

## **“THE ROLE OF CUSTOMARY ACTORS IN SHAPING CHILD MARRIAGE IN BURKINA FASO, LEBANON, AFGHANISTAN, PALESTINE & EGYPT”**

Conference: Child Marriage in forced migration: social processes in-flux  
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### **ABSTRACT**

*Displacement, associated with economic and social vulnerability, is a powerful driver of child marriage. Child marriage is at a crossroad between international and national norms, local uses and customs. However, community traditions, beliefs and practices strongly frame the social norms applicable to child marriage, thus granting the significance of customary justice. The relevance of the role of the customary actors lies on community legitimization, exacerbated in contexts of displacement where formal justice could be simply not available or not enough tailor-made to accommodate the needs or customs of migrant populations. In addition, customs and traditions move with the influx of displacement.*

*Customary actors hold positions of authority and influence which are directly linked with the application of social norms prevailing at the community. The different ways child marriage is shaped by customary actors remains yet an unexplored topic, given the difficulties on accessing information directly by them, the complexities of each context in which local customs applied to child marriage and the diverse situations they are dealing with.*

*This paper brings some insights specifically on customary practices and more specifically on conflict resolution around child marriages in several countries and communities across Middle East, North Africa and Central Asia countries, where Terre des hommes (Tdh) is working. It analyses 79 cases of a variety of child marriage disputes handled by customary actors in Burkina Faso, Lebanon, Egypt, Afghanistan and Palestine collected within a large quantitative action-research conducted by Tdh during 2012 and 2018 which focused on cases of children involved in conflicts at the community level resolved by customary justice actors.*

*Some findings shed light about the consideration of offenders children are given when they may refuse a marriage in front of the customary actors and about the fact that in a significant number of cases child marriage as such is not the upstream problem of the dispute handled by customary actors but it is rather discussed through another conflict resolution process managed by them. Additionally, the analysis tells about the crucial influence of customary actors in whether or not proceeding with a child marriage as the majority of disputes are brought to them before the children are engaged and how their participation in the process is granted. Finally, it appears how customary actors position alongside with the children's wishes (not to marry) or the possibilities of reversing a child marriage, particularly in cases of violence perpetrated against the child. From the analysis and the findings, the paper brings some questions for discussions as well as recommendations for further research and programming.*

### **INTRODUCTION**

Marriage before the age of 18 (child marriage) is widely considered a human right violation, it falls within the definition of gender-based violence and it is essentially a serious child protection concern. But indeed, child marriage remains a reality for many young people, especially girls, around the world. Displacement, associated with economic and social vulnerability, is a powerful driver of child marriage as parents hope to secure a daughter's future, to meet basic needs and ensure the survival of the rest of the family (Otto-Oyortey & Pobi, 2003; Nour 2009; Walker, 2012; Women's Refugee Commission, 2016). Child marriage is also a way for families to strengthen their social connection with “newly-formed displaced community”, by ensuring higher social status and assumed to offer protection to their children against rape, unintended pregnancies, sexually transmitted diseases and relationships outside marriage that could damage their reputation and honor.

Child marriage is at a crossroad between international and national norms, local uses and customs (Bunting, 2005). Prevention and response strategies must take into account not only the diversity and cultural complexity surrounding age and marriage issues in displaced communities, but also the economic and social realities that underlie the decisions of the families involved.

Linked with the aforementioned, customary actors have a particular role in shaping process of child marriage. They hold positions of authority and count with the acceptance/respect of the community. They are given (through community legitimization) the competence and the power to endorse and/or revert child marriages. In this task, they not only apply but also have the power to dictate and to shape social norms as well as, accordingly, to influence them in a way or another within a given community.

This paper brings some insights specifically on customary practices and more specifically on conflict resolution around child marriages in several countries and communities across Middle East, North Africa and Central Asia countries, where Terre des hommes (Tdh) is working. Particularly, in Afghanistan, Lebanon, Palestine, Egypt and Burkina Faso<sup>1</sup>. It sheds light on some subjacent aspects of the topic linked with the role, the process and the basis for decision taken by customary actors in child marriage cases. It also explores the profile of this customary actors as well as certain characteristics of child marriage cases and the background of children involved, including their participation within the dispute resolution.

## THE RESEARCH & DATA ANALYZED

The concrete data analyzed in this paper comes from a quantitative large-scale action-research conducted by Tdh during 2012 and 2018: *“Shifting the paradigm for access to justice for children”*. This research project focused on cases of children involved in conflicts at the community level resolved by customary justice actors. Indeed, in countries where Tdh operates, and specifically within the regions mentioned beforehand, a significant proportion of conflicts are resolved within customary justice systems (Colliou & Hope, 2016) for various reasons, related to a better accessibility, community ownership, flexibility, cost effectiveness, confidentiality, etc. It should be noted that in contexts of displacement the formal system could be simply not available or not enough tailor-made to accommodate the needs or customs of migrant populations. In addition, the customary actors move with the influx of displacement (Dale, 2008).

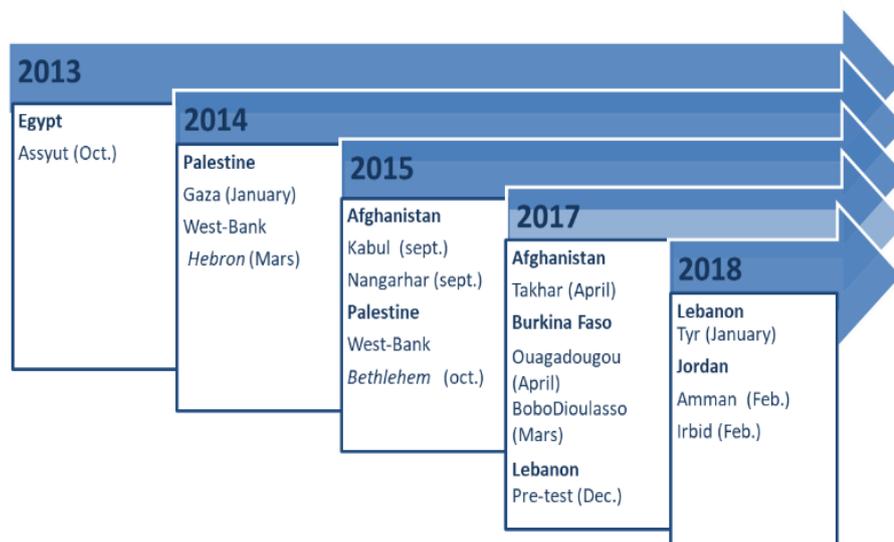
Following a pilot project initiated in 2013 in Assiut (Egypt) the research was extended to Palestine-West Bank, Gaza Strip, Afghanistan, Burkina Faso, Lebanon and Jordan (**Figure 1**).

