. As a consequence, investing economically on women is not advantageous. So, this situation is nothing more than a smart and useful strategy in order to reduce the costs of the family. Indeed, marrying a daughter when still very young “ means one less person to feed, clothe and educate”. A second aspect that has to be mentioned is the payment of the dowry. It is customary for the bride’s family to give a dowry to the husband’s family prior to marriage. The dowry is seen as a gift and its amount varies according to the age and education of the girl: the younger and less educated the girl is, the lower the dowry will be. If instead the girl has received a good education and the marriage is therefore postponed, the value of the dowry rises and it is justified by the fact that “a better education raises the requirements for a suitable husband”⁶⁰.

So, there is always an economic reason behind an early marriage where the girl is seen as a commodity to be ‘traded’ at a good price in order to conclude an advantageous business.

Another cause of child marriage is insecurity and it is strictly interlinked with the previous one. The highest rate of child marriage can be found in those countries that are defined as ‘fragile’. Fragile states (for other information see chapter 3.1) are characterized by conflicts, violence, poverty, food shortage, diseases, climate change that affect negatively economies and societies resulting in deep crisis. In war areas, women and girls are more exposed to rape, sexual violence, human trafficking and torture. Child marriage is often used as a ‘protective tool’: girls are forced to marry men from armed groups who in exchange guarantee security and protection to the whole family.

⁶⁰ UNFPA: Child Marriage and other harmful practices; p. 18; Available at: https://asiapacific.unfpa.org/sites/default/files/pub-pdf/child_marriage_and_other_harmful_practices_unfpa_apro_and_unicef_rosa_2020.pdf

However, all these situations often push families to leave conflict zones and move elsewhere, trying to minimize the risks that girls could encounter. However, displacement itself can lead to child marriage due to the lack of protection systems and services: girls are denied the access to education that would be a fundamental step both for girls' independency and for preventing conflicts.

This scenario is also fueled by patriarchal social norms and practices that go on well with gender inequality. Social norms are the informal rules that regulate the behavior of people within a group. The norms, that are usually handed down from a generation to another, are respected by the members in order to satisfy a feeling of inclusion.

However, negative elements such as the presence of gender inequalities can be rooted in those rules but due to their tradition are considered normal and they are therefore accepted. So, in those areas dominated by a patriarchal system the position of women is subordinated to that of men. This includes the total control of girls and women in every aspect of their life from the way they dress to what they do. Usually, control is exercised by the father and brothers but once the marriage is celebrated, the authority is transferred to the husband.

The obsession over control is due to the fear that the girl could dishonor the family. Indeed, a relationship or a pregnancy before marriage can cast a shadow over the whole family. For this reason, girls are often denied to attend school as soon as puberty begins.

Unfortunately, social norms can lead to harmful practices such as the Female Genital Mutilation (from now on abbreviated into FGM). FGM is "the partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons" according to the definition provided by the World Health Organization (WHO). FGM has a double role: it is a form of protection since it allows to monitor girls' sexuality and to "reduce woman's libido and [...] help her resist extramarital sexual acts"⁶¹; but it is also a process that marks the passage from puberty to womanhood and that contributes to increase marriageability.

Lastly, it is known that child marriage happens also in developed countries. One of the main causes that leads to it in those areas is linked with immigration. Indeed, young girls are often forced to marry foreigner men who will receive the country's citizenship as dowry; and a citizenship is not a small matter.

⁶¹ World Health Organization: Female Genital Mutilation; Available from: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>

3.3 Consequences of Child Marriage

The consequences of child marriage are multiple and they have a strong impact on child brides' lives both for what concern the immediate and long-term effects. The childhood and adolescence of these girls is brutally interrupted; they are isolated and separated from family and friends; they suddenly find themselves doing the household chores, growing children and buried by many responsibilities typical of adulthood and to which they were not prepared.

Beyond the interruption of childhood, a whole set of human rights is seriously violated.

The first one to be denied is the right to health. Little girls are expected to get pregnant soon after marriage. This, of course, could implicate serious risks since the body of the girls is not well developed. "Complications of pregnancy and childbirth are the main causes of death among adolescent girls ages 15-19 years old in developing countries"⁶² and a girl between 10 and 14 years old has 5 times the possibility of die during delivery rather than a woman in her 20s according to a report conducted by UNICEF. The highest rate of mortality is focused in rural areas where the way from home to the hospital is often long and girls have difficulties to reach it or there might be a lack of medical staff or inappropriate services. On the opposite, sometimes the husband himself does not allow the hospitalization and without his authorization the girls are not allowed to receive any treatment. Among the factors that can affect negatively a pregnancy there is malnutrition. An inadequate access to food and so a deficiency of vitamins and other essential constituents can lead to anemia as happened to Aisha, married at 13 years old. During an interview for Save the Children she explains that she felt sick during pregnancy; she had a serious anemia and this was only one of the problems that she had to face⁶³. Indeed, another common consequence of early childbearing is obstetric fistula that can also be caused by the practice of FGM. During the delivery, birth canal can be damaged and vagina, bladder or rectum tear, causing serious urine leakage. This problem, if not solved with surgery, can last a whole life and the ones that suffer the most from fistula are usually girls aged between 15-20.

What is more, it is easier for child brides to contract sexually transmitted diseases such as HIV or HVP both for the fact that they are more vulnerable due to the young age and also because their husbands are usually older and have had several partners. Sexually transmitted diseases can entail sterility to women but they can also affect the future child. Unfortunately, most of these girls

⁶² UNFPA: *Marrying Too Young*; chapter 1; p. 11

⁶³ Save the Children: *sposa bambine, una testimonianza*; Available at: <https://www.youtube.com/watch?v=8Uck276t5bU>

cannot have access to contraception for the lack of information and knowledge about it as well as due to the prohibition imposed by their husbands that stresses the impossibility for women to choose what to do with their own bodies. Of course, the risks faced by the mother can extend to their children too: "If a mother is under 18, her baby's chance of dying in the first year of life is 60 percent greater than that of a baby born to a mother older than 19"⁶⁴; indeed, many children often born underweight due to the inadequate nutrition of the mothers or die because their bodies are not ready yet to bear a pregnancy.