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<sup>1</sup> Legal age of marriage in the countries analyzed:

- **Afghanistan:** Under the Civil Code of the Republic of Afghanistan 1977, when a girl is below the age of 16, a marriage can be concluded with the permission of her father or a judge. There is no data available as to the minimum legal age of marriage once all exceptions have been taken into account in Afghanistan.
- **Lebanon:** Lebanon has no minimum age for marriage for all of its citizens or any civil code regulating personal status matters. Instead, religious courts set the age based on 15 personal status laws, some of which allow girls younger **than 15 to marry**.
- **Egypt:** The minimum legal age of marriage in Egypt is 18 years. However, underage girls are frequently married in “urfi”, an unofficial customary form of marriage.
- **Palestine:** In the West Bank, the minimum age of marriage is 15 for girls and 16 for boys. In Gaza the minimum age is 17 for girls and 18 for boys.
- **Burkina Faso:** Under the Code des Personnes et de la Famille 1989, the minimum age of marriage is 17 years for girls and 20 years for boys. However, girls can marry as young as 15 years and boys at 18 years if it is authorised by civil courts.

Figure 1: Process of data collection by country / per year



The customary justice actors' participants in the action-research were in most cases already stakeholders of the Tdh which allowed for access and trustworthy relationships to engage them in the process. Tdh data collectors used designed questionnaires through semi-direct interviews. Fifty-three questions composed these questionnaires and were organized in five parts:

1. Sources of data
2. Profile of customary actors
3. Social-demographic characteristics of children
4. Case resolution processes
5. Collaborators' feedback on the case and the children's rights concerned

The particularity of the action-research and the process designed was that it directly gathered the voice of customary actors. However, this also entailed some limitations, particularly related the cultural perceptions the customary actors brought to the answers. For this reason, the questionnaire had a section for collectors to give their impressions of the reported case. They were also asked to write a short narrative of the case, in a few lines. This was an important source of additional information to better contextualize the cases for analytical purposes.

It should also be clarified that the cases collected only concerned disputes that have required the intervention of customary actors. It cannot be excluded that some of the conflicts that arise within a community may be resolved before being reported to customary actors. This remark is particularly important in cases of child marriages, given the fact that the data presented contains information on child marriages that have involved indeed a conflict. Child marriages concluded without generating any issue on the parties concerned are therefore not covered in this paper. Consequently, the situation presented herein is not representative of all child marriages concluded in these communities, but a sample of those that have required the action of a customary actor to solve a child marriage dispute.

## METHODOLOGY

The action-research conducted by Tdh collected information on 3470 children and young people in several customary justice systems of the countries mentioned above plus Jordan and involved a total of 252 customary actors. After a first processing of these data, it appeared that child marriage cases were not only present in cases announced as "child marriage" as such by customary justice actors. Therefore, it was necessary to develop a protocol to identify child marriage cases embedded with other cases containing different descriptions. Once these cases were identified, they were all gathered in a database for separate analysis.

The identification protocol first identified child marriages, then components of child marriages were searched in family and personal disputes, sexual abuse and "other" cases. These components were searched within several variables. The following paragraphs specify what variables were treated, the cases selected, and the cases that were excluded.

**Examined variables:**

- ✓ **Variable AD23 a, b:** customary justice actors' definitions of the dispute. Investigations were made on child marriage cases, family law dispute (with or without violence), sexual abuses (rapes, sexual assault, harassment), and other cases.
- ✓ **Variable TT52 a, b:** Collectors' definition of the dispute. Investigations were made on child marriage cases, family law dispute (with or without violence), sexual abuses (rapes, sexual assault, harassment), and other cases.
- ✓ **Variable CO41 b, c, d, e:** information pertaining dispute resolutions.
- ✓ **Variable N21:** narratives of the cases were consulted for better understanding and contextualization.

**Children's cases selected** for the analysis:

- Girls and boys involved in these cases.
- Offenders and victims.
- Boys that are perpetrators of sexual violence/harassment that leads to child marriage for the victim.
- Girls who wants a marriage, sometimes despite the advice of their families.
- Other disputes resolved with a Baad<sup>2</sup> (Afghan context) or with an equivalent to the Baad.
- Girls and boys who got married despite the advice of their families.
- Children who are witnesses (whistleblowers).

Cases that **were excluded** of this selection:

- Children involved in cases that concerned their intimate/sexual lives, such as sexual abuse, rape, sexual assault or sexual harassment, without mention of child marriage in the resolution mode.
- Children involved in cases involving the re-marriage of their mothers, because the age of their mother cannot be inferred.
- Cases of pregnancies without mention of child marriage in the resolution.

In this selection, several **limitations** must be considered, which imply that some cases may be missing:

- Children involved in a dispute related to their parents' divorce where it was not possible to determine the age of the parents. These cases were not retained.
- Cases reported to customary justice actors that did not result in any agreement, as it was not possible to determine whether a child marriage was concluded. These cases were not retained.
- Cases that have finally been resolved within the family, such as sexual assault or abuse, because it was not possible to determine whether the victim was married as a way to resolve the dispute. These cases were not retained.

These limitations have nevertheless been reduced to a minimum, thanks to the "cross check" carried out with the variables TT52 (collectors' definition of the dispute), CO41 (main and additional resolutions) and through consulting case-by-case the narratives of the cases.

It should be recalled that the data does not allow the number of children involved in child marriage to be inferred in the countries investigated, because it only includes cases of children involved in a conflict which have been brought to the customary justice system in specific contexts and communities.

In addition, the action-research was focus on the children's involvement in customary justice systems. It means that it was not focused specifically on child marriage. Therefore, this database is not perfectly shaped for

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<sup>2</sup> In Afghanistan, *Baad* is a practice in communities leads by customs, where women and girls are given as compensation for crime/offense to avoid revenge between two parties (Human Rights Watch, 2011).

representing all the problematics around child marriage. To compensate this limitation, we created three new variables based on the narratives that allow to shed light in relation with this type of dispute. The next points present these three variables and their categories.

**Additional variable 1:** Reason that led the case to the customary justice system

- Case of domestic violence inside marriage
- Child custody dispute
- Child refused marriage
- Child runs away or want a marriage despite family's advice
- Family refuse marriage's agreement
- Forced marriage (cases that are led to the customary actors explicitly as forced marriage)
- "Immoral" sexual acts<sup>3</sup>
- Sexual abuse

**Additional variable 2:** Child's marital situation

- Not married
- Engaged
- Married
- Divorced

**Additional variable 3:** Decision regarding the child's marital status at the end of the process

- Divorce or cancellation of the engagement
- Marriage or engagement of marriage
- Other
- Don't know (narrative does not contain information about decision)

**SAMPLE**

At the end of these process, our data sample included a total of **81 children** involved in child marriage disputes handle by customary actors. Per country:

- Afghanistan n=28
- Burkina Faso n=9
- Egypt n=4
- Lebanon n=6
- Palestine Gaza n=17
- Palestine West-Bank n=17

Of these 81 cases, 2 of them were decided to be removed from the analyzed sample in this paper: (1) a case of a young girl (whose status was recorded by the customary actors as accomplice) who helped one of her friends to have a relationship with a young man, while her friend was promised to another man, because the information collected was about the whistleblower (the girls who reported the case); (2) a case of girl married but presented to the customary actor for thievery.

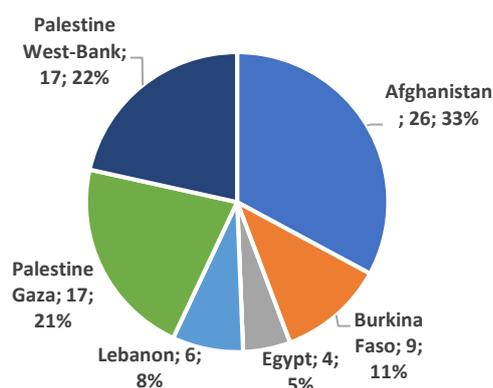
The final number is **79 cases** of children out of 3470 cases collected in the database. Hence, children affected by child marriage in our current database represent **2.3%**.

**Chart 1** shows the percentage distribution of these cases per country. One third of these data comes from Afghanistan (34%), 21% from Gaza and 21% from West Bank. The rest of the data comes from Lebanon, Egypt and Burkina Faso.

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<sup>3</sup> In the analysis perform, it makes reference mainly to consensual sexual behavior maintained by the parties in the disputes.

Chart 1: Cases of children involved in early marriage per country



The following paragraphs detail the year in which the cases were collected, as well as the profile of the children involved. As shown in the table (Table 1) below, the data collection of the majority of cases was in 2014, 2017 and 2018. Noting that the project was launched in 2013 overall the child marriages cases represent between 1.2% and 3.4% of our total sample per year.

Table 1: Children concerned by child marriage compared to the total of data collected (years 2013 to 2018)

Year of data collection	N child marriage <sup>a</sup>	% of child marriage per year	N total <sup>a</sup>	% of child marriage on the total data
2013	0	0%	36	0%
2014	18	22.8%	525	3.4%
2015	5	6.3%	401	1.2%
2016	9	11.4%	634	1.4%
2017	23	29.1%	937	2.5%
2018	24	30.4%	937	2.6%
<b>Total</b>	<b>79</b>	<b>100%</b>	<b>3470</b>	<b>2.3%</b>

*a) In number of individuals (N)*

## CHILD MARRIAGE: SAMPLE ANALYSIS

In order to better understand the cases analyzed in this paper, the following paragraphs present some examples of child marriage cases' narratives and give a short synthesis of them.

### Disputes occurred between:

- Members of the same family
- Two different families
- The girl and a third party

Then, it emerged that the customary actors can be **solicited by different people**, mainly in our sample:

- Adults (family members in most of cases)
- Children

Finally, the **reasons behind the dispute** show a large variety of situations. Indeed, several reasons can be identified in the examined cases:

- Marriage wanted by the family but refused by the child (mostly girls)

- Marriage wanted by the girl but refused by the family
- Marriage not wanted by family members
- Dispute between the husband and his girl wife (e.g. domestic violence or other types of conflict inside the couple)
- Girl wants to continue with her studies before to be married
- Girl and boy involved in a personal/sexual relationship not supported by their families
- Girl and boy who have run away because their families refused their relationship
- Families of a girl and boy who got married without the consent of their families (cancellation of marriage)
- Pregnant girl married off to restore her honor
- Girl survivor of sexual abuse

This short review of the diverse reasons behind the customary process tells about the many possibilities customary actors are handling depending on the context, the case, the social norms that apply in the concerned community and, mostly, the personal situation of the parties involved.

It appears in several cases that the child concerned wants a marriage to escape from a context of violence in her own family. However, they may be unaware of the collateral consequences the child marriage can entail. It can be a source of victimization (domestic violence within the married couple, de-schooling, etc.) or re-victimization (for example when a survivor of sexual abuse is married to restore the honor).