The second fundamental human right to be violated is the right to education. Every child has the right to receive an education according to Article 28 of the United Nations Convention on the Rights of the Child. It claims that all children should have equal opportunities and specifically primary school should be compulsory and free so that every child should have the chance to attend it. Moreover, State Parties should commit in order to develop different kinds of secondary education and introduce adequate measures (such as free schooling or financial aids) so that families could bear the costs of higher-level education. State Parties should also cooperate in order to eradicate illiteracy and particular attention should be paid to developing countries.

However, when young girls get married, the possibility to attend school and receive an education is denied even though they wish to continue as a girl confess during an interview for Human Rights Watch:

"When I see my friends going to school, I wish I could go with them".

Indeed, as it has already been explained in chapter 2.1, to invest in daughter's education is not advantageous and the family prefers to prepare girls for their role as mothers and housekeepers. But education is fundamental for "the development of the child's personality, talents and mental and physical abilities to their fullest potential"⁶⁵ and its denial does not allow the girl to reach independency, to socialize with people outside the family and to develop her own personality. What is more, in case of divorce or abandon, girls who have not received an education have difficulty finding a job due to the lack of skills or qualifications.

⁶⁴ UNICEF. 2007. The State of the World's Children 2007: Women and Children, the Double Dividend of Gender Equality; p.4; UNICEF: New York, NY. <http://www.unicef.org/sowc07/docs/sowc07.pdf>

⁶⁵ UNCRC: Article 29 §(1)

This is what happened to Mary, married at 14 years old, that claims:

“If I were in school, now my life would have been different. I may have been employed as a teacher.”⁶⁶

What clearly emerges is that education allows girls to find a job and to become financially independent but it can postpone marriage too. Indeed, according to demographic and fertility studies, “women with seven or more years of education marry four years later and have 2.2 fewer children than those with no education”⁶⁷, confirming the relation between the duration of school and the postponement of marriage. Lastly, girls who receives an education are more likely to invest in their children’s schooling process, putting an end to a difficult and uncertain future.

Another serious consequence of child marriage is violence and in particular domestic violence. It hits mostly illiterate women who have little power towards their husbands and in-laws at the extend of not being able to take any decision both for what concern family’s affairs but also the ones linked to their own bodies, pregnancy and childbearing. Unfortunately, domestic violence is often not considered a serious human right violation since it has been approved by social norms for decades and as a result, many women tend to justify it and consider it a normal practice. According to the International Center for Research on Women “ girls who were married before 18 were twice as likely to report being beaten, slapped or threatened by their husbands than girls who married later”. It often happens that domestic violence comes from the in-laws too as Fatima explains during an interview. She says that when her husband beat her up, the family just looked and nobody did anything and that when he put his hands around her neck, she couldn’t breathe.⁶⁸ Thanks to these witnesses you can understand what child brides go through. Indeed, it is known that girls frequently try to run away and seek refuge at their parents’ home, hoping for the family’s support without any success.

⁶⁶ Global Citizen: In her Own Word: 3 Powerful Stories From Former Child Brides; Available at: <https://www.globalcitizen.org/en/content/girl-bridges-share-stories-child-marriage-survivor/?template=next> [Accessed 23/06/21]

⁶⁷ UNICEF Innocenti Digest, “Early Marriage Child Spouses”; p.11 Available at: <http://www.unicefirc.org/publications/pdf/digest7e.pdf>

⁶⁸ RefugeeToday: From Child to Bride; Available at: <https://www.refugee.today/stories/from-child-to-bride-fatimas-story> [Accessed 24/06/21]

“ Dear daughter, you must be strong, we all went through it” (*Bertotti, 2013: 25*). This is the phrase that the girls hear the most when they try to escape their condition as child brides; they need to be strong, respectful and tolerant towards the husband and his family. Domestic violence also includes sexual violence. The physical consequence of coercive sex can be devastating for girls due to their young age and vulnerability. A girl who was victim of sexual violence can then suffer from serious hemorrhages and internal organs damage until leading to death itself. Obviously, child marriage has also serious psychological consequences on girls. “My life is destroyed” (*Human Rights Watch, 2015:9*) says a girl describing her life as a child bride. Indeed, after the marriage, girls are confined at home in order to serve the husband and the in-laws as well as taking care of the house and children. Their isolation does not allow them to have friends to which confide their worries to and so distress is often kept in silence. The lack of childhood, the premature personal growth, forced sexual relations, the frequent pregnancies and also seeing their own children dying can have devastating consequences at emotional and psychological level for girls who are still children as well. Indeed, they can suffer from post-traumatic stress disorder but also depression that sometimes can lead to suicide.

4. AN EXAMPLIFYING BUT NOT UNIQUE CASE: YEMEN

4.1 Yemen as Failed State

The Republic of Yemen is a country situated on the South of the Arabian Peninsula in Asia. The capital of Yemen is Sana'a and Islam is the official religion.

Yemen has not always been a single state. It was divided into North Yemen and South Yemen with their respective capitals Sana'a and Aden. North Yemen also called Yemen Arab Republic was created in 1962 and it was mainly influenced by "the Arab nationalist and anti-imperialist rhetoric of Egyptian president, Gamal Abdul Nasser"⁶⁹. On the other hand, the socialist state of South Yemen or 'People Democratic Republic of Yemen' was created in 1967 after the independence from United Kingdom. It is only in 1990, after a long and complex process, that the two states unified becoming the Republic of Yemen.

In 2011 the Arab Uprisings started to spread in the Arab Peninsula affecting Yemen too. Corruption, extreme poverty, human rights violation and the aspiration of reaching freedom and justice pushed people to mobilize. The instability originated from the protests made President Saleh to resign and the power shifted to his successor Abd Rabbih Mansur Hadi. During its presidency, the power gained by Houthi rebels was remarkable and it was enough to enable them to established their control over the government, increasing situations of violence and terrorism although an intervention of the Saudi led coalition against Houthi was ordered by President Hadi.

It is in 2014 that Yemen became regularly described as failed state. However, it does not exist a universal definition of failed state. In order to understand what a failed state is, it would be proper to analyze the definition of 'state' according to the sociologist and historian Max Weber; He claims that a state is "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory."⁷⁰

⁶⁹ W. Andrew Terrill: 'The conflicts in Yemen and U.S National Security', Strategic Studies Institute, US Army War College (2011) pag. 5

⁷⁰ From H.H. Gerth and C. Wright Mills (Translated and edited), From Max Weber: Essays in Sociology, pp. 77, New York: Oxford University Press, 1946.

When this definition is not applicable to a country, then it is possible to talk about failed state. More precisely, there are twelve indicators identified by the NGO Fund for Peace that are used to calculate the Fragile State Index. They are divided into 4 groups:

Cohesion sphere:

-security apparatus indicator: it refers to the threats that a state might face in terms of security such as criminal behavior, violent attacks and insurgencies. Also, it considers the private militias that operate on behalf of the state to counter the opposition but also how the latter respond to the authority.

-Factionalized elites' indicator: it takes into account the inequalities within the groups, their persecution or discrimination. For example, it analyzes the language used by the elites "in terms of nationalism, xenophobia, communal irredentism or of communal solidarity".⁷¹

-Group grievance indicator: it is based on the different social and political features (sometimes also historical ones) between groups that can jeopardize the stability of their relations.

Economic sphere:

-economic decline: it deals with the calculation of the economic decline through the per capita income, Gross National Product, unemployment data but also a decrease in prices of raw materials, illegal trade such as drug, human trafficking.

-uneven economic development: it analyzes the economic inequalities between groups and in particular the perception of disparity that can develop outrage feelings within people fostering complaints and unstable situations.

-Human Flight and Brain Drain: it refers to the migration of a country's labor due to multiple reasons (economic, persecutions or repressions) that will cause a substantial loss to the national economy.

Political sphere:

⁷¹ <https://fragilestatesindex.org/indicators/c2/> , consultato il 15/04/21

-State Legitimacy: it refers to the loss of credibility and trust in the State due to factors such as corruption, lack of transparency and responsibility that can result in grievances, manifestations and protests.

-Public Services: it takes into account the services that a State can ensure to its citizens concerning health, accessibility to water, education, protection from violence and all those essential needs in people's life.

-Human Rights and Rule of Law: it analyzes the presence of violations of human rights in political and social field.

Social sphere:

-Demographic Pressure: it deals with the pressure derived by high population growth rates in terms of access to water and food, health and all the people's basic needs but it also takes into consideration the uneven distribution of a country's inhabitants.

-Refugees and IDPs: this indicator concerns the refugees and the 'Internally Displaced Persons' and in particular the consequences that the displacement of people can bring internally and abroad.

-External intervention: it examines the intervention of foreign actors in the internal affairs of a State. The aim of intervention is to guarantee security, to keep the internal balance or to reach a solution in case of conflict.

The sum of the indicators mentioned above is used to measure the level of fragility of a country which is expressed by a number that goes from 0 to 120. According to the Fragile State Index Data in 2014, the year when Yemen was for the first time defined as failed state, the score was 105,4/120⁷²,. In 2020, the level increased to 112,4/120 and Yemen ranked first in the Fragile State Index Rank.

So, Yemen is a country characterized by inadequate governance, corruption, inequalities within people and many other structural problems that contribute to its instability. The political turmoil paves the way to the rise of extremist groups and terrorism exacerbating the already problematic internal imbalance but also affecting nearby countries with tragic consequences.

⁷² <https://fragilestatesindex.org/country-data/> , [Accessed 16th April 2021]

4.2 Women Status

Yemen is a country characterized by a patriarchal system where social and religious norms and practices are in force. This put women in a subordinate position both within family and society. Indeed, as it has already been explained in chapter 2.1, women in these areas undergo through discrimination, domestic violence, forced marriage, the denial of education and access to health services as well as the impossibility to take any decision even concerning their bodies (see for example the Female Genital Mutilation). In 1990, after the unification of Yemen, a new Constitution and a new Personal Status Law were released. In 1994 they were both amended moving backwards in the field of women's rights and condition due to more conservative rules. However, at first glance, the Constitution of Yemen seems to acquire a democratic aspect. Indeed, several articles claim equality between citizens. For example, article 41 of the Constitution declares that all citizens have the same rights and duties and that every individual is free to participate in the economic, political, cultural and social life as well as having the right to express its thoughts and opinions⁷³.

Even women seem to be at the same level as men as results in article 31 that claims that women are considered sisters of men and that "they have rights and duties, which are guaranteed and assigned by Shari'ah and stipulated by law"⁷⁴. But it is known that in families dominated by patriarchal system girls do not enjoy the same rights as their brothers. So, the democratic aspect that the Constitution tries to reveal is actually fake and the reality that hides behind is different. Indeed, women's rights in Yemen are widely violated aided by the corruption that spreads within the security forces that do not hesitate to attack who actually needs to be protected. Human rights violation and rights concerning women in particular are exacerbated by the Personal Status Law (Law n. 20 of 1992).

Personal Status Law (usually called also Family Code or Law of Domestic Relations) deals with the rights and duties in the family field and in particular it deals with subjects such as marriage, divorce and children's care. The Family Code is based on the fact that the male figure holds the power while the woman is subordinated to him and she becomes often object of discrimination as it can be realized by the content of article 40 where it is clearly claimed that the wife has to obey to his husband in order to comply with the interest and respect of the family. In particular, it is

⁷³ Constitution of Yemen; available at:

https://constitutionnet.org/sites/default/files/2001_constitution_of_the_republic_of_yemen.pdf

⁷⁴ Ibid; article 31.

important that the wife lives within the husband's home unless some exceptions or the marriage contract allow her to live in her own house as long as the spouses can live together. However, the husband has the right to access her house even if nobody is at home. Moreover, the man expects her wife to obey to his requests and to do the housework as every woman does. The wife is not allowed to leave the house unless she has received her husband's authorization or she has some valid reasons included religious reasons, doing her business and going to visit her parents if she is the only one available⁷⁵.