The narrative included by the data collector in the database provide for some specific background on the cases presented above:

**Afghanistan:** *Two brothers promised their children in marriage, but one of the two brothers (the father of the 4-year-old girl) decided to break this agreement. No punishment was sentenced by the customary actors handling the case for the brother who broke the engagement.*

**Burkina Faso:** *A 15-year-old girl who has dropped out of primary school is determined to marry to escape her father's abuse. The girls brought the case to the customary actors, who were able to convince the father to give his consent for the marriage.*

**Egypt:** *A family dispute within a couple, where the wife wants to marry off their daughter before the legal age, while the husband opposed to it. No resolution of the case is recorded in the database.*

**Lebanon:** *A 16-year-old girl promised in marriage to a 40-year-old man has a romantic relationship with another man. The customary actor tried to convince her that this is not acceptable as per the social norms in the community and that she must give her fiancé an opportunity.*

**Palestine – Gaza Strip:** *14-year-old girl raped by her father. His mother reported the case to the police and to customary actors. The customary actors convinced a cousin to marry off her to restore the honor of the girl.*

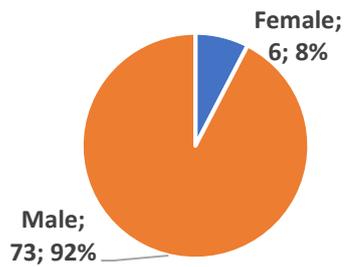
**Palestine – West Bank:** *A pregnant girl asks the customary actor to convince the child's father to marry her before her family finds out.*

## PROFILE OF CUSTOMARY ACTORS

The following paragraphs analyses the profile of the customary actors in our sample involved in the selected child marriage cases. The purpose is to better understand the context in which these child marriages cases are solved and more particularly by whom. However, it must be outlined that the data is from Afghanistan for 33% (n=26) of the cases.

The profile's attributes analyzed refers to the number of children's cases. As shows in **Chart 2**, the majority of cases analyzed were dealt by male customary actors and only 8% by female customary actors.

Chart 2: Sex of customary actor in child marriage cases analyzed



Looking at the type of customary actors, several names are given to them including with different attributes and competences. While religion shapes some of the categories analyzed, there are some typologies of actors where religion does not appear explicitly in the definition. In order to give an overview of the different types of customary actors that the cases analyzed refer to per country, below there is a short description of them:

**Arbitrators (Egypt):** they belong to the Egyptian Family House<sup>4</sup> and are primarily concerned with resolving sectarian disputes, if any, as well as revenge disputes in the community.

**Community leader (Afghanistan):** they have no official position, but he is an influent person respected by the community and deal with community dispute resolution.

**Imam:** it is a religious leader. Imams lead worships and solve dispute within their communities. In Gaza and West-Bank, some of them are employed by the Ministry of Religious Affairs.

**Islah man/women (Palestine):** trusted by his/her community and with not specific affiliation s/he is a reference in the community in conflict resolution and reconciliation processes.

**Malek (Afghanistan):** he is the tribal leader in the community. In case of conflicts within the tribe, he oversees the case resolution.

**Mukhtar (Palestine):** he is a traditional community leader, who is mainly a clan elder or male head of the family. He traditionally connects communities to formal government and plays an integral role in customary dispute resolution and the application of customary norms. Once appointed, mukhtar/as receive an official seal and an identity card from the Department of Tribes and Reform to facilitate their work. There is no required training or written guidelines for mukhtar/as to follow in carrying out their duties. The Department of Tribes and Reform also does not provide mukhtars with any payment for their work, nor do they receive payment from the parties to a dispute.

**Wakil or Wakil Gozar (Afghanistan):** he is elected by the correspondent municipality. He represents a district (urban contexts) or a village (rural contexts).

**Other types:** Social activists, teachers, etc. This category refers mainly to women who play a role in dispute resolution at the community level. They are given different names, in most cases with the purpose of differentiating from the official names given to male customary actors. While in some cases they role is very influential, it is still quite hidden.

This short review presents a lot of diversity. In addition, data tells about the professional occupation or/and affiliation to an official structure that customary actors have beyond their role in the community on dispute resolution. 70% of children involved in child marriage had their case managed by customary actors who had a professional occupation (**Chart 3**) and 46% customary actors were affiliated to an official structure (**Chart 4**).

Professional occupations include civil servants, chairman of a council, farmers, land owner, manager, military personnel, skilled-trades person (as hairdresser, shop keeper), school directors, teachers, etc.

An affiliation to official structures refers specifically to governmental ministries, political parties, as well as national non-governmental organizations and or public and semi-public foundations or associations. Affiliation to official structures (mainly governmental) gives a clue about the “grey zone” existing between formal and informal systems.

<sup>4</sup> The Egyptian Family House was created in 2011 meant to strengthen Egyptian religious harmony between the different religious communities and leaders. It is currently headed by a 27-member leadership council. Members have a mandate to engage directly with government ministers concerning public policy. The authority they hold makes them key actors in dispute resolution in the community.

Chart 4: Professional situation of customary actors in the sample

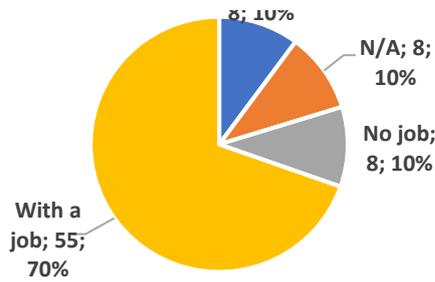
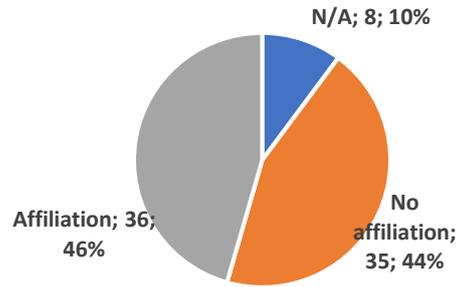


Chart 3: Affiliation of customary actors in the sample



### CHILDREN INVOLVED IN CHILD MARRIAGE CASES

Of the 79 children involved in child marriage cases in our sample, 78% are girls and 22% are boys (Chart 5).

Looking at the general situation analyzed in the action-research, boys are more represented in customary justice systems (Chart 6). About 20% of children involved in customary justice are girls, compared to boys who represent more and less 80% of the total cases.