Furthermore, the woman is excluded from taking any decision even for what concern her marriage. It is the groom's family to choose the girl and after visiting her, the bride's family (usually the father or the brothers) decided whether to accept the proposal and give their consensus. This practice represents a violation of international agreements and in particular of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriage that was ratified by Yemen in 1987.

Even for what concern divorce, the field of action of a woman is highly limited and she can request it only in few specific situations that are established by articles 51, 52 ,53 of the Personal Status Law. And as a matter of fact, a woman has the right to divorce from her husband when the latter does not provide any economic help to the family even if he has all the means to do it; when the woman is left alone for one year without any economic support or two years with a financial add; when the husband is kept in jail for more than three years and lastly when the husband has more than a wife and cannot support them all economically.

Except for the conditions just cited above, women have another possibility in order to obtain the divorce and it is about "khul'a ". It is a procedure according to which the woman can get the divorce without justifying the causes that led to this decision but by paying back the dowry and renouncing to any economic support. Of course, this last aspect is the reason why khul'a is not very common among Yemeni women.

It worth also mentioning that women encounter many difficulties in accessing justice. Since "Islamic Shari'ah is the source of all legislation"⁷⁶, it is often consulted. Indeed, the Islamic Shari'ah establishes that the witness of a woman is not sufficient. Paragraph 283 of Chapter 2 Part 3 of the Quran requires the presence of two men in order to witness and in case it is not possible

⁷⁵ Ibid; article 40.

⁷⁶ Constitution of Yemen; art. 3; Available at:

https://constitutionnet.org/sites/default/files/2001_constitution_of_the_republic_of_yemen.pdf

to have two men, a man and two women are required so that if one woman makes a mistake the other one can correct her.

The inequality between men and women concerns also the inheritance matters. Indeed, a man shall receive the same amount that is up to two females and in case there is only one inheriting woman she has to receive the half of the whole amount.⁷⁷

Another field where women do not enjoy many rights is the political one. Women living in South Yemen gained the right to vote in 1970 while their counterparts in North Yemen did not have the chance to access to political life until 1983. But after the unification of the country (1990) women's representation at political level started to decrease until becoming almost non-existent. Women have less chances to cover important roles in society due to the fact that education is required as demonstrated by article 64§2: Indeed, in order to become a candidate for the House of Representatives an individual needs to know how to read and write (and so to have received an education) besides satisfying a set of criteria such as owning the Yemeni nationality, not being under 25 years old as well as being well behaved, respectful of the religion and its practices, not being guilty for committing any crime that would bring dishonor and dishonesty.

So, women are not admitted in some specific schools. For example, The High Judicial Institute forbids women's participation which makes it impossible for them to become judges and, as a matter of fact, since 1990 no new women judges have been elected.⁷⁸

Even women's influence in civic life is weak. In the afternoon, qat sessions are held in order to discuss and solving problems but these meetings are exclusively reserved for men and women have no right to access to it.

Furthermore, Yemeni women's health is one of the most compromised in the whole world although article 55 of the Yemeni Constitution declares that:

“Health care is a right for all citizens. The state shall guarantee this by building various hospitals and health establishments and expanding their care. The law shall organize the medical profession. The expansion of free health services and health education among the citizens”.

⁷⁷ Quran; chapter 4 §12; Available at: <https://www.alislam.org/quran/Holy-Quran-English.pdf>

⁷⁸ Freedom House, Women's Rights in the Middle East and North Africa - Yemen, 14 October 2005, Available at: <https://www.refworld.org/docid/47387b712f.html> [accessed 30 June 2021]

Nevertheless, in rural areas the access to health care is often complicated and inappropriate since hospitals are usually situated in the cities which makes women to give birth at home jeopardizing their health as well as that of their children and contributing to increase the mortality rate. Moreover, husbands play a crucial role for what concerns women's access to healthcare services. They control every aspect of their wives' life and so their authorization is needed in order for women to receive hospitalization. Finally, Yemen is one of those countries that practice the Female Genital Mutilation as a result of a long tradition. "According to the UN Population Fund, the most recent data, from 2013, indicated 19 percent of women ages 15 to 49 have undergone FGM, with prevalence rates as high as 80 percent and 85 percent in al-Mahrah and Hadramout, respectively".⁷⁹ Female Genital Mutilation can have dangerous physical and psychological consequences: barrenness, complications during childbirth but also depression and anxiety. Furthermore, in Yemen the rate of employed women is very low and in the countryside it decreases even more due to the fact that the opportunities are almost non-existent. Nine working age women out of ten are not included in the labor force meaning that they are not employed and they are not looking for a job either (Amal Basha, Rana Ghanem, Nabil Abdulhafid,2005). However, there are no laws that prohibit women to be employed as expressed by article 5 of the Labor Code that recognizes work as a fundamental right of every individual as well as a duty to be accomplished. Every citizen has the right to be employed without any discrimination based on gender, origin, religion and nationality and shall enjoy of the same conditions and opportunities as the other citizens. Moreover, "the State shall, as far as possible, regulate the right to access to work through development planning of the national economy"⁸⁰. On the contrary, a whole section of the Yemeni Labor Code is dedicated to women. Indeed, chapter IV entitled "Regulation of the employment of women and young persons" provides a whole set of rights enjoyed by women in the employment field. In particular, article 42 specifies that women have the same working rights and duties as men without any discrimination. Women should also enjoy the access to the same jobs, conditions, career advancement, salaries, training, recoveries and insurances as men. However, particular prerequisites for a job should not be thought as discrimination.

⁷⁹ Annual Report on Human Rights in 2020; Available at: <https://www.ecoi.net/en/document/2048179.html> [Accessed 1st July 2021]

⁸⁰ Labour Code, Act. No 5 of 1995; article 5; Available at: <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/44043/65001/E95YEM01.htm> [Accessed 1st July 2021]

Nevertheless, the patriarchal system and the traditions of Yemeni culture often prevent women to fully enjoy their rights. As already explained earlier, men usually control their wives' life. For example, a woman is not allowed to go outside unless she's accompanied by her husband. This implies that having a job and reaching the workplace can become a problem.

Even being employed in a shop and so interacting directly with men would not be so appropriate according to the tradition.

All these situations often derive from the lack of knowledge about one's own rights as well as the lack of access to information. Although the Constitution and the Labor Code are committed to safeguard women's rights, females still undergo discriminations.

4.3 Children Status

In order to understand the condition of children in Yemen it would be better to focus the attention on the definition of children according to the Yemeni Law.

'Law n. 45 of 2002 on the Rights of the Child' emanated by the President in 2002 defines the child as any individual who has less than eighteen years old unless he or she achieved the major age earlier.⁸¹ But consulting article 127 of the Yemeni Personal Status Law, it emerges that a boy is considered an adult at 10 years old unless he reached puberty earlier and at 9 years old for girls or at the reach of puberty. Another definition is provided by the Civil Code (Law n.14 of 2000) that claims that "the age of majority is fifteen full years"⁸². It clearly emerges that a unique and coherent definition of child does not exist within the Yemeni Laws. Unfortunately, without a clear definition, children remain vulnerable and cannot be fully protected.

Therefore, child marriage is still a widespread phenomenon in Yemen at the extent of ranking 14th on a list provided by the International Center for Research on Women (ICRW). According to a survey by UNICEF "32 percent of girls were married before age 18 and 9 percent of girls were married before age 15"⁸³. One of the main reasons why child marriage is still present is that the Yemeni government has failed by not establishing a minimum age for marriage, violating article 2 of the International Convention on Consent to Marriage, Minimum Age for Marriage and

⁸¹ Law n. 45 of 2002 on the Rights of the Child; Available at: https://yemennic.info/db/laws_ye/detail.php?ID=11754#; [Accessed on 07/07/21]

⁸² Law n. 14 of 2000. Available at: <http://www.zipo-ye.org/ar/yemenilaws/6.pdf>; [Accessed on 07/07/21]

⁸³ Annual Report on Human Rights in 2020, Yemen; Available at: <https://www.ecoi.net/en/document/2048179.html> [Accessed 07/07/21]

Registration of Marriages (for more information see chapter 2) that requires States Parties to set a minimum age for celebrating marriage. Under that age, no marriages should be allowed unless an authority declares that despite the age, the spouses can marry. According to the law, this latter situation can happen only in serious circumstances and for the best interest of the spouses.

Even if today Yemen does not have a minimum age for marriage in the past it has not always been like that. Before 1990, the minimum age for marriage was set at 15 years old in North Yemen and 16 years old in South Yemen at the extent of becoming 15 years old for whole Yemen only in 1994. The turning point was in 1999 when the Government of Yemen decided to abrogate the law concerning the minimum age for marriage and to emanate a new norm prohibiting sexual relations before girls reach puberty. Of course, this norm is not respected and protection is therefore not guaranteed.

Between 2000 and 2009 there were several attempts by the Women's National Committee (WNC) in order to re-establish the minimum age for marriage. This urgency derived also from the case of Nujood Ali, a girl married at 9 years old to an older man who constantly abused her. Nujood Ali's story began to be known at international level at the extent of raising the interest and the attention on the topic of child marriage. Indeed in 2009 WNC propose to set the minimum age for marriage at 18 years old. The latter suggested to set it at 17 years old with the possibility to marry earlier with the approval of a judge. However, several parliamentarians from the opposite party did not agree on the proposal claiming that setting a minimum age was in opposition with the Sharia. So, the draft was reviewed by the Shari'ah Legislative Committee confirming that no minimum age should have been established. The following year, parliamentarians again required the draft to be revised by the Sharia Legislative Committee. The latter released a document stating that a minimum age for marriage was in contradiction with religious principles, the Quran but also with the Constitution. Later the same year, this interpretation was strengthened by a fatwa (it is a legal pronouncement in Islam) confirming that establishing a minimum age for marriage was against the Sharia⁸⁴.

Yemen as many other countries in the Middle East and North Africa recognizes Sharia as the source of all legislation. The difference lies in the fact that most of those countries have established a minimum age for marriage while Yemen still does not comply with article 2 of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

⁸⁴ https://www.hrw.org/report/2011/12/07/how-come-you-allow-little-girls-get-married/child-marriage-yemen#_ftnref87 to be checked.

4.4 Witnesses

This chapter's section was possible thanks to the help I was given by two Yemeni's women and their colleagues who provided information about the topic through their direct witnesses, phone calls and exchange of materials. I feel the need to specify that direct witnesses are of paramount importance since they come from people who live in a certain social situation, experience it and, as a result, they can give a big contribution with their point of view.

Before starting, it is important to say that the current war makes difficult for any organization to collect precise data. As a result, all of the most recent reports such as the UNFPA-UNICEF "Global Programme to end child Marriage (2020)" and "Child marriage in the context of poverty (June 2021)" refer to the 2013 "Yemen National Health and Demographic Survey". According to this survey, the percentage of girls married before 18 years old is equivalent of 32 and 9% of girls marry before turning 15

The first woman who helped me is Ola. She is the founder of the Sheba Youth Foundation for Development, a civil society organization led by Yemeni youth. Sheba Youth Foundation's idea was born out of the individual and volunteer work of many young people who decided to join their forces and establish a youth organization aimed at focusing on projects concerning exclusively young people and women. The name of the organization was inspired by the culture and history of one of the most ancient and prosperous civilizations of Yemen that is Sheba, home of the famous Queen Sheba. The organization commits in order to achieve six main goals. The first goal is to promote tolerance, community co-existence and peacebuilding. The second one is to enhance protection mechanisms for vulnerable groups. The following goals concerns the effective participation in supporting education and stability programs. The fourth one focuses on the improvement of entrepreneurial environment and the support of start-ups and small projects of youth and women. Then, the Sheba Foundation commits to provide the institutional, administrative and financial components necessary to make us work with high efficiency and effectiveness. And the ultimate goal consists in building and developing qualitative partnerships with various local and international parties. Although the Sheba Foundation does not face directly the phenomenon of child marriage, three of the above-mentioned goals are fundamental in tackling the practice. Taking care of vulnerable individuals and supporting young girls is a big step and a good start. The organization has undertaken a project of adolescent girls' empowerment (the "Empowering Young girls Initiative") in more than one governorate such as Hadramout, Taiz

and Sana's. This project aims at acquiring knowledge about young girls' needs since they are an excluded and invisible group. The first part of the project is dedicated to listening to girls in order to better understand what their necessities are and to have access to a greater amount of information. After this first step, the project commits to intervene with accurate programs aimed at the empowerment and the development of this vulnerable group.