Chart 5: Distribution of children involved in child marriage per sex

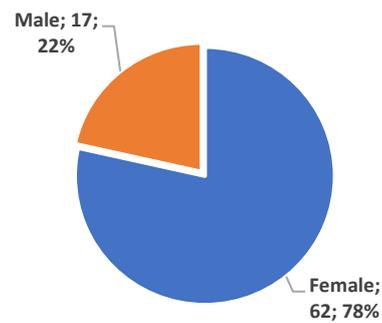
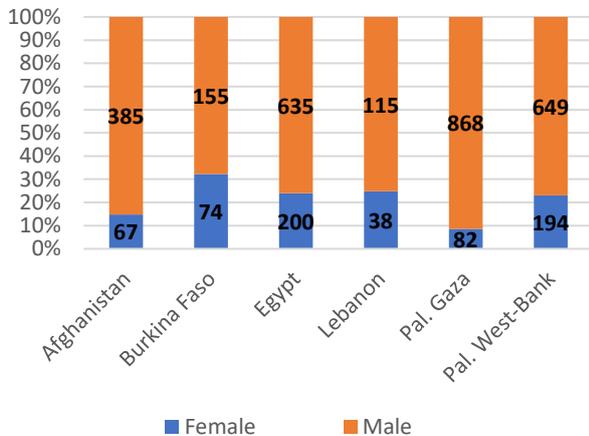


Chart 6: Distribution of children involved in customary justice system by sex



Regarding the children’s age, the sample analyzed includes individuals aged from 4 to 18 years old. The average age indicates a value of 15.86 years old and the median indicates 16 years old. Considering the values indicated for the variance ( $S^2=4.839$ ) and the standard deviation ( $S=2.200$ ), it appears that these values are representative of this sample. Meaning that the extreme values which have been found (ex. girl of 4 y years old) can be considered exceptional for this piece of analysis.

If we observe age trends by gender, and although girls and boys do not have the same average and median ages (Table 2), this difference is not significant ( $U=410.5, p=.083$ ). Hence, it can be considered that girls and boys in this sample are of a similar age.

Table 2: Difference of age between girls and boys involved in child marriage

	N	Mean	Median	Confidence interval at 95 %		Min.	Max.
				Low	Sup.		
Girls	62	15.65	16.00	15.04	16.25	4	18
Boys	17	16.65	17.00	16.13	17.16	15	18

<b>Total</b>	79	15.86	16.00	-	-	4	18
<i>U de Mann-Whitney: U=380.000, p=.074; S<sup>2</sup>=4.839; S=2.200</i>							

Within the action-research, several information was collected on the social-economic status of the children to get to know the background surrounding the cases. But for this specific selection on child marriage cases, the children's profile is quite challenging to present. Indeed, for some reasons that might be linked with the sensitivity of the topic itself, information as household's situation, parents' level of education, parents' situation of employment and children' school enrolment do not present enough information for analytical purposes. For instance, this kind of information is not answered by the customary actors we work with in Palestine and Gaza particularly<sup>5</sup>. On the other hand, most of the information available on the aforementioned criteria is from Afghanistan. Thus, analysis may not be representative in the sample selected.

Despite this limitation, it is still possible to take in consideration some hints from the information collected (**Appendix, Table I**). First, predominantly cases are coming from two-headed household (**Appendix, Table II**). Household income is also an important information, given that family's economic situation is often raised to explain recourse to child marriage (Otto-Oyortey & Pobi, 2003; Nour 2009). However, in this sample, it's not possible to see any tendency based on the information collected (**Appendix, Table II**). In addition, the concrete income amount as well as its regularity should be considered for further analysis.

Finally, the children's educational status is also a relevant point of analysis. The information collected does not allow to see any clear tendency, aside from Afghanistan were a relatively high number of individuals (all girls) have apparently never been to school and two third of these girls were already married or engaged (**Appendix, Table III**). A study on child marriage in Afghanistan states that married girls were not admit in school anymore, because school directors consider them as women who have experience "sexuality" with the risk of badly influencing the school girls (Bahgam & Mukhatari, 2004). Probably, this kind of information would be better collected directly alongside families rather than from customary actors in further analytical exercises.

### **ANALYSIS OF CHILD MARRIAGE DISPUTE RESOLUTION BY CUSTOMARY ACTORS**

Following the presentation of some elements of children's profile involved in child marriage, this section presents how these cases were dealt within the customary justice systems investigated in the action-research. While there are several researches that have presented the prevalence and consequences of child marriage, this particular analysis focuses on conflict resolution mechanisms pertaining child marriages in customary justice systems.

First, the customary actors' conception of the child's role in these disputes is presented. Next, the customary actors' definitions of the child marriage cases as well as the specific reasons behind them are addressed. Then, the customs/regulations used in the decision taken by customary actors as well as the involvement of other actors in the resolution process (from formal and customary systems) are tackled. Finally, children's participation within the dispute mechanisms is discussed.

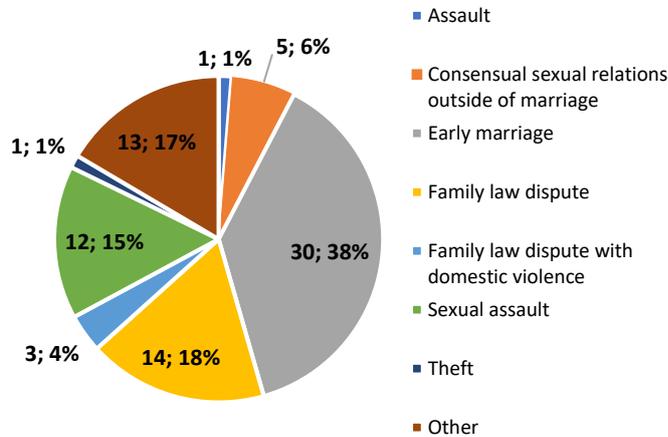
#### ***About customary actor's perception of the children involved in child marriage disputes***

In the child marriage disputes handled by customary actors in our sample it is interesting to observe how these cases and the children involved are perceived by these actors. First, it appears that children (boys and girls) are not all considered as victims in child marriages disputes (**see Appendix, Tables IV and V**). This observation must be linked with the narratives collected per case. The data in our sample is telling that some children were considered to have infringed the prevailing social norms or local customs related to child marriage (e.g. run away or refused a marriage arrangement). Of course, it could not be excluded this kind of cases may not be representative of all realities, but still tell about situations that are usually not considered in other type of analysis in the topic and notions on communities' perceptions that could raise the question about how the children's interests are safeguarded, especially when they are considered as offenders.