I had also the opportunity to talk with a friend of Ola who has been working in the educational field for ten years and in particular she collaborates with the National Foundation for Development and Humanitarian Resources. She explained me that, in Yemen, the area of education is seriously affected by war and therefore many children are denied to attend schools. According to the data provided by the Humanitarian Response and Education Cluster project, the number of children that need educational assistance increased from 5.5 million in 2019 to 8.1 million in 2021 and around 2 million children are not receiving an education at all. So, the aim of the Education Program is to ensure equal access to quality and safe education for all school-aged boys and girls living in the most fragile areas of Yemen. In order to achieve the set goals and to promote a favourable environment for education, semi-permanent and temporary classrooms are built and schools are furnished with educational supplies such as school desks, blackboards, recreational kit and hygiene tools. What is more, children are provided with school bags containing appropriate stationery.

It was observed that this kind of program encouraged many girls to continue their studies and it encouraged parents to register their daughters for school.

Another precious help was provided by Muna Luqman. She is a Yemeni activist co-founder of the Women in Solidarity Network and founder of the Food4Humanity. Food4Humanity is an organization born in 2015 and composed by Yemeni volunteers who help families firsthand by providing them food and safe water, access to the healthcare system and all kind of humanitarian needs. So, the organization's attempt consists in tackling poverty in every part of the country, especially in the rural areas where families are at most affected by poverty.

In the exchange of emails, Muna Luqman explains me that Food4Humanity has given origin to the Water4Peace initiative and I got the opportunity to have a conversation on zoom with/in contact with Abdullah who explained me how the initiative works to prevent child marriage.

5. THE POSSIBLE SOLUTIONS TO TACKLE CHILD MARRIAGE

As it has been demonstrated in the former chapters, child marriage is still a worldwide spread phenomenon. In order to tackle this practice, it would be appropriate to modify the traditions and old cultural and social norms on which child marriage is rooted.

A first important step is to set a universal minimum age for marriage. A first attempt was done by the United Nations between 1951 and 1962. While discussing on the issue, State Parties found difficult to determine the concept of puberty since its definition varied from country to country and so they decided to establish it by setting an age expressed in numbers. However, even this solution was not possible since it was not easy to agree on a universal minimum age for marriage. As a result, the draft of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1959 did not include a minimum age for marriage in the provisions⁸⁵. Later in 1962, the Convention was approved and opened for signature. The new version required the ratifying States to indicate the minimum age for marriage. The 1962 Convention was followed by a recommendation in 1965 declaring that the age for marriage should not be under fifteen years old. Although the Convention includes a common numerical age, it still has some weak aspects that need to be changed in order to protect young girls. The first weak point is, again, the age. Girls at fifteen years old are still too young to assume the same responsibilities of adult women.

Despite that fact that maturity comes at different ages depending on the country, this heterogeneity must not be an obstacle on raising the threshold of marriageable age to eighteen years old in all world. This would allow girls to attend schools, to find a good job, to become independent and benefit from more opportunities that they would miss if they married earlier. The second weak point concerns the recurring expression “except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses”⁸⁶. Parental or authority’s consent allows minors’ celebration of marriage also below the threshold established, reducing the validity of laws. So, it would be of paramount importance to

⁸⁵ Tambe Aahwini, 2020: The Moral Hierarchies of Age Standards: The UN Debates a Common Minimum Marriage Age, 1951–1962; Published by Oxford University Press on behalf of the American Historical Association

⁸⁶ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1962; article 2; Available at: <https://www.ohchr.org/en/professionalinterest/pages/minimumageformarriage.aspx> ; [Accessed 16th August 2021]

eliminate any form of exception and consent in order to protect young girls from early marriage. Moreover, also the registration process should undergo some changes. Birth and marriage registrations are important because they show the age of the spouses. Nevertheless, births and marriages are often not registered making young girls vulnerable. What makes the situation even worse is that any person or any State violating the law is not sanctioned. Sanctions are a useful and necessary tool that allows the enforcement and the respect of norms forbidding child marriage. For example, at local level, parents or authorities and religious representatives respectively approving and celebrating child marriages, the adult groom marrying a minor, officers who register child unions as well as any employee involved in situations related to early marriage should be severely fined⁸⁷. Simultaneously, in the international arena, it would be appropriate for State Parties violating the rights included in the ratified Conventions to receive severe sanctions and not only recommendations or the general conclusions contained in the periodic reports. However, besides sanctions, it would be a good and innovative tool to introduce also recompences addressed to those States and individuals that were able to achieve any result in reducing child marriage. This tool could induce States Parties to seriously commit with the provisions included in the conventions leading to a twofold positive result. On one side, it would help million girls by granting them a better future and life condition but at the same time also society itself would undergo a positive change.

However, raising the minimum age for marriage, eliminating loopholes such as family members' or authority's consent, correct registrations of births and marriages as well as the introduction of sanctions and recompences would not be sufficient to eradicate this practice. Indeed, child marriage is a problem to be tackled from the roots. First of all, girls should be provided with useful information both concerning their personal life and the world. It is important for them to acquire knowledge about their own rights, such as health and reproductive rights as well as their right to access health services whenever they need it also without the authorization of the husband and the family. Moreover, they have to acquire information of the world surrounding them; they need to know that marriage is not the only option for their future. When a girl is able to attend school and receive an education, she has the possibility to find a good job putting an end to economic dependency and social invisibility as well as to decrease gender inequality. Secondly, changing parents and community members' point of view on girls is a key element. Since traditions and social norms are one of the main causes of child marriage it would be necessary to go beyond

⁸⁷ UNICEF, Child Marriage and The Law: Technical note for the Global Programme to End Child Marriage; 2020.

them. For example, the belief that daughters are a burden within the family and so marriage results the only solution needs to be abandoned. On the contrary, parents have to be conscious of the worth of their daughters and should recognize that they enjoy a set of rights that need to be respected. One of those rights is the right to education. Usually, girls drop out of school before attending the secondary level school; in doing so, many opportunities and a safer future are denied to them. A decisive step would be helping parents to understand the importance of letting their daughters attending higher level education. On the other side, girls who did not have the chance to attend formal schooling have the possibility to learn and study thanks to special non-formal programme as affirmed by Lee-Rife S. (2012). A further solution that would allow girls to receive an education is to help families economically: giving economic contributions and financial aids, lending money and offering scholarships would help families bearing the family costs. Such an approach could affect the attitudes of family and community members at the extent of breaking with old social norms and traditions and so limiting practices such as child marriage. Besides the measures analyzed so far, it must be taken into account also the role of NGOs that commit in order to end the practice of child marriage.

The first big NGO is Human Right Watch. It is a big Non-Governmental Organization composed by 450 experts of human rights, lawyers and journalists coming from different countries. Human Rights Watch was born in 1978 but it was first known as Helsinki Watch founded in order to protect people living within the countries that ratified the Helsinki Accords⁸⁸. Three years later, in 1981, America Watch was created in order to denounce the violation of human rights occurring in Central America that at the time was characterized by terrible civil wars. Quickly the NGO started to develop in many parts of the world such as Africa, Asia and Middle East (known as the Watch Committee⁸⁹) until becoming relevant at international level. Finally, in 1988, it changed its name into Human Rights Watch. The aim of the organization is to protect vulnerable individuals such as refugees, children and minorities groups. In order to accomplish its task, Human Rights Watch investigates and tries to expose those situations in which human rights are jeopardized by drafting reports and addressing to governments, United Nations and other bodies in order to monitor the enforcement of norms and promote change where needed. For example, taking into account the former case study about Yemen, Human Rights Watch submitted a detailed report concerning child marriage in 2011. After analyzing the situation of the Country, women and children's status

⁸⁸ Human Rights Watch: About Us. Available at: <https://www.hrw.org/about/about-us> ; [Accessed 18th August 2021]

⁸⁹ Human Rights Watch: Our History. Available at: <https://www.hrw.org/our-history> ; [Accessed 18th August 2021]

as well as the rights violated due to the practice of early marriage, Human Rights Watch addressed to several actors giving them a set of recommendations. The first actor to which Human Rights Watch addressed directly was the Government of Yemen. The latter was required to establish a threshold for marriage as it is declared in the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages and possibly set the limit to eighteen years old in compliance to the definition of child defined in the Convention on the Rights of the Child. The second request concerns the punishment of all individuals that are involved in child marriage practices and do not denounce the situation. Another important step that the Yemeni Government is required to take is to allow young girls who are already married to divorce and to be sustained by the husband in order to avoid that the burden of divorce falls on the victims. Then, of course, the free and full consent of the spouses should always be respected and that's why Human Rights Watch required the abrogation of article 15 and 23 of the Personal Status Law that does not contemplate the possibility for women to choose their husband⁹⁰. Furthermore, religious representatives should become aware of the negative consequences to which child brides are subjected. The NGO then makes a list of the recommendation concerning health. The Ministry of Health is required to allow girls and women to acquire more information on their health rights as well as let them benefit of health services and to expand them in particular in rural areas where medical care lacks. Moreover, health employees should always register births included those occurred at home since they are data of paramount importance. For what concerns education, the Yemeni Ministry is required to find solutions in order to allow girls to attend school such as placing incentives and to provide transportation from rural areas and make the way to facilities safe. The report then addresses to judges who have to inform whenever a marriage with a minor is celebrated. Also, the Ministry of Interior is encouraged to examine and denounce child marriages and the lack of birth and marriages' registrations. The attention is then focused on Civil Society Organizations that has the task to sensitize parents and children on the benefits derived from the postponement of marriage as well as to help child brides in need of sustain after divorce and to guarantee that they complete their studies. Finally, the last recommendations were directed to international donors who are encouraged to develop programs against violence and gender discrimination especially in the field of education and again, raise awareness on the importance of birth, marriage and divorce registration is a key element. After ten years, Human

⁹⁰ Human Rights Watch (2011): How Come you Allow Little Girls to Get Married? Child Marriage in Yemen. Available at: https://www.hrw.org/sites/default/files/reports/yemen1211ForUpload_0.pdf ; [Accessed 19th August 2021]

Rights Watch has released the 2021 World Report about the events that characterized year 2020. The NGO found that the situation in Yemen is still dramatic. More than seven million children still have not the chance to get an education and child marriage is still widespread in the country. A minimum age for marriage has not been established yet and the law of 'the free and full consent' is not respected⁹¹. A second important organization is the International Center for Research on Women (ICRW). ICRW is a non-profit organization born in 1976 and based in Washington D.C with several offices located in different world's regions such as India (ICRW Asia), Uganda (ICRW Africa) and the Netherlands. The organization was created in order to stop inequalities between men and women and to raise women's voice on their needs and rights such as health. In particular, ICRW has always focused its attention on child marriage; It conducted several researches on the topic providing information on the causes that lead to that practice as well as trying to identify possible solutions in order to end it. One of the programs included the direct cooperation between the association and girls together with their families and communities in order to work on the postponement of marriage. ICRW is famous for its collaboration with other organizations, included UNICEF. UNICEF is another important organization that work at global level in more than 190 countries. UNICEF also known as United Nation Children's Fund is a United Nations organization created in 1946. Its aim is to save and protect children. In order to allow them to grow safely, UNICEF tries to immunize children to avoid them catching common diseases that could result lethal to them; it works for the prevention and the treatment of HIV but it also tries to prevent children to be subjected to violence and exploitation. In the education field, UNICEF commits in order to guarantee every child the right to be educated. Moreover, one of the organization's biggest attempt is to overcome gender inequality by empowering girls and women in order to allow them to participate in social and political life. In 2017 UNICEF and ICRW collaborated on a report entitled " Child Marriage in the Middle East and North Africa". They analyzed the situation of several countries such as Egypt, Lebanon, Jordan, Morocco, Sudan and Yemen and tried to develop some solutions. For what concerns Yemen (see case study in chapter 4) the report opens with a reference to a 2009 programme (the 'Safe Age of Marriage') carried out in Yemen in order to intervene on the practice of child marriage. The programme aimed at improving girls' rights, ensuring them the access to education and limiting old social norms and traditions. In 2016, an assessment took place in several areas of the country in order to observe the approach of