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<sup>5</sup> Information collected from Tdh's collaborators.

These perceptions could be influenced by the nature of the dispute as well. As already stated, child marriage cases may be presented in different types of dispute by the customary actors. **Chart 7** shows that the majority of child marriage cases have been reported as such (38%). But 22% of them have been reported in other categories of the action-research questionnaire: "Family law dispute" or "Family law dispute with violence", 15% as "Sexual assault", 6% as "Consensual relationships outside marriage" and 17% as "Other" (running away, illegal relationships, forced marriages attempts, sexual harassments, and one dispute about a previous arrangement).



Indeed, this diversity may be the result of a situation in which the child marriage is not the upstream problem of the dispute but it is discussed through another conflict resolution process managed by customary actors, for instance in our sample: cases of sexual abuses or consensual (sexual) relationships, girls are already married and are survivors of domestic violence within the couple, etc. In

these situations, the dispute will not be understood or considered as a child marriage dispute as such case but as family law dispute or eventually as an assault. As mentioned above, the narrative of the cases recorded by the data collector interviewing the customary actors has been fundamental to extract the analysis and the pathway of the child marriage disputes in our sample.

*Table 3: Reasons which brought the child marriage case to customary justice (No. of children)*

Type of reasons	N	Percentages
Child Refuse marriage	17	21.5%
Immoral sexual acts	14	17.7%
Domestic violence	12	15.2%
Family refuses marriage	12	15.2%
Runaway/wish marriage	11	13.9%
Forced marriage	6	7.6%
Sexual abuse	6	7.6%
Child custody affaire	1	1.3%
<b>Total</b>	<b>79</b>	<b>100%</b>

Therefore, it is interesting to examine the exact context that led these cases to customary actors. In most cases (21.5%) girls are referred by the family to customary justice actors because they refuse the marital arrangement (**Table 3**). 17.7% of child marriage cases analyzed in our sample were brought to customary actors as they were considered an "immoral" relationship contravening the prevailing social norms or local customs, 15.2% of them refer to children survivors of domestic violence (where in most often the husband is the perpetrator) and nearly 14% are runaways or a wish to get married with the beloved (being the couple below the age of 18 years

old). Finally, the remaining cases concern forced marriages (according to the description in the narratives), sexual abuses and one case of child custody coming from a child marriage.

To complement with the previous analyzed information, a point on the marital status of the children in the sample is made. **Table 4** indicates that 44.3% are not married yet, while 29.1% are married, 24.1% of children (all girls) are promised in marriage and 2.5% (all girls) are divorced after being previously married.

Table 4: Marital status of children when case is brought to the customary actor

Marital status	N	Percentages
Not married	35	44.3%
Married	23	29.1%
Engaged	19	24.1%
Divorced	2	2.5%
<b>Total</b>	<b>79</b>	<b>100%</b>

A joint analysis of the information presented tells that customary actors involved in child marriage disputes have indeed an influential role pertaining to the delay, revert, validation of the marriage disputes brought to them. Additionally, once married, violence within the marriage concerns as well the decisions taken by customary actors with the ability, and hence, the potential to influence and act upon the protection of the survivor.

### *Child marriage decisions taken by customary actors*

The next step is to examine what kind of decision customary actors took regarding the child marriage cases in our sample. For this analysis, 3 cases were excluded on the basis that they did not directly concern a decision about a child marriage as such.

**Table 5** presents the total of decisions taken by customary actors in the sample analyzed. It appears that 30.3% of children stay married or were promised to marriage (engagement) at the end of the resolution process concerned, while for 18.4% children the marriage/engagement was cancelled. Unfortunately, in almost half of the cases in the sample it was not possible to know what kind of decision was taken by customary actors as the information was not recorded in our database by the data collectors (categories “Other” and “Don’t know”).

Table 5: Decisions taken by the customary actors in child marriage cases analyzed (No. of children)

Types of decisions	N	Percentage
Married/engagement	23	30.3%
Divorce/cancellation of engagement	14	18.4%
Other*	2	2.6%
Don’t know	37	48.7%
<b>Total</b>	<b>76</b>	<b>100%</b>

*\* In one case, a boy and a girl had a sexual relationship outside of marriage. The girl was killed by her family before the end of the process.*

Comparing the type of reasons that brought the case to customary justice system and the decision taken, some scenarios can be drawn (**Table 6**), although a pattern between these two criteria cannot be established in this particular analysis. However, it appears that child marriages are not in all cases irreversible from the point of view of customary actors, particularly in cases of violence perpetrated against the child. In some cases, customary actors positioned within the children’s wishes or interests (not to get married) rather than with their families’ opinion (in favour of marriage). Finally, for cases that involved some sort of sexual violence/behaviors it appears that in the majority of them, the social peace at the community prevailed over children’s rights, leading to the unlikely scenario in which customary actors would not act according to a child protection approach (e.g. refer to specialized services). It points out to the taboos in the analyzed communities about sexuality.

Table 6: Decisions taken by customary against the reason cases were brought to them (No. of children)

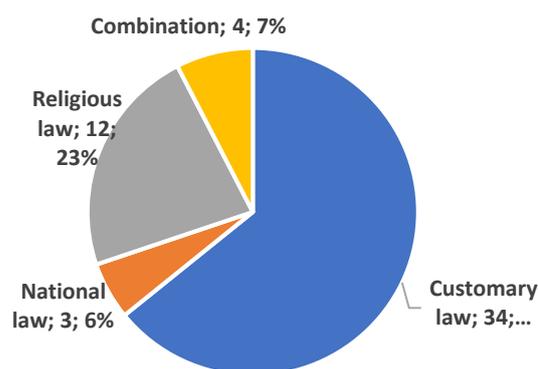
	Family refuses marriage	Forced marriage	Child refuse marriage	Runaway or wish to marriage	Sexual abuse	Total
Divorce or engagement cancelled	-	1	2	-	-	3
Marriage or engagement	1	-	-	-	-	1
Don't know	3	1	0	1	3	8
<b>Total</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>12</b>

**On what grounds/basis customary actors take decisions regarding child marriage cases? What other actors participate in child marriage dispute resolutions?**

The action-research tools included questions about (i) what type of custom/regulation/social norm underlies the decision taken by customary actors as well as a (ii) the participation of other actors (including formal actors) during the child marriage dispute resolution process.

In our particular sample on child marriage cases, for 64% of children the outcome was based on customary regulations (not necessarily written), while for 23%, it was based on religious precepts/norms (Chart 8). Only 6% of children have their outcome base on national laws and for 7% it was a combination of the others. A connection with the preeminence of customs and religion is could be established, leading to the importance of working through a multi-tiered approach that ensures positive approach of community-based values and practices (including faith-based) and a pro-gender local justice norms.

Chart 8: Principal base of norms applied for the decision-making in child marriage cases (No. of children, N=53)



Within the dispute process, various other actors participated. More precisely, data shows the participation of other community actors (other customary actors that are not the principal one leading the case, religious/faith-based actors, Child Protection Committee members, etc.) and participation of actors from the formal system (police, prosecutor, judges, child welfare actors, forensic, etc.).

For the first group, it appears that for 85% of children involved in child marriage dispute, their cases were resolved with the participation of other community actors (Chart 9.1 & 9.2). This trend is similar to the results observed with the total of data in the action-research not limited to child marriage (see Appendix, Chart I). Regarding the participation of formal actors, it only reached the 15% of the child marriage disputes (Chart 10). Comparatively, this result is lower that what it can be observed in the total of data (see Appendix, Chart II).

Chart 9: Involvement of other community actors in the resolution process (No. of children)

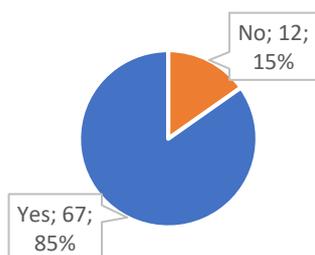
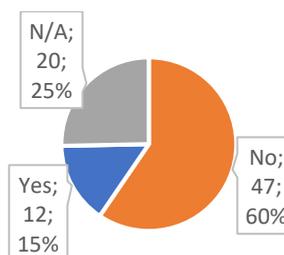


Chart 10: Involvement of formal actors in the resolution process (No. of children)



Examining what kind of interactions happened between formal and customary systems in these cases, it appears that in most of them, the case was reported to the police as well as to the customary actor. The information gathered does not allowed for further analysis on the type of involvement of the formal actors within the child marriage dispute analyzed.

**THE PARTICIPATION OF THE CHILDREN IN CHILD MARRIAGE CASES DEALT BY CUSTOMARY ACTORS**

Given the importance of child participation in child marriage dispute processes which directly concerned them, the action-research tools included a specific question about the children’s giving account of the facts of the case. The quality of their participation and how the information provided to the customary actors was taken by him/her do not appear in the database, though both issues are essential when examining meaningful participation of children (more linked with qualitative researches).

Regarding the sample analyzed in this paper, as shown in **Table 7**, it appears that children had the opportunity to give their account of events in almost half of the cases (48.1%). This participation may be related to the children’s age, because as previously seen, the age mean is about 16 years old. In addition, it needs to be considered that depending on the context the perception of age in different communities and cultures change and can be based on different elements related to the concept of maturity, that are indeed different for boys and for girls.

*Table 7: Participation of children involved in child marriage disputes (Q: Did the child/youth give his or her account of events?)*

	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total	% Total
Yes	9	8	4	4	3	10	38	48.1%
No	12	1	-	2	1	7	23	29.1%
Don't know	5	-	-	-	2	-	7	8.9%
N/A	-	-	-	-	11	-	11	13.9%
<b>Total</b>	<b>26</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>17</b>	<b>17</b>	<b>79</b>	<b>100%</b>

**DISCUSSION**

Gathering the analysis carried out, the following main findings and forward questions/recommendations can be raised:

- The customary actors involved in the child marriage dispute analyzed considered some children to have infringed the prevailing social norms or local customs related to child marriage, particularly in cases where they have run away as the marriage or existing relationship were not accepted by the families or in cases where children refer directly to the customary actor to intervene as they refuse the marriage arrangement.
- It appears in many cases that child marriage as such is not the upstream problem of the dispute but it is discussed through another conflict resolution process managed by customary actors, for instance in our sample: cases of sexual abuses or consensual (sexual) relationships, girls are already married and are survivors of domestic violence within the couple, etc. In these situations, the dispute will not be understood or considered as child marriage as such case but as family law dispute or eventually as an assault. It tells about the broader approach to be applied in the identification of child marriage cases and the interventions designed for prevention and protection responses, including with children, families and customary actors in the different communities. It would be recommendable though to gather further evidence on normative expectations and sanctions that might indicate that child marriage may not be a social norm as such in



these/some communities although it may be indirectly perpetuated by other norms related to sexuality or broadly family affairs.