⁹¹ Human Right Watch (2021): Yemen – Event of 2020; Available at: <https://www.hrw.org/world-report/2021/country-chapters/yemen#2b78f2> ; [Accessed 19th August 2021]

communities towards child marriage and to check the awareness on the consequences that this practice brings. Although the 2009 programme, results proved that child marriage was still present and that 72.5% of women married before eighteen years old and 44.5 % of them married at fifteen years old or before⁹². So, the report continues by proposing detailed recommendations for each country. In the case of Yemen, the first suggestion concerned the distribution of incentives to allow girls to attend school. Incentives can include the payment of transports, school fees, meals but also loans to guarantee girls to attend school. Help is also offered to those girls and women who did not have the chance to study and so specific courses are held in order to teach them to read and write. For what concerns social norms and practices, children and adults are required to work together following the Communication for Development (a UNICEF tool) that helps individuating and sensitize about the negative effects that child marriage has in girls' health⁹³. This cooperation is thought to bring changes within traditions and social norms. It is then important that organizations develop a solid method of prevention and intervention dedicated to those young girls that are about to marry as well as those who already married. In order to implement the action plan and achieve good results, NGOs need to receive permanent funding. Another essential step is to sensitize girls about their rights by conducting campaigns within school and community so they can acquire appropriate information about it. Lastly, conflict is an element that should not be undervalued due to the fact that it affects the social norms and practices that lead to early marriage. Studying the interaction between war and child marriage would be useful in order to find solutions that could limit the practice.

Save the Children is another non-profit organization that protects children's rights that works in more than 120 countries. The organization was born in 1919 in England with the aim of ensuring children living in war zones or any other emergency situation to have access to food, health care and education and granting them a better future. The goals set for 2030 aspire to give all children a safer future by avoiding them to die from curable illnesses, granting them to have access to education and by ensuring them protection from violence and exploitation. For over 20 years, the organization has committed to tackle child marriage. Through specific programs, Save the Children collaborates with girls, families and local communities with the aim of persuading them to let girls complete their studies and postponing marriage.

⁹² Child Marriage in the Middle East and North Africa, United Nations Children's Fund (UNICEF) Middle East and North Africa Regional Office in collaboration with the International Center for Research on Women (ICRW), 2017

⁹³ Ibid.

Lastly, a precious help is also given by Girls Not Brides. It is a network composed by more than thousand civil society organizations spread across America, Africa, Europe, Asia and the Middle East. It was created in 2011 with the hope of tackling child marriage and allowing girls and women to enjoy the same rights as men and boys. In order to achieve its goals, Girls Not Brides cooperate to give voice to vulnerable girls included those who are already married and to safeguard basic rights such as health and education. The organization then commits to sensitize about the dangerous consequences that child marriage can have at local, regional and international level and act concretely to find solutions and put an end to child marriage. In the 2020 report, Girls Not Brides has analyzed how Covid-19 has threaten the result achieved so far jeopardizing the future situation. Indeed, the suspension of lessons, the sudden impoverishment and the increase of domestic violence will have a negative impact of many girls' life in future. So, Girls Not Brides has done its best in order to help girls despite the situation. It modified its way of acting by taking advantage of social medias in order to keep in contact with girls as well as offering them online lessons. Moreover, the organization has cooperated with experts in order to reconsider and improve the laws about child marriage. In 2020, Girls Not Brides collaborated with the UNFPA-UNICEF Global Programme to End Child Marriage giving origin to the CRANK (Child Marriage Research to Action Network)⁹⁴ with the aim of improving the research programme on early marriage and it establishes periodical meetings between researchers, decision makers and organizations' members who examine situations and discuss on the topic. Finally, Girls Not Brides has invited young girls to share their stories and to be sure they were heard by as many people as possible the organization has benefitted from high level medias such as BBC and the Guardian⁹⁵.

Besides NGOs, the Sustainable Development Goals project (or Agenda 2030) can be a useful tool to put an end to child marriage too. The Sustainable Development Goals was adopted in 2015 by the United Nations and it is composed by 17 goals to be reached within 2030. The priority is to eliminate poverty, hunger, insecurity, to guarantee health, education and gender equality. So, Agenda 2030 is useful because it tries to tackle all the elements that are at the basis of child marriage. However, specific attention is dedicated to child marriage. In 2014 Girls Not Brides proposed to include early marriages within the Sustainable Development Goals⁹⁶. Indeed, the 5.3

⁹⁴ Girls Not Brides in collaboration with UNFPA-UNICEF: Impact Report 2020; 2021.

⁹⁵ Ibid.

⁹⁶ Sustainable Development Goals: Girls Not Brides: the Global Partnership to End Child Marriage; Available at: <https://sustainabledevelopment.un.org/index.php?page=view&type=20036&menu=1561&nr=55338>; [Accessed 27th August 2021]

goal encourages to “ eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”⁹⁷.

⁹⁷ Girls Not Brides, SDGs and Child Marriage; 2020.

CONCLUSIONS

As it can be understood from the previous chapters, child marriage is an extremely complicated and delicate topic. In this paper, as it was already anticipated in the introductory section, there was the willingness to provide information, raise awareness on the topic and to suggest some solutions that could be useful to tackle the problem. Tradition, poverty and denied opportunities are at the basis of the phenomenon. It is important to tackle the problem from the roots, developing specific programs aimed at listening to young women's needs and making sure that every State respects the norms established by the Conventions.

The commitment as well as the communication with girls, their families and communities should always be constant in order to promote a change in the mentality for what concerns girls' worth and the importance of the postponement of marriage. Also Governments and international donors play a fundamental role in this situation and together with the above-mentioned solutions can represent a beacon of hope to girls since meaningful results can be achieved in this way.

I hope this work has generated interest to those people reading it and I hope as many people as possible could give voice and suggest new initiatives aimed at the complete elimination of the problem.

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