- Interestingly, child marriages are not in all cases irreversible from the point of view of customary actors, particularly in cases of violence perpetrated against the child. In some cases, customary actors positioned within the children's wishes or interests (not to get married) rather than with their families' opinion (in favour of marriage). Hence, child protection lens could be further mainstreamed within the interventions with customary actors dealing with child marriages cases, including violence against children.
- Additionally, in our sample the close to half of the cases that were brought to the customary actors, the concerned child was not married yet. It appears then that the involvement of customary actors may happen at a stage where it is possible (and so they have the influence) to "re-shape" the course of the marriage.
- While it could be potentially related with the age mean identified in the sample for the cases analyzed (16 years old), it appears that children had the opportunity to give their account of events in almost half of the cases (48.1%). It needs to be taken in account though the different conceptualizations of the "age of maturity" customary actors may have. Empowerment of children on that regards is essential in child marriage programming.
- Lastly, the sample analyzed tells about child marriage disputes from the point of view of customary actors. Further research on the topic should entail different data set that is driven by the voices and experience of the children themselves in the first place complemented with their families' inputs to gather a comprehensive analysis on the topic.

## APPENDIX

Table I: Household situation of children involved in child marriage cases (within the sample analyzed)

	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total
Two-headed household	22	6	3	5	5	6	48
One-headed household	3	1	1	1	-	1	7
Other	1	2	-	-	1	1	5
N/A	-	-	-	-	11	9	20
<b>Total</b>	<b>26</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>17</b>	<b>17</b>	<b>80</b>

Table II: Parents' employment situation of children involved in child marriage cases (within the sample analysed)

	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total
Employment <sup>a</sup>	10	8	1	5	-	4	29
No employment <sup>b</sup>	13	-	3	1	1	2	20
Don't know	3	1	-	-	4	2	10
N/A	-	-	-	-	12	9	21
<b>Total</b>	<b>26</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>17</b>	<b>17</b>	<b>80</b>

a) One parent at least is in full-time employment or self-employed

b) No parent has a full-time job or is self-employed

Table III: School attendance situation of children involved in child marriage cases (within the sample analyzed)

	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total
Regular school attendance	9	6	4	1	-	1	21
Dropout / Truant school	2	2	-	5	5	6	20
Never been to school <sup>a</sup>	14	1	-	-	-	1	16
Not applicable <sup>b</sup>	1	-	-	-	-	-	1
Don't know	1	-	-	-	1	-	2
N/A	-	-	-	-	11	9	20
<b>Total</b>	<b>27</b>	<b>9</b>	<b>4</b>	<b>6</b>	<b>17</b>	<b>17</b>	<b>80</b>

a) Only for children and young between 5 and 18 years old.  
b) Only for children under 5 years old.

Table IV: Customary actors' perception on the role of girls involved in child marriage cases (No. of children)

<b>FEMALE</b>	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total
Victim	17	9	2	3	2	17	50
Offender	7	-	1	2	1	-	11
Don't know	-	-	-	-	1	-	1
<b>Total</b>	<b>24</b>	<b>9</b>	<b>3</b>	<b>5</b>	<b>4</b>	<b>17</b>	<b>62</b>

Table V: Customary actors' perception on the role of boys involved in child marriage cases (No. of children)

<b>MALE</b>	Afghanistan	Burkina Faso	Egypt	Lebanon	Palestine Gaza	Palestine West-Bank	Total
Victim	1	-	-	1	8	-	10
Offender	2	-	1	-	5	-	8
Don't know	-	-	-	-	-	-	0
<b>Total</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>13</b>	<b>0</b>	<b>18</b>

Chart II: Involvement of other community actors in the conflict resolution process (No. of children)

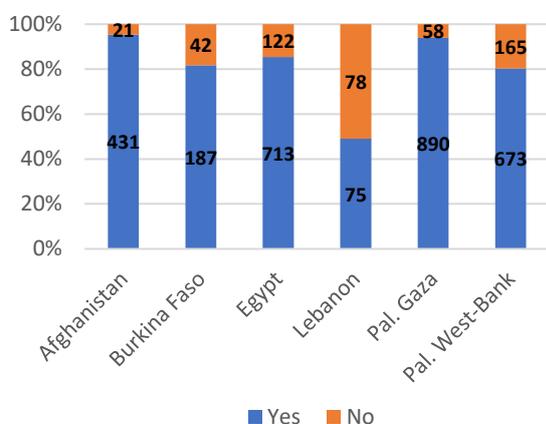
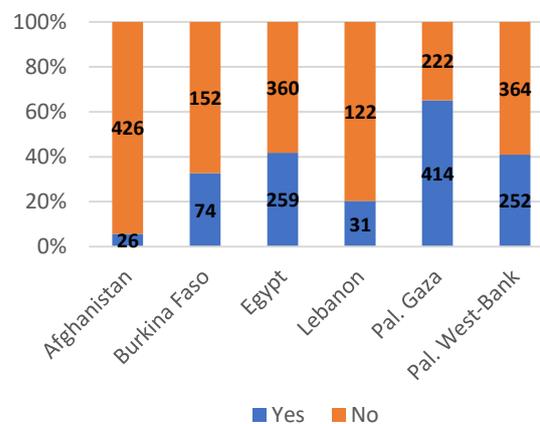


Chart I: Involvement of Formal system actors in the conflict resolution process (No. of children)



## BIBLIOGRAPHY

*Afghanistan: Stop Women Being Given as Compensation.* HUMAN RIGHTS WATCH, 2011.

Bauting, A. (2005). *Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue.* SAGE Journal, Social & Legal Studies.

Colliou & Hope (2016). *Customary Law & Juvenile Justice.* Terre des hommes (Tdh).

Dale, P., (2008). *Access to Justice in Sierra Leone: A Review of the Literature.* UNICEF.

*Early Marriage A Harmful Traditional Practice A Statistical Exploration.* UNICEF, 2005.

Mathur, S. (2003). *Too Young To Wed: The Lives, Rights and Health of Young Married Girls.* International Center for Research on Women (ICRW).

Nour, M. (2009). *Child Marriage: A Silent Health and Human Rights Issue.* Journal Rev Obstetrics Gynecol.

Otoo-Oyortey, N. (2003). *Early marriage and poverty: exploring links for policy and programme development.* Journal Gender & Development, Vol 11.

Raj, A. (2010). *When the mother is a child: the impact of child marriage on the health and human rights of girls.* US National Library of Medicine National Institutes of Health.